

# Problems of legal regulation of artificial intelligence in administrative judicial procedure

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## **Abstract**

*The use of digital technologies in administrative courts uses the legal systems of the European Union and the world to strengthen the ways of protecting human rights. This paper examines certain problems of legal regulation of the use of artificial intelligence technologies in administrative judicial procedure. The methodology of this work is based on an interdisciplinary approach using comparative legal, dialectical and systemic methods. The main objective of this article is to determine the forms and directions, risks and benefits, prospects for the use of artificial intelligence in administrative judicial procedure, taking into account foreign experience in legal regulation in this area. The concept of "artificial intelligence" is investigated. It is emphasized that the use of artificial intelligence technologies in administrative judicial procedure is an acceptable use only of specialized intelligent systems that can work under human control. It is stated that when considering administrative cases in an administrative court of minor complexity, it is possible to use artificial intelligence technologies, which will be able to independently generalize and analyze legislation, judicial practice and be a recommendation for a judge when making a fair and lawful decision on the principles of the rule of law. It has been established that the use of artificial intelligence technologies in administrative proceedings provides opportunities for the effective implementation of the right to judicial protection, but can be used to take actions that are contrary to the rule of law, in particular regarding the violation of the right to a fair trial in administrative cases in administrative courts. The latter requires the improvement of legal regulation of the use of artificial intelligence technologies in administrative judicial procedure using international principles and standards.*

**Keywords:** right to judicial protection, artificial intelligence, digital technology, electronic technology, administrative judicial procedure, legal regulation.

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## 1. Introduction

The current stage of development of public relations is characterized by the rapid activation of digital technologies<sup>6</sup>. Artificial intelligence technologies are already widely used in the legal sphere and legal practice. Thus, at the beginning of 2017, JPMorgan announced the use of Contract Intelligence software, which in a few seconds is able to analyze legal documents, which previously required 360 thousand hours of working time<sup>7</sup>. A study conducted by International Data Corporation indicates that revenue in the global artificial intelligence technology market, including software, hardware and services, grew by 12.3% in 2020 compared to 2019 and reached \$156.5 billion in 2021 – reached \$383.3 billion, an increase of 20.7% compared to the previous year<sup>8</sup>. Digital technologies are designed to improve the lives of people and the well-being of communities, as well as contribute to the development of society, they also contain obvious and hidden risks and threats, creating challenges for all of humanity<sup>9</sup>. The application of machine learning technology in the legal sector is now becoming more common, especially as a tool to save lawyers time and provide more detailed analysis of ever-increasing datasets to aid in legal decision making in court systems around the world<sup>10</sup>. At the same time, the complex and interdisciplinary nature of this issue, the dynamism of changes in this area requires further legal research on the use of artificial intelligence technologies in administrative proceedings. In addition to technical improvements, artificial intelligence technologies need effective legal regulation, because these technologies can limit the rights of people. Therefore, it is important to study the risks and benefits, the prospects for the introduction of artificial intelligence technologies in administrative proceedings, to consider certain problems of their legal regulation, and also to establish what opportunities such technologies create to improve the protection of the rights, freedoms and interests of individuals and legal entities in public law relations.

## 2. Literature review

The issues of legal support for the activities of artificial intelligence in justice have been studied by some scientists. So, Sartor G, Branting K. (1998) investigated

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<sup>6</sup> Shevchuk, O., Zui V., Maryniv, I., Davydenko, S., Mokhonchuk, S., *Human Right to Internet Access in Healthcare in the "Right to Health Concept": Legal Issues*. „European journal of sustainable development”. 2021. Vol. 10 Iss. 2, p. 287.

<sup>7</sup> Kryvytskyi Yu., *Artificial Intelligence as a Tool of Legal Reform: Potential, Trends and Prospects*. Scientific Herald of National Academy of Internal Affairs. 2021. № 2 (119). pp. 90 -101.

<sup>8</sup> Global AI spending increased by more than 20% in 2021. Available at: <https://3dnews.ru/1074015/globalnie-zatrati-v-sfere-ii-v-2021-godu-virosli-bolee-chem-na-20> [Accessed 12 November 2022].

<sup>9</sup> Razmetaeva Y., Barabash Y., Lukianov D. *The concept of human rights in the digital era: changes and consequences for judicial practice*. "Access to Justice in Eastern Europe". 2022. Vol. 5, Iss. 3. p. 42.

<sup>10</sup> Artificial Intelligence in the administration of justice. By Raffaele Giarda and Camilla Ambrosino February 15, 2022, 7 Mins Read. Available at: <https://globallitigationnews.bakermckenzie.com/2022/02/15/artificial-intelligence-in-the-administration-of-justice/> [Accessed 12 November 2022].

