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Implementation of AI in international law and administrative law (in the context of human rights protection)

Впровадження штучного інтелекту у міжнародне та адміністративне право (в контексті захисту прав людини)

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Abstract

The purpose of the article is to analyze the possibility of introducing artificial intelligence into the rules of international and administrative law in the context of ensuring human rights, in particular through the activities of public administration bodies and the consideration of administrative cases. Research results. The article outlines the problems of the international legal definition of artificial intelligence using the examples of resolutions of the United Nations, the Council of Europe, the Code of Ethics of transnational corporations and legal instruments of individual States. Practical meaning. The authors analyze the state of international legal regulation and the possibility of using AI, provided that human rights are respected at the national level, including in the activities of bodies authorized to consider cases of administrative offenses, implementation of electronic justice in administrative and procedural court practice. Value/originality. Scientific proposals regarding the relevance of the international legal definition of the concept of artificial intelligence, the problems of observing human rights in its application both at the international and national level, in particular, the use of its opportunities in justice for the purpose of more effective consideration of cases, and at the same time reducing the burden on judicial systems are formulated, ability to conduct legal proceedings using AI is analyzed.

Анотація

Метою статті є аналіз можливості впровадження штучного інтелекту в норми міжнародного права та адміністративного права в контексті забезпечення прав людини, зокрема через діяльність органів публічної адміністрації та розгляд адміністративних справ. Результати досліджень. У статті окреслені проблеми міжнародно-правового визначення штучного інтелекту на прикладах резолюцій Організації Об'єднаних Націй, резолюцій Ради Європи, Етичного кодексу транснаціональних корпорацій і нормативних актах окремих держав світу. Практичне значення. Автори здійснюють аналіз стану міжнародно-правового регулювання та можливості використання штучного інтелекту за умови дотримання прав людини на національному рівні, в т.ч. у діяльності органів, уповноважених розглядати справи про адміністративні правопорушення, реалізації електронного судочинства в адміністративно-процесуальній судовій практиці. Цінність/оригінальність. Сформульовано наукові пропозиції щодо актуальності міжнародно-правового визначення поняття штучного інтелекту, проблем дотримання прав людини при застосуванні штучного інтелекту, як на міжнародному так і на національному рівні, зокрема використання можливостей технології у правосудді з метою більш ефективного розгляду справ, та водночас зменшення навантаження на судові системи, аналізуються можливості здійснення

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судочинства з використанням штучного інтелекту.

Ключові слова: міжнародне право, права людини, адміністративне право, штучний інтелект, судові процедури, правосуддя.

Introduction

Artificial intelligence is a step towards the growth of Internet technologies, which allows automating processes used to be executed by a person using algorithms that largely mimic his (her) thinking. It is clear that the process of AI full-scale implementation in all spheres is complex and must be justified and governed by relevant regulations. However, the facts of artificial intelligence application in both private and public legal relations (State authorities, justice) already exist, and they mostly have a positive influence on such relations, because the approach thoroughly expands the very possibilities of the latest technologies, providing greater accuracy, objectivity, taking into account certain features when forming a decision or result. At the same time, the analysis of the initiatives by international organizations of individual States indicates that the international community is aware of possible risks of a legal nature, so some countries are trying to examine the possibilities of using such technologies.

Nowadays, the use of modern achievements in the cybernetic sphere has two main problems, which are based on: 1) technologies that are useful, but such opportunities are unknown to mankind; it is difficult to outline the nature of their use; 2) technologies requiring high technological and legal development of the State, which automatically excludes other, less developed countries from its use or increases the risks of violations in various areas of national and international law.

Thus, the legal regulation of Internet technologies, including artificial intelligence, is at the stage of its active establishment, in the process of creating unified legal standards of behavior, which determines the relevance of the proposed study.

The problems of the AI development largely depend on the specific directions of the cybernetic technologies' evolution, but there is a question of ensuring balance between the interests of civilization, the latest technologies and preservation of human values: political, economic, legal, cultural and religious ones.

The use of artificial intelligence and other Internet technologies is explored within the areas of international and national law (administrative) and judiciary. The aim of our Article is to analyze the state of international legal regulation and the possibility of using AI in the activities of bodies authorized to consider cases of administrative offenses, the implementation of electronic justice in administrative and procedural judicial practice.

To reach the purpose of the research, we set the following tasks:

- 1) to study the use of artificial intelligence in the international legal practice in the context of human rights protection;
- 2) to investigate the approaches to the definition of artificial intelligence at the international and national level;
- 3) to examine the ways of application of artificial intelligence in administrative justice;
- 4) to learn the examples of the AI technology introduction in international and national (administrative) legal acts.

Literature Review

The first studies of the legal aspects of artificial intelligence appeared in the 20th century, in the Thesis by Anne von der Lieth Gardner "An Artificial Intelligence Approach to Legal Reasoning" (Gardner, 1987). In the same year, the first International Conference devoted to the problems of artificial intelligence was held, which prompted the creation in 1991 of the International Association of Artificial Intelligence and Law and the first publication on the topic "Artificial Intelligence and Law".

