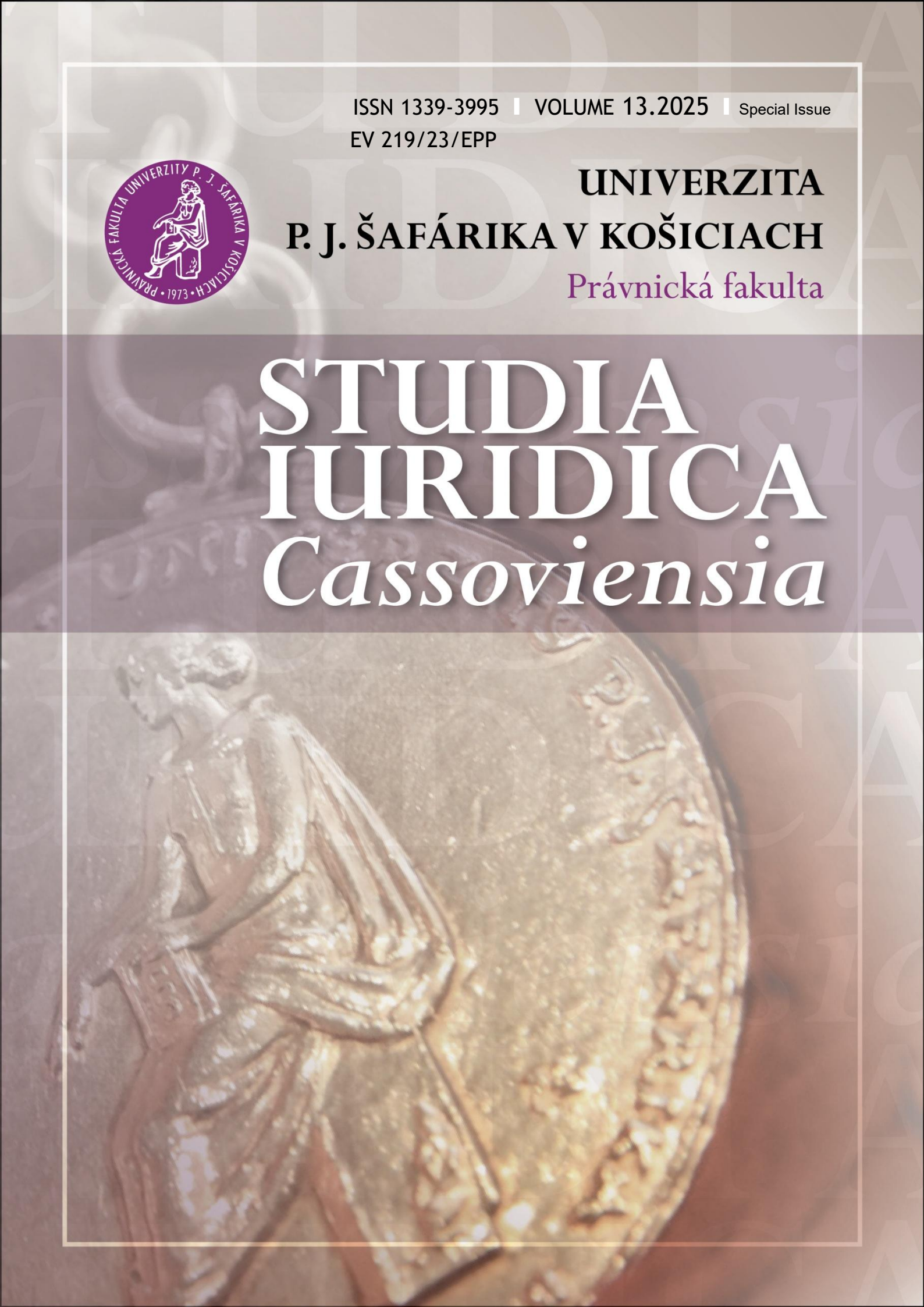
ISSN 1339-3995 | VOLUME 13.2025 | Special Issue
EV 219/23/EPP

UNIVERZITA
P. J. ŠAFÁRIKA V KOŠICIACH
Právnická fakulta

STUDIA IURIDICA Cassoviensia



Publisher:
Pavol Jozef Šafárik University in Košice, Faculty of Law,
Šrobárova 2, 041 80 Košice, Slovak Republic, Org ID: 00397768

Address of the Editorial Office:
SIC Editorial Office, Kováčska 26, P.O. Box A-45, 040 75 Košice, Slovak Republic,
e-mail: redakcia_sic@upjs.sk

Journal is issued periodically twice a year. It is freely available at the web page http://sic.pravo.upjs.sk (open access journal). All the submitted articles are peer-reviewed in double-blind form by two reviewers anonymous to the author.

Vol. 13.2025, special issue/ Publication date: December 19, 2025

ISSN 1339-3995, EV 219/23

STUDIA IURIDICA
Cassoviensia

How Law Responds to Challenges of Digital Era

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Editorial

We are pleased to present this special issue of STUDIA IURIDICA Cassoviensia devoted to the theme **How Law Responds to Challenges of the Digital Era**. Digitalization and the rapid advancement of artificial intelligence continue to reshape social relations, economic structures, and the functioning of public institutions. These developments bring remarkable opportunities but also raise complex legal questions concerning accountability, transparency, rights protection, and the adequacy of existing regulatory frameworks. This issue aims to contribute to the broader scholarly discussion on how law can meaningfully respond to these ongoing transformations.

The articles collected in this issue address several key areas where digital technologies intersect with contemporary legal systems – from **the regulation of online content and the relationship between national and European rules**, highlighting persistent challenges in classifying, moderating, and removing illegal material, to **the growing role of artificial intelligence in administrative and judicial processes**, exploring questions of decision-making, responsibility, and the limits of automation within the public sector.

A number of articles provide **comparative and critical reflections on the digitalization of public administration**, considering how different European states design and implement automated procedures while striving to maintain core principles of administrative law. Other articles analyze **platform governance and the shifting balance between private regulation and public oversight in digital environments**. Finally, the issue includes articles on the **transformation of the labor market under the influence of digital technologies and AI**, discussing both emerging risks and regulatory responses at the national and EU level.

Taken together, these articles provide a concise yet diverse perspective on the legal challenges posed by the digital era. They underline the need for thoughtful, principled, and forward-looking legal responses that keep pace with technological change while upholding fundamental values. We trust that this special issue will support continued academic debate and inspire further research in this evolving field.

prof. JUDr. Radomír Jakab, PhD.
editor-in-chief

ILLEGAL CONTENT CLASSIFICATION IN LIGHT OF THE SLOVAK CASE-LAW[1]

KLASIFIKÁCIA NEZÁKONNÉHO OBSAHU V KONTEXTE SLOVENSKEJ ROZHODOVACEJ PRAXE

Laura Bachňáková Rózenfeldová[2]

https://doi.org/10.33542/SIC2025-S-01

ABSTRACT

Classification of illegal content presents a multifaceted issue requiring complex examination of the applicable regulation adopted on the national, European and international level that defines content categories that are considered unlawful and therefore subject to prosecution by competent state authorities. Following such examination, the practical implementation of the relevant legislation represented in the decision-making practice of state authorities must also be analysed with the objective to identify specific content types sanctioned within the national context. Proposal of such classification forms the subject-matter of this paper, the objective of which is to identify the individual categories of illegal content focusing on the existing case-law of Slovak national authorities.

ABSTRAKT

Klasifikácia nezákonného obsahu predstavuje viacvrstevnú problematiku, ktorá si vyžaduje komplexné preskúmanie platnej regulácie prijatej na národnej, európskej a medzinárodnej úrovni, ktorá vymedzuje druhy obsahu, ktoré sú považované za nezákonné, a teda sankcionovateľné zo strany príslušných štátnych orgánov. Na predmetné preskúmanie nevyhnutne nadväzuje analýza praktickej implementácie príslušnej právnej úpravy vyjadrenej v rozhodovacej praxi štátnych orgánov s cieľom identifikovať, ktoré druhy protiprávneho obsahu sú skutočne postihované na národnej úrovni. Predmetom tohto príspevku je návrh takejto klasifikácie s cieľom identifikovať jednotlivé kategórie nezákonného obsahu na základe analýzy existujúcej rozhodovacej činnosti vnútroštátnych orgánov.

I. INTRODUCTION

Regulation of the digital environment presents a difficult exercise both for the legislator tasked with the formulation of the necessary regulatory framework as well as for the competent authorities ensuring the implementation of the applicable legislation in practice.[3] This is especially true as regards the regulation of illegal activities committed on the Internet, as their ever-expanding variety makes the application of the existing regulation especially difficult.[4] The contributing reason for this is the fact that the majority of the relevant legal acts were

[1] This work was supported by the Slovak Research and Development Agency under contract No. VV-MVP-24-0038 ‚*Analysis of liability for Internet torts with machine learning methods*‘and contract No. APVV-21-0336 ‚*Analysis of judicial decisions using Artificial Intelligence*‘.

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[3] See SAVIN, A. Internet regulation in the European Union. In: EU Internet Law. Cheltenham, UK: Edward Elgar Publishing, 2017. https://doi.org/10.4337/9781784717971.00007.

[4] WALL, D. S. Cybercrime. The Transformation of Crime in the Information Age. Cambridge, U.K.: Polity Press, 2007. ISBN: 9780745627366. https://doi.org/10.1111/j.1468-4446.2007.00187_8.x.

originally formulated with primary focus on unlawful acts committed in the offline world, not considering the specific nature of illegal acts carried out online.[5] In many instances, the existing legislation does not adequately respond to the challenges brought by online offenders, establishing the need for its amendment or broader interpretation by competent national authorities.[6] Moreover, the continuing adoption of legislation responding to partial issues concerning illegal acts online makes it difficult to provide a comprehensive examination of this legal area, including the identification of individual categories of illegal content. Any proposal of illegal content classification must therefore be based on a thorough examination of the applicable national, European and international regulation and its corresponding application in practice by the national authorities.[7] Moreover, the illegal content categories identified in this regard may be sanctioned through the instruments of civil, administrative as well as criminal law. Therefore, the relevant case law adopted by the competent state institutions and national courts must also be examined. The decisions of national authorities that form the basis of conclusions presented in this paper include decisions obtained on the basis of a freedom of information request in accordance with Article 14 of the Act No. 211/2000 Coll. on free access to information (Freedom of Information Act) as amended (e. g. decisions of the Personal Data Protection Office of the Slovak republic), as well as judicial decisions issued by competent courts accessed from the database of decisions created as one of the outputs of the project No. APVV-21/0336, on the solution of which the author participates.[8]

The objective of this paper is, however, not the identification of all categories of illegal content carried out online that may be sanctioned under the applicable regulation, but the proposal of a classification of content categories that cover types of illegal content most prosecuted within the national context. To achieve this, we also examine the crime statistics regularly published by the Ministry of Interior of the Slovak republic, the Ministry of Justice of the Slovak republic and General Prosecutor's Office of the Slovak republic.

The main research question stipulated in this regard is as follows: "*What categories of illegal content can be distinguished within the national context, specifically based on the examination of the applicable regulation followed by the analysis of the corresponding case-law of competent national authorities?*" The formulated research question may be divided into the following research sub-questions:
(RQ1): "*What is the legal definition of the term 'illegal content'?*"
(RQ2): "*What different categories of illegal content can be distinguished and what is the manner of their prosecution within the national context?*"

This paper is organized into three sections. Section I examines the legal definition of the term 'illegal content'. Section II analyses the individual categories of illegal content and their corresponding regulation and representation in the case-law of national authorities. Section III contains discussion and conclusion.

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5 See also YAR, M. (2018) A Failure to Regulate? The Demands and Dilemmas of Tackling Illegal Content and Behaviour on Social Media. International Journal of Cybersecurity Intelligence & Cybercrime: 1(1), 5-20. https://www.doi.org/10.52306/01010318RVZE9940.

6 See also FICO, M. Základy trestnej zodpovednosti v procese unifikácie trestného práva medzivojnovej Československej republiky. Košice: Univerzita Pavla Jozefa Šafárika v Košiciach, 2020. ISBN 9788081528408.

7 See also ROMŽA, S. Privatizácia trestného práva. Praha: Nakladatelství Leges, 2021. ISBN 9788075025289.

8 This database includes more than 4 million decisions published by the Ministry of Justice of the Slovak republic. The decisions analysed for the purposes of this paper were selected through the methods for decision selection created and implemented by the research team and use different machine learning methods allowing, e. g. the selection based on the presence of a reference to a specific provision of the legal regulation in the relevant decision.

II. DEFINITION OF ILLEGAL CONTENT

The first legal definition of the term 'illegal content' was provided within the context of the European Union regulation by the Commission in its Communication titled 'Tackling Illegal Content Online. Towards an enhanced responsibility of online platforms', according to which illegal content may be defined in the following manner: „*what is illegal offline is also illegal online.*"[9] This general definition was later specified in Article 4 (b) of the Commission Recommendation (EU) 2018/334 on measures to effectively tackle illegal content online, according to which illegal content "*means any information which is not in compliance with Union law or the law of a Member State concerned*".[10] This interpretation considered the existence of possible differences in the definition of illegal content as specified in the national law of individual Member States. Concurrently it confirmed the fact that if information violates the European Union regulation, it will be considered illegal, regardless of the differences in the provisions of Member States' national legal systems.

On this basis, the recently enacted Regulation (EU) 2022/2065 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act)[11] provided a new definition of illegal content in its Article 3 (h), under which this term covers "*any information that, in itself or in relation to an activity, including the sale of products or the provision of services, is not in compliance with Union law or the law of any Member State which is in compliance with Union law, irrespective of the precise subject matter or nature of that law.*" In determining whether content is illegal, it is not decisive whether the illegality of the information or activity results from the European Union law or from the legal order of a Member State. The form in which the illegal information is contained is also not relevant, nor is the precise nature or subject matter of the legal provision from which the illegality of the information results. The Digital Services Act "*does not distinguish between different types of infringement with respect to any of the obligations. This means that criminal offences, intellectual property rights violations and infringements of personal rights all face uniform compliance rules.*"[12] Concurrently the regulation does not specify individual categories of illegal content covered by it. Recital 12 of the Digital Services Act only lists illustrative examples of content types that are considered illegal, which include illegal hate speech or terrorist content, unlawful discriminatory content, the sharing of images depicting child sexual abuse, the unlawful non-consensual sharing of private images, online stalking, the sale of non-compliant or counterfeit products, the sale of products or the provision of services in infringement of consumer protection law, the non-authorised use of copyright protected material, the illegal offer of accommodation services or the illegal sale of live animals.

Within the national context, we can find the definition of the term illegal content in the Act No. 264/2022 Coll. on media services as amended. Article 151 (2) of this Act defines illegal content as content that:

a) "*fulfills the characteristics of child pornography or extremist material,*
b) *incites to conduct that fulfills the characteristics of any of the crimes of terrorism,*
c) *approves conduct that fulfills the characteristics of any of the crimes of terrorism, or*

[9] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Tackling illegal content online. Towards an enhanced responsibility of online platforms. *COM (2017) 555 final. P. 2.*

[10] Commission Recommendation (EU) 2018/334 of 1 March 2018 on measures to effectively tackle illegal content online. *OJ L 63, 6.3.2018, p. 50–61.*

[11] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act). *OJ L 277, 27.10.2022, p. 1-102.*

[12] BUITEN, M., C. The Digital Services Act from Intermediary Liability to Platform Regulation. In: JIPITEC 12 (5) 2021. S. 366. https://dx.doi.org/10.2139/ssrn.3876328.

d) fulfills the characteristics of the crime of denial and approval of the Holocaust, crimes of political regimes and crimes against humanity, the crime of defamation of a nation, race and belief or the crime of incitement to national, racial and ethnic hatred."

Nevertheless, this definition does not cover all content types that may be considered unlawful under the provisions of the national law. Different categories of illegal content can be identified in this regard, following the provisions of applicable legislation and the relevant case-law of competent authorities. These categories are examined in the following chapter of this paper.

III. CLASSIFICATION OF ILLEGAL CONTENT

This chapter provides a classification of illegal content categories based on the examination of the applicable regulation, reflecting the existing case-law of national authorities. Individual categories of illegal content can be differentiated on the basis of their seriousness and the related extent of the harm that may arise as a result of the dissemination of a certain category of illegal content on the Internet. While, for example, harm caused by the infringement of intellectual property rights, such as the unlawful making available of audiovisual or musical works on the Internet, is primarily of the nature of quantifiable material damage localized in relation to the relevant right holders, harm that may arise as a result of a failure to prevent the dissemination of terrorist propaganda may result in harm to life and health of persons affected by the commission of a terrorist attack, including significant property damage.

A. Terrorist content

Terrorist content presents a category of illegal content, the dissemination of which may result in serious consequences including harm to the functioning of democracy and the rule of law. Significant effort was executed within the European Union to address the misuse of the Internet for terrorist purposes, including the creation of a common collaborative framework by the Commission - the EU Internet Forum (EUIF) aiming to reduce the accessibility to terrorist content online and increase the volume of effective alternative narratives online[13], formation of the EU Internet Referral Unit (EU IRU) within the EUROPOL that detects and investigates malicious content on the Internet, including social media, and the adoption of corresponding legislative, as well as other measures within the European Union context.

The legislative basis for the regulation of terrorist content is contained in the Directive (EU) 2017/541 on combating terrorism.[14] Specifically, Article 5 requires the Member States to punish as a criminal offence when committed intentionally the public provocation to commit a terrorist offence, specifically the distribution, or otherwise making available by any means, whether online or offline, of a message to the public, with the intent to incite the commission of one of the terrorist offences listed in points (a) to (i) of Article 3(1), where such conduct, directly or indirectly, such as by the glorification of terrorist acts, advocates the commission of terrorist offences, thereby causing a danger that one or more such offences may be committed. Specific examples of this offence include the glorification and justification of terrorism or the dissemination of messages or images online and offline, including those related to the victims of terrorism as a way to gather support for terrorist causes or to seriously intimidate the population.[15] Later adopted Commission Recommendation (EU) 2018/334 of 1 March 2018 on

[13] See European Union Internet Forum. Available: https://home-affairs.ec.europa.eu/networks/european-union-internet-forum_en.

[14] Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA. *OJ L 88, 31.3.2017, p. 6–21.*

[15] Ibid. Recital 10.

measures to effectively tackle illegal content online focused on the role of hosting services providers in the dissemination of terrorist content and formulated the definition of this category of illegal content in its Article 4 (h). These initiatives later led to the adoption of the Regulation (EU) 2021/784 on addressing the dissemination of terrorist content online[16] that extended the definition of terrorist content.[17]

Within the national context, the Act No. 300/2005 Coll. on Criminal Code (Criminal Code) provides in its Article 140b a list of offences classified as criminal offences of terrorism that also cover the individual types of material defined as terrorist content in the Regulation (EU) 2021/784. The criminal sanctioning of terrorism offences in the Slovak Republic is rare. To illustrate, the offence of certain forms of participation in terrorism (Article 419b of the Criminal Code) which sanctions public incitement to commit terrorism offences, as well as public approval of such offences, has been detected by the competent law enforcement authorities in only a number of cases annually, e. g. 5 cases in 2023.[18] Similarly, the statistics published by the General Prosecutor's Office of the Slovak Republic and the statistical yearbooks of the Ministry of Justice of the Slovak Republic record no more than one case of conviction of a person for committing this offence in the calendar years 2022 and 2023. Nonetheless, the example of a material that falls under the definition of terrorist content in the national context can be provided. In 2022, a terrorist attack against the members of the LGBTIQ+ community was committed on the territory of the Slovak republic. A few hours before the attack, the perpetrator posted a document on his Twitter account titled "A call to arms" (manifesto), in which he explained his racist, anti-Semitic and extremist motives that led him to commit this act. Given that the attacker repeatedly glorified the terrorist offences, advocated them and incited others to commit such offences, the document in question was classified as terrorist content. Following the attack, to ensure a more effective monitoring of the availability of this content, the file containing the manifesto in the form of a hash (a unique digital file identifier) has been included in a global database of terrorist content operated by the Global Internet Forum for Counter Terrorism (GIFTC).

B. Extremist content, including xenophobic and racially motivated speech that publicly incites hatred and violence (hate speech)

The national legal order does not contain the legal definition of the term ‘extremism’. This concept is only defined in legally non-binding documents.[19] The availability of extremist

[16] Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online. *OJ L 172, 17.5.2021, p. 79–109.*

[17] According to its Article 2 (7), the terrorist content covers one or more of the following types of material, namely material that a) incites the commission of one of the offences referred to in points (a) to (i) of Article 3(1) of Directive (EU) 2017/541, where such material, directly or indirectly, such as by the glorification of terrorist acts, advocates the commission of terrorist offences, thereby causing a danger that one or more such offences may be committed; b) solicits a person or a group of persons to commit or contribute to the commission of one of the offences referred to in points (a) to (i) of Article 3(1) of Directive (EU) 2017/541; c) solicits a person or a group of persons to participate in the activities of a terrorist group, within the meaning of point (b) of Article 4 of Directive (EU) 2017/541; d) provides instruction on the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or on other specific methods or techniques for the purpose of committing or contributing to the commission of one of the terrorist offences referred to in points (a) to (i) of Article 3(1) of Directive (EU) 2017/541; e) constitutes a threat to commit one of the offences referred to in points (a) to (i) of Article 3(1) of Directive (EU) 2017/541.

[18] Criminality Statistics. Ministry of Interior of the Slovak republic. Available: https://www.minv.sk/?statistika-kriminality-v-slovenskej-republike-xml.

[19] See Counter Extremism Concept for 2015-2019, and later revised Counter Extremism Concept until 2024. Available: https://www.minv.sk/swift_data/source/policia/naka_opr/nptj/koncepcia%20extremizmus%202015-2019.pdf and https://www.minv.sk/?zakladne-dokumenty-3&subor=395760.

content on the Internet[20] has been a long-standing issue in the Slovak Republic.[21] The dissemination of extremist content can be sanctioned within the national context either as the administrative delict of extremism pursuant to Article 47a(1) of Act No 372/1990 Coll. on delicts, or as one of the extremist criminal offences defined in Article 140a of the Criminal Code, most commonly as the distribution of extremist material (Article 422b) that sanctions a perpetrator that copies transports, procures, makes accessible, puts into circulation, imports, exports, offers, sells, ships or distributes extremist material. The legal definition of extremist material can be found in Article 130 (7) of the Criminal Code, according to which it covers "*written, graphic, video, audio or audio-video works:*

a) *of texts and declarations, flags, badges, passwords, or symbols, groups and movements that lead or led in the past to the suppression of fundamental human rights and freedoms,*
b) *of programmes or ideologies of groups and movements that lead or led in the past to the suppression of fundamental human rights and freedoms,*
c) *advocating, promoting or inciting hatred, violence or unreasonable differential treatment of groups of persons or an individual because of their belonging to one race, nation, nationality, skin colour, ethnicity, origin, or their religion, if it is an excuse for the above reasons, or*
d) *justifying, approving, denying or seriously derogating genocide, crimes against peace, crimes against humanity or military crimes, if the offender or an accessory to such an act was convicted by a final judgment of an international court established under international public law, the authority of which is recognised by the Slovak Republic, or by a final judgment of a court of the Slovak Republic.*"

Article 130 (8) of the Criminal Code further specifies that extremist material does not include material that is demonstrably produced, distributed, put into circulation, made publicly accessible or kept in possession for the purpose of educational, collection or research activities. The examination of the national case-law concerning the dissemination of extremist content online reveals that in the majority of cases, the competent authorities sanctioned the dissemination of such content on social media (prevalently on Facebook) of the perpetrator, specifically its publication on the public profile of the offender. Similarly, posting comments in the discussion on other users' posts or in the various groups created on the social network were also found to constitute extremist content dissemination. In one instance, a user was sanctioned (not exclusively) for flagging another user's post containing extremist material via the "Like" function. Other examples of extremist content dissemination included the possession of extremist material in a form that allows it to be made available online (photographs, audio or visual-sound recordings) on external media, in particular on the mobile phones of the perpetrators,[22] offering extremist materials for sale and distribution, in particular by publishing advertisements on various websites (in particular bazos.sk, bazar.sk or Facebook Marketplace), operation of a website, on which the accused published photographs, pictures, articles, reviews and links to events of right-wing musical formations, as well as other extremist material, or even sending out a mass email containing extremist material by which the accused incited various persons to hatred against persons belonging to a specific nationality.

[20] See also OECD Current approaches to terrorist and violent extremist content among the global top 50 online content-sharing services. OECD Digital Economy Papers, No. 296, OECD Publishing, Paris, 2020. https://doi.org/10.1787/68058b95-en.

[21] See LETKOVÁ, L. Trestné činy extrémizmu z pohľadu štatistiky a rozhodovacej praxe od roku 2017. Bratislava: C. H. Beck, 2023. ISBN: 978-80-8232-026-1.

[22] Such images also included photographs of the offenders themselves, if they showcased their extremist tattoos.

The category of content that publicly incites hatred and violence (the so-called hate speech) forms an integral part of the category of extremist content. The concept of hate speech appears in international, European, as well as national legal norms, but lacks a uniform definition.[23] Noteworthy is the definition provided in the first Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems that defines in its Article 2 (1) racist and xenophobic material as „*any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors.*" Within the national context, criminal offences of extremism include a criminal offence committed out of a special motive under Article 140 (e) of the Criminal Code, which covers offences committed out of hatred against a group of persons or an individual because of their actual or deemed belonging to a race, nation, nationality, ethnicity, because of their actual or deemed origin, skin colour, gender, sexual orientation, political opinions or religion. The related term 'hate crime' is a concept covering a group of different offences defined by the national legislation, which may take different forms, for example, the offence of bodily harm, violence against a group of population, dangerous threats (e.g. such as in the case where the perpetrator through his mobile devices threatened his former partner with death, serious bodily harm and other serious harm in such a way that it could have raised reasonable concern, while he committed the said act out of a specific motive - hatred towards a group of persons because of their race and religion).[24]

C. Child pornography

The illegality of child pornography is confirmed in numerous international, European as well as national legal norms. The Budapest Convention on Cybercrime (2001) for example regulates in its Article 9 offences related to child pornography that covers "*pornographic material that visually depicts: a) a minor engaged in sexually explicit conduct; b) a person appearing to be a minor engaged in sexually explicit conduct; c) realistic images representing a minor engaged in sexually explicit conduct*." Parties to this Convention are required to establish as criminal offences under their national law when committed intentionally and without right, the following acts: a) producing child pornography for the purpose of its distribution through a computer system; b) offering or making available child pornography through a computer system; c) distributing or transmitting child pornography through a computer system; d) procuring child pornography through a computer system for oneself or for another person; and e) possessing child pornography in a computer system or on a computer-data storage medium.

Similar regulation is also contained in the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse that, moreover, criminalises the act of knowingly obtaining access, through information and communication technologies, to child pornography which covers offenders who visit child pornography websites without downloading and storing the material on their own devices. Liability of offenders in this context arises if they intentionally visit a website where child pornography is available with knowledge of the presence of such content on it. The offender's intent in this respect may be inferred from

[23] See PEJCHAL, V. Hate speech and human rights in Eastern Europe. Legislating for divergent values. London: Routledge, 2021. ISBN: 9781032236322. https://doi.org/10.4324/9781003005742.

[24] Rozsudok Špecializovaného trestného súdu z 30. januára 2019, sp. zn. 2T/41/2018. In this case, the offender was sanctioned with a six-month prison sentence, the execution of which was conditionally suspended. Concurrently the court prohibited the perpetrator from contacting the injured party in any form, including via electronic communication services or other similar means, during the probationary period, and ordered him not to approach the injured party at a distance of less than five meters and not to stay near her home or in a place where she stays or visits.

the fact that their visits to such sites are repeated or that the offender has gained access to the site on the basis of the payment of some consideration.[25]

The European Union regulation of child pornography is currently contained in the Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography that establishes minimum rules concerning the definition of criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children, child pornography and solicitation of children for sexual purposes. Offences concerning child pornography (Article 5) similarly cover acquisition or possession of child pornography, knowingly obtaining access, by means of information and communication technology, to child pornography, distribution, dissemination or transmission of child pornography, offering, supplying or making available child pornography as well as its production. With the objective to make the fight against child sexual abuse, sexual exploitation and child pornography more effective, the Commission adopted a new strategy in this area (2020)[26] which reflects the increase in the demand for child sexual abuse material leading to the creation of a global market, and a dramatic increase in reports of online child sexual abuse, indicating that the EU has become the largest producer of child sexual abuse material in the world. On this basis, the Regulation (EU) 2021/1232 on a temporary derogation from certain provisions of Directive 2002/58/EC as regards the use of technologies by providers of number-independent interpersonal communications services for the processing of personal and other data for the purpose of combating online child sexual abuse[27] was later adopted and a new proposal (not yet adopted) for a Regulation laying down rules to prevent and combat child sexual abuse was presented.[28]

In the national context, the relevant regulation is contained in the Criminal Code that criminalises production of child pornography (Article 368), its distribution (Article 369), possession of child pornography and participation in a child pornographic performance (Article 370) and sexual abuse (Article 201b). The criminal offence of child pornography distribution sanctions whoever copies, transports, procures, makes accessible or otherwise distributes child pornography. Based on the available statistical data for the last five calendar years, this offence was identified by the competent law enforcement authorities in an average of 253 cases per year, which seems to be a relatively low number of investigated cases, considering the amount of child pornography material available on the Internet.[29] The clearance rate for identified offences averages 30 % per year. The number of people sentenced for this crime is similarly low (52 in 2023, 61 in 2022, 44 in 2021, 47 in 2020).[30] Based on the examination of the available case law, the distribution of such content covered the making of available of child pornography through different communication applications to other unidentified users (often through apps such as Messenger, Pokec, WhatsApp, Telegram, Skype, Snapchat, Instagram etc.), the publication of child pornography on the public profile of the offender's social media, the sending of such material through email or making it available through peer-to-peer (P2P) programmes. The punishment to which the offenders were sentenced included primarily prison sentence (the execution of which was in most cases suspended for a probationary period),

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25 Council of Europe. Explanatory Report to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. P. 140. Available: https://rm.coe.int/16800d3832.

26 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. EU strategy for a more effective fight against child sexual abuse. *COM/2020/607 final.*

27 *OJ L 274, 30.7.2021, p. 41–51.*

28 Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse. *COM/2022/209 final.*

29 See WORTLEY, R. – SMALLBONE, S. Investigating Child Pornography. In: Internet Child Pornography. Causes, investigation and prevention. Praeger, 2012. P. 50-70. https://doi.org/10.5040/9798400671708.ch-004.

30 Statistical data of the Ministry of Justice of the Slovak republic. Available: https://web.ac-mssr.sk/statisticke-rocenky/

forfeiture of property, specifically electronic devices used for the commission of a crime, and even the imposition of a pecuniary fine.

D. Content in violation of the fundamental right to privacy and the right to personal data protection

The right to privacy was defined for the first time as the right to be left alone.[31] Today, the framework of this fundamental right is interpreted more broadly, encompassing various aspects of an individual's private life, the definition of which is constantly evolving.[32] As the Supreme Court of the Slovak Republic has stated in this regard, "*the wide range of manifestations and components of the private life of a natural person corresponds to the possibility of a variety of manifestations of interference with privacy and their consequences on protected personality rights*."[33] This is particularly valid as regards the application of this right online. Considering the diversity of the possible infringement forms, it is not possible to provide an exhaustive list of examples of illegal content whose unauthorised disclosure on the Internet infringes the right to privacy of the individuals concerned. The examples provided in this chapter cover the most common infringements based on their occurrence in the national case law. These include content whereby someone, without the consent of the person concerned, takes and/or makes available images or video and audio recordings relating to that person, for example by posting them on their social media or other platforms allowing the sharing of user-generated content. A number of cases of unauthorised disclosure of such content relate to the disclosure of intimate photographs or videos taken without the consent of the concerned subjects (using hidden cameras, gaining unauthorised access to the devices or user accounts, recording incidents of sexual abuse); even if consent was initially provided for the creation of intimate media, the subsequent dissemination of such content often after the end of the relationship ('revenge porn')[34] without consent is unlawful. Further examples of illegal content include cases of unauthorized dissemination of information regarding private individuals concerning their private life that may include false or misleading statements capable of interfering with the protection of the personality of the person concerned guaranteed, *inter alia,* by Article 11 of the Act No. 40/1964 Coll. Civil Code, in particular their civil honour, dignity and privacy, as well as the unauthorized dissemination of electronic communication of the user.

Closely connected with the right to privacy is the fundamental right to personal data protection guaranteed by Article 8 of the Charter of Fundamental Rights of the EU.[35] According to the Constitutional Court of the Slovak republic, this right ensures the protection of the data subject from "*obtaining, storing, using or further processing data relating to the private sphere of their life. Such protection is a necessary prerequisite for the individual's ability to decide which information relating to their privacy they will publish, which in a broader context protects their ability to make decisions freely and on their own responsibility regarding their private life.*"[36] This protection is ensured in the national context through the instruments of administrative, as well as criminal law. The corresponding case-law of the Personal Data

[31] WARREN, S. D. - BRANDEIS, L. D. The right to privacy. *Harvard Law Review*, 1890 4(5), P. 193-220. https://doi.org/10.2307/1321160.

[32] See PFISTERER V. M. The Right to Privacy - A Fundamental Right in Search of Its Identity: Uncovering the CJEU's Flawed Concept of the Right to Privacy. German Law Journal. 2019;20(5):722-733. https://doi.org/10.1017/glj.2019.57.

[33] Uznesenie Najvyššieho súdu Slovenskej republiky sp. zn. 3 Cdo 137/2008 z 18. februára 2010.

[34] See DVOŘÁKOVÁ, M. Revenge porn a deepfakes: ochrana soukromí v éře moderních technologií. In: Revue pro právo a technologie, Vol. 11, No. 22 (2020). ISSN: 1805-2797. P. 51-89. https://doi.org/10.5817/RPT2020-2-2.

[35] TZANOU, M. Data protection as a fundamental right next to privacy? 'Reconstructing' a not so new right. In: International Data Privacy Law, Vol. 3, No. 2. ISSN: 2044-4001. P. 88–99, https://doi.org/10.1093/idpl/ipt004.

[36] Nález Ústavného súdu Slovenskej republiky, sp. zn. II. ÚS 53/2010 z 9. decembra 2010.

Protection Office of the Slovak republic[37] also covers infringement cases, where the unlawful processing of personal data can be classified as illegal content. The include, primarily the unauthorized recording of data subjects through camera information systems. The processing of personal data in this manner often infringes different personal data processing principles, including the principle of lawfulness (failure to demonstrate the legal basis for processing), transparency principle (failure to provide necessary information to data subjects), principle of data minimisation (data processed are not limited to what is necessary in relation to the purposes for which they are processed) and storage limitation (storing of data for longer period than necessary for the purposes sought by processing). Further examples include the unauthorized disclosure of personal data on the Internet, e. g. on the controller's website, social media, in the obligatorily published contracts that are incorrectly anonymized etc., and the unauthorized sending of personal data to third parties via online communication tools, e. g. sending of emails to an unauthorized third parties due to the entering of an incorrect email address (often associated with insufficient security of the attached documents containing personal data, such as contractual agreements) or even making of available documents containing personal data through email on the basis of a freedom of information request.

E. Content infringing intellectual property rights

Another standard example of illegal content is content that infringes intellectual property rights, specifically copyright and trademark protection. Both categories of content may be protected through instruments of civil, administrative, as well as criminal law. As regards copyright infringement, it covers primarily the following cases of infringement sanctioned as a criminal offence according to the Article 283 of the Criminal Code:

a) making available of copyrighted works via peer-to-peer (P2P) networks. In these cases, the user of a P2P network unlawfully creates copies of copyrighted works and makes them available via a computer program (µTorrent, BitTorrent, etc.) to an unlimited number of other P2P network users, who can download these works without any restrictions and free of charge.
b) unlawful storage of copyrighted content on file hosting servers and the subsequent publication of links to the digital content thus published on various discussion forums, usually with the aim of obtaining financial compensation for each download of the content made available in this manner.
c) the unauthorized publication of copyrighted content online in another manner, e. g. on different websites or Internet forums.[38]

Trademark infringements that may be classified as illegal content, on the other hand, usually cover cases, in which the offender creates, purchases or in another way procures imitations or counterfeits of different goods or services that are offered for sale online, often through advertisements published on different e-commerce platforms.[39]

F. Content in violation of unfair competition regulation

The development of e-commerce led to the introduction of new business practices, through which competitors try to maximize their profits. In order to reach the largest number of potential

[37] See BACHŇÁKOVÁ RÓZENFELDOVÁ, L. – SOKOL, P. – HUČKOVÁ, R. – MESARČÍK, M. Personal data protection enforcement under GDPR – the Slovak experience. In: International Data Privacy Law, Vol. 14, Issue 3, 2024. https://doi.org/10.1093/idpl/ipae008.

