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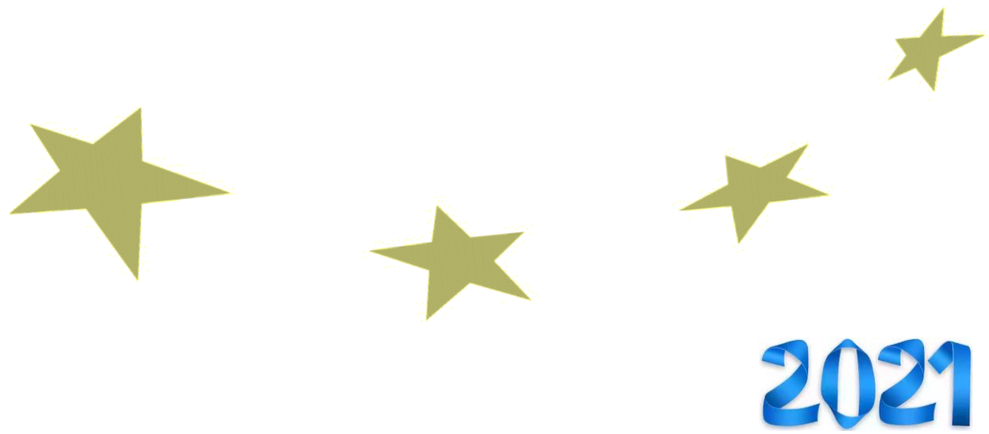

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Criminal liability of e-persons and the EU law

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Abstract

The global technological world is changing rapidly. Robots, computers and artificial intelligence are replacing more and more simple human activities. All these examples clearly show what technology is already capable. This is made possible, among other things, by processing large amounts of data ("big data") from a wide variety of sources. As a result, algorithms are now able to solve complex tasks and also to learn. The main question in that context is, if and to what extent e-persons (electronic persons) can be held criminally liable for their actions.

Key words

Criminal liability, e-persons, EU Law

1. Introduction

With the help of neuronal networks, systems can process information on several levels simultaneously. Using various machine learning approaches - reinforcement learning or monitored or unsupervised deep learning, - neuronal networks can be trained to make decisions and even to be creative based on what they have learned. This gives the system the ability to behave autonomously, i.e. to react appropriately to a large number of (possibly unknown) situations and problems independently and without human help. This flexibility and adaptability hold huge potential. The concrete effects that artificial intelligence will have on our society can hardly be foreseen today. In any case, one thing is clear: the use of autonomous or semi-autonomous AI[1] should improve our living conditions by relieving people of certain tasks or making them easier. Violations of legal interests caused by intelligent agents cannot be avoided. This is especially true when, on the one hand, these systems are becoming more and more autonomous and are no longer constantly under human supervision and, on the other hand, they are finding their way into public space. An increase in the number of possible independent actions by the intelligent agent also logically leads to an increased risk of violations of legal interests.[2]

2. AI criminal liability

If an AI (e.g. intelligent robot) damages a protected legal asset, the question is who can be held responsible for it (programmers, manufacturers or users).[3] This result is conceivable because the predictability may already be lacking or, due to the ubiquitous use of AI and the impossibility of completely excluding damage. Since autonomy presupposes the independence of external (human) influence, this legal consequence is inherent in intelligent agents. Unpredictable actions of the system are the logical consequence of autonomy. It must therefore be the task of jurisprudence to define the legal framework for the use of new technologies. If the humans have the impression that the rule of law does not have adequate answers to the legal challenges of advancing digitization, trust in the normative order is shaken. The result that no one can be held responsible for a criminal success would shake the foundations of the law. The purpose of criminal law[4] is not only to prevent future injustices. This should happen on the one hand as a preventive measure, on the other hand as a general preventive measure by showing society that a breach of the law is followed by a appropriate reaction. Comprehensive compliance with legal norms by the public can only succeed if an infringement is formally designated and sanctioned as such by the case law. If the impression arises that legal interests can be harmed without consequences, criminal law no longer fulfills its purpose.

2.1. The starting point for the need for AI criminality

If an AI, for example in the form of an intelligent robot, damages a protected legal asset, it is questionable who can be held responsible for it. In view of the increasing degree of learning ability and autonomy, likely in the not too distant future the criminal success can no longer be attributed to the people behind it, namely the programmers, manufacturers and users, for various reasons. This result is conceivable because the predictability may already be lacking or, due to the ubiquitous use of AI and the impossibility of completely excluding damage, the use is socially adequate and therefore no longer inappropriately.

[1] FUNTA, R. (2019): Úvod do počítačového práva.
[2] SVÁK, J. (2003): Ochrana ľudských práv..
[3]. KLIMEK, L. (2015): Criminal Liability of Legal Persons in Case of Computer Crime: A European Union Response.
[4] ČENTÉŠ, J. a kol. (2015): Trestný zákon - Veľký komentár.

It must therefore be the task of jurisprudence to define the legal framework for the use of new technologies and the consequences of their use. This has two consequences: Firstly, it enables use outside of test environments, also because the legal standards can be taken into account during programming. Second, clarifying legal questions makes a significant contribution to the social acceptance of the AU use. If the population has the impression that the rule of law[5] does not have adequate answers to the legal challenges of advancing digitization, trust in the normative order is shaken. Damage to protected legal interests without reaction can not be accepted, since this trust requires comprehensive protection without unplanned loopholes. If criminal law and its users are not in a position to respond appropriately to a violation of legal interests, this amounts to devaluing the legal interest that is obviously no longer worthy of protection.[6] The purpose of criminal law is also to prevent future injustices. This should happen on the one hand as a preventive measure by acting on the perpetrator, on the other hand as a general preventive measure by showing society (as the recipient of the application of criminal law) that a breach of the law is followed by an appropriate reaction. Comprehensive compliance with legal norms by the general public can only succeed if an infringement is also formally designated as such and sanctioned by the case law. If the impression arises that legal interests can be harmed without consequences, criminal law no longer fulfills its purpose. Jurisprudence is called upon to help shape digital change in line with our normative value system. Therefore, in view of the preventive punitive purposes, it is unacceptable to only find solutions to the legal problems in connection with AI when these have already resulted in a violation of legal interests. The dogmatic discussion must take place beforehand.

3. Dogmatic challenges of AI criminality

With regard to the practical applicability of criminal law to intelligent agents, three central points of criticism are mentioned, which show that our criminal law dogmatics is not prepared for the use of autonomously acting AI. First, it lacks the ability of the AI to take an action in the criminal sense. Second, AI could not be guilty either. And thirdly, an intelligent agent is not a suitable addressee of a criminal sentence.

3.1. Concept of action in connection with AI

If one sees the ability of AI to at least potentially understand norms as a prerequisite for the ability to act, then this should be rejected, at least at this point of time. Intelligent agents do not (yet) have the ability to recognize an unknown impulse as obligatory and to act accordingly.

a) Free will as a prerequisite for liability?

However, free will in this sense is not accessible to evidence. The decision is therefore the result of the genetic disposition and socialization of the person, the result of the current mood and the other situational circumstances. But the opposite is also true: just as human free will cannot be positively proven at the present time, it cannot be assumed with certainty that such freedom does not exist. The fact that the actual existence of free will should now be a mandatory prerequisite for criminal liability seems absurd against the background of what has just been said.