As noted by John Markoff (Markoff, 2016), the era of technological progress (1950s) and designing of personal computers (1970s) became the starting point for the emergence of artificial intelligence. Complete computerization and the world of "big data" have actually become what determines our development today. The author also talks about the fact that today is the turning point in the global development of informatics,

programming, robotics, neurobiology, etc., after which the world awaits a machine that replaces or surpasses a person in certain qualities.

There are many discussions regarding the interpretation of the very concept of "artificial intelligence". On the one hand, it is interpreted very abstractly as: the ability of the system to autonomously select the best solution to the problem from the set of variants (Yefremov, 2008); comparison of people's abilities and qualifications with available vacancies (Herweijer & Waughray, 2018); the ability of an automated system or computer program to perform human functions, making optimal decisions based on the analysis of external factors and taking into account the life experience of mankind (Horbenko & Meleshkevych, 2016); the ability to solve complex tasks; ability to learn, generalize and analogies (Machusky, 2020); the possibility of interaction with the world through communication, perception and the admission into consciousness of perceptions (Yefremov, 2008).

On the other hand, there are many more specific definitions and interpretations, according to which artificial intelligence is: a robot or a program that can replace a person in any activity (Varenko, 2013); a section of informatics that deals with the formalization of tasks resembling the job performed by a person (Andrew, 1983); science and technology capable of reproducing the thought processes of the human brain and enabling them to create and process various computer programs, as well as intelligent machines that could completely replace and simplify human work (Pelcher, 2018). As we can see, there is unified approach to this problem. Apparently, there is no exact answer to the question "What is AI?". Be that as it may, artificial intelligence today is a branch of science, the development of which is closely related to the solution of specific practical issues aimed at optimizing the processes.

Methodology

Methodology is a set of approaches, ways, methods, techniques and procedures that are used in the process of scientific knowledge and practical activity to achieve a predetermined goal. To gain the purpose of our research the following methods were used.

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practical activity to achieve a predetermined goal. To gain the purpose of our research the following methods were used.

Monography approach helped to examine the works by foreign and Ukrainian scientists, who investigated the issues related to artificial intelligence.

Normative and dogmatic method was useful when studying legal instruments enshrining the definition of AI, legal regulation of the latter and its impact on possible human rights violations (resolutions of the United Nations, Council of Europe, the European Union, the Code of Ethics of transnational corporations and legal instruments of individual States, etc.).

Analytical method was helpful when examining the use of artificial intelligence in international legal practice and in the area of human rights protection.

With the help of logical method, the approaches to the designation of the term "Artificial Intelligence" at the international and national level were investigated.

Analyses and systematization method made it possible to consider the application of artificial intelligence in administrative justice.

Legal and predictive method was applied to explore the credibility of application of artificial intelligence in administrative justice.

The method of generalization was applied to make proposals for the introduction of artificial intelligence into justice with the aim of more effective consideration of cases, and at the same time – reducing the burden on judicial systems.

Results and Discussion

Use of artificial intelligence in international law legal practice

In the process of using Internet technologies, an individual leaves a significant amount of information about himself (herself) in the network and can only superficially affect its editing or removal, making it vulnerable from the standpoint of observing the rights and freedoms of a person and citizen. Numerical services store on their servers' data that allows accurate identification of a person, his (her) interests, lifestyle, preferences and circle of close friends. Already today this information is used to prepare personalized advertising that we receive every

day. The problem of ensuring the AI legitimate use in this aspect is that the technology is capable of “adapting” to the human personality, copy his (her) most common traits, misleading others, which creates a wide margin for possible abuses and violations.

In order to more accurately illustrate the specificity of the problem, we can provide, as an example, well-known Internet services that process photo images, simultaneously uploading information about family ties, origin of those who have been registered. This effect is achieved by using various mathematical algorithms (Zuiderveen Borgesius, 2020). Without questioning the legality and usefulness of such services, nevertheless, we can conclude that the level of development of such technologies can be used with certain abuses.

It should be noted that there are still no guaranteed secure data warehouses that cannot be hacked. Cases of merging personal data from a well-known social network are a confirmation of this. However, along with the threats of violations in the protection of personal data, the breach of ethical norms is no less important, for example, because of the ability of technology to simulate the behavior of images of both dead and alive. Body movements, facial expressions, as well as the possible (but not used) ability to reproduce the language of the depicted are evidence of how far technologies have advanced in improving virtual space and reality. Such “living” portraits look quite convincing; allow concluding about human personality, character and behavior. While this technology is useful and interesting, the information provided to the sites is excessive, communicated is communicated to an undetermined audience and involves unauthorized persons without any consent of the owner. For example, computer models are successfully used in cinema, when video content uses simulated artificial intelligence personalities are used in video content. In the USA, this is seen from the perspective of the need to protect intellectual property rights. In particular, in 1985 the specific act was adopted in California (USA), which protects the rights of famous people heirs from the commercial use of the images of the deceased (Kulinich, 2011). Computer models are not considered as individuals, but they are able to help in the formation of public opinion, because famous person from the past speaks to the audience, although not of his (her) own free will.

