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Editorial
The Use of ChatGPT by the Judge: What Can Go Wrong, Goes Wrong

The fact that the (potential) use of artificial intelligence (AI) by the courts is a hotly debated topic can easily be seen by a quick glance at the current legal literature. Hardly a week seems to go by without the topic being written about. The opportunities, but also the risks, that the use of 'robot judges' entails or could entail are pointed out. The discussion focuses primarily on AI systems that have a direct influence on judicial decisions, either by replacing the judge with an AI or by the AI making non-binding suggestions to the judge.[1] However, a decision by the Dutch Rechtbank Gelderland of 7 June 2024 shows that even much more banal applications of generative AI by the courts can lead to significant distortions.[2] But what exactly was the case about?

The case revolves around a dispute between two homeowners. One of them had added another floor to his house, as a result of which his neighbour expected a lower return from the use of his solar panels and therefore claimed damages. The Rechtbank Gelderland ruled on this case and referred to ChatGPT when calculating the damages in order to determine the average lifespan of solar panels. The court made the following statements in this regard:

> *The court, also with the help of ChatGPT, estimated the average lifespan of solar modules from 2009 at 25 to 30 years; this lifespan is therefore set at 27.5 years here.*[3]

Secondly, the court uses ChatGPT to determine the current average price per kilowatt hour for electricity. It lists the following:

> *Assuming, again partly on the basis of ChatGPT, a current average kWh price of €0.30 (€0.29 to €0.34, depending on the type of contract), the loss of revenue at a more or less constant kWh price amounts to around €2,250.*[4]

To start with the positive: The court is making the use of ChatGPT public and thus transparent, as if it deliberately wanted to initiate a discussion. This is to be

1 See also my editorial entitled 'The robo-judge on the rise in Europe?', ERPL 2022, pp 517 ff.
2 See Rechtbank Gelderland, judgment of 7 Jun. 2024, ECLI:NL:RBGEL:2024:3636.
3 See Rechtbank Gelderland, judgment of 7 Jun. 2024, ECLI:NL:RBGEL:2024:3636, nr. 5.7.
4 See Rechtbank Gelderland, judgment of 7 Jun. 2024, ECLI:NL:RBGEL:2024:3636, nr. 5.7.

welcomed, as a certain number of unreported cases of non-transparent use of ChatGPT by judges are to be feared and an open discussion in this regard is necessary. In this case, the Rechtbank Gelderland does not use generative AI in the way described at the beginning, but much more modestly only as a source of information in the run-up to the actual decision. Unfortunately, the court seems to make the fatal assumption that ChatGPT has genuine, trustworthy knowledge. However, this is precisely not the case: ChatGPT does not have any genuine, trustworthy knowledge, it is not a database. It is a so-called Large Language Model (LLM) that predicts the next word in a sentence, nothing more. Especially the older versions of ChatGPT are very bad search engines, but even the latest version still often hallucinates when asked about the underlying sources for its answer. Furthermore, while the court attempts to be transparent about the use of ChatGPT, it then fails to provide other important details. For example, it is not clear which 'prompts', i.e., which questions exactly were asked to ChatGPT. However, this is important for the evaluation and traceability of the answer. It also remains unclear which version of ChatGPT the court actually used. For example, only the latest version can collect real-time data on energy prices. The determination of the lifespan of solar modules with the help of ChatGPT without further examination of the facts also appears dubious, as experts assess their life-span very differently. A more precise evaluation of the facts by the court would have been appropriate here. Ultimately, it also remains unclear what exactly the court means when it says that the results were also obtained '*with the help of ChatGPT*' or '*partly on the basis of ChatGPT*'. Have other trustworthy sources been used? And if yes, why are they not disclosed? So, the court wants to make the use of ChatGPT transparent, but then unfortunately fails so badly in the details that it is ultimately a non-transparent approach.

The judiciary is facing major challenges in Europe. The use of digital tools that effectively relieve the judiciary must therefore not be taboo, but rather an objective. However, the decision by the Rechtbank Gelderland also impressively demonstrates how urgently judges need to be trained in the use of generative AI and provide them with clear guidelines in this regard. There is no time to lose, otherwise there is a risk of further careless use of ChatGPT by the courts. A court ruling must be based on facts and law and not on 'information' whose sources are unclear, as in the case of ChatGPT. Decisions must be based on scientifically sound and verifiable facts. This is the only way to serve the rule of law.

Let us now turn to the content of this issue, which I hope will be of interest to our readers. We begin with *Matteo Dellacasa*'s interesting contribution 'Restitution Following Termination for Breach of Contract - Safeguards Against Opportunism and the Role of Consideration'. The subsequent article by *Vittorio Bachelet* deals with the much-discussed 'pay-or-consent' model of companies such as Meta, but also with other emerging trends in digital contract law. In his article 'Private Law and Consumer Protection Paradigms Facing (Digital) 'Addictions' – A Starting Point for Reflection', *Michele Ciancimino* also deals with a current digital

topic, namely the fight against digital addictions with the means of private and consumer law. The following very readable article by *Michelle Liu* on 'digital vulnerabilities' takes a critical look at the current consumer model in the digital age. She shows that a partial reorientation of European consumer law appears necessary because of the ever-increasing digitalization. In his contribution 'Lessons from the Covid-19 Pandemic for Better EU Rules on Air Passenger Rights', *Ricardo Pazos Castro* asks what lessons can be learned from the Covid era for European air passenger law. Then, in their article entitled 'Strengthening the efficacy of the CSDDD through Private International Law', *Racha Radja* and *Seniha Arme Akin* explore to which extent the effectiveness of the CSDDD can be increased through private international law. It follows the interest article written by *Sebnem Akipek Öcal* and *Ahmet Arslan* titled 'Overcoming the Non-Acceptance of Civil Marriages in Türkiye: The Biggest Problem of the Legal Reception of the Swiss Civil Code'. The final article 'Implementation of the Commission Recommendation of 7 December 1994 on the transfer of small-and medium-sized enterprises in Albania: A German or Italian Model?' by *D. Veshi and others* concludes the issue.

We hope you enjoy reading this issue of ERPL.

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