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THE USAGE OF ARTIFICIAL INTELLIGENCE TO ENSURE THE PRINCIPLE OF LEGALITY IN CRIMINAL PROCEEDINGS: OPPORTUNITIES AND RISKS

Abstract. The principle of legality takes one of the most important places among other principles of criminal proceedings. One of the driving forces of the fourth industrial revolution, which, among other things, will determine the direction of development of the criminal legal system, will be artificial intelligence. The article describes theoretical foundations of the principle of legality in criminal proceedings and the results of a study on the use of artificial intelligence in the field of ensuring the principle of legality in criminal proceedings. Understanding the broad scope of artificial intelligence in policing is essential for appreciating the legal restrictions imposed on AI-based law enforcement. Due to the lack of sufficient sources in modern scientific literature devoted to the complex use of AI to ensure the principle of legality as a whole, we conducted a SWOT analysis, which showed that these technologies have a number of advantages and opportunities in terms of efficiency and accuracy.

Keywords: principle of legality; criminal proceedings; artificial intelligence; law enforcement; risk; opportunity; ethics; law; bias; technology; information.

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ҚЫЛМЫСТЫҚ ПРОЦЕСТЕГІ ЗАҢДЫЛЫҚ ПРИНЦИПІН ҚАМТАМАСЫЗ ЕТУ ҮШІН ЖАСАНДЫ ИНТЕЛЛЕКТТІ ҚОЛДАНУ: МҮМКІНДІКТЕР МЕН ТӘУЕКЕЛДЕР

Аннотация. Заңдылық принципі қылмыстық іс жүргізудің басқа принциптерінің ішінде маңызды орындардың бірін алады. Төртінші өнеркәсіптік революцияның қозғаушы күштерінің бірі, басқалармен қатар, қылмыстық-құқықтық жүйенің даму бағытын анықтайтын жасанды интеллект болады. Мақалада қылмыстық процестегі заңдылық принципінің теориялық негіздері және қылмыстық процестегі заңдылық принципін қамтамасыз ету саласында жасанды интеллектті қолдану бойынша зерттеу нәтижелері сипатталған. Құқық қорғау қызметіндегі жасанды интеллекттің кең ауқымын түсіну жасанды интеллектке негізделген құқық қорғау органдарына қойылатын заңды шектеулерді бағалау үшін өте маңызды. Жалпы заңдылық принципін қамтамасыз ету үшін жасанды интеллектті кешенді қолдануға арналған заманауи ғылыми әдебиеттерде жеткілікті дереккөздердің болмауына байланысты біз SWOT талдауын жүргіздік, бұл бұл технологиялардың тиімділік пен дәлдік тұрғысынан бірқатар артықшылықтары мен мүмкіндіктері бар екенін көрсетті.

Түйінді сөздер: заңдылық принципі; қылмыстық сот ісін жүргізу; жасанды интеллект; құқық қолдану; тәуекел; мүмкіндік; этика; заң; біржақтылық; технология; ақпарат.

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ИСПОЛЬЗОВАНИЕ ИСКУССТВЕННОГО ИНТЕЛЛЕКТА ДЛЯ ОБЕСПЕЧЕНИЯ ПРИНЦИПА ЗАКОННОСТИ В УГОЛОВНОМ ПРОЦЕССЕ: ВОЗМОЖНОСТИ И РИСКИ

Аннотация. Принцип законности занимает одно из важнейших мест среди других принципов уголовного судопроизводства. Одной из движущих сил четвертой промышленной революции, которая, помимо прочего,

будет определять направление развития уголовно-правовой системы, станет искусственный интеллект. В статье описываются теоретические основы применения принципа законности в уголовном процессе и результаты исследования, посвященного использованию искусственного интеллекта в области обеспечения принципа законности в уголовном процессе. Понимание широкого применения искусственного интеллекта в правоохранительной деятельности важно для понимания правовых ограничений, налагаемых на правоохранительную деятельность на основе искусственного интеллекта. Из-за отсутствия достаточного количества источников в современной научной литературе, посвященных комплексному использованию искусственного интеллекта для обеспечения принципа законности в целом, мы провели SWOT-анализ, который показал, что эти технологии обладают рядом преимуществ и возможностей с точки зрения эффективности и точности.

Ключевые слова: принцип законности; уголовное судопроизводство; искусственный интеллект; правоприменение; риск; возможность; этика; закон; предвзятость; технология; информация.