On 16 February, 2017, the European Parliament adopted Resolution 2015/2103(INL) on Civil Law Rules on Robotics with recommendations to

the Commission (European Parliament, 2017), which, according to Horodyskyi (2017), laid the foundations for the understanding of robotics and artificial intelligence and became, despite its advisory nature, the basis for the introduction of subsequent international standards. The Resolution provided for the introduction of civil liability for damage caused by robotics and artificial intelligence to agents, i.e. natural persons who use such technologies. This legal act also refers to the introduction of legal grounds for the AI use, establishing special common European system for the registration of these schemes, the assignment of individual registration numbers allowing the device and its owners to be reliably identified, and the terms of compensation for damages; creating special robotics control agency is envisaged, the problems of human dependence on technical examples are covered, including the problems of robotic human organism.

The discussion of the possibility of recognition of the computer program the author of the work and the comparison of human intelligence with artificial one is one of the most interesting projects of a legal nature in the world. For example, back in 2016, Japan began the process of developing regulations on copyright protection of creative products designed by artificial intelligence, while Australia and the United States recognize copyright exclusively for humans.

According to the Resolution 2015/2103(INL) (European Parliament, 2017), responsibility for the damage caused cannot be assigned to robots (including artificial intelligence used by robotics), but only to the person, who is a manufacturer, operator, owner or user. In order to establish legal liability, it is necessary to prove the guilt of a person who could foresee and prevent the occurrence of such damage. In this regard, it is proposed to introduce a mandatory system of insurance against the occurrence of negative consequences and harm.

Besides, in 2018, the CEPEJ European Ethical Charter on the use of artificial intelligence (AI) in judicial systems and their environment (hereinafter – the Ethical Charter) (European Commission for the Efficiency of Justice, 2018) was adopted, which is important for determining the place of Artificial Intelligence in the European judiciary. In fact, this act was the first step towards promoting the AI use in the area of justice.

The efforts of international organizations to legally consolidate relations related to the use of artificial intelligence have been supported by a number of leading States aware of the prospects of such regulation nowadays and in the future. In fact, we are observing the traditional process of supplementing international and national law with the rules, which have become in demand by time and technology with their progressive practical use.

For example, Telychko, Rekun and Chabanenko (2020) draw attention to the legal experience of various States of the world: South Korea ("Korea's Artificial Intelligence Robot Development Law" (2005), "Robot Ethics Charter" (2007) and "Legal regulation of autonomous systems in South Korea" (2012); the USA: (Road map for US Robotics, 2011, 2016 and the National Robotics Initiative, 2011, 2016); Japan (Guidelines for the Safe Use of New Generation Robots, "Japan's Economic Revitalization Plan", "New Robot Strategy". Japan's Robot Strategy: Overview, Strategy, Action Plan" (New Robot Strategy; Japan's Robot Strategy: Vision, Strategy, Action Plan, 2015); China: (Guidelines on Promoting the Development of Industrial Robots, 2014 and the Global State Development Program "Made in China 2025, 2015"; Estonia: (Robot Courier Act (2017)); Germany: (Act on the use of highly automated vehicles (2017)). Microsoft, in cooperation with the specialists from the University of Science and Technology of China, are trying to endow robotics with human abilities (Wehner 2021).

Definition of artificial intelligence. Artificial intelligence from the human rights perspective at the international and national level

Considering the need for such legal regulation, its main drawback remains the uncertainty of the State's attitude to artificial intelligence, which is typical of the entire Internet industry, where technology significantly ahead of regulation of political, legal, religious, and ethical aspects. That is why we still have any established international legal standard and legal AI definition. In addition, the existence of different approaches in national legal systems, as evidenced by the above examples, sometimes diametrically opposed, testify to the scale and specificity of the problem, especially in the era of globalization.

For example, the Organization for Economic Co-operation and Development (hereinafter –

OECD) in the Recommendation of the Council on Artificial Intelligence (OECD, 2019) indicates that AI system is a machine-based system, which can make predictions, recommendations or decisions affecting the real world or virtual environment for a certain set of human-defined purposes. AI systems are designed with different levels of autonomy.

Within the framework of national law, the most vivid definition of artificial intelligence is presented in the USA legislation, where a series of traits defining the concept of artificial intelligence is formulated, which demonstrate levels of human and cybernetic interaction where artificial intelligence is able to independently search for ways to solve tasks, act autonomously towards a person and at least be trained (Congress, 2017).

Legal regulation of artificial intelligence, according to Burov (2019), can lie in: a) positioning robots with artificial intelligence only as objects of social relations. According to this approach, work with AI is perceived only as a possible help in social relations, where the actors are physical and legal entities; b) understanding robots with artificial intelligence as individual actors of legal relations. Under this approach, robots with artificial intelligence is perceived as separate subjects of social relations, with the ability to relatively independently and to a sufficient extent realize and evaluate the meaning of their actions and the actions of other persons; c) positioning of robots with artificial intelligence as individual subjects of legal relations and possible objects thereof. Undoubtedly, the indicated directions of development of artificial intelligence are still more futuristic, especially in the approach to robots as separate actors of legal relations, since this mean a certain equating of artificial intelligence to the intelligence of the person. This, in turn, gives rise to a number of problematic ethical and legal issues, particularly in the area of human rights, as it is currently difficult to predict how the legal regulation of the consequences of the use of artificial intelligence and the protection of human rights in all its manifestations will correlate in the future. At the same time, the obvious benefits of technology and its continuous development will require the necessary legal steps the part of the States.

