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G.G. Galiakbarova

L.N. Gumilyov Eurasian National University, Astana, Kazakhstan
e-mail: galiakbarova_gg@enu.kz

SOME FEATURES OF LEGAL REGULATION OF ARTIFICIAL INTELLIGENCE: FOREIGN AND NATIONAL EXPERIENCE

This paper is research devoted to the study of approaches to the legal regulation of the field of artificial intelligence both in Kazakhstan and in some foreign countries that succeed in this matter. The paper also provides a structured understanding of the prospects for the governance of artificial intelligence in Kazakhstan, as well as recommendations for the use of modern international standards and practices. Special attention is paid to the experience of the United States, the European Union, China, and Russia. Based on the results of critical analysis of foreign experience, several measures have been proposed, including the definition of the concept of artificial intelligence and the status of "new" subjects of law at the legislative level. At the same time, the paper notes that the artificial intelligence legal provisions at the level of a codified act does not require haste and needs detailed elaboration. This approach will ensure clarity and efficiency of regulation, as well as the necessary flexibility for such a rapidly developing area of social relations.

The aim of this study is to determine the place of artificial intelligence, and possible areas of its application, and to consider the main problems.

Methods: analysis and synthesis, deduction and induction, comparative legal.

The conducted research is of potential value for domestic legislators, lawyers, human rights activists, students, and anyone interested in the legal regulation of artificial intelligence.

Key words: artificial intelligence, digitalization, technology, law, international experience.

Г.Г. Галиакбарова

Л.Н. Гумилев атындағы Еуразия ұлттық университеті, Астана қ., Қазақстан
e-mail: galiakbarova_gg@enu.kz

Жасанды интеллектті құқықтық реттеудің кейбір ерекшеліктері: шетелдік және ұлттық тәжірибе

Бұл мақала Қазақстан мен кейбір шет елдердегі жасанды интеллект саласын құқықтық реттеу тәсілдерін зерттеуге арналған. Мақалада шетелдік озық тәжірибеге сүйене отырып, қазақстандық модельді құру мақсатында стратегиялық құжаттар мен заңнамалық реттеудің салыстырмалы талдауы жүргізілген. Сонымен қатар, Қазақстанда жасанды интеллектті реттеудің болашағы және халықаралық стандарттар мен тәжірибелерді қолдану бойынша ұсыныстар талқыланған. АҚШ, Еуропалық Одақ, Қытай және Ресейдің жасанды интеллектті кешенді реттеу тәжірибесіне ерекше көңіл бөлінген. Шетелдік тәжірибені талдау нәтижесінде жасанды интеллект ұғымын және заңнамалық деңгейде «жаңа» құқық субъектілерінің мәртебесін анықтау бойынша бірқатар шаралар ұсынылады. Бұл ретте мақалада кодификацияланған акт деңгейінде жасанды интеллектті реттеу асығыстықты қажет етпейтіні және егжей-тегжейлі пысықтауды қажет ететіні атап өтіледі. Бұл тәсіл реттеудің айқындылығы мен тиімділігін, сондай-ақ қоғамдық қатынастардың қарқынды дамып келе жатқан саласы үшін қажетті икемділікті қамтамасыз етуге мүмкіндік береді.

Мақаланың мақсаты – қазіргі таңдағы жасанды интеллекттің орнын, оны қолданудың мүмкін салаларын анықтау бойынша негізгі мәселелерді қарастыру болып табылады.

Әдістері: талдау және синтез, дедукция және индукция, салыстырмалы құқықтық.

Жүргізілген зерттеу отандық заң шығарушыға, заңгерлерге, құқық қорғаушыларға, студенттерге және жасанды интеллектті құқықтық реттеуге қызығушылық танытқандарға пайдалы болады.

Түйін сөздер: жасанды интеллект, цифрландыру, технология, құқық, халықаралық тәжірибе.

