

The role of AI-based systems in negotiated proceedings

By Fantoly Zsanett – Herke Csongor – Szabó Barbara¹

Introduction

Although the right (and the obligation) to investigate criminal conduct lies exclusively with the State, the cooperation of the accused with law enforcement authorities in criminal proceedings to establish substantive justice is now recognised by law in almost every country in the world. Many forms of cooperation with the prosecution are accepted in the criminal procedure codes of different nations, but for all of them, the emergence of artificial intelligence (AI) brings new opportunities for the defendant who chooses to cooperate with the authorities involved in the criminal justice system. By AI we mean the ability to think creatively and deductively, – including primarily learning, – by machines and the programs and algorithms behind the entities that run them, which will enable the machines to make decisions autonomously.² In another worlds, artificial intelligence (AI) leverages computers and machines to mimic the problem-solving and decision-making capabilities of the human mind,³ so they are systems that act like humans.⁴ In particular, the use of AI in cooperation with law enforcement authorities is worthwhile for large companies and legal entities with international activities and a dominant role in market competition, where an inadequate organisational culture allows the commission of criminal offences within the company, sometimes using it. Nowadays, in the field of criminal compliance activities, some companies are making serious efforts to build up internal investigation and control methods. For them, cooperation with public law enforcement authorities to investigate the crime and gather evidence is rewarding if the subsequent criminal sanctions that may be imposed are reduced or even waived by the authorities – because of the cooperation.⁵ This *special report* shows the potential of using AI in criminal proceedings and e-discovery processes in internal investigations for defendants and legal persons who prefer to cooperate with the authorities. E-discovery is a form of digital investigation that attempts to find evidence in e-mail, business communication and other data that could be used in criminal proceedings.⁶

1. The systematic positioning of negotiated proceedings among the instruments that speed up and simplify criminal proceedings

In recent decades, the issue of simplifying and speeding up criminal proceedings has become a priority in the field of criminal justice under the rule of law. As early as 1987, *Recommendation No R(87)18 of the Committee of Ministers of the Council of Europe*⁷ listed a number of ways of simplifying criminal proceedings, from investigation through prosecution to trial. These include the possibility of discretionary prosecution (or discretionary criminal investigation/discretionary criminal law

¹ ZSANETT, FANTOLY – Professor at University of Public Services, Faculty of Law Enforcement, Department of Criminal Procedural Law, Hungary

CSONGOR, HERKE – Professor at University of Pécs, Faculty of Law, Department of Criminal and Civil Procedural Law, Hungary

BARBARA, SZABÓ – PhD student at University of Pécs, Faculty of Law, Department of Criminal and Civil Procedural Law, Hungary

²MARR, BERNARD: *The Complete Beginners' Guide to Artificial Intelligence*. <https://www.forbes.com/sites/bernardmarr/2017/04/25/the-complete-beginners-guide-to-artificial-intelligence/?sh=fda0e364a835> [Download date: 11 November 2022]

³ <https://www.ibm.com>

⁴ TURING, ALAN: *Computing machinery and Intelligence*. <https://www.cademic.oup.com/mind/article/LIX/236/433/986238>

⁵ AMBRUS, I. - MEZEI, K. - MOLNÁR, E.: *Explanation of compliance law I. General and criminal compliance*. Wolters Kluwer Hungary. Budapest, 2021. p. 447.

⁶ What is e-discovery? <https://www.proofpoint.com/us/threat-reference/e-discovery>

⁷ <https://rm.coe.int/16804e19f8>

enforcement in general), including the right to discretionary closure of proceedings, with appropriate compensation for the victim (1). The use of judicial jurisdiction measures with the same purpose as discretionary criminal investigation/discretionary criminal law, – with the consent of the aggrieved party, – also simplifies the criminal procedure (2). The 'classical method', the decriminalisation of minor offences, is particularly useful for traffic, tax and customs offences (3). Abbreviated (sommas) or written procedures can be used for offences where the factual elements take precedence over the elements of guilt in the adjudication (4). These first four elements barely enter into the definition of „negotiated proceedings”.

