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ARTIFICIAL INTELLIGENCE IN LEGAL AND LEGISLATIVE TECHNIQUE: BETWEEN THE REQUIREMENTS OF CONSTITUTIONALITY, THE PRINCIPLE OF LEGALITY, AND DEMOCRATIC STANDARDS

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The integration of artificial intelligence into legal and legislative drafting can enhance the quality of normative acts, the coherence of regulations, and the ex ante control of their compliance with constitutional principles. However, the use of AI must be assessed in light of the fundamental values of the rule of law, such as the separation of powers, transparency, public accountability, and citizen participation. The European framework emphasizes the need to respect human rights, democracy, and institutional guarantees, requiring transparency, human oversight, and accountability mechanisms. The study highlights that AI can serve as a supportive tool in the legislative process – for filtering, warning, and analysis – but cannot assume an autonomous decision-making role, such as exercising a veto on constitutionality. This issue is particularly relevant in administrative law, where legality and judicial control are essential.

Keywords**:** *artificial intelligence; legal technique; legislative technique; constitutionality; legality; democracy; decisional transparency; public participation; political pluralism; administrative law.*

INTELIGENȚA ARTIFICIALĂ ÎN TEHNICA JURIDICĂ ȘI TEHNICA LEGISLATIVĂ: ÎNTRE EXIGENȚELE CONSTITUȚIONALITĂȚII, PRINCIPIUL LEGALITĂȚII ȘI STANDARDELE DEMOCRAȚIEI

Integrarea inteligenței artificiale în tehnica juridică și legislativă poate îmbunătăți calitatea actelor normative, coerența reglementărilor și controlul conformității acestora cu principiile constituționale. Totuși, utilizarea AI trebuie analizată în raport cu valorile fundamentale ale statului de drept, precum separația puterilor, transparența, responsabilitatea publică și participarea cetățenilor. Cadrul european subliniază necesitatea respectării drepturilor omului, a democrației și a garanțiilor instituționale, impunând transparență, supraveghere umană și mecanisme de răspundere. Studiul evidențiază că AI poate servi ca instrument de sprijin în procesul legislativ – pentru filtrare, avertizare și analiză – dar nu poate deține un rol autonom decizional, precum un veto de constituționalitate. Relevanța este majoră în dreptul administrativ, unde legalitatea și controlul jurisdicțional sunt esențiale.

Cuvinte-cheie: *inteligență artificială; tehnică juridică; tehnică legislativă; constituționalitate; legalitate; democrație; transparență decizională; participare publică; pluralism politic; drept administrative.*

Introductory Considerations

Contemporary developments in artificial intelligence require a reconsideration of the relationship between technical rationality and legal rationality. Whereas legislative technique has traditionally been conceived as a set of rules, procedures, and requirements intended to ensure the clarity, coherence, and effectiveness of regulation, the emergence of AI tools introduces the possibility of algorithmically assisted normative review, capable of operating rapidly over a vast body of norms, drafts, opinions, and compliance standards. Such capacity may bring unquestionable benefits in identifying conflicts of norms, legislative overlaps, terminological inconsistencies, and defects in normative structure. Within the European logic of better regulation, normative drafting is already linked to verification of legal basis, subsidiarity, and proportionality, as well as consultation of relevant actors.

At the same time, the use of AI in the process of drafting normative acts cannot be understood solely as a matter of efficiency. A regulatory act is not a mere technical product, but the expression of a public competence exercised within constitutional and legal limits. For this reason, any attempt to integrate AI into the sphere of legislative technique must be examined through the lens of the principles of constitutionality,

legality, legal certainty, decisional transparency, institutional accountability, and the protection of democracy. The Council of Europe Framework Convention on Artificial Intelligence explicitly formulates this requirement, demanding that activities within the life cycle of AI systems be “fully consistent with human rights, democracy and the rule of law” [1, p. 1, art. 1].

