

Human Rights as a Universal Value in the Context of Artificial Intelligence Development

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ABSTRACT

In the article the introduction of artificial intelligence is considered as an objective process that affects human rights, which are the highest value recognized at the international and national levels. The issue about the possible limits of such influence and the necessity to preserve the basic properties of the existing constitutional law and order, is considered. The given research is aimed at understanding of the specificities of artificial intelligence' influence on the basic constitutional rights and freedoms of citizens. The authors consider that it is important to improve governmental regulations in the area of informing the public about the possibilities of using artificial intelligence technologies, developing the competence of all citizens in mastering the new forms of interaction with artificial intelligence. In the process of artificial intelligence' introduction it is necessary to embody the constitutional values of democracy, recognition and respect for the interests of an individual, society and the state. There is a need to create legal, organizational and financial environment, where technological innovations ensure respect for human rights and freedoms. A promising research area is not only the identification of existing gaps in the legislative regulation of certain rights and freedoms due to artificial intelligence' use, but also the development of a comprehensive normative act, summarizing legal rules on the fundamental issues of artificial intelligence' use in the framework of a uniform federal law.

Keywords: *human rights, artificial intelligence, constitutional values, human rights-based approach protection against discrimination*

1. INTRODUCTION

Social (political, legal and others) values are a traditional universal tool for influencing social relations. They provide factors and conditions aimed at gradual evolutionary change of the political and legal system, the movement towards the progress of social relations.

The constitutional establishment of social values allows solving the problem of their correlation, to determine ideological and strategic priorities in the context of differentiation and existence of a multitude of political and legal interacting elements with changing parameters. Being the result of the general laws' manifestation, the constitutional values are determined by the mechanism of social continuity. Moreover, they actively influence the process of legal and social phenomena, ensuring the continuity of this process's development.

The constitutional values in the science of constitutional law, as a rule, include such categories as equality and justice, morality, sovereignty and democracy. But there are

also the supporters of the approach to consider individual constitutional rights and freedoms as an independent constitutional value, for example, the right to health protection and medical care, the right to labor, etc.

Due to the variety of existing social values, the problem of their hierarchy, internal coherence and subordination arises. The hierarchy of political and legal values is implied in the Constitution, e.g. the article on the priority of civil rights and freedoms precedes the articles on state sovereignty, federalism and the mechanism of state power. Speaking about the hierarchy of constitutional values it is important to point out that most of the doctrines of the constitutional system should be considered in harmony with the constitutional principle of recognizing a person, his rights and freedoms as the basic values.

Many principles serve only as an instrumental basis of political, legal, economic, or cultural components that provide conditions for the formation of a political and territorial identity, the development of self-government, the preservation of national and cultural diversity, the recognition of basic rights and freedoms.

2. HUMAN RIGHTS AS CONSTITUTIONAL VALUE

Basic human rights are enshrined in that section of the Russian Federation Constitution, which is impossible to be modified in the ordinary way. It follows from this fact that human rights serve as the basis of the constitutional system and the activities of public authorities are built upon their recognition and protection.

The axiological nature of rights and freedoms is determined by art. 2 of the Russian Federation Constitution. Acknowledgement the supremacy of human rights and freedoms gives significant meaning to the section of the Article 2 of the Constitution of the Russian Federation, according to which fundamental rights and freedoms belong to everyone, and "... not depending on the conditions dictated by the state, not at the discretion, will and decision of the authorities" [1].

The preamble of the Russian Federation Constitution of 12 December, 1993 states that human rights and freedoms, civil peace and harmony were approved by the multicultural population of the Russian Federation. Obviously, in the latter case, there is no reference either to a concrete historical era or state system (historical continuity of statehood and respect for previous generations are emphasized), and it is people (society) who is recognized as the leading actor.

According to this approach the Russian Constitution has much in common with the fundamental document in the sphere of human rights – the Universal Declaration of Human Rights, adopted on 10 December, 1948, the first article of which recognizes that all people are born independent and equal in their dignity and rights [2].

In part 2 of art. 17 of the Russian Federation Constitution there is the provision that personal rights and freedoms belong to every individual from birth. Thus, human rights act as a universal value recognized at the international and national levels. It seems that significance of human rights' constitutional value has two basic characteristics.

Firstly, human rights, as a value, act as the factor of regeneration and development of society and a state. In this regard constitutional scholars speak of determining the vector of development of the country [see 3; 4]. The transformation of the approach to human rights in Russia took place in the context of the communist regime's collapse and changes in the political and legal system. During this period the constitutional values and the idea of human rights' supremacy embodied the common will of the multinational people of Russia and had a decisive impact on public relations, determining strategic priorities of state development.