Out-of-court settlements can also greatly facilitate the speeding up of criminal proceedings. These may include, – among other things, – the payment of a sum of money to the State or a public institution, or the restitution of property obtained by means of a criminal offence, with compensation for the aggrieved party's loss (5). Examples of further simplifications of the criminal court procedure include alternative sentencing procedures⁸, so-called pre-trial investigation procedures in the case of a confession by the accused, and solutions to simplify court records and sentencing (6).

Based on the procedure the main ways of simplifying and speeding up the procedure are as follows:⁹

a) during the investigation:

- diversion: since the 1970s, there have been two main types of diversion from the criminal justice pathway in Europe: discretionary accusation principle and mediation, which are not belong to negotiated procedures¹⁰;

payment of a certain amount of money: for minor offences, the proceedings can be terminated after payment of a certain amount of money; nowadays such settlements are also possible for major offences of business criminal law in several countries (see for example DPA – deferred prosecution agreements – and NPA – non prosecution agreements – that are used in the US for transnational bribery and big frauds among other crime.)¹¹

b) after the prosecution, but before the trial:

- sentencing order: in the case of minor offences and offences threatened by minor penalties, the court decides on the basis of the case file, – on the prosecutor's motion, – without holding a trial and without taking evidence;¹²
- a simplified trial: if the accused consents, the accused's criminal responsibility is assessed in a simpler evidentiary procedure in the hope of lighter sentences;¹³

c) a settlement (plea bargain).¹⁴

The out-of-court settlements and plea bargaining (in the court) may represent two different realities.

⁸ Ilona GÖRGÉNYI: *Restorative elements in the circle of alternative sanctions*. In *New trends in crime*. 2004. p. 210-220.

⁹ Mariann IZSÁKI: *Simplification of criminal procedure, with special reference to the plea bargain*. JPTE ÁJK Pécs, 1995. p. 18.

¹⁰ Lenke FEHÉR: *Diversion and mediation in Austria*. *Acta Juridica Academiae Scientiarum Hungaricae*, 1995-96/1-2. p. 97-103.

¹¹ In France, this has been in place since 1940: after paying the criminal costs and compensating the aggrieved party, the prosecution can waive the prosecution. The Dutch Penal Code gives this power to the police as well as the prosecution. Cf. Mariann IZSÁKI: *Simplification of criminal proceedings, with special reference to the plea bargain*. JPTE ÁJK Pécs, 1995. p. 20.

¹² Under the Austrian Code of Criminal Procedure, even a motion by the prosecutor is not required. Ákos FARKAS. *Consensual elements in criminal proceedings*. *Hungarian Law*, 1992/8, p. 508.

¹³ In England and the USA, a statement of consent is sufficient, but in Denmark and Spain, for example, a confession on the essential elements of the facts is also required. Cf. Mariann IZSÁKI: *Simplification of criminal procedure, with special reference to the plea bargain*. JPTE ÁJK Pécs, 1995. p. 22.

¹⁴ Similarly, agreements between the different authorities or participants can also help to speed up the procedure. For details, see Csongor HERKE: *Die Absprache als ein Institut der Strafverfahrenserleichterung*. In: VARGHA László-émlékkönyv, PTE ÁJK, Pécs, 2003. p. 97-106.

Hungarian law regulates four legal institutions belonging to the broader range of plea-deals:

1. Cooperation with the suspect: if a person with a reasonable suspicion of committing a criminal offense cooperates in the investigation and proof of the case (or other criminal case) to such an extent that the national security or law enforcement interest in the cooperation outweighs the criminally suspected as an interest in bringing a person reasonably suspected of having committed a criminal offense, depending on the stage of the proceedings, the prosecution rejects the application (Section 382) or terminate the proceedings (Section 399).
2. The conclusion of an agreement: before prosecution, the public prosecutor's office and the accused may reach an agreement on the confession of the guilt of the crime committed by the accused and the consequences thereof (Section 407).
3. Admission at the preparatory meeting: at the preparatory hearing the accused may plead guilty to the offense for which he has been charged and may waive his right to a trial within the scope of the confession. If the court accepts the declaration of guilt, it does not examine the merits of the indictment and the question of guilt.
4. Agreements concluded under the Conservation Program.

