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Use of Artificial Intelligence Tools by Law Enforcement Services in Light of the Artificial Intelligence Act

Abstract: The purpose of the research of this text is to identify crimes for which law enforcement services can use real-time remote biometric identification systems in public spaces. This will be done by analysing the prerequisites that allow the use of this technology and comparing them to acts prohibited by the Polish Criminal Code. This results in the creation of a catalogue of crimes for which the services can use a real-time remote biometric identification system in public spaces. The findings of this research are very relevant due to the rapid development of artificial intelligence, which has been observed for several years.

Keywords: artificial intelligence, criminal law, cybersecurity, national security

Introduction

In the history of a humankind there are many turning points that separate different eras. One of such was the Industrial Revolution at the turn of the 18th and 19th centuries. Then, at the end of 20th century came the digital revolution with computers and telephones. Next step, which we may be eyewitnesses to is the development of artificial intelligence. Mastering fire, steam and heavy machines allowed us to produce substantially more goods, thereby helping our civilization to raise its standards; however, it also led to the environmental pollution that we are facing today. The increased processing power that came with computers helps disseminate information more easily, connecting with our beloved ones hundred miles away. Yet everyday internet access given to us by phones also came at a price in terms of many social issues. Entry into the world of artificial intelligence will probably also involve certain costs, although the nature of these costs is as yet unclear. However, it is imperative to prepare for this by providing relevant legal solutions. That was the motivation underpinning Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act),¹ which is widely known as the AI Act.

¹ OJ L, 2024/1689, 12.7.2024.

Acknowledging how powerful a tool artificial intelligence could be in the wrong hands, the legislative bodies of the European Union have limited the use of artificial intelligence in certain matters. One of these is “the use of ‘real-time’ remote biometric identification systems in publicly accessible spaces for the purposes of law enforcement,” which is prohibited by Article 5(1)(h). However, there are some exceptions—according to the further part of this regulation, the use of ‘real-time’ remote biometric identification systems in publicly accessible spaces for the purposes of law enforcement is possible for:

- (i) the targeted search for specific victims of abduction, trafficking in human beings or sexual exploitation of human beings, as well as the search for missing persons;
- (ii) the prevention of a specific, substantial and imminent threat to the life or physical safety of natural persons or a genuine and present or genuine and foreseeable threat of a terrorist attack;
- (iii) the localisation or identification of a person suspected of having committed a criminal offence, for the purpose of conducting a criminal investigation or prosecution or executing a criminal penalty for offences referred to in Annex II and punishable in the Member State concerned by a custodial sentence or a detention order for a maximum period of at least four years.

Therefore, it might be concluded that the use of ‘real-time’ remote biometric identification systems in publicly accessible spaces for the purposes of law enforcement is highly restricted and possible in only limited situations. The article seeks to identify the criminal offences listed in the Polish Criminal Code² for which the technology in question could be used, and then to propose solutions that would enable safer use of it. To rectify the above task, it is necessary to analyse the rationale for the law enforcement services’ use of artificial intelligence, and then identify the prohibited acts listed by Polish legislation that implement this rationale. In answering the above question, the prerequisites use of the technology under discussion will be compared with the catalogue of criminal acts indicated in the PCC. A noteworthy fact is the significant differences between the various points of Article 5(1)(h): for this reason, each point will be considered separately.

It should be pointed out beforehand, however, that a regulation of the European Parliament and the Council of the European Union, unlike a directive, does not require implementation: it automatically becomes binding throughout the European Union from the date of its entry into force. This follows from Article 288 of the Treaty on the Functioning of the European Union. Moreover, it should be pointed out that Real-Time Remote Biometric Identification Systems in public spaces are technologies that enable automatic recognition of people’s identities based on biometric characteristics (e.g., faces) without their knowledge or consent,

² Consolidated text Journal of Laws of 2025, item 383, hereinafter: PCC.

while moving in an open environment. They operate continuously, analysing data from surveillance cameras and comparing it with databases to identify specific individuals in real time.

