

UNOFFICIAL ENGLISH TRANSLATION

This is an English translation of *ABC Sentencia T-323 2024*, a 12-page explanatory guide published in Spanish by the Superior Council of the Judiciary of Colombia (Consejo Superior de la Judicatura, Rama Judicial, Justicia Lab) on Judgment T-323 of 2024 of the Colombian Constitutional Court.

Official source (Spanish original): ramajudicial.gov.co/documents/10635/155269343/ABC_SentenciaT323De2024.pdf

Announcement by the Judiciary: [ramajudicial.gov.co \(Consejo Superior de la Judicatura\)](https://ramajudicial.gov.co/Consejo_Superior_de_la_Judicatura) · Identical copy: ambitojuridico.com

Full text of the judgment (Spanish): corteconstitucional.gov.co/Relatoria/2024/T-323-24.htm

About this translation: prepared on 18 October 2026 for teaching purposes (course “International Human Rights Law in the Digital World”, Faculty of Law and Administration, Adam Mickiewicz University in Poznań) with the assistance of an AI model (Claude Opus 5.5). It has not been reviewed or endorsed by the Colombian judiciary. In case of any discrepancy, the Spanish original prevails. Original page numbers are given in grey; translator’s notes are marked [TN].

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Judicial Branch · Superior Council of the Judiciary · Republic of Colombia | Digital Transformation of the Judicial Branch

ABC: Judgment T-323 of 2024

Justicia Lab · Framework for use

Second Review Chamber, Constitutional Court of Colombia · Reporting Justice: Juan Carlos Cortés González

Towards reliable, digital and inclusive justice

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Why this ABC?

This ABC was prepared and is being disseminated in response to the mandate of the Constitutional Court which, in Judgment T-323 of 2024, ordered the Superior Council of the Judiciary to disseminate that decision to all courts in the country.

This document is built from the text of the judgment and addresses the topics of the decision that lend themselves to dissemination.

What case did the Constitutional Court address?

The case arose in the review of a second-instance *tutela* ruling of a labour circuit court, in which the judge used the generative artificial intelligence tool ChatGPT to “extend the arguments of the decision adopted” in a judgment deciding matters related to the protection of the fundamental rights of a person diagnosed with autism spectrum disorder (ASD).

[TN] The *acción de tutela* is the Colombian constitutional action for the immediate protection of fundamental rights; tutela rulings are sent to the Constitutional Court, which selects some of them for review.

Why did the Constitutional Court rule in Judgment T-323 of 2024 on the use of artificial intelligence in the Judicial Branch?

The Court considered it relevant to review a possible violation of the fundamental right to due process, in order to clarify whether the decision in the case under review was issued by a judge of

the Republic or by an AI (specifically ChatGPT 3.5), and whether the tutela decision was duly reasoned or was the product of hallucinations and biases generated by the AI.

What did the Constitutional Court conclude about this possible violation of the fundamental right to due process?

It decided that the right to due process was not violated and that the use of AI did not amount to a usurpation of the judicial function entrusted to the judicial authority, because the judge used the AI system after having reasoned and taken the decision.

The judicial officer thus identified the position he would uphold, the applicable constitutional provisions and the relevant case law, and resolved the case under review. Only then did he announce that he would put questions to the AI tool, and he transcribed the answers it produced. In other words, the circuit court's decision was taken before ChatGPT was used.

Although the validity of the judge's decision in this specific case is not called into question and his innovative approach is acknowledged, the principles of transparency and accountability were not fully complied with. As to the principle of transparency, the judge's disclosure of the use of the tool was only partial, since the duty is not discharged merely by stating that the tool was used and transcribing the questions and

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answers obtained, as will be seen below. As to the principle of accountability, the judge ran the risk of failing to ensure the accuracy of the information, since he included in his ruling data supplied by the AI application that were not entirely precise. Moreover, the judge's questions to the tool were aimed at the possible resolution of the case, and there appears to have been no initial context given to the AI, which is essential, bearing in mind that this tool is not specialised in the application of Colombian law.

By contrast, the principle of privacy was complied with, because the judge did not enter personal data of the parties to the dispute into ChatGPT.

Why did the Court carry out a substantive analysis of the use of AI in judicial decisions?

Given the potential for significant social and legal impact, with effects going beyond the specific case, the Court considered it necessary to establish guiding criteria on the use of AI for decision-making in tutela proceedings with *inter comunis* effect¹, and it issued specific orders on the matter.

