CIVIL JUSTICE IN THE AGE OF AI: HUMAN INVOLVEMENT IN AUTOMATED DECISION-MAKING IN THE EU AND THE UK

By

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Abstract

The advancement of artificial intelligence (AI), particularly generative AI and large language models, has raised complex questions about the prospects of its integration into the judicial decision-making process in civil cases. While many jurisdictions prohibit fully automated AI adjudication due to various legal and ethical risks, the issue arises whether to strike the right balance between leveraging the benefits of AI-assisted adjudication and safeguarding the procedural rights of the parties, without "opening the door" to their possible abuse.

This thesis examines the doctrinal and regulatory foundations for defining the concept of human involvement in the AI-assisted decision-making process in civil proceedings. It focuses on the degree of such involvement, with particular attention to the "human-in-the-loop" and "human-out-of-the-loop" models. Through a comparative analysis of the regulatory approaches adopted by the EU and the UK, this thesis identifies the limitations on AI use in the judiciary and two above-mentioned corresponding models of human involvement.

Furthermore, it conceptualises an emerging procedural right, namely the right to human involvement, which derives from the concept of human involvement. The thesis analyses the scope of this right in light of Article 22 of the General Data Protection Regulation and assesses its potential to transform the interpretation of existing procedural guarantees under Article 6 of the European Convention on Human Rights. By modelling different regulatory scenarios applicable to both jurisdictions, it suggests the additional safeguards for AI integration in the decision-making process based on monetary thresholds and different case complexity, to ensure compliance with procedural requirements under the right to a fair trial. It also explores preventive mechanisms against the abuse of the right to challenge decisions rendered with AI assistance and highlights possible need for reform of the three-tier court structure in case of increased AI deployment in adjudication.

AUTHOR'S DECLARATION

I, the undersigned, **Diana Deputat**, candidate for LLM degree in Central European University declare herewith that the present thesis titled "Civil justice in the age of AI: human involvement in automated decision-making in the EU and the UK" is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography. I declare that no unidentified and illegitimate use was made of the work of others, and no part of the thesis infringes on any person's or institution's copyright.

I also declare that no part of the thesis has been submitted in this form to any other institution of higher education for an academic degree.

Vienna, 16 June 2025

Diana Deputat

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Introduction

The rapid development of artificial intelligence (hereinafter - AI) in recent years has started the process of transformation of the administration of justice. Although only a few jurisdictions have implemented legislation to regulate the integration of AI into court proceedings, *de facto* use of AI tools by litigants, their legal representatives, and judges has increased due to the advancement of generative AI (hereinafter - GenAI), in particular, large language models (hereinafter - LLMs). Despite the benefits of GenAI deployment in court proceedings (expediting proceedings, predicting outcomes of the cases, risk evaluation), first and foremost, it creates complex ethical and legal challenges for regulators. Some of these legal challenges, which will be the main focus of the research, are related to the right to a fair trial, as guaranteed by Article 6 of the European Convention on Human Rights[1] (hereinafter - ECHR), and their transformative influence on the exercise of procedural rights.

Both the European Union (hereinafter - the EU) and the United Kingdom (hereinafter - the UK) aim to define and regulate human oversight over AI usage in different sectors, including the judiciary. The recently adopted EU Artificial Intelligence Act[2] (hereinafter – the EU AI Act) and the UK White Paper "AI regulation: a pro-innovation approach"[3] (hereinafter - the UK AI White Paper) *de facto* prohibit giving AI the role of sole decision-maker in any court proceeding. Adopted before them, the General Data Protection Regulation (hereinafter -

[1] Council of Europe, European Convention on Human Rights (as amended by Protocols Nos. 11, 14 and 15) ETS No. 005, (adopted 4 November 1950, entered into force 3 November 1953) https://www.echr.coe.int/documents/d/echr/convention_ENG accessed 16 June 2025.

[2] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised 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 L, 2024/1689, 12 July 2024 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1689#cpt_III accessed 16 June 2025.

[3] Department for Science, Innovation and Technology, *A pro-innovation approach to AI regulation* (White Paper, 2023) https://www.gov.uk/government/publications/ai-regulation-a-pro-innovation-approach/white-paper accessed 16 June 2025.

GDPR)[4], which is in force in both of the above-mentioned jurisdictions, determines in Article 22 (3) the "right to obtain human intervention" in cases involving any form of fully automated decision-making.[5] This provision imposes an *ex-post* obligation on the data controller[6] as it entitles the data subject to request a review of the decision made by fully automated means[7]. However, this safeguard applies only to natural persons and does not extend to the assistive use of GenAI in the judicial decision-making process.[8] Hence, none of these legal instruments suggests court-specific guidelines on the levels of human involvement in different forms of AI applications in the decision-making process in civil proceedings.

An analysis of the doctrinal field shows that scholars articulate a balance between human oversight and AI integration in the public sector (including the judiciary) using a variety of terms such as "human-on-the-loop,"[9] "human-in-the-loop,"[10] "human-out-of-the-loop,"[11] "right to human judge,"[12] "human in command,"[13] "human review,"[14] etc. Despite the valuable aspects of human-AI interaction indicated in the mentioned terminology, there is no unified

[4] 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) [2016] OJ L 119 https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng accessed 16 June 2025.
[5] Ibid, art 22(3).
[6] Guillermo Lazcoz, Paul de Hert, 'Humans in the GDPR and AIA governance of automated and algorithmic systems. Essential pre-requisites against abdicating responsibilities' (2023) 50 Computer Law & Security Review 105833 https://www.sciencedirect.com/science/article/pii/S0267364923000432 accessed 16 June 2025.
[7] GDPR, art 4(1).
[8] Mimi Zou and Ellen Lefley, 'Generative Artificial Intelligence and Article 6 of the European Convention on Human Rights: The Right to a Human Judge? (2024). UNSW Law Research Paper No. 25-8, 6 https://ssrn.com/abstract=5040351 accessed 16 June 2025.
[9] High-Level Expert Group on Artificial Intelligence, Ethics Guidelines for Trustworthy Artificial Intelligence (European Commission, 8 April 2019) 16 https://digital-strategy.ec.europa.eu/en/library/ethics-guidelines-trustworthy-ai accessed 16 June 2025.
[10] Ibid.
[11] Australasian Institute of Judicial Administration, AI Decision-Making and the Courts: A guide for Judges, Tribunal Members and Court Administrators (June 2022) 9 https://aija.org.au/wp-content/uploads/woocommerce_uploads/2022/06/AI-DECISION-MAKING-AND-THE-COURTS_Report_V5-2022-06-20-1lzkls.pdf accessed 16 June 2025.
[12] Zou and Lefley (n 8), 12.
[13] Giuliana Amore and Maria Margherita Lazzara, 'Causes of Reflection on the Use of AI in Civil Justice' (2024) 10 (1-2) *The Italian Law Journal* 536 https://theitalianlawjournal.it/data/uploads/10-italj-1-2-2024/535-amorelazzara.pdf accessed 16 June 2025.
[14] Melanie Fink, 'Human Oversight under Article 14 of the EU AI Act' (2025) SSRN https://ssrn.com/abstract=5147196 accessed 16 June 2025, 2.

standard that reflects different degrees of human involvement in the AI decision-making process within civil proceedings. Some scholars have already addressed theoretical problems related to ensuring procedural safeguards of the right to a fair trial in AI-assisted decision-making in courts[15] as well as the legal, ethical and psychological aspects of AI integration in justice[16] and pointed out the need for oversight of AI applications in the court through a "human-in-the-loop" model[17]. Nevertheless, the following questions remain under-explored: (i) how the court-tailored concept of human involvement could be framed and what should be its scope, limits and models of application in AI-assisted adjudication in civil cases, (ii) how the right to human involvement as an emerging procedural right can be defined and exercised in AI decision-making process in civil proceedings, (iii) how the practical application of the right to human involvement, enshrined in Article 22 of the GDPR, may influence the interpretation of traditional procedural guarantees, and what additional duties may be imposed on the judge (iv) what is the right balance between the right to appeal decisions rendered with AI assistance and preventive mechanisms against the abuse of procedural rights, (v) whether AI deployment in civil proceeding may restructure the traditional three-tier court instance system.

This thesis aims to define the concept of human involvement and the models through which it can be applied in AI-assisted civil adjudication within the existing framework in the EU and the UK. Furthermore, it seeks to outline the scope of the right to human involvement and examine its impact on the practical implementation of procedural guarantees, including court

[15] Marcin Górski, 'Why a Human Court? On the Right to a Human Judge in the Context of the Fair Trial Principle' (2023) 1 *eucrim: The European Criminal Law Associations' Forum* https://eucrim.eu/articles/why-a-human-court-on-the-right-to-a-human-judge-in-the-context-of-the-fair-trial-principle/#docx-to-html-fn34 accessed 16 June 2025.

[16] 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' (2024) 6 *Data & Policy* 6 e59, 24-25 https://doi.org/10.1017/dap.2024.53 accessed 16 June 2025.

[17] Kalliopi Terzidou, *'The Use of Artificial Intelligence in the Judiciary and its Compliance with the Right to a Fair Trial'* (2022) 31 *Journal of Judicial Administration* 154, 166 https://ssrn.com/abstract=4495715 accessed 16 June 2025.

instance structure, the exercise of the right to appeal, and preventive mechanisms against its abuse.

Firstly, I will argue that in the context of the decision-making in civil proceedings, the relations between the judge and AI should be described under the umbrella term "human involvement," from which arises the procedural right, i.e. "right to human involvement". The research will specify a few levels of human involvement in AI decision-making in courts, such as:

- zero level, no AI application in adjudication, e.g. AI usage for administrative tasks, but not for legal analysis[18];
- first level "human-in-the-loop"(HITL) - AI is used as an assisting tool in the analysis of facts and case materials. It could contribute to drafting parts of the decision, but the judge maintains significant control over evidence assessment and is actively involved in drafting the final decision;
- second level "human-on-the-loop"(HOTL) - semi-automated AI decision-making, where the system analyses all case materials and drafts the suggested version of the decision that the judge can approve: the judge monitors the whole process and can make corrections at any stage, including the process of drafting the final decision;
- third level "human-out-of-the-loop"(HOOTL) - fully automated AI adjudication, prohibited in many jurisdictions.

Due to the current trends in AI usage in court proceedings, the first and second levels of human involvement will be the primary focus of the thesis. Moreover, the scope of the thesis will be limited only to AI deployment in civil proceedings, without substantial analysis of criminal or administrative proceedings. This limitation is justified by the fact that, under the civil limb of Article 6 of the ECHR, the right to fair trial is ensured through procedural guarantees such as the adversarial and party-driven character of the proceedings, greater autonomy of the parties

[18] AI Act, recital 61.

in exercising their procedural rights, and, compared to the criminal limb, different interpretation of elements of procedural fairness. All mentioned characteristics form a more adaptive environment for AI deployment and thus make AI integration in civil proceedings more feasible.