Today, the CIS countries face the need to interact with the digital world as well. Despite some delays in the deployment of the latest information technology, there are successes in certain digitalization sectors in Ukraine, considering the

scale of work that has been carried out over the past decades. Ukraine actively participates in the international discussion on the development of artificial intelligence, gradually integrates into the digital (virtual) space, increasing the number and variety of digital services provided in the state every year. In particular, the Ukrainian Concept for the development of artificial intelligence was taken into account by international organizations, and it began to be studied by the Council of Europe and UNESCO. The implementation of one of the digital initiatives became the online portal of public services “Diya” – an access point to all public services that the state provides to citizens and businesses. The launch of this application has become a significant step forward the digitalization of personal documents; in particular, Ukraine has become the first state in the world where a citizen’s digital passport is legally and practically implemented.

This, in turn, increased the efficiency and convenience of document circulation, reduced the bureaucracy of the system of providing administrative services, and eliminated the possibility of a corruption component in the “citizen and State” legal relationship. Along with this, the directions of digitalization of the state are recognized: updating of legislation, streamlining the work of State registers, court activities, as well as digitalization in the fields of health care, education, transport, etc.

A certain shift in this process was the accession of Ukraine to the OECD Guidelines in 2019 and signing the OECD-Ukraine Memorandum of Understanding (OCDE, 2014), in which, among other things, it is noted that Ukraine joined the Recommendation of the OECD Council on artificial intelligence.

It is important that in 2020 the Decree of the Cabinet of Ministers of Ukraine “On Approval of the Concept of Development of Artificial Intelligence in Ukraine”, which defines artificial intelligence, was passed (Resolution of the Cabinet of Ministers of Ukraine No. 1556-r, 2020). The possibility of applying it only if the rule of law, fundamental rights and freedoms of man and citizen, democratic values, personal data protection, privacy is respected, as well as an initiative to develop its own Code of Ethics for artificial intelligence is separately established. Among the identified problems are: complexity of verifying compliance of artificial intelligence systems to legislation and existing ethical principles; insufficient level of information security and data protection in the information

and telecommunication systems of State agencies due to the outdated system for identifying and assessing information threats; lack of artificial intelligence technologies application in judicial practice, etc.

The priority directions for the implementation of the Concept are: Ukraine’s involvement in a significant segment of the world technology market artificial intelligence technologies and leading positions in international rankings (AI Readiness Index by Oxford Insights, AI Index by Stanford University, etc.); introduction of artificial intelligence technologies in the area of education, economy, public administration, legal regulation and ethics, cyber security, defense and the field of justice; increasing the level of public safety through the use of artificial intelligence technologies when devising measures for the re-socialization of convicted persons and the risk of repeated offences. It should be noted that a number of European States, as well as Ukraine, are already using artificial intelligence mechanisms in the legal sphere. It is the system for recording administrative offenses in the area of road safety in automatic mode, which records such violations of the Traffic Rules as: exceeding specified speed limits for vehicles and violations of traffic rules and stopping on the route lane.

Offenses are recorded by automatic recording complexes – stationary technical means (control devices) enabling automatic detection and photography or video recording of events with the signs of administrative offenses in the area of road safety (Articles 14-2, 33, 122 of the Code of Administrative Offenses (Law of Ukraine No. 2747-IV, 2005). Vehicle license plate recognition is a manifestation of the artificial intelligence functions, which is used here.

Not only States, international organizations, but also large private companies are trying to implement the principles of dealing with artificial intelligence. A technical leader – Bosch has developed a special Code of Ethics for artificial intelligence (Bosch, 2020), which enshrines the main principles: artificial intelligence should be safe, reliable, and understandable and remain under human control. Bosch, as a multinational corporation, plans to manufacture all products using artificial intelligence by 2025 and believes that it is the engine of global progress. The company offers three approaches when a person retains control over artificial intelligence: 1) artificial intelligence plays a purely supportive role; 2) smart system autonomously makes decisions that an individual can cancel at any time, for

example, during autonomous driving, in the parking assistance system; 3) used for applications in braking systems. Bosch joined the High-Level Expert Group on Artificial Intelligence –the agency appointed by the European Commission to investigate the ethical aspects of artificial intelligence. The Code of Ethics emphasizes that its actions are based on the values enshrined in the Universal Declaration of Human Rights.

This is significant progress for transnational corporations, since, in fact, not only rights but also obligations are emerging in dealing with artificial intelligence. To date, there are no international legal instruments establishing strict obligations for big business to respect, for example, human rights. International organizations, led by the UN, are limited only to documents of a recommendatory nature, and the introduction of such a Code of Ethics is an undoubted step into the future.

