Mirosław Wróblewski

Artificial intelligence in Poland – brief remarks in the context of fundamental rights protection

I. Regulatory framework

AI Politics

On 28th December 2020 the government approved "The politics for the AI development in Poland as of 2020" (called as *AI Politics*)[1]. This documents is based the assumptions for AI strategy for Poland prepared by experts invited by the Ministry of Digitisation in 2019 and publics consultations regarding it ("Artificial Intelligence Development Policy in Poland for 2019-2027").

The objective of *AI Politics* is to encourage the growth and innovation of the knowledge-based economy by supporting AI science and research developments in Poland and to prepare citizens for the digital transformation by improving their competences. More specific objectives include i.a. encouraging growth and innovation of AI companies through dedicated support in AI research, increasing national and international partnerships in AI, creating a data ecosystem with trustworthy and high-quality data and increased data exchange mechanisms, reinforcing the digital infrastructure, regulatory framework and test environments to foster the development of AI innovations.

AI Politics declares that along the process of achieving the economic objectives of *AI Politics* it is important to account for the protection of human dignity and to ensure conditions for fair competition, including consumers' protection. However one shall underline that the analysis of the AI impact on human rights, including the problems of discriminatory effects of AI, is limited. Nevertheless some areas important for the society and fundamental rights have been raised in *AI Politics* (see below).

Education

An important part of *AI Politics* are short and long-term activities regarding education on AI. To foster AI and digital competences of children in preschool, primary and secondary education, the government proposes to increase courses in IT, to create traineeship programs in AI in various disciplines, to develop programming and coding courses (such as R and Python) and to train students in data processing. Winter and summer schools in the field of AI are also considered for students to prepare them with basic knowledge in AI[2]. For example the IT/AI Winter and Summer Law School s organized by Kozminski University intend to discuss fundamental legal issues concerning the choice of the legal framework of relevance to IT contracts, software protection and database protection. The curriculum of the IT/AI Schools covers also the highly relevant issues of artificial intelligence and smart contracts. According to *AI Politics* the revision of children's and students' curricula should not only focus on acquiring technical skills but should equally target soft skills such as critical thinking, empathy and interpersonal skills.

---

[1] Resolution of the Council of Ministers No. 196 published in the Official Journal on 12th January 2021 (Monitor Polski of 2021 item 23).
[2] See: https://www.kozminski.edu.pl/pl/node/5107

In terms of higher education, the *AI Politics* foresees the development of Master programs in AI with modular courses to prepare students to particular key sectors such as healthcare[3] and logistics. An Academy of Digital Applications will be set up to develop courses in AI, machine learning and cybersecurity at university level and will target thousand students. This initiative will be complemented with the 'Algorithm and Programming' championships that challenges above-average students of higher education to solve complex algorithmic and programming problems. Finally, the Polish Academy of Sciences has established a Doctoral School on Information Technology and Biomedicine providing PhD scholarships in AI related fields[4]. Post-diploma studies on AI have been launched as well, however they are targeted rather at legal professionals[5].

Besides policy initiatives to support formal education in AI, the state is aiming to raise the awareness of AI to the citizens in general and to foster a culture of lifelong learning for the workforce in particular. Raising the public awareness will be encouraged among others through the development of Massive Open Online Courses (MOOCs) and the creation of an online platform providing an overview of the educational offerings in AI. Finally, the upgrade of AI competences will also be encouraged in the public administration.

Legislation

Apart from *AI Politics* (being a policy document, not hard law) there are residual pieces of legislation that concern AI. E.g. in the banking law[6] or insurance law[7]. Those regulations secure that if decisions concerning individuals are taken by automated decision making systems (including AI systems) the right to appeal to a human being is guaranteed. The have become effective to complement EU data protection reform (GDPR).

Jurisprudence

There is scarce jurisprudence regarding application of AI. However the Constitutional Court (CC) issued a judgment in case K 53/16 in a case concerning profiling the unemployed by local labour offices[8]. The case was initiated by the Commissioner for Human Rights who challenged constitutionality of legal provisions allowing labour offices to profile unemployed persons with automated decision making system as regards the scope of the state aid they could receive[9]. Profiling of the unemployed was introduced in 2014 along with the amendment to the Act on the Promotion of Employment and Labor Market Institutions[10], as well as the adoption of the ordinance on the profiling of assistance for the unemployed[11]. Irrespective of these two legal acts an additional

---

[3] See: M. Wróblewski, *Sztuczna inteligencja w medycynie* [Artificial intelligence in the medicine], „Menedżer Zdrowia" No. 3-4/2021, pp. 91-93.

[4] See: http://tib.ippt.pan.pl/

[5] See e.g.: https://www.kozminski.edu.pl/en/node/3834

[6] Article 105a para. 1a of the banking law of 29th August 1997 (Journal of Laws 2020 item 1896 as amended).