Г.Г. Галиакбарова
Евразийский национальный университет имени Л.Н. Гумилева, г. Астана, Казахстан
e-mail: galiakbarova_gg@enu.kz

Некоторые особенности правового регулирования искусственного интеллекта: зарубежный и национальный опыт

Данная статья представляет собой научное исследование, посвященное анализу правовых подходов в регулировании сферы искусственного интеллекта как в Казахстане, так и в ряде зарубежных стран, достигших успехов в этой области. Так, в статье представлен сравнительный анализ стратегических документов и законодательного регулирования, с целью создания сбалансированной казахстанской модели на основе передового зарубежного опыта. Также статья предоставляет структурированное понимание перспектив регулирования искусственного интеллекта в Казахстане, а также рекомендации по использованию современных международных стандартов и практик. Особое внимание уделяется опыту США, Европейского союза, Китая и России в формировании комплексного регулирования сферы искусственного интеллекта. В результате анализа зарубежного опыта предложен ряд мер, среди которых определение термина «искусственный интеллект» и законодательное закрепление статуса «новых» субъектов права. В статье подчеркивается, что кодификация в сфере регулирования искусственного интеллекта не должна быть поспешной и форсированной, так как требует тщательной проработки. Такой подход позволит обеспечить четкость и эффективность регулирования, а также необходимую гибкость для столь стремительно развивающейся сферы общественных отношений.

Цель статьи – определить место искусственного интеллекта в современных реалиях, возможные области его применения, рассмотреть основные проблемы.

Методы: анализ и синтез, дедукция и индукция, сравнительно-правовой.

Проведенное исследование представляет потенциальную ценность для отечественного законодателя, юристов, правозащитников, студентов и всех интересующихся правовым регулированием искусственного интеллекта.

Ключевые слова: цифровизация, технология, право, международный опыт, искусственный интеллект.

"As a progressive nation, we must look only forward!"
From the interview with K.-J. Tokayev
to the newspaper "Egemen Qazaqstan"
dated January 3, 2024

Introduction

Artificial intelligence (hereinafter referred to as AI) is rapidly becoming a part of our daily lives, influencing numerous aspects of society. AI technology involves using computers and machines to gather and analyze data to mimic human abilities like prediction, problem-solving, and decision-making.

Numerous nations have already embarked on the AI development race. For instance, Singapore, a leading global economy and one of Asia's tiger economies, aims to make significant investments in AI research. Their goal is to leverage AI to tackle pressing social and economic challenges, nurture emerging local talent, and increase AI adoption across various industries. For this purpose, the AI Singapore Strategy, a national AI program to strengthen the digital economy and society, was developed in 2017 (AI Singapore, 2017).

China has endorsed multiple initiatives aimed at advancing AI. One such initiative is the Made in China 2025 Plan, introduced in 2015, which sets out a decade-long strategy to position China as a global leader in cutting-edge manufacturing. While many aspects of the Plan are still being finalized, some key goals include increasing China's export of high-technology goods to US$1 trillion by 2025, taking domestic brands to the global stage, and developing world-class leaders in key industrial sectors (Made In China, 2025). Also, in May this year, China released a three-year action plan on artificial intelligence, according to which Beijing wants to standardize new technologies by 2027 to support high-quality development.

While China and the US are leading the global race to develop and regulate AI, the European Union introduced the world's first Artificial Intelligence Act (2024) in March this year, the specifics of which we will discuss later.

In February 2024 K.-J. Tokayev emphasized the extreme importance of digitalization of the economy and ensuring the widespread use of AI technologies (https://www.akorda.kz/ru/glava-gosudarstva-provel-rasshirennoe-zasedanie-pravitelstva-714237). It is hard to find a reason to disagree with this since potentially the use of AI can increase global GDP by 14% by 2030 and bring up to 70% of additional

economic effect. The use of AI will automate many routine tasks. For example, in business or manufacturing, it can process and analyze large volumes of data or perform tasks related to customer service. AI can also calculate risks in the healthcare sector, forecast emergency situations, and identify various threats and cyberattacks.

Based on the key findings of this research, it is evident that the Republic of Kazakhstan (hereinafter referred to as the RK) urgently requires legislative regulation for the application of AI across different sectors of society. This should be informed by examining the experiences of more advanced nations, particularly in the legal framework of this emerging area of social relations.

Methodology

What has been done recently, what legal documents have been adopted, what is their practical implementation and what else can we offer – we will try to answer these and other questions in this study.

Thus, in this paper we have defined two main tasks aimed at addressing the topic, namely:

- to explore the aspects of the legal governance of AI

- to study the most effective foreign practices in certain aspects of legal regulations of AI with the purpose of further adoption.

The research methodology involved comparing existing laws and regulations related to artificial intelligence. Additional methods used included formal logic, historical analysis, legal analysis, and systematic analysis. The research relied on various sources, such as AI-related laws and regulations, other legal documents, scholarly works, and media articles.

