

## Towards a Criminal Classification of Crimes Committed through Artificial Intelligence in Peru

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**Citation:** Huamán, H. Y. B. and Rodríguez, W. R. (2025). Towards a Criminal Classification of Crimes Committed through Artificial Intelligence in Peru, *Journal of Cultural Analysis and Social Change*, 10(2), 2669-2676. <https://doi.org/10.1064753/jcasc.v10i2.1990>

**Published:** November 17, 2025

### ABSTRACT

This research examines recent legislative additions related to artificial intelligence (AI) in the Peruvian Penal Code (CPP), as well as the challenges posed by its use in the commission of complex crimes, such as the creation of deepfakes, digital identity theft, automated fraud, and other forms of cybercrime. Despite some progress, regulatory gaps persist to address these new criminal modalities, highlighting the need for a more precise and up-to-date criminal classification. In this framework, the study analyzes the deficiencies of the current legal system and contrasts them with comparative legislative proposals from other countries, it also underlines the urgency of incorporating modern penal provisions that address the misuse of intelligent systems, while respecting the principles of legality and due process. To ensure methodological rigor, a qualitative approach is adopted, based on the dogmatic analysis of Peruvian criminal law, a review of specialized legal doctrine and a comparative study of foreign legislative models. In addition, landmark cases are examined to identify key legal challenges. The aim is to propose guidelines that inform an effective criminal policy adapted to the impact of artificial intelligence in the criminal field.

**Keywords:** Artificial Intelligence, Criminal Law, International Law, Human Rights, Crimes

### INTRODUCTION

In recent years, artificial intelligence (AI) has ceased to be an exclusive tool in the technological field to become an active agent within multiple spheres of human life, including the legal one. Its accelerated expansion has generated significant benefits, but it has also posed new challenges in the field of Criminal Law, by facilitating the commission of increasingly complex crimes, such as the creation of *deepfakes*, digital identity theft or automated fraud. These new forms of criminality call into question the effectiveness of the current criminal legislation and show the existence of legal gaps that must be addressed urgently.

In this context, this study focuses on the need to move towards an adequate criminal classification of crimes committed using artificial intelligence in Peru, although recent regulatory additions have been made to the Penal Code, these are still insufficient in the face of the dynamism of criminal behaviors linked to the use of intelligent systems, in this sense, A dogmatic and comparative analysis of the deficiencies of the Peruvian legal system is proposed, in contrast to the legislative experiences of other countries and international guidelines on the matter.

The objective of this research is to propose guidelines that guide an effective criminal policy, adapted to the challenges posed by artificial intelligence, without violating the fundamental principles of Criminal Law, such as legality, due process and proportionality, with this, it seeks to contribute to the development of a modern

regulatory framework that protects fundamental rights, in accordance with the technological advances of our time.

### Artificial Intelligence and its Irruption in the Criminal Field

*Prima facie*, in order for conduct to be classified as punishable, there must be an objective classification in criminal law (*lex certa*), which is directly related to the principle of legality (*nullum crimen, nulla poena sine lege*), according to which there is no crime or punishment without a prior law. This principle is expressly enshrined in Article II of the Preliminary Title of the Criminal Code (CP), which provides:

*"No one shall be punished for an act that is not provided for as a crime or misdemeanor by the law in force at the time of its commission, nor shall he be subjected to a penalty or security measure that is not established therein."*

In addition, article 2, paragraph 24 (d), of the Constitution provides that:

*"No one may be prosecuted or convicted for an act or omission that, at the time of its commission, was not previously qualified by law, expressly and unequivocally, as a punishable crime; nor punished with a penalty not provided for by law."*

Along these lines, with the growing and measurable expansion of artificial intelligence, legal loopholes have arisen that are exploited by criminals to consummate illicit acts through the manipulation of intelligent systems.

However, *broadly speaking*, Ramírez [1] emphasizes that new technologies have opened up a field of previously unimaginable possibilities for the commission of behaviors with criminal and criminological relevance. Thanks to the use of web tools and digital platforms, crimes have been perpetrated that are not typified in current criminal legislation, in a consistent manner, Jiménez [2] points out that globalization has generated profound changes and improvements in cultural and economic relations; however, he warns that these advances are affected by accelerated technological development, which has resulted in a major challenge for contemporary criminal policy.

