

## THE POSSIBILITY OF APPLYING ARTIFICIAL INTELLIGENCE IN CIVIL PROCEEDINGS

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In the article, the author referred to the possibility of using artificial intelligence in judicial procedures. For this purpose, first of all, the author revealed the essence of artificial intelligence algorithms, the advantages and disadvantages of their application, and identified the possible legal areas in which these algorithms can be applied. The ability of artificial intelligence algorithms in predicting justice has been discussed in more detail. At the same time, the article presented the five principles provided by the European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their Environment adopted by the European Commission for the Efficiency of Justice in 2018, which should have guiding significance in the design and implementation of artificial intelligence algorithms in judicial procedures.

**Keywords:** *artificial intelligence, algorithm, judicial procedure, principle, charter, predictable justice*

Currently, artificial intelligence has become widely used in the world, not only in the technological field. According to experts, it is capable of creating a new development of humanity's perspectives or fundamentally changing existing structures.

To find out the possibility of using artificial intelligence in judicial procedures, first of all, it is necessary to reveal its essence.

Artificial intelligence is a system of algorithms capable of solving such problems, which usually requires human intelligence and abilities. Artificial intelligence is formed as a result of the study and analysis of such abilities of the human brain as teaching, reasoning, and self-improvement. As an outcome of such research, so-called "intelligent programs and systems" are being developed. Artificial intelligence can be defined as a system of algorithms that analyze patterns and features in specific data to draw conclusions.

Experts also widely discuss its advantages and disadvantages. Speed, availability, reduction of human error, and ability to easily solve repetitive problems are indicated as advantages. Costliness and the inability to completely repeat the human creative mind are considered a disadvantage. The fact that the wide spread of artificial intelligence can lead to unemployment and human indifference is also mentioned as a disadvantage.

The rapid spread of artificial intelligence could not get around the legal sphere, particularly the judiciary.

The initiative for the possibility of using artificial intelligence tools in the judicial process essentially originated from the private sector, for whose beneficiaries it is a means of reducing legal uncertainty and the unpredictability of judicial decisions.

Studying the experience of European countries allows us to identify the possible legal areas within which artificial intelligence algorithms can be applied. These include the creation of intelligent search engines for case law, online dispute resolution, assistance in the development of legal documents, predictive analytics, classification of contracts, and chatbots, which are designed to inform or assist interested parties in initiating legal processes.

Among the listed, within the framework of this article, reference will be made to those algorithms of artificial intelligence that are capable of predicting justice. The purpose of such algorithms is to determine the probability of success of a legal dispute in court. The algorithm works based on the analysis of statistical indicators of previous decisions of courts with similar legal disputes, comparing them with the actual circumstances of the expected legal dispute<sup>1</sup>. The more data the algorithm contains, the more accurate its predictions will be. The task of the mentioned algorithms is to repeat the conclusions made by the courts when examining cases with similar facts. This toolkit can not only be used, for example, by advocates, but it can also be of assistance to judges in drafting judicial decisions. With these algorithms, it is also possible to calculate the amount of damages or the amount of alimony to be paid.

Objectively, a question may arise whether artificial intelligence algorithms can ensure the reasoning behind the court's decision. It is indisputable that the algorithm is not capable of providing it. This is explained by the fact that the reasoning of the judicial act itself is a complex process and largely depends on the discretion of the judge. In particular, it is not possible to make conclusions in advance without finding out what the circumstances that are important for solving the legal dispute, which of those facts are proven and which are not, what legislation should be applied, and how the legal norms to be applied should be interpreted. With all this in mind, designers of artificial intelligence algorithms are still content with creating programs that can only predict the outcome of a case. Referring to the accuracy of such predictions, it should be noted that a similar study was conducted by the students of the University College London (UCL) based on the case law of the European Court of Human Rights, and the accuracy of the conducted prediction was estimated at 79 per cent.

