

# PRINCIPLES OF USE OF ARTIFICIAL INTELLIGENCE IN JUSTICE

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**Annotation.** The scientific article highlights legislative and theoretical approaches to determining the principles of using artificial intelligence in justice as technologies that occupy an increasingly important place and open up new opportunities for improving the judicial system, increasing the efficiency, transparency and accessibility of justice. It was found that the use of artificial intelligence in justice can become uncontrollable and unpredictable for a person, and therefore defining the limits of its use will minimize existing risks, including: violation of human rights, freedoms and interests, damage to the authority of the judiciary, etc. It is emphasized that the introduction of artificial intelligence must necessarily be carried out in compliance with the principles of justice (for example, the rule of law). In addition, the European Commission on Judicial Efficiency, taking into account a number of ethical, legal and other issues, approved the principles that must be followed in the case of the use of artificial intelligence in the judiciary. In particular, the work reveals the content of such principles of the use of artificial intelligence in judicial proceedings as: observance of basic human rights, non-discrimination, quality and safety of court decisions, compliance with Art. 6 of the Convention on the Protection of Rights and Fundamental Freedoms, as well as transparency, impartiality and fairness. At the same time, it is stated that artificial intelligence technologies used in justice carry the risks of disclosure of confidential data about a person, their discrimination on various grounds (such as the COMPAS program used in the USA), making unfair decisions due to errors in artificial intelligence algorithms, etc., and therefore one of the of the main principles compared to those indicated should be the use of artificial intelligence technologies in justice exclusively under human control. It was concluded that the gradual development of artificial intelligence technologies in justice will necessarily be accompanied by the emergence of new risks of their use by both judges, court employees, and parties, participants in a court case, which confirms the need for further study of the specified issue with the aim of revising the existing principles, supplementing their list with new ones and as a result of minimizing the harm that can be caused.

**Key words:** principles, artificial intelligence, justice, rule of law, human rights.

## 1. Introduction.

In Conclusion No. 14 (2011) of the Advisory Council of European Judges to the attention of the Committee of Ministers of the Council of Europe on Justice and Information Technologies, it is stated that the latter can be a tool or means of improving the administration of justice, facilitate users' access to courts and strengthen the guarantees established by Art. 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms: access to justice, impartiality, independence of the judge, fairness, reasonable terms of consideration of the case [1]. A type of information technology that occupies an increasingly important place in justice and opens up new opportunities for improving the work of the judicial system, increasing the efficiency, transparency and accessibility of justice is artificial intelligence (hereinafter – AI). Its use covers a wide range of tasks that contribute to the automation, analysis and support of decision-making in justice, but it is also accompanied by challenges, in particular, the use of AI in justice can become uncontrollable and unpredictable by humans. At the same time, defining the principles of using AI in justice will help

judges adapt to new challenges arising in the digital age, minimize the existing risks of using AI, and contribute to the development of the legal system as a whole, making it more inclusive and modern. Considering the above, the study of the principles of using AI in justice is relevant.

## **2. Analysis of scientific publications.**

The question of the principles of using AI in legal activity, in particular justice, was investigated in their works by foreign and domestic scientists, namely: Bernaziuk Ya., Zhornokuy Yu., Kovalchuk O., Kravchuk V., Kuzmenko O., Lotysh T., Lutska G., Martsenko N., Ostrovsky S., Paskar A., Radutny E., Chorna V. etc. However, the rapid development of AI technologies, their active use in justice continues to create both new opportunities and challenges, which indicates the relevance of research on this issue.

## **3. The aim of the work.**

The purpose of the article is to determine the principles of applying AI in justice.

## **4. Review and discussion.**

The future of justice, of course, depends on technology and the automation of court processes, so AI has a huge potential to speed up the data processing process, relieve the work of the courts, and make it efficient. However, taking into account the existing risks, it is very important when using AI to observe the fundamental principles, among which special attention should be paid to the principle of the rule of law as a prerequisite for technical development [2, p. 95]. One of the elements of the rule of law is the principle of legal certainty, which is meaningfully objectified through the need for stable legal regulation, which is revealed through the statics (stability of the current legal regulation of social relations) and dynamics (the necessary flexibility, which is achieved by law enforcement acts, in particular, court decisions) of law [3, c. 14].

