

Does soft law matter?

The Guidelines of the Council of Europe's European Commission for the Efficiency of Justice (CEPEJ)

by *Daniel Schmidt**

Ethics are good, but legislation is even more so. This approach is being adopted by European policymakers with regard to the regulatory framework for the use of information and communication technologies (ICT) and artificial intelligence (AI) in the justice sector.¹ Nevertheless, soft-law instruments substantially impact the shaping, complementing and guiding of national and international authorities in the creation of relevant standards and rules, and are much needed in this dynamic, fast-changing environment. In this article, I will emphasise the impact of the relevant 'Guidelines' and other documents adopted by the Council of Europe's European Commission for the Efficiency of Justice (CEPEJ) and argue for a dual approach to the regulation of technology in justice that encompasses both hard and soft law.

1. What is a guideline?

According to the Council of Europe's terminology, a guideline typically instructs member states on how to implement existing standards in practice without introducing new ones.

Guidelines, as a policy of the Council of Europe's Committee of Ministers are not, unlike "recommendations" foreseen in the Council Statute.² Due to the explicit legal basis for adopting recommendations set out in the Council Statute, these recommendations carry more legal and political weight than guidelines.³ Recommendations may introduce new standards or

policy principles that could subsequently form the basis of a legally binding instrument, such as a convention. Not only does the Committee of Ministers adopt guidelines, but its subordinate bodies, such as the CEPEJ, do so too.

Guidelines and other supporting documents, such as explanatory memoranda, studies and good practice collections, complement⁴ and facilitate the implementation of recommendations or other standards set out in conventions by providing practical and technical advice and detailing implementation methods for specific target groups. All of these supporting documents would fall under the category "soft law",

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1. See: Council of Europe Framework Convention on Artificial Intelligence (CETS 225), and Regulation (EU) 2024/1689 of the European Parliament and of the Council of June 13, 2024 laying down harmonised rules on artificial intelligence (AI Act).

2. See: Statute of the Council of Europe (ETS 001), Article 15.b. Guidelines would fall under "all other resolutions" under Article 20.d.

3. Guidelines for Drafting Committee of Ministers' Recommendations, Council of Europe Legal Advice and Litigation Department (DLA-PIL), 2023.

4. Often, they are directly annexed to a recommendation.

“... a phenomenon in international relations (that) covers all those social rules generated by State[s] or other subjects of international law which are not legally binding, but which are nevertheless of special legal relevance.”⁵

2. The CEPEJ mandate

The CEPEJ is tasked with facilitating the implementation of international legal instruments concerning the efficiency and fairness of justice, as well as defining concrete measures to improve the functioning of judicial systems across Europe.⁶ This explicitly entails the drawing up of reports, statistics, best practice surveys, guidelines, action plans, opinions and general comments. From the outset, a strong focus has been placed on the role of ICT.

As it is neither a steering committee,⁷ nor a supervisory or monitoring body,⁸ the CEPEJ can suggest areas in which the relevant steering committees of the Council of Europe may draft new international legal instruments or amendments to existing ones, for adoption by the Committee of Ministers. The Council of Europe's steering committees, particularly the European Committee on Legal Co-operation (CDCJ), the European Committee on Crime Problems (CDPC) and the Steering Committee for Human Rights (CDDH), may request that the CEPEJ prepare specific action plans, surveys of best practice or guidelines.⁹ In this respect, the CEPEJ does not set new standards by formulating recommendations (see above), but rather focuses on providing guidance to facilitate their implementation in practice.

When discussing guidelines, it is important not to focus too much on their definition in relation to other possible formats of the aforementioned supporting documents, as this would diminish recognition of the latter's impact. Although these formats may not be as prescriptive as guidelines, they still offer guidance. Therefore, when discussing guidelines, I will also consider other formats of supporting documents.