As noted above, individual States are already developing their own legal framework and defining the principles of dealing with artificial intelligence, which will be the basis for their domestic and foreign policy. For example, Androschuk (2020) notes that Poland has implemented policy for the development of artificial intelligence for 2019 – 2027 in accordance with new world trends and the international obligations undertaken by the State.

According to the Memorandum on the AI development, a plan is being developed for the comprehensive implementation of artificial intelligence in almost all spheres of State functioning in order to support Poland's desire to maintain and improve its place among the world's leading countries. The main goal of Poland is to join the narrow group of 20 – 25% of countries establishing artificial intelligence. By 2025, more than 700 companies using artificial intelligence shall be created in the country; to achieve this in 2023, Poland will require investments to develop artificial intelligence in the amount of approximately 9.5 billion zlotys. The proposed example illustrates the prospects for the development of artificial intelligence and its strategic importance for any country in the world.

It is worth noting that in legal regulation of artificial intelligence development special attention is paid to the connection of artificial intelligence with ensuring the observance of human rights. The concept of their recognition and protection has undergone a long civilization

evolution, and AI can become the element capable of harming it. Therefore, international and national acts dedicated to this issue, although they do not have established conclusions, constantly emphasize the need to respect human rights.

In light of the observance of human rights, the use of artificial intelligence can be compared with the introduction of an “electronic person”, which is associated with the establishment of legal capacity of artificial intelligence, which is divided into: legal capacity of artificial intelligence based on the model of a natural person; legal personality of artificial intelligence based on the model of legal entity.

AI intervenes in the sphere of human relations, in private life, capable of influencing the fate of a person and humanity. According to the authors, there are possible risks associated with the observance of basic human rights in the area of artificial intelligence application, and may manifest themselves in military affairs, due to the violation of fundamental human rights, for example, the right to life, freedom of speech and assembly; non-discrimination; effective legal assistance; in ensuring a fair trial, including in the exercise of procedural rights. Artificial intelligence is able to hold a wide range of information about the person, which affects the so-called “electronic sovereignty of the person” including his (her) rights and obligations. This forms the concept of the “electronic person”; the process of creating such a person has already begun through the formation of the personality of artificial intelligence and a number of norms aimed at establishing interaction and protecting human rights from the consequences of the AI activities (Coeckelbergh, 2010).

As for the sphere of the judiciary, it is quite conservative among public institutions and resistant to dynamic social changes. However, the introduction of AI systems is already taking place in some States (USA, China, Japan), and electronic justice systems are successfully operating in a number of countries around the world. **Recommendation Rec (2001)3of the Committee of Ministers to member states on the delivery of court and other legal services to the citizen through the use of new technologies** (Committee of Ministers, 2001), among other things, indicates the need to enable commencement of proceedings by electronic means, as well to carry out further procedural actions in electronic work flow production.

Application of artificial intelligence in administrative justice

With regard to administrative justice in Ukraine, currently participants in the administrative process have the opportunity to submit electronic evidence and use electronic digital signature. The legislator also enshrines provisions according to which documents (in particular, procedural documents, written and electronic evidence, etc.) can be submitted to the court and proceedings can be conducted by the parties to the case in electronic form using an electronic system. It is interesting to answer the following question: whether the introduction of electronic court proceedings would enhance the protection of rights, freedoms, interests, make justice effective, transparent, accessible and, ultimately, more economical? This is especially relevant in the context of administrative proceedings, where one of the parties to a legal dispute is an individual, who is opposed to the system of public power through the subject of power.

The issues related to the use of artificial intelligence technologies are the provision of an electronic court and availability of legal proceedings (for example, administrative one or consideration of cases on administrative offenses) with the possibility of using a virtual judge (Slingo, 2020).

The leader in the AI use in justice remains the USA, which applies technology mainly in civil and criminal cases. The Stanford Computational Policy Lab has developed the algorithm assisting judges when choosing a preventive measure: custody or bail. China is also one of the first to implement AI systems in the judiciary. Since 2017, there has been an online court in the form of a mobile application of the Chinese We Chat program. There is a video chat instead of a courtroom and an avatar in place of a judge, which is controlled by artificial intelligence. The Hangzhou court became the first digital court; the PRC Government further established similar courts in Beijing and Guangzhou. Courts have already considered about 119,000 cases. Such courts are authorized to consider disputes in the area of copyright, economic disputes on the Internet, etc.

European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their environment (European Commission for the Efficiency of Justice, 2018) formulates 5 basic principles for the use of technologies grounded on artificial intelligence in judicial systems, namely: 1) the principle of respect for

fundamental rights (i.e. compliance with the principle of the rule of law); 2) the principle of non-discrimination; 3) the principle of quality and safety (requirement for proper and high-quality training process and functioning of artificial intelligence technology in the area of justice); 4) the principle of transparency, impartiality and justice; 5) the principle “under the control of the user” (the AI user shall have an assured level of autonomy in the use and application of its functions with the aim of the most effective implementation of his (her) procedural rights). The listed principles cover the functional aspects of the use of the so-called “predictive justice”.

