

Social Scoring and Emotion Recognition Systems in Family and Care Law Cases in the Context of Polish and European Law

Anna Wilk¹,

¹WSB University in Dąbrowa Górnicza,
Poland

Abstract— The article addresses the legal aspects of using some artificial intelligence tools in the broadly understood area of family law. These tools include social scoring systems, assessment of the risk of committing a crime and emotion recognition. They can be useful, for example, in the process of psychological assessment, analysis of data on the personal and property situation of specific persons in alimony proceedings, adoption or foster care, as well as in medically assisted procreation procedures. However, the use of these technologies involves a significant risk, which the legislator should counteract. The author therefore analyses whether the regulations adopted by the national and Community legislator are sufficient to eliminate this risk.

Keywords— artificial intelligence, social scoring, emotions, family, child

I. INTRODUCTION

Artificial Intelligence (AI) is entering more and more areas of everyday life, on the one hand contributing to technological progress and helping people (or even replacing them) in performing monotonous or tedious tasks, but on the other hand also causing threats that we have not dealt with before. These threats may concern, for example, image protection (the problem of deepfake technology), protection of intellectual property rights (the issue of "creativity" of artificial intelligence) or the labor market (reduction of jobs due to increasing robotization and automation).

Two of the "skills" of artificial intelligence deserve special attention because they can both open up various opportunities and generate risks - namely the ability to analyze large data sets and draw specific conclusions from them, and the ability to recognize emotions. As for the first of these skills, based on the

analysis of documents or the history of a given person's activities on the Internet, artificial intelligence can, for example, indicate the "ideal" candidate for an employee, client or even a life partner. In a radical version, these "skills" of artificial intelligence can be used to create a system of so-called social scoring, i.e. a tool for assessing the social credibility of a given individual. In such a system, AI, based on the previous behavior of a given individual or their socio-economic status, draws conclusions about the broadly understood risk that this individual may generate - from the risk of committing a crime, through the risk of causing an accident, to the risk of insolvency. A particularly dangerous type of AI tool is one that allows predicting the commission of a crime by a specific person, which may lead to their subsequent discrimination and, in fact, to punishing the very intention to commit a crime, determined solely on the basis of an analysis of the personality and behavior of a given individual.

There are also AI-based tools for automatic analysis of facial expressions, which allows for the analysis of human emotions - algorithms try to directly map facial expressions, assigning them to specific emotions (Budzanowska-Drzewiecka § Lubowiecki-Vikuk, 2023, p. 72). This technology is used to recognize and analyze emotions based on facial expressions (Budzanowska-Drzewiecka and Lubowiecki-Vikuk, 2023, p. 72). It can improve human-technology interactions by enabling machines to recognize, among others, gender, age, or emotional state and appropriately adapt to the needs of specific people, but it can also predict much more sensitive features (e.g. personality, sexual orientation, religious denomination), interfering in the private sphere (Budzanowska-Drzewiecka § Lubowiecki-Vikuk, 2023, p. 73).



II. SOCIAL SCORING AND EMOTION RECOGNITION SYSTEMS IN CURRENT PRACTICE

Social scoring is criticized because it may pose a particular threat to citizens of non-democratic countries, where such instruments can be used to conduct large-scale surveillance of individuals and to identify potential "subversive elements" in advance (see Walkowski, 2023, pp. 153-157). China has probably gone the furthest in this respect, where since the rule of Mao Zedong, all citizens have been subject to the so-called *dang'an* system, under which detailed files are kept for each individual (Bachulska, 2019, p. 15; Pabisiak, 2020, p. 39). Along with technological progress, the digitalization of this system has taken place, which consists of many programs implemented by local authorities of individual regions, private entities and party and government institutions (Bachulska, 2019, pp. 15-16; see also Walkowski, 2023, p. 152; Walkowski, 2022, pp. 137-138). Behaviors such as crossing the road on a red light, failure to fulfill family obligations or having a child without permission may be assessed (Bachulska, 2019, p. 16; Bartoszewicz, 2020, p. 61). A high ranking facilitates access to work, public positions and loans, while a low ranking makes it difficult to apply for housing, social welfare, various licenses, permits, etc. (Bartoszewicz, 2020, p. 61; Bachulska, 2019, p. 16). There is also a system of "blacklists" of people who have broken the law and are exposed to many sanctions, ranging from fines, through bans on flying or using high-speed trains, to difficulties in buying a car (Bartoszewicz, 2020, p. 60; Mac Sitigh and Siems, 2019, pp. 14-15). The introduction of a centralized, nationwide system for assessing social credibility is planned (Uznańska, 2023, p. 3; see also Drinhausen and Brussee, 2021, pp. 1-23). The implementation of this system may involve risks resulting from the lack of mechanisms for democratic control of power in China. It will also be noted that programs introduced in regions considered by the authorities to be politically unstable, such as Tibet and Xinjiang, had the greatest surveillance potential (Bachulska, 2019, p. 24).

