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Artificial intelligence in the work of lawyers and in the judicial system – from new technologies to regulations

Introduction

March 14, 2023 saw the launch of ChatGPT-4, and almost immediately, the spectacular success of the US research organization OpenAI was announced[1]. As soon as the capabilities of the latest iteration of the artificial intelligence algorithm (hereafter also referred to as AI) from the Silicon Valley-frontier laboratory[2] were presented, questions and speculation arose about the not-too-distant future as well as the role of humans in a world where AI plays an increasingly important role. Although the above date by no means ushered in the fourth industrial revolution, nor was it the only one that introduced more technologies based on similar solutions, the event of that day reverberated the most among those interested in the issue[3]. Neither Gemini (until February 2024 known as Bard) from Google, which demonstrates some tendencies toward disinformation[4], nor Copilot from Microsoft – the provider of services such

[1] S. Palczewski, *ChatGPT-4 od OpenAI. Sukces, ale i wiele ograniczeń,* https://cyberdefence24.pl/technologie/chatgpt-4-od-openai-sukces-ale-i-wiele-ograniczen (accessed: 9.08.2024).

[2] OpenAI is headquartered in San Francisco, California, lying barely a few dozen kilometres from the Santa Clara Valley, the northern part of which is the notorious Silicon Valley – the cradle of the legend of great companies founded in a garage.

[3] See: https://ai-blog.eu/podsumowanie-2023-roku/ (accessed: 9.08.2024).

[4] M. Michalewski, *Dezinformacja 2.0. Rola AI w kontroli informacji i kształtowaniu opinii,* https://elementapp.ai/blog/dezinformacja-2-0-rola-ai-w-kontroli-informacji-i-ksztaltowaniu-opinii/ (accessed: 18.09.2024).

Noas MS Office, used by more than a billion people worldwide[5] – proved as impressive as ChatGPT-4, associated with the eccentric billionaire entrepreneur Elon Musk, and its new capabilities. The greatest advances in AI relative to older versions of the algorithm have been made in several areas, including the legal domain[6].

Noting the progressive development of AI, this paper explores selected aspects concerning the possible involvement of artificial intelligence in the work of lawyers, including representatives of the judiciary. The main purpose of the study is first to discuss selected novel information technologies tested in the USA, China and Poland, as they may have a significant impact on how lawyers, including judges, perform their respective professions and ultimately transform the nature of the latter. Subsequently, attention will be drawn to the most recent European regulations pertaining to AI.

Apart from recapitulating the observations, the conclusion will ask the question of whether the development of new technologies and the gradual deployment of AI in a proportion of legal services may prospectively culminate in a situation where the computer replaces not only the lawyer who provides counseling or representation but, to some extent, the judge in their judicial capacity. The following inquiry relies primarily on theoretical and dogmatic-legal analysis of selected relevant literature, online sources, and normative acts.

AI in the work of lawyers: selected technologies

It may be noted at the outset that the latest iteration of ChatGPT has significantly improved its score in the biannual US test known as the Uniform Bar Examination (UBE), taken by law students before they are licensed to practice law. The exam consists of three components, containing problem and multiple-choice questions, which are scored on a 400-point scale[7]. When Version 3.5 of the Chat was tested to assess its capabilities, it turned out that although it knew the answers to a number of questions, it ranked among the

[5] See: *Over 1 billion people worldwide use a MS Office product or service,* https://financialpost.com/personal-finance/business-essentials/over-1-billion-people-worldwide-use-a-ms-office-product-or-service (accessed: 18.09.2024).

[6] O. Górzyński, *OpenAI: nowy GPT-4 zda egzamin prawniczy. Czy za 10 lat zastąpi prawnika, księgową, programistę, dziennikarza?*, https://samorzad.infor.pl/wiadomosci/5702338,openai-nowy-gpt4-zda-egzamin-prawniczy-kiedy-zastapi-prawnika-ksiegowa-i-dziennikarza.html (accessed: 10.08.2024).

[7] See: https://www.ncbex.org/exams/ube (accessed: 12.08.2024); https://www.ncbex.org/exams/mee (accessed: 13.08.2024); https://www.ncbex.org/exams/mpt (accessed: 13.08.2024); https://www.ncbex.org/exams/mbe (accessed: 13.08.2024).

lowest 10% of scores obtained by humans[8]. The latest version, which debuted a year later, was already in the top 10%, achieving a total of 297 points. AI performed best in the Contracts section[9]. Although the capabilities of the upcoming new iteration of the algorithm are as yet unknown, further significant improvements are expected, and they are certain to capture the attention of the media as well as numerous institutions interested in exploiting the achievements of AI. In a democratic, rule-of-law state, one of the fundamental principles of judicial proceedings – or at least an advocated priority – is expedition, aimed primarily at preventing protracted proceedings as well as ensuring that cases are resolved fairly and in the shortest possible timeframe by a competent, impartial and independent court[10]. However, theory clashes with practice, as the reality is often considerably different[11]. The number of procedural obligations, necessary submissions and expert reports, evidence, and all kinds of other issues that prolong the course of a case means that the judicial system has long ceased to be efficient, while the 21st century society, deeply habituated to almost instantaneous access to goods and services and using state-of-the-art technology for their own convenience, do expect speed, security and greater efficiency in the public sector[12]. Hence, some entertain high hopes for AI as a milestone in human development, with ChatGPT as its flagship product. Even so, while the latter has advanced significantly as a result of improvements, it is not flawless. Not infrequently, it confuses facts, cites the wrong sources, or fails to resolve dilemmas with an ethical element, which is so crucial to fair adjudication[13]. With time, these problems are likely to be mitigated or eliminated, and some of the solutions may consequently be

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[8] P. Arredondo, *GPT-4 passes the bar exam: what that means for artificial intelligence tools in the legal profession*, https://law.stanford.edu/2023/04/19/gpt-4-passes-the-bar-exam-what-that-means-for-artificial-intelligence-tools-in-the-legal-industry/ (accessed: 12.08.2024).

