

ЦИВІЛЬНЕ, ПІДПРИЄМНИЦЬКЕ, ТРУДОВЕ ПРАВО

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LEGAL REGULATION OF ARTIFICIAL INTELLIGENCE TECHNOLOGY: PROBLEMS OF THEORY AND PRACTICE

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*The purpose of this article is to study the current problematic issues of theory and practice relating to legal regulation of artificial intelligence technology. For this purpose, the author analyzes the concepts of “digital technologies”, “artificial intelligence”, “legal regime of artificial intelligence”, and “legal personality” of artificial intelligence. The analysis also examines the peculiarities of the legal regime of artificial intelligence technologies and their practical significance. **The methodological basis** of the study is general scientific and special methods of scientific knowledge. The use of these methods made it possible to analyze the peculiarities of legal regulation of artificial intelligence technologies and to describe the problems of its legal regime. **Results:** artificial intelligence technologies require comprehensive legal regulation that will establish clear boundaries for their use and introduce effective control mechanisms; formulation of proposals for improving the current civil legislation of Ukraine, taking into account global trends in the legal regulation of artificial intelligence; implementation of international experience and development of special legislation will ensure a balance between technological progress and protection of citizens’ rights. **Discussion:** the rapid development of artificial intelligence is accompanied by a number of potential threats to participants in civil legal relations, including the provision of false information, failure to fulfill contractual obligations, health hazards, violation of the right to a fair trial, and overloading of the judicial system. Of particular concern is the use of artificial intelligence in areas that directly affect human rights, such as medicine and the judiciary. Algorithmic errors can lead to negative consequences, including violations of human rights and legal liability for damages. Also, automation of judicial processes cannot replace the human factor, as artificial intelligence does not have the moral principles and professional ethics necessary for the administration of justice.*

Key words: digital technologies; legal regulation; legal regime; artificial intelligence; artificial intelligence technologies; “legal personality” of artificial intelligence.

Problem statement and its relevance. The relevance of the topic is due to the rapid development of artificial intelligence technologies, which requires proper legal regulation of this phenomenon.

The use of machine learning algorithms, neural networks and other automated systems has already become an integral part of modern society, economics and jurisprudence. However, the legal aspects of artificial intelligence, including its “legal personality”, liability for damage, and international approaches to regulation, remain controversial.

The growing integration of artificial intelligence into various fields of activity, including legal relations, creates new challenges for traditional legal concepts. The current legal order lacks a single, universally recognized definition of artificial intelligence, which complicates its legal regulation.

The problem of artificial intelligence’s “legal personality” remains open, as current Ukrainian legislation does not define it as a subject of legal relations, which complicates the issue of liability for the actions of autonomous systems. In addition, the legal doctrine faces issues of regulating contractual relations involving artificial intelligence, intellectual property rights, and personal data protection.

In particular, the relevance is reinforced by the emergence of a number of court cases on liability for artificial intelligence. Some countries, such as the EU and the US, already have legal initiatives to regulate this area, but they are not unified. The European Union has introduced the Artificial Intelligence Act, Canada is working on the Artificial Intelligence and Data Act (AIDA), and the United States is adopting regulations at the state level. At the same time, Ukraine lacks a clear legal framework for regulating artificial intelligence, which creates the need to adapt civil law to new modern challenges.

The purpose of the article is to provide a comprehensive analysis of the legal regulation of artificial intelligence technologies with a focus on the issues of theory and practice in civil law.

Analysis of recent research and publications.

The problems of the theory and practice of legal regulation of digital technologies in general and artificial intelligence technology in particular, as well as the impact of artificial intelligence on private law doctrine, are being actively studied by both national and foreign scholars and practitioners. The authors who have studied these issues include: Androshchuk G.O., Belov D.M., Belova M.V.,

Bilyk P., Velikanova M.M., Varava I.P., Grudnytskyi V.M., Zhomokuy Y.M., Zerov K.O., Kodynets A.O., Kokhanovska O.V., Paramonov O.Y., Spesivtseva O.O., Forsiuk V.L., and others.