However, even in democratic countries, social credit rating systems may violate human rights and serve to discriminate. Artificial intelligence is capable of being guided by prejudices to a similar extent as humans, and this may particularly apply to scoring systems that assess individual data – for example, an algorithm used to filter CVs in the job recruitment process was biased against women, and a program used to predict the risk of recidivism among convicts discriminated against African American people, indicating them as people at higher risk of recidivism (Kubiak and Kudła, 2023, pp. 40-42; similarly, Wilk, 2024, p. 44; Mering, 2022, pp. 18-19; Rejmaniak, 2021, pp. 28-32; Michael & others, 2022, pp. 2-8; Ferrer et al., 2021, pp. 72-80; Bias in Algorithms, 2022, p. 17). The American PredPol crime prediction system led to an unintentional concentration of police activities on petty crime in poor neighborhoods – in this case, people from national minorities living in such neighborhoods were disproportionately punished (Daćków, 2024, p. 4). On the other hand, the SyRI algorithm used in the Netherlands to assess the risk of social benefit fraud discriminated against families from national and ethnic

minorities (Kubiak and Kudła, 2023, p. 41).

Social scoring systems are used not only by central or local authorities, but also by private entities. An example is Sesame Credit, a system created by the Alibaba group, which owns the Alipay mobile payment system – this system analyzes information about Alipay users and assesses their credibility, and users with a high score can use various types of facilities and discounts (Bachulska, 2019, p. 19; Kostka, 2018, p. 4).

Scoring is also used to assess creditworthiness – AI supports the analysis of indicators corresponding to various features of the borrower (e.g. age, profession, marital status), their financial situation (assets and liabilities held) or financial products used and previous credit history, leading to the development of an advanced profile of the borrower, which is then compared with the profiles of other borrowers and the history of repayment of their liabilities (Rojszczak, 2020, p. 67). M. Rojszczak, citing data on the use of credit scoring in the USA, indicates that in addition to basic information (education, occupation, number of children, etc.), it also included information from public registers (bankruptcies, criminal records), social media, information on the place of residence and neighbourhood, means of transport, health status, way of spending free time, shopping preferences, favourite TV programmes, participation in entertainment events or gambling preferences (Rojszczak, 2020, p. 67).

AI-based algorithms are also used to assess insurance risk, e.g. mortality risk in life insurance or risk of a road accident (Malinowska, 2019, p. 119). This data can be obtained from policyholders not only using traditional questionnaires, but also via applications installed on mobile devices, which enable monitoring of health and physical activity in real time (Malinowska, 2019, pp. 119-120; Łańcucki, 2019, p. 13). In relation to road insurance, data used in risk assessment are obtained using so-called telematics, i.e. monitoring systems used in new vehicles, which can be used to estimate the risk associated with the driving style of a given driver (Malinowska, 2019, pp. 119-120; Łańcucki, 2019, p. 13).

Meanwhile, emotion recognition systems can be found in call centers, finance, healthcare, and in the recruitment process (Gościńska, 2024). They raise concerns among employees who fear interference with their privacy, potential biases, and uncertainty of their employment status due to incorrect or misinterpreted conclusions resulting from AI tools (it is debatable whether AI can correctly interpret human emotions at all). (Gościńska, 2024). Emotion recognition systems can also be an alternative to lie detectors (so-called polygraphs) – for example, some insurers use such systems to detect insurance fraud attempts (Gościńska, 2024). The use of such practices can lead to circumventing regulations prohibiting or restricting the use of lie detectors, e.g. in court proceedings. The right not to reveal one's emotions to the outside world is one of the elements of the right to privacy, and being exposed to constant assessment by various algorithms violates this right. It is also possible to imagine that emotion recognition systems used in non-democratic countries could be used, for example, to detect a potentially negative attitude of an individual towards the authorities and thus justify the use of repression. Emotion

recognition systems can therefore be an element of a broader assessment of social credibility, all the more dangerous because while an individual has an influence, for example, on what they do and publish on the Internet (and this can be assessed as part of social scoring), they have no influence on their own emotions and it is difficult for them to defend themselves in any way against the operation of these systems or to "manage" their own credibility and reputation.

III. SOCIAL SCORING AND EMOTION RECOGNITION SYSTEMS IN FAMILY AND CARE LAW

It seems that one of the potential areas of application of social scoring and emotion recognition systems is also family and care law (the example of an algorithm used in social care matters has already been cited above). The issue of the impact of new technologies on family law has already been analyzed in the literature in the context of robots as family members (Książak, 2023, pp. 289-298; Pfeifer-Chomiczewska, 2022, pp. 12-38; Zakliczyńska, 2023; pp. 75-83) and in the context of virtual relationships as a threat to marital fidelity (Pfeifer-Chomiczewska, 2022, pp. 12-38; Ogrodnik-Kalita, 2023, pp. 399-418).

However, the issue of automated decision-making in family matters using AI-based algorithms has not yet been addressed more broadly. The current provisions of Polish law do not yet contain any references to the use of AI in family and care matters. This may be due to the fact that proceedings and procedures in the broadly understood family and care law touch on a very sensitive and intimate sphere of life, and therefore AI seems to enter these proceedings with less dynamism than, for example, in the financial industry, but this is not impossible and seems to be only a matter of time.

