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О ВОЗМОЖНОСТИ ОСОЗНАНИЯ КОНЦЕПЦИЙ СОВРЕМЕННОГО ИСПАНСКОГО ПРАВА О ПРАВОСУБЪЕКТНОСТИ ИСКУССТВЕННОГО ИНТЕЛЛЕКТА: ВЗГЛЯД ИЗ РОССИИ

АННОТАЦИЯ. Общественная жизнь и технические инновации всегда опережают свою правовую регламентацию. Это призывает к соответственному пересмотру, обновлению и улучшению существующему в настоящее время законодательства. Сейчас в Испании ведутся дискуссии, рассматривающие возможность наделять роботов правосубъектностью. Увеличивающееся присутствие искусственного интеллекта в нашей повседневной жизни становится весьма объективным. Тем не менее, это вызывает у людей неудобства и беспокойность. Законодательно трудно определить уровень своего влияния, которое он может фактически оказать на проблемы правового регулирования использования искусственного интеллекта, включая вопросы, касающиеся предотвращения преступлений с вовлечением в них роботов. Целью данной статьи является изучение целого ряда концепций правосубъектности искусственного интеллекта в Испании. Рассматриваются некоторые возможности обеспечения правовой структуры для данных концепций в испанском законодательстве. Исследуется целый ряд возможных проблем, вызванных неясностью правового статуса роботов. Определяется возможность осознания искусственного интеллекта как субъекта права в испанском законодательстве. Основными методами данного исследования являлись систематические и сравнительные подходы, методы синтеза и анализа, что позволило проанализировать, суммировать и систематизировать концепции правосубъектности искусственного интеллекта в Испании. В результате изучения данных вопросов авторы пришли к выводу, что существует насущная необходимость установить некоторые ограничения правосубъектности роботов. Была обнаружена общественная потребность в формировании некой правовой структуры, позволяющей решить этические и правовые конфликты с участием искусственного интеллекта. Выявлена попытка общества гармонизировать законодательство в области роботизации на международном уровне. Доказана необходимость воспрепятствования использованию роботов в криминальных целях.

КЛЮЧЕВЫЕ СЛОВА. Правосубъектность, искусственный интеллект, робот, уголовная ответственность, особый субъект преступления, наказание, уровень преступности, участник уголовно-процессуальных правоотношений, расследование преступлений.

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ON POSSIBILITY OF PERCEPTION OF MODERN SPANISH LAW CONCEPTS OF LEGAL PERSONALITY FOR ARTIFICIAL INTELLIGENCE: A VIEW FROM RUSSIA

ABSTRACT. Social life and technical innovations are always ahead of their legal regulation. This calls for a consistent reconsideration, renewal and improvement of currently existing legislation. Scientific discussions are now being held in Spain looking into the possibility of granting legal personality to robots. The increasing presence of artificial intelligence in our everyday life is rather objective. Nevertheless, it causes people's inconvenience and anxiety. It is difficult for the legislator to define the level of his impact which he or she can actually have on the problems of legal regulation of the usage of using the artificial intelligence, including the issues concerning prevention of crimes that involve robots. The purpose of the following article is to study a number of concepts of legal personality of artificial intelligence in Spain. Some possibilities of proving a legal framework in the Spanish legislation for these concepts are considered. A number of probable problems caused by the vagueness of robots' legal status are examined. The opportunity of perception of artificial intelligence as a subject of law in Spanish legislation is determined. The leading methods of this research were systematic and comparative approaches, methods of synthesis and analysis, which allowed to analyze, summarize and systematize the concepts of legal personality of artificial intelligence in Spain. As a result of studying the following issues, the authors came to the conclusion that there exists a crucial need to establish some limits of legal personality of robots. The public need for formation of a certain legal framework allowing to resolve ethical and legal conflicts with participation of artificial intelligence was discovered. The endeavor of society to harmonize the legislation in the field of robotics at the international level was revealed. The necessity of hindering the usage of robots for criminal purposes was proved.

KEYWORDS. Legal personality, artificial intelligence, robot, criminal liability, special subject of crime, punishment, crime rate, party to criminal proceedings, investigation of crimes.

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1. INTRODUCTION

How can the need for legislative regulation of the issues regarding legal personality of artificial intelligence be justified? The development of technology goes through several phases. The first one can be described as getting access to the Internet and its active implementation in all spheres of life. The second one is autonomous interaction of robots with the objects of the outside world without any human control and the unification of both robots and humans with the aim to improve the standards of living. Nowadays, the development of technology is sure to be in the second phase of evolution. Thus, it raises a number of questions to which the legislator is to respond.

