

# AI AND ETHICS. THE CASE OF REFUGEES

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## Abstract

*Technological progress has had both benefits and negative effects over time. The road to civilization was paved by scientists through hard work. Today we enjoy the results produced over a long period of time when civilizations and empires succeeded each other. Man has always sought to lead a better life, to explore territories and seek new opportunities. The institutionalisation of people's power in the form of the state led to some limitations on the freedom of free movement. The establishment of states led to the emergence of borders. This paper seeks to analyse how today's most advanced advancement, AI, can have both beneficial and negative contributions to society. In a world where basic human rights are no longer a novelty, regulation of new technologies has become a necessity. The lack of clear regulations leads to abuses by the state or its members. Ethics is a basic pillar in any field of activity. Scientific discoveries led to economic progress. Competitiveness has bred efficiency. Even if in a first stage there are systemic changes in certain economic branches, with the possibility of technology replacing certain activities carried out until then by man, the economic prosperity of the last two centuries was only possible through a mass development of production. The political factor, through its representative bodies, has the mission of ensuring a balance between technological development and society as a whole. The balance is ensured through regulation, legislation. Technologies must have a positive impact on the democratic world. This article examines new technologies in the context of refugees. Displacement of populations is not new, but in correlation with new technologies and fundamental human rights it acquires a new dimension.*

**Keywords:** *international law, refugee law, technological progress, AI, ethics in the use of technology, case-law.*

## 1. Introduction

Technology has represented throughout the centuries and is still today the key to a society of well-being. Through its multiple valences, *i.e.*, depending on the sector it impacts, technology as a tool and science as a branch of study have provided the path to progress. Science, human genius and the development of the arts have led to a society where life expectancy and culture have increased considerably, overall. However, as technological progress experienced an unprecedented momentum, the need arose to ensure a balance regarding how new discoveries do not contravene moral or legal norms. Morality has been the subject of philosophical research and debate since ancient times. However, we have most of the writings and conceptions of life from the Greeks and the Romans, according to the development of written sources. The Greeks often used the phrase „common good”, to express the legitimacy of measures that could take the form of legal norms. Today, we are no longer talking about the novelty of the vaccine or the telephone, but about artificial intelligence. The unprecedented development would not have been possible without the contribution brought by globalisation. Economic exchanges and migration of populations gradually led to economic prosperity. Migration is not only caused by people's desire to lead a better life, but also by other events such as natural calamities or wars. These events lead to movements of people, either within the same territory or outside it. If it is carried out within the state, then we are talking about internal displacement. In the case of the movement of the population by crossing the border of a state, we speak of an external displacement or migration.

This paper aims to provide a look at artificial intelligence in the wider context of migration looking from an ethical and legal perspective of the use of new technologies. When crossing the border of a state there are security measures. Some of these use some of the most sophisticated technologies. The storage of data has become an issue that concerns people because in the absence of clear legal norms regarding their use, state authorities may violate fundamental rights enshrined in domestic or international legal acts.

The importance of approaching such a topic results precisely from the need to ensure a balance between the dynamics and statics of law. On the one hand, the legal norm must not inhibit technological progress, on the

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other hand, we cannot allow certain vital aspects to be left out of the regulatory framework, thereby giving the possibility for abuses to occur. The lack of an ethical perspective on the use of new technologies and legal legitimacy can lead to a challenge from society. There is reluctance on the part of the religious spectrum when new technologies may conflict with religious principles. These tensions are fuelled by misinterpretations from religious leaders of all world religions. The lack of legal consecration leads to the lack of state's coercion.

In order to analyse the phenomenon of the use of artificial intelligence in a world increasingly affected by migratory populations, the author uses content analysis as a qualitative research technique. In addition to the scientific literature incidental to the subject under analysis, there is a concern for case-law because the sanctioning of abuses by the courts, whether at the national or international level, leads not only to possible damages, but also to the adoption of new regulations or the modification of existing ones. The rule of law is a basic pillar especially in the European Union, a union based on law.

