THE USE OF AI SYSTEMS WITHIN THE CONTEXT OF THE OFFENCE OF CONDUCTING STATISTICAL ANALYSIS BASED ON THE IDENTITY OF JUDGES UNDER FRENCH LAW

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Abstract

This paper investigates a specific criminal offence under French law, for which AI systems may be frequently and effectively used: the statistical analysis of judicial decisions based on the identities of judges and court clerks. Emerging from France's open data policy and formalised through the Digital Republic Act adopted in 2016, the public dissemination of judicial decisions has become increasingly widespread. While this development advances transparency and democratic accountability, it simultaneously gives rise to significant concerns regarding privacy and the protection of personal data. In response to these risks, the French legislature amended Article L10 of the Administrative Justice Act and Article L111-13 of the Judicial Organisation Act in 2019 to criminalise the reuse of identity data from judicial actors for the purpose of or, with the effect of, evaluating or predicting their professional practices. The offence, classified as a misdemeanour *(délit)* under the French Penal Code, carries penalties of imprisonment and substantial fines. This paper examines the offence's material and moral elements, its place within the broader structure of French criminal law, and the potential for AI technologies to give rise to liability. It demonstrates that the French legal framework reflects a deliberate prioritisation of data protection and judicial independence over algorithmic optimisation and predictive utility.

Keywords

Open Data, Judicial Transparency, Data Protection, Digital Republic Act, Article 226-18 of the Penal Code

1. INTRODUCTION

Digital transformation has had significant influence on legal systems by enhancing the transparency of public services and facilitating citizens' access to information. Within this context, France's Digital Republic Act,[1] which entered into force in 2016, extended the open data policy to the field of judicial authority by mandating the publication of court decisions. Under this reform, the publication of decisions in pseudonymised form has been established as a fundamental principle, aiming to balance two equally vital interests: people's access to court decisions rendered in the name of the people and privacy and personal data protection rights of the individual parties to the case, the third party individuals, the judge(s) who rendered the decision, and other public officials mentioned in the decision.

However, the combination of widespread access to court decisions with the rise of artificial intelligence technologies has introduced new legal and ethical concerns. Chief among them is the ability of these technologies to analyse court decisions in ways that enable the evaluation or prediction of judges' professional behaviour based on their identities. Recognising this as a significant risk, the French legislature amended the Administrative Justice Act and the Judicial Organisation Act in 2019 to criminalise the reuse of identity data of judges and court clerks for the purpose of or, with the effect of, conducting statistical analysis of their professional practices, and subjected such conduct to criminal penalties.

This paper examines in detail the legal regime surrounding the public accessibility of judicial decisions in France within the framework of open data policy, the legal status of the personal data contained therein, and the criminal law terms aimed at protecting the identities of judges and court clerks. It also assesses how these rules interact with the use of AI-powered systems.

2. THE OPEN DATA POLICY, ITS CONSTITUTIONAL AND LEGAL BASIS AND COURT DECISIONS

In the preamble of the French Constitution of 1958, the fundamental rights and the principles of national sovereignity are proclaimed with reference to the Declaration of the Rights of Man and of the Citizen 1789 (hereinafter "Declaration of 1789"), which includes the society's right to demand an account of public officials' administration (Article 15, Declaration of 1789). On the basis of Article 15 of the Declaration of 1789, France adopted the Decisions on Open Data of the Interministerial Committee for the Modernisation of Public Action of December 4, 2013[2] (hereinafter "CIMAP") and Valter Act 2015[3] to implement a policy of administrative public data openness (Cassar, 2019a, p. 3).

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1 Loi pour une République numérique, Law Nr. 2016-1321, 7 October 2016.

2 Comité interministériel pour la modernisation de l'action publique.

3 LOI n° 2015-1779 du 28 décembre 2015 relative à la gratuité et aux modalités de la réutilisation des informations du secteur public.