For his part, Alfaro [3] specifies that technology is a powerful weapon for the development of criminal injustice, so it is essential to have an adequate classification in criminal legislation, in order to prevent, punish and mitigate its consequences, along the same lines, Espinoza and Sanz [4] underline the urgency of incorporating new legal provisions that mitigate the inexorable advance of crimes committed with AI, likewise, the European Union (EU) specifies that certain intelligent systems represent an imminent risk to the protection of fundamental rights, following this idea, Kuteynikov [5] warns that not monitoring or identifying the consequences of AI in the commission of crimes could generate serious control gaps, so States must adopt necessary and urgent measures for their regulation.

In this regard, it is pertinent to mention that some European countries have begun to enact legal provisions aimed at establishing favorable conditions for the implementation and operation of AI-powered systems, such is the case of Belgium, which in 2018, through a Royal Decree, authorized the conduct of tests with autonomous vehicles, that is, those operated by artificial intelligence systems. in order to evaluate whether their use generated damage to protected legal assets, such as the physical integrity of passers-by. [6]

In Finland, according to the *Staatsblad de Belgisch* [7], a law was passed aimed at improving the safety and operation of transport, laying the foundations for the digitalisation and automation of traffic. This implied that the country legally prepared for the introduction of technologies such as autonomous vehicles and other smart mobility systems, ensuring their safe and regulated use.

For its part, Slovenia has promoted legislative projects focused on strengthening the protection of the personal data of its entire population, with the aim of mitigating the risk of violation of fundamental rights in the face of data manipulation through intelligent algorithms [8]. These initiatives reflect the growing international awareness of the need to adapt legal frameworks to the challenges posed by artificial intelligence, in order to prevent its use for illicit purposes and to ensure a balance between innovation and legal certainty.

**Table 1.** Criminal Offenses, in the Context of AI

| Country/Region             | Legal Context                                          | Typified Conduct                                                                                                                                                                                                                            |
|----------------------------|--------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Italy                      | Law No. 633 of 22 April 1941. Article 171(1).          | The offences of unauthorized reproduction or extraction of protected texts, data or other materials available online or in databases, when carried out through the use of artificial intelligence systems, for any purpose, are punishable. |
| South Korea                | Amendment to the Sexual Offences Act (September 2024). | It penalizes with three years in prison and a fine anyone who possesses or distributes digital pornographic material, generated with <i>AI (Deepfake)</i> .                                                                                 |
| New Jersey (United States) | Newly Enacted State Law (2025)                         | The law penalizes anyone who uses <i>AI (Deepfake)</i> to create misleading or harmful content with 5 years.                                                                                                                                |
| Indonesia                  | Law No. 1 of 2023.                                     | Cybercrime with AI; Criminal liability of the user or                                                                                                                                                                                       |

|        |                                         |                                                                                                    |
|--------|-----------------------------------------|----------------------------------------------------------------------------------------------------|
|        | Article 37, paragraph 2.                | developer.                                                                                         |
| France | Article 226-8 of the French Penal Code. | The law states that any content creation using <i>AI (Deepfake)</i> without consent is punishable. |

Source: Own Elaboration

### Current Status of Peruvian Criminal Legislation in the Face of AI Crimes

The State has the monopoly to be able to sanction behaviors that are considered legally reprehensible; that is, it carries out a social control called *ius puniendi*. Von Liszt, founder of penal policy, points out that the State directs the fight against crime through punishment and execution; it also protects the protected legal rights of its citizens [9]. Along the same lines, *the Supreme Court of Justice's Appeal for Annulment No. 820-2000-Tacna, dated 15-06-2000* [10], establishes that criminal law constitutes a means of social control that punishes conduct that injures or endangers legal rights protected by law, in order to achieve social peace. the State, in the *last resort*, can impose its punitive power to protect the rights of its citizens.

In this sense, in the face of the imperative advance of science and the emergence of new technologies, it is inevitable and necessary for the State to intervene to carry out a regulatory and dogmatic control of criminal laws, with the aim of regulating artificial intelligence. This, with the purpose of protecting the citizen against the risks that its use could bring in the perpetration of various crimes.