Results and Discussions

AI is advancing rapidly, leading to societal changes that demand a response from interested nations. Countries like the US (the National Artificial Intelligence Initiative Act of 2020), EU (the Artificial Intelligence Act), China (the New Generation of Artificial Intelligence Development Plan, 2017), Japan, Russia (the National Strategy for the Development of Artificial Intelligence until 2030), and others are actively working on legal frameworks for AI, including ethical guidelines, liability issues, and data protection. However, some countries have adopted a more cautious approach to AI regulation.

The President of Uzbekistan approved a program to research and implement artificial intelligence technologies between 2021 and 2022. This program is outlined in a presidential decree focused on creating favorable conditions for the rapid adoption of AI technologies (https://president.uz/ru/lists/view/4195).

In Kazakhstan, the first steps towards the introduction of AI were laid by the previously existing state program “Digital Kazakhstan” (https://adilet.zan.kz/rus/docs/P1700000827) and were aimed primarily at the healthcare sector.

However, despite significant steps in the development of digitalization on the national scale, there are several barriers to the improvement of AI in our country. For example, in many regions, the quality of the Internet remains poor.

In 2019, by the decision of the Board of Trustees of Nazarbayev University AOE, the Corporate Fund “Fund for Support of Research and Development in the Field of Artificial Intelligence” was established, which was supposed to become part of the ecosystem for training, research, and commercialization of AI in the country. However, as of today, it is not fully functioning and there is no information on the work done recently.

Not so long ago, the Committee for Artificial Intelligence and Innovation Development of Kazakhstan was established. It is too early to talk about the contribution of this government agency to the promotion of AI in the country; this will require years of painstaking work in this direction. But, as foreign experience shows, it is advisable to work together in this direction both as part of the government apparatus and various research institutes and public organizations.

According to the Government AI Readiness Index for 2023, conducted by Oxford Insights, Kazakhstan is in 72nd place among 193 countries (Government AI Readiness Index 2023 – Oxford Insights).

In turn, in Kazakhstan, the need for legal regulation of AI was first announced in 2021 in the Concept of Legal Policy until 2030 (https://adilet.zan.kz/rus/docs/U2100000674), according to which, in light of the rapid development of big data, AI, quantum technologies, etc., regulators everywhere are showing a strong interest in such technologies. After several tragic incidents involving the use of self-driving cars in foreign jurisdictions, the possibility of granting robots legal status and, as a consequence, the possibility of bringing AI to legal liability has become widely discussed. Kazakhstan acknowledges the need to implement comprehensive laws governing communications, information

and communication technology, data handling, industrial automation, digital assets, information security, artificial intelligence, machine learning, and personal data protection, in response to global developments.

J. Gordon suggests that the growing legal interest in AI stems from its potential impact on fundamental human rights. He argues that our current legal systems are ill-equipped to handle the complex legal situations arising from AI advancements. Given AI's global reach, a global approach to addressing these legal issues is crucial. Despite extensive legal regulation in many areas, lawyers and judges may lack a full understanding of AI's implications for law, the legal system, and legal education. To effectively navigate AI-related legal challenges, Gordon advocates for a comprehensive revision of the legal program or concept of law (Gordon, 2021).

Kazakhstan currently has no separate legislation fully dedicated to AI. At the same time, the draft Digital Code developed by the authorized body is being actively discussed. Kazakhstan could potentially be a pioneer in establishing a unified law that addresses the digital landscape within its national legal system. While seeking to be a leader in this area is important, the primary focus should be on developing a high-quality law that effectively regulates the digital interactions between government agencies, businesses, and individuals in the context of digital technology adoption and usage.

However, regulation in the sphere of information technology, data protection, privacy, and other related fields regulates some features of the use of AI. For instance, there is the Law of the Republic of Kazakhstan "On Informatization" (https://adilet.zan.kz/rus/docs/Z1500000418) and the Law of the Republic of Kazakhstan "On Personal Data and their Protection" (https://adilet.zan.kz/rus/docs/Z1300000094/z13094.htm), which can be applied to data processing using AI.

It is also worth noting that currently several strategic documents, namely the National Development Plan of the Republic of Kazakhstan until 2025 (https://adilet.zan.kz/rus/docs/U1800000636) and the Concept of Digital Transformation, Information and Communication Technology Industry Development and Cybersecurity for 2023-2029 (https://adilet.zan.kz/rus/docs/P2300000269), define some tasks and activities in the area of AI.

