

Generative Artificial Intelligence in Legal Practice: Use and Regulation

İnan ULUÇ*

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* Dr., Esq., inanuluc@gmail.com **ORCID:** 0000-0001-6261-3142

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ABSTRACT

In 2023, it was uncovered that two New York attorneys had cited fictitious judgments in their filings, exposing their use of generative artificial intelligence (“GenAI”) in document preparation. Similar cases have emerged across multiple jurisdictions, including the states of Texas, Colorado, and California in the United States, as well as Canada. Additionally, judges in England and Colombia admitted to using GenAI in their judicial processes, demonstrating that GenAI’s integration into legal practice has outpaced understanding of its implications. Concomitant with these incidents has come the polarization of the legal community. While some professionals advocate for GenAI, citing its efficiency and effectiveness in legal tasks, others raise fundamental concerns about its reliability, consistency, and algorithmic bias. Despite these debates, GenAI’s integration into legal practice appears inevitable. The pressing issue now is how GenAI is being utilized in legal practice and what regulatory responses should be implemented regarding its use. In this context, this study first examines how GenAI is currently utilized in legal practice and how it may be utilized in the future. Then, through a comparative analysis of responses given in the United States, Canada, and the European Union, emerging trends in addressing GenAI’s use in legal practice are examined. Drawing on this comparative analysis, this article proposes specific recommendations for Türkiye to establish a balanced regulatory framework that addresses the risks of GenAI while harnessing its benefits for legal practice. The article concludes that, rather than blanket prohibitions or unregulated adoption, a coordinated approach combining ongoing professional education, ethical guidelines, adaptive regulatory frameworks, and oversight mechanisms offers the most viable path for maintaining the integrity of legal systems. This approach enables responsible adoption of GenAI, serving both legal professionals and the public interest.

Keywords: Legal technology, legal practice, generative artificial intelligence, risk, regulation.

Hukuk Uygulamasında Üretken Yapay Zekâ:

Kullanımı ve Düzenlenmesi

ÖZ

2023 yılında, New York Barosu'na kayıtlı iki avukatın mahkemeye sundukları dilekçelerde hayali mahkeme kararlarına atıfta bulunmaları nedeniyle başlatılan inceleme, bu dilekçelerin hazırlanmasında üretken yapay zekâdan faydalandığını açığa çıkarmıştır. Takip eden dönemde, benzer olayların Amerika Birleşik Devletleri'nin ("ABD") Teksas, Kolorado ve Kaliforniya eyaletlerinde ve Kanada'da yaşanması, ardından İngiltere ve Kolombiya'da görev yapan bazı hâkimlerin yargılama süreçlerinde üretken yapay zekâdan faydalandıklarını beyan etmeleri, bu teknolojinin hukukta kullanımının getirdiği risklerin anlaşılmasından daha hızlı yayıldığını ortaya çıkarmıştır. Bu olaylar beraberinde üretken yapay zekânın hukuk pratiğindeki yerine dair tartışmaları ve kutuplaşmaları beraberinde getirmiştir. Bazı hukukçular, söz konusu teknolojinin kullanımını hızı ve verimliliği arttırdığı gerekçesi ile savunurken, bazılarıysa güvenilirlik, tutarlılık ve algoritmik önyargı konularında endişelerini dile getirerek karşı çıkmaktadırlar. Gelineen noktada, üretken yapay zekânın hukuk uygulamasında kullanımı kaçınılmaz görünmektedir. Esas mesele artık bu teknolojinin hukukta nasıl kullanıldığı ve bu kullanımın düzenlenmesine ilişkin hangi adımların atılabileceğidir. Bu bağlamda makale, ilk olarak üretken yapay zekânın hukuk uygulamasında nasıl kullanıldığını ve kullanılabileceğini ele almakta, ardından ABD, Kanada ve Avrupa Birliği'nde atılan adımların karşılaştırmalı analizi yoluyla bu teknolojinin düzenlenmesinde ortaya çıkan eğilimleri incelemektedir. Sonrasında, bu karşılaştırmalı analizden yola çıkarak, Türkiye'nin üretken yapay zekânın risklerini ele alırken hukuk pratiği için sunduğu faydalardan da yararlanabileceği dengeli bir yaklaşım oluşturmaya yönelik öneriler sunulmaktadır. Makale, kapsamlı yasaklar ya da denetimsiz kullanım yerine, sürekli mesleki eğitimi, etik kılavuzları, kolay uyarlanabilir düzenlemeleri ve denetim mekanizmalarını birleştiren koordineli bir yaklaşımın hukuk sistemlerine olan güveni korumak için en uygun yaklaşım olduğu sonucuna varmaktadır. Bu yaklaşımın, üretken yapay

zekânın kullanımını etik bir zemine oturtarak hem hukuk uygulayıcılarına hem de kamu yararına hizmet edeceği düşünülmektedir.

Anahtar Kelimeler: Hukuk teknolojisi, hukuk uygulaması, üretken yapay zekâ, risk, regülasyon.

INTRODUCTION

Generative artificial intelligence (“GenAI”) refers to deep learning models that, based on their training datasets and user prompts, can create new content, such as audio, video, text, images, and simulations, or replicate existing styles and content^[1].

This technology evolved from a theoretical concept to a practical reality when OpenAI released ChatGPT on November 30, 2022. While its implications for the legal practice were initially a mystery, perhaps not even on most legal professionals’ radar, ChatGPT made its maiden voyage into the legal realm in early 2023 by taking the “Uniform Bar Exam^[2].” By not just passing but excelling on the exam, earning a combined score of 297^[3], ChatGPT hinted at its potential to transform legal practice fun-

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- [1] Adam Zewe, “Explained: Generative AI”, *MIT News*, November 9, 2023, <https://news.mit.edu/2023/explained-generative-ai-1109>; Kim Martineau, “What is generative AI?”, *IBM*, April 20, 2023, <https://research.ibm.com/blog/what-is-generative-AI>; “What is generative AI”, *McKinsey & Company*, April 2, 2024, https://www.mckinsey.com/featured-insights/mckinsey-explainers/what-is-generative-ai#.
- [2] The Uniform Bar Exam (“UBE”) is a standardized test that law school graduates must pass to be an attorney in the United States. The UBE comprises three main components: (1) *Multistate Examination (MBE)*: A multiple choice test consisting of 200 questions covering subjects such as Constitutional Law, Contracts, Civil Procedure, Criminal Law and Procedure, Evidence, Real Property, and Torts. (2) *Multistate Essay Examination*: A series of essay questions that test the examinee’s ability to analyze and apply legal principles in written form. The essays cover various topics, including but not limited to those tested on the MBE. (3) *Multistate Performance Test*: A practical component to evaluate the examinee’s ability to perform legal tasks, such as drafting legal documents or advising a client, based on a given set of materials. This component assesses skills in legal analysis, problem-solving, and communication.
- [3] See Debra Cassens Weiss, “Latest Version of ChatGPT Aces Bar Exam with Score Nearing 90th Percentile”, *ABA Journal*, March 16, 2023, <https://www.abajournal.com/web/article/latest-version-of-chatgpt-aces-the-bar-exam-with-score-in-90th-percentile>; Pablo Arredondo, “GPT-4 Passes the Bar Exam: What That Means for Artificial Intelligence Tools in the Legal Profession”, *Stanford Law School Blogs*, April 19, 2023, <https://law.stanford.edu/2023/04/19/gpt-4-passes-the-bar-exam-what-that-means-for-artificial-intelligence-tools-in-the-legal-industry/>.

damentally, putting the legal profession on its heels. After ‘surpassing’ the bar exam, ChatGPT debuted in the judicial system. First, it was used by a judge to make a ruling^{[[4]]} and then by lawyers in their legal submissions^{[[5]]}.

As technology advances, legal professionals^{[[6]]} naturally explore and integrate innovative tools and platforms into their practice, whether basic technology, such as Microsoft Office, or sophisticated software solutions like case management systems. However, in the case of GenAI, its integration represents a departure from traditional tools due to its advanced capabilities. While some have praised these capabilities for streamlining processes, enhancing efficiency, and saving costs^{[[7]]}, others have approached

[4] Janus Rose, “A Judge Just Used ChatGPT to Make a Court Decision”, *Vice*, February 3, 2023, <https://www.vice.com/en/article/k7bdmv/judge-used-chatgpt-to-make-court-decision>.

[5] Benjamin Weiser, “Here’s What Happens When Your Lawyer Uses ChatGPT”, *The New York Times*, May 27, 2023, <https://www.nytimes.com/2023/05/27/nyregion/avianca-airline-lawsuit-chatgpt.html>; Molly Bohannon, “Judge Fines Two Lawyers for Using Fake Cases from ChatGPT”, *Forbes*, June 22, 2023, <https://www.forbes.com/sites/mollybohannon/2023/06/22/judge-fines-two-lawyers-for-using-fake-cases-from-chatgpt/?sh=6c09e995516c>.

[6] In this article, the term “legal professionals” refers to judges, assistant judges, rapporteurs, and attorneys when discussing Türkiye, while it includes judges, attorneys, and law clerks in sections focusing on jurisdictions outside of Türkiye. However, given that the use of and the risks posed by GenAI may differ from one profession to another, specific professional title(s) will be explicitly stated if needed for clarity during analysis.

[7] Stacie I. Strong, “Rage Against the Machine: Who Is Responsible for Regulating Generative Artificial Intelligence in Domestic and Cross-Border Litigation?”, *University of Illinois Law Review Online*, September 2023, 166-67; Jeffrey W. Greene and Elizabeth E. Georgiopoulos, “With Responsible Use and Advanced Tools, Generative AI Will Change the Way We Litigate”, *Boston Bar Association* 68, no. 3 (August 2024); Kalliopi Terzidou, “Generative AI Systems in Legal Practice Offering Quality Legal Services While Upholding Legal Ethics”, *Cambridge University International Journal of Law in Context Online*, March 27, 2025; Laura Safdie, “AI and Legal Aid: A Generational Opportunity for Access to Justice”, *Thomson Reuters*, February 3, 2025, <https://www.thomsonreuters.com/en-us/posts/ai-in-courts/ai-legal-aid-generational-opportunity/>.

them with cautious optimism, expressing reservations^{[[8]]}. Critics of GenAI express substantial concerns about its integration into legal practice, arguing that it introduces significant risks that cascade through the justice system from potential threats to due process and procedural fairness, to ultimately eroding public trust and compromising the standards and integrity of the legal profession^{[[9]]}.

The divergence of opinions stems from GenAI's capability to craft entirely new, original content by utilizing machine learning techniques^{[[10]]}. This unique capability brings three critical issues to the forefront: First, in its current form, GenAI lacks 'guardrails' to prevent the generation of inac-

[8] Ibid., 167; Lauren Croft, "Use of ChatGPT in Courts Should Be 'Approached with Great Caution'", *Lawyers Weekly*, February 13, 2023, <https://www.lawyersweekly.com.au/the-bar/36657-use-of-chatgpt-in-courts-should-be-approached-with-great-caution#:~:text=About-,Use%20of%20ChatGPT%20in%20courts%20should%20be%20'approached%20with%20great,can%20and%20should%20be%20used.>

[9] See David Uriel Socol de la Osa and Nydia Remolina, "Artificial Intelligence at the Bench: Legal and Ethical Challenges of Informing – or Misinforming – Judicial Decision-Making Through Generative AI", *Cambridge University Data and Policy Journal Online*, December 2024; Drew Simshaw, "Access to A.I. Justice: Avoiding an Inequitable Two-Tiered System of Legal Services", *Yale Journal of Law and Technology* 24 (2022); Dan Ho and Mirac Suzgun, "AI, Liability, and Hallucinations in a Changing Tech and Law Environment", *Stanford Law School Podcasts*, Episode 161, May 15, 2025, <https://law.stanford.edu/stanford-legal/ai-liability-and-hallucinations-in-a-changing-tech-and-law-environment/>; Hon. Ralph Artigliere, "AI Hallucinations in Court: A Wake-Up Call for the Legal Profession", *JD Supra*, January 22, 2025, <https://www.jdsupra.com/legalnews/ai-hallucinations-in-court-a-wake-up-4503661/>.

