"PREDICTIVE POLICING" VS. PRESUMPTION OF INNOCENCE: THE EVIDENTIARY VALUE OF AI ANALYSIS IN TAX EVASION CASES

Maior Dragoș Alexandru
PhD Candidate & Lawyer

Baba Victor-Samuel
George Emil Palade University of Medicine, Pharmacy, Science and Technology of Târgu Mureș
Year of study: 2nd

Abstract

This article examines the tension between the deployment of artificial intelligence (AI) systems by ANAF in the fight against tax evasion and the safeguarding of fundamental procedural rights, particularly the presumption of innocence. It underscores the risks posed by "black box" algorithms, which have the potential to shift criminal proceedings from a framework grounded in evidentiary legality to one dominated by probabilistic assessments. The analysis contends that automatically generated reports possess, at most, the evidentiary weight of administrative complaints (extra causam) and cannot serve as independent proof sufficient to substantiate a criminal accusation.
Moreover, in light of the reforms introduced by Law No. 126/2024, the study emphasizes the indispensable role of human expertise as a necessary legality filter, ensuring the protection of the right to a fair trial and mitigating the significant information asymmetry between the state and the taxpayer.

INTRODUCTION

The origins of artificial intelligence can be traced to 1955–1956, with the creation of *Logic Theorist* by the RAND Corporation and Carnegie Institute of Technology. This pioneering program emerged from a vision to simulate human reasoning, demonstrating that symbolic processing—the manipulation of symbols by humans—could be replicated, and potentially enhanced, by computational systems. Notably, the program successfully proved 38 of the 52 then-existing mathematical theorems and even proposed novel improvements to human reasoning.[1]

Today, the AI sector represents a global industry valued at approximately $1.2 trillion, with significant influence on areas such as renewable energy and data processing. Consequently, states have increasingly incorporated AI into governmental functions,

[1] Encyclopedia Britannica, *Allen Newell. American computer scientist and psychologist*, June, 2024 available at: https://www.britannica.com/biography/Allen-Newell#ref733775 accessed on 11.02.2026 at 10:31.

exemplified by initiatives such as the PNRR and Milestones 214 and 215. These developments, however, have generated considerable legal and ethical questions regarding the accuracy of AI-generated processes and their alignment with fundamental legal principles. Romania initiated such implementations several years ago, with plans to continue in 2026 through the digitization of the National Anti-Fraud Agency (ANAF) and the APIC Big Data Platform.

The Ministry of Finance directly owns the APIC platform, which is mainly used by ANAF. This system consists of processing huge volumes of data from multiple and heterogeneous sources, being able to analyse two types of data: structured and unstructured. Thus, this artificial intelligence system will be able to analyse tax returns, electronic invoices, customs data, information from public sources, external registers, and complex transaction flows in order to identify tax evasion early on, assigning a risk score to each taxpayer and predictive modelling of budget revenues, which can determine in real time the bottlenecks in each economic sector.[2]

This article, however, focuses on the tension between AI-driven efficiency in data processing and the procedural safeguards ensured by human expertise. While AI systems offer significant performance advantages by eliminating errors due to human fatigue, these systems cannot operate in a vacuum. Human intervention remains essential to provide context, accountability, and fairness, particularly in ensuring compliance with fundamental guarantees. The core conflict arises when the pursuit of rapid and cost-effective results compromises the thoroughness required for human-led analysis.

The deployment of "black box" algorithms during criminal investigations exacerbates information asymmetries between the state and individuals. In the absence of mandatory human oversight, criminal proceedings risk transitioning from a framework grounded in the legality of evidence to one predicated on statistical probabilities, thereby undermining the substantive protections afforded by the presumption of innocence. This raises a critical question: can a "black box" algorithm alone substantiate a criminal charge without violating fundamental procedural guarantees?

[2] *Technical Annex – Table of Milestones and Targets for Component 8: Fiscal and Pension Reforms (Tabel jaloane şi ținte – Componenta 8. Reforma fiscală şi reforma sistemului de pensii)*, updated version 2025, related to the National Recovery and Resilience Plan (PNRR), published by the National Agency for Fiscal Administration (ANAF), available at: https://static.anaf.ro/static/10/Anaf/Informatii_R/Programe_proiecte/C8%20Tabel%20jaloane%20si%20tinte%20versiunea%202025.pdf, accessed on 11.02.2026 at 11:20.