The first intergovernmental standard in the field of legal regulation of the use of AI technologies was the Recommendation on Artificial Intelligence adopted on May 22, 2019. The OECD Council, in order to support innovation and trust in AI technologies through the promotion of responsible management of reliable AI, while ensuring respect for human rights and democratic values, defines additional among the principles of AI management: inclusive growth, sustainable development and well-being; human-centered values, justice; transparency and comprehensibility; stability, reliability and security; responsibility [4]. Recommendations CM/Rec (2020) 1 regarding the impact of algorithmic systems on human rights, adopted by the Committee of Ministers of the Council of Europe on April 8, 2020, also emphasize that in the process of implementing technologies based on artificial intelligence, the basic principles set forth in the European Convention on Human Rights must be observed. It is obvious from the above that when introducing AI, the center of relations should be a person, his moral and life values, and the rule of law, etc. should be ensured [5, c. 569].

The above-mentioned principles (rules) are optional, but they influence the development of AI technologies in the world and determine the limits of their use. In particular, the use of AI by participants in the judicial process should not have a negative impact on the authority of the judiciary. For example, in the decision of the Commercial Cassation Court as a part of the Supreme Court dated February 8, 2024. in case No. 925/200/22 it is stated that the applicant, in addition to the norms of Art. 509, 510, 526 of the Civil Code of Ukraine, cited the content of the concept of "voluntary commitment" provided by ChatGPT AI. The complainant also drew attention to the fact that the AI of ChatGPT identified this legal construction as an obligation (in the theoretical sense), which the parties reached voluntarily (by their own free will), without interfering with the meaning of the concept. According to the applicant, taking into account the theoretical definition of the concept of "obligation", the concept of "voluntary obligation" used by the court is subject to clarification - the definition of the subjects, object and content of such a concept and the definition of its difference

from the theoretical definition “obligation” (subject, object, content of this concept). That is, the applicant actually asked the Supreme Court to refute or confirm what the ChatGPT AI generated from the outlined question, which is not a source of reliable, scientifically proven information, contrary to the conclusions made by the court in the court decision. This is confirmation that in this way the applicant questioned the judicial discretion and judicial interpretation of this issue in the decision, which acquired the status of final, which disregarded the authority of the judiciary [6].

Taking into account a number of ethical, legal and other issues that accompany the use of AI in any field, and even more so in the process of justice, the European Commission for Judicial Efficiency as part of the Council of Europe in 2018 approved the Ethical Charter on the use of AI in the judiciary the system and its environment in order to deal with new challenges. The specified charter enshrines the principles that must be followed in the case of the use of AI in judicial proceedings: 1) observance of basic human rights when using AI; 2) non-discrimination, prevention of the development of any discrimination between individuals or groups of individuals; 3) quality and security of processing court decisions and data in a secure technological environment; 4) presentation of all procedural aspects, capabilities and functions of AI in an understandable language in order to comply with Art. 6 of the European Convention on Human Rights; 5) transparency, impartiality and justice [7].

At the same time, despite the wide prospects for society created by modern AI technologies, some of them can have a significant impact on fundamental human rights and freedoms. In particular, there is a risk of violating the human right to privacy. Each participant in the legal process has the right to non-disclosure of personal data about himself. Accordingly, in order to secure the personal data of such persons, it is necessary to provide only anonymized materials to the AI system. Considering this, judges and other court employees using AI should make sure that they have taken all necessary measures to protect personal data [8]. In our opinion, in the case of disclosure of personal data, the responsibility for this should rest with the judge or court employee who provided such data to the AI system.

If we talk about the use of AI not by judges or court employees, but by other participants in the judicial process, then there is a risk of abuse of procedural rights by them. In particular, in the already mentioned case No. 925/200/22 of the Supreme Court by resolution of February 8, 2024. recognized the submission by the plaintiff’s representative of an application for clarification of the Supreme Court’s decision dated December 11, 2023. in case No. 925/200/22 abuse of procedural rights and left this application without consideration. The reason for such a decision of the court was the use of AI technology by a participant in the case under consideration for the purpose of denying the conclusions already made by the court. Deliberate or negligent abuse of court resources, including the use of AI without proper understanding of its capabilities, as a basis for contrasting its findings with those of the court, can undermine trust in the judicial system. Such behavior is contrary to the purpose of the right to go to court. And the plaintiff’s appeal to the “position” of AI “ChatGPT” was recognized as a sign of disrespect for the judges of the Supreme Court [9]. But in the separate opinion of the judge of the Cassation Commercial Court as part of the Supreme Court in this case, it is stated that there is no established approach and clear criteria in judicial practice, according to which the use of AI by participants in the legal process can be recognized as an abuse of procedural rights [10].