[10] For further information about the difference between traditional AI and GenAI, see Emily Heaslip, "What's the Difference Between Traditional and Generative AI?", October 16, 2023, <https://www.uschamber.com/co/run/technology/traditional-ai-vs-generative-ai>. As one example of the risk posed to the justice system by this capability of GenAI, see Advisory Committee of Judicial Conference of the United States, *Evidence Rules* 19 April 2024, 6 ("Rapidly improving generative AI software applications are capable of producing fabricated (or altering existing) photographs, audio recordings, and audio-visual recordings that are so realistic that it is becoming very difficult to differentiate between authentic evidence and fabricated/altered evidence.").

curate and misleading information, leading to documents filled with fabricated legal authorities known as hallucinations^{[[11]]}. Second, while GenAI can rapidly ‘read’ extensive amounts of source material, its susceptibility to misinterpretation and misapplication often undermines the trustworthiness of references to legitimate legal authorities^{[[12]]}. Third, it is challenging to identify AI-created texts, images, and videos, raising concerns about

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- [11] Strong, “Rage Against the Machine”, 167; Bohannon, “Judge Fines Two Lawyers” (“[Steven] Schwartz had been serving as legal counsel for Roberto Mata, who was suing Avianca Airlines [...]. Avianca had filed for the case to be dismissed, and in response, Schwartz filed six cases to show precedent, including Varghese v. China Southern Airlines and Shaboon v. Egypt Air. But the court found these cases – which would later be revealed to be created by ChatGPT – didn’t exist and had ‘bogus judicial decisions with bogus quotes and bogus internal citations.’”); Leyland Cecco, “Canada Lawyer Under Fire for Submitting Fake Cases Created by AI Chatbot”, *The Guardian*, February 29, 2024, <https://www.theguardian.com/world/2024/feb/29/canada-lawyer-chatgpt-fake-cases-ai> (“[A lawyer in Canada] was representing a father who wanted to take his children overseas on a trip but was locked in a separation dispute with the children’s mother. [Attorney] alleged to have asked ChatGPT for instances of previous case law that might apply to her client’s circumstances. The chatbot, developed by OpenAI, produced three results, two of which she submitted to the court. The lawyers for the children’s mother, however, could not find any record of the cases despite multiple requests. When confronted with the discrepancies, [attorney] backtracked. ‘I had no idea that these two cases could be erroneous. After my colleague pointed out the fact that these could not be located, I did research of my own and could not detect the issues either,’ [attorney] wrote in an email to the court.”). Another example of GenAI hallucination can be found in the CNN article titled “Bot or not? How to tell when you’re reading something written by AI.” According to the news, when ChatGPT was asked to generate a short economics article titled “What to expect from the Fed meeting as Powell faces a legacy-defining moment,” ChatGPT cited the consumer price index (CPI) figure wrong and inaccurately stated that the Fed Chair Jerome Powell’s term came to an end in February 2022. For further information, *see* Clare Duffy and Kenneth Uzquiano, “Bot or Not? How to Tell When You’re Reading Something Written by AI”, *CNN*, July 11, 2023, <https://www.cnn.com/interactive/2023/07/business/detect-ai-text-human-writing/>.

- [12] Strong, “Rage Against the Machine”, 167.

authenticity and accountability^[13].

Despite these challenges, GenAI's swift permeation within the legal industry and its growing integration into various aspects of legal practice foreshadow ineluctable changes. This article responds to this imperative by analyzing GenAI's current and emerging role in legal practice and exploring the regulatory approaches emerging in the United States ("U.S."), Canada, and the European Union ("EU")^[14]. This jurisdictional selection reflects methodological considerations designed to capture diverse legal traditions and approaches: the U.S., as the locus of GenAI development, offers insights into emergent methods; Canada provides a comparative common law perspective within a distinct federal structure; while the EU exemplifies a comprehensive, rights-centric legislative approach that prioritizes fundamental protections over technological permissiveness.

The analysis begins by examining GenAI's practical applications across key areas of legal work, from document preparation to legal research, before turning to evaluate how different jurisdictions are addressing GenAI integration in legal practice via regulatory frameworks and professional guidance. Building on this comparative analysis, the focus then shifts to

[13] Ibid., 167. Also, as examples of efforts to detect GenAI-created content, see Melissa Heikkilä, "Why Detecting AI-Generated Text Is So Difficult (and What to Do About It)", *MIT Technology Review*, February 7, 2023, <https://www.technologyreview.com/2023/02/07/1067928/why-detecting-ai-generated-text-is-so-difficult-and-what-to-do-about-it/> ("Last week, OpenAI unveiled a tool that can detect text produced by its AI system ChatGPT. [...] This tool is OpenAI's response to the heat it's gotten from educators, journalists, and others for launching ChatGPT without any way to detect the text it has generated. However, it is still very much a work in progress, and it is woefully unreliable. OpenAI says its AI text detector correctly identifies 26% of AI-written text as 'likely AI-written.'"); Duffy and Uzquiano, "Bot or Not"; Mike Wheatley, "NIST Announces New Initiative to Create Systems That Can Detect AI-Generated Content", *Silicon Angle*, April 29, 2024, <https://siliconangle.com/2024/04/29/nist-announces-new-initiative-create-systems-can-detect-ai-generated-content/>.

[14] This article analyzes the use of GenAI within civil litigation. The analyses and opinions presented throughout are specifically limited to civil cases and do not extend to criminal litigation.

the specific steps Türkiye should take to address the use of GenAI in legal practice. The article concludes by arguing that effectively integrating GenAI into the legal field requires a unified, proactive approach where lawmakers, regulatory bodies, and institutions collaborate closely. Rather than relying on reactive, fragmented, and content-specific solutions^{[[15]]}, efforts should be directed toward identifying, or maybe establishing a dedicated body, whether public or private, that can stay abreast of GenAI's evolving capabilities and implement comprehensive measures at both national and international levels^{[[16]]}.

I. THE USE OF GENAI IN LEGAL PRACTICE

In *Law's Empire*, while developing his theory of legal interpretation, Ronald Dworkin reintroduces Judge Hercules, a character who appears in an earlier Dworkin work^{[[17]]}. Judge Hercules is gifted with an unparalleled superhuman capacity to read, understand, and grasp every fragment of law and thus decides cases in a way that puts the law in the best possible light, achieving justice, fairness, and integrity^{[[18]]}. When Dworkin invoked Judge Hercules in 1986, his intent was not to prophesy the age of GenAI in the legal profession but to critique the legal positivism of Herbert Lionel

[15] Strong, "Rage Against the Machine", 167-68 ("In the United States, individual judges are amending their rules to indicate the extent to which generative AI is permitted in party submissions, while in Canada, the Supreme Court is considering the adoption of a practice note concerning the use of AI in its proceedings. The United Kingdom has issued a White Paper on AI, while the European Union (EU) and China have already drafted legislation on the subject.").

[16] Ibid., 168. For further information regarding the regulation of GenAI in domestic and cross-border litigation, see Strong, "Rage Against the Machine."

[17] Ronald Dworkin, "Hard Cases", *Harvard Law Review* 88, no. 6 (1975): 1057.

[18] John T. Noonan Jr, "Hercules and the Snail Darter", *The New York Times*, May 25, 1986, <https://www.nytimes.com/1986/05/25/books/hercules-and-the-snail-darter.html>.

Adolphus Hart^[19].

Judge Hercules has garnered renewed attention among legal scholars and practitioners as GenAI becomes more widespread in legal practice. Due to the gray areas in legal determinations requiring human judgment, it is posited that AI will not become Judge or Attorney Hercules in the near future^[20]. However, GenAI's current execution of a wide range of legal tasks provides a preview of a future where its role in the legal realm and decision-making is significantly amplified. This trajectory raises the prospect of potentially diminishing the need for human judges and attorneys as GenAI advances and refines its capabilities^[21].

[19] David Freeman Engstrom and Jonah B. Gelbach, "Legal Tech, Civil Procedure, and the Future of Adversarialism", *The University of Pennsylvania Law Review* 169 (2021): 1008.

[20] Amy Howe, "AI Won't Displace Human Judges, But Will Affect Judiciary, Roberts Says in the Annual Report", *Scotus Blog*, December 31, 2023, <https://www.scotusblog.com/2023/12/ai-wont-displace-human-judges-but-will-affect-judiciary-roberts-says-in-annual-report/> ("[Justice] Roberts rejected any suggestion that, as a result of AI, 'judges are about to become obsolete.' He acknowledged that professional tennis tournaments now use 'optical technology to determine whether 130 miles per hour serves are in or out.' However, Roberts – who at his confirmation hearing famously compared judges to baseball umpires tasked with calling balls or strikes – said 'legal determinations often involve gray areas that still require [the] application of human judgment.'").

[21] Rachel Curry, "AI Is Making Its Way into the Courtroom and Legal Process", *CNBC*, November 1, 2023, <https://www.cnn.com/2023/11/01/ai-is-making-its-way-into-the-courtroom-and-legal-process.html> ("Is the U.S. headed towards an AI-driven 'smart court,' as the Center for Strategic and International Studies calls China's frequent use of automated, digitized court proceedings? Not quite, experts say. However, these predictions aren't entirely off the mark. [...] While the current use of AI in the U.S. legal industry operates intensely behind the scenes, it's inching further into the front lines of the courtroom."). *See also* "AI and The Rule of Law: Capacity Building for Judicial Systems", UNESCO, accessed August 28, 2024, <https://www.unesco.org/en/artificial-intelligence/rule-law/mooc-judges>; Robert Buckland, "AI, Judges, and Judgment: Setting the Scene", Working Paper No. 2023.220 (Mossavar-Rahmani Center for Business and Government, Harvard Kennedy School, November 2023); Tara Vasdani, "From Estonian AI Judges to Robot Mediators in Canada, U.K.", *LexisNexis*, <https://www.lexisnexis.com>.

GenAI is currently utilized primarily for the following purposes: (a) litigation outcome prediction and case selection, (b) legal research, (c) opinion writing and decision-making, and (d) other.

A) LITIGATION OUTCOME PREDICTION AND CASE SELECTION

Litigation outcome prediction is an area where, by harnessing advanced machine learning technology^[22] and data analytics^[23], GenAI and AI-based tools may offer unparalleled insights into the potential outcomes of legal conflicts. To make an outcome prediction, AI uses legal factors such as past case law, legal precedents, statutes, scholarly publications, and con-

ca/en-ca/ihc/2019-06/from-estonian-ai-judges-to-robot-mediators-in-canada-uk.page; Christopher Michael Malikschrutt, “The Real Future of AI in Law: AI Judges”, *American Bar Association: Law Technology Today*, October 18, 2023, https://www.americanbar.org/groups/law_practice/resources/law-technology-today/2023/the-real-future-of-ai-in-law-ai-judges/. For further information about smart courts and the push for technological innovation in the judicial system of China, see Claire Cousineau, “Smart Courts and the Push for Technological Innovation in China’s Judicial System”, *Center for Strategic and International Studies*, April 15, 2021, <https://www.csis.org/blogs/new-perspectives-asia/smart-courts-and-push-technological-innovation-chinas-judicial-system>.

[22] Machine learning technologies refer to a subset of artificial intelligence that enables systems to learn from data, identify patterns, and render decisions with minimal human involvement. These technologies utilize algorithms and statistical models to analyze large datasets, learn from them, and enhance their performance over time without being expressly programmed for particular tasks. See “What is machine learning?”, *IBM*, September 22, 2021, <https://www.ibm.com/think/topics/machine-learning>; Sara Brown, “Machine learning, explained”, *MIT Management: Sloan School*, April 21, 2021, <https://mitsloan.mit.edu/ideas-made-to-matter/machine-learning-explained>; “What is Machine Learning? Key Concepts and Real-World Uses”, *Syracuse University: School of Information Studies*, February 14, 2025, <https://ischool.syracuse.edu/what-is-machine-learning/>.

