TOWARDS THE STATUS OF CLASSIFICATION OF ARTIFICIAL INTELLIGENCE AS A SUBJECT OF LAW

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Abstract. As a result of digital transformation in the 21st century, large volumes of data have been accumulated, respective algorithms have been created, and digital advancements are being implemented in almost all key areas. That experience has emphasised the role and importance of technologies, including artificial intelligence (AI), in modern life. Both in the public and private sectors it is possible to achieve a number of goals and objectives remotely, from different countries around the world, using automated approaches. Operating in the digital world without specific boundaries assigns more global meaning to the digital transformation process and significantly increases the scope of opportunities. To adapt to digital reality, certain traditional approaches should be changed, including in the area of jurisprudence. While information and communication technologies are rapidly developing, there is a need for legal regulation of technology-related issues. However, at the same time, new norms should support digital revolution and innovative approaches. In this context, it is necessary to determine the legal status of AI. Therefore, in the wake of the development of an international digital order, the present article aims to explore the strategic, ethical and legal frameworks of AI. This will help to determine to what extent it is possible to assign to AI the status of a subject of law.

Keywords: artificial intelligence, digital transformation, digital technologies

Introduction

As Toomas Hendrik Ilves, former president of Estonia, points out: "Almost every part of our lives is being digitized. You can buy a car, lease a house, find a doctor, and order groceries with a few taps on a screen"[1]. Thus, digital transformation in our daily lives requires a better understanding of the essence of technology. At the same time, the importance of developing appropriate standards is increasing to grasp the opportunities and overcome the challenges associated with this process.

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1.   *Toomas Ilves.* Unlocking Digital Governance, German Marshall Fund of the United States, (2020), p. 10.

In this regard, it is necessary to define the concept of AI. In the historical context it should be noted that, in 1950, Alan Turing started to conceptualize the idea of AI[2]. In 1956, scientist John McCarthy used the term "artificial intelligence". In his opinion, this meant the creation of a system that could think and act independently. He defined AI as a computer, a software, that would have the intellectual capabilities to do what a human does[3].

According to the Encyclopaedia Britannica, AI is the ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings[4]. AI refers to systems that display intelligent behaviour by analysing their environment and taking actions, with some degree of autonomy, to achieve specific goals. In the digital era, AI is one of the most strategic technologies of the 21st century[5].

The definition of AI suggests that it can be used in almost all areas (for example, in healthcare, education, the justice system, agriculture, the financial sector, foreign and security policy). It can stimulate the simplification and timeliness of the data processing and decision-making processes. Due to the importance of AI, states need to develop both strategic and legal frameworks to be adaptable to the upcoming technological advancements, and to prevent challenges of the digital world. The creation of appropriate standards will mitigate the risks of AI and facilitate to build proper digital transformation strategies.

Strategic frameworks of AI in states

A number of states have developed and adopted AI strategies, through which they form their conceptual vision in terms of AI systems. In addition, it is important to develop common approaches and standards in respect of this issue among states, in both bilateral and multilateral formats.

Austria's strategy promotes responsible and broad use of AI in the public interest and is based on European fundamental values (inviolability of human dignity, respect for privacy and the principle of equality). To determine the issues related to AI, the document focuses on the development of social dialogue. Furthermore, it implies the carrying out of research to introduce innovative approaches. The strategy emphasizes the necessity to create a legal framework that ensures the safety of the use of AI for people and meets the requirements of EU legislation[6].

France's strategy implies the development of the ecosystem and the allocation of more financial resources for the implementation of AI. It also refers to the acceleration of the

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2. Darrell *M. West* and John *R. Allen*, Turning Point – WHAT IS AI? Brookings Institution Press, (2020), p. 2.
3. Id.
4. The Encyclopedia Britannica. https://www.britannica.com/technology/artificial-intelligence (Accessed June 20, 2023).
5. Artificial Intelligence for Europe, European Commission, Brussels, (2018), p. 1.
6. AI Mission Austria 2030, OECD, https://oecd.ai/en/dashboards/policy-initiatives/http:%2F%2Faipo.oecd.org%2F2021-data-policyInitiatives-24233, (Accessed June 10, 2023).

process of using AI in the areas of economy and public administration. The strategy document focuses on the development of a trustworthy AI system at the national level and the creation of educational programmes in that direction[7].

According to the strategic vision of the United States of America, it is important to stimulate technological achievements in the area of AI to develop appropriate technical standards and to train current and future generations of American workers with the skills to apply AI technologies to prepare them for today's economy and jobs of the future. It is necessary to foster public trust and confidence in AI technologies and protect civil liberties, privacy, and American values in their application to fully realize the potential of AI technologies for the American people[8].

