Limits of the use of artificial intelligence in law – ethical and legal aspects

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Abstract. **The article is devoted to legal and ethical problems pertaining to the use of artificial intelligence (hereinafter – AI) in law. AI solutions are already being applied in some areas of law, and the use of AI will undoubtedly be expanding. There are problems relating to the regulatory framework because AI has no expressly defined legal status and the scope of AI is not clear either. AI could successfully be employed for data processing in certain areas, such as forensic science and criminology, as well as legal proceedings, where AI could assess procedural documents for their conformity with formal requirements, namely as a means of assisting a human, who is a decision maker. Recognising AI's decision-making ability is extremely challenging. Thus, AI would transform from a means into a subject of law empowered to make decisions about other subjects of law. The existing legislation is not ready to embrace it, and AI's decision-making ability is related to issues of an ethical nature, considering that decisions about people would be made by a non-human subject.**

Keywords: artificial intelligence, justice, law

I. INTRODUCTION

The fair resolution of controversial legal relationships is one of the objectives of law. Society rightly expects justice to be ensured by law enforcement authorities, whose job is to secure that justice is done. It is common knowledge that justice contributes to social peace, thereby ensuring a country's sustainable growth. In today's world, with evolving technologies, it is being increasingly discussed how to use artificial intelligence for ensuring and also administering justice. Technological capabilities provided by artificial intelligence are broad enough, but it still remains unclear how artificial intelligence fits into the legal system and whether it can be recognised as a legal subject at all.

The research deals with problems relating to limits of the use of artificial intelligence in law, especially with regard to ensuring justice in dispute resolution.

II. MATERIALS AND METHODS

The objective of the research is to explore the use of artificial intelligence in law within the scope of the existing legal framework in order to assess ethical and legal aspects and formulate suggestions for improving legislation.

The research has employed descriptive, analytical, deductive and inductive methods. The descriptive method will be used to introduce the essence of artificial intelligence, ethical and legal problems of its use and their solution. Deductive and inductive methods will be used to express conclusions and suggestions. These methods have been used to analyse laws and the opinions of legal scholars and formulate conclusions and suggestions.

III. RESULTS AND DISCUSSION

A. Possibilities of using artificial intelligence in legal proceedings

Nowadays the term 'artificial intelligence' (AI) denotes technologies based on computerised and autonomous algorithms. AI is being used in health care, transport and a number of other industries. Challenges are related to the use of AI technologies in law. There is a public debate ongoing about whether AI will replace judges, but it should be stressed that adjudication is just an area of law. Using AI in law can be viewed in several dimensions: adjudication; support of the adjudication process (for example, drawing-up minutes of court hearings, assessing whether documents submitted to court conform to formal requirements); other areas of law. In the legal industry, AI can arguably be used in forensic science (acquiring and examining evidence, preparing expert reports), criminology (analysing elements of crime), civil transactions (drafting various contracts) and, certainly, administering justice. Law as a system can be viewed from two aspects. First, these are technological solutions that have a support function, such as databases, registers, data storage and processing systems, etc., which neither resolve

disputes nor make decisions. There are no physical and legal obstacles to using AI technologies for these support mechanisms. Legislation of the Republic of Latvia is based on the Law on State Information Systems [1], whose purpose is to ensure the accessibility and quality of the information to be provided by authorities in the state information systems. Also, every system is governed by a special regulation, so making data processing safe and effective. It should be stressed that automated data processing systems facilitate the effective performance of duties by institutions or officials. For example, for the purposes of a notarial certification, a sworn notary can verify the data of a participant of a deed or certification in the Biometric Data Processing System by comparing the person's finger prints with the data available on this system. [2] One criticism is that there is no regulation in place for attesting reliability of data derived from automated systems. Data so derived are often accepted as reliable by default. Thus, a major challenge in the use of AI is to secure that inputs remain unchanged. This could be achieved, for example, by means of electronic signature.