[23] Nan L. Grube, “Data Analytics and Artificial Intelligence in Litigation”, *MOBAR*, January-February 2022, <https://news.mobar.org/data-analytics-and-artificial-intelligence-in-litigation/#20> (“Generally speaking, data analytics is discovering patterns, trends, and relationships between and among a colossal amount of data through the use of computer algorithms and programs. Data analytics uncovers patterns that correlate with an outcome, and in the legal field, this data allows lawyers to make informed strategic decisions.”).

textual information relevant to the dispute at hand. If AI is to be utilized for judge-specific predictions, in addition to legal factors, features coming from external sources may be incorporated into the analysis. These could include the assigned judge's demographics, historical trends in their decisions, tenure on the bench, caseload, attitudinal information, and local economic or crime data^{[[24]]}.

The ability to predict litigation outcomes is described as “one of the most exciting developments of the age”^{[[25]]}, accordingly, it continues to be an active scholarly and commercial research area. In the commercial sphere, many companies are building or already offering AI models to predict the outcome of cases. In the U.S., big legal research companies – LexisNexis^{[[26]]}, Westlaw^{[[27]]}, and Bloomberg^{[[28]]} – have all developed tools leveraging AI and data analytics to predict case outcomes and estimate the likelihood of judges granting or denying motions. There is also a collection of smaller companies offering outcome prediction services concentrated on specific practice areas. For example, a Canadian company, Blue J Legal, is a start-up with a large language model-based prediction engine focusing on tax law and disputes^{[[29]]}. A U.S. company, Docket Alarm, provides

[24] Charlotte S. Alexander, “Litigation Outcome Prediction, Access to Justice, and Legal Endogeneity”, in *Legal Tech and the Future of Civil Justice*, ed. David Freeman Engstrom (Cambridge University, 2023), 157; Engstrom and Gelbach, “Future of Adversarialism”, 1011.

[25] “AI: the future of litigation strategy”, *Hausfeld*, June 13, 2019, <https://www.hausfeld.com/fr-fr/what-we-think/perspectives-blogs/ai-the-future-of-litigation-strategy/>.

[26] “Lex Machina”, <https://lexmachina.com/>.

[27] “Westlaw Edge”, <https://legal.thomsonreuters.com/en/products/westlaw-edge/litigation-analytics#compare>.

[28] “Bloomberg Law”, <https://pro.bloomberglaw.com/products/legal-research-and-software/workflow-tools/#overview>.

[29] “Blue J”, <https://www.bluej.com/how-it-works>; Grube, “Data Analytics and Artificial Intelligence” (“[Blue J’s system] works by using machine learning to predict how a court would rule in a specific scenario. Lawyers can then input the scenario by filling out a brief questionnaire with facts about the unique legal situation. Blue

prediction services in patent litigation and affords its clients analytics, producing the likelihood of winning given a particular judge, technology area, law firm, or party^[30].

The enthusiasm and interest in outcome prediction seen in the commercial sphere are equally reflected in the academic sphere. Numerous academic studies have focused on decisions given by different levels of courts in various areas of law, such as employment, immigration, asylum, tort, and human rights. For example, academic interest in the U.S. concentrated on judgments furnished by the U.S. Supreme Court^[31], federal appellate courts, federal district courts^[32], immigration courts^[33],

J uses its AI to compare the entered case against all relevant previous cases in its database. From this point, a lawyer can simulate a change in facts on the outcome and compare it against other cases. Blue J reports it can predict case outcomes with 90% accuracy.”).

[30] “Docket Alarm”, <https://www.docketalarm.com/>. Notably, some law firms recognized the financial and strategic benefits of outcome prediction long before. In 2015, Dentons, the world’s largest law firm, announced the launch of its Nextlaw Labs to fund development in outcome prediction and other AI-powered approaches to legal practice. For further information, see Joseph Andrew and Elliot I. Portnoy, “Dentons Launches Nextlaw Labs and Creates Legal Business Accelerator”, *Dentons*, May 19, 2015, <https://www.dentons.com/en/about-dentons/news-events-and-awards/news/2015/may/den%20tons-launches-nextlaw-labs-creates-legal-business-accelerator>. See also Alexander, “Litigation Outcome Prediction”, 162 (“[G]iant personal injury firm Morgan & Morgan has developed a ‘Google-style’ operation’ in which the firm ‘evaluate[s] ‘actionable data points’ about personal injury settlements or court proceedings’ and uses the insight to ‘work up a case accordingly – and ... do that at scale.’”).

[31] For example, see Daniel Martin Katz, Michael J. Bommarito II, and Josh Blackman, “A General Approach for Predicting the Behavior of the Supreme Court of the United States”, *Plos One* 12, no. 4 (2017).

[32] See generally Alexander, “Litigation Outcome Prediction”, 160.

[33] For example, see Daniel L. Chen and Jess Eigel, “Can Machine Learning Help Predict the Outcome of Asylum Adjudications”, International Conference on Artificial Intelligence and Law, London, United Kingdom, June 12-16, 2017; Matthew Dunn, Levent Sagun, Hale Sirin, and Daniel L. Chen, “Early Prediction

and state courts. Outside of the U.S., studies focused on an assortment of courts, some of which are the European Court of Human Rights^[34], the International Criminal Court^[35], the Constitutional Court of Turkey^[36], Turkish district courts^[37], and French appeals courts^[38].

Based on this layout of the commercial and scholarly fields, interest in AI-powered outcome prediction will continue to grow. This burgeoning interest, paired with advancements in machine learning technology and data analytics, will indisputably transform AI's capabilities and, concomitantly, the practice of law. However, the implications of this transformation may vary for lawyers and potential litigants^[39].

Accurately assessing the likelihood of a successful outcome for a lawsuit grants lawyers a strategic advantage. With AI's predictive capabilities, they can decide whether to take a case on contingency^[40], determine the ex-

of Asylum Court Decisions”, Proceedings of the 16th Edition of the International Conference on Artificial Intelligence and Law, London, United Kingdom, 2017.

[34] “AI Predicts Outcomes of Human Rights Trials”, *University College London*, October 24, 2016.

[35] Alexander, “Litigation Outcome Prediction”, 160 fn 29.

[36] For example, *see* Emre Mumcuoglu, “Prediction of Outcomes in Higher Courts of Turkey Using Natural Language Processing” (master's thesis, Bilkent University, 2022),

<https://repository.bilkent.edu.tr/items/f10eab5e-2ee2-4ce5-b608-6115a60f6789>.

[37] Ibid.

[38] Alexander, “Litigation Outcome Prediction”, 160 fn 30.

[39] *See* Peter Leonard, “GenAI before the courts: the legal risks in using artificial intelligence”, *Business Think*, January 9, 2024, <https://www.businessthink.unsw.edu.au/articles/generative-AI-in-legal-practice>; Joely Williamson, “The Rise of AI in Legal Practice: Opportunities, Challenges, and Ethical Considerations”, *Colorado Technology Law Journal Online*, March 21, 2025; Alexander, “Litigation Outcome Prediction”.

[40] In the U.S. legal system, attorneys can take cases on a contingency basis, which is intended to enhance access to justice for individuals who might not otherwise

tent of investment in experts, allocate resources effectively, or advise their clients on settlement options. Preceding all these considerations, they can meticulously select their clients and cases. While this represents informed decision-making for lawyers, it constitutes the commoditization of legal claims for potential litigants^{[[41]]}. This can impede access to justice for those deemed risky^{[[42]]} or whose claims are considered novel or disfavored. With this possible ramification for access to justice, GenAI, touted for its potential to reduce the justice gap, may ironically exacerbate disparities in access to justice^{[[43]]}.

B) LEGAL RESEARCH

Legal research is another aspect of legal practice where GenAI is poised to become legal professionals' 'loyal wingman.' With its ability to swiftly analyze vast volumes of legal documents, pinpoint relevant precedents, rules and regulations, and provide summaries, GenAI may streamline the research process, afford insights complementing human knowledge and expertise, and allow legal professionals to concentrate their efforts on more strategic aspects of the practice. Indeed, empirical evidence affirms that this potential of GenAI has already been recognized within the profession.

According to the "LexisNexis International Legal Generative AI

afford legal representation. Under a typical contingency fee agreement, the client only pays attorney fees if they win the case, with the payment being a percentage of the awarded damages. This arrangement helps to ensure that financial barriers do not prevent people from pursuing their legal rights.

[41] See Benjamin Alarie, "The Path of the Law: Towards Legal Singularity", *U. Toronto L.J.* 66 (2016); Alexander, "Litigation Outcome Prediction".

[42] Alexander, "Litigation Outcome Prediction", 168 ("[T]o the extent that representation is denied to would-be litigants because of their own negative personal histories, ingested by a model as data points, litigation outcome prediction tools can reduce people to their worst past acts and prevent them from changing course.").

[43] The effects of GenAI on access to justice and other due process rights will be explored in a separate scholarly work.

Study”^[44], 65% of lawyers foresee the highest potential for GenAI in aiding them in researching legal matters^[45]. Further, pursuant to Bloomberg Law’s 2024 Legal Operations and Technology Survey, most legal professionals have used GenAI in their practice have used it for legal research^[46]. In the survey, respondents were asked about utilizing GenAI in their practice. They were presented with a list of possible legal tasks and the option to respond that they had not used GenAI for work. 54% of the participants said they had not used GenAI for work^[47]. Of the respondents who have used GenAI for work, 57% reported using it for legal research^[48].

Prior to the Bloomberg survey and LexisNexis study, various news reports spotlighted attorney blunders involving GenAI in legal research, resulting in court submissions with improper or fabricated citations^[49]. As a result, courts have begun to take measures or impose consequences to

[44] “LexisNexis International Legal Generative AI Survey Shows Nearly Half of the Legal Profession Believe Generative AI Will Transform the Practice of Law”, *LexisNexis*, August 22, 2023, <https://www.lexisnexis.com/community/pressroom/b/news/posts/lexisnexis-international-legal-generative-ai-survey-shows-nearly-half-of-the-legal-profession-believe-generative-ai-will-transform-the-practice-of-law> (“The survey asked 7,950 lawyers, law students, and consumers across the U.S., U.K., Canada, and France about their overall awareness, its anticipated impact on the practice of law, use of generative AI, and expectations of adoption.”).

[45] Ibid.

[46] “2024 Legal Operations and Technology Survey”, *Bloomberg Law*, January 2024, <https://assets.bbhub.io/bna/sites/18/2024/06/2024-Legal-Ops-and-Tech-Survey.pdf>; Stephanie Pacheco, “Analysis: Legal Workers Use AI for Research, Despite Red Flags”, *Bloomberg Law*, April 4, 2024, <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-legal-workers-use-ai-for-research-despite-red-flags>.

[47] Ibid.

[48] Ibid.

[49] Some cases involving the incidents of GenAI hallucination are as follows: *Mata v. Avianca, Inc.*, 22-CV-1461, 2023 WL 4114965, at 1 (S.D.N.Y. June 22, 2023); *U.S. v. Cohen*, 18-CR-0602, 2023 WL 8635521, at 9-12 (S.D.N.Y. Dec. 12, 2023); *Morgan v. Community Against Violence*, 23-CV-0353, 2023 WL 6976510, at 13-16 (D. N.M. Oct. 23, 2023); *A. v. B.*, Florence Business Court, Order of March 13,

address the misuse of GenAI and ultimately discourage attorneys from using it^{[[50]]}. However, the Bloomberg survey suggests that, despite this push from the judiciary, legal professionals are not dissuaded from leveraging GenAI in legal research. Further, the LexisNexis study indicates that the prevalence of GenAI in legal research will increase^{[[51]]}. This underscores the need and urgency for guidelines on the ethical and proper use of GenAI in the legal profession, as well as ongoing oversight to ensure legal professionals do not breach ethical standards and professional responsibilities.

