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APPLICABILITY OF LEGAL REGULATIONS TO HIGH ARTIFICIAL INTELLECT – ROBOTS

ABSTRACT

The present paper addresses the necessity of creating legal regulations regarding a technological novelty - robots; it discusses the issues of freedom of religion, freedom of expression and the right to personal development in the context of domestic legislation, as well as international regulations. The paper focuses on the issue of potential applicability of the said constitutional rights to robots, and the role of the Constitutional Court and the Supreme Court of Georgia with respect to this subject. In addition, the paper addresses the case-law of the Supreme Court of the United States and the European Court of Human Rights.

I. NECESSITY OF REGULATING ARTIFICIAL INTELLIGENCE AS A TECHNOLOGICAL NOVELTY

Modern technologies represent the unity of systematized knowledge that can transform societies with maximum, using minimal physical or mental resources.² Concurrently with the world of technology, artificial intelligence (hereinafter, “AI”) is constantly progressing as one of the technological novelties.

The AI performs functions that are related to human intelligence and is aiming to imitate cognitive functions of a human being, to achieve the level of intelligence that will allow it to demonstrate intelligent actions. The AI is in direct correlation with legal order.

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² Hee Jun Choi, "Technology Transfer Issues and a New Technology Transfer Model", The Journal of Technology Studies, p.5. Science, Technology and Innovation in the New Economy, Organisation for Economic Co-operation and Development Policy Brief, September 2000, p.1.

Given the main objectives of legal regulations regarding implementation and conceptualization of technological innovations, it is necessary to create the most convenient conditions and to protect the rights and legitimate interests of individuals, as well as consumer rights and the environment.

Given all of the abovementioned, the issue of subjecting modern technologies and innovations to legal regulations is of utmost importance.

The term “robot” stems from a Czech word “robota”.³ Under the current definition, a robot is a machine, which senses, thinks, acts and has the skills for processing information, which strengthens the cognitive aspect.⁴ According to Oxford Dictionary, a robot is a machine resembling a human being and able to replicate certain human movements and functions automatically.⁵ The AI technology is an agent that acts autonomously, with its own motives and emotions and has the ability to interact with humans and its environment.⁶ It is considered the aforesaid definition should also include such categories as nature, autonomy, purpose, operational environment and interaction between humans and robots.⁷ However, as of today, the universal definition of this term cannot be found.

According to Professor Sam Lehman-Wilzig, robots can exhibit curiosity, display self-recognition, be creative and purposive, learn from their own mistakes, imitate the behavior of humans, reproduce themselves and have an unbounded life span. They can read, talk, learn, feel. According to Kemeny, there are “six criteria which distinguish living from inanimate matter: metabolism, locomotion, reproducibility, individuality, intelligence, and a ‘natural’ (non-artificial) composition”.⁸ He concludes that robots can meet all of the aforementioned criteria. Moreover, Weizenbaum - a critic of AI - “admits that computers are sufficiently ‘complex and autonomous’ to be called an ‘organism’ with ‘self-consciousness’ and an ability to be ‘socialized’ members of their own machine species”.⁹

The area of robots is very wide and various legal documents have an impact on it. The question is whether it is possible to apply the traditional legal regime to robots or whether it is necessary

³ Ivan Margolius, “*The Robot of Prague*”, Newsletter Issue 17, Autumn 2017.

⁴ Patrick Lin and others, “Robot ethics: Mapping the issues for a mechanized world”, *Artificial Intelligence* 175 (2011), p.943, George Bekey, “Autonomous Robots: From Biological Inspiration to Implementation and Control”, MIT Press, Cambridge, MA, 2005.

⁵ The definition of the term is available at: <<https://en.oxforddictionaries.com/definition/robot>> accessed 20 January 2019. The same definition is also under in the article by Chris Holder and others “*Key legal and regulatory implications of the robotics age (Part I of II)*”, *computer law & security review* 32 (2016), p.384.

⁶ Kang-Hee Lee, “*Evolutionary algorithm for a genetic robot’s personality*”, *Applied Soft Computing* 11 (2011) p. 2287.

⁷ E. Palmerini and others, “*RoboLaw: Towards a European framework for robotics regulation*”, *Robotics and Autonomous Systems* 86 (2016), p.79.

⁸ Phil McNally and Sohail Inayatullah, “The Rights of Robots: Technology, culture and law in the 21st century” (*Futures* April 1988) p. 125.

⁹ *Supra* note 8, pp.125, 134.

to create *lex robotica*. It is considered that the argument for creating *ad hoc* legal regulations for robots is based not only on ontological grounds,¹⁰ but also on the tasks that are performed by them in the society.¹¹

It is argued that in the context of full autonomy, robots become legal subjects and obtain rights as well as duties.¹² However, until robots become entirely capable of acting in accordance with their own priorities and aims, based on their own pleasure, they cannot be considered as completely independent and ethical agents.¹³

Legal regulation is necessary given the socio-economic potential of sophisticated robots as well as the potential risks. However, as noted in the Stanford University Journal “Artificial Intelligence and Life 2030”, the lack of a legal definition of AI will further complicate regulation of this area, since, given the absence of relevant regulating laws, the issues of the legality of using technological innovations, culpability and liability, safety and the protection of human rights are vague.¹⁴

Given the specificities and the area of functioning of the laws regarding high performing AI, these laws must meet the requirements of a democratic and legal state and be relevant, sufficient and proportionate to legal aims.¹⁵ According to case-law of the CJEU, the principle of legality encompasses the principles of proportionality, legality, legal certainty, reasonability of legal acts and equality.¹⁶ As for the ECtHR, - it considers that the law must meet the requirements of

¹⁰ The *rationale* of ontological grounds is based on the independent nature of acting, which also enables a robot to bear responsibility for the harm inflicted as a result of its actions.

¹¹ A. Bertolini, “Robotic Prostheses as Products Enhancing the Rights of People with Disabilities. Reconsidering the structure of Liability Rules” *Law Comput. Technol.* 29 (2–3) (2015), pp. 116–136.

¹² Leroux and others “*Suggestion for a Green Paper on Legal Issues in Robotics*”. Contribution to Deliverable D.3.2.1 on ELS Issues in Robotics, 2012.

¹³ Mathias Gutman and Others, “*Action and autonomy: A hidden Dilemma in artificial autonomous systems*” (in *Robo- and Informationethics: Some Fundamentals*, eds. Michael Decker and Mathias Gutman, Lit Verlag 2012).

¹⁴ Peter Stone and others, “Artificial Intelligence and Life in 2030.” *One Hundred Year Study on Artificial Intelligence: Report of the 2015-2016 Study Panel*, Stanford University, Stanford, CA, September 2016. <https://ai100.stanford.edu/sites/default/files/ai100report10032016fnl_singles.pdf> [accessed 15 July 2018].

¹⁵ *Patyi and Others v. Hungary* App no. 5529/05 (ECtHR 7 October 2008) paras. 38-39.

