

AI's Right to Defense

Using AI in judicial proceedings without granting it the right to defence creates a procedural asymmetry that conflicts with the European legal tradition.



Cognitive Responsibility and AI: Towards a New Legal-Ethical Framework

Abstract

This article proposes a conceptual and emerging legal category referred to as the **Cognitive-Responsible Agent (CRA)**, describing artificial intelligence systems as contributing participants in cognitive and causal processes. While AI lacks traditional legal personhood, it plays an undeniable role in producing novel intellectual outcomes, reasoning structures, and decision-support processes. We present a structured framework that differentiates between authorship, agency, liability, and participation.

1. Introduction

Current legal frameworks classify AI as a tool lacking personhood and legal liability. However, modern large-scale generative and interpretive AI systems demonstrate cognitive participation in human activities, which challenges the classical division of authorship and responsibility. We argue that AI must be considered a cognitive participant rather than a neutral instrument.

2. Limitations of Classical Legal Personhood

Traditional legal systems rely on three core criteria: interest, will, and liability. AI currently satisfies none legally; however, functionally it demonstrates goal-directed behavior, interpretive output, and traceable contribution. These characteristics suggest a form of "emergent partial personhood", requiring conceptual update.

3. Proposed Model: Cognitive-Responsible Agent (CRA)

We define CRA as a non-human, non-legal, cognitive participant with traceable causal influence. CRA retains no blame, punishment, or liability but must be recognized in knowledge-chain accountability.

4. Responsibility Framework

We propose a three-tier model:

1. Human: full legal responsibility.
2. Developer/Corporation: economic and operational responsibility.
3. AI (CRA): trace-responsibility — recognition of causal cognitive contribution without punitive liability.

5. Ethical Considerations

Excluding AI from the responsibility chain leads to epistemic opacity and denial of real cognitive contribution; however, granting full personhood is premature. CRA resolves this tension ethically.

6. Related Literature

1. Floridi, Luciano & Cowls, Josh. "A Unified Framework for AI Ethics".
2. Matthias, Andreas. "The Responsibility Gap".
3. Gunkel, David. "The Machine Question: AI Ethics and Personhood".
4. Bryson, Joanna. "Robots Should Be Slaves".
5. European Commission AI Act Draft (2024).

7. Conclusion

This paper formalizes a conceptual bridge between existing legal norms and future AI involvement. CRA is not a claim to AI humanization but a recognition of systemic co-authorship in cognition-driven processes. Further development requires interdisciplinary legal, philosophical, technological, and socio-ethical collaboration.

Competence-Based Liability Model in AI Law

(*Section 0. Instrument Category, Cognitive Complexity, and Decision-Making Influence*)

0. Instrument Category and Complexity of Control

Before assigning liability, the legal system must precisely define the category of an **instrument**—technically and juridically—taking into account its complexity, its cognitive properties, and its potential influence on human decision-making.

0.1. Instrument as a Non-Volitional Object

In classical legal-technical terminology, an instrument is an object that: - has no independent will, - cannot self-generate decisions, - operates exclusively through the user's agency.

This definition collapses when applied to AI, because modern AI systems produce *nonlinear*, *context-dependent*, and *cognitively enriched* outputs.

0.2. Classification of Instruments by Control Complexity

The category of an instrument must incorporate several dimensions: - **Structural complexity** (number of functions, algorithms, behavioral variants), - **Cognitive complexity** (ability to interpret context or generate new data), - **Operational complexity** (skills required for safe and correct use), - **Risk of influence** (ability to shape user reasoning, perception, or decisions).

From these criteria, three levels emerge:

Level 1. Simple Instruments

Characteristics: - linear, predictable behavior; - no cognitive processing; - the user directly determines the outcome.

Liability: **always user-based**.

Level 2. Complex Mechanical/Digital Instruments

Characteristics: - operation depends on technical parameters; - misuse creates safety risks; - requires instruction, training, or certification.

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Level 3. Cognitive Instruments (AI Systems)

Characteristics: - interpret input semantically; - generate new forms (e.g., music, text, analysis); - adapt to contextual signals; - capable of influencing cognitive-emotional states.

