

In the midst of the quarantine and the coronavirus (Covid-19) pandemic, many have been working from home remotely using and taking advantage of technological advances and the development of smartphones, laptops and virtual private network (VPN) connectivity. The same applies to a large portion of lawyers, including employees of our firm, who have been able to work remotely, from the security of our homes, to provide and continue to provide, our services.

Technology and the legal domain

However, this is not the only time that technology is being used by the legal world, as it is now the case in every area of modern society. In 2019, the ABA Legal Technology Survey Report confirmed that 80% of lawyers use their smartphones for work-related issues, such as digitising, editing or forwarding documents, communicating via email, arranging meetings and/or investigating specific legislation or decisions. In addition, several law firms have long provided teleconferencing with clients or prospective clients, automating the process of disclosing documents through the use of eDiscovery applications, instead of the traditional thorough research conducted by lawyers of exhibits and documents, as well as the collection of data and exhibits with the use of digital means and applications, the use of case management software, and the creation of reports and analyses using cognitive analytics. These are some of the existing tools and applications used by lawyers and the legal domain both in Cyprus and around the world that have recently enabled the uninterrupted provision legal and other services, given the restrictive measures that make it impossible to communicate in any other way.

Artificial Intelligence

As aforementioned, the above tools and applications have been used for some years by the lawyers, as well as by other professionals. What has begun to be used lately, firstly abroad and more recently in Cyprus, is the utilisation of the possibilities provided by Artificial Intelligence (hereinafter, AI) for the rendering of legal services, namely the communication, storage, management, and/or disclosure of documents.

Specifically:

- It is already possible for a person to use AI programs in the examination of contracts or agreements, especially multi-paged ones, for the any existence of unusual, unexpected, or unfavorable provisions or obligations.
- An AI program is available in the market, which is able to prepare legal documents, although the provision of legal services by non-licenced lawyers is not lawful.
- An AI program exists which can predict the conclusion/judgement of the court. Such programs provide law firms with the ability to determine whether to take a case.

Technology, Artificial Intelligence and
the professions of Lawyer and Judge



In addition, in different forms of social media, such as Facebook and Twitter, AI applications and programs are being used as means to resolve disputes, mainly by checking the content of the posts and either deciding whether a post is offensive or false, or indicating the relevant post to a special committee to evaluate its content. In any case, the relevant/involved parties may challenge the decision produced by the AI in a special committee (composed of humans), which re-evaluates both the post and the decision of the AI.

The above process of automated decisions has been examined by legislators of the European Union in the Personal Data Protection Regulation (2016/679), the GDPR, by including the explicit right of individuals not to be subject to decisions which are the result of an exclusively automated process and which significantly affect their rights and/or obligations (article 22). However, individuals do not appear to be protected in the event that the person making such a decision has relied solely or sufficiently on such automated procedures.

Proposals for future applications of AI to the legal domain

There are various considerations and suggestions for further ways to integrate and/or promote the use of AI in the legal domain, as the level of technology and the development of AI to date has mainly faced the difficulty of interpreting legislation and recognising subjective data, such as the intentions of counterparties when interpreting contracts, for example:

- Use of AI programs for automated applications of law, which will be specifically designed in such a way that it can be implemented by AI programs, for example tax issues.
- Use of AI programs to analyse the likelihood of a wrongful action being repeated (when calculating the penalty), though this analysis will be later evaluated by the Court.
- Use of AI programs by individuals to resolve disputes between them, i.e. instead of litigation, to agree to accept the outcome of a lawsuit as reached by the AI.
- Development and use in the future of AI programs that provide legal services instead of lawyers, when it is possible for such programs to develop legal claims or arguments, with the possibility of creating AI programs to directly resolve disputes through AI instead of human judges.



Possible issues arising from the extensive use of AI and/or the above suggestions

Although computers, and especially AI programs, will be able to analyse huge volumes of data compared to humans and therefore it will be easier to achieve the necessary consistency and compatibility of individual decisions with relevant legislation, principles and case law, there is, however, large number of issues arising from the above scenarios:

- It is very likely that the public will not accept the complete replacement of the legal and judicial system by computers and AI programs, considering that humans should have the final word on serious matters, such as constitutional law, human rights, but also moral and economic issues that are likely to affect the lives of many people.
- In a world where decisions are made by AI programs, it will not make sense to appeal to a higher AI procedure, since, if there is a superior program, it will have to be installed over or replace the one of the first degree of jurisdiction. Issues might arise even in the case of a provision regarding appeals to a human judge, but, it would again be difficult for a person to deviate from such a decision, taking into account the capabilities of computers to calculate and analyse vast sets of data and possibly all relevant legislation and jurisprudence, in comparison with the corresponding human capabilities.
- If AI programs are used both as lawyers and as judges, then essentially a single data exchange system will only emerge if both programs reach the same result.
- Basic principles of the legal system will gradually be lost, such as the right of natural persons to appear in court, the right to be heard and/or the right to represent themselves or to be represented by a lawyer of their choice before a Judge.
- Questions may also be raised in the justification of court decisions and consequently in the transparency of proceedings, since the algorithms used by computers and AI programs will hardly be able to justify the decision with arguments, or exercise discretion in favour of a version in place of another in the case of the interpretation of legal provisions or to evaluate subjective data, such as the intention of the parties or that of the party charged.
- The multiplicity of views will be endangered; according to the current system, the possibility of the coexistence of opinions within society is not only allowed but it is perfectly acceptable, being both legitimate and necessary for the well-being of society.



The above analysis does not seek to argue either for or against the use of AI or the issues that may arise in the future from the use of AI in the legal or judicial domain, nor does it suggest that lawyers or judges should be replaced by such programs.

A very important part of a lawyer's profession is personal contact with their client, the time they will devote to listening to their problem, understanding their position and what they are feeling, showing empathy, supporting them emotionally and arguing before a judge, presenting the position of their client, and using all the subjective elements and emotions to advance the case. On the other hand, a Judge is not a mere decision-making mechanism, but an institution staffed by people of recognised prestige and morality, who inspire confidence in citizens and ensure that the rule of law and legality are applied either by the submission of citizens to it, or through the imposition of sanctions in the case of its violation.

It is, however, especially important for lawyers, as well as for the judiciary and the judicial system, to progress and evolve alongside technology and to take full advantage of its immediate and effective capabilities. An illustrative example is the fact that the judiciary has so far, even in 2020, not digitized any proceedings whatsoever, and as a result in cases of emergency such as this pandemic, has allowed paralyzing the entire system to become paralysed for about 2 months, unlike other departments of the public service and/or the private sector, which are able to continue to provide their services uninterruptedly.