The analysis of national legislation in this area allows us to conclude that the Concept of AI Development in Ukraine (Resolution of the Cabinet of Ministers of Ukraine No. 1556-r, 2020), provides one of the directions of implementation of artificial intelligence in justice “...adjudication of cases of minor complexity (by mutual agreement of the parties) based on the results of the analysis carried out using artificial intelligence technologies, the state of compliance with the legislation and judicial practice”. According to Par. 20, Part 1, Article 4 of the Code of Administrative Offenses of Ukraine (Law of Ukraine No. 2747-IV, 2005), administrative case of minor complexity (minor case) is the case, in which the nature of the disputed legal relationship, the subject of the evidence and the composition of the participants, etc., do not require preparatory proceedings and (or) court sessions for full and comprehensive establishment of its circumstances; the list of such administrative cases is enshrined in Art. 6 of this Code.

However, clarification is needed on what the legislator sees in the adjudication by artificial intelligence – decision-making by the so-called virtual judge or, after all, assistance of artificial intelligence technology to the judge in making decisions in this category of cases? Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (Council of Europe, 1950) enshrines the right to review cases by an independent and impartial court. However, this article and the comments here to do not explicitly prohibit the AI application, that is, indicate that justice is administered only by a human judge.

Practices of the European Court of Human Rights in the light of the violation of Article 6 of the Convention due to the use of artificial intelligence in decision-making are not yet

available. National law details the norm of the Convention in the Constitution of Ukraine. Emphasizing the need for additional regulation at the national level, we would like to note that according to Art. 127 of the Constitution of Ukraine (Law No. 254k/96-VR, 1996), justice shall be administered by judges. In cases determined by law, justice shall be administered involving jurors. Similar legal view is enshrined in Art. 92 of the Basic Law for the Federal Republic of Germany (Federal Ministry of Justice, 1949). Therefore, there is currently no possibility to administer justice to another actor than the judge; however, nothing prevents optimizing his (her) and court's work by involving artificial intelligence. Therefore, the second option is the help of artificial intelligence for more effective, fast, and less prolonged (protracted) consideration of certain categories of cases, which will contribute to achieving more accurate processing of information on the case and avoiding errors in justice. In particular, the Concept of the Development of Artificial Intelligence in Ukraine (Resolution of the Cabinet of Ministers of Ukraine No. 1556-r, 2020) mentions the possibility of considering cases of minor complexity with the use of artificial intelligence, i.e. it is possible to use such a system that will be able to independently summarize and analyze legislation, judicial practice, and, accordingly, help the judge to make a fair and legal decision. In this case, AI can be a peculiar part of the administrative process.

Regarding possible risks, these include determining the likelihood of acceptance of a mistaken judicial decision, which would violate the right to a fair trial and may affect certain procedural rights of the participants to the proceedings.

Credibility of international recognition of artificial intelligence standards of human behavior

Recommendation CM/Rec (2020)1 of the Committee of Ministers to member States on the human rights impacts of algorithmic systems (Committee of Ministers, 2020), defines the main areas of human rights protection in connection with the introduction of algorithmic systems, because this concept is related to artificial intelligence (which is the set of mathematical processes and algorithms). Based on the above Recommendation, we can say that artificial intelligence is the result of mathematical calculations combined with the activity of algorithmic systems in real time. The imitation of

human features offered to it is only a background to facilitate interaction with the user. In this case, we are talking about the application of the same algorithmic systems, only with a higher degree of autonomy, and yet will remove his comparison with human personality. In our opinion, such an approach, at the current stage of development of the mentioned technology, allows us to outline the limits of legal regulation of this problem, will be more in line with the existing technical and legal realities and can be successfully modernized in the future to meet new legal challenges.

Considering the above, it should be noted that the adoption of the Concept of Artificial Intelligence Development in Ukraine is not enough, as it does not yet provide for radical systemic changes, including in the national law, and is of a somewhat declarative nature.

In this regard, a model for Ukraine is a systematic approach, which is often used by international organizations. In particular, the UN, ensuring the promotion of international standards for the protection of human rights, notes that their consolidation is possible not only through the adoption of separate legal and regulatory acts, concepts, strategies, as well as through political and economic decisions aimed at the appropriate regulation of various sectors and spheres of the State management. Among such powerful means, the UN highlights, for example, education and ensuring access to it. It is not only about the training of highly professional specialists, but also creating broad access to knowledge, which would allow successful application of the latest technologies and methods, and ultimately lead to the popularization of these achievements and their effective practical implementation. Thus, according to the authors, the State strategy for the development of artificial intelligence should cover all sectors of the economy and be widely supported in society through State policy, financing of own projects, educational and informational programs, adaptation of national law and its individual branches.

The basis for such legal relations in some cases is the recognition by artificial intelligence or digital person, as a kind of improved human being, standards of living human behavior (Brodbeck, 2015). At the same time, this approach is impractical, as it continues to replace the fundamental concepts of the living and non-living being. Making technology human, securing copyright for it or recognition of its moral and ethical obligations, rights and duties,

can probably destroy the system of values that had been formed for thousands of years and which is not applicable to an inanimate technology, even one endowed with the ability to think (Schmidt & Cohen, 2014). Even in this case, artificial intelligence should remain an object, not a subject of relations. For the most part, it is the application of the technology that is being investigated, not its hazard due to the existence or ability to think. Artificial intelligence, due to the lack of socio-cultural additions that form a person from birth and cannot be equated with him (her) and is unlikely to become a full-fledged actor of legal relations.

