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PROSPECTS OF THE APPLICABILITY OF ARTIFICIAL INTELLIGENCE IN THE CONTEXT OF THE RIGHT TO DEFENSE

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Abstract. This article examines how artificial intelligence can support the exercise of the right to defense in criminal proceedings and the legal conditions governing its use by advocates in Armenia. Through doctrinal and comparative analysis of Armenian legislation, European human-rights standards, professional guidance and selected foreign judgments, it considers both defense counsel's use of AI and the deployment of automated systems by investigative and prosecutorial authorities. It argues that AI can strengthen defense capacity by assisting legal research, reviewing extensive case material and preparing drafts, particularly where counsel's resources are limited. These benefits depend on safeguards addressing three connected concerns: disclosure of confidential client and pretrial information, unreliable or fabricated legal outputs, and the opacity of systems used against the accused. The article proposes a graduated approach that links the sensitivity of information to the security of the tool, while retaining personal responsibility for verification and legal judgment. For Armenia, it recommends professional guidance, continuing education, access to secure infrastructure, procedural disclosure obligations and protocols informing clients about confidentiality risks. It concludes that effective integration requires advocates to develop the ability both to use AI responsibly and to challenge its evidentiary role in proceedings.

Keywords - *Artificial intelligence, right to defense, criminal proceedings, equality of arms, professional secrecy, legal hallucinations, human oversight, algorithmic transparency.*

1. Introduction

Every generation of lawyers meets a technology that reorganizes the profession. Printed law reports, then electronic databases changed where lawyers look for the law and how quickly they find it. Generative artificial intelligence differs in kind rather than degree. It does not merely retrieve text but produces it. It reads,

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summarizes, compares and drafts at a scale and speed that no individual practitioner can match, and it is already embedded in the tools lawyers use every day. In its concluding report of December 2025, the American Bar Association (ABA) task force described AI as an established component of legal practice rather than an experimental addition.[1]

The premise of this article is that AI is a tool of the future which the defense bar must integrate rather than resist. The question is not *whether* defense lawyers will use it but *how*. There is a specific reason for urgency in criminal matters: the state is not waiting. Investigative and prosecutorial authorities increasingly rely on automated tools for surveillance, data analysis, identification and risk assessment.[2] A defense bar that declines to engage with the same technology does not preserve the old balance between the parties. It lets that balance tilt further toward the prosecution.

The defense lawyer, however, is not an ordinary user of technology. The advocate is the guardian of the client's confidences, an officer who owes candor to the court, and the counterweight to the state's power in the adversarial process. Each of these roles generates a limit on how AI may be used: confidentiality, accuracy and equality of arms. These limits are not arguments against AI. They are the conditions that make its use legitimate.

2. The Normative Frame

2.1 The right to defense and equality of arms

Armenia's constitutional guarantees encompass trial fairness under Article 63 and legal assistance provided by an independent, self-governing legal profession under Article 64. Article 67 specifies protections for the accused, including sufficient preparation time and facilities, communication with counsel and the opportunity to examine witnesses.[3] These protections correspond to Article 6(3)(b)–(c) of the European Convention on Human Rights (ECHR). The European Court of Human Rights (ECtHR) has interpreted these provisions in ways that bring two requirements into focus here.

The first concerns privacy in the lawyer–client relationship. In the Court's established approach, a trial cannot meet the requirements of fairness unless the accused can consult counsel without outsiders listening.[4] In *Michaud v France* it

[1] ABA Task Force, Year 2 Report (December 2025); LawSites (16 December 2025). Full details of shortened source citations appear in References.
[2] Završnik, 'Criminal Justice' (2020), 567.
[3] Armenian Constitution (2015 amendments), arts 63, 64, 67.
[4] S v Switzerland (1991), para 48.

placed lawyers' obligation of secrecy among the foundations of democratic justice.[5]

The second is equality of arms, including access to the evidence and adequate facilities to examine it. The difficulty of examining large digital collections has already reached Strasbourg. In *Sigurður Einarsson and Others v Iceland* the prosecution had used e-discovery software to filter a vast collection of seized electronic data into a smaller set of "tagged" documents. This suggests a case for giving the defense a meaningful opportunity to search, or request searches of, material filtered by the prosecution. The Court accepted that refusing the defense an opportunity to search the full collection could affect its right to adequate facilities, and it treated judicial review of such requests as an important safeguard, although it found no violation on the facts.[6] *Rook v Germany* involved roughly 45,000 intercepted telephone calls and some 14 million seized electronic files, and again the Court found no violation.[7] Yet both cases show where criminal practice has arrived: once a case file is measured in millions of items, the practical capacity to process it becomes part of the substance of the right to defense.

