

Section Two.

Internet, New Technologies and the Justice System

The Legal Tech and the Legal Profession – the New Technology Enters the Lawyers’ Offices

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Abstract

The article refers to the potential of artificial intelligence technology in the lawyer’s profession, as well as the objections to its application. Firstly, the article presents the business model of law firms based on AI, focusing the way in which such law firms operate, taking into consideration employment and investment structure. Secondly, the challenges in the legal ethics are discussed. In this regard problems of confidentiality, conflict of interests as well as obligation of further study are tackled. Thirdly, the question about the necessity of a new education model is raised.

Keywords:

AI, artificial intelligence, legal profession, code of conduct

1. *New technology impacts the way in which the legal profession operates*

For a long time lawyers have felt exempted from a need to care about the development of the modern technology and of the IT.¹ Majority of lawyers seemed to disregard the impact the newest technologies have or might have on their profession.² The old-fashioned habits were well-established and the daily routine of legal professionals seemed to be immune to the

1 The different AI systems supporting legal services are presented by Ed Walters, ‘The Model Rules of Autonomous Conduct: Ethical Responsibilities of Lawyers and Artificial Intelligence’ (2019) 35.4 Georgia State University Law Review 1077.

2 It is not a solely Polish phenomenon: for the USA see: Drew Shimshaw, ‘Ethical Issues in Robo-Lawyering: The Need for Guidance on Developing and Using Artificial Intelligence in the Practice of Law’ (2018) Hastings Law Journal 185 and 195; Mark McKamey, ‘Legal Technology. Artificial Intelligence and the Future of Law Practice’ (2017) 22.45 Appeal Law Journal 6.

digital revolution.³ This conservative approach was not only a result of the general reluctance towards the spread of the modern technology but also an attempt to defend a traditional business model of this profession – the new technology requires its investment scheme to be reshaped. The adjustment to the modern technology would mean that also the manner in which lawyers tend to think needs to evolve.⁴ A revised approach to the lawyers' duties towards their clients is required.⁵ The AI-supported process of the decision-making imposes different requirements as to the education of lawyers. The AI-supported legal profession will be a very different one. As a rule, these changes cannot be observed in the lawyers' community yet and there is little awareness among legal practitioners of how dramatic they are likely to be. We, as lawyers, are not prepared to face upcoming challenges. The process of transition will be painful because the march of the AI would require the full re-organization of the law firm, including changing the well-established way of earning money. The expansion of the AI would require redesigning legal framework governing the legal profession. It is also necessary to think about modernizing legal education, ethics, and business model. The purpose of this paper is to examine the content of the existing Polish codes of conducts of the two Polish legal professions: the advocates' and the so-called legal advisers (with practically this same status as advocates) from the perspective of the growing AI usage in the daily work of lawyers. Even if in Poland this revolution is only beginning, it will bring about enormous changes. Probably we will face immense difficulties when unprepared professionals will have to pursue their profession in a completely new environment.

Another effect of the development of the AI designed for the legal services may be the increase of the availability of the "self-help" devices.⁶ This matter will be not further examined in this paper. However, in countries like Poland, with its common distrust to the lawyers and general unwillingness to ask for legal services, such self-help (namely, use of AI-based devices) may be problematic. The tendency to avoid asking for the human-driven legal services will grow as people will be looking for the alternative sources of „legal advice“.

3 On the discussion concerning the conservative reluctance towards the technological innovation in the law offices see: Mark McKamey, 'Legal Technology' (n 2) 16. Such kind of reluctance seems to be an international and intercultural phenomenon.

4 *ibid* 11.

5 Shimshaw (n 2) 178.

6 *ibid* 181.

Nevertheless, the impact of the AI-supported legal services depends primarily on abilities of the AI itself. The scale of the revolution/potential revolution depends very much on the sophistication of the AI (weak or – still being rather *in statu nascendi* – strong AI).⁷

1.1. The AI-supported decision-making

In this introductory part of my article, I would like to comment shortly on the way in which AI may impact the manner of exercising legal professions. It is necessary to make the ethical standard understandable.