IV. JUDGING THE EXERCISE OF PARENTAL AUTHORITY AFTER DIVORCE/PARENTAL SEPARATION

Social credibility assessment systems could support decision-making as to which parent should be entrusted with the exercise of parental authority after separation or divorce. In the matter of ruling on the exercise of parental authority after divorce or parental separation, the provisions of the Family and Guardianship Code do not specify the criteria that should be taken into account, except for the prohibition of separating siblings and the general principle of the child's welfare. In practice, in the event of a dispute, such a decision is most often made based on the opinion of the Advisory Team of Court Specialists (OZSS), which, after conducting psychological tests of the child and parents, recommends the best solutions for the child.

As is rightly noted in the literature, it is currently difficult to imagine AI replacing expert evidence, but it can be a tool supporting the expert in issuing an opinion, including a psychological opinion (Zbiciak, 2024, p. 33). "Intelligent" emotion recognition systems can therefore create a psychological portrait of a specific person, which can then be

used in the process of assessing that person in terms of deciding how to exercise parental authority. As psychiatrist Dr. D. Juchnowicz rightly notes, "as doctors, we rely on how the patients look, how they behave, what they say, what people around them say, and the results of additional tests. On the other hand, artificial intelligence will not only take into account all this data, but will also notice and analyze even more facial expressions, small things in behavior, e.g. it will count how many times the patients blinked, what grimaces and gestures they made during the observation. In addition, it will take into account, among other things, data from smartphones about our location (indicating, among other things, the level of socialization), internet searches, text message content, the content and form of our conversations, online shopping, or the pace of our walking" (Nauka w Polsce, 2023). There are also technologies designed to assess the risk of committing crimes, which can be used, for example, to estimate the risk of using violence against a child. These are so-called neuroprediction tools that can be used to make a structured assessment of the risk of violence-related behavior in clinical practice (Płoch, 2023, p. 208).

As B. Kaczmarek-Templin rightly notes, "the supporting role of algorithms in the process of preparing and issuing opinions by experts could probably prove more desirable than completely replacing the human factor. The use of AI-supported tools would make it possible to give opinions a greater degree of objectivity than before. On the other hand, the control of the effects or conclusions indicated by the algorithm, and carried out by a human, would ensure appropriate control and ensure that the opinion meets the requirements specified by law, including that it is supplemented with the argumentation of the position adopted" (Kaczmarek-Templin, 2022, p. 73). Theoretically, AI tools used in the opinion-giving process by the OZSS could play an supporting role, but the results of their operation should not be treated uncritically, and the final conclusion of the opinion should be formulated and justified by the experts. Artificial intelligence could simply be one of the research tools used, but only those tools that are consistent with current scientific knowledge should be used, and their selection should be appropriately justified. However, it seems that using these tools should not go too far. While the use of emotion recognition systems can support the work of experts, the use of neuroprediction tools should rather be ruled out as too far-reaching. The subject of the opinion is not the assessment of the risk of possible use of violence against a child, but the assessment of parental competences and emotional bonds in the family. It is worth considering introducing regulations regarding the use of artificial intelligence tools in the opinions of court experts or separate regulations for evidence obtained using AI. Currently, it is up to the expert to choose the research methods and tools, which should be justified by him. However, some AI tools, such as neuroprediction or emotion recognition systems, may pose a high risk of violating the privacy of people undergoing tests. It may therefore be necessary to limit (if not prohibit) the use of such systems in the opinion-giving process. Such conclusions also arise in the light of the AI Act regulations, which will be discussed later in this study.

V. ALIMONY CASES

Artificial intelligence can also analyze data on the personal and financial situation of parents, which can also be useful in ruling on alimony. According to art. 135 § 1 of the Family and Guardianship Code, the scope of alimony benefits depends on the justified needs of the entitled person and the earning and financial capabilities of the obligated person. Algorithms similar to those assessing creditworthiness can be used for this purpose. However, in alimony cases, evidence from an expert opinion is generally not conducted, and the assessment of the personal and financial situation of the entitled and obligated person is carried out by the court itself, most often based on evidence from documents, witness statements and the hearing of the parties. The provisions of the Code of Civil Procedure do not yet refer to the issue of the possible use of AI tools to improve the work of a judge, and in this respect it seems that the law is not keeping up with technological progress. Potential legislative changes should not, however, aim to replace the judge with a robot or algorithm, and it seems that alimony cases are, of all family cases, the most exposed to such risk. The assessment of earning and financial possibilities resembles the assessment of creditworthiness, and excessive reliance on AI may lead to a situation where a party in alimony proceedings will be treated as a client of a financial institution, "screened" by algorithms in terms of their credibility.