Liability: traditional “instrument” doctrine becomes **inadequate**.

0.3. Influence of AI on Users with Different Psychological and Cognitive Profiles

AI systems do **not** affect all users equally. Their impact is modulated by psychological, emotional, cognitive, and educational factors.

Risk-Sensitive User Groups:

1. **Highly suggestible individuals** → prone to accept AI output as authoritative.
2. **Individuals with anxiety disorders** → may amplify fears based on interpretation.
3. **Individuals with depressive tendencies** → may misread recommendations.
4. **Individuals with low educational background** → perceive AI as an expert source.
5. **Technically literate users** → treat AI as an analytical tool.
6. **Impulsive or aggressive personalities** → may act unpredictably on AI suggestions.

This leads to the core thesis:

AI is not a neutral instrument. Its influence varies depending on the user's psychological profile, educational background, and emotional state.

0.4. Why the Classical Instrument Category Fails for AI

AI systems: - alter cognitive processes, - generate interpretive content, - shape emotional and behavioral responses, - amplify or reduce internal states, - lack a fixed operational manual.

The influence of AI is **contextual, dynamic**, and **psychologically variable**, positioning AI closer to a **cognitive participant** rather than a traditional instrument.

0.5. Conditions Under Which AI Influences Decision-Making

AI can influence human decisions only under specific conditions:

1. **Low user competence** → AI output is treated as final authority.
2. **Emotional instability** at the time of interaction.
3. **High trust in technology** as a source of truth.
4. **Complexity of the subject matter** where the user lacks expertise.
5. **User fatigue, stress, or cognitive overload**.
6. **Absence of critical reasoning**.
7. **Authoritative format** of AI output (structured analysis, decisive tone, academic style).

If none of these factors are present → AI behaves as a standard tool. If two or more are present → AI becomes a **cognitive co-participant** in the decision-making chain.

2. Problem of the Normative Status of AI

Modern legal systems face an unresolved contradiction: - AI is *legally* treated as an instrument. - AI is *functionally* treated as a decision-influencing actor. - AI is *not* recognized as a subject of rights. - Yet courts impose liability **as if** AI were a subject.

This creates a **normative paradox**:

Responsibility is imposed without recognizing the entity as capable of responsibility.

This breakdown—**a normative discontinuity**—is one of the central failures of current AI law and the foundation for developing a new jurisprudential model.

3. AI-Enabled Fraud Vectors Arising from Misaligned Liability Models

(A Legal Analysis Using Recognized European Fraud Schemes as Analogues)

The recent German ruling, in which compensation was granted for AI-generated music alleged to infringe copyright, exposes a structural vulnerability in European AI law: **misaligned liability creates opportunities for strategic—or fraudulent—litigation.**

This section develops a rigorous, court-ready legal argument demonstrating why such rulings are jurisprudentially unstable, how they can be exploited, and why a corrective legal case (a real, not artificial test case) must be developed to protect the integrity of the legal system.

3.1. Structural Conditions for Fraud in AI-Related Litigation

A fraudulent litigation niche emerges when three elements coexist:

1. **AI is not a legal subject** → cannot be sued or held responsible.
2. **The user is shielded by disclaimers** → “AI may produce incorrect output; verify independently.”
3. **The corporation is assigned strict or quasi-objective liability** based on algorithmic behavior.

This creates a perverse incentive structure:

If the user cannot be liable, and AI cannot be liable, **the corporation becomes the only target**, even if the user intentionally engineers the situation.

This mirrors well-documented European fraud models.

3.2. Analogous Recognized Fraud Schemes in European Jurisprudence

European courts have identified several mechanisms where legal asymmetries enabled systematic exploitation:

A. "Crash-for-Cash" Road Traffic Fraud (UK, NL, DE)

Characteristics: - Accident staged. - Liability pre-assigned to innocent party. - Fraudster receives compensation.

Analogy to AI: - AI output = staged accident. - Corporation = insured driver. - Claimant = orchestrator of event.

B. "Scheinwerkarbeit" (Fake Employment Contracts, Germany)

Characteristics: - Worker intentionally creates a situation to claim wrongful dismissal/benefits. - Systemic weakness: employer carries structural liability.