The basis of the following research consists of the works of Juan Carlos Lorente, who is responsible for the promotion of robotechnics on the global markets. He developed the definition of the concept of "robot" and identified the types of robots. According to him, a robot is a programmable electronic mechanism or a device which is capable of controlling objects and performing actions inherent only to humans¹. This approach to the understanding the nature of a robot device is still being developed and precised. In this regard, it is impossible to claim that any functions peculiar to robots are now permanent. The complexity of adopting a universal definition is also caused by the variety of types of robots. Juan Carlos Lorente, who is a business devel-

¹ ¿Puede un robot tener responsabilidad civil o penal? // Noticias Juridicas. 2016. URL: <http://noticias.juridicas.com/actualidad/noticias/11479-iquest;puede-un-robot-tener-responsabilidad-civil-o-penal/>.

opment manager at GMV company, focused on three main types of robots: industrial ones, robots for delivering professional services and robots for personal (household) purposes.

1.1. Multifunctionality of robots.

Artificial intelligence is often used for industrial, military and domestic purposes. Some robots are created that can take care of people, solve security problems, including energy security [1], improve physiological and intellectual characteristics of a human, predetermine human reactions.

1.2. Specificity of robots as technical systems.

The behavior of robots can be characterized as actions performed without intuition and deprived of conscience and ethics. The usage of robots can lead to intercultural tensions and social conflicts [2]. A robot is able to move independently, make its own decisions, interact with people and show emotional reactions. Affective bonds with robots may lead to human's inclination to trust the robot and to be loyal to him. The development of people's relations with robots drags social risks and can have a negative impact on human mental health. Decisions made by artificial intelligence will also be able to have an impact on people's social behavior. The robots will demand to be granted equal rights with humans. In this respect, sooner or later there will be a need to adopt laws on the preservation of the human race in order to regulate some ethical aspects and social conflicts that will arise between a robot and a human.

2. METHODOLOGICAL BASE

Nowadays in Spain, and generally in Europe, there exists no sufficient legal regulation of the matters related to the ability of artificial intelligence to have legal personality. Within the EU there is a project "Regulating emerging robotic technologies in Europe: robotics facing law and ethics"². Its creators strongly believe that it is almost impossible to accurately define the content of the term "robot", which is caused by the diversity of their types. Hence, one shall study robots considering every robotic system individually in particular. The above stated project proposes the establishment of some basic principles governing the legal relationships involving robots.

Moreover, within the European Union in the Global strategy for foreign and security policy 2016 it was emphasized that there is a crucial need to adopt international standards on biotechnology, artificial intelligence and robotics³. It is required in order to avoid risking and taking the economic advantage. The European Union intends to support the exchange of information so as to take the responsibility for the development and adoption of legal rules in the above-mentioned spheres. In February 2017 the European Parliament presented a list of fundamental measures which are to be taken before the member States of the European Union pass their laws in the field of robotechnics⁴:

- creation of the European Agency of robotics and artificial intelligence, which will provide the authorities of the EU Member States with the required information concerning technical, ethical and other aspects of legal regulation;
- development of a Code of Ethics in order to establish some basic rules of regulation of the institute of robots' legal responsibility;

² RoboLaw. URL: <http://www.robolaw.eu/deliverables.htm>.

³ Strategy on research and innovation // European Commission. URL: https://ec.europa.eu/info/research-and-innovation/strategy/goals-research-and-innovation-policy_en.

⁴ Civil Law Rules on Robotics // European Parliament. URL: http://www.europarl.europa.eu/doceo/document/A-8-2017-0005_EN.html

- defining of the content of robot safety principle, according to which robots are to respond to complex situations in a unified way and in an acceptable manner, from the point of view of human ethics;
- establishment of the principle of responsibility of robots for the damage caused by them;
- creation of legal framework of electronic legal personality;
- conducting specified research on the effectiveness of current systems of taxation and some other social systems;
- priority of the principles of security and privacy within the process of creating robots (inclusion of these principles in the Strategy of cybersecurity in the field of robotechnics);
- development of the European register of robotics with the aim to monitor the process of application of new recommendations, to implement a system of registering robots based on the classification criteria created especially for this purpose.