The open data policy recognised by CIMAP and Valter Act 2015 was not extended to judicial decisions, since the judical authority is seperate from both the executive power and administrative authority, as a requirement of the principle of the separation of powers enshrined in article 64 of the Constitution 1958 and article 16 of the Declaration of 1789. Indeed, the Council of State expressly stated in 2010 that, regardless of their nature, documents held by the judicial authorities and necessary for their function of adjudication cannot be accepted as administrative documents (Conseil d'État, Section du Contentieux, 07/05/2010, n° 303168). As shown by Cassar, France followed the same reasoning when applying Article 1(2)(h) of Directive (EU) 2019/1024 in defining public sector information (Cassar, 2019a, p. 3).

However, on the basis of Article 12 of the Declaration of 1789 and Article 6 of the European Convention on Human Rights (ECHR), the open data policy was extended to judical decisions with articles 20 and 21 of Digital Republic Act 2016. These articles amended Article L10 of the Administrative Justice Act and Article L111-13 of the Judicial Organisation Act respectively. These articles were further amended by Article 33 of Law No. 2019-222 of 23 March 2019 on the 2018–2022 Programme and Reform for Justice.

Paragraph 2 of Article L10 of the Administrative Justice Act and paragraph 1 of Article L111-13 of the Judicial Organisation Act provides that, subject to the specific provisions governing access to court decisions and their publicity, judgments are made available to the public free of charge in electronic form. Access to court decisions and their publicity appear as two distinct mechanisms (Cassar, 2019b, p. 2; Mission d'étude, 2017). In fact, even before the Digital Republic Act 2016, individuals were able to use their right to access the court decisions (Renaudie, 2024, 163-164). Indeed, it was established that court decisions are public and that they include, among other information, the names of the judges who rendered them (paragraph 1 of Article L10 of the Administrative Justice Act, paragraphs 2 and 4 of Article 454, and paragraph 1 of Article 486 of the French Code of Civil Procedure). Redaction requirements explained in part 2 of this paper are established in paragraph 2 of Article L10 of the Administrative Justice Act and paragraphs 2 and 3 of Article L111-13 of the Judicial Organisation Act. Thus, personal data relating to the parties, third parties, judges and other public officials must be ommitted where the decision is shared with those who are not parties to the case.

According to Articles 1 (administrative litigation), 2 (civil, commercial and social litigation) and 3 (criminal litigation) of the Order of 28 April 2021 issued pursuant to Article 9 of Decree No. 2020-797 of 29 June 2020 concerning the public availability of decisions of judicial and administrative courts, the publication of decisions by the Council of State and the Court of Cassation in accord with Article L10 of the Administrative Justice Act and Article L111-13 of the Judicial Organisation Act was to begin no later than 30 September 2021. Relevant deadline for administrative courts, administrative courts of appeal, and courts of appeal was set as 30

April 2022, while the deadline for judicial courts in criminal and civil matters was determined as 31 December 2025. Thus, it is expected that all court decisions will be published in accord with Article L10 of the Administrative Justice Act and Article L111-13 of the Judicial Organisation Act starting from the end of this year.

In fact, the historical roots of the publication of the judicial decisions may be found even in the 18th century practice (Mission d'étude, 2017, p. 19). Augustin-Charles Renouard, former Attorney General at the Court of Cassation, commented on the publicity of the court decisions in 1839 as follows:

> The judgments and rulings of the courts and tribunals, whether these courts are composed of one judge or several, are the property neither of the bench from which they originate nor of the litigants who bring them about. They belong to the entire country; their publicity is both a safeguard for litigants and a means of education for all citizens (Renouard, 1839, p.138).[4]

Yet, the application of the open data policy to the judicial decisions, starting with the Digital Republic Act 2016, seems to require the establishment of a new balance between the people's interest in accessing judicial decisions given in the name of the people and the privacy rights of the parties concerned (Giambiasi, 2018, p. 119; Leurent, 2020, p. 582). In the next section, the personal data protection concerns will be investigated in greater detail.

3. PERSONAL DATA PROTECTION CONCERNS

As explained in the previous section, it is expected that all court decisions will be published in accord with Article L10 of the Administrative Justice Act and Article L111-13 of the Judicial Organisation Act starting from the end of this year. This measure is to enable the people to access the judicial decisions rendered in the name of the people. Whilst, publication of court decisions raises privacy and security concerns.