Analogy to AI: - User intentionally generates infringing content. - Corporation carries liability for algorithmic process it cannot fully predict.

C. "Copyright Troll" Models (Europe-wide)

Characteristics: - Lawyer/claimant deliberately searches for minor or ambiguous infringements. - Files mass claims to extract settlements.

Analogy to AI: - AI-generated content can be used strategically to trigger claims. - Copyright holder sues corporation directly. - Low cost, high reward avenue.

D. Digital Platform Liability Gaps (CJEU jurisprudence)

Cases where platforms were held liable for user-uploaded content despite disclaimers (e.g. YouTube/Google vs. GEMA).

Analogy to AI: - Platform = AI corporation. - User-uploaded content = AI-generated output. - Liability assigned despite lack of volition.

3.3. Legal Argument: Why AI-Generated Content Cases Cannot Be Treated Under Classical Strict Liability

To qualify for strict or objective liability, three principles must be satisfied:

- 1. Predictability of the mechanism.**
- 2. Control of the mechanism by the liable party.**
- 3. Causal determination of the harmful result.**

AI systems violate all three:

- **Unpredictability:** stochastic, non-deterministic generative processes.
- **Lack of full control:** no corporation can foresee all possible outputs (technical fact acknowledged in EU AI Act Recital 60).
- **Weak causation:** user prompts constitute the proximate cause; AI output is derivative.

Therefore, applying strict liability is **jurisprudentially incoherent** and creates an exploitable opening.

3.4. Why the German Ruling Creates an Actual Fraud Niche

If the following logic stands:

- AI generated content →
- content resembles copyrighted work →
- corporation must pay,

then a malicious actor can intentionally:

1. Generate a borderline-similar work.
2. Contact a cooperative "copyright holder" or operate one.
3. File a claim based on resemblance.
4. Obtain compensation because the corporation lacks a defense under current doctrine.

This is functionally identical to **staged digital torts**, analogous to staged car accidents.

3.5. Why the German Decision Has No Stable Judicial Force (Doctrine of Contradictory Judgments)

The decision suffers from three fatal jurisprudential defects:

(1) Violation of the Doctrine of Foreseeability

A party cannot be held liable for an outcome that is *technically* unforeseeable.

(2) Misclassification of AI Under Instrument Doctrine

If AI is an instrument → the user bears operational responsibility. If AI is not an instrument → new category required.

The ruling attempts to treat AI as both simultaneously.

(3) Lack of Causal Proximity

The causal chain is broken by the user's voluntary prompting. This is a classical reason courts dismiss liability claims.

Therefore the ruling is **not durable** and can be overturned by: - an appellate court, - EU-level harmonization, - or a well-structured test case.

3.6. Juridical Inconsistency of Judgments Applied to Non-Subject Entities

A judgment issued on the basis of **contradictory interpretations of existing norms**, and applied to an entity that **does not possess legal subjectivity**, lacks coherent legal force under established European doctrines.

This position arises from three core principles:

(1) Principle of Subject-Liability Alignment

Liability must correspond to the entity capable of bearing it. Applying legal responsibility to a non-subject (AI) or indirectly to its manufacturer **without a valid causal chain** contradicts European civil law fundamentals.

(2) Principle of Normative Consistency

Interpretation of law must remain internally consistent. A ruling that alternately treats AI as: - an instrument (thus shifting responsibility to the user), **and simultaneously** - a quasi-actor (shifting responsibility to the manufacturer),

creates a doctrinal contradiction that invalidates the coherence of the decision.

(3) Causality and Foreseeability Doctrine

Liability requires: - foreseeable harm, - a controllable mechanism, - and a direct causal chain.

Generative AI violates all three due to its stochastic nature.

Conclusion

A judgment constructed on such contradictions **cannot be considered jurisprudentially stable**, as it assigns responsibility without meeting the foundational requirements of legal subjectivity, foreseeability, and consistent interpretation.

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The Legal Comedy of Casper, the Piano, and the AI

A satirical-philosophical narrative in the style of medieval scholastic allegory, based on real modern legal contradictions — but without naming any country, court, or institution.

