

IRSTI 10.19.25
UDC 34.05
JEL K2, K24

<https://doi.org/10.46914/2959-4197-2026-1-2-147-156>

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PROBLEMATIC ASPECTS OF THE LEGAL REGULATION OF THE DEVELOPMENT, DEPLOYMENT, AND USE OF ARTIFICIAL INTELLIGENCE TECHNOLOGIES IN THE REPUBLIC OF KAZAKHSTAN

Abstract

This article addresses one of the most relevant spheres of social life in the era of digitalization, namely the legal regulation of activities related to the development/deployment/use of artificial intelligence (AI) technologies in Kazakhstan. The widespread dissemination of these technologies is evidenced by their everyday use by virtually all of us through voice assistants, chatbots, and online user support systems across various internet resources and platforms. The purpose of this study is to analyze the problems arising in the legal regulation of the development/deployment/use of AI technologies in the Republic of Kazakhstan, as well as to formulate proposals for the development of a normative legal act whose provisions would regulate the ethical aspects of the development and deployment of AI technologies. Accordingly, the article possesses both scientific and practical significance in identifying the key problems of the legal regulation of the processes under consideration. The principal methods of our systemic analysis were concentrated on legal modeling. We also address a number of issues through the application of the analytical method; however, a more detailed discussion of the applicable methodological framework and materials is provided later in the article itself.

Keywords: artificial intelligence, problems, development, deployment, legal regulation, improvement.

Introduction

Artificial intelligence has a broad range of technological applications, and its use is characterized by its adaptability to virtually all spheres of modern human and social life. At present, the areas in

which the technologies under consideration are most actively used include trade, informatization, robotics, text analysis, image analysis, and others. The scale and diversity of applications of these technologies are both impressive and alarming, because despite the speed of their dissemination, many issues of legal regulation remain unresolved.

The deployment of AI technologies in financial processes is of particular concern, since in this field people rely heavily on automated solutions for managing funds, assessing risks, and making economic decisions. This raises questions of liability, transparency, and legal protection for the parties involved in financial and legal relations.

The technologies we analyze are regarded as tools in human hands, and the nature of their use determines their potential for application across a wide range of areas in which they may produce significant and tangible social effects.

This is confirmed by facts available in the press and on the global internet. One of the most noteworthy examples is information indicating that AI technologies have been applied in pharmaceuticals [1] and medicine [2]. Without going into detail, it is sufficient to note that these technologies currently function as universal tools that contribute to increasing the efficiency of researchers working in various fields.

The use of artificial intelligence has the potential to produce substantial positive effects and to expand the horizons of humanity's socio-economic and technological development [3, p. 207], and this is difficult to dispute.

However, if one attempts to analyze information already described in open sources, it becomes clear that society is already beginning to face problems associated with the active use of the technologies under consideration. These problems arise, for example, in the incorrect classification of goods on marketplaces (a seller lists one type of product, while AI identifies another), in malfunctions of household appliances (for example, a robot vacuum cleaner starts draining water instead of cleaning), and in cases where cameras are activated and third parties gain remote access to them and are able to monitor the private lives of others. It follows that, despite the obvious advantages of using AI in social life, it is impossible to deny the existence of certain risks aimed at violating the rights and freedoms of individuals закрепленных in legislation.

The technologies under analysis possess a number of unique properties, including a high degree of autonomy which, however alarming it may sound, gives rise to the ability to self-learn and self-organize. Therefore, earlier understandings of these technologies are losing their relevance, which creates a need for a comprehensive assessment of the risks associated with their deployment. This would make it possible to predict and prevent the negative consequences of AI use and to develop mechanisms ensuring that AI is used exclusively for the benefit of society while minimizing its harmful effects.

The importance of the issues raised is beyond doubt, especially given that they are compounded by the absence in legislation [4] of a fully developed conceptual framework through which a mechanism for regulating the use of AI, including within civil circulation, could be developed. Moreover, as was rightly noted in the Resolution of the Government of the Republic of Kazakhstan approving the relevant document, "...there are no norms regulating the ethical standards for the use of artificial intelligence, which, according to international practice, constitute the foundation for the development of legal relations in the field of artificial intelligence" [5].

Researchers in Kazakhstan whose works on AI and its legal regulation are publicly available have also pointed to the identified gaps [6, p. 273]. Accordingly, contemporary society is confronted with the complex and multifaceted task of establishing the fundamental basis for the harmonious deployment and subsequent use of AI which, on the one hand, creates conditions for the development of innovation and, on the other, contributes to preserving the integrity of fundamental legal and social values. In order to minimize the risk of violations of human rights and freedoms, these circumstances must be taken into account in the development and improvement of legal norms.