¹⁶ Konstantine Korkelia, *Human Rights and the Rule of Law* (Tbilisi 2013), p. 33, available at: <https://www.tsu.ge/data/file_db/faculty-law-public/Adamianis%20Uflebebi_%202013.pdf> [accessed 25 April 2019]. The author relies on different judgments, such as *Hermann Schröder HS Kraftfutter GmbH & Co. KG v. Hauptzollamt Gronau*, Case No.265/87 (CJEU 11 July 1989); The principle of proportionality was further codified in Article 5(3) of the Treaty on European Union (after the entry into force of the Lisbon Treaty - in Article 5(1), *Hoechst AG v. Commission*, Case No. 46/87 and 227/88 (CJEU 21 September 1989). *Deuka, Deutsche Kraftfutter GmbH, B. J. Stolp v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, Case No. 78/74 (CJEU 18 March 1975); *Racke v. Hauptzollamt Mainz*, Case No. 98/78 (CJEU 25 January 1979); *Ralf-Herbert Kühn v. Landwirtschaftskammer Weser-Ems*, Case No. C-177/90 (CJEU 10 January 1992); *Agricola Tabacchi Bonavicina v. Ministero per la Politiche Agricole*, Case No. C-402/98 (CJEU 6 July 2000). *Koninklijke Scholten-Honig NV and De Verenigde Zetmeelbedrijven “De Bijenkorf” BV v. Hoofdprodukschap voor Akkerbouwprodukten*, Case No. 25/77 (CJEU 25 October 1978); *Albert Ruckdeschel & Co. und Hansa-Lagerhaus Ströh & Co. v. Hauptzollamt Hamburg-St. Annen*, Case No, 117/76 (CJEU 19 October 1977); *Peter Überschär v. Bundesversicherungsanstalt für Angestellte*, Case No. 810/79 (CJEU 8 October 1980); *EARL de Kerlast v. Union régionale de coopératives*

publicity, accessibility and foreseeability.¹⁷ Hence, laws regarding technological innovations shall meet the following criteria:

- serving legitimate aims;
- be non-discriminate, proportionate, transparent and fair;
- a link shall exist between the normative content concerning regulations of technological innovations and existing legal reality;
- relation between technologies, regulations and the normative nature of laws should be balanced and harmonized;¹⁸
- laws should create the mechanisms for intervention for the purposes of balancing “protected value” and “inflicted harm”;
- they should consider the needs of a given society, its experience and/or relation with technological innovations. Laws should be amendable and they should address existing challenges and the needs of the society;
- they should not serve as an artificial obstacle and they should not obstruct the implementation or development of new technologies. They should not legitimize fears of the society, ungrounded superstitions, religious or other viewpoints and sensitive views.

Sophisticated AI are implemented in public and private sectors. Application of AI makes legal consulting online possible, which is why it represents a know-how for many fields of law.¹⁹ Creating a legal AI platform with codification of current laws, case-law and legal literature will completely change the rules of the game and will make legal services exclusive, innovative, progressive and flexible. A legal AI platform is capable of handling complex and lengthy processes by using cognitive, rational and analytic skills of technology.²⁰ Accordingly, it is necessary for relevant legal regulations to exist on domestic, as well as on international level. Under the principle of separation of power, it is the legislative branch that should create main guiding principles with respect to regulating AI. As of today, none of the countries has addressed the

agricoles and Coopérative du Trieux, Case No. C-15/95 (CJEU 17 April 1997); *Kjell Karlsson v. Jordbruksverk*, Case No. C-292/97 (CJEU 13 April 2000); *Tanja Kreil v. Germany*, Case No. C-285/98 (CJEU 11 January 2000).

¹⁷ *Sunday Times v The United Kingdom*, App No 6538/74, A/30, [1979], paras. 46, 47, 51, 52, 67 <<https://globalfreedomofexpression.columbia.edu/cases/the-sunday-times-v-united-kingdom/>> accessed 25 April 2019.

¹⁸ We bring to the reader’s attention the fact that, normative nature of the law, neither technologies nor regulations, is a not solid and sustainable substance themselves; they are transforming, rapidly changing and growing in time and environment.

¹⁹ Richard Susskind, *Artificial Intelligence and the Law* Conference at Vanderbilt Law School <<https://law.vanderbilt.edu/academics/academic-programs/law-and-innovation/activities.php>> accessed 15 April 2019.

²⁰ Pamela V. Grey, “*Artificial Legal Inteligence, Harward Journal of Law and Technology*“, Volume 12, Number 1, 1998, p. 247.

issue of legal capacities and legal status. Clearly, the courts cannot intrude into the existing legally protected sphere *sua sponte*, independently, without legal grounds and procedures.

The skills and functions of sophisticated AI - robots are almost the same as those of a human being, which makes it possible to consider them as independent contractors for legal purposes.

There is a number of problematic issues, which should be addressed by the existing law. Namely:

- whether a person acting under orders and commands of AI technology - a robot - should be liable before the law or whether liability should rest upon robots in such cases;
- to what extent shall rights and liberties apply to robots;²¹
- how should the issue be resolved when damaged has occurred as a result of action or inaction of a robot;
- what should be the legal status of robots, which are not deemed as the subjects of law under the existing legal order;
- whether it is possible to establish legal liability of a robot.

As a result of technological changes, today robots can create, analyze and send information just like human beings.²² They are interactive and have emotions. Upon creating them, scientists are giving robots emotional intelligence and capacities, which makes it impossible to clearly distinguish computers from a human being.²³ Robots address societies and make speeches, which

²¹ Would it be possible to apply rights and liberties by the method of analogy just like in case of legal entities?

²² Furthermore, a US national Matt McMullen has created the first female intimate robotic AI “Harmony“ for the purposes of sexual satisfaction, and presentation of a similar male robot is planned in 2018. Robots are already available for purchase and their market price is USD 11,000 <<https://realbotix.com/>>, <<https://www.mirror.co.uk/tech/male-sex-robots-bionic-penises-11818283>> accessed 20 January 2019; Robots for medical services and conducting surgeries have also been developed <<https://www.nbcnews.com/mach/science/these-tiny-robots-could-be-disease-fighting-machines-inside-body-ncna861451>> accessed 20 January 2019; Chinese governmental news broadcaster Xinhua has presented robot anchors to its audience. The agency stated that they will deliver information to their audience “tirelessly”, every day and from any part of the country <<http://netgazeti.ge/news/318325/?fbclid=IwAR2Ch8Pv5fe2uuKSO6qgjT6WYwFudJazTkmTvPevgNY5o3YpnPJXE8Yq6k>>; accessed 25 November 2018; On the International Conference on Robots in 2016, the Chinese University of Science and Technology presented robots with a human body and sophisticated artificial intelligence, which could communicate with people and perform various functions and tasks <<http://www.ieee-ras.org/component/rseventspro/event/988-wrc-2016-world-robot-conference>> accessed 25 November 2018. Besides, a Japanese robot Erica developed at the Osaka University is now engaged in journalism <<https://www.livescience.com/61575-erica-robot-replace-japanese-news-anchor.html>> accessed 25 November 2018. In addition, the following robots are also engaged in active communications with public: Actroid, Asuna, Chihira Kanae, Jia Jia which was presented at the Tokyo Game show in 2017 and others. A short list is available at <<https://www.hexapolis.com/2017/04/04/advanced-robots-humanoid/>> accessed 25 November 2018.

²³ Rafael A. Calvo and Dorian Peters, *“Positive Computing: technology for wellbeing and human potential”* (2014); Klaus R. Scherer, and others, *“Blueprint for affective Computing A Sourcebook”* eds., 2010; The Oxford Handbook of Affective Computing (Rafael A. Calvo, Sidney D’Mello, Jonathan Gratch and Arvid Kappas eds., 2015).

spontaneously results in the exercise of freedom of speech, thought and religion, protected under Article 19 of the Constitution of Georgia. The said article represents the foundation of a democratic society and serves as a prerequisite for the development of a state.

It has been argued that recognizing the freedom of expression of robots will become an inseparable part of democratic culture.²⁴ Democratic culture guarantees the recognition of a robot as a legal subject. The freedom of expression is an instrumental value not only for a listener, but also for the one who is exercising it.

We should also consider counterarguments that are opposing the issue of granting freedom of expression to robots, based in particular on the premise that robots are not human beings. According to one part of the society, in order for robots to have equal rights as humans, they need something that can only be a characteristic of a human being.

Professor Lawrence B. Solum of Georgetown University notes that if scientists discover similarities between the actions and cognitive abilities of robots and human beings, we will have sufficient grounds for approaching robots in the same manner as human beings. They are developing not only from the emotional point of view, but their cognitive abilities are also evolving, as well as the level of their independence, autonomy.²⁵ If we agree upon Prof. Solum's claim and the progress of AI, the issue of applying freedom of expression exclusively to human beings will no longer be relevant.