Here, some recommendations can be made regarding the better use of GenAI for legal research and mitigating associated risks. Legal professionals should bear in mind that the impact and credibility of legal documents, whether penned by a judge, attorney, or law clerk, depend not only on the integrity of legal arguments but also on the accuracy and reliability of the legal research underpinning them. Thus, AI responses should be cautiously approached, and resources cited by it should be read and verified. Additionally, it should be remembered that, in its current state, GenAI models' responses may be shaped by the phrasing of the questions and often reflect the user's existing information and insights if embedded

2025, Case No. 11053/2024 R.G., https://www.damiencharlotin.com/hallucinations/?sort_by=-date&states=Italy&period_idx=0.

[50] Josh Russell, "Sanctions Ordered for Lawyers Who Relied On ChatGPT Artificial Intelligence to Prepare Court Brief", *Courthouse News Service*, June 22, 2023, <https://www.courthousenews.com/sanctions-ordered-for-lawyers-who-relied-on-chatgpt-artificial-intelligence-to-prepare-court-brief/>; Ben Warwick, "Colorado Lawyer Suspended for Using AI Platform to Draft Legal Motion", *CBS News*, November 22, 2023, <https://www.cbsnews.com/colorado/news/colorado-lawyer-artificial-intelligence-suspension/>; Susan Lazaruk, "B.C. Law Society Investigates Lawyer Who Used AI to Make Fake Case Law", *Vancouver Sun*, February 27, 2024, <https://vancouver.sun.com/news/local-news/fake-case-law-in-b-c-divorce-court-points-up-pitfalls-with-ai-tools-for-lawyers>.

[51] "LexisNexis International Legal Generative AI Survey" ("Lawyers see the highest potential for generative AI tools to assist them in researching matters (65%).").

within the questions^[52]. Accordingly, legal professionals should approach GenAI interactions with a critical mindset, recognizing that the quality and accuracy of responses may differ based on the input provided. Also, they should strive to ask clear, well-informed questions and critically evaluate the responses they receive, cross-referencing with reliable resources when necessary. Finally, and most importantly, legal professionals should prioritize developing AI literacy and proficiency, recognizing that their AI use may have ethical implications in terms of professional responsibility and the integrity of legal proceedings. These implications are discussed in further detail under the title II-D, Türkiye.

C) OPINION WRITING AND DECISION-MAKING

In early 2023, Judge Juan Manuel Padilla of the First Circuit Court in the City of Cartagena, Colombia, delivered his judgment concerning whether an autistic child's insurance should cover all the costs of his medi-

[52] For example, when OpenAI's ChatGPT 3.5 was prompted to answer a question of whether Elon Musk should sell Mercedes-Benz, it generated the following response: "Elon Musk is the CEO of Tesla, a company known for its electric vehicles, while Mercedes-Benz is a well-established automotive manufacturer with its own line of vehicles. *Whether Elon Musk should sell Mercedes is a decision that would depend on various factors, including the strategic goals and priorities of both Tesla and Mercedes-Benz, as well as market dynamics and regulatory considerations. From a strategic perspective, selling Mercedes could potentially allow Tesla to focus more resources and attention on its core business of electric vehicles and sustainable energy technologies.*" (emphasis added). When the question was whether the Republic of Türkiye should sign the European Convention on Human Rights, the following was ChatGPT's response: "*Türkiye's decision to sign the European Convention on Human Rights (ECHR) is a complex matter that involves political, legal, and societal considerations. [...] Ultimately, the decision to sign the ECHR would require careful consideration of the potential benefits and drawbacks, as well as broader political and societal dynamics within Türkiye.*" As illustrated by these examples, rather than directly correcting factual inaccuracies in the questions about ownership of Mercedes-Benz and Türkiye's status as a signatory to the ECHR, ChatGPT shaped its answers in accordance with the way the questions were phrased and based its decisions on the inaccurate information placed into the questions. This highlights the model's ability to shape its answers according to the context provided, even when the information is incorrect.

cal treatment^{[[53]]}. Judge Padilla decided that the entirety of the child’s medical expenses and transport costs should be paid by his medical plan^{[[54]]}. While the judgment itself did not cause much surprise, the inclusion of the Judge’s conversations with ChatGPT did. The judgment revealed that Judge Padilla utilized ChatGPT in the decision-making and opinion writing^{[[55]]}. Here, Judge Padilla’s candor should be commended. Rather than concealing his AI use, Judge Padilla opted for full transparency, thereby preserving the integrity of legal proceedings and setting an important precedent for fellow judges.

In September 2023, it was reported that Lord Justice Colin Birss of the High Court of England Wales used ChatGPT to write part of a judgment. Lord Justice Birss stated he asked the AI tool to summarize an area of law, received a paragraph he recognized as acceptable, and used it in the judgment^{[[56]]}. Later, on 12 December 2023, the United Kingdom Courts and Tribunals Judiciary (“CTJ”) released a non-binding guidance to the judicial officeholders regarding the use of AI in the courts^{[[57]]}. The guidance

[53] Luke Taylor, “Colombian Judge Says He Used ChatGPT in the Ruling”, *The Guardian*, February 2, 2023, <https://www.theguardian.com/technology/2023/feb/03/colombia-judge-chatgpt-ruling>.

[54] Ibid.

[55] Judge Padilla posed several legal questions to ChatGPT, such as, ‘Is an autistic minor exempt from paying therapy fees?’ and ‘Has the Constitutional Court previously issued favorable decisions in similar cases?’, according to the judgment. Upon being questioned about his choice to use ChatGPT, Judge Padilla defended his use of GenAI, arguing that GenAI could enhance the efficiency of Colombia’s legal system and assist in drafting legal texts. For further details, *see* Croft, “Use of ChatGPT in Courts”; Taylor, “Colombian Judge Says He Used ChatGPT”.

[56] Hibaq Farah, “Court of Appeal Judge Praises ‘Jolly Useful’ ChatGPT After Asking It for Legal Summary”, *The Guardian*, September 15, 2023, <https://www.theguardian.com/technology/2023/sep/15/court-of-appeal-judge-praises-jolly-useful-chatgpt-after-asking-it-for-legal-summary>.

[57] “Artificial Intelligence (AI)-Judicial Guidance”, *Courts and Tribunals Judiciary*, December 21, 2023, <https://www.judiciary.uk/guidance-and-resources/>

gives jurists cautious approval to use AI for writing opinions but warns against using it for legal research and analysis^[58].

Prior to these developments, the legal community was primarily concerned about whether and to what extent lawyers could use GenAI. These recent developments reveal and acknowledge that judges and law clerks might also be inclined to utilize GenAI and rely on it to draft opinions and judicial decisions^[59]. However, this acceptance and use of GenAI should not be met with incredulity, as its support for these actors and other judicial staff is anticipated to extend beyond drafting opinions and decisions. The CTJ foresees GenAI helping summarize large bodies of text, locate material, write presentations, and perform administrative tasks such as composing emails and memoranda^[60].

GenAI's capacity to effortlessly handle a wide range of tasks undoubtedly empowers judges and law clerks to streamline their research, writing, and decision-making processes, save time and effort, and manage large caseloads more effectively. Yet, amidst its utility and efficiency lies the inherent risk of complacency^[61]. It is imperative for judges and law clerks

artificial-intelligence-ai-judicial-guidance/.

[58] Ibid. ("Tasks not recommended: • Legal Research: AI tools are a poor way of conducting research to find new information you cannot verify independently. They may be useful as a way to be reminded of material you would recognize as correct. • Legal Analysis: The current public AI chatbots do not produce convincing analysis or reasoning.").

[59] See Socol de la Osa and Remolina, "Artificial Intelligence at the Bench", 2, 4; Strong, "Rage Against the Machine", 171.

[60] "Artificial Intelligence (AI)-Judicial Guidance", *Courts and Tribunals Judiciary*, December 21, 2023, <https://www.judiciary.uk/guidance-and-resources/artificial-intelligence-ai-judicial-guidance/>.

[61] Strong, "Rage Against the Machine", 171 ("Some in the United States may think that U.S. judges would never resort to AI in drafting their judgments, but U.S. judges have been known to take questionable shortcuts in their work in the past. For example, some U.S. judges have been known to engage in 'judicial plagiarism,'

not to view GenAI as the default route for research, writing, and decision-making and to maintain a vigilant approach to safeguard the accuracy, confidentiality, and integrity of the judicial process. The CTJ guidance, in this respect, serves as a valuable starting point for shaping and preserving this approach not only for judges and law clerks in Britain and Wales but also for judges in Türkiye, where GenAI is available but lacks guidance for its responsible use.

D) OTHER

GenAI's utilization in legal practice extends beyond the preceding areas. It can assist in various other areas, such as assembling and creating legal documents (*e.g.*, contracts, legal complaints, pleadings, motions, briefs, wills)^{[[62]]}, facilitating the discovery process (e-discovery)^{[[63]]}, providing

which is when judges copy materials from party submissions into judicial decisions and opinions.”).

[62] Andrew Perlman, “The Implications of ChatGPT for Legal Services and Society”, Research Paper No. 22-14 (Law School, Suffolk University, 2022), 5-10; “Use of Artificial Intelligence in Legal Practice”, *British Institute of International and Comparative Law*, 2023, https://www.biicl.org/documents/170_use_of_artificial_intelligence_in_legal_practice_final.pdf.

[63] “Discovery” in the context of U.S. trial practice refers to the process whereby parties to a legal proceeding gain access to facts that may directly or indirectly substantiate their claims or defenses. There are five forms of discovery, which are: depositions, interrogatories, requests for document production, physical and mental examinations, and requests for admission. Regarding the use of GenAI in the discovery process, *see* A.D. Reiling, “Courts and Artificial Intelligence”, *International Journal for Court Administration* 11 (2020): 10; Engstrom and Gelbach, “Future of Adversarialism”, 1011; David R. Cohen and Marcin M. Krieger, “Generative AI in E-Discovery – Getting Beyond the Hype”, *ALM*, March 9, 2024, <https://www.law.com/thelegalintelligencer/2024/03/09/generative-ai-in-e-discovery-getting-beyond-the-hype/> (“In e-discovery, some of the most transformative tools are those that have the potential to eliminate the need for first-level human review. Products are already entering the market, which allow attorneys to provide document requests and/or coding protocols to GenAI products, and then allow the technology to determine which documents are relevant and responsive – including the reasoning for each

general legal information to pro se litigants^{[[64]]}, developing questions for direct and cross-examining witnesses^{[[65]]}, preparing or reviewing expert reports^{[[66]]}, assessing liability^{[[67]]}, and calculating and evaluating damages^{[[68]]}.

With its increasing capabilities, there is no doubt that legal tasks GenAI can perform will multiply going forward. This will inevitably impact legal practice in many jurisdictions not merely by changing how lawyers, judges, and law clerks do their work but also by resetting procedural cornerstones, such as attorney-client privilege, access to justice, due process, evidence collection and admissibility, and burden of proof. Thus, juris-

decision. Products still in development promise to go even further, automating issue coding and performing preliminary privilege review.”).

[64] A “*pro se litigant*” refers to an individual who represents themselves in a legal proceeding rather than being represented by a lawyer or attorney. Regarding the use of GenAI by pro se litigants, see Raymond H. Brescia, “Robots vs. Predators: Can Generative Artificial Intelligence Help to Address the Justice Gap in Consumer Debt Litigation”, *Fordham Urban Law Journal* 51, no. 5 (2024).

[65] Perlman, “The Implications of ChatGPT for Legal Services”, 4.

[66] Collin Starkweather, Izzy Elken, and Jey Kumarasamy, “Strategic Perspectives – Technology Experts Explore the Pitfalls, Promises, and Impact of Generative AI on Expert Witness Work”, *VitalLaw*, February 20, 2024, <https://www.vitalaw.com/news/strategic-perspectives-technology-experts-explore-the-pitfalls-promises-and-impact-of-generative-ai-on-expert-witness-work/sld019a275826cbc7473286d8db61ec9d57b0>.