Despite the existence of some scientific and applied research, the relevance of further study of this topic is due to the dynamism of digitalization, the emergence of new forms of legal relations, the lack of unambiguous approaches to the “legal personality” of artificial intelligence, and the need to adapt national legislation to international standards.

Presentation of basic material of the research.

Today, artificial intelligence technologies are a tool for everyday use in various industries and everyday life, and this necessitates its reasonable and effective legal regulation.

The relevance of this issue lies in the lack of a legislative definition of the concept of “artificial intelligence” in the national legislation of Ukraine, except for the Concept of Artificial Intelligence Development in Ukraine of December 2, 2020, No. 1556, which defines that “artificial intelligence is an organized set of information technologies that can be used to perform complex tasks by using a system of scientific research methods and algorithms for processing information received or independently created during work, as well as to create and use own knowledge bases, decision-making models, algorithms for working with information and determine ways to achieve the tasks” [1].

If we look at international experience, the EU Artificial Intelligence Act is one of the most important legal acts regulating artificial intelligence. It is the first comprehensive legislative act of the European Union (hereinafter referred to as the EU) aimed at regulating artificial intelligence activities by EU member states. For example, Article 3(1) of the European Union Artificial Intelligence Act defines “artificial intelligence system” as a machine system that is designed to operate with different levels of autonomy and that can demonstrate adaptability after deployment, and that, for explicit or implicit purposes, concludes from the input it receives how to generate results, such as predictions, content, recommendations or decisions that may affect a physical or virtual environment” [2]. In this law, artificial intelligence is defined as a machine system with the functions of autonomy and genera-

tion of certain decisions (forecasting, recommendation, decision, etc.).

It would also be appropriate to consider the so-called Bill C-27 or its component, the Artificial Intelligence and Data Act (AIDA), which was introduced by the Canadian government in June 2022 and is currently under consideration. AIDA is a comprehensive legal document that will form the regulatory framework for artificial intelligence systems in Canada, so that the latter, in turn, are based on the basis of safety for users or third parties, non-discrimination and responsibility of companies of such technologies. Part 2 of Article 39 of the Law on Artificial Intelligence and Data defines the following: “a technological system that autonomously or partially autonomously processes data related to human activity using a genetic algorithm, neural network, machine learning, or other technique to generate content or make decisions, recommendations, or predictions” [3]. Hence, we see a more concise and improved definition that refers to the terms “data processing”, “content generation”, etc., which, in our opinion, prevents ambiguity in the interpretation of artificial intelligence.

Analyzing the US legislation, one can notice the problem of the absence of a single official definition of artificial intelligence, but in some acts one can find its various variations. For example, the Executive Order on Maintaining American Leadership in Artificial Intelligence contains a definition in Section 9 - “the term ‘artificial intelligence’ means the full scope of Federal investments in artificial intelligence, including: research and development of basic artificial intelligence methods and technologies; artificial intelligence prototype systems; application and adaptation of artificial intelligence methods; architectural and system support for artificial intelligence; cyber infrastructure, data sets, and standards for artificial intelligence” [4].

In other words, this order directs the definition more to the economic and research fields than to legal regulation, and the Executive Order on Promoting the Use of Robust Artificial Intelligence in the Federal Government [5] in Section 9 uses Section 238(g) of the National Defense Authorization Act for Fiscal Year 2019 as a reference point, which defines what “the term ‘artificial intelligence’ includes:

1) any artificial system that performs tasks under changing and unpredictable circumstances without significant human control or is capable of learning from experience and improving performance when processing data sets;

2) an artificial system created in the form of computer software, physical hardware, or other environment that solves tasks requiring perception, cognitive abilities, planning, learning, communication, or physical actions similar to humans;

3) an artificial system designed to think or act in a human-like manner, including cognitive architectures and neural networks;

4) a set of methods, including machine learning, that are designed to approximate the performance of cognitive tasks;

5) an artificial system designed for rational actions, in particular, an intelligent software agent or robot that achieves its goals through perception, planning, logical reasoning, learning, communication, decision-making and action” [6]. Such definitions can be reduced to the general concept of artificial intelligence as an artificial system capable of performing cognitive functions based on machine learning.