The object of our research is the development/deployment/use of AI technologies in Kazakhstan, namely the legal regulation of these processes. As for the subject matter, this study examines the legislative norms of both Kazakhstan and certain foreign states, as well as the provisions of legal doctrine.

Materials and methods

Depending on the stated objective, the authors identified a methodological framework that made it possible to determine the key directions for the development of the institution of legal regulation of the development, deployment, and use of AI technologies. In order to understand the level of legal regulation reflected in national legislation and in approaches found in foreign practice and international law, we employed the comparative legal method as a special research method.

It should be noted, however, that, as mentioned above, the main methodological instrument within the general methods of scientific inquiry was analysis, which made it possible to identify and examine the provisions of the current legislation of Kazakhstan and certain foreign states, as well as scholarly literature devoted to the issues raised in this article.

Subsequently, this made it possible to apply the method of legal modeling, within the framework of which possible formulations of legal norms aimed at eliminating gaps in the legislation of the Republic of Kazakhstan in the field of regulating the development, deployment, and application of AI technologies were developed and substantiated.

As repeatedly noted, the empirical basis of the study consists of the provisions of the legislation of the Republic of Kazakhstan, as well as scholarly works and publications by both Kazakhstani and foreign authors.

The methodological basis was determined by the authors in accordance with the purpose of the academic article, as has already been mentioned earlier in this study.

Results and discussion

An analysis of the current legislation not only of our own state but also of a number of foreign countries regarding the regulation of everything related to AI technologies has shown that the law is lagging behind and failing to keep pace with the rapidly developing field of AI. According to some researchers [7, p. 96], this is due to the absence of a regulatory framework establishing the necessary standards on the basis of which the legislator could develop the appropriate tools for legal regulation. The opinion of scholars who adhere to this position is indeed confirmed by measures adopted by certain states. In the context of our research, we must mention this. We are referring to norms of an ethical nature [8] and to guiding principles. Such principles already exist at the international and/or regional levels, as well as at the national level [9].

The work of defining the legal foundations for regulating the development/deployment/use of AI technologies has not stopped. This need is also connected with the fact that the technologies themselves continue to evolve. Accordingly, instruments such as the “AI Act” of 21 April 2021, developed and adopted by the European Commission, have emerged. This was followed by the entry into force of the new EU AI law [10] on 1 August 2024. This event marked the beginning of a series of key stages related to ensuring compliance with the requirements established in that law [11].

Steps are also being taken to expand the possibilities for the use of highly automated vehicles on public roads. One example is the experience of France. This state not only introduced certain amendments to its traffic regulations, but also to its Transport Code [12]. The amendments made by the French legislator entered into force in September 2022. At the same time, these changes also affected issues of criminal liability. More specifically, where there is evidence that the vehicle was being used without any violations, the driver (who, however paradoxical it may sound, was not actually driving the vehicle) will not bear liability in the event of a traffic accident.

In the context of ensuring information security, it is equally important to establish restrictions on price discrimination, which is often based on socially sensitive characteristics. Accordingly, legislative development should also focus on introducing mandatory risk assessment procedures and audit requirements aimed at verifying pricing accuracy and preventing fraudulent practices.

A separate issue concerns the potential for unfair and unlawful creation of artificial scarcity through the use of AI technologies in electronic commerce. Therefore, it is necessary to prohibit such practices where they involve covert manipulation of consumer choice or misleading representations regarding the characteristics or availability of goods.

This is particularly important, as errors in the application of AI technologies may result in unjustified denial of services or the blocking of users.

To ensure the effective implementation of these requirements, the relevant legislation of the Republic of Kazakhstan should include provisions enabling the clear allocation of liability among the various actors involved in electronic commerce relationships, including AI developers, marketplace operators, and sellers.

In the context of the topic of this article, it is important to focus not only on the problems related to the legal regulation of the development and deployment of AI, but also on issues concerning ethical aspects. States seek to create the necessary conditions for the rapid development and deployment of “artificial intelligence” technologies, including through the establishment of the necessary standards [13, p. 1966].

With specific regard to electronic commerce involving the technologies under consideration, it appears essential to impose obligations on operators of digital trading platforms and marketplaces to ensure algorithmic transparency, particularly where such algorithms influence product ranking, consumer recommendations, and pricing mechanisms. Consumers must also be adequately informed of the use of AI and, as noted above, be provided with the option to opt out of personalization.