In the area of alimony cases, there is currently no scope for replacing the judge with algorithms analysing the financial and earning possibilities of the obligated party, similarly to the assessment of creditworthiness, however, proposals appearing in public discussion to radically simplify alimony proceedings (e.g. the proposal of "immediate alimony" submitted some time ago) may be heading in this direction.

VI. FOSTER CARE AND ADOPTION

Social credibility assessment systems can also be widely used where family law establishes particularly strict requirements for specific persons, i.e. primarily in matters concerning foster care and adoption.

As for foster families and family children homes, the provisions of the Act on Family Support and the Foster Care System establish detailed requirements that should be met by persons intending to provide such forms of care for children. Thus, in accordance with Article 42 of this Act, the performance of the function of a foster family and the management of a family children home may be entrusted to persons who, among other things: provide a guarantee of proper provision of foster care; are capable of providing proper care for the child, which has been confirmed by a medical certificate and a psychological opinion; provide appropriate living and housing conditions; are not convicted of an intentional crime; and in the case of a non-professional foster family, at least one person forming this family must have a permanent source of income. The candidates' fulfilment of these requirements is checked in detail in accordance with further provisions of the Act, and in accordance with Article 128 et seq., an assessment of both the

foster family or family children home itself and the situation of the child placed in foster care is also carried out.

In relation to adoption, the general requirements that candidates for adoptive parents should meet are formulated in the provisions of the Family and Guardianship Code. According to art. 114¹ § 2 of the Family and Guardianship Code, a person with full legal capacity may adopt a child if their personal qualifications justify the belief that they will properly fulfil the obligations of an adoptive parent and they have a qualification opinion and a certificate of completion of training organised by an adoption centre, referred to in the provisions on family support and the foster care system, unless this obligation does not apply to them. A detailed description of these requirements, as well as the method of assessing their fulfilment, can be found in the aforementioned Act on Family Support and the Foster Care System. Article 161 of this Act lists a detailed catalogue of personal data concerning both candidates for adoptive parents and the child. This data includes, among others, data concerning education, profession, place of work, housing conditions and income, health status of candidates, but also, for example, data concerning their religion and ethnic origin - in order to select an adoptive family appropriate for the needs of the child. In relation to the child, the data is also detailed and includes, among others, data concerning their health, maintaining contacts with the biological family, the child's attitude towards adoption and the child's religion and ethnic origin. Further provisions of the Act specify in detail the method of conducting qualifications for adoption, including, among others, psychological diagnosis of the child, determining the specificity of their needs in the context of proper selection of the family; assessment by a psychologist of the degree of the child's ability to establish an emotional bond in a new family. Based on the collected data, the adoption center prepares a qualification opinion.

Both in relation to foster care and adoption proceedings, objective data are of course collected, such as a clean criminal record or income, but the regulations also establish criteria of an evaluative nature. As for foster care, they are expressed in the requirement to "guarantee proper care", while in relation to adoption proceedings, these are to be "personal qualifications justify the belief that the adopter will properly fulfil their obligations". This is where the risk of using social scoring opens up. Scoring in this version would essentially cover all spheres of functioning of the candidate for foster care or adoption. At the same time, it should be noted that in such cases, the provisions of the law provide for the processing of probably the largest sets of data in family matters, including sensitive data, such as health data, religion or ethnic origin. On the one hand, the detailed catalogue of processed data (which is not strictly defined in divorce or alimony cases) limits the risk of processing so-called excess data – unrelated to the purpose of processing (see Art. 5 sec. 1 item c of the GDPR). Any system supporting the assessment of candidates would therefore have to be designed in such a way that it does not pose the risk of unauthorised expansion of the scope of information about these people – for example, tracking their profiles on social media would be inadmissible. On the other hand, even AI tools

operating only on data strictly specified in the Act may draw conclusions as to the "ideal candidate" – a particular threat here may be, for example, discrimination on the basis of financial status and preference for the most affluent candidates, while the wealth of the family itself is not a guarantee that placing a child there would be in the child's best interests. Yes, having "appropriate living and housing conditions" is required, but an example of how scoring systems can interpret this data may be the proposal of higher fees by insurers in the event that the insured person lives in an area with (according to AI) higher crime rates (Rojaszczak, 2020, p. 67). There is therefore a risk of segregating people according to their broadly understood socio-economic status, which does not necessarily correspond to the best interests of the child.

VII. MEDICALLY ASSISTED PROCREATION TECHNOLOGIES

Even wider possibilities for the use of social scoring are opened up by medically assisted procreation technologies. The progress of biological sciences enables the implementation of assumptions known so far from science fiction films, such as designing an "ideal child" with physical features and level of intelligence selected in advance by the parents. In order to make this happen, it is necessary to search for the ideal candidate for a reproductive cell donor, with a specific appearance, health condition, level of intelligence or socio-economic status. Donation of reproductive cells allows for the introduction into the procreation process of another person, apart from the child's parents, who can, through their "good genes", compensate for any shortcomings of the parents in this area and contribute to the conception of a child with the desired features.