1. Crimes Related to Article 5(1)(h)(i) of the AI Act

Point (i) relates to (only) victims of kidnapping, human trafficking and sexual harassment or searching for missing persons. While this regulation in no way relates to detection of offenders, it is clearly connected with some of crimes enlisted in PCC. Prohibited acts indicated in the PCC for which the law enforcement services may use remote biometric identification systems in publicly accessible spaces for the purposes of law enforcement on the basis of Article 5(1)(h)(i) may be divided into three groups: human trafficking related crimes, sexual abuse-oriented crimes, and crimes against the care of minors.

The first of the above are prohibited by Article 189 and 189a of the PCC. This refers to unlawful deprivation of freedom, which is prohibited under the penalty of imprisonment for up to 5 years if the deprivation lasted for less than 7 days, up to 10 years if deprivation lasted for more than 7 days, up to 15 years if the deprivation involved a person who was unfit due to age, mental or physical condition, and finally up to 25 years if the deprivation was combined with special anguish. The subject of protection contained in this provision is freedom in the physical sense, which is understood as the ability to move and move freely.³ Article 189a of the PCC refers to human trafficking and also list crimes where the law enforcement services can use artificial intelligence to search for victims. This is a relatively new regulation, having been added to the PCC in September 2010 as a result of ratification of Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children adopted by the United Nations General Assembly. The precise identification of the elements of this criminal act is facilitated by its definition in Article 115 § 22. According to this regulation, “human trafficking is recruiting, transporting, delivering, transferring, storing or receiving a person with the use of violence or unlawful threat, abductions, trickery, misrepresentation or exploitation of a mistake or inability to grasp the action taken, abuse of a relationship of dependence, taking advantage of a critical position or a state of helplessness, giving or accepting a pecuniary or personal benefit or the promise thereof to a person having custody or supervision of another person for the purpose of exploitation, even with her consent, in particular in prostitution, pornography or other forms of sexual exploitation, forced labour or services, begging, slavery or other forms

³ Jerzy Lachowski, “Commentary on Article 189,” in Arkadiusz Lach et al., *Kodeks karny: Komentarz* (LEX/el., 2023).

of exploitation degrading human dignity, or to obtain cells, tissues or organs in violation of the law.”

Secondly, a considerably larger group of crimes that come under the regulation in question are crimes against sexual freedom and morality, which are regulated in Chapter XXV of the PCC. The most obvious example here is rape, which is prohibited under Article 197 § 1. Further paragraphs concern qualified forms of the same criminal act. It is noteworthy that this provision was recently amended by the law of June 28, 2024. This change has abolished the claim that there is no rape when resistance is apparent, which could be encountered before the aforementioned amendment.⁴ Other criminal acts for which law enforcement services can use the ‘real-time’ remote biometric identification systems in publicly accessible spaces are:

- taking advantage of the vulnerability of another person or limited sanity, prohibited by Article 198;
- abusing a relationship of dependency or taking advantage of a critical situation, prohibited by Article 199;
- sexual intercourse with a minor, prohibited by Article 200;
- prohibition of establishing a connection with a minor, prohibited by Article 200a.

All of the above-mentioned crimes have similar characteristics: they are distinguished by the fact that the victims of the crimes indicated in them are people in a substantially weaker position than the person committing the sexual abuse. For this reason, Article 198 is designed to protect those unable to express legally relevant consent,⁵ Article 199 is designed to protect those who are under the influence of an abuser (according to the Supreme Court jurisprudence, “the essence of a dependency relationship is that the dependent person is in such a relationship with the perpetrator that conflict with him threatens his material or immaterial interests”⁶), and Article 200 and Article 200a are designed to protect minors, i.e. persons whose sexuality is subject to special protection under the law.

The last criminal act that fulfils the prerequisites referred to in Article 5(1)(h)(i) is the abduction of a minor or a person who is helpless, as prohibited by Article 211. According to this regulation, it is prohibited to abduct a minor younger than 15 years old or a person who is unfit due to their mental or physical condition against the will of the legal guardian. Article 211 is intended to protect a state of proper care given to a minor or a person who is unfit due to their mental or physical con-

⁴ Marek Mozgawa, “Commentary on Article 197,” in Magdalena Budyn-Kulik et al., *Kodeks karny: Komentarz aktualizowany* (LEX/el., 2025).

