

MSC 2020**International Scientific and Practical Conference «MAN. SOCIETY.
COMMUNICATION»****IMPLEMENTATION OF THE RIGHT TO JUDICIAL
PROTECTION IN THE CONTEXT OF DIGITALIZATION**

Roza Petrova (a), Valeriya Revina (b), Elena Begicheva (c)*, Natal'ya Stepanova (d)
*Corresponding author

(a) Russian Technological University, Moscow, Russian Federation, Petrova_r_e@mail.ru

(b) Russian Technological University, Moscow, Russian Federation, leramipp@mail.ru

(c) Russian Technological University, Moscow, Russian Federation, sherlen.new@gmail.com

(d) Russian Technological University, Moscow, Russian Federation, etincelle78@mail.ru

Abstract

There is a widespread introduction of artificial intelligence in all spheres of society in an era of rapid development of information technology. Digital reality has already become a reality in the modern world. Law as a regulator of public relations, first of all, should contribute to the comprehensive protection of human rights and freedoms. It is necessary to respond as quickly and efficiently as possible to the legal support of these processes taking into account the ongoing changes. The judicial system is no exception. The legal profession faces a tough choice if to use artificial intelligence as an aid in the implementation of typical tasks of professional activity or allow it to be used to the maximum extent possible in legal activities. Undoubtedly, the existing legal regulation of the spheres of social life needs a global transformation and the need to ensure the security of cyberspace. The right to judicial protection is one of the fundamental human rights guaranteed and provided by the state. This article discusses the issues of determining the limits of the use of artificial intelligence in law enforcement, the possibility of implementing the concept of an "electronic judge", namely, can a robot with artificial intelligence provide intellectual support to the judicial system, taking on the functions of a judge? And what are the advantages and disadvantages of this? In addition, the value of the use of artificial intelligence in the course of legal proceedings is determined, as well as the advantages and disadvantages of its use.

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1. Introduction

Today society is undergoing a global transformation of world consciousness in connection with the accomplished technological revolution, which undoubtedly entailed large-scale changes in legal consciousness, economic regulation, and political foundations. The system of values of society is also radically changing, a “digital” reality is emerging, which often consists in the deepest break with the physical world to which we are all so accustomed. Augmented reality (AR) technologies are used to bridge this gap and to more fully realize human potential. AR is a collection of technologies that adds digital data and images to the physical world (Kartskhia, 2018). Electronic voting has entered our life during referendums, elections and the nomination of legislative initiatives. (Ivanova, 2019) It is believed that this technology will permeate all spheres of the national economy and act as a kind of link between automatic systems and humans. The digital transformation of different spheres of life has led to a change in the code of ritual behaviour, which affects the structure of transaction costs and, consequently, the quality of life of the population (Shmakov, 2019) One of the most important goals of modern states is to create and apply competitive innovative technologies (Gromova & Tjaša Ivanc, 2020). In such conditions of the digital environment, we see the problem of realizing the right to judicial protection, administering justice in the digital reality as undoubtedly urgent and vital.

The argument in favor of the need to introduce artificial intelligence systems as an intellectual assistant to the judge in the judicial system is the statistics of judicial errors. These data testify in favor of the advisability of using artificial intelligence systems in courts to minimize judicial errors. However, it is necessary to take into account the need for sustainable development of the judicial system (Alekseevskaya, 2020).

2. Problem Statement

The invasion of technology into such a seemingly closed, at first glance, area like law is an aggressive and unreasonable measure. However, as practice has shown, in some cases, it is the “machines” that take on the main burden of routine, mechanical work - analysis, systematization, freeing lawyers to perform their direct official duties.

The desire of developers and programmers to create robots with artificial intelligence and the ability of the latter to adapt, learn and self-regulate leads to the fact that the analytical forecast of possible actions of a robot with artificial intelligence is actually impossible or completely incorrect.

It is this fact that is the main concern of the scientific world, practicing specialists in various fields of knowledge, as well as state legislators in the issue of the expediency of widespread use and use of artificial intelligence technologies in the life of society and the state. As noted, “we must pay attention to modern technologies and use their potential correctly” (Valeev & Bazilevskikh, 2018). There is no doubt that artificial intelligence technology is able to provide a correct solution to various legal problems in a shorter time frame.

Artificial intelligence robots are capable of providing significant support (mostly technical) in the operation and organization of courts. However, the concept of an “electronic judge” is relevant in this regard, that is, the question of whether a robot with artificial intelligence can provide intellectual support

to the judicial system, taking on the functions of a judge. And what are the advantages and disadvantages of this?