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Introduction. The cornerstone of the criminal justice system is the concept of legality. For example, in the system of principles of criminal proceedings provided for by the Criminal Procedural Code of the Republic of Kazakhstan (hereinafter – CPC), the principle of legality is mentioned in the first place (Art. 10 of the CPC) and it is not by accident¹. Thus, the legislator emphasizes its importance, place, and role, as well as the importance of following it and complying with it at all stages of criminal proceedings. This concept suggests that guidelines need to be precise, widely known, and equitably imposed. Nevertheless, the rise of artificial intelligence (AI) generates an engaging contradiction. Though AI is capable of making the system more efficient by making operations more efficient, furthering investigations, and removing prejudice, its mysterious nature and reliance on the material have cast doubts about a system that is congruent with the principle of legality.

Generative AI is incredibly relevant due to its capacity to generate new content, such as music, text, and images. This application generates a new skill for machines. The possibilities for generative AI applications span a diverse range – from creating new virtual worlds to automating data integration. As this article seeks to illustrate, the potential uses for generative AI in the design and creativity process manifests itself throughout many fields. Furthermore, when combined with other developments in AI and computer science generative AI provides a powerful productivity

tool for creators.

But, the ever-increasing use of AI in the criminal justice system represents an enigmatic paradox. Although AI promises to expedite processes, enhance investigations, and minimize prejudice, the opaqueness of its inner workings, combined with its reliance on data, stoke concerns over equity and adherence to the rule of law.

One could argue, however, that the upside to deploying AI in criminal justice is immense. AI algorithms can sift through vast datasets, scanning CCTV footage, phone records, and internet chatter for trends indicative of criminal activity. This approach can lead to more robust cases built around salient evidence, potentially producing faster resolutions and a reduction in offenses.

Because of the lack of adequate resources in contemporary scientific literature surrounding the unified integration of artificial intelligence to ensure compliance with the legality principle, we elected to conduct a SWOT analysis.

The research aims to study, describe, explain, and predict the state and quality of legality in criminal proceedings, and develop scientific and practical recommendations to strengthen the regime of legality in criminal proceedings.

Gavrilova in her studies proposed to make AI a background part of our daily lives where it becomes an intelligent manager [1].

This creates a system where AI becomes a background part of our everyday lives. It acts intelligently to automatically manage things

¹ Criminal Procedure Code of the Republic of Kazakhstan (unofficial translation): the Code of the Republic of Kazakhstan dated July 4, 2014 № 231 crime [Electronic resource] – Access mode: <https://adilet.zan.kz/eng/docs/K1400000231> (Access date: 09.08.2024).

around us.

Materials and methods. Legality and activities to ensure legality in society and the criminal process are studied through dialectical, logical, and statistical methods of systemic analysis. From the position of materialist dialectics, legality, and law enforcement activities are considered in development, in a specific historical situation, and in relationship with other social and legal phenomena (ideology, legal policy, legal and law enforcement system). The functional approach allowed to cover by scientific analysis the main directions of activity of bodies of the Ministry of Internal Affairs, Prosecutor's Office, and participation of lawyers in criminal proceedings to ensure legality and its role in the system of bodies of unified state power of the Republic of Kazakhstan.

The research materials were the works of scientists aimed at studying the use of artificial intelligence in the context of ensuring the principle of legality. As a result of the literature study, it was noted that the greatest application of artificial intelligence systems at this stage of the development of science and technology was found in police activities. Let us note the lack of research on the use of artificial intelligence to ensure the principle of legality. In general, there is a lack of work that addresses the topic of the synergy of artificial intelligence and the principle of legality, as well as the legal and ethical aspects of their application in this area.

Results, discussion. Legality and its place in the system of principles of criminal procedure.

We found that there is no common approach to the consideration of legality. M. Wood considers the principle of legality in the general system of criminal law, also in the relationship with the rest of the constitutional principles: the principle of equality, the rule of law, and justice [2]. J. Horder notes that the principles of criminal law are purely theoretical, they must be enshrined in laws that will be understandable and accessible to citizens [3]. M. Peno also supports the view that the principles of criminal law, especially the principle of legality, are a fundamental component of the criminal law system, and are realized in the introduction of criminal procedure [4]. G. Werle and F. Jessberger point out that the principles of international criminal law have

become one of the most influential areas of international criminal justice [5]. A. Stoian and S. Draghici consider the principle of legality as one of the most important principles of the rule of law, which contributes significantly to the protection of the rule of law and social balance [6]. The recognition of the principle of legality in an act of constitutional value marked the moment of the foundation of the state, based on the principles of law and presented to create a modern public administration. The principle is present at the level of each judicial power, which ensures its popularity due to its specificity.