⁵ Piotr Zakrzewski, “Commentary on Article 198,” in Adam Błachnio et al., *Kodeks karny: Komentarz* (LEX/el., 2024).

⁶ Judgement of Supreme Court of Republic of Poland of May 6, 2014, V KK 358/13, LEX no. 1482486.

dition by its legal guardian.⁷ The Polish Supreme Court has even pointed that the subject of legal protection under this provision is not the freedom of the abducted or detained person.⁸ It is a crime prosecuted by public indictment,⁹ which is of great importance, considering the article's subject matter: law enforcement bodies do not require the initiative of the victim.

In concluding the discussion of point (i), it should be emphasized once again that the use of a 'real-time' remote biometric identification systems in publicly accessible spaces in the law enforcement services' action against the above-mentioned crimes is possible only for the purposes of a targeted search for specific victims.

2. Crimes Related to Article 5(1)(h)(ii) of the AI Act

The next section of the provision in question contains a much broader catalogue of criminal acts for which law enforcement services may use 'real-time' remote biometric identification systems in publicly accessible spaces. This is due to the use of vague (in the sense of Polish criminal law) expressions—"the prevention of a specific, substantial and imminent threat to the life or physical safety of natural persons or a genuine and present or genuine and foreseeable threat of a terrorist attack." Far less questionable are the offences contained in the second part of the quoted passage, thus the analysis will begin with this article.

The PCC contains three prohibited acts directly related to terrorism—bringing in conditions that are universally dangerous to life or health prohibited by Article 165, financing terrorist activity prohibited by Article 165a, and placing a dangerous device or substance on a ship or in a public land transport facility prohibited by Article 167. However, one of these articles allows for a significant expansion of this set. According to Article 165a § 1, "whoever collects, transfers or offers means of payment, financial instruments, securities, foreign exchange, property rights or other movable or immovable property with the intent to finance a terrorist offence or an offence referred to in Article 120, Article 121, Article 136, Article 166, Article 167, Article 171, Article 252, Article 255a or Article 259a"—thus, if one considers the act prohibited by Article 165a to be a terrorist threat, as referred to in the Article 5(1)(h)(ii), the consequence will be that use of a 'real-time' remote biometric identification systems in publicly accessible spaces may also be possible in cases of acts prohibited by Article 120, Article 121, Article 136, Article 166, Article 167, Article 171, Article 252, Article 255a or Article 259a. Such an interpretation of the cited provision of the ordinance greatly expands the possibilities of law enforcement services as to the technology in question.

⁷ Marek Mozgawa, "Commentary on Article 211," in Budyn-Kulik et al., *Kodeks karny*.

⁸ Judgement of Supreme Court of Republic of Poland of December, 18, 1992, I KZP 40/92, LEX no. 22106.

⁹ Julia Kosonoga-Zygmunt, "Commentary on Article 211," in Błachnio et al., *Kodeks karny*.

Moreover, the PCC contains a definition of a terrorist act: according to Article 115 § 20, “A terrorist offence is a prohibited act with a sentence of imprisonment for at least five years, committed with the aim of: 1) seriously terrorising a large number of people, 2) forcing a public authority of the Republic of Poland, or another state or international organisation, to take or not to take a certain course of action, 3) cause a serious disturbance in the political system or the economy of the Republic of Poland, or another state or international organisation, or a threat to commit such an act.” Analysing this provision, one must come to the conclusion that the Polish legislator abandoned the concept of including an act of terrorism in the framework of a specific criminal act in favour of the possibility of qualifying almost any criminal act (as long as it is punishable by imprisonment, the upper limit of which is at least 5 years—this is the only strict condition under the cited definition) as an act of terrorism due to the intended effect of the criminal. As indicated in the literature, the commission of a terrorist offence is an extraordinary aggravating circumstance under criminal law, as well as an element of certain criminal acts.¹⁰ It is therefore impossible to identify all criminal acts for which it is possible for law enforcement to use ‘real-time’ remote biometric identification systems in publicly accessible spaces. The legality of the use of such an instrument should be considered on a case-by-case basis, taking into account Article 115 § 20.

