Expediency and scope of using AI in civil justice

Nino Kharitonashvili, PhD
Associated professor, Caucasian University, Alte University, GTTU,
Lawyer, Lepl Notary chamber of Georgia
Georgia

Abstract:

At first, people obeyed the rules out of fear of the gods. By the time when Nietzsche declared that "God is dead," faith had been replaced by the rule of law. But now the reality has been changed. Modern technologies are playing an increasingly important role in the digital era. The world is changing rapidly and the achievements of technical development are so fast, that they are only followed by legal regulations. The rule of law is rivaled by the rule of code. Artificial intelligence is a modern trend. Nobody knows how it can change the world. It is used in different fields but its usage in justice is the most controversial. The purpose of this article is to discuss how reasonable is the use of AI in the decision making process on civil cases where the creativity and human feelings play the most important roles - especially in the most untouchable sphere from globalisation such as family law.

Keywords: Artificial intelligence, justice, decision making, civil procedure, family law

Introduction

Artificial intelligence is already used in many different fields. It is no longer just a vision of the future - we are surrounded by it. (Ziemianin, K, 2021). Today, AI has become a global trend. The leading economies are in a race to be the first in this field. (Kamyshanskiy, V., Stepanov, D., Mukhina & I., Kripakova, D., 2021). Though it may bring a lot of benefits for humanity, some scholars consider AI as Civilized Man's Deadly Sin. (Kozyrev, A., 2018). Such predictions caused that some attempts of regulation on using AI in justice have begun at the international level. The Council of European Judges (CCJE) developed Recommendation to highlight the role of technology in providing information to judges, lawyers and other stakeholders in the justice system, as well as to the public and the media; According to Recommendation information technology must be tailored to the needs of judges and other users. Information technology should not violate the right of fair trial; Information technology should not intervene in the power of a judge and threaten the fundamental principles set out in the Conventions. (CCJE, 2011). The same approaches are reflected in European Ethical Charter "on the Use of Artificial Intelligence in Judicial Systems and their environment" adopted by European

Commission for the efficiency of Justice (CEPEJ, 2018).

The supporting role of artificial intelligence is also emphasized by common law countries. Supreme Court of Wisconsin recognized the importance of the role of the judge, stating that this kind of machine learning software would not replace their role, but may be used to assist them (Giarda R. & Ambrosino C., 2022). The abovementioned points out that the use of AI tools and services in judicial systems is intended to improve the efficiency and quality of justice and deserves to be encouraged. Preparation of judicial systems for AI use has already taken place. This was followed with the adoption of Recommendation on the Ethics of Artificial Intelligence On 23 November 2021 by The Unesco.

This means that using AI in judiciary is not far and it will be implemented by all states in the world soon or later, despite that implementation of artificial intelligence in the judicial system requires expensive resources (Siboe, N. N.,2020).

The legal profession was considered to be — by its very nature — requiring specialist skills and nuanced judgment that only humans could provide and would therefore be immune to the disruptive changes brought about by the digital transformation (Giarda R. & Ambrosino C., 2022), but the usage of AI has already began. Since there is a theoretical fear of artificial intelligence becoming dominant, at the early stage of its implementation, to avoid chaotic complications, it is necessary to determine in advance the risks of its use and if these risks are outweighed by the benefits obtained from its use. Currently, there is more active discussion about its use in criminal law, however, it is also important to foresee and analyze the perspective of its use in the consideration of civil disputes.

Risks assessment of using AI in civil judiciary

Positive results that the use of artificial intelligence in justice can bring are widely recognized. In terms of quantity and speed of statistical data processing, AI is irreplaceable and exceeds the human mental capacity. Artificial intelligence may useful for solve the 21-st centuries judicial sectors major problem - court congestion, for which governments are innovating alternative dispute resolution methods, but the problems still remain. Artificial intelligence is a good tool to help judges. It can easily find and process information faster than human intelligence. It can also be useful as a predictor for parties who intend to litigate but do not have solid positions. An important relief for the judicial sector will be the use of artificial intelligence in the automatic generation of documents. (Reiling, A.D., 2020) Also interesting is the feasibility of using artificial intelligence from the perspective of lawyers. It is possible to prepare a statement of claim and a defense more correctly and easily, which will reduce, but not lose the importance of the work of lawyers.