### Crimes against AI regulated in the Peruvian Penal Code

At the beginning of 2025, Peruvian legislators began to take seriously the need to regulate AI in criminal matters, so the executive branch on April 29, 2025 enacted Law No. 32314, published in the Official Gazette El Peruano, this marked a historic precedent in Peruvian legislation, since the use of Artificial Intelligence is explicitly incorporated into the Peruvian legal system. in the commission of crimes. This rule in question substantially modifies the Penal Code in the crimes of defamation and in the manipulation of deepfake, the substantial modifications will be detailed below:

#### *Aggravating Circumstances (Article 46 of the Criminal Code)*

The first amended article is found in Chapter II, within the section on the application of penalties of the Peruvian Criminal Code: Article 46, "Mitigating and aggravating circumstances". This provision qualifies the intensity of the crime either in its illegality or in its culpability, making it more or less serious. Its main function is to determine the amount of the penalty, that is, to graduate the sanction applicable to the punishable act (Plenary Agreement No. 1-2008/CJ-116) [11], although it should be noted that the second paragraph of the article in question was substantially modified.

It is important to note that the cases incorporated are considered more serious crimes, so that, due to their very legal nature, they are classified as aggravating circumstances (Supreme Court of Justice [EP, 25-03-2008] [12]).

Article 46. 2. The following constitute aggravating circumstances, provided that they are not specifically provided for to punish the crime and are not constituent elements of the punishable act: e) "Using in the execution of the punishable conduct the use of that which may result in common danger, as well as the improper use of artificial intelligence or similar or analogous technologies" ñ) When artificial intelligence or artificial intelligence is used to carry out the punishable conduct, or similar or analogous technologies.

#### *Crimes Related to Child Pornography (section 129-M)*

The amended article 129-M, crimes related to child pornography, establishes that "Whoever possesses, promotes, manufactures, distributes, exhibits, offers, markets, advertises, publishes, imports, exports or manipulates by any means objects, books, writings, images, videos or audios, or uses technologies based on artificial intelligence, including deepfakes or any multimedia content generated by artificial intelligence, for purposes related to pornography or performs live shows of a sexual nature, in which minors under eighteen years of age participate, shall be punished with imprisonment of not less than six nor more than ten years and a fine of one hundred and twenty to three hundred and sixty-five days"

The rule is categorical in punishing unlawful conduct committed to the detriment of minors. In this framework, deepfakes or "deep fakes" constitute an artificial intelligence technology that, through machine learning algorithms and neural networks, allows the creation, manipulation or alteration of images, videos and audios, giving them an appearance of authenticity, their dangerousness is manifested in the ability to impersonate a person's identity or to simulate scenes that never happened. presenting them as true [13].

When this technology is used for the purpose of child pornography, the threat is significantly compounded by allowing illegal material to be created without the child's physical involvement. In this way, the spectrum of punishable behaviors is broadened and the difficulty in detecting and punishing the crime increases, which requires a more rigorous regulatory and judicial response to this type of practice.

In short, the use of advanced technologies such as artificial intelligence in the generation of sexual content with minors increases the seriousness of the conduct, not only because of the direct violation of the dignity and sexual freedom of minors, but also because of the potentially massive and rapid dissemination of such material in digital environments. which justifies the severity of the penalties provided for by the legislator.

### ***Defamation by Amnesty International (Article 132)***

The right to honour, recognized in article 2, paragraph 7, of the Constitution, is a manifestation of the supreme value of human dignity. This right guarantees that everyone is protected against acts that seek to undermine him socially or individually, affect his reputation, offend him, humiliate him or, in general, undermine the esteem he deserves as a worthy human being. *STC 1970-2008-PA/TC [389]* [14],

In this line, this article is typified in the special crimes of the current penal code, Cabrera [15] considers that since its cataloguing begins with the vital legal interests of the individual, those that constitute a *conditio sine qua non* for the development and realization of the rest of the legal goods. The importance of this cataloguing function lies in the fact that it facilitates the rapid location of the sanctioning provision of the punishable conduct and, in addition, makes it possible to establish exactly the legal right that the law protects.