The General Data Protection Regulation (hereinafter "GDPR"), defines personal data as "any information relating to an identified or identifiable natural person" (Article 4, GDPR). Accordingly, court decisions involve personal data relating to the individual parties to the case, the third party individuals, the judge(s) who rendered the decision, and other public officials mentioned in the decision.

As explained in the first section, all the court decisions are public by virtue of the Administrative Justice Act and Code of Civil Procedure. Accordingly, court decisions are rendered publicly, and they are open to the public in the sense that those who wishes to obtain them are permitted to do so. Yet, this is by no means implies that information contained in court

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4 The English translation of the part was initially generated by ChatGPT, then reviewed and refined by the author.

decisions cannot amount to private or personal information (Renaudie, 2024, 163-164). Indeed, infomation relating to the individual parties to the case, the third party individuals, the judge(s) who rendered the decision, and other public officials mentioned in the decision constitutes personal data, even though it is contained in a court decision that is meant to be public.

Personal data is accepted to have been rendered anonymous where "the data subject is not or no longer identifiable" (Recital 26 of the GDPR). Neither the GDPR nor the French Data Protection Act (Law Nr. 78-17 of 6 january 1978) protects anonymised information (Articles 2(1) and 4 of the GDPR; Articles 4 and 5 of the French Data Protection Act). Yet, where the data subject can be identified or re-identified by using other data by the data controller or any other person, data in question does not constitute anonymised information (Esayas, 2015, p. 4). Hence, personal information concerning the judge(s) who rendered a court decision cannot be anonymised, given that such decisions are intended to be public and to include the names of the judges.

Article 4 of the EU GDPR introduced a new concept, namely pseudonymised information, which refers to information that can be attributed to a specific data subject only through the use of additional information kept seperately. Unlike anonymised information, pseudonymised information, continues to qualify as personal data. Nevertheless, pseudonymisation serves as an additional safeguard where anonymisation is not feasible. (Malekian, 2017, pp. 287-290; Hintze and El Emam, 2018, pp. 147-151).

Article L10(3) of the Administrative Justice Act and Article L111-13(2) of the Judicial Organisation Act require the use of pseudonymisation method to protect the personal data of the parties to the case and third parties. These provisions require the redaction of names and surnames of natural persons who are mentioned in the case as party to the case or a third party, before the decision is made publicly available. Furthermore, any information, disclosure of which threatens security or privacy of the parties, the third parties or their relatives, must also be ommitted.[5] The specific categories of personal information to be ommitted are listed in Article 2 of the Decree n° 2021-1276 of 30 September 2021.[6] Such personal data is accessible

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5 For examples of information that may lead to identification of the person, see Cass. 1° civ. 5 juill. 2017, n° 16-16901 ; 16-50025; Cass. crim. 3 oct. 2012, n° 12-80569.

6 The English translation of the relevant part of Article 2 of Decree No. 2021-1276 of 30 September 2021 (initially generated by ChatGPT, then reviewed and refined by the author) is as follows:

1° Concerning natural persons mentioned in the decision, when they are parties or third parties:

a) Data relating to the identity and contact details of the natural persons mentioned in judicial decisions, including: title, surname, usual name, first name(s), alias, gender, dates of birth and death, places of birth and death (municipalities), country codes and names for birth and death, nationality, telephone number, email address, postal address, residence address, parentage, social security number, titles and honorary distinctions;

only to agents authorised by the Council of State or Cout of Cassation (Article 3(2), Decree n° 2021-1276 of 30 September 2021). Thus, personal information relating to parties and third parties mentioned in the decision is directly required to be ommitted from the decision. What is more, information that might threaten security or privacy of the parties, third parties or their relatives should also be ommitted. Information that has not been rendered anonymous in the manner described above cannot be considered anonymised information. Therefore, they might remain pseudonymised and subject to personal data protection rules.