[9] D.M. Katz, M.J. Bommarito, S. Gao, P. Arredondo, *GPT-4 passes the bar exam*, „Philosophical Transactions A" 2024, Vol. 382, No. 2270, pp. 5–12, https://royalsocietypublishing.org/doi/epdf/10.1098/rsta.2023.0254 (accessed: 14.08.2024).

[10] Cf. article 45 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483).

[11] On the crisis phenomena concerning judicial dispute resolution in many contemporary legal systems see e.g. A. Zienkiewicz, *Holizm prawniczy z perspektywy Comprehensive Law Movement. Studium teoretycznoprawne*, Warszawa 2018, pp. 312–321 and the literature indicated there.

[12] R. Susskind points out that the challenge of „more for less", resulting from clients' expectation of a qualitatively and quantitatively superior and more time-efficient service at a lower price, is one of the leading factors that will determine the direction of legal services over the next decade. It is likely to radically change how lawyers work in view of the significant cost of legal services provided in the traditional formula at a time of economic crisis, the increasing complexity and volume of legal problems, and the ongoing advances in (and access to) new information technologies. See: R. Susskind, *Tomorrow's lawyers. An introduction to your future*, New York 2017, pp. 4–5, 15.

[13] On the issue of the right to fair adjudication in the light of contemporary challenges related to the presence and use of artificial intelligence algorithms in its process, see more: M. Dymitruk, *The right to a fair trial in automated civil rroceedings*, „Masaryk University Journal of Law and Technology" 2019, Vol. 13, No. 1, pp. 27–44.

implemented alongside or instead of the already existing systems that support the work of lawyers. A question naturally arises: is artificial intelligence the long-term answer to humanity's needs in the broadly understood justice and legal services sector as well?[14]

As regards the US, one should note that certain states utilize the COMPAS (Correctional Offender Management Profiling for Alternative Sanctions) system, a tool developed by the private company Equivant (formerly Northpointe) to assist judges in decision-making[15]. The program assesses the likelihood of recidivism, failure to appear in court and the risk of future violent crime[16]. The score is expressed on a ten-point scale based on a variety of data, including the criminal record of the person in question, their environment, age, gender and ethnicity[17], although it has not been disclosed how AI computes such probability or which factors are key to the probability calculations. The move to have the judges assisted by AI mechanisms has resulted in part from the phenomenon known as the "hungry judge effect", i.e. a situation in which rulings made by judges are statistically more lenient after a lunch break than before one when rulings tend to be stricter[18]. It should be noted, however, that the 2011 study which demonstrated such a peculiarity was not conducted by American but by Israeli researchers, who examined a total of 1,112 decisions issued by Israeli judges in the observation period[19]. Inferred in that experiment, the direct correlation between the severity of the rulings and perceived hunger was warranted in view of the statistics cited above, but it was also criticized by certain scientific milieus, who claimed that the result is exaggerated, as it seems to be a key factor in the theory with which they categorically

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[14] R. Susskind, *Tomorrow's lawyers*…, p. 13.

[15] A.L. Washington, *How to argue with an algorithm: lessons from the COMPAS-ProPublica debate*, „The Colorado Technology Law Journal" 2019, Vol. 17, No. 1, p. 133, https://ctlj.colorado.edu/wp-content/uploads/2019/03/4-Washington_3.18.19.pdf (accessed: 14.08.2024).

[16] F. Lagioia, R. Rovatti, G. Sartor, *Algorithmic fairness through group parities? The case of COMPAS-SAPMOC*, „AI & Society" 2023, Vol. 38, No. 2, pp. 462–463, https://link.springer.com/article/10.1007/s00146-022-01441-y (accessed: 13.08.2024); M. Dymitruk, *Algorithmic decision-making in the judiciary: striking the right balance*, Workshop on AI, Law and Philosophy (ALP 2023) at the 36th International Conference on Legal Knowledge and Information Systems (JURIX 2023), Maastricht University, Netherlands, 18–20.12.2023, section „3.1.2. Principle of non-discrimination".

[17] Ibidem, pp. 459, 463, 471.

[18] K. Piwowar, *Algorytmy – dyskryminacja i wykluczenie oraz ich społeczne konsekwencje,* https://swps.pl/centrum-prasowe/informacje-prasowe/24585-algorytmy-dyskryminacja-i-wykluczenie-oraz-ich-spoleczne-konsekwencje (accessed: 15.08.2024). See also the pioneering text on the subject: S. Danziger, J. Levav, L. Avnaim-Pesso, *Extraneous factors in judicial decisions*, „Proceedings of the National Academy of Sciences" 2011, Vol. 108, No. 17, pp. 6889–6892.