Apart from the legislation which exists now in the European Union, the standards of the International organization for standardization have also been developed. The most notable of them are ISO 10218-1:2011 “Robots and robotic devices. Safety requirements for industrial robots”⁵, ISO/TC 199 “Safety of machinery”⁶, ISO/TS 15066:2016 “Robots and robotic devices. Collaborative robots”. These standards are regulatory documents, which state requirements of the quality and industrial safety of robots, rules on the prevention and precaution of industrial accidents. These documents also touch upon the sphere of industry and compose the so-called “soft law”.

3. THEORY

According to the opinion of a number of Spanish researchers, a robot is not an ordinary technical device. This is a personality endowed with artificial intelligence and which is able to think over logically its performance of actions. Based on the reached conclusions it can act on the assumption of the circumstances in the external environment [3; 4].

The insoluble at the moment legal contradictions were also identified. It is recognized particularly that the creator of a robot acquires intellectual property rights to it. At the same time the rights of the robot in such situation are not actually recognized. Neither is recognized the institute of robot’s responsibility for its actions.

3.1. Proposed within the European Union alternatives to the concept of electronic legal personality

The European Union considers various ways out of the currently existing legal dead end by proposing the following legislative alternatives:

- establishment of an obligatory insurance regime, according to which the producers or owners of a robot would enter into risk insurance contracts for the risk of liability for the damage caused by their robots;
- development of a common fund created for autonomous robots and an individual fund organized for each category of robots;
- creation of a special register, which will include all the data identifying each robot.

Hence, the European Union is planning to establish a register of robots in order to track all their activity from their production to their destruction. It is absolutely necessary due to the fact that some robots can be placed in public areas without

⁵ URL: <https://www.iso.org/standard/62996.html>

⁶ URL: <https://www.iso.org/committee/54604/x/catalogue/>

any control of a human. It is important to make sure that all robots are able to be identified so that in case of an accident, which a robot participated in, it is essentially important to obtain full information about its producer, the nature of its functions, etc.

The data stated in the register will simplify the monitoring of robots' actions and movements. Moreover, such a register will let the information about the robots be easily exchanged at the international level. The type of a robot, the sphere of its activities, its functions and territorial scope of activity are to be noted in the Register. In addition, technical characteristics of a robot, information about mandatory insurance and the results of inspections carried out on robot shall be enlisted there too.

Thus, the register is planned to be a unique passport for each robot. After registration of artificial intelligence the permission to carry out particularly specialized activity of a robot will be granted to the owners or producers of the robot and the specification of the territorial scope of robot's activity will also be developed.

According to the European legislator, the identification data of each robot is also important because of the following purposes:

- guaranteeing control over robots' activity;
- prevention of their illegal use;
- protection of confidential data processed by robots;
- tracking and recording data concerning the activity of robots.

3.2. Technical safety issues of robotics

It is essential to address the following crucial aspect of the reviewed problem, which concerns technical safety of robots. There is a need to start regulations the below stated three principles:

- the principle of secure robot design;
- the principle of liability for defects caused to the robot during its production;
- the principle of robots' compliance with the market conditions (improvement of data security while using a robot, usage of homomorphic encryption, usage of security standards and certification of the reliability of digital devices).

There is also a crucial need for legislation, which should impose limits on the use of robots and define safety measures for production and operation of robots. People consistently realize that progress cannot disguise the disastrous risks that go along with it. The progress in robotics sphere is hardly inferior to the progress in the use of nuclear energy or in space research. Even if we do not fully admit the possibility of separating legislation concerning robotechnics is a separately existing branch of law, at least we admit the fact that it cannot be denied that robots can cause harm to a person or to person's property, and that such cases sooner or later will have to be resolved with the help of criminal law and criminal procedure on a more frequent basis.

4. RESULTS

The questions raised by social reality are numerous and they are essential for determining legal personality of artificial intelligence. Is it possible to compare artificial intelligence with a human being? Who is to be responsible for the damage caused by robots? Can robots commit crime? Is there any possibility to apply the institute of liability to robots? Is it necessary to take into consideration the peculiarities of artificial intelligence and the fact that robots lack human feelings when imposing punishment on a robot? Or will the mitigation of punishment associated with such circumstances lead to groundless discrimination against other subjects of criminal liability, for instance, humans? How to control robots effectively?