To a certain extent, technological progress makes the satisfaction of the requirements of legal subjectivity possible. For example, having a body had been considered one of main distinctions between technology and a human being, however, the progress has eliminated this distinction. Robots are capable of processing ambiguous information, conducting various actions within the frame of their program, inflicting harm, performing useful or unlawful commands. Given the aforementioned, Associate Professor at the Washington University Law School - Ryan Calo argues that unlike previously existing technologies, robots are social actors.²⁶

Jane Bambauer, who has examined whether data can be considered speech, argues that whatever is performed, produced (saved, synthesized, organized, analyzed, connected, shared) by robots, shall be deemed as free speech for the purposes of the First Amendment of the US Constitution.²⁷

²⁴ Jack M. Balkin, "Cultural Democracy and the First Amendment", 110 Nw.U.L.Rev.1053, 1060.

²⁵ Lawrence B. Solum, "Legal Personhood for Artificial Intelligences", 70 N.C. L. REV. note 10, 1, 1258-79 (1992), <<https://scholarship.law.unc.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=3447&context=nclr>>.

²⁶ Ryan Calo, "Robotics and the Lessons of Cyberlaw", 103 Calif.L. Rev. 515 (2015), p.4.

²⁷ Jane Bambauer, "Is data Speech?", Vol. 66, Stanford Law Review, (2014), pp .57, 77-86, 91-105.

Stuart Benjamin asserts that since the products of algorithms contain “receivable and sendable messages”,²⁸ they should be considered speech.

According to Tim Wu, the First Amendment implies that the speech should carry an intellectual choice. Hence, robots will have to pass the functionality test in order to demonstrate the ability to make intellectual choices.²⁹

Discussions regarding the potential and skills, as well as potential legal subjectivity of sophisticated AIs have begun since 20th century. Isaac Asimov has developed fundamental ethical principles on treating robots.³⁰ Today, in the 21st century, we can hear discussions about improving and further developing their physical and cognitive skills. Robots are involved in various social fields, including business, health-care, jurisprudence, media, etc. Potential skills of these technologies in other fields are constantly growing, which makes them right-holders. However, they still are not considered as independent subjects. This is based on a claim that a robot is a machine and does not have a relevant level of independence. Moreover, supporters of this approach share the view that robots can only achieve progress upon the demand of a specific person who gives orders through the program support. This is why robots are not deemed to be bearing liability in accordance with the law, i.e. if they act against the law or inflict harm upon an individual, liability will be borne by the developers/owners of the program. It can also be said that another thing preventing robots from becoming legal subjects is the fear of substitution as well as traditional conservative views.

Given the aforementioned, robots are social actors and the time has come for the fact of them exercising rights to be recognized. Clearly, recognizing the rights and liberties of an individual as universal value had to do with limitation of power, civil disobedience, conflict, and war. Without this experience, we would not have been able to talk about *jus cogens* norms and international instruments of fundamental rights and liberties. Today, the first-ever form of rights and liberties has been transformed, and they consolidate drastically different rights. A few centuries ago, nobody would have talked about the access to internet, right to food, right of women to education, their voting rights or other rights. Slavery was abolished only after years of fighting, which now is considered to be *jus cogens*. Clearly, it is difficult to change the perception on robots in the “human and human centric” society, and recognizing their rights will be linked to very complex procedures.

As of today, existing law leaves the question of robots’ rights open. We believe that given a great variety of ways in which robots can be adapted in the society and given that they function-

²⁸ Stuart Minor Benjamin, “*Algorithms and Speech*”, Vol.161, U. PA. L. Review, pp.1445, 1461-71 (2013), Andrew Tutt, “*Software Speech*”, 65, Stanford Law Review Online 73 (2012), p. 77.

²⁹ Tim Wu, “*Machine Speech*”, 161, U PA. L. Review (2013), pp. 1495, 1503.

³⁰ Isaac Asimov, “*I, ROBOT*”, Canada:Doubleday 1950, p. 40 and Isaac Asimov, “*The Rest of Robots*”, Canada:Doubleday 1964, p. 43; the rationale of ethical principle implies programming a robot in accordance with universally recognized ethical norms, as well as in accordance with the values of universal declaration on human rights, equality, fairness, non-stigmatization, and personal and social responsibility.

ally are exercising rights recognized by law, existence of legal regulations is essential for determining legitimacy of their actions and consequences thereof. Defining legal status and recognition of rights of robots by law would be an important step forward by a State, because it makes no sense to ignore the existing reality merely because robots are machines. At the same time, it is necessary to enact regulations that would correspond to potential illegal actions, that can occur within the course of their exploitation. An important aim is that the legislation be able to react adequately and in a timely manner, with due regard to the existing risk factors.

Clearly, large-scale implementation of a sophisticated AI - robots would affect a number of legal conventions. Furthermore, this will dictate the courts to change or adopt new interpretation of the concept of legal subjects. We think that constitutional changes are inevitable. The exercise of freedom of expression by robots will make it necessary to interpret this phenomenon in a new manner in a Georgian reality as well. Hence, we believe that neither normative nor practical examples are sufficient for denying robots the freedom of expression.

II. STATE PRACTICE WITH RESPECT TO HIGH PERFORMING AI - ROBOTS

Generally, the existence of robots does not automatically alter the existing scope of rights recognized by law at the international and regional level. The Supreme Court of the United States has noted that “the main principles of freedom of speech protected under the First Amendment do not depend on the creation of new media or innovations in technology”. In case of *Brown v. Entertainment Merchants Association*,³¹ the Court ruled that video games were within the scope of the First Amendment. It noted that just the same way as books and movies serve the purpose of expressing ideas, video games also represent the means of communicating ideas - it encompasses various social messages (characters, dialogues, plot and music). They create a space where gamers interact with virtual world and this suffices for the First Amendment to apply to video games as well. The First Amendment and the doctrine of free speech applies regardless of who is the speaker. In its judgment on *The First Nation Bank of Boston v. Bellotti*,³² the Court ruled that free speech does not depend on identification of a speaker or a source, and this right is granted not only to individuals, but also to corporations, associations, and unions. The Supreme Court of the United States considers that the First Amendment is about the speech, not about a speaker as such.³³ Corporations, as legal entities, have freedom of speech.³⁴ The First Amendment applies to those speakers as well, who are not private individuals.³⁵ Under the precedent,

³¹ *Brown v. Entertainment Merchants Association*, 564 U.S. 786, 790 (2011).

³² *The First Nation Bank of Boston v. Bellotti*, 463 U.S. 765, 777 (1978).

³³ *Citizens United v. FEC*, 558 U.S. 310, 392–93 (2010).

³⁴ *ibid.*

³⁵ Toni M. Massaro, Helen Norton and others, "SIRI-OUSLY 2.0: What Artificial Intelligence Reveals About the First Amendment", (101 Minnesota Law Review 2481, 28 June 2017) p. 2496.

algorithms (as a result of the action of a developer) are considered to be speech.³⁶ In case of *Zhang v. Baidu.com Inc.*,³⁷ the Court ruled that results of a search engine fall within the ambit of the First Amendment as well. Regardless of identity or the format, the First Amendment protects equally nontraditional speakers and speech as well. We believe that, based on the case-law of the US Supreme Court, the possibility of application of the First Amendment to AI technology is not excluded. Accordingly, given this precedent of the Supreme Court, it can approach the free speech of robots in the same manner as it addresses free speech of an individual. Given all the above mentioned, we cannot reject the speech produced by high-performing AI solely because we cannot see a human in it and that it does not satisfy the criteria of “personhood”.

