Speech of Victor V. Momotov,
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Session 1: "Smart Courts" and the Future of the Judiciary

In an age of information and digital technology, a state that strives to develop its economic potential, protect its technological sovereignty should pay special attention to the development of new technologies for the purposes of improving various spheres of relations within the society.

In Russia, judicial power as one of the vital components of the state mechanism cannot remain uninvolved in the processes of digitization and looks at technological development as one of the priorities of judicial reforms.

The term “e-justice” has already well established itself in our legal order, promoting the public and open nature of proceedings, as well as accessibility of justice.

For example, using e-justice services, any Russian citizen or organisation today is able to send procedural addresses and documents to the courts in electronic form, receive responses to those addresses or a court act adopted in the case and signed by a judge's digital signature, or obtain information about the progress of a case. We are ensuring 24/7 accessibility and functioning of more than 10,000 websites of federal courts, bodies of the judiciary, bodies of the Judicial Department, sub-districts of justices of the peace and state bodies of constituent entities of the Russian Federation that support the work of justices of the peace.

All these electronic tools have gained popularity and enjoy demand on the side of the participants of proceedings. The tools serve to broaden their guarantees stipulated in law, and the trial itself is becoming more transparent, which positively influences the legal consciousness of the society and raises public trust to the courts.

As we see, the demand for electronic resources continues to grow year after year, as it becomes easier, faster and less costly for the trial participants to perform the necessary procedural actions this way. During the 6 years of work of the e-justice module within "Justice" State Automated System (SAS), over 2 million citizens

created personal accounts there in order to use the service and submitted over 10 million addresses to federal courts of general jurisdiction. Within the same period, federal commercial courts received over 3 million electronic addresses through a similar service within "My Arbiter" information system. Over the last three years, the number of hits on SAS "Justice" portal and on the websites of federal courts of general jurisdiction has increased 16 times, and the number of unique users (based on IP addresses) on the portal has increased from 16 mln. to 25 mln.

The positive experience of using modern technologies presupposes their further development and use in order to ensure effective justice, therefore the technological modernization of the court system continues: systems allowing the courts to exchange documents electronically are developing along with data storage systems, cloud technologies, and e-case files, which make it possible for the participants of proceedings to study the case materials remotely.

We should discern between the so-called "weak AI", used for solving certain narrow tasks and "strong AI", which is capable of self-learning and independent decision-making.

Currently, "Justice Online" superservice is being developed with the use of digital and AI technologies. Its launch is planned for 2024.

The superservice will feature assistive elements, which will help the users determine the competent court, calculate and pay the state fee, and will also contain standardized forms and types of claims, which will make it easier and faster for those in need of judicial protection to apply to court. Moreover, the superservice will be integrated with other state information systems, which will promote the creation of a single digital space, make it easier to gather and verify the necessary data and materials.

The main task for the weak AI used within the "Justice Online" superservice will be the automated drafting of court acts based on text analysis of the procedural address and case materials. We are also studying its potential in order to transform audio recordings of court sessions into written minutes, as well as to create an intellectual search system that will be able to analyze and systematize judicial practice.

The use of AI in the court's organizational activities, in particular in the document flow and court archives is possible without significant restrictions, but we need to ensure the safety of all personal data, materials and information received and stored in the e-systems.

The use of weak AI in such activities will allow to decrease the volume of routine tasks performed by the judges and court staff. Already now, using this technology it is possible to automate the input and processing of information in document flow tasks, the search for inconsistencies with procedural legislation in procedural documents received by the court, checking the identity and powers of persons participating in the trial.

In our opinion, weak AI can also be used for consideration of civil and administrative cases that do not contain an actual dispute, i.e. in situations where the adoption of a decision does not require to analyze the legal relations of the parties and is more of technical nature, first of all in court order proceedings.

Moreover, the computers technologies and capabilities available today should be directed at peaceful resolution of disputes at the stage of pre-trial settlement. Applying to court is the last resort measure in protecting one's rights. Integration of new technologies into the process of pre-trial dispute settlement could include the so-called educational functions: potential plaintiffs should be aware of their rights and the prospects of defending them in court. It seems that AI is able to determine the most probable result of a future dispute, thus discouraging certain parties from initiating disputes they are bound to lose.

In order to make justice more efficient, new technologies could also change its scale and form. We believe that in the future it may be feasible to consider the possibility of moving simple repetitive disputes with “cliché” plots into the digital realm, thus saving the judge's time and the physical space of the courtroom for resolving particularly important and complicated cases, which require direct eye-to-eye interaction of the trial participants, so that the judge can evaluate the facts of the case and the behaviour of the parties as objectively as possible.

Today it is already evident that the role of the machine and of modern technologies is only going to grow. This growing trend will increase the risk of adoption of decisions that do not meet the criteria of fairness and fail to take into account all the facts that are significant for the correct consideration of the case. Therefore, in parallel to the introduction of new technologies, we should be taking steps aimed at mitigating that risk.

To a larger extent, this pertains to the direct use of strong AI in the administration of justice, whereby the machine is not only able to gather, process and analyze data, but can also engage in self-learning and make independent decisions.