[38] See BACHŇÁKOVÁ RÓZENFELDOVÁ, L. Prosecution of copyright infringements as a criminal offence in Slovakia. In: Journal of Intellectual Property Law & Practice. Roč. 17, č. 12 (2022). ISSN 1747-1532. P. 1023-1031. https://doi.org/10.1093/jiplp/jpac103.

[39] As regards the role of intermediaries in trademark infringement, see Riordan, J. The Liability of Internet Intermediaries. Oxford: Oxford University Press, 2016, 1st ed. https://doi.org/10.1093/oso/9780198719779.001.0001.

customers, entrepreneurs use different methods of content creation aimed at users, reflecting their behaviour and activities carried out online (often to a highly personalized extent). The content with which these competitors try to attract the attention of individual users (especially through advertising) may, under certain circumstances, be classified as illegal due to the violation of competition rules, including unfair competition according to the relevant provisions of the Act No. 513/1991 Coll. Commercial Code. A standard example of unfair competition illegal content is content fulfilling the nature of misleading advertising (Article 45 of the Commercial Code). Advertising is misleading, if it misleads or may mislead the persons to whom it is addressed or to whom it reaches, and concurrently it can influence the economic behaviour of the affected persons or may harm another competitor or consumer. The competent courts must consider "*the perception of an average consumer of the products or services being advertised who is reasonably well informed and reasonably observant and circumspect*."[40] Another example of illegal content include misleading description of goods and services offered online (Article 46 of the Commercial Code). In the context of e-commerce, this will primarily concern the sale of counterfeit products on various electronic marketplaces (Amazon, Ebay, Alibaba, Aliexpress), including marketplaces created on social networks (Facebook Marketplace, etc.). Further examples may include the provision of goods and services under the name of another competitor (creating the risk of confusion – Article 47 of the Commercial Code) or the unauthorised use of the trade secrets (Article 51 of the Commercial Code), e. g. the operation of an online store, the content of which was similar to or identical to the applicant's online store, both functionally and visually, whereby the store operator (former employee of the applicant) allegedly used a summary of information including the portfolio of the goods sold, the selection of suppliers and the setting of business conditions to establish their own business.[41]

G. Other types of illegal content

In the national context, other specific examples of illegal content can be identified, such as a) the promoting or operating of gambling websites without the necessary license granted by the Gambling Regulatory Authority, b) the dissemination of political content during election moratorium (48 hours before voting) by a political party, political movement, coalition of political parties and political movements and/or individual candidates, c) the sale of goods or services that are prohibited or subject to special restrictions (medicaments, narcotic or psychotropic substances, alcohol, tobacco and tobacco products, guns, etc.), d) fraudulent content that aims to mislead other users or exploit their mistake for the purpose of self-enrichment, e.g. by obtaining login details, payment details or other sensitive data of users, which the attacker can then use to his advantage, e) violent content depicting violent crimes shared through social networks or other types of intermediary services, f) content whose dissemination meets the factual basis of the crime of spreading alarm messages under the Article 361 of the Criminal Code, specifically in the case of spreading alarm messages via the Internet, e. g. by sending threatening emails about the presence of explosives in schools, universities, courts, hospitals or other publicly accessible places, or g) other hidden or undisclosed advertising practices including the promotion of goods or services by influencers without providing a notice identifying the commercial nature of the promotion, infringing the prohibition of unfair commercial practices regulation.[42]

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[40] Judgement of the Court of Justice of the European Union from 19. September 2006 in the case C-356/04 Lidl Belgium. ECLI:EU:C:2006:585. P. 77-79.

[41] Uznesenie Okresného súdu Košice II z 8. 4. 2019, sp. zn. 35Cb/18/2019.

[42] See Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC,

IV. CONCLUSION

The classification of illegal content presented in this paper and the examples provided in this regard cover the individual categories of illegal content that can be distinguished within the national context, specifically based on the examination of the applicable regulation followed by the analysis of the corresponding case-law of competent national authorities. The illegal content categories identified in this regard include terrorist content, extremist content, including xenophobic and racially motivated speech that publicly incites hatred and violence (hate speech), child pornography, content in violation of the fundamental right to privacy and personal data protection, content infringing intellectual property rights, content in violation of unfair competition regulation and other categories of content that are sanctioned through the instruments of civil, administrative as well as criminal law. As mentioned above, this paper does not aim to identify all categories of illegal content that may be sanctioned under the applicable regulation, as such enumeration would not be feasible within the scope of this article. Nonetheless, we focus on the examination of the standard illegal content categories, reflecting also the practical implementation of the relevant legislation represented in the decision-making practice of state authorities, providing specific examples in this regard.

The national case-law examined confirms that the existing mechanisms for sanctioning cases of illegal content online are currently almost exclusively focused on individual infringers. Nonetheless, a possible change in this approach can be expected, considering the possibility of establishing the liability of intermediary service providers based on the provisions of the newly adopted Digital Services Act, which stipulates new obligations in this regard. However, a necessary prerequisite for this would be the more intensive involvement of national authorities, which is presumed in the Digital Services Act. This may include, e. g. the Slovak Council for Media Services which has the right to issue an order to act against illegal content directly to providers of intermediary services,[43] reflecting Article 9 of the Digital Services Act, if within the scope of proceedings on the prevention of illegal content it is proven that the content in question constitutes illegal content (within the definition of this term provided in the Act No. 264/2022 Coll. On media services) and concurrently its dissemination endangers the public interest or constitutes a significant interference with the individual rights or legitimate interests of a person within the scope of the national legal order, to achieve the removal of and prevent the dissemination of illegal content in question. So far, one such decision has been issued in the national context,[44] namely the decision No. RNO/1/2024 of 24 April 2024 in relation to Twitter International Unlimited Company, which imposed the obligation to remove a user's post distributed on the content sharing platform X and the obligation to prevent its distribution. The reason for imposing the aforementioned obligations was the fact that the disputed post was assessed as illegal content fulfilling the characteristics of extremist material pursuant to Article 151(2)(a) of the Act No. 264/2022 Coll. on media services and the characteristics of the criminal offence of incitement to national, racial and ethnic hatred pursuant to the Article 424 of the Criminal Code, including the corresponding European Union and international regulation. It remains to be seen, to what extent the Digital Services Act and its corresponding provisions in the national law will be employed in practice by the competent national authorities, reflecting the current state of prosecution of illegal content.

98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'). *OJ L 149, 11.6.2005, p. 22–39.*

[43] Article 153 of the Act No. 264/2022 Coll. on media services as amended.

[44] Decision of the Council for Media Services No. RNO/1/2024 from 24th April 2024 against Twitter International Unlimited Company. Available: https://rpms.sk/sites/default/files/2024-10/RNO_1_2024.pdf.

KEYWORDS
illegal content classification, terrorist content, extremist content, hate speech, child pornography, privacy, personal data, intellectual property rights, unfair competition

KĽÚČOVÉ SLOVÁ
klasifikácia nezákonného obsahu, teroristický obsah, extrémistický obsah, hate speech, detská pornografia, súkromie, osobné údaje, duševné vlastníctvo, nekalá súťaž

BIBLIOGRAPHY

1. Act No. 264/2022 Coll. on media services as amended
2. Act No. 40/1964 Coll. Civil Code as amended
3. Act No. 513/1991 Coll. Commercial Code as amended
4. Act No. 300/2005 Coll. Criminal Code as amended
5. BACHŇÁKOVÁ RÓZENFELDOVÁ, L. Prosecution of copyright infringements as a criminal offence in Slovakia. In: Journal of Intellectual Property Law & Practice. Roč. 17, č. 12 (2022). ISSN 1747-1532. P. 1023-1031. https://doi.org/10.1093/jiplp/jpac103
6. BACHŇÁKOVÁ RÓZENFELDOVÁ, L. – SOKOL, P. – HUČKOVÁ, R. – MESARČÍK, M. Personal data protection enforcement under GDPR – the Slovak experience. In: International Data Privacy Law, Vol. 14, Issue 3, 2024. https://doi.org/10.1093/idpl/ipae008
7. BUITEN, M., C. The Digital Services Act from Intermediary Liability to Platform Regulation. In: JIPITEC 12 (5) 2021. https://dx.doi.org/10.2139/ssrn.3876328
8. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Tackling illegal content online. Towards an enhanced responsibility of online platforms. *COM (2017) 555 final.*
9. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. EU strategy for a more effective fight against child sexual abuse. *COM/2020/607 final.*
10. Commission Recommendation (EU) 2018/334 of 1 March 2018 on measures to effectively tackle illegal content online. *OJ L 63, 6.3.2018, p. 50–61.*
11. Council of Europe. Explanatory Report to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.
12. Counter Extremism Concept for 2015-2019, and later revised Counter Extremism Concept until 2024.
13. Criminality Statistics. Ministry of Interior of the Slovak republic. Available: https://www.minv.sk/?statistika-kriminality-v-slovenskej-republike-xml
14. Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse
15. Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'). *OJ L 149, 11.6.2005, p. 22–39.*
16. Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography. *OJ L 335, 17.12.2011, p. 1–14.*

17. Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA. *OJ L 88, 31.3.2017, p. 6–21.*
18. DVOŘÁKOVÁ, M. Revenge porn a deepfakes: ochrana soukromí v éře moderních technologií. In: Revue pro právo a technologie, Vol. 11, No. 22 (2020). ISSN: 1805-2797. P. 51-89. https://doi.org/10.5817/RPT2020-2-2
19. FICO, M. Základy trestnej zodpovednosti v procese unifikácie trestného práva medzivojnovej Československej republiky. Košice: Univerzita Pavla Jozefa Šafárika v Košiciach, 2020. ISBN 9788081528408.
20. Judgement of the Court of Justice of the European Union from 19. September 2006 in the case C-356/04 Lidl Belgium. ECLI:EU:C:2006:585. P. 77-79.
21. LETKOVÁ, L. Trestné činy extrémizmu z pohľadu štatistiky a rozhodovacej praxe od roku 2017. Bratislava: C. H. Beck, 2023. ISBN: 978-80-8232-026-1.
22. Nález Ústavného súdu Slovenskej republiky, sp. zn. II. ÚS 53/2010 z 9. decembra 2010.
23. OECD Current approaches to terrorist and violent extremist content among the global top 50 online content-sharing services. OECD Digital Economy Papers, No. 296, OECD Publishing, Paris, 2020. https://doi.org/10.1787/68058b95-en.
24. PEJCHAL, V. Hate speech and human rights in Eastern Europe. Legislating for divergent values. London: Routledge, 2021. ISBN: 9781032236322. https://doi.org/10.4324/9781003005742
25. PFISTERER, V.M. The Right to Privacy - A Fundamental Right in Search of Its Identity: Uncovering the CJEU's Flawed Concept of the Right to Privacy. German Law Journal. 2019;20(5):722-733. https://doi.org/10.1017/glj.2019.57
26. Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse. *COM/2022/209 final.*
27. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act). *OJ L 277, 27.10.2022, p. 1-102.*
28. Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online. *OJ L 172, 17.5.2021, p. 79–109.*
29. Regulation (EU) 2021/1232 on a temporary derogation from certain provisions of Directive 2002/58/EC as regards the use of technologies by providers of number-independent interpersonal communications services for the processing of personal and other data for the purpose of combating online child sexual abuse. *OJ L 274, 30.7.2021, p. 41–51.*
30. RIORDAN, J. The Liability of Internet Intermediaries. Oxford: Oxford University Press, 2016, 1. ed. ISBN: 9780198719779. https://doi.org/10.1093/oso/9780198719779.001.0001
31. ROMŽA, S. Privatizácia trestného práva. Praha: Nakladatelství Leges, 2021. ISBN 9788075025289.
32. Rozsudok Špecializovaného trestného súdu z 30. januára 2019, sp. zn. 2T/41/2018
33. SAVIN, A. Internet regulation in the European Union. In: EU Internet Law. Cheltenham, UK: Edward Elgar Publishing, 2017. https://doi.org/10.4337/9781784717971.00007
34. Statistics published by the General Prosecutor's Office of the Slovak Republic. https://www.genpro.gov.sk/statistiky/statisticky-prehlad-trestnej-a-netrestnej-cinnosti-za-rok-2023/

35. Statistical data of the Ministry of Justice of the Slovak republic. https://web.ac-mssr.sk/statisticke-rocenky/
36. The first Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems
37. The Budapest Convention on Cybercrime.
38. The Charter of Fundamental Rights of the EU.
39. TZANOU, M. Data protection as a fundamental right next to privacy? 'Reconstructing' a not so new right. In: International Data Privacy Law, Vol. 3, No. 2. ISSN: 2044-4001. P. 88–99, https://doi.org/10.1093/idpl/ipt004
40. Uznesenie Najvyššieho súdu Slovenskej republiky z 18. februára 2010, sp. zn. 3 Cdo 137/2008.
41. Uznesenie Okresného súdu Košice II z 8. 4. 2019, sp. zn. 35Cb/18/2019.
42. WALL, D. S. Cybercrime. The Transformation of Crime in the Information Age. Cambridge, U.K.: Polity Press, 2007. ISBN: 9780745627366. https://doi.org/10.1111/j.1468-4446.2007.00187_8.x
43. WARREN, S. D. - BRANDEIS, L. D. The right to privacy. *Harvard Law Review*, 1890 4(5). https://doi.org/10.2307/1321160
44. WORTLEY, R. – SMALLBONE, S. Investigating Child Pornography. In: Internet Child Pornography. Causes, investigation and prevention. Praeger, 2012. P. 50-70. https://doi.org/10.5040/9798400671708.ch-004
45. YAR, M. (2018) A Failure to Regulate? The Demands and Dilemmas of Tackling Illegal Content and Behaviour on Social Media, International Journal of Cybersecurity Intelligence & Cybercrime: 1(1), 5-20. https://www.doi.org/10.52306/01010318 RVZ E9940

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THE IMPACT OF ARTIFICIAL INTELLIGENCE ON THE EUROPEAN LABOUR MARKET - POLARISATION, CHALLENGES AND OPPORTUNITIES

VPLYV UMELEJ INTELIGENCIE NA EURÓPSKY TRH PRÁCE – POLARIZÁCIA, VÝZVY A PRÍLEŽITOSTI

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https://doi.org/10.33542/SIC2025-S-02

ABSTRACT

The rapid development and diffusion of artificial intelligence (AI) is having a major impact on the European labour market, transforming employment structures, skills, and ways of working. This technological revolution is both a challenge and an opportunity for workers, companies, and policy makers. This research is about to focus on the sectors, the depth, and the ethical use of AI, and will explore the labour law issues of new forms of employment generated by AI (e.g. platform work).Overall, the integration of AI into the labour market presents both opportunities and risks that require initiative-taking policy responses, ongoing research, and collaboration between governments, businesses, and social partners. By addressing the legal, social, and ethical implications of AI-driven work, Europe can harness the benefits of technological advancement while safeguarding workers' rights and promoting a more inclusive labour market.

ABSTRAKT

Rýchly rozvoj a šírenie umelej inteligencie (AI) má veľký vplyv na európsky trh práce, mení štruktúru zamestnanosti, zručnosti a spôsoby práce. Táto technologická revolúcia je výzvou a zároveň príležitosťou pre pracovníkov, spoločnosti a tvorcov politík. Tento výskum sa zameria na odvetvia, hĺbku a etické využívanie umelej inteligencie a bude skúmať pracovnoprávne otázky nových foriem zamestnávania vytvorených umelou inteligenciou (napr. práca na platforme). Celkovo integrácia AI do trhu práce predstavuje príležitosti aj riziká, ktoré si vyžadujú iniciatívne politické reakcie, pokračujúci výskum a spoluprácu medzi vládami, podnikmi a sociálnymi partnermi. Riešením právnych, sociálnych a etických dôsledkov práce založenej na AI môže Európa využiť výhody technologického pokroku a zároveň chrániť práva pracovníkov a podporovať inkluzívnejší trh práce.

I. INTRODUCTION

The advent of Artificial Intelligence (AI) has precipitated a paradigm shift in various domains, with the European labour market being one of the most profoundly impacted. This technological advancement is profoundly impacting not only the nature of employment, but also our fundamental conception of work, careers, and the future of labour.

Contemplate a workplace where humans and machines collaborate seamlessly, leveraging each other's strengths, or conceptualise a labour market where routine tasks are automated, thereby liberating human creativity and innovation. To facilitate this transition, it is imperative

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to address the challenges that lie ahead. Moreover, it is crucial to explore strategies through which employers, employees, and legislators can effectively prepare for this transition. The advent of AI gives rise to numerous intriguing inquiries: for instance, how are traditional jobs being transformed? Which professions will be created, and which will be rendered obsolete? Furthermore, it is crucial to consider the necessary skill sets for future success. Of pertinence is the question of ensuring that this technological revolution benefits all members of society.

This subject is of interest not only to technology enthusiasts but to all members of society, including workers, entrepreneurs, educators, and decision-makers. A comprehensive understanding of the interplay between AI and the labour market is imperative for effectively navigating the challenges of the future. This paper aims to provide a comprehensive overview of this rapidly evolving field, and to inspire further reflection on the future of work.

The starting point of this research is the observation that AI's integration into the workplace represents more than a mere technological upgrade; it is a profound socio-economic transformation. Recent advancements in AI have given rise to critical questions regarding the evolution of employment structures and skill requirements, necessitating a systematic investigation into these changes within the European context.

The current research reveals a complex picture. Numerous studies have examined the dual impact of AI: while its automation capabilities can displace routine tasks and contribute to labour market polarisation, there is also strong evidence that AI spurs the creation of new job opportunities and drives innovation. Despite the growing body of literature addressing these issues, there are still significant gaps in our understanding, particularly regarding the interplay between technological advancements, regulatory frameworks, and demographic shifts. This paper seeks to address these gaps by integrating insights from economic theory, legal analysis, and social science research.

The primary objective of this research is to analyse the transformative effects of AI on the European labour market. To this end, the study employs an interdisciplinary methodology, encompassing a critical review of extant literature, an analysis of empirical data, and case study evaluations of sectoral impacts. The central hypothesis guiding this investigation is that, although AI accelerates the polarisation of job roles – thereby boosting both high-skilled and low-skilled positions at the expense of medium-skilled ones – it simultaneously offers significant opportunities for economic growth and workforce development, provided that effective policy interventions and re-skilling initiatives are implemented.

The present study systematically explores these dimensions, with the aim of contributing valuable insights into the policy and practical implications of AI-driven transformations in the European labour market.

II. ON THE IMPACT OF AI ON THE LABOUR MARKET IN GENERAL

When examining the impact of MI on the labour market, it is important to stress that it is not simply about job losses or job creation, but about changes overall in work. According to a study from 2023, 32.8% of activities are likely to be fully affected by the emergence of ChatGPT and similar generative AI services, 36.5% partially affected, while 30.7% are likely to remain unaffected.[2] This figure illustrates the expected overall impact of MI on the labour market.

[2] ZARIFHONARVAR, A.: Economics of ChatGPT: A Labor Market View on the Occupational Impact of Artificial Intelligence. *ZBW - Leibniz Information Centre for Economics*. 2023. p. 2. https://doi.org/10.2139/ssrn.4350925.

AI will not lead to a *leisure era* as Keynes predicted earlier.[3] Instead, it is transforming the labour market by creating new jobs and replacing old ones.[4] This process can both create fears of unemployment but also encourage workers to learn new skills.[5]

However, we must also recognise that the impact of AI is not equally distributed across different occupations and income levels. A 2019 study shows that, on average, occupations affected by MI experience small positive wage increases, while employment levels do not change significantly. However, in higher income occupations there is a strong positive relationship between the impact of MI and both employment and wages.[6] This suggests that AI has the potential to increase labour market polarisation.

III. LABOUR MARKET POLARISATION

Labour market polarisation is a phenomenon that has been increasingly seen in advanced economies – also in the European Union – in recent decades, especially since the 1980s. This process is manifested in two main aspects: the transformation of the employment structure and the increase in wage differentials.

Thus, soon, the structure of the labour market will take an *hourglass* shape, with an increasing number of high-skilled, well-paid jobs and an increasing share of low-skilled, low-paid jobs, and a parallel decline or disappearance of medium-skilled and medium-paid jobs.[7]

Another important feature of polarisation is the widening of income inequality, with high skilled workers seeing their wages rise significantly, while low skilled workers' wages stagnate or increase only slightly, and the middle class sees their incomes fall relatively.[8]

This phenomenon is driven by a number of factors: on the one hand, technological changes, such as automation and digitalisation, which are mainly replacing routine tasks requiring medium skills.[9] On the other hand, some of the medium-skilled jobs can be outsourced to lower-wage countries.[10] Finally, changes in labour market institutions, weakening trade unions and changes in minimum wage policies may also contribute to polarisation.[11]

Skills development and education are key to meeting these challenges. The European Union's strategy for the period 2021 to 2027 gives priority to supporting cybersecurity innovation, which is linked to AI.[12] This shows that the EU has recognised the importance of AI and its potential impact on the labour market.

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3 KEYNES, J. M.: The general theory of employment, interest and money. *Közgazdasági és Jogi Könyvkiadó*, Budapest, 1965. p. 21.

4 ZHANG, X.: Research on the impact of artificial intelligence on the labor market. *Advances in Economics and Management Research*, 2023. 8, pp. 252-257. https://doi.org/10.56028/aemr.8.1.252.2023.

5 BAKOŠOVÁ, L.: Climate action through artificial intelligence: International legal perspective, *STUDIA IURIDICA Cassoviensia*, Vol. 10.2022, No.2. pp. 8-9. https://doi.org/10.33542/sic2022-2-01.

6 FELTEN, E. W. - RAJ, M. - SEAMANS, R.: The Occupational Impact of Artificial Intelligence: Labor, Skills, and Polarization (available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3368605).

7 BONCZ B. – SZABÓ ZS. R.: The labour market impact of artificial intelligence: how to prepare? (A mesterséges intelligencia munkaerő-piaci hatásai: hogyan készüljünk fel?) *Vezetéstudomány*, issue 2022/2, p. 71. https://doi.org/10.14267/veztud.2022.02.06.

8 KESZI R.: Artificial intelligence, labour market, disability (Mesterséges intelligencia, munkaerőpiac, fogyatékosság.) Seventh Disability Conference, Budapest, 26 November 2019 (available at: https://keszi.krolify.hu/wp-content/uploads/2019/11/KesziRoland_MestersegesIntelligenciaMunkaeropiacFogyatekossag.pdf).

9 ILLÉSSY M. – HUSZÁR Á.: Technological development and labour market: how does automation affect jobs in Hungary? (Technológiai fejlődés és munkaerőpiac: hogyan hat az automatizáció a munkahelyekre Magyarországon?) *Statisztikai Szemle*, issue 100/2, p. 143. https://doi.org/10.20311/stat2022.2.hu0137.

10 Drivers of employment polarisation and wage growth at the top end of the wage scale in recent years in Europe: European Labour Force Monitor, 2014 Summary (available at: https://www.eurofound.europa.eu/system/files/2021-05/EF14191HU.pdf).

11 Labour market polarisation and job quality in the crisis: European Labour Force Monitor 2013 Executive Summary (available at: https://www.eurofound.europa.eu/system/files/2021-05/EF13041HU.pdf).

12 ZARIFHONARVAR, A. op. cit. p. 8. https://doi.org/10.2139/ssrn.4350925.

The impact of MI on the European labour market is therefore complex and multifaceted. Artificial Intelligence (AI) and its impact on the European labour market is a highly topical and much researched subject. I have found several relevant publications that examine this issue from different angles.

IV. EUROPEAN PERSPECTIVES ON ARTIFICIAL INTELLIGENCE

A recent comprehensive survey from 2024 examined support for basic universal income, which is linked to the issue of technology unemployment caused by AI. The study found twenty-three relevant articles, twelve of which analysed data from the European Social Survey 2016. This research highlights that changes in the labour market caused by AI require innovative solutions, and basic income appears as one of these potential solutions.[13]

Previously, Kitti MEZEI[14] and Lucia BAKOŠOVÁ[15] also examined the legal context of artificial intelligence in the European Union. Their research highlights that the development of AI must ensure that it is human-centred and ethical, transparent, and respectful of fundamental rights. MEZEI's study analyses in detail the EU's draft regulation on artificial intelligence, which could directly affect the use of AI in the labour market.[16]

A study from 2023 presents the EU project AIM@VET (Artificial Intelligence Modules for Vocational Education and Training), which focuses on the development of vocational training modules focused on AI.[17] The aim of the project is to adapt vocational training to the needs of the labour market, with a special focus on MI. This research will highlight the importance of teaching and learning in vocational education and training (VET), which is key to preparing the European workforce for the labour market transformed by VET.[18]

The EU AI Act (Regulation (EU) 2024/1689) represents a landmark legislative framework for mitigating risks associated with AI systems, particularly in high-stakes domains such as employment.[19] Under Annex III, AI systems used for recruitment, performance evaluation, and termination of employment contracts are classified as high-risk, necessitating strict compliance with transparency, data governance, and human oversight requirements. For example, AI tools that screen job applications or monitor employee productivity must undergo conformity assessments, maintain detailed logs, and provide clear information to affected workers.[20] This regulatory approach directly addresses concerns about algorithmic bias and opacity in hiring practices, which disproportionately impact marginalized groups.[21]

The Act's risk-based hierarchy creates a dual obligation for employers: (1) to ensure technical compliance with documentation and auditing standards, and (2) to uphold

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13 SZABÓ-SZENTGRÓTI G.-WALTER V.-VÉGVÁRI B.: Support for universal basic income: A crossdisciplinary literature review. *Journal of Infrastructure, Policy and Development*, pp. 11-12, https://doi.org/10.24294/jipd.v8i10.7486.

14 MEZEI K.: Current issues in the regulation of artificial intelligence in the European Union. (A mesterséges intelligencia jogi szabályozásának aktuális kérdései az Európai Unióban) *In Medias Res*, 2023. issue 1, pp. 53-70. https://doi.org/10.59851/imr.12.1.4.

15 BAKOŠOVÁ, L.: Climate action through artificial intelligence: International legal perspective, *STUDIA IURIDICA Cassoviensia*, Vol. 10.2022, No.2. p. 18. https://doi.org/10.33542/sic2022-2-01.

16 MEZEI op. cit. p. 54. https://doi.org/10.59851/imr.12.1.4.

17 EMERŠIČ, Ž. – HRASTNIK, G. – MEH, N. – PEER, P.: Adapting VET Education to Labor Market Needs with Focus on Artificial Intelligence and Computer Vision, ROSUS 2023 - Računalniška obdelava slik in njena uporaba v Sloveniji 2023: Zbornik 17. strokovne konference, https://doi.org/10.18690/um.feri.4.2023.8.

18 EMERŠIČ, Ž.– HRASTNIK, G. – MEH, Nataša Peer – PEER, P. op. cit.

19 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) Annex III/4.

20 SOUSA E. - SILVA, N.: The Artificial Intelligence Act: Critical Overview (July 30, 2024) https: //doi.org/10.2139/ssrn.4937150.

21 POE, R. L.: Why Fair Automated Hiring Systems Breach EU Non-discrimination Law. Machine Learning and Principles and Practice of Knowledge Discovery in Databases, 465–476. https://doi.org/10.1007/978-3-031-74630-7_34.

fundamental rights under the Charter of Fundamental Rights of the EU, including non-discrimination and dignity.[22] A critical gap in current implementations, however, lies in the lack of enforceable mechanisms for workers to challenge automated decisions. While Article 14 mandates transparency for high-risk systems, it does not explicitly grant employees the right to contest algorithmic outcomes without judicial intervention.[23] This contrasts with Spain's recent reform, which empowers Workers' Councils to audit and negotiate the parameters of AI tools used in employment decisions.[24]

V. LABOUR MARKET TRANSFORMATION INSTEAD OF THE LEISURE ERA

With the extremely rapid advances in science and technology in recent years, society is rapidly entering a new era of scientific and technological revolution and industrial transformation, led by artificial intelligence. In order to capture this new scientific and technological revolution and industrial transformation, governments around the world have issued a number of relevant policies to develop high-tech industries and to guide research and innovation.[25] Accordingly, AI is a key technology driving the new scientific and technological revolution and industrial transformation, and is at the forefront of global scientific and technological competition. The world is full of development opportunities and challenges due to the changing geopolitical landscape. The continuous advances in artificial intelligence are deconstructing and rebuilding every aspect of the world. But what impact will this have on the labour market?

KEYNES[26] envisaged the leisure age as a future state in which economic development and technological progress would result in people having significantly more leisure time. Keynes distinguished between absolute and relative needs. Modern consumer culture, especially through social media and advertising, amplifies relative needs, which encourages constant consumption and comparison. This makes it more difficult to achieve real satisfaction.

While technological advances and automation have indeed led to more leisure time, this has not led to greater happiness or satisfaction.[27] With increasing mental health problems, loneliness and general dissatisfaction in modern societies, we can now say that the Keynesian leisure era has not been brought about by such a major digital transformation.

Rather than the leisure age, AI is transforming the labour market by creating new jobs and replacing old ones.[28] Currently available research emphasises the importance of skills development[29], education[30] and the role of government policies[31] addressing the potential employment shock caused by AI. Overall, these publications provide a comprehensive picture

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22 HOGAN, L. - LASEK-MARKEY, M.: Towards a Human Rights-Based Approach to Ethical AI Governance in Europe. *Philosophies*, 9(6), 181. https://doi.org/10.3390/philosophies9060181.

23 LI, S. - SCHÜTTE, B.: The Proposed EU Artificial Intelli- gence Liability Directive. *Technology and Regulation*, 2024, 143–151. https://doi.org/10.71265/82fwbw94.

24 DURAN, S. G.: Opening the Black-Box in Private-Law Employment Relationships: A Critical Review of the Newly Implemented Spanish Workers' Council's Right to Access Algorithms. *Global Privacy Law Review*, 4(Issue 1), 17–30. https://doi.org/10.54648/gplr2023003.

25 ZHANG op. cit. p. 252. https://doi.org/10.56028/aemr.8.1.252.2023.

26 John Maynard KEYNES was one of the most important and influential economists of the 20th century. KEYNES was one of the greatest figures in theoretical economics, whose work had an extraordinary impact on economic thought and policy in the 20th century. Among his most important works is The General Theory of Employment, Interest and Money, published in 1936, which is the founding work of macroeconomics.

27 ZHANG op. cit. p. 253. https://doi.org/10.56028/aemr.8.1.252.2023.

28 LIU, J.: From the Perspective of the Labor Market, The Opportunities and Challenges Brought by the New Generation of Artificial Intelligence Technologies such as ChatGPT are Analyzed. *Scientific Journal of Technology*, issue 2023/5, p. 7. https://doi.org/10.54691/sjt.v5i5.4997.

29 ZHANG op. cit. p. 253. https://doi.org/10.56028/aemr.8.1.252.2023.

30 LIU op. cit. pp. 8-9. https://doi.org/10.54691/sjt.v5i5.4997.

31 ZHOU, Q.: Research progress on the impact of artificial intelligence on the labor market. *Advances in Economics and Management Research*, issue 2023/8. p. 242. https://doi.org/10.56028/aemr.8.1.241.2023.

of the impact of AI on the European labour market, highlighting the legal, educational, and economic challenges and opportunities.

Although it is too early to talk about the impact of AI on labour market differences between European countries, the available data suggest some important correlations.

1. Education systems and social inequalities

One key factor in the differences between European countries is the diversity of education systems. Differentiation in secondary education has a significant impact on the association between social origin and social status in adulthood.[32] This suggests that in a labour market transformed by AI, the flexibility and adaptability of countries' education systems may be key to adapting to technological change.

Differences between European countries are significantly influenced by institutional and labour market characteristics. Active labour market policies, the generosity of unemployment benefits and the coverage of collective bargaining explain a large part of the differences between countries in labour market insecurity and welfare.[33] With the rise of AI, these factors may become even more important, as they may affect countries' ability to address AI-related challenges.

2. Language and cultural factors

Language distance and language skills have a significant impact on the labour market integration of migrant workers, especially women.[34] Research shows that a good knowledge of the language of the destination country is a key factor for successful integration. Better language skills increase the chances of participation in the labour market and of finding a job, as well as having a positive impact on expected wages. However, lack of language skills can make it more difficult to find a job even if you have the right qualifications.[35] The linguistic distance, i.e. the difference between the migrant's mother tongue and the language of the destination country, has a negative impact on labour market integration. This effect is particularly strong for women, for whom a greater language distance reduces labour market participation, employment and hours worked. For men, the effect of linguistic distance is less pronounced, but also has a negative impact on hours worked.[36] Developing language skills not only improves your immediate job prospects but also has a positive impact in many other areas. Better language skills reduce feelings of discrimination in the workplace, increase self-esteem and self-efficacy, and are also associated with better general health. All these factors indirectly contribute to more successful labour market integration.[37]

It is important to note that, in addition to language skills, other factors also affect the labour market situation of migrants. For example, educational attainment, vocational qualifications, the economic situation in the host country and the circumstances of migration (e.g. economic

[32] SCHINDLER, S., BAR-HAIM, Y., BARONE, C., BIRKELUND, J. F., BOLIVER, V., CAPSADA-MUNSECH, Q., EROLA, J., FACCHINI, M., FENIGER, Y., HEISKALA, L., HERBAUT, E., ICHOU, M., KARLSON, K. B., KLEINERT, C., REIMER, D., TRAINI, C., TRIVENTI, M., & VALLET, L-A: Educational tracking and social inequalities in long-term labour market outcomes: Six countries in comparison. *International Journal of Comparative Sociology*, 65(1), pp. 39-62. https://doi.org/10.1177/00207152231151390.

[33] INANC, H. - KALLEBERG, A. L.: Institutions, Labor Market Insecurity, and Well-Being in Europe. *Social Sciences,* 2022, 11(6), 245 p. 3. https://doi.org/10.3390/socsci11060245.

[34] BAR-HAIM E, BIRGIER D.P.: Language distance and labor market integration of migrants: Gendered perspective. *PLoS ONE*, 19(4), pp. 3-4.

[35] GÖDRI I.: Gender differences in the labour market situation of foreign nationals in Hungary (Nemek közötti eltérések a külföldi állampolgárok munkaerő-piaci helyzetében Magyarországon.) *In*: NAGY I.– PONGRÁCZ T.-né – TÓTH I. Gy. (ed.): Role changes. Report about men and women (Szerepváltozások. Jelentés a férfiak és a nők helyzetéről) 2011. TÁRKI, Nemzeti Erőforrás Minisztérium, Budapest, p. 90.

[36] GÖDRI op. cit. p. 91.

[37] GÖDRI op. cit. p. 88.

migrant, family reunification or refugee status). Ethnic and cultural distance also plays a role, as it can increase the chances of ethnic discrimination.[38]

Overall, developing language skills and bridging cultural gaps is key to the successful integration of migrant workers into the labour market. Host countries should develop programmes and policies that support migrants' language learning and cultural integration, thus helping their economic and social integration. With the spread of AI technologies, this factor may take on a new dimension, as AI-based language tools can reduce language barriers but also require new skills.

3. Impact of demographic changes

The demographic transition in the countries of Central and Eastern Europe, including declining birth rates, ageing, and migration, is putting considerable pressure on labour markets and pension systems. Ageing populations and falling birth rates are all contributing to a steady decline in the working age population. The rise of AI could further complicate this situation by changing the demand for labour and the skills needed.[39]

Projected trends suggest that the proportion of the working age population could fall significantly, leading to a decline of up to 25-38% by 2060 compared to the current situation.[40]

These demographic changes not only have an impact on the labour market but also threaten the sustainability of pension systems. Pension systems operate on a pay-as-you-go basis, with contributions from active workers funding pensioners.[41] A declining working-age population and a growing pensioner population could create imbalances, which may require public budget support.[42] The emergence of artificial intelligence further complicates the situation. The spread of AI is creating new challenges and opportunities in the labour market: automation and the use of AI are particularly relevant for low-skilled, routine tasks that can potentially be replaced by machines. However, this means not only job losses but also the emergence of new positions requiring higher skills. The changing demand for labour makes it essential to continuously train and retrain workers. The increase in demand for new AI-generated jobs, such as data analysts or AI experts, means that traditional training systems will also need to be adapted to meet new technological requirements. The future labour market will require skills such as digital literacy, creative problem solving and adaptability.