However China already uses 'Court2Judge' platform. (Wang, N. & Tian M.Y. 2022). The general idea of combining artificial intelligence and the law was born in 1981. Since 2016 the concept of a smart court was developing. (Aini, G., 2020). Now, Robot Xiaofa stands in Beijing No1 Intermediate People's Court, offering legal guidance. She has answers to more than 40,000 litigation questions and can manage 30,000 lawful issues. China as of now has more than 100 robots in courts of the nation, as it effectively seeks progress to smart justice. Some of the robots even have specialisms, for example, business law or labour-related disputes. (Dialani, P., 2021).

Although Chinese scientists point out to both procedural and consequential shortcomings: however, in the application process, intelligent software has displayed essential, prerequisite, procedural, and result defects and thus poses ethical risks and challenges. First, judicial big data is not comprehensible, reliable, and objective. That is, not all judgment documents can be found online, and at least half of them are online. There are 100 judgements for 100 judges, of which there may be 25 similarities, but similarity does not represent the right direction. (Aini, G., (2020).

AI guru Herbert Simon often emphasized that studying AI involves studying the human mind. AI is defined as machines that can accomplish tasks that humans would accomplish through thinking. (Dörfler, V. Mattingly, James, ed. 2022). However, the way of getting the result makes the significance difference: main difference between human intelligence and artificial intelligence are the tools through which the processes of perception take place; Although scientists are trying to create artificial neurons and simulate the most unrecognizable organ - the human brain, important is how cognition is done by these two intelligences. The process of human cognition is carried out by verbalizing of the information provided by the five senses. Humanity has used linguistics as a means of knowledge transfer and communication for millennia. The artificial intelligence makes cognition through code language by numbers 1 and 0. As long as this distinction exists, usage of AI in justice will be controversial, as from the beginning was the Word, and the Word was with God, and God was the Word. (The bible, Gospel of Johan). Indeed, this problem is alredy identified: description of the factual and legal circumstances in understandable way for artificial intelligence was highlighted as a special difficulty. (Aini, G., 2020). Although there is an idea that artificial intelligence can think with non-digital technology at the next stage, (Gabisonia, Z., 2022). We already can read about news from Shanghai telling us the story of the first robot ever created to analyze case files and charge defendants based on a verbal description of the case (Giarda R. & Ambrosino C., 2022).

AI towards vulnerable persons in civil proceeding

European Ethical Charter on AI determined that algorithms must be done in a responsible manner, respecting the fundamental rights of individuals as set out in the European Convention on Human Rights (ECHR) and Council of Europe Convention No 108 on the Protection of Personal Data. Its principles reflect fundamental values and essential methodological meazures that must to be taken while creation of algorithm: quality and security need to be ensured. (European Ethical Charter. 2018) The main principles of the charter are: respect for human rights and non-discrimination; principle of quality and security, transparency. These principles were outlined for the prevention of the risks that arise while using artificial intelligence. Significant risks of the using AI in civil justices seems towards the vulnerable subjects. In the family disputes, which is recognized as the most untouchable sphere from harmonisation where the customs play the main role, the legislator establishes a wider initiative of the judge, since human characteristics gain special importance in the process of evaluating evidence and is based on the internal beliefs of the judge. For example Georgian Civil Procedure code while reviewing family cases allows the court to determine the circumstances by its initiative due to their specificity and high public

interests. (Georgian parliament. 1997). Also, for the protection of childs rights competent authority while the issuance of any legal document must take into account the high standard of reasoning, which must necessarily indicate the best interests of the child. (Georgian parliament. 2019). Involvement of specialized persons became mandatory when participating in the case of minors. Due to social needs, the status of a special plaintiff for the participation of persons with psycho social needs in the civil process has been established. (Georgian parliament. 2020). This means that civil proceedings for vulnerable persons are characterized with high public interest and they need sofisticated and individual approaches.