The redaction of personal information relating to judges and court registry staff follows a different regime in L10(3) of the Administrative Justice Act and Article L111-13(2) of the Judicial Organisation Act. There is no automatic obligation to redact the identity information of judges or court registry staff before publication. Yet, if disclosure is likely to undermine the security or the privacy of these individuals or their relatives, any element that could identify not only the parties and third parties but also judges and court registry staff must be redacted. Publication of the identity of judge(s) or court registry staff naturally interferes with their right to the protection of personal data (Lynskey, 2014, p. 575). Therefore, the Decree n° 2021-1276 of 30 September 2021 applies a similar redaction process to the identity of judge(s) or court registry staff as to the parties and third parties. While Article 2 of the Decree n° 2021-1276 of 30 September 2021 lists personal data categories separately for each group, the redaction

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b) Data relating to the administrative status of natural persons mentioned in judicial decisions, including: information appearing on permits, residence titles and cards or travel documents for foreign nationals, identity card, passports, driving licenses, administrative authorizations;

c) Data relating to personal life mentioned in judicial decisions, including: legal capacity, family situation, date and place of marriage or civil partnership (PACS), date of divorce or dissolution of civil partnership, number of children;

d) Data relating to professional life, educational and academic background, and financial situation mentioned in judicial decisions, including: level of education, professional situation, title, rank and employment, work relations, status, retirement rights, all elements of remuneration, tax situation;

e) Data relating to the assets of natural persons mentioned in judicial decisions, including: banking data including account numbers, information from accounting documents, movable and immovable property and rights, land publicity and cadastral references, legal aid status;

f) Data relating to the activities of natural persons mentioned in judicial decisions, including: travel, associations, contacts, IP address;

g) Data relating to the objects, vehicles and means of communication of natural persons mentioned in judicial decisions, including: vehicle identification number, license plate, equipment identifier data, geolocation data;

h) Data relating to offenses, convictions, or security measures of natural persons mentioned in judicial decisions;

i) Data relating to judicial proceedings before judicial and administrative courts;

j) Data relating to the facts giving rise to liability mentioned in judicial decisions;

k) Data and information relating to the damages suffered mentioned in judicial decisions;

l) The number of the judicial decisions;

m) Data relating to opinions, expert assessments mentioned in judicial decisions.

procedure is otherwise uniform.[7] Thus, except for the decisions delivered directly to the parties, court decisions provided upon request or made publicly available are pseudonymised (Mission d'étude, 2017, p. 198).

Furthermore, a specific paragraph was added to both L10 of the Administrative Justice Act and article L111-13 of the Judicial Organisation Act to prohibit statistical analysis based on the identity of judge(s) or court registry staff. These paragraphs prohibit the reuse of the identity data of judges and court clerks where the purpose or effect is to evaluate, analyse, compare, or predict their actual or alleged professional practices. The relevant paragraphs refer both to Articles 226-18, 226-24, and 226-31 of the Penal Code and to the measures and sanctions provided by the Data Protection Act 1978, which together set out the penalties applicable in the event of a violation of this prohibition.

The next section explores the legal conditions and penalties associated with this criminal offence.

4. THE OFFENCE IN ARTICLE L10(4) OF THE ADMINISTRATIVE JUSTICE ACT AND ARTICLE L111-13(3) OF THE JUDICIAL ORGANISATION ACT

According to Article L10(4) of the Administrative Justice Act and Article L111-13(3) of the Judicial Organisation Act, any person who reuses the identities of judge(s) and court clerks for the purpose of, or with the effect of, evaluating, analyzing, comparing, or predicting their actual or alleged professional practices commits a criminal offence. Relevant provisions refer to Articles 226-18, 226-24, and 226-31 of the Penal Code, which prescribe the applicable penalties.

The punishment provided in Article 226-18 of the Penal Code for the offence of collecting personal data by fraudulent, unfair, or unlawful means is five years' imprisonment and a fine of €300,000. Pursuant to Article L10(4) of the Administrative Justice Act and Article L111-13(3) of the Judicial Organisation Act, the prohibited reuse of judges' or court clerks' identity information, even if obtained legally, constitutes a criminal offence punishable by five years' imprisonment and a fine of €300,000.

