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THE POSSIBILITY OF USING ARTIFICIAL INTELLIGENCE IN LEGAL PROCEEDINGS OF CONTEMPORARY RUSSIA

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Abstract

The research deals with the analysis of artificial intelligence as an integral part of the contemporary effective activity of judicial bodies, which, despite all the positive aspects of its functioning, is not a reason for rejecting the activities of officials in the judicial practice. The purpose of studying the possibilities of implementing artificial intelligence in the legal proceedings of contemporary Russia and the prospects for its application in this area is directly related to the need to develop and improve the regulatory framework. The analysis of modern scientific views on the possibility of using artificial intelligence in Russian court proceedings shows that there are opposed opinions concerning the forms and prospects of such use – from solving purely technical problems as an intelligent electronic assistant to the judge to replacing completely the judge in the administration of justice. According to the authors, at the present development stage of the Russian state, it is too early to talk about replacing the judge with artificial intelligence, while in the context of individual situations, it is impossible. The article compares examples of using the capabilities of artificial intelligence in the judicial activity of foreign countries and analyzes the main provisions of international acts that enshrine the ethical principles of the use of artificial intelligence in the judicial systems of European countries. In this article, the authors think about the prospects for implementing artificial intelligence in court proceedings of contemporary Russia, its effectiveness, as well as methods and approaches to this process, noting both beneficial and negative aspects of such implementation.

Keywords

Artificial intelligence – Natural intelligence – Modern technologies – Judge – Court proceedings

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Introduction

The definition of artificial intelligence as the ability of intelligent systems to perform creative functions that are traditionally considered the prerogative of humans was first stated by the American computer scientist John McCarthy in 1956 at a conference held at Dartmouth University.

At present, this term is most often used regarding systems (which include digital computers and computer-controlled robots) that are endowed with intellectual processes such as the ability to reason, analyze, and synthesize information, and taking into account the experience of previous generations.

Undoubtedly, artificial and natural intelligence has several differences. First, it must be noted that to date none of the created artificial intelligence has reached such a level of development as to compete with humans on an equal footing. According to the authors, this is because, in their daily activities, people rely not only on the knowledge that they gain in the course of their everyday life but also on empirical experience. Computers do not have such a property a priori: they operate based on pre-developed software for functioning and deciding according to a situation.

A very interesting and intriguing topic is the debate about whether contemporary computer programs have IQs. Note that determining the level of intelligence even in a person is a quite difficult process. This is because there are different ways to assess the level of mental abilities. Besides, some scientists believe that IQ is a very relative indicator since it often tests the level of a person's ability to passing such tests rather than the very level of intelligence. This leads to the conclusion that artificial intelligence can be trained to solve certain problems so that it will take much less time to solve the problem for computers compared to a human. As a result, the computer will score the highest points, sometimes unattainable even for genius people. But at the same time, it cannot answer the simplest questions, to which the answers were not embedded in its software.

In recent decades, artificial intelligence is increasingly penetrating everyday life. There is almost no sphere in which it is not used to some extent. Legal proceedings, for which specialized programs based on artificial intelligence are already being developed and actively used, are no exception. It should be noted that in foreign scientific literature, attention was paid to the issues of artificial intelligence and the possibility of its application in law and court proceeding, in particular, a few decades ago[1].

However, in the Russian Federation, active interest in this topic was manifested by scientists just in the last few years[2].

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[1] A. D'Amato, Can/should computers replace judges? (Chicago: Northwestern University School of Law, Faculty Working Papers, 1977); G. Sartor y L. Branting, "Introduction: judicial applications of artificial intelligence", Artificial Intelligence and Law num 6 (1998); F. Galves, "Where the not-so-wild things are: Computers in the courtroom, the federal rules of evidence, and the need for institutional reform and more judicial acceptance", Harvard Journal of Law and Technology Vol: 13 num 2 (2000) y E. A. Engle, "An introduction to artificial intelligence and legal reasoning: Using xTalk to model the Alien tort Claims Act and Torture Victim Protection Act", Richmond Journal of Law and Technology Vol: 11 num 1 (2004).

[2] P. M. Morkhat, "Ispol'zovanie iskusstvennogo intellekta pri osushchestvlenii pravosudiya kak sposob preodoleniya sudejskogo usmotreniya", Law and State: Theory and Practice Vol: 5 num 161 (2018):

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Because of this circumstance, several foreign countries have already actively started using the capabilities of artificial intelligence in court proceedings. Thus, in October 2016, it became known about artificial intelligence, which was developed by researchers from the University of Pennsylvania, and the University of Sheffield. It is reported that it can predict the decisions of the European Court of Human Rights with 79% accuracy.