The strategy of the Federal Republic of Germany implies the increase of investments in the area of AI, the establishment of respective centres for AI research and their funding schemes, and the integration of AI into society taking into account ethical, legal, cultural and institutional standards[9].

Lithuania's strategy focuses specifically on the development of ethical and legal principles, the integration of AI systems into the economic sector, the enhancement of relevant skills and competences, research, and efficient approaches to data protection[10].

Singapore's AI strategy sets three goals: 1) to identify priority areas and resources at the national level; 2) to set out how Government, companies, and researchers can work together to realize positive impact from AI; 3) to address areas where attention is needed to manage changes and risks when AI becomes more pervasive[11]. According to Singapore's strategy, AI systems should be developed based on people's needs, and citizens and businesses should benefit from it. The document takes into consideration the activities that contribute to raising awareness of digital advancement in society[12].

Singapore's strategy includes 5 important national projects that address the use of AI systems in these directions. In particular, they consider optimising the movement of freight to improve productivity for business and traffic efficiency, to make municipal services more responsive, reliable, and timely, to help prevent and better manage chronic diseases, to help teachers to better customise and improve the learning experience for every student and to strengthen border security[13].

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7. National Strategy on AI, OECD, https://oecd.ai/en/dashboards/policy-initiatives/http:%2F%2Faipo.oecd.org%2F2021-data-policyInitiatives-25374, (Accessed June 10, 2023).

8. Executive Order on Maintaining American Leadership in AI, OECD, https://oecd.ai/en/dashboards/policy-initiatives/http:%2F%2Faipo.oecd.org%2F2021-data-policyInitiatives-24277, (Accessed June 10, 2023).

9. National AI Strategy, OECD, https://oecd.ai/en/dashboards/policy-initiatives/http:%2F%2Faipo.oecd.org%2F2021-data-policyInitiatives-24114, (Accessed June 10, 2023).

10. AI Strategy, OECD, https://oecd.ai/en/dashboards/policy-initiatives/http:%2F%2Faipo.oecd.org%2F2021-data-policyInitiatives-24220, (Accessed June 10, 2023).

11. National Artificial Intelligence Strategy, Singapore, (2019), p. 13.

12. Id., p. 18.

13. Id., p. 8.

In terms of developing an international multilateral format, Canada and France are launching with Australia, Germany, India, Italy, Japan, Mexico, New Zealand, the Republic of Korea, Singapore, Slovenia, the United Kingdom, the United States of America, and the European Union the Global Partnership on Artificial Intelligence[14]. It aims to facilitate the development of AI that is grounded in human rights, inclusion, diversity, innovation, and economic growth and enhance international cooperation on AI-related issues.

As a result of the analysis of the strategies, it can be said that countries determine priority areas, which should be taken into account when implementing AI in the key areas of state and public life. Simultaneously, countries are developing approaches that must be followed in the process of the use of AI systems. It stimulates the creation of proper grounds for ethical and legal frameworks.

Ethical and legal aspects of AI

The digital revolution has led to extraordinary decisions. A chatbot named Mirai, which was created in Japan, was officially granted residence in Tokyo[15]. Saudi Arabia granted citizenship to a humanoid robot named Sophia, built by Hanson Robotics[16]. Considering these decisions, it has not been determined from the legal point of view how a robot can be perceived as a citizen. It is uncertain how a robot can have both legal and political ties with a particular country. Especially when specific legal criteria have not been established regarding the possibility of granting to AI the status of a subject of law. In addition, it is necessary to determine an ethical framework.

In this context, in 2019, an independent group of experts set up by the European Commission developed ethics guidelines for AI. The purpose of the guidelines is to promote the trustworthiness of AI. Trustworthy AI has three components: 1) it should be lawful, complying with all applicable laws and regulations; 2) it should be ethical, ensuring adherence to ethical principles and values; 3) it should be robust, both from a technical and social perspective. AI systems can cause harm, including unintentional harm. Therefore, it is important to implement all three components in practice to avoid such risks[17]. Compliance with the ethical principles of AI implies its development and deployment in a way that adheres to the principles of respect for human autonomy, prevention of harm, fairness and explicability[18].

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14. Launch of the Global Partnership on Artificial Intelligence (June 15, 2020), https://www.diplomatie.gouv.fr/en/french-foreign-policy/digital-diplomacy/news/article/launch-of-the-global-partnership-on-artificial-intelligence-by-15-founding, (Accessed June 10, 2023).

15. AI bot granted residence in Tokyo, (2017), https://dig.watch/updates/ai-bot-granted-residence-tokyo, (Accessed June 7, 2023).

16. Alistair Walsh, Saudi Arabia grants robot citizenship, (2017), https://www.dw.com/en/saudi-arabia-grants-citizenship-to-robot-sophia/a-41150856, (Accessed June 7, 2023).