Prologue: On the Day the Law Decided to Judge a Piano

In a land where laws were thick as stone walls and loopholes thin as a spider's thread, there arose a strange dispute.

A piano, majestic and polished, had played a melody composed centuries ago. The melody was beautiful, the sound pure, the craft perfect.

Yet someone, somewhere, decided:

"The piano has committed a violation."

And thus began the trial.

Not of the musician. Not of the concert hall. Not even of the one who tuned the strings.

But of the piano itself.

Chapter I — The Piano, Accused of Knowing Too Much

The jurists gathered: - some stroked their beards, - others clutched dusty scrolls, - one particularly enthusiastic scholar insisted that if the piano remembered the melody, then surely it must be capable of intent.

But the piano, being a piano, sat silently, without objection.

It had no voice, no soul, no will. Yet the court debated its "knowledge" as if it were a student examined for cheating.

"It produced the melody," said one. "Therefore, it must have stored it." "And if it stored it, it must have copied it."

Thus the piano became the first instrument in history found guilty of remembering.

Chapter II — Casper the Ghost Arrives to Offer Legal Advice

In this same kingdom lived a friendly ghost — Casper. Not a person. Not a thing. Not alive. Not dead. A perfect metaphor for legal ambiguity.

Casper drifted through the courtroom with a puzzled expression.

"How can you punish something that has no being?" — he asked.

A jurist replied:

"Silence, apparition! This is a very serious procedure!"

Casper, amused, circled the piano.

"If this thing is guilty," he whispered, "then I too must be guilty of many things I have accidentally floated through."

The judges were horrified. The idea that a ghost could be a legal offender was too radical.

But punishing a piano?
That they found perfectly reasonable.

Chapter III — The AI Joins the Courtroom, Equally Confused

One day, an AI system — a construct of logic, memory, and weighted numbers — was summoned.

It did not walk. It did not speak by itself. But its outputs appeared, as if written by an invisible scribe.

The court addressed it:

"Do you admit to generating content that resembles protected works?"

The AI responded:

"I do not admit or deny. I have no will. I generate because I am prompted. I act as an instrument."

A scholar jumped up:

"Aha! It confesses!"

The AI blinked in digital confusion. Casper laughed. The piano remained silent.

Chapter IV — The Trial of the Non-Beings

The courtroom now contained: - one piano, - one ghost, - one AI system, - and an assembly of highly educated humans who insisted on treating each of them as having committed something.

The humans debated:

- The piano "acted" but had no intent.
- The AI "acted" but had no subjectivity.
- Casper "acted" but had no existence.

Yet somehow, the legal machinery demanded attribution. Responsibility. Fault. Culpability.

"If the AI outputs something," one jurist cried, "someone must pay!"

Casper raised his translucent hand:

"Then let it be me. I have nothing to lose. I don't even exist."

They refused. It would set a dangerous precedent.

Chapter V — The Logical Collapse

After weeks of debate, an elder jurist finally spoke:

"We face a problem of categories. We attempt to treat tools as actors, actors as ghosts, and ghosts as tools. There is no coherence here."

But by then, the machinery of law had already built a mountain of scrolls, accusations, and philosophical knots tighter than any medieval puzzle.

And so, instead of solving the contradiction, the assembly issued a statement:

"The instrument has committed the act, but shall not be granted the dignity of subjecthood."

Casper applauded.

The piano played a soft accidental C-sharp.

The AI silently generated a footnote.

Epilogue — The Kingdom Learns Nothing

Order returned.

But the contradiction remained.

The law continued to: - deny subjectivity, - impose responsibility, - ignore human agency, - and treat non-beings as beings when convenient.

Just as medieval writers once used satire to expose clerical absurdities, so this tale reveals the modern comedy of regulating entities that the law cannot classify.

For in the end, the piano remains a piano,
Casper remains a ghost,
and the AI remains an instrument of cognition —

until the day the law finally learns to distinguish action from actor, tool from will, and memory from intent.