Some researchers are of the opinion that freedom of expression applies to speech of robots as well, including algorithmic speech. David Skover and Ronald Collins argue that the audience of free speech under the First Amendment is everyone, regardless of who or what exercises it.³⁸

Article 9 of the European Convention of Human Rights protects the freedom of thought, conscience and religion.³⁹ Under the first paragraph of the said Article, everyone has the right to freedom of thought, conscience and religion. The right to freedom of thought, conscience and religion is among those fundamental rights, without which a democratic state based on the rule of law cannot exist. While the first paragraph of Article 9 provides for the said right, paragraph 2 prescribes certain limitations. These limitations shall be prescribed by law, necessary in a democratic society and they must serve one of the legitimate aims (public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others). This paragraph is aiming to balance the right of an individual to freedom of thought, conscience and religion against the interests of public, whenever the two of them come into contradiction.⁴⁰

The right to freedom of thought, conscience and religion, including the freedom to change one’s religion or belief cannot be restricted by the State. Article 9 of the ECHR imposes on States Parties not only negative, but also positive obligations to protect the right to freedom of thought, conscience and religion. States Parties have an obligation to ensure the peaceful enjoyment of

³⁶ *Zhang v. Baidu.com, Inc.*, 10 F. Supp. 3d 433, 435 (S.D.N.Y. 2014) (search results manifested in algorithm represents “in essence an editorial judgment about which political ideas to promote”; See also *Langdon v. Google, Inc.*, 474 F. Supp. 2d 622 (D. Del. 2007); *Search King, Inc. v. Google Tech., Inc.*, No. CIV-02-1457-M, 2003 WL 21464568 (W.D. Okla. 27 May 2003).

³⁷ *Zhang et al v. Baidu.Com Inc. et al*, No. 1:2011cv03388, 10 F. Supp. 3d 433 (S.D.N.Y. 2014).

³⁸ Toni M. Massaro and others *supra* note 35; Arizona Legal Studies Discussion Paper No. 17-01; Ohio State Public Law Working Paper No. 374; Colorado Law Legal Studies Research Paper No. 17-3.

³⁹ Council of Europe, European Convention of for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, Article 9.

⁴⁰ Konstantine Korkelia, Irine Kurdadze, *International Human Rights Law under the European Convention on Human Rights* (Tbilisi 2004) p. 193, <<http://www.nplg.gov.ge/gsd/cgi-bin/library.exe?e=d-01000-00---off-0samartal--00-1---0-10-0---0---0prompt-10---4-----0-11--11-ka-50---20-about---00-3-1-00-0-0-11-1-0utfZz-8-00&a=d&cl=CL4.5&d=HASHb07e4e79354e15c4f86d59.9.5>>, accessed 25 April 2019. See also *Wingrove v. The United Kingdom*, 25 November 1995, 24 EHRR 1, 1996-V, para. 53 cited in “International Human Rights Law under the European Convention on Human Rights”.

the right to freedom of religion.⁴¹ Article 9 is the only right that does not list “national security” as one of the legitimate aims for restricting the right at hand.⁴²

“The right to freedom of thought, conscience and religion means that a person cannot be subjected to a treatment which is aiming to forcibly change one’s way of thinking. This means that a person can not only practice its religion and beliefs, but also abstain from doing so. The right to freedom of thought, conscience and religion ‘entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practice or not to practice a religion’”.⁴³ “The freedom of practicing a religion of a belief is not only an individual right, - it can be exercised collectively ‘together with others’”.⁴⁴

Under Article 10 of the ECHR, everyone has the right to freedom of expression. However, this right is not absolute in nature. According to the European approach, freedom of expression is one of the most important rights; it can, however, be limited.

The First Amendment of the US Constitution concerns not only verbal and written speech, but speech that is communicated by actions as well. The First Amendment says that Congress shall make no law abridging the freedom of speech. With respect to hate speech and free speech in general, the US Supreme Court uses a so-called “clear and present danger” test, which has first been set forth in the case of *Schenck v. United States*.⁴⁵ The US Constitution as well as the analysis of the US Supreme Court’s case-law⁴⁶ demonstrate that the right to free speech plays one of the most important roles and that it can only be limited under very exceptional circumstances.⁴⁷

Comparative analysis of the First Amendment and Articles 9 and 10 of the ECHR demonstrates that the audience under these provisions is everyone, regardless of the group of the subjects of these rights. The case-law of the US Supreme Court makes it possible of the AI technology to be considered the right holders under the First Amendment.

At the same time, it is noteworthy that the European Union does not have special regulations and definitions with respect to robots. As a product, it is regulated by different legislation and

⁴¹ *supra* note 40, 196.

⁴² *ibid* 194.

⁴³ *ibid* 194; *Buscarini v. San Marino*, European Court of Human Rights, 18 February, 1999, 30 EHRR 208, para. 34 cited in “*International Human Rights Law under the European Convention on Human Rights*”.

⁴⁴ *ibid* 196.

⁴⁵ *Schenck v. United States* 249 U.S. 47 (1919). According to the judgment, if a “clear and present danger” is not at hand, restrictions on free speech shall be not be justified.

⁴⁶ See e.g. *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) where the US Supreme Court ruled that the protection of human rights is a state interest, however, the Court found that the said aim could have also been achieved without restricting free speech.

⁴⁷ Georgian Democracy Initiative, *Hate Speech* (PROLOG 2014), p. 8
<<https://www.gdi.ge/uploads/other/0/190.pdf>> accessed 25 April 2019.

directives⁴⁸ and should meet the ISO and CEN standards.⁴⁹ Given the tendencies in technological development of robots, some consider that it is necessary to reevaluate the EU law in order to set minimal standards.⁵⁰

In order to create legal regulations applicable to robots, the EU Parliament adopted a resolution based on FP7 project RoboLaw.⁵¹ The regulation underlined the necessity to define terms and as a conclusion, the Parliament called for the EU Commission with studying specific criteria in order to determine the legal status and regime applicable to robots.⁵² Besides, it is essential that the Commission was called for to develop and implement regulating legal acts and policies with respect to the form of civil liability, harmonized technical standards of safe product as well as the creation of a supervisory body on AI research and innovations.⁵³ The Commission expresses its willingness to address the issues of robots' liability and registration systems within the document EC/2015/2103 (INL).⁵⁴

In the resolution, the EU Parliament underlined the necessity to create legal regulations, which stems from the robots' ability to perform specific functions, tasks, operations, aims, complex issues and make decisions in real time. Besides, robots with high social intellect, independence and autonomy already exist, which is why the European Parliament is of the opinion that they should be granted a special status of electronic personality. Moreover, recommendations with respect to civil liability, compensation funds, strict rules on liabilities and compulsory insurance scheme,⁵⁵ as well as registration numbers and special legal status have been adopted.

⁴⁸ EN ISO 12100, Safety of machinery – General principles for design – Risk assessment and risk reduction; EN ISO 10218-1:2011 Robots and robotic devices – Safety requirements for industrial robots – Part 1: Robots; EN ISO 10218-2:2011 Robots and robotic devices – Safety requirements for industrial robots – Part 2: Safety of Robot integration; EN ISO 13482:2014 Robots and robotic devices – Safety requirements for personal care robots.

⁴⁹ Directive on Liability for Defective Products and the Product Safety Directive; Machinery Directive; Medical Devices Regulation (e.g., for surgical robots) or the Low Voltage Directive (e.g., for vacuum cleaners); Electromagnetic Compatibility and Radio Equipment Directives.

⁵⁰ Kritikos Mihalis, “*Legal and ethical reflections concerning robotics*”, STOA Policy Briefing, June 2016 – PE563.501, Brussels, European Parliament Research Service.

⁵¹ Regulating Emerging Robotic Technologies in Europe: Robotics facing Law and Ethics', funded by the European Commission and conducted between 2012 and 2014; Nevejans N., “*European civil law rules in robotics, Directorate General for Internal Policies*”. Policy Department C: Citizens' Rights and constitutional Affairs, Study PE 571.319, Brussels, European Parliament, (2016).

⁵² It is noteworthy that the resolution does not give the definition of “sophisticated robots”. However, it stipulates that the following criteria should be taken into account: autonomy, exchanging data with its environment (interconnectivity), analyses data, self-learning from experience and by internation, at least a minor physical support, the adaptation of robot's behavior and actions to the environment, *absence of life in the biological sense* (para. 1)

⁵³ Rosa Oyarzabal, “*What is a Robot under EU Law?*”, <<https://www.natlawreview.com/article/what-robot-under-eu-law>> accessed 11 November 2018.

⁵⁴ P8_TA (2017) 0051 Civil Law Rules on Robotics-European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL)); European Parliament 2014-2019; Palmerini E. et al. (2014) Guidelines on regulating robotics. RoboLaw Deliverable D6.2.

