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ARTIFICIAL INTELLIGENCE AND CASE CATEGORIES IN CIVIL PROCEEDINGS

Abstract

Under the Polish Constitution, administration of justice cannot be performed by someone (something) other than a human being. Therefore, the introduction of AI into civil proceedings may not take place in violation of the right to a court. This does not mean, however, that one should not consider possibly allowing AI to adjudicate civil cases and thus replace the judge, but it should rather apply to simple, uncomplicated and repetitive cases. Certainly, AI would not be affected by external factors, except for one – the introduction of appropriate assumptions into the algorithm. It must be remembered that AI is not human, so if it were to act as a judge, it would have to ‘learn to think’, be able to react to non-standard behaviour of witnesses and parties, analyse their behaviour, etc. It is worth considering piloting the introduction of AI at first instance in certain categories of cases, especially those that do not require extensive evidentiary proceedings based on evidence other than documents. Examples of such cases are ‘franking’ cases involving loans linked to a foreign currency. This would provide an opportunity to verify in practice the use of AI in justice for activities other than technical, opinion and adjudication support.

KEYWORDS

artificial intelligence, judge, ‘franc’ case, right to a court

SŁOWA KLUCZOWE

sztuczna inteligencja, sędzia, „sprawa frankowa”, prawo do sądu

I. INTRODUCTION

The application of AI in civil proceedings must meet two conditions: it must not diminish the rights of citizens in the context of the right to a court (Article 45 of the Polish Constitution and Article 6 ECHR)¹ and should result in a reduction of the length of court proceedings, which is a problem not only in Poland but also in other countries.² Indeed, the long duration of court proceedings undermines confidence in the justice system. Moreover, the introduction of AI should not be an end in itself but should bring tangible benefits, exactly such as accelerating of judicial proceedings without diminishing the rights of citizens.

New technological tools, which in this area are referred to as LegalTech (Legal Technology),³ in the provision of legal aid and justice are being introduced in various legal systems, although often not yet on a large scale. In Poland, such most popular tools are: software for the management of law firms, time recording software for lawyers, legal information systems, software for the creation of contracts and pleadings, as well as software supporting debt collection processes. These tools are, therefore, used primarily by law firms and not by the courts.

As far as the judiciary is concerned, a distinction should be made between the tools that improve the work of the court as an institution and the tools that improve the recognition of cases.⁴ The former tools are known to Polish legis-

¹ Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950, as amended and supplemented by protocols (Official Journal of the Republic of Poland 1993, No 61, item 284, as amended).

² See Joanna Klimczak, *Szybkość postępowań sądowych w Polsce i w innych państwach Europy* (Warsaw 2020) 7ff.

³ See, e.g., Laura Kontiainen, *Legal Tech Con 2018 – How will AI shape the future of law* in Riika Koulu, Laura Kontiainen (ed), *How will AI shape the future of law*, Helsinki 2019, 17ff; Dariusz Szostek, in Dariusz Szostek (ed), *Prawo nowych technologii. LegalTech. Czyli jak bezpiecznie korzystać z narzędzi informatycznych organizacji, w tym w kancelarii oraz dziale prawnym* (Warsaw 2021) 3.

⁴ It has been pointed out in the doctrine that the applications of AI in the judiciary should be distinguished from the process of automating proceedings – see Arkadiusz Bieliński, *Potencjalne*

lation in relation to civil proceedings, the latter are basically not used in Poland. Therefore, it can be hypothesised that the use of AI in the judiciary in Poland is basically non-existent, and this is not peculiar to Poland alone but to European legislation in general. However, it seems that in certain categories of cases, the use of AI would be beneficial, leaving aside, of course, aspects of a constitutional nature.

The application of tools streamlining the work of courts as institutions is primarily aimed at improving the exchange of pleadings so that the work of court clerks doesn't have to be involved and the circulation of letters between the court and the parties (their attorneys) is faster. In fact, this mainly concerns cases where the parties are represented by professional attorneys (attorneys-at-law, advocates, etc.),⁵ with regard to, for example, the possibility of filing pleadings via an ICT system, the problem is the computerisation of the courts, which causes the deadline for the introduction of such a solution to be postponed. Moreover, implementation of some solutions has been forced by the Covid-19 epidemic, e.g. remote hearings.

II. AI IN VARIOUS ROLES IN COURT

1. GENERAL ASPECTS

As indicated, the introduction of AI into civil proceedings would have to solve the problem of protracted proceedings without adversely affecting the substantive adjudication of cases and depleting the rights of the parties (litigants). The key question is whether AI would need to be applied to the substantive adjudication of cases or only to ancillary issues in the administration of justice. Indeed, the scope of the potential use of AI in the judiciary is not analogous to that of other legal professions, since it is not about providing legal assistance to citizens but about adjudicating cases and issuing judgments on behalf of the Republic of Poland in procedural proceedings and decisions on the merits in non-procedural proceedings. It is, therefore, about resolving human disputes, i.e., a judgment must be given in a particular case which is in accordance with the law and at the same time corresponds to the sense of social justice.

obszary zastosowania sztucznej inteligencji w postępowaniu cywilnym – czy obecnie ma to rację bytu i czy jesteśmy na takie rozwiązania gotowi? in Kinga Flaga-Gieruszyńska, Jacek Gołaczyński, Dariusz Szostek (eds), *Sztuczna inteligencja, blockchain, cyberbezpieczeństwo oraz dane osobowe* (Warsaw 2019) 62–64.