Devices that are designed to support the work of lawyers become more sophisticated and can substitute the work of many paralegals and even lawyers within a law firm. These devices facilitate not only the administration of files, but they are able to perform a lot of tasks, also these requiring an intellectual involvement.⁸ Advanced systems can e.g. produce legal writings. The AI may also suggest the case theory by shaping the strategy and suggesting the best possible solution for the client.⁹ Eventually, the role of lawyers may be reduced to controlling and supervising.¹⁰ The essence of the AI is an ability to modify its own algorithms in line with the obtained input data. The systems supporting legal decision-making process of lawyers are likely to have different level of autonomy and require varied intensity of the participation of lawyers to achieve the outcome.¹¹ Finally, the AI-based software may force senior partners of the law firm to reorganize completely the structure of the law firm. In the law firm of the future, numerous junior partners, associates and paralegals might

7 On this difference *ibid* 188-189.

8 Gabriela Bar, 'Sztuczna inteligencja w kancelarii prawnej przyszłości' in Dariusz Szostek (ed), *Legal Tech. Czyli jak bezpiecznie korzystać z narzędzi informatycznych w organizacji, w tym w kancelarii oraz dziale prawnym* (C. H. Beck 2021) 609.

9 There is still a question to what extend the AI will be able to function within the environment of the law. McKamey (n 2) 12-13 indicates the technical constraints of the AI which may impede it from finding reasonable answers for the legal questions, but the Author himself does not find this pessimistic approach as to the abilities of the AI in legal matters convincing.

10 Richard Susskind and Daniel Susskind, *The Future of the Professions. How Technology Will Transform the Work of Human Experts* (Oxford University Press 2015) 187.

11 For an overview see: Daniel Kluttz and Dreidre Mulligan, 'Automated Decision Support Technologies and the Legal Profession' (2019) 34 *Berkeley Technology Law Journal*, 853.

no longer be necessary.¹² Instead, a person supervising the accuracy of the system's operation¹³ and the senior partner who would assess the results generated by the AI-algorithms would be needed.¹⁴

The usage of the AI-based support systems keeps growing and, eventually, it will profoundly reshape the way in which the legal profession operates. This process of changes challenges the organization of the law firms, traditional investment models, the duties of the lawyers, including the ethical duties, and may even render the traditional legal education model obsolete. In this paper I would like to discuss briefly this process in order to provide an overview of how it would impact the picture of the legal profession in Poland in a very close future. Lawyers in Poland tend to be unaware of how deeply the implementation of the AI changes law firms. The first stage of the encounter with the AI applied in the law offices could be shocking for lawyers who would have to practise law under entirely new conditions.

Various systems based on the AI and used in the law offices are able to substitute work of many lawyers.¹⁵ These systems prepare drafts of the legal writings, are able to monitor and apply the case law and the doctrine, to support the decision-making process and to make prediction concerning the outcome of the case, which is useful when developing a case theory. Systems based on the AI perform also a lot of other tasks, supporting the organization of the lawyering process in the law firm.

12 See however: Shimshaw (n 2) 190.

13 Phillip Leith and Amanda Hoey, *The Computerised Lawyer* (Springer 1998) 317; Iga Kurowska and Kamil Szyt, 'Legal Tech w kancelariach prawnych oraz pracy prawników in-house' in Dariusz Szostek (ed), *Legal Tech. Czyli jak bezpiecznie korzystać z narzędzi informatycznych w organizacji, w tym w kancelarii oraz dziale prawnym* (C. H. Beck 2021) 167.

14 John Armour and Horst Eidenmueller, 'Self-Driving Corporations' (2019) 475 European Corporate Governance Institute - Law Working Paper 6 and 11. The authors describe also the AI of the future with the ability of so-called unsupervised learning, p. 12. At this moment it is premature to examine such systems. It is unlikely that the final assessment of the supervising lawyer would not be required in the foreseeable future.

15 McKamey (n 2) 7. The author refers to the Moravec's paradox according to which in highly specialized professions, relying on the high-intelligence requirement, it will be much easier to replace humans than in less intense professions. The legal profession could be then a victim of this development.