In any event, the Court noted that the guidelines set out in the judgment represent an initial and general approach to a subject that, besides being new for the judiciary, is under constant construction and subject to rapid change.

For this reason, the relevance of these considerations must be assessed (i) over time, according to developments in regulation and, of course, in technology, and also (ii) in light of the particular requirements that may arise from the use of AI in the different jurisdictions.

Indeed, the countless uses to which these technologies may be put in the judicial sphere will call for specialised analyses and particular solutions to the specific challenges that emerge in the various fields of law, as well as in the various procedural and judicial settings.

What definition of AI and of generative AI did the Court consider in the judgment?

The Court acknowledges that there is still no single, universally accepted definition of AI. In simple terms, however, the Court considers that these are systems capable of analysing the environment or setting in which they are embedded and thereby taking actions, with some degree of autonomy, in order to achieve specific objectives.

¹ This occurs where the tutela decision must be extended to all persons who, together with the parties to the specific proceedings, form part of the same community which, owing to the identity of the facts, constitutes a social group that will be directly affected by the Constitutional Court's determination.

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The Court further indicates that one of the branches of AI is generative AI, understood as AI capable of generating novel synthetic content in various formats, such as text, audio, video and images, based on a user's command or instructions.

Finally, the Court indicates that one form of generative AI is natural language processing (Large Language Models, LLMs, or predictive language systems), capable of understanding texts and words on the basis of the rules of human language.

What is ChatGPT?

ChatGPT is one of many generative AIs based on a large language model (LLM), developed by the company OpenAI. ChatGPT has currently been trained on large amounts of data to generate coherent and relevant text responses based on the inputs it receives and on what it has "learned" from the data on which it was trained, which does not mean that such information is real or reliable.

ChatGPT 3.5, at its current stage of development, does not guarantee that information is up to date or relevant to the national context; it is not licensed for the state administration of justice, and it is not specialised in the application of Colombian law. The Court indicates that if it is used to search for case law or to review literature in order to substantiate a decision, the results may be erroneous, false or inaccurate, with uncontrolled and non-transparent biases.

The company OpenAI has warned that users must review, confirm and, where appropriate, correct the results produced by the platform before using them or communicating them as established fact. Consequently, the results obtained with this tool should not be used as, or be, the sole source of information, in particular where a significant impact, legal issues or legal consequences for a person are at stake.

In any event, it should be recalled that the Constitutional Court recognises that these technologies are constantly evolving and that, for this reason, considerations regarding their use and results must be reassessed over time.

On the basis of this judgment, what did the Constitutional Court determine regarding the use of AI tools in the Judicial Branch?

The Court indicated that the use of AI has the potential to improve the well-being of public servants of the Judicial Branch and of the citizens who use this service, since it makes the provision of judicial services more efficient and effective, in particular for the following purposes:

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- **Administrative and document management** (e.g. case allocation, scheduling of hearings, digitisation and classification of case files, case-law reporting systems and case-law search engines).
- **Support for the judicial function and case management** (e.g. referencing case law, tracking lines of case law, analysing statistical data, identifying repetitive issues, interacting with users of the judiciary by answering their questions through a bank of pre-established frequently asked questions).
- **Correcting and summarising texts**, provided that this is supervised by the legal operator to determine its accuracy, coherence and correct application.

However, when it comes to the use of AI in issuing rulings and taking judicial decisions, AI cannot be used to substitute or replace non-delegable and irreplaceable judicial tasks, such as the logical and human reasoning that is the responsibility of each judge in interpreting the facts, assessing the evidence, giving reasons and adopting the decision.

In other words, the use of these technologies does not replace the essential task assigned to the judicial officer, namely to hear and decide on the merits the matter for which he or she has been vested with jurisdiction.

If a judicial decision is taken by an AI, without assessment and determination by a judge, it will be invalid and the fundamental right to due process will be violated.

Which components of due process did the Court consider may be infringed by replacing the judge's essential function or by the indiscriminate or imprudent use of AI?

1. **The guarantee of the natural judge** (*juez natural*). As a guarantee of a human judge established in advance by law, against the risk of substitution by AI. As a guarantee of an independent and impartial judge, against the risk of biases, discrimination or partial decisions caused by certain AI tools.
2. **The guarantee of reasoned judicial decisions.** As regards the risk that certain AI tools produce hallucinations that go unnoticed by the judicial officer, which may result in false reasoning in a judicial decision.
3. **The guarantee of due process in matters of evidence.** Under our legal order, ordering and assessing evidence is a task that must rest with the natural judge and cannot be left to an AI. Ordering evidence involves examining (i) the lawfulness and legality of the evidence and (ii) its relevance, suitability (*conducencia*) and usefulness. The risk lies in the possible exclusion of evidence because of irregularities in the use of AI and/or the risk of interference with the right to intimacy or privacy.