Overall, the demographic transition in Central and Eastern European countries and the rise of AI are combining to pose serious challenges for labour markets and pension systems. To develop proper responses, it is necessary to strengthen social dialogue and develop policies that consider the changing demographic and economic context.

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38 GÖDRI op. cit. p. 89.

39 BALTES, N.j.-JIMON, S. A.: Study regarding the effects of demographic transition on labor market and public pension system in Central and Eastern Europe. *Studies in Business and Economics*, no. 15(1)/2020. p. 160. https://doi.org/10.2478/sbe-2020-0013.

40 KREISZNÉ H. E.: Labour market effects of demographic change in Hungary (A demográfiai változások munkaerőpiaci hatásai Magyarországon) *Confessio*, issue 2016/4. p. 19.

41 KOLOH G.: The problem of demographic transition. Possibilities of interpreting a global process. (A demográfiai átmenet problematikája. Egy globális folyamat értelmezésének lehetőségei.) *Korall*. Issue 22/85. p. 28. https://doi.org/10.52656/korall.2021.03.002.

42 RAB H.: The circumstances of the 1997-98 pension reform and its impact on the development of the pension system. (Az 1997-98-as nyugdíjreform körülményei és hatása a nyugdíjrendszer fejlődésére.) *Miskolci Jogi Szemle*. 2010/2. issue, p. 52.

4. Environmental policies and employment

According to a 2020 study, environmental regulations have a heterogeneous impact on different occupations, increasing the demand for jobs with green potential.[43] The AI is expected to have a similar impact on the labour market, valuing some occupations and marginalising others.

The rise of environmental regulation and AI will significantly reshape the labour market, creating new opportunities and marginalising some professions. This process particularly affects jobs with green potential, for which there is a growing demand.

Tightening environmental regulations and the growing demand for sustainability are leading to the emergence of new professions. For example, the role of urban gardeners is becoming more valued as cities increasingly strive to create greener environments. Precision agriculture is seeing the use of AI-controlled drones, robots, and sensor systems, requiring new types of skills from agricultural professionals. In the environmental field, AI models analyse ecological data, predict the effects of climate change[44], and support sustainable resource management. This increases the demand for professionals who can develop and run these systems and interpret the results.[45]

The rise of green technologies is also creating new opportunities for engineers and technicians. The development and operation of renewable energy, energy efficient systems and green technologies require a skilled workforce. The use of AI in these areas will further increase efficiency and create new jobs.[46] The combined impact of environmental regulation and AI on the labour market is a complex and dynamic process. While some traditional jobs are being sidelined, new, innovative, and sustainability-focused positions are emerging.

This change requires continuous training and retraining of the workforce to meet new challenges and opportunities.

5. Regulatory environment

Finally, it should be stressed that changes in the regulatory environment also have an impact on the labour market. For example, the EU AI Regulation sets new requirements for the development and deployment of AI systems.[47]

In 2020, the Commission of the European Union published a White Paper on Artificial Intelligence (AI), which set out a single EU regulatory framework for the development and deployment of AI technologies.[48] The document stresses that the broad societal impact of AI makes it essential to harmonise technological progress with fundamental human values, including respect for human dignity and privacy. It stresses that the reliability of AI systems can

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43 NIGGLI, M. - RUTZER, CH.: Environmental Policy and Heterogeneous Labor Market Effects: Evidence from Europe, p. 3. https://doi.org/10.2139/ssrn.3973664.

44 BAKOŠOVÁ, L.: Climate action through artificial intelligence: International legal perspective, *STUDIA IURIDICA Cassoviensia*, Vol. 10.2022, No.2. p. 14. https://doi.org/10.33542/sic2022-2-01.

45 DIÓSI SZ.: Artificial intelligence, synthetic reality. Global challenges related to AI and GenMI systems and European regulatory strategies. (Mesterséges intelligencia, szintetikus valóság. Az MI és GenMI rendszerekkel kapcsolatos globális kihívások és európai szabályozási stratégiák.) *Doctoral (PhD) thesis*, 2024, Doctoral School of Public and Law, University of Pécs (available at: https://ajk.pte.hu/sites/ajk.pte.hu/files/file/doktori-iskola/diosi-szabolcs/diosi-szabolcs-muhelyvita-ertekezes.pdf) p. 5.

46 VIRÁG B. – HORVÁTH M.: Economic Policy of Eurasia: Sustainable and Innovative Economic Policy Strategies in Eurasia. (Eurázsia gazdaságpolitikája: Fenntartható és innovatív gazdaságpolitikai stratégiák Eurázsiában.) *Hungarian National Bank*, Budapest, 2024. p. 206.

47 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).

48 White Paper on Artificial Intelligence: A European approach to excellence and trust, Brussels, 19.2.2020 COM(2020) 65 final.

only be set up if developments are linked to the ethical standards that define European societies. In this context, the concept of human-centred AI is a technological paradigm that not only creates opportunities for innovation but also guarantees respect for European values.[49]

Excellence and trust are at the heart of the EU's White Paper and play a crucial role in the field of AI. In my view, a development can be considered excellent when performance, efficiency, innovation, and ethics are in harmony.

The excellence of AI is a measure of its performance and effectiveness.[50] This includes the accuracy, speed, and reliability of the algorithms in the target area. Achieving excellence requires continuous improvement and innovation in AI. Develop new techniques, algorithms, and approaches to improve effectiveness and functionality. Finally, for AI to achieve excellence, it is important to consider ethical and societal considerations in its development and deployment, including data protection, fairness, and equal opportunities.

Humans are naturally wary of novelty and the unknown, so it is no coincidence that trust is a key issue in AI. Trust fosters the adoption of AI, because when people are convinced that it is safe, reliable and truly supports their daily activities, they are more open to it. But transparency and clear explanations are essential. Transparency in the decisions and operation of the AI strengthens user trust, as it is important that the system can clearly explain its decisions and the logic of its operation. Finally, the responsible use of AI by both developers and users, respecting the relevant legislation and ethical guidelines, is key to trust.[51] Excellence and trust are therefore interlinked, they *go hand in hand,* and one is essential to the other. Developers and users need to place a strong emphasis on both areas for AI to successfully and sustainably serve societal goods.

The Commission is therefore promoting a regulatory and investment-oriented strategy with the dual aim of promoting the uptake of AI and addressing the risks associated with certain applications of the new technology. The White Paper, referred to above, aims to set out policy options on how to achieve these objectives. It does not address the development and use of AI for military purposes. The Commission invites Member States, other European institutions and all stakeholders, including industry, social partners, civil society organisations, researchers, the public and interested parties, to respond to the options presented in order to develop future Commission proposals.[52]

The legal adoption process of the European Union's Artificial Intelligence (AI) Regulation (AI Act) was a two-step process: first voted by the European Parliament on 13 March 2024 and approved by the European Council on 21 May 2024. During this process, the Parliament adopted the legislation with 523 votes in favour, forty-six against and forty-nine abstentions, while the Council unanimously supported the final text. The law was preceded by an agreement between the Council and the Parliament on 9 December during the *trialogue* negotiations. The final text was adopted by the Council on 21 May 2024, thus completing the legislative process. The Regulation was published in the Official Journal of the European Union on 12 July 2024 and entered into force on 1 August 2024. However, the application (implementation) of the

[49] MEZEI op. cit. p. 54. https://doi.org/10.59851/imr.12.1.4.

[50] EKLER, P. – PÁSZTOR, D.: Areas of application and security issues of applied artificial intelligence – Artificial intelligence in practice. (Alkalmazott mesterséges intelligencia felhasználási területei és biztonságos kérdései – Mesterséges intelligencia a gyakorlatban.) *Scientia et Securitas*, 1(1), pp. 36-37. https://doi.org/10.1556/112.2020.00006.

[51] RIDEG G.: Artificial intelligence and public administration: Thoughts on the risk-based approach to artificial intelligence regulation in practice, challenges and opportunities. (A mesterséges intelligencia és a közigazgatás: Gondolatok a mesterséges intelligencia szabályozás kockázatalapú megközelítéséről a gyakorlatban, kihívások és lehetőségek.) *Közigazgatási Tudomány*, issue 2023/3, p. 161. https://doi.org/10.54200/kt.v3i2.65.

[52] White Paper on Artificial Intelligence: A European approach to excellence and trust, Brussels, 19.2.2020 COM(2020) 65 final.

provisions of the Regulation will be phased in gradually, with full compliance obligations for high-risk AI policyholders, for example, only coming into force on 2 August 2027.[53]

The regulation was finally adopted as a regulation that classifies AI applications into three risk categories. It bans applications and systems that pose an unacceptable risk[54] and for high-risk[55] use cases it imposes a strict regulatory regime, including record-keeping, detailed user information, monitoring, intervention, and recall. Finally, the third category of low-risk or no-risk applications.[56]

The GDPR's Article 22 establishes a right against fully automated decisions that significantly affect individuals, including hiring, promotion, or dismissal.[57] In CJEU Case C-634/21, the Court ruled that credit scoring systems classifying individuals based on algorithmic profiling constitute automated decision-making under Article 22, requiring explicit consent or contractual necessity.[58] Applying this precedent to employment contexts, AI-driven tools that rank candidates or evaluate performance without human intervention may violate GDPR unless employers demonstrate strict necessity or obtain worker consent.[59]

However, the GDPR's individual-centric framework struggles to address systemic biases embedded in training data. For instance, AI models trained on historical hiring data may perpetuate gender or racial disparities, even if compliant with technical GDPR standards.[60] A collective governance model, such as Spain's algorithmic co-governance, offers a solution by mandating worker representatives' involvement in auditing and refining AI systems.[61] This approach aligns with the EU AI Act's emphasis on human oversight but goes further by institutionalizing worker participation in algorithmic design.[62]

In another case of the Court of Justice of the European Union, Case C-157/15, the interpretation of employer responsibility (occupational stress claims) could extend to failures in AI system maintenance, creating a hybrid liability regime where both technical providers and employers share accountability.[63]

VI. ILLUSTRATE SOME SECTORAL IMPACTS WITH EXAMPLES

Finally, in this research I would like to mention some examples of areas where AI has a significant impact on the labour market. Although this impact varies from sector to sector, I will briefly provide an overview of how AI is affecting different sectors in the labour market, illustrated by a few examples. AI is expected to transform the labour market, creating new jobs, and making others redundant. The World Economic Forum estimates that by 2025, AI and

53 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) Article 113.

54 Artificial Intelligence Act, Article 5.

55 Artificial Intelligence Act, Chapter III.

56 Artificial Intelligence Act, Chapter V.

57 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

58 HORSTMANN, J.: CJEU: The Rating of a Natural Person's Creditworthiness by a Credit Rating Agency Constitutes Profiling and Can Be an Automated Decision under Article 22 GDPR. *European Data Protection Law Review*, 10(1), 117–123.

59 DURAN op. cit p. 25. https://doi.org/10.54648/gplr2023003.

60 POE op. cit. 469. https://doi.org/10.1007/978-3-031-74630-7_34 .

61 DURAN op. cit p. 26. https://doi.org/10.54648/gplr2023003.

62 HOGAN, L. - LASEK-MARKEY, M. op. cit. p. 181. https://doi.org/10.3390/philosophies9060181.

63 DE GRAAF, T. - VELDT, G.: The AI Act and Its Impact on Product Safety, Contracts and Liability. *European Review of Private Law,* 30(Issue 5), 803–834. https://doi.org/10.54648/erpl2022038.

automation could eliminate eighty-five million jobs while creating ninety-seven million new jobs.[64]

Artificial intelligence is fundamentally transforming the way manufacturing and industry works, from optimising production processes to rethinking workforce organisation. The technology's impact is most clear in four primary areas: predictive maintenance and equipment management; quality assurance and defect detection; supply chain optimisation; and human-machine interaction.

Artificial intelligence can predict machine failures by analysing sensor data, reducing the frequency of unplanned downtime. For example, in the automotive industry, processing robot performance data can reduce lost production time by 30-50%. Digital twins help simulate equipment behaviour so that maintenance can be scheduled outside peak production times. The General Electric example shows that AI-based solutions can increase equipment lifetime by 20%.[65] Computer vision-based AI systems can find manufacturing defects in real time, exceeding the accuracy of traditional visual inspection. BMW, for example, has achieved a 99.9% defect detection rate for in-production part inspection on its AIQX platform. Similar solutions can be applied in the electronics industry, where soldering defects can be found 40% faster.

AI algorithms can predict demand fluctuations, optimise inventory management, and simulate different scenarios. Walmart in the US achieved a 15% reduction in inventory levels with AI-based demand forecasting.[66] Swedish manufacturer Hexpol reduces parts shortages by 30% by combining IIoT sensors and RFID tracking.[67] Finally, the example of the Dutch Airbus shows that autonomous design systems can generate 10 000 design variants in 1 hour.[68]

Artificial Intelligence (AI) has brought a major transformation to healthcare, where technology has become a strategic partner, not just a tool, in everything from diagnostics to therapies. In the diagnostic field, for example, breakthroughs in the analysis of imaging technologies have revolutionised patient care. In breast cancer screening, FDA-approved AI systems such as those developed by Google Health can find tumours on mammograms with 99% accuracy, while reducing scan times by a factor of thirty compared to traditional methods. At the same time, wearable devices such as smartwatches can detect early heart rhythm disturbances with 97% confidence based on continuously collected ECG data.[69] These innovations are not limited to physiology: for rare diseases, machine-learning algorithms link symptoms from different databases, reducing diagnosis time from years to months.[70]

VII. CONCLUSION

The revolutionary impact of artificial intelligence on the European labour market is no longer a futuristic vision, but an everyday reality. Technology is not just automating routine tasks, it is

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64 LOSONCI D. – TAKÁCS O. - VÁROSINÉ D. K.: In the wake of the effects of Industry 4.0 – an analysis of the Hungarian automotive industry. (Az ipar 4.0 hatásainak nyomában – a magyarországi járműipar elemzése.) *Közgazdasági Szemle,* Vol. LXVI, February 2019, pp. 185-218. https://doi.org/10.18414/ksz.2019.2.185.

65 FINIO, M. – DOWNIE, A.: How is AI being used in manufacturing? (available: https://www.ibm.com/think/topics/ai-in-manufacturing).

66 BHARADWAJ, CH.: How AI in Manufacturing is Revolutionizing the Industry: Key Use Cases and Examples. (available: https://appinventiv.com/blog/ai-in-manufacturing).

67 GREENFIELD, D.: Top Manufacturing Tech Applications in 2025, Six experts from across the industrial automation sector weigh in with their expectations about the technologies manufacturers will use most effectively this year. (available: https://www.automationworld.com/factory/digital-transformation/article/55253334/ai-robots-supply-chain-and-energy-tech-will-drive-manufacturing-in-2025).

68 DILMEGANI, C.: Manufacturing AI: Top 15 tools & 13 use cases & case studies. (available: https: //research.aimultiple.com/manufacturing-ai/).

69 SU, L. (ed.): A Review of the Role of Artificial Intelligence in Healthcare. *J Pers Med*. 2023. June 5;13(6):95.

70 DAVE, M. – PATEL, N.: Artificial intelligence in healthcare and education. *British Dental Journal* 234, pp. 761–764. https://doi.org/10.1038/s41415-023-5845-2.

fundamentally transforming the philosophy of work, presenting new challenges and opportunities for workers and decision-makers alike. The most significant trend in this transformation is the polarisation of the labour market, embodied in an 'hourglass model': the proportion of high- and low-skilled jobs is increasing, while the proportion of medium-skilled jobs is decreasing.

Demographic changes are worsening the situation in Central and Eastern Europe. The working age population is expected to fall by 25-38% by 2060, which could mean the collapse of pay-as-you-go pension systems. In this context, AI plays a dual role: on the one hand, it accelerates the displacement of low-skilled jobs, and on the other hand, it creates new opportunities in the fields of predictive analytics, automated production, or digital health.

The European Union took steps to create a regulatory environment in 2024 when it adopted the Regulation on Artificial Intelligence. The EU's regulatory response is key to balancing technological progress with human values. Although the Regulation will enter into force gradually, for example full compliance obligations for high-risk systems will only become mandatory from August 2027, this regulatory framework does not only impose technical requirements but also serves to protect the European social model of human dignity, solidarity, and social justice.

In my view, a transformation of training systems is becoming urgent. The European Commission's AIM@VET programme, for example, is developing AI-based vocational training modules to prepare the workforce for the new challenges. Digital literacy, creative problem-solving and adaptability are among the priority skills of the future. While AI tools (e.g. real-time translation tools) can help to reduce language barriers, they also pose new challenges for the integration of migrant workers. Workers who cannot or have difficulty in buying these skills will have little chance of succeeding in a changing labour market.

In summary, artificial intelligence is not a technical tool, but a paradigm shifts in society. Rethinking work is not about the disappearance of jobs, but about their profound transformation. AI will be a partner, freeing people from being slaves to routine, but social cooperation is essential.

My *de lege ferenda proposal* is as follows. The EU AI Act’s current framework prioritizes technical compliance but lacks mechanisms for institutionalizing worker participation in AI system design and deployment. To address this, national labour laws should be amended to grant trade unions explicit rights to audit algorithmic decision-making systems used in recruitment, performance evaluation, and task allocation, including access to training data and model parameters. They should also ensure the right to negotiate algorithmic transparency clauses in collective agreements, requiring employers to disclose how AI systems influence working conditions, wage structures, and disciplinary actions. Finally, they should also guarantee the right to veto the implementation of high-risk AI systems that fail independent bias audits or conflict with sectoral ethical guidelines.

This approach aligns with Spain’s 2023 reforms, where Workers’ Councils may demand technical documentation of AI tools affecting employment terms. However, the EU should standardize these rights through a Directive on Algorithmic Co-Governance, mandating Member States to integrate trade union oversight into their AI compliance frameworks.

Europe is now facing a choice. The choice is now between technological progress guided by people-centred values or being overshadowed by polarisation and a demographic divide. The labour market of the future requires institutions capable of flexibility, a culture of lifelong learning and ethical innovation. Transforming education, strengthening social dialogue, and constantly updating regulations are not a luxury but a vital condition for sustainability. Europe's response to this challenge will decide whether the continent stays a global value model in the 21st century or loses its competitiveness.

KEY WORDS
Artificial intelligence, European Union, labour market, transformation, machine learning, ethical AI, job displacement, upskilling, AI Act, new skills, skill gap, emergence of new jobs, regulation, labour market polarisation

KĽÚČOVÉ SLOVÁ
umelá inteligencia, Európska únia, trh práce, transformácia, strojové učenie, etická umelá inteligencia, strata pracovných miest, zvyšovanie kvalifikácie, zákon o umelej inteligencii, nové zručnosti, rozdiely v zručnostiach, vznik nových pracovných miest, regulácia, polarizácia trhu práce

Supported by the EKÖP-24-3-I-SZE-3 UNIVERSITY RESEARCH FELLOWSHIP PROGRAM of the Ministry for Culture and Innovation from the source of the National Research, Development and Innovation Fund.

BIBLIOGRAPHY

1. BAKOŠOVÁ, L.: Climate action through artificial intelligence: International legal perspective, *STUDIA IURIDICA Cassoviensia*, Vol. 10.2022, No.2. https://doi.org/10.33542/sic2022-2-01
2. BALTES, N.J. - STEFANIA A.: Study regarding the effects of demographic transition on labor market and public pension system in Central and Eastern Europe. *Studies in Business and Economics*, no. 15(1)/2020. https://doi.org/10.2478/sbe-2020-0013
3. BAR-HAIM E, BIRGIER DP: Language distance and labor market integration of migrants: Gendered perspective. *PLoS ONE*, 19(4) https://doi.org/10.1371/journal.pone.0299936
4. BHARADWAJ, CH.: How AI in Manufacturing is Revolutionizing the Industry: Key Use Cases and Examples. (available: https://appinventiv.com/blog/ai-in-manufacturing)
5. BONCZ, B. – SZABÓ, ZS. R.: The labour market impact of artificial intelligence: how to prepare? (A mesterséges intelligencia munkaerő-piaci hatásai: hogyan készüljünk fel?) *Vezetéstudomány*, issue 2022/2. https://doi.org/10.14267/veztud.2022.02.06
6. DAVE, M. – PATEL, N.: Artificial intelligence in healthcare and education. *British Dental Journal* 234, https://doi.org/10.1038/s41415-023-5845-2
7. DE GRAAF, T. – VELDT, G.: The AI Act and Its Impact on Product Safety, Contracts and Liability. *European Review of Private Law,* 30(Issue 5), 803–834. https://doi.org/10.54648/erpl2022038
8. DILMEGANI, C.: Manufacturing AI: Top 15 tools & 13 use cases & case studies. (available: https://research.aimultiple.com/manufacturing-ai/)
9. DIÓSI SZ.: Artificial intelligence, synthetic reality. Global challenges related to AI and GenMI systems and European regulatory strategies. (Mesterséges intelligencia, szintetikus valóság. Az MI és GenMI rendszerekkel kapcsolatos globális kihívások és európai szabályozási stratégiák.) *Doctoral (PhD) thesis*, 2024, Doctoral School of Public and Law, University of Pécs (available at: https://ajk.pte.hu/sites/ajk.pte.hu/files/file/doktori-iskola/diosi-szabolcs/diosi-szabolcs-muhelyvita-ertekezes.pdf) p. 5.
10. Drivers of employment polarisation and wage growth at the top end of the wage scale in recent years in Europe: European Labour Force Monitor, 2014 Summary (available at: https://www.eurofound.europa.eu/system/files/2021-05/EF14191HU.pdf)

11. DURAN, S. G.: Opening the Black-Box in Private-Law Employment Relationships: A Critical Review of the Newly Implemented Spanish Workers' Council's Right to Access Algorithms. *Global Privacy Law Review*, 4(Issue 1), 17–30. https://doi.org/10.54648/gplr2023003
12. EKLER P. – PÁSZTOR D.: Areas of application and security issues of applied artificial intelligence – Artificial intelligence in practice. (Alkalmazott mesterséges intelligencia felhasználási területei és biztonságos kérdései – Mesterséges intelligencia a gyakorlatban.) *Scientia et Securitas*, 1(1), 35–42. https://doi.org/10.1556/112.2020.00006
13. EMERŠIČ, ŽIGA – HRASTNIK, GREGOR – MEH, NATAŠA – PEER, P.: Adapting VET Education to Labor Market Needs with Focus on Artificial Intelligence and Computer Vision, ROSUS 2023 - Računalniška obdelava slik in njena uporaba v Sloveniji 2023: Zbornik 17. strokovne konference, https://doi.org/10.18690/um.feri.4.2023.8
14. FELTEN, E.W. – RAJ, M. - SEAMANS, R.: The Occupational Impact of Artificial Intelligence: Labor, Skills, and Polarization, https://doi.org/10.2139/ssrn.3368605
15. FINIO, M. – DOWNIE, A.: How is AI being used in manufacturing? (available: https://www.ibm.com/think/topics/ai-in-manufacturing)
16. GÖDRI I.: Gender differences in the labour market situation of foreign nationals in Hungary (Nemek közötti eltérések a külföldi állampolgárok munkaerő-piaci helyzetében Magyarországon.) *In*: NAGY I.– PONGRÁCZ T.-né – TÓTH I. Gy. (ed.): Role changes. Report about men and women (Szerepváltozások. Jelentés a férfiak és a nők helyzetéről) 2011. TÁRKI, Nemzeti Erőforrás Minisztérium, Budapest
17. GREENFIELD, D.: Top Manufacturing Tech Applications in 2025, Six experts from across the industrial automation sector weigh in with their expectations about the technologies manufacturers will use most effectively this year. (available: https://www.automationworld.com/factory/digital-transformation/article/55253334/ai-robots-supply-chain-and-energy-tech-will-drive-manufacturing-in-2025)
18. HOGAN, L., – LASEK-MARKEY, M.: Towards a Human Rights-Based Approach to Ethical AI Governance in Europe. *Philosophies*, 9(6), 181. https://doi.org/10.3390/philosophies9060181
19. HORSTMANN, J.: CJEU: The Rating of a Natural Person's Creditworthiness by a Credit Rating Agency Constitutes Profiling and Can Be an Automated Decision under Article 22 GDPR. *European Data Protection Law Review*, 10(1), 117–123. https://doi.org/10.21552/edpl/2024/1/17
20. ILLÉSSY M. – HUSZÁR, Á.: Technological development and labour market: how does automation affect jobs in Hungary? (Technológiai fejlődés és munkaerőpiac: hogyan hat az automatizáció a munkahelyekre Magyarországon?) *Statisztikai Szemle*, issue 100/2. https://doi.org/10.20311/stat2022.2.hu0137
21. INANC, H., – KALLEBERG, A.L: Institutions, Labor Market Insecurity, and Well-Being in Europe. *Social Sciences*, 2022, 11(6), 245 https://doi.org/10.3390/socsci11060245
22. KESZI R.: Artificial intelligence, labour market, disability (Mesterséges intelligencia, munkaerőpiac, fogyatékosság.) Seventh Disability Conference, Budapest, 26 November 2019 (available at: https://keszi.krolify.hu/wp-content/uploads/2019/11/KesziRoland _ MestersegesIntelligenciaMunkaeropiacFogyatekossag.pdf)
23. KEYNES, J.M. : The general theory of employment, interest and money. Közgazdasági és Jogi Könyvkiadó, Budapest, 1965.

24. KOLOH G.: The problem of demographic transition. Possibilities of interpreting a global process. (A demográfiai átmenet problematikája. Egy globális folyamat értelmezésének lehetőségei.) *Korall*. Issue 22/85. https://doi.org/10.52656/korall.2021.03.002
25. KREISZNÉ H. E.: Labour market effects of demographic change in Hungary (A demográfiai változások munkaerőpiaci hatásai Magyarországon) *Confessio*, issue 2016/4.
26. Labour market polarisation and job quality in the crisis: European Labour Force Monitor 2013 Executive Summary (available at: https://www.eurofound.europa.eu /system/files/2021-05/EF13041HU.pdf)
27. LI, S. – SCHÜTTE, B.: The Proposed EU Artificial Intelli- gence Liability Directive. *Technology and Regulation*, 2024, 143–151. https://doi.org/10.71265/82fwbw94
28. LIU, J.: From the Perspective of the Labor Market, The Opportunities and Challenges Brought by the New Generation of Artificial Intelligence Technologies such as ChatGPT are Analyzed. *Scientific Journal of Technology*, issue 2023/5. https://doi.org/ 10.54691/sjt.v5i5.4997
29. LOSONCI D. – TAKÁCS O. – VÁROSINÉ D. K.: In the wake of the effects of Industry 4.0 – an analysis of the Hungarian automotive industry. (Az ipar 4.0 hatásainak nyomában – a magyarországi járműipar elemzése.) *Közgazdasági Szemle*, Vol. LXVI, February 2019. https://doi.org/10.18414/ksz.2019.2.185
30. MEZEI K.: Current issues in the regulation of artificial intelligence in the European Union. (A mesterséges intelligencia jogi szabályozásának aktuális kérdései az Európai Unióban) *In Medias Res*, 2023. issue 1 https://doi.org/10.59851/imr.12.1.4
31. NIGGLI, M. – RUTZER, CH.: Environmental Policy and Heterogeneous Labor Market Effects: Evidence from Europe, https://doi.org/10.2139/ssrn.3973664
32. POE, R. L.: Why Fair Automated Hiring Systems Breach EU Non-discrimination Law. Machine Learning and Principles and Practice of Knowledge Discovery in Databases, 465–476. https://doi.org/10.1007/978-3-031-74630-7_34
33. RAB H.: The circumstances of the 1997-98 pension reform and its impact on the development of the pension system. (Az 1997-98-as nyugdíjreform körülményei és hatása a nyugdíjrendszer fejlődésére.) *Miskolci Jogi Szemle*, issue 2010/2.
34. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)
35. 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)
36. RIDEG G.: Artificial intelligence and public administration: Thoughts on the risk-based approach to artificial intelligence regulation in practice, challenges and opportunities. (A mesterséges intelligencia és a közigazgatás: Gondolatok a mesterséges intelligencia szabályozás kockázatalapú megközelítéséről a gyakorlatban, kihívások és lehetőségek.) *Közigazgatási Tudomány*, issue 2023/3. https://doi.org/10.54200/kt.v3i2.65
37. SCHINDLER, S., BAR-HAIM, Y., BARONE, C., BIRKELUND, J. F., BOLIVER, V., CAPSADA-MUNSECH, Q., EROLA, J., FACCHINI, M., FENIGER, Y., HEISKALA, L., HERBAUT, E., ICHOU, M., KARLSON, K. B., KLEINERT, C., REIMER, D., TRAINI, C., TRIVENTI, M., & VALLET, L-A: Educational tracking and social

inequalities in long-term labour market outcomes: Six countries in comparison. *International Journal of Comparative Sociology*, 65(1) https://doi.org/10.1177/00207152231151390
38. SOUSA E SILVA, N.: The Artificial Intelligence Act: Critical Overview (July 30, 2024) https://doi.org/10.2139/ssrn.4937150
39. SU, L. (ed.): A Review of the Role of Artificial Intelligence in Healthcare. *J Pers Med*. 2023. June 5;13(6):95
40. SZABÓ-SZENTGRÓTI G. – WALTER V. – VÉGVÁRI B.: Support for universal basic income: A crossdisciplinary literature review. *Journal of Infrastructure, Policy and Development*, https://doi.org/10.24294/jipd.v8i10.7486
41. VIRÁG B. – HORVÁTH M.: Economic Policy of Eurasia: Sustainable and Innovative Economic Policy Strategies in Eurasia. (Eurázsia gazdaságpolitikája: Fenntartható és innovatív gazdaságpolitikai stratégiák Eurázsiában.) *Hungarian National Bank*, Budapest, 2024.
42. White Paper on Artificial Intelligence: A European approach to excellence and trust, Brussels, 19.2.2020 COM(2020) 65 final
43. ZARIFHONARVAR, A.: Economics of ChatGPT: A Labor Market View on the Occupational Impact of Artificial Intelligence. *ZBW - Leibniz Information Centre for Economics*. 2023. https://doi.org/10.2139/ssrn.4350925
44. ZHANG, X.: Research on the impact of artificial intelligence on the labor market. *Advances in Economics and Management Research*, issue 2023/8. https://doi.org/10.56028/aemr.8.1.252.2023
45. ZHOU, Q.: Research progress on the impact of artificial intelligence on the labor market. *Advances in Economics and Management Research*, issue 2023/8. https://doi.org/10.56028/aemr.8.1.241.2023

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RESPONSIBILITY FOR NULL AND VOID DECISIONS MADE BY ARTIFICIAL INTELLIGENCE

ZODPOVEDNOSŤ ZA NULITNÉ ROZHODNUTIA VYDANÉ UMELOU INTELIGENCIOU[1]

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https://doi.org/10.33542/SIC2025-S-03

ABSTRACT

The article deals with the current and highly specialized topic of liability for null administrative acts issued by artificial intelligence systems. The first part addresses the general legal concept of AI, the current legal framework of the EU, and the upcoming legislation in the area of liability. The analysis then focuses on the legal nature of nullity and the challenges posed by the use of fully or partially automated systems in administrative procedures. Special attention is given to the applicability of the annulment action under Article 263 TFEU and the identification of critical errors that may lead to the nullity of AI-generated decisions. The article examines the nullity of decisions issued by AI systems in public administration and legal liability for them.

ABSTRAKT

Článok sa zaoberá aktuálnou a vysoko odbornou problematikou zodpovednosti za nulitné správne akty vydané systémami umelej inteligencie. V prvej časti sa venuje charakteristike AI z pohľadu práva, aktuálnemu právnemu rámcu EÚ, ako aj pripravovanej legislatíve v oblasti zodpovednosti. Nasleduje analýza právnej povahy nulity rozhodnutí a aplikačných výziev, ktoré vyplývajú z používania plne alebo čiastočne automatizovaných systémov v správnom konaní. Osobitná pozornosť je venovaná využitiu žaloby podľa čl. 263 ZFEÚ, ako aj identifikácii chýb, ktoré môžu spôsobiť nulitnosť rozhodnutí AI. Článok skúma nulitu rozhodnutí vydaných systémami AI vo verejnej správe a právnu zodpovednosť za ne.

I. INTRODUCTION

The boom in digital technologies and their progressive deployment in various spheres of public and private life have brought with them fundamental challenges that modern law must face. One of the most significant technologies of the 21st century is undoubtedly artificial intelligence, whose application is gradually penetrating the field of public administration and administrative decision-making. The automation of decision-making processes, whether in the form of support tools or fully autonomous systems, represents a fundamental qualitative shift in the way public power is exercised. However, this trend also raises a number of unresolved questions in the field of administrative law, particularly with regard to legal liability, legitimacy, reviewability, and the possible invalidity or nulity of administrative acts issued by AI systems.

There is a wealth of rapidly developing specialist literature in the field of AI. Artificial intelligence is an interdisciplinary field, which is why specialist literature can be found not only

[1] This article was prepared with the support and is the output of a research project supported by the Scientific Grant Agency VEGA no. 1/0062/25 entitled *Automatization of decion-making processes in public administration*.

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in legal, but also in technical, ethical, and philosophical contexts. Technical literature focuses on algorithms, models, and AI architectures (e.g., neural networks, machine learning, etc.). Legal literature focuses on responsibility for AI decisions, the legal subjectivity of AI, GDPR, automated decision-making, etc.

One of the globally recognized works is a professional book entitled *„Algorithmic Regulation*[3]*."* This professional work was written by Professor Karen Yeung of the University of Birmingham and Professor Martin Lodge of the London School of Economics. This book offers a critical examination of the regulation of algorithms, understood as a means of coordinating and regulating social activities and decision-making, as well as the need for institutional mechanisms through which the power of algorithms and algorithmic systems themselves could be regulated.

Another globally significant work is the book entitled *„Automating inequality: How high-tech tools profile, police, and punish the poor*[4]*."* The author is an American professor at the University of Albany. Her book focuses on the damage caused by computer algorithms that replace human decisions and their negative impact on economically disadvantaged people. The author points out the inappropriateness of using AI in public administration, especially in social services.

Significant and extensive works devoted to the field of artificial intelligence tend to come from foreign authors. In our domestic context, there are currently only shorter scientific articles in the form of proceedings from scientific conferences.

While technological development and legal literature is advancing at a rapid pace, norm-setting and legal reflection on these changes are lagging behind. Currently, there is no comprehensive legal framework that addresses all aspects of the legal status and legal consequences of AI systems in the context of public administration. The first comprehensive legislative act at the European Union level that attempts to systematically address this situation is Regulation (EU) 2024/1689 of the European Parliament and of the Council, known as the Artificial Intelligence Act. Its aim is to introduce harmonized rules, particularly for high-risk AI systems, and to ensure an appropriate level of transparency, oversight, and accountability. Its aim is to introduce harmonized rules, particularly for high-risk AI systems, and to ensure an appropriate level of transparency, oversight, and accountability.

The area of legal nullity is different. There are relatively few specialist literary works devoted exclusively to null administrative acts. In the Slovak Republic, there is no comprehensive professional work on this area. Nullity is usually only briefly mentioned in administrative law textbooks as one of the possibilities for classifying defects in individual administrative acts. The Slovak Republic is one of the few countries that does not regulate the nullity of administrative acts de lege lata. It is an institution that was created by administrative law theory and practical application. It is not a modern phenomenon like artificial intelligence. Nullity has been present in administrative law since the very beginning of the formation of public administration in the Enlightenment.

The concept of nullity is precisely defined in German doctrine. German administrative procedure law expressly regulates when an administrative act is null and void and the procedure for its revocation.[5] The concept of nullity is also recognized in Polish administrative procedure law, which does not expressly use the term nullity, but includes it under the regulation of

[3] YEUNG, K. - LODGE, M. Algorithmic regulation. Oxford University Press. [on-line]. 2019. [Accessed 16. October 2025]. DOI identifier: https://doi.org/10.1093/oso/9780198838494.001.0001.

[4] EUBANKS, V. Automating inequality: How high-tech tools profile, police, and punish the poor. Picadoro, 2019. ISBN: 9781250215789.