As known, Estonia is famous for its investment in the latest technologies. That is why to reduce the burden on civil servants, and focusing their attention on more complicated cases, since March 2019, the country started developing a plan, according to which a robot judge will deal with small civil cases. Presumably, the plaintiff and the defendant will upload the documents to the system, and artificial intelligence will make a judgment after analyzing uploaded documents. Subsequently, either party will be able to appeal this decision to a human judge.

The Beijing Internet Court is actively developing an online service that includes an Internet judge. It is planned that this judge will help in filing appeals to the court using an online platform. Besides, it will conduct a real dialogue with the person and provide him with certain help[3].

As seen, artificial intelligence and the latest advanced technologies are making certain adjustments to the work of lawyers and even can replace them in some industries.

Methods

The methodological base of the research comprised general scientific methods, such as dialectical approach, analysis, synthesis, and analogy, as well as several particular scientific methods of cognition including formal-logical, system-structural, and comparative-legal, which allowed comparing different views on the essence of artificial intelligence as a special legal phenomenon.

Results

Even though in some foreign countries, programs for automating the justice administration process are becoming widespread, at the present stage they serve only as an auxiliary tool for analyzing documentation, and cannot replace a judge.

The solution to such important issues as the use of artificial intelligence in court proceedings should be based on a clear regulatory framework. In December 2018, the first international act specifically dedicated to the use of artificial intelligence in justice was adopted, named "European Ethical Charter on the use of artificial intelligence in the judicial

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6-11; O. V. Kolga y E. B. Kalashnikova, "Cifrovoe" napravlenie razvitiya pravosudiya v Rossii. Novosibirsk: Proceedings of the 16th International science-to-practice conference "Urgent problems of jurisprudence" Vol: 11 num 15 (2018): 51-57; N. I. Glebov, "Iskusstvennyj yuridicheskij razum", Humanitarian Law. Online scientific journal of law (2018). Retrieved from: https://humanlaw.ru/9-article/26-artificial-intelligence.html; O. V. Bryantseva y O. L. Soldatkina, "Elektronnoe pravosudie v Rossii: problemy i puti resheniya", Bulletin of the Kutafin Moscow State Law University, Law 12 (2019): 97-104 y P. M. Morkhat, "The use of artificial intelligence in judicial proceedings", Herald of Civil Procedure Vol: 9 num 3 (2019): 61-85.

[3] Kak iskusstvennyj intellekt menyaet yuridicheskuyu professiyu i chem eto grozit yuristam. Retrieved from: https://forbes.kz/process/technologies

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systems and their environment". It was approved by the European Commission for the Efficiency of Justice of the Council of Europe. The most important principles of this Charter in particular, include:

- respect for human rights, which implies that the use of contemporary technologies cannot exclude the right to fair court proceedings and adversarial process;

- security quality, in which only certified software is given priority in the administration of justice (the evaluation of this software should be carried out by both professional lawyers and technical specialists);

- transparency, according to which all technologies that are used in this area should be brought to the public in a clear and accessible form;

- nondiscrimination (in any form);

- user control[4].

In the context of the fourth industrial revolution, it is impossible to avoid the implementation of advanced technologies in all spheres of society and the translation of almost all public relations and communications into digital form, which is also very relevant for today's Russia.

Undoubtedly, implementing the latest and progressive technologies in court proceedings will give an impetus to the new sound and development of the most important principles of justice, such as the rule of law, independence of judges, accessibility, and consideration of cases within a reasonable time.

No one denies the fact that even the most highly qualified judge when performing their official duties, cannot know by heart all the normative legal acts that have a legal force at the moment. Consequently, the implementation of such information programs, which will be equipped with a complete and constantly updated electronic legal framework, can help to increase the level of legality in the administration of justice. Due to the functioning of such a program, judges will apply a particular act faster and better when awarding judgment on various categories of cases.

The creation, implementation, and widespread use of state automated systems that facilitate the proper distribution of cases among judges, and the formation of judicial structures, taking into account the specialization and workload of each judge, can help to increase the level of independence of judges in the administration of justice.

Implementing digital mechanisms for information communication and the electronic circulation of documents can help to reduce the terms of court proceedings and increase the availability of justice. Such progressive development of electronic justice will significantly speed up and simplify the filing of documents and reduce both the time and material costs of the parties. It will significantly facilitate the simplification of the process of familiarization

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[4] European Ethical Charter on the use of artificial intelligence in the judicial systems and their environment. Adopted at the 31st Plenary Meeting of the European Commission for the Efficiency of Justice (Strasbourg, 2018).

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with the case materials. According to the authors, the system of general jurisdiction courts, where e-mail is still the means of electronic filing of documents, is the most in need of modernizing procedural aspects.

Discussion

The most relevant issues at the present stage are the possibility of replacing a judge with artificial intelligence, the need for such a replacement, and implementing the latest technologies in court proceedings.