Compared to the existing scientific literature, the article aims to include several concepts converging to the subject under attention.

## **2. Border management using computer systems**

### **2.1. Preliminary Considerations**

Government must demonstrate its functionality in the real world. Before identifying the tasks of Government and the processing of designs required to be transposed, it is necessary to look at the circumstances in which Government is to focus on public sector performance. Reforms in Government must adapt to existing processes, institutions, cultures, values, resources, conditions and circumstances, but also to those foreseen, anticipated<sup>1</sup>.

Computerization is a necessary component for economic and social development in society. In an international economy that relies on knowledge and electronic devices, the lack of their use can be a setback to a nation's technical and scientific progress. The establishment of a modern administration, using technology and knowledge, will have important benefits in society, eliminating mentalities anchored in the past and developing a new organisational culture. The enhancement of new technologies is received differently in society. The implementation of new technologies resulting from technical and scientific progress generally raises issues of trust. Citizens are concerned about the security of their data, its collection. Electronic systems process data. The attention that government structures must pay to cyber security is fundamental so that it can be implemented and favorably received by citizens. The risk of citizens' data being used by unauthorised persons or being disseminated for purposes other than those intended, generates fear for the use of new technologies<sup>2</sup>.

### **2.2. A brief history of surveillance technologies in the field of migration since the modern era<sup>3</sup>**

Passports were the classic means of identifying travellers. However, these documents could be easily borrowed or falsified, which led to the search for new methods for the transit of people to be made as safe as possible. The challenges were to establish the authenticity of documents and the identity of travellers. Although the use of passports became widespread before World War I, efforts to standardise them were made after the Second World War. The International Civil Aviation Organization, established in 1947 as a result of the International Convention on Civil Aviation of 1944, had a significant role in establishing standard travel documents.

Although the history of fingerprints is a long one, they have been associated with individual identity since 4000 years ago, the systematisation and standardisation of this practice was developed at the end of the XIX century by William Herschel.

Photographs of the defendants. This practice began around 1843. There has been controversy over this method, with some researchers believing they can approximate a man's character based on physical appearance, which later led to the development of eugenic theory.

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<sup>1</sup> A. Profiroiu, M. Profiroiu, *Cadrul de analiză a performanțelor sectorului public*, Revista Economie Teoretică și Aplicată, 2007, pp. 46-49.

<sup>2</sup> C. Vrabie, *Elemente de e-guvernare*, Pro Universitaria Publishing House, Bucharest, 2014, p. 53.

<sup>3</sup> C. Dumbravă, *European Parliamentary Research Service, Artificial intelligence at EU borders. Overview of applications and key issues*, Brussels, European Union, 2021, pp. 1-41.

Mind-reading machines. Although attempts to develop such an instrument began as early as 1880, in 1920 the first polygraph (death detector) was invented, able to record and interpret indicators such as blood pressure, pulse, breathing, etc. Although it also has shortcomings, this tool continues to be used, its role is to understand what is happening in the mind of the perpetrator based on physiological parameters.

Thus, states developed automatic identification and artificial intelligence. In the pre-digital era, the collection and interpretation of certain indicators required sustained physical work. There was a need for increased attention from the operators involved in this activity. Digital development has led to the interpretation of indicators by information systems. Facial identification has implications not only in entertainment activities or in the use of performing gadgets, but also in terms of security, being used in criminal cases and not only. In the field of migration, facial recognition is used at borders.