1. ANATOMY OF ARTIFICIAL INTELLIGENCE IN TAXATION (TECHNICAL BASIS)

To understand the operational logic of the AI employed by ANAF, which relies on advanced data processing and machine learning, it is essential first to distinguish between traditional software systems and autonomous learning algorithms. Conventional algorithmic systems operate according to pre-established rules encoded in their software, following a deterministic "If A, then B" logic. By contrast, machine learning systems are not provided with explicit procedural instructions. Instead, they analyse large volumes of data, discern patterns, and generate their own rules to produce outcomes, effectively "learning" from experience.[3]

Thus, the artificial intelligence system will be able to analyse tax returns, electronic invoices, customs data, information from public sources, external registers, and complex transaction flows in order to identify tax evasion early on by identifying, for example, patterns of tax evasion by a taxpayer or imports and exports that are not justified by other tax documents of the company.

Since July 2024, Romania has implemented the e-Factura system, mandating that all B2B invoices be uploaded by taxpayers. While this represents a substantial data collection effort, its effectiveness is contingent upon the operational readiness of a compatible Big Data platform.[4] To address this, ANAF plans to integrate the SIDI (Information System for Development and Integration) platform, which will consolidate information from e-Factura, e-Transport, and eleven additional integrated databases. SIDI will function as a central engine, aggregating and analysing data to assign risk scores to taxpayers.

However, reliance on such a system raises significant legal and ethical concerns. Errors in data input or algorithmic processing may result in the incorrect assignment of risk scores, undermining transparency and accountability. Individual guarantees, including the taxpayer's right to understand the basis for selection for audit, are jeopardized if the algorithmic reasoning

[3] IBM (2024, August) *What is machine learning?*, available at: https://www.ibm.com/think/topics/machine-learning accessed on 11.02.2026 at 12:05.
[4] HotNews.ro (2024, January) *e-Factura in vain? Only from 2026 will ANAF have the data analysis technology. The Poles have decided to postpone e-Factura*, available at: https://hotnews.ro/e-factura-degeaba-se-trimit-acum-facturile-abia-din-2026-va-avea-anaf-tehnologia-de-analiza-a-datelor-polonezii-au-decis-amnarea-e-factura-18301 accessed on 11.02.2026 at 12:33.

becomes opaque.[5] This raises fundamental questions regarding the right to information about personal data processing (*Habeas Data*).

Prior analyses have highlighted the tension between large-scale data aggregation and the risks of algorithmic opacity or error in the assignment of taxpayer risk scores. Of particular concern is the scenario in which the data input into SIDI is incomplete, inaccurate, or otherwise flawed. In such instances, the machine learning system may internalize erroneous patterns as valid, producing the so-called "Garbage In, Garbage Out" effect.[6] Since AI aims for collection efficiency, a "Garbage In" error will be multiplied across the entire system, leading to wrong conclusions for large groups of users.[7]

We can therefore conclude this chapter by saying SIDI and similar AI systems have the capacity to discern patterns from collected data, these patterns may nevertheless yield unfair or legally problematic outcomes. The veracity of data sources and the indispensable role of human expertise remain critical, not merely as technical considerations, but as fundamental safeguards of ethical and legal rights.

2. LEGAL NATURE OF THE AI REPORT: EVIDENCE OR SIMPLE NOTIFICATION

Building on the preceding analysis of AI decision-making and report generation, it is essential to examine the legal status of algorithmic outputs within the criminal justice system, particularly in light of constitutional and procedural standards.

Reports issued by entities such as ANAF must be scrutinized from multiple perspectives, as their admissibility and legal effect in criminal proceedings depend on formal and substantive validity. A report failing to meet these conditions may amount to a purely technical-material operation devoid of legal consequences.[8] Before addressing the impact of this report, we must analyse an aspect that could be decisive in terms of legal effects, namely

[5] Avocatnet.ro (2025, May) *The future information system of the Tax Authority, which will use Big Data to detect non-compliance among taxpayers, could be operational by mid-2026, say specialists*, available at: https://www.avocatnet.ro/articol_70542/Viitorul-sistem-informatic-al-Fiscului-care-va-folosi-Big-Data-pentru-a-detecta-neconformit%C4%83%C8%9Bile-la-contribuabili-ar-putea-fi-opera%C8%9Bional-la-mijlocul-lui-2026-spun-speciali%C8%99tii.html accessed on 11.02.2026 at 13:50.