[67] Claudio Terranova, Clara Cestonaro, Ludovico Fava, and Alessandro Cinquetti, “AI and Professional Liability Assessment in Healthcare: A Revolution in Legal Medicine?”, *Sec. Regulatory Science* 10 (2024), <https://www.frontiersin.org/journals/medicine/articles/10.3389/fmed.2023.1337335/full#h5> (“[A]s AI streamlines the analysis of the multitude of factors relevant to [medical] malpractice claims, including informed consent, adherence to standards of care, and causation, the evaluation of professional liability might also benefit from its use.”).

[68] For example, see “Artificial Intelligence’s Impact on Personal Injury Law and Civil Litigation”, Pullano & Siporin, accessed March 12, 2024, <https://pullanolaw.com/artificial-intelligences-impact-on-personal-injury-law-and-civil-litigation/>.

dictions worldwide have started responding to legal professionals' use of GenAI and addressing its impacts on the legal system.

II. RESPONSES GIVEN TO THE USE OF GENAI IN LEGAL PRACTICE

As analyzed above, GenAI's introduction to the legal field has revolutionized various aspects of legal practice and, accordingly, litigation, offering unprecedented efficiencies and capabilities. However, GenAI's propensity to misinterpret legitimate legal authorities and fabricate sources have prompted responses from varied jurisdictions. The following discussion explores these responses, focusing on the U.S., Canada, and the EU, and examines Türkiye's response, if any.

This jurisdictional selection reflects methodological considerations designed to capture diverse legal traditions and approaches: the U.S., as the locus of GenAI development, offers insights into emergent methods; Canada provides a comparative common law perspective within a distinct federal structure; while the EU exemplifies a comprehensive, rights-centric legislative approach that prioritizes fundamental protections over technological permissiveness.

A) THE UNITED STATES

GenAI's swift permeation into the legal field initially caught the U.S. off guard, prompting various measures to address inherent risks and ensure the ethical use of the technology while harnessing its potential. Consensus, however, remains elusive on the most effective method for balancing risk mitigation with innovation and efficiency. This lack of consensus has inevitably resulted in a fragmented approach in the U.S.^{[[69]]}.

Despite being one of the first jurisdictions to grapple with GenAI, the U.S. has not yet established clear guidance on its use. As a result, issuing

[69] Strong, "Rage Against the Machine", 167 ("The technology industry has already called for immediate regulation of AI, and the legal institutions around the world are responding. In the United States, individual judges are amending their rules to indicate the extent to which generative AI is permitted in party submissions.").

standing orders^{[[70]]} or amending the court's local rules^{[[71]]} has become the predominant means of addressing GenAI use in legal proceedings. For example, on 30 May 2023, a U.S. District Judge in Texas became the first federal judge to issue a standing order directing how GenAI may and may not be used in his court. According to the order, all attorneys and pro se litigants appearing before the Court “must, together with their notice of appearance, file on the docket a certificate attesting either that no portion of any filing will be drafted by [GenAI] (such as ChatGPT, Harvey.AI, or Google Bard) or that any language drafted by [GenAI] will be checked for accuracy, using print reporters or traditional legal databases, by a human being”^{[[72]]}. Failure to file a certificate on the docket results in the Judge striking the filing of an attorney or pro se litigant unless the respective party moves for leave and explains why they believe the GenAI platform used

[70] A standing order refers to a directive or set of instructions issued by a judge and remains effective until modified or revoked by the issuing judge. Standing orders can be issued about various matters, including procedural requirements, filing deadlines, or courtroom behavior. They are designed to establish consistent procedures and guidelines for how the judge's courtroom operates and generally apply to all cases the judge hears.

[71] Local rules of court are specific regulations and procedural guidelines established by a particular court to govern the conduct of cases within that court's jurisdiction. These rules are designed to supplement and work with broader rules, such as federal or state rules of procedure. The purpose of local rules is to promote efficiency, consistency, and fairness in administering justice within the court. Attorneys and parties involved in cases should familiarize themselves with and adhere to these rules to ensure proper and timely handling of their legal matters.

[72] Judge Brantley Starr, “Judge Specific Requirements: Mandatory Certification Regarding Generative Artificial Intelligence”, *U.S. District Court for the Northern District of Texas*, accessed May 11, 2024, <https://www.txnd.uscourts.gov/judge/judge-brantley-starr>; Judge Brantley Starr, “Certification Regarding Judge-Specific [GenAI] Requirements Template”, accessed May 11, 2024, <https://www.txnd.uscourts.gov/judge/judge-brantley-starr>.

has the requisite accuracy and reliability for legal briefing^[73].

On 21 June 2023, a judge for the U.S. Bankruptcy Court – Northern District of Texas issued a general order regarding pleadings using GenAI. The order requires all attorneys and pro se litigants filing pleadings or other papers, fully or partially drafted utilizing GenAI, to verify that any generated language was checked for correctness, using print reporters, traditional legal databases, or other reliable means^[74]. Similar orders requiring verification of language generated by and/or the disclosure of the use of GenAI have been issued by state^[75] and federal judges^[76] from different circuits and courts across the U.S.

[73] Ibid.

[74] “General Order: Pleadings Using Generative Artificial Intelligence”, *U.S. Bankruptcy Court for the Northern District of Texas*, accessed April 5, 2024, <https://www.txnb.uscourts.gov/news/general-order-2023-03-pleadings-using-generative-artificial-intelligence>.

[75] Judge Roy Ferguson, “Standing Order Regarding Use of Artificial Intelligence in Cases Assigned to Judge Roy Ferguson”, *394th District Court of Texas*, accessed May 9, 2024, <https://img1.wsimg.com/blobby/go/2f8cb9d7-adb6-4232-a36b-27b72fdcd38/downloads/Standing%20order%20Regarding%20Use%20of%20Artificial%20Int.pdf?ver=1714274594094>; Judge Gerald Cleary, “Standing Order – Jury Trials Regarding Artificial Intelligence in Cases Assigned to Judge Gerald Cleary”, *Circuit Court of Cook County, Illinois*, accessed April 5, 2024, https://ocj-web-files.s3.us-east-2.amazonaws.com/orders/2024-02-14%20-%20Law%20-%20Cleary%20-%20Standing%20Order%20-%20Jury%20Trials_1.pdf?VersionId=b8FUkpiXjregHJvFdSuOJhYBlw9KZ; The Honorable Mark J. Grisanti, “The Supreme Court of the State of New York”, *New York Courts*, accessed August 23, 2024, https://www.nycourts.gov/LegacyPDFS/courts/8jd/pdfs/IAS_Rules/JudgeGrisanti2024.pdf.

[76] The Honorable Stephen Alexander Vaden, “Order on Artificial Intelligence”, *U.S. Court of International Trade*, <https://www.cit.uscourts.gov/sites/cit/files/Order%20on%20Artificial%20Intelligence.pdf>; Judge Stanley Blumenfeld, Jr., “Standing Order for Civil Cases Assigned to Judge Stanley Blumenfeld, Jr.”, *U.S. District Court for the Central District of California*, accessed June 11, 2024, <https://www.cacd.uscourts.gov/sites/default/files/documents/SB/AD/1.%20Civil%20Standing%20Order%20%283.1.24%29%20%5bFinal%5d.pdf>; Judge S. Kato Crews, “Standing Order for Civil Cases Assigned to Judge Kato Crews”, *U.S. District Court for the District of Colorado*, accessed March 12, 2024, https://www.documentcloud.org/documents/24485321-skf_standing_order_civil_cases_v2.

Amending the court's local rules is another approach employed by U.S. courts. The U.S. Court of Appeals for the Fifth Circuit and the U.S. District Court for the Eastern District of Michigan provided examples of this approach. In November 2023, the Fifth Circuit proposed an amendment to the Fifth Circuit Rule 32.3, which would require a new certificate of compliance on which attorneys and pro se litigants must choose one of two options specifying either that "no GenAI program was used in drafting the document presented for filing" or that "a GenAI was used in the drafting this document and all generated text, including all citations and legal analysis, has been reviewed for accuracy and approved by a human"^[77]. In December 2023, the U.S. District Court for the Eastern District of Michigan proposed a change to its local rule 5.1, which would require filers to disclose the use of GenAI in composing or drafting any paper presented to the Court and attest that citations of authority have been verified by a human being by using print volumes or traditional legal databases and that the language in the paper has been checked for accuracy by the filer^[78].

Additionally, two federal appeals courts – the San Francisco-based 9th

[77] United States Court of Appeals for the Fifth Circuit, Notice of Proposed Amendment to 5th Cir. R. 32.3 ("Fifth Circuit Rule 32.3. Certificate of Compliance. See Form 6 in the Appendix of Forms to the Fed. R. App. P. Additionally, counsel and unrepresented filers must further certify that no generative artificial intelligence program was used in drafting the document presented for filing, or to the extent such a program was used, all generated text, including all citations and legal analysis, has been reviewed for accuracy and approved by a human. A material misrepresentation in the certificate of compliance may result in striking the document and sanctions against the person signing the document.").

[78] United States District Court for the Eastern District of Michigan, Notice of Proposed Amendments to Local Rules, LR 5.1 Filing of Papers ("4. Disclosing Use of Artificial Intelligence. (C) If generative AI is used to compose or draft any paper presented for filing, the filer must disclose its use and attest that citations of authority have been verified by a human being by using print volumes or traditional legal databases and that the language in the paper has been checked for accuracy by the filer.").

U.S. Circuit Court of Appeals and the Philadelphia-based 3rd U.S. Circuit Court of Appeals – have decided to form committees to investigate how AI affects the courts in the latest effort by the judiciary to address the rapid increase in the use of AI in legal proceedings^{[[79]]}.

This divergence among courts' approaches to addressing GenAI use in legal practice highlights the need for federal guidance in the U.S. While individual courts have taken proactive steps through standing orders and local rule amendments, the absence of unified federal guidance has created a patchwork of requirements that vary across jurisdictions. The common threads emerging from these diverse approaches, such as mandatory disclosure, human verification of AI-generated content, and attorney certification, suggest a judicial preference for transparency and accountability over outright prohibition. Federal appeals courts' formation of investigative committees, on the other hand, indicates recognition that the preceding ad hoc measures may be insufficient in mitigating the risks GenAI poses in the long term. As GenAI continues to evolve, the U.S. legal system faces the ongoing challenge of developing comprehensive standards that can keep pace with technological advancements while maintaining the integrity of legal proceedings.

B) CANADA

In Canada, courts have issued practice directions^{[[80]]} regarding the use of AI in court submissions. The Court of the King's Bench of Manitoba states in its practice direction that “when [AI] has been used in the preparation of materials filed with the court, the materials must indicate how

[79] Nate Raymond and Sara Merken, “Two US appeals courts form committees to examine AI use”, *Reuters*, January 25, 2024, <https://www.reuters.com/legal/government/9th-circuit-forming-committee-examine-ai-use-court-2024-01-25/>.

[80] Practice directions serve as conduits used to support the rules of procedure and provide guidance about what the tribunal expects from the parties, as well as what the parties can expect from the tribunal. In other words, they articulate rules and help parties understand them.

[AI] was used”^[81]. Another practice direction was issued by the Supreme Court of Yukon. Under this directive, attorneys and pro se litigants must inform the Court of any AI tools they have utilized and the specific purposes for which these tools were used whenever they are employed in legal research or submissions in any matter before the Court^[82]. In December 2023, the Federal Court of Canada (the “Court”)^[83] released a practice notice applicable to represented and self-represented litigants appearing before the Court^[84]. The notice demands a declaration from the parties to inform each other and the Court if they have used AI to create or generate new content in preparing a document filed with the Court^[85]. One detail worth mentioning is the Court’s decision to limit the declaration require-

[81] The Honorable Chief Justice Glenn D. Joyal, “Practice Direction Regarding the Use of Artificial Intelligence in Court Submissions”, *Court of King’s Bench of Manitoba*, accessed May 19, 2024, https://www.manitobacourts.mb.ca/site/assets/files/2045/practice_direction__use_of_artificial_intelligence_i_court_submissions.pdf.

[82] Judge Duncan C.J., “Practice Direction Regarding Use of Artificial Intelligence in Legal Research and Submissions”, *Supreme Court of Yukon*, accessed June 1, 2024, <https://www.yukoncourts.ca/sites/default/files/2023-06/GENERAL-29%20Use%20of%20AI.pdf>.