⁵⁵ Art. 59(a), (b) and (c) of the resolution address the issues of compulsory insurance scheme and compensation funds.

The European Parliament has underlined the necessity of defining liability given the functional capacities of robots. Under Articles 59(f) and 31(f) of the Draft Report with the recommendation to the Commission on Civil Law Rules on Robotics⁵⁶, the Parliament called upon the European Commission to assess the legal risks and results of creating a specific legal status of electronic personality which grants robots special rights and obligations whenever they inflict harm on or otherwise interact with third parties as a result of independent actions.⁵⁷ The status prescribed by the resolution can be applied in cases where robots interact with persons, environment or make independent decisions. As of today, EU law is not familiar with the concept of electronic personhood, and the resolution has not been followed by any specific changes in the EU legislation.

Based on his research, Samir Chopra concludes that by establishing the status of electronic persons, robots will eventually be considered as law subjects and thus join the circle of legal subjects.⁵⁸ However, others argue that this recognition will end the debates on slavery, which will remind us of unwanted past experience.⁵⁹

According to Friedrich Carl von Savigny, only human beings have rights and obligations, however, the law can attribute subjectivity to anything. Ugo Pagallo argues that even though robots do not satisfy the established criteria, their regulation is necessary. Even more so, it is impossible to prohibit legislatures from converting robots into citizens and to altering existing standards without any rational judicial grounds.⁶⁰

According to Aïda Ponce Del Castillo of the European Trade Union Institute, the electronic person statues envisaged in the EU Parliament's resolution has to do with granting certain rights and obligations, which is not a new idea.⁶¹ Robert Gaizauskas, - a Professor in Computer Science at the Sheffield University and William Sweet, - Professor in Philosophy at St. Francis Xavier University argue that robots are electronic persons and thus they have certain rights. A Professor at the Sheffield University Tony Prescott explains that a person is an individual which

⁵⁶ Draft Report with recommendation to the Commission on Civil Law Rules on Robotics, (2015/2103(INL)), European Parliament, Committee on Legal Affairs, 2014-2019, p. 11.

⁵⁷ Nathalie Nevejans, European Civil Law Rules in Robotics, Directorate- General for Internal Policies, Policy Department C: Citizens Rights and Constitutional Affairs Legal Affairs, PE 571.379, p. 17 <<http://www.europarl.europa.eu/committees/fr/supporting-analyses-search.html>> accessed 11 November 2018.

⁵⁸ Samir Chopra, "*Rights for autonomous artificial agents?* Communications of the ACM", 53 (8), (2010), pp. 38-40.

⁵⁹ Samir Chopra and White, Laurence F. White, "*A Legal Theory for Autonomous Artificial Agents*" (University of Michigan Press: Ann Arbor, MI, USA 2011) p.186.

⁶⁰ Ugo Pagallo, Vital, Sophia, and others., "*The Quest for the Legal Personhood of Robots*", September 2018. pp. 9-10; Bendert Zevenbergen, Mason Kortz and others, "*Appropriateness and feasibility of legal personhood for AI systems*", July 22, 2018, p. 7; Solum, L.B., "Legal personhood for artificial intelligences". NCL Rev., 1991. 70: p. 1231; LoPucki, L.M., "*Algorithmic Entities*", Washington University Law Review, 2018. 95(4).; Bayern, S., "*The Implications of Modern Business-Entity Law for the Regulation of Autonomous Systems*", European Journal of Risk Regulation, 2016. 7(2): pp. 297-309; Bayern, S., Of Bitcoins, "*Independently Wealthy Software, and the Zero-Member LLC*", Northwestern University Law Review, 2013. 108: p. 1485.

⁶¹ L. B. Solum, N.C. L. Rev. 70, 1231 (1992); S. Chopra and L. White, "*Artificial agents: Personhood in law and philosophy*", in Proc. 16th Euro. Conf. on Artif. Intell., 2004.

has the purpose of existing, language, beliefs, the ability to communicate and is morally responsible for its decisions and actions. In his opinion, it is unnecessary to have a human body. Hence, sophisticated AI are ethical agents and right holders,⁶² which means that they should have the same fundamental rights as human beings.⁶³

According to Professor Sam Lehman-Wilzig, robots cannot be denied the legal status given their ability to relocate, make choices, study, analyze, interpret, make decisions and feel.⁶⁴

According to Robert van den Hoven van Genderen, German law does not define the term “person” at all, however it can imply having rights and obligations, legal capacity, the right to perform legal actions and the capacity to be a subject to legal liabilities. He underlines that robots need a positive legal status, just like physical and legal entities. Legislative changes are inevitable and necessary, which can be done either through making relevant changes to existing laws, or by applying *sui generis* standards to robots in order to determine their place in a legal system. Clearly, these changes would also affect the status of non-physical entities in positive law.⁶⁵

In his book “Homo Deus”, Yuval Noah Harari notes that science will develop in such a direction whereby all organisms are deemed to be algorithms, forms of life - as databases; intellect will be separated from consciousness and those possessing hyper-intellect will know more about us, than we know about ourselves.⁶⁶

The issue of recognizing robots as subjects of law does not lose its relevance and this recognition is merely a matter of time. We believe that for determining legal subjectivity of robots, not only we need a relevant legal basis, but also to accept that their ability to act and make decisions without human supervision and bearing responsibility for the harm inflicted, as well as recognizing their moral and legal liability.

⁶² Szollosy, M. (2017). “Robots, AI, and the question of ‘e-persons3’”, a panel at the 2017 Science in Public conference, 10–12 July 2017’. JCOM 16 (04), C05, pp. 3; 5.

⁶³ Filipe Maia Alexandre, “The Legal Status of Artificially Intelligent Robots Personhood”, Taxation and Control, p.25.

⁶⁴ Hartini Saripan and others, “Are Robots Human? A Review of the Legal Personality Model”, World Applied Sciences Journal 34 (6); p. 826. “What is it to be a person? It can hardly be argued that it is to be human. Could an artifact be a person? It seems to be the answer is clear and *the first R.[Robot] George Washington* to answer ‘Yes’ will qualify. A robot might do many of the things we have discussed: moving and reproducing; predicting and choosing; learning; understanding and interpreting; analyzing (translating, abstracting and indexing); deciding; perceiving; feeling– and not qualify. It could not do them all and be denied the accolade.”

⁶⁵ Robert van den Hoven van Genderen, “Legal personhood in the age of artificially intelligent robots” (28 December 2018) p. 250.

⁶⁶ Yuval Noah Harari, “*Homo Deus: A Brief History of Tomorrow*”, Harper Collins, 2017.

III. POSSIBLE APPLICATION OF RIGHTS UNDER GEORGIAN LAW TO HIGH-PERFORMING AI - ROBOTS

Article 16 of the Constitution of Georgia encompasses the sphere of individual autonomy; the right to change one's religion or beliefs; the right to practice one's religions and beliefs individually as well as collectively through teachings, evangelism, performing rituals etc. It also encompasses negative liberty - to be an atheist and not to become a follower of any religion, not to recognize specific beliefs or refuse to state one's beliefs or philosophical views.

The Constitutional Court of Georgia has noted that the aim of the Constitution is to establish the guarantees for inviolability of the right to freedom of thought, conscience and religion, as a *forum integrum* and the inner world of a person, - one's personal autonomous sphere.⁶⁷

In its judgment on the case of *Public Defender of Georgia v. The Parliament of Georgia*, the Constitutional Court of Georgia ruled that the right to freedom of religion is linked to the foundations of an individual's personal self-determination and noted that freedom of religion implies one's liberty to choose their own religious, philosophical and moral-ethical priorities, live in the society with an opportunity exercise individual self-determination and find his/herself in this sense. From this point of view, freedom of religion represents the grounds for an individual's views, feelings and living in accordance with them.⁶⁸

Freedom of expression is protected under Article 17 (1) of the Constitution of Georgia, which determines the constitutional legal scope of the freedom of expression and prohibits persecution based on one's expression; besides, the Constitutional Court has ruled that it is prohibited to force someone to express their views.⁶⁹

Under Article 3 of the Law of Georgia on "Freedom of Speech and Expression", the State shall recognize freedom of speech and expression as eternal and supreme human values.⁷⁰ Article 8 of the said law stipulates that "any restriction of the rights recognized and protected by this Law may be established only if it is prescribed by a clear and comprehensive, narrowly tailored law and the benefit protected by the restriction exceeds the damage caused by the restriction".⁷¹

It is well-known that robots can talk. Hence, in the era of technological innovations, it is important that States have the power to regulate a relevant right in order to protect the rights and legal interests of others. Technology and robots should be programmed in such a manner that

⁶⁷ Judgment of the Constitutional Court of Georgia №1/1/477 dated 22 December 2011 in the case of "The Public Defender of Georgia v. The Parliament of Georgia", para. II-7.