In accordance with the regulation of the Minister of Health of 25.10.2015 on the health requirements for a candidate for a reproductive cell donor for the purpose of partner donation and donation other than partner donation and for the recipient of reproductive cells and embryos and the detailed conditions for collecting reproductive cells for use in a medically assisted procreation procedure, only the health condition of the candidate for a reproductive cell donor is subject to examination, and not his appearance, education, income or interests. There is therefore no basis for selecting a candidate for a donor in accordance with the expectations of the recipients as to his specific physical or intellectual characteristics. Nevertheless, it should be noted that the appearance of the candidate for a donor is significant in the case of donation other than partner donation, i.e. when the donor is a person who is not in a marriage or partnership with the recipient, as well as in the case of embryo donation, i.e. the introduction into the woman's body of an embryo that is genetically unrelated to her and her husband / partner. Pursuant to art. 32 sec. 2 item 2 and art. 36 sec. 1 point 4 of the Act on the Treatment of Infertility, in the case of donation other than a partner's donation and embryo donation, the doctor must determine based on phenotypic data whether, as a result of these procedures, a child will be born that is physically similar to the recipient and her husband or partner, who will be entered in the birth certificate as its parents. The

point is therefore to maintain the secrecy of medically assisted procreation procedures (similar to the secret of adoption) and to protect the child from potential speculations by the environment regarding its origin, which could take place if the child were to differ significantly in appearance from its parents. This is where the field opens up for the operation of AI tools, which can, based on the analysis of the phenotypic characteristics of candidate donors and recipients, even present the potential future appearance of children conceived from their reproductive cells (it is worth noting that applications that predict the future appearance of a child based on photos of parents are available to everyone and can be installed on a phone, and the doctor could have even more advanced tools). Unfortunately, the Act on the Treatment of Infertility does not specify who and on what principles should select the most suitable donor from the pool of potential donors, due to phenotypic characteristics. There is therefore a risk of using practices in which the recipient, alone or with her spouse/partner, can, based on AI prediction, choose a donor who is "ideal" in appearance, and whose cells will guarantee the greatest similarity of the child to the recipients.

Artificial intelligence could also help interpret genetic data in order to create an ideal embryo that meets the requirements of future parents. According to Article 26, Section 1 of the Act on the Treatment of Infertility, it is inadmissible to use preimplantation genetic diagnosis as part of a medically assisted procreation procedure to select phenotypic characteristics, including the child's sex, except when such a selection allows to avoid a serious, incurable hereditary disease. There is therefore a ban on the use of preimplantation genetic diagnosis to obtain the desired characteristics of a child (except in the case of sex-linked genetic diseases), however, this ban does not apply to the use of AI systems that can predict the potential characteristics of children based on data concerning donors and recipients of reproductive cells, within the scope of mandatory analysis of phenotypic data.

VIII. AI ACT AND GDPR REGULATION

The problem of using social credit scoring systems and emotion recognition on an increasingly wide scale has been noticed by the European legislator.

According to Article 5 paragraph 1 letter c) of the AI Act, it is prohibited to introduce into circulation, put into service or use AI systems for the purpose of assessing or classifying individuals or groups of individuals for a specified period of time based on their social behaviour or known, inferred or predicted personal characteristics or personality traits, where social scoring leads to one or both of the following effects: unfavorable or disadvantageous treatment of certain individuals or groups of individuals in social contexts that are unrelated to the contexts in which the data was originally generated or collected; unfavorable or disadvantageous treatment of certain individuals or groups of individuals that is unjustified or disproportionate to their social behaviour or its seriousness.

Article 5 paragraph 1 letter (c) The AI Act also prohibits the placing on the market, putting into use for that specific purpose,

or using an AI system to conduct risk assessments of individuals for the purpose of assessing or predicting the risk of an individual committing a crime based solely on profiling the individual or assessing their personality traits and characteristics; this prohibition does not apply to AI systems used to support a human assessment of an individual's involvement in criminal activity that is already based on objective and verifiable facts directly related to criminal activity.

As rightly noted in the literature, the AI Act contains only a relative ban on social scoring, because it applies exclusively to situations in which the use of such an artificial intelligence system leads to: 1) unfair or unfavourable treatment of some individuals or entire groups of individuals in social contexts that are unrelated to the contexts in which the data was originally generated or collected, or 2) unfair or unfavourable treatment of some individuals or entire groups of individuals that is unjustified or disproportionate to their social behaviour or its importance (Namysłowska & others, 2023, p. 76). This is therefore a narrowed ban on the use of social scoring, which raises doubts because, on the one hand, the preamble to the AI Act emphasises the threat that social scoring poses to fundamental rights, and on the other hand, it does not introduce an absolute ban on the use of such practices or even limit the catalogue of entities authorised to use them (Namysłowska & others, 2023, pp. 76-77). The doctrine expresses the belief that AI systems used for social control of individuals by the public sector or as part of the performance of public tasks, assessing their social behavior, in particular in social contexts that are not related to the context in which the data was originally generated or collected, should be prohibited in the EU, and an exception to the prohibition could only be those systems whose producers or users have demonstrated that they have only positive effects (e.g. for combating terrorism), improve social life and are not used to control social behavior (Namysłowska & others, 2023, p. 77).