the judicial applications of artificial intelligence<sup>11</sup>, Zuckerman, A. (2020) studied the features of artificial intelligence in the administration of justice<sup>12</sup>, Plakhotnik O. (2019) analyzed artificial intelligence systems in judicial systems in selected foreign countries in relation to criminal proceedings<sup>13</sup>, Wang N., & Tian M.Y. (2022) examined the challenges facing the courts in China and the application of artificial intelligence<sup>14</sup>, Aletras N., Tsarapatsanis D., Preotiuc-Pietro D., Lampos V., (2016) conducted research on the use of artificial intelligence built on the "deep learning" technology in order to predict the results of decisions of the European Court of Human Rights. So, having gained access to evidence in a particular case, artificial intelligence technologies evaluated them in accordance with the specified parameters with an accuracy of verdicts of about 79% of 584 cases considered<sup>15</sup>. Turuta O. V., Turuta O. P. (2022) studied the impact of artificial intelligence on human rights<sup>16</sup>, Razmetaeva Y., Barabash Y., Lukianov D. (2022) studied the specifics of the development of the concept of human rights in the digital age regarding the consequences for judicial practice<sup>17</sup>, Stefanchuk, M.O., Muzyka-Stefanchuk, O.A., & Stefanchuk, M.M. (2021) drew attention to the main characteristics of such categories as "artificial intelligence", "robot" in order to understand their essence from a legal point of view, revealed the scope of these systems<sup>18</sup>, Karmaza O. O., & Fedorenko T. V. (2021) studied the principles of artificial intelligence in justice Ukraine<sup>19</sup>, Demura M. & Klepka D. (2021) investigated the use of artificial intelligence algorithms in the field of criminal justice<sup>20</sup> and others. However, there is still no comprehensive scientific approach to the legal regulation of the use and development of artificial intelligence systems in administrative proceedings, which indicates the relevance of the scientific novelty of this study.

<sup>11</sup> Sartor G., & Branting K. *Judicial Applications of Artificial Intelligence*. "International review of law, computers and technology" 1998. P.411 - 414. DOI:10.1007/978-94-015-9010-5.

<sup>12</sup> Zuckerman, A. *Artificial Intelligence in the Administration of Justice*: in Andrew Higgins (ed.) *The Civil Procedure Rules at 20*, Oxford University Press, 2020, p. 291. DOI: <https://doi.org/10.1093/oso/9780198863182.003.0020> [Accessed 10 November 2022].

<sup>13</sup> Plakhotnik O., *Practical use artificial intelligence in criminal proceeding*. "Herald of criminal justice". 2019. Iss. 4. Pp. 45-57. DOI:10.17721/2413-5372.2019.4/45-57.

<sup>14</sup> Wang N. & Tian M.Y. *"Intelligent Justice": human-centered considerations in China's legal AI transformation*. "AI Ethics". 2022. 23. pp. 1-6. doi: 10.1007/s43681-022-00202-3.

<sup>15</sup> Aletras N., Tsarapatsanis D., Preotiuc-Pietro D., Lampos V. *Predicting judicial decisions of the European Court of Human Rights: a Natural Language Processing perspective*. "Peer Journal Computer Science". 2016. №2. p. 93. <https://doi.org/10.7717/peerj-cs.93>

<sup>16</sup> Turuta O. V. & Turuta O. P., *Artificial intelligence through the prism of fundamental human rights*. "Uzhhorod National University Herald. Series: Law". 2022. Vol.71. pp. 49-54. DOI <https://doi.org/10.24144/2307-3322.2022.71.7>

<sup>17</sup> Razmetaeva Y., Barabash Y., Lukianov D., *op. cit.*, pp. 41–56.

<sup>18</sup> Stefanchuk, M.O., Muzyka-Stefanchuk, O.A., & Stefanchuk, M.M. *Prospects of legal regulation of relations in the field of artificial intelligence use*. "Journal of the National Academy of Legal Sciences of Ukraine". 2021. 28(1), pp. 157-168.

<sup>19</sup> Karmaza O. O., Fedorenko T. V. *Principles of artificial intelligence in the justice of Ukraine*. "Law and Society". 2021. Iss. 2. pp. 18-24.

<sup>20</sup> Demura M. & Klepka D., *Using Artificial Intelligence Algorithms in the Field of Criminal Judiciary: International Experience and Domestic Prospects*. "Science and Innovation". 2021. Vol. 17, no. 5. pp. 95-102.

### 3. Methodology and research methods

The methodological basis of the study is a combination of general and special methods of scientific knowledge. The dialectical method of scientific knowledge is used as the main general scientific method. In the course of the work, formal-legal and system-structural methods were used to study documents covering the prospects for the introduction and development of artificial intelligence systems in administrative proceedings. In the course of formulating the concept of "artificial intelligence", the authors used the logical-semantic method. Methods only in interaction with each other and in synthesis with other scientific methods allowed the authors to collect reliable information on the advantages, as well as on the prospects for using artificial intelligence systems in administrative proceedings, as well as the opportunity to study some problems of their legal regulation and suggest ways to optimize legislation in this area.

### 4. Formation of the legal framework and principles for the use of artificial intelligence technologies in administrative proceedings

When using artificial intelligence systems in administrative proceedings, we propose to adhere to two interrelated approaches. In the first case, it is necessary to take into account both positive and negative consequences for human rights when using artificial intelligence in the course of consideration of administrative cases in administrative courts. However, the misuse of artificial intelligence algorithms creates many problems, in particular, violations of such rights as the right to a fair trial and the presumption of innocence and others<sup>21</sup>. Among other rights, it should be highlighted, for example, interference with the right to privacy and the right to human equality, which is endangered by the use of artificial intelligence algorithms, as well as the human right to freedom of expression and assembly<sup>22</sup>. All the benefits of using artificial intelligence systems should only be realized if they comply with certain values and ethical principles<sup>23</sup>. If the use of artificial intelligence systems in the course of consideration of administrative cases in administrative courts strengthens the mechanism for exercising the human right to judicial protection and contributes to the implementation of other human rights (the right to a fair trial and the right to enjoy all the guarantees necessary for defense in court), then they should be developed and apply, if there is a decrease in human rights guarantees, the use of artificial intelligence systems in administrative proceedings should be abandoned.

