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ARTIFICIAL INTELLIGENCE TECHNOLOGIES IN THE JUDICIARY: EUROPEAN STANDARDS AND UKRAINIAN PRACTICE

The article provides a comprehensive analysis of the growing influence of artificial intelligence (AI) technologies on the field of justice, with a particular focus on developments within European and international institutions. Taking into account the increased academic attention to this issue, the article reviews key policy documents that set the ethical and operational framework for the use of AI in justice systems. The article also highlights the establishment of a dedicated Resource Centre on Cyberjustice and AI within the CEPEJ, that provides institutional support for the exchange of best practices and legal tools in the field of AI applications in justice. The article aims to explore the introduction of developed policies during practical implementation of AI technologies in the field of justice, particularly in the Ukrainian context. The particular attention is paid to emerging trends and practices analysis in the use of AI in judicial processes, based on broader international and European standards. The research is divided into three main parts: the first part contains an overview of developed approaches to the use of AI in justice within the Council of Europe and other international organizations; the second part examines the first domestic regulatory initiative on the use of AI in the administration of justice, introduced by the High Anti-Corruption Court of Ukraine (HACC); the third

ТЕХНОЛОГІЇ ШТУЧНОГО ІНТЕЛЕКТУ В СУДОЧИНСТВІ: ЄВРОПЕЙСЬКІ СТАНДАРТИ ТА УКРАЇНСЬКА ПРАКТИКА

Представлено комплексний аналіз зростаючого впливу технологій штучного інтелекту (ШІ) на сферу правосуддя, з особливим акцентом на розробках європейських і міжнародних інституцій. З огляду на підвищену увагу науковців до цього питання розглянуто ключові документи, які встановлюють етичні та операційні рамки для використання ШІ у сфері здійснення судочинства. Крім того, висвітлюється створення спеціального Ресурсного центру з питань кіберправосуддя та штучного інтелекту при CEPEJ, що здійснює інституційну підтримку обміну найкращими практиками і правовими інструментами щодо застосування ШІ у сфері здійснення судочинства. Стаття має на меті дослідити, як розроблені політики втілюються під час практичної реалізації технологій ШІ у сфері судочинства, зокрема в українському контексті. Особливу увагу приділено аналізу нових тенденцій та практик використання ШІ у судових процесах на основі ширших міжнародних та європейських стандартів. Дослідження складається з трьох основних частин: перша містить огляд розроблених підходів щодо використання ШІ в судочинстві в рамках Ради Європи та інших міжнародних організацій; друга розглядає першу національну нормативну ініціативу щодо використання ШІ при здійсненні правосуддя, запроваджену

part explores the approach of Supreme Court to the legal qualification and implications of the use of AI by parties of the case in their case law. The article contributes to the scientific debate on how national jurisdictions can responsibly adapt to technological innovations, while upholding fundamental legal principles and ensuring the protection of human rights in the digital era.

Keywords: Artificial Intelligence (AI), information and Communication Technologies (ICT), judiciary, civil procedure, abuse of procedural rights, right to a fair trial.

Вищим антикорупційним судом України (ВАСУ); третя частина досліджує підхід Верховного Суду до правової кваліфікації та наслідків використання ШІ сторонами у справі у своїй судовій практиці. Зроблено внесок у наукову дискусію про те, як національні юрисдикції можуть відповідально адаптуватися до технологічних інновацій, дотримуючись при цьому основоположних правових принципів і забезпечуючи захист прав людини в цифрову епоху.

Ключові слова: штучний інтелект (ШІ), інформаційно-комунікаційні технології (ІКТ), судочинство, цивільне судочинство, зловживання процесуальними правами, право на справедливий судовий розгляд.

JEL Classification: K13.