It should also be noted that the prohibition on using conclusions from scoring systems for "harmful or unfavorable treatment of certain individuals or groups of people in social contexts that are not related to the contexts in which the data was originally generated or collected" essentially means that scoring may be performed, but its results cannot be used for a purpose other than that for which the data was collected. This would mean that if, for example, scoring were used in adoption proceedings, its results could not be used in future criminal proceedings against a specific person or to assess their creditworthiness, but there is nothing to prevent the conclusions from being used in adoption proceedings.

Also, the concept of "unfavorable or unfavorable treatment of certain individuals or groups of individuals that is unjustified or disproportionate to their social behavior or its importance" is unclear and may mean in practice that scoring should not be used to make decisions of great importance based on trivial criteria - e.g. refusing to grant a mortgage due to failure to pay a previous fine of PLN 100. Nevertheless, if the conclusions from scoring indicate, for example, the mental instability of a person applying for the adoption of a child, the refusal decision

cannot be treated as unjustified or disproportionate. The above shortcomings of the AI Act regulations in the field of social scoring are only slightly mitigated by the prohibition of using systems for assessing the risk of committing a crime (also with exceptions), because in fact scoring will continue to be used in all other areas of possible assessment of the credibility of a given person.

As for emotion recognition systems, Article 5(1)(f) of the AI Act prohibits the introduction into circulation, putting into use for this specific purpose or using AI systems to draw conclusions about a natural person's emotions in the workplace or educational institutions, except in cases where the AI system is to be implemented or introduced into circulation for medical or safety reasons. This prohibition seems to have been excessively limited. It covers only workplaces and educational institutions, and does not cover, for example, the extremely important sphere of individual-state relations, i.e. public institutions such as judicial authorities. The exceptions to this prohibition, concerning medical and safety reasons, have been formulated in a very general manner, without specifying which authorities or institutions would have the right to use emotion recognition systems in such cases. Medical reasons can also justify, for example, the use of such systems in the course of assessing the mental health of parents, children, prospective adoptive parents or for foster care. In turn, safety considerations could speak in favor of using emotion recognition technology to assess a person's tendency to aggression and thus predict the risk of them using violence against a child. Yes, in the context of the prohibition of predicting the commission of crimes, this last risk may be somewhat mitigated, but not entirely, because not every behavior assessed in psychology as violence may exhaust the features of a crime, specified in the provisions of criminal law. For example, based on the analysis of emotions, the AI system may determine that a given person has a tendency to set the child against the other parent, which behavior is not a crime, and only in very extreme cases of isolating the child from the other parent may it fulfill the features of the crime of psychological abuse of a child.

Yes, many scoring and emotion recognition systems have been recognized by the AI Act as so-called high-risk systems (see Annex III to the AI Act) and are therefore subject to stricter security and quality requirements, but it seems that greater restrictions on their use should have been provided for.

It should be noted that, pursuant to Article 22(1) of the GDPR, the data subject has the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her, or similarly significantly affects him or her. Recital 71 of the preamble to the GDPR states that "the data subject should have the right not to be subject to a decision, which may include specific measures, evaluating personal aspects concerning him or her, which is based solely on automated processing and produces legal effects concerning him or her, or similarly significantly affects him or her, such as the automatic rejection of an electronic credit application or electronic recruitment methods without human intervention. Such processing includes "profiling" - which consists of any automated processing of

personal data that allows for the evaluation of personal aspects of a natural person, in particular to analyse or predict aspects relating to the performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements of the data subject - insofar as it produces legal effects concerning that person or significantly affects him or her in a similar manner. However, decision-making based on such processing, including profiling, should be permitted where expressly authorised by Union or Member State law to which the controller is subject, including for the purposes of monitoring and preventing - in accordance with the regulations, standards and recommendations of Union institutions or national supervisory bodies - fraud and tax evasion and to ensure the security and reliability of services provided by the controller, or where it is necessary for entering into or performing a contract between the data subject and the controller, or where the data subject has given his or her explicit consent. Such processing should always be subject to appropriate safeguards, including information to the data subject, the right to obtain human intervention, the right to express one's own point of view, the right to obtain an explanation of the decision resulting from such an assessment and the right to challenge such a decision. Such processing should not apply to children".

In accordance with Article 22(4) in conjunction with Article 9 of the GDPR, automated decisions may not be based on special categories of personal data referred to in Article 9(1) (including genetic, biometric, health or religious data) unless with the consent of the data subject or in the important public interest and there are suitable measures to safeguard the rights, freedoms and legitimate interests of the data subject.