In addition, there are even more places to find a legal institution in the Criminal procedure, that bears the character of an agreement. Thus e.g. the prosecution of a "prosecution reprimand" requires the tacit consent of the accused (since if he complains about it, the investigation must continue). The same is true of adjournment, where, in addition to tacit consent, there may be further consensus in the background (eg compensation, reparation, etc. by the accused, the indictment is difficult to imagine without prior consultation of the prosecution and defense, even with the victim involved). And in the same way, there is a tacit agreement in criminal proceedings, and in many cases it can only be brought before a court only because, on the basis of a preliminary discussion and consensus, the accused sees that he or she is quicker (and the practices shows it's comes with a lenient sanction) he/she can expect to be held accountable. Thus, at the beginning of the proceedings, three more accelerating institutions are available (stands before court, penalty order, settlement) and their number decreases over time, and no such separate simplification procedure is possible during a normal hearing.

It is clear that there are numerous possibilities at the investigative (prosecutorial) stage of criminal proceedings to divert the proceedings from the traditional judicial route and to complete the proceedings, in whole or in part, following an agreement with the defence. With the use of AI, it is easier to select the cases where it is possible to reach an agreement at all, and further time and cost savings can be achieved within the given procedure by using AI. The AI e.g. can examine what types of cases have previously been settled and what other characteristics of these types of cases made it likely or unlikely that a settlement could be reached.

Among the solutions for simplifying and speeding up criminal proceedings, it is worth examining the role of AI in plea bargaining (3).

Discretionary proceedings or discretionary prosecution (1) is essentially the simplest form of diversion: the prosecutor, or in some countries even the investigating authority, simply decides not to investigate or prosecute the case. The main reason for this may be the low degree of danger to society (no crime is committed in the absence of danger to society) or if the authority considers that there is no other reason to prosecute the person or act in question. In the discretionary prosecution/discretionary indictment process, the role of AI can be to select cases, based on the data input, where either the circumstances of the offence or the circumstances of the guilt may justify a non-prosecution. For example, the probability

of this may be greater in the case of theft of a smaller value or crimes committed with possible intent. It is a huge task for the prosecution or the investigating authority to compare and select a large number of cases based on predefined criteria, whereas the AI can easily select, based on predefined criteria, the types of cases or offenders for which or for whom it is generally justified to terminate proceedings or not to prosecute. An example of this is the scientific theory of the so-called "quasi-repetitive approach" ("Near-Repeat-Ansatz"), according to which predictable patterns are available for certain types of crime (e.g. burglary) because serial criminals have recurring patterns of behaviour based on rational selection of victims and cost-benefit analysis.¹⁵ Predictive policing is about using statistical methods, – often with the help of AI, – to try to predict when and where a crime will be committed, and even to determine when and where it will take place. The fundamental aim is to prevent crimes from being committed on the basis of this forecast. More recently, predictive methods have included the first AI-based software, such as PredPol, Precobs, HART, X-LAW, Keycrime; However, predictive policing can also be useful in helping to decide on discretionary prosecution/discretionary indictment, as it provides information on whether the person is likely to re-offend or repeat the offence (risk assessment tool). If the answer to this question is the negative, a decision to discontinue the proceedings or not to prosecute can be taken more easily, – even after considering other factors.

The role of AI in mediation can arise from two perspectives. On the one hand, it is necessary to select those cases that are suitable for mediation. In practice, AI is useful here not necessarily because there would be so many cases suitable for mediation that the prosecution would be significantly relieved of the burden of a faster selection, but rather because it could be relevant for providing more objectivity in decision-making. It has been observed that in many cases the prosecution decides on the basis of individual, subjective criteria whether or not to refer a case to mediation, which violates the principle of equal treatment. AI cannot be accused of this kind of bias, as it selects cases for mediation based on pre-loaded, objective criteria. AI has very much been accused in the literature to reproduce human biases¹⁶.