In this sense, as it is a fundamental right of greater protection, the article was modified as follows:

**Article 132. Defamation** *If the crime is committed by means of a book, the press or other means of social communication, or by means of artificial intelligence technologies, deepfakes or other content generated by artificial intelligence that disseminates false or degrading information that causes damage to reputation or image, the penalty shall be imprisonment of not less than one nor more than three years and a fine of one hundred and twenty to three hundred and sixty-five days.*

### ***196-A. Aggravated Exhaustion***

Fraud is a property crime that consists of deceiving a person, with the purpose of obtaining an illicit economic benefit to the detriment of the victim. Traditionally, this crime was carried out through direct deception, false documents or personal artifices [16].

However, with the emergence of artificial intelligence (AI) and new technologies, the legislator has recognized that these means are increasingly tools used to defraud. For this reason, Law No. 32314 incorporated as an aggravating circumstance of fraud:

*Article 196-A. "The penalty shall be imprisonment of not less than four nor more than eight years and a fine of ninety to two hundred days, when the fraud:7). It is carried out by manipulating the voice, image, audio or body movement of third parties, using artificial intelligence or similar technologies in a way that causes economic harm to the victim."*

This provision points to phenomena such as:

- Voice or video "deepfakes" that simulate real people to induce money transfers or authorize transactions.
- Audiovisual manipulation of executives, relatives or officials to deceive the victims.
- Digital impersonation that generates fraudulent trust, leveraging AI's ability to mimic human traits.

With this, it is recognized that technological fraud has a high power of condemnation and produces a greater social risk, so a more serious penalty is imposed (4 to 8 years in prison).

In short, Article 196-A paragraph 7 seeks to adapt the criminal classification to the digital age, protecting people's economic assets against fraud committed with artificial intelligence, where the manipulation of sensitive elements such as voice or image can generate significant economic damage.

### ***Intellectual Property Crimes***

The right to freedom of intellectual creation is intrinsically related to the fundamental rights of the human person, since it recognizes the exclusive power of the author to decide how, when and under what conditions his work is disseminated, exploited or protected. This right, at the same time, becomes a legal duty of respect on the part of third parties, ensuring a balance between the promotion of culture, innovation and the protection of creators [17].

In the Peruvian regulatory framework, the Penal Code punishes different behaviors that violate intellectual property, now incorporating specific provisions against the use of advanced technologies, such as artificial intelligence. Law No. 32314 (2025) has strengthened criminal protection in this area, highlighting the following crimes:

- Unauthorized reproduction and dissemination of works (art. 217 CP). It punishes anyone who, without the consent of the author or owner, reproduces, distributes or disseminates works, phonograms, artistic performances or broadcasts, imposing prison sentences of 2 to 6 years and a fine.
- Aggravated forms (Article 218 of the Criminal Code). The penalty is increased to 4 to 8 years in prison in the case, for example, of unpublished works disseminated without consent, or when devices that circumvent copy protection systems are manufactured or marketed.

- Plagiarism (art. 219 CP). Anyone who disseminates as his own, in whole or in part, a work of another of human authorship, even with alterations that attempt to hide the copy, is punished with 3 to 6 years in prison.
- Plagiarism with economic advantage (art. 220 f) CP). If an economic benefit is obtained from the improper exploitation of a plagiarized work, the penalty is increased from 4 to 8 years.

Circumvention of technological protection measures (arts. 220-A, 220-B and 220-C CP). Those who evade, manufacture, distribute or provide services aimed at circumventing the technological mechanisms that protect works, phonograms or broadcasts are punished with imprisonment of 2 to 4 years.

Together, these provisions reflect that the legislator seeks to adapt the criminal response to the challenges of the digital age, where artificial intelligence and technological systems facilitate new forms of copyright infringement.

**Table 2.** Legislative Comparison on AI Regulation

| Country        | Year of Disposition                                                                                           | Objective of the Standard                                                                                                                                                                                         |
|----------------|---------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| United States  | In October 2023, a provision was published to guide the design, use, and implementation of automated systems. | The regulation has guidelines for the protection of fundamental rights such as the right to privacy and personal intimacy, in the face of the imperative development of AI.                                       |
| European Union | March 2024                                                                                                    | The AI Act, the first major binding AI law in the world, was passed. It regulates according to risk levels (unacceptable, high, limited, minimal), with a focus on fundamental rights, security and transparency. |
| China          | August 2023                                                                                                   | The Cyberspace Administration published standards for generative AI services. Objective: to control content, ensure security, protect personal data and maintain "national security".                             |
| Canada         | 2022 (project, still under debate 2024)                                                                       | Artificial Intelligence and Data Law (AIDA), within bill C-27. It seeks to regulate high-impact AI systems, ensuring transparency, oversight, and accountability.                                                 |
| Brazil         | September 2023                                                                                                | Presentation of Bill 2338/2023, which establishes a legal framework for AI in Brazil. Objective: to protect fundamental rights, define the principles of responsible use and supervision.                         |