2.2 The emerging European framework

In December 2018, the Council of Europe's Commission for the Efficiency of Justice (CEPEJ) adopted its European Ethical Charter, the first European instrument addressing AI in justice. Its five principles concern the protection of fundamental rights, avoidance of discriminatory effects, reliable and secure data, transparent and fair operation, and continued control by users. Under the last principle, professionals retain the freedom to examine and reject a system's output.[8] In December 2025 the CEPEJ added guidelines on generative AI for courts. They prefer tools that remain under the judiciary's own control, require legal citations to be checked automatically against official sources, and ask courts to tell the parties where AI supported a decision.[9] Although addressed to courts, these guidelines set a benchmark the defense can invoke.

Armenia's signature on 27 January 2026 makes the Council of Europe AI Framework Convention (CETS No 225) particularly relevant to future domestic regulation. This was the first international treaty devoted specifically to governing

[5] Michaud v France (2012), paras 117–119, 123.
[6] Sigurður Einarsson and Others v Iceland (2019), App no 39757/15.
[7] Rook v Germany (2019), App no 1586/15.
[8] CEPEJ, European Ethical Charter (2018).
[9] CEPEJ, Generative AI Guidelines (2025), CEPEJ(2025)18Final.

AI.[10] Article 8 addresses transparency and oversight, while Article 10 concerns protection against discrimination. For criminal proceedings, Article 14 is especially relevant: effective remedies must be accompanied by sufficient information to challenge a decision in which AI played a substantial part. Article 15 adds procedural protection when a system has a significant impact on human rights. Armenia had not ratified the Convention when this article was written. Nevertheless, signature entails an interim duty under Article 18 of the Vienna Convention on the Law of Treaties to refrain from conduct that would undermine the Convention's object and purpose.

The EU AI Act offers a comparative model. Its high-risk regime covers specified law-enforcement applications and systems supporting judicial research and interpretation of the facts and applicable law. A separate prohibition addresses predictions of individual offending derived exclusively from profiling or personality characteristics.[11] Armenia is not bound by the Act, but it offers a ready template for domestic regulation.

2.3 Professional regulation

Professional bodies have responded faster than legislators. In July 2024, the ABA issued Formal Opinion 512, explaining how established ethical obligations govern generative AI. Lawyers remain responsible for competent work, protection of confidences, communication with clients, honesty before courts, appropriate supervision and fees that are reasonable.[12] The European professional response includes the October 2025 generative-AI guide issued by the Council of Bars and Law Societies of Europe (CCBE). It advises lawyers not to enter confidential client data into AI systems without contractual and technical safeguards, to verify outputs before relying on them, to be open with clients who would object to AI use, and to guard their independence against bias and over-reliance.[13]

Armenian law contains the building blocks but no AI-specific rules. The Law on the Advocacy protects the advocate's professional secret, covering both the information the client entrusts and the content and nature of the advice given, without limit in time (Article 25). It also obliges advocates to keep improving their professional knowledge (Article 19).[14] To the author's knowledge, the Chamber of Advocates had not adopted guidance on AI at the time of writing. That gap is an

[10] Council of Europe, AI Framework Convention, CETS No 225; Armenia signature announcement (28 January 2026).
[11] EU AI Act, Regulation 2024/1689, art 5(1)(d); Annex III, points 6 and 8(a).
[12] ABA, Formal Opinion 512 (29 July 2024).
[13] CCBE, Generative AI Guide (2025), ss 4.1–4.4.
[14] Armenian Law on Advocacy (2004, as amended), arts 19, 25.

opportunity: the Armenian bar can shape the rules before practice hardens around them.

3. The Case for Integration: AI as an Instrument of the Defense

3.1 Research capacity

The most immediate use of AI is legal research: locating and summarizing case law, mapping statutory frameworks, and comparing approaches across jurisdictions. The empirical evidence supports cautious optimism. In a randomized controlled trial, participants using GPT-4 completed legal tasks substantially faster, while the quality of their work improved only modestly. Where it helped, the weakest performers gained the most.[15] That equalizing effect matters for the defense bar, which in Armenia as elsewhere consists largely of small practices and individual advocates working without research staff. Richard Susskind argues that clients want outcomes, not the particular processes lawyers have traditionally used to produce them.[16] On that view, a tool that frees the lawyer's time for judgment and advocacy is a gain for the client.