[19] M. Nosowski, *Problem głodnych sędziów, czyli co tak naprawdę Daniel Kahneman opisał w swojej książce,* https://www.wsroddanych.pl/post/problem-g%C5%82odnych-s%C4%99dzi%C3%B3w-czyli-co-tak-naprawd%C4%99-daniel-kahneman-opisa%C5%82-w-swojej-ksi%C4%85%C5%BCce (accessed: 18.09.2024).

disagree[20]. Further disapproval was prompted by fears of having AI implemented into legal systems under the banner of eliminating human shortcomings[21]. However, regardless of the critical voices, the fact is that hunger, thirst, fatigue, or other external factors contribute – to a greater or lesser extent – to the overall quality of work performed by all professionals, including those in the legal domain. This must not be overlooked, particularly in the US, where, according to data from 2022, the number of civil and criminal cases exceeded 65 million (with close to 100 million 10 years earlier; 2020 saw a major decline from nearly 85 to over 61 million)[22]. Thus, introducing an AI algorithm into the justice system was a response to problems that only continue to accrue. While the solution had the desired effect on the efficiency of the courts and removed the burden of a thorough examination of each case from the representatives of the American judiciary, it was not free from error. AI relies on specific data, figures, and mathematical premises to compute the percentage probability of a given occurrence, search for, and combine similar phrases to juxtapose two different facts. At the stage of data collection, selection and analysis, so-called algorithmic exclusion may take place[23]: an error in computer systems that leads to undesirable outcomes[24]. The crime statistics on which the aforementioned COMPAS system relies reflect much more unfavourably on males, notably black individuals, when they undergo AI assessment[25]. Here, one of the most notorious was a 2016 case in which a black citizen from Wisconsin, Eric Loomis, was charged with five felonies (involvement in a drive-by shooting as a driver, first-degree reckless endangerment of life[26], fleeing from the police, driving a vehicle without the owner's consent, and possession

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[20] For more, see: A. Glöckner, *The irrational hungry judge effect revisited: simulations reveal that the magnitude of the effect is overestimated*, „Judgment and Decision Making" 2016, Vol. 11, No. 6.

[21] See: K. Chatziathanasiou, *Beware the lure of narratives: „Hungry judges" should not motivate the use of „Artificial Intelligence" in law*, „German Law Journal" 2022, Vol. 23, No. 4. The author gives as one example, the US COMPAS system that has been touched upon.

[22] S. Edwards, *How many court cases are filed each year in U.S. courts?*, https://www.consumershield.com/articles/how-many-court-cases-are-filed-each-year (accessed: 19.09.2024).

[23] K. Filipek, *Skrzywienie algorytmiczne (SI): teorie, typy i metody zwalczania*, p. 10, https://metody.org/wp-content/uploads/2021/10/kamil_filipek_skrzywienie_algorytmiczne.pdf (accessed: 15.08.2024).

[24] Ibidem, p. 7.

[25] M. Dymitruk, *Algorithmic decision-making…*; idem, *Artificial Intelligence as a tool to improve the administration of justice?*, „Acta Universitatis Sapientiae, Legal Studies" 2019, Vol. 8, No. 2, p. 183.

[26] In Wisconsin, it is treated as one of the most serious crimes divided into first (Class F felony) and second (Class G felony) degrees. The crime committed by Eric Loomis qualified as Class F, which is punishable by a fine of up to USD 25,000 and 12.5 years of imprisonment. In order for one to be convicted, it must be proved beyond reasonable doubt that the defendant's behavior endangered another person (either intentionally or through irresponsible behavior), as well as demonstrated that the defendant showed no respect for human life, https://dkanderson.com/wisconsin-recklessly-endangering-safety/ (accessed: 19.09.2024).

of a firearm), of which he pleaded guilty to the two least serious[27]. Based on the risk analysis performed by the aforementioned algorithm, the court sentenced him to 6 years of imprisonment due to a high probability score in all three categories analyzed by the system. One of the defences raised by the attorneys was that the system operated in a non-transparent manner, as its source code remains a company secret. The defendant alleged that the only reason for the sentence being so severe was his ethnicity, his previous criminal record notwithstanding[28]. Leaving aside the validity of Loomis's arguments – or lack thereof – it is undeniable that once the legal system and the process of administering justice – which should be transparent and fair – is aided by an artificial intelligence algorithm whose software and underlying mechanism is unknown even to the judges who use it, serious doubts and reservations arise. This was neither the first nor the last such case, but it is noteworthy due to the tremendous interest of the media and other institutions, which provoked a number of doctrinal disputes concerning the legitimacy of the development and application of AI in the administration of justice.

When discussing the American experience, one cannot overlook their largest political and economic competitor in the Far East, i.e. China. As the leader in industrial and technological manufacturing, it is also highly active with respect to AI use in the legal field. Numerous reasons are cited behind the PRC's technological transformation and modernization of the judiciary. The main issues include staff shortages, the need to streamline procedures, the desire to realize the principle of justice and the right to court more fully, the need to align the judiciary with state policies and ongoing reforms[29], and the need to foster economic development through investment in legal technology[30]. The Asian giant's AI and legal technology may be classified into three categories: assistive, substitutive and disorganizing. As these designations suggest, each covers a different aspect of the operation of the modern justice system. The first category streamlines the proceedings, searches for similar cases, performs speaker-specific voice recognition to produce a transcript of the hearing in real-time, and detects discrepancies in witness testimonies as well as procedural

[27] See: Judgment of the Supreme Court of the State of Wisconsin, *State v. Loomis* (2016), No. 2015AP157-CR, https://caselaw.findlaw.com/court/wi-supreme-court/1742124.html (accessed: 15.08.2024).