[83] Sean Fine, “Federal Court Bans Its Judges from Using AI in Decisions in the Wake of U.S. Controversy”, *The Globe and Mail*, January 10, 2024, <https://www.theglobeandmail.com/canada/article-ai-canada-federal-court-judges/> (“The Federal Court is based in Ottawa, but its judges travel across the country to hear cases. It deals with matters under federal jurisdiction such as national security, immigration, and intellectual property; provides a forum for claims against Ottawa; and reviews decisions by federal ministers and administrative bodies.”).

[84] “Notice to the Parties and the Profession Regarding the Use of Artificial Intelligence in Court Proceedings”, *Canadian Federal Court*, December 20, 2023, <https://www.fct-cf.gc.ca/Content/assets/pdf/base/2023-12-20-notice-use-of-ai-in-court-proceedings.pdf>.

[85] Ibid.

ment to GenAI usage, excluding traditional AI^[86]. This limitation reveals the Court’s awareness of technological differences and objective to avoid unnecessarily burdening parties using more established and less controversial traditional AI technologies.

Additionally, unlike preceding U.S. and Canadian judicial decisions, the Court acknowledged that lawyers and litigants are not the only ones whose use of GenAI needs to be considered; judges and law clerks may also resort to AI. Thus, the Court published the “Interim Principles and Guidelines on the Court’s Use of Artificial Intelligence”^[87]. With this document, the Court promises not to use AI, particularly automated decision-making tools, in making its judgments and orders without consulting the public first. The Court also addresses the potential use of AI by its members and their law clerks and lists the following guiding principles: accountability, respect for fundamental rights, non-discrimination, accuracy, transparency, cybersecurity, and humans in the loop^[88]. While this document is undoubtedly welcomed, it falls short regarding accountability mechanisms.

In Canada, much like the U.S., judicial action has emerged as the primary approach to addressing GenAI in the absence of a comprehensive regulatory architecture. This approach, concentrating solely on attorneys and litigants, offers speed, as fewer individuals need to agree on a partic-

[86] Ibid. (“The Declaration requirement only applies to certain forms of AI, defined as a computer system capable of generating new content and independently creating or generating information or documents, usually based on prompts or information provided to the system. This Notice does not apply to AI that lacks the creative ability to generate new content. For example, this Notice does not apply to AI that only follows pre-set instructions, including programs such as system automation, voice recognition, or document editing. It bears underscoring that this Notice only applies to content that was created or generated by AI.”).

[87] “Interim Principles and Guidelines on the Court’s Use of Artificial Intelligence”, *Canadian Federal Court*, December 20, 2023, <https://www.fct-cf.gc.ca/en/pages/law-and-practice/artificial-intelligence>.

[88] Ibid.

ular course of action, and flexibility, allowing rules and standing orders to be promptly and easily amended to keep pace with the ongoing evolution of AI technologies and accompanying challenges^{[[89]]}.

This method, however, faces limitations. First, it is not viable in unitary states following the civil law tradition, where courts operate within a framework established by a comprehensive, codified set of laws. This extensive codification leaves no room for issuing local rules that manage courts' affairs and govern legal proceedings, including filing procedures, deadlines, courtroom behavior, evidence, and other aspects of legal practice. Further, civil law jurisdictions lack a direct counterpart to the standing order or practice notice mechanisms found in common law jurisdictions. Because of these reasons, the latitude civil law judges have in conducting legal proceedings is less extensive than that of judges in common law jurisdictions, rendering judicial action less practical for addressing GenAI. Secondly, within common law jurisdictions, this method is inimical to achieving consistency across individual litigations within a particular court and consistency among different courts within and across jurisdictional lines^{[[90]]}. Lastly, the approach employed to address the improper use of GenAI should provide for accountability^{[[91]]}. If a rule or law specifies how GenAI should be utilized, mechanisms must be in place to ensure adherence to that provision. Judicial action provides accountability through judicial sanctions against attorneys and pro se litigants who fail to adhere to the rule. There, however, remains the lack of means to hold non-compliant judges and law clerks accountable.

C) THE EUROPEAN UNION

The foregoing constraints of judicial actions, compounded by GenAI's significant implications in general, have prompted legislative actions to

[89] Strong, "Rage Against the Machine", 170.

[90] Ibid.

[91] Ibid., 169.

address it in a broader and more harmonized manner. The EU Artificial Intelligence Act (“AI Act”) is a landmark example. On 12 July 2024, the AI Act, Regulation EU 2024/1689, became law after publication in the EU Official Journal^[92]. The AI Act applies to manufacturers, providers, and deployers of in-scope AI systems (traditional and generative AI) that are used in or produce an effect in the EU, regardless of the place of establishment (personal^[93] and territorial^[94] scopes). The approach espoused by the Act is risk-based, meaning that requirements vary according to the risk associated with a particular AI practice. There are four different risk categories: (i) minimal risk, (ii) limited risk, (iii) high risk, and (iv) unacceptable risk^[95].

Under the Act, one of the areas where the deployment of AI constitutes high-risk is the administration of justice. More specifically, pursuant to Annex III, Article 8(a), AI systems “intended to be used by a judicial authority or on their behalf to assist a judicial authority in researching and interpreting facts and the law and in applying the law to a concrete set of

[92] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonized rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, EU No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) [2024] OJ L2024/1689.

[93] Under the AI Act, providers, importers, and manufacturers of AI systems bear the most rigorous obligations. However, “deployers” of AI systems also fall under the scope of the Act. According to Article 3(4), a “deployer” means “a natural or legal person, public authority, agency or other body using an AI system under its authority except where the AI system is used in the course of a personal non-professional activity.”

[94] The EU Artificial Intelligence Act, Article 2.

[95] For the definitions of these risk categories, *see* Claudio Calvino, Meloria Meschi, Dimitris Korres, and Gabriella Ezeani, “The Four Risks of the EU’s Artificial Intelligence Act: Is Your Company Ready?”, *FTI Consulting*, July 25, 2023, <https://www.fticonsulting.com/insights/fti-journal/four-risks-eus-artificial-intelligence-act>.

facts” are to be classified as high-risk AI systems^[96]. The details as to the interpretation and implementation of this article are given under Recital 61. Based on Recital 61, an AI system falls under the high-risk category if it is used during the administration of justice in a manner that results in producing legal effects for the parties or, more generally, impacting individual freedoms as well as the right to an effective remedy and to a fair trial^[97]. An AI system, however, is not considered to be high-risk if its use does not pose a significant risk of harm to the health, safety, or fundamental rights of natural persons, including by not materially affecting the outcome of decision-making (such as the judiciary, employment, law enforcement, or education). This applies to situations in which the AI system is intended to: “(a) perform a narrow procedural task, (b) improve the

[96] The EU Artificial Intelligence Act, Annex III, Article 8(a) (“High-risk AI systems pursuant to Article 6(2) are the AI systems listed in any of the following areas: 8. Administration of justice and democratic processes: (a) AI systems intended to be used by a judicial authority or on their behalf to assist a judicial authority in researching and interpreting facts and the law and in applying the law to a concrete set of facts, or to be used in a similar way in alternative dispute resolution.”).

[97] The EU Artificial Intelligence Act, Recital 61 (“Certain AI systems intended for the administration of justice and democratic processes should be classified as high-risk, considering their potentially significant impact on democracy, the rule of law, individual freedoms as well as the right to an effective remedy and to a fair trial. In particular, to address the risks of potential biases, errors, and opacity, it is appropriate to qualify as high-risk AI systems intended to be used by a judicial authority or on its behalf to assist judicial authorities in researching and interpreting facts and the law and in applying the law to a concrete set of facts. AI systems intended to be used by alternative dispute resolution bodies for those purposes should also be considered to be high-risk when the outcomes of the alternative dispute resolution proceedings produce legal effects for the parties. The use of AI tools can support the decision-making power of judges or judicial independence but should not replace it: the final decision-making must remain a human-driven activity. The classification of AI systems as high-risk should not, however, extend to AI systems intended for purely ancillary administrative activities that do not affect the actual administration of justice in individual cases, such as anonymization or pseudonymization of judicial decisions, documents or data, communication between personnel, administrative tasks.”).

result of a previously completed human activity, (c) detect decision-making patterns or deviations from prior decision-making patterns and is not meant to replace or influence the previously completed human assessment, without proper human review, or (d) perform a preparatory task to an assessment”^{[[98]]}.

In sum, the AI Act classifies an AI system as high-risk if it is used by a judicial authority or on its behalf to assist the judicial authority in administering justice, researching and analyzing facts and law, or applying the law to a concrete set of facts, mainly if the outcome produces legal effects for the parties. Judicial authorities deploying a high-risk AI system within the preceding scope must comply with strict requirements, including continuous system monitoring, utilizing high-quality data, maintaining activity logs, ensuring human oversight, and conducting fundamental rights impact assessment^{[[99]]}. In cases of non-compliance, financial and non-financial sanctions are foreseen^{[[100]]}.

The AI Act’s focus on “judicial authorities” while omitting “lawyers” inevitably raises questions about its implications for lawyers’ use of AI. Given the Act’s emphasis on safeguarding the right to an effective remedy, a

[98] The EU Artificial Intelligence Act, Article 6(3).

[99] The EU Artificial Intelligence Act, Articles 26 and 27; Maxi Scherer, “We Need to Talk About...the EU AI Act”, *Kluwer Arbitration Blog*, May 27, 2024, <https://arbitrationblog.kluwerarbitration.com/2024/05/27/we-need-to-talk-about-the-eu-ai-act/> (“Deployers of high-risk AI activities have to follow a certain number of regulatory obligations, such as the obligations to (i) take appropriate technical and organizational measures to ensure that the AI systems are used in accordance with their instructions (Article 26(1)), (ii) monitor their operation (Article 26(4)), (iii) assign human oversight to natural persons who have the necessary competence, training, authority, and support (Article 26(2)), (iv) ensure the input data is relevant and sufficiently representative (Article 26(4)), and (v) keep the logs automatically generated by the system for a period of at least six months (Article 26(6)). In certain situations, deployers have additional duties to carry out data protection impact assessments (Article 26(9)) and cooperate with national EU authorities (Article 26(12)).”).

[100] The EU Artificial Intelligence Act, Article 99.

fair trial, and fundamental rights within the context of the administration of justice and AI, it can be inferred that the use of AI by judicial authorities is regulated explicitly due to their direct responsibility for making legal decisions that can significantly impact rights and freedoms. However, the Act's omission should not grant lawyers immunity from its requirements. There are several reasons why lawyers using AI should meet the requirements of the Act:

- Even though lawyers are not considered judicial authorities and lack the decision-making power of judges, they act as conduits, enabling natural and legal persons to access an effective remedy, a fair trial, and the protection of their rights and freedoms. In other words, lawyers are integral to the effective administration of justice. Suppose judicial authorities must adhere to strict requirements to use AI, while lawyers are not required to do so. In that case, there will likely be breaches in the high level of protection the EU intends to afford the administration justice, thereby undermining the Act's ability to prevent harmful effects of AI on fundamental rights and the rule of law.
- The AI Act is one component of the EU's wider emerging digital rulebook, which encompasses various aspects of the digital realm, including the General Data Protection Regulation, Digital Services Act, and Digital Markets Act^[101]. Lawyers should, therefore, recognize the comprehensive legal context in which they operate and understand that adherence to the AI Act constitutes part of the broader regulatory compliance effort.
- Article 86 of the AI Act affords citizens a right to seek a clear and

[101] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); Regulation (EU) 2022/2065 of the European Parliament and the of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act); Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).

meaningful explanation from the deployer if a decision is made about a person based on the output of a high-risk AI system and that decision produces legal effects or significantly affects the person's health, safety, or fundamental rights^{[[102]]}. This is one provision of the Act that lawyers will rely on in cases where judicial authorities use a high-risk AI system to administer justice. To effectively exercise this or any other right on behalf of their clients and uphold high standards of professional conduct, lawyers must understand how to (i) navigate the complexities of the Act, (ii) ensure the appropriate use of AI by judicial authorities, (iii) interpret AI output used in decision-making, and (iv) approach decisions taken with AI assistance that produce legal effects or affect rights. Complying with the AI Act will equip lawyers with the notions and skills necessary to form this understanding and uphold professional and ethical standards.