Source: Own Elaboration

## The Regulation of AI at the International Level

### *The European Union and Artificial Intelligence*

Various experts in artificial intelligence argue that several countries have already begun to implement specific regulations in their legal systems, in that line international organizations such as the European Council, decided to address this issue at some point with a view to protecting Human Rights, so it should be noted that within the framework of international cooperation, was approved on May 17, 2024 "*Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law*" this is the first legally binding international instrument in this field. Among the objectives of this agreement is to guarantee and protect Human Rights, as well as democracy and the rule of law in the face of the imperative advance of AI.

It is pertinent to note that this Framework Convention was drafted by 46 members belonging to the European Council with the participation of all observer States: Canada, Japan, Mexico, the Holy See and the United States of America, as well as the European Union, and a significant number of non-member States: Australia, Argentina, Costa Rica, Israel, Peru and Uruguay.

In this sense, in this agreement, it was established to have as a priority to protect some fundamental principles of the human person such as:

- Human dignity and individual autonomy
- Equality and non-discrimination
- Respect for privacy and protection of personal data
- Transparency and oversight
- Accountability and responsibility
- Reliability
- Secure innovation

It should be noted that, according to Lothar, 2024, the European Union (EU) approved the Artificial Intelligence Regulation, which was published on July 12, 2024, and entered into force on August 1, 2024, this regulation in question is very complex, given that it has 180 recitals, 13 chapters, 113 articles and 13 allegations

### **United Nations Assembly**

On March 21, 2024, the General Assembly of the United Nations (UN) issued a landmark resolution on the promotion of artificial intelligence systems, "*Seizing the opportunities of safe and reliable artificial intelligence systems for sustainable development*" (). It is pertinent to note that this document was supported by more than 120 member states led by the United States, which urges all nations not to use the AI system against the fundamental rights of people Vázquez, 2024[18].

The paper underscores the urgent need to create artificial intelligence (AI) systems that are safe, reliable, and secure, to facilitate a digital transformation that benefits all people equally. This initiative not only drives technological progress, but can also be key to achieving the 17 Sustainable Development Goals (SDGs), addressing the economic, social and environmental aspects of development in a balanced way. In particular, the importance of these systems in developing countries, where the challenges are greatest and the opportunities more limited, are highlighted.

The resolution does not focus only on the public sector. It also calls on the private sector to act responsibly, complying with both national laws and international standards, such as the United Nations Guiding Principles on Business and Human Rights.

One of the central points of the text is the obligation for AI systems to respect and promote human rights and fundamental freedoms at all stages of their life cycle, from their design to their implementation and use. States and actors involved are urged to avoid the use of technologies that may violate international law or pose a threat to the rights of individuals, especially those in vulnerable situations. In this regard, it is highlighted that having safe and reliable AI systems is essential to comply with the 2030 Agenda and close digital divides both between and within countries.

It also insists that artificial intelligence must not become an obstacle to digital transformation or equitable access to its benefits. On the contrary, Governments are encouraged to work together, especially with developing countries, to ensure that no one is left behind in this process.

The document promotes the creation of an enabling environment for innovation and ethical investment in AI, supported by effective regulatory and governance frameworks. In addition, it recognizes that data is at the heart of artificial intelligence, which is why fair, secure and collaborative management of it is required at a global level.

Finally, the continuity of international dialogue on how to properly govern artificial intelligence in a context of constant technological change is promoted. It highlights the need to promote inclusive research on their effects and establish clear international safeguards to guide those who design, develop or use these systems, in favour of AI that is truly at the service of humanity.