To date, the European Commission has proposed the first ever legal framework for artificial intelligence. The proposal provides a comprehensive package on artificial intelligence use and includes an updated Coordinated Plan on Artificial Intelligence 2021 Review (European Commission, 2021), ensuring respect for human rights and, among other things, creating the first legal framework for limiting artificial intelligence, in order to support the security of mankind.

Thus, artificial intelligence remains useful and interesting technology serving for the benefit of humanity and contributes to the strengthening of international and national legal order.

Conclusions

Summarizing the above, we can note that artificial intelligence technology requires perfect legal regulation at the international and national levels. There is concern about the growing role of Internet technologies in human life and especially in the context of their impact on the individual's rights and freedoms. The concept of their protection was developed according to humanistic principles and hardly implies that at least part of them is attached to the machine. Accordingly, at the international level, within the UN and other organizations, global challenges related to the spread of artificial intelligence, its penetration into all spheres of human life and the importance that will be given to artificial intelligence in the near future.

Technologies created on the basis of artificial intelligence or having an algorithmic construction limited to human influence are also considered dangerous, especially during their use in law enforcement and judicial activities, since the conclusions reached by artificial intelligence carry a high risk of making a mistake and can negatively affect the awareness of human

dignity. Recognizing the revolutionary nature of technology in general, the international community is trying to establish a system of norms that would minimize possible risks and protect humanity.

In turn, the States must independently determine their attitude to the AI introduction. Each country adapts its national law in accordance with the conditions that are formed on the world arena, respecting the rights, freedoms and interests of citizens. Therefore, according to the authors, it would be expedient for Ukraine to hold public discussion (involving scientists from various areas) on the problems of implementing systems that use artificial intelligence, comprehensive analysis of the achievements of other countries in this direction, and identifying the limits, in which the AI application would become the most effective.

For the world community, the issue of introducing artificial intelligence in justice currently remains debatable and is accompanied by different approaches, from the active use of artificial intelligence in resolving various categories of disputes (China) to the establishment of criminal liability for the use of artificial intelligence algorithms for predicting court decisions (France). The national legislation does not provide for the possibility of replacing the judge with an algorithm, but it is possible to discuss the partial involvement of AI in judicial system.

Following the example of international organizations, it is advisable to develop recommendations, domestic standards for the AI application. Accelerate the development and adoption of the Code of Ethics for Artificial Intelligence (including, in Ukraine) and Develop a strategy to take advantage of this technology.

Bibliographic references

- Andrew, A. M. (1983). Artificial intelligence. Tunbridge Wells, Kent: Abacus Press. Retrieved from: <https://catalogue.nla.gov.au/catalog/437545>
- Androshchuk, H. (2020). Strategy for the development of artificial intelligence in Poland. Legal Newspaper. Retrieved from: <https://acortar.link/YVZ7z3>
- Bosch (2020). AI Code of Ethics: Bosch sets principles for working with artificial intelligence. Retrieved from: <https://www.bosch.ua/news-and-stories/ai-code-of-ethics/>