Introduction

The use of artificial intelligence (hereinafter – AI) technologies in the judiciary has received increasing attention from academics in recent years (Zsolt, 2021; Dymitruk, 2019; Veress, 2021; Razmetaeva & Razmetaev, 2021; Razmetaeva, 2022; Razmetaeva & Filatova-Bilous, 2024; Tsuvina, 2020). Some common approaches and policies on this issue are being developed in the international and European institutions. The following documents were adopted in this regard: 1) the European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their Environment (CEPEJ, 2018), 2) Resolution 2341 of the Parliamentary Assembly of the Council of Europe "Need for democratic governance of artificial intelligence" (Parliamentary Assembly of the Council of Europe, 2020); 3) Report of the Committee on Legal Affairs and Human Rights "Justice by algorithm – the role of artificial intelligence in policing and criminal justice systems" (Committee on Legal Affairs and Human Rights, 2020); 4) Recommendation of the Council on Artificial Intelligence (ORCD, 2019); 5) CEPEJ Guidelines on videoconferencing in judicial proceedings (CEPEJ, 2021b), 6) Recommendation CM/Rec (2020)1 of the Committee of Ministers on the human rights impacts of algorithmic systems (Committee of Ministers, 2020); 6) CEPEJ Guidelines on electronic court filing (e-filing) and digitalisation of courts (CEPEJ, 2021a); 7) The Opinion No. 26 (2023) of the Consultative Council of European Judges (CCJE) "Moving forward: the use of assistive technology in the judiciary" (Consultative Council of European Judges, 2023) etc.

Special attention was also paid to the use of information and communication technologies in general and AI technologies in the latest European judicial systems CEPEJ Evaluation Report (CEPEJ, 2024). A special Resource Centre Cyberjustice and AI was even created within CEPEJ (Resource Centre Cyberjustice and AI, 2025), which collects and disseminates information on existing instruments in this area at national legal systems.

At the same time, despite such a rapid development of the AI use in justice area, it is evident that national legal orders are only beginning to face

such existential threats as ensuring access to justice in the age of AI, respecting the principle of proportionality between the efficiency of judicial proceedings and the guarantees of the right to a fair trial, ethical challenges in the field of automated decision-making, etc. In the light of the above, research on concrete examples of the use of AI in court proceedings at national level and attempts to regulate such use are of interest.

The aim of the article is to analyse new trends in the use of AI in the judiciary, based on the existing developed policies of international and European institutions, and to study individual attempts to regulate the use of AI in Ukrainian national practice.

The article is divided into three parts: the first part is devoted to an overview of the current policy in the field of AI technologies within the Council of Europe, the second part is an analysis of the legal qualification of the possibility of using AI technologies in the case law of the Supreme Court, and the third part is devoted to the first attempt to regulate the use of AI technologies at national level in the administration of justice made by the High Anti-Corruption Court of Ukraine (HACC).

1. Policy of the AI use in judiciary in Europe: in searching of a common approach

The problem of the use of AI in the justice area is not an easy one. The integration of AI into legal practice has raised complex questions about the legitimacy, reliability, and ethical use of such tools within judicial processes. CCJE identifies the AI in its Opinion № 26 "Moving forward: the use of assistive technology in the judiciary" as the replication of human cognition and decision-making by a machine, which involves applying statistical and mathematical algorithms that allow computers to recognize patterns within extensive datasets independently, without needing direct programming for each task. This ability to identify patterns is what is described as "learning". The results of such analysis can then be used for activities such as classifying data, organizing information, or making decisions (Consultative Council of European Judges, 2023).

In its European judicial systems Evaluation Report CEPEJ pointed out that "ICT is no longer a novelty, but a vital tool to automate tasks, reduce errors, standardise practices, improve monitoring of court proceedings, enable remote communication, enhance access to data and information and rationalise the overall efficiency and effectiveness of court operations. The digital transformation of justice over the last thirty years allows for remote hearings, presentation of electronic evidence, digitalisation of case files and court decisions, and simplifying / facilitating the search, analysis, and the drafting of the legal reasoning" (CEPEJ, 2024). CEPEJ emphasised three main domains, in which ICT plays a pivotal role – automation, re-organisation and management, and generative capabilities (CEPEJ, 2024). This third area is very important in our research. CEPEJ explains it as follows:

"ICT offers generative potential by fostering innovation within judicial systems. From electronic filing systems to data analytics tools, ICT empowers courts to generate new insights, improve service delivery, and adapt to evolving legal landscapes" (CEPEJ, 2024).