### **Proposals for Improvement in Peruvian Regulations**

Despite the progress made with the enactment of Law No. 32314 in 2025, Peruvian criminal law still has limitations in comprehensively addressing the challenges posed by artificial intelligence. While conduct such as *deepfake manipulation*, AI child pornography, defamation and aggravated fraud have been criminalized, regulatory gaps remain that need to be addressed urgently. In this sense, the following proposals for improvement are proposed:

1. Specific classification of new crimes associated with AI. The Penal Code must expressly contemplate criminal figures linked to algorithmic manipulation, adversarial attacks, manipulation of training data, generation of mass disinformation and crimes committed by autonomous systems. These behaviors, although they are still emerging, are already present in other comparative systems such as South Korea, France or the United States.
2. Criminal liability of promoters and suppliers. Legislation should specify the extent to which programmers, service providers and companies that bring AI systems to market are liable for the damage caused by their products, especially when they act negligently by failing to foresee foreseeable risks. This would make it possible to delimit the chain of responsibilities and avoid impunity in complex cases.

3. Creating a comprehensive regulatory framework for cybersecurity and AI. It is necessary to articulate regulations that link criminal provisions with cybersecurity and personal data protection policies. The misuse of AI not only affects individual legal assets, but also national security and democratic stability.
4. Incorporation of the principle of algorithmic transparency. As in the European Union with the AI Law, Peru should establish the obligation to audit and supervise high-risk algorithms used in sensitive areas (finance, health, justice, electoral processes). This would help ensure fundamental rights such as equality, privacy, and non-discrimination.
5. Judicial training and creation of specialized prosecutors' offices. It is essential to strengthen the technical capacities of judges, prosecutors and police officers in the face of crimes committed with AI. The creation of prosecutors' offices and divisions specialized in digital crimes would allow for a more effective and coordinated response.
6. International cooperation. Given the transnational nature of crimes committed with AI, Peru should actively participate in international conventions such as the Council of Europe's Framework Convention on AI and Human Rights (2024) and in UN multilateral forums, in order to harmonize standards and access judicial and technological cooperation mechanisms.
7. Permanent updating of the regulatory framework. The regulations must include a periodic review clause, which obliges the legislator to evaluate from time to time the effectiveness of the provisions in the face of technological advances. This would allow legislation to be kept in line with the dynamic evolution of artificial intelligence.

## CONCLUSION

The irruption of artificial intelligence in the criminal field poses challenges that the Peruvian legal system cannot ignore. The enactment of Law No. 32314 in 2025 was a significant advance in the express recognition of the use of AI in crimes such as defamation, child pornography, aggravated fraud and the manipulation of *deepfakes*; however, these provisions are still insufficient in the face of the dynamism of new criminal behaviors that arise with technological development, generating gaps that could lead to scenarios of impunity.

Compared to other international experiences, such as the European Union's AI Law, the deepfake legislation in South Korea, or the specific provisions of France and the United States, Peru is still in an incipient stage of regulation. This reveals the need to move towards a more precise classification that encompasses crimes such as algorithmic manipulation, mass disinformation using AI, adversarial attacks or the liability of developers and providers of intelligent systems, which currently operate in a framework of legal ambiguity.

Peruvian regulation must be built on the basis of the fundamental principles of Criminal Law, in particular legality, proportionality and due process, avoiding indiscriminately criminalizing the use of artificial intelligence and focusing the sanction on those behaviors that affect essential legal rights such as life, integrity, sexual freedom, honor, etc. property or national security. Likewise, the regulatory response cannot be isolated, but must be integrated with cybersecurity policies, personal data protection, algorithmic transparency and administrative oversight mechanisms, in order to achieve a comprehensive approach that balances technological innovation and the protection of fundamental rights.

Similarly, the transnational nature of crimes committed with AI requires strengthening international cooperation and Peru's adherence to conventions such as the Council of Europe's Framework Convention on Artificial Intelligence and Human Rights, as well as active participation in multilateral digital governance spaces. To this must be added the constant training of judges, prosecutors and police officers, who require technical tools and specialized knowledge to deal with the evidentiary and legal complexity involved in these crimes.

In short, Peruvian criminal legislation must be conceived as a dynamic and evolving framework, subject to periodic review, which allows it to adapt to the dizzying changes in technology. Only in this way will criminal law be able to effectively fulfil its function of protecting legal goods and guaranteeing fundamental rights in an era dominated by artificial intelligence.

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