With the AI Act, the EU has chosen legislative action to address the burgeoning use of AI systems and their harmful effects on health, safety, fundamental rights, democracy, and the rule of law. By this choice, the EU intends to create a legal environment where the response to AI is harmonized and consistent across its member states. To introduce flexibility and speed into this setting, the Act has empowered the European Commission to adopt delegated acts^{[[103]]} whereby the Commission can update the rules

[102] The EU Artificial Intelligence Act, Article 86.

[103] The EU Council and Parliament can delegate to the EU Commission the power to adopt delegated acts for more efficient decision-making. Through this power, the Commission can adopt delegated acts, which are essentially specific laws and regulations. This power to adopt delegated acts, however, is subject to strict limits: (i) the delegated act cannot change the essential elements of the law, (ii) the legislative act must define the objectives, content, scope, and duration of the delegation of power, and (iii) the delegation of power may be revoked at any time by the Council or Parliament. For more information, see "New EU Decision-making Landscape: Delegated Acts & Implementing Acts", *Clifford Chance*, May 2011, <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2011/05/new-eu-decisionmaking-landscape-delegated-acts-implementing-acts.pdf>.

as technology evolves^{[[104]]}.

Questions of accountability, however, can arise, especially about who will bear the cost of judicial authorities' non-compliance. While Chapter XII of the Act prescribes fines and penalties and lays down principles applicable to their enforcement, it is unclear whether and how they may be enforced against non-compliant judicial authorities. Pursuant to Article 99(4), "non-compliance with [obligations of deployers according to Article 26], other than those laid down in Article 5, shall be subject to administrative fines of up to 15 000 000 EUR or, if the offender is an undertaking, up to 3% of its total worldwide annual turnover for the preceding year, whichever is higher."

Judges, as natural persons using AI to administer justice, fall under the scope of deployers and are subject to the obligations stipulated under the AI Act. While the Act imposes the obligations, the questions of who would bear the administrative fines resulting from a judge's violation and what impact the improper use of high-risk AI would have on the judge's decisions and their enforceability remain ambiguous. The answers to these questions depend significantly on the rules that each Member State shall lay down and how they choose to enforce the AI Act within their judicial systems. Member States may designate specific judicial bodies or court administrations to bear the responsibility for compliance, thereby absorbing any resulting fines. As to the latter question, there is no doubt that the improper use of high-risk AI systems will prompt challenges regarding the validity and enforceability of judicial decisions. The outcomes of these challenges will depend on the specific circumstances of each case, including the extent to which the AI system influenced the decisions and the degree of non-compliance with the AI Act.

D) TÜRKİYE

Türkiye is actively engaged in researching and developing strategic pri-

[104]

The EU Artificial Intelligence Act, Article 97.

orities, objectives, measures, and governance mechanisms in response to the rapid advancements in AI. This includes efforts to align the Turkish legal system with these advancements and address their broader societal and economic impacts. For instance, the National AI Strategy 2021-2025, published by the Digital Transformation Office of the Presidency^[105], outlines legislative measures aimed at adapting administrative and legal regulations to the AI-induced socioeconomic transformation while also addressing AI applications' ethical and legal dimensions^[106].

While these legislative efforts are commendable, they may not fully address the unique challenges of GenAI. In a unitary state like Türkiye, legislative actions can be instrumental in establishing a consistent and comprehensive approach to GenAI in legal practice^[107], ensuring that principles of procedural fairness – such as equality of arms and parties – are upheld through, for example, instituting oversight mechanisms^[108]. These actions, however, fall short in terms of speed and flexibility, risking obsolescence amid the rapid advancements in GenAI and its diverse applications in legal practice. Additionally, depending on how the legislation is

[105] “National Artificial Intelligence Strategy 2021-2025”, *Presidency of the Republic of Türkiye: Digital Transformation Office*, August 2021, <https://cbddo.gov.tr/SharedFolderServer/Genel/File/TR-UlusalYZStratejisi2021-2025.pdf>.

[106] Ibid., 9.

[107] In federal states, it is much more challenging to address GenAI holistically and establish consistency within legal practice *via* legislative actions. For example, in the United States, Congress could only influence GenAI use by successfully asserting that GenAI adversely affects interstate commerce under the Commerce Clause (Article 1, Sect. 8, Clause 3 of the Constitution), impacts individual procedural rights protected under the Constitution, or relates to the implementation of an international treaty.

[108] Seyhan Selcuk, Nesibe Kurt Konca, and Serkan Kaya, “AI-driven civil litigation: Navigating the right to a fair trial”, *Computer Law & Security Review: The International Journal of Technology Law and Practice* 57 (2025): 11. For further information about potential adverse impacts of using AI in judicial processes on the right to a fair trial and its components, *see* *ibid.*

drafted, questions of accountability could arise regarding who should bear the cost of non-compliance, particularly if the noncompliant professional is a judge^[109].

Given these inherent limitations, the rules of professional conduct emerge as a viable alternative to legislative actions in addressing the use of GenAI in legal practice. Unlike legislative actions, these rules can be implemented and amended quickly, thus providing the speed and flexibility needed to keep pace with changes in the AI field^[110]. Consistency and accountability can be established by the respective public bodies governing the legal profession: the Union of Turkish Bar Associations (“UTBA”) for lawyers^[111] and the Turkish Council of Judges and Prosecutors (“TCJP”) for judges.

The ethical principles and standards to which attorneys’ practice and conduct must conform are regulated by the Rules of Profession (“Rules”) of the UTBA^[112], while Article 34 of the Turkish Attorneyship Act estab-

[109] For this subsection, which focuses on Türkiye, the term “judge” is used comprehensively to refer to judges, assistant judges, and rapporteurs. In the Turkish legal system, a rapporteur is crucial in assisting higher courts, such as the Court of Cassation, the Council of State, and the Constitutional Court. Rapporteurs at the Constitutional Court need not be judges but carry out their duties under the judicial guarantees.

[110] Strong, “Rage Against the Machine”, 173.

[111] In Poland, for example, the National Bar Council of Attorneys-at-Law (“Council”) has taken the lead in addressing attorneys’ use of AI in their practice. In 2025, the Council released a framework on how attorneys should use AI-based tools, providing detailed recommendations on professional secrecy, client consent, data protection, and regulatory compliance under both national law and EU regulations such as the AI Act and GDPR. For further information, see “AI in the Work of an Attorney-at-Law: Recommendations on How Attorneys-at-Law Should Use AI-Based Tools”, *National Council of Attorneys-at-Law*, 2025, <https://kirp.pl/wp-content/uploads/2025/05/rekomendacje-ENG-NET.pdf>.

[112] “The Rules of Profession”, *Union of Turkish Bar Associations*, January 26, 1971, <https://tbbyayinlari.barobirlik.org.tr/TBBBooks/571.pdf>.

lishes compliance with these rules as a statutory duty^{[[113]]}.

Professional ethics and standards and the statutory duty established by the Rules and the Attorneyship Act, respectively, provide a strong foundation for lawyer conduct. However, as legal practice evolves, so must the rules governing it. In this respect, the Rules have been updated to address various changes in practice. Alas, these changes have yet to incorporate considerations for the growing use of GenAI by lawyers. To fill this void, it is recommended that the Rules be amended to characterize lawyers' use of GenAI as conduct impacting professional principles and standards^{[[114]]}. Such a characterization would establish direct accountability for lawyers, allowing disciplinary actions against those who use GenAI in violation of the Rules while simultaneously ensuring ethical compliance and competence pertaining to GenAI within the practice.

The recommended approach is exhibited by the American Bar Association ("ABA"). On 29 July 2024, the ABA Standing Committee on Ethics and Professional Responsibility ("Standing Committee") released its first formal opinion addressing the burgeoning use of GenAI in legal practice^{[[115]]}. In the opinion, the Standing Committee characterizes lawyers' use of GenAI as conduct affecting their responsibilities under the ABA Model Rules of Professional Conduct^{[[116]]} and strives to guide them in

[113] The Turkish Attorneyship Act, Act No: 1136, Enactment Date: 19.3.1969, Official Gazette 7.4.1969/13168, Article 34 ("Lawyers are obligated to perform their duties with care, accuracy, and honor appropriate to the sanctity of the role, to act in a manner consistent with the respect and trust required by the title of attorney, and to comply with the Rules of Profession established by the Union of Turkish Bar Associations.").

[114] Strong, "Rage Against the Machine", 173.

[115] "Formal Opinion 512: Generative Artificial Intelligence Tools", *American Bar Association Standing Committee on Ethics and Professional Responsibility*, July 29, 2024,

https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-512.pdf.

[116] The ABA Model Rules of Professional Conduct are non-binding, yet they often serve as persuasive authority. These rules are primarily designed to guide lawyers

navigating the ethical challenges posed by this technology, ensuring that their practice remains informed and compliant.

In this opinion, the Committee concentrates on the responsibilities most impacted by the use of GenAI, including, but not limited to, duties related to competency^{[[117]]}, confidentiality^{[[118]]}, communications^{[[119]]}, and fees^{[[120]]}. Specifically, the Committee recommends that lawyers continually update their knowledge and skills to stay abreast of advancements in GenAI technology. It underscores the importance of maintaining client confidentiality in the face of such technology, advising a careful review of the security measures associated with GenAI tools. Additionally, the Committee stresses the need for clear communication with clients about the role of GenAI in their cases, particularly regarding its influence on decision-making processes and fee structures. Notably, while the Committee's opinions, including the one cited above, are not legally binding, they are influential on the legal practice and often cited as persuasive by courts and state bar associations across the U.S. Consequently, this opinion, along with future ones, is expected to play a crucial role in forming rules that address the problems surrounding GenAI and govern its use by attorneys,

and establish a framework for regulating conduct through disciplinary agencies.

[117] ABA Model Rules of Professional Conduct, Rule 1.1 obligates lawyers to provide competent representation and requires they exercise legal knowledge, skill, thoroughness, and preparation reasonably needed for the representation.

[118] ABA Model Rules of Professional Conduct, Rule 1.6 requires lawyers to be cognizant of the duty to keep confidential all information relating to the representation of a client, regardless of its source, unless there is informed consent given by the client.

[119] ABA Model Rules of Professional Conduct, Rule 1.4 addresses lawyers' duties to communicate with their clients, explain matters to the extent reasonably necessary to permit a client to make an informed decision, and advise them promptly whenever he has any information to give, which is important the client should receive.

[120] ABA Model Rules of Professional Conduct, Rule 1.5 requires a lawyer's fee and expenses to be reasonable and consists of criteria for evaluating whether a fee or expense is reasonable.

law clerks, and judges in the U.S^{[[121]]}.

Unlike the ABA's Model Rules of Professional Conduct, the UTBA's Rules of Profession currently do not expressly consist of the obligations that may be associated with or impacted by lawyers' use of GenAI^{[[122]]}. This regulatory gap introduces significant ambiguity regarding the basis for disciplinary actions against lawyers who may misuse or exploit GenAI in their practice. Article 134 of the Attorneyship Act^{[[123]]}, which allows for disciplinary penalties against those who violate the honor and traditions of the legal profession or fail to act with the required honesty and integrity, could theoretically be invoked to remedy this gap. However, Article 134 is an inadequate and temporary solution for several reasons: 1) the article's broad language makes it difficult to determine which uses of GenAI would constitute "a violation of the honor and traditions of the profession" or a "failure to act with the required integrity and honesty;" 2) this broad language risks overreach, potentially leading to the penalization of minor infractions or misuses and stifling legitimate uses of GenAI, and 3) in the absence of clear professional rules and guidelines, enforcement under this article would likely be inconsistent and arbitrary, leading to resistance within the legal community.