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<sup>21</sup> Turuta O. V., & Turuta O. P., *Artificial intelligence through the prism of fundamental human rights*. "Uzhhorod National University Herald. Series: Law". 2022. Vol. 71. pp. 49-54. DOI <https://doi.org/10.24144/2307-3322.2022.71.7>.

<sup>22</sup> Respect for human rights in the era of artificial intelligence. Available at: <https://www.coe.int/tu/web/commissioner/-/safeguarding-human-rights-in-the-era-of-artificial-intelligence> [Accessed 15 November 2022].

<sup>23</sup> Raso, F., Hannah H., V. Krishnamurthy, C. Bavitz, and K. Levin. *Artificial Intelligence & Human Rights: Opportunities & Risks*. "Berkman Klein Center for Internet & Society Research Publication". 2018. p. 7. Available at: [https://kennisopenbaarbestuur.nl/media/257132/2018-09\\_ahumanrights.pdf](https://kennisopenbaarbestuur.nl/media/257132/2018-09_ahumanrights.pdf).

The legal basis for the introduction of artificial intelligence in administrative proceedings is indicated in the provisions of both international and national documents. The main national document for the formation of legal norms and principles for the introduction of artificial intelligence in administrative proceedings is the Concept for the Development of Artificial Intelligence in Ukraine dated December 2, 2020, No. 1556-r. This Concept determines that one of the priority areas for the use of artificial intelligence is justice, as well as bringing legislation in the field of the use of artificial intelligence technologies in line with international regulations<sup>24</sup>. An important international document on the introduction of human rights as a new component and in providing powerful mechanisms for their implementation and guarantee is the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>25</sup>. Access to the administrative court must take place in accordance with the general principles of administrative proceedings, therefore, according to Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, everyone has the right to a fair and public hearing of his case within a reasonable time by an independent and impartial court established by law, which will resolve the dispute on his rights and obligations<sup>26</sup>. Note that in the norms of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, there is no direct prohibition on the use of artificial intelligence systems.

To clarify the formation of the legal foundations and principles for the introduction of artificial intelligence in administrative proceedings, one should first indicate the main provisions of international documents - the Committee of Ministers of the Council of Europe, the Council of the Organization for Economic Cooperation and Development, the UN. So, in 2001, the Committee of Ministers of the Council of Europe in its Recommendation No. R (2001) 3 of February 28, 2001 "On the dissemination of judicial and other legal information through the use of new technologies"<sup>27</sup> recommended that Member States "make it as easy as possible for citizens to communicate with the courts ... through new technologies", which includes, subject to security and privacy requirements: (1) the ability to initiate legal proceedings by electronic means; (2) the ability to take further action during the

<sup>24</sup> Concept of development of the digital economy and society of Ukraine for 2018-2020: order of the Cabinet of Ministers of Ukraine dated January 17, 2018, No. 67. Official Gazette of Ukraine. 2018. No. 16. Article 560.

<sup>25</sup> Grynchak A. A., Tavorzhanska Y. S., Grynchak S. V., Smorodynskyi V. S., Latysh K. V. *Convention for the Protection of Human Rights and Fundamental Freedoms as a Constitutional Instrument of European Public Order*. "Public Organization Review". 2022.7. pp. 1–14. doi: 10.1007/s11115-021-00583-9.

<sup>26</sup> Convention on the Protection of Human Rights and Fundamental Freedoms: International document dated 04 November 1950, № 995\_004. Official Gazette of Ukraine official publication. 1998. No. 13. (No. 32 dated 23.08.2006), p. 270.

<sup>27</sup> Recommendation Rec (2001)3 of the Committee of Ministers to member states on the delivery of court and other legal services to the citizen through the use of new technologies (adopted by the Committee of Ministers on 28 February 2001 at the 743<sup>rd</sup> meeting of the Ministers' Deputies) Available at: [https://www.viaduk.net/clients/vsu/vsuen.nsf/\(documents\)/7887A705C14296F0C2257D88002FB42D](https://www.viaduk.net/clients/vsu/vsuen.nsf/(documents)/7887A705C14296F0C2257D88002FB42D) [Accessed 10 November 2022].

proceedings in court in an electronic environment; (3) the ability to receive information about the state of the case if you have access to the judicial information system; (4) the possibility of obtaining information about the results of the trial in electronic form; (5) the possibility of obtaining access to any information necessary to achieve the effectiveness of the implementation of judgments. The recommendation also states that information on trials should be publicly available and disseminated via the Internet.

In the Resolution of the European Parliament "Norms of civil law on robotics" dated February 16, 2017, it is proposed to fix the legal basis for the use of artificial intelligence and the introduction of a pan-European registration system for smart machines<sup>28</sup>. The main issues addressed in this Resolution are the issues of ethical standards on robotics and artificial intelligence, the granting of rights to works and artificial intelligence, the creation of the European Agency for Robotics and Artificial Intelligence, the solution of the issue of responsibility for the caused by the robot and artificial intelligence, as well as the proposal among already known categories of subjects of legal relations (individuals and legal entities) to create a new one - "electronic person (personality)", which has its own specific rights and obligations. With regard to justice, this document notes that the development and widespread use in the future of automatic machines and machines that make decisions in accordance with the algorithm embedded in them will undoubtedly influence the decisions made as individuals. Such guidelines are relevant to administrative, judicial or any other public authorities that make final decisions on matters related to consumer protection, commercial or administrative activities.