Although CEPEJ Evaluation Report does not explore the usage of AI tools in judiciary in detail, but only outlines them in general terms, CEPEJ noted the opening of the CEPEJ Resource Center on Cyberjustice and Artificial Intelligence, which tasks can be summarized as follows: 1) to collect and structure data of AI systems and other cyberjustice tools at national levels; 2) to help the national authorities responsible for the digitalization of justice to explore recent developments in this area to make it possible to explore its risks and benefits; 3) to provide the legal practitioners and users with the information of such systems according to the provisions of the the European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their Environment (Resource Center on Cyberjustice and Artificial Intelligence, 2025). The following areas of use of AI systems and other cyberjustice tools are distinguished: 1) document search, review, and large-scale discovery; 2) Online Dispute Resolution; 3) prediction of litigation outcome; 4) decision support; 5) anonymisation and pseudonymisation; 6) triaging, allocation and workflow automation; 7) recording, transcription and translation (Resource Center on Cyberjustice and Artificial Intelligence, 2025).

At the same time, in its Opinion № 14 on justice and information technologies (IT) CCJE emphasized that "IT should be used to enhance the independence of judges in every stage of the procedure and not to jeopardise it" (Consultative Council of European Judges, 2011). In the judicial area the use of AI has always been associated with several challenges dictated by the peculiarities of judicial decision-making and the need to ensure the right to a fair trial for litigants. CCJE in its Opinion № 26 "Moving forward: the use of assistive technology in the judiciary" (2023) identified challenges arising from the use of technology, among which are: a) substantive challenges, such as: (i) the judicial independence challenge; (ii) the fair trial challenge; b) other challenges, in particular: (i) design challenge; (ii) the implementation challenge; (iii) the funding challenge; (iv) the data protection, security and accessibility challenge; (v) the well-being challenge (Consultative Council of European Judges, 2023).

The challenges related to the use of AI in justice have led to the consolidation of efforts to develop the European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their Environment, adopted within the framework of the CEPEJ, with the aim of making the use of AI in civil, commercial and administrative disputes more predictable and ensuring consistency in judicial practice. This document identifies five principles for the use of AI in judicial proceedings, in particular: a) the principle of respect for fundamental human rights; b) the principle of non-discrimination; c) the principle of quality and security; d) the principle of openness, impartiality

and fairness; e) the principle of "under user control" (CEPEJ, 2018). These principles outline the basic framework for the use of AI in the judiciary and should be used as a guide for national practices.

2. First attempts to regulate the use of AI in the justice administration in Ukraine: Regulation of the AI usage in the High Anti-Corruption Court

The first document in the field of justice that attempted to regulate the use of AI in the work of the court was the Principles for the Use of Artificial Intelligence Tools in the High Anti-Corruption Court, approved by the Order of the High Anti-Corruption Court of 19 December 2024 № 56 (hereinafter – the Principles) (High Anti-Corruption Court, 2024). This document defines the general rules for the use of artificial intelligence tools by judges and HACC staff in the performance of the tasks assigned to the HACC.

This document states that the main objective of using AI in the work of the HACC is to increase the efficiency and transparency of its activities, as well as to establish conditions and rules for the use of AI tools in the performance of official duties in order to improve the quality of work, reduce the amount of organisational and material resources spent, and find ways to improve the efficiency of the work organisation processes of the HACC (High Anti-Corruption Court, 2024).

At the same time, the Principles emphasise that the use of AI cannot be considered as the result of the work of the HACC staff and does not replace the intellectual component of the HACC's human capital, but can only serve as an auxiliary tool to accelerate and optimise the use of the HACC's organisational and material resources related to the performance of certain work processes by the HACC's staff, except for issues related to the administration of justice or the functioning of the HACC as a state body. This document states that the main objective of using AI in the work of the HACC is to increase the efficiency and transparency of its activities, as well as to establish conditions and rules for the use of AI tools in the performance of official duties in order to improve the quality of work, reduce the amount of organisational and material resources spent, and find ways to improve the efficiency of the work organisation processes of the HACC (High Anti-Corruption Court, 2024).