However, there is an opinion that AI can be used in family and employment matters, as there is also a significant proportion of routine cases. Here, the judge, in a function similar to that of a civil-law notary, assesses a proposed arrangement of the parties for legal validity. (Reiling, A.D., 2020). But its usage in practice showed that in order to make a divorce judgement, the judge must determine that the relationship between the couple has collapsed. In addition to objective evidence, during the trial, the judge can make a comprehensive judgement based on the eyes, language and other behaviour of the couple to determine whether the relationship has collapsed. (Aini, G., 2020). All this can be done today only by human intelligence. In the United Kingdom relatively simple piece of IT determined the financial capacity of (ex)-spouses in maintenance proceedings. The parties filled in a PDF form, and the IT calculated the resulting capacity. Due to a small mistake, which went unnoticed, incorrect calculations were made in 3,638 cases between April 2011 and January 2012, and between April 2014 and December 2015. (Reiling, A.D., 2020). This means that one mistake can wrongly decide the fate of people and bring irreparable consequences. The same is towards with moral damage claims. The moral demage is depending on the degree of suffering (Ninidze T., 2002). The aforementioned outlines another human characteristic that distinguishes from an artificial one - this is emotional intelligence. Emotional intelligence is described as human abilities, feelings (Kambur, E., 2021), and perceptions, which are often determined by various chemical processes, genetic factors, momentary experiences or impressions received by occesion in life. According to today's data, emotional intelligence cannot be possessed by a being who thinks in code. Its absence contradicts the main principle of decision-making. In arbitration, it is believed that the arbitrator should wear the shoes of the parties, feel himself in their position and decide the case accordingly. If the judge cannot put himself in the other person's shoes, or he can but cannot feel whether it is tight or not, he will not be able to understand the emotions of the parties. Another human factors which are significant in decision-making process – are judge's conscience, inner faith and the sense of responsibility in case of violation of laws, which obviously only human being can have.

Therefore, may be concluded that usage of artificial intelligence in disputes related to family, children, disabled persons, moral damages and labor can only have an auxiliary, secondary purpose. As for purely financial disputes AI can be successfully used to speed up disputes and make the court system more efficient.

AI and impartiality

It is common sense that AI may be appropriate for judgment and decision making due to its impartiality, while humans are prone to cognitive bias, AI would

make justice fairer, and moreover, unlike human judges, AI does not get tired and does not depend on its glucose levels to function.(Kahnemann, D., 2011) As for in Georgia there were some suspects on case distribution to judges and for prevention in 2017, the principle of electronic distribution of cases through a computer program was introduced. But it is clear that the impartiality of AI is another legend, though its characters largely depend on its creator, on the person who gives artificial intelligence access to information and tasks. AI has not inherent biological properties or social skills. Even if these features can be attributed to it, they are programmed by its creator. (Ziemianin, K., 2021) That is why European Parliament In 2021 in the non-binding resolution emphasized the risk of algorithmic bias and that human supervision and strong legal powers are needed to prevent discrimination by AI. Human operators must always make the final decisions and subjects monitored by AI-powered systems must have access to remedy.

To ensure that fundamental rights are upheld when using these technologies, algorithms should be transparent, traceable and sufficiently documented. Where possible, public authorities should use open-source software in order to be more transparent."(MEPs2021).

In general, if we deduce from the fact that since all human has past experiences and are shaped by genetic, social and cultural factors, may be concluded that there is no impartial human being. But this does not mean that a person with bias can not administer impartial justice. The key for a person is to be aware of his own bias and struggle with it. Unlike humans, the bias is not a characteristic of artificial intelligence, but if human bias is put in it by its creator, it will not have the ability to percept and struggle with it, unlike humans (Siboe, N. N., 2020).

That is why the opinion that AI technology will help to make the judicial process more predictable without compromising the integrity of judges' discretionary reasoning (Sartor, G., & Branting, K., 1998) is contraversial. On the one hand, this will help to implement the principle of foreseeability, but it will prevent the development of law as a living organism. AI relies heavily on information already contained in it and makes judgement based on that information. Consequently, if it can make a creative decision, set a precedent for a new social relations is controversial too even for the mere paradoxical reason - it does not have emotions and the bias. Development is often due to occasion - a good example is the case of Isaac Newton and the apple, when a random event became the basis for a great discovery.

It is no coincidence that China uses the robot for justice, and it is clear that the robot is with an algorithm for protecting state interests. while In Netherlands, the Council of State recommended that the principles of good governance, and in particular the principle of a reasoned decision and the due diligence principle, should be interpreted more strictly in the context of digitisation. (Reiling, A.D., 2020). However, in countries, where the prestige of the court is low and the society do not trust it, where the judge is not a strategic decision-maker but a law enforcer, where court decisions are made by the method of formal logic, and at the same time due to overcrowding the court is unable to create high quality justice, simple dispute resolution by artificial intelligence would be the best solution, especially the cases which may have a predictable outcome. But if the litigation is creative and interprets the laws, using a certain emotional intelligence, then

the replacement of human resources is practically excluded. Using AI in justice in such a manner will be positive especially in for such countries like Georgia where courts are characterized by congestion, shortage of personnel and overloaded with disputes. The mentioned problem actually leaves the population without legal protection, who vainly seeks to achieve justice through alternative ways of dispute resolution, but the salvation is not in it either, because the newly introduced court mediation is also characterized by bureaucratic approaches, and due to the unfortunate experience of arbitration, it already has a low reputation. Especially, since the criteria for selecting judges are not based on emotional intelligence and other human characteristics, but on how well the future judge knows the laws by heart, which is what artificial intelligence can do best.