3.2 Volume, time and equality of arms

A modern criminal file may contain interrogation transcripts, phone extractions, video footage, financial records and expert reports running to thousands of pages. The prosecution has investigators and technical units, while the defense often has one advocate. AI tools can index such material, trace how a witness's account changes from one interview to the next, assemble timelines and flag inconsistencies. This is precisely the comparative reading that, done by hand, consumes the time the right to defense is meant to secure. Practice in the United States shows the potential: public defenders have used AI tools to manage discovery at scale, and in one reported case a defense team used facial recognition on body-camera footage to locate an exculpatory witness.[17] Where the prosecution uses software to filter the evidence, as it did in the Icelandic case discussed above, a comparable ability to search the material is necessary if the parties are to participate on meaningfully equal terms.

[15] Choi, Monahan and Schwarcz, 'Lawyering' (2024), 147.
[16] Susskind, How to Think About AI (2025).
[17] Russell, 'AI's Complex Role' (2025).

3.3 Drafting and strategy

AI can also serve as a drafting assistant by structuring a motion on a preventive measure, anticipating the prosecution's counter-arguments, rehearsing a cross-examination, or preparing an Armenian working translation of a Strasbourg judgment available only in another language. Used this way, it does not replace the advocate's judgment. It gives that judgment more material to work with. One caution belongs here rather than later. Language models tend to agree with their users, and research shows they often fail to correct a user's mistaken legal premise.[18] A defense lawyer who asks a model to confirm a favored theory will usually receive confirmation. The better practice is to instruct it to argue against the defense's position.

3.4 From permission to competence

The ABA's commentary on professional competence has, since 2012, required attention to technological developments, including their advantages and dangers. The CCBE similarly places technological literacy within the lawyer's professional skill set.[19] **The Armenian duty to keep improving professional knowledge points the same way. Within a short horizon, competence in criminal defense will include AI literacy in two directions: the ability to use these tools well, and the ability to challenge them when the state uses them.**

A serious objection deserves an answer. AI outputs can seem *flat*: statistically plausible text that lacks the texture of the particular case, the client's circumstances and the meaning that legal reasoning gives to facts. Mireille Hildebrandt has shown that data-driven "law as computation" predicts from patterns in past data and does not reason in the contestable, meaning-giving way that law requires.[20] The objection is correct, but its conclusion is human oversight, not abstention. This is exactly the CEPEJ principle of user control. AI is strong where scale matters: reading, sorting, comparing. The advocate remains decisive where judgment matters: weighing evidence, choosing arguments and deciding what matters to this client.

[18] Dahl and others, 'Large Legal Fictions' (2024), 64.
[19] ABA Model Rules, r 1.1, cmt 8; CCBE, Generative AI Guide (n 14), s 4.2.
[20] Hildebrandt, 'Law as Computation' (2018), 12.

4. First Limit: Confidentiality and the Secrecy of the Pretrial Investigation

4.1 Why confidentiality is structural

Confidentiality is not one ethical rule among many. It is the condition for the client's candor and therefore for effective defense. Its constitutional and Convention foundations were set out above, and Article 25 of the Law on Advocacy gives it statutory form. The difficulty is technical. Anything typed into a cloud-based AI service leaves the lawyer's control. It is processed on a provider's servers, often abroad, and depending on the terms of service may be retained, reviewed by staff, used to train future models, or disclosed in response to legal process.

4.2 United States v Heppner

The first judicial decision to confront this problem squarely arose in a criminal case. Facing fraud and false-statement charges in New York's Southern District, Bradley Heppner used Claude, Anthropic's consumer chatbot, to develop written material about his defense. His prompts drew partly on information obtained from counsel; he subsequently gave counsel the resulting documents. Judge Rakoff ruled on 17 February 2026 that the documents fell outside both the protection for lawyer–client communications and the work-product doctrine.[21] Three considerations supported that conclusion. Communicating with a chatbot was not a consultation with a lawyer. Confidentiality was also absent: the service terms permitted collection of user information, its reuse in model training and its release to outsiders, including public authorities. Finally, counsel had neither commissioned nor directed the exercise. The documents therefore did not embody a strategy developed by the lawyers or work undertaken at their request. The court left open whether use directed by counsel, on the model of experts or interpreters retained by the lawyer, might be treated differently.