On May 22, 2019, the Council of the Organization for Economic Cooperation and Development adopted the Recommendation on Artificial Intelligence<sup>29</sup>, which identified five value-based principles for advancing artificial intelligence, four national policy recommendations, and a principle for international cooperation to develop trustworthy artificial intelligence. The principles mentioned include: (1) inclusive growth, sustainable development and well-being; (2) human-centered values and equity; (3) transparency and explainability; (4) reliability, safety and security; (5) accountability. The "European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment"<sup>30</sup> enshrines the principles for the use of artificial intelligence in judicial systems in order to improve the efficiency and quality of justice. It is based on the following basic principles: (1) respect for fundamental rights; (2) non-discrimination; (3) quality and safety; (4) transparency, impartiality and credibility; (5) user control. In a certain direction of

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<sup>28</sup> Resolution with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL)) (European Parliament, 16 February 2017) Available at: [https://www.europarl.europa.eu/doceo/document/A-8-2017-0005\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-8-2017-0005_EN.html) [Accessed 12 November 2022].

<sup>29</sup> Forty-two countries adopt new OECD Principles on Artificial Intelligence – OECD. Available at: <https://www.oecd.org/science/forty-two-countries-adopt-new-oecd-principles-on-artificial-intelligence.htm> [Accessed 12 November 2022].

<sup>30</sup> European ethical Charter on the use of Artificial Intelligence in judicial systems and their environment. Available at: <https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c> [Accessed 12 November 2022].

studying the implementation of artificial intelligence technologies, one should also analyze the White Paper on Artificial Intelligence: a European approach to excellence and trust, published on February 19, 2020, which notes that artificial intelligence should work for people and be a force working for the benefit of society. The purpose of this document is possible changes that will contribute to the reliable and safe development of artificial intelligence in Europe, with all respect for the values and rights of EU citizens<sup>31</sup>.

Also important regarding the application and development of artificial intelligence technologies in administrative proceedings are the documents of the Committee of the Council of Europe "Human Rights in the Age of Artificial Intelligence - Europe as an International Standards Setter in the Field of Artificial Intelligence" published in January 2021<sup>32</sup>, and in March 2021, the Declaration on risks in decision-making using a computer or artificial intelligence in the field of the social protection system was adopted<sup>33</sup>, which points out that while artificial intelligence and machine learning have benefits for the social safety net, it should be ensured that public applications are fair and that ethical values apply to everyone without causing any difference in social cohesion.

Regarding the development and application of artificial intelligence in administrative proceedings, it is provided for in the provisions of national documents. Thus, the Concept for the Development of the Digital Economy and Society of Ukraine for 2018-2020 provides for the implementation of measures to introduce appropriate incentives for the digitalization of the economy, public and social spheres, awareness of the existing challenges and tools for the development of digital infrastructures, the acquisition of digital competencies by citizens, in which the main role is played by such technologies and concepts as the Internet of Things (Internet of Things, IoT), Big Data (Big Data), Cloud computing, machine learning, machine interaction, artificial intelligence, robotics...<sup>34</sup>. In this document, for the first time in national documents, the term "artificial intelligence" was used for the digitalization of the economy, public and social spheres. The Strategy for the Development of the Justice System and Constitutional Proceedings for 2021-2023 proclaims that one of the tasks in Ukraine is to ensure the coordination and balance of the process of improving the justice system, taking into account the further

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<sup>31</sup> White paper. On Artificial Intelligence – A European approach to excellence and trust. European Commission. Brussels, 19.02.2020 COM (2020) 65 final. Available at: [https://ec.europa.eu/info/sites/info/files/commission-white-paperartificial-intelligence-feb2020\\_en.pdf](https://ec.europa.eu/info/sites/info/files/commission-white-paperartificial-intelligence-feb2020_en.pdf) [Accessed 11 November 2022].

<sup>32</sup> Human rights in the era of artificial intelligence in Europe as a setter of international standards in the field of artificial intelligence. Available at: <https://www.coe.int/ru/web/commissioner/-/high-level-conference-human-rights-in-the-era-of-artificial-intelligence> [Accessed 11 November 2022].

<sup>33</sup> Declaration by the Committee of Ministers on the risks of computer-assisted or artificial-intelligence-enabled decision making in the field of the social safety net: Adopted by the Committee of Ministers on 17 March 2021 at the 1399<sup>th</sup> meeting of the Ministers' Deputies. Available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680a1cb98](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a1cb98) [Accessed 10 November 2022].

<sup>34</sup> Concept of development of the digital economy and society of Ukraine for 2018-2020: order of the Cabinet of Ministers of Ukraine dated January 17, 2018, No. 67. Official Gazette of Ukraine. 2018. No. 16. Article 560.

harmonization of national legislation with the legislation of the European Union, increasing the efficiency of the organization of the judiciary and justice institutions, building public confidence in them. One of the objectives of this Strategy is the development of e-governance by introducing the possibility of online consideration of certain categories of cases, regardless of the location of the parties and the court, and other e-justice services<sup>35</sup>.