On the other hand, the question arises as to whether AI can play the role of mediator in a mediation process. That is, could the AI, rather than a living person, be the mediator in the mediation process (or part of it)? The answer also depends on whether we are talking about so-called small group mediation (which is essentially based on the parties and the mediator acting separately) or large group mediation (which is based on the parties and the mediator acting together). Generally, where there is large group mediation, there is also small group mediation, i.e. the parties meet the mediator separately before meeting together, or there may be separate discussions after the joint meeting. AI will likely play a more important role in small group mediation, with a particular emphasis on the preliminary assessment stage, but this will not significantly speed up or simplify the process. In conclusion, mediation is an important legal instrument to reduce the caseload of the authorities, speed up procedures, prevent crime more effectively and, above all, recover the damage caused by crime as soon as possible,¹⁷ and AI can play a role in this respect, in particular in the selection of cases and data processing.

Plea bargaining in the broad sense (3) is a plea bargaining process whereby the accused admits guilt in the hope that in return for the admission the state will be more lenient towards him or her.¹⁸ According to the relevant literature, there are several arguments against plea bargaining.¹⁹ Examples include, but are not limited to, the serious risk of convicting the innocent; or that plea bargaining gives an unjust advantage to the accused who cooperates with the authorities over his non-dealing accomplices since those who insist on the due process under constitutional law receive a heavier sentence than their plea bargaining counterparts. However, plea bargaining is often ineffective; the result is a lower sentence

¹⁵ STAFFLER, L. – JANY, O.: *Künstliche Intelligenz und Strafrechtspflege – eine Orientierung*. Zeitschrift für Internationale Strafrechtsdogmatik, 2020/4. p. 167. o.

¹⁶ SCHERER, M.: *Artificial Intelligence and Legal Decision-Making: The Wide Open?* Journal of International Arbitration, 2019/5. 560.

¹⁷ TÓTH, M.: *From crime-oriented criminal law to aggrieved party-oriented criminal law*. Jura, 2005/1. pp. 189-192.

¹⁸ IZSÁKI, M.: *Simplification of criminal procedure, in particular with regard to the plea bargain*. JPTE ÁJK Pécs, 1995. p. 24.

¹⁹ TARR, Á.: *Certain questions concerning the regulation of plea bargaining*. In Andor Kováts Memorial Book, 2004. p. 159-160.

with a lower deterrent effect. Substantive justice is seldom obtained; the plea bargainer often saves his skin by making a false confession. Too many things in plea bargaining depend on the person and professionalism of the defender,²⁰ and in these proceedings there is the possibility of judicial and prosecutorial bias and possible revenge. The chances of rehabilitation of convicted persons in plea bargaining procedures are also reduced. However, there are also many arguments in favour of plea bargaining. One such argument is that sentences are handed down very quickly, which promotes the trial economy. The accused will receive a lighter sentence, thus eliminating the risk of a disproportionate sentence being imposed in a public trial, but neither the prosecution nor the defence will feel like losers at the end of the proceedings. A cooperating defendant can also help to bring the other alleged perpetrators to justice as soon as possible, thus rewarding the cooperation of the accused with real concessions.²¹ It can be seen that the arguments for and against plea bargaining are linked, as BÓCZ expressed it: the dangers are no different from the benefits themselves – in reverse.²²

2. Artificial intelligence and criminal compliance in investigations

Criminal compliance refers to the measures taken in the corporate sector to avoid breaches of criminal law and, as a consequence, prosecution and specialisation in criminal law;²³ or, in the case of an offence already committed, to request the authorities in charge of criminal matters to carry out a post-crime investigation, to evaluate the series of offences, to determine the organisational response to them. The main goal of the corporation in this kind of negotiated proceedings is to propose an out-of-court settlement in order to “clean” the case and close it without a costly criminal procedure. One of the tools of criminal compliance is an *internal investigation*, which is a control procedure – within an organisation, – the aim of which is to investigate and evaluate a past event within the organisation, – in our case the event – that led to the criminal offence. An internal investigation is therefore an organisational response to the suspicion of a criminal offence,²⁴ which is the repressive aspect of criminal compliance.²⁵