In essence, the concept of an "electronic judge" is a process of automation of law enforcement, which requires a rather sophisticated technology capable of simulating court decisions. But at the same time, there is no guarantee that even the most complex artificial intelligence systems will be able to provide a worthy replacement for the full-fledged activity of judges due to the following facts:

- the judgment has a high social significance, and therefore any mistake can lead to significant social upheavals;
- many legal categories (for example, "good faith", "reasonable time", "fairness", etc.) traditionally inherent in civil circulation are simply not able to be reliably assessed by the artificial intelligence system due to the lack of ethics and morality criteria in the artificial intelligence system;
- legal reasoning in a court decision is directly dependent on human abilities, which are unique;
- artificial intelligence is not able to assess the probative value of each forensic evidence;
- artificial intelligence system is not capable of interpreting law, in particular, carrying out a teleological interpretation of a rule of law (that is, identifying the target setting of its existence in the legislative system). Namely, the teleological nature of the law, as noted by De Belfond (1996) is the main difficulty in introducing artificial intelligence technology into the judicial process, since, depending on the goals and arguments pursued, the solution can be completely different.

On this basis, the most acceptable at the moment is the "concept of an electronic judge" in the aspect of the interaction of the artificial intelligence system and the judge. That is, the artificial intelligence system can act as an assistant to the judge (not only purely technical assistance, but also, for example, analytical, informational, etc.)

3. Research Questions

The scientific world never tires of reminding that despite the fact that artificial intelligence technology can be a powerful tool for reforming the justice system in Russia, the use of artificial intelligence technology in the judicial system is associated with many legal incidents.

An important problem of introducing artificial intelligence into legal proceedings, among other things, is the risk of its excessive formalization due to the fact that the implementation of the principle of freedom of judicial discretion remains difficult to implement. Reasoning by analogy, as Cerden (2014) believes, is not inherent in artificial intelligence. This leads to the fundamental impossibility, even inadmissibility of vesting the "electronic judge" with the authority to independently make a judicial decision on the case.

The following can be distinguished among the key problems of using artificial intelligence systems in the justice system: the problem of reasoning by analogy with the artificial intelligence system (Luger, 2003), the problem of interpretation of law, moral and ethical assessment of the situation, the problem of considering cases by the artificial intelligence system in the context of conflicting judicial practice or conflicts of law. New parameters appear, but it is important to look, firstly, at their content and, secondly,

at their consequences for world development, participants in international life and the state of their relations (Baranovsky, 2020).

4. Purpose of the Study

The aim of the study is to conduct a comprehensive analysis of the doctrinal approach and practice of using digital technologies in the implementation of the right to judicial protection.

5. Research Methods

The methodological basis of the research was provided by such research methods as: special legal, method of analysis, method of interpretation of law and other methods of generalizing scientific material.

6. Findings

Analyzing the indicated ways of using artificial intelligence in the field of legal practice, it is possible to systematize them into the following groups:

Intelligent search for information, as well as its intellectual processing. Forecasting the results of the trial. Scrupulous and long-term activity of lawyers participating in the development of a decision-making mechanism using artificial intelligence technology is required initially in order for the artificial intelligence system to achieve high accuracy in predicting the result of a trial. Modeling legal arguments and evidence base. This activity of the artificial intelligence system is also based on various methods of searching and processing large amounts of information. Development of standard legal documents. First of all, this is the selection of templates for legal documents, their initial intellectual filling. Tracking the relevance of existing legal documentation. This direction is difficult to implement from a technological point of view, since the question arises of how the artificial intelligence system can compare the texts of existing documents with changes in legislation. Intelligent sorting of judgments into various categories and degrees of legal force. Electronic office work. It includes all stages of work with cases: their formation, tracking the status, accounting, making changes, etc.

It is logical to assume that for the full use of artificial intelligence technology in the judicial system, the following problems must be resolved:

- problems of consideration and resolution of court cases for which there are no precedents, judicial practice or interpretations and clarifications of the higher courts;
- the problem of considering contradictory legal disputes from the point of view of legal and moral principles;
- the problem of consideration and resolution of various categories of court cases in the absence of legal regulation or its gap, conflict of legal norms.

Artificial intelligence technologies, if properly regulated and implemented, can have a positive impact on the judicial system - modernize and optimize it.

7. Conclusion

In the course of legal proceedings, the use of artificial intelligence can have the following meanings:

- simultaneous professional legal linguistic translation directly in the trial.
- electronic record keeping. In particular, the artificial intelligence system can be able to carry out all actions with court cases on the basis of the automatic classification of legal documents: form them, keep records of them, track their status, monitor the progress of the case, etc.
- application of the artificial intelligence system in forensic expert activity (Grishina et al., 2019)
- providing assistance to the judge in making court decisions, to the parties in the search and selection of procedural evidence.

In addition, it is possible to identify false documents, signatures, contradictions in the testimony of witnesses and other persons by means of the artificial intelligence system. Such mechanisms can improve the efficiency of judicial proceedings.

Having studied scientific approaches to the directions of application of artificial intelligence technology in the judicial system, the following advantages of such use can be distinguished.

First, artificial intelligence technology is able to solve the problem of citizens' access to justice through the introduction of online dispute resolution systems.

Secondly, the artificial intelligence system can become an effective support for the activities of judges through the provision of intellectual and technical assistance. Wittenberg (2017) notes the transformative potential of artificial intelligence in relation to law enforcement practice, because technology has the ability to search for information and process it quickly.

Third, artificial intelligence can be used in the mainstream of predictive activity.