### 2.3. Migration management systems at EU level

The security system of the Schengen Area was put in place to protect its external borders. The security network consists of three essential systems that identify fraud and prevent dangerous individuals from entering the travel area. The three systems are: Visa Information System (VIS) Schengen Information System (SIS) European Dactyloscopy (EURODAC). *The Visa Information System (VIS)* allows the member states of the Schengen Area to exchange visa data. It is a central IT system and a communication infrastructure that links the central system to national systems. VIS connects consulates in non-EU countries and all external border crossing points of the Schengen Area. *SIS* is a large-scale information system. SIS is a basis for cooperation in law enforcement and protection of the external borders of the Schengen Area. SIS provides information to the police, migration, justice, and other authorities regarding missing people, criminals or criminal entities, and people who are forbidden to enter. EURODAC makes it easier for the EU States to determine which state is responsible for revising asylum applications by comparing fingerprint data. The system does this through an EU asylum fingerprint database. When an individual applies for asylum, their fingerprints are transmitted to the EURODAC central system. It is an essential tool that provides fingerprint comparison evidence<sup>4</sup>.

### 2.4. Artificial intelligence in the context of refugees

It is considered that in the future, border management will depend on the contribution of artificial intelligence. There is hope that artificial intelligence can help eliminate certain factors such as race, ethnicity, etc., which can lead to discrimination. So, it could be useful in the context of flows of migrants or refugees. Artificial intelligence can examine vast amounts of data, and correlate them, which is of real use for decision-makers. However, the introduction of technologies from the sphere of artificial intelligence must be treated carefully. Artificial intelligence can make a wrong decision by returning a person who has applied for asylum because there is a risk of being persecuted in the country of origin. States are ultimately signatories to international obligations. A balance must be struck between the obligations of States and the integration of technological progress. So far, artificial intelligence does not enjoy regulation like other areas<sup>5</sup>.

## 3. Ethics in the use of IT systems

The European Union and beyond is facing a crisis of migrants waiting at the gates of Europe to obtain asylum. This presents a challenge in terms of border management. Speeches of political leaders show that they approach the issue of migration from a more humanitarian, inclusive perspective. Some authors believe that SIS II (the modern version of SIS)<sup>6</sup>, VIS<sup>7</sup> and EURODAC<sup>8</sup> violate the principle of purpose limitation by collecting as much data as possible, exceeding the purposes for which they were established. Tools that were intended for migration, asylum and border management can affect the rights of migrants. Although these tools have been effective in combating illegal entry into the Union, technology can have enormous consequences for migrants'

<sup>4</sup> For more information use the following link: <https://www.etiaseu.com/articles/sis-vis-and-eurodac-the-security-system-of-the-schengen-zone>, accessed on 27.11.2023.

<sup>5</sup> M. Forster, *Refugee protection in the artificial intelligence era. A test case for rights. Research Paper, International Law Programme*, September 2022, pp. 1-38.

<sup>6</sup> For more information use the following link: <https://home-affairs.ec.europa.eu/>, accessed on 27.11.2023.

<sup>7</sup> Regulation (EC) no. 767/2008 of the European Parliament and of the Council of 09.07.2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation).

<sup>8</sup> Regulation (EU) no. 603/2013 of the European Parliament and of the Council of 26.06.2013 on the establishment of 'Eurodac'.

rights. There isn't a proper assessment of the impact these surveillance technologies can have, which raises some ethical concerns. The storage of personal and biometric information of migrants and asylum seekers is at an unprecedented level. The collection of personal data on a large scale by law enforcement authorities, internal security and national security (intelligence services), including European ones (such as Europol or Eurojust) may violate art. 8 ECHR regarding the right to respect for private and family life<sup>9</sup>.

It is necessary that the norms be precise, limited to the purpose, regardless of the act that includes them: treaty, convention, law and so on. The need for the norm to be precise resides in the fact that it must not leave room for uncertainty in the mind of the reader. Moreover, another aspect that must be taken into account is that, in addition to the addressees, the acts involve the intervention of the national authority at various levels (public officials, scientists, lawyers, etc.), including technical instructions whose implementation rests with the officials specialised in the regulated field, which is why this must be taken into account when drafting the normative act<sup>10</sup>.