Secondly, human rights have instrumental value contributing the elements of rationalization in legal regulation and law enforcement. The Russian Federation Constitution defines human rights as a value in their direct sense. Consequently, any abstract constitutional value, according to V.E. Chirkin [4], is objected at the level of general or specific rules.

Taking into account the above-mentioned characteristics of human rights as the highest value, the issue about the challenges that can affect their transformation negatively and impede their implementation, logically arises. The problems of the correlation of the standards of the Russian Federation Constitution and life are often resulted in legal conflicts. The new digital reality also contains new challenges for the civilization of law, including the phenomena of artificial intelligence and Big Data.

In the given article the authors aim at summarizing associated with the introduction of artificial intelligence technologies threats for basic human rights, preserved in the Russian Federation Constitution. The problem of correlation of artificial intelligence and human rights is also relevant for European legal scholars [5–9]. From our point of view the important issue is whether the value and priority of human rights can be preserved in the described conditions. In this regard, it is required to indicate the strategic priorities in the sphere of the advancement of artificial intelligence in Russia, as well as to formulate possible directions of the relevant technologies' impact on individual human rights, pointing to ways of minimizing risks.

3. ARTIFICIAL INTELLIGENCE AS THE OBJECT OF CONSTITUTIONAL LEGAL REGULATION

The introduction of artificial intelligence is an objective process, the main priorities and parameters of which are contained in the special-programme papers. In the Strategy for the Development of Information Society in the Russian Federation for 2017-2030, approved by the Decree of the President of the Russian Federation dated the 9th of May, 2017, № 203 in subparagraph "c" of paragraph 36 artificial intelligence is determined as one of the main directions of Russian information and communication technologies' development [10].

On October 10, 2019, the President of the Russian Federation adopted the National Strategy for the Development of Artificial Intelligence for the period until 2030, where the key feature of artificial intelligence is the ability to simulate human cognitive functions and, while carrying out certain tasks, to obtain the results that are comparable to the results of human intellectual activity (subparagraph "a" of paragraph 5) [11].

According to experts, artificial intelligence technologies will become more social in the future: the agents initially oriented to solving instrumental tasks, will be the part of environment (and possibly participants) of human interactions [12].

Already to date, the above-mentioned properties arise the important issue of the subjectivity of technologies comparable to human beings. Meanwhile, in paragraph 23 of the discussed decree of V.V. Putin, goals of artificial intelligence advancement in Russia are formulated. They include ensuring welfare gains and standard of life of population, providing national security, law, and order,

achieving sustained competitiveness of the Russian economy. Thus, we can observe the emphasis on the servicing character of artificial intelligence technologies. In our opinion this creates the key dilemma of artificial intelligence introduction: will those servicing functions stay unchangeable in technologies that are comparable to humans in their characteristics and whether will they be used against human rights and freedoms? Obviously, the search for answers to these questions inevitably leads to the consideration of constitutional and legal aspects.

There is no doubt that the Constitution of the state as the document with the highest legal force, superior in the hierarchy of legal acts, establishes the prevailing social, political and legal values and determines the country's long-term development. Considering the issues of artificial intelligence usage, it is important to establish the conceptual framework in this sphere:

1. According to art. 2 of the Russian Federation Constitution, it is an individual, as well as his rights and freedoms, that is the highest value. Thus, in Russia, a human being, and not artificial intelligence host, is recognized a full participant of public relations. The rights and freedoms of an individual are ensured by justice and subject to all legal remedies, they also confine the context and enforcement of laws, the actions of the legislative and executive bodies and local self-government. It is a person and a citizen who is given the opportunity to appeal the decisions and actions (or omission) of state authorities and officials in court. As for the hosts of artificial intelligence, their existence and functioning should have a service nature and must be aimed at realizing the rights and freedoms of citizens and be subordinate to achieving a socially necessary result.

2. The Russian Federation Constitution of 1993 recognizes the state sovereignty of the Russian Federation, extending throughout the whole territory (article 4) and leading to the necessity of providing guarantees for the country's economic, technological and digital sovereignty. This ensures the independence of Russia in the area of artificial intelligence and allows development and usage of domestic technologies in this area. Russia's international cooperation in the area of artificial intelligence cannot reduce the level of our country's independence in decision-making connected with the usage of artificial intelligence technologies.