Solving this problem requires a more pragmatic approach to the question of the guilt of the human perpetrator. Free will is only ascribed, based on one's own human experience. Guilt as a precondition for criminal liability is thus presented as an assignment of responsibility, which is carried out because the injustice that has been committed has caused a conflict within our social system, which this assignment is intended to resolve. Such a functional understanding of guilt enables responsibility to be assigned to intelligent agents. A breach of law committed by AI is fundamentally just as likely as human misconduct to cause a social conflict that needs to be resolved, provided that the algorithm is also attributed free will through our social system. So it does not matter whether the wrong decision made is based on determined biological or algorithmic processes or on free will.[7]

b) Thoughts on an e-person status

Such an allocation of responsibility due to a social conflict is only possible to the extent that the intelligent agent is also viewed as a person in the legal sense. E.g. the ELIZA program, developed by the computer scientist Joseph Weizenbaum, simulated a psychotherapeutic session by reacting to certain key words provided by the human person in electronic dialogue with ready-made phrases. The anthropomorphization of the behavior of artificially intelligent programs is therefore also called the ELIZA effect. It is therefore likely that such entities are viewed by society as having a status that goes beyond that of a thing.

In addition, such an electronic personal status would then also have to be legally recognized. There have already been attempts in politics to discuss the introduction of an e-person status in any case. For example, in 2017 the EU Parliament asked the European Commission[8] to deal with this question for

[5] FENYK, J. – SVÁK, J. (2008): Europeizace trestního práva.
[6] IVOR, J. – KLIMEK, L. - ZÁHORA, J. (2013): Trestné právo Európskej únie a jeho vplyv na právny poriadok Slovenskej republiky.
[7] FUNTA, R. - GOLOVKO, L. - JURIŠ, F. (2020): Európa a Európske právo.
[8] Resolution of the European Parliament of February 16, 2017 with recommendations to the Commission on civil law

civil law. The variability of the concept of person in law shows that the e-person would not represent a dogmatic castle. Distinctions between natural and legal persons,[9] between adults and minors or differentiations with regard to the age of criminal responsibility make it clear that the various personal terms are always valued: What social, legal, moral position does the affected legal subject have and what conclusion does the legal system want to draw from it? If we consider the already considerable and in the future still growing importance and the ubiquity of digital technologies as well as the challenges and legal problems associated with them, the conclusion is, in my opinion, the following: The introduction of an e-person status is sensible and necessary - both from a legal policy point of view and for reasons of criminal theory.[10]

4. Punishability of intelligent agents

Finally, the objection is raised that an electronic person cannot be punished at all. The question is first of all which characteristics the criminal punishment specifically has and finally whether these can be used against an intelligent agent. Three characteristics can be distinguished here: the evil character, the socio-ethical judgment of unworthiness associated with the punishment and the disapproval character. Let us first consider infliction. The punishment has an effect on the perpetrator, which is to be perceived by him as disadvantageous. It does not matter that this is not always actually the case, because constitutional guarantees are in any case restricted, such as freedom of movement and personal development - the textbook example of the homeless person who intends to be locked up before winter is mentioned here to spend the cold season in the heated prison.

However, it will probably be of little interest to those affected whether the evil (also perceived as such), e.g. the payment of a sum of money, has to be carried out as a fine or a fine. The same applies to imprisonment, preventive detention as a measure and police custody. In all cases, the same constitutional guarantees are limited. So the infliction of evil is not a specific feature of the punishment. Just like the infliction of evil, the socio-ethical judgment of unworthiness is not a characteristic that specifically characterizes the punishment. In the event of a violation of the norms in criminal law as well as in disciplinary and administrative offense law, the state charge is made that the person concerned behaved unlawfully: a parking ticket also expresses that this behavior is contrary to the general consensus of values in the form of the legal system stands. In addition, it can hardly be determined to what extent social ethics should serve as a characteristic. Even conceptually, it is extremely difficult to separate.

And finally, there are constitutional concerns about explicitly marking the punishment with such a value judgment. If the punishment were concerned with the downgrading of the moral and ethical value of the perpetrator, this would affect him in his personal validity claim guaranteed by human dignity - state bullying, if you like. What remains is disapproval as a central characteristic of the punishment and thus the direct link between the punishment and the guilt of the perpetrator. The personal reproach, which is not a prerequisite for the imposition of the other state sanctions, characterizes the higher degree of disapproval of the criminally relevant behavior and thus the punishment following this behavior as such. If artificial intelligences, as just stated, are culpable in the sense of an attribution of responsibility (following from our social reality), then the punishment can also develop its disapproving character towards AI.

However, the mere determination of criminal liability[11] is not sufficient to achieve the general preventive goals. The injustice that has been committed must be made tangible to the population as a recipient, which is why the accusation of guilt must be quantified by means of the fairest possible penalty. It is possible to think of charitable work, interventions in the robot body or, as a last resort, switching off. Also to be considered is reprogramming by implementing the meaning of the violated norm in the

regulations in the field of robotics (2015/2103(INL)). In the Resolution is, a.o. mentioned, that the widespread use of robots might not automatically lead to job replacement, but lower skilled jobs in labour-intensive sectors are likely to be more vulnerable to automation; this trend could bring production processes back to the EU; research has demonstrated that employment grows significantly faster in occupations that use computers more; the automation of jobs has the potential to liberate people from manual monotone labour allowing them to shift direction towards more creative and meaningful tasks; automation requires governments to invest in education and other reforms in order to improve reallocation of the types of skills that the workers of tomorrow will need. See also: PERÁČEK, T. (2020): The perspectives of European society and the European cooperative as a form of entrepreneurship in the context of the impact of European economic policy. The Regulation refers also to Regulation (EU) 2016/679 of the European Parliament and of the Council (the General Data Protection Regulation) which sets out a legal framework to protect personal data; whereas further aspects of data access and the protection of personal data and privacy might still need to be addressed, given that privacy concerns might still arise from applications and appliances communicating with each other and with databases without human intervention. See also: MESARČÍK, M. (2020): Ochrana osobných údajov; DAŇKO, M. – ŽÁRSKÁ, P. (2019): Data protection vs. Intellectual property; VALENTOVÁ, T. – BIRNSTEIN, M. – GOLAIS, J. (2018): GDPR / Všeobecné nariadenie o ochrane osobných údajov. Zákon o ochrane osobných údajov. Praktický komentár; HUDECOVÁ, I. – CYPRICHOVÁ, A. – MAKATURA, I. a kol. (2018): Nariadenie o ochrane fyzických osôb pri spracúvaní osobných údajov – Veľký komentár.

[9] JELÍNEK, J. (2007): Trestní odpovědnost právnických osob.

[10] KLÁTIK, J. (2012): Rozvoj trestného súdnictva v Európskej únii.

[11] KLIMEK, L. (2012): Free Movement of Evidence in Criminal Matters in the EU.

algorithm. This would have both a maximum special preventive effect and, if necessary, a general preventive effect, as long as several intelligent agents are networked with one another and the implementation can therefore be carried out across the board. It is also possible that artificial intelligences can be punished.