It is worthwhile to discuss the issue of whether artificial intelligence *post factum* can interpret the impartiality of the judge delivering a given decision. Currently, an attempt is being made to design algorithms that analyze the outcome of certain legal disputes solved by the judge to evaluate his or her behavior. Such an approach, however, has been criticized because this criterion alone cannot prove that the judge was not impartial when making a judicial act in a specific case.

No matter how obvious the effectiveness of artificial intelligence algorithms is, their design and operation require certain legal regulations.

It is for this reason that the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe has adopted the European Ethical

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<sup>1</sup> Raffaele Giarda, International: Artificial Intelligence in the administration of justice, February 19, 2022, <https://www.globalcompliancencnews.com/2022/02/19/international-artificial-intelligence-in-the-administration-of-justice310122/>

Charter on the Use of Artificial Intelligence in Judicial Systems and their Environment (hereinafter the Charter)<sup>2</sup>.

The Charter is addressed to stakeholders in the public and private sectors who are responsible for the design and implementation of artificial intelligence algorithms designed to ensure the processing of judicial decisions and other data.

The use of artificial intelligence tools in the judicial system has a purpose to increase the efficiency and quality of justice. Therefore, such use should be encouraged. However, fundamental human rights should be taken into account when implementing artificial intelligence tools.

Processing of judicial decisions and data by artificial intelligence aims to ensure the predictability of applying of the legal norms and the stability of judicial practice.

Regardless of the circumstances of how artificial intelligence algorithms will be used in legal proceedings, such use must be carried out transparently, impartially, and fairly, subject to external and independent expert evaluation.

The Charter has established **five principles**, according to which the interested entities of the public and private spheres should implement the design and operation of artificial intelligence algorithms, as well as the monitoring of this process.

**1. Principle of respect for fundamental rights: ensure that the design and implementation of artificial intelligence tools and services are compatible with fundamental rights:**

The first principle requires that the design and operation of artificial intelligence algorithms should be carried out in accordance with fundamental rights provided by the European Convention on Human Rights and the Convention on the Protection of Personal Data.

Where artificial intelligence tools are used as a means of resolving legal disputes or assisting of drafting judicial decisions, it is important that such tools do not undermine the rights to access to court and fair trial. The use of such a toolkit should also be carried out, taking into account the principles of the rule of law and the independence of the judge.

**2. Principle of non-discrimination: specifically prevent the development or intensification of any discrimination between individuals or groups of individuals:**

Given the ability of these processing methods to reveal existing discrimination through grouping or classifying data relating to individuals or groups of individuals, public and private stakeholders must ensure that the methods do not reproduce or aggravate such discrimination and that they do not lead to deterministic analyses or uses.

**3. Principle of quality and security: with regard to the processing of judicial decisions and data, use certified sources and intangible data with models conceived in a multi-disciplinary manner in a secure technological environment:**

First of all, this principle implies that representatives of the judiciary, as

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<sup>2</sup> <https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c>

well as scientists conducting research in the fields of law and other social sciences, should be involved in the process of developing artificial intelligence programs. It must be ensured that the database of court decisions to be entered into the system will not be subject to any changes. Artificial intelligence algorithms must be developed in such a way as to ensure their safe operation, which implies ensuring the integrity of the system and excluding interference.

**4. Principle of transparency, impartiality, and fairness: make data processing methods accessible and understandable, authorize external audits:**

This principle is to ensure transparency, impartiality, and fairness. This principle requires access to and expertise in the methods of designing and conducting artificial intelligence algorithms. Although artificial intelligence is an object of intellectual property, a reasonable balance must be ensured between the intellectual property right to specific algorithms and the transparency of their processing methods (access to their design), impartiality (absence of bias), fairness (priority must be given to the interests of the judiciary), especially when such algorithms have legal consequences or directly affect the rights of individuals.

**5. The principle "under user control": precludes a prescriptive approach and ensures that users are informed actors and in control of their choices:**

First of all, it requires the awareness of artificial intelligence users. Users must be informed in a clear and accessible manner about the artificial intelligence systems, their performance, the possibility of error, the nature of the proposed decisions, their binding or non-binding consequences, other methods of dispute resolution, or the right to access to the court.