AI as an Instrument for Ex Ante Review of Constitutionality and Legality

From a functional perspective, artificial intelligence can effectively serve as a mechanism for ex ante review of normative compliance. It may verify the existence of legal basis, the competence of the issuing authority, compliance with the hierarchy of normative acts, terminological coherence, the structural regularity of the text, possible contradictions with higher-ranking norms, and apparent compatibility with the requirements of subsidiarity, proportionality, and protection of fundamental rights. These components fall within the logic of the European better regulation toolbox, which treats verification of legal basis, subsidiarity, proportionality, and stakeholder consultation as standard benchmarks of the regulatory process.

Consequently, AI can contribute to the transition from a predominantly reactive legislative technique to a preventive one, in which regulatory errors are detected before the norm is adopted or published. Its capacity to integrate extensive normative databases and automatically compare a draft with the Constitution, organic legislation, subordinate acts, and relevant international standards turns AI into a possible instrument of legal discipline in the normative drafting process. It can formulate reasoned warnings, grade risks of non-compliance, and generate reports useful to the initiator, the advisory body, or the supervisory authority. Within the logic of European better regulation, however, impact assessment remains an instrument to support decision-making, “not a substitute for it” [2, p. 14, par. 61].

Nevertheless, this ex ante review function is not equivalent to the prerogative of deciding definitively on the legal validity of a regulation. Current European standards insist not only on the reliability and transparency of AI systems, but also on human oversight, accountability, auditability, and remedies. This means that, even when AI detects serious risks of unconstitutionality or illegality, the final finding and the assumption of legal effects cannot be detached from human competence.

The Constitutional Limits of a Possible Algorithmic Veto

The main difficulty begins when one moves from the idea of a compliance filter to that of a genuine algorithmic veto. Constitutionality is not reduced to the mechanical identification of a textual conflict between norms. In many situations, constitutional review requires systemic interpretation, appraisal of legitimate aim, evaluation of the necessity and proportionality of interference, reference to case law, and, not infrequently, an axiological balancing between competing constitutional values. These operations go beyond the simple logic of normative matching and belong to the sphere of competence of public authorities and, ultimately, of constitutional jurisdiction or the competent courts.

In consequence, attributing to AI the prerogative of autonomously and definitively blocking the adoption of a regulation would be difficult to reconcile with the principle of separation of powers and with the requirement of human accountability in the exercise of normative competence. The updated Venice Commission Checklist emphasizes that “checks and balances and constitutional review have now been raised to the level of specific Rule of Law benchmarks” [3, p. 31], which excludes transferring the final decision on constitutional validity to an algorithmic structure lacking democratic legitimacy of its own.

Democratic Standards Relevant to the Use of AI in Legislative and Legal Technique

The analysis of the use of artificial intelligence in the process of drafting normative acts cannot remain limited to the requirements of constitutionality and legality in the strict sense, but must be extended to the standards that protect the very substance of democracy. In the sense of the Venice Commission Checklist, “Democracy relates to the involvement of the people in the decision-making process” [4, p. 4, par. 7], and this premise must also be projected onto the use of AI programs in the normative sphere.

A first relevant democratic standard is the transparency of the normative drafting process. If AI is used for drafting, filtering, evaluating, or classifying projects, its use cannot remain opaque, since algorithmic

opacity would affect the intelligibility of the decision-making process and diminish public control over the reasons that influenced the normative solution. At the same time, it must be noted that, according to the Explanatory Report to the Council of Europe Framework Convention, "transparency in the context of artificial intelligence systems is subject to technological limitations" [5, p. 9, par. 33], which requires that the transparency requirement be translated into realistic obligations of explainability, documentation, and human oversight.

A second standard is effective democratic participation. Lawmaking is not compatible with democracy if it becomes an exclusively technical process, isolated from public debate. Within the logic of European better regulation, the normative process must include a "high-quality, transparent stakeholder consultation" [3, p. 19, sect. 5.1.2]. Consequently, AI may support the systematization of observations received, the detection of recurring problems, and impact evaluation, but it should not be used to neutralize the pluralism of opinions expressed in consultation or to replace public deliberation itself.