1.2. New business model

The impact of the AI on the traditional business models of the law firms will be far-reaching.¹⁶ The regular scheme of earning money by medium or large law firms was the billing of hours,¹⁷ which have been generated mostly by the junior partners and associates.¹⁸ The business model of the law firm is based on the relatively small investment at the beginning of the commercial activity and then requiring a relatively high level of investment through the existence of the law firm, resulting e.g., from rising salaries of highly qualified members of the law firm. The expansion of the AI in the legal work changes this model dramatically: to start a law firm equipped with highly efficient AI-systems a substantive investment¹⁹ would be required at the beginning (it could be a simplification depending on various payment schemes) and then the costs of the further functioning of the law firm would be reduced, due to the savings on the staff.²⁰ This reality would have an impact on the career of the young lawyers. In the future it will be extremely difficult to start a legal career. There will be no need to hire young lawyers due to the fact that exactly their work²¹ will

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- 16 (n 2) 179. The author expects the lowering of the legal services costs and improvement of the conditions of the access to the legal services (USA). It is probably a correct assumption from the long term perspective, but the necessity of the large investment at the beginning of the operation might reduce this effect.
 - 17 Leah Wortham, 'The Future of the Legal Profession and Legal Services Delivery' in Leah Wortham and others (eds), *Learning from Practice. A Text for Experiential Legal Education* (West Academic Publishing 2016) 763; John Armour, Richard Parnham and Mari Sako, 'Augmented Lawyering' (2020) 558 European Corporate Governance Institute - Law Working Paper 24.
 - 18 Richard Susskind, *Tomorrow's Lawyers. An Introduction to Your Future* (Oxford University Press 2017) 60.
 - 19 Iga Kurowska, Kamil Szpyt, 'Legal Tech w kancelariach prawnych' (n 13) 162; Mark McKamey, 'Legal Technology' (n 2) 14-15. The author argues against with the view (Chester) according to which the lawyers' environment will be reluctant to change the traditional business approach in this respect. McKamey claims that such reluctance could appear in reality, but only in the short term. Finally, the advantages resulting from the AI would also prevail in this conservative environment.
 - 20 Tomasz Zalewski, Podstawowe zasady skutecznego wykorzystania narzędzi Legal Tech in Dariusz Szostek (ed), *Legal Tech. Czyli jak bezpiecznie korzystać z narzędzi informatycznych w organizacji, w tym w kancelarii oraz dziale prawnym* (C. H. Beck 2021) 216.
 - 21 Susskind and Susskind (n 10) 69. It is, however, disputed, how strong this impact on the legal profession will be. Some authors predict much lower reduction of the need for the staff – (n 2) 190. The author predicts that the outcome will

be replaced by the AI-based supporting systems.²² A systematic rethinking of the design the future career models would be crucial in order not to lose the development opportunities for the younger generations of lawyers.²³

2. *The ethical challenge*

The broad application of the AI in the law offices will require an adaptation of the professional code of conducts,²⁴ too. It would involve a revision of the interpretation of the codes' rules as well. The usage of the AI will mean that a different kind of skills would be necessary. A lawyer benefiting from the AI-support systems must understand well the way in which these systems function, and the way how the algorithms are designed to produce results.²⁵ Such lawyer should also know the limits of the system used. He or she should not blindly rely on the results which are produced by AI tool, and be able to verify whether the system used secures the required confidentiality of the services provided to the client.

The existing professional codes of conducts in Poland do not deal with the challenges of the AI-systems directly, even though the usage of the electronic systems has already been observed.²⁶ However, it should be taken into account that the existing codes of conduct apply also to the

be rather that lawyers would be able to conquer new fields of the activity. It is possible, but it does exclude the observation that in the core business this need will be reduced. It may encourage the further expansion of the business, but in case of the quite conservative legal businesses, at least from the perspective of such countries like Poland, it is likely that legal services would not expand to the new territories but the opportunity will be used to reduce the staff related expenses. Armour, Parnham and Sako (n 18), 3-4 stress that the AI would not replace lawyers in the law firm.