The law is not settled. A Michigan federal magistrate judge reached a different conclusion that same month: work-product protection covered documents a litigant acting without counsel had developed with AI assistance. On that reasoning, using software as an instrument did not amount to sharing material with another person.[22]

[21] United States v Heppner, 2026 WL 436479 (SDNY, 17 February 2026).
[22] Warner v Gilbarco, Inc, 2026 WL 373043 (ED Mich, 10 February 2026).

4.3 Lessons for a civil-law system

Armenian law does not use the American doctrine of privilege, but *Heppner*'s reasoning transfers. First, whether information remains confidential depends on whether it was disclosed to a third party on terms that permit further disclosure. That is a question about the tool, its tier and its contract. Second, the Armenian advocate's duty of secrecy is personal and active. Entering identifiable client information into a consumer chatbot may itself constitute a breach, whether or not anyone later seeks to obtain it. Third, personal data law applies. Armenia's personal-data statute limits transfers abroad where the destination's protection is inadequate. A list identifying jurisdictions with adequate protection is maintained by the Personal Data Protection Agency.[23] Because most AI services process data outside Armenia, feeding client files into them is also a cross-border transfer.

The secrecy of the pretrial investigation adds a further layer. The Criminal Procedure Code permits confidentiality restrictions on pretrial case material; counsel may consequently be subject to a duty of non-disclosure. Uploading interrogation records, expert opinions or other investigative materials to a public AI tool is a disclosure to a third party, whatever the lawyer's intention. The same concern extends to the personal data of witnesses and victims, which may include health or other sensitive information.

4.4 A graduated model

These considerations do not require a ban. They require a graduated approach that matches the sensitivity of the information to the security of the tool, as summarized below.

Table 1. A graduated model for the use of AI by defense counsel

Tier	Information	Acceptable tools	Safeguards
1	General legal questions with no case facts (e.g. ECtHR case law on Article 5)	Any reputable tool, including consumer services	Verify every authority
2	Anonymized or hypothetical facts	Preferably enterprise tools, consumer tools only with training disabled	Remove names, dates, places and unique details, consider re-identification risk
3	Identifiable client information, defense strategy, pretrial investigative materials	Only enterprise tools with contractual confidentiality, zero data retention and no training on inputs, or locally hosted models under the lawyer's control	Inform the client; document the tool and its terms; never use consumer tools

[23] Armenian Law on Protection of Personal Data (2015).

5. Second Limit: Accuracy, Hallucination and the Duty of Candor

5.1 The nature of the problem

A language model constructs a response from patterns that make particular sequences of words probable. This process does not itself establish that the cited law is authentic. A convincing answer may thus attribute invented language or a ruling to an authority, or cite a case that was never decided. Empirical studies quantify the risk. Researchers at Stanford and Yale found that general-purpose models answering verifiable questions about US federal cases hallucinated between 58 and 88 percent of the time, often failed to correct false premises, and could not reliably tell when they were wrong.[24] A follow-up study found that even specialized legal research tools built on verified databases gave incorrect or misgrounded answers to roughly 17 to 33 percent of queries.[25]

5.2 The courts' response

The first widely reported case, *Mata v Avianca* (2023), concerned lawyers who submitted six fictitious precedents supplied by ChatGPT. Their reliance on those authorities resulted in sanctions.[26] Since then the pattern has spread across jurisdictions. In *Ayinde*, the Divisional Court of England and Wales dealt with two cases together: in one, 18 of 45 authorities cited did not exist, and in the other, five fictitious cases had been relied on. The court rejected reliance on freely accessible chatbots as a dependable research method. Responsibility for checking the underlying authorities remains with the lawyer. A deliberate submission of false material may attract contempt proceedings and, in some circumstances, criminal liability for perverting the course of justice.[27] In *Noland v Land of the Free*, the discovery that an opening brief contained invented quotations in 21 out of 23 instances led California's appellate court to sanction counsel in the amount of $10,000 and make a referral to the State Bar.[28]

The problem has reached the bench. In October 2025, following a Senate inquiry, two United States federal judges acknowledged that orders issued from their chambers contained AI-generated errors, in one case produced by a law clerk using Perplexity and in the other by an intern using ChatGPT.[29] The scale of the phenomenon is captured by a database maintained by the researcher Damien

[24] Dahl and others (n 19).
[25] Magesh and others, 'Hallucination-Free?' (2025), 216.
[26] Mata v Avianca, Inc (2023), 678 F Supp 3d 443.
[27] Ayinde; Al-Haroun [2025] EWHC 1383 (Admin), paras 6–7, 25–27.
[28] Noland v Land of the Free, LP (2025), 114 Cal App 5th 426.
[29] Volokh, 'Two Federal Judges Apologize' (24 October 2025).