Some authors refer to the principles of the use of artificial intelligence in legal proceedings: (1) the principle of respect for fundamental rights, which, in particular, consists in the introduction of artificial intelligence within the limits, method and procedure so as not to violate fundamental human rights guaranteed at the international and national level; (2) the principle of non-discrimination, the content of which, in particular, is revealed through the prevention of the development or intensification of any discrimination between people or groups of people; (3) the principle of quality and security, which is that court decisions and the data used in them are protected and located in a secure technological environment; (4) the principle of transparency, impartiality and fairness - these are the principles of ensuring the absence of the human factor (preventing human interference) in the case of using artificial intelligence; (5) the principle of "under the control of the user" guarantees a high level of autonomy, user awareness and other<sup>36</sup>. These principles of the use of artificial intelligence, taking into account the specifics of the consideration of administrative cases in administrative courts, can be applied in administrative proceedings. Particular attention when using artificial intelligence systems in administrative proceedings in the context of human rights to judicial protection should be paid to the principle of the rule of law, the principle of legality, the principle of responsibility in the field of the use of artificial intelligence in administrative proceedings, the principle of continuous monitoring of activities in the field of the use of artificial intelligence in administrative proceedings, the principle of clearly defining the boundaries of the action of artificial intelligence and others.

To achieve the goal of the Concept for the Development of Artificial Intelligence in Ukraine dated December 2, 2020 No. 1556-r. in justice, it is necessary to ensure the fulfillment of the following tasks: (1) further development of already existing technologies in the field of justice (Unified Judicial Information and Telecommunication System, Electronic Court, Unified Register of Pre-trial Investigations, etc.); (2) adjudication of cases of minor complexity (by mutual agreement of the parties) based on the results of the analysis carried out using technologies<sup>37</sup>. The Code of Administrative Procedure of Ukraine specifies the

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<sup>35</sup> Strategy for the Development of the Justice System and Constitutional Proceedings for 2021-2023: Decree of the President of Ukraine dated 11.06. 2021 №231/2021. Official Gazette of Ukraine. 2021. No. 48. p. 23. Art. 2963.

<sup>36</sup> Karmaza O.O., Fedorenko T.V., *Principles of artificial intelligence in the justice of Ukraine*. "Law and Society". 2021. 2. pp. 18-24.

<sup>37</sup> Concept of development of the digital economy and society of Ukraine for 2018-2020: order of the Cabinet of Ministers of Ukraine dated January 17, 2018, No. 67. Official Gazette of Ukraine. 2018. No. 16. Article 560.

concept of "administrative proceedings" - as the activity of administrative courts to consider and resolve administrative cases in the manner prescribed by this Code. And the term "administrative case" in the Code of Administrative Procedure of Ukraine is indicated as a public law dispute referred to the decision of the administrative court, and the concept of "administrative court" as a court within whose competence this Code includes the consideration and resolution of administrative cases (Article 1). Based on the provisions of the Code of Administrative Procedure of Ukraine, the "electronic administrative judicial procedure" system in Ukraine is implemented by providing participants in the administrative process with the following opportunities: (1) create and send electronically procedural or other documents to the court, other bodies and institutions in the justice system; (2) receive information about the status and results of consideration of procedural documents or other documents; (3) submit written and electronic evidence in electronic form; (4) receive subpoenas via electronic communications; (5) pay the court fee online when forming an electronic statement of claim (appeal or cassation complaint). To realize the possibilities of the "electronic administrative judicial procedure" system, it is necessary to register in the Unified Judicial Information and Telecommunication System. Electronic Court is a subsystem of the Unified Judicial Information and Telecommunication System.

According to the Concept for the Development of Artificial Intelligence in Ukraine dated December 2, 2020, No. 1556-r, the main task of justice is to ensure the issuance of court decisions in cases of minor complexity (by mutual agreement of the parties) based on the results of the analysis carried out using artificial intelligence technologies, the state of compliance with the law and jurisprudence<sup>38</sup>. A positive moment in the development of artificial intelligence in administrative proceedings is that the High Council of Justice of Ukraine, in its Decision No. 283/0/15-21 dated February 9, 2021, proposes to launch a pilot project based on one court of first instance in terms of automated consideration by the system using artificial intelligence of court cases for the consideration of administrative offenses with a formal composition. A promising direction is also the consideration of administrative cases in administrative courts using artificial intelligence systems for consideration of such a category of administrative cases as "administrative cases of low complexity (minor cases)". Thus, in accordance with the norms of the Code of Administrative Procedure of Ukraine, the term "administrative case of minor complexity (minor case)" is an administrative case in which the nature of the disputed legal relations, the subject of proof and the composition of the participants do not require preparatory proceedings and (or) a court session for a full and comprehensive establishing his circumstances (art. 4, para. 20). In this case, the use of artificial intelligence systems in the course of consideration of administrative cases in administrative courts is an acceptable use only of specialized intelligent systems capable of operating under human control. Such a system should be used in

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<sup>38</sup> Concept of development of the digital economy and society of Ukraine for 2018-2020: order of the Cabinet of Ministers of Ukraine dated January 17, 2018, No. 67. Official Gazette of Ukraine. 2018. No. 16. Article 560.

administrative courts in compliance with the fundamental rights guaranteed, in particular, by the European Convention on Human Rights and national legislation protecting the rights and freedoms of participants in judicial administrative proceedings.

In order to consider court cases in administrative courts using artificial intelligence systems, it is necessary to develop and adopt appropriate legislative acts that will regulate public relations in this area of activity. Thus, in Article 127 of the Constitution of Ukraine<sup>39</sup>, it is enshrined that justice is carried out by judges and judicial power is entrusted to them, also at the legislative level, for example, in the Law of Ukraine "On the judiciary and the status of judges", or in the provisions of the Code of Administrative Procedure of Ukraine, are not indicated legal norms providing for the possibility of using artificial intelligence systems in the consideration of administrative cases in administrative courts. The legislation of Ukraine in the field of legal proceedings today fixes the requirements only for individuals wishing to be a judge of an administrative court, and the procedure for their appointment, based on the above, artificial intelligence technologies at the present stage cannot replace judges in administrative courts.