4.1. Characteristics of artificial intelligence

According to a commonly used approach to the reviewed issue, artificial intelligence is software which performs various operations usually inherent only to human intelligence, for example, logical thinking, training and some others [5]. Artificial intelligence can be completely autonomous or semi-autonomous. Nevertheless, the key aspect that separates a robot endowed with artificial intelligence from other technical devices is the ability of such a robot to acquire information from external environment (machine learning). The International Organization for Standardization defines a robot used in industry as a multifunctional mechanism for controlling objects of different degrees of autonomy, which can easily be re-programmed by a human. In this regard, artificial intelligence has the following characteristics:

- the ability to obtain autonomy through sensors and (or) through the exchange of data with the external environment and the analysis of the data (interrelatedness);
- the ability to learn through experience and interaction;
- the ability to adapt its behavior according to the requirements of the environment.

However, the development of permanent characteristics of artificial intelligence requires at the same time additional analysis of many other complex phenomena such as consciousness, free will, thinking, emotions and mind.

4.2. Issues of personal data protection arising during the development of artificial intelligence

Among such data stored on a robotized technical device there may be stored personal data of a person (images, voices, facial features, etc.). The usage of data about person's private life by artificial intelligence may violate the right to privacy. Ensuring the security of private information involves problems of confidentiality and other new challenges. It makes sense to reconsider certain aspects of personal data protection and adopt special rules related especially to artificial intelligence. The processing of personal data requires the implementation of anonymization and encryption measures [6]. Some questions arise here: how to ensure the right to oblivion (right to be forgotten) or the right to have the processing of information about one's private life cancelled (right to restrict processing)? If anonymization of data is not performed, it is highly likely that then the utilization of artificial intelligence will be limited only to the domestic sphere of life. The operation of robots in public places where it is absolutely impossible to acquire consent to process data will be impossible. At the same time, even if the above-mentioned problematic aspects are regulated, it does not exclude the possibility of hacking a robot with an illegal purpose of obtaining personal data [7, p. 76–87]. Furthermore, it is necessary to decide what preventive measures can be provided in order to prevent the usage of robots for illegal purposes.

5. DISCUSSIONS

The most common in Spanish scientific circles approaches to understanding the legal nature of robots are the following ones [8; 9].

5.1. Robot as an individual

Article 30 of Spanish Civil Code states that legal capacity is acquired by birth at the time of complete separation from mother's body. Artificial intelligence, in its turn, does not possess any biological characteristics, but it and acquires certain

skills so as to perform specific tasks. Nowadays it is not characterized by possessing intuition or the ability to recognize human feelings. The human's possession of natural feelings and emotions makes the types of criminal penalties applied to him rather effective while the effectiveness of similar measures of criminal repression on robots is rather doubtful. Back in 1990 robotics technician Hans Moravec noted that it is relatively easy to make technical devices show the same abilities as an adult. But it is considered difficult or almost impossible to give them the ability to perceive the reality and perform motor reactions as a one-year-old child can do [10, p. 15]. Moreover, it is necessary to take into account the essential principle of human superiority over robots, which is required to ensure security. Thus, while determining the limits of the legal personality of a robot we should base our actions and opinions on the fact that the prior purpose of creating robots was to improve the quality of human life.

5.2. Robot as a legal entity

Corporate entities are legal entities provided for in articles 35–39 of Spanish Civil code. They are a fictitious legal construct.

The similarity of artificial intelligence with a legal entity from the point of view of Spanish civil law is possible because of the below stated positions:

- its existence is independent from its owner;
- its ability to acquire rights and perform duties;
- its ability to perform civil transactions;
- its ability to cause damage;
- its ability to be a subject of criminal law;
- the possibility to apply sanctions to it;
- its ability to act as plaintiff and defendant;
- it is created by a human and can be possessed by a human;
- the legal construct of the ownership of a legal entity can be equally applied to a robot;
- like a legal entity a robot is able to acquire legal personality at the time of its official registration.

However, artificial intelligence from the perspective of possible legal personality has its own specific characteristics. Unlike legal entities, they involve the following aspects:

- legal entities do not replace people, but they embody humans' organization and contribute to the performance of their activities;
- a legal entity cannot function without a person; a person conducts activities on behalf of a legal entity, representing its interests, while a robot does not need any person to carry out its activities, as the robot can make logical decisions and act completely independently, on its own behalf and in its own interests;
- a legal entity needs human control, while a robot can do without a human;
- a robot interacts directly with the external environment, it can commit, for instance, theft or murder, which is not peculiar of an ordinary legal entity.

5.3. A robot as an animal

In Spanish scientific community it is believed that it is unacceptable to extend provisions on the protection of animals and other provisions governing legal status of animals to governing legal status of artificial intelligence as they do not have common genetic basis. Robots cannot currently experience feelings inherent to animals [9; 5]. Moreover, the functions of artificial intelligence differ from the functions of animals because the main aim of robots is to meet human needs.