“The idea of legality regulates rulings as well as rules, and it is an ideal that rules as well as rulings can fail to live up to. Provisions may be genuine rules (susceptible of application to more than one case) and yet lack the rule-of-law qualities of openness, clarity, certainty, prospectivity, and even (all but the most trivial and morally redeeming) generality.” [7].

The relationship between legal practice and law enforcement is based on moral principles and has high value for criminal proceedings.

The content of public law enforcement service includes the penetration into the private life of people, the use of operational measures of coercion, detention pending trial, as well as other significant restrictions on the rights and freedoms of citizens in the sphere of criminal proceedings.

Thus, the norms of ethics and criminal procedure law provisions are closely interrelated and mutually dependent. The spheres of their action largely coincide, so in most cases the public consciousness gives the same legal and moral assessment of criminal procedural activity. It is aimed at achieving a positive goal, i.e. to protect the rights and legitimate interests of victims of crime, as well as to protect the individual from unlawful and unjustified accusation, conviction, restriction of his rights and freedoms, maintenance of justice in society as a whole.

The commonality of the target settings of criminal procedural law and moral norms leads to the fact that many requirements of morality are included in the content of procedural norms governing preliminary investigation and judicial proceedings, thus creating and strengthening

the moral foundations of criminal procedure. The moral foundations of criminal procedure presuppose such a construction of criminal procedural legislation and the practice of its application, which are based on respect for the honor and dignity of the individual, other principles, norms and requirements of morality and, ultimately, are aimed at strict compliance with the requirements of the principle of legality.

Criminal procedural norms that contradict the norms of morality are perceived by the public consciousness as unjust, illegal. The moral significance of specific criminal procedural norms can be more fully understood on the basis of familiarization with the most general, principled provisions of criminal procedural law. This is important because the moral aspect of this or that procedural institute or a separate norm is not always obvious, if we consider them in isolation, outside the entire procedural system.

AI to ensure the principle of legality in criminal proceedings.

Around the world, the criminal law environment is being revolutionized by AI. This involves the ability to work faster and more efficiently, predicting events and ensuring citizens' safety. However, AI also presents a series of social, legal, and ethical challenges that need to be addressed.

Several studies have been conducted to explore the application of AI in criminal law sphere. Coglianese, C., & Dor, L. M. gave an insight into how digitizing, algorithmic resources, and machine learning are used in the federal, state, and local governments in United States. It is a comprehensive report of how artificial intelligence implemented by non-military arms of the government is being applied in federal and state departments and courtrooms [8].

AI has been involved in legal cases related to intellectual property. As AI creates more art and content, there are disagreements about who owns it and whether it's plagiarized. Courts are deciding who is responsible for what AI makes, from pictures and music to writing.

For example, A legal dispute arose between

the University of California, Los Angeles (UCLA) and an artificial intelligence startup regarding ownership of a medical imaging algorithm developed by a UCLA researcher. The court was tasked with adjudicating whether the algorithm fell under the university's intellectual property rights or was the exclusive property of the researcher².

China, unlike many other nations, has been at the forefront of integrating artificial intelligence into its judicial system since the 1990s. Chinese judges utilize AI to assist in case analysis and even sentencing. Their "smart court" system analyzes historical cases and suggests potential sentences based on these precedents. Colombia offers another example, where a judge has employed ChatGPT to assist in drafting judgments.

Historically, the Indian legal system has been slow to adopt technology. However, advancements in artificial intelligence and a changing mindset are likely to accelerate this process. India ranks 17th in the Oxford Insights and International Development Research Centre's index of government AI readiness. The Supreme Court has been actively digitizing the Indian legal system, with the help of a Bengaluru-based company, TERES, which provides AI-enabled transcribing services.

In 2022, the Supreme Court launched SUPACE, an AI-powered platform designed to digitize the legal system. Recently, Justice Anoop Chitkara of the Punjab and Haryana High Court used SUPACE to gain a better understanding of bail law in cases involving assault and cruelty³.