3. From legal and formal standpoint, the matters of artificial intelligence are not referred either to the sphere of exclusive jurisdiction of the Russian Federation or to the sphere of joint jurisdiction of the Russian Federation. However, it is obvious that the optimal balance in distinguishing between the subjects of jurisdiction and authoritative powers in the given area can only be achieved if there is the federal priority in settling policy issues connected with the usage of artificial intelligence. The uncertainty of legal framework of the authoritative powers will create problems in practice and impede the recognition of constitutional rights and freedoms of Russian citizens.

4. The forms of expression of freedom are connected not only with personal space or private life; they find their

objectification in the public sphere and some collective forms. This fact acquires a very important social meaning. From the above-mentioned provision follows the recognition of human dignity as a key category that reflects the significance of human rights' value.

In part 1 of art. 21 of the Russian Federation Constitution personal dignity is protected by the state, nothing can be the ground for its affronts. In its turn, part 2 of the aforementioned legal norm establishes a ban not only on torture, violence and any form of cruel and degrading treatment, but also on medical, scientific or other experiments on a person without his/her consent. It seems that the recognition of human dignity is the most important component of the development of freedoms, respect for other people, tolerance, responsibility of public authorities, etc. Dignity is inherent in all people, and therefore both in the Russian Federation Constitution and in fundamental international documents in the sphere of human rights, the equality of human rights and citizenship is naturally guaranteed regardless of gender, race, nationality, language, origin, property status and official position, residence, religion, beliefs, etc. (part 2 of art. 19). Discrimination, that is restrictions on rights and access to welfare, based on the listed parameters, is not allowed. Meanwhile, these are the risks of discrimination that are most often paid attention upon by the critics of artificial intelligence technologies' diffusion. Michelle Bachelet, in her speech on October 17, 2019, with genuine concern pointed out the recruitment programs that systematically reduce the value of women, systems that consider dark skinned suspects as persons who is about to commit a new crime with a high probability, programs that analyze the needs in policing and lead to excessive police control in poor areas and in places where minorities live [13]. The Council of Europe Commissioner for Human Rights, Dunja Mijatović, also points out sex discrimination when using software recruitment programs, as well as discrimination in the decision-making process regarding health-care benefits. In her opinion, the reasons of such situations are the existing public prejudices, which are reproduced in the process of artificial intelligence systems' development [14].

Thus, the problem of discrimination when using artificial intelligence technologies is not fictitious and has numerous examples in practice. Some experts classify the risks of introducing and using artificial intelligence into those, that arise in the course of progressing artificial intelligence technologies, and those that arise in the process of application [15]. This distinction is important for understanding of the possibilities to neutralize the alleged threats to human rights. In particular, as it was mentioned in [15], the developers of the Google Brain Team proposed a method of training algorithm that takes into account the prohibition of discrimination within protected classes.

The Law on Amendment to the Russian Federation Constitution of March 14, 2020 № 1-Federal Constitutional Law "On Improving the Regulation of Certain Issues of the Organization and Functioning of Public Authorities" presupposes to supple the subsections "i" and "m" of art. 71 of the Russian Federation

Constitution with provisions on the classification of information technologies as subjects of exclusive jurisdiction of the Federation.

Moreover, in the subsection “m” of art. 71 of the Russian Federation Constitution there is the explicit reference to the including of issues of ensuring the personal safety of individuals, society and a state when applying information technologies and transferring digital data in the sphere of federal regulation [16]. Such an approach, in our opinion, limits the possibility of using artificial intelligence technologies against the values, safeguarded by the Russian Federation Constitution, and the basis of the constitutional system of the country.

4. CONSTITUTIONAL RIGHTS AND FREEDOMS IN DIGITAL ERA

4.1. Safeguarding the privacy

Private life (the right to privacy) implies that private individuals should have a certain field for independent development, interaction and freedom, i.e. the so-called “private sphere”. In the art. 23 of the Russian Federation Constitution, everybody has the right to privacy, personal and family secrets, protection of his honor and dignity and to the secrecy of correspondence, telephone conversations, postal, telegraph and other messages. As in [14], Dunja Mijatović believes that in Internet people themselves provide personal information about their health, political opinion, family life, without even paying attention to who, how and what for will use this data. Each action of a user in search engines and social networks leads to the factor of becoming results more personalized [17]. P.A. Romashev rightly points out the “digital mark” left by almost every person. This creates the conditions for mass surveillance and the usage of millions of users’ data for commercial purposes [18].

