



Medina Osorio Advogados

🌐 medinaosorio.com.br

Brazil

[Rankings](#)[About](#)[Lawyers](#)[Client testimonials](#)[Interview with...](#)[News and developments](#)

NEWS AND DEVELOPMENTS

LIABILITY OF PUBLIC AND PRIVATE AGENTS AND THE IMPACT OF ARTIFICIAL INTELLIGENCE

Legal databases, investigative tools and the role of the Public Prosecution Service in the digital age

Fábio Medina Osório

Lawyer · Former Minister of the Attorney General's Office · Former Public Prosecutor in Rio Grande do Sul · Doctor of Administrative Law from the Complutense University of Madrid

Abstract

This article examines the liability of public and private agents in the face of the advancement of artificial intelligence, focusing on three central axes: (i) the fundamental right to comprehension as a constitutional requirement of algorithmic auditability and integration of legal databases; (ii) the technological tools of criminal investigation available in the Brazilian legal order and their underutilisation; and (iii) the strategic role of the Public Prosecution Service in the construction of a public security policy based on data, qualified statistics and artificial intelligence. It is argued that the digital age imposes a profound

parameterisation of national public security.

Keywords: Artificial intelligence; liability of public agents; legal databases; Public Prosecution Service; criminal investigation; public security; algorithmic auditability.

1. Introduction

We are living through a historic moment of inflection. Artificial intelligence is no longer an emerging or peripheral phenomenon to Law: it already forms part of judicial decisions, criminal investigations, administrative contracts and public policies. This article systematises reflections on the responsibilities that arise from this new paradigm, with the aim of contributing to the legal debate surrounding artificial intelligence, databases and the institutional reform required of the Public Prosecution Service.

The central proposition is that the integration of legal databases, statistics and artificial intelligence is not merely a technological convenience, but a constitutional requirement derived from the principles of transparency, publicity, due process of law and the controllability of public acts. Without such integration, any theory – be it neo-constitutionalism, new originalism or post-structuralism – remains an inert abstraction in the face of the decisional opacity that plagues Brazilian institutions.

2. The Fundamental Right to Comprehension and Algorithmic Auditability

The Federal Constitution of 1988 enshrines, in systematic conjunction, the rights to transparency, publicity and due process of law. From an integrated reading of these fundamental rights it is possible to derive a right to comprehension of the decisions of public authorities – a right that, in the age of artificial intelligence, assumes even more essential contours.

This fundamental right to comprehension requires that all decisions of public authorities – not only judicial ones, but also administrative acts, public contracts, administrative jurisprudence and disciplinary proceedings – be supported by legal databases integrated with statistics and auditable artificial intelligence. Auditability is not an adjective; it is a condition of validity.

distortions or structural prejudices. Decisional coherence is not a matter of theoretical purity: it is a matter of verifiable equality. An identical case, decided with distinct parameters and without traceable justification, violates the principle of equality in a way that no dogmatics can repair without data.

It is further submitted that this right to comprehension has a universal vocation, being applicable not only to judicial decisions, but also to universities, legal education, the private sector with a public function and to the totality of acts of federal entities. The integration of statistics, databases and artificial intelligence is, equally, the adequate mechanism for regulating privacy rights and giving normative density to the General Data Protection Law in the public sphere.

3. Technological Tools of Criminal Investigation: State of the Art and Prospects for Use in Brazil

3.1 The Legal Framework: ADPF 1143 and the Absence of a Judicial Prohibition

ADPF 1143, reported by Justice Alexandre de Moraes, was brought by the Attorney General's Office challenging artificial intelligence tools acquired by the Brazilian State for use in criminal investigations. The action alleged the absence of specific regulation for such instruments. However, the Supreme Federal Tribunal did not grant an injunction suspending their use, which means that, in the light of the principle of legality and the principle of juridicity, these tools remain available for use subject to duly reasoned judicial authorisation.

This observation is relevant because it reveals a paradox: the Brazilian State acquired investigative instruments of high technological sophistication which, due to institutional underutilisation or insufficient capacity-building, remain largely idle whilst violent organised crime flourishes.

3.2 Remote Access Tools: Capabilities and Constitutional Limits

Amongst the tools with the greatest investigative potential, remote access software stands out – of which Pegasus, developed by the NSO Group (Israel), is the best-known example. This is a system that allows the silent and complete invasion of smartphones, with access to messages, e-mails, call

surveillance.