3. How are CEPEJ Guidelines drafted?

The guidelines and other supporting documents are drafted by specialised thematic working groups. Each group consists of six members who are proposed by the member states and appointed by the CEPEJ Bureau based on their expertise.¹⁰ Once finalised by the working group, the guidelines are presented and discussed at CEPEJ plenary meetings, where they are eventually adopted. The official members at these meetings are representatives of the Council's 46 member states, mainly from the respective ministries of justice.

As the guidelines are adopted unanimously, they represent the views of the member states and are widely accepted. Furthermore, CEPEJ members promote them within their own judicial forums.

4. What are the relevant Guidelines issued by the CEPEJ?

In line with its remit, the CEPEJ has issued several guidelines on the use of ICT in the field of Justice.¹¹

- Guidelines on the use of generative AI for courts (12/2025)
- Guide on the use and development of remote hearings (06/2025)
- Guidelines on the online publication of judicial decisions (12/2024)
- Information note on the Use of Generative AI by judicial professionals in a work-related context (2/2024)
- Guidelines on online alternative dispute resolution (12/2023)
- Guide on judicial e-auctions (6/2023)
- Assessment Tool for the operationalisation of the European Ethical Charter on the use of artificial intelligence in judicial Systems and their environment (12/2023)
- Comparative Study on the use of judicial e-auctions in the Council of Europe Member States (6/2023)

5. Daniel Thürer: Soft Law. Max Planck Encyclopedia of Public International Law [MPEPIL], 2009.

6. Resolution RS(2002)12 establishing the European Commission for the efficiency of justice (CEPEJ).

7. Steering committees typically draw up policy texts and legal standards, such as treaties or recommendations. See: www.coe.int/en/web/cm/intergovernmental-structures and <https://www.coe.int/en/web/civil-society/standard-setting-and-monitoring-work-in-committees>.

8. The CEPEJ is commonly referred to as a „Specialist Advisory Body“, set up by the Council of Europe's Committee of Ministers.

9. Resolution RS(2002)12 establishing the European Commission for the efficiency of justice (CEPEJ).

10. Revised rules of procedure of the CEPEJ (CEPEJ/GENERAL (2014) 20).

11. Accessible at: www.coe.int/en/web/cepej/cepej-working-group-cyber-just.

- Guidelines on electronic court filing (e-filing) and digitalisation of courts (12/2021)
- Guidelines on videoconferencing in judicial proceedings (6/2021) and Selected National Good practices (6/2021)
- Toolkit for the implementation of the Guidelines on Cyberjustice (6/2019)
- European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their environment (12/2018)
- Guidelines on how to drive change towards Cyberjustice [Stock-taking of tools deployed and summary of good practices] (12/2016)

5. What is the impact of the CEPEJ Guidelines?

The CEPEJ guidelines have considerable impact at national and international levels, as evidenced by references to them by national authorities and international organisations, and by decisions of the European Court of Human Rights (the Court). Council of Europe member states use the CEPEJ guidelines as a reference and basis for further national adaptations to specific circumstances.

5.1 Evidence by national authorities

The most prominent example of the impact of the CEPEJ guidelines is the explicit reference to the CEPEJ's "European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their environment" from 2018 (the Ethical AI Charter), which sets out five ethical principles that the use of AI in the judicial environment should adhere to.

(1) The principle of *respecting fundamental rights* ensures that artificial intelligence tools and services are designed and implemented in a way that is compatible with these rights.

(2) The principle of *non-discrimination*, which specifically prevents the development or intensification of discrimination against individuals or groups.

(3) The principle of *quality and security with regard to the processing of judicial decisions and data*. This calls for certified sources and intangible data, as well as models conceived in a multidisciplinary manner within a secure technological environment.

(4) The principle of *transparency, impartiality and fairness*: making data processing methods accessible and understandable and authorising external audits.

(5) The principle of *'under user control'*, which precludes a prescriptive approach and ensures that users are informed and in control of their choices.