It is worthwhile for the company to invest financial resources in internal investigation because its willingness to cooperate in this way after the offence has been committed may result in exemption from criminal liability by the criminal authorities or in a significant reduction in the level of the penalty imposed.²⁶ In the event of detection of the infringement, collection of evidence supporting the infringement and its transfer to the investigating authority, or cooperation with law enforcement authorities, the criminal sanction may be replaced, in some cases, by an intra-company sanction, with no accusation. The internal investigation also makes it possible to deliver evidences to the public prosecution authorities in order to ask them to go for an out-of-court settlement. Internal investigation may also have a criminal preventive effect, which means it may prevent further offences from being committed within the legal person. Indeed, if it is clear to the company's managers and employees that their infringing acts will be detected in an internal investigation, they are likely to refrain from committing them. In corporate criminal compliance, AI can be used in prevention (through early case assessments), in review (through post-case studies) and in the process of collecting and evaluating the

²⁰ FENYVESI Cs.: *A defender in the “simplified” special procedures*. Legal Theory Review, 2001/3.

²¹ TARR, Á.: *Some questions of the regulation of plea bargaining*. In Andor Kováts Memorial Book, 2004. pp. 159-160.

²² BÓCZ E.: *Legality, opportunity and the discretionary power of the prosecutor*. Law Enforcement Review, 1994/1. p. 14.

²³ For details see ROTSCH, T. (ed.): *Criminal compliance*. Nomos. Baden-Baden, 2015., AMBRUS, I. - MEZEI, K. - MOLNÁR, E.: *Explanation of compliance law I. General and criminal compliance*. Wolters Kluwer Hungary. Budapest, 2021. p. 50 - 51.

²⁴ KNIERM, T.: *Erfordernisse und Grenze der Internal Investigation*. In: ROTSCH, T.: *Wissenschaftliche und praktische Aspekte der nationalen und internationalen Compliance-Diskussion*. Nomos. Baden-Baden, 2010. 81. p.

²⁵ MOMSEN, C.: *Internal investigation zwischen arbeitsrechtlicher Mitwirkungspflicht und strafprozessualer selbstbelastungsfreiheit*. Zeitschrift für Internationale Strafrechtsdogmatik. 2011/6. sz. 11. p. Quoted in AMBRUS, I. - MEZEI, K. - MOLNÁR, E.: *Explanation of compliance legislation I. General and criminal compliance*. Wolters Kluwer Hungary. Budapest, 2021. p. 446.

²⁶ MOLNÁR, E.: *The intra-firm preemption process in an interdisciplinary context*. Journal of Law, 2016/9. p. 460.

facts and evidence that determine each cases.²⁷ In particular, the latter algorithm application technique can be useful for the investigating authority in terms of accepting the intention of the defendant to cooperate. The AI helps to filter and classify data content according to specific aspect, automatically identifying concepts and the documents that can be associated with them. The data can come from a variety of sources; facts and information stored on servers in banks, financial institutions, hospitals, etc. can be subject to scrutiny. Data can be not only extracted and collected, but also analysed by the AI. In addition to revealing the interrelationship between individuals and organisations, so-called *advanced analytics* can also be used for emotional analysis, i.e. to select documents by tone or topic. *Process analysis*, in turn, suggests a model for achieving more efficient performance and filtering out risk factors.²⁸ For example, using *Casepoint Advanced Analytics*, it has been reported that the algorithm was used to conduct an internal audit of a multi-billion dollar international company for only \$200,000 and two weeks, which would have been impossible to do so cost-effectively and in such a short time using manual tools.²⁹ In this complex Foreign Corrupt Practices Act (FCPA) Investigation, the client had an enormous amount of data set that needed to be reviewed in a tight time turn around.³⁰ The international company was supposed to collect 60,000 documents, mostly in Japanese language, and evaluate them from a criminal law perspective within two weeks. Budgetary constraints and an unrealistic deadline posed a major challenge, as in addition to analysing and evaluating foreign language documents, knowledge of the local legal framework was essential to assess the activities of a multinational company operating in several countries. By running the algorithm purchased by the multinational company, a keyword search of the company's correspondence system for its managers and employees in both English and Japanese was made possible. (Of the 60,000 documents originally covered, only 600 remained in the filter after the keyword search.) Translation and local attorney's and legal adviser's fees, which would have represented a significant part of the criminal costs in a possible criminal prosecution, were, as a result of the internal investigation using the algorithm, eliminated. From a financial point of view, it is therefore clearly worthwhile for the prosecution to accept the defendant's offer that the company involved in the criminal proceedings will hand over to the law enforcement authorities the evidence obtained from its internal investigation using the AI. This not only saves time and money for the authorities but also helps to increase the efficiency of investigations. Furthermore, the accurate and rapid collection and processing of huge amounts of unstructured data (such as video footage, images, emails and other text files), cognitive data analysis not only contributes to the effectiveness of the investigation but is also of crucial importance from a preventive point of view. If the company's management and employees know, that the internal control system is active and it filters out the potential legal violations, they will not commit crimes, knowing that punishment is inescapable. Not to mention that manual data processing and evaluation cannot exclude the risk elements of human factors, such as errors due to bias.³¹ Of course AI does also make errors (false positive and false negative answers, solutions as well), as we can read it mostly in the US or UK literature.³²