A third standard concerns political pluralism and the protection of the parliamentary opposition. The introduction of AI into the legislative circuit cannot serve as an instrument for technically consolidating the will of the majority to the detriment of genuine parliamentary debate, the right to amend, or the visibility of the opposition in the normative process.

A fourth standard is public accountability and the contestable character of the decision. In the field of legislative and administrative technique, this means that AI intervention must be reviewable, explainable, and assumed by an identifiable human authority. Normative power, in a constitutional democracy, must remain exercised in institutional forms that are controllable and imputable.

Finally, a cross-cutting democratic standard is equality of participation and non-discrimination. Applied to legislative technique, this standard means that AI cannot be accepted as an instrument of normative modelling if it reproduces systemic biases, disadvantages certain social categories, or creates opaque barriers to access to debate and representation.

Special attention should be paid to the principle of democracy of artificial intelligence programs in legal and legislative technique, viewed through the prism of the principle of constitutionality. In the matter of the use of artificial intelligence in legal and legislative technique, it is possible to formulate, at the doctrinal level, a principle of democracy of AI programs, in the sense that the design, training, implementation, and use of AI systems affecting the normative process or legal activity must not affect the substance of the democratic constitutional order. This principle derives from the combined requirements of the supremacy of the Constitution, separation of powers, political pluralism, decisional transparency, public participation, the accountability of authorities, and judicial review. In this sense, an AI program used in the normative process is admissible only if it functions within the democratic architecture of the state, and not as a substitute for it.

Viewed through the prism of the principle of constitutionality, this principle of democracy of AI programs means, first of all, that no algorithmic system may become the implicit holder of a public competence that belongs, in the constitutional order, to Parliament, the Government, the competent administrative authorities, or constitutional jurisdiction. Constitutionality presupposes not only the formal conformity of a norm with the Constitution, but also respect for the framework of competences, constitutional procedures, the legitimacy of the issuing body, and its public accountability. Therefore, even if AI may review draft normative acts from the perspective of legal basis, hierarchy of norms, coherence, and possible incompatibilities, it cannot be given, without distorting the principle of constitutionality, the autonomous power to decide definitively which normative solution is constitutional and which solution must be excluded from the democratic circuit.

In legislative technique, the principle of democracy of AI programs translates into the requirement that algorithmic tools support democratic deliberation rather than neutralize it. This means that AI may be used to detect conflicts of norms, verify legal basis, subsidiarity, and proportionality, systematize observations from public consultation, and identify risks of normative incoherence. However, the algorithm cannot become an opaque mechanism through which legitimate legislative preferences are filtered, the options of parliamentary debate are reduced, or the will of the majority is technically consolidated to the detriment of pluralism and opposition.

In legal technique, the same principle requires that AI programs do not affect the autonomy of legal reasoning and the adversarial character of the interpretive process. In activities of legal qualification, systematization of sources, case-law analysis, drafting of reasoning, or verification of the conformity of administrative and jurisdictional acts, AI may provide considerable support. But the democracy of AI programs requires legal interpretation to remain, ultimately, a human exercise that is accountable, controllable, and contestable. This is essential especially in fields where the effects of the decision affect fundamental rights, sanctions, access to justice, relations of public power, or citizens' participation in public life.

In a synthetic formulation, the principle of democracy of AI programs, reread through the principle of constitutionality, may be expressed as follows: any artificial intelligence program used in legal or legislative technique is legitimate only if it respects the constitutional order of competences, preserves democratic deliberation, allows effective human control, does not cancel the pluralism of legal and political opinions, and does not impede the exercise of judicial review. Consequently, the democracy of AI programs concerns not only the result produced by the algorithm, but also the institutional, procedural, and constitutional conditions in which it operates.