Through a comparative analysis of the legal framework in the EU and the UK regarding AI usage in court proceedings, combined with the detailed analysis of Article 22 of the GDPR and procedural requirements under the civil limb of Article 6 of the ECHR would be answered two of the core questions of the thesis: (i) how can different levels of human involvement in AI decision-making in courts transform modern understanding of civil justice, in particular, existing procedural guarantees and instance structure of the courts? (ii) how can the right balance be found between the potential risks and benefits of AI-assisted adjudication and adopting AI-tailored safeguards that will not "create opportunities" for procedural rights abuses by the parties?

The mentioned jurisdictions are chosen based on two aspects. First, the EU is at the forefront of regulating AI usage in different sectors through a strict legislative and risk-based approach, while the UK has adopted a more flexible principle-based approach[19]. Second, the comparison between the EU, where the majority of Member States have civil law systems and the UK, which has a common law system, provides valuable insights into two contrasting approaches to AI regulation. The comparative analysis is limited to the existing legal framework for AI usage, specifically in the context of court proceedings. However, since the procedural guarantees framing the right to a fair trial and the context of the right to human involvement in both the EU and the UK derives from the same legal instruments i.e. Article 6 of the ECHR

[19] David Mark, Tomás McInerney, and John Morison, 'Regulating automated decision-making in the Justice system: what is the problem?'(2023) SSRN https://ssrn.com/abstract=5021951 accessed 16 June 2025, 3.

and Article 22 of the GDPR, the peculiarities and limitations of exercising the right to human involvement are examined from a general, cross-jurisdictional perspective.

The thesis is structured into two main chapters, which explore the concept, scope and models of human involvement in the AI-assisted decision-making process as well as the right to human involvement that arises from it.

Chapter 1 lays the foundation for the doctrinal and legal understanding of human involvement in AI-assisted decision making in court proceedings, defining its levels, applicable models, and distinguishing it from other related terminology, particularly "human oversight". It proceeds with an analysis of existing approaches to defining the role of AI in court proceedings across jurisdictions, with a special focus on the EU's risk-based and the UK's principle-based approaches. Moreover, the chapter describes the nature of human involvement in AI adjudication in court proceedings through the provisions of Article 22 of the GDPR, drawing analogies between the limitations imposed on automated decision-making and the application of AI in the decision-making process in civil proceedings.

Chapter 2 focuses on the procedural aspects of exercising the right to human involvement in civil proceedings and its interaction with existing procedural safeguards. It begins with a detailed analysis of the transformation in the interpretation of core procedural requirements under Article 6 of the ECHR, including procedural fairness, adversarial proceedings, equality of arms, the administration of evidence, and the reasoning of judicial decisions. The chapter then critically examines the ways of asserting the right to human involvement through the right to appeal in civil cases of different complexity. It further evaluates which mechanisms can be established to prevent abuse of procedural rights within different models of AI usage in the decision-making process in civil cases. Finally, the chapter examines the specific impact of AI on the traditional three-tier instance court system, identifying emerging challenges of AI deployment in civil courts.

CHAPTER 1: FOUNDATION OF THE HUMAN INVOLVEMENT IN AI DECISION-MAKING IN COURT PROCEEDINGS

Chapter 1 outlines the doctrinal and regulatory foundation of the concept "human involvement" in AI adjudication in court proceedings. It distinguishes "human involvement" from broader terms such as "human oversight" and "human control", focusing on the procedural role of the judge as an active participant in the administration of justice. The chapter proceeds with an analysis of the legal framework governing AI deployment in civil cases, focusing on two distinct approaches: the EU's risk-based model and the UK's principle-based model. It identifies the tendencies within both models regarding the understanding of human involvement in AI-assisted decision-making in courts. The chapter forms the groundwork for determining the emerging procedural right, namely, the right to human involvement, the practical application of which will be explored in Chapter 2.

1.1 Defining human involvement in AI decision-making in court proceedings

The deployment of AI systems in judicial decision-making requires a clear understanding of the interaction between humans and AI. Over the decades, since the automation process started in different sectors, numerous scholars have attempted to define the scope and limits of human control over machines,[20] the nature of human-AI collaboration,[21] and the boundaries of

[20] Riikka Koulu 'Human Control over Automation: EU Policy and AI Ethics' (2020) 12(1) *European Journal of Legal Studies* 9, 18 https://ejls.eui.eu/wp-content/uploads/sites/32/2020/04/2.-EJLS-121-Koulu.pdf accessed 16 June 2025.
[21] Lisanne Bainbridge 'Ironies of automation' (1983) 19(6) *Automatica* 775, 777 https://ckrybus.com/static/papers/Bainbridge_1983_Automatica.pdf accessed 16 June 2025.

oversight over AI functioning[22]. Due to the diverse approaches taken by regulators and academics, there is an overlap in terminology that complicates the identification of the most suitable concepts of AI usage in court proceedings.

Generally, human oversight is considered a broad term that is often used as a synonym for "human involvement" or explained through it. For instance, Melanie Fink defines human oversight as *"involvement of a natural person in an algorithmic work process"*[23]. Riikka Koulu collapses the concepts of "human oversight" and "substantial human involvement"[24]. Sebastian Felix Schwemer and Peter Alexander Earls Davis, relying on the Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679 adopted by Article 29 Data Protection Working Party (hereinafter - WP29) in February 2018, interpret "human involvement" through "meaningful human oversight".[25] In the mentioned guidelines, the WP29 specified that *"to qualify as human involvement, the controller must ensure that any oversight of the decision is meaningful, rather than just a token gesture"*[26].

A comparison of these definitions reveals a significant terminological overlap that complicates the identification of the precise and legally relevant definition of interaction between a judge and AI in the decision-making process in civil cases. Taking into account the peculiarities of the administration of justice, it is reasonable to argue that "oversight" is a subset of "control"[27], while "involvement" is a narrower subset of "oversight".This interpretation reflects the constitutional and procedural status of the judge. The definition offered by WP29 aligns most

[22] Koulu (20) 23.
[23] Fink (14) 2.
[24] Koulu (20) 21.
[25] Peter Davis and Sebastian Felix Schwemer, 'Rethinking Decisions Under Article 22 of the GDPR: Implications for Semi-Automated Legal Decision-Making' in *Proceedings of the Third International Workshop on Artificial Intelligence and Intelligent Assistance for Legal Professionals in the Digital Workplace (LegalAIIA 2023), held in conjunction with ICAIL 2023* Braga, 19 June 2023) 6 https://ssrn.com/abstract=4478107 accessed 16 June 2025.
[26] Article 29 Data Protection Working Party, Guidelines on Automated Individual Decision- Making and Profiling for the Purposes of Regulation 2016/679 (WP 251rev.01, 2018), 21 https://ec.europa.eu/newsroom/article29/items/612053 accessed 16 June 2025.
[27] Koulu (20) 23.

closely with the nature of court proceedings, as the role of the judge is commonly understood not as an "external observer" but rather as a mandatory active participant in civil adjudication. From the perspective of the separation of powers and judicial independence, the judge acts as a representative of the third, judicial branch, whose authority cannot be delegated to AI. Nevertheless, even if some tasks may be delegated to AI, the role of the judge in decision-making must remain active and substantial. Consequently, "human oversight", which by definition requires a more passive engagement with AI, cannot be used to describe obligations that can be imposed on the judge in AI-assisted civil proceedings. As the model of passive or minimal supervisory roles over AI decision-making process risks undermining procedural enshrined in Article 6 of the ECHR, the concept of "human involvement" is more relevant in determining relations between the judge and AI in adjudication.

Depending on the degrees of human interaction with AI, various governance mechanisms of human involvement in adjudication can be defined.[28] However, there is no unified legal classification of different levels of human involvement in AI decision-making. Furthermore, even the existing terms are not *"used consistently across different fields and contexts"*[29].

For instance, the High-Level Expert Group on Artificial Intelligence in "Ethics Guidelines for Trustworthy AI," defined several generally applicable governance mechanisms for human oversight. Proposed classification includes the following:

- human-in-the-loop (hereinafter - HITL) - *"human intervention in every decision cycle of the system"*[30];
- human-on-the-loop (hereinafter - HOTL) - *"human intervention during the design cycle of the system and monitoring the system's operation"*[31]; and

[28] High-Level Expert Group on AI, Ethics Guidelines for Trustworthy AI (9) 16.
[29] Fink (14) 4.
[30] High-Level Expert Group on AI, Ethics Guidelines for Trustworthy AI (9) 16.
[31] Ibid.

- human-in-command (hereinafter - HIC) - *"capability to oversee the overall activity of the AI system (including its broader economic, societal, legal and ethical impact) and the ability to decide when and how to use the system in any particular situation"*[32].

Melanie Fink, in the context of the analysis of Article 14 of the EU AI Act, points out only on two mechanisms of human oversight, *de facto* provided by the mentioned article. The first one is HITL, within which *"human needs to guide or validate every output before it can take effect"*[33], and the second one is HOTL, where *"human only monitors the decision-cycle and has a possibility to intervene at any moment, but does not need to do so"*[34]. At first glance, the two represent distinct models of human oversight, but depending on the specific application, they may overlap or encompass one another.[35]

Guillermo Lazcoz and Paul de Hert, interpreting provisions of Article 22 of the GDPR, highlight two models of human involvement: HITL and "human-out-of-the-loop" (hereinafter - HOOTL), explaining that last one functions *ex-post*, based on a request for human intervention.[36] HOOTL can take place when (i) their decision is made without a human, and (ii) there is a request to review such decisions.[37]

In academic debate, there is an active debate over whether AI should be deployed in the decision-making process in courts and how to ensure an adequate application of the HITL model.[38] Usually, HITL is recognised by scholars as the only acceptable mechanism for integrating AI into adjudication in civil proceedings. However, recent interpretations of governance mechanisms of human oversight under Article 14 of the EU AI Act and Article 22

[32] Ibid.
[33] Fink (n14) 3.
[34] Ibid.
[35] Ibid 4.
[36] Lazcoz and de Hert (n 6) 15.
[37] Ibid.
[38] John Morison and Tomás McInerney, 'When Should a Computer Decide? Judicial Decision-Making in the Age of Automation, Algorithms and Generative Artificial Intelligence' S. Turenne and M. Moussa (eds.), *Research Handbook on Judging and the Judiciar*y (Elgar-Routledge, 2024) 5 https://ssrn.com/abstract=4723280 accessed 16 June 2025.

of the GDPR highlight the need for more nuanced, court-specific taxomony of human involvement in AI-supported adjudication.

To structure the analysis, it is useful to map the entire spectrum of possible human involvement in AI adjudication i.e., from zero AI applicationin adjudication to sole AI decision-making in civil courts. The mentioned spectrum can be divided into four distinct levels:

- zero level: no AI application decision-making. AI is not used for some administrative tasks like translations, anonymisation of decisions, and non-substantial editing of final drafts of the judgements;
- first level: HITL model. AI is used to analyse case law, facts of particular cases, evidence, and based on that, make suggestions/analysis that can be used in the final decision;
- second level: HOTL model. It is semi-automated model, in which AI suggests a full version of the final decision (e.g., court order/decision on merits). The judge must review and approve or reject such draft;
- third level: HOOTL model. This represents fully automated process, with sole AI decision-making in it.[39] It can exist only as a theoretical model as is prohibited both in the EU and the UK.