In this regard, it is worth noting the position of O. Yar, A. Brazheev, L. Golovko, and V. Bashkatov, who argue that the use of “artificial intelligence” will require the state not only to amend existing legal norms but also to engage in the “...development of new” regulatory mechanisms through which it will become possible to ensure full protection of fundamental human rights. At the same time, these authors emphasize that the protection of fundamental human rights must also include the prevention of abuses of an ethical nature [14].

Having reviewed a considerable body of scholarly literature and legislative provisions, we venture to broaden the problem by turning to such categories of the AI “life cycle” as “development, deployment, and application.”

At this point, it should immediately be noted that once the problem is broadened in this way, the need arises to expand the approach to determining the legal personality of AI. This follows from the fact that AI must be considered not only as an “object” of legal relations but also as a “subject.”

This point of view has found support among legal scholars. In her publications, V.V. Belozertseva also emphasizes that legal mechanisms (which the author describes as “traditional”) are incapable of ensuring the effective regulation of artificial intelligence. According to this author, this is due to the fact that artificial intelligence acts both as an object and as a potential subject of rights to varying degrees. The author points to difficulties in the legal individualization of decisions made with respect to artificial intelligence and to the absence of direct mechanisms of legal liability as one of the principal problems [15, p. 83].

The nature of artificial intelligence technologies and their “life cycle” has led to a high degree of fragmentation in the existing documents and a lack of coherence in the creation of mechanisms and/or standards for determining approaches to terminology and its regulation. Therefore, it is impossible to discuss the legal regulation of the development, advancement, deployment, and application of the technologies under analysis without a generally accepted definition of the term “artificial intelligence.” Moreover, this problem exists not only in Kazakhstani legislation. International practice likewise lacks a unified approach to defining this term.

Within the context of our work, we would also like to address the issue of ethical aspects. We are not alone in drawing attention to this matter. In particular, as already noted, AI technologies allow remote access to the video cameras of household devices that operate using AI (such as robot vacuum cleaners), thereby making it possible to violate someone’s private life. This means that legislators must not only use legal and regulatory instruments, but must also equip these instruments with mechanisms of an ethical nature.

Speaking of the ethical dimension, it should be emphasized that it is especially relevant in intellectual property law. A. Pokrovskaya has focused on this issue, discussing the problem of legal uncertainty associated with AI-generated content and paying particular attention to copyright issues and the possibility of recognizing AI as a “subject” of these legal relations. In the author’s view, this raises important “...ethical questions related to the use of AI,” including in the context of personal data protection and the prevention of “...data leaks” [16, p. 180].

In this connection, it should be emphasized that, to date, no state (at the time of writing this article) has adopted a special law on AI except the EU. It should be noted that only the European Union has adopted an “AI Act,” the provisions of which are aimed at regulating AI. Admittedly, this regulation lacks specificity and is characterized as “general regulation,” as we mentioned earlier in the article; nevertheless, a standalone law has been adopted in the EU. This gives rise to the question: given the specific nature of AI technologies, is it necessary to develop and subsequently adopt a special law, or would it be sufficient to amend existing legislative acts?

A similar approach involving two groups of problems, “ex ante” and “ex post,” is proposed by M. Scherer, according to whom AI technologies possess a set of unique characteristics that make it possible to divide the problems into these two groups. These groups concentrate, respectively, on problems arising at the initial stages and those arising at later stages [17].

The legal regulation of any phenomenon must begin with the definition of that phenomenon – that is, how can something be regulated if it has no definition? AI is no exception, and it must primarily be defined through its specific features. In this regard, let us once again emphasize that, as already noted earlier in this article, neither the national legislation of Kazakhstan (including the Civil Code of the Republic of Kazakhstan [18]) nor international law contains a generally accepted definition of artificial intelligence.

Moreover, none of the definitions that have already been proposed by various scholars has received recognition leading to its transformation into a rule of law. In our view, this is due not so much to a lack of specificity as to the absence of consensus within academic circles.

Our position is also based on the opinion of S.V. Nikitenko, according to whom the current legislation is characterized by a “...conservative and rigid nature,” which, in the author’s opinion, necessitates the “...construction of a flexible system of norms capable of adapting to the conditions of rapid technological progress” [19, p. 155].

From this perspective, a reasonable approach would consist in identifying the types of AI systems and developing and subsequently implementing restrictive measures. However, such measures should apply only to systems that pose a significant risk, while the criteria for risk assessment should also be developed jointly with specialists in the field of digitalization. Such an approach would help reduce the likelihood of harm or mitigate its consequences through risk assessment and the application of rules corresponding to potential risks [20].

Concluding the analysis of doctrinal sources, the authors emphasize that the legal regulation of all processes within the AI “life cycle” is still at an early stage. We have not identified any unified approach to differentiating AI technologies, nor any definition of AI that exists at either the national or international level.