[28] *State v. Loomis. Wisconsin Supreme Court requires warning before use of algorithmic risk assessments in sentencing*, „Harvard Law Review" 2017, Vol. 130, No. 5, https://harvardlawreview.org/print/vol-130/state-v-loomis/ (accessed: 18.09.2024).

[29] For more see: C.S. Shang, W. Guo, *The rise of online dispute resolution-led justice in China: an initial look*, „Australian National University Journal of Law and Technology" 2020, Vol. 1, No. 2, pp. 25–42.

[30] K. Latek, *„Roboty w togach" i rozprawy na WeChatcie? Analiza przyczyn i sposobów wykorzystania nowych technologii w chińskim sądownictwie oraz charakterystyka zagrożeń z tym związanych*, „Gdańskie Studia Azji Wschodniej" 2023, No. 23, p. 229, https://czasopisma.bg.ug.edu.pl/index.php/GSAW/article/view/9421/8458 (accessed: 15.08.2024).

errors[31]. The second category replaces traditional, stationary court sessions by holding so-called online courts, whose jurisdiction is confined to cases involving the use of the Internet, in areas such as e-commerce, competition law, copyright law, tort liability, consumer protection and product liability[32]. The course of the entire proceeding – from the filing of the lawsuit to the verdict – takes place exclusively online, which significantly reduces costs as well as time (on average, up to 28 minutes per hearing and 40 days to conclude the entire proceedings)[33]. Another example of such replacement technology is a special AI bot that educates the litigants free of charge on substantive and procedural law. However, it should be stressed that it does not fully substitute for a professional attorney but only provides legal advice. In another variant, it can draft the necessary submission, as well as develop a cost estimate for the entire proceeding with a list of necessary documents, search for algorithmically relevant precedents and statutes, as well as estimate the risk of failure in a given case, taking into account the social and image-related consequences. A considerable achievement of Chinese technological thought is the use of the popular application *WeChat*, a messenger with more than a billion users. Albeit used primarily to communicate with friends, it can also serve to contact a judge via voice or in writing, conduct mediation, file a lawsuit, pay for a submission, or use a qualified electronic signature[34]. The widespread use of the app in everyday situations and the large number of registered users, which is similar to the population of the Middle Kingdom (more than 1.4 billion inhabitants[35]), also makes it an important evidence base and tool in criminal proceedings, which is the subject of numerous legal regulations in its own right and a reason for further modernisation of the algorithms[36]. Finally, the disorganization technology is not yet fully developed, but intensive work is underway to have it completed by 2030. In simple terms, it consists of having the judge replaced by AI in some cases. Although the technology is not fully operational, Chinese lawyers are already obliged to submit written rationales when a decision differs from the one proposed by the AI algorithm[37]. All indications are that China rather than the US will launch the first fully autonomous "cyberjudge", an aspiration that meets with widespread approval among the people of that vast country. Will China be an example of the legal callousness of AI, which lacks human reactions and empathy, or will it become

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[31] Ibidem, pp. 230–233.

[32] Ibidem.

[33] Ibidem, pp. 233–234.

[34] Ibidem, pp. 235–236.

[35] See: https://www.gov.pl/web/chiny/informator-ekonomiczny (accessed: 7.03.2025).

[36] For more, see: Z. Qu, Q. Jiang, R. Dai, *Study on the examination and judgment of WeChat record-type evidence in criminal proceedings*, „Frontiers in Humanities and Social Sciences" 2024, Vol. 4, No. 2, pp. 188–193.

[37] K. Latek, op. cit., p. 230.

an unrivaled model for the rest of the world by responding to the expectations of its citizens? For now, the question remains unresolved[38].

At this point, one should also consider Poland, where significant efforts have been made since 2016 to implement and develop AI in the public and private sectors[39], highlighting those that involve the application of new technologies within the judiciary and the legal branch. Particular attention should be drawn to the 2023 report by the Artificial Intelligence Working Group[40], which details technical solutions whose implementation in the Polish judiciary would definitely speed up and facilitate the work of lawyers. Some of these technological improvements are already in place in other parts of the globe, e.g. in China, with chatbots that operate similarly to ChatGPT, real-time transcriptions, fact analysis, similar case search, etc. The report follows the adoption of the Policy for the Development of Artificial Intelligence in Poland from 2020[41], which outlines the goals, the scope of AI use, as well as the associated ethical considerations in the short term (by 2023), medium term (by 2027) and long term (post-2027)[42].