While the California Civil Rights Council, in its amendments to labor law regarding automated decision-making systems, proposed its own definition in Part 3 of the proposed amendments, which reads as follows: “a machine learning system that can make predictions, recommendations, or decisions for a specific set of human-defined goals” [7]. California lawyers and legislators did not stop there, and in February 2023, the state Senate introduced Senate Bill 721 [8], which provides for the establishment of the California Interagency Working Group on Artificial Intelligence. This group is tasked with submitting a report to the legislature by January 1, 2030, which will include a general definition of artificial intelligence to be used at the legislative level. Thus, there are different concepts of artificial intelligence in the US legislation, depending on the field of application, but the most active and focused on legal regulation are the legislators of the state of California, who plan to be the first to provide an official definition of artificial intelligence in the United States.

Thus, we can say that the essence of the above

concepts is close to each other in the general sense, but the wording is different. The Artificial Intelligence and Data Act (Canada) is the most comprehensive among the previously studied definitions compared to the others. The EU defines artificial intelligence as a “machine system”, Canada - as a “technological system”, and California lawyers, although at the stage of developing a general concept, define a “machine learning system” as artificial intelligence. What is common is that the Canadian and EU documents studied above refer to the generation of content (decisions, proposals, recommendations, etc.) as the result of input data, while the Californians took a more general approach - the result is forecasts, decisions, etc.

As mentioned above, national legislation currently does not regulate artificial intelligence in civil turnover, which also gives rise to discussions among scientists and lawyers about granting “legal personality” to artificial intelligence, in particular, determining who owns intellectual property rights, defining the limits of liability, etc.

In modern democratic countries governed by the rule of law, including Ukraine, the legal status of a person belongs only to individuals, i.e. people, as provided for in Articles 24-27 and other of the Civil Code of Ukraine (hereinafter - the CCU). It is individuals who have the full range of rights provided for by the legislation of each state, but there are exceptions to the restriction of some rights, for example, in the case of a person being recognized as incapacitated. Thus, most scholars agree with the statement of Y. Zhornokuy that “a more limited status of a person is granted to legal entities whose legal rights are mainly limited to economic relations” [9, p. 119].

An individual uses his or her rights and obligations to realize personal interests, i.e., they are certain means of achieving a specific individual goal. The discussions on the definition of artificial intelligence in the legal field as an object or subject are quite long, because if earlier artificial intelligence at the initial stage of creation could be considered an object of law (mostly civil law), in relation to which individuals and/or legal entities could enter into legal relations, in particular, by concluding a sale and purchase agreement or other transactions, a contract of exchange or other transactions, the legal

precedent of the acquisition of Saudi Arabian citizenship in October 2017 by the android (gynoid) Sophia from the Hong Kong company Hanson Robotics “with the ability to adapt to human behavior and work with people” [10, p. 74], which has artificial intelligence.

To date, many humanoid robots with artificial intelligence have been developed and demonstrated to humanity. A striking example of this is the humanoid robots with artificial intelligence from Realbotix, presented in January 2025, which are able to “conduct dialogues, memorize interlocutors and demonstrate emotions” [11].

Artificial intelligence, in our opinion, cannot be granted legal status on the basis of a natural person, as this would directly contradict the law, in particular, the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and the EU Charter of Fundamental Rights, and on the basis of a legal entity, as it is in fact a product (thing) of the activities of a company or an individual who cannot represent artificial intelligence in private or commercial use.

As rightly noted by Y. Zhornokuy: “The purpose of granting a subject legal personality is to enable it to influence the legal system in a certain way and to be subject to certain influence from it” [9, p. 120]. Based on this, we believe that artificial intelligence can neither influence nor be influenced by legally negative or positive consequences (legal liability, remuneration, etc.) on its own.