17. Ethics Guidelines for Trustworthy AI, High-Level Expert Group on Artificial Intelligence, European Commission, (2019), p. 2.

18. Id.

The guidelines do not address issues of compliance with the law, as states themselves must develop and adopt respective legal norms at the national level. The guidelines set the following specific criteria for the development, deployment and use of trustworthy AI: (1) human agency and oversight, (2) technical robustness and safety, (3) privacy and data governance, (4) transparency, (5) diversity, non-discrimination and fairness, (6) environmental and societal well-being and (7) accountability[19].

From a legal standpoint, in 2021, the European Commission proposed an Artificial Intelligence Act. The Act is an important framework for the development of respective legal norms at the national level and the implementation of principles in practice that will facilitate the formation of binding mechanisms for creating a trustworthy AI concept.

The proposed regulatory framework on Artificial Intelligence focuses on the following 4 specific objectives: 1) ensure that AI systems placed on the Union market and used are safe and respect existing law on fundamental rights and Union values; 2) ensure legal certainty to facilitate investment and innovation in AI; 3) enhance governance and effective enforcement of existing law on fundamental rights and safety requirements applicable to AI systems; 4) facilitate the development of a single market for lawful, safe and trustworthy AI applications and prevent market fragmentation[20].

AI systems with their specific characteristics may affect fundamental rights. Therefore, the Artificial Intelligence Act seeks to ensure the safeguarding of a number of rights, including respect for private life and the protection of personal data, nondiscrimination, equality and respecting the interests of all vulnerable groups[21].

The regulation follows a risk-based approach. In particular, according to this criterion, it differentiates between three categories of AI: AI systems with an unacceptable risk, a high risk, and low or minimal risk. The prohibition covers practices that include cases where manipulative actions are carried out against a person, or perpetrators exploit vulnerabilities of specific vulnerable groups such as children or persons with disabilities to materially distort their behaviour in a manner that is likely to cause psychological or physical harm[22].

As for the legal personality of AI, if a juridical person (an entity – companies, corporations, associations, or other organizations that are given rights and responsibilities) acts as a subject of law in a form established by legislation, considering the development of respective legal norms and regulations, AI may become a modern digital juridical person, taking into account the components of an electronic person. A state will grant it the legal status based on certain restrictions to protect the legal interests of a natural person, especially in terms of labour rights, and simultaneously, the scope of liability of AI should be determined following its specific characteristics.

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19. Id.
20. Artificial Intelligence Act, (2021), Regulation of the European Parliament and of the Council, p. 3.
21. Id., p. 11.
22. Id., pp. 12-13.

When analysing legal solutions relating to the consequences of the actions of AI and the possibility of attributing liability for damage to it, it is necessary to take into consideration the definition of AI. Namely, this means the ability of an AI system to interpret data, learn from this data and use the experience acquired in this manner to carry out specific tasks. Harm can be caused by AI that is located in computers, cars or robots[23].

As for the standards of data processing, the EU General Data Protection Regulation, which entered into force on 25 May 2018, establishes a number of standards for data protection in digital reality and determines ways to implement relevant mechanisms in practice to ensure the safeguarding of the fundamental rights of a person. The General Data Protection Regulation applies to AI systems when they are fed with personal data, when they use them and serve as the basis for making decisions. The principles enshrined in the General Data Protection Regulation, such as the prohibition of discrimination or limitation of purpose are relevant to AI systems, especially when there is a risk of misuse of data by a third party[24].

Ultimately, the formation of ethical and legal frameworks should lead to the development of a balanced approach to the introduction of AI. On the one hand, special attention should be paid to the importance of protecting human rights. And on the other hand, states should focus on the development of AI to increase access to public services and to improve the governance process. Simultaneously, it is essential to create appropriate instruments and develop proper methodologies to prevent the use of high-risk AI systems. Any mechanism posing such risks can cause substantial damage to the legal interest of citizens, society, state, and can violate human rights. Therefore, to overcome the challenges associated with this process, organisational and technical measures should be determined, implemented and monitored which will contribute to the protection of both public and private interests.

Sectoral development of an AI system

Based on the establishment of strategic, ethical and legal frameworks, the sectoral approach of an AI system can be developed more clearly, which means demonstrating its role and importance in all key areas. This process will accelerate the determination of the legal status of AI.

Through AI, it is possible to provide public services to citizens in a simplified manner, on time, at low cost, and remotely. The introduction of an automated approach in public governance ensures the continuity of communication with a person, including in times of crisis. AI is used in the healthcare system for improving access to medical services and for the prevention and management of diseases.

23. *Karolina Ziemianin.* Civil Legal Personality of Artificial Intelligence. Future or Utopia? Internet Policy Review, Journal of Internet Regulation, Volume 10, Issue 2, (2021), p. 4.