5. e-persons vs recognition of judicial decisions

Artificial intelligence (AI), robotics and related technologies are being developed quickly, and have a direct impact on all aspects of our societies, including basic social and economic principles and values. The development and design of so-called 'artificial intelligence', robotics and related technologies are done by humans, and their choices determine the potential of technology to benefit society. A common Union framework must cover the development, deployment and use of AI, robotics and related technologies, and must ensure respect for human dignity and human rights, as enshrined in the Charter of Fundamental Rights of the European Union.[12] The Union and its Member States have a particular responsibility to make sure that AI, robotics and related technologies – as they can be used cross borders – are human-centred, i.e. basically intended for use in the service of humanity and the common good, in order to contribute to the well-being and general interest of citizens. European citizens could benefit from an appropriate, effective, transparent and coherent regulatory approach at Union level that defines sufficiently clear conditions for companies to develop applications and plan their business models, while ensuring that the Union and its Member States retain control over the regulations.

5.1. EU judicial cooperation in criminal matters

A trend towards automation requires that those involved in the development and commercialisation of artificial intelligence applications build in security and ethics at the outset, thereby recognizing that they must be prepared to accept legal liability for the quality of the technology they produce.

EU judicial cooperation in criminal matters[13] is based on mutual recognition formulated by the 1999 Tampere European Council. The Treaty of Lisbon significantly changed the EU's constitutional configuration and provided an explicit legal basis for rules and procedures for ensuring mutual recognition of all forms of judgments and judicial decisions. Mutual recognition is not a new concept developed in the area of freedom, security and justice (AFSJ), but was initially developed in the internal market. However, mutual recognition in criminal justice has a different logic and legal basis than the mutual recognition of market access rules. In that regard, mutual recognition in the AFSJ has specific characteristics, given the implications for fundamental rights and national sovereignty and the extent to which it needs to be facilitated by the harmonisation of substantive and procedural criminal law, particularly as regards procedural safeguards. Any move away from applying the principle of mutual recognition in criminal matters may have negative consequences and affect its application in other fields, such as the internal market. Ths is because mutual recognition means the direct recognition of judicial decisions from other Member States and means that a judicial decision should not be refused only on the basis that it is issued in another Member State. Mutual recognition requires a high level of mutual trust between Member States. A mutual trust requires Member States to be compliant with EU law and, in particular, with the fundamental rights recognised by the Charter and the rule of law, such as judicial independence.

Thus, a Union-level approach can facilitate development by avoiding fragmentation in the internal market and at the same time underlines the importance of the principle of mutual recognition in the cross-border use of robots and robotic systems.

6. Conclusion

The industrial revolution is in full swing. Scientific disciplines that are affected are therefore called upon to help shape it actively and in lively exchange with one another. Otherwise, they risk being left behind or even becoming an obstacle in progress. For this reason, the legal system must have adequate answers to the questions and problems that come with it. The introduction of AI criminality will be inevitable in the long term. The concerns expressed about such criminal liability can be countered in a dogmatically sound manner by allowing an expanded understanding of criminal law terms in this field that goes beyond the previous limits of individual criminal law dogmatics. This concerns the ability to act and in particular the culpability. While technological progress may be a little frightening at times in terms of its size and speed, it can hardly be stopped. In any case, the advantages should outweigh the legal and technical risks if these are recognized in good time and minimized or completely resolved. In this way, at least law does not become a technology obstacle.

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Obstruction of the execution of an official decision in family matters

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Abstract

Obstruction of the execution of an official decision is the most frequently committed criminal offense heard by courts in Slovakia.In family matters, most often in the regulation of rights and obligations to minor children, parents fail to comply with court-issued decisions. On the part of a parent who is denied the right of contact in the sense of a court decision, there is an attempt to resolve such a breach of obligations of the other parents by filing a criminal complaint. The whistleblower is then disappointed by the polis rejection of the filed criminal report due to non-fulfillment of the conditions specified in §349 of the Criminal Code. The aim of the paper is, based on current legislation and literature, to approach the difference between obstruction of the execution of an official decision in accordance with §348 of the Criminal Code and obstruction of execution of an official decision in parental matters in accordance with §349 of the Criminal Code.

Key words

Official decision, obstruction of execution of official decision, personal execution

1. Úvod

V rámci úpravy styku s maloletým dieťaťom dochádza v mnohých prípadoch k rodičovským nezhodám a k neplneniu rodičovských dohôd alebo súdnych rozhodnutí. Vzhľadom na zaťaženosť súdov, niekedy zdĺhavému rozhodovaniu súdov, prichádzajú dotknutý rodičia k záveru, že jediným prostriedkom na vyriešenie ich problému je využiť prostriedky trestného práva a domáhať sa svojich rodičovských práv prostredníctvom trestného oznámenia. K tomuto záveru prichádzajú z dôvodu neznalosti trestného konania ako aj samotného Trestného zákona. S tým, že sa v ich v okolí vyskytli prípady „marenia výkonu úradného rozhodnutia“ najčastejšie porušením zákazu činnosti viesť motorové vozidlo uložené páchateľovi rozhodnutím súdu, sú presvedčený, že stačí aj v ich prípade podať trestné oznámenie a svoj problém s uplatnením rodičovských práv majú vyriešený.

Ku sklamaniu dochádza v prípade, ak mu je takéto trestné oznámenie zo strany polície odmietnuté z dôvodu, že nevyužil prostriedky Občianskeho práva. Právna úprava výkonu rozhodnutia vo veciach maloletých je zakotvená v ustanovení § 370 a nasl. Zákona č. 161/2015 Z.z. Civilný mimosporový poriadok. Nesplnením tejto zákonom stanovenej podmienky uvedenej v §349 Trestného zákona, teda použitia opatrenia v občianskom súdnom konaní nie je možné začať trestné stíhanie voči osobe, ktorá svojím konaním napĺňa skutkovú podstatu trestného činu uvedenú v §349 Trestného zákona. Preto je dôležité pochopiť rozdielnosť kedy dochádza k spáchaniu trestného činu marenia výkonu úradného rozhodnutia v zmysle §348 ods.1, ods.2 Trestného zákona a § 349 Trestného zákona.

2. Marenie výkonu úradného rozhodnutia v zmysle § 348 zákona č. 300/2005 Z. z. Trestný zákon

V zmysle § 348 ods.1 Trestného zákona (zákon č. 300/2005 Z. z.), „ kto marí alebo podstatne sťažuje výkon rozhodnutia súdu alebo iného orgánu verejnej moci tým, že“[1]…ďalej zákon v odst.1 písm. a) až l) vymenováva jednotlivé skutky, ktoré naplňujú skutkovú podstatu tohto trestného činu. V ods.2 písm. a) až b) § 348 Trestného zákona sú uvedené ďalšie skutky, ktoré naplňujú skutkovú podstatu tohto trestného činu. V oboch prípadoch sa jedná o prečin nakoľko trestná sadzba neprevyšuje hornú hranicu päť rokov.

