

# ALBANIAN LAW JOURNAL

EVIDENCE GENERATED  
THROUGH ARTIFICIAL  
INTELLIGENCE: CRIMINAL  
JUSTICE CHALLENGES IN THE  
DIGITAL AGE

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**YEAR OF PUBLICATION**

November 2025

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This publication was funded by the European Union. Its contents are the sole responsibility of European Movement Albania, Albanian Law Journal and its authors and do not necessarily reflect the views of the European Union.

The action "Building Partnership on Fundamentals: Empowering CSOs for the EU accession process", is being implemented by the European Movement in Albania, with the financial support of the European Union - IPA Civil Society Facility 2021, and in cooperation with the Academy of European Integration and Negotiations (AIEN), Slovak Foreign Policy Association (SFPA) and the Center for Transparency and Freedom of Information (CTFI).



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Competition in the artificial intelligence (AI) sector has brought about the development of new and highly advanced technologies, so much so that it has become hard or even impossible for people to tell apart real content from AI output. AI can now be prompted to generate very realistic photos, videos and audio of public figures, even fictitious ones, in mere seconds.

The application of AI has started to extend to legal matters, especially criminal matters. It has been integrated into the probative process for collecting or establishing evidence that could be crucial in determining guilt or innocence. Applications include CCTV image processing, voice analysis in recordings, device decryption, assessing document authenticity, profiling and predictive modeling for offender behavior, but also digital simulations of crime scenes.

Innovation has been accompanied by regulation at the international level on the responsible use of AI, pioneered by the European Union and the Council of Europe. Different countries have chosen to integrate AI into their legal systems. In the Albanian case, despite the apparent tendency toward digitalization, no concrete steps have been taken as of yet to integrate AI in criminal justice, even though, in principle, the law does not prohibit it.

Integrating AI in the criminal process could enable increased efficiency and accuracy in proceedings as a whole compared to traditional methods. On the other hand, employing these atypical methods raises

questions regarding the admissibility of AI evidence. Apart from legal restrictions, several ethical concerns related to respect for human rights are present.

The article aims to assess the landscape on the use of AI evidence in the criminal process, particularly the Albanian one, while identifying challenges and opportunities for a practice still in its early days.

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## AI Evidence in the Criminal Process

When referring to the phrase “AI evidence”, two main categories are to be understood: i) evidence collected via AI tools; and ii) evidence generated or enhanced by AI.

AI tools could serve to analyze large volumes of data, e.g., flagging suspicious bank transactions, communications, or child sexual abuse material. It is about facilitating investigative tasks that usually require time and can be associated with human error. The final result in this case could be presented as admissible evidence in the criminal process.

AI-generated and AI-enhanced evidence include: visual and audio material (deepfakes); enriching surveillance footage; automatic wiretapping transcriptions; cross-matching DNA and fingerprint data on databases; facial or voice recognition; assessing whether a document is authentic or falsified; predictive and profiling analyses; aiding law enforcement with reconstructing crime scenes, and other applications.

Despite the wide range of uses, a highly controversial topic in practice is the admissibility of AI-generated and AI-enhanced evidence. Procedural implications are mainly associated with respecting the equality of arms principle, the evidence source and its probative value. [1]

Compared to ordinary evidence, AI ones have been met with a sort of “judicial resistance” [2] regarding their admissibility accompanied by additional verifications, thereby producing the

opposite effect on judicial efficiency. While some AI systems place labels on the generated content, the fact is that these labels can easily be removed. [3]

The judicial resistance is justified when you take into account major challenges, such as privacy and personal data violations, but also investigative secrecy, algorithmic bias, lack of transparency and fallibility. Practically speaking, “all human rights could be affected by the use of AI systems”. [4]

Algorithmic bias and stereotypes related to AI content are notable issues. It is general knowledge that, AI systems are as unbiased as the data on which they are trained. If the data contains prejudices against certain groups on the basis of race, gender, sexual orientation, or socio-economic situation, then AI and evidence generated by it tend to violate impartiality and fair trial principles.

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## Cases from Practice

Instances where AI evidence has been used include cases in which AI itself is the subject matter of the trial, cases in which AI evidence is presented as “real” evidence, and cases in which AI evidence is used for illustrative purposes. [5]

In *State of Washington v. Puloka*, the defense sought to support self-defense arguments by submitting as evidence an AI-enhanced version of footage showing the incident between the defendant and other people. This was due to the fact that the original video, filmed with the cell-phone of a bystander, was blurry and dark,

leaving many details obscured. Based on existing case law and the request of the prosecution, the court did not view this material as admissible evidence even though it was crucial for the defense. [6]

A major case is the one of the California serial killer named “The Golden State Killer”, who was able to be identified and convicted decades later through DNA analysis supported by AI. However, this case is controversial as regards matters of privacy and ethics, since the police had sent the genetic material of the defendant to the genealogy database “GEDmatch”.