#### **5. Development of artificial intelligence in administrative proceedings: discussion, problems of defining the concept, foreign experience**

There is no single point of view in the legal literature regarding (1) the legal aspects of the development of artificial intelligence technologies, (2) the possible recognition of the legal personality of robots with artificial intelligence, (3) the mechanisms for exercising legal liability, and (4) the conditions for compensating people for damage in cases of harm caused to them. using artificial intelligence technologies. The question of the types (forms) of artificial intelligence that are used or will be used in public relations regulated by the rule of law remains a debatable issue in scientific legal circles. Note that if we proceed from the provisions of the general theory of law, then the objects of legal relations are social values and benefits, regarding the possession of which the objects enter into legal relations, exercise their rights and obligations. Material and non-material goods and values can act as objects of legal relations. As for the subjects of legal relations, in addition to the ability to act as a bearer of subjective rights and legal obligations, an inalienable property of any independent subject of law is the ability to produce, express and implement a personified will. And the operation of artificial intelligence systems implies the possibility of independent decision-making, depending on specific circumstances, based on the existing database, its processing, drawing conclusions based on classification criteria, comparison with relevant actual circumstances. With the recognition of this fact, the question inevitably arises of the subject who should

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<sup>39</sup> Constitution of Ukraine: Law of Ukraine No. 254/96 of 28 June, 1996. Information of the Verkhovna Rada of Ukraine. № 30. Art. 141.

be held responsible for making such a decision<sup>40</sup>.

However, some researchers in the field of law believe that machines with artificial intelligence should be endowed with legal personality on an equal basis with individuals. Others argue that such machines should be given a status similar to legal entities. Also, some scientists are considering the possibility of criminal liability for artificial intelligence<sup>41</sup>, others argue that "robots" cannot be court-martialed, prosecuted, or interrogated<sup>42</sup>, a number of scientists argue that the responsibility for the actions or inaction of artificial intelligence lies with the person who develops and programs artificial intelligence<sup>43</sup>. Karmaza O., Fedorenko T. V. (2021) point to the problem of the lack of a normatively fixed order, methods and mechanisms of action and interaction of various forms of artificial intelligence, namely: (1) computer programs; (2) information technology on artificial intelligence; (3) "electronic person (personality)"; (4) "cyber-physical system". The authors of the term "electronic person (personality) - judge" understand it conditionally and propose to apply it to robots with an extremely developed intellect that have a physical reincarnation, but are not biological persons<sup>44</sup>.

From the point of view of N. Stefanchuk, it is impossible to equate the terms "robot" and "artificial intelligence", which correlate with each other as form and content. A robot is a device, a machine, the main ability of which is the automated execution of one or more tasks following the pattern of human actions, which is characterized by signs of mobility, sensitivity, analyticity, etc. Artificial intelligence gives work to the properties that it is customary to characterize it, namely, intelligence, the ability to analyze and process information, as well as perform the tasks for which it is programmed<sup>45</sup>. Zuckerman, A (2020) points out that the replacement of lawyers and judges by artificial intelligence will have major consequences beyond job losses. "AI Lawyers" and "AI Judges" will change the adversarial system beyond recognition, reducing litigation to a single machine operation, ending the appearance of a trial, and eliminating the physical presence of a court. The legitimacy of the court will be undermined because the decisions made by artificial intelligence will not be able to reflect human psychology: emotions,

<sup>40</sup> Pozova, D. D., *Legal aspects of approximation automatic devices to human capabilities*. "Journal of civil studies". 2017. (26). p. 81.

<sup>41</sup> Hrytsai, D. I., *"Smart works": some problems of determining the legal status*. "Legal Ukraine. Monthly legal journal". 2018. No. 1/2. pp. 104-106.

<sup>42</sup> Schmidt, E. & Cohen, J., *The New Digital Age: Transforming Nations. Businesses and Our Lives*. Vintage. 2014. 368 p.

<sup>43</sup> Yaroshenko, O.M., Melnychuk, N.O., Zhygalkin, I.P., Silchenko, S.O., Zaika, D.I. *Problems of legal regulation of artificial intelligence in labor law of developed countries*. "Informatologia". 2022. 55 (1-2), pp.160-169. <https://doi.org/10.32914/i.55.1-2.13>

<sup>44</sup> Karmaza, O. O., & Fedorenko, T. V., *Principles of artificial intelligence in the justice of Ukraine*. "Law and Society". 2021. Iss. 2. pp. 18-24.

<sup>45</sup> Stefanchuk, M.O., *Theoretical principles of civil legal personality of natural persons and peculiarities of its implementation*: Thesis Doctoral of law. Abstract. National Academy of Legal Sciences of Ukraine, Research Institute of Private Law and Entrepreneurship named after F. G. Burchak. Kyiv, 2020. 40 p. [in Ukrainian].

aspirations, beliefs or moral feelings<sup>46</sup>.

So far, it is also impossible to define a single concept of "artificial intelligence". Thus, the Committee of the Council of Europe (December 2020) published an analyzing document on the current situation with the legal framework for artificial intelligence called "Feasibility study on a legal framework on AI design, development and application based on CoE standards". In particular, it notes the lack of a unified approach to the definition of the term artificial intelligence itself. As a result, the researchers recommend adopting a technically neutral term that would cover cases directly related to potential risks to human rights, democratic principles, and the rule of law. For example, in the international encyclopedic dictionary "artificial intelligence" is defined as: the ability of a machine to imitate intelligent human behavior (reasoning, learning or understanding speech); branch of computer science dealing with the modeling of intelligent behavior in computers<sup>47</sup>.