The possibilities of using big data are constantly growing. This fact has already led to the formation of such an information environment, which allows both states and commercial organizations large-scale monitoring, analyzing, predicting and even manipulating people's behavior. Tension between technologies and human rights is also evident in the field of face identification. The processing of citizens’ biometric data without their written consent violates both personal data law and the right to privacy (art. 23 and 24 of the Russian Constitution). Of course, video surveillance systems can significantly increase the effectiveness of law enforcement agencies in crimes’ detection and investigation. Video surveillance systems are able to provide strong evidence in a criminal case [19]. On the other hand, integration of video systems into a common network with the possibility of analyzing records and identifying a person upon appearance is a significant restriction of human rights, and interference in

that sphere is possible only if substantial guarantees are provided for their protection.

In this regard, one should pay attention to part 1 of art. 24 of the Russian Federation Constitution, which declares the gathering, containing and using of information about a private life without his/her consent illegal. It seems that the collection of such information in the context of artificial intelligence technologies’ introduction cannot be arbitrary, and the legislation should determine in details the specific circumstances under which interference in private life may be allowed.

4.2. Safeguarding freedom of expression and freedom of assembly

Freedoms of expression and assembly can also be violated owing to usage of artificial intelligence technologies when regulating interaction in the information environment and organizing mass events. As Dunja Mijatović notes in [14] that governmental bodies and business enterprises use the algorithms “... that stifle freedom of expression and assembly”. In particular, she gives an example of information filtering mechanisms for identifying extremist content in social networks. Face identification of public protests’ participants is also an ambiguous means to identify violators. The Australian Commissioner for Human Rights, Edward Santow, on the pages of the journal “Science”, speaks of the situation when Metropolitan police used artificial intelligence technology to search for 104 suspected wrongdoers and the applied program worked falsely 102 times.

As the human rights activist rightly notes, the risk for human rights is very high, because a person can be arrested and detained illegally and finally subjected to unlawful prosecution [20]. It seems that systems, based on artificial intelligence usage, should not be applied in the sphere of basic human rights’ restriction until the problems identified are resolved and clear criteria for restriction of rights and freedoms are formulated.

4.3. Guaranteeing the right for fair trial

The abilities of artificial intelligence can be used in the sphere of administration of justice. So, today it is possible to observe how, at the initiative of the heads of the judicial organs of various countries, digital technologies are introduced even in trying criminal cases. They make the implementation of many legal procedures more operative [21]. Meanwhile, regarding trying cases and decision-making process based on artificial intelligence technologies, the existing limitations should be specified. In the part 1 of art. 46 of the Russian Federation Constitution, everybody is guaranteed judicial protection of its rights and freedoms, and in the part 1 of art. 118 of the Russian Federation Constitution, justice in the Russian Federation is enforced solely by the court. Making a decision by a computer program contains serious risks that

are unlikely to be overcome in the nearest future. Firstly, as we noted before, the problem of neutralizing the negative factors of artificial intelligence work, expressed in the accumulation of human prejudices and creating conditions for further discrimination, has not yet been solved. Secondly, artificial intelligence is not able to regard the inconsistency of law and law enforcement (noted by A.A. Ivanov).

The judge of the Russian Federation Supreme Court, V.V. Momotov, rightly points out that understanding of general ethical categories is formed in a person in the process of socialization, upbringing, formation of personality, and they cannot be incorporated in the computer program [ibid.].

In the part 2 of art. 50 of the Russian Federation Constitution, when administering justice, the usage of proof acquired against the federal law is not allowed. Either verbal or non-verbal evidence, used in various types of legal proceedings, is diverse and their content is individual. Therefore, they cannot be properly evaluated by a computer program. Thus, at the moment it is impossible to talk about fair justice in those cases where the decision is made by the robot, not by the person.

4.4. *Guaranteeing labor rights*

The most important socio-economic right providing the material basis for human existence is labor right. Labor right in certain environments has constitutional status. In relation with the problems, that artificial intelligence usage entails, one should point out not only the existing possibility of discrimination (as we mentioned before), but also an indirect negative effect, expressed in a possible massive job cuts and tightening labor demands.

At the moment, there is also a pressing problem of labor relations of employees working with artificial intelligence host. It requires the development of many aspects including the issues of legal capacity of artificial intelligence hosts, working time and labor standards (if these include technical parameters), labor protection and protection of rights of the employees working with artificial intelligence hosts, issues of the interaction of artificial and human intelligence in the labor sphere.