Charlotin. It recorded roughly 700 decisions at the end of 2025 and 2,086 by September 2026, from more than sixty jurisdictions.[30]

6. Third Limit: AI Deployed Against the Accused

The third limit reverses the perspective. It concerns not the defense lawyer's own use of AI but the tools the state deploys against the accused: risk scores, facial recognition, and forensic and analytical software. These systems are often proprietary, and their workings may be hidden from the defense and the court alike. Legal scholarship has identified the core problem. Rebecca Wexler has shown how trade-secret claims shield forensic software from scrutiny in criminal cases, Andrea Roth argues that machine outputs are a form of testimony that should be tested like the account of a witness, and Brandon Garrett and Cynthia Rudin propose a presumption in favor of interpretable "glass box" systems in criminal justice.[31] European scholars frame the same problem in Convention terms, as a threat to the fairness guarantees of Article 6 and to equality of arms.[32]

Judicial responses illustrate the consequences. In the Dutch SyRI litigation, The Hague's District Court found the risk-profiling system incompatible with Article 8 ECHR. The opacity of its models and the resulting inability to check them were central to the finding.[33] A further Strasbourg judgment concerned a peaceful demonstrator identified through facial-recognition software and then arrested. That use of the technology breached the guarantees in ECHR Articles 8 and 10.[34] For the defense lawyer, the practical lesson is to ask in every case whether an AI system contributed to the evidence and, if it did, to seek disclosure of how it works and how reliable it is.

7. Toward an Armenian Framework: Recommendations

The analysis suggests five measures.

1. **Guidance from the Chamber of Advocates.** The Chamber should adopt AI guidance modeled on the CCBE guide, incorporating the tiered confidentiality model, a mandatory verification rule for all authorities and quotations, and a standard of transparency toward clients.

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[30] Charlotin, AI Hallucination Cases Database (accessed 28 September 2026); Bloomberg Law (29 December 2025).
[31] Wexler, 'Life, Liberty, and Trade Secrets' (2018), 1343; Roth, 'Machine Testimony' (2017), 1972; Garrett and Rudin, 'The Right to a Glass Box' (2024), 561.
[32] Završnik (n 3); Quattrocolo, Artificial Intelligence, Computational Modelling and Criminal Proceedings (2020), ch 4.
[33] SyRI, ECLI:NL:RBDHA:2020:1878 (5 February 2020).
[34] Glukhin v Russia (2023), App no 11519/20.

2. **Training.** AI competence, covering both use and challenge, should become part of advocates' mandatory continuing education.
3. **Secure infrastructure.** Individual advocates cannot negotiate zero-retention contracts with global AI providers. The Chamber could procure secure tools collectively.
4. **Procedural reform.** The Criminal Procedure Code should require disclosure when AI systems are used in investigation or in producing evidence, and should guarantee the defense information sufficient to challenge them.
5. **Client protocols.** Advocates should warn clients at the outset about the confidentiality risks of their own AI use.

8. Conclusion

Artificial intelligence is here, it is improving quickly, and it will change the practice of criminal defense. Its capacity to read, compare and draft at scale can strengthen the right to defense, particularly for the small practices that make up most of the Armenian defense bar, and it may soon be indispensable to meaningful equality of arms. Integration is therefore happening. But the terms of integration are set by duties the profession already has. Confidentiality requires that client information and pretrial materials go only into tools that keep them confidential. Candor requires that every authority be verified by the lawyer who signs the document. And the defense lawyer's role as the state's counterweight requires the capacity to demand transparency from AI systems used against the accused. The task for the Armenian bar, legislator and courts is to build these duties into practice while the rules are still being written.

Conflict of Interests

The author reports no ethical concerns arising from this study and has no conflicts of interest to disclose.

Ethical Standards

This study did not include research involving human participants.

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