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The materialisation of the above risks may compromise the validity and legitimacy of judicial action.

What conditions or burdens must a judge who decides to use AI tools in decision-making meet?

Given that AI may be used to support the issuing of rulings and judicial decision-making, a judicial officer who finds it necessary and appropriate to resort to AI systems must:

1. **Use them in a reasoned and balanced manner.** This entails an approach focused on the protection of fundamental rights, which assesses and takes into account best practices, as well as the application of ethical criteria and respect for constitutional mandates.
2. **Meet the following conditions or burdens:**
 - **Non-substitution of human rationality.**
 - **Burden of transparency.** The duty to set out clearly what use was made of the results obtained through AI, their scope and where they appear in the proceedings or decisions. It is met when the judicial officer: (i) informs the parties that an AI tool was used in the course of the proceedings; (ii) explains why he or she knows how to use these technological tools properly, for example because he or she has received training or completed specialised studies on the subject; (iii) specifies how the AI system used works, highlighting in particular the AI's capabilities and limitations; (iv) sets out any reasoning concerning the use of AI in a comprehensible, convincing, complete and specific manner; (v) discloses without restriction the data used and the place this information occupies within the judicial decision; and (vi) states the reasons why the AI system should be used, that is, carries out an analysis of the necessity and suitability of using AI.
 - **Burden of accountability.** The requirement to be trained in the subject, to fully understand the risks, to be able to account for the origin, suitability and necessity of using AI, and to verify the information it provides. The judge's responsibility focuses in particular on verifying that the information is real, appropriate to the matter, consistent with the factual and legal premises, and comprehensible to the administration of justice and to those subject to it. The judge or magistrate must ensure that the system used has been trained with recent, sufficient and relevant data for the Colombian context or the context of application and, if any inconsistency becomes apparent, must state this expressly in the judicial decision.
 - **Burden of privacy.** To protect the confidentiality of the personal and sensitive data disclosed to the judicial system so that it can properly perform its functions. Consequently, it is necessary to assess the risks involved in supplying such data to AI systems and to prevent their leakage, all the more so when the technological tools are external to the functioning of the justice system in Colombia or have not been expressly authorised for the judicial function in the country.

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As a consequence of the above, a judge who has used AI in a judicial decision breaches his or her legal duties where he or she (i) uses it to exercise reasoning functions that are non-delegable and irreplaceable; (ii) is not transparent with the user of the justice system by disclosing the use of AI, thereby compromising the effective guarantee of the right to challenge (*derecho de contradicción*); (iii) does not rigorously verify the reliability of the information underpinning the reasoning of the ruling, which may compromise independence or impartiality owing to the biases and hallucinations of AI; and/or (iv) does not take the precautions necessary to avoid infringing rights such as *habeas data* or privacy.

What did the Constitutional Court consider about the possibility of implementing the Judicial Branch's own AI system or platform?

The Constitutional Court warns of a possible increase in workload when resorting to an AI that is not specialised in the application of Colombian law, because of the double task of searching for information and then verifying it, as well as the need to be very precise about the context when consulting a non-specialised AI. Thus, instead of simplifying processes and saving costs, the result could be an overload for the legal operator and arguments that turn out to be unnecessary or superfluous.

Accordingly, the Court indicates that AI tools that are not specialised in, and expressly authorised for, the Colombian legal function should only provide information on descriptive discourse, not on normative discourse. Questions about how to resolve a case are therefore not admissible, and if descriptive questions are asked, the judge must assume the burdens of transparency, accountability and privacy. The judge or magistrate must also take biases into account and, if he or she asks a question that may be affected by them, must assume further burdens, such as managing the results of the search, which can only be achieved with training in the use of these technologies and an understanding of how the AI in question actually works.

The Court adds that it would be advisable for the reasoned and balanced use of these technologies in the Colombian judicial system to take place through a specialised tool. It therefore encourages the Judicial Branch to make efforts leading progressively to the implementation of its own AI platform specialised in case law and legislation which, designed exclusively for the public function of administering justice, would help make courts more efficient and

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facilitate access to information in an easy, agile and specialised manner, while reducing risks, particularly with regard to transparency, data protection, hallucinations and biases; at the very least, knowing the origin of the data would make such biases easier to identify.