Some authors propose to understand the term "artificial intelligence" as a set of different concepts of automated processes, each of which has an algorithm as a specific component...<sup>48</sup>. Other researchers understand this term as an object of civil rights and suggest that in the process of applying artificial intelligence technologies in such areas as medicine or public administration, it is advisable to extend the legal regime of a source of increased danger to this object of civil rights in order to better protect the rights of users of artificial intelligence technologies<sup>49</sup>. There is an opinion of scientists that artificial intelligence is a property of automatic systems to take on certain functions of the human intellect<sup>50</sup>. There is an approach in the legal literature regarding the definition of the concept of artificial intelligence through its division into types. For example, A. A. Baranov proposed such types of artificial intelligence as: (1) Weak Artificial Intelligence, (2) Artificial Narrow Intelligence, (3) Artificial Superintelligence<sup>51</sup>. Thus, the analysis of scientific approaches showed that researchers mainly study the use of artificial intelligence technologies only in terms of the use of computer programs or information technologies for artificial intelligence, and in most cases do not consider "electronic person (personality)" as a possible subject of procedural relations.

The Concept for the Development of Artificial Intelligence in Ukraine dated December 2, 2020, No. 1556-r specifies the concept of "artificial intelligence". This term is defined as an organized set of information technologies, with the use of which

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<sup>46</sup> Zuckerman, A., *op. cit.*, p. 292.

<sup>47</sup> Artificial intelligence. Webster's New International English Dictionary. Available at: <https://slovar-vocab.com/english/websters-internationalvocab/artificial-intelligence-8661715.html> [Accessed 15 November 2022].

<sup>48</sup> Kozhevnikova, A., *The use of artificial intelligence in the civil process*. "Scientific Bulletin of the International Humanities University. Series: Jurisprudence". 2022. 55. p. 41.

<sup>49</sup> Martsenko, N., *The legal regime of artificial intelligence in civil law*. "Actual problems of law". 2019. n. 4. p. 96. DOI: 10.35774/app2019.04.091

<sup>50</sup> Savchenko, A.S., Synelnikov, O. O., *Methods and systems of artificial intelligence: a study guide*. 2017, p. 18. Kyiv: National Aviation University. 190 p. [in Ukrainian].

<sup>51</sup> Baranov, O. A., *The Internet of Things (IoT): a robot with artificial intelligence in legal relations*. "Legal Ukraine". 2018. No. 5-6. pp. 75-95.

it is possible to perform complex tasks by using a system of scientific research methods and algorithms for processing information obtained or independently created during work, as well as create and use your own knowledge bases, decision-making models, algorithms work with information and determine ways to achieve the goals<sup>52</sup>. In 2018, in the Strategy "Artificial Intelligence for Europe", the European Commission provided for the first time an official definition of this definition, namely: artificial intelligence (AI) are systems that exhibit intelligent behavior by analyzing their environment and taking actions (with a certain degree of autonomy) to achieve specific goals<sup>53</sup>. The provisions of the European Ethical Charter on the use of artificial intelligence in judicial systems and their environment also contain the concept of "artificial intelligence" and is defined as a set of scientific methods, theories and techniques, the purpose of which is to reproduce human cognitive abilities by a machine. Modern developments in artificial intelligence seek to have machines perform complex tasks previously performed by humans. This international document also defines such terms as: machine learning, database, expert systems, neural networks and others<sup>54</sup>.

Regarding the understanding of the term "artificial intelligence" in foreign documents. Thus, according to paragraph 2 of Article 2 of the Basic Law of Japan No. 103 of December 14, 2016 "On Improving the Use of Public and Private Sector Data", the term "technology related to artificial intelligence" means a technology for realizing such intellectual functions as learning, inference and judgment implemented by artificial means and the use of appropriate functions implemented by artificial means<sup>55</sup>. Canada has adopted the Montreal Declaration on the Responsible Development of Artificial Intelligence, providing ethical guidance for the development of artificial intelligence and the culmination of research and consultation with the public, experts and policy makers. It is noted that the development and use of artificial intelligence systems should contribute to the creation of a just society and should not help reduce the responsibility of people for decision-making<sup>56</sup>. Thus, the term in the national documents "artificial intelligence" as an organized set of information technologies, with the use of which complex tasks

<sup>52</sup> The concept of the development of artificial intelligence in Ukraine: order of the Cabinet of Ministers of Ukraine of December 2, 2020, No. 1556. Available at: <https://zakon.rada.gov.ua/laws/show/1556-2020-%D1%80#Text> [Accessed 15 November 2022].

<sup>53</sup> Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial intelligence Act) (EUR-LEX, 21/04/2021). Available at: <https://europa.eu/legal-content/ES/ALL/?uri=COM:2021:206:FIN> [Accessed 12 November 2022].

<sup>54</sup> European ethical Charter on the use of Artificial Intelligence in judicial systems and their environment. Available at: <https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c> [Accessed 12 November 2022].

<sup>55</sup> Prime Minister of Japan. Basic Act on the Advancement of Public and Private Sector Data Utilization. Act No. 103 of December 14, 2016. Available at: [http://www.japaneselawtranslation.go.jp/law/detail\\_main?re=01&vm=04&id=2975](http://www.japaneselawtranslation.go.jp/law/detail_main?re=01&vm=04&id=2975) [Accessed 15 November 2022].