[6] European Union Agency for Cybersecurity (ENISA) (2023, November) Understanding Algorithmic Bias and Data Quality: Garbage In Garbage Out in Automated Systems, available at: https://www.enisa.europa.eu/publications/algorithmic-bias-and-data-quality accessed on 11.02.2026 at 15:10.

[7] Economic and Social Council (CES) (2024, March) Report on the digitization of tax systems and the protection of taxpayers' rights in the face of automated processing, available at: https://www.ces.ro/rapoarte-si-studii-2024 accessed on 11.02.2026 at 15:45.

[8] L. Chiriac, Administrative Law II, 1st Edition, Petru Maior University Publishing, Târgu Mureș 2009, p. 38.

the fulfilment of conditions of formal validity. The criteria that must be met to confirm the validity of the form are: identification of the issuer, date and place, signature, and recipient. The last three conditions in this list can be easily met by an algorithm that attaches this data to the report, but the problem may arise in identifying the issuer, which will ultimately be the artificial intelligence system. This aspect will mean that each report issued will have to be reviewed by a human factor, which will not only eliminate the agency's efficiency but may also make it more difficult for officials within the institution to gradually place more trust in the system than necessary and resort to issuing the report exclusively based on the algorithm's expertise. Therefore, the risk that this report will be invalidated from the outset should not be overlooked.[9]

Assuming formal validity is established, the question arises whether such automatically generated reports may be utilized in criminal proceedings. Criminal procedure demarcates a critical threshold: documents generated prior to the commencement of proceedings are administrative in nature and cannot be directly transposed into a case file as evidence. [10] Accordingly, reports generated by the APIC/Big Data platform are, by definition, *extra causam*—extrajudicial instruments lacking probative force. Historically, ANAF's prior practice of issuing such reports "lightly" contributed to the phenomenon of a "State Justice within the State," effectively positioning the agency as judge of guilt. The Constitutional Court of Romania ("CCR") decisively curtailed this practice in Decision No. 72/2019, emphasizing that citizens must be protected from the subjectivity and potential errors of human inspectors—a rationale that extends a fortiori to AI-generated reports. An algorithmic report, devoid of human oversight, constitutes an extrajudicial act and cannot exceed the evidentiary status of a simple complaint. The CCR's ruling establishes a clear barrier against the so-called "dictatorship of the algorithm" in Romanian courts. [11]

The ***right to defence*** constitutes one of the most important guarantees available to the defendant and other procedural participants during criminal proceedings. Legal doctrine emphasises that the right to defence must be understood as a broad procedural concept, extending beyond the mere provision of legal representation by a lawyer. It also encompasses principles such as adversarial proceedings, the search for objective truth, and the equality of

[9] L. Chiriac, *Administrative* Law *II*, 1st Edition, Petru Maior University Publishing, Târgu Mureș 2009, pp. 39-41.
[10] National Institute of Justice, *Curriculum Annex 2019. Criminal* Procedure *Law*, 1st Edition, INJ Publishing, Chișinău 2019.
[11] Constitutional Court of Romania, Decision no. 72 of January 29, 2019, published in the Official Gazette of Romania, Part I, no. 332 of May 2, 2019.

arms between the prosecution and the defence.[12] Within this context, an essential question arises: does the use of artificial intelligence undermine the principle of equality of arms?

This concern stems primarily from the defendant's inability to audit or verify the internal logic of "black box" algorithms. Unlike traditional algorithms, which follow transparent rule-based instructions (for example, "if the sum exceeds a specific threshold, flag the transaction as suspicious"), modern machine learning models—particularly deep learning systems and neural networks—operate through complex self-learning mechanisms that may be extremely difficult to interpret.