Ako je zrejmé zo znenia ods.1 a 2 citovaného § 348 páchateľ spácha prečin tým, že zmarí alebo sťaží výkon rozhodnutia súdu alebo iného orgánu verejnej moci. Z rozhodovacej praxe súdov sa vo väčšine prípadovjedná o porušenie zákazu viesť motorové vozidlo, ktoré mal páchateľ tohto trestného činu uložené rozsudkom konajúceho súdu. Dokazovanie spáchania takéhoto trestného činu je pomerne jednoduché. OČTK po zistení, že páchateľ mal v predchádzajúcom období uložený trest zákazu nejakej činnosti a tento zákaz porušil po vykonaní procesných úkonov môže dôjsť v rámci tzv. super rýchleho konania, ktoré je upravené v ustanovení § 204 a v nadväzujúcom ustanovení § 348 zákona č. 301/2005 Z. z. Trestného poriadku v znení neskorších predpisov k uzavretiu veci a k vyneseniu rozsudku konajúcim súdom.[2]

[1] Zákon č. 300/2005 Z. z. Trestný zákon.
[2] HVOZDA, M. (2012): Aplikačné problémy v superrýchlom konaní.

V zmysle § 204 zákona č. 301/2005 Z. z. Trestného poriadku : „Ak bola prokurátorovi odovzdaná spolu so spisom osoba, ktorá bola zadržaná ako podozrivá pri páchaní prečinu, na ktorý zákon ustanovuje trest odňatia slobody, ktorého horná hranica neprevyšuje päť rokov, alebo bezprostredne po ňom a prokurátor ju neprepustí na slobodu, odovzdá ju najneskôr do 48 hodín od zadržania súdu, ktorému tiež podá obžalobu so spisom. Ak prokurátor zistí dôvody väzby, súčasne navrhne, aby bol obvinený vzatý do väzby." K tomu, aby sa vykonalo super rýchle konanie, je nevyhnutné, aby boli kumulatívne (súčasne) splnené tri podmienky, a síce:

a) trestné konanie je vedené pre prečin, na ktorý zákon ustanovuje trest odňatia slobody, ktorého horná hranica neprevyšuje päť rokov
b) k zadržaniu osoby podozrivej zo spáchania prečinu musí dôjsť pri páchaní prečinu, resp. bezprostredne po ňom
c) prokurátor takúto zadržanú osobu podozrivú zo spáchania prečinu neprepustí na slobodu

Väčšina takýchto súdnych konaní vzhľadom na skutočnosť, že páchatelia už boli raz odsúdený za spáchanie trestného činu a bol im uložený aj trest zákazu činnosti, končí uložením nepodmienečného trestu odňatia slobody.

3. Marenie výkonu úradného rozhodnutia v zmysle § 349 zákona č. 300/2005 Z. z. Trestný zákon

V zmysle § 349 Trestného zákona (zákon č. 300/2005 Z. z.), „ kto po tom, čo sa proti nemu bezvýsledne použili opatrenia v civilnom procese smerujúce k výkonu rozhodnutia súdu alebo súdom schválenej dohody o výchove maloletých detí, marí výkon takého rozhodnutia alebo dohody alebo kto marí výkon neodkladného opatrenia uloženého v civilnom procese na ochranu osôb ohrozených násilím alebo vo veciach starostlivosti súdu o maloletých, potrestá sa...[3]

Rozdielnosť oproti zneniu § 348 Trestného zákona (zákon č. 300/2005 Z. z.), je v tom, že až po bezvýslednom použití opatrení v civilnom procese dochádza k spáchaniu tohto trestného činu.

Osoba domáhajúca sa svojich rodičovských práv, ktoré sú porušované zo strany druhého rodiča pred využitím prostriedkov trestného práva musí najprv využiť postup upravený v zákone č. 161/2015 Z. z. Civilný mimosporový poriadok ako aj vo Vyhláške Ministerstva spravodlivosti Slovenskej republiky, ktorou sa ustanovujú podrobnosti výkonu rozhodnutia vo veciach maloletých 207/2016.

V prípade, že už súd rozhodol vo veci starostlivosti o maloletého, o styku s maloletým alebo inej ako peňažnej povinnosti vo vzťahu k maloletému a takéto rozhodnutie je právoplatné a vykonateľné stáva sa exekučným titulom v zmysle § 376 ods.1 CMP a oprávnený môže podať návrh na nariadenie výkonu rozhodnutia. Samotné vykonávacie konanie môžeme rozdeliť na tieto fázy:[4]

1. Postup súdu po začatí konania
2. Nariadenie výkonu rozhodnutia
3. Uskutočnenie výkonu rozhodnutia

Postup súdu po začatí podania návrhu v zmysle § 376 ods.1 CMP je upravený v §3 a § 4 vyhlášky 207/2016. Súd po podaní návrhu na nariadenie výkonu rozhodnutia zisťuje, či sa povinný podrobuje rozhodnutiu a či existujú ospravedlniteľné dôvody, pre ktoré sa povinný nemôže podrobovať rozhodnutiu. Pri zisťovaní existencie ospravedlniteľných dôvodov súd zohľadňuje najmä správanie sa povinného pri plnení povinností a správanie sa oprávneného pri realizácii práv vyplývajúcich z rozhodnutia, ako aj správanie sa a názor maloletého.

Súd v zmysle §377 CMP nariadi výkon rozhodnutia vydaním uznesenia. Po vydaní uznesenia o nariadení výkonu rozhodnutia alebo súčasne s vydaním tohto uznesenia môže súd vykonať úkony a opatrenia smerujúce k tomu, aby došlo k dobrovoľnému splneniu povinnosti v zmysle § 378 CMP.

Postup podľa § 378 CMP nastupuje pred nariadením samotného výkonu pričom má plniť preventívny a výchovný účel. Jeho cieľom je pôsobiť na oprávnenú a povinnú osobu tak, že príde k dobrovoľnému plneniu povinností vyplývajúcich z exekučného titulu, alebo k inej dohode, čo do ich realizácie. Je na súde aký spôsob preventívneho pôsobenia na osobu povinného zvolí. Taktiež môže využiť rôzne subjekty, či už orgán sociálnoprávnej ochrany detí a kurately, ako aj mediátora.[5]

Voľba rozsahu a spôsobu uskutočnenia preventívneho pôsobenia výkonu rozhodnutia medzi týmito možnosťami je na sudcovi a vyplýva z okolností, ktoré sudca posúdi na základe svojej úvahy. Rovnako je na rozhodnutí súdu, či v rámci preventívnej činnosti nariadi pojednávanie, alebo zašle výzvu povinnej osobe len písomne. Obsahom, či už písomnej výzvy alebo výzvy na nariadenom pojednávaní je apelácia na povinného, aby sa vykonateľnému rozhodnutiu dobrovoľne podrobil, t. j.. aby dobrovoľne plnil to, čo mu ukladá vykonateľné rozhodnutie. Zároveň je súd povinný ho v tejto výzve poučiť o možných následkoch nesplnenia tejto povinnosti, a to civilnoprocesného charakteru (ukladanie pokút, odňatie dieťaťa), ako aj následkov v trestnoprávnej rovine (§ 349 zákona č. 300/2005 Z. z. Trestný zákon v znení neskorších predpisov.

Vo výzve je povinný upozornený na následky nepodrobenia sa rozhodnutiu, najmä o:

[3] § 349 Trestného zákona č. 300/2005 Z. z.

[4] SMYČKOVÁ, R. – LÖWY, A. (2019).: Základné aspekty výkonu rozhodnutia vo veciach maloletých.