[7] Article 41 para. 1a 2) of the insurance law of 11 September 2015 (Journal of Laws 2020 item 895 as amended).

[8] See Constitutional Court judgment K 53/16 with full motivation part: https://ipo.trybunal.gov.pl/ipo/Sprawa?cid=1&dokument=16959&sprawa=18355

[9] See a thorough analysis by J. Niklas, K. Sztandar-Sztanderska, K. Szymielewicz, *Profiling the unemployed in Poland: Social and Political Implication of Algorithmic Decision Making*, Warsaw 2015, accessible online: https://panoptykon.org/sites/default/files/leadimage-biblioteka/panoptykon_profiling_report_final.pdf. The motion of the Commissioner was prepared by the Department of Constitutional, International and European Law.

[10] Act on the Promotion of Employment and Labor Market Institutions of 20 April 2014 (Journal of Laws of 2016 item 645 as amended).

[11] Ordonance of Minister of Labour and Social Policy on the profiling of assistance for the unemployed of 14 May 2014 (Journal of Laws item 631).

instrument exists which outlines the framework of profiling: Profiling of Labour Market Programs for the Unemployed A Handbook for Local Labor Offices. Profiling by virtue of the amended provisions became one of the new responsibilities imposed on local labour offices. However, the legislation vaguely determined what a profile is and how the procedure for its determination looks like. That lack of clarity has been raised by the Commissioner for Human Rights in its motion to the CC[12].

In the process of profiling labour offices were using a special IT tool introduced in the framework of the IT system, which has been functioning earlier (Syriusz Std). According to new legislation determination of a profile was effected through an analysis of the situation of the unemployed and his/her chances on the labour market. The basis of the profiling process is composed of 24 questions, as provided in a special questionnaire, although the information for the IT system come also from other sources. The machine system then calculated "employment potential" of a given unemployed. After the determination of the profile, an unemployed individual should receive information on which active labor market programs may be offered to him/her. As a result a different scope of labor market programs is assigned to each of the three profiles. handbook drafted by the ministry is more detailed in that scope: it determines characteristic features of each profile and examples of persons to whom a given category maybe assigned.

Legal regulations do not provide for the manner in which a specific active labor market program is determined. Apart from the enigmatically drawn scope of processed data, one cannot determine the manner of conducting the profiling process. Profiling of assistance for the unemployed undoubtedly qualifies as personal data processing, conditioning the possibility to obtain specific forms of support from a labor office. Black box problem.

Profiling of the unemployed might lead to infringement of several fundamental rights and freedoms. One of them was lack of transparency (black box problem). Individuals subjected to profiling should have a legal right to obtain detailed information about all aspects of this process that might affect their situation. However the system used by local labour office did not secured this right. The profiling of the unemployed might also negatively affect right to privacy and invoked risk of discrimination. An important legal problem, raised by the Commissioner for Human Rights, was lack of effective redress. On shall agree that, "[w]hen introducing a public policy which involves algorithmic decision-making, the state should provide additional, specific safeguards protecting individuals against the risks related to this mechanism, in particular a very high standard of transparency and a right to obtain "human intervention" at all stages of the decision-making process"[13]. The right to effective redress should therefore be guaranteed as regards the unemployed.

On 6th June 2018 the Constitutional Court adjudicated that: 1). Article 33(2b) of the Act of 20 April 2004 on Employment Promotion and Labour Market Institutions – insofar as it does not provide for a separate means of appeal against the determination of the type of assistance to be allocated to an unemployed person – is consistent with Article 45(1) and Article 78 of the Constitution of the Republic of Poland; 2). Article 34a(3c) of the Act referred to in point 1 is inconsistent with Article 51(1) and (5) in conjunction with Article 31(3) as well as with Article 92(1) of the Constitution. The CC was of an opinion that the profiling does not mean automatically that the decision is finally taken, there is still room for an office officials for their decision. What is more the right to labour office aid is not a constitutional right therefore the lack of redress is justified. However the CC agreed that the questioned provision do violate the constitutional rights to privacy and protection of personal data.

---

[12] Motion No. VII.501.277.2014.KM of 7 December 2016, accessible online: https://ipo.trybunal.gov.pl/ipo/Sprawa?cid=1&dokument=16959&sprawa=18355

[13] J. Niklas, K. Sztandar-Sztanderska, K. Szymielewicz, *Profiling…, op.cit.*, p. 38.

Firstly, the processing of data shall be regulated by parliamentary legislation, not an ordonance or ministerial handbook. Second, the CC demanded that such a parliamentary legislation specify all necessary details of the executive acts regarding the profiling process. One shall also note that the same day the CC decided to send a special signalization to the parliament (Ref. No. S 3/18) – the CC raised the problem of lack of effective data protection safeguard in the profiling mechanism regarding the unemployed. The Constitutional Court especially pointed at: 1.) lack of the legal provision demanding an employed consent for profiling, especially in a situation when unemployed refusal to provide information is sanctioned with a refusal of further state aid, 2.) lack of legislation regarding retention of personal data, 3.) lack of transparency regarding processing of personal data.