When trying to find answers to these questions, it should be noted that information technology, and artificial intelligence, in particular, can be used for both good and harm. This leads to the conclusion that the state faces properly applying the latest technologies that serve the basis for the development of legal and democratic institutions.

One of the problems with implementing artificial intelligence in court proceedings is the lack of properly trained specialists to develop software used in this field. The current legislation establishes a clear list of requirements for candidates for the position of a judge. Among them are the appropriate level of education, certain life and professional experience, and high moral qualities. For developers of the algorithm for artificial intelligence, nothing like this is required. Most often this algorithm is created by people who are very far from the sphere of justice, i.e. a human factor is evident. In this case, the point at issue is that artificial intelligence is developed and produced by natural intelligence, i.e. a specific person. And it turns out that this activity, however, like any other activity, including court proceedings, is not immune from mistakes. Thus, the algorithm being developed may already initially contain defects that will eventually affect the result – making a legal decision on various categories of cases.

Also, procedural law requires judges to use more sophisticated categories than software algorithms when verifying evidence. A modern machine can make an accurate analysis and a reasonable and correct decision from the standpoint of the law. But along with formal signs, such as strict adherence to the language of the law, the level of legal awareness of the judge, his inner conviction of the correctness of the decision made, is also important in the court proceedings. Even elements of legal psychology, such as the feelings and emotions of a judge, his life experience are immanent features of the unique legal thinking underlying the profession of a judge, although outwardly carried out in a formal framework, but filled with a special content that is beyond the control of artificial intelligence.

Artificial intelligence can never show humanism. It will never learn to understand the motives of the committed offense, cannot assess the veracity of the testimony. The machine can only file a fact. But behind every fact, such a concept is hidden as evaluation of evidence. For example, the same evidence in one case may be the basis, while in another, it may be rejected at all. Why is this happening? According to the authors, the reason is that when making a decision, the court is guided by several criteria (including both value and evaluation criteria), which are enshrined in the law. In the absence of specific legal regulation, i.e. the so-called gap in the law, the legal analogy or the analogy of law is applied. Artificial intelligence is deprived of this capability, when considering such a case, it cannot deliver a judgment because of the lack of mental resources inherent in a person.

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According to the authors, the impossibility of replacing a judge with artificial intelligence is clearly shown by the example of the court of cassation, which checks the legality of a judgment of a lower court that has already entered into force. As known, the basis for the cancellation of the court's judgment under the cassation procedure is a significant violation of the criminal and (or) criminally remedial law, which has affected the outcome of the case[5]. The computer algorithm will find and focus on any violation of the law and conclude about the cancellation of the judicial act even in cases where the formal cancellation will lead to the same decision of the case made by a lower court.

In the 21st century, it is hardly possible to deny the need to use artificial intelligence in various spheres of life of the contemporary state, and it would be foolish not to take advantage of its capabilities. In such a situation, a logical question arises: how artificial intelligence can be used in today's court proceedings in Russia? In the work of A.A. Sokolova, legal online consultations, and online justice are indicated as forms of using artificial intelligence[6]. According to the authors, both forms cannot be considered as replacing natural intelligence with artificial intelligence. In the first case, professional lawyers offer advice, bringing information to users through the use of Internet services. Online justice, according to Sokolova, simplifies the interaction of citizens with the courts and is reduced to implementing the claim filing procedure, and other procedural documents in electronic form, i.e., makes easy the implementation of purely technical procedures, again, through the use of Internet services. Neither in one nor another case, it is not about the thought processes that are the stumbling block in the confrontation between natural and artificial intelligence.

According to the authors, in modern realities, in terms of prospects for using artificial intelligence in court proceedings, one can talk about the possibility of delegating to it some of the powers of a judicial assistant such as studying judicial practice according to the specifics of the case under consideration, monitoring the status of proceedings that have been suspended, generating reports and documents on specific ongoing proceedings based on ready-made templates and data embedded in the program, and obtaining necessary information from law enforcement and other authorities for conducting court proceedings using electronic archives.

What are the prospects for deeper implementation of artificial intelligence in the legal proceedings of today's Russia? How effective can it be? What methods and approaches should be used to implement the latest technologies?

When discussing the prospects for implementing artificial intelligence in the legal proceedings of contemporary Russia, it is necessary to emphasize a very important fact: the public relations system in the infosphere of Russia is not regulated by any single normative legal act. The legislation of the Russian Federation does not fully meet all the challenges of the digital environment, which is because of one of the biggest problems of national legislation – the presence of numerous repeats and gaps in the law. Therefore, the legislation needs to be systematized, get rid of repeats, and be brought into a structured and systematic form. The discussion of this issue was repeatedly submitted to various

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[5] Ugolovno-processual'nyj kodeks Rossijskoj Federacii ot 18.12.2001 № 174-FZ (red. ot 07.04.2020). Collection of Legislation of the Russian Federation, 52 (Part I), Article 4921. Rossiyskaya Gazeta № 73. April 6, 2020.
[6] A. A. Sokolova, "Iskusstvennyj intellekt: riski vnedreniya", Legal Technique num 3 (2019): 351.