Another pilot project within the Polish judiciary launched in January 2024, whereby an arbitration court is supported by an artificial intelligence algorithm. The application was designed and delivered by ENOiK sp. z o.o., a Polish enterprise specializing in innovative, AI-based legal solutions. With a subsidy from the National Research and Development Center, their concept could be developed and implemented for commercial use[43]. AI relieves arbitrators from performing repetitive but time-consuming procedural steps, manual searches, and analyzing similar cases, thanks to which the entire proceeding may be shortened to a record 40 work hours, as well as reduce the costs of legal representation. Taking into account several hundred variables derived from the information submitted by the parties, the AI algorithm detects non-substantive aspects of the case to omit them from evaluation and then suggests a settlement based on which a human arbitrator will make their decision[44].

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[38] C.S. Shang, W. Guo, op. cit., pp. 4–42.

[39] See: https://www.gov.pl/web/ai/droga-polski-do-ai2 (accessed: 18.08.2024); https://www.si-dla-sprawiedliwosci.gov.pl/droga-polski-do-ai/ (accessed: 18.08.2024).

[40] Raport *Recommendations for the application of artificial intelligence in the judiciary and the prosecution service*, prepared by the Working Group on Artificial Intelligence Subgroup on Ethics and Law, Warsaw 2023, https://www.gov.pl/web/ai/raport-rekomendacje-w-zakresie-zastosowania-sztucznej-inteligencji (accessed: 18.08.2024).

[41] Resolution No. 196 of the Council of Ministers of 28 December 2020 on the establishment of the Policy for the development of artificial intelligence in Poland from 2020 (M.P. of 2021, item 23).

[42] https://www.gov.pl/web/cyfryzacja/rozwoj-sztucznej-inteligencji-w-polsce--wazna-decyzja (accessed: 18.08.2024).

[43] *Polski sąd oparty o sztuczną inteligencję rusza w styczniu. 40 godzin na rozprawę*, https://businessinsider.com.pl/technologie/nowe-technologie/polski-sad-oparty-o-sztuczna-inteligencje-rusza-w-styczniu-40-godzin-na-rozprawe/bdtkqlw (accessed: 18.08.2024).

[44] See: https://enoik.pl/ (accessed: 22.09.2024).

The ENOiK Arbitration Court operates analogously to its traditional equivalent, with the exception that those who intend to take advantage of that modality must create an account in the ENOiK system because, following the execution of the relevant arbitration clause, all actions relating to the case are carried out on that platform. Having filed a statement of claim on a dedicated form and upon payment of the appropriate court fee, the respondent drafts their response, to which the claimant, in turn, is entitled to a reply. The arbitrator assigned to the case is designated at random, but they may be changed in extraordinary circumstances. The AI program analyzes more than 500,000 judgments of the common courts and then submits a suggested preliminary solution to the arbitrator; the latter is obliged to familiarize himself/herself with the proposal just as he or she does with the facts of the case prior to issuing the ruling[45]. However, it should be stressed that the task of AI is to assist and provide support to the arbitrators, not to replace them, so that the existing level of professionalism and objectivity can be maintained[46]. Once approved, the ruling of the ENOiK Arbitration Court is equally valid to a judgment of a common court and may be granted an enforcement clause. There is no doubt that this is another milestone in the digitization of the Polish legal system, which has met with a very positive reception both in Poland and abroad as a pioneering project that brings legal practice and IT together. The company intends to expand the system to enable the request of the opinion of expert witnesses and appraisers in the future and potentially widen the competence scope to include other legal domains as well[47]. Given the need to modernize the public sector and adapt new technologies if further significant successes are achieved and long-term potential is evident, that solution may also have an impact on other types of proceedings and the entirety of legal services provided to the citizens. Moreover, AI is also involved in online Online Dispute Resolution (ODR) platforms, such as the blockchain-based Kleros – also used by Polish litigants – where algorithms serve to automatically select arbitrators and assess the evidence and arguments from the parties. Further examples include Smartsettle One, a platform that utilizes AI to assist parties in negotiations and mediation, or the DoNotPay app, which offers the assistance of a "robot lawyer"[48].

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[45] Ibidem.

[46] K. Wigowski, *Rewolucja w polskim sądownictwie – sąd arbitrażowy wspierany przez sztuczną inteligencję*, https://exai.pl/rewolucja-w-polskim-sadownictwie-sad-arbitrazowy-wspierany-przez-sztuczna-inteligencje/ (accessed: 18.08.2024).

[47] A. Lalek, *Prawnicy coraz częściej znajdują sojusznika w sztucznej inteligencji*, https://www.bankier.pl/wiadomosc/Prawnicy-coraz-czesciej-znajduja-sojusznika-w-sztucznej-inteligencji-8694451.html (accessed: 22.09.2024).

[48] See: https://kleros.io/ (accessed: 25.10.2024); https://www.smartsettle.com/smartsettle-one (accessed: 25.10.2024); https://donotpay.com/ (accessed: 25.10.2024).