The proposed spectrum of human involvement in AI-assisted adjudication in civil cases reflects the range of theoretically possible models of AI deployments in courts. While levels from zero to second may be implemented in practice, they must be subject to proper legal and ethical safeguards. The third level, however, remains prohibited. As the first and second levels pose numerous challenges, particularly in terms of aligning with procedural guarantees, they form the core focus of this thesis.

[39] Lazcoz and de Hert (n 6) 11.

It is essential to point out that the described classification of levels of human involvement in AI adjudication in civil cases may have normative implications, potentially leading to the establishment of new procedural rights. The nature and limits of AI usage in judicial decision-making can directly affect the ability of the litigants to exercise their procedural rights. From this perspective, the concept of human involvement gives rise to a new procedural right, i.e., the right to human involvement in AI-assisted decision-making in civil cases. The emerging right should be legally recognised and theoretically grounded in alignment with the provisions of Article 6 of the ECHR. A detailed analysis of the context, scope, and application across different court instances will be provided in Chapter 2.

1.2 Legal framework on AI deployment in civil courts

In many jurisdictions, regulating AI usage across sectors has become a central challenge for public authorities. The ongoing and often *de facto* advancement of AI integration into the judiciary has raised many concerns over legal and ethical risks associated with AI deployment in civil cases, which may jeopardize court proceedings. Since the legal framework on regulating AI deployment in court proceeding is fragmented and only partially reflected in legislation and guidelines in some jurisdictions, there is a need to analyse existing approachуы in defining the role of AI in judicial adjudications.

1.2.1 General overview of existing approaches on AI regulation in court proceedings

In recent years, many states have begun drafting frameworks to regulate human-AI interaction. Two main regulatory models have emerged during this process: (i) a risk-based approach,[40]

[40] Victorian Law Reform Commission, *Artificial Intelligence in Victoria's Courts and Tribunals: Consultation Paper* (October 2024) 63 https://www.lawreform.vic.gov.au/wp-content/uploads/2024/10/VLRC_AI_Courts_CP_web.pdf accessed 16 June 2025.

typically adopted through AI-specific legislation, sector-specific laws, or pending legislative proposals; and (ii) a principle-based approach, in which AI usage is governed through guidelines rather than legislative acts [41]. The classification is not absolute, as even in states with risk-based models, some guidelines can exist independently from regulatory acts.

An alternative classification of existing models suggests that AI-specific legislation should form a separate category.[42] However, given that only two finalised AI-specific regulations currently exist, namely the EU AI Act (already in force)[43] and the South Korean AI Basic Act (will enter into force in 2026)[44] and both of them adopt the risk-based approach as the foundation for regulating AI deployment in different sectors there is no need to analyse them in separate category.

Other jurisdictions that have adopted a risk-based model of AI regulation include:

1. Brazil: In December 2024, the Brazilian Senate approved[45] the so-called Brazilian AI Act[46], which awaits further legislative approval;
2. Canada: The Artificial Intelligence and Data Act, which forms part[47] of the Bill C-27[48], remains under parliamentary review;
3. China: Various regulations have been adopted (for instance, Regulations on Deep Integration Management of Internet Information Services[49] and Interim Measures for

[41] Ibid 64.
[42] Ibid 63.
[43] AI Act (2).
[44] Artificial Intelligence Act, 'South Korean AI Basic Law' (2025) https://artificialintelligenceact.com/south-korean-ai-basic-law/ accessed 16 June 2025.
[45] Artificial Intelligence Act, 'Brazil AI Act' (2024) https://artificialintelligenceact.com/brazil-ai-act/ accessed 16 June 2025.
[46] Complementary Bill 93/2023 (Federal Senate, Brazil) https://www25.senado.leg.br/web/atividade/materias/-/materia/157931 accessed 16 June 2025
[47] Innovation, Science and Economic Development Canada, 'The Artificial Intelligence and Data Act (AIDA) -- Companion document'(2022) https://ised-isde.canada.ca/site/innovation-better-canada/en/artificial-intelligence-and-data-act-aida-companion-document?utm_source accessed 16 June 2025.
[48] Bill C-27 Digital Charter Implementation Act, 2022, 1stSess 44th Parl (House of Commins, Canada) https://www.parl.ca/legisinfo/en/bill/44-1/c-27 accessed 16 June 2025.
[49] Cyberspace Administration of China Ministry of Industry and Information Technology Ministry of Public Security, *Provisions on the Management of Deep Synthesis of Internet Information Services* (Order No 12, 25 November 2022) https://www.gov.cn/zhengce/zhengceku/2022-12/12/content_5731431.htm accessed 16 June 2025.

the Management of Generative Artificial Intelligence Services[50]) or proposed (Draft Regulations on AI-Generated Content Labelling that will take effect in September 2025[51]). However, a unified AI act has not yet been adopted.

4. USA: The U.S. follows two approaches: sector-specific and principle-based. Although there is no dedicated AI act at the federal level, the general framework is established by Executive Order 14110 on Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence[52], and Executive Order on Advancing United States Leadership in Artificial Intelligence Infrastructure[53]. Concrete regulatory efforts have advanced at the state level (e.g. Colorado and California).[54]

The principle-based model of regulating AI is considered more flexible and pro-innovative because guidelines provide regulators and stakeholders with greater room for interpretation. This model forms the foundation for AI regulation in the following jurisdictions:

[50] Cyberspace Administration of China National Development and Reform Commission Ministry of Education Ministry of Science and Technology Ministry of Industry and Information Technology Ministry of Public Security State Administration of Radio and Television, *Interim Measures for the Management of Generative Artificial Intelligence Services*, (Order No 15 10 July 2023) https://www.gov.cn/zhengce/zhengceku/202307/content_6891752.htm accessed 16 June 2025.
[51] Norton Rose Fulbright 'China's proposed AI Labelling Regulations: Key points' (October 2024) https://www.nortonrosefulbright.com/en/knowledge/publications/c1211a61/chinas-proposed-ai-labelling-regulations-key-points?utm_source= accessed 16 June 2025.
[52] Executive Order No 14110 *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence* (1 November 2023) https://www.federalregister.gov/documents/2023/11/01/2023-24283/safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence accessed 16 June 2025.
[53] Executive Order on Advancing United States Leadership in Artificial Intelligence Infrastructure, The White House (14 January 2025) https://bidenwhitehouse.archives.gov/briefing-room/presidential-actions/2025/01/14/executive-order-on-advancing-united-states-leadership-in-artificial-intelligence-infrastructure/ accessed 16 June 2025.
[54] Angela Huyue Zhang, 'The Promise and Perils of China's Regulation of Artificial Intelligence' (January 28, 2024). (forthcoming, *Columbia Journal of Transnational Law)* 9-10 https://static1.squarespace.com/static/5daf8b1ab45413657badbc03/t/67902cc54fa8400aea9dc26e/1737501893309/01_CTL_63_1_Zhang+%281%29.pdf accessed 16 June 2025.

1. Japan: The Revised Governance Guidelines for Implementation of AI Principles[55] and Social Principles of Human-Centric AI[56] have broad applicability, but do not set any concrete guidelines for the judicial sector;
2. Singapore: Model AI Governance Framework for Generative AI,[57] published in 2024, outlines different principles for the use of GenAI. However, it does not contain any specific provisions related to GenAI application in court proceedings;
3. United Kingdom: The UK White Paper "AI regulation: a pro-innovation approach"[58] establishes core, cross-sectoral principles for AI application. In addition, separate Guidelines for judicial officers holders were published in December 2023[59] and revised in April 2025[60].

In the context of regulatory analysis of the concept of human involvement in AI decision-making in civil cases and the corresponding right to human involvement, the EU and the UK were selected for several reasons. These jurisdictions represent two distinct approaches analysed above: the EU has adopted the risk-based approach, while the UK regulates AI through the principle-based approach. The EU AI Act stands at the forefront of global legislative efforts to define the boundaries of AI deployment and to establish obligations for

[55] Ministry of Economy, Trade and Industry of Japan, *Governance Guidelines for Implementation of AI Principles,* (Expert Group on How AI Principles Should be Implemented AI Governance Guidelines Working Group, January 28, 2022) https://www.meti.go.jp/shingikai/mono_info_service/ai_shakai_jisso/pdf/20220128_2.pdf accessed 16 June 2025.
[56] The Cabinet Secretariat of Japan, *Social Principles of Human-Centric AI* (March 2019) https://www.cas.go.jp/jp/seisaku/jinkouchinou/pdf/humancentricai.pdf accessed 16 June 2025.
[57] AI Verify Foundation, *Model AI Governance Framework for Generative AI* https://aiverifyfoundation.sg/wp-content/uploads/2024/05/Model-AI-Governance-Framework-for-Generative-AI-May-2024-1-1.pdf accessed 16 June 2025.
[58] DSIT, *A pro-innovation approach to AI regulation* (n 3).
[59] Judiciary of England and Wales, *Artificial Intelligence (AI): Guidance for Judicial Office Hol*ders (12 December 2023) https://www.judiciary.uk/wp-content/uploads/2023/12/AI-Judicial-Guidance.pdf accessed 16 June 2025.
[60] Judiciary of England and Wales, *Artificial Intelligence (AI): Guidance for Judicial Office Holders* (14 April 2025) https://www.judiciary.uk/wp-content/uploads/2025/04/Refreshed-AI-Guidance-published-version-website-version.pdf accessed 16 June 2025.

both providers and deployers of AI systems. There is no other regulation in force that is similar to the EU AI Act in terms of complexity and scope.

In contrast, the UK AI White Paper, although not directly focused on the judiciary, sets out principles that were complemented by Guidelines for judicial officers holders adopted in 2023 and revised in 2025. Furthermore, the GDPR, which remains in force both in the EU and the UK, serves as crucial data protection safeguard. That means that interpretation of "meaningful human involvement" and possible limitations on human intervention in the semi- or fully-automated AI decision-making are largely aligned in both jurisdictions.

The selection of these jurisdictions is also justified by their different legal traditions: the majority of the EU Member States follow civil law systems, while the UK has a common law system. Ultimately, both jurisdictions are bound by the ECHR, which leads to a similar interpretation of the procedural rights and guarantees. Thus, considering these aspects together, the EU and the UK offer increasingly valuable insights for a comparative analysis of existing approaches to regulating AI applications in court proceedings with the aim of outlining a cross-jurisdictional concept of human involvement and the procedural right arising from it.

1.2.2 The European Union's risk-based approach

In contrast to the various regulatory efforts undertaken in other jurisdictions to develop legislative frameworks for AI applications across sectors, the EU AI Act is currently is the most comprehensive regulatory act. By assessing the risks associated with AI deployment in different fields, it acknowledges the specific operational characteristics of AI and, in response, imposes a particular set of obligations on different actors involved.

Although the EU AI Act is not specifically drafted for the judicial sector, it contains important provisions for analysis of the spectrum of human involvement in AI-assisted decision-making in courts. According to Recital 1 of the Preamble, the purpose of the EU AI Act is to ensure

that AI systems are *"human centric and trustworthy"*[61] aligning with *"a high level of protection of health, safety, fundamental rights including democracy, the rule of law and environmental protection, to protect against the harmful effects of AI systems in the Union, and to support innovation"*[62]. The wording of the purpose indicates a broad scope of the EU AI Act's application, which in turn suggests that the obligations it imposes are not specifically tailored to the peculiarities and procedural safeguards required in the judicial sector.