An even more complicated issue is the creation of a catalogue of legitimate uses of the technology in question, based on the first part of the Article 5(1)(h)(ii). The expression “the prevention of a specific, substantial and imminent threat to the life or physical safety of natural persons” naturally refers to Chapter XIX of the PCC—Crimes against life and health. Hence, it can be pointed out that counteracting the crimes indicated in Article 148, Article 148a, Article 149, Article 150, Article 151, Article 152, Article 153, Article 154, Article 155, Article 156, Article 156a, Article 157, Article 157a, Article 158, Article 159, Article 160, Article 161, and Article 162 qualifies as an action referred to in the Article 5(1)(h)(ii). Nevertheless, in other parts of the PCC, you can also find criminal acts that meet the premise of the “threat to the life or physical safety of natural persons,” despite the fact that the legally protected good is not human life and health as is the case with the aforementioned regulations. The following can be indicated as examples of such: Article 117, Article 118, Article 118a, Article 120, Article 121, Article 123, Article 134, Article 135, Article 136, Article 163, Article 164, Article 165, Article 166, Article 167, Article 171, Article 172, Article 173, and Article 223. Discussing each of the aforementioned provisions is a task far beyond the scope of this work; therefore, suffice to say, although the object of protection of the crimes specified in these provisions is not always human

¹⁰ Michał Grudecki, “Commentary on Article 115,” in Jan Kulesza et al., *Kodeks karny: Komentarz* (LEX/el., 2025).

health and life, the consequence of such crimes as those against peace or humanity, and war crimes or crimes against public safety will always be the endangerment of human life or the safety of individuals. In view of the above, in the opinion of the author of this text, the way in which the provision in question is drafted is far from optimal, as it may give rise to many doubts of interpretation in practice.

Once again, however, it should be pointed out that the use of a ‘real-time’ remote biometric identification systems in publicly accessible spaces in the struggle of the law enforcement services against the above-mentioned crimes is possible only for the purpose of prevention.

3. Crimes Related to Article 5(1)(h)(iii) of the AI Act

The last of the points justifying the use of a ‘real-time’ remote biometric identification systems in publicly accessible spaces is the most specific of the three, as it refers to one of the annexes to the regulation, which contains a catalogue of crimes. Annex II lists the following crimes:

- terrorism,
- trafficking in human beings,
- sexual exploitation of children, and child pornography,
- illicit trafficking in narcotic drugs or psychotropic substances,
- illicit trafficking in weapons, munitions or explosives,
- murder, grievous bodily injury,
- illicit trade in human organs or tissue,
- illicit trafficking in nuclear or radioactive materials,
- kidnapping, illegal restraint or hostage-taking,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft or ships,
- rape,
- environmental crime,
- organised or armed robbery,
- sabotage,
- participation in a criminal organisation involved in one or more of the offences listed above.

Many of those crimes were mentioned previously but in a different context—it should be noted once more that only point (iii) allows law enforcement services to use ‘real-time’ remote biometric identification systems in publicly accessible spaces against offenders, to search for offenders. However, in indicating the specific provisions of the PCC that sanction the crimes indicated in the annex in question, it should be pointed out that the crimes indicated therein often correspond to several provisions of the criminal act.