The European legal perspective

Compared with the two giants of America and Asia, Europe appears to lag behind in the AI innovation race, although there is no shortage of minor technological solutions that the countries of the Old Continent have introduced to support the daily work of the judiciary. The matter has also been addressed through EU legislation, as research and work on devising an appropriate legal framework to cover the ever-improving AI programs has been going on for years (e.g. Ethical guidelines for trustworthy artificial intelligence[49], Guidelines on Online Dispute Resolution[50]). The resulting instruments are, in fact, the first in the world to regulate the issue so comprehensively. Here, one should mention the dedicated EU regulation adopted on June 13, 2024, known as the AI Act[51]. It aims to improve the functioning of the internal market and promote the dissemination of human-oriented and trustworthy AI while ensuring a high level of protection of health, safety, and the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union[52] – including democracy, the rule of law and environmental protection – from the harmful effects of AI systems in the EU, as well as foster innovation[53]. The regulation is intended to enable free cross-border flow of AI-based goods and services, thereby preventing Member States from imposing restrictions on the development, marketing and use of AI systems, unless expressly permitted in the regulation. It should be applied in accordance with the EU values formulated in the Charter, facilitating the protection of individuals, businesses, democracy, the rule of law and the protection of the environment while stimulating innovation and employment and making the EU a leader in the spread of trustworthy AI[54]. One of the significant provisions of the Act is the requirement for openness and transparency of the employed algorithms and the selected content, notably in the course of law enforcement and judicial proceedings[55]. In addition, it distinguishes three categories of AI systems in terms of the

[49] See: Ethical guidelines for trustworthy artificial intelligence, prepared by the High Level Expert Group on Artificial Intelligence set up by the European Commission in 2019.

[50] See: Guidelines on Online Dispute Resolution, prepared by European Commission for the Efficiency of Justice (CEPEJ), Council of Europe in 2023.

[51] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024. laying down harmonised rules on artificial intelligence and amending Regulations (EC) No. 300/2008, (EU) No. 167/2013, (EU) No. 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (Official Journal of the EU L 2024/1689 of 12 July 2024).

[52] Charter of Fundamental Rights of the European Union 2016/C 202/02 (Official Journal of the EU C 202/389 of 7 June 2016).

[53] Article 1(1) of the aforementioned EP and Council Regulation (EU) 2024/1689.

[54] See: 1 and 2 of the preamble of the aforementioned EP and Council Regulation (EU) 2024/1689.

[55] See: https://www.gov.pl/web/cyfryzacja/europejski-ai-act-opublikowany (accessed: 16.08.2024).

associated risk. Those that involve unacceptable risk – exemplified by the PRC's well-known social credit score system[56] – are prohibited under the Act; high-risk systems, e.g., those which autonomously classify job applicants based on a scan and digital analysis of the attached resume or manage critical infrastructure, are to be strictly regulated; finally, there may be systems which have not been prohibited or identified as high-risk ones, and which remain largely unregulated[57].

According to the position of the Ministry of Digital Affairs, Poland fully endorses the European Union's efforts to coordinate artificial intelligence policy. The AI Policy adopted by the Polish Government states that any artificial intelligence system should jointly meet three conditions: be lawful and include ethical principles and rules for trustworthy artificial intelligence, as well as be secure and technically resilient. Furthermore, Poland supports EU-level efforts to create universal legal standards for artificial intelligence based on fundamental rights, security and ethics[58]. Currently, work is being done on a draft law enabling the application of the act in question. The regulations introduced under the AI Act are intended to promote the modernization and digitalization of the public sector while avoiding the adverse effects and concerns such as those discussed in the section concerned with the US, although there is also no shortage of critical voices asserting that, in a sense, its provisions stifle the innovation of the European technological labs, which thus fail to keep the pace with the US or Far Eastern competition[59]. This may be understandable insofar as the penalties provided for in that Act – mainly financial – are quite severe, reaching up to EUR 35 million or 7% of annual turnover for engaging in prohibited practices if the violation is committed by

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[56] Operating in China, this system constantly monitors and evaluates the actions of individual citizens and businesses. The underlying premise is that the state power apparatus awards points reflecting the behavior of such individuals and entities. Based on one's conduct, participation in charitable actions, compliance with traffic regulations, activity on social media, timely payment or defaulting on a loan installment, etc., points may be gained or lost. The better the score, the greater the benefits, including concessions or reliefs, faster administrative procedures, more favorable terms on bank loans, etc. In contrast, a poor score may prevent a person from being able to travel, use public places, use banking services, and much more. The incessant surveillance is carried out using complex AI algorithms coupled with a CCTV system capable of facial recognition, which instantly identifies a person, linking them with specific data obtained from social media profiles in real-time. For more, see: A. Bachulska, R. Górski, *Chiński system oceny społeczeństwa. Orwell i Huxley w praktyce*, „Tygodnik Spraw Obywatelskich" 2020, No. 10, https://instytutsprawobywatelskich.pl/chinski-system-oceny-spoleczenstwa-orwell-i-huxley-w-praktyce/ (accessed: 20.09.2024).

[57] See: https://artificialintelligenceact.eu/ (accessed: 20.09.2024).

[58] Polish position on the AI Act, https://www.gov.pl/web/cyfryzacja/przelomowe-przepisy-dotyczace-sztucznej-inteligencji--parlament-europejski-przyjal-rozporzadzenie (accessed: 5.11.2024).

[59] See: *AI Act chce chronić dane objęte prawem autorskim. UE może ograniczyć innowacje*, https://businessinsider.com.pl/technologie/ai-act-reguluje-sztuczna-inteligencje-w-europie/xwe2fdh (accessed: 20.09.2024).

an enterprise and up to EUR 15 million or 3% of annual turnover for all other infringements[60]. On the one hand, such sanctions show that the EU bodies take the issue seriously and want to underscore that development and progress are desirable, but with certain limits set by ethics, morality, security and respect for the privacy of citizens, thus discouraging potential transgressors. On the other hand, such measures may deter (despite the declared support and benefits of compliance with the provisions of the Act) small and medium-sized enterprises[61].