The main essence of artificial intelligence, which distinguishes it from modern information and communication systems controlled by humans, is the presence of cognitive capabilities that arise during autonomous or semi-autonomous activities. In particular, artificial intelligence cannot be held liable, because in fact, a certain result is obtained based on a corresponding request. As Y.M. Zhornokuy points out: “The legal system, if it decided to grant such systems (actually robots) legal personality, would have to specifically set out what legal rights and obligations are associated with such recognition. If this does not happen, it will be difficult for the legal system to understand what it has done” [9, p. 121]. Therefore, if a certain country begins to endow artificial intelligence with “legal personality”, it is necessary to allocate a spe-

cial legal status for it.

In Ukraine, the legal regime of artificial intelligence is not defined at the legislative level, let alone defined as a subject of law, so it is currently an object of legal relations, and responsibility will be borne by the developer and/or user. It is also worth mentioning the opinion of Velikanova M.M., that “the European Parliament adopted a resolution on 20.10.2020 stating that any physical or virtual activity, device or process controlled by artificial intelligence systems can technically be a direct or indirect cause of harm or damage, but is almost always the result of someone creating, deploying or interfering with their operation; therefore, it is not necessary to grant legal personality to artificial intelligence systems” [12, p. 84].

Raising the question of who owns intellectual property rights, we should refer to the principles of copyright, according to which the original creative contribution is recognized as a person, not a tool. Thus, artificial intelligence does not have a specific status that would give the right to claim authorship. Smirnov I. in his study notes that “according to the terms of use of ChatGPT, OpenAI, the developer of the system, does not own the content created by users” [13], which further secures copyright for a person. In particular, the Law of Ukraine “On Copyright and Related Rights” (hereinafter - the Law) has a number of articles regulating intellectual property rights to an object created by artificial intelligence, in particular, part 5 of Article 33 of the Law provides that “a sui generis right to a non-original object generated by a computer program arises as a result of the fact of generating this object and begins to operate from the moment of its generation” [14], such rights are subject to a term of protection of 25 years.

As mentioned above, artificial intelligence systems are almost an integral part of our lives and are used in many areas of human activity, such as science, business, education, etc. The rapid development of artificial intelligence technologies raises concerns about possible risks in case of improper and unethical use, as the unique risks of such systems are due to their autonomy. For example, artificial intelligence is able to learn from input data and memorize information, so this specificity complicates the process of detecting and responding to

failures.

Although, the development of artificial intelligence has mostly positive aspects, such as processing and analyzing a large amount of information, detecting human errors and improving efficiency, automating processes, increasing the accuracy of results in many areas, etc. However, a number of risks for participants of civil legal relations should be considered, among which the authors include:

- 1) unreliability of information concerning an individual or legal entity;
- 2) failure to fulfill contractual obligations;
- 3) violation of the right to health care
- 4) violation of the right to a fair trial;
- 5) overload of the judicial system.

In the first aspect, we allow for the possibility of distortion of information, for example, when artificial intelligence analyzes unverified sources or publications of the so-called “yellow press” and provides false or distorted information about a company or a public figure to the user, which may be a violation of the right to respect for honor, dignity and/or business reputation (Articles 297, 299 of the Civil Code of Ukraine) and is the basis for filing a lawsuit (defamation claim).

The second aspect is supported by a real-life case that has gained considerable publicity. For example, Mike Jones ordered an unmanned Waymo taxi to the Los Angeles airport, and upon arrival at the landing site, the car began to circle the parking lot, making him late for his flight [15]. From this situation, we see that the man (passenger) entered into a passenger transportation contract with the Waymo taxi service (carrier), where the latter failed to disembark on time, and therefore violated the terms of the contract, which led to negative consequences for the passenger (in this case, a late flight).

The third risk occurs if artificial intelligence makes a mistake in the algorithm or has irrelevant (outdated) data, which will lead to an incorrect diagnosis that endangers the patient’s life and health and may directly give rise to damages based on breaches of the healthcare services agreement.

The fourth risk requires special attention, because the practice of introducing artificial intelligence (AI) into various systems of human activity

has not bypassed the judiciary, so we should agree with the opinion of scientists Belov D. M. and Belova M. V. that “automation of judicial proceedings with the help of artificial intelligence is one of the current trends in the development of judicial proceedings” [16, p. 316]. This approach may have advantages, such as increased speed and efficiency of decision-making, increased objectivity of trials, and disadvantages that may have critically negative consequences for justice.