Pursuant to Article 5 and Article 103(2) of the Romanian Criminal Procedure Code, as well as Article 6 of the European Convention on Human Rights, evidence must be verifiable in both logic and content. Black box algorithms undermine this principle in three ways: (i) the impossibility of presenting contrary evidence; (ii) failure to provide legally required reasoning; and (iii) potential algorithmic bias. For instance, if ANAF issues a report asserting a "98% risk of carousel fraud," the defence cannot interrogate the algorithm's weighting of data or assumptions, thereby impeding the adversarial process. The second perspective is that of a violation of the obligation to provide reasons. Court decisions and the prosecutor's acts must be justified.[13] If a prosecutor orders a procedural measure, such as the seizure of assets, solely on the basis of an algorithmic output, the justification does not originate from a legal analysis but merely reproduces a technological conclusion. In such circumstances, the judicial authority risks delegating part of its decision-making power to a software system, which raises serious concerns regarding the legality of the procedure. Third, algorithmic systems trained on historical data may reproduce or amplify existing structural biases. For example, if ANAF has historically conducted a disproportionately high number of inspections within a specific economic sector, the AI system may interpret that pattern as evidence that the sector is inherently associated with fiscal fraud. This could lead to a proliferation of false positives, generating suspicion where none objectively exists.

In opaque algorithmic systems, such biases may remain undetected even by judges or investigators. This situation directly contradicts the classical legal principle ***"Ei incumbit***

[12] Gabriel Petrache (November 2023) The lawyer's right to consult the case file. The time limit within which the right to defense regulated by the provisions of Art. 94 para. 4 of the Criminal Procedure Code can be restricted available at: https://www.juridice.ro/713688/dreptul-avocatului-de-a-consulta-dosarul-cauzei-the-time-limit-within-which-the-right-to-defense-regulated-by-the-provisions-of-Art. 94 para. 4 of the Criminal Procedure Code can be restricted.html accessed on 18.02.2026 at 15:01.

[13] European Court of Human Rights, Case of *Ruiz Torija v. Spain*, Application no. 18390/91, Judgment of December 9, 1994, para. 29.

probatio qui dicit, non qui negat"—the burden of proof rests upon the party making the allegation, not upon the party denying it. Consequently, the defendant should not be placed in the position of having to demonstrate that the algorithm was mistaken. Rather, the state must establish guilt through verifiable, transparent, and logically demonstrable evidence.

To offer a brief conclusion that reinforces the above, the ANAF's decision to create such a reporting system based on machine learning attacks the principle of equality of arms enshrined by the ECHR in three very pertinent points, adding an additional layer of illegality through the lack of intangibility.

In Romania's constitutional and procedural framework, criminal guilt may only be attributed to a human being through formal charges or indictments, and confirmed by a final judicial decision (Article 23 of the Romanian Constitution; Article 4 of the Criminal Procedure Code). Granting probative force to automatically generated AI reports constitutes an impermissible shift from criminal procedure to administrative decision-making, circumventing established mechanisms for judicial determination of guilt. AI may detect numerical anomalies or discrepancies in tax data, but it cannot assess intent (*dolus*) or negligence (*culpa*), which are essential elements in establishing criminal liability. Determination of men rea remains a function of the human judge or qualified expert. AI, therefore, cannot "prove" guilt; it can merely highlight irregularities.

In conclusion, justice is not a statistical calculation; it is a search for truth that necessitates human intervention. Black box AI systems, while powerful analytical tools, cannot substitute for the human judgment required to ensure fairness, accountability, and compliance with fundamental procedural guarantees.

3. THE BARRIER OF HUMAN EXPERTISE (LEGALITY FILTER)

Given the changes made by Law No. 126/2024[14] to Article 10(2) of Law No. 241/2005, the role of the expert opinion has shifted from an optional evidentiary instrument to a mandatory condition for the extrinsic legality of an indictment. Consequently, in the absence of a specialist expert report—or in the presence of a report that fails to meet the legally required standards of expertise—any indictment, including those informed by AI-generated outputs, will not satisfy the requirements of procedural regularity. This legislative intervention represents a paradigmatic shift in the evidentiary framework governing tax evasion offenses.

[14] Published in Official Gazette no. 437 of May 13, 2024, entered into force on May 16, 2024.

Prior to this reform, judicial practice demonstrated a tendency for criminal investigation bodies to rely on technical or scientific findings rather than expert reports to quantify damage in cases of tax evasion, broadly construed. Frequently, even absent the statutory urgency required under Article 172(9) of the Code of Criminal Procedure, investigative authorities would invoke artificial exigencies to justify the use of technical-scientific findings in place of expert assessments.