Starting the consideration of the crimes indicated in the catalogue with terrorism, it has already been mentioned that Articles 165, 165a and 167 can certainly qualify here. A consequence of the qualification of Article 165a may also be the recognition that law enforcement can take advantage of the tools offered by artificial intelligence in the fight against offenders of crimes sanctioned by Article 120, Article 121, Article 136, Article 166, Article 167, Article 171, Article 252, Article 255a, or Article 259a. An even more complicated issue is that the vast majority of crimes can be considered an act of terrorism under the definition under Article 115 § 20 as long as it was intended to produce a specific effect referred to in the provision. Another in the catalogue of crimes is human trafficking, which is defined by Article 115 § 22 and prohibited by Article 189a. When it comes to sexual exploitation of children and child pornography, we may point crimes prohibited by Article 197 § 4, Article 200, Article 200a and Article 200b. Another crime listed in the catalogue in question is illicit trafficking in narcotic drugs or psychotropic substances. Interestingly, the PCC does not refer to this crime—it is prohibited under Article 55, Article 56, Article 58 and Article 59 of the Law on Counteracting Drug Addiction, which is a separate act regulating drugs and other psychoactive substances, including criminal issues. The next crime is illicit trafficking in weapons, munitions or explosives, as prohibited by Article 171 and Article 263. Crimes such as murder and grievous bodily injury correspond to Article 148, Article 156 and Article 158 in the Criminal Code. A rather unusual crime is illicit trafficking in nuclear or radioactive materials, which is prohibited by Article 171. Kidnapping, illegal restraint or hostage-taking were also partly discussed: in this respect, this concerns regulations such as Article 189, Article 211 and Article 252. Complications stem from crimes within the jurisdiction of the International Criminal Court; in order to identify the provisions of the Code covering these crimes, reference should be made to the Rome Statute of the International Criminal Court. In accordance with Article 5 of the same act, the Court's jurisdiction under this statute shall include the following crimes: genocide, crime against humanity, war crime of aggression. These are defined in the following provisions: Article 6, Article 7 and Article 8. Those crimes are also prohibited by the PCC—Article 117, Article 118, Article 118a, Article 120, Article 122 and Article 123. The crime of unlawful seizure of aircraft or ships is prohibited by Article 166. Rape, which was also previously discussed, is regulated by Article 197. Environmental crime is a very broad term: in the PCC, this issue is given a separate chapter. For this reason, the crime against the environment is prohibited by Article 181, Article 182, Article 183, Article 184, Article 186, Article 187 and Article 188. Use of a 'real-time' remote biometric identification systems in publicly accessible spaces against offenders by law enforcement services is also legal when it comes to qualified forms of robbery. This relates to armed robbery regulated by Article 280 § 2 or organised robbery, which may be qualified as a crime that violates Article 258, which concerns a much broader category than robbery, namely, the activities of

organized criminal activity. In terms of the crime of sabotage, it should be pointed out that the word occurs only once in the Criminal Code—in Article 130 § 7, which deals with the broader crime of espionage. The last type of crime listed in the catalogue found in Annex 2 to the regulation in question is participation in a criminal organisation involved in one or more of the offences listed above. Participation in an organized criminal group is regulated in Article 258 of the Criminal Code, but participation alone is insufficient for law enforcement to be authorized to use the ‘real-time’ remote biometric identification systems in publicly accessible spaces. The objects of these groups must be crimes on the list in question.

4. Other Limitations of Use of Artificial Intelligence Tools by Law Enforcement Services

However, the cases mentioned in the above paragraphs are subject to additional restrictions, which are indicated in the paragraphs of Article 5. As stated in paragraph 2, “the use of ‘real-time’ remote biometric identification systems in publicly accessible spaces for the purposes of law enforcement for any of the objectives referred to in paragraph 1, first subparagraph, point (h), shall be deployed for the purposes set out in that point only to confirm the identity of the specifically targeted individual.” The same provision indicates that the decision to use the technology in question should be made taking into account (a) “the nature of the situation giving rise to the possible use, in particular the seriousness, probability and scale of the harm that would be caused if the system were not used” and (b) “the consequences of the use of the system for the rights and freedoms of all persons concerned, in particular the seriousness, probability and scale of those consequences.” While the principle of using these systems only against a wanted person undoubtedly increases the security of its use, the indications in points a and b are expressed in vague language. Consequently, it is difficult to state whether they will actually help reduce potential abuse. It is noteworthy noting that a further part of the provision also requires law enforcement to register the system it uses in the relevant European Union database to be established under Article 49. However, the most important issue is addressed in paragraph 3—in order to use ‘real-time’ remote biometric identification system in publicly accessible spaces, it is necessary to obtain “a prior authorisation granted by a judicial authority or an independent administrative authority whose decision is binding of the Member State.” The use of these systems without a previously obtained permit will be possible only in exceptional cases, but even then the application for a follow-up permit should be submitted within 24 hours after use. The issue of establishing regulations clarifying the use of this technology is largely left to national legislatures by the regulation—“Member States concerned shall lay down in their national law the necessary detailed rules for the request, issuance and exercise