The judiciary has a significant role in protecting the rights and interests of individuals and legal entities, so any mistake can cost a loss of justice. It is necessary to be aware of the risks of artificial intelligence that may arise due to the limited data on which they are based, resulting in systematic, unfair, inaccurate (distorted) court decisions, and the topic of ethics and moral values should be raised directly, since artificial intelligence in its activities does not have a conscience (only imitates it), morality, honor, professional ethics, which guide judges in the exercise of their official powers, in particular in terms of making decisions. Therefore, artificial intelligence will not be able to replace judges, but will be an auxiliary tool in the activities of the judiciary, and only in the manner and within the limits set by the code of ethics and legislation.

The total set of risks highlighted earlier may give rise to the last one - overloading the judicial system, in particular, the workload of judges will increase several times when persons whose civil rights have been violated file a lawsuit for their protection.

Conclusions. Artificial intelligence has become an integral part of modern society, but its rapid development is accompanied by a number of potential threats to participants in civil legal relations. Despite significant benefits, such as increased efficiency, process automation, and accurate data analysis, there are serious risks, including unreliable information, failure to fulfill contractual obligations, health hazards, violation of the right to a fair trial, and overloading the judicial system.

Of particular concern is the use of artificial intelligence in areas that directly affect human rights, such as medicine and the judiciary. Algorithmic errors can lead to negative consequences, including violations of human rights and legal liability for

damages. At the same time, automation of judicial processes cannot replace the human factor, as artificial intelligence does not possess the moral principles and professional ethics necessary for the administration of justice.

Therefore, artificial intelligence technologies require comprehensive legal regulation that will set clear limits on their use and introduce effective control mechanisms. In particular, the implementation of international experience and the development of special legislation will help to ensure a balance between technological progress and the protection of citizens' rights.

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ПРАВОВЕ РЕГУЛЮВАННЯ ТЕХНОЛОГІЇ ШТУЧНОГО ІНТЕЛЕКТУ: ПРОБЛЕМИ ТЕОРІЇ І ПРАКТИКИ

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*Метою даної статті є дослідження актуальних проблемних питань теорії і практики щодо правового регулювання технології штучного інтелекту. Для цього було проаналізовано поняття «цифрові технології», «штучний інтелект», «правовий режим штучного інтелекту», «правосуб'єктність» штучного інтелекту. Також у результаті аналізу було розглянуто особливості правового режиму технологій штучного інтелекту та їх практичне значення. **Методологічною основою** дослідження є загальнонаукові та спеціальні методи наукового пізнання. Використання цих методів дало можливість проаналізувати особливості правового регулювання технологій штучного інтелекту та описати проблеми його правового режиму. **Результати:** технології штучного інтелекту потребують комплексного правового врегулювання, що встановлюватиме чіткі межі їх використання та запроваджуватиме ефективні механізми контролю; формулювання пропозицій по вдосконаленню чинного цивільного законодавства України, враховуючи світові тенденції правового регулювання штучного інтелекту; впровадження міжнародного досвіду та розробка спеціального законодавства дозволить забезпечити баланс між технологічним прогресом та захистом прав громадян. **Обговорення:** стрімкий розвиток штучного інтелекту супроводжується низкою потенційних загроз для учасників цивільних правовідносин, зокрема, надання недостовірної інформації, невиконання договірних зобов'язань, загроза для здоров'я, порушення права на справедливий суд та перенавантаження судової системи. Особливе занепокоєння викликає застосування штучного інтелекту у сферах, що безпосередньо впливають на права людини, наприклад, медицина та судочинство. Помилки алгоритмів можуть призвести до негативних наслідків, включаючи порушення прав осіб і юридичну відповідальність за завдану шкоду. Також автоматизація судових процесів не може замінити людський фактор, оскільки штучний інтелект не володіє моральними принципами та професійною етикою, необхідними для здійснення правосуддя.*

***Ключові слова:** цифрові технології; правове регулювання; правовий режим; штучний інтелект; технології штучного інтелекту; «правосуб'єктність» штучного інтелекту.*

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