II. Institutional framework

NASK

A leading ministry regarding AI in Poland is Ministry od Digitization, who coordinated works on *AI Politics.* However it is NASK (National Research Institute), whose mission is to develop and implement solutions which facilitate the development of information and communication networks in Poland, who implements in practice vast part of *AI* strategic policies. The Artificial Intelligence & Data Analysis Centre (AIDA) is one of NASK's four management centres, focusing on coordinating, initiating and developing projects involving AI applications, taking into account the needs of the administration, cybersecurity, education and the media. AIDA activities include: 1.) developing AI together with the Centre for Research and Technology Transfer, Centre for Administrative and Educational Projects and the Centre for Cybersecurity and Infrastructure; 2.) providing the IT infrastructure necessary for big data analyses; 3.) formation of a professional team of experts on data science and interactive media technologies; 4.) conducting research on AI and promoting the importance of AI in society; 5) carrying our tasks assigned by the Ministry of Digitization as part of the *AI Politics*; 6) networking activity – building a cross-border network of connections with other institutions specializing in AI. AIDA also initiates and conducts different educational activities regarding AI.

AI legal research and studies

In 2019 a Virtual Chair of Ethics and Law was established a consortium established by technical and legal departments of most prominent universities in Poland, Institute of Legal Science of the Polish Academy of Sciences, NASK and Ministry of Digitization[14]. Main purposes of the Virtual Chair are: 1.) inspiring scientific research and studies in law and ethics as regards AI development, in the context of new technologies; 2.) monitoring of application and implementation of AI in Poland and worldwide; 3.) monitoring AI policies implementation worldwide, especially in the EU; 4.) preparing and inspiring public authorities to develop AI and new technologies, 5.) international cooperation as regards AI and new technologies.

Few technical universities opened specialized studies on AI (e.g. Poznań, Wrocław), but also math departments at university (e.g. Poznań). Post-diploma studies have been established as well, like SGH or Gdańsk Technical University. However Kozminski University runs post-diploma studies for for legal professionals[15], a part of curriculum concentrates on fundamental rights protection vis-à-vis artificial intelligence.

---

[14] See website: https://wkeip.pl/
[15] Business and AI, see webpage: https://www.kozminski.edu.pl/en/node/3834

As regards legal publications on AI by far the most comprehensive book on AI remains the "Law on Artificial Intelligence" edited by Professors Luigi Lai and Marek Świerczyński[16], although there are many more prominent scholars publishing on specialized aspects of legal aspect of new technologies, including AI, e.g. Dariusz Szostek[17], Kinga Flaga-Gieruszyńska and Jacek Gołaczyński[18]. Aspects concerning AI and data protection are discussed i.a. in a book edited by Dominik Lubasz[19].

NGOs and AI

There is a growing number of NGOs in Poland which take on research and analysis of AI in the context of fundamental rights. One of them, dealing with privacy, is renowned Panoptykon Foundation[20]. Comprehensive approach to AI is dealt with by Digital Poland Foundation[21] and newly established AI LAW TECH Foundation[22]. Foresight Poland[23] prepared an interesting report "Map of Polish AI", addressed to investors looking for partners in Poland developing business implementing AI solutions.

The author is an attorney at law, co-founder of the Virtual Chair of Law and Ethics established in Poland in 2019, the lecturer on post-diploma studies "AI and Business" at Kozminski University in Warsaw; expert of AI LAW TECH Foundation; director of the Constitutional, International and European Law Department in the Office of the Commissioner for Human Rights in Poland and member of the Human Rights Commission in the Bars Association of Attorneys at Law in Warsaw.

---

[16] *Law on Artificial Intelligence*, ed. by L. Lai, M. Świerczyński, C.H. Beck, Warsaw 2020.

[17] See i.a. D. Szostek, *Blockchain a prawo* [Blocchain and Law], C.H. Beck, Warsaw 2018.

[18] See i.a. K. Flaga-Gieruszyńska, J. Gołaczyński, *Prawo nowych technologii* [Law of New Technologies], Wolters Kluwer, Warsaw 2021.

[19] D. Lubasz, M. Namysłowska, [in:] *Ochrona danych osobowych* [Personal Data Protection], ed. D. Lubasz, Meritum Wolters Kluwer, pp. 1009-1030.

[20] See website: https://panoptykon.org/

[21] See website: https://www.digitalpoland.org/

[22] See website: http://ailawtech.org/

[23] See website: https://www.foresight.pl/