The Spanish State Technical Committee on the Administration of Justice, formulated a policy on the use of AI in the administration of Justice based on, and making explicit reference to the principles on the Ethical AI Charter.¹²

The French Council of State of France provided a charter for the use of AI within the administrative jurisdictions, acknowledging that it was inspired by the CEPEJ's Ethical AI Charter.¹³

In terms of examples of references to other thematic guidelines, the Lithuanian Council of the Judiciary can be cited as an example. They refer to the CEPEJ Guidelines on video conferencing in judicial proceedings when setting out the main principles for remote hearings in their national recommendations on video conferencing in judicial proceedings.¹⁴

5.2 Evidence by international (professional) organisations

International professional organisations also refer strongly to the Ethical AI Charter. Notably, the Council of Bars and Law Societies of Europe (CCBE)¹⁵ and the Association of European Administrative Judges (AEAJ) refer to it when formulating positions on the use of AI.¹⁶

Contributing to the wider discussion, the guidelines and other deliverables have been extensively noted and cited by various international organisations, including the European Union's Fundamental Rights Agency (FRA),¹⁷ the Organisation for Econom-

12. Policy on the use of Artificial Intelligence in the Administration of Justice, State Technical Committee on the Administration of Justice, Spain, 2024.

13. Charter for the use of artificial intelligence within the administrative jurisdiction, The Council of State, France (11/12/2025).

14. Recommendations on remote judicial hearings approved by the Judicial Council on 27 August 2021 - Rekomendacijos dėl nuotolinių teismo posėdžių patvirtinta Teisėjų Tarybos 2021 m. rugpjūčio 27 d.

15. See for example: CCBE considerations on the Legal Aspects of AI (20/02/2020).

16. Ljubljana Statement on AI, Association of European Administrative Judges (16/05/2025).

17. See for example: Digitalising Justice: A fundamental rights-based approach, European Union Agency for Fundamental Rights, 2025.

ic Co-operation and Development (OECD)¹⁸ and the United Nations (UN).¹⁹ The same applies to discussions at a national level.²⁰

5.3 Evidence by the European Court of Human Rights

The European Court of Human Rights (hereinafter, the Court) made numerous references in its judgments to the work of the CEPEJ and specifically to its guidelines. This concerns mainly issues of reasonable time in court proceedings under the civil limb of the European Convention of Human Rights' (hereinafter, the Convention) Article 6, Right to a fair trial.

The European Court of Human Rights (hereinafter, the Court) has made numerous references to the work of the CEPEJ, and specifically to its guidelines, in its judgments. These mainly concern issues of reasonable time in court proceedings under the civil limb of the European Convention of Human Rights' (hereinafter, the Convention) Article 6, Right to a fair trial.

For example, in the case of *Apicella v. Italy*,²¹ the Court referred to the decision of the Committee of Ministers' decision to establish the CEPEJ and its 2004 work programme to demonstrate the need to address the issue of lengthy procedures, not only through compensation, but also through the modification of the operational process.

In the case of *Vervele v. Greece*,²² the Court used national data on the key performance indicators "disposition time" and "clearance rate", as provided by the CEPEJ, to determine whether the length of the procedures could be considered reasonable.

In the case *Xavier Lucas v. France*,²³ the Court referred to the CEPEJ Guidelines on electronic court filing (e-filing) and the digitalisation of courts (12/2021) when referring to international standards relating to the issue of access to a court under Article

6(1) of the Convention, due to excessive formalism in insisting on electronic submission without taking into account the particular circumstances of the case. The Court therefore stressed that digital technologies could contribute to better justice administration if the requirement to submit documents electronically is proportionate to the legitimate aim pursued.²⁴ Specifically, the Court follows the CEPEJ guidelines, considering strict e-filing obligations to be "...only appropriate if relevant support measures and infrastructure were already in place".

Similarly, the Court refers to the same guidelines in the case *Patricolo and Others v. Italy*.²⁵ Regarding the question of whether rejecting an appeal based on a failure to verify that electronically submitted documents are originals violates the right of access to a court, the Court concurs with the Guidelines that "*States should ensure some flexibility and limit the administrative burdens on users when transforming judicial procedures and implementing e-filing systems*".