Therefore, it is the provisions of the GDPR that are stricter in terms of requirements for the use of artificial intelligence for the broadly understood assessment of individuals than the provisions of the AI Act, clearly indicating that this is possible primarily for the prevention of fraud, ensuring the security of services, concluding or performing a contract and with the consent of the data subject; and that automated data processing should not apply to children, which would limit the scope for the use of scoring in family matters. The problem, however, is that Article 22(1) of the GDPR only applies to decisions made solely on the basis of profiling, and not to cases where AI merely supports the decision-making process. The principle of consent (with only a few exceptions), expressed in Article 22(1) of the GDPR should be adopted as a necessary condition for the use of scoring and emotion recognition systems in circumstances permitted by the AI Act.

IX. CONCLUSIONS

Given the silence of the Polish legislator on the use of AI in the area of family law, the only regulation is the AI Act and GDPR. Unfortunately, this regulation is far from sufficient. In all cases of automated decision-making, the principle of consent, as set out in Article 22 of the GDPR, should apply, but it cannot prevent all potential abuses in this area. For example,

in terms of medically assisted procreation, if all parties involved in the process of selecting the donor and recipients of reproductive cells consent to the use of AI, this condition will be fulfilled, but the result may be the design of "perfect humans". Candidates for adoptive parents may also consent to the use of scoring, and the effect will be the design of an "ideal family" based on discriminatory criteria, e.g. solely on socio-economic status and not emotional ties. Family matters seem to be the ones where there should be particularly strict control over the use of AI tools. Even if these tools are used with the consent of the people concerned, there is a risk of uncritical reliance on them or of performing a kind of social engineering with their help, manifesting itself in the creation of "ideal" (in the opinion of AI) individuals, families and behaviors. It is therefore worth submitting a postulate that AI tools could be used in family matters only in particularly justified cases, with the consent of all interested parties and only when automated decision-making does not directly concern the child, but at most his or her parents or guardians. The selection of these tools should be exhaustively justified, and the result of their work should be checked by independent experts. There should also be a state supervision and control body that certifies such tools before they are released for use.

X. REFERENCES

- Bachulska, A. (2019). Rozwój systemu oceny wiarygodności społecznej w ChRL: między „orwellowskim koszmarem” a technokratyczną utopią? Raport Ośrodka Badań Azji Centrum Badań nad Bezpieczeństwem Akademii Sztuki Wojennej, Listopad 2019. Warszawa, pp. 1-39.
- Bartoszewicz, M. (2020). Chiński system zaufania społecznego. *Przegląd Geopolityczny* 32, pp. 58-67.
- Bias in Algorithms. Artificial Intelligence and Discrimination (2022). European Union Agency for Fundamental Rights. Vienna, pp. 17-30.
- Budzanowska-Drzewiecka, M. and Lubowiecki-Vikuk, A. (2023). Rozpoznawanie i pomiar emocji w badaniach doświadczeń klienta. *Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu* 5, pp. 67-77.
- Chłopecki, A. (2021). Sztuczna inteligencja – szkice prawnicze i futurologiczne. Warszawa: C. H. Beck.
- Daćków, M. (2024). Automatyzacja procesów decyzyjnych a problem dyskryminacji w kontekście regulacji europejskich. Unpublished doctoral dissertation. Gdańsk.
- Drinhausen, K. i Brussee, V. (2021). China's Social Credit System in 2021. From fragmentation towards integration. *MERICs China Monitor* 3, pp. 1-25.
- Ferrer, X., Van Nuenen, T., Such, J. M., Coté, M. and Criado, N. (2021). Bias and Discrimination in AI: A Cross-Disciplinary Perspective. *IEEE Transactions of Technology and Society* 2, pp. 72-80.
- Kaczmarek-Templin, B. (2022). Sztuczna inteligencja (AI) i perspektywy jej wykorzystania w postępowaniu przed sądem cywilnym. *Studia Prawnicze. Rozprawy i Materiały* 2, pp. 361-78.
- Kostka, G. (2018). China's Social Credit Systems and Public Opinion: Explaining High Levels of Approval. *SSRN Electronic Journal* 1, pp. 1-31.
- Książek, P. (2023). Sztuczna inteligencja jako wychowawca, opiekun i reprezentant. W poszukiwaniu definicji rodziny. *Prawo i Więź* 3, pp. 289-298.
- Kubiak, M. and Kudła, M. (2023). Stronniczość i uprzedzenia sztucznej inteligencji (AI Bias) – ryzyko i sposoby jego mitygacji. *Prawo Nowych Technologii* 2, pp. 40-42.

Łańcucki, J. (2019). Wpływ innowacyjnych technologii na funkcjonowanie rynku ubezpieczeniowego. *Prawo Asekuracyjne* 2, pp. 6-22.

Malinowska, K. (2019). Ocena ryzyka w ubezpieczeniach a nowe technologie w kontekście zasad umowy ubezpieczenia. *Prawo Asekuracyjne* 2, pp. 110-126.

Mac Sithigh, D. and Siems, M. (2019). The Chinese Social Credit System: A Model for Other Countries? *Modern Law Review* 6, pp. 1034-1071.

Mering, P. (2022). Wpływ sztucznej inteligencji na dyskryminację rasową – aspekty prawne. *Ad Astra. Program badań nad astropolityką i prawem kosmicznym* 6, pp. 18-19.