Fourthly, the artificial intelligence system is impartial and objective. However, this quality is inherent in artificial intelligence, provided there is a proper algorithm in the operation of the system.

Thus, the use of artificial intelligence technologies can help reform the entire judicial system and modify the mechanism for judicial resolution of disputes by speeding up many of the traditional procedures. Researchers on the issue of artificial intelligence in justice identify various directions for modifying the judicial system using artificial intelligence technology. So, for example, Surdin (2015) identifies the following areas of transformation of the activities of courts:

- supporting function of artificial intelligence: assistance in informing and consulting citizens, participants in legal proceedings, identifying potential arguments and strategies for protection;
- substitute function: performing actions previously carried out by employees of the courts;
- changing the form of work of the judicial community.

Kamener (2017) highlights the key function of artificial intelligence systems in court proceedings in civil cases - intellectual assistance to judges, which can be expressed in identifying various patterns, possible options for judicial decisions.

The improvement of legislation in the field of regulation of artificial intelligence should be comprehensive. The following features of state regulation of the field of artificial intelligence can be identified after analyzing the possible threats from the use of artificial intelligence and ways to resolve them:

First, the concept of respect for human dignity, rights and freedoms should be the main guideline for the legal regulation of the scope of artificial intelligence.

Secondly, artificial intelligence technologies must remain under complete human control.

Thirdly, artificial intelligence technologies should be transparent and safe; their use should not in any way diminish human rights and freedoms.

Fourth, decisions made by the artificial intelligence system that have a significant impact on human rights and freedoms and create significant legal consequences must be contested.

Fifth, the functioning of the artificial intelligence system should take into account not only the political and legal aspects, but also comply with the moral, ethical and ethical principles.

Sixth, the key priority of state policy in the field of artificial intelligence regulation is the maximum benefit to society.

Seventh, if the activity of the artificial intelligence system has caused any negative consequences, then it should be possible to detect the source of harm, it is necessary to establish a chain of harm, to identify the perpetrators of this.

Eighth, the state policy in the field of artificial intelligence regulation should guarantee the provision of basic rights to every citizen, in particular, the right to protect the secrecy and confidentiality of personal information, to privacy, etc.

It is undeniable that e-justice has enormous potential and is on the way of progressive and inevitable development and distribution. Technology has a significant impact on social development (Malko & Kostenko, 2019).

References

- Alekseevskaya, E. (2020). Recent Development of the Russian Judiciary System. *Russian Law Journal*, 8(2), 120-143. <https://doi.org/10.17589/2309-8678-2020-8-2-120-143>
- Baranovsky, V. (2020). A New International Order: Overcoming or Transforming the Existing One. *Social Sciences*, 50(2), 36-59. <https://www.eastviewpress.com/Journals/0134-5486>
- Cerden, G. (2014). Machine Learning and Law. *Washington Law Review*, 89(1), 88-115.
- De Belfond, K. L. (1996). The use of expert systems in law. *International Review of Comparative Law*, 46(2), 712.
- Grishina, E. P., Shiryaeva, S. V., Sheiafetdinova, N. A., & Solovyev, A. A. (2019). Forensic medical examination of the quality of medical care: legal, methodological and ethical issues. *International Journal of Psychosocial Rehabilitation*, 23(4), 668-679.
- Gromova, E., & Ivanc, T. (2020). Regulatory Sandboxes (Experimental Legal Regimes) for Digital Innovations in BRICS, *BRICS Law Journal*, 7(2), 10–36.
- Ivanova, K. (2019). Electronic Legislative Initiative as a Tool to Improve Citizens' Public Activity in Cyberspace: Common Issues in the BRICS Countries, Europe and the Russian Federation, *BRICS Law Journal*, 6(1), 102–126.
- Kamener, L. (2017). Change in the court system: a verdict on artificial intelligence and courts. *The Centre for Public Impact*, 15, 43-51.
- Kartskhia, A. A. (2018). Digitalization in law and law enforcement. *Monitoring of law enforcement*, 1(26), 36-40. https://elibrary.ru/download/elibrary_35127812_71107003.pdf
- Luger, J. (2003). *Artificial Intelligence: Iskusstvennyy intellekt: Strategii i metody resheniya slozhnykh problem*. Williams.
- Malko, A., & Kostenko, M. (2019). Legal techniques and technology as the most important factors for the sustainable development of the societal legal system. *Brics law journal*, 6(2).

https://www.elibrary.ru/download/elibrary_41111831_35722787.pdf

Shmakov, A. V. (2019). Code of ritual behavior in the context of digital transformation of the economy. *Terra Economicus*, 17(4), 41–61.

Surdin, T. (2015). Justice and technological innovations. *Justice issues*, 12, 15-18.

Valeev, D., & Bazilevskikh, E. (2018). E-Justice and Information Technologies in Civil Procedure, *BRICS Law Journal*, 5, 175–179. https://www.elibrary.ru/download/elibrary_37177069_92335336.pdf

Wittenberg, D. S. (2017). Artificial Intelligence and Legal Practice. *Litigation News*, 1, 8.