[5] Section 44 of the German Administrative Procedure Act. Verwaltungsverfahrensgesetz (VwVfG). [on-line]. Available on the Internet: https://www.gesetze-im-internet.de/vwvfg/index.html#BJNR012530976BJNE013200310.

invalidity.[6] An interesting solution in Polish administrative law is the impossibility of declaring nullity if 10 years have elapsed since the date of delivery of an individual administrative act and this act had irreversible legal consequences. The wording of this legal provision shows a preference for one of the principles of the rule of law, namely legal certainty.

The topic of null administrative acts is as relevant as artificial intelligence. In practice, we cannot avoid the occurrence of null decisions issued by AI systems over time. Therefore, it is necessary to examine both of these areas together and find their common intersections and limits.

The aim of this article is to establish the conditions under which the legal concept of nullity can be applied to decisions generated by artificial intelligence in the exercise of public authority, and to determine the entities that will bear legal responsibility for such null decisions.

Since the legal system of the Slovak Republic, similar to many other EU member states, the term „null act" is understood as a decision suffering from such serious defects that it cannot be considered legally effective, it is important to examine whether and how this institution can also be applied to acts resulting from AI activities. In this article, the author draws on the generally known principles of nullity, which she applies to the field of artificial intelligence. Using this research approach, the author formulates de lege ferenda proposals for the most serious errors that could cause the nullity of decisions issued by AI systems in public administration.

The author of the article posed the following research question*: Is it possible to apply the legal concept of nullity to decisions issued or generated by artificial intelligence used by public authorities, and who is responsible for these decisions?*

The author of the scientific article applies a scientific method of analysis, through which she examines and explains in detail the issue of legal phenomena related to null and void decisions and artificial intelligence. She also uses the method of description to provide a precise and systematic description of the subject of the research. The method of concretization is used to formulate de lege ferenda proposals for the most serious errors that can lead to the nullity of decisions generated by AI systems in public administration. Finally, in evaluating the fulfillment of the article's objectives, the method of synthesis was applied, which made it possible to integrate the acquired knowledge into a comprehensive conclusion.

II. ARTIFICIAL INTELLIGENCE IN GENERAL

1. Characteristics of artificial intelligence from a legal perspective

Artificial intelligence, or AI, is the use of digital technologies to create systems that can perform tasks that normally require human intervention. Artificial intelligence mimics human thinking, but processes information faster and more accurately.[7] To perform tasks and make decisions, artificial intelligence systems are trained to recognize patterns in large amounts of data and learn from experience.[8] AI is a branch of computer science that deals with the creation of algorithms and systems capable of performing tasks that would normally require human intelligence.[9]

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6 Article 156 of the Polish Administrative Code.Ustawa z dnia 14.06.1960 r. Kodeks postępowania administracyjnego. [on-line]. Available on the Internet: https://przepisy.gofin.pl/przepisy,3,9,9,240,428062,20250713,art-154-163a-uchylenie-zmiana-oraz-stwierdzenie-niewaznosci.html.

7 Consilium.europa.eu How artificial intelligence works: uses and its impact. [on-line]. Available on the Internet: https://www.consilium.europa.eu/sk/policies/ai-explained/.

8 Ibidem.

9 See more: ŠTĚDROŇ, B. - JAŠEK, R. - SVÍTEK, M. a kol., Umělá inteligence a právo. Plzeň: Aleš Čeněk, 2024. ISBN-978-80-7380-947-8.

The above text only contains the characteristic features of AI. There is currently no legal definition of AI that applies internationally.

The latest OECD definition states that an AI system is a machine system that, for explicitly or implicitly specified objectives, infers from inputs it receives how it can generate outputs such as predictions, content, recommendations, or decisions that may affect the physical or virtual environment. Different AI systems vary in their degree of autonomy and adaptability after deployment. [10]

It should be noted that the definition of AI should be flexible enough to take into account technological progress, while also being precise enough to provide the necessary legal certainty.[11] However, we can say that for EU Member States, the definition contained in the Artificial Intelligence Act is binding in the area of private law. The Artificial Intelligence Act, according to Article 3, defines an AI system as follows: *„a machine system designed to operate with varying levels of autonomy, which may exhibit adaptability after deployment, and which, for explicit or implicit objectives, derives from the inputs it receives, a way of generating outputs such as predictions, content, recommendations, or decisions that may impact the physical or virtual environment.“*

In defining AI systems, this regulation follows the seven non-binding ethical principles for AI to which it refers. The purpose of these principles is to help ensure that AI is trustworthy and ethical. The seven principles are human factor and oversight; technical reliability and safety; privacy and data governance; transparency; diversity, non-discrimination, and fairness; societal and environmental well-being; and accountability. We consider it important to highlight the significance of the principle of „human factor and oversight.“ This principle essentially means that AI systems are developed and used as a tool that serves people, respects human dignity and personal autonomy, and operates in a manner that allows for appropriate human control and oversight.

The following three challenges are associated with the overall digitization of the legal sphere:

- practical implementation of technology,
- ensuring that technology does not become an obstacle to justice,
- maintaining public trust and confidence in the courts (we can also apply this to public authorities) at a time when there is considerable mistrust of certain technologies.[12]

In terms of evolutionary development, AI can be divided into three main types, which indicate the level of AI capabilities and functions:[13]

- **narrow or weak AI** (ANI – artificial narrow intelligence) – „below human level.“ It performs specific limited tasks (e.g., face recognition, speech recognition, recommendation systems). It is characterized by speed and accuracy, but cannot generalize or understand context.[14]

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[10] Organisation for Economic Co-operation and Development (OECD). Explanatory Memorandum on the Updated OECD Definition of an AI System. In OECD Artificial Intelligence Papers; No. 8.; OECD Publishing: Paris, France, 2024.

[11] White Paper on Artificial Intelligence – A European approach to excellence and trust. Publishing: 19. 2. 2020 [COM(2020) 65 final]. 18 s. [on-line]. Available on the Internet: https://eur-lex.europa.eu/legal-content/SK/TXT/PDF/?uri=CELEX:52020DC0065.

[12] ALLSOP, J. Technology and the future of the Courts. In The University of Queensland Law Journal. [on-line]. 2019. Vol. 38, No. 1. [Accessed 10. October 2025]. Dostupné na internete: https://journal.law.uq.edu.au/index.php/uqlj/article/view/1539.

[13] BABŠEK, M. – RAVŠELJ, D. – UMEK, L. – ARISTOVNIK, A. Artificial Intelligence Adoption in Public Administration: An Overview of Top-Cited Articles and Practical Applications. In MDPI Open Access Journals. [on-line]. 2025. Vol. 6, Issue 3. [Accessed 10. October 2025]. Dostupné na internete: https://www.mdpi.com/2673-2688/6/3/44.

[14] TEAIHAGH, A.. Governance of Artificial Intelligence. In Policy and society. Oxford University Press. [on-line]. 2021. Vol. 40, No. 2, 137-157 s. [Accessed 10. October 2025]. Dostupné na internete: https://academic.oup.com/

- **Artificial general intelligence** (AGI) – „human level“
  Performs intellectual tasks like humans (e.g., reasoning, learning, autonomous problem solving).[15]
- **Super AI** (ASI – artificial super intelligence) – „above human level“

Hypothetical and currently unachievable super AI that exceeds human intelligence and solves problems beyond human capabilities.[16]

2. Current legal framework

The most relevant legal regulations that can be drawn upon in the field of AI include:

- European Commission Communication of May 10, 2017 [COM(2017) 228 final] on the mid-term review of the Digital Single Market Strategy (A Connected Digital Single Market for All),
- European Commission Communication of 25 April 2018 [COM(2018) 237 final] entitled „Artificial Intelligence for Europe,“
- White Paper on Artificial Intelligence – A European approach to excellence and trust of 19 February 2020 [COM(2020) 65 final] (hereinafter referred to as the ‘White Paper’),
- European Parliament resolution of 6 October 2021 on artificial intelligence in criminal law and its use by police and judicial authorities,
- European Parliament resolution of October 6, 2021, entitled „Artificial intelligence in criminal law and its use by police and judicial authorities in criminal matters,“
- Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonized rules in the field of 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 (hereinafter referred to as the „Artificial Intelligence Act“),
- Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law[17] (The European Union became a signatory to this Convention on September 5, 2024.[18] The Slovak Republic is not yet a direct signatory to this Convention.[19])
- Slovakia's Digital Transformation Strategy 2030, approved by Resolution of the Government of the Slovak Republic No. 206/2019 of May 7, 2019,
- Action Plan for the Digital Transformation of Slovakia for 2019-2022.

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policyandsociety/article-pdf/40/2/137/42564427/14494035.2021.1928377.pdf. DOI identifier: https://doi.org/10.1080/14494035.2021.1928377.

15 FJELLAND, R. Why General Artificial Intelligence Will Not Be Realized. In Humanities Social Sciences Communications. [on-line]. 2020. [Accessed 10. October 2025]. Available on the Internet: https://www.nature.com/articles/s41599-020-0494-4.pdf. DOI identifier: https://doi.org/10.1057/s41599-020-0494-4.

16 KAPLAN, A. - HAENLEIN, M. Siri, Siri, in My Hand: Who’s the Fairest in the Land? On the Interpretations, Illustrations, and Implications of Artificial Intelligence. In Business Horizons. [on-line]. 2019. Vol. 62, 15–25 s. [Accessed 15. October 2025]. Available on the Internet: https://www.researchgate.net/profile/Michael-Haenlein/publication/ 328761767_Siri_Siri_in_my_hand_Who's_the_fairest_in_the_land_On_the_interpretations_illustrations_and_implications_of_artificial_intelligence/links/60cd8315299bf1cd71ddd5e7/Siri-Siri-in-my-hand-Whos-the-fairest-in-the-land-On-the-interpretations-illustrations-and-implications-of-artificial-intelligence.pdf. DOI identifier:https://doi.org/10.1016/j.bushor.2018.08.004.

17 Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law. [on-line]. Available on the Internet: https://digital-strategy.ec.europa.eu/sk/news/commission-signed-council-europe-framework-convention-artificial-intelligence-and-human-rights.

18 EU Council Decision No. 2024/2218 of 28 August 2024 on the signing, on behalf of the European Union, of the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law. [on-line]. Available on the Internet: https://www.slov-lex.sk/pravo-eu/32ba6be5-eaf7-4be9-bd2c-3343e66530fb.

19 Chart of signatures and ratifications of Treaty 225. [on-line]. Available on the Internet: https://www.coe.int/en/web/Conventions/ full-list/?module=signatures-by-treaty&treatynum=225.

In connection with the implementation of the Artificial Intelligence Act into Slovak national law, the Slovak legislature is preparing new generally binding legislation. The new law will introduce new obligations for operators of high-risk AI systems, as well as the creation of new market surveillance authorities to ensure the control and safe use of AI, the possibility of imposing fines linked to a company's turnover, the establishment of a regulatory and experimental environment for AI, and so on.[20] The regulation itself – the Artificial Intelligence Act – will not come into full effect until 2026.

The regulation of AI de lege ferenda will also include a legal act governing the issue of liability for the use of AI, namely the Directive of the European Parliament and of the Council on the adaptation of the rules on non-contractual civil liability of AI.[21] The full text of the draft Directive on Liability for Artificial Intelligence was submitted in 2022, but the draft has not yet been approved.[22]

3. Artificial intelligence liability

When examining the concept of liability, we will refer to the Artificial Intelligence Act, the White Paper, and the draft Directive on Artificial Intelligence Liability.

The White Paper[23] states that artificial intelligence technologies incorporated into products and services may pose new security risks to users. The White Paper points to a lack of clear security measures to address these security risks. The consequences of this lack of measures may include threats to individuals and legal uncertainty for companies selling products that use AI. One example is an error in AI technology that involves object recognition. Based on this error, an autonomous vehicle may incorrectly identify an object on the road and cause an accident, resulting in injuries and property damage. The lack of measures and rules also makes it difficult for injured parties to submit evidence due to restricted access to it, which leads to a general inefficiency of redress compared to situations where damage is caused by traditional technologies.

Another related problem is the reduced ability to trace the originator of the damage, which, in accordance with most national rules, is necessary in order to claim compensation for damage resulting from a fault. This means increased costs for victims and the unenforceability of compensation from entities that are not manufacturers of products using AI technologies. The White Paper advocates that persons who have suffered damage caused by AI technologies should be afforded the same legal protection as persons who have suffered damage as a result of other technologies.

The proposal for a directive on artificial intelligence liability[24] introduces a wide range of rules governing liability for the use of AI, but only in the private law sphere. Specifically, it concerns the regulation of non-contractual civil liability.

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[20] Redakcia Bezpečnosti v praxi. Nový zákon o organizácii štátnej správy v oblasti umelej inteligencie – legislatívny proces začatý. In Bezpečnosť v praxi. Publishing 22.08.2025. [on-line]. Available on the Internet: https://www.bezpecnostvpraxi.sk/aktuality/novy-zakon-o-organizacii-statnej-spravy-v-oblasti-ai-aktbvp.htm.

[21] ŠUFLIARSKY, P. Umelá inteligencia. In právne listy. Publishing 17.09.2025 [on-line]. [Accessed 25. September 2025]. Available on the Internet:https://www.pravnelisty.sk/clanky/a1631-umela-inteligencia.

[22] Proposal for a Directive of the European Parliament and of the Council on the adaptation of the rules on non-contractual civil liability of artificial intelligence of 28.09.2022. [on-line]. Available on the Internet: https://eur-lex.europa.eu/legal-content/SK/TXT/PDF/?uri=CELEX:52022PC0496&from=EN.

[23] The following information is drawn from: White Paper on Artificial Intelligence – A European approach to excellence and trust. Publishing: 19. 2. 2020 19. 2. 2020 [COM(2020) 65 final]. [on-line]. Available on the Internet: https://eur-lex.europa.eu/ legal-content/SK/TXT/PDF/?uri=CELEX:52020DC0065.

[24] The following information is drawn from: Proposal for a Directive of the European Parliament and of the Council on the adaptation of the rules on non-contractual civil liability of artificial intelligence of 28.09.2022. [on-line]. Available on the Internet: https://eur-lex.europa.eu/legal-content/SK/TXT/PDF/?uri=CELEX:52022PC0496&from=EN.

The explanatory memorandum to the proposed directive emphasizes that current national rules on liability for damagesdo not correspond to the specificities of artificial intelligence. Due to its complexity, autonomy, and opacity (the so-called black box effect), it is difficult for injured partiesto identify the liable entity and prove its fault. The aim of the proposeddirective is to prevent legal uncertainty and fragmentation of the legal regulations of EU Member Statesby introducing uniform rules on civil liability for damagecaused by AI. This is objective liability with a reversed burden of proof andpresumptions of causation. It does not apply to transport, digital servicesor criminal liability, but it may apply to the liability of the state for damagecaused by a systemic AI error.

The proposed Directive has not yet been adopted in the legislative process and therefore has no legal effect on Member States. The Commission has removed the draft directive from its 2025 work program.[25]

The reasons for this decision by the Commission stem from the differing opinions of representatives of individual member states. Those who oppose the adoption of the proposed directive argue that the revised Product Liability Directive is sufficient for non-contractual liability and that liability for AI could be adequately addressed by the national legal frameworks of individual Member States.[26] Some commercial companies that develop various AI systems are also against adoption due to the greater liability that would result for them under the directive. [27]

The Artificial Intelligence Act[28] regulates a different type of liability for AI system errors. This regulation deals with administrative liability. This type of liability creates a relationship between the state and the entity. For example The Office for the Supervision of Medical AI Systems finds that a hospital has failed to implement mandatory AI testing, thereby violating the provisions of the Artificial Intelligence Act.

The Artificial Intelligence Act focuses on liability for high-risk AI systems. It addresses the liability of importers, distributors, notified bodies, AI system providers, AI system operators, and entities deploying AI systems.

Under Article 3 of the Artificial Intelligence Act, a public authority may act as a provider that develops an AI system or AI module for general purposes, or that has it developed and places it on the market or puts it into service under its own name or trademark, regardless of whether it is for remuneration. A public authority may also be a deploying entity, which means that it is an entity that uses an AI system within its jurisdiction, except when it uses the AI system in the context of personal non-professional activities. A public authority may also be an operator.

Article 99 of the Artificial Intelligence Act sets out penalties for breaches of the provisions of this regulation. These penalties may also be imposed on public authorities. The Member State must determine the extent to which this applies. This follows from Article 99(8). Article 99(3), (4) and (5) provides for fines as the only type of penalty that may be imposed for various infringements of the provisions of this Regulation:

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[25] Geneva internet platform dig watch. EU delays AI liability directive due to stalled negotiations. Publishing 20.02.2025. [on-line]. Available on the Internet: https://dig.watch/updates/eu-delays-ai-liability-directive-due-to-stalled-negotiations?utm_source=chatgpt.com.

[26] WH Partners. EU Commission Withdraws AI Liability Directive. [on-line]. Available on the Internet: https://whpartners.eu/news/eu-commission-withdraws-ai-liability-directive/?utm_source=chatgpt.com.

[27] Ibidem.

[28] The following information is drawn from: Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules in the field of 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 [on-line]. Available on the Internet: https://eur-lex.europa.eu/legal-content/SK/ALL/?uri=CELEX:32024R1689.

- administrative fines of up to €35,000,000 for failure to comply with the prohibitions on AI practices set out in Article 5,
- administrative fines of up to 7% of the undertaking's total worldwide annual turnover in the preceding financial year (if the offender is a commercial company and whichever amount is higher),
- administrative fines of up to €15,000,000 for non-compliance with any of the provisions relating to operators or notified persons other than those set out in Article 5 (an exhaustive list of provisions is set out in Article 99(4),
- administrative fines of up to 3% of the undertaking's worldwide annual turnover for the preceding financial year (if the offender is a commercial company and whichever amount is higher),
- administrative fines of up to €7,500,000 for providing incorrect, incomplete, or misleading information in response to a request from notified persons or national competent authorities,
- administrative fines of up to 1% of the undertaking's total worldwide annual turnover for the previous financial year (if the offender is a commercial company and whichever amount is higher).

From the above characteristics of individual documents, it is clear that each of them formulates liability for errors caused by artificial intelligence in such a way that the responsible entity is not the AI system itself, but its creator, operator, supplier, etc. This means that artificial intelligence has not yet been granted the status of a legal entity with its own legal personality. We believe that at the current stage of AI development, such an approach is not possible. In fact, such an approach will probably never be possible, given that, simply put, an AI system is a computer program designed by individuals with a high level of expertise in the field of computer science.

III. NULLITY

1. Artificial intelligence decision-making process

In order to identify potential sources of errors that could result in nullity, we must first clarify how the AI system's decision-making process works in administrative proceedings. We will describe this process in several stages.

The first stage is **the input of data**. This involves entering administrative data about the participant, factual circumstances, evidence, data from registers, etc. Legal norms that the AI interprets are also entered here.

The second stage is **data preprocessing**. This stage consists of normalization, data filtering, noise removal, and data transformation into a form suitable for the model.

The third part is the **application of the decision-making model**. At this stage, the AI system applies a decision-making algorithm to the pre-processed data. This phase involves the legal qualification of the act, identification of the facts, and legal consequences.

The penultimate phase is **Decision Generation**. An output document (e.g., an administrative decision) is created. The output document is generated in accordance with the legal form, it contains the operative part, the reasoning, and instructions on the remedy.

The final stage of the AI decision-making process consists of **review and authorization**. Ideally, the output should be verified by a human administrative authority before confirmation. In practice, there are also AI systems that are fully automated. In this case, decisions are made without direct human intervention and control. In practice, there are also AI systems that are fully automated, meaning that decisions are issued without direct human intervention and control.

2. Characteristics of nullity

The issue of nullity as an undesirable legal consequence of acts issued by public authorities in democratic states has been the subject of our long-term research interest.[29] Nevertheless, we consider it appropriate to provide a brief general description of this legal institution. The institution of nullity has its historical roots[30] and cannot be considered a product of current legal practice. In its resolution, the Constitutional Court of the Slovak Republic stated the following in relation to the characteristics of nullity:*„This is a concept that arose within the framework of legal theory discourse. The legal system of the Slovak Republic lacks a general legal definition of the concept of nullity of an administrative decision or a definition of defects that cause the nullity (invalidity) of an administrative act. Both case law and administrative law theory agree that an act is an administrative act that does not produce the intended effects if its defects are so fundamental and obvious that it „cannot be regarded" as an administrative act."* [31]

Legal theory and practice consider the following deficiencies to be the most serious errors, the occurrence of which in decisions causes nullity: lack of legal basis, lack of jurisdiction, the most serious defects of jurisdiction, absolute lack of form, absolute error in the person of the addressee, non-existence of a factual basis causing lack of content, requirement of criminal or other legally impossible performance, requirement of factually impossible performance, uncertainty, absurdity, internal contradiction, lack of will. [32]

Before we list the errors that could be considered the most serious de lege ferenda, causing nullity in the field of AI, it is necessary to note that the entire construct of nullity in the field of artificial intelligence legislation is hypothetical. De facto, the Artificial Intelligence Act does not absolutely provide for the nullity of AI systems or decisions generated by them. The Artificial Intelligence Act does not contain any provision that would regulate the invalidity of an AI system or cases where such a system does not even arise and where the acts generated by it are invalid/null and void.

There is no legal definition of nullity in EU law. EU law does not use this term in any legislation. This fact was the subject of our previous research. [33] In this context, we have previously addressed Article 263 TFEU, i.e. actions for annulment. Article 263 TFEU sets out grounds for invalidity that are similar to grounds for nullity. We believe that this type of action could also be used in the case of null and void acts issued by an AI system. The defendant in this case would be the EU body operating the AI system that issued the null and void act. This would apply in particular to high-risk AI systems, for which the Artificial Intelligence Act stipulates a requirement for human oversight. This means that the body responsible for errors can only be the body that manages the AI system. As mentioned above, this is only a hypothetical, research-academic level, as the technological adaptation of artificial intelligence itself is relatively new. In the field of law, AI systems are still in their infancy.

Based on the above facts, we can de lege ferenda classify the following among the errors of the AI system that result in a null decision.

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[29] See more: FRANCOVÁ, M. Paakty ako nežiaduci jav v právnom štáte. In: JAKAB, R. – BERNÍKOVÁ, E. – REPIŠČÁKOVÁ, D. (eds.): Správne právo bezhraníc. Zborník vedeckých prác. Košice: ŠafárikPress, 2024. 239- 255 s. ISBN 978-80-574-0294-7.

[30] See more: FRANC KUPCOVÁ, M. Historický vývoj právnej úpravy nulitných správnych aktov. Tento príspevok bude publikovaný v zborníku z medzinárodnej vedeckej konferencie organizovanej Právnickou fakultou Západočeskej univerzity v Plzni s názvom „NADĚJE PRÁVNÍ VĚDY 2024".

[31] Resolution of the Constitutional Court of the Slovak Republic, file no.I. ÚS 323/2016-46. Publishing 18.05.2016. [on-line]. Available on the Internet: https://merit.slv.cz/I.%C3%9AS323/2016.

[32] HENDRYCH, D. a kol. Správní právo. Obecní část. 9. vydání. Praha: C.H.Beck, 2016. ISBN: 978-80-7400-624-1.

[33] See more: FRANCOVÁ, M. Nulitné správne akty a európska únia. In: Zborník zo VI. ročníka medzinárodnej vedeckej konferencie Banskobystrické zámocké dni práva. Banská Bystrica: Belianum, 2024. 64 – 78 s. ISBN 978-80-557-2133-0.

Incomplete, outdated, false, or illegal input data was entered into the AI system. This would be a lack of legal basis and the absence of a factual basis.

The AI system applies an incorrect legal norm or misinterprets it. This will be a lack of legal basic.

The decision is issued by an AI system that does not operate in accordance with the provisions of the Artificial Intelligence Act and other legislation. This would constitute a lack of authority/competence and a lack of legal basis.

The AI system generates a decision that does not comply with the formal requirements laid down by law. This would be an absolute lack of form.

The AI system fails to recognize that the participant has the right to express themselves, submit evidence, and be heard. This will constitute a violation of the participant's procedural rights and thus a lack of factual basis, resulting in a lack of content.

The high-risk AI system does not meet the specific requirements under Section 2 of the Artificial Intelligence Act. This would be a lack of competence, lack of legal basis.

The failure to register high-risk AI systems listed in Annex III to the Artificial Intelligence Act in the Union database will costitute an absolute lack of form.

An opaque algorithm (so-called black box AI)[34], which may give rise to doubts about the legality of the act, e.g., failure to comply with the legal requirements of the act – absence of justification for the decision.

The failure to verify the output generated by the AI system, i.e., lack of human verification of correctness. This error will be particularly noticeable in high-risk AI systems. This deficiency may result in the failure to detect several different errors that cause nullity.

The situations mentioned above do not represent an exhaustive list of errors that can be considered so serious that they would result in the nullity of a decision issued by the AI system.

When considering de lege ferenda the reasons for the nullity of the AI system, it is also necessary to take into account the practical difficulties associated with proving them. A significant problem is the phenomenon of the so-called black box, in which it is not possible to reconstruct the internal decision-making processes of the AI system retrospectively. It is not possible to identify the variables used or analyze the course of inference,[35] which causes fundamental uncertainty of evidence when challenging the illegality of a decision generated by an AI system.[36] The opacity of algorithmic processing also complicates the demonstration of system errors, as in many cases there are no technical records or access to versions of the AI system that would allow for an accurate assessment of whether there was incorrect processing of inputs, incorrect application of legal norms, or other deficiencies causing nullity.[37]

Proving the lack of a factual or legal basis is therefore also affected in practice by the fact that it may not be technically or legally possible for either the party to the proceedings or the reviewing authority to determine what data was used by the decision-making system, what conclusions were reached, and whether the system complied with legislative requirements.

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[34] BATHAEE, Y. The artificial intelligence black box and the failure of intent and causation. In Harvard Journal of Law & Technology. [on-line]. Spring 2018. Vol. 31, No. 2. [Accessed 10. October 2025]. Available on the Internet: https://jolt.law.harvard.edu/assets/articlePDFs/v31/The-Artificial-Intelligence-Black-Box-and-the-Failure-of-Intent-and-Causation-Yavar-Bathaee.pdf.

[35] Inference in the context of artificial intelligence is the resulting conclusion/output that an AI model generates based on input data. This output is a transfer act of the algorithm, which may have various legal consequences.

[36] BURRELL, J. How the machine "thinks": Understanding opacity in machine learning algorithms. In Big Data & Society. [on-line]. 2016. Vol. 3, No. 1. [Accessed 10. november 2025]. Available on the Internete, DOI identifier: https://doi.org/10.1177/2053951715622512.

[37] SELBST, A.D. – BAROCAS, S. *The Intuitive Appeal of Explainable Machines*. In Fordham Law Review. [on-line]. 2018. Vol. 87, Issue 3. [Accessed 10. november 2025]. Available on the Iternete: https://ir.lawnet.fordham.edu/ flr/vol87/iss3/4/. DOI identifier: https://doi.org/10.2139/ssrn.3126971.

It is therefore necessary to introduce an obligation for providers and users of high-risk AI systems to ensure the storage of sufficient technical and procedural records, including documentation of the AI system model and the links between inputs and outputs, which directly corresponds to the requirements of European legislation.[38] In this context, it is also appropriate to consider the reverse easement mentioned above.

In the case of an error consisting in the entry of incomplete, false, or unlawful input data into the AI system, reference can be made to the case law of the Court of Justice of the European Union. The Court of Justice has stated on several occasions that a filtering system that does not sufficiently distinguish between illegal and legitimate content, such that its algorithm could block legitimate content, would be incompatible with the right to freedom of expression and information.[39]

Another aspect related to the input of data raises moral issues. That is, whether it is even possible, or right and lawful, to use data from participants in legal proceedings to „feed" AI system algorithms. At this point, it is also necessary to consider context and decision-making. Algorithms do not know the story or the context. These two components represent the human factor.[40]

The decision of the Court of Justice of the European Union in the current case[41] concerning Article 22 of the GDPR – automated processing of personal data – will also be interesting and significant. The processing of personal data and the right to information are an integral part of public administration processes. A decision made solely by automated processing of personal data, including profiling, which has legal effects on the data subject, which concerns the data subject or similarly significantly affects the data subject, is illustrated by a situation if a citizen received a decision directly from an algorithm that processed data about him and decided on the outcome of his application. [42] This interpretation was also adopted by the Advocate General of the Court of Justice of the European Union in his opinion in the *case of OQ v Land Hessen.* [43] The decision of the Court of Justice of the EU in this case will be the first decision in relation to automated individual decision-making under the GDPR, which should set legal limits (restrictions) for this framework. [44]

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38 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules in the field of 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 [on-line]. Available on the Internet: https://eur-lex.europa.eu/legal-content/SK/ALL/?uri=CELEX:32024R1689.

39 Judgment of the Court of Justice of the EU, case number C-401/19, dated 26.04.2022, in the case of the Republic of Poland against the European Parliament and the Council of the EU. [on-line]. Available on the Internet:https://curia.europa.eu/juris/document/document.jsf?text=&docid=258261&pageIndex=0&doclang=SK&mode=lst&dir=&occ=first&part=1&cid=2372401.

40 See more: SOUKUPOVÁ, J. AI-based legal technology: A critical assessment of the current use of artificial intelligence in legal practice. In Masaryk University Journal of Law and Technology. [on-line]. 2021. Vol. 15, no. 2, s. 279-300. [Accessed 10. October 2025]. Available on the Internet: https://journals.muni.cz/mujlt/article/view/14504. DOI identifier: https://doi.org/10.5817/mujlt2021-2-6.

41 Ongoing proceedings at the Court of Justice of the EU, case number C-634/21 OQ v. Land Hessen, with participation of: SCHUFA Holding AG. [on-line]. Available on the Internet: https://eur-lex.europa.eu/legal-content/SK/TXT/HTML/?uri=CELEX:62021CC0634.

42 MESARČÍK, M. Boj proti online dezinformáciam: Úloha všeobecného nariadenia o ochrane údajov v Európskej únii. In Zborník príspevkov z medzinárodnej vedeckej konferencie „Bratislavské právnické fórum 2024." Bratislava: Univerzita Komenského v Bratislave. 2024. 104 – 116 s. ISBN 978-80-7160-728-1.

43 Opinion of Advocate General Priit Pikamäe delivered on 16.3.2023 in case C-634/21 OQ v Land Hessen with participation: SCHUFA Holding AG, points 34 – 35. [on-line]. Available on the Internet: https://eur-lex.europa.eu/legal-content/SK/TXT/HTML/?uri=CELEX:62021CC0634.

44 Opinion of the Standing Commission on the Ethics and Regulation of Artificial Intelligence (CERAI) on the importance of a responsible approach when deploying artificial intelligence in the conditions of Slovak public administration. Bratislava, dated 20.06.2023.. [on-line]. Available on the Internet: https://mirri.gov.sk/wp-content/uploads/2021/06/Stanovisko-CERAI-k-d%C3%B4le%C5%BEitosti-zodpovedn%C3%A9ho-pr%C3%ADstupu-pri-nasadzovan%C3%AD-umelej-inteligencie-v-podmienkach-slovenskej-verejnej-spr%C3%A1vy.pdf.

Another interesting aspect in relation to null decisions issued by artificial intelligence systems is the introduction of the possibility of remedying the shortcomings of a given decision within a certain period of time. This is the concept of so-called *indirect nulity*,[45] which we consider to be a more appropriate and compatible form compared to pure nullity. We believe that this indirect nullity would be a suitable tool for eliminating the most serious errors in rapidly evolving artificial intelligence systems. Especially those that can be eliminated by a simple change in the algorithm in a relatively short time.

IV. CONCLUSION

Based on the analysis presented, it can be concluded that there are real risks associated with the use of artificial intelligence in public administration decision-making processes, especially in high-risk systems. The current EU legal framework, including the new Artificial Intelligence Act, introduces a number of obligations for entities placing AI systems on the market or using them, but does not yet explicitly regulate the nullity of decisions generated by AI.

On the other hand, legal theory and analogies from administrative law allow for the identification of certain procedural and substantive errors that could result in the nullity of decisions, particularly in the absence of a legal basis, jurisdiction, or formal requirements.

The use of an action for annulment under Article 263 TFEU may constitute a procedural tool to defend against such acts, although the interpretation of this option is still rather hypothetical. This is because this type of action is primarily used against the invalidity of secondary acts of European law.

In the future, it will be necessary to comprehensively amend legal liability for artificial intelligence decisions, including amendments to nullity, revision of legal mechanisms, and ensuring a fair balance between technological progress and legal certainty for individuals.

In the article, the author formulates several specific hypothetical situations whose existence would result in the nullity of decisions generated by an AI system. The author considers these situations to be realistically possible and so serious that the standard institution of invalidity would be insufficient. The author also points to a possible solution through the application of indirect nullity, i.e., the introduction of the possibility of subsequently remedying the defect within a certain short period of time. This applies mainly to errors that could be remedied by a simple intervention in the AI system's algorithm.

Based on the examined legal regulation for the field of AI, the entity responsible for null decisions generated by the AI system in public administration processes is the public authority that is in the position of a developer, user, etc. This position of the public authority stems from the Artificial Intelligence Act. The public authority will not only be administratively liable, but will also be liable for compensation for damage caused to individuals by a null and void decision.

In the introduction to this work, the author posed the following research question: *Is it possible to apply the legal concept of nullity to decisions issued or generated by artificial intelligence used by public authorities, and who is responsible for these decisions?*

In conclusion, the author offers the following answer to the research question: *Based on the research contained in this scientific work, it is possible to apply the legal concept of nullity to*

[45] See more: SEMAN, T. – FRANCOVÁ, M. Extraterritorial Effects of Administrative Paactsin the Slovak Republic with Application to the International Driving Licence. In Juridical Tribune - Review of comparative and international law. December, 2024. Vol. 14, Num. 4, 604-619 s. [Accessed 10. October 2025]. Available on the Internet:https://www.tribunajuridica.eu/arhiva/y14v4_en.html. ISSN 3008-63X. ISSN-L: 3008-637X. DOI identifier: https://doi.org/10.62768/tbj/2024/14/4/05.

decisions generated by AI systems in public administration processes. The specific public administration body operating the AI system is responsible for null and void decisions.