One of the serious risks of using AI technology is the possible discrimination based on various traits, which will result in absence of objectiveness, fairness and

equality towards particular groups, social classes and individual citizens. The law stipulates equality of all before the law, but in fact the citizens never find themselves on equal grounds. If we strive towards objectiveness and fairness, we should uncover this actual inequality and take it into account, which is only possible during a trial, where the judge studies and evaluates the facts of the case in an objective manner.

This risk is also related to the ability of classifying or recognising new data based on previously discovered trends pertaining to particular persons or groups of persons, which is characteristic of machine learning and neural network methods.

Statistical methods of processing big data lead the AI to finding a particular set of traits and then giving them more weight already during consideration of a particular case, which may result in violation of the presumption of innocence, whereby from the outset the system will be inclined to find the suspect guilty. For example, if a correlation is found between age and gender traits, lack of a constant place of residence or work on the one side and a particular type of crime on the other, this will lead to a subjective interpretation of analyzed facts and to errors in making the final decision.

A conclusion based solely on statistics and the use of formal and dogmatic approach to interpretation of law cannot be used to prove a person's guilt or innocence. That's why during the actual development and in the process of using AI we should be double-checking whether the algorithms applied give superfluous weight to such factors as sex, gender, ethnicity, socioeconomic status, political convictions, social ties, etc. in their decision-making.

It proceeds from the above that the nature and principles of AI's work force us to pay a lot of attention to its quality and safety. The quality and objectiveness of data, their sources, the ethics of use of this or that type of personal data for analysis should be thoroughly checked. The same applies to the correctness of mathematical models forming the possible statistical correlations. We should also remember that any software, being the creation of human beings, is influenced by the subjective perceptions and preferences of its authors. This fact necessarily implies certain risks.

The fact that AI does not have legal personality or legal capacity puts all the liability for the results of its work and for the final decision on the person vested with decision-making powers. In this regard, we should ensure the possibility of the so-called external audit. This implies obligatory accessibility and comprehensibility of the initial big data and also the use of only those neural

networks, the logic of whose analysis and decision-making can be traced. In other words, both the judge and the participants of proceedings should be able to learn, how and based on what facts the AI came to this or that conclusion.

An obligatory condition for the application of results acquired with the use of neural networks should be the user control feature, whereby the right to make the final decision rests with the judge. Of course, only the judge has the ability to evaluate the facts of the case based on inner conviction, which is a more complicated concept than software algorithms. Moreover, AI is not able to apply the analogy of statute or analogy of law, evaluative or value-based criteria stipulated in legislation, such as the application of principles of fairness and humanism during sentencing, compliance with the requirements of reasonability and good faith in civil law.

Administration of justice is a living process, and the judge is its direct participant, endowed with such qualities as competence, fairness, respect for the participants of proceedings, decency and dignity, professional secrecy, diligence, integrity, ethics and empathy. A judge can look into the ulterior motives of the parties, discover the real reasons behind a particular event and take into account all the individual features necessary to adopt a legal, objective and humane decision. The processes and actions produced the human psyche are more complicated than any mathematical formula, which is why this is an impossible task for AI.

We do not dispute that in the future the so-called predictive justice may take shape, the aim of which is to discover, after analyzing a large volume of court acts, the factors on which a decision to be adopted by the court depends. But such a technology can only be considered for the role of a judge's assistant, not a judge's replacement.

At the same time, we should take into account the particular risks related to the use of recommendations and decisions suggested by AI. It's hard to exclude that judges and participants of proceedings will start to rely on the previously made forecasts regarding the results of proceedings, based solely on objective statistical calculations. Then a judge who disagrees with a decision suggested by AI will be bound not only to provide substantiation for her own conclusions, but also to explain her disagreement with AI. This state of affairs, as well as the high workload on judges, can create conditions in which a judge will prefer to take the path of least resistance and to always side with AI. In light of the above, we need to provide for conditions that will not allow such automatic enforcement of the AI's decisions with a judge's signature.

In conclusion, I'd like to point out that taking into account the modern level of development of AI technology, including the breakthrough in neural network studies, lawyers around the world are quite actively discussing the topic of drawing AI to administration of justice, going as far as possible replacement of human judges by AI. The idea of full automating the judicial process and replacing the judges by AI is generally thought of as impossible, and the risks that AI application creates for justice make this prospect even more uncertain.

Even in the distant future, the exercise of judicial power over people by courts consisting exclusively of AI entities seems surreal. As of today, the human brain has not been studied to the fullest extent, which means that the issue of creation of AI whose cognitive abilities will match those of a human brain will most probably remain unresolved for yet a long time.

We should remember that in pronouncing a decision, the court, made up of human judges, is guided by a whole range of evaluative and value-based criteria, as mentioned above. We can surely say that comprehending the nature of such criteria is only possible for a human being; a machine does not have human consciousness and is unable to objectively evaluate all the facts of the case based on its inner conviction. As it has been said previously, a judge should possess such necessary qualities as fairness, respect towards participants of proceedings, decency and dignity, diligence and integrity. However, it is empathy – the ability to be compassionate and involved – that is the main quality in the judicial profession. It seems unlikely that AI, whatever top-notch technologies are used in its creation, will have all the above qualities.