The representatives of the judicial authority should have the opportunity at any time to check the database as a result of the processing of which a certain solution is proposed by the artificial intelligence, and also, depending on the circumstances of the specific case, they should have the opportunity to ignore the proposed solutions.

Discussing the possibility of applying artificial intelligence algorithms in domestic civil proceedings, it should be noted that despite the large penetration of digital technologies into the RA judicial system, artificial intelligence algorithms are still not applicable in civil proceedings. Perhaps the only manifestation of their use can be considered the special computer program for the distribution of cases among judges, which makes a specific conclusion about the distribution of court cases based on the analysis of certain data patterns and features.

Taking into account the advantages of using artificial intelligence algorithms, it is necessary to discuss the issue of which civil procedure structures are possible to launch and in what manner.

As already mentioned, the algorithm works in the way of carrying out certain comparisons. Therefore, it is possible to solve such civil procedure questions that require comparisons between the contents of the procedural documents and/or attached documents on the one hand and the conditions mentioned in the disposition of the legal provision on the other hand. It is important to

mention that such conditions should not give rise to different interpretations.

The above mentioned application of artificial intelligence algorithms is possible when solving the issue of admissibility of electronically submitted claims, applications, appeals, and cassation appeals.

In particular, according to Article 100 of the RA Civil Procedure Code:

1. The documents provided in the same code (claim, application, complaint, response to the claim, petition, etc.) can be submitted according to the law and in the order established by the Supreme Judicial Council.

2. The documents attached to the documents submitted electronically are submitted electronically in a scanned version, and in case of the need to pay the state duty, it is paid through the electronic system of state payments ([www.e-payments.am](http://www.e-payments.am)).

3. The simple power of attorney signed with an electronic signature is attached to the documents submitted electronically, and the power of attorney with notarization is attached in the form of a copy, with the reflection of the password that enables the court to check its authenticity online or an electronic original.

In case of the possibility of submission of claims, applications, and complaints electronically, the program can be designed and operated in such a way that in case of non-compliance with the content of the mentioned documents and/or the attached documents, the requirements presented by law are not observed, the program automatically returns it to the addressee. Objectively, a question may arise as to whether the program can make such a conclusion regarding all content elements. Thus, for example, such content elements that refer to the name of the court, the persons participating in the case, passport data or state registration number, registration or notification address, and the list of attached documents do not need any additional comments, these conditions are either present in the mentioned procedural documents, or not, or they are presented incompletely. Therefore, taking into account the current capabilities of artificial intelligence algorithms, it can be confidently asserted that the discussed content defects can not only be raised by the program, but also the application of the corresponding procedural consequence is possible. Regarding the documents attached to claims, applications, and complaints, without any exception, the algorithm must be able to check not only their existence but also, in individual cases, compliance with the requirements presented to them.

Artificial intelligence algorithms are also capable of analyzing patterns and characteristics of certain data to draw conclusions. Therefore, through artificial intelligence, it is possible to provide a solution to civil procedural issues that require comparisons between the facts of the case and the previous decisions of the courts. The more data the algorithm contains, the more accurate its predictions will be. According to that, the use of artificial intelligence algorithms can possibly be considered when solving the issue of admissibility of appeals on a point of law as well.

One of the requirements for the content of appeals on a point of law is the existence of a ground for accepting the appeal and its justification. In all cases when the appeal on the point of law is brought on the ground of the uniform application of the law and other normative legal acts, the Court of Cassation

must find out the existence of a conflicting interpretation when deciding the admissibility of such appeal. Meanwhile, with the availability of a suitable database and the introduction of intelligent search systems, this contradiction can be raised by artificial intelligence. Moreover, the algorithm can be designed in such a way that, for example, in relation to the norm indicated in the appealed judicial act, it not only brings up the judicial act indicated by the appealed person and the possible conflict with it but also all the possible judicial practice in connection with it, thus also providing the Court of Cassation to reveal the existence of contradictory judicial practice, why not also in the cassation proceedings, and to fulfill its constitutional function.