[5] SMYČKOVÁ, R. – LÖWY, A. (2019).: Základné aspekty výkonu rozhodnutia vo veciach maloletých.

a) možnosti súdu aj bez návrhu zmeniť rozhodnutie o osobnej starostlivosti k dieťaťu podľa osobitného predpisu),
b) možnosti súdu podľa vyzvať príslušný štátny orgán, aby zastavil výplatu rodičovského príspevku povinnému podľa osobitného predpisu, alebo aby zastavil výplatu prídavku na dieťa a príplatku k prídavku na dieťa povinnému podľa osobitného predpisu (383 CMP),
c) možnosti uloženia pokuty, a to aj opakovane (§ 383 CMP),
d) skutočnosti, že marenie výkonu rozhodnutia súdu alebo súdom schválenej dohody o výchove maloletých detí je trestným činom, vrátane určenia trestu.[6]

Výkon rozhodnutia možno uskutočniť, len čo bolo uznesenie o nariadení výkonu rozhodnutia vydané, nevyžaduje sa ani jeho doručenie povinnému. Ak úkony a opatrenia súdu smerujúce k dobrovoľnému splneniu povinnosti zostali bezvýsledné, súd podľa ust. § 384 a nasl. výkon rozhodnutia uskutoční. Ak je to vzhľadom na okolnosti prípadu potrebné, súd uskutoční výkon rozhodnutia aj bez vykonania úkonov a opatrení smerujúcich k dobrovoľnému splneniu povinnosti. Uskutočneniu výkonu rozhodnutia nebráni, že uznesenie o nariadení výkonu rozhodnutia nebolo účastníkom doručené.

Súd písomne, elektronickými prostriedkami alebo telefonicky upovedomí oprávneného o mieste a čase uskutočnenia výkonu rozhodnutia. Súd povinného o uskutočnení výkonu rozhodnutia upovedomí až na mieste samom. Tak ako sme to uviedli vyššie až po poučení povinného na následky nepodrobenia sa súdnemu rozhodnutiu je možné využiť prostriedky trestného práva podaním trestného oznámenia na príslušné oddelenie policajného zboru SR alebo príslušnú okresnú prokuratúru. Súd by mal tak konať z úradnej povinnosti.

4. Záver

Cieľom nášho príspevku bolo v krátkosti priblížiť rozdiel pri posudzovaní trestného činu marenia výkonu úradného rozhodnutia a to jednak v zmysle §348 ods.1, ods.2 Trestného zákona ako aj v zmysle § 349 Trestného zákona. Na prvý pohľad sa zdá, že sa jedná o tie isté skutkové podstaty avšak až následne po podrobnej analýze textu § 349 Trestného zákona je zrejmé, že na naplnenie skutkovej podstaty je potrebná kumulatívna podmienka a to až po bezvýslednom použití opatrení v civilnom procese dochádza k spáchaniu tohto trestného činu.

V praxi veľmi často dochádza hlavne zo strany jedného z rodičov k chybnému postupu. Rodičia sa pod vplyvom aj medií, okolia ale často aj neúplnými informáciami zo strany orgánov kurately obracajú na orgány polície v domnienke rýchleho vyriešenia svojich problémov vo výkone rodičovských práv.

Aplikačná prax vo výkone súdnych rozhodnutí poukazuje na pomalosť súdov a využívanie aktuálnej zákonnej konštrukcie, podľa ktorej § 377 ods. 1 CMP proti uzneseniu o nariadení výkonu rozhodnutia a proti uzneseniu o zamietnutí návrhu na nariadenie výkonu rozhodnutia je odvolanie prípustné čím sa spúšťa nekonečná mašinéria. Zrejme jediným účinným spôsobom ako zabezpečiť výkon rozhodnutí o styku rodiča s mal. dieťaťom v tých najvážnejších prípadoch porušenia práva dieťaťa na styk je represia v podobe okamžitého stíhania povinného rodiča, ktorý súdne rozhodnutie nerešpektuje. Pokiaľ povinný rodič bude vedieť, že v prípade nerešpektovania rozhodnutia o styku mu hrozí trestné stíhanie a následne odsúdenie, bude motivovaný rozhodnutie rešpektovať. Opakovaná recidíva by viedla k nepodmienenému trestu odňatia slobody.

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[6] SMYČKOVÁ, R. – LÖWY, A. (2019).: Základné aspekty výkonu rozhodnutia vo veciach maloletých.

Artificial Intelligence and Law: Some Philosophical Remarks

Mykola Palinchak

Abstract

Technical and scientific advances regularly confront legal systems with new challenges. Jurisprudence and regulation have had to deal with new phenomena such as cyber crime, DNA analysis, weapons that can be made with 3D printers, telecommunications surveillance or self-driving cars. With all these new technologies, it is necessary to develop a way to deal with these phenomena. For now, this process has not yet been completed and no satisfactory legal approach has yet been found.

Key words

Artificial Intelligence, legal systems, new technologies

1. Introduction

Probably the greatest challenge is still ahead of us: How should the legal system deal with advanced artificial intelligences and robots that did not come about through evolution, but were created by humans? So far, humans have enjoyed a special status in all legal systems. Many rights and duties were reserved for humans. Usually only people could make themselves liable, conclude contracts, conduct litigation and invoke constitutionally guaranteed fundamental rights. In the future, advanced artificial intelligence and robots could dispute this special legal position. Previously, artificial intelligence and robots only had limited capabilities in a certain area of their application. In the future, however, artificial intelligence could arise that will be at least equal to humans in all tasks and activities, or even far surpass them. In the case of such artificial actors, the question arises whether they are able to shake the anthropocentricity[1] of today's legal systems for the first time. The impressive technical progress in recent years suggests that such artificial intelligence could become a reality in the foreseeable future. It seems likely that it will not take so long that such artificial intelligence will be superior to humans in all areas.

2. New and already known Artificial Intelligence problems

Robots and artificial intelligence pose an extraordinary legal challenge for two reasons. On the one hand, they combine many elements that have made it difficult to deal legally with previous technological innovations. For example, previous technological advances have raised the question of the ethical and legal limits of invasive surveillance practices, but artificial intelligence algorithms are making new widespread surveillance programs much more powerful and, accordingly, the associated legal issues are becoming more pressing. On the other hand, scientific progress in the field of artificial intelligence confronts us with a number of completely new problems. These issues are related to the controversial status of artificial intelligences as legal entities.[2]

In practice, these problems are often anything but easy to solve, but at least we are already familiar with them based on previous technical achievements and know the right method to solve them. Examples of simple legal problems of artificial intelligence are the problem of area-wide monitoring of communication thanks to artificial intelligence (e.g. the PRISM monitoring program), the question of whether artificial intelligence can be patented, the problem of the legal approval of self-driving vehicles as well as the liability classification of the hazard potential of the development of artificial intelligence.

The difficult legal problems of artificial intelligence go beyond the simple problems insofar as they are related to the status of artificial intelligence as legal entities: Can artificial intelligence appear as independent contracting parties or conclude contracts? Can artificial intelligences be (criminally) responsible for their actions? Do artificial intelligences have a right to basic rights?

Thus, the core of all these difficult problems of artificial intelligence is a questtion: Can existing or future artificial intelligence be legal entities? With these questions, we not only consider the current state of the art. Therefore, our estimates will also include a speculative component. It should be emphasized, however, that the speculative parts only relate to future developments in the field of artificial intelligence, not

[1] Anthropocentrism means, that human beings are the most important entity in the universe. In other words, anthropocentrism puts humans at the center of the world.