Second, law can be viewed as a set of actions aimed at settling legal relationships by resolving a dispute, prosecuting offences according to law, enforcing decisions made by courts or other competent authorities, and carrying out other mandatory actions causing a direct impact on a right-holder's rights and duties. In this context, it can be concluded that the supreme goal of law is to ensure justice. This follows from the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms. [3] There is no doubt that justice ensures social peace and should therefore be recognised as a basis for sustainability of both society and the state. Adjudication as the supreme guarantee of justice, which involves assessing the relevance, reliability, admissibility and sufficiency of evidence obtained during preceding stages and drawing logical conclusions based on evidence and also personal experience for settling disputes in civil proceedings (for example, recovery of damages, reinstatement, termination of a transaction) or for convicting and imposing a penalty in criminal proceedings, is carried out by a human, namely an official appointed in accordance with the statutory procedure. Can justice be administered by AI, an algorithm that will make a dispassionate assessment by relying only on the legal circumstances of a case? The existing legislation sets forth special requirements for judges, namely: apart from professional qualifications and other formal requirements, where in theory there should be no doubt as to AI's ability to provide professional competence, a judge is required to have impeccable reputation. [4] The Law on the Judiciary does not contain any specific features or objective criteria by which reputation could be measured or determined. [5] However, it is impeccable reputation that, first, characterises a person and cannot be attributed to AI; second, the reputation requirement obliges a judge to apply the highest moral and ethical standards in the administration of justice. Relationships between right-holders are of a social nature, so they should be solved by assessing not only legislation, but also moral and ethical standards prevailing in society at a given point in time. It

is expressly laid down in Article 97(1) of the Civil Procedure Law that a court assesses evidence according to their own convictions which are based on evidence that has been examined thoroughly, completely, and objectively at the hearing and according to legal consciousness based on the principles of logic, scientific findings, and observations drawn from every-day experience. [6] As a result, legal consciousness has an essential role in the administration of justice. AI is not and cannot be endowed with legal consciousness. According to scientific literature, "Legal culture is unthinkable without a person and his actions, which are determined worldview, without the progressive orientation of this action and this thinking. It acts as a social phenomenon with a clearly defined goal orientation." [7] Legal consciousness is inherent only in individuals, live beings, it is formed over the entire life of a person as individual social experience. Legal consciousness cannot fully be objectivised by means of an algorithm, and it will always be subject to a certain bias. But it is legal consciousness that makes legal relationships so individualised and unique. Even if AI had legal consciousness, there would arise other legal and ethical issues. Considering that AI technologies are designed by a human, how can a relevant person's legal consciousness be distinguished from that of AI? Second, presuming that AI would be able to acquire legal consciousness, how can conformity with ethical and moral principles be achieved?

B. Artificial intelligence and legal awareness

Researcher T.J.M. Bench-Capon rightly points out that it is important that AI tools behave in an ethical manner and their decisions are not harmful. [8] Scientific literature specifically deals with ethical aspects, in the context of both technological solutions and ethics. Based on the analysis of literature, technology is ready to offer solutions that would ensure ethical behaviour of AI. Researchers D. Vanderelst and A. Winfield offer a method for implementing ethical behaviour in robots inspired by cognitive simulation theory. [9] Despite technological possibilities, using AI in the adjudication process should be analysed very carefully, considering a significant impact produced by court rulings on an individual's fundamental rights. Modern society has accepted the natural rights doctrine, according to which an individual has natural and inalienable rights prevailing over positive rights. [10] It can be concluded that the scope of rights and duties granted to an individual may be different in certain situations according to specific laws, but – as human beings, as live beings – all people are equal. These principles are reflected in the United States Declaration of Independence of 4 July 1776, which holds as self-evident that all men are created equal, that they are endowed with certain unalienable rights, and that among these are life, liberty and the pursuit of happiness. To secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. [11] All proceedings are subject to rights. Proceedings represent merely a set of conditions for exercising objective rights, whose goal is to ensure the equality of all people. The fact that a person is given more rights in particular proceedings does not mean that the person has superiority over other people.