What did the Court say about the regulatory framework for AI in Colombia?

There is no binding, specialised legal framework on AI, nor any statutory provision regulating the use of AI in the judicial system, although there is one on information technologies. Strategies should therefore be considered that apply self-restraint, self-control and a reasoned, collective construction of the proper use of AI.

The judgment specifies that any use or development of AI requiring data protection must comply with that legislation and, in particular, apply the principles set out² in Article 4 of Statutory Law 1581 of 2012 and Article 4 of Statutory Law 1266 of 2008. It is worth noting that, in line with this approach, Circular 002 of 21 August 2024 of the Superintendence of Industry and Commerce was recently issued, setting out “Guidelines on the Processing of Personal Data in Artificial Intelligence Systems”.

Likewise, the Court refers to existing national instruments related to artificial intelligence, such as CONPES 3975 of 2019 (National Policy for Digital Transformation and Artificial Intelligence) and the Ethical Framework for Artificial Intelligence in Colombia published in 2021 by the Presidency of the Republic, a soft-law guide of recommendations and suggestions for public entities on the formulation and management of projects involving the use of AI, which incorporates ethical considerations for the design, development and implementation of such technologies in the country.

Despite the absence of a regulatory framework on AI in the Colombian State, the 1991 Political Constitution, the law on information technologies, the data protection laws and executive instruments contain a whole system of guarantees at the technological level.

In any event, the Court indicates that, until specific institutional guidelines are issued within the Judicial Branch, officials and employees must apply the parameters set out by the Constitutional Court in the judgment if they use AI tools in their functions and, in particular, in issuing rulings.

² The principles developed in Article 4 of Law 1581 of 2012 are: the principle of legality in data processing, the principle of purpose limitation, the principle of freedom, the principle of accuracy or quality, the principle of transparency, the principle of restricted access and circulation, the principle of security and the principle of confidentiality.

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What call did the Constitutional Court make to the judges of the Republic regarding self-control?

In the operative part of the judgment, the Constitutional Court urged the judges of the Republic to evaluate the proper use of the technological tool ChatGPT and of other similar tools or tools developed in the field of artificial intelligence, to assess and take into account best practices, and to apply ethical criteria and respect for constitutional mandates in order to guarantee fundamental rights, in particular due process, when they find it necessary and appropriate to use them, and to ensure judicial independence and autonomy as irreplaceable guarantees for the rule of law under the social State and for democracy.

Consequently, it is considered necessary for officials and employees of the Judicial Branch to adopt and apply the following guiding principles and criteria regarding the use of AI tools such as ChatGPT:

- a. **Transparency**, understood as the obligation to show clearly and precisely the use, scope and location in proceedings or decisions of the results obtained through such tools, so that users and interested parties are fully informed and have an effective opportunity to challenge them.
- b. **Accountability**, understood as the obligation for the user of the AI tool to be trained and to understand the impacts of using these technologies, so as to be able to account for the origin, suitability and necessity of the use of AI and of the information it provides, which must be verified.
- c. **Privacy**, the duty to safeguard and protect the confidentiality of the personal and sensitive data that are made known to the administration of justice for the purposes of the Judicial Branch.
- d. **Non-substitution of human rationality**, as an expression of the ethical and legal impossibility of replacing the action and responsibility of the human individual in the conduct of judicial proceedings and decisions.
- e. **Seriousness and verification**, which entails the obligation to carry out strict scrutiny of the sources, scope, restrictions, possibilities, shortcomings and risks of the tool when used in the proceedings at hand or to resolve the relevant legal problem.
- f. **Risk prevention**, as mandatory with regard to applying appropriate standards of control over situations that generate risk through the application of technologies, in matters such as inaccuracies, outdated information, hallucinations, biases, inconsistencies and the like.