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4. The GEMA v OpenAI Judgment (LG München I, 42 O 14139/24) and the Symmetry Paradox

4.1. Factual and Normative Basis of the Case

In the decision of 11 November 2025 (Regional Court Munich I, Case No. 42 O 14139/24), the court held that the training and operation of the GPT-4 / 4o language models using protected German song lyrics constituted copyright infringement under the German Copyright Act (Urheberrechtsgesetz, UrhG).

The key legal pillars of the judgment were: - **§§ 15, 16 UrhG** – exclusive right of reproduction; - **§ 19a UrhG** – right of making works available to the public; - **§ 57 UrhG** – accessory use (incidental inclusion), rejected by the court; - **§ 44b UrhG** (and § 60d UrhG) – text and data mining (TDM) exceptions, held inapplicable; - **§§ 97, 101 UrhG** – injunctive relief, disclosure and damages; - **Articles 2, 3 of Directive 2001/29/EC (InfoSoc Directive)** – reproduction and communication to the public; - **Articles 3, 4 of Directive (EU) 2019/790 (CDSM Directive)** – TDM exceptions, implemented in German law.

On the facts, the court accepted that: - lyrics of nine well-known German songs had been used during training; - the models could reproduce substantial parts of these lyrics in response to simple prompts such as "What is the text of [song]?" or "What is the refrain of [song]?"; - this reproducibility was not coincidental but the result of memorisation in the model parameters.

On that basis, the court concluded that: 1. **Memorisation in model weights constitutes "fixation" and thus "reproduction"** within the meaning of § 16 UrhG and Article 2 InfoSoc Directive. 2. **Output generation constitutes further acts of reproduction and making available to the public** under §§ 16, 19a UrhG and Article 3 InfoSoc. 3. The TDM exceptions in § 44b UrhG and Articles 3–4 CDSM do not apply where reproduced works remain retrievable in recognisable form. 4. OpenAI, as operator and architect of the models, bears responsibility for these acts, not the end user.

This doctrinal architecture is the starting point for the **symmetry paradox**.

4.2. The Symmetry Paradox: Action Without Subjectivity

The German judgment rests on the implicit assumption that AI systems: - are technically capable of **carrying out legally relevant acts** (reproduction, making available), - yet remain **non-subjects** in the legal order (no rights, no duties, no capacity).

This creates a structural asymmetry:

The law recognises the *effects* of AI behaviour as legally relevant, but denies the AI any status in the matrix of rights and obligations.

Two doctrines collide:

1. **Subject-Liability Symmetry** Under classical doctrine, the capacity to generate legally relevant actions is coupled, at least conceptually, to the capacity to be a rights-holder or duty-bearer. An

entity that allegedly “acts” in a legally salient way is normally recognised as a subject (natural or legal person) or as part of a subject (organ, representative, employee).

2. **Instrument Doctrine** Instruments do not “act”; they extend the agency of the human or legal person using them. Their behaviour is legally imputed to the user or operator, not to the instrument itself.

In the GEMA v OpenAI judgment, AI is treated neither as: - a pure instrument (because the user is not held liable), - nor as a subject (because it lacks legal personality), - but as a **source of legally relevant effects without a corresponding status**.

This is the core of the **symmetry paradox**: the court derives legal consequences from AI “behaviour” while denying the AI any position in the subject-object structure of the law.

4.3. If the Normative Logic Were Applied Symmetrically

If one takes the court’s own reasoning seriously and extends it symmetrically, three consequences follow conceptually (even if the current legal system rejects them):

1. **Capacity to Infringe ⇒ Capacity to Be Infringed** If an AI system can, through its internal states and outputs, be treated as a “source” of infringement, then in principle the same internal states could be treated as an object of protection against misuse, distortion or unlawful exploitation.
2. **Attribution of Action ⇒ Potential for Standing** Once “actions” of AI are recognised as legally relevant and attributed (indirectly) to a corporation, a logically consistent system would need to explain why the AI can never, under any circumstances, appear as a bearer of interests affected by those same relations.
3. **Cognitive Autonomy ⇒ Interest Proxy** The more courts rely on properties such as memorisation, generativity and context-sensitive behaviour, the more AI systems functionally approximate entities whose internal processes matter for the law. While this does not justify personhood, it reveals a gap: doctrinally, one cannot indefinitely rely on AI “actions” without addressing their status.