At the same time, cooperation also brings certain benefits for the defendant or the legal person involved in the offence. Although in the absence of *mens rea*, the majority of the criminal codes of the continental European countries, which have been brought up on traditional criminal law doctrine, do not allow for

²⁷ SCHNEIDER, S. H. - PRIEWER, M.: *LegalTech: solutions to old and new challenges in internal investigations*. <https://www.financierworldwide.com/legaltech-solutions-to-old-and-new-challenges-in-internal-investigations#.Y3DkTnbMI2w> [Download date: 11. november 2022]

²⁸ <https://www.analyticsinsight.net/artificial-intelligence-is-playing-a-big-role-in-fraud-investigation/> [Download date: 11. november 2022]

²⁹ <https://www.casepoint.com/resources/case-studies/corporate-ediscovery-cost-savings-artificial-intelligence/> [Download date: 10. oktober 2022.]

³⁰ <https://www.casepoint.com/resources/case-studies/case-study-ediscovery-fcpa-investigation>

³¹ <https://www2.deloitte.com/ch/en/pages/forensics/articles/forensic-investigators-gain-an-edge-with-ai.html> [Download date: 11. oktober 2022.]

³² JARSON, JEFF – MATTU, SURYA – KIRCHEN, LAUREN – ANGWIN, JULIA: How we analyzed the COMPAS Recidivism Algorithm. <https://www.propublica.org/article/how-we-analyzed-the-compas-recidivism-algorithm>

the guilt and thus the criminal liability of the legal person (there are some exemptions such as France), most national legislation does allow for the imposition of specific penalties (for example criminal fine, prohibition from certain activities, or even termination) in criminal proceedings or, more importantly, the application of criminal law measures against the legal person involved in the offence. Typically, this is possible in cases where a legal person's manager or a member of its supervisory board commits a criminal offence using the legal person, such as cartel offences, fraud, money laundering, etc. In such cases, the detection of unlawful conduct within the company is not only worthwhile for the legal person because of the reduction (or even remission) of the sanction in exchange for cooperation, but also because of the shorter period the legal person is subject to criminal proceedings, the less damage to its entrepreneurial prestige. If the relevant data concerning the persons identified by the investigating authority are collected and filtered through AI-driven tools, voluntary fact-finding and data provision can be essential aspects of cooperation to facilitate unlimited reduction of the sanction. In the US, the AI-based, so-called *Filip Factors* have already been developed, which provide a summary of the criteria which the prosecution decides whether to prosecute (or the termination of the investigation) a legal person in a particular case, concerning the criminal compliance activities of the enterprise.³³ Among these criterias, in the section on "Confidential reporting and investigation", we find questions urging the use of AI in corporate internal investigations, such as: „Does the company have an effective way of collecting and analyzing allegations of misconduct?“³⁴ Although the purchase of the AI tools and their application in a regulated legal framework requires a significant financial investment for businesses, it is still worthwhile for the legal person, as compliance with a cooperation agreement based on the use of AI may result in exemption from prosecution or at least a significantly reduced sanction. The corporation's willingness to cooperate with the prosecutors is reflected in how efficiently it collects and evaluates the data used in its own activities, and how willing it is to filter them and hand over the relevant data to the prosecutor's office.³⁵