The current wording of Article 10(2) of Law No. 241/2005 states that "*in the case of an offense under Article 6^1, 8, or 9, if the damage caused is fully covered by actual payment by the first court hearing, the penalties provided for by law for the offense committed shall be reduced by half. If the damage caused and recovered under these conditions is up to EUR 1,000,000 inclusive, in the equivalent of the national currency, a fine may be imposed. In the case of an offense under Articles 6^1, 8, or 9, if, after the first court hearing and before the final judgment of the case, the damage caused is fully covered by actual payment , the limits of the punishment provided by law for the offense committed shall be reduced by one third. The damage shall be determined on the basis of a specialist expert opinion. The suspect or defendant shall have the right to participate in the expert opinion. The provisions of Articles 172-180 of the Code of Criminal Procedure shall apply accordingly; the suspect or defendant, whether a natural or legal person, shall be notified of the expert assessment through their representative, as appropriate, and shall be given the time necessary to fully exercise their procedural rights*."

Within these legislative parameters, it is noted that, in matters of tax evasion offences, the damage shall be determined only on the basis of a specialist expert assessment, Article 10(2) of Law No. 241/2005 making this evidentiary procedure mandatory, thus establishing an exception to the rule of the principle of free assessment of evidence enshrined in Article 103(1) of the Code of Criminal Procedure in the case of tax evasion offenses, lato sensu.[15] This once again guarantees the limits of the competence of a system that cannot take into account the subjective human aspect.

Therefore, with regard to the obligation to carry out a specialist assessment to determine the damage in the event of a tax evasion offense, lato sensu, the interpretation of the provisions of Article 10(2) In this regard, it should be noted that, in the judicial practice that has developed since the law came into force, the courts have, for the most part, ruled that the performance of a specialist expert assessment is mandatory.

[15] G. Moloman, *"Lack of Specialized Expertise in the Field of Tax Evasion Offenses – Cause of Irregularity of the Indictment,"* in JURIDICE.ro, May 16, 2024.

In this regard, it should be noted that, in judicial practice following the entry into force of the law, the courts have, for the most part, ruled that expert evidence is mandatory in cases of tax evasion.[16]

Judicial practice has largely affirmed the mandatory nature of expert assessment. A notable illustration is the decision of the Bucharest Tribunal, Criminal Section I, in case no. 12964/3/2023. Initially, the court rejected a defendant's request for a forensic accounting examination, deeming it unnecessary given no specific challenge to the technical-scientific report prepared during the investigation. However, following the entry into force of Law No. 126/2024 on July 26, 2024, the court reopened the case, ordering a specialist expert assessment to ensure compliance with the newly mandated evidentiary procedure. This decision underscores the courts' recognition that human expertise is no longer merely advisory but serves as a procedural safeguard.

In the current criminal procedural architecture, the human expert functions as a guarantor of the legality of the indictment. No matter the sophistication or predictive accuracy of Big Data simulations—such as those produced by the APIC platform—these outputs remain provisional hypotheses until validated and formally assumed by an expert opinion. Without this human verification, any AI-generated assessment lacks probative weight, and the case may be returned to the prosecutor for irregularity. Thus, the procedural barrier established by human expertise reinforces the primacy of accountability and responsibility over algorithmic authority, preserving the integrity of the criminal justice process.

4. PRESUMPTION OF INNOCENCE AS A PROCEDURAL GUARANTEE

As anticipated in the preceding discussion, the introduction of AI-based systems in criminal procedure raises critical questions regarding the preservation of the presumption of innocence as a fundamental principle of criminal law. Article 4 of the Romanian Criminal Procedure Code enshrines that "every person is presumed innocent until proven guilty by a final criminal judgment," [17] a constitutional norm reinforced over time to ensure procedural fairness and alignment with prevailing political and social contexts. Doctrine has emphasized that the presumption of innocence must not be treated as a mere rule of law but elevated to a governing

[16] G. Moloman, op. cit.
[17] Art. 23 para. (11) of the Romanian Constitution: *Until the final court decision on conviction, the person is considered innocent.*

principle that structures the entire criminal process. Accordingly, the present analysis cannot be considered complete without a separate examination of this principle.

In other words, although it is not specified in the Code of Criminal Procedure, in accordance with doctrine, we believe that the presumption of innocence is not only a procedural guarantee, but also a substantive e rule, as it is the expression of a genuine subjective right recognized to a person against whom a criminal charge has been brought, namely the right not to be held criminally liable if they are not guilty of committing a criminal offense.