These issues could be reflected in the Section of the Labor Code "Features of the regulation of the labor with usage of artificial intelligence". Obviously, such aspects of labor relations as rest time, salary, labor discipline, etc. are not relevant for artificial intelligence hosts [22], they are relevant only for the creator (owner, tenant) of the artificial intelligence system. In addition, the introduction of artificial intelligence systems will improve the job search for citizens in need, optimize the process of initial "testing" (interviewing) of citizens.

In 2016, the World Economic Forum published the report "The Future of Professions,". In 2019, three years later, the continuation was issued: "Professions of the Future," where it is noted that technological breakthroughs, if rightly managed, can lead to new professions and improving the quality of life, but if wrongly managed, they

create a risk of increasing inequality, as certain tasks simply become outdated or automated. In the next five years the following technologies will be introduced by companies and will seriously change the labor market: big data analytics, Big Data (85%); mobile and web-app (75%); internet of things (75%); machine learning (73%); cloud technologies (72%). Moreover, among the highly perspective technologies the respondents called augmented and virtual reality (58%), blockchain (45%), 3D printing (41%) and pilotless transportation (40%).

Accordingly, the demand for "artificial intelligence and machine training specialists", "big data specialists", "automation experts", "robot engineers" and "blockchain specialists" will increase. Almost 50% of companies expect that automation of manufacture will "lead to some reduction of the number of their full-time employees". 59% of the employers, surveyed by the World Economic Forum, expect that by 2022 production chain and distribution of products will "change significantly". In total, the survey shows that business enterprises expect job cuts by 0.98 million people and plan to hire 1.74 million.

However, the reporters consider that the technologies themselves also create new performance objectives, from application development to building robots, providing opportunities for work that people have not previously performed. Therefore, the introduction of artificial intelligence is not likely to replace a man completely in the key areas of the production and organizational process.

4.5. *Safeguarding freedom of creation*

As a rule, any state and society proceed from the recognition of creativity as an undeniable value. In part 1 of art. 44 of the Russian Federation Constitution guarantees of freedom of literary, aesthetic, scientific, technical and other types of creation are enshrined. Diffusion of artificial intelligence technologies has raised the issue of recognition of intellectual property rights of artificial intelligence hosts and programme creators, generating a new creative product.

Russian and foreign civil law doctrine have not decided this issue yet. There is no doubt in need for legal protection of the products created by artificial intelligence hosts. The issues of these results' ownership should be associated with the creators of a specific artificial intelligence system, the forms of their participation in obtaining data of non-material goods. Therefore, the proposal of E.P. Sessitsky to make amendments in intellectual property rights' laws of the Russian Federation is worth considering. The researcher offers to include the products, created by artificial intelligence systems in the list of civil law objects in the status of "equivalent to protected results of intellectual activity" with recognition of their exclusive rights without granting copyright and other personal non-property rights to anybody [23].

The current Constitution of the country proceeds from the fact that human rights and freedoms are of universal value, are inalienable and belong to every person from birth (art. 17). The legal analysis of human rights and recognition of

their universal constitutional value exclude granting copyright to artificial intelligence subjects (systems, objects, devices, agents), since this will oppose the foundation of the constitutional system and the conception of relationship of an individual and a state in Russia (preamble, art. 2, 17).

5. CONCLUSION

The conducted research allows making the following conclusions:

1. The advancement of artificial intelligence is an objective process, the main priorities and parameters of which are enshrined in the target-program documents of the Russian state. This process has considerable potential for the country's economic development. Nevertheless, in the terms of implementation of artificial intelligence technologies (i.e. computer systems and information technologies, not based on biomaterials and biotechnologies, that can imitate intellectual human activity) their creation, development, implementation and usage is regulated by the legislation. It is necessary to promote the constitutional values of a democratic state, recognition and respect of individual interests, society and the state.
2. The major threats to human rights arise from artificial intelligence usage in areas covering privacy. Beyond that, we pointed out the peculiarities of artificial intelligence influence on safeguarding freedom of expression, freedom of assembly and freedom of creation, as well as on ensuring the right for fair trial and labor rights.
3. Legal regulation of some issues of artificial intelligence use is implemented in the framework of several legislative acts. It seems appropriate both to compile these norms and to include new ones, developing this legal institution within the uniform federal law.
4. The state should invest more in the initiatives to increase public knowledge and improve education, it also should develop the competence of all citizens (in particular, of younger generation) of learning new forms of interaction with artificial intelligence technologies in order to form a positive attitude towards computer systems and information technologies that can imitate intellectual human activity.
5. It is necessary to create legal, organizational and financial environment where technological innovations ensure respect for human rights and freedoms, and all restrictions become necessary and proportionate in a democratic society and are implemented in accordance with the law.

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