The algorithm can also be designed to make predictive inferences about the resolution of the dispute. Although such conclusions may have a purely advisory nature, they can greatly contribute to reducing the workload of the courts. Therefore, artificial intelligence algorithms can be used to determine the possible outcome of a court case. Thus, for example, part 1 of Article 297 of the Civil Procedure Code of the Republic of Armenia stipulates that claims for confiscation of an amount not exceeding AMD 5,000,000 are examined by the court of first instance in a simplified procedure. The study of judicial practice shows that the above-mentioned claims arise from similar legal disputes, have repeated facts, and do not contain any serious legal disputes. Moreover, as a rule, the final judicial act held in the framework of the discussed proceedings does not have a reasoning part by force of law, taking into account the exceptions provided by the RA Civil Procedure Code.

The above-mentioned proves that in the case of the examination of claims provided for in Article 297, Part 1 of the RA Civil Procedure Code, artificial intelligence algorithms can not only predict the possible outcome of the dispute, which will be carried out based on the factual circumstances of the claim to be examined, following the practice of courts in disputes with similar factual circumstances in the past but also in case of satisfying the claim (if no objection was submitted and/or the claim is satisfied in full) they can develop the draft of the final judicial act automatically. It should be kept in mind that the mentioned prediction will have only an advisory nature, and the court should have full discretion to disagree with the predicted solution.

**ԱՇԽԵՆ ՂԱՐՍԼՅԱՆ – Արհեստական բանականության կիրառման հնարավորությունը քաղաքացիական դատավարությունում** – Հոդվածում հեղինակն անդրադարձել է դատավարական ընթացակարգերում արհեստական բանականության կիրառման հնարավորությանը: Այդ նպատակով նախ և առաջ բացատրել է արհեստական բանականության ալգորիթմների էությունը, դրանց կիրառման առավելությունները և թերությունները, առանձնացրել է այն հնարավոր իրավական ոլորտները, որոնց շրջանակներում կարող են կիրառվել այդ ալգորիթմները: Առավել մանրամասն քննարկման առկա է դարձել արհեստական բանականության ալգորիթմների ունակությունն արդարադատության կանխատեսման հարցում: Միաժամանակ հոդվածում ներկայացվել են Արդարադատության արդյունավետության եվրոպական հանձնաժողովի կողմից 2018 թվականին ընդունված Դատական համակարգերում և հարա-

կից միջավայրում արհեստական բանականության օգտագործման վերաբերյալ եվրոպական էթիկական խարտիայով նախատեսված այն հինգ սկզբունքները, որոնք ուղղորդող նշանակություն պետք է ունենան դատավարական ընթացակարգերում արհեստական բանականության ավգորիթմների նախագծման և գործարկման հարցերում:

**Բանալի բառեր** – *արհեստական բանականություն, ավգորիթմ, դատավարական ընթացակարգ, սկզբունք, խարտիա, կանխատեսելի արդարադատություն*

**АШХЕН КАРСЛЯН – Возможность применения искусственного интеллекта в гражданском процессе.** – В статье автор ссылается на возможность, использование искусственного интеллекта в судебных процессах. Для этого, прежде всего, автор раскрыл сущность алгоритмов искусственного интеллекта, преимущества и недостатки их применения, а также обозначил возможные правовые сферы, в рамках которых эти алгоритмы могут применяться. Искусственный интеллект стал предметом более детального обсуждения в вопросе о способности алгоритмов в деле прогнозирования правосудия.

Параллельно в статье представлены пять принципов, предусмотренных Европейской этической хартией по использованию искусственного интеллекта в судебных системах и связанных с ними средах, принятых Европейской комиссией по эффективности правосудия в 2018 г., которые должны иметь руководящее значение в разработках и внедрении алгоритмов искусственного интеллекта в судебных процессах.

**Ключевые слова:** *искусственный интеллект, алгоритм, судебный процесс, принцип, устав, предсказуемое правосудие*