More recently, the Concept of Artificial Intelligence Development for 2024-2029 (https://primeminister.kz/ru/news/pravitelstvom-prinyata-kontseptsiya-po-razvitiyu-iskusstvennogo-intellekta-na-2024-2029-gody-28786) has been also adopted, which has essentially become the first document of its kind that describes the strategic point in our country. We have yet to see and evaluate what its implementation will lead to since there are already some controversial points. For example, the Concept, as it seems to us, prioritizes "technology first, then regulation". This perception is erroneous, since without regulation, the technology, which has not yet become widespread, has already led to fakes, misinformation, and manipulation that have repeatedly caused panic. An obvious example is the AI-generated photo of the alleged attack on the Pentagon last May, which then crashed the global financial markets. It appears essential to regulate AI at this stage. Our lawmakers have the chance to introduce the Digital Code, considering the shortcomings in the world's first AI law recently passed in the EU. For instance, some European tech companies have expressed dissatisfaction with the law, fearing it could hinder their growth in the global market. Naturally, this task is complex, as it requires striking a careful balance between safeguarding societal rights and fostering technological advancement. Thus, creating a flexible regulatory framework is crucial in this process.

Before delving into this research, it is necessary to understand what "artificial intelligence" is from a legal point of view.

The term "artificial intelligence" was introduced in 1956 by John McCarthy at a specialized scientific conference dedicated to this topic.

According to several researchers, the lack of a clear legal definition of this concept is recognized as a constraining factor in resolving other legal issues (Vasil'ev, 2018: 38).

Here's a comparative table of the legal definitions of artificial intelligence in different countries, according to table 1.

This table illustrates the variations in the legal definitions and approaches to AI regulation across different jurisdictions. Each country adapts the definition based on its legislative framework and strategic goals in AI development.

At the moment, the concepts of AI and AI technologies are not enshrined in Kazakhstan legislation, which hinders the implementation of projects with AI. The Law of the Republic of Kazakhstan "On Informatization" includes the concepts of "intelligent robot", and "electronic information resources", which partially regulate the concept of AI, but without direct mention.

Table 1 – The legal definitions of artificial intelligence in different countries

Country/Region	Definition of Artificial Intelligence (AI)
United States	A system powered by machines that can, based on specific human-defined goals, generate predictions, recommendations, or decisions that impact both real and virtual environments.
European Union	A software system capable of producing outputs like content, predictions, recommendations, or decisions based on specified human objectives, which affect the surrounding environment.
Kazakhstan	The Law "On Informatization" was amended on June 25, 2020, to include a legal definition of an *"intelligent robot."* According to this definition, an intelligent robot is an automated device that can react to its surroundings and perform actions or remain inactive based on what it perceives and understands.

At the same time, if we look at the scientific community's perspective, we will find the following. For example, some authors interpret the concept of AI through the concepts of fully or partially autonomous self-organizing cybernetic computer-hardware-software system or a cyber-physical system (Kutejnikov, 2019: 75).

As can be seen, the definition provided in the Russian legislation not only reveals the essence of AI but also helps to differentiate this concept from related ones. Thus, machine learning, neural networks, etc., which are sometimes identified with AI (Kirsanova, 2019: 180), are referred to as technologies and promising artificial intelligence methods in this Strategy. AI is also separated from robotics. Thus, it is understood as a mandatory element of technology solutions, such as robots, unmanned objects, etc.

In general, the statutory regulation of AI in Kazakhstan and abroad is still at the stage of active development and requires constant updating and adaptation to rapidly changing technologies and the challenges they present.

AI creates opportunities for automation, optimization of resources, and solving complex problems. For example, in medicine, the automotive industry, and the financial sector, AI speeds up processes, improves diagnostic accuracy, ensures safety, and optimizes resource management. Today, AI technologies are already used in Kazakhstan that are capable of reading MRI (Magnetic Resonance Scanning) and CT (Computed Tomography) images and making preliminary diagnoses for patients. If such experience becomes widespread, doctors may be relieved of the need to read images. Also, new technologies can replace designers and illustrators, and easily do the work of accountants, customer service managers (telephone operators), proofreaders, copywriters, translators, and even taxi drivers.

When developing approaches to legal regulation of the use of AI, it is important to consider the following some aspects.

One of the biggest challenges in regulating AI is determining liability for harm caused by AI technology. This involves considering whether an intelligent robot should be treated as an object or an entity with some level of autonomy. Should we view AI as a tool under human control, or as something with independent capabilities?

One of the solutions proposed by researchers includes the introduction of a specific legal personality of an "electronic person" (Jastrebov, 2018: 315).

By examining scientific research and both domestic and international laws, we can identify several key points for regulating AI, as illustrated in Figure 1.