22 Susskind (n 19), 87; Armour, Parnham and Sako (n 18) 22.

23 On different career prognoses for young generation lawyers – Tony King, 'The Future of Legal Education from the Profession's Viewpoint: A Brave New World?' in Hilary Sommerlad and others (eds), *The Futures of Legal Education and the Legal Profession* (Hart 2015) 192.

24 Some attempts may be expected due to interest of e.g. Warsaw Attorneys-at Law's Bar – see: <https://www.oirp.warszawa.pl/izba-warszawska-powoluje-komisje-ds-legaitech/>.

25 Shimshaw (n 2) 196.

26 § 19.6 of the advocates' code of conduct (Zbiór Zasad Etyki Adwokackiej i Godności Zawodu (Kodeks Etyki Adwokackiej) from 27 February 2018) and Article 23 sentence 3 of the attorneys-at-law code of conduct (Kodeks Etyki Radcy Prawnego from 22 November 2014) refer to the safety of electronic documents.

AI-related concerns. It is necessary to interpret them having in mind the fundamental changes of the reality of the lawyering under the influence of the AI.²⁷

2.1. Confidentiality

Both codes of conducts require keeping the confidentiality.²⁸ It is understood as a basis for the client's reliance towards the lawyers. A duty to keep all information regarding the client and his or her cases confidential²⁹ encompasses also the documents produced in the frame of providing the service to the client. The duty of confidentiality may be difficult to fulfil if the AI-systems are used.³⁰ A lawyer using the AI-supported systems must be sure that the use of a particular software does not endanger the data of their clients.³¹ It depends mainly on the algorithms used, especially the details of how the self-learning mechanism really works and whether other users of this AI-based software get access to the data processed for the previous user.³² It means that the lawyer must understand well the setting of the system within the Internet, in particular be aware of how the processing of data looks like.³³ He must know how the system works

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- 27 Comment 8 to the Rule 1.1 to the American Bar Association of Model Rules of Professional Conduct on the lawyer's duty to provide competent representation to a client makes it clear that to maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.
- 28 § 19.1 of the advocates' code of conduct and Article 15.1 of the attorneys-at-law code of conduct.
- 29 Although e.g. data about criminal convictions and offences (that are frequently processed by lawyers) are not within the utmost sensitive data under Article 9 GDPR, due to their particular meaning they are subject to special protection according to Article 10 GDPR – Mariusz Krzysztofek, 'Commentary to Article 10' in *Ochrona danych osobowych w Unii Europejskiej po reformie. Komentarz do rozporządzenia Parlamentu Europejskiego i Rady (UE) 2016/679* (Legalis 2016) para 7.
- 30 Leith and Hoey (n 14) 324; Shimshaw (n 2) 198.
- 31 About the technology challenges in regards to processing clients' data – Jerzy Nauman, Commentary to § 19 in *Zbiór Zasad Etyki Adwokackiej i Godności Zawodu* (Legalis 2020) para 63.
- 32 About the duty of care in the context of processing data with the use of technology on the example of personal data – Dariusz Szostek, *Przechowywanie danych kancelarii w chmurze* in Dariusz Szostek (ed), *Bezpieczeństwo danych i IT w kancelarii prawnej. Czyli jak bezpiecznie przechowywać dane w kancelarii prawnej* (C.H. Beck 2018) 300.
- 33 Walters (n 1) 1080-1082.

and whether the self-learning process of the AI does not endanger the observance of the confidentiality principle, what may happen if the external resources are also used for the self-learning process of the artificial intelligence.³⁴ It means that a lawyer must not use the system without being able to understand its functioning or without knowing what kind of data are used further. The principle behind the duty of confidentiality must apply regardless of the technology used – the AI-system must not utilize the data which are covered by the duty of confidentiality.

2.2. *Conflict of interests*

The above-mentioned remarks concern also the matter of the conflict of interests. An online AI system may use the resources gathered on the Internet. It means that the system may use also the data generated in one law firm for the purposes of the other law firm. It may create a situation of the conflict of interests, for instance if the data transmitted from the one law firm to another, even anonymised, are used to generate a better outcome for a possible opponent law firm, even in a different case. Of course, such data are converted into the Big Data and there is no possibility to identify the data of individual clients. Probably the AI-systems with self-learning ability based on the collected data from various law firms shall be regulated by the codes of conduct. The rule should probably allow for the usage of the AI-data, if there is no possibility to identify individual clients in any way and the self-learning process is based on the high amount of the data, coming from different sources, so that it is technically proven that the self-learning process is based on the material which is so differentiated that there is no technical possibility that the information harvested by the AI-based system from one case may support the opposing party to this case.