ECtHR notes that it is not disputed by the Government that DnA material is personal data and that in the present cases there was an interference with the applicant's right to respect for his private life. The Court, having regard to its case-law, according to which DnA profiles clearly constitute data pertaining to one's „private life” and their retention amounts to an interference with the right to respect for one's private life within the meaning of art. 8 ECHR finds no reason to hold otherwise. The Court has also previously found that the retention of fingerprints amounts to an interference with the right to respect for private life, within the meaning of art. 8 ECHR. The retention of the applicant's DnA Profile and fingerprints therefore amounted to an interference with his private life. The applicant alleged under art. 8 ECHR that the indefinite retention of his DnA profile, fingerprints and photograph in accordance with the blanket policy of retention of personal data of any individual convicted of a recordable offence, amounted to a disproportionate interference with the right to respect for his private and family life and could not be justified<sup>11</sup>.

We must say that the European Parliament has considered the possibility of using artificial intelligence by police bodies and judicial authorities at various administrative and criminal investigation times in Resolution 2020/2016(INI)<sup>12</sup>. Thus, the European Parliament has considered limiting the technology that cannot correctly identify persons belonging to ethnic minorities, seniors or women, states will publish or use only computer systems that can be accessed in a transparent manner.

The European Parliament also stressed that any technology that automatically identifies people in the public space should be banned, any application and device that obtains its information from a private database will not be authorised, as there is a risk of law enforcement in a predictive manner. At the same time, the resolution proposes to ban systems that can carry out a social evaluation of people.

What we consider relevant in this analysis is the AI border management system represented by the iBorderCtrl program, which the European Parliament has considered to be an interference with the rights of persons transiting or requesting a form of protection. It is therefore assessed that this is, in fact, a computerised lie detector mechanism and which does not support the beneficiary with a proper service, because human rights are inviolable.

This system has been the subject of an analysis by the CJEU<sup>13</sup>, in which the Court held that projects similar to iBorderCtrl were developed by persons who must respect the fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union and, therefore, the entire technical documentation of the project cannot be published just because there is a suspicion of non-compliance with the Charter limits.

We must say also that other systems based on AI have also been developed at EU level to support people who require a form of protection such as DoNotPay<sup>14</sup>, enabling the identification of efficient and free legal solutions or at a low cost.

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<sup>9</sup> S. Giray, C. Kaya, *The Role of Surveillance Technologies in the Securitization of EU Migration Policies and Border Management*, Uluslararası İlişkiler / International Relations, 2020, vol. 17, no. 68, Special Issue: Revisiting Migration in International Relations, pp. 145-160.

<sup>10</sup> R.-M. Popescu, *Claritatea, precizia și previzibilitatea – cerințe necesare pentru respectarea Constituției, a supremației sale și a legilor în România*, in *Dreptul* no. 9/2017.

<sup>11</sup> ECtHR, Case *GAUGHRAN v. THE UNITED KINGDOM*, app. no. 45245/15, 2020.

<sup>12</sup> European Parliament resolution of 06.10.2021 on artificial intelligence in criminal law and its use by the police and judicial authorities in criminal matters.

<sup>13</sup> CJEU, Case of C-135/22, *Patrick Breyer v. European Research Executive Agency*, 2023, para. 105-106.

<sup>14</sup> For more information use the following link: <https://donotpay.com/>, accessed on 27.11.2023.

Similar projects to iBorderCtrl have also been proposed in the United States, where the doctrine presents the AVATAR project that aims at the credibility of the person who appeals to the virtual assistant available at the border and which is a veritable automated interview device<sup>15</sup>. However, these devices must not replace the human decision regarding the recognition of refugee status, and the fact that it cannot be substituted for the assessment of the aspects which may constitute grounds for granting that status or other form of protection.

AI can also be used to support refugees in identifying a place where they can accommodate. Thus, GeoMatch is a project developed in Switzerland through which asylum seekers receive recommendations on which canton is most adapted to their needs<sup>16</sup>.