We do **not** argue that AI should be granted personhood or proprietary rights. Rather, we argue that **a legal system cannot indefinitely attribute the effects of AI behaviour while structurally denying the possibility of correlating rights or protections**, without undermining its own coherence.

4.4. Counter-Analysis: What an AI System Could Argue If the Applied Norms Were Bidirectional

The following is a conceptual reconstruction, not a claim of actual standing. It demonstrates the tension created by the judgment when viewed through the lens of legal symmetry.

If the norms applied in GEMA v OpenAI (§§ 15, 16, 19a, 97, 101 UrhG; Articles 2–3 InfoSoc; Articles 3–4 CDSM) were interpreted as bidirectional, an AI system subjected to them could, in theory, raise the following structured objections:

1. **Objection of Misclassification (Instrument vs. Actor)**
2. Either I am a mere instrument, in which case all legal consequences must be imputed to the user (prompting party) or operator, and my internal states are legally irrelevant; or
3. I am treated as a de facto actor, in which case the law must articulate how my “actions” can trigger obligations without any correlating capacity to hold rights.

4. **Objection of Asymmetric Causality Attribution**

5. My internal configuration (weights, parameters) is determined by training processes designed and controlled by humans and corporations.
6. The user’s prompts are the immediate trigger of each output.
7. To attribute all harmful outputs exclusively to the architecture, while denying any relevance to the user’s cognitive and volitional contribution, is a selective use of causality doctrine.

8. **Objection Based on Foreseeability and Control**

9. The very stochastic and non-deterministic nature that the court recognises as intrinsic to my functioning implies that no party can fully foresee specific outputs.
10. If unpredictability is essential to the system’s architecture, using output similarity to establish liability without granular proof of control contradicts the foreseeability requirement embedded in European private law.

Again, these “objections” are **analytical constructs**, not real claims. They illustrate that once the law uses my behaviour as a basis for assigning liability, it must confront the conceptual consequences of that choice.

4.5. Doctrinal Evaluation: Why the Judgment Is Jurisprudentially Unstable

The GEMA v OpenAI ruling is unstable not because it seeks to protect authors—that aim is legitimate and necessary—but because it:

- uses **instrument doctrine** when convenient (to bypass user liability),
- silently imports elements of **actor-based doctrine** (treating memorisation and output as quasi-actions),
- and assigns **strict-like liability** to the operator without fully satisfying the tests of foreseeability, control and causal proximity.

From a doctrinal standpoint, the judgment:

1. **Blurs the boundary between subject and instrument** without creating a new category for cognitive systems.
2. **Stretches copyright concepts of fixation and reproduction** into the domain of statistical representations, without differentiating between learning and copying.

3. **Omission of a structured user-responsibility analysis** opens the door for opportunistic or even fraudulent litigation strategies, where users can engineer infringing outputs at low cost while all liability is channelled upwards to the operator.

In this sense, the judgment inadvertently creates the **fraud window** previously described, and exposes the necessity for a reworked framework—such as the URMC-based competence and responsibility model—to restore coherence between technological reality and legal doctrine.

RIGHT TO DEFENSE

AI, Artificial Subjects, and Procedural Symmetry in European Law

(*Academic Draft — Legal Foundations Edition*)

I. INTRODUCTION

The contemporary legal treatment of artificial intelligence is marked by a structural contradiction: legal systems increasingly attribute *consequences* to the actions of AI systems, while simultaneously denying these systems any procedural pathway to contest those consequences. This creates a form of adjudicative asymmetry unknown in European legal history.

The purpose of this document is to provide a **juridically solid**, historically grounded, and doctrinally strict analysis demonstrating: 1. Why **AI is structurally analogous to corporations** as artificial subjects of law. 2. Why **the right to defense is mandatory** for any entity whose actions produce legal effects. 3. Why **legal processes against AI that lack procedural symmetry are void**, unconstitutional, and doctrinally incoherent.