The problem is further aggravated by the absence of a uniform approach to regulating the development, deployment, and application of AI technologies through legal norms and/or standards, because both norms and standards are highly fragmented, and their use is possible only in relation to certain specific aspects of particular spheres of social life.

Conclusion

We have conducted a study devoted to the legal regulation of processes related to the development, deployment, and application of AI technologies. At the time of preparing this article, neither the law of Kazakhstan nor international law contains any unified approach to the conceptual framework or to the development of ethical and legal standards.

In order to resolve these problems, it is necessary to develop and adopt a special law (possibly following the example of the EU), the provisions of which would be aimed at comprehensive regulation of all aspects of the creation, deployment, and application of AI technologies. In our view, the proposed legislative provisions should reflect a number of important aspects of AI regulation, including risk assessment, the determination of a list of spheres in which AI would be prohibited in an imperative manner, and mandatory state monitoring of all processes taking place within the AI “life cycle.”

The effectiveness of the proposed measures would be ensured through the application of a risk-based approach. Establishing a list of prohibited areas of AI use would make it possible to guarantee that technologies contrary to the values of a rule-of-law state are not used on the territory of Kazakhstan or in relation to its citizens, including those located outside the Republic of Kazakhstan.

It is also important that the improvement of national legislation include the development and formal recognition of the term “artificial intelligence,” from which the legal personality of AI should follow. Only once the term itself and the legal personality of AI have been determined will the legislator be able to develop criteria aimed at assessing the risks and ethical aspects associated with the development, deployment, and application of AI technologies.

We also emphasize that there is now a real need to establish a comprehensive set of requirements and rules for systems classified as high-risk. These should include conformity assessment, risk management, requirements for data processing and storage, record-keeping, and transparency. The implementation of these measures is intended to enhance public trust in artificial intelligence and to ensure the safe deployment of AI in all spheres of public life.

If Kazakhstan establishes a legal framework for regulating the development, implementation, and application of AI, it will be able to share this experience in standard-setting with other countries. This will enhance both the country’s image and investor confidence in Kazakhstan.

Therefore, in the opinion of the authors, the legal regulation of AI and of the processes comprising its “life cycle” must also be accompanied by full user awareness regarding interaction with such technologies, as well as by granting all interested parties the possibility of refusing to use AI. This is of particular importance in relation to high-risk AI systems, where the criterion of the “ambiguity of interaction” becomes especially significant. In addition, users must be guaranteed the right to choose interaction with a human rather than with an AI system in cases where there is a risk of violation of their rights.

Taking into account the foregoing analysis and the prevailing scholarly views, we conclude that within the life cycle of artificial intelligence (AI), particularly at the deployment stage, the state must establish a legally binding procedure for certification and, consequently, registration of AI systems, especially those used in electronic commerce. It is essential to emphasize the necessity of mandating human oversight and monitoring; the exclusive use of fully automated decision-making in high-risk domains should not be permitted.

Summarizing our analysis and having examined various approaches to the classification of AI across different spheres of social activity, we conclude that the differentiation of AI-driven systems as high-risk systems in electronic commerce should be based on a set of criteria. These include:

- ♦ the degree of impact on consumers’ access to goods and services, including automated refusals or restrictions;
- ♦ the extent of economic impact, such as personalized pricing;
- ♦ the scope of audience reach through the use of personal and behavioral data;
- ♦ and the degree of autonomy, as well as the potential for discriminatory or manipulative effects on user behavior.

Upon completion of monitoring, the presence of one or more of these factors should entail the application of enhanced regulatory requirements.

And it is these evaluation criteria that can serve as the basis for further work on the formation of ethical standards that will be applied in the development/implementation/application of AI technologies. Our assumption is based on the fact that the criteria we propose are already aimed at maintaining a high degree of legitimacy of AI technology, which is widely used by e-commerce entities.

With specific regard to electronic commerce involving the technologies under consideration, it appears essential to impose obligations on operators of digital trading platforms and marketplaces to ensure algorithmic transparency, particularly where such algorithms influence product ranking, consumer recommendations, and pricing mechanisms. Consumers must also be adequately informed of the use of AI and, as noted above, be provided with the option to opt out of personalization.

In the context of ensuring information security, it is equally important to establish restrictions on price discrimination, which is often based on socially sensitive characteristics. Accordingly, legislative development should also focus on introducing mandatory risk assessment procedures and audit requirements aimed at verifying pricing accuracy and preventing fraudulent practices.