Parallel to the aforementioned Act, work was also done on the Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law[62], which was presented in Strasbourg during the session of the Committee of Ministers of the Council of Europe[63]. It is the first-ever international legally binding treaty aimed at ensuring respect for human rights, the rule of law and the legal norms of democracy in the use of AI systems[64]. The treaty, which may also be accessed by non-European countries, establishes a legal framework that covers the entire life cycle of AI systems and addresses the risks that they may pose while promoting responsible innovation[65]. The Convention applies to public and private sectors alike and establishes the requirement of transparency, identification, and assessment of the means selected by AI algorithms if there are concerns that they violate human rights[66]. Interestingly, in order to maintain cohesion, the Convention encourages closer

[60] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024. on laying down harmonised rules on artificial intelligence and amending Regulations (EC) No. 300/2008, (EU) No. 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (OJ EU L 2024/1689 of 12 July 2024), Article 99.

[61] K. Krzywicka, *AI Act, czyli nowe wyzwania dla przedsiębiorców w erze rozwoju sztucznej inteligencji*, https://www.parp.gov.pl/component/content/article/85510:ai-act-czyli-nowe-wyzwania-dla-przedsiebiorcow-w-erze-rozwoju-sztucznej-inteligencji (accessed: 20.09.2024).

[62] Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, CM(2024)52-final, 17 May 2024, https://search.coe.int/cm#{%22CoEIdentifier%22:[%220900001680afb11f%22],%22sort%22:[%22CoEValidationDate%20Descending%22]} (accessed: 22.09.2024).

[63] M. Blandyna Lewkowicz, *Rada Europy przyjęła traktat ws. sztucznej inteligencji*, https://cyberdefence24.pl/technologie/rada-europy-przyjela-traktat-ws-sztucznej-inteligencji (accessed: 16.08.2024).

[64] „This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five signatories, including at least three member States of the Council of Europe, have expressed their consent to be bound by this Convention […]. In respect of any signatory which subsequently expresses its consent to be bound by it, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval" – see: Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, CM(2024)52-final, 17 May 2024, Article 30(3–4).

[65] https://www.coe.int/en/web/portal/-/council-of-europe-adopts-first-international-treaty-on-artificial-intelligence (accessed: 16.08.2024).

[66] Ibidem.

cooperation and exchange of AI know-how between its signatories, as well as providing assistance to countries that are not (but may prospectively become) party to it[67]. It should be noted that the document in question does not, in principle, apply to algorithms involved in the overall operation of systems responsible for national defense and the protection of national security interests or to programs that are still undergoing research and development in laboratories and have not yet been made widely available[68]. To a degree, the Convention is an extension of the AI Act but with a more global scope. The Convention was open for ratification on September 5, 2024 in Vilnius during a conference of ministers of the Member States of the European Union. Representatives of the European Commission signed the document, expressing the EU's readiness to access it[69].

Conclusions

It is increasingly evident that artificial intelligence penetrates into numerous fields around the world. The potential of algorithms is recognized not only by entrepreneurs who launch more and more functionalities for social media users fascinated by the new technology but also by governments who perceive the associated opportunities and threats. Two global superpowers: the US and China are clearly in the lead with new technologies, but other countries continually follow suit. In response to the growing social expectations, the public sector, including the judiciary, also seeks to become more digital, accessible, faster and cheaper for citizens who need to have their disputes resolved efficiently and their rights protected.

It should be noted that many of the AI algorithms are still only in the testing phase and have not yet reached their full potential. Due to legitimate concerns regarding their harmful use, which may violate such values as human dignity, the right to privacy, liberty and equal treatment, personal data protection or non-discrimination[70], the technological and ethical issues are being debated, and attempts are being made to devise an adequate legal framework for AI. Given the transformation processes in societies and the growing expectations, threats and opportunities in the third decade of the 21st century, AI is argued by some to be a remedy for many of the accrued problems or just the opposite by others. Both the legal services sector and the justice

[67] Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, CM(2024)52-final, 17 May 2024, Article 25.

[68] Ibidem, Article 3(2–4).

[69] https://digital-strategy.ec.europa.eu/pl/news/commission-signed-council-europe-framework-convention-artificial-intelligence-and-human-rights (accessed: 22.09.2024).

[70] For more, see: M. Kubit, *Rozwój sztucznej inteligencji w świetle prawa Unii Europejskiej – dylematy i wyzwania*, Warsaw 2021, pp. 86–89.

system have witnessed the gradual implementation of surprisingly effective AI, which in certain areas makes human intervention completely unnecessary. In the literature, the concept of three generations of online courts has been advanced. In the first generation, the attorneys and the court communicate via electronic means. Documents are circulated digitally, while hearings are held online in the form of video conferences. The second generation involves a thoroughly digital dispute resolution and asynchronous proceedings within a limited time frame, without the requirement for all participants to attend (the so-called electronic writ-of-payment proceedings before the Court of Lublin-Zachód are cited as an example of such proceedings). In the third generation, the judge will be completely replaced by the AI algorithm in certain categories of cases[71].