The EU AI Act outlines the following four levels of risks: unacceptable, high, limited, and minimal, or no risk. According to part 8 of Annex III and Recital 61, AI systems used *"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"* [63] are categorised as high-risk systems. This provision also extends to AI systems used in alternative dispute resolution mechanisms if the following conditions are met: AI systems are used in a similar manner, for the same purposes, and *"the outcomes of the alternative dispute resolution proceedings produce legal effects for the parties"* [64].

However, some of the AI systems, even if they are deployed in the judiciary, may pose lower risks. For instance, Recital 61 clarifies that AI systems which *"do not affect the actual administration of justice in individual cases"*[65] and are used for administrative tasks such as *"anonymisation or pseudonymisation of judicial decisions, documents or data, communication between personnel"*[66] are not classified as high-risk systems.

Nevertheless, the EU AI Act establishes a clear normative boundary for the use of AI in courts by explicitly prohibiting sole AI decision-making in any proceedings. It states that *"AI tools can support the decision-making power of judges or judicial independence, but should not*

[61] AI Act, recital 1.
[62] Ibid.
[63] Ibid, Annex III(8)(a).
[64] Ibid, recital 61.
[65] Ibid.
[66] Ibid.

replace it: the final decision-making must remain a human-driven activity"[67]. This provision suggests that, in the context of human involvement, Recital 61 permits only the application of the human-in-the-loop (HITL) model. The use of the human-on-the-loop (HOTL) model remains questionable, as it is unclear whether the degree of human involvement it proposes would satisfy the aforementioned reguirements.

It is crucial to highlight that the EU AI Act does not propose a definition of human involvement and the obligation of judges arising from it. Article 14 of the EU AI Act refers to "human oversight", which, in the context of this thesis, is considered a broader and less precise term than "human involvement". Additional arguments in favour of adopting the concept of human involvement and stipulating boundaries of its application beyond those described in Subchapter 1.1. are related to the wording of Article 14 itself. The obligations articulated there are imposed on providers and deployers. According to Article 3(4), a deployer is "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*"[68]. Although a judge may fall into the category of a deployer in certain contexts, the obligations imposed by Article 14 are generic in nature, and predominantly focus on the responsibilities of the judicial institutions. Consequently, these obligations are insufficient to ensure procedural fairness guarantees required in the judicial decision-making process in court proceedings.

Article 14(1) requires effective oversight over high-risk AI systems *"by natural persons during the period in which they are in use"*[69]. However, as Lena Enqvist has clearly stated, this provision mandates presence of *"the expert-in-the-loop and individual agency regarding the*

[67] Ibid.
[68] Ibid, article 3(4).
[69] Ibid, article 14(1).

human operator's operation"[70], which, from a technical perspective, can be imposed only on providers, since judges act as end-users of such systems.

Article 14(2) stipulates risk minimisation obligations on the use of AI systems in line with their intended purposes.[71] This duty has a broad scope of application, and may, under certain circumstances, be interpreted as applying to judges if they are recoginswd as deployers.

Article 14(3) concerning risk management measures applies solely to providers, as does Article 14(4), which requires that providers ensure AI systems are delivered to deployers in a manner that is understandable for adequate application.

Overall, Article 14(4) plays a crucial role in ensuring that AI systems deployed in court proceedings function transparently, by obliging providers to give judges relevant information that enables them (i) *"understand the relevant capacities and limitations of the high-risk AI system…duly monitor its operation"*[72], (ii) being aware of automation bias, (iii) *"correctly interpret the high-risk AI system's output"*[73], (iv) "*decide..disregard, override or reverse the output*"[74], (v) "*intervene in operation… or interrupt the system through a 'stop' button'"*[75]. Nevertheless, the fulfilment of these provisions remains the sole responsibility of the providers.

Article 14(5) sets out the requirements for biometric verification that are mandatory for both providers and deployers. However, in the context of the judiciary, their application is likely to be limited due to the law enforcement exception.

Furthermore, the general requirements for AI deployment across various sector, including in civil justice, as defined in Articles 9-13 and Article 15, are *de facto* mandatory only for providers due to their technical nature. These obligations relate to risk management (Article 9),

[70] Lena Enqvist, '"Human oversight" in the EU artificial intelligence act: what, when and by whom?' (2023) 15 (2) Law Innovation and Technology 1, 10 https://www.researchgate.net/publication/373113807_'Human_oversight'_in_the_EU_artificial_intelligence_act_what_when_and_by_whom accessed 16 June 2025.
[71] AI Act, article 14(2).
[72] Ibid, article 14(4)(a).
[73] Ibid, article 14(4)(c).
[74] Ibid, article 14(4)(d).
[75] Ibid, article 14(4)(e).

data accuracy and its proper governance (Article 10), the availability of technical documentation (Article 11), maintaining record-keeping (Article 12), transparency of system functioning and availability of information about it for deployers (Article 13) and the assurance of an appropriate *"level of accuracy, robustness, and cybersecurity"*[76] .

Therefore, the EU AI Act provides only fragmentary regulatory framework for the deployment of the AI systems in court proceedings. It classifies such systems as high-risk and defines some boundaries of their potential application, with a strong emphasis on judicial independence and autonomy. Moreover, the concept of human oversight under Article 14, along with the obligations stipulated therein, is focused on ensuring the proper deployment and functioning of AI systems in civil justice. However, these obligations are not specifically addressed to judges: they apply to multiple actors who are responsible for the overall human-centric and trustworthy functioning of AI.[77] Thus, such understanding of human oversight makes it inapplicable in the context of court proceedings, where judges must engage more actively and significantly with AI systems. The aforementioned supports the statement that, in the context of the administration of justice, the term "human involvement" is more appropriate.

Furthermore, given the broad scope of the EU AI Act, there is a need for the adoption of separate regulations or guidelines that would specify the requirements for AI deployment in civil justice. In the absence of such legal instruments, the interpretation of the scope of human involvement in civil proceedings should be based primarily on the procedural guarantees of the right to fair trial enshrined in Article 6 of the ECHR and Article 47 of the Charter of Fundamental Rights of the European Union[78] (hereinafter - CFREU).

[76] Ibid, article 15(1).
[77] Ibid, recital 1.
[78] Charter of Fundamental Rights of the European Union [2012] OJ C 326/391 https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT accessed 16 June 2025.

1.2.3 The United Kingdom's principle-based approach

In contrast to the EU's risk-based approach reflected in the EU AI Act, the UK adopted the UK AI White Paper - a policy document, which sets out principles applied flexibly to allow businesses to adjust to changes in AI development across various sectors. [79] As stated by Michelle Donelan, former Secretary of State for Science, Innovation and Technology, the principle-based approach was taken *"to adapt as needed while providing industry with the clarity needed to innovate"*[80]. The UK AI White Paper establishes five main principles that must be observed in all sectors of the economy: *"safety, security and robustness, appropriate transparency and explainability, fairness, accountability and governance, and contestability and redress"*[81].

From the wording of the UK AI White Paper, it is evident that it indirectly applies to the judicial sector,[82] as it merely defines a direction that needs to be complemented by sector-specific guidelines. Accordingly, in December 2023, the Courts and Tribunals Judiciary published the first version of Guidelines for judicial officers holders[83] and revised them in April 2025 (hereinafter – AI Judicial Guidelines).[84] These guidelines are primarily applicable in England and Wales and are directed not only at judicial office holders, but also at *"their clerks, judicial assistants, legal advisers/officers and other support staff"*[85]. Moreover, the scope of the AI Judicial Guidelines extends to legal representatives and unrepresented litigants, ensuring that all actors involved in court proceedings use AI in a responsible manner.

Compared to the EU AI Act, the AI Judicial Guidelines have a more practical application in court proceedings. Apart from the classification of AI deployment in the judiciary as a high-

[79] DSIT, *A pro-innovation approach to AI regulation* (n 3).
[80] Ibid.
[81] Ibid.
[82] John Barwell, 'The Pitfalls of Using AI in UK Civil Litigation' https://legallens.org.uk/the-pitfalls-of-using-ai-in-uk-civil-litigation/ accessed 16 June 2025.
[83] Judiciary of England and Wales, *Artificial Intelligence (AI): Guidance for Judicial Office Holders* (n 59).
[84] Judiciary of England and Wales, *Artificial Intelligence (AI): Guidance for Judicial Office Holders* (n 60).
[85] Ibid, 3.

risk activity, framing and imposing certain prohibitions on AI usage by judges, the EU AI Act is strategically focused on defining obligations for providers and deployers related to the technical characteristics of AI systems. Therefore, the term "human oversight" reflects the general, cross-sectoral scope of the EU AI Act application, rather than a specific concept of judge-AI interaction that could be directly applicable within the judiciary.

In contrast to the EU AI Act, the AI Judicial Guidelines provide court-specific guidance that constitutes a valuable asset in defining reasonable and safe AI applications in court proceedings, as they:

- establish the clear boundaries regarding the recommended limits of GenAI applications in the judicial sector;
- explain the strengths and weaknesses of GenAI and suggest the safest ways to use it;
- specify methods of using AI in compliance with data privacy requirements;
- provide practical advice on mitigating bias resulting from GenAI training data;
- warn about the risks of AI hallucinations;
- provide suggestions for secure AI use;
- set rules regarding the responsibility of judges for AI-generated outputs used by them;
- identify Microsoft's "Copilot Chat" as a preferred GenAI system available to judges in the UK.[86]

The UK's legal framework is deliberately flexible in its interpretation: neither the UK AI White Paper nor the AI Judicial Guidelines explicitly defines the concepts of "human involvement" or "human oversight". Both the Bar Council's Written evidence [87] and in the report

[86] Ibid, 8.
[87] The Bar Council, written evidence to the Justice and Home Affairs Committee, House of Lords, (session 2021-2022) NTL0048 (1 October 2021) para 28 https://committees.parliament.uk/writtenevidence/39768/pdf/ accessed 16 June 2025.

"Technology rules? The advent of new technologies in the justice system"[88] published by the Authority of the House of Lords in 2022, suggest that oversight obligations should mandate ministers and other governmental bodies[89] (e.g. the Information Commissioner for personal data), as well as expert teams, which could be created for the oversee the deployment new AI systems [90]. In other words, nothing in these sources suggests that "human oversight" is the only appropriate concept to articulate the duties of the judge in the AI-assisted decision-making process in court proceedings. Hence, "human oversight" is a broader notion encompassing regulatory and technical control over AI, thus the narrower term "human involvement" is more appropriate for describing the procedural role and duties of the judge in AI decision-making in civil cases.