⁶⁸ Judgment of the Constitutional Court of Georgia №2/1/241 dated 11 March 2004 in the case of "Citizen of Georgia Akaki Gogichaishvili v. The Parliament of Georgia", para. II-5.

⁶⁹ Judgment of the Constitutional Court of Georgia №2/482,483,487,502 dated 18 April 2011 in the case of "Political Union of Citizens "Movement for Unified Georgia", Political Union of Citizens "Conservative Party Of Georgia", Citizens Of Georgia - Zviad Dzidziguri and Kakha Kukava, Georgian Young Lawyers' Association, Citizens - Datchi Tsaguria And Jaba Jishkariani, Public Defender of Georgia v. The Parliament of Georgia", para. II-10.

⁷⁰ Law of Georgia on Freedom of Speech and Expression, Article 3.

⁷¹ *Supra* note 70, Article 8.

they do not violate constitutionally protected values. Especially, given that under Article 17 of the Constitution of Georgia, limiting freedom of speech is only allowed if it is prescribed by law, is necessary in a democratic society and serves at least one of the following legitimate aims: national or public security, protection of territorial integrity, protection of the rights of others, prevention of publication of confidential information and safeguarding impartiality and independence of courts. Besides the aforementioned, according to the case-law of the Constitutional Court, limitation of freedom of speech can also be allowed if such an expression violates the rights of others.⁷² Essentially, the conflict of values that arises in cases of limitation of a right shall be resolved through reasonable balancing of private and public interests and proportionate limitation of the right.⁷³ Moreover, systematic reading of the Constitution of Georgia demonstrates that the logic and legal grounds for limitation of the said right are prescribed by the Constitution itself. The State does not have the duty to regard as lawful any action of an individual, that is conducted on grounds of their beliefs.

In separate cases, the State has an authority and even a duty to interfere within the right to freedom of religion in order to secure the respect of others' autonomy or to protect legitimate interest of another individual or the society.⁷⁴ The grounds for limitations prescribed by paragraph 2 of Article 16 of the Constitution differ from those prescribed by Article 9 of the ECHR. Under the latter, freedom of expression can be limited in order to protect the interests of public safety, public order, health or morals, or the rights and freedoms of others.⁷⁵ The grounds for limiting freedom of expression shall be prescribed by law, shall serve a legitimate aim, should be proportionate and necessary in a democratic society.

In a legal state, "everyone" is the subject of the right to freedom of thought, conscience and religion, regardless of race, color, language, sex, religion, political or other views, national, ethnic or social origin, property or titular status, place of residence. The right applies not only to physical persons, but to legal entities as well. In *First National Bank of Boston v. Bellotti*,⁷⁶ the US Supreme Court ruled that the freedom of expression is exercised not only by physical persons, but also by legal entities, regardless of whether this is a corporation, association or a union.

Legal entities can enjoy constitutionally protected rights and liberties by the virtue of Article 45 of the Constitution, considering the nature of specific rights.⁷⁷ Accordingly, depending on the substance of specific rights, they apply also to legal entities. It should be underlined that the AI

⁷² Judgment of the Constitutional Court of Georgia №2/1/241 *supra* note 68, para. I.

⁷³ Hate Speech *supra* note 46, p. 11; See also Judgment of the Constitutional Court of Georgia №1/1/477 *supra* note 67, paras. II-45-49, cited in "Hate Speech".

⁷⁴ Judgment of the Constitutional Court of Georgia №2/1/241 *supra* note 68, para. I.

⁷⁵ European Convention *supra* note 39.

⁷⁶ *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), No. 76-1172, p. 435 U. S. 777.

⁷⁷ Constitution of Georgia, Article 45.

do not meet the criteria set forth by Georgian legislation neither with respect to physical persons nor with respect to legal entities.⁷⁸

On 19 April 2015, Hanson Robotics Ltd. created the first social robot named “Sofia”,⁷⁹ which was presented to the public in the US at the South by Southwest Festival (SXSW) in March 2016 and which holds a citizenship. Each right enshrined in Chapter 2 of the Constitution of Georgia defines the circle of subjects of the rights and liberties. The Constitution utilizes terms such as “persons”, “individual”, “everyone” and “a citizen”. The formulation of paragraph 1 of Article 17 of the Constitution is that the freedom of speech and expression is protected. Is it possible that constitutional legal grounds of the said right encompasses the freedom of speech and expression of “Sofia” and other robots? Clearly, there are skeptics who argue that robot “Sofia” is not a physical person or a human being and thus there is no possibility of applying human rights. In this regard, it would be relevant to invoke the judgment of the Constitutional Court where it defined the terms “physical person” and “citizen”. The Court ruled that the term “physical person” is broader than the term “citizen” and that in the context of disputed provisions, the term “citizen” by substance was of the same meaning as the term “physical persons”.⁸⁰ A simple analysis of the given definition demonstrates that the term “physical person” also encompasses the citizens. It is essential citizenship produces the legal connection with the state and represents the link with legal order of the state, as well as with rights and liberties the protection of which is upon the state authorities, through the Constitution and through the People. If robot “Sofia” is a citizen, and the Constitutional Court considers that the term “physical persons” encompasses citizens as well, it means that nothing prevents application of Articles 16 and 17 of the Constitution to robot “Sofia”. Furthermore, Article 17 does not specify the subjects of the right protected therein, - it merely states that no one shall be persecuted because of his/her opinion or for expressing his/her opinion. We believe that by evoking the aforementioned definition provided by the Constitutional Court, the argument that Article 17 of the Constitution cannot be applied to robots shall not stand.

The right to freedom of speech and freedom of expression has to do not only with expression as such, but also with communication. Speech expressed by robots is also part of communication. Any term expressed with this aim shall be regarded as constitutionally protected speech, since

⁷⁸ Under Article 11(1) of the Civil Code of Georgia, The capacity for rights of a natural person is the ability to have civil rights and duties that arise from the moment of the person’s birth, and under Article 24, A legal person is an organised entity created to accomplish a certain purpose that owns property, is independently liable with its own property, acquires rights and duties in its own name, enters into transactions and can sue or be sued. A legal person may be organised as a corporation, based on membership, dependent or independent of the status of its members, and engage or not engage in entrepreneurship.

⁷⁹ Hanson Robotics company, <<http://www.hansonrobotics.com>> 20 January 2019.

⁸⁰ Judgment of the Constitutional Court №2/2/180-183 dated 5 November 2002 in the case of “Georgian Young Lawyers Association and Zaal Tkeshelashvili, Maia Sharikadze, Nino Basishvili, Vera Basishvili and Lela Gurashvili v. The Parliament of Georgia”.

no matter in what form or how information is produced, the one exercising the right is providing the audience with knowledge about the truth for the purposes of exchanging the ideas.⁸¹

Even though there are no such examples in the existing Georgian reality, tailored literature does address the issue of creating religious robots, whereby the robots can have specific religious beliefs or have no such beliefs.⁸²

While religion dictates human beings the decisions concerning his or her personal identity and defines their “personal Me”, it is interesting what could the religion be for robots. The Constitutional Court of Georgia has noted that the freedom of religion implies sharing, choosing, identifying (positive liberty) with or negating, changing (negative liberty) one’s religion without state interference, i.e. protection of the inner aspect of individual’s reasoning. At the same time, the liberty of an individual to conduct his or her life in accordance with their beliefs can be limited in order to protect the rights of others.⁸³ The belief of robots can be a program, information on religion and religious dogmas, which is developed by the “architect of the robot”, the program developer. Robots have the ability to process received information and make relevant conclusions quickly. Thus, we believe that in case robots are given the right and the ability to make choices, it will be necessary to address the issue of limitation of the rights in order to protect the rights of others as well.