At the same time, other traditional and accessible means for refugees already exist and can benefit from improvements, so the literature presents the situation of mobile terminals that are connected to GPS and the internet, as well as the situation of the mobile terminals, thus, the dependence on guides or traffickers is removed, however, access to these services can be used by states or malicious individuals to identify and intercept possible asylum seekers before they can complete the administrative application procedure<sup>17</sup>.

Similarly, Germany has used artificial intelligence-based information systems to check the origin of asylum seekers, including linguistically<sup>18</sup>. However, these devices represent for some authors real challenges when we put in balance the protection of human rights, because systems with AI are inherently built with stereotypes or prejudices<sup>19</sup>.

Thus, there may be a serious interference, threats to the physical and mental integrity of the asylum-seeker, discriminatory results, systematic perpetuation of discrimination and marginalisation, or violation of the principle of non-refoulement.

The European ethical Charter on the use of AI in judicial systems and their environment contains five fundamental principles when referring to the link between the judiciary and artificial intelligence. These principles are<sup>20</sup>:

- Principle of respect for fundamental rights: ensure that the design and implementation of artificial intelligence tools and services are compatible with fundamental rights;
- Principle of non-discrimination: specifically prevent the development or intensification of any discrimination between individuals or groups of individuals;
- Principle of quality and security: with regard to the processing of judicial decisions and data, use certified sources and intangible data with models elaborated in a multi-disciplinary manner, in a secure technological environment;
- Principle of transparency, impartiality and fairness: make data processing methods accessible and understandable, authorise external audits;
- Principle „under user control”: preclude a prescriptive approach and ensure that users are informed actors and in control of the choices made.

On 13.03.2024, the European Parliament approved the AI Act. According to the Regulation, „the purpose is to improve the functioning of the internal market and promoting the uptake of human centric and trustworthy artificial intelligence, while ensuring a high level of protection of health, safety, fundamental rights enshrined in the Charter, including democracy, rule of law and environmental protection against harmful effects of artificial intelligence systems in the Union and supporting innovation”<sup>21</sup>.

#### 4. Conclusions

Public authorities must adapt to social dynamics. The role of public actors is to create confidence in the use of new technologies by their citizens.

<sup>15</sup> N. Kinchin, D. Mougouei, *What can artificial intelligence do for refugee status determination? A proposal for removing subjective fear*, International Journal of Refugee Law, vol. 34, no. 3-4, October/December 2022, pp. 373-397.

<sup>16</sup> D. Walsh, *Using machine learning to help refugees succeed*, Stanford University - Human-Centered Artificial Intelligence, 13.11.2023, for more information use the following link: <https://hai.stanford.edu/news/using-machine-learning-help-refugees-succeed>, accessed on 27.11.2023.

<sup>17</sup> A. Alencar, *Technology can be transformative for refugees, but it can also hold them back*, Migration Policy Institute, 27.07.2023.

<sup>18</sup> M. Forster, *Refugee protection in the artificial intelligence era*, Research Paper, Chatham House, 07.09.2022, p. 6.

<sup>19</sup> *Idem*, pp. 9-10.

<sup>20</sup> *European Ethical Charter on the use of Artificial Intelligence in judicial systems and their environment*, European Commission for the Efficiency of Justice, Strasbourg, 2018, p. 3.

<sup>21</sup> European Union AI Act.

States are involved to international treaties, conventions, etc. The implementation of systems in the field of artificial intelligence must be carried out taking into account the legal and ethical dimensions. Fundamental human rights and the implications of managing the flows of asylum seekers are a dimension that states need to take into account. The principles and norms of *ius cogens* are guidelines in international law.

The use of technologically advanced tools is particularly challenging in areas of law where there is a high concern for the protection of certain social values such as criminal law, for example. In certain strategic decisions or areas that have a high impact on individuals, the existence of an external agent, an expert, would be necessary to avoid significant harm.

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