At present, every court ruling is produced by human consciousness, namely: a ruling is delivered by a person who is granted relevant competence by law. A judge and a party to a case have different social roles, while they are equal in horizontal terms, meaning that they both are human. Therefore, a judge and a party to a case differ only in the context of proceedings. The situation would change if the adjudication function had been assigned to AI. In this case, legal differences that are inherent only in proceedings would disappear and the equality criterion would change radically, namely: AI is not a human, which means that a non-human subject would decide on rights that are essential for people. This situation is unacceptable from the ethical standpoint because, in administering justice, judges rely not only on legislation and logic, but also on their life experience. Both facts and personal experience used to interpret them are important for ensuring justice. Justice is not only about the legally correct interpretation of facts and the application of relevant laws. This view would be too narrow in the context of social relationships. Mg. iur. Mārtiņš Birģelis refers to elements of justice in his essay, where he rightly points out that the interaction between happiness and justice has preoccupied several legal scholars. [12] It is doubtful that AI could be endowed with a sense of happiness that is unique to humans. However, several researchers are optimistic about using AI in the adjudication process, specifically underscoring its role in the acceleration of proceedings by using AI technologies for online judicial solutions. For example, Richard Suskind predicts that AI, machine learning and virtual reality are likely to dominate the judicial service. [13] This prediction concerning the role of AI in the administration of justice could be accepted, but only in respect of the effective and much broader use of AI technology for performing support functions, meaning proceedings-related actions other than adjudication, such as assessing the conformity of documents with formal requirements. [14] Society is being increasingly interested in court rulings, thus calling for better privacy protection, and, as regards possibilities provided by AI for raising public awareness, it should be noted that AI would be a great tool for assessing information to be made public, and for selecting the most significant rulings, conducting an analysis and making reports on them. This function is explained in observations by researcher Ahmed Sabreen: "However, the modern avenues also pose major challenges to the Right to Privacy which is often overlooked by the advocates of the open justice principle." [15] It is stressed in scientific literature that "Artificial intelligence related technologies are currently employed in a variety of human endeavours in an effective manner, such as from facial recognition on a smartphone screen to composing music and art from scratch. Considering these facts, legal science can make more decisions with the use of high-tech tools in criminal trials to determine criminal penalties and several ways of criminal law which influences those who have engaged in socially harmful behaviour." [16] Using AI would add value to a relatively under-researched but important aspect, which is the translation of court rulings into a "plain" legal language, i. e. using terminology that can be understood by the general public. Scientific literature describes important results of a study, namely: "We propose that artificial intelligence (AI) could help in this task by automatically analysing the court rulings and extracting information from their text about the circumstances of each case, the requests of the parents, the decisions of the judge, and the facts that were taken into account. Law is language and, therefore, natural language processing occupies a prominent place among the applications of AI to the legal field." [17]

We should not neglect uses of AI in other fields of law, one of them being forensic examination. In forensic examination, unlike in the administration of justice, it is essential to ensure the independence of experts from external factors. Pursuant to Article 2 of the Law on Forensic Experts, an expert examination has to be unbiased, judicial and scientifically justified [18]. It is also noted in scientific literature that AI technologies can be used to achieve a standardised and anonymised assessment of a person being examined, making it independent of subjective perception of a forensic expert [19].

For the most part, using AI for the detection of criminal offences or the investigation of crime will not lead to ethical dilemmas. These fields of law will use technological possibilities provided by AI, and results will be interpreted by a human, who will make legally binding decisions, so AI will only be a tool in the hands of a human. Using AI is and will remain a subject of much debate. AI is also one of priorities at European Union level, aimed at the design, development and implementation of reliable AI systems, without undermining fundamental rights of the European Union. On 7 December 2018, the European Commission adopted the Coordinated Plan on Artificial Intelligence [20], which encouraged Member States to develop their own national strategies on artificial intelligence. Latvia has articulated such a strategy, and, on 4 December 2020, the Cabinet approved an information report on developing artificial intelligence solutions drawn up by the Ministry of Environmental Protection and Regional Development.[21] Meanwhile, the European Parliament adopted amendments to the Artificial Intelligence Act on 14 June 2023. [22]

As a result of the research, the authors have arrived at the following:

1) at present, using artificial intelligence in law is hindered by the lack of legislation that would deal with artificial intelligence as a legal subject;
2) artificial intelligence can still be used as a set of technological tools for ensuring certain functions of law enforcement authorities, while there are no grounds for asserting that artificial intelligence is able to replace humans in administering justice.

In the legal sector, AI technologies are emerging as a tool to help people in various fields of law. Ethical issues will indeed be faced by society if it is attempted to give AI discretionary decision-making powers. The existing regulatory framework does not provide a comprehensive definition of AI, neither does it define the scope of using technologies and their place in the legal system.

IV. CONCLUSIONS

There are no reasons to believe that technologies will stop advancing, and the increased use of artificial intelligence should undeniably be expected, also in legal practice. It is concluded that anticipated challenges are associated with determining areas/procedural steps where artificial intelligence can be used, and positioning factual information derived by artificial intelligence in the evidencing system.

The nearest future will call for radical decisions to be made concerning AI. This matter is of both legal and ethical nature.

If we are increasingly going to use the assistance of or delegate decisions to AI systems, we need to make sure these systems are fair in their impact on people's lives, that they are in line with values that should not be compromised and able to act accordingly, and that suitable accountability processes can ensure this. [23]

AI technology makes both everyday life and the fight against crime easier by completing tasks faster and more accurately, being able to process much more information than a human can in less time. This is the technological aspect, or possibilities, of AI. While AI is used as a tool in the hands of a human, ethical issues can be solved within the existing system. It is clear how decisions are made and can be appealed against, the decision-making power is granted to a human, who is also responsible for their decisions. It is a traditional and established procedure, in which society has confidence. In fact, granting the decision-making power to AI would mean recognising AI as a subject of law, which would lead to both legal and ethical issues, whose solution would require establishing public opinion and significant legislative amendments.

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