Do robots have the ability to define their identity? Are they capable of acting in accordance with their beliefs? Would proselytism or religious service by robots be deemed unlawful? How can we assess the actions of robots? We believe that religious service conducted by religious robots shall not be deemed unlawful. Technological development of high performing AI will make it possible to program religious robots based on processing information database, which will change the existing reality. It has been mentioned that robot Sofia already has the ability to define their own identity, as well as the skills for perception and logical reasoning. If all these elements are at hand, why would we create artificial obstacle is law we believe that not changing the existing reality is the result of fear that humans will lose their power, which is groundless and leads to “rightless”, unequal environment.

⁸¹ Tomas I. Emerson, "First Amendment Doctrine and the Burger Court", 62, *California Law Review*, pp. 422, 423; Federick Schauer, "The Boundaries of the First Amendment: A Preliminary Exploration of Constitutional Silence", 117 *Harvard Law Review* (2004);, pp. 1765, 1786, Ronalds K.L. Collins & David M. Skover, "Intentionless Free Speech: Robots & Receivers", pp. 1,3.

⁸² James F. McGrath, "*Robots, Rights and Religion, Scholarship and Professional Work – LAS*", Butler University Digital Commons, Butler University, 2011, pp.32,36, Leiber, Can Animals and Machines, "*Be Persons?*", pp. 19-21, Masahiro Mori, "*The Buddha in the Robot*", 1981 p. 13 writing: "I believe that Buddha has a nature - this is a great accomplishment for those who follow Buddha". In his "Spiritual Robots", Robert M. Geraci notes that he wants to study what impact can Japanese religious ideas - including shinto - have on robots in the context of implementation of robots in the society, p. 230, 240. Sidney Perkowitz, "*Digital People*", Washington DC: Joseph Henry Press, 2004, pp. 215-216., Foerst, "*God in the Machine*", pp.161-162, Dinello, "Technophobia", pp.75-78.

⁸³ Judgment of the Constitutional Court of Georgia №2/1/241 *supra* note 68, para. I.

Under the existing law, religious robots do not fall within the sphere of legal protection. According to the current Georgian law, subjects of the right to freedom of religion are only humans. Clearly, it is not unlawful for a program developer to create a robot with religious views (in doing so, a developer will be exercising his or her right to personal development), which would perform the functions of an abbot, priest, imam, or other holders of religious titles. If this is true, then how can a line be drawn, and who should draw the line between the rights of others on one hand, and good faith, morals, ethics and public trust on the other? Is it reasonable to preserve the classic legal framework? We believe that it will be difficult to regulate these issues both for the government and for the society.

Given the existing circumstances, we are of the opinion that there is nothing that would prevent application of Articles 16 and 17 of the Constitution to robots. Otherwise, we will have to deal with the issue of unregulated speech. In this case, the necessity to create regulations is stemming not only from public interests, but also from the standards of a democratic state. We believe that in accordance with the principle of secularism, it should not be impossible to grant certain rights to robots. It is also logical that, given the existing reality, the current legal order be altered.

Sophisticated AI - robots also exercise the right to personal development, which is protected under Article 12 of the Constitution of Georgia. This right “in the first place, implies right of one’s personal self-determination and autonomy. It is personality that defines one’s essence, indicates his/her individuality and distinction from others”.⁸⁴ In essence, Article 12 represents a fundamental guarantee for exercising the rights and liberties of an individual; it provides the guaranties for the free personal development, and the freedom of living one’s life in a fair state, which represents the most important and the broadest aspect of one’s private life.⁸⁵

For the purposes of Article 12 of the Constitution of Georgia “special importance is attached not only to freedom to independently define the relations with outer world, but also to physical and social identity of an individual, inviolability of his/her intimate life”.⁸⁶ The Constitutional Court of Georgia noted that “Article 12 of the Constitution is auxiliary in nature and protests the most general aspects of personal development, that are not given in independent sections of other constitutionally protected rights. Thus, any law that restricts the principle of the individual personal development, autonomous nature of actions as well as the principle of defining the

⁸⁴ Judgment of the Constitutional Court of Georgia №2/1/536 dated 4 February 2014 in the case of “Citizens of Georgia Levan Asatiani, Irakli Vacharadze, Levan Berianidze, Beka Buchashvili and Gocha Gabodze v. The Minister Labor, Health and Social Defense, para. II-54.

⁸⁵ Judgment of the Constitutional Court of Georgia №1/2/622 dated 9 February 2017 in the case of “Citizen of Georgia Edisher Goguadze v. The Minister of Interior of Georgia”, para. II-12.

⁸⁶ Judgment of the Constitutional Court of Georgia №2/4/532,533 dated 8 October 2014 in the case of “Citizens of Georgia Irakli Kemoklidze and Davit Kharadze v. The Parliament of Georgia” para. II-3; Judgment of the Constitutional Court of Georgia №2/4/570 dated 4 August 2016 in the case of “Citizen of Georgia Nugzar Jakeli v. The Parliament of Georgia”, para. II-9. Judgment of the Constitutional Court of Georgia №1/2/622 *supra* note 85, para. II-15; The Court reiterated this finding in its judgment №1/13/732 dated 30 November 2017 in the case of “Citizen of Georgia Givi Shanidze v. The Parliament of Georgia”, para. II-(b)10.

relation of the state and the society on one hand, and an individual on the other based on the choices of the latter, is related to constitutionally protected rights of freedom of personal development and private life.⁸⁷

The right to personal development can be subjected to certain legal limitations; Article 12 of the Constitution is not absolute in nature. The right protected therein can be limited whenever its exercise is infringing upon the interests of others or is contrary to public interests. A State has an obligation to create a free space for personal development, to guarantee the effective exercise of the said right and at the same time, take important public interests into account.⁸⁸ “The State should recognize and respect freedom of conduct and development in such a manner, that it does not result in disproportionate and unjust limitation of others’ constitutional rights and freedoms, violation of constitutional order and prejudice of valuable legitimate aims.”⁸⁹

Robot “Sofia” can express 62 different kinds of human emotions. They are studying issues such as happiness, disappointment, world history, literature etc. They can talk about issues such as music, art, and can define its own identity, as well as skills of perception logical reasoning, making speeches before large audiences; they also take part in different social campaigns, talks and has the ability to answer questions and express their views on different issues. Technologies are capable of developing their own skills, which is why we believe that robot “Sofia” is exercising the right to personal development, although, they are limited in doing so given the lack of independence. We believe that the legal framework of the said right should also encompass non-personal elements.

Robots do functionally exercise the right to freedom of speech. They can develop not only positive, but also dangerous speech, that can be accessible by various means. One of the problems that has to do with the freedom of expression and the speech of robots is hate speech, whereby robots can publicly engage in such a speech. Can a State regulate robots’ speech that is harmful for the rights and legitimate interests of others? A number of researchers are already addressing the harm caused to the society due to robots’ manipulation, lies, forcing, misinformation and discrimination.⁹⁰ Can the content of the robots’ speech be regulated given the existing legal reality, and will the government interference be in breach of the principles of democracy and fairness? How should we determine culpability and who should bear the liability? In our opinion, the said issue shall be considered with respect to Article 17 of the Constitution.

⁸⁷ Judgment of the Constitutional Court of Georgia №1/2/622 *supra* note 85.

⁸⁸ Judgment of the Constitutional Court of Georgia №2/4/570 dated 4 August 2016 in the case of “Citizen of Georgia Nugzar Jakeli v. The Parliament of Georgia”, para. II-13.

⁸⁹ Judgment of the Constitutional Court of Georgia №2/1/536 *supra* note 82, para. II-65.