An important principle of using AI technologies is non-discrimination of a person or a group of persons based on certain characteristics. Protocol No. 12 to the Convention on the Protection of Human Rights and Fundamental Freedoms prohibits discrimination in the exercise of any right provided for by law. Instead, the Constitution of Ukraine stipulates that there can be no privileges or restrictions based on race, skin color, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other characteristics. However, in practice, there have been situations where AI technologies discriminated against people based on certain characteristics. Thus, in 2016, the computer program COMPASS, used by an American court to assess risk, was accused of being racially biased. The program was more likely to mislabel African-American defendants as possible repeat offenders – mislabeling them nearly twice as often as whites (45 % to 24 %) [11]. Although some efforts are already being made to eliminate AI bias, the problem is far from being solved. In particular, one of the most powerful legislative initiatives – the Artificial Intelligence Act (AI Act), which is the world’s first compilation of rules for the use and development of

AI systems, proposes that the developers of AI systems fulfill strict obligations before bringing them to the market, namely to ensure high quality data sets uploaded to the system to minimize risks and discriminatory effects [12].

The use of AI in the judiciary must undoubtedly be accompanied by the security of such systems, since the latter are vulnerable to various threats at all stages of their life cycle. In particular, AI creates a threat of disclosure of confidential information during data collection and processing. As noted by T. V. Lotysh confidential data must be protected using reliable measures to prevent unauthorized access and possible violations. Comprehensive data security systems, including encryption and access control best practices, as well as regular audits of data processing in AI systems complement these efforts. Compliance with laws and regulations on data protection is also important [13, p. 55].

Transparency, impartiality and fairness also belong to the main principles of using AI in justice. O. Ya. Kovalchuk points out that transparency refers to the openness of the AI model, including its architecture, data and processes. Bias and fairness refer to the use of unbiased data to train AI systems. Justice ensures equal operation of AI systems for all users, which improves inclusiveness, representativeness, equality of decision-making and increases citizens' trust in such technologies [14, p. 219].

As noted by A. Paskar, one of the main disadvantages of using AI in the judiciary is the possibility of problems with transparency and accountability. Because decisions made on the basis of AI algorithms can be difficult to explain and challenge, which raises questions about their fairness and legality. In addition, there is the problem of liability for errors or deficiencies in algorithms that lead to unfair decisions [15]. On the one hand, there is an opinion about the possibility of applying the principles of civil liability to AI, if it acts autonomously without direct human involvement. On the other hand, approaches to determining responsibility for criminal or administrative violations cannot be applied in the same way, since they require conscious behavior [16, p. 176]. But O. E. Radutny is convinced that everything created by human labor, we still reasonably perceive as objects of property rights, objects, things that a priori cannot have legal rights and protected interests. Accordingly, they cannot be held responsible for the damage caused, answer for obligations [17]. Taking into account the above, it is advisable to support the approach according to which the responsibility for the actions of AI should be assumed by the person under whose leadership they were committed, since according to the legislation, AI is not the subject of legal relations [18]. But the key is presence or absence connection between the actions of AI systems and human actions [19, c. 122].

The principle of setting out all procedural aspects, capabilities and functions of AI in an understandable language in order to comply with Article 6 of the European Convention on Human Rights, which is also called the principle "under user control" (under user control) is focused on the fact that people should be able to intervene and control every a decision made by the software [7]. In addition, as noted by O. Chernykh, AI must be controlled by the user, also because from the point of view of justice, decisions generated by AI can be absurd or violate fundamental human rights (as stated, in particular, in the analysis of the principle of non-discrimination) [20, c. 29].

## 5. Conclusions.

Developing and enshrining relevant principles is important to create a balance between the use of AI technologies in justice and the achievement of its purpose. Of course, the implementation of AI must be carried out in compliance with the principles of justice, but, taking into account a number of ethical, legal and other issues, the European Commission for the Efficiency of Justice also approved a number of important principles that determine the limits of the use of AI in justice, which allows to minimize the existing risks violation of human rights, freedoms and interests, damage to the authority of the judiciary, etc. But still, one of the main principles remains the use of AI technologies in justice exclusively under human control to ensure non-disclosure of confidential data, non-discrimination of a person, adoption of a fair court decision, etc. However, the gradual development of AI technologies in justice will certainly be accompanied by the emergence of new risks of their use by both judges,

court employees, and parties, participants in a court case, which confirms the need for further study of the specified issue with the aim of revising existing principles, supplementing their list with new ones, and as a result minimization of damage that can be caused.

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