The Principles define the main areas where AI can be used by HACC staff, which include, in particular: a) analysing and summarising large amounts of data; b) automating repetitive work processes; c) designing and visualising work reports, graphs, charts, etc.; d) searching for new ideas for approaches to organising work processes; e) creating content and/or automating the maintenance of the HACC's social media websites; g) creating chatbots to receive feedback from HACC visitors and participants in court proceedings; h) selecting materials for self-development; i) professional development of HACC staff, training, etc. (High Anti-Corruption Court, 2024).

It is important that this document explicitly states certain reservations regarding the use of AI in the work of the court, in particular:

a human rights caveat, according to which the use of AI should not violate the rights, freedoms and duties of a person and a citizen;

an ethical caveat, which means that such use should not violate the ethical rules and principles that are mandatory for HACC staff;

a confidentiality caveat, which means that when using AI, HACC staff must comply with the requirements for the protection of sensitive and other restricted information established by the applicable legislation, it is not allowed to upload official HACC documents to AI tools (High Anti-Corruption Court, 2024).

Once again, it should be emphasised that this document does not apply to the use of AI in judicial proceedings, as it explicitly states that the latter should be based on the principles of judicial independence and should not affect the objectivity of the court proceedings.

3. First attempts to use AI in the trial: the Supreme Court assessment of the use of AI tools during the preparation of procedural documents

Attention should also be paid to attempts to use AI tools in activities directly related to court proceedings and trial. This issue can be considered from the perspective of:

a) the possibility of using AI tools by the parties to the case and their representatives when drafting procedural documents, and

b) the possibility of using AI tools by judges during judicial proceedings.

Although there is no guidance on the second perspective neither in court practice nor in special regulations, the issue of the possibility of using AI tools in the preparation of procedural documents by the parties or their representatives has already been the subject of an assessment in one of the cases considered by the Supreme Court. In our opinion, the analysis of the Supreme Court reasoning in this case leads us to reflect on the second of the above-mentioned perspectives.

A recent judgment by the Supreme Court offers one of the first domestic legal assessments of these issues. In this case, the Supreme Court addressed the utilisation of AI-generated content, specifically from ChatGPT, in a procedural application submitted by a party's legal representative. The Supreme Court's response, which classified the use of ChatGPT as an abuse of procedural rights and an expression of disrespect towards the judiciary, has provoked a heated debate within the legal community (Decision of the Supreme Court on the 8th of February 2024 in case № 925/200/22).

At the core of the dispute was a request filed under Article 245 of the Commercial Procedural Code of Ukraine, which permits parties or enforcement officers to seek clarification of a judgment that has entered into

force. This procedural mechanism is narrowly tailored to support the enforcement of court decisions and does not permit reinterpretation or reconsideration of the legal reasoning underpinning the judgment. In the case at hand, the claimant's representative sought clarification not for enforcement purposes, but to challenge a particular concept – "voluntary obligation" – used by the Supreme Court in its judgement in this case. To support this argument, the representative cited a legal explanation generated by ChatGPT, suggesting that the court's application of the term conflicted with the conceptual understanding provided by the AI system (Decision of the Supreme Court on the 8th of February 2024 in case № 925/200/22).

The Supreme Court interpreted this activity as an abuse of procedural rights. It emphasized that the role of the clarification mechanism is not to provide a platform for disputing the court's reasoning or offering alternative legal interpretations. The application was found to contain no legitimate enforcement-related question, and thus fell outside the scope of Article 245. The Supreme Court further criticized the use of ChatGPT in this context, asserting that AI systems are not reliable or authoritative sources of legal knowledge, given their lack of a scientific foundation, regulatory oversight, or verification mechanisms. The Supreme Court's ruling went beyond the specific procedural issue and ventured into broader commentary on the use of AI in the legal domain. It acknowledged that AI technologies may serve as supportive instruments in legal work but warned that their use must not undermine the authority of judicial decisions. In the the Supreme Court's view, invoking an AI-generated "opinion' to contest the conclusions of a final judgment directly challenges the institutional role of the judiciary and may erode public confidence in the justice system. Such conduct, the the Supreme Court held, demonstrates a failure to exercise the professional responsibility expected of legal practitioners and undermines the principles of fair trial and procedural discipline" (Decision of the Supreme Court on the 8th of February 2024 in case № 925/200/22).