⁵ See further Tomasz Szanciło, Beata Stępień-Załucka, *Sędzia robotem a robot sędzią w postępowaniu cywilnym w ujęciu konstytucyjnym i procesowym* (Prawo i Wiąż 2023) No 4, 230-231.

Therefore, in procedural terms, three possibilities must be kept in mind: 1) AI as an assistant judge; 2) AI as a court registrar; 3) AI as a judge. These are different roles performed by specific individuals in the administration of justice, with obviously different roles and powers. If AI were to perform the role of a judge, the question of the appeal procedure appears to be extremely important, and this applies both to ordinary appeals and extraordinary appeals. Indeed, it is possible to imagine (at this point only theoretically) a situation in which the court would be composed of robots in both instances, as well as in the Supreme Court. The question is whether such a solution is possible and, if so, whether it is advisable and necessary. In other words, is it conceivable that the case will be decided from start to finish without the involvement of the human factor, and would such a hearing of the case be acceptable not only from a substantive point of view but also socially acceptable.

2. THE ROLE OF A JUDGE IN THE ADMINISTRATION OF JUSTICE

The administration of justice in the Republic of Poland is exercised by the Supreme Court, common courts, administrative courts and military courts, with judicial proceedings being at least two-instance (Articles 175(1) and 176(1) of the Polish Constitution).

A judge performs tasks in the field of justice and legal protection, other than the administration of justice (Article 2 § 1 and 2a of the Act of 27 July 2001 – Law on the system of common courts⁶), except that in district courts (i.e. the lowest level courts) these tasks are also performed by court assessors,⁷ with the exclusion of certain categories of decisions and cases, with the latter exclusion being relevant to civil cases, relating to cases heard in the family and juvenile division (Article 2 § 1a and 2a u.s.p.).⁸ Judges, in the exercise of their office, are

⁶ Consolidated text Official Journal of the Republic of Poland 2023, item 217, as amended; hereinafter: u.s.p.

⁷ Before the expiry of 36 months of performing the duties of a judge, a judicial assessor may submit to the president of the competent regional court a request for appointment to the position of a judge of a district court; the assessment of the qualifications of the judicial assessor is carried out by a visiting judge appointed by way of a draw of lots by the president of the competent appellate court, and then the college of the district court assesses the candidature of the assessor for the vacant position of a judge of a district court (Article 106xa § 1–5 u.s.p.). The application for the appointment of an assessor to the position of a judge is presented to the President of the Republic of Poland by the National Council of the Judiciary.

⁸ Pursuant to Article 2 § 1a(3) u.s.p., court assessors are not allowed to resolve cases in the area of family and guardianship law, cases concerning demoralisation and criminal acts of minors, treatment of persons addicted to alcohol and narcotic and psychotropic drugs, as well as cases belonging to the guardianship court under separate acts, with the exception of cases for permission to perform an act exceeding the scope of ordinary management of the property of a child or a person

independent and subject only to the Constitution and laws.⁹ Judges shall be provided with working conditions and remuneration commensurate with the dignity of their office and the scope of their duties. A judge may not belong to a political party nor a trade union, nor engage in public activities incompatible with the principles of independence of the courts and independence of judges (Articles 178(1)-(3) of the Constitution of the Republic of Poland). Judges are irremovable, and a judge's removal from office, suspension from office, transfer to another seat or to another position against his or her will may take place only by virtue of a court decision and only in cases specified by law. A judge may not, without the prior consent of the court, be held criminally responsible or deprived of liberty. A judge may also not be detained or arrested, except in the case of being apprehended in the commission of an offence, if his or her detention is necessary to ensure the proper course of proceedings; the president of the locally competent court shall be immediately notified of the detention and may order the immediate release of the detainee (Articles 180(1)-(2) and 181 of the Constitution of the Republic of Poland).

As can be seen, the constitutional guarantees of judges' independence and autonomy from external factors are extensive. This is obvious, as the role of judges (assessors) in the administration of justice is the most important one; it is they who decide how it is exercised, what the content of judgments is, and how specific cases with which civil law subjects apply to the courts are decided. It is the manner in which the judges (assessors) handle the case, including the time taken to conclude them, and the procedural decisions (in particular judgments) they issue that determine the public's perception of the justice system. In other words, it is a combination of two aspects: the completion of the case within a reasonable time and the issuance of a correct and just decision on the merits (judgment or order on the merits). They should be guided solely by the law, their own convictions, principles of logical thinking, life experience, etc., in making their judgements, and, therefore, should not be exposed to any factors that could influence the content of their judgements.

3. AI AS A JUDGE

It is relatively easy to imagine the use of AI in the role of an assistant judge, whose tasks (in general) include taking actions that allow the judge to make a substantive ruling on the case, possibly concluding it in a different way. In practice, this comes down to the assistant judge drafting orders aimed at preparing court cases for hearing, collecting the necessary literature and case law, as well as

under guardianship in the form of simple acceptance or rejection of an inheritance, resolved in the course of proceedings for the statement of inheritance acquisition.

⁹ With regard to court assessors, this principle is expressed in Article 106j(1) u.s.p.