<sup>56</sup> University of Montreal's Technosocial Innovation Centre, *The Montreal Declaration for a Responsible Development of Artificial Intelligence*. Available at: [https://monoskop.org/images/d/d2/Montreal\\_Declaration\\_for\\_a\\_Responsible\\_Development\\_of\\_Artificial\\_Intelligence\\_2018.pdf](https://monoskop.org/images/d/d2/Montreal_Declaration_for_a_Responsible_Development_of_Artificial_Intelligence_2018.pdf) [Accessed 15 November 2022].

are performed. This is possible due to the use of a system of scientific methods, research and algorithms for processing information obtained or independently created during work. This term generally corresponds to the definitions provided for in international instruments.

Regarding the use of "artificial intelligence" systems in legal proceedings in foreign countries. Thus, the European Union and certain countries of the world, in particular Australia, Great Britain, India, Canada, China, Malaysia, Mexico, South Korea, the United States of America, Japan, etc. have adopted strategies and other legal acts on the use and development of artificial intelligence systems. Thus, in some countries of the world, artificial intelligence systems capable of independently summarizing and analyzing legislation, other regulatory legal acts, judicial practice and making standard, indisputable decisions are already becoming part of legal proceedings, however, unified scientific approaches to assessing the risks associated with them use are missing. Judicial systems use such artificial intelligence systems, namely: in the United States of America, they use "Correctional Offender Management Profiling for Alternative Sanctions", in the UK they use "Harm Assessment Risk Tool", in China they use "Compulsory Similar Cases Search and Reporting Mechanism"<sup>57</sup>. Wang N, & Tian MY. (2022) point out that the challenges facing the courts in China, including the exponential growth in the number of cases and the lack of qualified professionals in the judiciary, have led to the active application of artificial intelligence throughout the country. The use of artificial intelligence in Chinese courts aims to make processes such as transcribing and reviewing documents more efficient, or in some cases directly assist Chinese judges in their judicial decision-making process<sup>58</sup>. For example, in France, artificial intelligence is perceived as a negative phenomenon that violates the personal rights of judges. The possibility of using robotic programs in justice was included in the agenda for reforming the national judicial system in 2019 in France. At the first stage, this will affect more than 2.5 million cases. Article 33 of Law no. 2019-222 of 23.03.2019 on programming and reform of justice for 2018-2022 states: no data relating to judges or court clerks may be reused for the purpose of or as a result of evaluating, analyzing or predicting their actual or perceived professional practice<sup>59</sup>. Thus, many foreign countries have developed and are actively implementing program documents for the development of artificial intelligence technologies in legal proceedings, on the basis of which certain changes to the legislation are adopted. At the same time, there is no comprehensive approach to the legal regulation of relations on the creation and use of artificial intelligence technologies in the legislation of foreign countries in administrative proceedings.

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<sup>57</sup> Plakhotnik O., *op. cit.*, pp. 45-57.

<sup>58</sup> Wang N., & Tian M.Y. "Intelligent Justice": human-centered considerations in China's legal AI transformation. "AI Ethics". 2022. 23 pp. 1-6. DOI: 10.1007/s43681-022-00202-3.

<sup>59</sup> Loi n° 2019-222 du 23 mars 2019 de programmation 2018-2022 et de réforme pour la justice: NOR:JUST1806695L JORF n°0071 du 24 mars 2019. Available at: [https://www.legifrance.gouv.fr/eli/loi/2019/3/23/2019-222/jo/article\\_33](https://www.legifrance.gouv.fr/eli/loi/2019/3/23/2019-222/jo/article_33) [Accessed 15 November 2022].

## 6. Conclusion

Effective mechanisms of legal regulation of the use of artificial intelligence in the course of consideration of administrative cases in the administrative courts of Ukraine are important for the state and for society. Improving the legislation on the use of artificial intelligence in administrative proceedings should be comprehensive. Improving the legislation on the use of artificial intelligence in administrative proceedings should be comprehensive. Considering the increasing risks associated with the promotion of artificial intelligence in administrative proceedings, in the issue of legal regulation, the principle of the rule of law should be given due respect before the prerequisites of technical development, as well as compliance with international principles and rules of ethics for its use. It is also required to use such legal mechanisms for the use of artificial intelligence systems so that the consequences of its use in administrative proceedings become useful for the whole society and do not restrict human rights, including the right to judicial protection, the right to a fair trial, the right to access to justice, the right to equality of subjects of judicial consideration, the right to enjoy all the guarantees necessary for protection in the system of administrative courts. There is a need to develop and adopt a special legislative act in the field of justice regarding the organizational and legal framework for the use of artificial intelligence. This legislative act should fix the content of the goals, objectives, principles, limits of the operation of artificial intelligence systems in administrative proceedings, spell out the procedure and methods for the operation of artificial intelligence in administrative proceedings, as well as define clear mechanisms for their legal status and types of legal liability when using artificial intelligence systems intellect. It should also be taken into account that the introduction and development of artificial intelligence technologies in the consideration of administrative cases in administrative courts will be effective when the technical support of administrative courts in Ukraine will be of a high level and will be able to ensure the strict implementation of all the principles of administrative proceedings, ensure the principles of transparency<sup>60</sup>, impartiality and fairness of consideration administrative case and will guarantee the safety of all participants in the administrative litigation in the administrative courts.

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<sup>60</sup> See regarding the application of the principle of transparency in administrative procedures, Săraru, C.-S., *European Administrative Space - recent challenges and evolution prospects*, ADJURIS – International Academic Publisher, 2017, p. 53.

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