The analysis of the scope of human involvement in AI decision-making in courts, as reflected in the AI Judicial Guidelines, identifies the specific tasks for which AI application is suggested. These include providing summaries for texts, writing materials for presentations, and some administrative tasks such as *"composing, summarising and prioritising emails, transcribing and summarising meetings, and composing memoranda"* [91]. Crucially, the AI Judicial Guidelines explicitly advise judges against relying on AI for core judicial functions such as legal research and legal analysis (including analysis of the facts of the case, drafting reasoning of a judicial decision)[92]. Nevertheless, from a theoretical standpoint, judges retain discretion to use AI for the outlined tasks, provided they have a clear understanding of their responsibility for such usage. Thus, the AI Judicial Guidelines implicitly endorse the HITL model,

[88] The Justice and Home Affairs Committee, *'Technology rules? The advent of new technologies in the justice system'* (HL Paper 180, session 2021-2022, 20 March 2022) 35 para 80 https://publications.parliament.uk/pa/ld5802/ldselect/ldjusthom/180/180.pdf accessed 16 June 2025.
[89] Ibid, 35-36 para 80.
[90] The Bar Council, written evidence NTL0048 (n 87) para 28.
[91] Judiciary of England and Wales, *Artificial Intelligence (AI): Guidance for Judicial Office Holders* (n 60) 8.
[92] Ibid, 8-9.

characterising it as *"a potentially good secondary tool"* [93] without imposing mandatory limitations.

Furthermore, statements by Sir Geoffrey Vos, Master of the Rolls and co-author of the AI Judicial Guidelines, indicate openness within the UK judiciary system towards adopting the HOTL model in AI-assisted decision-making in civil cases Specifically, Vos recognises the possibility of using AI to make minor decisions if two following requirements are met: (i) the parties are informed of a role of the human judge and AI-generated elements in the decision-making process; and (ii) the paries have the right to appeal such decision before a human judge.[94] Moreover, Vos acknowledged that in certain commercial and compensation-related disputes, litigants *"may come to have confidence in machine made decisions more quickly than many might expect"*[95]. This perspective demonstrates the potential openness of the judicial system to the future possibility of extending AI usage beyond the HITL approach, towards potential integration of the HOTL model.

Therefore, the UK's principle-based approach to regulating AI use in court proceedings provides a flexible framework that is responsive to technological changes and is complemented by sector-specific guidelines. The AI Judicial Guidelines outline practically oriented recommendations, enabling responsible adoption of the HITL model in AI adjudication in courts. Additionally, statements by Sir Geoffrey Vos reflect the potential openness of the UK judicial system to the cautious expansion of AI applications through the HOTL model in civil cases.

[93] Ibid, 7.
[94] Sir Geoffrey Vos, 'Speech by the Master of the Rolls to the Law Society of Scotland Law and Technology Conference'(online lecture, 14 June 2023) para 21 https://www.judiciary.uk/speech-by-the-master-of-the-rolls-to-the-law-society-of-scotland/ accessed 16 June 2025.
[95] Ibid, para 22.

Despite differences in their regulatory approaches to AI deployment in civil courts, the EU and the UK frameworks share essential similarities in outlining the basis of the concept of human involvement in AI-assisted decision-making process:

- neither regulatory frameworks explicitly defines the concept of human involvement in AI-assisted adjudication in court proceedings;
- AI cannot be used in courts without human supervision; it cannot function as a final decision-maker;
- judges remain responsible for the use of AI in court proceedings. Even though the EU AI Act does not explicitly state this rule, it can derive from the emphasis on assistive role of AI;
- the use of AI to analyse facts of the case, evidence as a basis for the decision-making process presents legal and ethical risks;
- the HITL model is acceptable both in the EU and the UK as a safe foundational baseline for integration of AI into adjudication.

Nevertheless, key differences should be mentioned:

- compared to the EU's model, the UK's principle-based approach is more adaptable to technological development;
- the EU framework imposes *ex-ante* obligations on providers and deployers, while the UK approach is focused on providing court-specific, judge-oriented guidelines;
- the UK's high officials have expressed openness to moving in the direction of granting parties in some civil cases the right to decide on the AI application with the corresponding right to appeal the results of such application (i.e., openness to the HOTL model); the EU not yet considered such a mechanism,even on the level of public statements.

1.2.4 Human involvement under Article 22 of the GDPR

The concept of human involvement does not originate in AI-specific regulation or guidelines but is rooted in the General Data Protection Regulation, adopted on 14 April 2016 and became effective on 25 May 2018 across all EU Member States at that time, including the UK. As the UK GDPR remains in force with text identical to the EU version, this thesis will not distinguish between the EU GDPR and the UK GDPR. Reference in the text will be made only to the version avalible on the EUR-lex website.[96]

The term emerged in the interpretation of Article 22 of the GDPR by the Article 29 Data Protection Working Party in its Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679.[97]

Article 22 of the GDPR constitutes a safeguard for data subjects (natural persons), protecting them from being *"subject to a decision based solely on automated processing..which produces legal effects..or similarly significantly affects him or her"*.[98] Although the text of the GDPR does not explicitly address the assistive use of GenAI[99] in decision-making processes, nor does it extend the safeguards to legal persons, it nonetheless contains essential provisions on automated decision-making that are useful for doctrinally framing the nature and scope of human involvement in AI decision-making in civil cases.[100]

Moreover, it is crucial to emphasise that while both natural and legal persons can be parties in civil cases, under the GDPR, the data subject can only be a natural person. However, essential procedural safeguards established by Article 22 of the GDPR regarding the protection mechanisms of data subjects' rights (right to human intervention, right to explanation) are

[96] GDPR (4).
[97] Article 29 Data Protection Working Party, *Guidelines on Automated Individual Decision- Making and Profiling* (n 26).
[98] GDPR, art 22(1).
[99] Zou and Lefley (n 8), 6.
[100] Ibid, 5.

valuable in analysing human-AI collaboration in the decision-making process in civil proceedings.

As stated in the SCHUFA case, three cumulative conditions invoke the application of Article 22(1) of the GDPR: (i) there must be a decision, (ii) the decision must be based solely on automated processing, and (iii) it must produce *"legal effects concerning [the interested party]' or 'similarly significantly [affect] him or her"*[101]. According to the interpretation of the WP29, solely automated decision-making is defined as *"the ability to make decisions by technological means without human involvement"*[102] - a process commonly referred to as the "human-out-of-the-loop" (HOOTL) model. The provisions of the EU AI Act explicitly prohibit autonomous AI decision-making in civil cases, and the UK's AI Judicial Guidelines implicitly apply the same rule.

Moreover, the mentioned guidelines specify when human involvement may be considered as merely superficial or imitative and, therefore, insufficient to preclude the application of Article 22 of the GDPR. As stated by the WP29, solely automated decision-making exists where *"someone routinely applies automatically generated profiles to individuals without any actual influence on the result"*[103]. Drawing an analogy with court proceedings, this issue can arise if judges adopt AI-suggested or AI-drafted decisions as the final judgments without conducting meaningful review. Such negative practices may impose significant risks of violating the procedural rights of the parties as well as the guarantees enshrined in the right to a fair trial. To mitigate these risks, the EU has gradually restricted the potential deployment of AI in judicial decision-making through provisions of the EU AI Act, while the UK has emphasised the responsibility of judges for materials prepared with AI assistance.

[101] Case C-634/21 *SCHUFA Holding*, ECLI:EU:C:2023:957 (Court of Justice of European Union, 7 December 2023) para 43 https://curia.europa.eu/juris/document/document.jsf?docid=280426&doclang=en.
[102] Article 29 Data Protection Working Party, *Guidelines on Automated Individual Decision- Making and Profiling* (n 26) 8.
[103] Ibid, 21

Furthermore, the WP29 stresses the key criteria for human involvement in the automated decision-making process: the involvement must be meaningful *"rather than just a token gesture"*[104]. In practice, this means that Article 22 of the GDPR accommodates only the "human-in-the-loop" (HITL) model[105]. The application of the semi-automated "human-on-the-loop" (HOTL) model remains questionable and would only be justified if the threshold of "meaningful" oversight is met.

Also, Article 22(2) of the GDPR indicates certain exceptions from the application of the general rule established in Article 22(1). The two exceptions that are most relevant to the present analysis are where solely automated decision-making is authorised by EU law or Member State law (Article 22(2)(b)) and where solely automated decision-making is based on the data subject's explicit consent (Article 22 (2)(c)).[106] Currently, the invocation of exception Article 22(2)(b) in the context of AI decision-making in civil cases appears legally impossible, due to the explicit prohibition in the EU AI Act regarding the use of AI as a final decision-maker in court proceedings. Similarly, the UK's principle-based approach neither provides for nor is expected to introduce a statutory authorisation that would permit fully automated AI decision-making in civil proceedings.

The exception of Article 22(2)(c) might become applicable if procedural law grants litigants the right to opt for AI adjudication in civil cases. However, where explicit consent for AI adjudication is given, Article 22(3) requires the data controller to implement effective procedural safeguards. The list of safeguards notably includes the right to human intervention (usually considered as an *ex-post* right) and the right to *"express his or her point of view*"[107]

[104] Ibid.
[105] Mark, McInerney and Morison (n 19) 12.
[106] GDPR, art 22(2).
[107] Ibid, art 22(3).

that closely resembles the right to be heard[108]. Furthermore, Recital 71 emphasises three other crucial safeguards: the right to be informed about the processing, the right to an explanation, and the right to challenge a decision (resembling the right to appeal).[109] The listed safeguards mirror some of the traditional procedural guarantees in civil proceedings, suggesting potential correlation with the requirements set in Article 6 of the ECHR, Article 47 of the CFREU, and Article 6 Human Rights Act 1998[110], which will be analysed in greater depth in Chapter 2.

Currently, regulators in both the EU and the UK do not foresee the application of an exception similar to Article 22(2)(c) of the GDPR, which would grant parties the right to provide explicit consent for the use of AI in decision-making in civil proceedings. This scenario raises the question of whether such a right could emerge in civil proceedings in the near future, given the prohibition of sole AI adjudication, which models of a meaningful human involvement to AI-assisted decision-making in civil cases could potentially be applied.

In my opinion, the "human-out-of-the-loop" (HOOTL) model, characterised by fully automated AI adjudication, creates significant risks for ensuring safeguards required by Article 22(3) and Recital 71 of the GDPR and fails to align with procedural fairness and other guarantees enshrined in the right to a fair trial. By excluding human involvement, this model *de facto* transfers judicial functions to AI, which is incompatible with both the constitutional principle of separation of powers and the concept of "access to a court" under Article 6 of the ECHR[111].

In contrast, the HOTL model, which involves semi-automated AI decision-making with a certain degree of human involvement in the process of rendering a decision, is more compatible

[108] Ljubiša Metikoš and Jef Ausloos, 'The Right to an Explanation in Practice: Insights from Case Law for the GDPR and the AI Act' (2024) *Law, Innovation and Technology* 16 https://ssrn.com/abstract=4996173 accessed 16 June 2025.
[109] GDPR, recital 71.
[110] Human Rights Act 1998,sch 1pt I ch 5 https://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/I/chapter/5 accessed 16 June 2025.
[111] Terzidou (n 17), 159.

with procedural standards. From a theoretical perspective, if the procedural right to provide explicit consent for AI adjudication in civil proceedings is introduced, along with the "meaningful" human oversight and implementation of effective safeguards as articulated in Article 22 (3) and Recital 71 of the GDPR, the HOTL model could be considered as a viable alternative to the widely recognised HITL model.