The global landscape for AI regulation is diverse, reflecting varying legal systems and priorities. While some nations focus on fostering AI development, others prioritize establishing specific regulations. Innovative approaches like regulatory sandboxes are being explored, but a comprehensive international framework for AI regulation remains elusive.

A systematic analysis of AI regulation presents a significant challenge for the international legal community. Despite ongoing discussions, there's no clear consensus on how to regulate AI effectively. The potential for controversial situations and problems arising from AI use highlights the urgency of addressing these issues.

We advocate for a broad scholarly and international discussion to establish unified approaches for understanding AI's role in the modern knowledge system. This includes exploring the possibility of enshrining fundamental principles and international standards for AI responsibility in both international and national law.

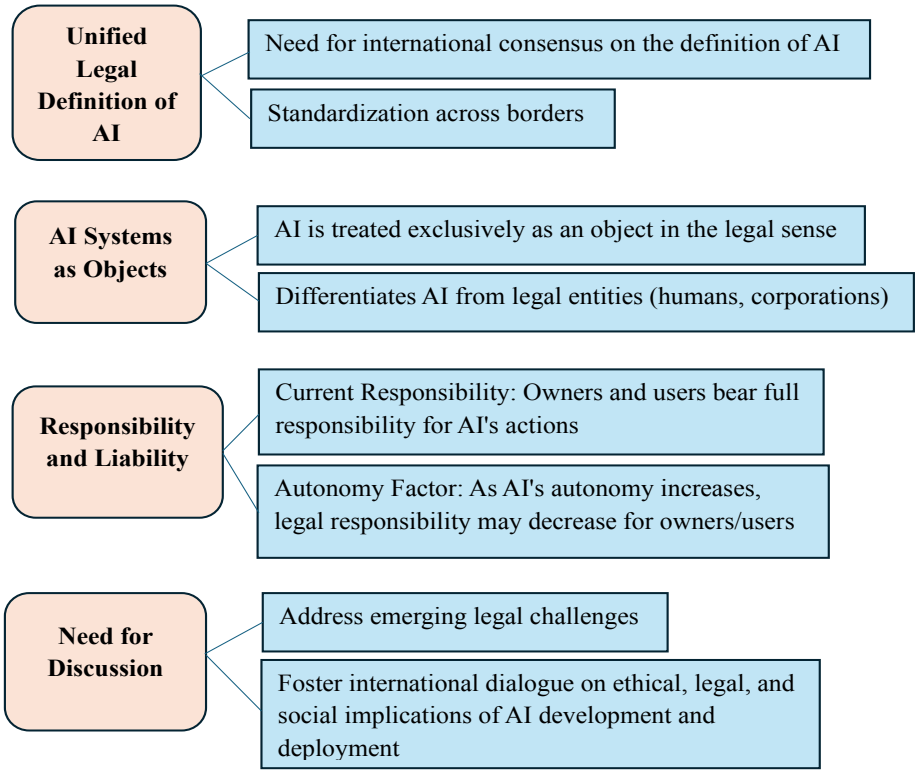

Figure 1 – Features of Legal Regulation of AI

Conclusion

Currently, the lack of a unified definition of "artificial intelligence" hinders the development of a comprehensive international legal framework. To address this, Kazakhstan's lawmakers should consider the various types of AI systems, their applications in different fields, and the specific legal context when defining AI.

Developing a legal and regulatory framework for AI should be a step-by-step process based on well-defined principles. This framework needs to address how AI is used in different areas, potential risks, and the positive impact AI can have on individuals, communities, and the government.

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Information about the author:

Galiakbarova Guzal Gazinurovna – Secretary of the Board-Scientific Secretary of the L.N. Gumilyov Eurasian National University, Acting Associate Professor of the Department of Constitutional and Civil Law, PhD (Kazakhstan, Astana, e-mail: galiakbarova_gg@enu.kz).

Автор туралы мәлімет:

Галиакбарова Гузаль Газинуровна – Л.Н. Гумилев атындағы Еуразия ұлттық университетінің Басқарма хатшысы – Ғалым хатшы, конституциялық және азаматтық құқық кафедрасының доценті м.а., PhD (Қазақстан, Астана қ., e-mail: galiakbarova_gg@enu.kz).

Информация об авторе:

Галиакбарова Гузаль Газинуровна – PhD, секретарь правления-ученый секретарь Евразийского национального университета имени Л.Н. Гумилева, и.о. доцента кафедры конституционного и гражданского права (Казахстан, г. Астана, e-mail: galiakbarova_gg@enu.kz.

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