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conferences, many discussions were held, however, the persons taking part in the discussion could not come to a consensus on this issue. Scientists also pay attention to various aspects of the problem of legal support for artificial intelligence in Russia in their scientific works[7]. Taking into account the current state of the problem, one can conclude that the prospects for implementing artificial intelligence in the legal proceedings of the Russian Federation have both beneficial and negative aspects. Among the beneficial aspects, the following can be highlighted: providing the judicial process with all the necessary legal framework, which even a judge with the highest qualifications may not know by heart; carrying out the competent and thoughtful distribution of cases between judges using state automated systems taking into account their specialization and workload; taking part in the judicial process remotely; reducing the level of the workload of judicial assistants by delegating some of their powers to artificial intelligence. Negative aspects of implementing artificial intelligence in the legal proceedings of the Russian Federation may include the inability for artificial intelligence to make decision by analogy (where there is a gap in the law), lack of life and professional experience, inability of evaluating critically the case circumstances in certain situations, and the insufficient level of legal support. Speaking about the methods and ways of implementing artificial intelligence in the court proceedings of contemporary Russia, it is necessary to focus on the fact that this process:

- first, requires a significant expenditure of time and money;

- secondly, requires studying carefully and determining the integral functioning mechanism and application areas of artificial intelligence in legal proceedings;

- thirdly, will lead to a significant reduction in the number of jobs: many qualified lawyers will remain unemployed and will become unclaimed in the labor market since their job responsibilities will be handled by the algorithm embedded in the program.

Conclusion

From the authors' viewpoint, digitalization of court proceedings and artificial intelligence implementation in the administration of justice should take place gradually and smoothly.

In any case, implementing new technologies in court proceedings will entail the need for:

1) Transforming higher education and teaching methods that will cause the training of specialists with knowledge both in the sphere of contemporary information technologies and law to prevent developing appropriate artificial intelligence algorithms for the jurisprudence from being a purely mechanical process, while opposite, representing a conscious activity of a professional lawyer, i.e. represent a successful symbiosis of technical and content aspects.

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[7] P. M. Morkhat, "K voprosu o specifike pravovogo regulirovaniya iskusstvennogo intellekta i o nekotoryh pravovyh problemah ego primeneniya v otdel'nyh sferah", Law and Justice Vol: 6 (2018): 63-67; A. A. Vasiliev; D. Shpopper y M. Kh. Mataeva, "Termin "iskusstvennyj intellekt" v rossijskom prave: doktrinal'nyj analiz", Yurislingvistika Vol: 7-8 (2018): 35-44 y V. A. Shestak, A. G. Volevodz, "Sovremennye trebovaniya pravovogo obespecheniya iskusstvennogo intellekta: vzglyad iz Rossii", Russian Journal of Criminology Vol: 13 num 2 (2019): 197-206.

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2) Conducting advanced training and retraining of current judges in terms of their training based on digital technology development programs to gain new knowledge and skills in working with IT systems.

3) Adjusting the regulatory framework, changing existing laws, and adopting new ones. Because of the successful development of IT technologies in recent years and their intense implementation in all spheres of life, including court proceedings, it seems necessary to develop and adopt the Information code of the Russian Federation, where a particular section should be devoted to the use of artificial intelligence in law. It should contain a clear conceptual framework and forms of using artificial intelligence in court proceedings. The procedural codes of the Russian Federation, which will regulate the procedural issues of using various forms of artificial intelligence in various categories of cases, will require appropriate adjustments. The Criminal Code of the Russian Federation will require introducing new components of crime in Chapter 28 "Crimes in computer information" and in Chapter 31 "Crimes against justice". Chapter 28 will consolidate the components of crime, whose specific object will be the public relations related to the security of information and systems processing such information (i.e. the technical side of this activity will be protected). Chapter 31 will consolidate the components of crime, whose object is, respectively, justice, considered as both the activities of the court to resolve cases and the activities of other law enforcement agencies assisting the court (the content-related issues will be protected). According to the authors, only if these conditions are met, artificial intelligence will contribute significantly to the specified sphere of activity of natural intelligence carriers. In the modern reality, artificial intelligence can and should become a reliable assistant to a human judge, but it will never replace human due to the lack of important cognitive abilities such as thinking, imagination, and perception aimed at interacting with the surrounding reality, getting specific information, analyzing it, and converting it into knowledge and experience.

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