Michael, K., Abbas, R., Jayashree, P., Bandara, R. J. and Aloudat, A. (2022). Biometrics and AI Bias. *IEEE Transactions of Technology and Society* 1, pp. 2-8.

Namysłowska, M., Bieda, R., Budrewicz, P., Lubasz, D., Nowakowski, M., Pajak, R., Świerczyński, M., Więckowski, Z., Wochlik, I. and Wróblewski, M. (2023). O etycznych, prawnych i społecznych konsekwencjach stosowania systemów sztucznej inteligencji w państwach członkowskich Unii Europejskiej. Uwagi na tle projektu rozporządzenia w sprawie sztucznej inteligencji. *Przegląd Sejmowy*, 6, pp. 61-84.

Ogrodnik – Kalita, A. (2023). Wierność w czasach cyfrowej zarazy, czyli o prawach i obowiązkach małżeńskich w dobie sztucznej inteligencji i nowych technologii. *Prawo i Władza*, pp. 399-418.

Pabisiak, J. (2020). Dangerous, Yet Not So Unique. Characteristics of the Chinese Social Credit System. *Polish Political Science Yearbook* 3, pp. 30-53.

Pfeifer-Chomiczewska, K. (2022). O wpływie sztucznej inteligencji na relacje międzyludzkie i prawo małżeńskie. *Głos Prawa. Przegląd Prawniczy Allerhanda* 1, pp. 12-38.

Płocha, E. A. (2023). Sztuczna inteligencja w postępowaniu w sprawach dotyczących wykonania środka zabezpieczającego w postaci pobytu w zakładzie psychiatrycznym. In: J. Piskorski and M. Błaszczak, ed., *Nowe technologie. Wyzwania i perspektywy dla prawa karnego*. Łódź: ArchaeGraph, Łódź 2023, pp. 206-226.

Rejmaniak, R. (2021). Bias in Artificial Intelligence Systems. *Białostockie Studia Prawnicze* 3, pp. 28-32.

Rojszczak, M. (2020). Sztuczna inteligencja w instytucjach finansowych – aspekty prawne i regulacyjne. *Internetowy Kwartalnik Antymonopolowy i Regulacyjny* 2, pp. 61-77.

Uznańska, P. (2023). Chiński(e) system(y) oceny wiarygodności społecznej na drodze ku centralizacji?, *Komentarz Ośrodka Badań Azji nr 3 Centrum Badań nad Bezpieczeństwem Akademii Sztuki Wojennej*, pp. 1-7.

Walkowski, M. (2023). Social Credit System: A Discussion about the Utility of Chinese Digital Project in a European Union Settings. *Polish Political Science Yearbook* 4, pp. 151-171.

Walkowski, M. (2022). Social Credit System in the People's Republic of China. Theoretical Assumption and Implementation. *Polish Political Science Yearbook* 3, pp. 135-153.

Wilk, A. (2024). Prawne aspekty funkcjonowania sklepów autonomicznych. *Studia Prawnicze. Rozprawy i Materiały* 1, pp. 31-55.

Zakliczyńska, K. (2019). Seks-roboty w Chinach. Rozwój technologii a moralność społeczeństwa. *Seksuologia Polska* 17, pp. 75-83.

Zbiciak, A. (2024). Wybrane aspekty wykorzystywania nowoczesnych technologii w pracy sędziego orzekającego w sprawach karnych. Stan obecny i perspektywa na przyszłość. *Gdańskie Studia Prawnicze* 2, pp. 22-36.

Legal acts

Act of 25 February 1964 - Family and Guardianship Code (consolidated text *Journal of Laws* of 2023, item 2809).

Act of 17 February 1964 - Civil Procedure Code (consolidated text *Journal of Laws* of 2024, item 1568, 1841).

Act of 9 June 2011 on family support and the foster care system (consolidated text *Journal of Laws* of 2025, item 49).

Act of 25 June 2015 on infertility treatment (consolidated text *Journal of Laws* of 2020, item 442). Regulation of the Minister of Health of 25 October 2015. on the health requirements for a candidate for a reproductive cell donor for the purpose of partner donation and donation other than partner donation and for the recipient of reproductive cells and embryos and the detailed conditions for collecting reproductive cells for the purpose of using the procedure of medically assisted procreation (*Journal of Laws* of 2015, item 1718).

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), *Official Journal of the EU L* No. 119 of 4 May 2016 (GDPR).

Regulation (EU) 2024/1689I of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), *Official Journal of the EU L* 12, 2024 (AI Act).

Internet sources

Gościńska, J. (2024). AI śledząca emocje – narzędzie do empatii czy inwigilacji. 18.4.2025 <https://www.securitymagazine.pl/pl/a/ai-sledzaca-emocje-narzedzie-do-empatii-czy-inwigilacji>

<https://naukawpolsce.pl/aktualnosci/news%2C96784%2Cekspert-potencjal-sztucznej-inteligencji-w-psychiatrii-jest-ogromny-ale-moze,26.5.2023>