Therefore, Article 22 of the GDPR serves as a foundation for the concept of human involvement in AI decision-making in civil proceedings. It complements the prohibition of fully autonomous AI adjudication in civil cases stipulated in the EU AI Act while at the same time establishing a set of procedural safeguards that, if implemented, could justify granting the parties the right to consent to AI-assisted decision-making. While the HITL model aligns with the requirements of the EU AI Act, the UK White Paper, and the GDPR criteria, the HOTL model could also become a viable alternative if the aforementioned rights defined in Article 22 (3) and Recital 71 are properly guaranteed.

The analysis provided highlights the need to examine the existing procedural guarantees in the civil proceedings that may be transformed by the deployment of AI in adjudication. Based on the review of the conceptualisation of the rights which must be guaranteed to data subjects in cases of automated decision-making processes under the GDPR, the right to human involvement should be exercised through a similar set of safeguards. This set of rights aims to ensure meaningful human involvement and includes: the right to be informed, the right to an explanation, the right to human intervention and the right to appeal. Therefore, Chapter 2 focuses on the concept of the right to human involvement, including the procedural aspects and mechanisms through which it can be exercised in practice.

CHAPTER 2: PROCEDURAL ASPECTS OF EXERCISING THE RIGHT TO HUMAN INVOLVEMENT IN CIVIL PROCEEDINGS

Based on the concept of human involvement developed in Chapter 1, this chapter examines the right to human involvement in AI-assisted decision-making in civil proceedings. It analyses the core procedural guarantees in civil proceedings common to both the EU and the UK and explores how their interpretation may evolve with the introduction of AI in the decision-making process. The chapter conceptualises the right to human involvement as an emerging right in civil proceedings, defining its context, elements and correlation with existing procedural guarantees. It also addresses the specificities of exercising the right to appeal within the two analysed models of human involvement, preventive mechanisms of abuse of this right and its overall impact on the court instance system.

2.1 The right to human involvement and its interaction with traditional procedural safeguards

The concept of human involvement that was defined above forms the basis for the emerging right to human involvement in AI-assisted decision-making in civil cases, which may significantly influence on the administration of justice. Incorporating this right into civil procedural rules (codes) would transform the interpretation and application of traditional procedural safeguards. Since neither the legal framework of the EU nor of the UK defines the right to human involvement, its conceptualisation must be derived from shared principles of civil justice applicable in both jurisdictions.

The fundamental element in defining the right to human involvement in AI adjudication in civil proceedings is the guarantee of a fair trial, which is established in Article 6(1) of the ECHR, stating that *"everyone is entitled to a fair and public hearing within a reasonable time by an*

independent and impartial tribunal established by law"[112]. The same guarantee is reflected in Article 47 (2) of the CFREU and in Article 6 (1) of the Human Rights Act 1998[113], which mirrors Article 6(1) of the ECHR. The recently adopted Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law (signed by both the EU and the UK) by Article 5 imposes an AI-specific obligation stating that *"Each Party shall adopt or maintain measures that seek to ensure that artificial intelligence systems are not used to undermine…respect for judicial independence and access to justice"*[114]. Since both the EU and the UK are bound by the ECHR, and given that the CFREU with the Human Rights Act 1998 reflect the same formulation of the right to a fair trial, the following analysis will proceed primarily based on Article 6(1) of the ECHR.

2.1.1 Procedural fairness

The guidelines to Article 6(1) of the ECHR (civil libel) outline a range of procedural guarantees that must be ensured during civil proceedings.[115] Nevertheless, this thesis will focus primarily on procedural requirements of guarantees of the right to a fair trial, due to their major influence on the balance between judges and AI in the context of adjudication.

Procedural fairness [116] as the main procedural requirement, is an umbrella concept encompassing the following procedural requirements: adversarial proceedings, equality of arms, administration of evidence, and reasoning of judicial decisions. This thesis claims that the right to human involvement is a new complex procedural right in AI-assisted civil

[112] ECHR art 6 (1).
[113] Human Rights Act 1998 (n 110).
[114] Council of Europe, *Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law* (CETS No 225, opened for signature 5 September 2024, Vilnius) accessed 16 June 2025.
[115] European Court of Human Rights *Guide on Article 6 of the European Convention on Human Rights Right to a fair trial (civil limb)* (updated 2023) 4) https://rm.coe.int/1680700aaf accessed 16 June 2025.
[116] Ibid, 39.

proceedings: it is formed on the basis of existing procedural safeguards and exercised throughout the whole decision-making process in court proceedings.

Therefore, the analysis provided below will shape the context of this right by exploring AI's transformative influence on the key procedural requirements of the right to a fair trial. Other aspects of Article 6(1) of the ECHR, such as access to court, impartial tribunal, independence, impartiality, and length of proceedings, are not addressed in this thesis, as the main focus is only on the procedural requirement regarding procedural fairness.

Procedural fairness as a requirement *"applies to proceedings in their entirety"*[117] and means *"adversarial proceedings in which submissions are heard from the parties and they are placed on an equal footing before the court"*[118]. However, it is important to distinguish the commonly referred general concept of fairness from procedural fairness.

Fairness as a term can be divided into "substantial" and "procedural" fairness. Substantial fairness is a semi-legal term that is related merely to the ethical risks and is not a procedural guarantee in decision-making under the ECHR: it ensures that AI is not bias in generated results (e.g. suggested decision/reports), it sets the quality requirements to the data used to train LLMs.[119] Accordingly, the judge is not responsible for the training data itself but is obliged to verify all outputs of GenAI through the whole cycle of adjudication. This obligation contributes to ensuring procedural fairness, whithin which several above-mentioned safeguards are framing human involvement in the AI adjudication.

[117] *Stran Greek Refineries and Stratis Andreadis v. Greece* (ECtHR, 9 December 1994), Series A no. 301-B para 49 http://hudoc.echr.coe.int/eng?i=001-57913 accessed 16 June 2025.
[118] ECtHR, *Guide on Article 6 (civil limb)* (n 115) para 204.
[119] Socol de la Osa and Remolina (n 16) 6.

2.1.2 Adversarial proceeding

First, the principle of adversarial proceeding must be guaranteed: the parties have the right to be informed by the judge regarding the use of AI-generated outputs, to be provided with concrete context AI's analysis and to be given sufficient time to comment on it. The rationale behind these guarantees is similar to the safeguards enshrined in Article 22 of the GDPR.

The defined interpretation is concictent with the European Court of Human Rights (hereinafter - ECtHR) jurisprudence, which held the party *"must have the possibility to familiarise itself with the evidence before the court, as well as the possibility to comment on its existence, contents and authenticity in an appropriate form and within an appropriate time, if need be, in a written form and in advance"*[120]. Furthermore, the party must *"be guaranteed free access to the observations of the other participants in these proceedings and a genuine opportunity to comment on those observations"*[121].

The problems that arise with the interpretation of the mentioned cases is (i) civil procedural rules across jurisdictions do not recognice AI-generated outputs, particulary in the form of the analysis of the facts or case materials as the evidence and (ii) AI cannot be considered as "the other participant" in civil proceedings, even when the judge refer to GenAI as an assitant. Despite unclear legal status of AI in civil proceedings, the adversarial character of the process as a safeguard imposes certain obligations on the judge: to inform the parties about the use of AI in the decision-making process, to grant access to GenAI reports that are taken into account for rendering the final judgement, to give a reasonable time to comment on those outputs. All of these obligations directly influence the effectiveness of exercising the right to human involvement.

[120] *Krčmář and Others v. the Czech Republic* (ECtHR, 3 March 2000), no. 35376/97 para https://hudoc.echr.coe.int/eng?i=001-243566 accessed 16 June 2025.
[121] *Ruiz-Mateos v. Spain*, (ECtHR, 23 June 1993) Series A no. 262 para. 63 https://hudoc.echr.coe.int/eng?i=001-57838 accessed 16 June 2025.

2.1.3. Equality of arms

Second, the principle of "equality of arms" that in practice is also referred as "fair balance" principle is crucial in the context of AI-assisted adjudication.[122] The concept of "equality of arms" provides the parties with *"a reasonable opportunity to present his case - including his evidence - under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent"*[123]. In light of the aforementioned procedural guarantees associated with adversarial proceedings, which are closely connected to "equality of arms" notion, additional risks arising from AI usage in civil cases relate to technical imbalance between the parties. For instance, a litigant who lacks access to certain AI technologies may face difficulties in challenging GenAI outputs.

This issue can be addressed through the following measures: (i) providing the parties with assess to state-endorsed GenAI models if they lack commercial alternatives; (ii) granting parties the right to refuse the deployment of AI in decision-making process[124] (i.e. no state-provided equivalent exists or disparity would materially prejudice a party's case) and (iii) establishing a monetary threshold for the classification of the types of civil cases where AI potentially can be deployed.

From the judge's standpoint, ensuring a fair balance in AI decision-making process requires: (i) detailed disclosure of characteristics and limitations on AI application in adjudication, (ii) a reasonable timeframe for parties to comment on AI-generated outputs, taking into account technical imbalance, and (iii) an order for state-funded expert opinions or for temporary access equivalent AI models, if other alternatives to partis are unavailable or unaffordable. These steps

[122] ECtHR, *Guide on Article 6 (civil limb)* (n 115) paras 221-22.
[123] Dombo Beheer B.V. v. the Netherlands (ECtHR, 27 October 1993) Series A no. 274 para 33 https://hudoc.echr.coe.int/eng?i=001-57850 accessed 16 June 2025.
[124] Socol de la Osa and Remolina (n 16), 26.

reflect the substance of human involvement and safeguard the positive application of AI for securing a fair balance between parties in Ai-assisted adjudication.

2.1.4 Administration of the evidence

The third important criterion that requires consideration is the administration of the evidence in the AI-assisted decision-making in courts. The main focus of this analysis is on the challenges that arise when GenAI is used for evidence assessment. Both in the EU and the UK, this activity is recognised as high-risk, given that the evaluation of evidence may have a serious impact on the outcome of the case.

One major problem involves so-called "black box" effect i.e., the lack of transperency in how the GenAI arrives to particular conclusions.[125] This issue has been broadly discussed by scholars from the point of regulatory requirements for AI systems used in the judiciary. However, to ensure meaningful human involvement the judge is obliged to: (i) acquire sufficient knowledge of how the GenAI generates its reports and (ii) be capable of explaining to the parties how AI contributed to the evidence assessment and how that contribution was incorporated into the judge's reasoning.

The second problem concerns bias and prejudice arising from the technical functioning of AI systens and the training data used in GenAI.[126] Although judges are not responsible for the data on which GenAI is trained, they must be capable of identifying bias and prejudice in AI-generated, which were formed based on the selection or interpretation of case law. Judges are obliged to prevent such negative impacts on the decision-making process. For instance, the AI

[125] Ibid, 5.
[126] Zou and Lefley (n 8), 9.

Judicial Guidelines recommend that, in order to indicate and avoid possible bias in AI-generated results, judges should refer to the Equal Treatment Bench Book[127].[128]

The ECtHR case law also has emphasised on the neutrality stating that *"the lack of neutrality on the part of a court appointed expert may in certain circumstances give rise to a breach of the principle of equality of arms inherent in the concept of a fair trial"*[129]. Despite the fact that AI is not an expert in the traditional sence, its assistive role in assessing evidence raises similar concerns. If the neutrality of AI outputs cannot be ensured, their use may jeopardise compliance with procedural safeguard sdescribed above.