To address this gap, the UTBA should establish a dedicated AI task force

[121] Strong, "Rage Against the Machine", 173 ("Since the vast majority of judges and law clerks are also lawyers, a properly drafted [rules of professional conduct] could govern the use of generative AI by judges and clerks.").

[122] In the U.S. and Europe, the following professional obligations are accepted to be associated with or impacted by attorneys' GenAI use: the duty to provide competent representation, the duty of confidentiality, the duty to supervise (both lawyer and nonlawyer assistance), the duty of candor to the tribunal, the duty to provide independent professional judgment, and the duty to communicate.

[123] The Turkish Attorneyship Act, Article 134 ("Disciplinary penalties prescribed in this Law shall be applied to those who engage in actions and behaviors that do not comply with the honor, order, and traditions of the legal profession, as well as professional rules, and to those who fail to perform their duties in professional work or act in a manner not befitting the honesty required by their duties.").

with a mandate to evaluate GenAI's impact on the practice of law and the profession and explore its proper integration into lawyers' practice^[124]. This task force should comprise distinguished legal practitioners, members of the judiciary, academics from legal and engineering disciplines, and representatives from technology providers. Its objectives would include evaluating the implications of GenAI for lawyers, identifying associated risks—such as privacy violations and algorithmic biases—formulating new Rules of Profession tailored to the challenges posed by GenAI, and devising oversight and reporting mechanisms. Furthermore, it is crucial that local bar associations proactively support this initiative by providing ongoing training, educational programs, and certification courses on the ethical and practical use of GenAI. Such an approach not only equips lawyers with the necessary skills to navigate the complexities introduced by GenAI but also fosters a culture of continuous professional development, essential for upholding the high standards of legal practice in an increasingly technology-driven environment.

Having addressed the issue of managing lawyers' GenAI use, attention must now be turned to addressing its use by those behind the bench. Many judges, much like lawyers, seek ways to increase the speed and efficiency with which they perform tasks^[125]. As judicial workloads continue to grow, there is no doubt that the number of judges using GenAI and their tendency to rely on it will also increase. However, the ethical principles

[124] This recommendation can actually be implemented through the already-existing working groups, if it is preferred not to establish a new task force. For example, the UTBA can utilize its "Artificial Intelligence Working Group" formed within the "IT and Technology Law Commission", while the Istanbul Bar Association could similarly employ its "Artificial Intelligence Working Group" instituted under the "IT Law Commission". Nevertheless, an examination of the reports and publications released by these working groups reveals that their current focus has been more on monitoring AI trends than developing policies and guidelines for using AI in legal practice, necessitating a shift in their approach from passive observation to active policy development and implementation.

[125] Socol de la Osa and Remolina, "Artificial Intelligence at the Bench", 4.

governing judges, the Turkish Judicial Ethics Declaration (“Declaration”)^{[[126]]}, have not yet been adapted to this reality by the TCJP.

Adapting the Declaration to this reality requires careful consideration. The TCJP must balance the need for innovation and efficiency with ensuring that using GenAI does not compromise the judiciary’s integrity, accuracy, transparency, impartiality, and independence. Given the delicacy and significance of the matter, it is advisable for the TCJP first to establish a task force with a composition akin to the one recommended for the UTBA. To ensure a holistic and coherent approach to integrating and using GenAI in the Turkish justice system, lawyers must be included as members of this task force, and measures must be implemented to guarantee effective coordination between the task forces of the UTBA and the TCJP.

The task force can take the lead in revising the Declaration and disciplinary rules to account for GenAI’s integration within the judiciary and to address the risks of its potential misuse or exploitation by judges. These efforts should include the establishment of a duty to disclose, requiring judges to explicitly inform all parties involved in a case about the use of GenAI in judicial proceedings. Additionally, oversight mechanisms should be instituted to rectify any errors or injustices arising from GenAI use. This might involve providing venues for parties who claim to have been adversely impacted by GenAI use and establishing streamlined procedures for reviewing these claims and GenAI-influenced decisions^{[[127]]}. Further-

[126] “Turkish Judicial Ethics Declaration”, *Turkish Council of Judges and Prosecutors*, March 14, 2019, <https://www.resmigazete.gov.tr/eskiler/2019/03/20190314-4.pdf>.

[127] The idea of establishing GenAI-oriented venues and procedures might be unwelcome due to the currently available appeal procedures offered by the Turkish Code of Civil Procedure. However, implementing this idea would be beneficial for several reasons: 1) By providing specific venues for parties adversely impacted by the use of GenAI, the policy ensures that there are accessible, tailored processes in place. This makes it easier for affected parties to raise their concerns and seek redress, which might be more cumbersome or less evident within the standard

more, comprehensive guidelines outlining best practices for evaluating and using GenAI would be valuable for ensuring this technology's responsible and ethical deployment in the judiciary.

The TCJP should also organize educational programs for judges to understand GenAI's risks, capabilities, and limitations. This would ensure they can make informed decisions about when and how to integrate GenAI into their work. Additionally, attending these educational sessions and reporting could be mandatory to keep judges updated on advancements in GenAI technologies and emerging issues.

In conclusion, much like Sherlock Holmes' "dog that didn't bark," the use of GenAI by lawyers and judges in Türkiye is believed to go unrecognized, with many acting as though it is not there simply because it has not yet drawn significant attention. Just as the dog's silence pointed to something important being overlooked, the quiet adoption of GenAI in legal practice signals a shift that demands notice. As GenAI usage will undoubtedly continue to grow, it becomes increasingly essential for the Turkish legal system to respond with timely, deliberate, and informed measures.

Harnessing GenAI and addressing the associated risks require a comprehensive strategy. While legislative actions are essential to this strategy, they should not constitute the central component but rather serve to establish a foundational framework within a broader approach. Although necessary for establishing consistency and accountability, legislation often lacks

appeal processes; 2) Traditional appeal processes are general and not specifically designed to handle complexities arising from the use of advanced technologies like GenAI. Establishing streamlined procedures for reviewing claims and decisions influenced by GenAI can offer more specialized, efficient handling of such cases; 3) By embedding venues and procedures tailored to GenAI, trust and transparency in the judicial use of GenAI can be enhanced. Stakeholders are more likely to trust and accept GenAI when precise, robust mechanisms are in place to address errors or injustices; 4) As GenAI evolves, new types of errors or unpredictable impacts may emerge. Having a dedicated process for reviewing these issues ensures that the legal framework can adapt and respond appropriately, rather than being constrained by traditional appeal processes that may not adequately address the unique challenges posed by the technology.

the speed and adaptability needed to keep pace with rapid advancements in GenAI. Therefore, the strategy should center around the UTBA and the TCJP. Through task forces established within these authorities, there should be concerted efforts to assess GenAI's implications for the legal profession, practice, and justice system; revise professional conduct and ethics rules to explicitly govern GenAI use; and formulate comprehensive guidelines. To ensure these guidelines translate into practice, enforcement mechanisms should be established, including oversight bodies, mandatory disclosure requirements, regular compliance assessments, and disciplinary frameworks with proportionate sanctions for violations. Additionally, extensive educational programs should be implemented to ensure judges and lawyers are equipped with the skills and ethical understanding necessary to navigate the technology's complexities. With proper execution, this approach would enable the responsible integration of GenAI into the Turkish justice system, fostering not only flexibility and speed but also accountability and consistency in its application.

III. CONCLUSION

Since its introduction into the legal field, GenAI has had a profound and polarizing impact on the profession. Proponents argue that GenAI is a valuable tool, alleviating mundane tasks, increasing efficiency, and enabling legal professionals to concentrate on more complex and strategic aspects of their work. Conversely, critics express substantial concerns, asserting that GenAI introduces significant risks to the legal field. These risks include potential threats to due process and procedural fairness, and the erosion of public trust in the justice system, all of which could compromise the standards and integrity of the legal profession.

Regardless of one's stance on this matter, GenAI is here to stay, and its use in the legal realm is poised to expand^[128]. Critical in this context is

[128] According to LexisNexis' 2024 Investing in Legal Innovation Survey, which included 266 senior leaders from top U.S. law firms and legal professionals from Fortune 1000 companies, 31% of respondents reported that their firms have a dedicated

establishing safeguards to address the potential risks highlighted by the critics and, consequently, to ensure the ethical and responsible use of the technology. However, as demonstrated hitherto, there is considerable divergence among jurisdictions.

In some jurisdictions, such as the U.S. and Canada, courts have assumed a gatekeeper role, addressing the use of GenAI through standing orders that impose blanket bans, mandate disclosures of GenAI use, or require certification of the veracity of any portions of filings generated by GenAI. There are, however, inherent problems with this approach. First, it exclusively concentrates on lawyers and pro se litigants, not addressing judges' and law clerks' GenAI use; second, such standing orders "are a veritable mosaic of inconsistent, individual rulings consisting of wildly varying requirements"^{[[129]]}; third, it dissuades from the utilization of GenAI and other technologies aiming to enhance efficiency in legal practice. The EU, on the other hand, has taken legislative action and passed the EU AI Act, laying down a horizontal legal framework for AI systems. This response is not yet considered ideal, as legislative actions are neither speedy nor adaptable. Further, the AI Act's ambitious scope may result in overregulation, stymying advancements in AI systems^{[[130]]}. Lastly, the Act's implemen-

budget for GenAI. Moreover, 90% of the respondents stated that they expect their investments in GenAI to increase over the next 5 years. For further information, see "2024 Investing in Legal Innovation Survey: The Rise of GenAI at Top Firms & Corporations," *LexisNexis*, accessed August 19, 2024, <https://www.lexisnexis.com/pdf/genai-report.pdf>. In the same vein, "Future of Professionals Report: AI-powered Technology & the Forces Shaping Professional Work," Thomson Reuters, July 2024, <https://www.thomsonreuters.com/content/dam/ewp-m/documents/thomsonreuters/en/pdf/reports/future-of-professionals-report-2024.pdf>.

[129] Hon. John G. Browning, "Robot Lawyers Don't Have Disciplinary Hearings – Real Lawyers Do: The Ethical Risks and Responses in Using Generative Artificial Intelligence", *Georgia State University Law Review* 40, no. 4 (2024): 954.

[130] Cain Burdeau, "EU Moves to Regulate AI, But Critics Decry Loopholes As Big Tech Warns of Overregulation", *Courthouse News Service*, December 11, 2023, <https://www.courthousenews.com/>

tation may be hindered by the varying interpretations and enforcement practices of member states, creating inconsistencies across the EU. An alternative approach to legislative and judicial actions is utilizing professional conduct rules administered by licensing authorities. These rules can be implemented and amended relatively quickly, allowing for adaptation to the continually evolving GenAI landscape. Effective enforcement by these authorities may also promote consistency across the professions they regulate. Enforcement instruments could include oversight bodies, mandatory disclosure requirements, regular compliance audits, and disciplinary measures for violations.

GenAI remains in the nascent phase of its development, and while its potential to revolutionize the legal field is immense, its full implications are yet to be understood. As this technology evolves, unforeseen challenges and ethical concerns will likely emerge, necessitating a cautious and informed approach to its integration into legal practice. Within the specific case of Türkiye, this early stage offers a critical opportunity to shape the trajectory of GenAI's use within the legal field. Rather than relying solely on legislative action, based on the preceding reasons, Türkiye should consider leveraging professional rules as a primary conduit to address using GenAI in the legal field. By empowering the professional bodies, the UTBA and the TCJP, to create, amend, and enforce the professional rules, Türkiye can guide the responsible and ethical deployment of GenAI, ensuring that it enhances rather than undermines the core values of the legal profession and justice system. Ultimately, however, effective and ethical integration will depend on comprehensive education, vigilant oversight, and a nuanced understanding of GenAI's capabilities, flaws, and limitations^{[[131]]}.

[eu-moves-to-regulate-ai-but-critics-decry-loopholes-big-tech-warns-of-over-regulation/](#).

[131] Browning, "Robot Lawyers", 954-55 ("More education, not more regulation, is the key. The responsible integration of AI in legal practice requires greater education,

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