2.3. *Acting based on the professional skills and knowledge*

Acting for the client and on behalf of the client requires knowledge and skills which are adequate to the provided service. This rule, though written

34 Shimshaw (n 2) 200; On the use of the internal and external data (but not in the specific context of the law firm see: John Armour, Horst Eidenmueller, 'Self-Driving Corporations' (n 14) 17.

in different words, is found in both Polish code of conducts.³⁵ The usage of the AI-based systems would require lawyers to acquire abilities which differ from the abilities which traditionally have been expected from the these professionals.³⁶ A lawyer advising clients must understand well the logic behind the functioning of the system and must be aware of its limitations. The case theory designed with the support of the system must be verified by the lawyer. He or she must have the soft abilities³⁷ helping the client to make the final decision. It must be understood that the AI-based system cannot replace all factors which are considered by the judges in the courtroom or must be taken into consideration when looking for the real improvement of the client's situation.³⁸ It must be understood that the machine, even if very advanced and equipped with the perfectly developed self-learning systems, after analysing thousands of cases and doctrinal views still does not replace a human understanding and evaluation.³⁹

3. Changing the legal education of lawyers in the AI-age

The above-mentioned abilities of lawyers require completely new approach to the process of legal education.⁴⁰ During the legal education in Poland there are very few opportunities to learn about the highly innovative systems supporting the lawyering work in the law firm. The lack of understanding how this technology works yields into being unprepared⁴¹ to face the emerging challenges for the profession. Also, the professional

35 § 13 of the advocates' code of conduct and Article 12.1 of the attorneys-at-law code of conduct.

36 Armour Parnham and Sako (n 18) 5.

37 About the increased meaning of soft skills in lawyer's profession –Susskind (n 19) 75; Leah Wortham, 'The Future of the Legal Profession' (n 18) 789.

38 Shimshaw (n 2) 204. Author stresses the importance of the "soft" moral, social and political factors which even an advanced system cannot consider and sufficiently take into account.

39 Walters (n 1) 1079.

40 Wiesław Staśkiewicz and Tomasz Stawecki, 'Legal Databases and Their Functions in the Process of Interpreting and Applying the Law' (2012) 1 *Archiwum Filozofii Prawa i Filozofii Społecznej* 103, mentions the challenges to legal education due to distortion of theories of interpretation of law and decreased knowledge about law outside provisions of law.

41 On meaning of practical skills in legal education during studies Fryderyk Zoll, 'Przyszłość kształcenia prawników w Polsce' (2010) 6 *Państwo i Prawo* 25.

association of lawyers⁴² must think how to organize the paths of the legal career, due to the diminished need for the young lawyers in the law firm using the AI-based systems. It is necessary to create a vision for the legal career of lawyers in the Legal Tech dominated world.

4. Conclusions

This short overview shows only a small number of issues which will emerge when the technological progress finally reaches the law firms. The vast application of the AI will deeply change the profession, requiring different set of skills from lawyers on one hand, and on the other – reshaping the organisation model of the law firm. The law schools and the professional association of lawyers should rise to the challenge and adjust the profession to new AI-fuelled environment. They must also adjust the rules of conducts, so that not only the legal knowledge is required but also clear understanding of the technology supporting the lawyers. The future of the legal profession is beginning, even in Poland.

42 The importance of legal education both during university studies and after them, in formula of lifelong learning is underlined in Polish doctrine by e.g. Arkadiusz Radwan, 'Edukacja prawnicza wobec wyzwań XXI wieku' in Ryszard Czarny and others (eds), *Państwo i prawo wobec wyzwań u progu trzeciej dekady XXI wieku. Księga jubileuszowa z okazji 70. urodzin Profesora Jerzego Jaskierni* (Wydawnictwo Adam Marszałek 2020) 206.