Conclusions

The purpose of the article was to review the perspectives and risks of using artificial intelligence in civil litigation. As a result of the discussion, the following conclusions can be drawn: The myth that artificial intelligence is impartial should be replaced by its strict and detailed regulation by the states. Artificial intelligence should be deployed based on a transparent algorithm for tightly regulated purposes, especially if it is used in developing countries like Georgia.

However, the use of artificial intelligence as an assistant in court system to unload the judiciary is inevitable. Legal disputes are becoming more complex and diverse with the development of technology and the automatisation of processes. AI will enable the judiciary to resolve disputes more quickly but mankind must carefully keep ,,the Golden interval".

Accordingly, artificial intelligence in civil justice must be used only for certain categories of cases. It is necessary to determine the categories of proceedings, for which the use of artificial intelligence will be strictly limited, such as family disputes, as well as disputes in which vulnerable persons participate.

References:

Aini, G., (2020) A Summary of the Research on the Judicial Application of Artificial Intelligence, Beijing, Normal University Law School, Beijing, China. Chinese Studies > Vol.9 No.1.

Gabisonia, Z., (2022), Internet law and AI, Tbilisi, publishing house, ,,World of Lawyers".

Giarda R. & Ambrosino C., (2022), Artificial Intelligence in the administration of justice https://globallitigationnews.bakermckenzie.com/2022/02/15/artificial-intelligence-in-the-administration-of-justice/;

Dialani, P., (2021), Aartificial intelligence, AI will have robot judges soon?.

Dörfler, V. Mattingly, James, ed. (2022). Artificial Intelligence, The SAGE Encyclopedia of Theory in Science, Technology, Engineering, and MathematicsPublisher: Sage.

European Comission for the Eefficiency of Jjustice (CEPEJ), (2018) European Ethical Charter "on the Use of Artificial Intelligence in Judicial Systems and their environment", 31st plenary meeting of the CEPEJ, Strasbourg.

Judicial Advisory Council of Europe (CCJE) (2011). Conclusion N14. "Justice and Information Technology (IT)".

Kambur, E., (2021), Emotional Intelligence or Artificial Intelligence?: Emotional Artificial Intelligence, Florya Chronicles of Political Economy - Year 7 N. 2. pp 147-168.

Kamyshanskiy, V., Stepanov, D., Mukhina & I., Kripakova, D., (2021) Digital society, artificial intelligence and modern civil law: challenges and perspectives, SHS Web of Conferences 109, 01016.

Kozyrev, A., (2018). Artificial Intelligence as Civilized Man's Deadly Sin, Conference: World Peace Forum, Artificial intelligence and geopolitics, Beijing.

Kahnemann, D., (2011) *Thinking, fast and slow*, London: Penguin p. 43

Georgian parliament. (1997) .Georgian Civil Procedure code, article 354

Georgian parliament, (2019). Childs Rights Code of Georgia. N5004-I;

Georgian parliament, (2020). Law on Persons with disabilities;

Sartor, G., & Branting, K., 1998, Judicial Applications of Artificial Intelligence, Springer Science+Business Media Dordrecht.

MEPs. (2021). Use of artificial intelligence by the police: https://www.europarl.europa.eu/news/en/press-room/20210930IPR13925/use-of-artificial-intelligence-by-the-police-meps-oppose-mass-surveillance;

NiniZe T., (2002) comments of Georgian Civil Code, book I,article 18, p. 73.

Reiling, A.D., (2020). Courts and Artificial Intelligence. International Journal for Court Administration, 11(2), p.8.

Siboe, N. N., (2020). Use of Artificial Intelligence by the Judiciary in the face of COVID-19, OxHRH Blog.

The Bible, Gospel of Johan, https://www.orthodoxy.ge/tserili/akhali_agtqma/ioane-1.htm

Ziemianin, K., (2021) Civil legal personality of artificial intelligence. Future or utopia? Internet Policy Review 10(2) |, Volume 10. 5.

Wang, N. & Tian M.Y. (2022), 'Intelligent Justice': AI Implementations in China's Legal Systems, January, Artificial Intelligence.

Conflicts of interest

1. The author of this paper certify that he has NO affiliations with or involvement in any organization or entity with any financial or non-financial interest (such as honoraria; educational grants; membership, employment; affiliations, knowledge or beliefs) in the subject matter or materials discussed in this manuscript.