Predictive and profiling programs have been used in *State of Wisconsin v. Loomis*, in which the court sentenced the defendant on three charges based also on the program’s assessment that the latter had a high probability for recidivism. This verdict was confirmed by the Supreme Court of Wisconsin, which held that algorithmic risk assessment does not violate the defendant’s right to a fair trial. [7]

A simple theft of watches in Detroit in 2020 garnered increased attention because the person whom the facial recognition tool had identified, later was acquitted and sued the authorities for wrongful imprisonment. This case highlights the issue of accountability when investigative actions are carried out using AI, and whether the latter is reason enough to absolve law enforcement authorities of liability. [8] [9] The question remains unanswered since this case was settled. However, worth noting

from the settlement agreement are training obligations for police and for them not to rely only on the results of facial recognition tools, but also on other evidence that justifies arrests.

In a world first, a Florida court judge and the parties agreed to use virtual reality (VR) headsets upon the defendant’s request, seeking to reconstruct the crime scene – a wedding venue – where the owner had allegedly threatened those present with a firearm. While this case is still ongoing, we are of the opinion that such an innovative piece of evidence could have the potential to completely alter the course of the process.

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## International Standards on the Responsible Use of AI in Criminal Justice

Mindful of the risks posed by the unregulated use of AI, the international community has tried to keep pace with technological developments through legal ones.

Although no specific rules on the use of AI evidence exist, some principles may be highlighted from Regulation (EU) 2024/1689, more widely known as the AI Act. Particularly, Annex III of the AI Act classifies as high-risk AI systems, the use by law enforcement authorities as polygraphs or similar tools, to evaluate the reliability of evidence during the course of the investigation, assessing the risk of natural persons reoffending and profiling. This classification from the EU is motivated by the need to guarantee accuracy, reliability and

transparency in law enforcement activity, in particular for retaining public trust and ensuring accountability; the power imbalance from law enforcement actions that use AI systems; and the human rights impact as a result of training the AI system with low-quality data, including procedural rights hampered such as fair trial, right of defense and the presumption of innocence. [10]

The AI Act's preamble underscores the risk of singling out individuals in a discriminatory manner and recommends developing AI systems in a way that includes diverse actors and promotes equal access while avoiding unfair biases. Article 86 of the AI Act guarantees the right of persons affected by decisions that produce legal effects that are taken on the basis of the output from a high-risk AI system, to obtain from the deployer clear explanations of the role of AI in the decision-making process and the main elements of the decision taken.

On the other hand, the CCBE has taken a firmer stance on the use of AI in criminal justice by joining calls for a complete ban on using predictive and profiling programs by law enforcement, due to the unacceptable risks they pose in a democratic society. In this respect, the CBBE has presented several recommendations, notably for appropriate control and regulation on the use of AI tools in the justice system and law enforcement, ensuring respect for the right to a fair trial. [11] AI has also started to be utilized by the International Criminal Court. Through Project Harmony implemented by the Office of the

Prosecutor, efficient methods are sought for handling the significant amounts of data in international criminal cases. Applications also include automatic translations, biometric identification, and improving image quality. While the modernization of international criminal trials is welcome, it should be noted that, considering the importance that these proceedings hold, more focused attention is required for respecting procedural human rights, in line with AI Act standards.

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## AI Evidence in Albanian Criminal Procedure

The 1995 Code of Criminal Procedure, last amended in 2021, recognizes eight types of evidence and four means of gathering evidence. Typical or ordinary evidence like material evidence, documents, testimonies and expert opinions make up the foundation of the probative process.

Albanian law also permits admitting atypical evidence. Article 8/a, paragraph 1 of the Code expressly foresees that: "1. Facts in the criminal process can be established through any evidence, provided that the latter do not infringe on the fundamental human rights and freedoms.". [12] Additionally, Article 149, paragraph 2 provides that: "2. When evidence not regulated by law is submitted, the court may admit it if the evidence serves to establish facts and does not violate the person's free will. The court rules on the admissibility of the evidence after hearing the parties on the method of administering it."

These provisions added in 2017 also enable, in principle, submitting AI evidence, as long as the respect for fundamental rights and freedoms is guaranteed. Moreover, Articles 151 and 152 on the rules for admitting and evaluating evidence must be observed. It is for the court to decide on admitting evidence, assessing its authenticity and probative value while also excluding evidence prohibited by law and those manifestly inessential. The effect that follows evidence gathered in violation of legal restrictions is their inadmissibility, which can be raised at any time. Accordingly, the results of biological sample (DNA) analysis or medical procedures that have been conducted in contradiction with the special provisions of Article 201/a of the Code, are inadmissible.