Leheza, Len, Shkuta, Titarenko and Cherniak shed the light on the global landscape of AI in criminal justice [9]. Leveraging AI, we can build digital models for automating decisions in repetitive tasks in criminal proceedings. This streamlines the process, boosting efficiency and reducing costs.

Lapshin, Korneev and Kilimbaev dedicated their research on the use of AI in criminal justice. They concluded the following: 1) AI involvement in criminal sentencing raises concerns; 2) Even utilization of AI as a recommendation system

² Artificial intelligence revolutionizes court cases – How AI technology is transforming the legal system [Electronic resource] – Access mode: <https://aiforsocialgood.ca/blog/artificial-intelligence-revolutionizes-court-cases-how-ai-technology-is-transforming-the-legal-system> (Access date: 09.08.2024).

³ Role and Impact of Artificial Intelligence in the Judiciary [Electronic resource] – Access mode: <https://bnblegal.com/article/role-and-impact-of-artificial-intelligence-in-the-judiciary/> (Access date: 15.08.2024).

may interfere true spirit of the criminal law;

1) Overreliance of the judge on AI decisions may lessen their accountability to make lawful and fair decisions [10].

Surden points to the problem with biasness in AI-driven automatic decisions, especially when it comes to issues related to human rights [11].

Very interesting is the point of Jeong that stressed on the positive and negative aspects of AI. The negative ones can be seen in the threats to human rights. Too many examples show that AI and facial recognition can be fooling around. It is not reassuring when we are in the situation when our police are using technology that is looking for every pedestrian on the street. On the flip side, new technologies require a great deal of effort and cost to be rolled out on a larger scale. And if you are a city or state that is ready to expand your facial recognition program to help the police, you will need to have a few hundred thousand dollars behind just in case you system will fail.

A potential remedy to the current state of research in artificial intelligence is a higher level of awareness of the problem among those who work in the field. Artificial intelligence research institutions must establish clear guidelines and educate the public about the potential risks of AI. As AI technology rapidly advances, it's crucial that everyone understands how these systems could harm us [12].

Due to the lack of sufficient sources in modern scientific literature devoted to the complex use of AI to ensure the principle of legality as a whole, we conducted a SWOT analysis, which showed (Table 1) that these technologies have a number of advantages and opportunities in terms of efficiency and accuracy. However, it must be taken into account that the application of AI to ensure the principle of legality comes with significant ethical, legal and privacy issues that need to be addressed to ensure its responsible and safe implementation. The balance of these factors will be critical to determining the success and acceptance of such technologies in court.

Conclusion. Balancing the benefits of AI with the concerns of privacy, bias, accountability and transparency requires a comprehensive regulatory framework.

Understanding the broad scope of artificial

intelligence (AI) in policing is essential for appreciating the legal restrictions imposed on AI-based law enforcement. AI has undergone a significant transformation over the years, going from data exploration and analysis to more advanced tasks such as predictive policing, facial recognition and even making autonomous decisions.

As AI rapidly asserts its dominance in the realm of law enforcement, it is imperative to comprehend the complexities associated with the regulation of these technologies.

Forecast policing: Analytic tools using AI and its ability to devour/read through tons of data is crucial at modern policing. The predictions are changing how crime fighting is done, at the same time as also the significant concerns beyond the major ethical boundary we could only see afar off until now.

Face recognition: The technological capability to recognize and identify human faces quickly gives government agencies an important tool to identify suspects and find missing people. This can be of great help, especially in a world with ubiquitous cameras. But what's the price that society must pay for this technology?

Independent Decision Making: Artificial intelligence programming holds the potential to make decisions independently, guiding vital factors of law enforcement like the evaluation of risk and recommendations for sentencing. The obstacle is to assume control over such decisions, which are implemented through artificial intelligence.