This calls the essence of the training and the work of lawyers into question. Will the development of new technologies lead to a situation in which the human is superfluous in legal counselling and, moreover, in judicial practice? At this stage, it would be difficult to offer a definite answer, but it is also the case that predictions about the future of the legal profession – formulated more than a decade ago, e.g. by R. Susskind – are increasingly coming true. Susskind observed that the development of new information technologies would not only translate into broader public access to the law and knowledge of its interpretation and application but also prompt the evolution of legal services, yield new methods and tools for lawyers, as well as have an impact on the accessibility, organization and operation of the judiciary itself[72]. Susskind cited a number of new, groundbreaking technologies, such as automated document processing, constant connectivity, the electronic marketplace of legal services, e-learning, online legal counselling, open-sourcing of legal services, closed legal communities, project and workflow management, embedded legal knowledge, intelligent legal issue search, big data, online dispute resolution, and problem-solving using artificial intelligence[73], only to envision new varieties within the legal profession, including "legal knowledge engineer", "legal technologist", "ODR practitioner", "legal management consultant" and "legal risk manager"[74]. At the same time, Susskind finds that new information technologies not only bring improvements to the traditional justice system but also create opportunities for its development, for example, by contributing to the operation of the so-called "next generation courts", "virtual courts" or ODR which, given where the technology stands at present, seems to be an ever more realistic prospect for the participants in legal transactions[75].

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[71] J. Zajadło, K. Zeidler (eds.), *Wstęp do prawoznawstwa*, Gdańsk 2023, pp. 193–195.

[72] R. Susskind, *Tomorrow's lawyers*..., p. 3, for more, passim. Cf. idem, *The end of lawyers? Rethinking the nature of legal services*, New York 2008, passim.

[73] Idem, *Tomorrow's lawyers*..., pp. 43–55.

[74] Ibidem, pp. 133–145.

[75] Ibidem, pp. 54–55, 107–121; R. Susskind, *The end of lawyers?*..., pp. 192–224.

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Summary

Artificial intelligence in the work of lawyers and the judicial system – from new technologies to regulations

Keywords: new technology law, artificial intelligence, AI, lawyers, justice.

Due to the development of new technologies, in particular, artificial intelligence (commonly abbreviated as AI) and the presentation of its capabilities, questions are increasingly being asked relating to its role in people's everyday, private lives as well as in their professional aspects. One group that may be making increasing use of AI are lawyers and the justice sector, struggling with the phenomenon of protractedness and the extended legal systems in which they provide their services. The aim of the text is to highlight important issues concerning contemporary technological solutions in the field of artificial intelligence and its use in the process of administering justice and the work of lawyers, which in the 21st century constitute one of the most important ethical and legal debates. In fulfilling this task, the article is divided into two main parts focusing on selected technological and legal-ethical issues. Part one introduces selected new AI technologies tested in the US, China and Poland translating into the functioning of the judiciary. The second part introduces the latest European legal regulations dedicated to AI issues. Based on theoretical and dogmatic-legal analysis, new opportunities and threats resulting from the implementation of computer algorithms into the legal systems of various countries are indicated. The whole discussion is crowned with an open question about the future role of a human being, especially a lawyer, in the world of the 21st century, the era of progress, digitisation and artificial intelligence.

Streszczenie

Sztuczna inteligencja w pracy prawnika i funkcjonowaniu wymiaru sprawiedliwości – od nowych technologii do regulacji prawnych

Słowa kluczowe: prawo nowych technologii, sztuczna inteligencja, AI, prawnicy, wymiar sprawiedliwości.

W związku z rozwojem nowych technologii, w szczególności sztucznej inteligencji (zwanej powszechnie skrótowo AI), oraz prezentacją jej możliwości coraz częściej stawiane są pytania odnoszące się do jej roli w codziennym, prywatnym życiu człowieka, jak również w jego aspektach zawodowych. Szczególną grupą, która może co raz częściej korzystać z AI są prawnicy oraz sektor wymiaru sprawiedliwości, borykający się ze zjawiskiem przewlekłości oraz rozbudowania systemów prawnych, w warunkach których świadczą swoje usługi.

Celem artykułu jest zwrócenie uwagi na istotne zagadnienia dotyczące współczesnych rozwiązań technologicznych z dziedziny sztucznej inteligencji oraz jej wykorzystania w procesie wymierzania sprawiedliwości i pracy prawników, które w dobie XXI w. stanowią jedną z najważniejszych debat na tle etycznym i prawnym. Realizując tak zakreślone zadanie, tekst został podzielony na dwie zasadnicze części skupiające się na wybranych kwestiach technologicznych oraz prawno-etycznych. Część pierwsza wprowadza wybrane nowe technologie z dziedziny AI testowane w USA, Chinach i Polsce przekładające się na funkcjonowanie wymiaru sprawiedliwości, a część druga przybliża najnowsze europejskie regulacje prawne poświęcone problematyce AI.

W oparciu o analizę teoretyczną i dogmatyczno-prawną wskazano na nowe szanse i zagrożenia wynikające z implementacji komputerowych algorytmów do systemów prawnych różnych państw. Całość rozważań wieńczy pytanie otwarte o przyszła rolę człowieka, w szczególności prawnika w XXI w. – erze postępu, cyfryzacji i sztucznej inteligencji.