Although until now we are not aware of any case from Albanian practice of submitting AI-generated or AI-enhanced criminal evidence, AI integration could bring innovation for supporting ordinary evidence such as experimental procedures. On the other hand, a valid concern from the defense may be the violation of the equality of arms principle, part of the right to a fair trial enshrined in Article 42(2) of the Constitution, due to a prima facie advantage the state may possess from using AI. In reconfirming the rule that, no evidence has predetermined value under the law, the Constitutional Court has repeatedly held that: “[...] the equality of arms principle does not obligate general jurisdiction courts to accept all arguments and evidence a party may submit during the process. In dispensing its duty of freely evaluating evidence, the court may be satisfied with some evidence, while excluding

one or more that it considers irrelevant to the case [...]”. [13] Moreover, nowadays the use of AI is not exclusive to the state apparatus, but can also be utilized by the defense.

Integrating AI in criminal justice serves the purpose of efficiency and accuracy in proceedings. The perspective offered by AI evidence may be crucial for the outcome of the process, provided that this evidence is admitted. However, in this case, the ends may not justify the means. Whether a piece of evidence is admissible or not, beyond procedural reasons, also depends on the impact its admission may have or has had on human rights. Judicial resistance thus far to the innovation that is AI evidence is related to challenges not yet resolved such as privacy and confidentiality violations, fallibility, lack of transparency and algorithmic bias, but also infringed procedural rights.

Recognizing these challenges has led to the EU labeling the use of AI systems by law enforcement as high-risk, while other bodies like the CCBE recommend further regulation but also for completely banning certain unethical methods.

Albanian criminal justice has yet to create a practice of admitting AI evidence. The legal framework in force, while making no mention of AI, allows in principle a plurality of evidence as long as human rights are not violated.

Nevertheless, to anticipate the first AI evidence process, we find it suitable for Albanian lawmakers to lay down some guidelines on the use of AI in criminal justice, following the AI Act model. Justice actors must be periodically trained on the responsible use of AI. Transparency over how AI is employed must be guaranteed and everyone should be cognizant of the fact that this does not substitute human

knowledge and expertise. Above all, it is important to strike a balance between procedural efficiency and respect for human rights.

- [1] Prof. P. J. White, AI and Evidence: What Should Judges Look For?, National Civil Justice Institute (NCJI), Nashville, Tennessee, 20 July 2024. [ncji.org/wp-content/uploads/2024/07/2024-NCJI-Judges-Forum-AI-and-Evidence-What-Should-Judges-Look-For-White.pdf](https://ncji.org/wp-content/uploads/2024/07/2024-NCJI-Judges-Forum-AI-and-Evidence-What-Should-Judges-Look-For-White.pdf)(Accessed 1 July 2025).
- [2] M. D. Fan, “AI-Enhanced Evidence”, Boston University Law Review, 2025. [papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5173503](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5173503)(Accessed 1 July 2025).
- [3] Judge H. B. Dixon Jr., “The “Deepfake Defense”: An Evidentiary Conundrum”, The Judge’s Journal, 63 (2), 2024. [americanbar.org/content/dam/aba/publications/judge\\_s\\_journal/vol63no2-jj2024-tech.pdf](https://americanbar.org/content/dam/aba/publications/judge_s_journal/vol63no2-jj2024-tech.pdf)(Accessed 1 July 2025).
- [4] I. Shehaj, “Artificial intelligence assistants in legal practice: enhancing productivity while preserving human expertise”, Optime, 16 (2), 2024, 326-333. [doi.org/10.55312/op.vi2.6171](https://doi.org/10.55312/op.vi2.6171).
- [5] Prof. P. J. White, AI and Evidence, 6.
- [6] M. D. Fan, AI-Enhanced Evidence, 31.
- [7] I. Shehaj, Artificial intelligence assistants in legal practice, 330.
- [8] Ibid.
- [9] P. W. Grimm, M. R. Grossman & G. V. Cormack, “Artificial Intelligence as Evidence”, Journal of Technology and Intellectual Property, 19 (1), 2021. [scholarlycommons.law.northwestern.edu/njtip/vol19/iss1/2/](https://scholarlycommons.law.northwestern.edu/njtip/vol19/iss1/2/)(Accessed 1 July 2025).
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- [11] Council of Bars and Law Societies of Europe (CCBE), CCBE Statement on the use of AI in the justice system and law enforcement, Brussels, 25.05.2023. [ccbe.eu/fileadmin/speciality\\_distribution/public/documents/Statements/2023/EN\\_ITL\\_20230525\\_CCBE-Statement-on-the-use-of-AI-in-the-justice-system-and-law-enforcement.pdf](https://ccbe.eu/fileadmin/speciality_distribution/public/documents/Statements/2023/EN_ITL_20230525_CCBE-Statement-on-the-use-of-AI-in-the-justice-system-and-law-enforcement.pdf)(Accessed 1 July 2025).
- [12] Law No. 7905, dated 21.3.1995 “Code of Criminal Procedure of the Republic of Albania”, as amended.
- [13] Constitutional Court judgement No. 19, dated 01.04.2021 (V-19/21).