This constitutional requirement has certain specific consequences. In relation to this study, it is worth noting the premise of impartiality of the judicial bodies involved in the exercise of specific powers (especially the judge, but not only), and, on the other hand, the right of the accused to propose the administration of evidence. The state therefore has certain positive obligations[18] , requiring a cautious and balanced approach towards the accused, who is entitled to practical mechanisms that effectively enforce the right to defence.

In our view, both of the above requirements will undergo changes with the use of the new system.

With regard to impartiality as an element of a fair trial, we have stated that it represents the guarantee of the trust of litigants in magistrates and the institutions where justice is administered. Its essence lies in the obligation <u>not</u> to have a unilateral attitude that would undermine the spirit of objectivity, impartiality, and equidistance. In Romanian law, the impartiality of magistrates is enshrined as a constitutional principle. According to Article 124(2) of the Constitution, *"justice is unique, impartial, and equal for* all,*"* which means that justice must be administered objectively, *"in the name of the law,"* as provided for in Article 124(1) of the Constitution. On the other hand, the principle of impartiality requires that the authorities responsible for administering justice be neutral. On the other hand, the principle of impartiality requires that the authorities responsible for administering justice be neutral. Moreover, even the Constitutional Court has emphasized in its case law[19] that *neutrality is essential to justice.*

[18] In this regard, *Directive (EU) 2016/343 of the European Parliament and of the Council of March 9, 2016, on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings* (OJ L 65, 11.3.2016).
[19] *Decision No. 410 of October 12, 2004,* published in the Official Gazette of Romania, Part I, No. 1049 of November 12, 2004.

Moreover, according to the case law of Strasbourg[20] , impartiality, as a guarantee of the right to a fair trial, can be assessed in two ways: *a subjective approach*, which tends to determine the personal conviction of the judge in a particular case, which is referred to as subjective impartiality, and an *objective approach*, which aims to determine whether the judge has provided sufficient guarantees to exclude any legitimate doubt in his or her regard, which is referred to as objective impartiality. Furthermore, subjective impartiality is presumed until proven otherwise, whereas the objective assessment of impartiality consists in analysing whether, regardless of the magistrate's personal conduct, certain verifiable circumstances give rise to suspicions of lack of impartiality[21]

In applying the objective test, the opinion of the party regarding the impartiality of the magistrate and the proceedings is important. It is essential that suspicions regarding impartiality can be reasonably justified[22] . Therefore, impartiality is not only a matter of substance but also of appearance; it is not enough for the procedure to be "declared" impartial, but it must also be seen to be so.

In the context of using *APIC Big Data* platforms and the *SIDI* system, the objective impartiality of criminal proceedings is challenged by the algorithmic nature of *"suspicion*." If impartiality implies the absence of any preconceived ideas, an algorithm trained on historical data risks integrating and multiplying human biases under the guise of technological neutrality. To reinforce this idea, we recall that in 2022, in the Netherlands, the tax authorities used algorithms that incorrectly labelled approximately 26,000 parents as fraudsters in their applications for childcare assistance. A disproportionate number of them were immigrants. They were forced to repay large sums of money, which led to significant financial and psychological hardship for the families concerned. The data protection authority concluded that

---

[20] In this regard, see the judgments delivered in the cases of the European Court of Human Rights: Procola v. Luxembourg, *No. 14570/89, 28 September 1995; Le Compte, van Leuven and de Meyere v. Belgium, nos. 6878/75 and 7238/75, June 23, 1981; Thorgeir Thorgeirson v. Iceland, no. 13778/88, June 25, 1992; Hauschildt v. Denmark, no. 10486/83, May 24, 1989; Kleyn v. the Netherlands, nos. 39343/98, 39651/98, 43147/98, and 46664/99, May 6, 2003; Piersack v. Belgium, no. 8692/79, October 1, 1982; De Cubber v. Belgium, no. 9186/80, October 26, 1984; Grieves v. the United Kingdom, no. 57067/00, December 16, 2003; Kyprianou v. Cyprus, no. 73797/01, December 15, 2005; Wettstein v. Switzerland, no. 33958/96, December 21, 2000; Padovani v. Italy, no. 13396/87, February 26, 1993; Rudnichenko v. Ukraine, no. 2775/07, July 11, 2013; Castillo Algar v. Spain, no. 28194/95, October 28, 1998; Micallef v. Malta, no. 17056/06, October 15, 2009.* All cases are available at: https://hudoc.echr.coe.int .