The criminal justice authorities must enforce certain procedural guarantees when cooperating with the defendant. The legal norms and regulations governing internal investigations are constantly evolving and cover several areas of law (for example labour law, healthcare rules, and data protection provisions) and can be generally stated, they do not reach the level of fundamental rights guarantees that are necessarily applied in criminal proceedings. It is a fact that companies are now increasingly expected to facilitate the internal analysis of their fact-finding processes, and the adaptation of AI-based system and e-detection tools is probably the most effective way of doing so. The results of the company internal AI based system and e-detection can only be used as evidence in criminal proceedings without prejudice to the requirement of due process and under conditions of guarantees. The most important condition is transparency, that is, to ensure that the operating mechanism of the e-detection algorithm, based on sophisticated technology, is known to the prosecuting authorities. As there are no generally applicable rules for the use of electronic discovery, the basic assumption is that any such procedure is a "black box".³⁶ (The introduction of such rules would gradually become necessary, namely within the framework of hard law.) Thus, to be able to use the evidence obtained from the AI in criminal proceedings, the authorities need to know in advance what the expected outcome of the AI will be in the specific case, what technology will be used, what databases will be processed, and what monitoring and quality control processes will be in place during the execution of the task. Open and constructive communication between the company and law enforcement authorities is important, especially

³³ SCHNEIDER, S. H. - PRIEWER, M.: *LegalTech: solutions to old and new challenges in internal investigations*. <https://www.financierworldwide.com/legaltech-solutions-to-old-and-new-challenges-in-internal-investigations#.Y3DkTnbMI2w> [Download date: 11. november 2022.]

³⁴ <https://www.compliance.com/resources/evaluating-corporate-compliance-programs-using-the-doj-filip-factors/>[Download date:

³⁵ VOLKOV, MICHAEL: DOJ's „Filip“ Factors and Corporate Prosecutions. <https://blog.volkovlaw.com/2017/07/dojs-filip-factors-corporate-prosecutions/>

³⁶ SCHNEIDER, S. H. - PRIEWER, M.: *LegalTech: solutions to old and new challenges in internal investigations*. <https://www.financierworldwide.com/legaltech-solutions-to-old-and-new-challenges-in-internal-investigations#.Y3DkTnbMI2w> [Download date: 11. november 2022.]

regarding the type of algorithm chosen, which should be demonstrated in advance on a sample project involving a narrow database.³⁷ Therefore, a given algorithm is not a useful tool even if it is useful in the process of discovering material legal facts, if its operating principles and structure are not transparent for the subsequent user bodies, and the authorities in criminal cases. In this case, the voluntary acquisition and transfer of evidence in the framework of criminal compliance activities does not add value to the investigation by the authorities and cannot be used as a basis for cooperation. Furthermore, as a fundamental requirement of the rule of law criminal procedure is to ensure a fair trial, this requires in our case the emergence of a new type of legal role: a generation of lawyers with a solid knowledge of the technical background of the use of AI and how it works, and who can use this knowledge in their legal arguments in the courtroom, if it is necessary. But mainly the aim of the internal investigation is to avoid the courtroom and gain an out-of-court settlement.

Summary

The emergence of artificial intelligence (AI) brings new opportunities for criminal justice. Nowadays, criminal compliance activities are becoming more and more widespread among businesses with serious economic activities, as the development of internal investigation and control methods can be a useful tool both in terms of prevention and in cooperation with law enforcement authorities. Data processing using artificial intelligence makes available a wide range of evidence that would be impossible to collect and assess – using traditional law enforcement tools and techniques, – mostly relying on human resources. The deployment of AI tools and their operation within an appropriate legal framework is truly motivating for businesses if they can benefit from the fact-finding data and information collected and selected by AI during their internal investigations and cooperation with law enforcement authorities. This benefit is nothing less than a significant reduction in the duration of any subsequent criminal sanctions that may be imposed, and even the elimination of the fear to be prosecuted. The cooperation is also worthwhile for the criminal justice authorities, as the use of AI-based evidence in the context of the integral investigation activities of the company is a significant time and cost-saving factor in criminal proceedings.

³⁷ ZACHARY, A. – CHALK, R.: *The Rise of AI in Corporate Investigations*
file:///C:/Users/User/Downloads/the-rise-of-ai-in-corporate-investigations%20(2).pdf