The Court has made other direct references to the CEPEJ Guidelines, including the Guidelines on the role of court-appointed experts in the judicial proceedings of the Council of Europe's member states (12/2014), in the cases *Anna Maria Ciccone v. Italy*²⁶ and *Aydoğdu v. Turkey*.²⁷

6. Is the judicial domain particularly receptive to soft law, such as guidelines?

Hard law, such as legislation and conventions, sets legally binding norms for the use of technology and AI. However, it is not always clear how these norms can be met. Furthermore, it is the responsibility of the courts to apply legislation to specific cases while taking into account applicable standards and context. Therefore,

18. See for example: OECD (2025), *Governing with Artificial Intelligence: The State of Play and Way Forward in Core Government Functions*, OECD Publishing, Paris.

19. See for example: UN (2024), *Human rights in the administration of justice : report of the Secretary-General*, A/79/296.

20. See for example: Einsatz von KI und algorithmischen Systemen in der Justiz. *Grundlagenpapier* zur 74. Jahrestagung der Präsidentinnen und Präsidenten der Oberlandesgerichte, des Kammergerichts, des Bayerischen Obersten Landesgerichts und des Bundesgerichtshofs vom 23. bis 25. Mai 2022 in Rostock.

21. *Apicella v. Italy* [GC], no. 64890/01, §§ 32-33, 29 March 2006.

22. *Vervele v. Greece*, no. 34012/20, §§ 29,42,109, 26 August 2025.

23. *Xavier Lucas v. France*, no. 15567/20, §§25-26, 9 June 2022.

24. See also: *Digitalising Justice: A fundamental rights-based approach*, European Union Agency for Fundamental Rights, 2025, p. 22.

25. *Patricolo and others v. Italy*, nos. 37943/17, 54009/18 and 20655/19, §§ 45 and 99, 23 May 2024.

26. *Anna Maria Ciccone v. Italy*, no. 21492/17, §§ 26, 5 June 2025.

27. *Aydoğdu v. Turkey*, no. 40448/06, §§ 121, 30 August 2016.

soft law, such as guidelines, plays an important role in supporting the courts in their work.

When it comes to instruments such as the Convention, which are considered “living instruments” and interpreted in line with contextual factors and prevailing societal values, it is important to note the interpretive authority of courts. Soft law instruments manifest these contextual factors and societal values, while also playing a role in shaping them. This makes them an important contributor to the interpretation of legislation.

One particularly interesting case is the Ethical AI Charter, which was mentioned above and addressed several crucial issues prior to their codification into international standards such as the Council of Europe’s Framework Convention on AI and the EU’s AI Act. Once again, the CEPEJ acted within its mandate to facilitate the implementation of existing international standards. The Ethical Charter on AI mainly illustrates the practical relevance of ECHR Articles 6 (Right to a fair trial), 8 (Right to respect for private and family life), 13 (Right to an effective remedy) and 14 (Prohibition of discrimination) for the use of AI in the judicial environment. In the absence of formal legal norms, the application of the Charter’s five principles became an “ethical” question, anticipating a corresponding decision of the Court.²⁸

7. Conclusion

Evidence shows that the CEPEJ guidelines are widely recognised and considered an authoritative reference at both the national and international levels. Furthermore, they make a substantial contribution to national discourse by informing the interpretation of hard law instruments.

They derive their authority from a transparent and inclusive drafting process, with the guidelines being unanimously endorsed by the representatives of relevant institutions of the 46 European states. Whether they are less important in practice than guidelines adopted by the Council’s Committee of Ministers is difficult to answer based on empirical evidence and is thus rather a theoretical question.

Despite their non-binding nature, these soft law instruments notably impact the regulation of digital technology use in justice and how relevant courts assess its conformity with human rights.

In view of the rapid development of technology and its growing importance to the judiciary, it is crucial that related soft law instruments are constantly being developed and discussed. This will ensure that the issues at stake are given deeper consideration by both the judiciary and policymakers.

28. There is currently only one judgment of the Court on the use of AI, regarding facial recognition technology, *Glukhin v. Russia*, no. 11519/20, 4 July 2023.