Although it's crucial for controlling AI usage in ensuring principle of legality, regulation has its limits. Learning these restrictions is crucial because of it's for the making of proper and also fair regulatory structure:

- Gray areas of Ethics: The limitations set by law are often clear-cut, whereas when it comes to ethics in AI and law enforcement, things get significantly fuzzier. This dichotomy can mean that there are gaping holes when it comes to resolving the questions that have no clear-cut answers;

- Difficulties in enforcement: Keeping up with the law in artificial intelligence-based law enforcement units can be tricky because technology is always advancing and there

Strengths:	Weaknesses:
<p><i>Improved Investigations:</i> By examining vast quantities of information, AI can uncover patterns and clues, thus resulting in cases that are reinforced and also a more effective, more efficient method to conduct the investigations.</p> <p><i>Minimized Partiality:</i> Implementing AI might identify prejudices within datasets utilized for critical determinations such as bail or parole, thereby fostering impartiality within the system.</p> <p><i>Predictive policing:</i> Using AI to evaluate risk can potentially concentrate resources in areas with the highest criminal activity, which could ultimately deter future criminal incidents.</p> <p><i>Increased Efficiency:</i> With AI, tasks such as case management and court transcription can be automated, allowing for more time to focus on the intricate legal issues that require human expertise.</p> <p><i>Decisions based on data:</i> AI can analyze previous legal cases and help make better judgments, meaning more reliable results.</p>	<p><i>Openness and Clarity:</i> Intricate AI networks are often difficult to see through, causing uncertainty about their methods of operation. This absence of openness can bring up questions about legality and impartiality.</p> <p><i>Bias in the Data:</i> AI systems tend to inherit the existing biases contained in the datasets on which they are trained. If the datasets are already biased, the AI could easily create or enhance the biases in the criminal justice system.</p> <p><i>Issues of privacy:</i> arise as AI in the realm of criminal justice collects and utilizes data. It is important to achieve a balance between security and accountability in this context.</p> <p><i>Relying too much on AI:</i> Excess reliance on AI to make decisions can lead to sidelining human knowledge and good judgment, possibly resulting in missing critical details or unfair outcomes.</p> <p><i>Losing jobs:</i> AI-driven automation threatens to displace workers from positions in the law enforcement department, creating a need to help those affected.</p>
Opportunities:	Threats:
<p><i>Gaining Acceptance and Trust:</i> The public opinion of AI in the criminal justice infrastructure can increase with the simple act of widespread, indiscriminating information and communication.</p> <p><i>International cooperation:</i> can establish the best global procedures to ensure responsible use of artificial intelligence in law enforcement while upholding lawfulness across jurisdictions.</p> <p><i>Further exploration and study into Explainable AI:</i> has the potential to render AI conclusions and reasoning more lucid, thus cultivating confidence and morality.</p> <p><i>Enhanced legal research and analysis:</i> AI-driven legal aides can expedite legal research and furnish judges and attorneys with more informed adjudications.</p> <p><i>The development of a clear set of standards and regulations:</i> for AI application within the field of criminal justice will ensure a responsible and effective implementation process.</p>	<p><i>Bias by algorithm:</i> If not taken care of, biases in AI can result in biased outcomes in the justice system of crime.</p> <p><i>Privacy:</i> When a person's privacy is being abused, their rights and freedoms are in trouble. A privacy breach, or abuse of data, collected for an AI system can be unfair.</p> <p><i>Absence of accountability:</i> Ambiguous boundaries of accountability for AI decisions can lead to difficulties in locating and correcting misjudgments or partiality.</p> <p><i>Malicious use of AI:</i> There is a potential danger of AI being exploited for surveillance or tampering within the criminal justice system.</p> <p><i>Opposition from the public:</i> When people don't comprehend or believe in AI, they can oppose its application in policing.</p>

Table 1. SWOT analysis of the use of artificial intelligence to ensure the principle of legality in criminal proceedings

is a great need for experts in this area. The instruments we need to oversee compliance and enforce compliance must duly change;

- Variance Across Nations: The regulations surrounding the implementation of AI in law enforcement are broad and complex. They could

pose a threat to global issues in AI and open up potential hurdles for international cooperation;

- Oversight constrained: Legal clauses might not have enough investigative methods embedded within them to guarantee that law enforcement organizations adhere to moral values and open requisites.

The principles for developing legal documents that will regulate artificial intelligence are:

Equity: There should be a ban on the usage of artificial intelligence for discriminatory ends.

Transparency: Uber-strict regulations should

be in place regarding the clarity of the AI decision-making process, and algorithms should be held transparent for humans to understand.

Privacy. There should be a clear ban for the AI systems that collect or use personal data without users' content and in order to prevent abuse of personal information.

Presumed responsibility for inevitable results from errors when they happen to the artificial intelligence system.

Each AI system must be focused on high-quality performance.

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