KĽÚČOVÉ SLOVÁ
umelá inteligencia, nulitné akty, nulitnosť, zodpovednosť za AI, žaloba o neplatnosť podľa čl. 263 ZFEÚ

KEY WORDS
artificial intelligence, nullity acts, nullity, AI liability, Annulment Action under Article 263 TFEU

BIBLIOGRAPHY

1. ALLSOP, J. Technology and the future of the Courts. In The University of Queensland Law Journal. [on-line]. 2019. Vol. 38, No. 1. [Accessed 10. October 2025]. Available on the Internet: https://journal.law.uq.edu.au/index.php/uqlj/article/view/ 1539.
2. BABŠEK, M. – RAVŠELJ, D. – UMEK, L. – ARISTOVNIK, A. Artificial Intelligence Adoption in Public Administration: An Overview of Top-Cited Articles and Practical Applications. In MDPI Open Access Journals. [on-line]. 2025. Vol. 6, Issue 3. [Accessed 10. October 2025]. Available on the Internet: https://www.mdpi.com/2673-2688/6/3/44.
3. BATHAEE, Y. The artificial intelligence black box and the failure of intent and causation. In Harvard Journal of Law & Technology. [on-line]. Spring 2018. Vol. 31, No. 2. [Accessed 10. October 2025]. Available on the Internet: https://jolt.law.harvard.edu/assets/articlePDFs/v31/The-Artificial-Intelligence-Black-Box-and-the-Failure-of-Intent-and-Causation-Yavar-Bathaee.pdf.
4. BURRELL, J. How the machine "thinks": Understanding opacity in machine learning algorithms. In Big Data & Society. [on-line]. 2016. Vol. 3, No. 1. [Accessed 10. november 2025]. Available on the Internete, DOI identifier: https://doi.org/10.1177/2053951715622512.
5. Consilium.europa.eu How artificial intelligence works: uses and its impact. [on-line]. Available on the Internet: https://www.consilium.europa.eu/sk/policies/ai-explained/.
6. Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law. [on-line]. Available on the Internet: https://digital-strategy.ec.europa.eu/sk/news/commission-signed-council-europe-framework-convention-artificial-intelligence-and-human-rights.
7. Chart of signatures and ratifications of Treaty 225. [on-line]. Available on the Internet: https://www.coe.int/en/web/Conventions/full-list/?module=signatures-by-treaty&treatynum=225.
8. EUBANKS, V. Automating inequality: How high-tech tools profile, police, and punish the poor. Picadoro, 2019. ISBN: 9781250215789.
9. EU Council Decision No. 2024/2218 of 28 August 2024 on the signing, on behalf of the European Union, of the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law. [on-line]. Available on the Internet: https://www.slov-lex.sk/pravo-eu/32ba6be5-eaf7-4be9-bd2c-3343e66530fb.
10. FJELLAND, R. Why General Artificial Intelligence Will Not Be Realized. In Humanities Social Sciences Communications. [on-line]. 2020. [Accessed 10. October

2025]. Available on the Internet: https://www.nature.com/articles/s41599-020-0494-4.pdf. DOI identifier: https://doi.org/10.1057/s41599-020-0494-4.
11. FRANCOVÁ, M. Paakty ako nežiaduci jav v právnom štáte. In: JAKAB, R. – BERNÍKOVÁ, E. – REPIŠČÁKOVÁ, D. (eds.): Správne právo bezhraníc. Zborník vedeckých prác. Košice: ŠafárikPress, 2024. 239- 255 s. ISBN 978-80-574-0294-7.
12. FRANCOVÁ, M. Nulitné správne akty a európska únia. In: Zborník zo VI. ročníka medzinárodnej vedeckej konferencie Banskobystrické zámocké dni práva. Banská Bystrica: Belianum, 2024. 64 – 78 s. ISBN 978-80-557-2133-0.
13. German Administrative Procedure Act.Verwaltungsverfahrensgesetz (VwVfG). [on-line]. Available on the Internet: https://www.gesetze-im-internet.de/vwvfg/index.html#BJNR012530976BJNE013200310.
14. Geneva internet platform dig watch. EU delays AI liability directive due to stalled negotiations. Publishing 20.02.2025. [on-line]. Available on the Internet: https://dig.watch/updates/eu-delays-ai-liability-directive-due-to-stalled-negotiations?utm_source=chatgpt.com.
15. HENDRYCH, D. a kol. Správní právo. Obecní část. 9. vydání. Praha: C.H.Beck, 2016. ISBN: 978-80-7400-624-1.
16. Judgment of the Court of Justice of the EU, case number C-401/19, dated 26.04.2022, in the case of the Republic of Poland against the European Parliament and the Council of the EU. [on-line]. Available on the Internet: https://curia.europa.eu/juris/document/document.jsf?text=&docid=258261&pageIndex=0&doclang=SK&mode=lst&dir=&occ=first&part=1&cid=2372401.
17. KAPLAN, A. - HAENLEIN, M. Siri, Siri, in My Hand: Who's the Fairest in the Land? On the Interpretations, Illustrations, and Implications of Artificial Intelligence. In Business Horizons. [on-line]. 2019. Vol. 62, 15–25 s. [Accessed 15. October 2025]. Available on the Internet: https://www.researchgate.net/profile/Michael-Haenlein/publication/328761767_Siri_Siri_in_my_hand_Who's_the_fairest_in_the_land_On_the_interpretations_illustrations_and_implications_of_artificial_intelligence/links/60cd8315299bf1cd71ddd5e7/Siri-Siri-in-my-hand-Whos-the-fairest-in-the-land-On-the-interpretations-illustrations-and-implications-of-artificial-intelligence.pdf. DOI identifier: https://doi.org/10.1016/j.bushor.2018.08.004.
18. KUPCOVÁ FRANC, M. Historický vývoj právnej úpravy nulitných správnych aktov. Tento príspevok bude publikovaný v zborníku z medzinárodnej vedeckej konferencie organizovanej Právnickou fakultou Západočeskej univerzity v Plzni s názvom „NADĚJE PRÁVNÍ VĚDY 2024"
19. MESARČÍK, M. Boj proti online dezinformáciam: Úloha všeobecného nariadenia o ochrane údajov v Európskej únii. In Zborník príspevkov z medzinárodnej vedeckej konferencie „Bratislavské právnické fórum 2024." Bratislava: Univerzita Komenského v Bratislave. 2024. 104 – 116 s. ISBN 978-80-7160-728-1.
20. Ongoing proceedings at the Court of Justice of the EU, case number C-634/21 OQ v. Land Hessen, with participation of: SCHUFA Holding AG. [on-line]. Available on the Internet: https://eur-lex.europa.eu/legal-content/SK/TXT/HTML/?uri=CELEX: 62021CC0634.
21. Opinion of Advocate General Priit Pikamäe delivered on 16.3.2023 in case C-634/21 OQ v Land Hessen with participation: SCHUFA Holding AG, points 34 – 35. [on-line]. Available on the Internet: https://eur-lex.europa.eu/legal-content/SK/TXT/HTML/?uri=CELEX:62021CC0634.

22. Opinion of the Standing Commission on the Ethics and Regulation of Artificial Intelligence (CERAI) on the importance of a responsible approach when deploying artificial intelligence in the conditions of Slovak public administration. Bratislava, dated 20.06.2023. [on-line]. Available on the Internet: https://mirri.gov.sk/wp-content/uploads/2021/06/Stanovisko-CERAI-k-d%C3%B4le%C5%BEitosti-zodpovedn%C3%A9ho-pr%C3%ADstupu-pri-nasadzovan%C3%AD-umelej-inteligencie-v-podmienkach-slovenskej-verejnej-spr%C3%A1vy.pdf.
23. Organisation for Economic Co-operation and Development (OECD). Explanatory Memorandum on the Updated OECD Definition of an AI System. In *OECD Artificial Intelligence Papers*; No. 8.; OECD Publishing: Paris, France, 2024.
24. Polish Administrative Code. Ustawa z dnia 14.06.1960 r. Kodeks postępowania administracyjnego. [on-line]. Available on the Internet: https://przepisy.gofin.pl/przepisy,3,9,9,240,428062,20250713,art-154-163a-uchylenie-zmiana-oraz-stwierdzenie-niewaznosci.html.
25. Proposal for a Directive of the European Parliament and of the Council on the adaptation of the rules on non-contractual civil liability of artificial intelligence of 28.09.2022. [on-line]. Available on the Internet: https://eur-lex.europa.eu/legal-content/SK/TXT/PDF/?uri=CELEX:52022PC0496&from=EN.
26. Redakcia Bezpečnosti v praxi. Nový zákon o organizácii štátnej správy v oblasti umelej inteligencie – legislatívny proces začatý. In Bezpečnosť v praxi. Publishing 22.08.2025. [on-line]. Available on the Internet: https://www.bezpecnostvpraxi.sk/aktuality/novy-zakon-o-organizacii-statnej-spravy-v-oblasti-ai-aktbvp.htm.
27. Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules in the field of 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 [on-line]. Available on the Internet: https://eur-lex.europa.eu/legal-content/SK/ALL/?uri=CELEX:32024R1689.
28. Resolution of the Constitutional Court of the Slovak Republic, file no.I. ÚS 323/2016-46. Publishing 18.05.2016. [on-line]. Available on the Internet: https://merit.slv.cz/I.%C3%9AS323/2016.
29. SELBST, A.D. – BAROCAS, S. *The Intuitive Appeal of Explainable Machines*. In Fordham Law Review. [on-line]. 2018. Vol. 87, Issue 3. [Accessed 10. november 2025]. Available on the Internete: https://ir.lawnet.fordham.edu/flr/vol87/iss3/4/. DOI identifier: https://doi.org/10.2139/ssrn.3126971.
30. SEMAN, T. – FRANCOVÁ, M. Extraterritorial Effects of Administrative Paactsin the Slovak Republic with Application to the International Driving Licence. In Juridical Tribune - Review of comparative and international law. December, 2024. Vol. 14, Num. 4, 604-619 s. [Accessed 10. October 2025]. Available on the Internet:https://www.tribunajuridica.eu/arhiva/y14v4_en.html. ISSN 3008-63X. ISSN-L: 3008-637X. DOI identifier: https://doi.org/10.62768/tbj/2024/14/4/05.
31. SOUKUPOVÁ, J. AI-based legal technology: A critical assessment of the current use of artificial intelligence in legal practice. In Masaryk University Journal of Law and Technology. [on-line]. 2021. Vol. 15, no. 2, s. 279-300. [Accessed 10. October 2025]. Available on the Internet: https://journals.muni.cz/mujlt/article/view/14504. DOI identifier: https://doi.org/10.5817/mujlt2021-2-6.
32. ŠTĚDROŇ, B. - JAŠEK, R. - SVÍTEK, M. a kol., Umělá inteligence a právo. Plzeň: Aleš Čeněk, 2024. ISBN-978-80-7380-947-8.

33. ŠUFLIARSKY, P. Umelá inteligencia. In právne listy. Publishing 17.09.2025 [on-line]. [Accessed 25. September 2025]. Available on the Internet: https://www. pravnelisty.sk/clanky/a1631-umela-inteligencia.
34. TEAIHAGH, A. Governance of Artificial Intelligence. In Policy and society. Oxford University Press. [on-line]. 2021. Vol. 40, No. 2, 137-157 s. [Accessed 10. October 2025]. Available on the Internet: https://academic.oup.com/policyandsociety/article-pdf/40/2/137/42564427/1449 4035. 2021.1928377.pdf. DOI identifier: https://doi.org/ 10.1080/14494035.2021.1928377.
35. White Paper on Artificial Intelligence – A European approach to excellence and trust. Publishing: 19. 2. 2020 19. 2. 2020 [COM(2020) 65 final]. [on-line]. Available on the Internet: https://eur-lex.europa.eu/legal-content/SK/TXT/PDF/?uri= CELEX:52020 DC0065.
36. WH Partners. EU Commission Withdraws AI Liability Directive. [on-line]. Available on the Internet: https://whpartners.eu/news/eu-commission-withdraws-ai-liability-directive/?utm_source=chatgpt.com.
37. YEUNG, K. - LODGE, M. Algorithmic regulation. Oxford University Press. [on-line]. 2019. [Accessed 16. October 2025]. DOI identifier: https://doi.org/10.1093 /oso/9780198838494.001.0001.

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THE NEW COUNCIL OF EUROPE FRAMEWORK CONVENTION AND THE FUTURE OF INTELLIGENT ROBOTS IN ADMINISTRATIVE LAW

NOVÁ RÁMCOVÁ ÚMLUVA RADY EVROPY A BUDOUCNOST INTELIGENTNÍCH ROBOTŮ VE SPRÁVNÍM PRÁVU[1]

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https://doi.org/10.33542/SIC2025-S-04

ABSTRACT

On 5 September 2024, the brand-new Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law was adopted in Vilnius, Lithuania. The Framework Convention complements existing international standards on human rights, democracy, and the rule of law and aims to address legal gaps arising from rapid technological advances. While the Framework Convention's scope of application is vast, this article examines how the Convention contributes to recent efforts to deploy artificial intelligence in administrative decision-making. The Framework Convention was adopted during a period when many new legal frameworks governing the administrative decision-making of intelligent robots were adopted at the national level. This article argues that the recently adopted national-level legal frameworks are far from technologically neutral. On the contrary, the Framework Convention has been designed to stand the test of time. Consequently, it provides a durable legal framework for the future deployment of intelligent robots in administrative law (and beyond).

ABSTRAKT

Dne 5. září 2024 byla v litevském Vilniusu přijata zbrusu nová Rámcová úmluva Rady Evropy o umělé inteligenci a lidských právech, demokracii a právním státu. Rámcová úmluva doplňuje stávající mezinárodní standardy v oblasti lidských práv, demokracie a právního státu a dává si za cíl řešit veškeré právní mezery, které mohou vzniknout v důsledku rychlého technologického pokroku. Ačkoli je oblast působnosti Rámcové úmluvy značně široká, tento článek zkoumá, jak úmluva přispívá k aktuálnímu úsilí o zavedení umělé inteligence ve správním rozhodování. Rámcová úmluva byla přijata v období, kdy je na národní úrovni přijímána celá řada nových předpisů upravujících administrativní rozhodování inteligentních robotů. Tento článek tvrdí, že právní předpisy, které byly v nedávné době přijaty na národní úrovni, mají z hlediska úpravy umělé inteligence daleko k technologicky neutrální legislativě. Naopak, Rámcová úmluva je koncipována tak, aby její ustanovení obstály testu času. Lze jí proto považovat za nástroj, který vydláždí cestu budoucímu nasazení inteligentních robotů (nejenom) ve správním právu.

[1] This paper was written under the umbrella of the 4 EU+ research project "Europe: A Laboratory of a Digital State".

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I. INTRODUCTION[5]

On 5 September 2024, the brand-new Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law (Framework Convention, or Convention)[6] was adopted in Vilnius, Lithuania. The Framework Convention was to reflect the "accelerating developments in science and technology and the profound changes brought about through activities within the lifecycle of artificial intelligence systems, which have the potential to promote human prosperity as well as individual and societal wellbeing (…)."[7] It is the very first binding instrument of international law, adopted to address the challenges posed by artificial intelligence (AI) to legal systems in Europe and beyond.[8]

The scope of application of the newly adopted Framework Convention is rather broad. It covers the activities "within the lifecycle of artificial intelligence systems that have the potential to interfere with human rights, democracy and the rule of law."[9] In this respect, the Framework Convention further specifies that it is to be applied inter alia to "the activities within the lifecycle of artificial intelligence systems undertaken by public authorities, or private actors acting on their behalf."[10] While the deployment of AI in national security, research and development programs has been excluded[11] from the scope of application, the Framework Convention will be capable of covering a myriad of AI uses in administrative law in the future, starting from the collection of data available in various public registries and including issuing of the final decisions. Having said this, the Framework Convention was adopted during a period when national legal frameworks were emerging to address the deployment of AI in administrative decision-making.[12] Recently, such a legal framework has been adopted in the Federal Republic of Germany. Similar laws have been recently proposed in Estonia and the Czech Republic.[13]

The newly adopted Framework Convention has already garnered considerable attention in the international legal scholarship.[14] This article aims to contribute to this ongoing discussion.

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5 This is a written and much expanded version of our presentation "The new Framework Convention of the Council of Europe and its impact for administrative law", which was delivered on 3 October 2025 at the 2nd Czecho-Slovak Symposium on AI in Administrative Law, entitled "The Robot: Salient Servant - Lord Malevil."

6 Council of Europe Treaty Series - No. 225.

7 Framework Convention, Preamble.

8 See ZILLER, J. The Council of Europe Framework Convention on Artificial Intelligence vs. The EU Regulation: Two Quite Different Legal Instruments. In: Ceridap – Rivista Interdisciplinare sul Diritto delle Amministrazioni Pubbliche, vol. 5, no. 4, 2024, p. 202.

9 Framework Convention, Art. 3.1.

10 Ibid.

11 Framework Convention, Art. 3.2. and 3.3. (the Framework Convention is not applicable to research and development activities regarding artificial intelligence systems not yet made available for use, unless testing or similar activities are undertaken in such a way that they have the potential to interfere with human rights, democracy and the rule of law).

12 See SEVER, T. Trends of Automated Decision-Making in the Public Sector. In: URS, N., ŠPAČEK, D., NOMMIK, S. (eds), Digital Transformation in European Public Services. Complexities, Challenges, and Good Practices. Cham: Palgrave Macmillan, 2025, pp. 25-53.

13 See HANDRLICA, J. The dawn of automatisation in administrative procedural law in the Czech Republic. In: Bratislavské právnické fórum 2025 - Využívanie umelej inteligencie pri rozhodovaní vo verejnej správe. Bratislava: Univerzita Komenského, Právnická fakulta, 2025, s. 5-12.

14 See Aura y Larios de Medrano, A. La regulación de la inteligencia artificial en el ámbito internacional: la Recomendación de la UNESCO, el Convenio del Consejo de Europa y el Reglamento de la UE. In: ESPERANZA, F., ROSA, P. (eds), Nuevas fronteras : el derecho y las humanidades ante la revolución tecnológica digital. Valencia: Tirant lo Blanch, 2025, pp. 21-54, DUMORTIER, T. L'intelligence artificielle et les droits humains : les insuffisances du cadre européen. In: Enjeux numériques - Pour un IA responsable et éthique, vol. 29, no. 1, 2025, pp. 65-69, MENECEUR, Y. Droit et intelligence artificielle : interactions et transformations. In: Realités industielles, no. 2, 2025, pp. 34-38, CAMBIEN, N., NEWTON, D. La régulation de l´intelligence artificielle: approches internationales et britanique. In: Confluence de droits – La Revue, no. 12, 2024, pp. 1-19, Corlățean, T. Artificial Intelligence and the Need for Standards and Accountability for Protecting Human Rights, Democracy and the Rule of Law. In: Jurnalul Libertății de Conștiință, vol. 12, no. 1, 2024, pp. 201-221, HUESO, L. The Council of Europe's Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law. In: Ceridap – Rivista Interdisciplinare sul Diritto delle Amministrazioni Pubbliche, vol. 5, no. 3, 2024, pp. 53-87; MIHAILOVIČ, A. Comparative analysis of the EU AI Act and the CoE framework convention on AI, human rights,

It argues that while the recently adopted national legislation is, in principle, far from being technologically neutral[15] and durable, the Framework Convention has the potential to stand the test of time and serve as a facilitator for the future deployment of AI in administrative law.
This argument will be elaborated in the following way:
First, the newly adopted Framework Convention will be briefly presented (Chapter II). Here, attention will be paid to both the obligations arising from the Framework Convention and the Convention's institutional arrangements. Additionally, a brief comparison with the recently adopted EU AI Act will be provided.

Secondly, the authors will elaborate on their argument that the Framework Convention has the potential to stand the test of time. In Chapter III, several recently adopted or proposed national laws in the field of research will be outlined. In this respect, it will be argued that these national laws have been designed as a mere reaction to the emergence of AI. Thus, these laws aim to govern the technology of the present, not the technology of the future. On the contrary, the Framework Convention was designed as being technologically neutral from the outset. Consequently, arguments will be presented to support the authors' belief that the Framework Convention can establish a durable framework for AI deployment in future administrative law. Having said this, the authors aim not only to contribute to the recent discussion of the gradual shift from an anthropocentric to an "automated" state.[16] The aim of this article is also to contribute to a much broader debate[17] about the future of administrative law and the administrative law of the future.

II. The NEW COUNCIL OF EUROPE FRAMEWORK CONVENTION

1. The Framework Convention is briefly introduced

The text of the Framework Convention is based on preparatory work undertaken by the ad hoc Committee on Artificial Intelligence (CAHAI), which was later succeeded by the Committee on Artificial Intelligence (CAI). Having taken note of the CAHAI's final paper on the "Possible elements of a legal framework on artificial intelligence, based on Council of Europe's standards on human rights, democracy and the rule of law" adopted in December 2021, the Committee of Ministers of the Council of Europe instructed the CAI to elaborate a Framework Convention on the activities within the lifecycle of artificial intelligence systems, "based on the Council of Europe's standards on human rights, democracy and the rule of law, and conducive to innovation, which can be composed of a binding legal instrument of a transversal character, including notably general common principles".[18] The Committee of Ministers also decided to allow the European Union and interested non-European states – namely Argentina, Australia, Canada, Costa Rica, the Holy See, Israel, Japan, Mexico, Peru, the United States of America and Uruguay, sharing the values and aims of the Council of Europe to participate in the negotiations. These countries joined the CAI negotiations and participated

democracy and the rule of law. In: Days of Law Rolando Quadri. Rome: Institute of Comparative Law, University "Niccolò Cusano", 2024, pp. 331-347, ZILLER, J. op. cit. etc.

15 For an outstanding outline of the concept of "technological neutrality" in law, see OJANEN, A. Technology Neutrality as a Way to Future-Proof Regulation: The Case of the Artificial Intelligence Act. In: European Journal of Risk Regulation, First View, https://doi.org/10.1017/err.2025.10024.

16 See ENGSTRON, D. The Automated State: A Realist View. In: George Washington Law Review, vol. 92, no. 6, 2024, pp. 1437–1472. Also see BUTLER, O. Algorithmic Decision-Making, Delegation and the Modern Machinery of Government. In: Oxford Journal of Legal Studies, vol. 45, no. 3, 2025, pp. 727–752.

17 See COGLIANESE, C. Administrative Law in the Automated State. In: Daedalus, vol. 150, no. 3, 2021, pp. 104–120. Also see ALMADA, M. Automated Uncertainty: A Research Agenda for Artificial Intelligence in Administrative Decisions. In: Review of European Administrative Law, vol. 16, no. 3, 2023, pp. 137-158.

18 Explanatory Report to the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, sub I.2.

in the drafting of the Framework Convention.[19] Subsequently, the text of the Framework Convention was adopted by 17 signatory states[20] in Vilnius on 5 September 2024, in both English and French versions, both of which are equal.[21]

The Framework Convention is introduced by a quite extensive Preamble that outlines the intentions of the signatory states in comprehensive terms. The Explanatory Report reveals that the text of the Framework Convention has been influenced by the efforts to balance two somewhat contradictory factors.[22] On one hand, the signatory states to the Framework Convention wished to emphasise that artificial intelligence systems offer unprecedented opportunities to protect and promote human rights, democracy and the rule of law. At the same time, the signatory states to the Framework Convention wished to acknowledge that there are serious risks and perils arising from certain activities within the lifecycle of AI.[23] In this respect, the Preamble states that the Framework Convention addresses concerns that certain activities throughout the lifecycle of AI systems may compromise human dignity and individual autonomy, human rights, democracy, and the rule of law.[24] Further, the Preamble also highlights the concerns about the risks of discrimination in digital contexts, particularly those involving AI systems, and their potential effect of creating or aggravating inequalities, including those experienced by women and individuals in vulnerable situations, regarding the enjoyment of their human rights and their full, equal and effective participation in economic, social, cultural and political affairs.[25] Furthermore, the signatory states have addressed the risk of misuse of AI systems in the Preamble, stating their intention to avoid any use of such systems for repressive purposes that violate international human rights law, including through arbitrary or unlawful surveillance and censorship practices that erode privacy and individual autonomy.[26] Consequently, the Preamble sets the scene for a variety of legally binding obligations contained in the Framework Convention that aim to ensure that the activities within the lifecycle of AI systems that have the potential to interfere with the respect for human rights, the functioning of democracy, or the observance of rule of law in both the public and private sectors are in full compliance with this Framework Convention.[27]

The Framework Convention represents the very first binding instrument of international law, addressing the challenges and risks associated with the emergence of AI. The Convention is open for signature by the member states of the Council of Europe, non-member states that have participated in its elaboration, and the European Union.28 The Framework Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five signatory states, including at least three member states of the Council of Europe, have expressed their consent to be bound by this Convention.[29]

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19 Explanatory Report, sub I.3.
20 Andorra, Canada, European Union, Georgia, Iceland, Israel, Japan, Liechtenstein, Montenegro, Norway, Republic of Moldova, San Marino, Switzerland, Ukraine, United Kingdom, United States of America and Uruguay.
21 Framework Convention, Art. 36 in fine.
22 Explanatory Report, sub 10.
23 ibid.
24 Framework Convention, Preamble.
25 ibid.
26 ibid.
27 Explanatory Report, sub 11.
28 Framework Convention, Art. 30.1.
29 ibid, Art. 30.3.

2. A new framework for intelligent robots in administrative law

The scope of application of the newly adopted Framework Convention has been delimited as follows: it applies to activities throughout the lifecycle of AI systems.[30] However, only those AI systems are covered that "have the potential to interfere with human rights, democracy, and the rule of law."[31] In this respect, the Framework Convention primarily applies to the activities within the lifecycle of artificial intelligence systems undertaken by public authorities, or private actors acting on their behalf.[32] Consistent with earlier recommendations, as issued[33] by the Council of Europe, the Explanatory Report interprets the term "public authority" as "any entity of public law of any kind or any level (including supranational, State, regional, provincial, municipal, and independent public entity."[34] Thus, any use of AI systems in administrative decision-making by public authorities vis-à-vis individuals will fall within the scope of the newly adopted Framework Convention. Having said this, the Framework Convention goes even further, extending its application to cases in which AI systems used by private actors may interfere with human rights, democracy, and the rule of law.[35] However, while any deployment of AI systems in administrative decision-making undertaken by public authorities vis-à-vis individuals is governed by the regime established by the Framework Convention, the regime governing the use of AI by private actors is far more lenient.[36] Thus, one may argue that the focus of the Framework Convention is primarily on the relationship between the public authorities and individuals.

Having said this, the Framework Convention will represent a primary instrument governing recent efforts to deploy AI in administrative decision-making. The expected benefits of introducing AI into administrative decision-making are to speed up, simplify, reduce the cost, and streamline administrative processes.[37] At the same time, the deployment of AI in administrative decision-making aims to reduce the administrative burden on both public administration and citizens. This is to be achieved by linking automated systems to public records and databases, which should enable these systems to have immediate access to the information and documents needed for decision-making (without the need to request these documents from the persons concerned or to have them obtained by officials in the course of their official duties).[38] However, the potential benefits of automated management should not be limited to speeding up, simplifying, reducing costs, and streamlining administrative processes. The implementation of automation in administrative management should also ensure uniform application practices by eliminating arbitrariness and other individual errors.[39] In this respect, the Framework Convention provides for umbrella rules, as applicable for any future deployment

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30 ibid, Art. 2 ("AI system" means a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations or decisions that may influence physical or virtual environments).

31 ibid, Art. 3.1.

32 ibid, Art. 3.1.a.

33 See Recommendation No. R (84) 15 of the Committee of Ministers to member States Relating to Public Liability of 18 September 1984.

34 Explanatory Report, sub 28.

35 Framework Convention, Art. 3.1.b.

36 ibid (to ensure legal certainty and transparency, each state party is obliged to set out in a declaration how it intends to meet the obligation set out in this paragraph, either by applying the principles and obligations set forth in Chapters II to VI of the Framework Convention to activities of private actors or by taking other appropriate measures to fulfil the obligation set out in this paragraph. For state parties that have chosen not to apply the principles and the commitments of the Framework Convention in relation to activities of other private actors, the Convention expects the approaches of those state parties to develop over time as their approaches to regulate the private sector evolve).

37 See ROEHL, U. Understanding Automated Decision-Making in the Public Sector: A Classification of Automated, Administrative Decision-Making. In: JUELL-SKIELSE, G., ÅKESSON, M., LINDGREN, I. (eds), Service Automation in the Public Sector. Concepts, Empirical Examples and Challenges. London: Springer, 2022, pp. 35-63.

38 ibid.

39 ibid.

of AI in decision-making "undertaken by public authorities, or private actors acting on their behalf."[40]

In this respect, the Framework Convention sets out principles and obligations that state parties must implement when deploying AI systems in administrative decision-making. Two general obligations are provided. Firstly, the obligation of the state parties to protect human rights, as enshrined in applicable international law and in their domestic law, is provided.[41] Secondly, the Framework Convention imposes an obligation on state parties to maintain measures to ensure that artificial intelligence systems are not used to undermine the integrity, independence, and effectiveness of democratic institutions and processes, including the principle of the separation of powers, respect for judicial independence, and access to justice.[42] In parallel to these general obligations, the Framework Convention also establishes general common principles that each state party shall implement regarding artificial intelligence systems, in a manner appropriate to its domestic legal system. These principles are as follows:

- **human dignity and individual autonomy**: each state party shall adopt or maintain measures to respect human dignity and personal independence in relation to activities within the lifecycle of AI systems;[43]
- **transparency and oversight**: each state party shall adopt or maintain measures to ensure that adequate transparency and oversight requirements tailored to the specific contexts and risks are in place in respect of activities within the lifecycle of AI systems;[44]
- **accountability and responsibility**: each state party shall adopt or maintain measures to ensure accountability and responsibility for adverse impacts on human rights, democracy and the rule of law resulting from activities within the lifecycle of AI systems;[45]
- **equality and non-discrimination**: each state party shall adopt or maintain measures with a view to ensuring that activities within the lifecycle of AI systems respect equality, including gender equality, and the prohibition of discrimination, as provided under applicable international and domestic law;[46]
- **privacy and personal data protection**: each state party shall adopt or maintain measures to ensure that, with regard to activities within the lifecycle of AI systems, privacy rights of individuals and their personal data are protected, including through applicable domestic and international laws, standards and frameworks and adequate guarantees and safeguards have been put in place for individuals;[47]
- **reliability**: each state party shall take, as appropriate, measures to promote the reliability of AI systems and trust in their outputs, which could include requirements related to adequate quality and security throughout the lifecycle of AI systems.[48]

Lastly, the Framework Convention also provides for a general principle of safe innovation.[49] In this respect, the Convention imposes an obligation on state parties to establish controlled environments for the development, experimentation, and testing of AI systems under the supervision of their competent authorities. Thus, the Framework Convention explicitly obliges the state parties to foster prospective innovations in this field and to contribute to the innovation by establishing an appropriate administrative environment.[50] One approach to achieve these

[40] Framework Convention, Art. 3.1.a.
[41] ibid, Art. 4.
[42] ibid, Art. 5.
[43] ibid, Art. 7.
[44] ibid, Art. 8.
[45] ibid, Art. 9.
[46] ibid, Art. 10.
[47] ibid, Art. 11.
[48] ibid, Art. 12.
[49] ibid, Art. 13.
[50] Explanatory Report, sub 92.

goals is, for instance, regulatory sandboxes that aim to foster innovation, provide legal certainty and enable regulatory learning. Other approaches include exceptional regulatory guidance or no-action letters to clarify how regulators will approach the design, development, or use of artificial intelligence systems in novel contexts.

3. The Framework Convention and the EU AI Act

As is well known, the Framework Convention is not the only instrument designed to regulate artificial intelligence. In 2024, the EU Regulation on Artificial Intelligence (AI Act) was adopted. To provide a comprehensive understanding of the Framework Convention, it is beneficial to compare these two, at first glance, very similar instruments. Let us begin with the similarities. Both instruments are grounded in a shared concern – ensuring that the use of artificial intelligence systems complies with the protection of fundamental rights, democratic principles, and the rule of law. From the very beginning, an intensive exchange of views and consultations among the institutions involved was reflected in the final form of both documents. Therefore, it can be said that the same overarching purpose and objectives guide them.[51]

Despite certain similarities, there are also considerable differences between the two instruments. The first fundamental difference between the AI Act and the Framework Convention lies in the institution adopting the instrument. The AI Act is a legal act of the European Union, whereas the Convention is an initiative of the Council of Europe. Even at this level, it becomes apparent that the competences and scope of authority of the two institutions are defined differently. The competences of the Council of Europe are derived from its Statute, which provides that the organisation's objective is "to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and to facilitating their economic and social progress."[52] This provision establishes a broad and flexible mandate, enabling the Council of Europe to engage in a wide range of activities and address emerging challenges across various domains. This flexibility in competences is directly reflected in the drafting of the Framework Convention. Its provisions are intentionally general, focusing on principles and values rather than prescriptive rules, thereby granting member states significant discretion in interpreting and implementing them. In practice, this approach allows the Convention to adapt to diverse national contexts and evolving societal challenges, ensuring that its guiding principles remain relevant and practical across the broad spectrum of issues related to artificial intelligence and beyond.[53]

The second fundamental distinction between the AI Act and the Framework Convention concerns the scope of their respective addressees and the degree of their legal binding force. As a regulation, the AI Act is directly applicable and legally binding upon all EU member states as well as on entities operating within the Union's internal market. However, its effects are not limited to the EU. Its regulatory reach extends extraterritorially since the AI Act also applies to entities outside the EU if they place AI systems on the EU market or use them to provide services to EU citizens.[54] The regulation further emphasises the protection of affected persons in the Union, reinforcing the principles of accountability and transparency in the use of AI systems.[55] The AI Act thus establishes a comprehensive framework that integrates manufacturers, providers, distributors, and end-users to ensure the safe and ethically responsible deployment of AI technologies. In contrast, the Framework Convention adopts an

[51] ZILLER, J., Op. cit, p. 202.
[52] Statute of the Council of Europe, Art. 1.
[53] See ROTENBERG, M. Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law. In: International Legal Materials, vol. 64, no. 3, 2025, p. 859.
[54] AI Act, Art. 2.
[55] ibid

open and universal approach. It is open for signature not only by the member states of the Council of Europe, but also by other countries, regardless of their participation in the drafting process. The Framework Convention aims to become a global normative instrument, ensuring that the life cycle of AI systems is consistent with the principles of human rights, democracy, and the rule of law, regardless of territorial boundaries. This openness reflects its ambition to promote a cooperative, principle-based governance framework.

The third, and arguably one of the most significant, distinction between the AI Act and the Framework Convention concerns the legal nature of the instruments and their respective modalities of application.[56] The AI Act, as a regulation of the European Union, is directly binding upon all Member States without the need for transposition into national law.[57] It imposes specific legal obligations on both providers and users of artificial intelligence systems. It establishes mechanisms for oversight, accountability, and procedural control, with the objective of harmonising rules and ensuring the uniform functioning of the EU internal market. In contrast, the Framework Convention is an international treaty that only acquires binding force upon ratification by individual states.[58] Although it was adopted by the European Union and signed upon adoption, rendering it theoretically applicable to all member states, its practical effectiveness depends on each state's ratification process and domestic legal framework.

III. INTELLIGENT ROBOTS NEED A TECHNOLOGICALLY NEUTRAL LAW

The Framework Convention was adopted during a period when the deployment of AI into administrative decision-making was reflected in a myriad of national legal frameworks. The Framework Convention aims to address the spontaneous emergence of national AI legislation and to establish common fundamental principles. The fact is, however, that there has been a grave difference between the concept of the newly adopted national laws and that of the Framework Convention. This difference can be demonstrated in the following examples.

Since 2017, fully automated administrative acts have been regulated in the Federal Republic of Germany. Here, the Federal Administrative Procedure Act provides the following provision, governing the deployment of AI in administrative decision-making:

§ 35a - Fully automated issuance of an administrative act

An administrative act may be issued entirely by automatic means, provided that this is permitted by law and there is no discretion or scope for assessment.

This provision encompasses both positive and negative aspects of AI deployment in German administrative proceedings. In this respect, AI can only be deployed when a special act enables it. Secondly, fully automated issuance of an administrative act is not allowed when administrative discretion is required. In this respect, the wording of the provision refers to two types of administrative discretion, which have been traditionally distinguished in German administrative law scholarship – discretion (Ermessen) and scope of assessment (Beurteilungsspielraum).[59] The reason for excluding AI in cases where discretion or assessment is applied lies in the current nature of AI. In other words, as of today, the AI is not considered an appropriate or reliable tool for addressing cases of administrative decision-making where a choice among several options needs to be made.

The fact is, however, that the exclusion of AI in discretionary decision-making has not been a speciality of the German legislation. Such reservations are also to be found in other recently

[56] See ELENA, C. The legal regulation of Artificial intelligence (AI) in Europe: two decisive (but insufficient) steps of the Council of Europe and the European Union. In: Cuadernos de Derecho Transnacional, vol. 17, no. 1, 2025, p. 372.

[57] Consolidated Version of the Treaty on the Functioning of the European Union, Art. 288.

[58] Framework Convention, Art. 30.

[59] See Schneider, J., Enderlein, F. Automated Decision-Making Systems in German Administrative Law. In: Ceridap - Rivista Interdisciplinare sul Diritto delle Amministrazioni Pubbliche, vol. 4, no. 1, 2023, p. 98.

discussed pieces of national legislation. In 2022, a similar provision was proposed in Estonia, providing for the following:

Section 7 - Automated administrative proceedings

(1) Provided that it does not interfere with the rights or freedoms of individuals, an administrative authority may conduct automated electronic administrative proceedings, issue an automated administrative act or other document, or perform any other automated operations through an information system without the direct involvement of an official or employee acting on behalf of the administrative authority in cases specified by law.

(2) In the case referred to in paragraph 1 of this section, the administrative authority shall ensure that:

1) Automation is in the interest of both the person and the public, as it reduces time and facilitates the administration of affairs.

2) the legal provision on which the decision is based does not provide for the use of administrative discretion (…).

Additionally, this provision excludes AI use in such cases, requiring public authorities to exercise their discretionary powers, i.e., to choose among several solutions.[60]

Lastly, the proposal for a new provision on the use of AI in administrative decision-making can be demonstrated, as it was[61] a matter of discussion in the Parliament of the Czech Republic in 2025:

§ 15a – Automatic management of administrative proceedings

(1) If the nature of the matter under consideration, the protection of the rights of the persons concerned or the protection of the public interest does not require that an official perform an act in the proceedings, the act may be performed automatically without the participation of an official. The act may not be performed in this manner if it requires the use of administrative discretion or concerns a decision on an appeal.