An effective approach to addressing bias and prejudice and ensure neutrality in AI-assisted decision-making process involves categorising cases based on their complexity and type of evidence presented. The classification can help to determine when and how AI may be applied, for example, in assessing the admissibility of evidence, allocating the burden of proof, or overall evaluating evidence based on the criteria established in civil procedure law.

2.1.5 Reasoning of judicial decisions

The fourth essential aspect in AI-assisted adjudication is the requirement to provide reasoned court decisions in civil cases. According to the jurisprudence of the ECtHR, the right to be heard impose a duty on the court to provide the reasoning, explanation why *"the relevant submissions were accepted or rejected"*[130]. Moreover, providing a reasoned judgement enables exercising the right to appeal and *"public scrutiny of the administration of justice"*[131].

[127] Judicial College, *Equal Treatment Bench Book* (July 2024, May 2025 update) https://www.judiciary.uk/wp-content/uploads/2025/05/ETBB-July-2024-May-2025-update.pdf accessed 16 June 2025.
[128] Judiciary of England and Wales, *Artificial Intelligence (AI): Guidance for Judicial Office Holders* (n 60) 6.
[129] *Sara Lind Eggertsdóttir v. Iceland* (ECtHR, 10 October 2007) no 31930/04 para 47 https://hudoc.echr.coe.int/eng?i=001-81432 accessed 16 June 2025.
[130] *Fomin v Moldova* (ECtHR, 11 January 2012) no 36755/06 para 31 https://hudoc.echr.coe.int/eng?i=001-106789 accessed 16 June 2025.
[131] Ibid.

Nowadays the main concerns arise regarding whether GenAI has technical capacity to draft the reasoning of a quality at least at least equivalent to produced by human judges. As highlighted above, the AI Judicial Guidelines suggests that GenAI provides poor legal analysis and legal research.[132] These warnings raise serious doubts about the feasibility of using AI for drafting final decisions, particulary due to the tendency such as AI "hallucinations"[133], "black box" effect and its limited ability to accurately interpret legal terminology[134], case law and doctrinal concepts. Additionally, the previously discussed problems regarding evidence assessment outlined in Subchapter 2.1.4. are equally relevant to drafting reasoning of judicial decisions.

Given the rapid advancement of the AI functionalities, it can be reasonably anticipated that some of the current limitations and problems will diminish significantly over time. Therefore, one of the core concerns regarding the use of AI-generated reasoning in final court decisions should shift towards the *de facto* level of judicial scrutiny applied to AI-generated content. Depending on the adopted model of human involvement in the AI decision-making process (HITL or HOTL) the standards for balancing between judge-AI collaboration should vary accordingly.

Under the HITL model, the right to human involvement should impose corresponding obligations on judges : (i) verifying of the accuracy of facts of the case and applicable law in AI-generated text, (ii) rewriting generic or inaccurate text, so that reasoning is tailored to the case (currently, LLMs have tendency to give generic outputs, that can negatively influence on a public trust to judiciary) (iii) indicating which parts of the decision were drafted by the judge and which were generated by AI. These general duties apply regardless of case complexity or

[132] Judiciary of England and Wales, *Artificial Intelligence (AI): Guidance for Judicial Office Holders* (n 60) 8.
[133] Grace Ashford, 'A Lawyer Used ChatGPT in an Airline Lawsuit. The Chatbot Cited Nonexistent Cases' *The New York Times*, (New York, 27 May, 2023) https://www.nytimes.com/2023/05/27/nyregion/avianca-airline-lawsuit-chatgpt.html accessed 16 June 2025.
[134] Terzidou (n 17), 163.

the legal system (although stylistic of drafting differs between common law and civil law judgments).

Thus, judicial institutions could adopt Guidelines that specify rules for AI usage, differentiated by type of disputes. For instance, commercial disputes tend to revolve around complex contractual and technical terms that AI may handle better than family law cases, involving highly sensitive contexts that require more of a human judge voice.

As the application of the HOTL model remains disputable, AI application should be limited to certain scenarios i.e., it can provide a suggested draft of judgements in some low-value disputes (monetary threshhold must be indicated), non-complex court orders and in cases where parties explicitly agreed on such AI application. Therefore, compliance with the standard of reasoned judicial decision in AI-assisted decision-making in civil cases requires meaningful human involvement in AI-generated outputs. Moreover, the duties of the judges will differ from the model of human involvement applicable in a particular type of dispute and on the existence of consent of the parties to such usage.

In conclusion, the right to human involvement in AI decision-making in civil cases transforms the interpretation of all procedural guarantees analysed above. This right adapts existing procedural safeguards to AI advancements, expanding the scope of their application and imposing additional duties on judges. Further research will focus on reshaping the right to appeal and rethinking traditional court structure, which must modernise in light of practical limits and opportunities of AI deployment ib the judiciary.

2.2 Re-thinking the three-tier courts in civil cases: the right to appeal and its potential abuse

The right to human involvement as an emerging pocedural right is closely connected to existing procedural guarantees: it may overlap with them, reshape their traditional application, or give

rise to new AI-tailored guarantees. From previous analysis of the legal framework (especially the GDPR), examination of how AI may be integrated into the judiciary under human supervision without undermining the right to fair trial, highlighted different aspects of the right to human involvement.

As was emphasised in Chapter 1, the right to human involvement consist of the following rights recognised in the GDPR: the right to be informed, the right to an explanation, the right to human intervention and the right to appeal. Through exploring the influence of AI on interpretation of procedural guarantees, all of the listed rights were reflected through additional duties imposed on the judge in AI-assisted civil proceeding.The last of these rights i.e. the right to appeal is independently recognised in all jurisdictions; however, in the context of AI deployment in civil proceedings, this right may have specific implication that could transform the structure of civil courts.

Generally, civil justice systems across both the EU and the UK have three-tier structure, consisting of a first instance, an appellate instance and a third instance i.e. court of cassation or Supreme Court. The right to challange a decision is ensured across the globe: under general circumstancesthe right to appeal the first-instance court decision is guaranteed, while cassation review is allowed only under limited grounds in civil law jurisdictions or through granting certiorari in common law jurisdictions.

The described framework gives rise to several crucial questions: (i)iwhether AI can be used in decision-making process in all court instances; (ii) whether AI deployment in civil courts create separate grounds for appeal and how it should be exercised; (iii) whether there is the need in creating “zero instance” for AI decision-making process under the HOTL mode; (iv) and how to prent abuse of procedural rights witin AI usage in decision-making process. The answers to these questions highly depend on the type[135] and complexity of the civil case, technical capacity

[135] Zou and Lefley (n 8), 6.

of the judicial institutions, consent of the parties to the use of AI in the decision-making process.

2.2.1 Low value and non-complex disputes

This thesis argues that low-value or non-complex disputes, typically resolved through simplified procedures or small claim procedures, provide significant opportunities for AI deployment in decision-making process. For instance, in Scotland, a semi-automated simplified procedure is available through the platform Civil Online for disputes valued below 5000 pounds[136]. In such cases, the decision is rendered by the sheriff: such decision can be challenged through the mechanism of the recall of the decision. In the EU, the European Small Claim Procedure[137]applies to disputes valued below 5000 euros, and depending on the Member State the decision on the case can be appealed or be annuled[138]. Therefore, AI assistance in resolving such types of disputes should not unnecessarily complicate or prolong the dispute resolution processes.

It is interesting to note that from a doctrinal perspective, some scholars argue that application of procedures similar to European Small Claim Procedurecan be considered as "zero instance"[139]. However, I strongly disagree with such statement. Whether AI-assisted or not, simplified or small claim procedures are legally recognized as forms of civil proceedings aimed to expedite the dispute resolution process and minimize potential litigation costs. Reframing

[136] Scottish Courts and Tribunals Service, *Guide to Simple Procedure* https://www.scotcourts.gov.uk/taking-action/simple-procedure/guide-to-simple-procedure/ accessed 16 June 2025.
[137] Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure [2007] OJ L 199/1 (consolidated version 14 July 2017) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02007R0861-20170714 accessed 16 June 2025.
[138] European Comission 'European Small Claims Procedure' (Your European Business portal) https://europa.eu/youreurope/business/dealing-with-customers/solving-disputes/european-small-claims-procedure/index_en.htm accessed 16 June 2025.
[139] Maria Dymitruk 'AI-Based Automation of the European Small Claims Procedure:Legal Framework Mapping' *Revista Ítalo-Española de Derecho Procesal* 1, 6 https://revistasmarcialpons.es/rivitsproc/article/view/dymitruck-ai-base-automation-of-the-european-small-claims-proced/3451 accessed 16 June 2025.

them as an additional preliminary level within the instance system as it undermines their intended purpose and scope. Thus, AI deployment to the decision-making process within mentioned procedures does not justify their classification as a separate "zero instance".

Thus, in my opinion, AI can integrated into resolution of low-value or non-complex disputes as follows: AIsystems could be used to draft the full text of the decision on the judge's or one of the parties' initiative. The decision to apply AI should be formalised through a pricedural order (procedural ruling), which would inform both parties of the AI involvement, explains the peculiarities and scope of its use, and provides a timeframe for the parties to object to AI application in the decision-making process.

The appropriate model of human involvement in such cases should follow the HOTL approach: judges are obliged to control the drafting process and remain responsible for the final version of the judgement. Alternatively, the HITL model could also be used in decision-making processes[140], but for cases of such complexity, the HOTL model is likely more optimal as it can expedite proceedings, while maintaining low risks of procedural rights violation.

All of the above-mentioed rules can be applied to any type of decision rendered within the analysed procedures, including final decision on merits, timetabling, interim measures, and disclosure. Parties can be granted the right to partially object to the scope of AI application (hybrid model). For instance, AI could be applied under the HOTL model to all procedural issues such as timetabling, interim measures, disclosure etc; however, its application to final decisions on merits would be limited to the HITL model or be solely made by the human judge. Even when the full text of the judgement is AI-generated, the final decision must remain responsibility of the human beings who must review AI-suggested text for accuracy before issuing it (rubber-stamping[141] must be prohibited). For human involvement to be meaningful,

[140] Socol de la Osa and Remolina (n 16) 26.
[141] Barwell (n 82).

the AI systems must be adaptive, transparent in indication errors (e.g., in the form of red flags), and have the technical ability to show in the report which changes are made by judges. For all the aforementioned decisions the right to human involvement entitles the parties to receive reports on the whole process of AI decision-making with a clear indication of the judge's interaction with AI system and be able to comment on some of them.

Since the parties would be granted the right to object to the use of AI in the decision-making process at the outset and the judge would be involved in the decision-making process through the HOTL model, the right to challenge the decision should be limited only to the judgement itself: AI application cannot constitute a ground for appeal in such cases. Adoption of this rule would prevent the possible abuse of the right to appeal just on the grounds of AI application.