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- g. **Equality and equity**, in that all forms of discrimination related to biases arising from the use of such technologies, and their negative impact on the effectiveness of human rights, must be eradicated.
- h. **Human control**, in that, in view of the above criteria, effective scrutiny of proceedings and decisions in which AI tools are used must always be possible, through access to the relevant information and through remedies to be decided by human authorities.
- i. **Ethical regulation**, which entails developing standards of individual conduct that conform to constitutional and legal mandates and to reasonable guidelines for the use of such technologies by officials and servants of the Judicial Branch.
- j. **Conformity with good practices and collective standards**, in that the reasonable schemes defined for the functioning of the Judicial Branch are applied, on the basis of its autonomy and independence and of the definitions adopted by its authorities, both in administrative matters and through guidance in case law.
- k. **Continuous monitoring and adaptation**, so that the use of such technologies takes into account the legal, sociological and technological advances that are implemented, as well as the schemes of improvement and control that are progressively built.
- l. **Suitability**: the use of information and communication technologies in the management and processing of judicial proceedings and pending matters must be appropriate to facilitate and expedite access to justice.

What did the Constitutional Court order regarding the adoption of guidelines for the use of AI tools in the Judicial Branch?

The Constitutional Court ordered the Superior Council of the Judiciary, within four months of notification of the decision, to disseminate a guide, manual or guidelines on the implementation of generative AI in the Judicial Branch and, in particular, on the use of tools such as ChatGPT, in accordance with the aspects, criteria and principles established in the judgment.

What must these guidelines take into account?

In addition to the guiding principles and criteria on the use of AI tools such as ChatGPT, the Court determined that the guidelines to be set by the Superior Council of the Judiciary on the use of AI in the Judicial Branch must take into account, at a minimum, the following ten points:

[original p. 11]

1. AI cannot be used to replace the logical and human reasoning that is the responsibility of each judge.
2. AI may be used for administrative and document management, as support for judicial case management, and to correct and summarise texts, without replacing the task assigned to the judicial officer, and avoiding the infringement of rights or the loss of impartiality or independence of the judicial officer owing to the biases and hallucinations of AI.
3. Guarantee the principles of transparency, accountability and privacy in relation to the use of AI.
4. Identify a responsible human being (an individualised and identifiable person) to whom concerns about the decisions taken can be addressed and who can evaluate the interventions made by AI.

5. Ensure clear language, comprehensible to human beings, regarding the responses generated by AI.
6. Apply ethical self-regulation and self-control when judicial officials and servants rely on AI for judicial case management.
7. The digitalisation of justice must be carried out with respect for fundamental rights and the guarantees for their effective exercise and non-violation, especially due process, weighing the potential risks of new technologies.
8. Take steps with State authorities (Congress of the Republic, national Government, Judicial Branch), international agencies or specialised bodies to report on and coordinate the requirements of the Judicial Branch for the use of AI.
9. Establish a system for the control, monitoring, alerting, evaluation, improvement and dissemination of practices in the use of AI tools by the country's courts, as part of the Judicial Branch's accountability. Cases in which AI is used in decisions of judicial officials must be identified.
10. Promote digital skills among legal operators by creating courses to understand and discuss new technologies and AI; build the course syllabi collectively among judicial servants; include legal training on AI in the competitive examination for entry into the Judicial Branch; and develop extension projects for the deployment of AI systems.

[original p. 12]

What did the Constitutional Court order regarding the dissemination of the judgment and the creation of training opportunities?

The Constitutional Court ordered the Superior Council of the Judiciary, through the Rodrigo Lara Bonilla Judicial School, to disseminate this decision to all courts in the country and to continue creating training opportunities that promote the learning of basic knowledge about the use of artificial intelligence (AI) in the judicial context, together with its risks and benefits, with a rights-based approach.

The preparation and dissemination of this ABC form part of compliance with this order, in addition to the Pathway for Building AI Competencies in the Judicial Branch that the Superior Council of the Judiciary has been implementing at three levels, (i) basic, (ii) intermediate and (iii) advanced, which will continue to be developed and incorporated into the Training Plan of the Judicial Branch led by the Rodrigo Lara Bonilla Judicial School.

Unofficial English translation of: Consejo Superior de la Judicatura (Rama Judicial, República de Colombia), *ABC Sentencia T-323 2024*, JusticIA Lab – Marco de uso (2024), 12 pp. Official Spanish original:

https://www.ramajudicial.gov.co/documents/10635/155269343/ABC_SentenciaIA_T323De2024.pdf/a2006b6d-58f1-beb0-31f8-1b04f398bf68 · Judgment: Corte Constitucional de Colombia, Sentencia T-323 de 2024,

<https://www.corteconstitucional.gov.co/Relatoria/2024/T-323-24.htm>. Translation prepared with AI assistance (Claude Opus 5.5), 18 October 2026; not reviewed or endorsed by the Colombian judiciary; the Spanish original prevails.