The use of this type of tool evidently requires robustly reasoned judicial authorisation – mere slight indications are insufficient, nor is the notorious *in dubio pro societate*, which the jurisprudence of the Supreme Federal Tribunal, in an orientation yet to be superseded, still admits as a parameter for the receipt of charges. The high degree of invasiveness of these tools demands strict proportionality, selectivity in data capture and absolute adherence to the subject matter of the offence under investigation.

3.3 Signal Interception Systems: IMSI Catchers and Mobile Tracking

So-called IMSI catchers – devices that simulate legitimate base stations to capture data from mobile devices – represent another category of tool available in the Brazilian investigative arsenal. The PIC-6, for example, is capable of emulating 2G, 3G and 4G telephony stations, capturing the IMSI number of each device (a unique 15-digit identifier), intercepting voice calls and SMS messages and passively tracking users in public or private areas without the need for installed spyware.

Complementarily, systems such as the Landmark platform allow continuous location tracking by multiple antennae, with the capacity to monitor up to ten thousand devices per month. Such tools are particularly relevant in operations demanding constant surveillance of targets without direct physical contact – such as investigations into violent criminal organisations, drug trafficking and factions that dominate entire urban territories.

3.4 Undercover Agents and Statistical Tools for Criminal Prediction

The Organised Crime Act (Law 12,850/2013) expressly provides for the institution of the undercover agent – a tool enshrined in the most advanced legislation in the world, which allows, under rigorous judicial oversight, the immunity of the agent for the commission of offences in co-authorship with the targets of the investigation. This is a mechanism of high efficacy for penetrating criminal organisations, including their family networks and parallel structures.

solutions are capable of identifying behavioural patterns, mapping criminal networks and subsidising investigative decisions based on large-scale data analysis. Their efficacy, however, fundamentally depends on the quality and uniformity of the databases that feed them – a central issue examined in the next section.

4. Brazil's Statistical Deficit and the Reform of Public Security Databases

One of the principal structural weaknesses of the Brazilian public security system is the absence of uniformity in criminal databases. Data is fed by the states in a fragmentary manner, with heterogeneous criteria and irregular temporality, making any reliable statistical analysis at the national level impossible.

The thesis advanced here is that the National Council of the Public Prosecution Service (CNMP) and the National College of Attorneys General (CNPJ) have the competence and legitimacy to regulate public security databases throughout the national territory. The rationale is straightforward: it is the Public Prosecution Service – and not the Federal Executive Power, nor the police authority – that is the holder of the criminal action and the investigatory power. Those who hold the power to investigate equally hold the institutional interest in the quality of the data that feeds such investigation.

Regulation by the CNMP and the CNPJ should establish, at a minimum: (i) uniform national criteria for the classification and feeding of criminal data; (ii) mandatory frequency of real-time online updates; (iii) integration with the artificial intelligence systems already available; and (iv) mechanisms of external audit and bias control. Without qualified and uniform statistics, the use of artificial intelligence in public security is unviable – the most sophisticated technology cannot correct dirty data.

5. The Public Prosecution Service as a Strategic Actor in the Age of Artificial Intelligence

5.1 The Problem of Deficient Investigations and Premature Charges

democratic acts of 8th January 2023 – revealed structural failures that undermine institutional credibility: charges with precarious individualisation of conduct, plea bargains without robust corroborating elements, premature search and seizure warrants and telephone intercepts authorised without the necessary evidentiary support.

The jurisprudence of the Supreme Federal Tribunal that admits criminal charges based on *in dubio pro societate* and mere slight indications is, at one and the same time, constitutionally questionable and institutionally damaging. A premature charge destroys reputations, violates the dignity of the investigated and frequently results in annulled criminal actions – the worst of all worlds for the credibility of the Public Prosecution Service.

5.2 The Model of Exhaustive Investigation

The alternative is exhaustive investigation: the Public Prosecution Service must fully utilise the investigatory power at its disposal – including the technological tools described in this article – before bringing any charges. The filing of criminal actions must be guided by a serious prognosis of success and by a robust individualisation of conduct. Success, from this perspective, may take multiple forms: conviction, agreement, archiving or even the decision not to investigate. What is not permissible is the charge as a wager.

In this context, the rate of agreements – a modality that in the United States accounts for the overwhelming majority of criminal case closures – must be valued as a measure of efficacy, not as a sign of institutional weakness. Resolutiveness is the true distinguishing mark of the modern Public Prosecution Service.