[2] MARR, B. (2019): Artificial Intelligence in Practice: How 50 Successful Companies Used Artificial Intelligence to Solve Problem.

to the conditions that must be met for an intelligent agent to have legal personality. Therefore, the following discussion can be useful even if technical changes develop differently from what we expect. The focus of our investigation is on the philosophical foundations of these questions.

3. Fundamentals of Artificial Intelligence

Sometimes legal discussions about artificial intelligence suffer from insufficiently precise terminology. Everyday terms such as “intelligence” or “autonomy” are mostly vague, sometimes ambiguous and often bring with them associations that hinder the clarification of the problems. It is therefore worthwhile to explicitly define some core concepts in order to avoid misunderstandings and false associations.

We understand under artificial intelligence an intelligent actor or agent that is not created through evolution, but rather artificially created. We can use a very broad term agent, according to which any system whose actions can be systematically explained and forecasted by the ascription of goals and beliefs is an agent. By intelligence we understand the ability of an actor to achieve his goals in a wide variety of unknown environments. This understanding captures some elements that are often associated with intelligence, such as means-end rationality, adapting to novel conditions, and the ability to solve novel problems. We can differentiate between general intelligence and domain-specific intelligence. The former is characterized by the ability to achieve goals. A domain-specific intelligence, on the other hand, can only do this to a very limited extent number of environments.

Since we have designated artificial intelligence as an agent or actor, we can attribute goals and desires to it. We can describe the goals and desires of an artificial intelligence in the form of a utility function that orders world states according to their desirability. The utility function of an artificial intelligence does not have to be human-like. The utility function of a chess computer can, for example, qualify all chess configurations in which the computer wins, all configurations in which it plays a draw as moderately desirable and all configurations in which it loses as minimally desirable. In contrast to natural agents, artificial agents often have the option of directly determining the utility function as a programmer. As actors, artificial intelligences can also form beliefs about the world and use them to achieve their goals and desires. At first glance, it might seem strange to say that a chess program has beliefs. And there are actually important differences in the way in which people and such algorithms orient themselves in the world and store data about the world. But there are more things in common than one might initially assume.

Further dimensions of human action are autonomy and free will. A free will is incompatible with determinism: If the actions of an actor are completely determined by the laws of nature and the initial conditions of the universe, then he has no free will. According to this concept, artificial intelligences probably have no free will, because their algorithms work according to strictly deterministic laws. It should be emphasized, however, that it is also controversial whether people are free at all according to this concept. Artificial intelligence can be implemented in a robot, e.g. in a mechanical body, or it can control it from a distance. However, this is not mandatory, many domain-specific artificial intelligences, such as artificial intelligences in computer games, never interact with robots, but run exclusively on ordinary computers. In the course of the further discussion, we will fall back on the concepts introduced here in order to build a bridge to specific legal terms that play a role in regard to legal personality and secondly for the determination of criminal liability of artificial intelligences.

4. Artificial intelligence as person and legal entity

We turn to several difficult artificial intelligence problems below. The selection of problems is not random, but prepares the answer to the central question: Can existing or future artificial intelligences be legal entities that could then be held criminally responsible?

4.1. Artificial intelligence as person

The concept of the person, unlike the concept of legal personality, is not a legal dogmatic, but a philosophical concept. Therefore, the classification of an artificial intelligence as a person is not a necessary prerequisite for its legal status. After all, persons are the traditional subjects of law and criminal law in particular, and it is therefore interesting to ask whether, and if so, under what conditions artificial intelligences may be considered as persons. And as we'll see, there is some overlap between the two concepts, so it makes sense to answer that question first.

According to this, there is at least one type of artificial intelligence, namely simulations of human brains (so-called “whole brain emulations”). At the beginning of the process of a brain simulation there is the scanning of an existing brain. Since the simulation is based on an existing brain, it will also share essential, and in the case of a perfect scan, even all psychological characteristics of the original brain. So if the owner of the original brain has the will structure relevant to the status of a person, then the simulation also will have it. This means that the personal status for human brain simulations is likely to be affirmed. This classification has important ethical consequences. For example, this

may investigate mental illnesses such as depression or autism. This could be misused for research purposes.

With other types of artificial intelligence, it is more difficult to determine whether they can have desires. This would be conceivable with an artificial intelligence that, based on its final goals in the form of the utility function, forms instrumental goals, for example to save computing power. We can imagine an artificial intelligence programmed for a specific game. Its final goal is to win the game. From time to time the system creates instrumental goals such as "dominate the lower half", which are then pursued until new goals are set. The instrumental goals are sometimes revised based on the final goals. It seems entirely appropriate to describe this as a case where artificial intelligence has adjusted its first-level instrumental goals based on its second-level desires. For lawyers, it is often difficult to determine whether an artificial intelligence has the necessary will structure. It therefore makes sense for this question to be answered by experts on a case-by-case basis. Existing artificial intelligences may often not yet have second-order desires, but there seem to be no reasons why future artificial intelligences might not have the relevant will structure.

It seems entirely plausible that John Locke demands general intelligence in his works, i.e. the ability to be able to pursue his goals in many or even all problem areas through deliberation. The search for general artificial intelligence is one of the most important goals of AI research and has made impressive progress, particularly in the form of recurrent neural networks that can process data much more flexibly than previous neural networks. For example, a single DeepMind algorithm learned independently to play various Atari games based on pixel data on a human-like level. However, this algorithm was still far from reaching the generality of human intelligence. It therefore seems that existing artificial intelligences have probably not yet achieved the generality to meet Locke's intelligence criterion, but this may well be possible in the future. Locke also demands that people can relate to themselves and understand themselves as objects. In other words, people have beliefs about themselves, about their past and future. For many practical areas of application of artificial intelligences, beliefs of this kind are not necessary and were therefore not programmed by the developer. But with certain artificial intelligence in computer games (so-called "bots") it is necessary that the artificial intelligence can distinguish the character it controls, from the characters of other players. That can be understood as a very rudimentary version of a self-image. Bots in existing games do not have to store memories of past events, but it does not seem unlikely that game developers will develop bots that learn from past experiences and thus present a greater challenge for the player.

Thus, can artificial intelligences be able to understand and obey laws? At first glance, this criterion seems very demanding. We think that appearances are deceptive. The algorithm knows the rules of the game, it chooses its next move from the set of all moves permitted by the rules of the game. The rules of the game are a form of law or right: only a subset of all logically possible moves are in conformity with the rules. The program understanding of the law is far from what Locke demands - among other things, it refers to the wrong law, namely the rules of the game. But there is an initial indication of what the required understanding of the law could look like in an artificial intelligence. Is it possible that artificial intelligences can experience joy? In some cases, it is argued that existing “reinforcement learning” algorithms, such as those used by Google DeepMind, can feel joy. The future artificial intelligences could be inflicted with severe suffering in the course of experiments. So it seems conceivable that future artificial intelligences could fulfill all necessary and sufficient conditions demanded by Locke, and accordingly be seen as persons.