[21] See CCR *Decision No. 333 of June 12, 2014*, published in the Official Gazette of Romania, Part I, No. 533 of July 17, 2014, and CCR *Decision No. 711 of October 27, 2015,* published in the Official Gazette of Romania, Part I, No. 913 of December 9, 2015).

[22] In this regard, see the judgment of July 11, 2013, delivered in the case of *Rudnichenko v. Ukraine*, paragraph 113, and the judgment of October 15, 2009, delivered i the case of Micallef v. Malta, paragraph 98).

the data processing by the AI system in use was discriminatory[23] . Therefore, an AI system that identifies a high *"risk score"* based on patterns of tax evasion operates on a probability calculation. However, in criminal matters, according to the principle *of in dubio pro reo*, a probability (even 98%) leaves a doubt that must be to the suspect's advantage.

In other words, in order to comply with the standard of impartiality, the AI output cannot be accepted as evidence on its own, but requires human interpretation in the form of expert knowledge. The tax expert not only validates the figures, but also has the role of verifying that the algorithm has not operated with incomplete or erroneous data. Basing an accusation exclusively on a "Black Box" report is an *illegal delegation of judicial powers* to software. The impartiality of the judge is meaningless if he or she cannot audit the decision-making logic behind the risk score, being reduced to a mere signatory of statistical conclusions that he or she cannot control.

It is well known that the transition from the *in rem* to the *in personam* phase of criminal prosecution requires *"reasonable suspicion"* based on evidence, not just administrative alerts. And even if judicial practice has taught us that the Public Prosecutor's Office chooses to postpone the moment of *in personam* prosecution, under the protection of an ambiguous wording of the rule[24] , the reports generated by the APIC platform are, by definition, documents drawn up *outside the criminal procedural framework*. Their automatic transformation into evidence in the *in personam* phase without a human validation process violates the right to defence.

Ultimately, the presumption of innocence requires that the state prove guilt through logically verifiable and transparent evidentiary means. It cannot require the citizen to demonstrate that a machine-generated suspicion was incorrect.

CONCLUSIONS AND LEGISLATIVE PROPOSALS

Artificial intelligence platforms such as APIC and SIDI must remain operational tools for guiding risk analysis rather than sources of judicial determination. Their utility in identifying

[23] D.A. Maior, *The Normative Significance Of The Precautionary Principle In Artificial Intelligence Problem*, in The Juridical Current, vol. 100, no. 1/2025, pp. 55-67, available at: https://doi.org/10.62838/cjjc-2024-0040, accessed on 20.02.2026 at 15:00.

[24] The unjustified prolongation of the in rem investigation stage was the subject of Constitutional Court Decision No. 633 of October 12, 2018, according to which: *the time interval between the start of the in rem criminal investigation and the in personam criminal investigation is not strictly and expressly determined by the provisions of the Code of Criminal Procedure, but the criminal procedure provision specifies that the prosecutor shall order that the criminal investigation continue against the person. Thus, the prosecutor is obliged to order this measure when there are reasonable grounds for doing so.*

tax anomalies efficiently is undeniable; however, the outputs of these systems cannot, in themselves, constitute the basis for an indictment. The transition from statistical suspicion to legal certainty requires rigorous filtering through established evidentiary mechanisms, preserving a clear distinction between administrative and judicial evidence.

To adapt criminal procedure to the realities of the digital age, we propose enhancing the regulatory framework governing technical judicial expertise by instituting a mandatory filtering procedure. Such a mechanism would ensure that the right to defence is fully respected and that judicial decisions rely solely on transparent and verifiable methodologies. Between the issuance of AI-generated reports or alerts and their use as evidence, the intervention of a qualified human expert is indispensable. Analogous to primary medical care subjected to oversight by specialized advisory committees, algorithmic outputs should undergo validation by an accredited human expert to certify their reliability and compliance with procedural safeguards.

This novel form of expertise would serve to audit the generation of evidence by Big Data systems, confirming the accuracy of the data entered, the absence of algorithmic bias, and the avoidance of errors inherent to opaque "black box" processes. Such regulation is essential to convert AI-generated alerts into information that may legitimately underpin expert accounting assessments, thereby ensuring that the right to defence is meaningful and that judicial decisions rest on methodologies that are transparent and subject to human verification.