Implications for Administrative Law and Related Branches of Law

The issue becomes even more acute in administrative law, where the principle of legality has a structural function and the validity of the administrative act depends not only on content, but also on competence, procedure, reasoning, purpose, and proportionality. In this field, AI could have considerable utility in verifying the competence of the issuing authority, compliance with consultation and advisory procedures, the existence of normative basis, consistency with higher-ranking acts, the regularity of reasoning, and possible deviations from the principle of equal treatment or non-discrimination. Likewise, it could support administrative impact analysis and control over compliance with the requirements of transparency, accessibility, and foreseeability of regulation.

In relation to administrative procedure and administrative litigation, AI could function as an instrument for the early detection of defects likely to lead to the annulment of the act: lack of reasoning, excess of competence, breach of mandatory procedures, failure to observe the right to be heard, or disproportion of the administrative measure. Nevertheless, the final legal characterization of these defects and, above all, their legal effect on the validity of the act must remain within the sphere of the competent administrative authority and the judge, not an algorithmic model. This conclusion follows from the same logic of human control, accountability, and independent judicial review.

In financial and tax law, public procurement, public service law, and the field of contraventions, the relevance of AI is likewise evident. It can identify inconsistencies between norms, verify compliance with competences and procedures, detect non-uniform treatment, and support ex ante control of legality. However, the more intensely regulation affects rights, obligations, sanctions, or access to public resources, the stronger the requirement for human control, reasoning, and the possibility of challenge becomes.

Thus, in administrative law and related branches, AI may be a factor for strengthening administrative legality, but it cannot replace classical administrative and jurisdictional control. Its legitimate role is to reinforce legality and the quality of decision-making, not to institutionally confiscate the exercise of public competence.

The Legally Admissible Solution: Intelligent Filtering under Human Control

The model compatible with the requirements of the rule of law and democracy is an intermediate and functional one. AI may be integrated as a mandatory mechanism of procedural filtering, capable of issuing reasoned warnings, classifying the level of legal risk, and even technically suspending the progress of a draft until observations of non-compliance are clarified. In this configuration, the system does not exercise a material veto over the norm, but rather a role of procedural guardian of legislative and administrative quality.

Accordingly, the contribution of AI to legal and legislative technique must be conceived in terms of strengthening the institutional capacity of public authorities, not replacing them. Final legal legitimacy continues to belong to the human subject vested with public competence and subject to constitutional, administrative, and, where appropriate, jurisdictional accountability.

Conclusions

The integration of artificial intelligence into legal and legislative technique may constitute real progress for the quality of regulation, insofar as it allows the early detection of defects concerning legal basis, competence, normative coherence, proportionality, and compatibility with fundamental rights. At the same time, the analysis can no longer be limited to legal validity in the narrow sense, because the current European order expressly links the use of AI with the protection of democracy, requiring respect for the integrity of democratic institutions and processes, for transparency, participation, pluralism, and the free formation of opinion.

Consequently, the use of AI in the normative process is admissible only if it strengthens, rather than compresses, the democratic standards of lawmaking. A model compatible with the rule of law and democracy is one in which AI functions as an instrument of support, analysis, and warning, under effective human control, within a framework marked by traceability, public consultation, the possibility of challenge, and respect for political pluralism. By contrast, a model in which AI were to become an opaque mechanism of material filtering of normative options or a substitute for parliamentary deliberation would affect both the principle of legality and the requirements of an authentic constitutional democracy.

In administrative law and related branches, these conclusions acquire additional importance, because there legality, reasoning, procedure, judicial review, and equality of treatment constitute not only standards of legal validity, but also guarantees of a democratic administration. The reasonable future of AI in the normative field therefore lies not in substituting human authority, but in institutionalizing an instrument capable of making lawmaking and administration more coherent, more foreseeable, more transparent, and more resistant to anti-democratic drift.

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