4.2. Artificial intelligence as legal personality

Only (legal) persons have rights and obligations. Unlike the concept of the person, the concept of the legal person is a legal dogmatic concept, the meaning and extension of which must be determined by jurisprudence. In this way, it can basically also take into account new circumstances, such as technical advances in AI research, and new knowledge, e.g. about the cognitive abilities and its scope. Can artificial intelligences have legal personality? In oder to provide a precice answer to this it would be needed for the AI (in order to get legal personality) to fulfill the necessary and jointly sufficient conditions. In this regard, we have identified the following requirements the ability to be self-interested and the legal subject must have its own identity in order to be able to participate in legal transactions.

Regarding the first criterion, in order to have rights and obligations only makes sense for those who have a self-interest and can pursue them with the help of others. According to the second criterion, a legal entity must have its own identity. It must be clearly established who takes part in legal transactions and who is to become the owner of rights and obligations. The dogmatic debate on this relates almost exclusively to the question of what requirements are to be placed on companies as legal persons. In the case of natural persons, this question is of course answered in the affirmative. With the question of whether artificial intelligences have a sufficiently clearly defined identity, is questionable.

First of all, it should be noted that algorithms, like humans, are physically implemented and thus also localized. They are in one or more places and exist on a physical computer system. In addition, like people or societies, they can have a name: The Google algorithm that plays Go is called AlphaGo. What makes the question more difficult compared to humans and even

societies is that artificial intelligences as algorithms can simply be copied and thus duplicated. Google could easily create numerous instances of AlphaGo. We believe, that day there will be countless copies of brain simulations that do our work and make us redundant as workers. The fact that algorithms can be copied easily makes it difficult to identify them. It can be practically difficult to determine which of the many copies of an algorithm running on servers in a data center performed the service.[3]

Instead of arguing that the possibility of copies does not make identification much more difficult in legal transactions, we would like to show that the problem of copying also exists for biological organisms, albeit theoretically. In literature, in the context of the debate about personal identity, many thought experiments are discussed in which people are "copied" and whose identity is difficult to determine as a result. The most prominent scenarios include brain transplantation and mind uploading. After the operation, there are two independent, viable individuals who each have half of the brain of the original person. This is the case of a human copy. Mind uploading, on the other hand, is a term for transferring all the properties of a human consciousness (memories, personality, and other properties) to a computer. In both scenarios a person or the part of the person who is responsible for his personality is copied. In the second case, this process could be repeated any number of times to make numerous copies. Despite these two (initially theoretical, but possibly soon real) ways of copying people, we do not question their status as legal entities. Accordingly, we should not rush to deny artificial intelligences the status of legal entities because they can be easily copied.

5. Follow-up considerations

Existing artificial intelligences are not yet legal entities and also have no personal status. We think there are good reasons for this. It should be noted, however, that when extending the legal sphere to other biological or non-biological beings with strong cognitive distortions. Artificial intelligences that already exist and will emerge in the near future are not yet legal entities and therefore cannot yet bear any criminal responsibility. But we should not conclude from this that they do not deserve any protection. We should therefore take the idea seriously and consider similar protective mechanisms for artificial intelligences as they already exist for humans. We do not know whether existing artificial intelligences can already suffer and are therefore worthy of protection. But we do not doubt that now is the right time to ask this question. If artificial intelligences can in principle achieve the status of legal person in the future, then a number of legal follow-up questions arise. Research in the area of the criminal responsibility of artificial intelligence has to answer, for example, to what extent the relationship between programmer and artificial intelligence in the case of criminal behavior is to be assessed within the framework of the rules. It is also of great interest how the subjective side of the facts is designed in the case of artificial intelligences. For example, how is the distinction between deliberate negligence and contingent intent in the case of artificial intelligences to be determined? These and other questions deserve detailed investigation and cannot be dealt with within the scope of this article.

The most interesting question then is whether future artificial intelligences can in principle be guilty at all. In regards to humans, culpability is the norm that can be lifted in exceptional cases. With artificial intelligences it would have to be clarified whether they could ever be guilty at all. We can only say, that in order for artificial intelligences to be guilty, they must first be able to recognize what is legally required in a particular situation. Similar to how a chess computer knows the rules of chess, an artificial intelligence should be able to recognize the required actions. In the form of self-driving cars, we already have artificial intelligences that can recognize and obey legal rules, namely traffic rules. Knowledge of what is legally required may feel subjectively different with artificial intelligences than with humans, an algorithm will probably feel like a “bad conscience” when the legal system is violated.[4]

6. Conclusion

When it comes to the difficult legal problems of artificial intelligence, many may be pessimistic about their resolution with the existing means of law. Previous tools for attributing responsibility are not sufficient to legally assess situations in which advanced artificial intelligences play a role. We have to decide between not using this kind of machine anymore (which is not a realistic option), or facing a responsibility gap, which cannot be bridged by traditional concepts of responsibility. An answer to the question whether artificial intelligences should be granted some form of legal personhood cannot be answered now. But even if one can show that concepts of responsibility in criminal law could be applicable to artificial agents, and these can basically be held responsible within the framework of their cognitive abilities, this does not mean that criminal law is also ideally suited to deal with artificial intelligences. In fact, it is highly questionable whether, for example, the penalties and sanctions of criminal law make sense in the case of artificial intelligences.[5] In the case of artificial intelligences, however, criminal policy considerations that are already relevant today come

[3] KARÁCSONY, G. (2019): Managing personal data in a digital environment - did GDPR’s concept of informed consent really give us control?

[4] ROTENBERG, M., SCOTT, J., HORWITZ, J. (2015): Privacy in the modern age: The search for solutions.

[5] HALLEVY, G. (2013): When Robots Kill: Artificial Intelligence under Criminal Law.

into doubt when dealing with artificial intelligences. In contrast to real people who do not follow any particular decision theory, such artificial intelligence will always determine the probability of the expected value of an action, of being caught by the authorities, multiply by the amount of the threat of punishment. By increasing the threat of punishment, in contrast to humans, it should in principle be possible to prevent almost all crimes, because the expected value of the action for the artificial intelligence is extremely low. No artificial intelligence would choose an action with such a low expected value. Should the legislature therefore determine other threats of punishment for artificial intelligences? That is just one of the many questions that we will have to be asked and solved over the next few years.

7. Literature summary

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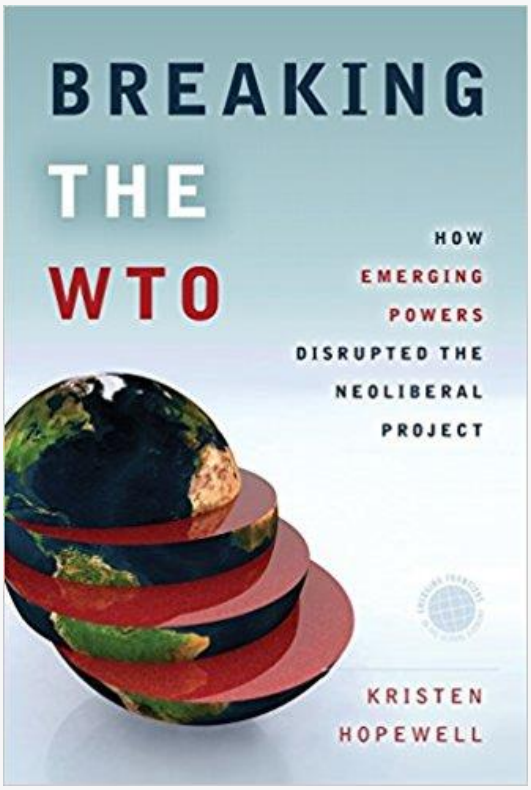
Hopewell, K.
Breaking the WTO: How Emerging Powers Disrupted the Neoliberal Project



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V prípade Breaking the WTO: How Emerging Powers Disrupted the Neoliberal Project, Kristen Hopewell tvrdí, že aktívny výkon ich vlastných záujmov vedie neoliberalizmus k patovej situácii. Pomocou príkladu Svetovej obchodnej organizácie (WTO), kniha nielenže ilustruje mocenský posun, ale aj to, že požiadavky zo strany vznikajúcich mocností sťažujú dosiahnutie konsenzu. Môžeme oceniť odvážnu a inovatívnu interpretáciu mocenských interakcií v rámci WTO, ktoré ponúka táto práca.