5.4. A robot as a thing

Considering a robot as a technical device, more complex and more advanced than the ones which previously existed, could make sense, if robots didn't have a significant level of autonomy of will. From a legal point of view, things usually include movable or immovable objects. A thing is associated with something inanimate, deprived of life [10]. However, it is expected that robots will surpass human intelligence and will obtain sufficient autonomy to interact with the environment. Recognizing the possibility of robots' causing harm and their distinguishing between categories such as "good" and "evil" do not allow us to apply the same legal rules to them as to things [11]. In the EU report of year 2017 the improving of robots' cognitive abilities is expected to change their traditional role of tools in the hands of humans and to entail the need to apply special rules to them⁷.

5.5. The robot as the electronic personality

Some Spanish researchers consider giving legal personality, similar to that of individuals, to robots to be justified [8; 11]. According to them, the recognition of legal personality of artificial intelligence will allow robots to have income, to pay taxes and fees, to have certain assets, to act as plaintiffs and defendants in courts without people who developed them. It would make sense for robot creators to grant certain rights to robots, but some researchers are opposed to the establishment of a legal link between a robot and its manufacturer [8; 5]. The concept of electronic personality raises a lot of questions. Nowadays, there is no unified procedure for the treatment of robots, and there are no laws governing what actions in relation to robots are recognized as permissible, and which may violate their rights. It will be impossible to apply any sanctions to the owners to the keepers of robots in order to resolve such cases. One of the ways out of this situation is to fix robot's specific aims while producing it, and in case robot manufacturer decides to disable artificial intelligence or to perform other actions that change its purpose, to oblige the manufacturers to transmit all the information about their actions to the Register of robots, which should be created in order to ensure control of robotics. Moreover, it has been unclear until recently whether all robots should be given legal personality. It would be inexpedient to create new legal mechanisms that technical systems would not be able to use because of their special characteristics. According to these facts, it is necessary to extend legal personality only to the robots that possess sufficient autonomy and are able to act independently of humans.

6. SUMMARY

Previously Spanish law had always been inextricably bound with the human component. In modern conditions a number of researchers believe this approach to be unable to give consistent answers to new challenges. This determines the necessity to develop a new branch of law — robolaw [11; 8]. First of all, there is a need to recognize the existence of robots' intellectual abilities, in particular, the main ability to think [5]. According to the earlier common approach, it was recognized that between artificial intelligence and human intelligence there is an unsurpassable ontological gap. What is carried out by technical devices is nothing more than a simulation of human thinking processes. Thus, it was emphasized that however developed the ability of the technical system to think is, it cannot achieve all the unlimited possibilities of human thinking. Robots cannot learn to love and hate, nor can they acquire beliefs and ambitions and reject them [12, p. 56].

⁷ Civil Law Rules on Robotics // European Parliament. URL: http://www.europarl.europa.eu/doceo/document/A-8-2017-0005_EN.html

At the present moment, this position is recognized as outdated and not corresponding to reality. Some experts claim that robotic technical devices can be characterized by individuality and certain personal qualities, in particular, freedom of thought [9; 5].

Researching into the possibility of creating a new branch of law, first of all it is necessary to analyze the following question: can robots be subjects of law? Opponents of giving robots legal personality begin with the fact that regardless of the level of development of science and technology robots are still created by the will of man [4]. But their position is criticized by their opponents. Those who are in favor of granting robots legal personality point to the fact that there is still no legally stated concept of “man”. As a result, it is impossible to come to a certain conclusion about whether a being similar in its characteristics to a person will be a subject of law. The position of unreasonableness to believe that it is not possible to give a robot legal personality only because it is not a human being is proved. Emphasis is placed on the fact that in addition to recognizing legal personality of legal entities in some countries the possibility of bringing them to criminal responsibility has also been fixed in law for a long time, despite the fact that legal entities lack the ability to think and, especially, free will [13, p. 31–32; 14].

Thus, Sanchez de Campo, an expert in the field of innovation, emphasizes the idea that for a relatively long time no one has considered the fact that robots have autonomy and personal qualities and can commit crimes to be strange [5]. Hence, in his opinion, amendments to the legislation are required. They would make it possible to prosecute robots effectively, acting in accordance with their technical condition. If a robot causes damage, it is necessary to apply such penalties as the suspension of its activities or destruction.

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