Only a human judge can hear the appeal of an application to recall a decision (annulment claim) in cases where AI was used for rendering a decision. Furthermore, the non-application of AI during the decision-making process cannot be a separate ground for the appeal: if an objection to AI usage was raised by one of the parties during the granted timeframe, it should be considered irrevocable; even the objection from one party should be sufficient to prohibit AI deployment in the particular case. This view is grounded on concerns regarding public trust in AI usage in adjudication[142] in civil cases. Forcing one of the parties to accept AI application in the decision-making process can jeopardise exercising of procedural rights and thus undermine overall public trust in civil justice. Therefore, the described approach ensures an appropriate balance between preserving meaningful human involvement and maximising the efficiency benefits of AI usage in civil adjudication.

[142] European Commission for the Efficiency of Justice, Working Group on Cyberjustice and Artificial Intelligence *1st Report on the use of Artificial Intelligence (AI) in the judiciary, based on the information contained in the CEPEJ's Resource Centre on Cyberjustice and AI* (CEPEJ-AIAB(2024)4Rev5, 2024)13 https://rm.coe.int/cepej-aiab-2024-4rev5-en-first-aiab-report-2788-0938-9324-v-1/1680b49def accessed 16 June 2025.

2.2.2 High value and complex disputes

Difficult questions arise if AI deployment is considered in civil cases with higher disputed value of claims or more complex legal issues involved. AI application in decision-making processes in such civil cases is more risky and, hence, generally requires a higher level of human involvement.

To ensure the appropriate level of procedural guarantees, civil procedure rules (civil procedure codes) could specify criteria for evaluating whether AI can be deployed (and the scope of deployment) in some types of cases. Especially this classification would be relevant in civil law jurisdictions, where judges are less flexible in creating new case law. The suggested set of criteria can include monetary threshold, sensitivity of the raised issues, complexity of required legal reasoning, and how unique is the dispute itself. Under such a pre-review risk assessment mechanism, the judge could decide *prima facie* on the possibility of AI application to the decision-making process and the scope of such application.

This decision could have a form of order (procedural ruling), that could cover the following:

- the potential scope of AI usage;
- the details regarding the applicable model of human involvement;
- peculiarities of procedural guarantees of the parties;
- extra grounds for an appeal and limitations for preventing procedural rights abuse;
- the timeframe for deciding on the applicable model.

However, there should be also be the right to appeal procedural ruling (order) that prohibit AI usage to the adjudication in the mentioned civil cases.

Two considerations justify granting judges with described extra power: firstly, as AI-assisted adjudication is classified as a high-risk activity, any misuse, mistakes or errors in its function that affect the outcome of the case could undermine public trust in the judiciary as the whole; secondly, the judge as an experienced and trained adjudicator is best placed to assess if AI

application in decision-making processes appropriate and will not jeopardize potential decision on merits. The problem with this approach lies in the tendency of humans to delegate more tasks to AI, and given that, it is questionable how many judicial orders will prohibit AI deployment in civil cases or would choose the HITL model.

Parties always must have the right to *"opt for a traditional judicial process"*[143], but to avoid abuses this right under normal circimstances could be exercised once per court instance (the first instance of a court of appeal). Otherwise, the parties could unduly prolong the proceeding by abusing the right to challenge a decision.

This thesis specifies two ways of possible integration of the AI system into the decision-making process in civil cases:

(1) HOTL model

The HOTL approach may be applied to more complex civil cases or claims with claims involving higher disputed values upon the request of both parties to civil proceedings which indicates their explicit consent for AI deployment in the decision-making process. It closely resembles the mechanism described in Subhapter 2.2.1. The main differences are related to (i) the subjects who may the request for the application of this model (ii) whether AI can be used in particular case is pre-determined by the judge and (iii) differences in the the guarantees related to the right to appeal.

Given the potentially significant risks associated with of AI deployment in adjudication, it is reasonable to grant only parties the right to request human involvement under HOTL model. Furthermore, even if the party requests for AI application, but pre-review risk assessment mechanism determines tha,t under HOTL approach there are some potential risks to procedural fairness, then such model cannot be applied in that case.

[143] Socol de la Osa and Remolina (n 16) 26.

Due to the higher level of complexity of the civil cases and semi-automated AI decision-making process, an additional level of protection should be provided: the parties should be granted with right to appeal the final decision on the merits before another judge within the first instance court. The right would not extend to the decisions regarding some procedural aspects drafted with AI usage (timetabling, interim measures, disclosure etc).

The "additional appeal" should be limited in scope and based inly on serious violations of substantive law or procedural rights occurred within AI-assisted decision-making process. The justification for the limited grounds derives from the fact that, under HOTL the final adjudicator is judge and hence is responsible for the rendered decision. As the thesis aims to define applicable model of AI deployment both for civil and common law jurisdictions, common detailed ground for suggested appeal cannot be outlined. If there are no grounds for stated additional level of protection, the party need to exercise its right within the jurisdiction of the appellate court.

This additional guarantee would ensure a higher level of accuracy and reasoning of the decision, would not undermine transparency and public trust to engagement with new technologies, and would prevent procedural abuses that could unnecessarily prolong civil proceedings. Therefore, the analysed extra level of protection of procedural rights leads to *de facto* structuring four-tier court system that will be described below in Subchapter 2.2.3.

(2) HITL model

This HITL model provides for a greater degree of human involvement in the AI decision-making process and is therefore one of the most suitable for AI deployment in complex cases or cases with higher disputed values. It may be proposed by a judge or by either party but still requires mutual consent. The pre-review risk assessment mechanism must confirm in each particular civil case that AI can be deployed within this model.

The reporting system on the whole process of AI application to adjudication must be provided to the parties. Although compared to above-defined system, the right to comment on such reports should be extended. In addition, the parties should be entitled to receive a preliminary report of the AI version of the final decision and be provided with time to comment on that before the judge orders the final judgement. As the level of human involvement in this model is deeper, compared to the HOTL model, there is no need for an additional layer of challenging decision within the first instance court.

Thus, the HITL model is suitable for more complex cases, as it provides for the balanced interaction between judge an AI that is tailored to the risk assessment mechanism.

2.2.3 Three-tier court system

Based on the overview of the different models for ensuring the meaningful exercise of the right to human involvement through the right to appeal judgements rendered with AI assistance, it is necessary to summarise the potential transformation of the court instance structure.

Under the analysed approaches, first-instance courts can be considered the primary instance for AI deployment, with the decisions subject to review by higher courts. The only proposed exception concerns the application of the HOTL model in high value disputes and complex civil cases, which requires an additional internal appeal layer. This could take the form of specialised chambers within first-instance courts, where complex civil cases could be resolved with application of the HOTL model. In such cases any internal appeal, the issue could be referred to the judge from different chamber. The integration of this modelwould require highly trained judges, tested trustworthy AI systems and clear, publicly available guidelines on the functioning of these AI systems and on the use and interpretation of AI-generated reports etc.

In theory, a “zero instance” could be created for sole AI decision-making in some civil cases. However, as analysed in Chapter 1, such AI application is banned in the EU and is not explicitly

allowed under the UK regulations. Therefore introducing a "zero instance" under existing framework seems impossible. Nevertheless, if regulators were to define the broad scope of grounds for the additional internal appeal layer in high-valued disputes and complex cases with the HOTL approach, a "zero instance" would be a reasonable future development.

In many jurisdictions, the primary function of theappellate instance is to conduct a full or limited review of first-instance judgements. This level of review requires more experienced judges and higher level of legal expertise. Due to the nature of appellate review, the use of AI for the decision-making purposes should be strictly limited. The only suitable model could be HITL, applied only with the consent of both parties and limited to the factor that have minimal possible impact on the decision-making process.

The court of cassation (or Supreme Court), given its narrow list of grounds for review of judgements, and its role in forming case law, should remain a "court of humans". AI application in adjudication at this level should not be permitted, due to the high status of the cassation courts in the judicial system and the broad scope of impact on the future jurisprudence.

Therefore, only first-instance courts can fully benefit from the advantages offered by new AI systems, while the higher-instance courts where decisions are challanged should predominantly remain human-driven decision-making process, ensuring procedural fairness and public trust in the judicial system.

CONCLUSION

This thesis demonstrates the current absence of the court-specifc definition of judge-AI interaction within decision-making process in civil cases. From theoretical perspective, the thesis defined the context of an umbrella term "human involvement" distinguishing four levees of its application, two of which "human-in-the-loop" (HITL) and "human-on-the-loop" (HOTL) were examined in detail.

The review of the two different regulatory approaches to AI deployment in the judiciary i.e. risk-based model adopted by the EU and the principle-based model adopted by the UK, highlighted that the principle-based approach is more adaptable to technological change and provides practical recommendation for AI application within the judiciary. Among that, the comparative analysis the concept of "human oversight" currently adopted in both the EU and the UK is used for any human-AI interactions, has broad scope of application including providers, deployers, judicial institutions, ministries etc. It was highlighted that the concept of "human involvement" is more adaptable for application in civil cases as it provides specific AI-related obligations imposed on judges and procedural guarantees for the parties, with the preventive mechanisms against abuses of procedural rights. Nevertheless, the conducted analysis stresses that neither jurisdiction prohibit AI deployment in the judiciary under the HITL model, while application of HOTL is questionable and requires further regulatory clarification. Consequently, both in the EU and the UK there is a significant lack of court-specific regulation that will enable effective regulation of AI application in civil adjudication.

Analysis of human involvement under Article 22 of the GDPR identified two key aspects: (i) the conditions under which human involvement in AI-assisted adjudication is considered as meaningful and (ii) the components of the emerging procedural right namely the right to human involvement, which *de facto* constitutes a set of additional procedural rights that are safeguards to ensure meaningful human involvement. The further analysis demonstrates the need for clear

regulatory definition of the scope and elements of the "right to human involvement". The thesis recommended to identify essential components on the basis of Article 22 of the GDPR, the list of which should include: the right to be informed about AI application; the right to an explanation; the right to human intervention and the right of the appeal. Furthermore, in the light of existing in the GDPR safeguards, the HITL and HOTL models were indicated as the safest models for AI application in decision-making process in civil cases.

Based on the contepstualisation of the right to human involvement in AI-assisted adjudication, was described the transformantion of five procedural safeguards for ensuring the right to fair trial under Article 6 of the ECHR. The analysis indicated that AI integration in the decision-making process would not jeopardize these principles, if the additional duties will be imposed on the judge. Corresponding additional rights of the parties in the civil proceedings with assistive AI use in the decision-making process reflects suggected under the GDPR list of four above-mentioned rights.

It was emphasized that for ensuring the right to a fair trial in civil proceeding and the right balance be found between the potential risks and benefits of AI-assisted adjudication, all civil cases needs to be classified according to defined criteria. The thesis suggested classification based in the monetary threshold and case complexity, identifying that for low-value disputes and non-complex cases the application of the HOTL model is preferable, while for high-value disputes and more complex cases the HITL model is more appropriate. Also was proposed pre-risk assessment model that would guarantee the safe AI application in adjudication.

Based on the conducted analysis was indicated that main abuses of procedural rights are related to the exercise of the right to appeal. The analysis of its practical implementation through suggested that nowadays there is no need in transforming three-tier court system, as even semi-automated AI decision-making in civil cases can be implemented through special champers in

first-instance court. The all described in thesis idea are a groundwork for further research in this field that should be complemented with dynamic regulatory responces.

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