Svet prechádza zmenami vyplývajúcimi z mocenského posunu. Vo svojej knihe Breaking the WTO: How Emerging Powers Disrupted the Neoliberal Project, Kristen Hopewell hodnotí vplyv na globálne hospodárske riadenie so zameraním na Svetovú obchodnú organizáciu (WTO).

Na základe empirického výskumu - pätnásť mesiacov terénneho výskumu v rámci WTO v rôznych krajinách, 157 rozhovorov s rôznymi zainteresovanými stranami, viac ako 300 hodín etnografického pozorovania a rozsiahlej analýzy dokumentov - autor jasne odhaľuje mocenskú politiku vo WTO. Každý z hlavných hráčov je ako románová postava: čitatelia cítia ich túžby, ich nepokoj a nádej a tiež to, čo bude budúcnosť toho celého. Hopewell na samom začiatku knihy predkladá svoj argument: rozpad základných inštitúcií neoliberálneho globálneho ekonomického poriadku je spôsobený prijatím jeho noriem, zásad a inštitucionálnych opatrení zo strany rozvíjajúcich sa mocností. Je to vysvetlenie vďaka čomu čitateľ odhalí prechod od multilaterálneho hospodárskeho riadenia pod vedením USA prostredníctvom rastúcich požiadaviek rozvíjajúcich sa mocností a vyplývajúcej patovej situácie v rámci WTO. Aký je pôvod WTO? Ide o multilaterálny obchodný systém, ktorého cieľom je postupne liberalizovať obchod prostredníctvom postupných kôl rokovaní. Jej zrod znamenal začiatok projektu budovania inštitúcií. Po dlhú dobu po roku 1945 bola WTO (a jej predchodca, Všeobecná dohoda o clách a obchode (GATT)) nástrojom hegemónie USA.

A aká je súčasná WTO? Je to stále nástroj; nedostatok dominantnej moci však vyplynul z posunu moci. Obe rozvinuté a rozvíjajúce sa krajiny sa usilujú využiť ju pre svoje vlastné záujmy. Aj keď rozvíjajúce sa mocnosti sa snažia hovoriť v mene iných rozvojových krajín, sú kritizované z dôvodu nedostatočnej reprezentatívnosti. Okrem toho existujú významné rozdiely v rozvinutých krajinách a tiež v rozvíjajúcich sa krajinách. Rokovania teda prichádzajú do patovej situácie, pretože neexistuje žiadna hegemónia, ktorá by "priniesla" dohodu, ktorú treba dosiahnuť. Kniha ma prinútila premýšľať: ak by platilo, že WTO de facto odráža väčšinu amerických záujmov v ére americkej hegemónie, dá sa očakávať, že USA získali najviac v rámci WTO. Patová situácia v rokovaniach v Dauhe však nemusela byť USA očakávaná. Okrem toho Hopewell zdôrazňuje, že podpora voľného obchodu v USA je vysoko selektívna. V rámci kola rokovaní v Dauhe očakávali USA rozširovanie liberalizácie poľnohospodárstva v Európskej únii a Japonsku. Medzitým sa poľnohospodárske dotácie v USA a iných bohatých krajinách stali hlavným cieľom, aj keď subvencované poľnohospodárstvo v rozvinutých krajinách môže priniesť úžitok chudobným krajinám, ktoré sú závislé od dovozu

potravín. Na jednej strane patová situácia v rokovaniach predstavuje otázku modelov rozvoja: prečo sa poľnohospodárstvo v Brazílii úspešnejšie rozvíja ako v Indii a Číne? Prečo rastie odvetvie služieb v Indii? Prečo sa výrobky vyrábajú v Číne? Keďže proces liberalizácie viedol k rýchlemu rozvoju rozvíjajúcich sa krajín, ako je Brazília, India a Čína, mali by USA a ďalšie bohaté krajiny očakávať podobnú situáciu?

Na druhej strane, prečo krajiny, ktoré sa vyvinuli a získali z liberalizácie, teraz tlačia liberalizačný proces smerom von? Hopewell ponúka svoje pozorovania základných záujmov rozvíjajúcich sa mocností. Brazílske výhody a očakávania v súčasnosti spočívajú v poľnohospodárskom vývoze; Indické v oblasti vývozu služieb; a Čínske vo výrobných vývozoch. Brazília vo svojich alianciách s Indiou kritizovala poľnohospodárske dotácie v rozvinutých krajinách. India aj Čína majú významnú časť svojho obyvateľstva zamestnaného v poľnohospodárstve. Hopewell poukazuje na to, že mocenské interakcie vedúce k patovej situácii odrážajú v podstate merkantilistický boj. Rokovania WTO sú navrhnuté tak, aby sa členovia dohodli na balíkoch, čo im umožní obetovať "straty" v niektorých oblastiach za "zisk" v iných. Patová situácia rokovaní v Dauhe naznačuje, že medzištátnym vzťahom nemožno vyhovieť. Okrem toho to znamená, že heterogénnym záujmom v rámci krajín nie je možné vyhovieť. Napríklad odvetvia služieb v Indii požadujú ústupky od USA a EÚ, aby umožnili viac pracovníkom dočasne pracovať na svojich trhoch, hoci ponuka bola nakoniec obmedzená na kvalifikovaných pracovníkov namiesto nízko kvalifikovaných pracovníkov.

Ak sa záujmy nemôžu uspokojiť prostredníctvom mnohostranných obchodných rokovaní, povedie takýto protekcionizmus k ekonomickej depresii alebo dokonca k vojne, ako tomu bolo počas druhej svetovej vojny? Hopewell poznamenáva, že v súčasnosti sme svedkami transformačného obdobia, v rámci ktorého inštitucionálne štruktúry ako je Medzinárodný menový fond (MMF), Svetová banka a GATT/WTO sa nachádzajú pod americkou hegemóniou. Vo všeobecnosti, kniha breaking the WTO hodnotí vplyv posunu moci na svetový poriadok hospodárskeho riadenia. Odhaľovanie politických interakcií v rámci WTO pomáha rozvíjať pochopenie vplyvu tejto situácie na globálnu politiku. To vytvára príležitosť pre hráčov, ktorí sa zameriavajú na vlastné záujmy. Okrem toho vyzýva výskumných pracovníkov, aby uskutočnili ďalšie globálne štúdie s cieľom zistiť, či toto zlepšenie je, alebo nie je možné.