All pieces of national legislation, as demonstrated above, share one characteristic: they constitute ad hoc responses to the emergence of AI. These ad hoc laws don't follow a more general approach to AI in administrative law; they merely respond to AI's current stage of development. Therefore, they exclude any deployment of AI in the field of administrative discretion, as allowing the AI to decide in this field seems too risky as of today.[62] While this approach may seem rational today, it does not reflect the current dynamics of AI development. Very probably, AI will serve as an effective tool for administrative discretion in the coming years, contributing to the efficiency and transparency of administration.[63] However, from this viewpoint, the national legislation outlined above will represent an obstacle rather than a platform for the prospective deployment of AI.

The newly adopted Framework Convention follows a somewhat different approach. In stark contrast to the pieces of national legislation mentioned above, the Framework Convention was designed to be technologically neutral from its outset. In this respect, the Explanatory Report

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60 See PILVING, I. Guidance-based Algorithms for Automated Decision-Making in in Public Administration: the Estonian Perspective. In: Ceridap - Rivista Interdisciplinare sul Diritto delle Amministrazioni Pubbliche, vol. 4, no. 1, 2023, pp. 68-70.

61 See SHARP, V., NEŠPOR, J., KLIMENTOVÁ, E. Automation of administrative proceedings in the Czech Republic: critical reflections on the draft "ADM amendment" to the Administrative Procedure Code. In: Studia iuridica cassoviensia, vol. 13, special issue, 2025, pp. 170-188.

62 See COVILLA, J. Artificial Intelligence and Administrative Discretion: Exploring Adaptations and Boundaries. In: European Journal of Risk Regulation, vol. 16, special issue 1, 2025, pp. 36-50.

63 See HAIM, A. Administrative Discretion in the Age of Algorithms. Conceptual and Empirical Inquiries. Dissertation submitted to the School of Law, Stanford University, 2024, p. 164. Also see MITROU, L., JANSSEN, M., LOUKIS, E. Human Control and Discretion in AI-driven Decision-making in Government. In: LOUKIS, E., MACADAR, MA. (eds) ICEGOV '21: Proceedings of the 14th International Conference on Theory and Practice of Electronic Governance. New York: Association for Computing Machinery, 2022, pp. 10-16.

highlights that the Framework Convention "reflects a broad understanding of what AI systems are, specifically as opposed to other types of simpler traditional software systems based on the rules defined solely by natural persons to execute operations automatically. It is meant to ensure legal precision and certainty, while also remaining sufficiently abstract and flexible to stay valid despite future technological developments."[64] As the signatory states of the Framework Convention sought to establish a universal and flexible framework capable of addressing future technological developments, they have also made no reservations regarding the deployment of AI within their administrative discretion. Thus, in contrast to several recent national laws governing AI use in administrative decision-making, the Framework Convention, in principle, allows the deployment of AI when administrative discretion is granted. Consequently, both general obligations and basic common principles, as provided by the Framework Convention, will also be applicable in these cases.

As a technologically neutral instrument, the Framework Convention neither imposes an obligation nor prohibits the deployment of AI in administrative discretion. Thus, any prospective deployment of AI in administrative discretion will be in line with the regime of the Framework Convention. However, any such deployment will need to respect the general common principles, as provided by the Framework Convention. With respect to the transparency principle[65], any such deployment must be based on written law, and the use of AI in discretion must be disclosed to the addressee of administrative proceedings in advance. Having said this, the Framework Convention is generally open to the deployment of AI in all cases where administrative discretion is anticipated. However, one may expect that at the same time, AI will be deployed only in easier cases of administrative discretion in the first stages. Decision-making about the routine penalties in road traffic may represent a salient example. At the same time, the oversight principle will be applicable, as each use of AI in administrative proceedings will require human control, particularly in the form of judicial review. The application of the oversight principle in this field must take into consideration that while the deployment of AI in cases of administrative discretion may contribute to higher efficiency in public administration, such application must also be free of any discrimination and biases. Lastly, a robust system of accountability[66] must accompany each case, where AI will be deployed in administrative decision-making with discretion in the future.

Having said this, one also needs to bear in mind that there have already been legal frameworks that allow the deployment of AI in administrative discretion today. Currently, this is the case of the Spanish legislation.[67] Here, Act No. 40/2015 (Ley 40/2015, de 1 de octubre, de Régimen Jurídico del Sector Público), which provides the following:

Article 41. Automated administrative action.

1. Automated administrative action is understood to be any decision or action carried out entirely by electronic means by a public administration within the framework of an administrative procedure, and in which a public employee has not been directly involved.

2. In the case of automated administrative action, the competent body or bodies −as appropriate− shall be established in advance for the definition of the specifications, programming, maintenance, supervision and quality control and, where applicable, auditing of the information system and its source code. It shall also indicate the body to be held responsible for the appeal.

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64 Explanatory Report, sub 24.

65 Framework Convention, Art. 8.

66 ibid, Art. 9.

67 See GAMERO CASADO, E. Automated Decision-Making Systems in Spanish Administrative Law. In: Ceridap - Rivista Interdisciplinare sul Diritto delle Amministrazioni Pubbliche, vol. 4, no. 1, 2023, pp. 26-38.

This example of Spanish legislation may serve as a paradigm for prospective legal frameworks in other European jurisdictions. While it allows the deployment of AI in administrative discretion, it also provides for limits on such deployment.

At this place, the authors would like to highlight that the technologically neutral stance of the Framework Convention represents a significant contribution of this newly adopted instrument of international law to the prospective deployment of AI in administrative law. While the national laws, adopted very recently across various jurisdictions, will need to be amended and updated as technological developments evolve, the text of the Framework Convention has the potential to become a stable and reliable source of law in the future.

IV. CONCLUSIONS

Administrative law has entered the era of AI. New legal frameworks have emerged at the national level, attempting to govern prospective deployment of AI in administrative decision-making. The fact is, however, that these newly adopted or recently proposed pieces of legislation constitute ad hoc law. While they respond to the emergence of AI, they, in principle, fail to establish a durable legal framework for its further development. Such an approach starkly contrasts with the prospective benefits AI may bring to transparency and the efficiency of administrative decision-making.

Having said this, the newly adopted Framework Convention follows an opposite approach. From its inception, the Framework Convention has taken a technologically neutral stance, being flexible enough to respond to future developments in AI. Thus, unlike the recently adopted national laws, the Framework Convention has been designed to stand the test of time. The provisions of the newly adopted Framework Convention are flexible enough to cover prospective technological developments in the dynamic field of AI.

Intelligent robots that will be prospectively deployed in public administration need a technologically neutral legislation – that is, legislation capable of responding to the very dynamic developments. The Framework Convention has the potential to become such legislation in the future and to establish a transparent and predictable framework for the responsible deployment of AI in administrative law.

KEY WORDS

Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law; technology neutrality

KLÍČOVÁ SLOVA

Rámcová úmluva Rady Evropy o umělé inteligenci a lidských právech, demokracii a právním státu; technologická neutralita

BIBLIOGRAPHY

1. ALMADA, M. Automated Uncertainty: A Research Agenda for Artificial Intelligence in Administrative Decisions. In: Review of European Administrative Law, vol. 16, no. 3, 2023, pp. 137-158, https://doi.org/187479823X16970258030172 ;
2. Aura y Larios de Medrano, A. La regulación de la inteligencia artificial en el ámbito internacional: la Recomendación de la UNESCO, el Convenio del Consejo de Europa y el Reglamento de la UE. In: ESPERANZA, F., ROSA, P. (eds), Nuevas fronteras : el derecho y las humanidades ante la revolución tecnológica digital. Valencia: Tirant lo Blanch, 2025, pp. 21-54, ISBN: 978-84-10811-53-9 ;

3. BUTLER, O. Algorithmic Decision-Making, Delegation and the Modern Machinery of Government. In: Oxford Journal of Legal Studies, vol. 45, no. 3, 2025, pp. 727–752, https://doi.org/10.1093/ojls/gqaf018 ;
4. CAMBIEN, N., NEWTON, D. La régulation de l'intelligence artificielle: approches internationales et britanniques. In: Confluence de droits – La Revue, no. 12, 2024, pp. 1-19 ;
5. COGLIANESE, C. Administrative Law in the Automated State. In: Daedalus, vol. 150, no. 3, 2021, pp. 104–120, https://doi.org/10.1162/daed_a_01862 ;
6. Corlățean, T. Artificial Intelligence and the Need for Standards and Accountability for Protecting Human Rights, Democracy and the Rule of Law. In: Jurnalul Libertății de Conștiință, vol. 12, no. 1, 2024, pp. 201-22 ;
7. COVILLA, J. Artificial Intelligence and Administrative Discretion: Exploring Adaptations and Boundaries. In: European Journal of Risk Regulation, vol. 16, special issue 1, 2025, pp. 36-50, https://doi.org/10.1017/err.2024.76 ;
8. DUMORTIER, T. L'intelligence artificielle et les droits humains: les insuffisances du cadre européen. In: Enjeux numériques – Pour une IA responsable et éthique, vol. 29, no. 1, 2025, pp. 65-69, https://doi.org/10.3917/ennu.029.0065 ;
9. ELENA, C. The legal regulation of Artificial Intelligence (AI) in Europe: two decisive (but insufficient) steps of the Council of Europe and the European Union. In: Cuadernos de Derecho Transnacional, vol. 17, no. 1, 2025, pp. 366-380, https://doi.org/10.20318/cdt.2025.9334 ;
10. ENGSTRON, D. The Automated State: A Realist View. In: George Washington Law Review, vol. 92, no. 6, 2024, s. 1437–1472 ;
11. GAMERO CASADO, E. Automated Decision-Making Systems in Spanish Administrative Law. In: Ceridap - Rivista Interdisciplinare sul Diritto delle Amministrazioni Pubbliche, vol. 4, no. 1, 2023, pp. 26-38, https://doi.org/10.13130/2723-9195/2023-1-119 ;
12. HAIM, A. Administrative Discretion in the Age of Algorithms. Conceptual and Empirical Inquiries. Dissertation submitted to the School of Law, Stanford University, 2024, https://purl.stanford.edu/rd297wm2686 ;
13. HANDRLICA, J. The Dawn of Automation in Administrative Procedural Law in the Czech Republic. In: Bratislavské právnické fórum 2025 - Využívanie umelej inteligencie pri rozhodovaní vo verejnej správe. Bratislava: Univerzita Komenského, Právnická fakulta, 2025, s. 5-12.
14. HUESO, L. The Council of Europe's Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law. In: Ceridap – Rivista Interdisciplinare sul Diritto delle Amministrazioni Pubbliche, vol. 5, no. 3, 2024, pp. 53-87, https://doi.org/10.13130/2723-9195/2024-3-31 ;
15. MENECEUR, Y. Droit et intelligence artificielle : interactions et transformations. In: Réalités industrielles, n° 2, 2025, pp. 34-38, https://doi.org/10.3917/rindu1.252.0034 ;
16. MIHAILOVIČ, A. Comparative analysis of the EU AI Act and the CoE framework convention on AI, human rights, democracy and the rule of law. In: Days of Law Rolando Quadri. Rome: Institute of Comparative Law, University "Niccolò Cusano", 2024, pp. 331-347, ISBN 978-86-82582-18-2 ;
17. MITROU, L., JANSSEN, M., LOUKIS, E. Human Control and Discretion in AI-driven Decision-making in Government. In: LOUKIS, E., MACADAR, MA. (eds) ICEGOV '21: Proceedings of the 14th International Conference on Theory and Practice of Electronic Governance. New York: Association for Computing Machinery, 2022, pp. 10-16, ISBN 978-1-4503-9011-8, https://doi.org/10.1145/3494193.349419 ;

18. OJANEN, A. Technology Neutrality as a Way to Future-Proof Regulation: The Case of the Artificial Intelligence Act. In: European Journal of Risk Regulation, First View, https://doi.org/10.1017/err.2025.10024 .
19. PILVING, I. Guidance-based Algorithms for Automated Decision-Making in Public Administration: the Estonian Perspective. In: Ceridap - Rivista Interdisciplinare sul Diritto delle Amministrazioni Pubbliche, vol. 4, no. 1, 2023, pp. 51-72, https//doi.org/ 10.13130/2723-9195/2023-1-105 ;
20. ROEHL, U. Understanding Automated Decision-Making in the Public Sector: A Classification of Automated, Administrative Decision-Making. In: JUELL-SKIELSE, G., ÅKESSON, M., LINDGREN, I. (eds), Service Automation in the Public Sector. Concepts, Empirical Examples and Challenges. London: Springer, 2022, pp. 35-63, ISBN 978-3-030-92643-4, https://doi.org/10.1007/978-3-030-92644-1_3 ;
21. ROTENBERG, M. Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law (Council Eur..). In: International Legal Materials, vol. 64, no. 3, 2025, pp. 859–902, https://doi.org/10.1017/ilm.2025.1
22. SEVER, T. Trends of Automated Decision-Making in the Public Sector. In: URS, N., ŠPAČEK, D., NOMMIK, S. (eds), Digital Transformation in European Public Services. Complexities, Challenges, and Good Practices. Cham: Palgrave Macmillan, 2025, pp. 25-53, https://doi.org/10.1007/978-3-031-81425-9-3 ;
23. Schneider, J., Enderlein, F. Automated Decision-Making Systems in German Administrative Law. In: Ceridap Rivista Interdisciplinare sul Diritto delle Amministrazioni Pubbliche, vol. 4, no. 1, 2023, pp. 95-115, https://doi.org/ 10.13130/2723-9195/2023-1-102 ;
24. SHARP, V., NEŠPOR, J., KLIMENTOVÁ, E. Automation of administrative proceedings in the Czech Republic: critical reflections on the draft "ADM amendment" to the Administrative Procedure Code. In: Studia iuridica cassoviensia, vol. 13, special issue, 2025, pp. 170-188;
25. ZILLER, J. The Council of Europe Framework Convention on Artificial Intelligence vs. The EU Regulation: Two Quite Different Legal Instruments. In: Ceridap – Rivista Interdisciplinare sul Diritto delle Amministrazioni Pubbliche, vol. 5, no. 4, 2024, pp. 202-227, https://doi.org/10.13130/2723-9195/2024-2-11

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AUTOMATION OF PROCESSES IN PUBLIC ADMINISTRATION IN SELECTED MEMBER STATES OF THE EUROPEAN UNION[1]

AUTOMATIZÁCIA PROCESOV VO VEREJNEJ SPRÁVE VO VYBRANÝCH ČLENSKÝCH ŠTÁTOCH EURÓPSKEJ ÚNIE

Lukáš Jančát[2]

https://doi.org/10.33542/SIC2025-S-05

ABSTRACT

The article examines the current legal status of automation of decision-making processes in public administration in eleven Member States of the European Union. Based on the analysis and comparison of the legal basis of fully automated decision-making, the legal regulation of partially automated administrative proceedings, specific institutions serving to protect the rights and legitimate interests of persons affected by automated decisions, and experiences with the implementation of automation into public administration decision-making processes in the countries studied, the author formulates recommendations that the Slovak legislator should adhere to when introducing automation into public administration decision-making processes. In light of the findings and requirements arising from Art. 2 para. 2 of the Constitution of the Slovak Republic and Art. 22 (2) (b) of the GDPR, it is recommended that the Slovak legislator establish the automation of decision-making processes in public administration on an explicit legal basis that takes into account the general limits of the admissibility of automated decision-making, while at the same time enshrining special guarantees of legality. Their purpose should be, in particular, to ensure the transparency and non-discrimination of automated decision-making, the responsibility of a specific public administration body for an automated decision, and its reviewability by a human.

ABSTRACT

Článok skúma aktuálny právny stav automatizácie rozhodovacích procesov vo verejnej správe v jedenástich členských štátoch Európskej únie. Na základe analýzy a komparácie právneho základu plne automatizovaného rozhodovania, právnej úpravy čiastočne automatizovaného administratívneho konania, osobitných inštitútov slúžiacich na ochranu práv a oprávnených záujmov osôb dotknutých automatizovaným rozhodnutím a skúseností s implementáciou automatizácie do rozhodovacích procesov verejnej správy v skúmaných štátoch autor formuluje odporúčania, ktorých by sa mal slovenský zákonodarca pri zavádzaní automatizácie do rozhodovacích procesov verejnej správy pridržiavať. Vzhľadom na zistenia a požiadavky vyplývajúce z čl. 2 ods. 2 Ústavy Slovenskej republiky a čl. 22 ods. 2 písm. b) GDPR možno slovenskému zákonodarcovi odporučiť, aby automatizáciu rozhodovacích procesov vo verejnej správe založil na explicitnom právnom základe, ktorý zohľadní všeobecné limity prípustnosti automatizovaného rozhodovania, a zároveň zakotvil osobitné záruky zákonnosti. Ich účelom by malo byť najmä zabezpečenie transparentnosti a nediskriminačnosti automatizovaného

[1] This article was prepared with the support and is the output of a research project supported by the Scientific Grant Agency VEGA no. 1/0062/25 entitled Automatization of decion-making processes in public administration.

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rozhodovania, zodpovednosti konkrétneho orgánu verejnej správy za automatizované rozhodnutie a jeho preskúmateľnosti človekom.

I. INTRODUCTION

The 2030 Digital Transformation Strategy for Slovakia declares that by 2030 the Slovak Republic will become a modern country with an effective public administration ensuring smart use of the territory and infrastructure. The key to fulfilling this vision is a significant improvement of the use of data and application of methods such as impact assessment, risk analysis, automated evaluation of cases or applications or predictive planning of future public service capacities.[3]

From the perspective of a researcher examining the possibilities of automating decision-making processes in public administration[4] in Slovakia, it is encouraging that the national strategic document envisions the automation of case and application assessments as one of the methods for realizing Slovakia's digital transformation vision by 2030. What is less pleasing, however, is that the fulfillment of this vision has not yet been translated into significant legislative changes since the adoption of the strategy in 2019.

De lege lata, the legal order of the Slovak Republic does not regulate any administrative proceedings in which the process, including the issuance of an individual administrative act, would be fully automated,, i.e., conducted without human intervention by a public administration official.[5] In the absence of a legal basis for fully automated decision-making processes, only the automation of part of the administrative procedure is currently permissible in the Slovak Republic,[6] which is also limited by the principle of legality expressed in Art. 2 para. 2 of the Constitution of the Slovak Republic[7].[8] Even when automating only some actions within the administrative procedure, public administration bodies should therefore proceed cautiously and base their automation initiative on a sufficiently clear legal basis.

Despite the legislature's passivity in implementing automated decision-making in administrative proceedings, it should be noted that in some areas of public administration, automated tools, including elements of artificial intelligence, are already being used for other purposes. Examples include algorithms of the Financial Administration of the Slovak Republic, such as the TAXANA chatbot, the eKasa real-time sales and cash receipts recording system, or the AIS-R machine learning algorithm for assessing the risk of VAT fraud. The latter two systems in particular have recently resonated in Slovak legal discourse. In connection with their implementation, which serves to automatically assess the riskiness of entrepreneurs within the framework of financial administration, the Constitutional Court of the Slovak Republic identified their constitutional incompatibility due to the lack of a legal basis, regardless of

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3 Ministry of Investments, Regional Development and Informatization of the Slovak Republic, 2025. MIRRI homepage. Online. Available at: https://mirri.gov.sk/wp-content/uploads/2019/10/SDT-English-Version-FINAL.pdf. [cited 2025-08-26]. See p. 26 and p. 31.

4 By the automation of decision-making processes in public administration, we understand procedures leading to administrative actions, including the issuance of an individual administrative act, where elements of the procedure are either fully or partially carried out without direct human intervention by means of sophisticated computer software, including artificial intelligence (AI) tools. A similar definition is provided by HOFMANN, H. C. H.**:** Comparative Law of Public Automated Decision-Making. An Outline**.** In**:** CERIDAP**,** 2023**,** No. 1**,** p. 1-12.

5 In the Slovak general regulation on administrative procedure there is no mention of the possibility of automating administrative procedures. See Slovak Administrative Procedure Code (zákon č. 71/1967 Zb. o správnom konaní (správny poriadok) v znení neskorších predpisov).

6 JAKAB, R.: National Report on Automation in Decision-Making in Public Administration in Slovakia. In: ACTA UNIVERSITATIS CAROLINAE, Vol. 70, 2024, No. 2, pp. 147-157.

7 Ústava č. 460/1992 Zb. Ústava Slovenskej republiky v znení neskorších predpisov.

8 According to Art. 2 para. 2 of the Constitution of the Slovak Republic: "State bodies may act only on the basis of the Constitution, within its limits and to the extent and in the manner established by law.".

whether the result of the automated assessment of an individual's riskiness was a decision or inaction of a public administration body.[9]

It seems that, unlike the Slovak Republic, some European Union Member States are technologically and legally one step further in introducing automated decision-making processes in public administration.[10] Based on this preliminary observation, the author of this article poses the following research question: "What is the current legal status of administrative process automation in selected Member States of the European Union?".

In response to this question, the author formulates the following two objectives of the article.

The first objective is to examine the current legal status of process automation in public administration in selected EU Member States, with a focus on the automation of administrative proceedings. Particular emphasis is placed on determining whether the given Member State has, within its legal system:

- a legal basis for issuing fully automated decisions in administrative proceedings;
- provisions for partially automated administrative proceedings;[11]
- specific institutions established to protect the rights and legitimate interests of individuals affected by automated decisions, especially in the context of the requirements arising from Art. 22 (2) (b) GDPR[12].[13]

Additionally, as part of achieving the first objective, the article aims to present examples of process automation in public administration in selected EU Member States, including examples of fully automated administrative proceedings, and to highlight potential legal issues associated with the implementation of such automation.

It is anticipated that achieving this objective will provide an informative source of knowledge for examining the conditions for automating processes in public administration in Slovakia. Identified positive, but particularly negative, experiences from other Member States may also serve as a cautionary guide for the Slovak legislator.

The second objective of the article is, building on this premise, to formulate basic recommendations that the Slovak legislator should follow when introducing automation into public decision-making processes.

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9 Nález ÚS SR z 10. novembra 2021, PL. ÚS 25/2019 (5/2021), point 26, 122, 123, 124 and 147. See also JuLIA, 2025. julia-project homepage. Online. Available at: https://www.julia-project.eu/sites/default/files/2025-05/Final% 20Handbook_%20AI%20and%20Public%20Administration_%20The%20%28legal%29%20limits%20of%20algorithmic%20governance.docx.pdf. [cited 2025-08-26], p. 91.

10 Artificial Intelligence and Administrative Law. Comparative study on administrative law and use of artificial intelligence and other algorithmic systems in administrative decision-making in the Member States of the Council of Europe. Strasbourg: Council of Europe, 2022, p. 43.

11 In the article, the term "semi-automated administrative procedure" or "semi-automated administrative decision-making" will be used synonymously with the term "partially automated administrative procedure".

12 Art. 22 (2) (b) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) provides for an exception to the prohibition of automated individual decision-making based solely on automated processing of personal data which produces legal effects concerning the data subject or similarly significantly affects him or her, consisting in the existence of a legal basis for the automated decision in EU law and in the national law of an EU Member State, provided that appropriate measures are also laid down to safeguard the rights and freedoms and legitimate interests of the data subject. In general, on the scope of Art. 22 GDPR and the nature of the exceptions arising from para. 2, see MESARČÍK, M.: E-government a umelá inteligencia. In: Andraško, J. a kol. Regulačné výzvy e-governmentu v Slovenskej republike v kontexte práva Európskej únie. Praha: Wolters Kluwer ČR, 2022, pp. 328-330, and in connection with the national law of a Member State, e.g. GREGA, R. – KOVAČ, P.**:** The Role of Automated Decision-Making in Modern Administrative Law: Challenges and Data Protection Implications**.** In**:** Central European Public Administration Review, 22(2), pp. 83–108.

13 In the article, the term "specific/special guarantees of legality" or “specific/special safeguards of legality” will be used synonymously with the term "specific institutions established to protect the rights and legitimate interests of individuals affected by automated decisions".

In terms of research methodology, general scientific methods typical of legal science will be used. The dominant method is the text analysis of scientific articles published mainly in the Scopus and Web of Science databases, as well as analytical documents of intergovernmental organizations, especially the Council of Europe, which in recent years have mapped the legal status of automation of decision-making processes in the public administration of EU Member States. The analysis also includes the effective legal regulations of the Member States, especially their administrative procedural rules.

The EU Member States studied include, on the one hand, the countries neighboring Slovakia – the Austria, Czech Republic, Hungary and Poland – due to their geographical and administrative-legal proximity, and, on the other hand, the more technologically advanced countries, given the available EU data comparing the degree of digitalization of public services,[14] such as Estonia, France, Germany, Italy, Latvia, Spain, Sweden. In addition to the analytical method, the method of synthesis of acquired knowledge, the comparative method for identifying differences in legal regulations, as well as the abstraction method, focused on selecting relevant parts of the analyzed literature and legal regulations, is also used. At the conclusion of the research, the generalization method is applied in formulating generalizing recommendations for the Slovak legislator.

II. CURRENT LEGAL STATUS OF PROCESS AUTOMATION IN PUBLIC ADMINISTRATION IN SELECTED EU MEMBER STATES

1. Austria

In Austria, since the 1980s, thanks to the jurisprudential activity of the Austrian Constitutional Court, there has been a settled legal opinion on the impossibility of issuing a fully automated decision according to the general rules of administrative procedure,[15] unless a special law provides otherwise. The reason for this is the requirement that the authority to which an individual administrative act is legally attributable and which is responsible for it is also actually able to exercise decisive influence on the computer-supported process of issuing the act.[16] Based on the above postulate, Austrian courts have established in their practice that while a purely automated decision by a public administration body is inadmissible,[17] Thus, a decision that is issued by automated means, but whose sending is approved by an authorized person, is admissible.[18] Examples of exceptions to the above rule under special laws include fully automated decisions issued by the tax authorities on late tax payments or annual income tax adjustments, as well as decisions of public administration bodies granting study scholarships based on submitted applications without the need for further fact-finding.[19]

In Austrian conditions, the legality and protection of the procedural rights of participants in automated administrative proceedings is fundamentally ensured only by traditional guarantees of legality.[20] The automation of decision-making processes in the field of public administration in Austria is therefore limited mainly by cases requiring the discretion of the public administration body and the need to ensure the fundamental procedural rights of the parties to

[14] See, for example, the eGovernment Benchmark (EC/Capgemini), which annually compares EU member states in 4 areas (User centricity, Transparency, Key enablers, Cross-border services). Available online: https://www.capgemini.com/wp-content/uploads/2024/07/eGovernment-Report-2024.pdf. [cited 2025-09-29], p. 16.

[15] At the federal level, the General Administrative Procedure Act (Allgemeines Verwaltungsverfahrensgesetz (AVG)) regulates these, with the federal states essentially referring to its use even in matters that fall within their state jurisdiction.

[16] VfSlg 11.590/1987.

[17] VwSlg 18.949 A/2014.

[18] VwSlg 19.196 A/2015.

[19] MERLI, F.: Automated Decision-Making Systems in Austrian Administrative Law. In: CERIDAP, 2023, No. 1, pp. 42-43.

[20] Merli, in the absence of specific ex ante guarantees of legality in Austria, expresses the need, at least in some areas, to adopt ex ante rules for quality control of algorithms used in decision-making processes in public administration. Ibid., p. 48.

the proceedings, such as the right to an oral hearing, the right to state the reasons for the decision, or the right to an effective remedy.[21] However, it is important to note that, for example, the right to an oral hearing or the right to state the reasons for the decision are not absolute rights. For example, automation of administrative proceedings, including full automation of the decision-making process, will therefore be permissible without ordering an oral hearing in proceedings in which the facts will be properly established only from the proposed or acquired supporting documents for the decision before its formal commencement and the party to the proceedings will be fully satisfied[22] or if the decision is unfavorable to him, there is a public interest in restricting this right in a proportionate manner.[23] A similar situation exists with the right to state the reasons for the decision, the restriction of which is permissible if a positive decision is issued to a party to the proceedings. In this context, the Austrian Supreme Administrative Court highlighted[24] that if a statement of reasons for a decision is required, the fact that it was issued by an automated system with insufficient capacity to produce it does not excuse its poor quality. "Black box" AI algorithms are therefore inadmissible under Austrian law in public administration decision-making processes.[25]

2. Czech Republic

The legal status of administrative procedure automation in the Czech Republic is currently at a similar level to that in Slovakia. The current wording of the Czech Administrative Procedure Code[26] does not contain any provision that would discuss the automation of administrative proceedings. Moreover, unlike the Slovak general administrative procedure regulation, the Czech regulation contains a provision[27] stipulating that acts of an administrative authority in proceedings are performed by officials authorised under the internal regulations of the public administration authority or by those entrusted by the head of that authority.[28] Such a link between the execution of individual acts of administrative proceedings and a person represents a fundamental limit to the automation of administrative proceedings in Czech conditions.[29]

In the absence of a general legal basis for automated decision-making in public administration, the Czech legal system contains only isolated provisions of special laws that allow the automation of part of the administrative procedure, or certain acts or activities. However, these provisions do not generally apply to the resulting expression of the will of the

[21] On the extent of the need to ensure these guarantees in administrative proceedings, see JANČÁT, L.: Právo na spravodlivý proces podľa Dohovoru a judikatúry ESĽP v Slovenskej republike. Vysokoškolská učebnica. Kosice: ŠafárikPress, 2024, p. 120., or HAMUĽÁKOVÁ, Z.: Právo na spravodlivý proces v kontexte automatizovaných rozhodnutí vo verejnej správe. In: MASLEN, M: Elektronizácia a digitalizácia verejnej správy. Typi Universitatis Tyrnaviensis, Trnava 2024. pp. 8-24.

[22] This applies, for instance, to proceedings initiated on the basis of a tax return or to the aforementioned proceedings concerning the award of a study grant.

[23] These include, for example, cases of administrative punishment of traffic offenses, where the facts are properly established on the basis of photographic or camera recordings of violations of road traffic rules, while proportionality is ensured by the offender's right to file an appeal without substantive justification within a specified period, which results in the cancellation of the decision issued without the opportunity to comment on the matter and the continuation of the proper course of administrative proceedings.

[24] VwSlg 11.728/1985.

[25] MERLI, F.: Automated Decision-Making Systems in Austrian Administrative Law. In: CERIDAP, 2023, No. 1, pp. 44-45.

[26] Zákon č. 500/2004 Sb. Zákon správni řád v znení neskorších predpisov.

[27] § 15 para. 2 of the Czech Administrative Code.

[28] In addition, similarly to Slovakia, the Czech Administrative Procedure Code also links the issuance of a decision to the actions of an authorized person who signs its execution. Compare § 69 para. 1 of the Czech Administrative Procedure Code and § 47 para. 5 of the Slovak Administrative Procedure Code.

[29] HANDRLICA, J.: Automatizace v rozhodování správních orgánu: Fatamorgána, nebo realita budoucnosti?. In: Správni právo, 2024, No. 6-7, p. 421.

public administration executive.[30] For example, Czech public administration authorities may exercise their powers, with the exception of issuing decisions, in a manner based on automated processing of personal data; they may obtain data from public registers or records in an automated manner; in proceedings for obtaining the qualification to perform certain health professions, they may deliver decisions via an automated system of communication with the addressee of the public administration; in matters of pension insurance, authorized officials may draw up a decision using automated means in the international alphabet with a pre-printed stamp, name, surname and function of the employee responsible for issuing the decision; and in matters of state social support, a similar regime operates, which, however, only concerns notifications and other documents, not the decision itself.[31]

At this point, it should be noted that the prospect of changing the status quo is on the horizon in the Czech Republic. The Czech legislature is currently discussing a bill in its third reading, which would, among other things, enshrine an explicit legal basis for fully automated decision-making directly into the Czech Administrative Procedure Code.[32] The proposed provision of Section 15a should allow for the performance of any act of administrative procedure automatically, without the participation of an official, unless this is contrary to the nature of the matter under consideration, the protection of the rights of the persons concerned or the protection of the public interest.

The draft law stipulates that the limit to the possibility of performing an automated action will always be the need to apply proper reasoning or the case of deciding on a remedy. The amendment further assumes that if the requirements of an act include the signature of an official - which also applies to a decision - this requirement is either not required in the case of automation, or in the case of an electronic form of written documentation, the integrity and origin of the data is ensured. If additional data about an official should also be part of an automated action, only the information that the action was performed in an automated manner without the participation of an official should be provided.

De lege lata, as well as de lege ferenda, there are no special institutions in the Czech legal system aimed at contributing to the protection of the rights and freedoms of data subjects in connection with the automation of administrative proceedings. Their protection is, or should be, ensured in Czech conditions by traditional guarantees of legality also applied in administrative proceedings conducted by an official.

3. Estonia

Surprisingly, although Estonia is known for its successful implementation of digital solutions in both the private[33] and public sectors,[34] the automation of decision-making processes in public administration has not yet become one of these success stories.[35] The Estonian e-

[30] STAŠA, J.: Očekávaní a obavy spojené s automatizací správního rozhodování.. In: MASLEN, M: Elektronizácia a digitalizácia verejnej správy. Typi Universitatis Tyrnaviensis, Trnava 2024. p. 130.

[31] For individual examples and their legal basis in the Czech legal system, see Ibid., pp. 130-131.

[32] This is part of the eighth parliamentary bill amending Act amending Act No. 128/2000 Coll., on Municipalities (the Municipal Establishment), as amended, and certain other acts in connection with the support of inter-municipal cooperation (Zákon, ktorým se mení zákon č. 128/2000 Sb., o obcích (obecní zřízení), v znení neskorších predpisov, a ďalšie zákony v súvislosti s podporou spolupráce obcí).. Print of the Chamber of Deputies of the Parliament of the Czech Republic no. 845/0, 9th election period. The text of the proposal is on pp. 12 and 13, the explanatory report on pp. 36-41 of the cited press. For the status of the legislative proceedings, see: https://www.psp.cz/sqw/historie.sqw?o=9&T=845.

[33] Applications such as Skype, Wise, and Bolt have Estonian roots.

[34] More than 80 AI projects have been implemented in public administration in Estonia. Among them, for example, the State Medicines Agency's system modeling the risk of price agreements on medicines; the Estonian Tax Administration's system evaluating the risk of fraud when applying for a VAT refund, or the system used by the Unemployment Insurance Fund to assess the likelihood of an unemployed person returning to work.

[35] PILVING, I.: Guidance-based Algorithms for Automated Decision-Making in Public Administration: the Estonian Perspective. In: CERIDAP, 2023, No. 1, p. 54.

governance is not primarily based on the use of automated systems in decision-making processes, including the use of artificial intelligence, but on the effective use of information and communication technologies.[36] The topicality of this statement is not changed by the ambition of the Estonian legislator in 2022 to enshrine provisions on automated administrative proceedings in the Estonian Administrative Procedure Code (Haldusmenetlus seadus (HMS)), as a general regulation on administrative proceedings, since the amendment to the law in question had not been approved at the time of writing this article.[37]

De lege lata, the automation of administrative procedures in the HMS is not regulated. In contrast, in some specific decision-making processes in the field of public administration, the Estonian legislator has established the possibility of issuing administrative decisions in an automated manner, including the possibility of issuing fully automated decisions. These include, for example, the exhaustively defined decisions set out in the Taxation Act (Maksukordaluse seadus (MKS)),[38] Environmental Fees Act (Keskkonnatasude seadus (KeTS))[39] or the Unemployment Insurance Act (Töötuskindlustuse seadus (TKindlS)).[40] However, the automation of these specific procedures is not permissible if the exercise of the administrative authority's discretion is necessary.[41]

Given the absence of comprehensive regulation of automation of decision-making processes in public administration, it is not surprising that specific legality guarantees applicable to the issuance of automated decisions cannot be identified in the Estonian legal order. In automated administrative procedures, Estonians must therefore rely on traditional guarantees of legality that also apply in procedures involving the human factor.

De lege ferenda, if the aforementioned HMS amendment enters into force, the legal basis for fully automated decision-making will be established. According to the draft law, the possibility of issuing an administrative decision without human intervention should be fundamentally permissible if:

- the authority to issue a fully automated decision interfering with the rights of an individual is provided for in a special regulation;
- automation is in the interest of the party to the proceedings, the public and in accordance with the principle of procedural economy;
- there is no need to interpret legally vague concepts and exercise discretion when making decisions;
- the facts are properly established;
- the decision-making process is predictable and understandable for the party to the proceedings, and
- the rights and interests of third parties will not be affected by automation.