of. Regardless of the permit issued, in accordance with paragraph 6, each use of a ‘real-time’ remote biometric identification system in publicly accessible spaces for law enforcement purposes shall be notified to the relevant market surveillance authority and the national data protection authority.” These bodies report annually to the European Commission on the use of this technology in a form prepared by the European Commission. The need for the relevant state authority to report annually on the use of the ‘real-time’ remote biometric identification systems in publicly accessible spaces is, at first glance, not a major limitation. However, with the increased use of this technology and, therefore, the experience of the courts and the administration, the creation of a centralised database on the use of this technology will enable more effective control and revision of this regulation to adapt to law enforcement practice.

Despite the above restrictions from the content of the regulation, member states may restrict the use of the technology in question on their own—“Member States may introduce, in accordance with Union law, more restrictive laws on the use of remote biometric identification systems.”

Summary

Having made a brief analysis of all three points in Article 5(1)(h), it should be pointed out that the scope of crimes for which it is possible to use the ‘real-time’ remote biometric identification systems in publicly accessible spaces exceptionally wide. The regulation in question, while limiting the use of this controversial technology, establishes a very extensive system of “exceptions” in which it is possible. Thus, without considering whether law enforcement agencies use the tools offered by artificial intelligence to search for victims, prevent crimes, or locate and identify suspected offenders, it can be concluded that the use of ‘real-time’ remote biometric identification systems in publicly accessible spaces when dealing with acts criminalized by the following articles of PCC: 117, 118, 118a, 120, 121, 122, 123, 130, 134, 135, 136, 148, 149, 150, 151, 152, 153, 154, 155, 156, 156a, 157, 158, 159, 160, 161, 162, 163, 164, 165, 165a, 166, 167, 171, 172, 173, 181, 182, 183, 184, 186, 187, 188, 189, 189a, 197, 198, 199, 200, 200a, 211, 223, 252, 255a, 258, 259a, 263, 280. Not to be forgotten, of course, are articles 55, 56, 58 and 58 of Law on Counteracting Drug Addiction. Furthermore, given the content of Article 115(20), which defines a terrorist crime by the intent of the offender, the catalogue is significantly expanded.

Although the above-created catalogue of criminal acts may, at first glance, overwhelm with its volume and raise doubts about the actual limitation of this very powerful technology, it should be noted that all of the above crimes are undoubtedly extremely serious. Therefore, it is to be hoped that law enforcement agencies will

use the tools given to them wisely and prevent numerous crimes, at the same time without bending the norms of the ordinance in question formulated in imprecise language, which could undoubtedly prove tragic for civil and human rights. Combined with the necessity of obtaining a permit issued by the judiciary in each case and the need to report to the designated authorities, it seems that this regulation will effectively protect citizens of the European Union while not unduly restricting the possibility of fighting crimes by the services established for this purpose.

In the opinion of the author of this text, it would be reasonable to introduce our own national rules on the use of 'real-time' remote biometric identification systems in publicly accessible spaces. Such a solution, facilitated by the norm expressed in Article 5(1) of the AI Act, would make it possible to adapt EU regulations to the Polish criminal law system, which would effectively eliminate the problems of interpretation that arise, for example, in the case of terrorism. Given the power of the technology in question and the threat posed by its misuse by law enforcement, this appears to be a solution that could effectively secure the privacy of citizens.

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