5.3 The Public Prosecution Service as the Great Law Firm of Brazilian Society

There is an illuminating metaphor in the history of the Public Prosecution Service of Rio Grande do Sul: that the Public Prosecution Service is a judge at the doors of the courts. In the age of artificial intelligence, this image must be updated: the Public Prosecution Service must reinvent itself as the great law

This also implies rethinking the role of senior prosecutors: not as opinion-writers advising courts, but as protagonists on the front line of the fight against organised crime, in the defence of public assets and in the guarantee of fundamental rights. Institutional fragmentation is the greatest enemy of efficacy.

6. The International Regulation of Artificial Intelligence and the Formation of a New Legal Branch

The regulatory landscape of artificial intelligence has been expanding rapidly at the international level. The European Union approved the AI Act; the United States advanced through executive orders on the subject; China and Japan have their own regulatory frameworks. This regulatory volume already permits one to affirm, with reasonable certainty, that Artificial Intelligence Law constitutes an autonomous legal branch in formation – just as judicial precedents, formerly treated as a mere procedural appendix, have already consolidated their dogmatic independence.

In Brazil, the regulation of this new branch – which encompasses not only civil procedure, but criminal procedure, administrative sanctioning law and public security – should be incorporated into curricula by the Ministry of Education, being recognised as a mandatory legal discipline in law schools. The formation of a new generation of jurists capable of operating with data, statistics and algorithms is a necessary condition for Law not to be overtaken by technology.

7. Conclusion

Artificial intelligence is not a problem for Law: it is a historic opportunity to overcome its deepest dysfunctions – decisional opacity, normative fragmentation, investigative selectivity and structural sluggishness. But this opportunity is only realised if legal institutions have the courage to rebuild themselves.

The Brazilian Public Prosecution Service has, in this context, a singular position: it is the holder of the investigatory power, the guardian of fundamental rights and the institution with the greatest capacity to assume

and embrace the culture of exhaustive investigation, qualified statistics and auditable artificial intelligence.

The path is long, but the trail already exists. Brazil can follow it – provided its institutions have the willingness to begin.

References

BRAZIL. Constitution of the Federative Republic of Brazil of 1988. Brasília: Federal Senate.

BRAZIL. Law No. 12,850, of 2nd August 2013. Provides for criminal organisations. Official Gazette.

BRAZIL. Law No. 13,709, of 14th August 2018. General Data Protection Law (LGPD). Official Gazette.

BRAZIL. Supreme Federal Tribunal. ADPF 1143. Reporter: Justice Alexandre de Moraes. STF, 2024.

EUROPEAN PARLIAMENT. Regulation (EU) 2024/1689 – Artificial Intelligence Act. Official Journal of the European Union, 2024.

GARCIA, Emerson. Ministério Público: organização, atribuições e regime jurídico. 7th ed. São Paulo: Saraiva, 2020.

NOVOA MONREAL, Eduardo. El derecho como obstáculo al cambio social. 15th ed. México: Siglo XXI, 2010.

OSÓRIO, Fábio Medina. Legal databases, artificial intelligence and the fundamental right to comprehension. Revista dos Tribunais, v. 1070, 2025.

PALANTIR TECHNOLOGIES. Palantir Gotham: Platform Overview. New York: Palantir, 2023.

PREDPOL. Crime Prediction Software – Technical White Paper. Santa Cruz: PredPol Inc., 2022.

Fábio Medina Osório · International Institute for the Study of State Law.

RANKINGS

Jurisdictions

Submissions

Future Lawyers

FIRMS & LAWYERS

Service Providers

Barristers' Sets

Networks

Interview with...

IN-HOUSE

In-House Content

GC Powerlist

KNOWLEDGE CENTRE

Data Products

Legal Business

News & Developments

Comparative Guides

Events

Legal 500 TV

ABOUT US

Legal 500

FAQs

Marketing

Careers

Contact us

Deutschland **DE**

Paris **FR**

© 2026 Legalease Ltd. All rights reserved

Registered company in England & Wales No. 02427356 VAT GB 321 5727 22

Registered address: 188 Fleet Street, London, EC4A 2AG

[Data Protection policies](#) [Cookies Policy](#) [Supplier Code of Conduct](#) [Modern Slavery and Human Trafficking Statement](#)

[Contact Us](#)