An interesting aspect of the proposal is the exception to the general clause, according to which it is not possible to issue an automated decision when interpreting a legally undefined concept or exercising discretionary power. Such an exception should be permissible if the content of a legally undefined concept or the scope of discretionary power is precisely defined by an internal act of the administrative body, which is publicly accessible, and at the same time

[36] METCALF, K.-N. – KERIKMÄE, T.: Machines are taking over – Are we ready?: Law and Artificial Intelligence. In: Singapore Academy of Law Journal, 2021, Vol. 33, p. 27.

[37] For the status of the legislative proceedings regarding the proposed amendment to the law in question, see: https://eelnoud.valitsus.ee/main#7POy5VDM. [cited 2025-09-26]. The proposal is also available at the above link.

[38] See § 46^2 MKS.

[39] See § 33^6 KeTS.

[40] See § 23 para. 4 TKindlS.

[41] PILVING, I.: Guidance-based Algorithms for Automated Decision-Making in Public Administration: the Estonian Perspective. In: CERIDAP, 2023, No. 1, p. 55.

the algorithm used is transparently published. This exception creates space for the implementation of more sophisticated automated systems, however, the proposal explicitly excludes the use of a self-learning algorithm that could autonomously change its parameters, as well as an algorithm whose general parameters and operating logic are not explained in the administrative regulation[42].[43]

In addition to establishing the legal basis for the automation of administrative procedures per se, if the HMS amendment is adopted, developments can also be expected in the area of special guarantees of legality. The draft law emphasizes, with certain exceptions, the need to guarantee the participant in the proceedings the right to express his/her opinion on the matter, the right to communicate with the public administration body, and the right to justification of the decision. In line with the principle of transparency, the proposal also establishes an obligation to publish all internal administrative acts and algorithms used in automated administrative procedures, so that the data subject can foresee the content of a possible automated decision in his or her case.

To protect human dignity, the proposal also provides for the right of an individual who does not consider it appropriate to submit to algorithmic decision-making to contact the competent authority, which is obliged to establish a mechanism for collecting and analyzing the objections raised. An individual should always have the possibility to challenge an automated administrative decision in administrative proceedings or under judicial review on the grounds that the competent authority did not take into account all the relevant circumstances of the case. Finally, the addressee of an automated decision should be explicitly informed that the decision was made using an algorithm.[44]

4. France

The French legislation on automated administrative procedures is considered proactive and innovative, not only due to the existence of a legal basis for fully automated and semi-automated decision-making, but also due to the precise implementation of Art. 22 GDPR and the related incorporation of specific legality guarantees.[45]

The legal framework for automated administrative procedures in French conditions is currently formed by Article 47 of the Law on Information Technology, Data Files and Civil Liberties (Law No. 78-17),[46] which has the nature of an implementing law to the GDPR, and the relevant provisions of the Code of Relations between the Public and the Administrative Authority (CRPA),[47] which constitutes a general regulation on administrative procedure. Article 47 of Law No. 78-17 essentially states that the issuance of any individual administrative act is admissible by automated means if the specific guarantees of legality set out in the article in question are ensured, with the exception of a fully automated decision deciding on an

[42] It is about the so-called "black box" algorithms. See more NEŠPOR, J.: Automated Administrative Decision-Making: What is the Black Box Hiding?. In: ACTA UNIVERSITATIS CAROLINAE, Vol. 70, 2024, No. 2, pp. 147-157.

[43] For an analysis of the HMS amendment, see PILVING, I.: Guidance-based Algorithms for Automated Decision-Making in Public Administration: the Estonian Perspective. In: CERIDAP, 2023, No. 1, pp. 59-65.

[44] Ibid., p. 60, pp. 63-64.

[45] MALGIERI, G.: Automated decision-making in the EU Member States: The right to explanation and other "suitable safeguards" in the national legislation. In: Computer Law & Security Review, 2019, No. 5, p. 13. Although Malgieri's article is based on an analysis of the original Article 10 of Law No. 78-17, we believe that the conclusions reached by the author are also applicable to the effective Article 47 of Law No. 78-17, since it is essentially the identical provision replacing the aforementioned Art. 10.

[46] Loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés.

[47] Code des relations entre le public et l'administration (CRPA).

administrative appeal.[48] The specific guarantees of lawfulness that must be ensured regardless of whether the decision is fully automated or semi-automated are:

- the automated decision is not based on special categories of personal data;[49]
- the automated decision was issued in accordance with Chapter I, Title I, Book IV of the CRPA, i.e. in accordance with the administrative procedure regulated by law;
- the automated decision complies with Article L311-3-1 of the CRPA, according to which a decision based on algorithmic processing shall include an explicit notification informing the person concerned;[50]
- the public administration body shall notify the data subject, at his/her request, in an intelligible manner, of the rules defining the processing of data by automated means and the main characteristics of its implementation, provided that it does not disclose secrets protected by law;[51]
- the public administration body, as the data controller, ensures control of algorithmic processing and its development in order to be able to explain to the person concerned in detail and in a comprehensible manner how the processing was carried out in their individual case.

In particular, the last two guarantees regarding so-called algorithmic accountability and transparency were emphasized by the French Constitutional Council in its decision,[52] in which it assessed the conformity of Article 47 of Law No. 78-17 with the Constitution. The Constitutional Council confirmed that the transparency requirements arising from the aforementioned article are in accordance with the Constitution, while also stating that automated decision-making based on machine learning systems without any human control is not permissible, as human control is essential in the design and development of algorithms.[53]

The aforementioned guarantees, together with the conclusions of the French constitutional body, have in practice created an obstacle to the creation of fully automated decision-making procedures. In French conditions, therefore, partially automated administrative procedures prevail. An example is the Parcoursup algorithm, designed to collect and manage the preferences of university applicants, which contributes to the evaluation of their academic records.[54]

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48 Administrative appeals ("recours administratif") in French administrative law refer to an action brought before the administrative courts. This distinguishes it from a regular remedy in administrative proceedings per se, which is usually a prerequisite for litigation, even in Slovak conditions.

49 See point I. Cl. 6 of Law No. 78-17. This is so-called sensitive personal data according to Art. 9 (1) GDPR, such as data revealing racial or ethnic origin, political opinions, religious beliefs, data concerning health and sexual orientation, etc.

50 According to Art. L311-3-1-1 CRPA such explicit notification must include the purpose of the algorithmic processing of data, indicate the right to obtain information on the rules defining this processing and the main characteristics of its implementation, as well as the procedures for exercising this right, indicate the right to communication and, where appropriate, to submit a request to the Commission for access to administrative documents, as defined in this part of the law.

51 According to Art. L311-3-1-2 CRPA the scope of the notification obligation includes information on the degree and manner of contribution of algorithmic processing to the decision-making process; processed data and their sources; processing parameters and the significance of their application to the situation of the data subject; operations performed by the processing.

52 See Conseil Constitutionnel, Décision n ° 2018-765 DC du 12 juin 2018.

53 MALGIERI, G.: Automated decision-making in the EU Member States: The right to explanation and other "suitable safeguards" in the national legislation. In: Computer Law & Security Review, 2019, No. 5, p. 15.

54 STEPANOV, A. Easy to learn, hard to master: the challenge of intelligible AI in French administration. In: The Digital Constitutionalist [online]. [cited 2025-09-27]. Available at: https://digi-con.org/easy-to-learn-hard-to-master-the-challenge-of-intelligible-ai-in-french-administration.

5. Germany

As Schneider and Enderlein state in their article,[55] In Germany, the application of advanced automated decision-making systems is limited and German public administration uses algorithms dominantly to support human decision-making. This applies despite the fact that the Federal Administrative Procedure Act (Verwaltungsverfahrensgesetz (VwVfG)), the Fiscal Code (Abgabenordnung (AO)), the Social Code Book X (Sozialgesetzbuch X (SGB X)),[56] as well as the administrative procedural regulations of the individual federal states, in addition to provisions regulating semi-automated administrative proceedings, also contain provisions regulating the fully automated decision-making process.[57]

Legal norms regulating the specific course of partially automated administrative proceedings have been part of German administrative procedural law for several decades. The regulation of semi-automated administrative proceedings focuses primarily on regulating exceptions to the traditional course of a given administrative proceeding. The exceptions in question remove some of the formal requirements for proceedings and decisions,[58] allow for the order of an oral hearing to be waived,[59] whether they simplify the requirements for justifying a decision.[60] The result is a legal possibility for the final decision to be issued by an automated system while maintaining the investigation of the facts of the case by public administration employees. The aforementioned semi-automated decision-making processes are used in Germany mainly in generic mass proceedings in the areas of taxes and social security. In conclusion, it is appropriate to point out that German administrative procedural norms do not regulate such semi-automated administrative proceedings in which the final decision is issued by a human, but with the assistance of automated systems, including artificial intelligence systems.[61] This represents a significant regulatory gap allowing the decision on the deployment of supporting automated systems to be left to the discretion of the competent authority, which is limited only by the general principles of administrative law.[62]

In contrast to semi-automated administrative procedures, the possibility for German public administration bodies to issue individual administrative acts without human intervention was enshrined in the aforementioned procedural codes relatively recently, in 2017.[63] German public authorities are currently authorized to issue fully automated decisions on the legal basis of § 35a VwVfG in administrative matters; § 155 para. 4 first sentence of the AO in tax and social security matters § 31a first sentence of SGB X. Although the provisions in question pursue the same purpose, namely to enable fully automated decision-making, the different legislative expression of the provisions in question creates three different regulatory approaches causing

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55 SCHNEIDER, J.-P. – ENDERLEIN, F.: Automated Decision-Making Systems in German Administrative Law. In: CERIDAP, 2023, No. 1, p. 96.

56 On the trichotomy of German administrative procedural law, see SCHOCH, F., Einleitung, In SCHOCH, F. – SCHNEIDER, J.-P. Verwaltungsverfahrensgesetz, C.H. Beck, Munich, 2022, pp. 290–294.

57 SCHNEIDER, J.-P. – ENDERLEIN, F.: Automated Decision-Making Systems in German Administrative Law. In: CERIDAP, 2023, No. 1, pp. 97-98.

58 See § 37 (5) VwVfG, § 119 (3), (2) AO, § 33 (5) (1) SGB X).

59 See § 28 (2) (No. 4) VwVfG, § 91 (2) (No. 4) AO.

60 See § 39 (2) (No. 3) VwVfG, § 121 (2) (No. 3) AO, § 35 (2) (No. 3) SGB X.

61 On the problems of human decision-making based on decision proposals created by an automated system, see HAITSMA, L. – BRINK, B..: From Human Intervention to Human Involvement: A Critical Examination of the Role of Humans in (Semi-)Automated Administrative Decision-Making. In: Digital Government: Research and Practice, 2025, Vol. 6, No. 3, Article 33, p. 17.

62 SCHNEIDER, J.-P. – ENDERLEIN, F.: Automated Decision-Making Systems in German Administrative Law. In: CERIDAP, 2023, No. 1, p. 103.

63 However, according to several German courts, the lack of an explicit legal basis for issuing fully automated decisions was not an obstacle to their lawful issuance even before the 2017 amendment to the German Administrative Procedure Codes. The previous legal basis for issuing "normal" individual administrative acts did not explicitly take into account the need for human intervention. However, according to the German courts, their legality was conditioned by their "attribution" to a public authority. Ibid., pp. 106-107.

inconsistency in the procedural concept of fully automated decision-making in German administrative law.[64] From a comparison of § 35a VwVfG, § 155 para. 4 first sentence AO, § 31a first sentence SGB X it follows that the most restrictive concept of fully automated decision-making is enshrined in the provisions of § 35a VwVfG. The provision in question conditions the possibility of issuing a fully automated decision on the existence of a separate legal basis in the lex specialis, which will authorize its issuance in a fully automated manner.[65] and at the same time assumes that the competent administrative authority has no discretion in a given administrative proceeding. In contrast to Section 35a VwVfG, the provision of Section 155 para. 4 AO and Section 31a SGB X do not make the possibility of issuing a fully automated decision conditional on the existence of a specific statutory authorisation. For the full automation of decision-making in tax matters, the need to exercise administrative discretion does not, in principle, constitute an obstacle. In the case of social matters, however, an individual administrative act may be issued by purely automatic means only provided that there is no reason for employees of the public administration body to deal with the specifics of the matter. The above implies that a fully automated decision is inadmissible not only in the case of the exercise of discretionary power by an administrative authority, but also in other cases where discretion cannot be exercised, but the matter in question is legally or factually complex.[66]

Speaking of special guarantees of legality, it can be highlighted at the conclusion of this subchapter that in 2017 the German legislator incorporated into individual procedural codes so-called guarantees for a thorough investigation of individual cases. Although the legislative solution and scope of protection vary depending on the given procedural code,[67] The safeguards in question have a common objective, namely to ensure that exceptional circumstances are taken into account in the administrative procedure, even if the administrative authority is otherwise entitled to issue an automated decision. To achieve this objective, the procedural codes provide that[68] the authority must take into account factual circumstances alleged by the party concerned which are relevant to the specific case and which would not have been identified in an automated procedure.[69] Despite the enshrining of the aforementioned guarantees, even in Germany, the fulfillment of all the requirements of Art. 22 (2) (b) GDPR, which should ensure the protection of the rights of the data subject when processing personal data when issuing an automated decision.[70]

6. Hungary

In the Hungarian legal system, fully automated administrative procedures have been regulated since 2017, and from 2023 onwards they will be fundamentally built on a two-track legal basis. At present, the legal basis is provided both in Section 40 of the General Administrative Procedure Act (Act CL)[71] and in Section 21 of the Act on the Digital State and

64 SCHNEIDER, J.-P. – ENDERLEIN, F.: Automated Decision-Making Systems in German Administrative Law. In: CERIDAP, 2023, No. 1, p. 100.

65 Such a legal basis is, for example, Section 3a of the Federal Travel Expenses Act (BRKG), on the basis of which it is possible to issue a decision on the reimbursement of travel expenses for federal civil servants, judges and soldiers in a fully automated manner. For further examples, see SCHNEIDER, J.-P. – ENDERLEIN, F.: Automated Decision-Making Systems in German Administrative Law. In: CERIDAP, 2023, No. 1, p. 100.

66 Ibid., p. 102.

67 While according to the VwVfG and SGB X, these guarantees apply to both fully automated and semi-automated administrative procedures, according to the AO they only apply to fullyautomated ones.

68 See Section 24 (1) third sentence VwVfG and Section 31a second sentence SGB X and the corresponding provisions of Section 150 (7) AO and Section 155 (4) third sentence AO.

69 SCHNEIDER, J.-P. – ENDERLEIN, F.: Automated Decision-Making Systems in German Administrative Law. In: CERIDAP, 2023, No. 1, p. 103.

70 Ibid., pp. 105-106.

71 2016. évi CL. törvény az általános közigazgatási rendtartásról.

Certain Rules for the Provision of Digital Services (Act CIII)[72]. For the initiation of proceedings on individual legal grounds, the prerequisites defined in the above provisions must be met, with the main differentiating prerequisite being whether the proceedings, which can be initiated at the request of a party to the proceedings, were initiated by electronic means or otherwise.[73] Furthermore, in the Hungarian legal order, a legal basis can be identified for automated administrative proceedings, which are initiated ex officio under specific regulations.[74]

Based on the provisions of Section 21 Act CIII, which has the character of lex specialis in relation to Section 40 Act CL, a fully automated decision may be issued if the proceedings initiated at the request of a party to the proceedings were initiated electronically; the decision does not require the application of proper reasoning; the data necessary for assessing the case is in the possession of the public administration body[75] available in a manner suitable for automated processing or obtains it by automatically receiving information in a format suitable for automated processing and issuing an automated decision does not preclude a special regulation. An additional requirement from the subsidiary applicable provision of Section 40 (a) Act CL is that there is no other participant with conflicting interests in the administrative proceedings. In addition, the legal basis for semi-automated administrative proceedings can also be derived from the provisions of Section 21, since Section 3 authorizes a public administration body to make any other decision or notification necessary for administration without human intervention, even if the procedure is not carried out through semi-automated decision-making.[76]

On the other hand, under Section 40 of the CL Act, fully automated decision-making is permissible even if the administrative procedure was initiated otherwise than on the basis of a proposal delivered by electronic means, a special law or government regulation allows this; the authority has all the data necessary for the decision at its disposal at the time of submission of the proposal; the decision does not require the discretion of the public administration authority and there is no other participant with conflicting interests. The provision of Section 40 envisages, at the stage of the commencement of proceedings, the existence of a possible form of human interaction when receiving the motion to commence proceedings. Such interaction allows the employee of the public administration body to assess whether the proposal can be processed in an automated manner, in an abbreviated procedure or in a "classic" administrative procedure. The choice of further procedure thus primarily depends on the complexity of the case and the period available to resolve the matter.[77]

In Hungarian conditions, the above-mentioned legal foundations are primarily used to build fully automated decision-making on the entry or change of reliable data recorded in public registers of public administration, or the issuance of any certificate about them. The fully

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[72] 2023. évi CIII. törvénya digitális államról és a digitális szolgáltatások nyújtásának egyes szabályairól.

[73] CSATLÓS, E.: Hungarian administrative processes in the digital age: An attempt at a comprehensive examination. In: Intersections. East European Journal of Society and Politics, 2024, Vol. 10, No. 1, p. 197. Although Csatlós' article is based on an analysis of the repealed § 11 of the Act on the General Rules of Electronic Administration and Trust Services (2015. évi CCXXII. törvény az elektronisk ügyintézés és a bizalí szállás általános szegáláiról), we believe that the conclusions reached by the author are also applicable to the current § 21 of Act CIII, since it is essentially an identical provision replacing the aforementioned § 11.

[74] For example, Section 21 para. 4 of the Road Transport Act (1988. évi I. TÖRVÉNY a közúti közlékédésről), which authorizes the competent public administration body to issue a fully automated decision in proceedings on traffic offences in accordance with the conditions laid down by government regulation.

[75] Designated in law as a body obliged to provide a digital service.

[76] CSATLÓS, E – MEZEI, P.: The Law of the Algorithmic State in Hungary. In: Italian Journal of Public Law. 2025, Vol. 17, No. 2, p. 635.

[77] A fully automated decision in the case of a proposal submitted in person is considered in Hungary, especially in the case of so-called registration acts, which can be carried out at a general local government body that also functions as a single point of contact. See more CSATLÓS, E.: Hungarian administrative processes in the digital age: An attempt at a comprehensive examination. In: Intersections. East European Journal of Society and Politics, 2024, Vol. 10, No. 1, p. 198.

automated procedure also applies to decision-making in the field of social affairs, such as decisions on granting maternity benefits or travel reimbursements related to the provision of specific health services outside the place of permanent residence, or decisions in the field of administrative punishment, namely decisions on imposing fines for traffic offenses that are documented by a special camera system, on the legal basis of the aforementioned Act I.[78]

From the perspective of special guarantees of legality, it is possible to identify in the aforementioned Section 21 of Act CIII the obligation of a public administration body to notify a party to the proceedings of the fact that a decision in his case was issued in an automated manner. A similar obligation, however, is absent in the Act CL as a general regulation on administrative procedure. Another specific institute that can be considered an ex ante guarantee of legality is the request for a full hearing of the proposal, regulated in Section 42 of the Act CL. Its essence lies in the right of the party to the proceedings to initiate a regular administrative proceeding within five days of the notification of the decision issued in a fully automated procedure.

However, this right to re-hear a case in administrative proceedings can only be exercised by a party to the proceedings if an appeal cannot be filed against a fully automated decision. The aforementioned guarantee is a reflection of the general requirement arising from Section 6 of the Act on the Right to Informational Self-Determination and Freedom of Information (Act CXII)[79], which is a Hungarian provision implementing the requirements of Art. 22 GDPR in terms of automated administrative procedures. In addition to it, in our opinion, it is also necessary to comply with other general requirements arising from the provision in question, although they are no longer explicitly reflected in Act CL or Act CIII. The reason is that the material scope of Section 6 covers all individual legal acts that are based solely on automated data processing. Other guarantees that must be met in fully automated decision-making in Hungarian administrative proceedings include compliance with the requirement of equal treatment; the need for the public administration body to inform the data subject, in particular the party to the proceedings, at his request, of the method and criteria used in the decision-making mechanism; and the requirement that the decision not be made using sensitive data, unless otherwise provided by law or a binding EU legal act.[80] Otherwise, we believe that decisions issued using automated means should be subject to the same guarantees of legality as in regular administrative proceedings.

7. Italy

Italian law does not currently regulate automated decision-making in the field of public administration. The only provision that can be indirectly linked to the automation of administrative proceedings is Article 3-bis of the Italian General Administrative Procedure Code,[81] which has the character of a principle. Article 3-bis essentially states that, in order to achieve greater efficiency in their activities, public administration bodies should use IT and telematic tools in internal relations, between public administration bodies themselves, as well as between them and public administration addressees. Although the aforementioned provision raises controversy about the sufficient legal basis for any automation of administrative proceedings, according to Galetta, accepting the Italian doctrine of "organizational autonomy" of public administration, which allows public administration bodies to independently decide on

[78] Ibid., pp. 200-201.

[79] 2011. évi CXII. törvény az információs önrendelkezési jogról és az információszabadságról.

[80] For an analysis of Section 6 of Act CXII, see more in MALGIERI, G.: Automated decision-making in the EU Member States: The right to explanation and other "suitable safeguards" in the national legislation. In: Computer Law & Security Review, 2019, No. 5, p. 16.

[81] LEGGE 7 agosto 1990, n. 241 Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi.

their internal activities within the limits of the law, this conclusion can be reached at least for semi-automated administrative proceedings.[82] However, fully automated decision-making in the field of public administration will not stand on the aforementioned legal basis.[83]

Despite the unclear legal basis, Italian public administrations in practice use IT tools that automate a certain phase of the administrative procedure,[84] One can even identify a case of a fully automated decision-making process that used an expert system algorithm to place or transfer teachers. However, the experience with the use of this system in Italy was not optimal, which led to an extensive lawsuit that ended up in the Italian Supreme Administrative Court.[85] On the one hand, he believed that the use of an automated system per se was lawful, but on the other hand, he identified as a problem the lack of transparency of such proceedings, which was related to the insufficient justification of the decision, the inaccessibility of the source code, and the effective possibility of challenging such an automatically issued decision.[86]

It follows from the above-mentioned decision of the Italian Supreme Administrative Court that in an automated administrative procedure the same guarantees of legality must be observed as in a procedure in which automated means are not used. In addition to the principle of legality and the requirements arising from it, it is important that automated administrative procedures also respect other related guarantees, in particular the principle of transparency and accountability of public administration.[87] Italian procedural law does not contain any specific procedural institutes that would serve as specific guarantees of legality created for the purposes of automated decision-making processes in the field of public administration.

8. Latvia

The Latvian general regulation on administrative procedure, which is the Administrative Procedure Act (Administratīvā procesa likums 2001 (APL)), is indifferent in relation to the regulation of administrative proceedings conducted by automated means. Given the absence of an explicit legal basis and the requirement arising from Section 4 of the Law on the Legal Effects of Documents (Dokumentu juridiksā spēka likums 2010) which stipulates that every official document, including a decision, must be signed by an authorised official except in cases provided provided for by a special law, legal doctrine tends to conclude that full automation of administrative proceedings in Latvia is permissible, provided that a special law eliminates the need to sign official documents, including individual administrative acts, in a given administrative proceeding. At the same time, as long as the signature on the official document is secured, partial automation of the administrative process should be permissible even if a special law does not provide for this exception. Even an administrative decision generated

[82] Galetta states that on the aforementioned legal basis, the automation of actions associated with the initiation of administrative proceedings is acceptable, i.e. activities associated with submitting proposals for the initiation of proceedings or preliminary investigation, on the basis of which a public administration body may initiate proceedings ex officio. Furthermore, the use of machine learning systems to process the data that public administration needs to decide whether and how to implement a certain policy or service, to identify the existence of a predetermined recipient of the measure to be taken. Also, the use of algorithms or machine learning systems to properly determine the state of affairs. Finally, activities related to the notification of decisions, or further communication after the decision has been issued with the addressee of the public administration, could also be subject to automation.

[83] GALETTA, D.-U. – PINOTTI, G..: Automation and Algorithmic Decision-Making Systems in the Italian Public Administration. In: CERIDAP, 2023, No. 1, pp. 14-15.

[84] For example, in relation to the initiation of proceedings at the request of a party, when submitting the proposal, the party´s identity is automatically verified through the public digital identity system (SPID - Sistema Pubblicodi Identità Digitale). For further examples, see Ibid., pp. 16-18.

[85] See Cons. St., Sec. VI, 8 April 2019, n. 2270, point 8.1 and 8.2.

[86] Ibid., p. 19.

[87] Ibid., p. 20.

entirely by an automated system should be acceptable as long as such a "draft" decision is signed by an authorized person.[88]

An example of a special law that eliminates the need to sign selected administrative decisions is, in particular, the Administrative Liability Act (Administratīvās atbildības likums 2018 (AAL)), which regulates special proceedings for administrative offences in Latvian conditions. Effective from 1 January 2025, this law also explicitly regulates the basic rules for automated decision-making[89] and the specific legality safeguards that must apply to automated decision-making under AAL. According to Section 303 para. 2 AAL states that under this Act, automated decision-making is permissible only in the case expressly provided for in this Act. The AAL currently regulates two cases where fully automated decision-making is permissible and where the need to sign an individual administrative act is also excluded. This involves deciding on the imposition of a fine on a vehicle owner for violating selected road traffic rules that were recorded by technical means[90] and the decision-making of the Latvian tax authority in relation to administrative offences for failure to comply with the deadline for filing a tax, information or public declaration or annual report or failure to submit such a declaration or annual report.[91] In addition, full automation finds its application in Latvian conditions also in the tax area, for example, when sending payment notices on the amount of real estate tax, which are considered an administrative decision.[92]

As mentioned above, special safeguards of legality are regulated in the Latvian legal order essentially only on a sectoral basis within the AAL. In other procedures where its automation is permissible, it is necessary to comply with the traditional guarantees inherent in administrative procedures conducted by employees of public administration bodies. Special safeguards that have been relatively recently enshrined in the AAL include the right to explanation, specific features of the automated decision, the right to review the automated decision and the right to have an unlawful automated decision revoked.[93]

The Latvian legislator has included in the scope of the right to explanation the right of the data subject to obtain meaningful and comprehensive information about the data used in making an automated decision, the automated system and the impact of its use on this decision, as well as about the persons involved in making this decision and creating the automated decision-making system. This information must be attached to the decision. In addition, its scope also includes the right of the data subject to request an oral or written explanation of the decision from the public administration body responsible for issuing the automated decision.[94]

The specific requirements of an automated decision according to AAL include information that the decision was issued by automated means; information falling within the scope of the right to explanation and the identification of the public administration body responsible for the issued decision. The automated decision must also be certified by a qualified electronic seal in accordance with a special regulation.[95]

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88 DANOVSKIS, E.: THE USE OF AUTOMATED DECISION-MAKING SYSTEMS BY THE GOVERNMENT IN LATVIA. In: Italian Journal of Public Law. 2025, Vol. 17, No. 2, p. 655 and p. 658.

89 In Art. 303 para. 1 AAL also defines the essence of automated decision-making under this Act, according to which it is a decision-making without the involvement of the person conducting the administrative offence proceedings or another person with decision-making authority, solely on the basis of automated data processing.

90 Art. 162 para. 3 AAL.

91 Art. 164 AAL.

92 See Art. 6 para. 1 of the Real Estate Tax Act (Par nekustamā turtas nodokli 1997). For further examples, see DANOVSKIS, E.: THE USE OF AUTOMATED DECISION-MAKING SYSTEMS BY THE GOVERNMENT IN LATVIA. In: Italian Journal of Public Law. 2025, Vol. 17, No. 2, pp. 659-660.

93 Art. 304 to Article 307 of the AAL.

94 Art. 304 AAL.

95 Art. 305 AAL.

Finally, the essence of the right to have an automated decision reviewed and the right to have an unlawful automated decision annulled is to ensure the individual's right to challenge an automated decision by lodging an appeal within one month of its notification, or to guarantee the possibility of its annulment ex officio in cases where such an appeal has not been submitted. At the same time, the AAL formulates a prohibition on a fully automated system deciding again on an appeal against an automated decision.[96]

9. Poland

In 2021, Section 14 para. 1b was incorporated into the Polish Code of Administrative Procedure (Kodeks postępowania administracyjnego (KPA)),[97] sparking a debate among Polish legal scholars regarding the establishment of a legal basis for the automation of administrative proceedings, including the possibility of issuing fully automated administrative decisions.

It follows from the wording of Section 14 para. 1b that Polish public administration bodies may resolve matters using automatically generated documents bearing the qualified electronic seal of that body, while regulations requiring the signature of an employee of the public administration body do not apply to automatically generated documents. It appears that Polish legal doctrine, as well as administrative practice, has settled on the conclusion since the entry into force of the provision in question that, although the linguistic interpretation of the provision in question would allow for full automation of the decision-making process, a systematic and teleological interpretation must prevail, according to which only partial automation of acts within the administrative procedure is permissible until the moment of issuing the final decision.[98] The reason is primarily the need to ensure compliance with the principle of legality, the fundamental principles of administrative procedure, the procedural rights of the parties to the proceedings, and the requirements of Art. 22 GDPR, which could not be fulfilled in the absence of specific legal safeguards systematically linked to Section 14 para. 1b KPA.[99]

Semi-automated administrative proceedings, including the use of AI systems, find their application in Polish conditions mainly in proceedings before employment offices and organizational units related to social and family security, where algorithms play an increasingly supporting role for officials in issuing individual administrative acts. Another example is the Agency for Restructuring and Modernisation of Agriculture, which is using AI in the disbursement of EU funds, when it uses data collected by satellites to verify what and where farmers applying for EU funds are growing in its state of affairs.[100]

We have not identified any specific guarantees of legality associated with the implementation of automated means in the decision-making process in public administration in Polish procedural law.

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96 Art. 306 to Article 307 of the AAL.

97 Ustawa z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego.

98 It is even acceptable to create a draft decision by an automated system, but a specific employee of the public administration body that formally issues it must always assume the final responsibility for its content. See JAKUBEK-LALIK, J.: The Challenges of AI in Administrative Law and the Need for Specific Legal Remedies: Analysis of Polish Regulations and Practice. In: Central European Public Administration Review, 2024, Vol. 22, No. 2, pp. 152-155.

99 See more WILBRANDT-GOTOWICZ, M.: The dilemmas of automated decision making in administrative proceedings – comments in the context of § 14 1b of the Administrative Procedure Code. In: STUDY OF PRAWNICZE KUL, 2023, Vol. 95, No. 3, pp. 152-155., or SIBIGA, G.: Zasada wykorzystania pism generowanych automatycznie do załatwienia indywidualnej sprawy administracyjnej (art. 14 § 1b KPA) Podstawa prawna czy zasada kierunkowa dla automatycznego podejmowania decyzji? (Dodatek specjalny do MOP 6/2023). In: Monitor Prawniczy, 2023, No 6, pp. 7-16.

100 JAKUBEK-LALIK, J.: The Challenges of AI in Administrative Law and the Need for Specific Legal Remedies: Analysis of Polish Regulations and Practice. In: Central European Public Administration Review, 2024, Vol. 22, No. 2, p. 121.

10. Spain

Spanish administrative procedural regulations have provided for the standardization of the electronic form of administrative proceedings, including the automation of decision-making processes, since 2007. After the entry into force of new procedural regulations in 2016, the current legal framework for automated decision-making in the field of public administration is formed by the Act on Joint Administrative Procedure of Public Administration (LPAC)[101] and the Act on the Legal Regime of the Public Sector (LRJSP).[102] The key provisions in this regard are Art. 41 and Art. 42 LRJSP. While the subject of Article 42 is the authorization of a public administration body to choose one of the variants of the electronic signature system when performing an automated administrative act, Article 41 discusses its essence.

According to Art. 41 para. 1, automated administrative action is understood to be any decision or action carried out entirely by electronic means by a public administration within the framework of an administrative procedure, and in which a public employee has not been directly involved. Under Spanish law, the relevant provision is regarded as the legal basis for both partially and fully automated administrative proceedings, including the possibility of employing AI systems in the decision-making process.[103]

Article 41 para. 2 LRJSP represents ex ante guarantee of legality created in connection with the automation of administrative proceedings. The provision in question primarily obliges public authorities to designate, before implementing automation into the decision-making process in the area of public administration, a competent authority to define specifications, programming, maintenance, supervision and quality control, and, where appropriate, auditing of the information system and its source code. Simply put, it is the obligation of public authorities to ensure that an automated system is used under human control.[104] Secondly, paragraph 2 requires the determination of the public authority that should be considered responsible for the automated administrative act, for the purposes of appeal. The obligation to designate the authority responsible for the automated decision appears to be particularly significant because it excludes the possibility of an automated administrative action being considered "autonomous", as it will always be attributable to a specific public administration authority. Automated administrative procedures are therefore, in Spanish conditions, equated with "normal" administrative procedures consisting in the issuance of individual administrative acts by a human being, with the same guarantees having to be respected in both cases.[105]

Other guarantees of legality worth highlighting include the obligation of the competent public authority to establish the use of an automated system in a specific administrative procedure by a normative legal act or an individual legal act, or the explicit enshrining of the requirement that public authorities, when implementing automated systems in decision-making processes, use algorithms that will function responsibly, transparently and non-discriminatoryly whenever technically possible.[106] However, despite its benefits, criticism is also emerging among Spanish legal scholars regarding the latter guarantee. This is primarily because the standards enshrining this requirement are rather recommendatory in nature and, moreover, the term "if technically possible" creates a regulatory gap in which the requirement of

[101] Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas.

[102] Ley 40/2015, de 1 de octubre, de Régimen Jurídico del Sector Público.

[103] CASADO, E. G.: Automated Decision-Making Systems in Spanish Administrative Law. In: CERIDAP, 2023, No. 1, pp. 25-27.

[104] However, Casado is critical of the fact that although the provision assumes professional human monitoring, legal control over its monitoring is absent. Ibid., p. 29.

[105] Ibid., pp. 28-29.

[106] See Art. 23 of the Law on Equal Treatment and Non-Discrimination (Ley 15/2022, de 12 de julio, integral para la igualdad de trato y la no discriminación).

accountability, transparency and non-discrimination may not apply to automated decision-making processes using AI, the functioning of whose algorithms is inexplicable.[107]

11. Sweden

Automation of decision-making processes in public administration has a relatively long tradition in Sweden, dating back to the 1970s. During this period, the Swedish Transport Administration began to use automated systems in its decision-making activities, and later also the Student Finance Board, the Tax Authority, and the Social Security Administration. At present, automated administrative proceedings in Sweden are widespread at both the national and local levels, in line with the Swedish legislator's long-term vision of being "the best in the world" in harnessing the benefits of digitalization, including its use whenever possible in interactions between public administration and its addressees.[108]

Despite the aforementioned tradition of issuing decisions by automated means in the field of public administration, Swedish administrative procedural law until 2017 did not contain any explicit mention of the possibility of issuing individual administrative acts by automated means. The reason for this was the legislative idea that the norms in the Swedish Administrative Procedure Act (Förvaltningslag 2017:900 (FL)) should be "technologically neutral", i.e. the principles and rules contained therein should apply to administrative proceedings, including decisions of an administrative authority, regardless of whether the procedure is carried out by a person or a machine. The ratio legis of such an idea lies in the effort to ensure the rigidity of administrative procedural law and thus the legal certainty of individuals, as it is based on the premise that special procedural provisions governing automated administrative proceedings would have to be adapted more often to technological progress. Although, according to Reichel, decisions issued in automated administrative procedures have withstood the review of their legality in a number of court proceedings even without an explicit legal basis, the Swedish legislator nonetheless incorporated this possibility into Section 28 of the Administrative Procedure Act (FL) in 2017.[109]

According to Section 28, first sentence, of the FL, a decision can be made by an officer on their own or by several jointly or be made automatically. The explicit legal basis for both fully and semi-automated decision-making in Section 28 of the Administrative Procedure Act (FL) is thus expressed merely through a concise reference to the possibility of issuing a decision automatically. The subject of Section 28 of the FL, as well as any other provision, is not the prerequisites or legal consequences of issuing a decision by automated means. With the increasing number of administrative proceedings with the potential to use automation in issuing decisions, the aim of declaring this possibility was only to remove any doubt about this alternative without the need to adopt separate legal bases in specific laws. Despite the stated intention of the legislator, Reichel states that the explicit incorporation of this legal basis has also brought with it certain legal problems, which are primarily associated with complying with all the requirements of Art. 22 2 letter b) GDPR and with the paradoxical impracticality of some "technologically neutral" provisions that should also be used in automated administrative proceedings.[110]

;[107] CASADO, E. G.: Automated Decision-Making Systems in Spanish Administrative Law. In: CERIDAP, 2023, No. 1, pp. 27, 30-31.