In a notable dissent, Supreme Court Judge Hanna Vronska argued that the procedural law does not explicitly prohibit the use of AI in court filings. She emphasized that the application in question did not display disrespectful or offensive content, nor did it involve any attempt to deceive the court or the opposing party. Judge Vronska maintained that the reference to ChatGPT was used to support a legal argument and did not constitute a procedural violation per se. In her view, without clear statutory or jurisprudential criteria for defining misuse of AI tools in legal proceedings, it is premature and unjustified to categorize such usage as abusive (Dissenting Opinion of Judge Vronska in case № 925/200/22 on the 8th of February 2024).

Such a controversial position by the Supreme Court opens up a broader discussion about the interaction between information technology and the law. As AI tools become more sophisticated and widely available, legal systems will need to address questions of their evidentiary value, reliability

and permissible scope of use[1]. For example, whether to consider the possibility of using texts generated by large linguistic models not only in the preparation of procedural documents by parties to a case and their representatives, but also the possibility of using AI technologies in the conduct of legal proceedings by judges themselves. And until regulatory and judicial standards are established, lawyers will continue to navigate a grey area where innovation, ethical boundaries and procedural safeguards remain in tension.

It is important to note that the question of whether judges should use large language models or other AI tools is not addressed in the procedural codes. Meanwhile, as outlined in Article 16 of the revised Code of Judicial Ethics, which was approved by the XX Regular Congress of Judges of Ukraine on 18 September 2024, the use of artificial intelligence technologies by a judge is permissible if it does not affect the independence and impartiality of the judge, does not affect the evaluation of evidence and the decision-making process, and does not violate the requirements of the law (Congress of Judges of Ukraine, 2024). In our opinion, such a different approach to the use of AI tools in court proceedings – when such use is permissible for the court, but for the parties to the proceedings and their representatives it is almost always equated with the abuse of procedural rights – is not sufficiently justified.

Conclusion

The use of AI technologies in the judiciary is spreading rapidly, and it is possible that it will eventually become an everyday reality in Ukrainian courts. At the same time, today we see only the first attempts to regulate the use of AI in a framework – in terms of the use of AI technologies in court administration, in particular in the activities of the HACC that are not related to the delivery of justice, as well as the possibility of the use of AI technologies by judges in the Code of Judicial Ethics.

At the same time, it is clear that the general reservations expressed in the Code of Judicial Ethics regarding the use of AI in the work of a judge should be understood and interpreted in the light of the rule of law, the independence of the judiciary and the guarantees of the right to a fair trial as provided for in Article 6(1) of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the ECtHR. From this point of view, it is advisable to develop and approve guidelines for the use of AI tools in the work of judges at the level of the Congress of Judges, as is the case in some foreign countries.

At the same time, it is worth critically assessing the recent case law of the Supreme Court, in which the use of large linguistic models by a party's representative when drafting a cassation appeal was considered an abuse of

[1] For the author's argumentation on this case see more: Razmetaeva, Yu., & Filatova-Bilous, N. (Eds.). (2024). *European Fundamental Values in the Digital Era*, 264–282. Pravo.

procedural rights and contempt of court. This once again highlights the lack of a uniform understanding of the nature and types of abuse of procedural rights in national court practice, which results in the concept being used to refer to behavior of the parties that does not show signs of illegality and does not contradict the purpose and objectives of the court proceedings.

In light of the above, specially developed toolkits on the use of AI tools for parties and their representatives, as is the case in foreign legal systems, as well as the introduction of provisions on the improper use of AI tools in legal proceedings in the Rules of Professional Ethics, in order to enable attorneys to be brought to disciplinary liability for the unethical use of AI in their activities, are also becoming relevant.

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