In French criminal law, criminal offences are classified into three categories according to their severity: felonies (crimes), misdemeanours (délits), and petty offences (contraventions) (Article 111-1 of the Penal Code). The offence of prohibited reuse of judges' or court clerks'

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[7] The English translation of the relevant part of Article 2 of Decree No. 2021-1276 of 30 September 2021 (initially generated by ChatGPT, then reviewed and refined by the author) is as follows:

2° Concerning judges, court clerks, and persons who habitually represent others in legal proceedings:

a) Data relating to identity: title, surname, usual name, first name(s), position;

b) Data relating to professional life: title, rank and employment, professional address.

identity information set out in article L10(4) of the Administrative Justice Act and Article L111-13(3) of the Judicial Organisation Act, punished by up to five years' imprisonment and a fine of €300,000, falls within the category of the misdemeanours.

The offence of prohibited reuse of judges' or court clerks' identity information is classified as a commission offence, requiring the active reuse of relevant information in a prohibited manner. Accordingly, the term "reuse" (réutilisation) is central to the material element of the offence. Article L10(5) of the Administrative Justice Act and article L111-13(4) of the Judicial Organisation Act refer to Articles L. 321-1 to L. 326-1 of the Code of Relations between the Public and the Administration with regards to the reuse of public information contained in court decisions. However, the concept of reuse *(réutilisation)* is not defined in these provisions. While these provisions do not define the term "réutilisation", Article 2 of Directive (EU) 2019/1024 of 20 June 2019 offers a broad definition encompassing any form of reuse.[8] At this stage, it is worth noting that France adopted the view that, regardless of their nature, documents held by judicial authorities and necessary for their function of adjudication cannot be regarded as administrative documents (Conseil d'État, Section du Contentieux, 07/05/2010, n° 303168), and followed the same reasoning when applying Article 1(2)(h) of Directive (EU) 2019/1024 in defining public sector information (Cassar, 2019a, p. 3). However, the definition of reuse in Article 2 of the Directive may be employed to clarify the meaning of "reuse" for the purposes of the Code of Relations between the Public and the Administration, and therefore, indirectly, Article L10(4) of the Administrative Justice Act and Article L111-13(3) of the Judicial Organisation Act.

The offence of prohibited reuse of judges' or court clerks' identity information may be constituted if, at least, one of the following two conditions is met: 1. Relevant information is reused for the purpose of evaluating, analyzing, comparing, or predicting actual or alleged professional practices of judges or clerks, 2. Relevant information is reused with the effect of such an evaluation, analysis, comparison, or prediction. In the first case, the lawmaker requires *dol spécial* (above mentioned purpose), whereas in the second case, the result of the *actus reus* (the effect of such an evaluation, analysis, comparison, or prediction) is necessary (Pin, 2019, pp. 173-195).

The use of AI systems, particularly large language models (LLMs), which can process vast amounts of legal data, including court decisions and reports, offers significant advantages in evaluating, analyzing, comparing, or predicting legal professionals' actual or alleged practices. These systems do so by processing, comparing, and extracting patterns from judicial decisions at high speed and scale (Sobowale et al., 2024, pp. 192–195; Galli and Sartor, 2023).

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8 Following authors also employ the term réutilisation in the same manner: (Gandon et Morcrette, 2018) and (Clément-Fontaine, 2024).

Furthermore, an increasing number of easily accessible AI powered programs now enable virtually anyone to analyze and predict judicial decisions. On the one hand, this development promises greater coherence and predictability in legal reasoning and enhances transparency and democratic accountability. On the other hand, the offences mentioned above may now be committed much more frequently than when they were first introduced in 2019.