24. *Thomas Gremsl, Elisabeth Hödl,* Emotional AI: Legal and Ethical Challenges, Information Policy 27 (2022), IOS Press, pp. 165-166.

In addition, the development of AI systems at general and higher educational institutions contributes to the performance of administrative tasks and the achievement of goals related to the teaching and learning process. Furthermore, an AI lecturer is being developed which, based on the experience of the Business and Technology University, has several functionalities, such as experience-based learning; high field expertise; continuous availability; learning at a pace tailored to individual needs; united digital learning space; and the opportunity to work on projects useful for a portfolio[25]. At the initial stage, the AI lecturer will conduct various learning modules, such as Computer Vision; Principles of Machine Learning (ML); Deep Learning (DL); Natural Language Processing (NLP)[26]. Also, AI is being successfully implemented in agriculture and finance to manage processes innovatively.

AI is used in the process of administration of justice as well. Namely, in Estonia, an AI judge can adjudicate small claims disputes of less than 7 000 Euros. A decision issued by AI can be appealed to a human judge if a party does not agree with the decision made by AI[27]. Although in most cases AI is considered an assisting tool to a judge in making decisions, it does not rule out the possibility of replacing a judge with AI in some areas in the next decade[28] and with certain limitations.

Furthermore, the rapid development of digital technologies and the experience gained from the COVID-19 pandemic at international and national levels have demonstrated the need to introduce AI in the process of implementing foreign and security policies.

The use of digital advances can facilitate to achieve foreign political goals and objectives remotely and timely. An important role of AI is demonstrated in the digital transformation of diplomatic services, which implies the development of a concept of a digital employee and ensures continuous contact with the representatives of various states, without taking into account a time factor and regardless of location. At the same time, AI makes it possible to virtually communicate with different types of audiences, irrespective of borders, and to continuously provide information about the history, culture, and foreign policy priorities of a country. It stimulates better communication with a wide audience on foreign policy issues and the proper presentation of a state with low expenses in the digital era.

As for consular relations, a chatbot consul tool can be implemented in this direction. Namely, considering the specifics of consular relations, it is possible to continuously provide consular services through AI in the format of online dialogue and to apply automated approaches in terms of the implementation of consular activities.

In light of the growing challenges and threats facing the security system, large volumes

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25. AI Lecturer – An innovative product of the Business and Technology University, (2023), https://btu.edu.ge/course/machine-learning/, (Accessed June 17, 2023).

26. Id.

27. *Tara Vasdani*. From Estonian AI judges to robot mediators in Canada, U.K., The Lawyer's Daily, part of LexisNexis Canada Inc., https://www.lexisnexis.ca/en-ca/ihc/2019-06/from-estonian-ai-judges-to-robot-mediators-in-canada-uk.page, (Accessed June 17, 2023).

28. *Tania Sourdin*. What if Judges Were Replaced by AI? Turkish Policy Quarterly, (2022), p. 57.

of data should be processed promptly, which is a necessary precondition for preventing destructive actions. Often, it is difficult for security analysts to quickly provide information to the decision-makers regarding the development of possible scenarios. Therefore, the use of AI in the area of security will facilitate the processing of information and the preparation of respective suggestions in a short period, using an automated approach. AI makes it possible to identify threats on time and to make conclusions on tools for overcoming challenges.

Conclusion

As a result of the growth of the scope and capabilities of digital transformation, the need to use of AI in all key areas has become obvious. In the future, this will contribute to the preparation and adoption of legislative initiatives that may become the basis for a clear determination of the legal personality of AI. To manage processes in the public and private sectors in a timely and effective manner, AI can be considered as a digital employee, an assistant, which may lead to the emergence of a new subject of law in a hybrid form, taking into consideration the legal characteristics of a natural person and a juridical person. This is also necessary for the prevention of challenges associated with AI and for determining the legal aspects of liability if any harm is inflicted. Thus, this process is an important precondition for implementing the concept of a responsible and trustworthy AI in practice.

In addition, the development of the idea of AI as a digital employee should be based on international standards for human rights protection and ethical norms. It should be a mechanism assisting an employee in the performance of his/her functions and should not conflict with the legal interests of a person, including in terms of labour rights.

Overall, AI is an important tool in the context of the digital transformation and modification of traditional approaches to public governance. Taking into consideration the digital reality, Georgia should draw up strategic, ethical and legal frameworks for AI. It is necessary for the determination of the agenda of the digital policy of the country and for the implementation of innovative projects which should lead to improved access to all key areas, including healthcare, education, the justice system, and foreign and security policy. The growth of the scope of new approaches in public governance will simplify communication between a state and a person and will positively affect the country. Furthermore, it will enable Georgia to engage in new international multilateral formats, especially in the global partnership platform established in the direction of AI.

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