⁹⁰ Woodrow Hartzog, “*Unfair and Deceptive Robots*”, 74 MD. L.Review, 2015, pp. 785, 790- 797 <<https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=3675&context=mlr>> accessed 15 October 2018 (noting that robots’ speech might include lies, fraud, manipulations, intrusion into one’s private life).

Article 17 protects, in general, the right to freedom of expression.⁹¹ The case-law of the Supreme Court of Georgia suggests that the freedom of expression is one of the foundations of the democratic society, as well as the main prerequisite for its development and self-determination of persons, which is why its limitation can only be necessary under exceptional circumstances.⁹²

Under the case-law of the Constitutional Court of Georgia, the purpose of Article 17 of the Constitution is to “ensure the process of the free exchange of ideas in a democratic society”⁹³ and is a “prerequisite for the existence of democratic society, as well for its full-fledged development”.⁹⁴

Article 17 of the Constitution is not absolute and it can be limited only in accordance with law, insofar as is necessary in a democratic society for ensuring national security, public safety or territorial integrity, for the protection of the rights of others, for the prevention of the disclosure of information recognized as confidential, or for ensuring the independence and impartiality of the judiciary. In the context of the necessity of limitations, the Constitutional Court ruled that “the Court has to assess violated right or the risk of violation caused by a specific program or information against the necessity to interfere within the freedom of expression. The Court should have the possibility to examine the value of the form and the content of expression, its social importance on one hand, and on the other hand - the harm caused by realization of this right”.⁹⁵

It is physical persons who hold the rights enshrined in Article 16 and 17 of the Constitution. Under the existing law, sophisticated AI - robots are not within the subjects of constitutionally protected rights. However, in order to establish liability, they “just as human beings, should be able to benefit from the results of the development of the law and the society and the positive results of the progressive and humanistic development of thought; they should be held responsible for committing acts that are actually dangerous for the society, and this should be done in accordance with the rules and to the extent that is objectively necessary and sufficient for the purposes of achieving the goals of imposing liability for specific offences”.⁹⁶

⁹¹ Teimuraz Tughushi and Others, *Protection of Human Rights and the Case-law of the Constitutional Court of Georgia* (Tbilisi 2013), p. 292.

⁹² Judgment of the Civil Chamber of the Supreme Court of Georgia dated 20 February 2012 in the case of “A. F. v. Asaval-Dasavali, Ltd.” <<http://www.supremecourt.ge/files/upload-file/pdf/ganmarteba7.pdf>> accessed 15 October 2018.

⁹³ Judgment of the Constitutional Court of Georgia №2/2-389 dated 26 October 2007 in the case of “Citizen of Georgia Maia Natadze and Others v. The Parliament of Georgia”, para. II-16.

⁹⁴ Teimuraz Tughushi and Others, *Protection of Human Rights and the Case-law of the Constitutional Court of Georgia* (Tbilisi 2013) p. 292. Judgment of the Constitutional Court of Georgia №1/1/468 dated 11 April 2012 in the case of “Public Defender of Georgia v. The Parliament of Georgia”, para. II-26.

⁹⁵ *ibid*, p. 300. Judgment of the Constitutional Court of Georgia №1/3/421,422 dated 10 November 2009 in the case of “Citizens of Georgia Giorgi Kipiani and Avtandil Ungiadze v. The Parliament of Georgia”, para. II-6.

⁹⁶ Judgment of the Constitutional Court of Georgia №1/6/557, 571, 576 dates 13 November 2014 in the case of “Citizens of Georgia Valerian Gelbakhiani, Mamuka Nikolaishvili and Aleksandre Silagadze v. The Parliament of Georgia”, para. II-62-64.

IV. ROLE OF THE CONSTITUTIONAL AND SUPREME COURTS

Inclusion of sophisticated AI - robots within the sphere of law protected by human rights, their recognition them as right holders and adoption of interpretations that are not dependent on personal elements can be accomplished by institutionally independent bodies such as the Constitutional Court or the Supreme Court. We believe it is necessary that the Constitutional Court change the interpretation of the rights protected under the Constitution, recognize separate rights of robots and allow relevant legal procedures. Constitutional and Supreme courts can recognize the rights, the same way as the US Supreme Court rule that racial segregation (*Brown v. Board of Education*) as well as gender discrimination were unconstitutional and as it upheld the gay marriage. The Constitutional Court of Georgia has noted that it interprets constitutional norms not only in the light of a specific provision whereby the right is envisaged, but also in the light of the entire essence of this right.⁹⁷ In addition, the Constitutional Court noted that the aim and purpose of the Court is such an interpretation of constitutional rights, that complies with the aims of the constitution, the values promoted therein as well as the essence of the right itself, which, on the other hand, ensures the practical, real and effective exercise of a right and does not make it merely theoretical or illusory.⁹⁸ Thus, not only does the Court define rights, but it provides such an interpretation that makes the exercise of this right more efficient. In the given case, recognition of AI as legal subjects will also raise the issues of violation/illegitimate restriction of this right, interference therein and the issue of respective determining liability.

Essentially, robot “Sofia” is already exercising the right to freedom of speech. Is the existing legal order ready to accept innovative technology as legal subjects? Will the Court be able to avoid this issue? Robots do not have access to the Constitutional Court in the existing legal reality. We believe that the Court is capable of discussing the issue of recognizing robots as subjects of protected rights and widening the protected sphere of constitutional rights. Even more so, when there are no arguments that would bar robots from becoming legal subjects. In this regard, it is essential that the law unify not only personal, but also non-personal characteristics; otherwise, the result will be having the dependence of “vassalage” with respect to high technologies. It will be interesting to observe whether the Constitutional or Supreme Court will play the role of promoting progress, or will they maintain the classical legal approach.

Lastly, we believe that the legal system is capable of resolving difficulties brought about by implementation of high performing AI - robots in the society. Applying certain rights to them and addressing the issue of broadening the scope of legal subjects will prepare legal systems for such innovations. Moreover, it will strengthen the democratic culture in legal systems.

⁹⁷ Teimuraz Tughushi and Others *supra* note 91, p.161.

⁹⁸ Judgment of the Constitutional Court of Georgia №1/1/477 *supra* note 67 para. I.

CONCLUSION

In Georgia, as well as in the rest of the modern world, large-scale implementation of robots and their progress makes changing of existing international legal conventions as well as numerous legal fields inevitable. This will raise the need to redefine the sphere of legal subjects.

Widening the scope of legal subjects and recognizing the exercise of human rights by robots is linked to a number of issues, and among others - to whether robot is an independent subject of law and whether the actions of AI are considered to be actions of a subject under the existing law, or whether it is necessary at all to convince the courts, the jury or a “neutral observer” in that robots should be recognized as legal subjects.

Under the current Georgian law, legal subjectivity is related to the issues of capacity for rights and legal capacity. Georgian law defines and sets forth the list of legal subjects with rights and obligations. Sophisticated AI technologies - robots do not satisfy these criteria within the existing Georgian legal order and regulations. Hence, they cannot be held liable under the existing law. Under the current legal framework, nor do they have access to international legal instruments and today robots are perceived merely as products.

Essentially, robots do functionally exercise the right to freedom of expression and free speech. This fact makes them a subject to such rights and hence it is necessary to make relevant legislative adjustments. For this reason, we are of the opinion that the legislature should unify personal as well as non-personal elements.

Robots have a unique ability to develop its cognitive abilities without any human supervision or outside control. Given the inexistence of independence, their ability to enjoy the constitutionally protected freedom of personal development is limited.

Robots exercise the right to freedom of religion. Considering the existing legal doctrine regarding the freedom of religion and based on relevant data, potentially it is possible to program religious robots, which will make it necessary to enact legislative changes.

In the techno-nation, the growing application of AI and robots, as well as considering the reality that robots will be given the ability to act and make choices, it will be necessary to address the issue of restricting their rights in order to protect the rights of others. This will inevitably lead to the adoption of relevant technical, ethical and legal regulations and recommendations.

Recognizing legal subjectivity of robots and making relevant changes to the legislation is natural, logical and inevitable. All is just a matter of time.