These offences are general offences, which can be committed by any person. Furthermore, under Article 121-2 of the French Penal Code, legal entities, with the exception of the State, are criminally liable for the offences committed on their account by their organs or representatives. Both Article L10(4) of the Administrative Justice Act and Article L111-13(3) of the Judicial Organisation Act refer to Article 226-24 of the French Penal Code with regards to the criminal liability of the legal persons from the offence of illegal reuse of identity of judges and clerks offence. Accordingly, a fine may be applied to the legal persons for such an offence, and the maximum amount of this fine is five times that which is applicable to natural persons (Article 131-38 of the Penal Code). Hence, a legal person convicted of the offence of prohibited reuse of identity of judge(s) and clerks may be subject to a fine of up to €1,500,000.

Additionally, Article 226-24 of the Penal Code authorises the imposition of the penalties listed under 2°, 3°, 4°, 5°, 7°, 8° and 9° of article 131-39 of the Penal Code to a legal person responsible for the offence of prohibited reuse of judges' or court clerks' identity information. These provisions include, among others, the permanent or temporary (up to five years) closure of the establishment used to commit the offence and permanent or temporary (up to five years) disqualification from public tenders. They also provide for confiscation in accordance with Article 131-21 of the Penal Code, as well as a permanent or temporary (up to five years) prohibition on exercising, directly or indirectly, one or more social or professional activities.[9]

Individuals convicted under Article L10(4) of the Administrative Justice Act or Article L111-13(3) of the Judicial Organisation Act may also be subject to additional penalties (Article 226-31 of the Penal Code). One of these additional penalties is the forfeiture of civic, civil, and family rights, as listed in Article 131-26 of the Penal Code. These rights include, among others, the right to vote and to stand for election, the right to hold a judicial office, the right to give an expert opinion before a court, the right to represent or assist a party in legal proceedings, and the right to make a witness statement in court beyond a simple declaration. The court may order the forfeiture of all or part of these rights for up to ten years.

Another additional punishment that may be imposed on a natural person commited one of the offences listed in Article L10(4) of the Administrative Justice Act and Article L111-13(3) of the

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9 English translation of the relevant article may be found in Translation by Equal Rights Trust, 2005. However, 8° should be updated as follows: "confiscation of the thing under the conditions of and according to the modalities listed in article 131-21 of the Penal Code".

Judicial Organisation Act is the prohibition from exercising the social or professional activity in the course or on the occasion of the offence was committed (Article 226-31 of the Penal Code). This prohibition may be permanent or temporary. The temporary prohibition may not exceed a term of five years (Article 131-27 of the Penal Code). Another possible additional punishment is prohibition from holding or carrying a weapon requiring a licence, for a maximum period of five years (Article 226-31 of the Penal Code). Lastly, the court may impose an additional penalty of displaying or disseminating the decision (Article 226-31 and 131-35 of the Penal Code). Thus, the French legal framework reflects a deliberate prioritisation of data protection and judicial independence over algorithmic optimisation and predictive utility.

5. CONCLUSION

The open data policy seeks to remove the qualitative distinction between published rulings and judgments and those handed down, a distinction which Chapus described as both quantitative and qualitative (Chapus, 2008, p. 5). While the digitalisation and public dissemination of court decisions in France represent an important development aligned with the principles of transparency and democratic accountability, these changes have simultaneously created a complex legal landscape regarding the protection of personal data. In particular, the statistical analysis of judicial decisions based on the identities of judges and court clerks directly interferes with the principles of personal privacy and professional independence.

In response, French law was amended in 2019 to prohibit the reuse of such identity data for specified purposes, rendering it a criminal offence. These amendments introduced both individual and corporate criminal liability, backed by the sanctions listed in Articles 226-18, 226-24, and 226-31 of the Penal Code, including significant fines and professional bans. The offence may be established either through specific intent (dol spécial) or where the prohibited effect results from the conduct.

AI powered systems, and particularly LLMs, have the capacity to process, compare, and extract patterns from judicial decisions at high speed and scale. While this offers the promise of greater coherence and predictability in legal reasoning, it also introduces the risk of indirect profiling of judges and misuse of statistical insights. The French legal response, which centers on the protection of personal data and professional independence in the context of technological progress, may serve as a valuable model for other jurisdictions, but only if the practical application of the norm can also be ensured.

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