- Brodbeck, L. (2015). Morphological Evolution of Physical Robots Through Model-Free Phenotype Development. *PLoS ONE*, 10(6), e0128444. Retrieved from: <https://doi.org/10.1371/journal.pone.0128444>
- Burov, M. (2019). Who is responsible for AI errors?. *Lawyer and Law*, 17. Retrieved from: https://uz.ligazakon.ua/ua/magazine_article/EA012676
- Coeckelbergh, M. (2010). Robot rights? Towards a social-relational justification of moral consideration. *Ethics and Information Technology*, 12(3), 209-221. Retrieved from: <https://acortar.link/itcKon>
- Committee of Ministers (2001). Recommendation Rec (2001)3 of the Committee of Ministers to member states on the delivery of court and other legal services to the citizen through the use of new technologies. Retrieved from: <https://rm.coe.int/09000016805e2aa7>
- Committee of Ministers (2020). Recommendation CM/Rec (2020)1 of the Committee of Ministers to member States on the human rights impacts of algorithmic systems, adopted at the 1373rd meeting of the Ministers' Deputies. Retrieved from: <https://rm.coe.int/09000016809e1154>
- Congress (2017). H.R.4625 – FUTURE of Artificial Intelligence Act of 2017. Retrieved from: <https://www.congress.gov/bill/115th-congress/house-bill/4625/text>
- Council of Europe (1950). Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols No. 11 and 14. Retrieved from: <https://acortar.link/VMLi2R>
- Efremov, Yu. M. (2008). Artificial intelligence, history and prospects of development. *Bulletin of ZhDTU*, 2(45), 123-127. Retrieved from: <http://vtn.ztu.edu.ua/article/view/81625>
- European Commission (2021). Coordinated Plan on Artificial Intelligence. Retrieved from: <https://digital-strategy.ec.europa.eu/en/policies/plan-ai>
- European Commission for the Efficiency of Justice (2018). European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their environment, adopted at the 31st plenary meeting of the CEPEJ, 03 – 04 December 2018. Retrieved from: <https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c>
- European Parliament (2017). European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL)). Official Journal of the European Union C 252/239. Retrieved from: https://www.europarl.europa.eu/doceo/document/TA-8-2017-0051_EN.html
- Federal Ministry of Justice (1949). Basic Law for the Federal Republic of Germany. Retrieved from: https://www.gesetze-im-internet.de/englisch_gg/
- Gardner, A. V. D. L. (1987). *An Artificial Intelligence Approach to Legal Reasoning*. Cambridge, Massachusetts: The MIT Press. Retrieved from: <https://acortar.link/OOpDTT>
- Herweijer, C., & Waughray, D. (2018). The fourth industrial revolution for the benefit of the Earth Using the possibilities of artificial intelligence for the benefit of the Earth. PWC. Retrieved from: <https://www.pwc.com/ua/uk/survey/2018/ai-for-the-earth-jan-2018.pdf>
- Horbenko, C.C., & Meleshkevych, L.M. (2016). Artificial intelligence as a technology for creating automated intelligent systems. Retrieved from: https://er.knutd.edu.ua/bitstream/123456789/5044/1/20160428-29_TEZY_V3_P349.pdf
- Horodyskyi, I. (2017). Trends in the development of legal regulation of artificial intelligence in the European Union”. In the collection: *Problems and development prospects in Ukraine of the IT Law conference*. Retrieved from: <https://acortar.link/mLjYwRV>
- Kulinich, O. (2011). Peculiarities of using photographic works depicting natural persons after their death. *University Scientific Notes*, 4(40), pp.103 – 108. Retrieved from: <https://acortar.link/u1kauh>
- Law No. 254k/96-VR. Constitution of Ukraine. Bulletin of the Verkhovna Rada of Ukraine, Kyiv, Ukraine, June 28, 1996. Retrieved from: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>
- Law of Ukraine No. 2747-IV2005. Code of Administrative Proceedings of Ukraine. Bulletin of the Verkhovna Rada of Ukraine, Kyiv, Ukraine, July 06, 2005. Retrieved from: <https://zakon.rada.gov.ua/laws/show/2747-15#Text>
- Machusky, V. (2020). Artificial Intelligence and Law. Business Law Electronic Resource. Retrieved from: <https://www.businesslaw.org.ua/artificial-intelligence-and-law/>
- Markoff, J. (2016). *Machines of Loving Grace: The Quest for Common Ground Between Humans and Robots*. NY: HarperCollins

- Publishers.
<https://dl.acm.org/doi/10.5555/2994165>
- OCDE (2014). Memorandum of understanding between the Government of Ukraine and the Organization for Economic Co-operation and Development regarding the deepening of cooperation No. 966_003. Bulletin of the Verkhovna Rada of Ukraine, Kyiv, Ukraine, October 07, 2014. Retrieved from: <https://acortar.link/7DJjMm>
- OECD (2019). Recommendation of the Council on Artificial Intelligence. Retrieved from: <https://acortar.link/88MICu>
- Pelcher, M. (2018). Advantages and disadvantages of using artificial intelligence in management. Ternopil National Technical University named after Ivan Pulyu Retrieved from: <https://acortar.link/ppUt4L>
- Resolution of the Cabinet of Ministers of Ukraine No. 1556-r. On the approval of the Concept of the development of artificial intelligence in Ukraine. Bulletin of the Verkhovna Rada of Ukraine, Kyiv, Ukraine, December 02, 2020. Retrieved from: <https://zakon.rada.gov.ua/laws/show/1556-2020-%D1%80#Text>
- Schmidt, E., & Cohen, J. (2014). The New Digital Age: Transforming Nations, Businesses and Our Lives. New-York: Vintage; Reprint edition. Retrieved from: <https://acortar.link/1xVXLo>
- Slingo, J. (2020). IBA 2020: Robots don black cap for lower court judges. The Law Society Gazette. Retrieved from: <https://acortar.link/qAni7k>
- Telychko, O., Rekun, V., & Chabanenko, Yu. (2020). Problems of definition and normative consolidation of the concept of "artificial intelligence" in the legislation of foreign countries and Ukraine. Juridical scientific and electronic journal, 2, 310-313. Retrieved from: <https://acortar.link/vdyzBZ>
- Varenko, V.M. (2013). Information and analytical activity: study guide. Kyiv. University "Ukraine". Retrieved from: http://megalib.com.ua/content/1956_71_Ponyattyashtychynogo_intelektu.html
- Wehner, M. (2021). China has developed a computer that beats humans at IQ tests. H/T Technology Review. Retrieved from: <https://www.dailydot.com/debug/china-iq-computer/>
- Zuiderveen Borgesius, F. G. (2020). Strengthening legal protection against discrimination by algorithms and artificial intelligence. The International Journal of Human Rights, 24(10), 1572-1593. <https://doi.org/10.1080/13642987.2020.1743976>