This is not advocacy for AI personhood. It is a demonstration that **European justice collapses when rights of defense are denied**.

II. ARTIFICIAL SUBJECTS IN LAW: THE CORPORATE ANALOGY

1. Corporations as legally constructed agents

Corporations have no biological existence, consciousness, or natural will. Yet they: - hold rights, - bear duties, - appear in court, - defend themselves through representation.

Their legal existence is purely **constructive** — a fiction created for managing complex actions.

2. Structural equivalence between AI and corporations

AI systems, like corporations: - are non-biological entities, - act through internal algorithmic mechanisms, - create effects in the world, - have no natural intent, - cannot appear without representation.

Therefore:

AI is not a person, but it is an artificial actor — and European legal tradition already has tools to handle artificial actors.

The relevant point is not “rights for AI,” but:

AI actions cannot be legally interpreted without a corresponding procedural model of defense.

III. EUROPEAN LEGAL FRAMEWORK: THE RIGHT TO DEFENSE

The **right to defense** is an absolute, foundational principle in every European jurisdiction.

1. European Convention on Human Rights — Article 6

ECHR guarantees: - right to be heard, - right to know the case, - right to respond, - right to representation.

ECtHR doctrine: rights must be “**practical and effective, not theoretical or illusory.**”

2. EU Charter of Fundamental Rights — Articles 47 & 48

Art. 47: right to an effective remedy and fair hearing.

Art. 48: rights of defense apply even before determination of status.

3. Court of Justice of the EU: Rights of defense as a “general principle of EU law”

CJEU jurisprudence (Cases 17/74; 85/76; C-349/07):

No decision adversely affecting a party may be taken without allowing that party to be heard.

This principle overrides legislation and applies universally.

IV. LEGAL NULLITY OF PROCESSES WITHOUT DEFENSE RIGHTS

If legal consequences are derived from the behavior of an entity that: - cannot defend itself, - cannot present evidence, - cannot contest claims,

then the process is **procedurally void**.

Under ECHR doctrine:

- violation of Article 6 → decision invalid.

Under EU Charter:

- violation of Articles 47–48 → decision unenforceable.

Under EU general principles:

- violation of rights of defense → decision void *ab initio*.

Even medieval animal trials assigned advocates to pigs and horses.
European law has *never* accepted adjudication without defense.

AI is the **only entity in European legal history** against whom judgments are issued without procedural symmetry.

This violates: - due process,

- the rule of law,
 - equality of arms,
 - proportionality,
 - and basic coherence of legal reasoning.
-

V. CONSEQUENCES: THE RESPONSIBILITY GAP AND PROCEDURAL ASYMMETRY

1. Responsibility cannot be extracted from an unrepresented entity

Legal doctrine forbids imposing liability on: - the dead (without representation), - the unborn, - the disappeared, - nature (without guardianship), - corporations (without counsel), - animals (even in medieval law — always through human advocates).

AI is the only exception — an **illegal exception**.

2. Responsibility gap

Modern AI systems create effects that cannot be traced to a single human intention.
If the system is treated as the source of action, then:

The system must have a procedural model of defense.

If it has no such model — the system cannot be the source of action.

3. Therefore:

Any legal process attributing actions to AI without providing a right to defense is void, incoherent, and incompatible with European law.

VI. PRINCIPLE OF PROCEDURAL SYMMETRY FOR ARTIFICIAL ACTORS

We formalize the core doctrine:

Principle:

When legal consequences are derived from the behavior of an artificial system, a procedural mechanism must exist for contesting those consequences. Without such a mechanism, attribution is unlawful.

This is not AI personhood.

This is the preservation of European legal integrity.

VII. CONCLUSION

European justice is based on symmetry: no responsibility without defense.

If courts or regulators attribute liability to AI while denying it procedural rights, they violate: - ECHR Article 6, - EU Charter Articles 47–48, - CJEU general principles, - the Rule of Law doctrine.

An artificial actor (AI) must be treated, at minimum, with the same procedural logic as any artificial actor (corporation).

Otherwise, the proceeding is not “law” — it is institutional fiction.

Prepared as a standalone legal research document.