Human expertise should not be construed as an impediment to the digitization of justice, but rather as an indispensable safeguard. In a state governed by the rule of law, technological efficiency cannot supersede human dignity. The mandatory role of expert opinion constitutes the ultimate protection against an "algorithmic dictatorship," ensuring that convictions remain the product of human reasoning—assumed, accountable, and verifiable—rather than the opaque output of computational processes.

BIBLIOGRAPHY

I. Doctrine

1. Chiriac, L., *Administrative Law II*, 1st Edition, Petru Maior University Publishing, Târgu Mureș, 2009.
2. Mateuț, Gh., *Criminal Procedure. General Part*, Universul Juridic, Bucharest, 2019.
3. National Institute of Justice, *Curriculum Annex 2019. Criminal Procedure Law*, 1st Edition, INJ Publishing, Chișinău, 2019.
4. Poncet, D., *Le nouveau Code de procédure pénale genevois annoté*, Georg, Librairie de l'Université, Geneva, 1978.
5. Pradel, J., Corstens, G., „La présomption d'innocence", în *Droit pénal européen*, Ed. Dalloz, Paris, 1999.

II. Articles and Specialty Studies

1. Economic and Social Council (CES), *Report on the digitization of tax systems and the protection of taxpayers' rights in the face of automated processing*, March 2024.
2. European Union Agency for Cybersecurity (ENISA), *Understanding Algorithmic Bias and Data Quality: Garbage In, Garbage Out in Automated Systems*, November 2023.
3. Maior, Dragoș Alexandru, *„The Normative Significance of the Precautionary Principle in Artificial Intelligence Problem"*, în *The Juridical Current*, vol. 100, no. 1/2025.
4. Moloman, George, *„Lack of Specialized Expertise in the Field of Tax Evasion Offenses – Cause of Irregularity of the Indictment",* available on *JURIDICE.ro*, May 16, 2024.
5. Petrache, Gabriel, *„The lawyer's right to consult the case file. The time limit within which the right to defense regulated by the provisions of Art. 94 para. 4 of the Criminal Procedure Code can be restricted"*, available on *JURIDICE.ro*, November 2023.

III. Sources in electronic format

1. Avocatnet.ro, *The future information system of the Tax Authority, which will use Big Data to detect non-compliance among taxpayers, could be operational by mid-2026,* say specialists, May 2025, available at: https://www.avocatnet.ro/articol_70542/Viitorul-sistem-informatic-al-Fiscului-care-va-folosi-Big-Data-pentru-a-detecta-neconformit%C4%83%C8%9Bile-la-contribuabili-ar-putea-fi-opera%C8%9Bional-la-mijlocul-lui-2026-spun-speciali%C8%99tii.html
2. Encyclopedia Britannica, *Allen Newell. American computer scientist and psychologist*, June 2024, available at: https://www.britannica.com/biography/Allen-Newell#ref733775
3. HotNews.ro, *e-Factura in vain? Only from 2026 will ANAF have the data analysis technology. The Poles have decided to postpone e-Factura*, January 2024, available at: https://hotnews.ro/e-factura-degeaba-se-trimit-acum-facturile-abia-din-2026-va-avea-anaf-tehnologia-de-analiza-a-datelor-polonezii-au-decis-amnarea-e-factura-18301
4. IBM, *What is machine learning?*, August 2024, availabl at: https://www.ibm.com/think/topics/machine-learning

5. National Agency for Fiscal Administration (ANAF), *Technical Annex – Table of Milestones and Targets for Component 8: Fiscal and Pension Reforms* (updated version 2025, related to
the PNRR), available at: https://static.anaf.ro/static/10/Anaf/Informatii_R/Programe_proiecte/C8%20Tabel%20jaloane%20si%20tinte%20versiunea%202025.pdf

IV. Case law

1. Constitutional Court of Romania (CCR) Decisions: Decision no. 410/2004; Decision no. 333/2014; Decision no. 711/2015; Decision no. 633/2018; Decision no. 72/2019.
2. European Court of Human Rights (ECHR) Case Law: *Le Compte, van Leuven and de Meyere v. Belgium*(1981).

V.Legislation

1. *Constitution of Romania.*
2. *Directive (EU) 2016/343 of the European Parliament and of the Council of March 9, 2016, on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings*.
3. *Law No. 126/2024* (published in the Official Gazette no. 437 of May 13, 2024).