A separate issue concerns the potential for unfair and unlawful creation of artificial scarcity through the use of AI technologies in electronic commerce. Therefore, it is necessary to prohibit such practices where they involve covert manipulation of consumer choice or misleading representations regarding the characteristics or availability of goods.

This is particularly important, as errors in the application of AI technologies may result in unjustified denial of services or the blocking of users.

To ensure the effective implementation of these requirements, the relevant legislation of the Republic of Kazakhstan should include provisions enabling the clear allocation of liability among the various actors involved in electronic commerce relationships, including AI developers, marketplace operators, and sellers.

Issues of liability for damage caused to consumers as a result of malfunctioning or improper operation of AI systems are of paramount importance in shaping the legal framework governing the development, deployment, and use of AI technologies in Kazakhstan. Accordingly, such liability must be clearly defined to ensure, inter alia, the effective compensation of harm.

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ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДА ЖАСАНДЫ ИНТЕЛЛЕКТ ТЕХНОЛОГИЯЛАРЫН ӘЗІРЛЕУДІ, ЕНГІЗУДІ ЖӘНЕ ПАЙДАЛАНУДЫ ҚҰҚЫҚТЫҚ РЕТТЕУДІҢ ПРОБЛЕМАЛЫҚ АСПЕКТІЛЕРІ

Андатпа

Ұсынылған мақала цифрландыру кезеңіндегі қоғам өмірінің ең өзекті салаларының біріне, атап айтқанда Қазақстанда жасанды интеллект технологияларын әзірлеуге/енгізуге/пайдалануға бағытталған әрекеттерді құқықтық реттеуге арналған. Бұл технологиялардың кең таралуы олардың әр түрлі интернет-ресурстар мен платформаларда дауыстық көмекшілерді, чатботтарды және пайдаланушыларды онлайн қолдау жүйелерін күнделікті қолдануымен расталады. Біздің зерттеуіміздің мақсаты Қазақстан Республикасында жасанды интеллект технологияларын әзірлеуді, енгізуді және пайдалануды құқықтық реттеу кезінде туындайтын проблемаларды талдау, сондай-ақ нормалары жасанды интеллект технологияларын әзірлеу мен енгізудің этикалық аспектісін регламенттейтін нормативтік-құқықтық актілерді әзірлеу бойынша ұсыныстар жасау болып табылады. Демек, қарастырылып отырған процестерді құқықтық реттеудің негізгі мәселелерін анықтауда мақаланың ғылыми және практикалық маңыздылығының болуын атап өтуге болады. Біз жүргізген жүйелік талдаудың негізгі әдістері құқықтық модельдеуге шоғырланды. Біз сондай-ақ пайдаланылған талдау әдісінің арқасында бірқатар сұрақтарды ашамыз, бірақ қолданылатын әдістемелік база мен материалдар туралы толығырақ мақалада тоқталамыз.

Тірек сөздер: жасанды интеллект, мәселелер, әзірлеу, енгізу, құқықтық реттеу, жетілдіру.

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ПРОБЛЕМНЫЕ АСПЕКТЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ РАЗРАБОТКИ, ВНЕДРЕНИЯ И ИСПОЛЬЗОВАНИЯ ТЕХНОЛОГИЙ ИСКУССТВЕННОГО ИНТЕЛЛЕКТА В РЕСПУБЛИКЕ КАЗАХСТАН

Аннотация

Представленная статья посвящена одной из наиболее актуальных сфер жизнедеятельности общества в период цифровизации, а именно правовой регламентации тех действий, которые направлены на разработку/внедрение/использование технологий искусственного интеллекта в Казахстане. Широкое распространение этих технологий подтверждается их повседневным использованием практически каждым из нас голосовых ассистентов, чат-ботов и систем онлайн-поддержки пользователей на различных интернет-ресурсах и платформах. Целью нашего исследования выступает анализ проблем, возникающих при правовом регулировании разработки, внедрения и использования технологий искусственного интеллекта в Республике Казахстан, а также выработка предложений по разработке нормативно-правовых актов, нормы которого будут регламентировать этический аспект разработки и внедрения технологий искусственного интеллекта. Следовательно, мы можем отметить наличие научной и практической значимости статьи в выявлении ключевых проблем правового регулирования рассматриваемых процессов. Основные методы проведенного нами системного анализа были сконцентрированы на правовом моделировании. Мы также раскроем ряд вопросов благодаря использованному методу анализа, но более подробно о применимой методологической базе и материалах мы остановимся далее, уже непосредственно в статье.

Ключевые слова: искусственный интеллект, проблемы, разработка, внедрение, правовое регулирование, совершенствование.

Article submission date: 13.04.2026