[108] REICHEL, J..: Regulating Automation of Swedish Public Administration. In: CERIDAP, 2023, No. 1, pp. 77-78.

[109] Ibid., pp. 80-81, 86.

[110] These include, for example, provisions on the formal requirements of a decision, which require that the decision will include the identification of the employee of the public administration body, regardless of whether the decision in question was issued by a human or automated means. Similarly, it appears to be a problem to comply with the requirement of sufficient justification of a decision in legally and factually complex cases if the decision is justified by an automated system.

As indicated, Swedish administrative procedural law does not contain specific guarantees of legality created in the image of automated decision-making processes. The "technology-neutral" approach to regulating administrative proceedings thus relies on the typical guarantees of legality used in the anthropocentric model of decision-making, even in automated decision-making. The main limits to the automation of decision-making processes by public administration bodies in Sweden are the requirements for sufficient reasoning of decisions, proper establishment of the facts of the case, and the principle of procedural economy, which must operate within the boundaries of the principle of legality.[111]

III. RECOMMENDATIONS FOR THE SLOVAK LEGISLATOR: WHAT AND WHOM TO BE INSPIRED BY WHEN AUTOMATING ADMINISTRATIVE PROCEDURES?

1. Summary of key findings

It follows from the previous chapter that the legal basis for the possibility of issuing fully automated decisions in administrative proceedings is, as of the date of writing, enshrined in eight of the eleven Member States surveyed.[112] At the same time, it was identified that the approach to establishing a legal basis is heterogeneous across the Member States. Differences are particularly evident in terms of the scope of its substantive applicability and its systematic embedding within the legal order.

Regarding the scope of substantive applicability, two groups of Member States can be distinguished: those with a general legal basis and those with a sectoral legal basis.

The first group, consisting of France, Germany, Hungary, Spain and Sweden,[113] has a general legal basis enshrined in its legal system, i.e. one whose scope covers essentially all administrative law matters. In other words, if the conditions and prerequisites set out in the general legal basis are met, the issuance of a fully automated decision is permissible regardless of the type of administrative procedure. Within this first group, a distinction can be made between Member States that regulate the specific conditions and requirements for issuing fully automated decisions within the general legal basis,[114] and those that do not explicitly regulate such conditions.[115]

The second group, comprising Austria, Estonia, and Latvia, has a sectoral legal basis, meaning that its applicability is limited to a specific set of administrative law matters or to certain proceedings regulated by a special law. Sectoral legal bases authorize public administration bodies to issue fully automated decisions primarily in proceedings concerning tax matters, social security, student grant allocations, and, exceptionally, administrative punishment.

Regarding the systematic embedding of the legal basis for fully automated administrative decision-making within a Member State's legal order, in the case of a general legal basis, it is either incorporated into the Member State's general administrative procedure regulation or in a data protection law implementing the requirements of Art. 22 (2) (b) GDPR in conjunction with

[111] REICHEL, J..: Regulating Automation of Swedish Public Administration. In: CERIDAP, 2023, No. 1, p. 84.

[112] In another Member State under review, namely the Czech Republic, the draft legal basis for fully automated decision-making is in the legislative process.

[113] Furthermore, in the case of Estonia, the draft legal basis for fully automated decision-making is in the legislative process.

[114] This is the case of France, Germany and Hungary. For instance, in France, the possibility of issuing any automated administrative decision is always conditional upon the provision of special safeguards of legality, with fully automated decision-making being impermissible in the context of administrative appeals. In Germany and Hungary, it involves a combination of several conditions, with a key limitation in both countries being that fully automated decisions are restricted in proceedings requiring the exercise of administrative discretion. At the same time, the general legal bases in these countries stipulate that, for fully automated decision-making to be possible in a given administrative proceeding, there must either be an explicit authorization in a lex specialis or no provision excluding this possibility.

[115] This is the case of Spain and Sweden.

the general administrative procedure regulation.[116] As already mentioned, in the case of a sectoral legal basis, it is enshrined in a separate law for each administrative procedure or set of administrative procedures.

When it comes to semi-automated decision-making, it can be generalized that Member States adopt a more lenient approach regarding the need for an explicit legal basis. In each Member State, the principle of legality presumes the existence of a legal basis, but this legal basis can be either explicit[117] or implicit[118].

In the case of France, Hungary, Spain, or Sweden, the explicit legal basis for fully automated decision-making is also the legal basis for semi-automated administrative proceedings. Another example of explicit regulation of partially automated administrative proceedings is Germany, which, within its administrative procedure codes, expressly regulates the possibility of preparing an administrative decision in an automated manner, while human intervention is still expected during fact-finding. In the Czech Republic and Estonia, certain parts of administrative proceedings or specific acts within such proceedings can be carried out automatically, usually on a special legal basis regulating the given administrative proceeding.

On the other hand, in Austria, Italy, Latvia, and Poland, the legality of automating part of the decision-making process or a specific act within administrative proceedings can be demonstrated on the basis of an implicit legal foundation, while maintaining the obligation that an authorized person issues the administrative decision. In Italy, this legal basis is implicitly derived from a principle expressed in the general administrative procedure regulation, whereas in Austria, Latvia, and Poland, it results from a systematic interpretation of constitutional and administrative procedural norms.

Finally, the examined Member States can be divided into those that rely on traditional safeguards of legality applicable to proceedings conducted by public administration employees, extending these safeguards to automated decision-making,[119] and those that have created explicit special legal safeguards for this purpose within their legal systems.

Among the examined Member States with explicit special safeguards of legality are France, Germany, Hungary, Latvia, and Spain. Although the scope and nature of these safeguards differ, their purpose can be categorized.

The first category includes safeguards aimed at ensuring transparency and non-discrimination in automated decision-making. To this end, Member States have established both substantive obligations for public authorities responsible for creating or managing automated systems – requiring that the system be under human supervision and operate responsibly, transparently, and non-discriminatorily – and procedural obligations for public authorities to inform affected persons about the issuance of an administrative decision through automated means, including the duty to clearly explain how the algorithm contributed to the decision and its characteristics. The leitmotif of these safeguards is to strengthen the right of parties to a properly reasoned decision and the associated right to review it. Additionally, a special safeguard aimed at promoting non-discriminatory decision-making and protecting

[116] This is the case of France.

[117] This legal basis explicitly allows an administrative decision to be issued using automated means or explicitly authorizes a public administration body to carry out part of an administrative procedure or some action of an administrative procedure in an automated manner.

[118] This is a legal basis where the possibility of automating a part of an administrative procedure or a specific act is derived from the principle on which the administrative procedure is built or other procedural rules relating in particular to the issuance and requisites of the decision.

[119] Traditional guarantees of legality that correlate with the automation of administrative proceedings include, in particular, the right to be heard, the right to reasons for the decision, the principle of material truth, the principle of transparency and the right to an effective remedy.

personal data involves the prohibition of issuing decisions based on "sensitive" categories of personal data.

The second category encompasses safeguards intended to ensure the accountability of the public administration official for an individual administrative act issued by automated means. The main objective here is to guarantee that fully automated decisions can always be attributed to a specific public authority responsible for them, both for the purpose of remedies and in the event of liability for damages caused in the exercise of public authority.

The third category consists of safeguards designed to guarantee human review of automated decisions. This guarantee is ensured either through the right of participants to request that their case be handled in an "anthropocentric" procedure given particular circumstances or, at minimum, through the right of participants to challenge an automated decision via a remedy decided by an authorized human official.

2. Recommendations for the Slovak legislator per se

The research findings suggest that, across the examined Member States, there is a prevailing trend toward establishing an explicit and general legal basis for both fully and semi-automated decision-making in public administration. In view of the principle of legality enshrined in Art. 2 para. 2 of the Constitution of the Slovak Republic, it is strongly recommended that the Slovak legislator, prior to implementing any automated system in the public decision-making process, first establish a legal basis for its use founded on these attributes.

Such a legal basis should, following the example of the majority of Member States, be reflected in the provisions of the Slovak general administrative procedure regulation, currently Administrative Procedure Code,[120] or in other codified procedural regulations for which the subsidiary application of the Administrative Procedure Code is excluded.[121] Following the French model, its establishment could alternatively be considered in conjunction with Personal Data Protection Act,[122] provided that the Slovak legislator simultaneously undertakes a more comprehensive regulation of special safeguards of legality for automated administrative decision-making within this Act. One should also consider the more ambitious option of adopting a completely new general administrative procedure regulation, which would comprehensively govern both anthropocentric administrative proceedings and automated administrative proceedings, including special safeguards of legality and the interrelations between these two types of proceedings.

We further contend that, at least during the initial phase of implementing automated systems, the establishment of a legal basis for automated decision-making should be accompanied by the codification of general limits on its permissibility. Following the example of Germany and Hungary, such a recommended limit could be either a requirement for the existence of a lex specialis authorizing automated decision-making in a given proceeding, or, at minimum, the requirement for a lex specialis explicitly excluding such decision-making. This limit would, during the initial implementation phase, enable the legislator to selectively deploy automated systems in administrative proceedings where their use is appropriate given the nature of the matter, and to exclude them in contexts where they would be inappropriate. Consideration should also be given to establishing a categorical limit prohibiting fully automated decision-

[120] Zákon č. 71/1967 Zb. o správnom konaní (správny poriadok) v znení neskorších predpisov.

[121] These are mainly Tax Code (zákon č. 563/2009 Z. z. o správe daní (daňový poriadok) a o zmene a doplnení niektorých zákonov v znení neskorších predpisov) and Act on Social Insurance (zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov).

[122] Zákon č. 18/2018 Z. z. o ochrane osobných údajov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.

making in cases requiring the exercise of administrative discretion.[123] While such a limit may constrain the implementation of more sophisticated AI systems based on machine learning, it would substantially reduce the risk of violating the rights and legitimate interests of participants arising from insufficient system transparency and the absence of real oversight by the responsible authority, which would be unable to explain the system's operation or justify the outcome of an automated assessment.[124]

Finally, we consider it essential that the legislator address the requirements of Art. 22 (2) (b) GDPR by explicitly codifying special safeguards of legality. As previously noted, their systematic incorporation could be achieved either within the existing Administrative Procedure Code and other procedural regulations for which its subsidiary application is excluded, in conjunction with the Personal Data Protection Act, or within the framework of a new general administrative procedure regulation. De lege ferenda, it is recommended that the codification of special safeguards of legality cover at least the basic categories identified in the preceding subchapter. In other words, any future legal framework should not lack substantive and procedural guarantees aimed at ensuring the transparency and non-discrimination of automated decision-making, the accountability of the specific public authority for the automated decision, and the capacity for human review of automated decisions.

IV. CONCLUSION

The comparative analysis of legal regulations on the automation of decision-making processes in public administration in selected Member States indicates that the legal basis for partial automation of administrative proceedings exists to some degree in every Member State, while most of them also possess a legal basis allowing for fully automated decision-making. These legal frameworks, however, exhibit considerable heterogeneity, particularly with respect to the scope of substantive applicability, the existence of general limits on the permissibility of automated decision-making, and the systematic embedding within the legal order of the respective Member State.

In contrast to the legal basis for the automation of administrative proceedings, special safeguards of legality are generally absent, as only five of the examined Member States were found to have explicitly codified them. Among those Member States that have adopted such safeguards, there is notable diversity in their regulation, both in terms of scope and the nature of the safeguards provided. To a certain extent, generalizable trends can be identified, with safeguards primarily aimed at ensuring the transparency and non-discrimination of automated decision-making, the accountability of the specific public authority responsible for the automated decision, and the capacity for human review of such decisions.

In light of these findings, and taking into account the requirements arising from Art. 2 para. 2 of the Constitution of the Slovak Republic and Art. 22 (2) (b) GDPR, is recommended that the Slovak legislator, prior to implementing any automated system in the public decision-making process, establish an explicit legal basis for its use, accompanied by general limits on the permissibility of automated decision-making. Simultaneously, special safeguards of legality

[123] On adminsitrative discretion and automated decision-making, see COVILLA, J. C.: Artificial Intelligence and Administrative Discretion: Exploring Adaptations and Boundaries. In: European Journal of Risk Regulation, 2025, Vol. 16, Special Issue 1, pp. 36-50.

[124] On the risks of introducing more sophisticated AI systems into decision-making processes in public administration, see SHEEHY, B. – FUI-NG Y.: The Challenges of AI-Decision-Making in Government and Administrative Law: A Proposal for Regulatory Design. In: Indiana Law Review, 2024, Vol. 57, No. 3., pp. 665-698., RANERUP, A. – HENRIKSEN, H.: Digital Discretion: Unpacking Human and Technological Agency in Automated Decision Making in Sweden's Social Services. In: Social Science Computer Review, 2022, Vol. 40, No. 2, pp. 445-461. or van BEKKUM M. – BORGESIUS FZ: Digital welfare fraud detection and the Dutch SyRI judgment. In: European Journal of Social Security, 2021, Vol. 23, No. 4, pp. 323–340.

should be codified, with the primary objectives of ensuring transparency and non-discrimination in automated decision-making, accountability of the specific public authority for the automated decision, and the ability for human review of that decision.

While it is, in our view, essential that further scholarly and professional discussion takes place regarding the specific content of the legal basis, its systematic embedding in the legal order, the scope and nature of general limits on the permissibility of automated decision-making, as well as the special safeguards of legality, the recommendations provided – drawn from the legal practices of other Member States – should serve as a fundamental legal starting point for the lawful implementation of administrative process automation in the Slovak Republic, ensuring at the same time that the rights and legitimate interests of individuals are respected.

KEYWORDS
Automation, administrative proceedings, decision-making. ADM, comparative study, EU Member States

KĽÚČOVÉ SLOVÁ
Automatizácia, správne konanie, rozhodovanie, ADM, komparatívna štúdia, členské štáty EÚ

BIBLIOGRAPHY

1. ANDRAŠKO, J. a kol. Regulačné výzvy e-governmentu v Slovenskej republike v kontexte práva Európskej únie. Praha: Wolters Kluwer ČR, 2022, p. 380.
2. CASADO, E. G.: Automated Decision-Making Systems in Spanish Administrative Law. In: CERIDAP, 2023, No. 1, pp. 24-40. DOI: 10.13130/2723-9195/2023-1-119
3. COVILLA, J. C.: Artificial Intelligence and Administrative Discretion: Exploring Adaptations and Boundaries. In: European Journal of Risk Regulation, 2025, Vol. 16, Special Issue 1, pp. 36-50. DOI: 10.1017/err.2024.76
4. CSATLÓS, E.: Hungarian administrative processes in the digital age: An attempt at a comprehensive examination. In: Intersections. East European Journal of Society and Politics, 2024, Vol. 10, No. 1, pp. 189-209. DOI: 10.17356/ieejsp.v10i1.1250
5. CSATLÓS, E – MEZEI, P.: The Law of the Algorithmic State in Hungary. In: Italian Journal of Public Law. 2025, Vol. 17, No. 2, p. 621-650. DOI: 10.2139/ssrn.4976513
6. DANOVSKIS, E.: THE USE OF AUTOMATED DECISION-MAKING SYSTEMS BY THE GOVERNMENT IN LATVIA. In: Italian Journal of Public Law. 2025, Vol. 17, No. 2, p. 655 and pp. 651-662.
7. GALETTA, D.-U. – PINOTTI, G.: Automation and Algorithmic Decision-Making Systems in the Italian Public Administration. In: CERIDAP, 2023, No. 1, pp. 13-23. DOI: 10.13130/2723-9195/2023-1-7
8. GREGA, R. – KOVAČ, P.**:** The Role of Automated Decision-Making in Modern Administrative Law: Challenges and Data Protection Implications**.** In**:** Central European Public Administration Review, 22(2), pp. 83–108. DOI: 10.17573/cepar.2024.2.04
9. HAITSMA, L. – BRINK, B.: From Human Intervention to Human Involvement: A Critical Examination of the Role of Humans in (Semi-)Automated Administrative Decision-Making. In: Digital Government: Research and Practice, 2025, Vol. 6, No. 3, Article 33, pp. 1-17. DOI: 10.1145/3716173
10. HAMUĽÁKOVÁ, Z.: Právo na spravodlivý proces v kontexte automatizovaných rozhodnutí vo verejnej správe. In: MASLEN, M: Elektronizácia a digitalizácia verejnej správy. Typi Universitatis Tyrnaviensis, Trnava 2024. p. 8-24.

11. HANDRLICA, J.: Automatizace v rozhodování správních orgánu: Fatamorgána, nebo realita budoucnosti?. In: Správni právo, 2024, No. 6-7, p. 421-424. DOI: 10.13140/RG.2.2.14537.76643
12. HOFMANN, H. C. H.**:** Comparative Law of Public Automated Decision-Making. An Outline**.** In**:** CERIDAP**,** 2023**,** No. 1**,** s. 1-12. DOI: 10.13130/2723-9195/2023-1-3
13. JAKAB, R.: National Report on Automation in Decision-Making in Public Administration in Slovakia. In: ACTA UNIVERSITATIS CAROLINAE, Vol. 70, 2024, No. 2, 147-157. DOI: 10.14712/23366478.2024.28
14. JAKUBEK-LALIK, J.: The Challenges of AI in Administrative Law and the Need for Specific Legal Remedies: Analysis of Polish Regulations and Practice. In: Central European Public Administration Review, 2024, Vol. 22, No. 2, pp. 109-127. DOI: 10.17573/cepar.2024.2.05
15. JANČÁT, L.: Právo na spravodlivý proces podľa Dohovoru a judikatúry ESĽP v Slovenskej republike. Vysokoškolská učebnica. Kosice: ŠafárikPress, 2024, p. 120. DOI: 10.33542/psp-0360-9
16. MALGIERI, G.: Automated decision-making in the EU Member States: The right to explanation and other "suitable safeguards" in the national legislation. In: Computer Law & Security Review, 2019, No. 5, p. 1-26. DOI: 10.1016/j.clsr.2019.05.002
17. MERLI, F.: Automated Decision-Making Systems in Austrian Administrative Law. In: CERIDAP, 2023, No. 1, pp. 42-43. DOI: 10.13130/2723-9195/2023-1-19
18. METCALF, K.-N. – KERIKMÄE, T.: Machines are taking over – Are we ready?: Law and Artificial Intelligence. In: Singapore Academy of Law Journal, 2021, Vol. 33, p. 24-49.
19. NEŠPOR, J.: Automated Administrative Decision-Making: What is the Black Box Hiding?. In: ACTA UNIVERSITATIS CAROLINAE, Vol. 70, 2024, No. 2, pp. 69-83. DOI: 10.14712/23366478.2024.23
20. PILVING, I.: Guidance-based Algorithms for Automated Decision-Making in Public Administration: the Estonian Perspective. In: CERIDAP, 2023, No. 1, pp. 51-74. DOI: 10.13130/2723-9195/2023-1-105
21. RANERUP, A. – HENRIKSEN, H.: Digital Discretion: Unpacking Human and Technological Agency in Automated Decision Making in Sweden's Social Services. In: Social Science Computer Review, 2022, Vol. 40, No. 2, 445-461. DOI: 10.1177/0894439320980434
22. REICHEL, J..: Regulating Automation of Swedish Public Administration. In: CERIDAP, 2023, No. 1, pp. 77-78. DOI: 10.13130/2723-9195/2023-1-112
23. SHEEHY, B. – FUI-NG Y.: The Challenges of AI-Decision-Making in Government and Administrative Law: A Proposal for Regulatory Design. In: Indiana Law Review, 2024, Vol. 57, No. 3., p. 665-698. DOI: 10.18060/28360
24. SCHNEIDER, J.-P. – ENDERLEIN, F.: Automated Decision-Making Systems in German Administrative Law. In: CERIDAP, 2023, No. 1, pp. 95-115. DOI: 10.13130/2723-9195/2023-1-102
25. SCHOCH, F., Einleitung, In SCHOCH, F. – SCHNEIDER, J.-P. Verwaltungsverfahrensgesetz, C.H. Beck, Munich, 2022, pp. 290–294.
26. SIBIGA, G.: Zasada wykorzystania pism generowanych automatycznie do załatwienia indywidualnej sprawy administracyjnej (art. 14 § 1b KPA) Podstawa prawna czy zasada kierunkowa dla automatycznego podejmowania decyzji? (Dodatek specjalny do MOP 6/2023). In: Monitor Prawniczy, 2023, No 6, pp. 7-16.

27. STAŠA, J.: Očekávaní a obavy spojené s automatizací správního rozhodování.. In: MASLEN, M: Elektronizácia a digitalizácia verejnej správy. Typi Universitatis Tyrnaviensis, Trnava 2024. p. 127-140.
28. STEPANOV, A. Easy to learn, hard to master: the challenge of intelligible AI in French administration. In: The Digital Constitutionalist [online]. [cit. 2025-09-27]. Available at: https://digi-con.org/easy-to-learn-hard-to-master-the-challenge-of-intelligible-ai-in-french-administration.
29. van BEKKUM M. – BORGESIUS FZ: Digital welfare fraud detection and the Dutch SyRI judgment. In: European Journal of Social Security, 2021, Vol. 23, No. 4, pp. 323–340. DOI: 10.1177/13882627211031257
30. WILBRANDT-GOTOWICZ, M.: The dilemmas of automated decision making in administrative proceedings – comments in the context of § 14 1b of the Administrative Procedure Code. In: STUDY OF PRAWNICZE KUL, 2023, Vol. 95, No. 3, pp. 141–158. DOI: 10.31743/sp.14504

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FROM PRIVATE REGULATION TO PUBLIC IMPACT: RETHINKING PLATFORM GOVERNANCE THROUGH DIGITAL CONSTITUTIONALISM

OD SÚKROMNEJ REGULÁCIE K VEREJNÉMU VPLYVU: PREHODNOTENIE SPRÁVY PLATFORIEM CEZ PRIZMU DIGITÁLNEHO KONŠTITUCIONALIZMU

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https://doi.org/10.33542/SIC2025-S-06

ABSTRACT

This paper explores the growing regulatory role of very large online platforms (VLOPs) through the lens of digital constitutionalism. It argues that while these platforms operate under private legal frameworks, their governance functions—especially content moderation and algorithmic decision-making—closely resemble public regulatory authority. As platforms increasingly shape the terms of civic participation, public discourse, and access to information, a normative gap has emerged between the private character of their power and its public consequences. The study identifies three core questions: what motivates platform self-regulation, whether platforms exercise public-like functions, and whether digital constitutionalism provides a viable framework for constraining their power. Drawing primarily on a comprehensive literature review, the analysis confirms that platform self-regulation is strategically motivated, that platforms exercise quasi-public authority, and that digital constitutionalism offers a promising—though still evolving—response. The findings suggest that constitutional values such as transparency, due process, and the protection of fundamental rights must increasingly be applied to powerful private actors in the digital environment to uphold rule-of-law standards and democratic legitimacy.

ABSTRAKT

Tento článok skúma rastúcu regulačnú úlohu veľmi veľkých online platforiem (VLOPs) z pohľadu digitálneho konštitucionalizmu. Tvrdí, že hoci tieto platformy fungujú v rámci súkromných právnych režimov, ich riadiace funkcie – najmä moderovanie obsahu a algoritmické rozhodovanie – sa svojou povahou čoraz viac približujú výkonu verejnej regulačnej moci. Keďže platformy čoraz výraznejšie formujú podmienky občianskej participácie, verejného diskurzu a prístupu k informáciám, vzniká normatívna medzera medzi súkromným charakterom ich moci a verejnými dôsledkami, ktoré vyvolávajú. Štúdia identifikuje tri kľúčové otázky: čo motivuje samoreguláciu platforiem, či platformy vykonávajú funkcie podobné verejnej moci a či digitálny konštitucionalizmus poskytuje životaschopný rámec na obmedzenie ich moci. Analýza, založená predovšetkým na komplexnom prehľade odbornej literatúry, potvrdzuje, že samoregulácia platforiem je strategicky motivovaná, že platformy

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vykonávajú kvázi verejnú autoritu a že digitálny konštitucionalizmus predstavuje sľubnú – hoci stále sa rozvíjajúcu – odpoveď. Zistenia naznačujú, že ústavné hodnoty, ako sú transparentnosť, riadny proces a ochrana základných práv, musia byť čoraz viac uplatňované aj voči mocným súkromným subjektom v digitálnom prostredí, aby sa zachovali štandardy právneho štátu a demokratická legitimita.

I. INTRODUCTION

In recent years, digital platforms have emerged as powerful gatekeepers of public discourse, social participation, and access to information. Services such as Facebook, YouTube, and TikTok are no longer merely intermediaries between users, but key actors in shaping the communicative architecture of democratic societies. These platforms define the rules of acceptable speech, regulate the visibility of content, and increasingly rely on algorithmic systems to enforce their standards. As a result, their decisions can profoundly affect individuals' rights—especially freedom of expression—without being subject to the same legal and procedural safeguards that constrain state action.

This evolution challenges the traditional liberal-democratic assumption that the protection of fundamental rights is primarily a matter of constraining public power. While public law has historically focused on preventing state overreach, today much of the coercive, normative, and organizational authority that affects fundamental rights is exercised by private actors. The governance models of large digital platforms embody this shift: they engage in unilateral rulemaking through community guidelines, adjudicate disputes internally without external oversight, and enforce their rules through opaque and often automated procedures. Despite operating within a framework of private law—most notably through general terms and conditions—platforms exert a form of authority that is public in function and effect.

This conceptual tension has drawn considerable scholarly attention, most notably through the framework of digital constitutionalism, a theoretical and normative project aimed at reinterpreting constitutional principles for the digital age. Its core premise is that certain private actors—particularly very large online platforms (VLOPs)—have attained such structural significance that their governance practices should be subject to procedural and transparency requirements traditionally reserved for public authorities.[4] While constitutional norms do not provide an exhaustive list of procedural obligations, the rule of law implies principles such as predictability, legality, due exercise of rights, and timely decision-making, while the principle of democracy entails democratic legitimacy, majority decision-making, and transparency.[5] Historically, these procedural safeguards emerged to protect the rights and legitimate interests of individuals in their interactions with public institutions.[6] Digital constitutionalism extends this rationale to the governance of digital platforms, obliging them not only to refrain from unjustified interferences but also to actively implement measures that protect users' rights. In doing so, it seeks to close the widening gap between the vast regulatory power these platforms exercise and the limited legal frameworks currently available to constrain them, embedding constitutional values directly into private digital governance structures.[7]

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4 CELESTE, E. : Digital constitutionalism: a new systematic theorization. In: *International Review of Law, Computers and Technology*, 2023, Vol. 33., I. 1. pp. 76-99. https://doi.org/10.1080/13600869.2019.1562604.

5 PATYI, A.: Issues of fundamental procedural rights and procedural constitutionality in the Fundamental Law. In: *Institutiones Administrationis Journal of Administrative Sciences*, 2022, Vol. 2., No. 1, pp. 6-23. https://doi.org/10.54201/iajas.v2i1.27.

6 VÁCZI, P. : Fair and effective public administration. In: *Institutiones Administrationis Journal of Administrative Sciences*, 2022, Vol. 2., No. 1, pp. 161-170. https://doi.org/10.2139/ssrn.4217563.

7 AYTAC, U. : Digital Domination: Social Media and Contestatory Democracy. In: *Political Studies*, 2024, Vol. 72, I. 1., pp. 6-25. https://doi.org/10.1177/00323217221096564.

The academic and regulatory relevance of this topic is further underscored by contemporary developments such as the European Union's Digital Services Act (DSA), which introduces horizontal obligations for platforms to improve transparency, accountability, and user rights protection. At the same time, however, many platform practices remain self-regulatory in nature, driven by business interests, risk management strategies, and the desire to preserve autonomy in the face of increasing public scrutiny. As such, self-regulation occupies a complex and often ambiguous role in the digital governance landscape: it promises flexibility and scalability but may also lack legal clarity, democratic legitimacy, and enforceable guarantees.

This paper aims to contribute to this ongoing discourse by offering a comprehensive literature-based overview of platform self-regulation and the emerging paradigm of digital constitutionalism. Rather than conducting empirical research, the primary objective is to synthesize and critically engage with the existing academic and regulatory literature in order to clarify conceptual foundations, identify key normative tensions, and explore possible future directions for legal development.

The central research questions guiding this study are as follows:

- What motivates platforms to adopt self-regulatory governance, and how do these motivations relate to legal and economic theories of private regulation?
- In what ways do platform content moderation practices resemble public regulatory functions, and what are the legal consequences of this resemblance?
- Can digital constitutionalism provide a viable normative framework for constraining platform power and ensuring accountability in the absence of direct state oversight?

To address these questions, the paper formulates three hypotheses:

1. Platform self-regulation is primarily motivated by strategic considerations aimed at pre-empting public regulation reducing legal exposure.
2. The regulatory functions exercised by platforms qualify as quasi-public in nature and thus necessitate the application of public law principles, despite being grounded in private law instruments.
3. Digital constitutionalism can offer a conceptual and normative foundation for rethinking platform accountability, but only if its principles are embedded into enforceable legal and institutional mechanisms.

The methodology employed in this study is primarily based on qualitative doctrinal analysis and interdisciplinary literature review. The paper draws on a broad corpus of academic writings in constitutional law, legal theory, platform governance, and digital rights, as well as selected regulatory documents, case law, and public policy reports. This approach allows for the identification of recurring patterns, normative tensions, and conceptual innovations in the literature. While empirical references and illustrative examples are occasionally used—for instance, to demonstrate the operation of algorithmic content moderation or the practical effects of community guideline enforcement—the overall goal is not to conduct an empirical case study, but to map the evolving academic discourse and to clarify its implications for legal and institutional design.

By situating platform self-regulation within the broader theoretical context of digital constitutionalism, this paper aims to contribute to a more principled understanding of how law should respond to the privatization of regulatory authority in the digital age. The normative ambition is not only to describe existing practices, but to critically assess whether they meet the standards of legitimacy, fairness, and accountability expected in a democratic constitutional order.

II. SELF-REGULATION IN THE SHADOW OF PUBLIC LAW: MOTIVATIONS AND CONSEQUENCES

One of defining characteristics of platform governance is a reliance on self-regulation—an approach situated between formal state control and unregulated market freedom. In this hybrid model, platforms - either individually, collaboratively with industry peers, or in coordination with public authorities - develop and enforce the rules that shape user behavior and online discourse. Understanding the motivations behind this model is therefore essential, as it reveals both the strategic calculations underlying platform conduct and the broader structural and institutional logics that drive private regulatory governance in the digital environment. The following analysis explores these drivers and theoretical frameworks to clarify why self-regulation has become the dominant mode of rule-setting in the platform economy.

Social media platforms often frame their self-regulatory practices as pragmatic responses to the complex and rapidly evolving digital environment. According to Beaumier and Newman these practices are commonly justified through three main rationales: preserving institutional autonomy, enhancing operational efficiency, and strengthening market position. However, these justifications are not merely ad hoc; they are underpinned by deeper theoretical logics that illuminate why private regulatory governance has become so prevalent—and so powerful—in the platform economy.

One of the primary incentives for platforms to adopt self-regulatory mechanisms is the anticipation of formal state intervention. When political actors begin discussing regulatory reforms, or when public scrutiny intensifies—especially in the wake of crises such as data breaches, disinformation campaigns, or harmful content proliferation—platforms may strategically introduce internal rules, codes of conduct, or ethical guidelines to stave off more intrusive government regulation. This anticipatory behavior allows platforms to control not only the content of governance (i.e., which values are protected and how) but also its timing and enforcement. By being “first movers” in the regulatory domain, platforms can influence or even co-opt public debate, presenting themselves as responsible actors already addressing the issues at hand. This strategy - often referred to as operating in the “shadow of hierarchy” - does not necessarily indicate a commitment to fundamental rights or democratic values; rather, it reflects a pragmatic effort to protect institutional autonomy and limit legal constraints.

A second rationale for self-regulation emphasizes functionality. In the absence of comprehensive public regulation, platforms may engage in self-regulation to resolve coordination problems, reduce legal and reputational risks, and enhance operational efficiency. From this perspective, self-regulation serves a quasi-infrastructural function: it allows platforms to standardize practices across a global user base, create predictable expectations for advertisers, and minimize public controversies that could trigger costly litigation or reputational damage. These privately set standards also act as club goods, signaling legitimacy to external stakeholders, attracting risk-averse investors, and facilitating smoother collaboration with governmental and civil society actors. Moreover, by shaping soft norms, platforms can forestall inconsistent regulatory responses from different jurisdictions and maintain a unified governance approach across borders, preserving the integrity of their global service models. Also, they are able to limit adaptation costs by not having to conform to multiple standards at once or to change their production standards in the future, if more businesses adopt the same standards.

The third rationale is rooted in the economic logic of two-sided markets, where platforms act as intermediaries between distinct user groups—typically, consumers on one side and advertisers, developers, or sellers on the other. In this setting, self-regulation is not merely a defensive or normative exercise; it becomes a strategic instrument for shaping market dependencies. Platforms can use their control over rules and technical infrastructure to create environments that are more attractive to advertisers (e.g., safer, more predictable, or more

aligned with brand values), even at the cost of limiting user autonomy. Importantly, this governance is embedded into the architecture of the platform itself, through algorithmic ranking, content prioritization, or the design of reporting systems.

Apple's 2021 implementation of the App Tracking Transparency (ATT) feature on iOS devices significantly limited third-party tracking and data collection, enhancing privacy protections for over a billion users. While framed as a user-centric privacy measure, the policy simultaneously reshaped the advertising ecosystem in Apple's favor by restricting competitors' data access, contributing to billions in lost revenue for rival platforms like Meta, Snapchat, and Pinterest, and illustrating how dominant actors can leverage self-regulatory design choices to consolidate market power and disadvantage competing services.

Taken together, these three rationales demonstrate that the self-regulatory practices of social media platforms are rarely altruistic or purely normative. Rather, they emerge at the intersection of public pressure, economic logic, and strategic market positioning—often blurring the boundaries between public interest and private power.[8]

According to Grabs, Auld and Cashore Private regulatory governance can been explained through distinct theoretical logics, each offering different insights into why such systems emerge and how they function. In the following we would like to highlight these:

The calculated strategic behavior perspective, grounded primarily in economics and management theory, views private regulatory governance as the product of rational, utility-maximizing behavior by firms. Companies adopt self-regulatory mechanisms or industry standards strategically to secure market advantages, preempt public regulation, or build reputational capital. Regulation here is instrumental: a means to manage legal risk, shape consumer trust, or respond to activist pressure. The public-private divide is conceptualized as largely functional. The state is seen either as a background actor or a potential threat to firm autonomy, prompting private regulation as a shield against stricter public oversight. In the context of social media platforms, such strategies include the adoption of content moderation policies or transparency reports aimed at avoiding legislative intervention or reputational damage.

The idea of the learning and experimentalist governance, emerging from economics, legal pragmatism, and democratic theory, emphasizes the iterative, adaptive nature of governance. Regulation is not a one-off imposition but a continuous process of learning, monitoring, and revision. Private actors—especially those with complex operational environments like platforms—engage in experimentalist governance to address novel problems more quickly than bureaucratic states can. From this perspective, private and public regulation are not in opposition but are part of a polycentric governance system, where diverse actors collaboratively generate and refine norms. In the platform economy, this can be seen in ongoing adaptations to community guidelines, transparency regimes, and co-regulatory initiatives with public authorities or civil society.

The political institutionalism theory rooted in political science, focuses on how private governance structures are embedded within and shaped by existing political institutions. Rather than arising ex nihilo, private regulation reflects institutional legacies, power relations, and governance logics internal to specific state formations. Private regulation is therefore neither fully autonomous nor universally substitutive—it co-evolves with public authority. In platform governance, this can be seen in how content moderation practices are influenced by national legal traditions (e.g. data protection law in the EU, or First Amendment constraints in the U.S.) and the extent to which states provide or restrict regulatory space. Platforms may adopt different

[8] BEAUMIER, G. – NEWMAN, A.: When Serving the Public Interest Generates Private Gains: Private Actor Governance and Two-Sided Digital Markets. In: *Perspectives on Politics*. 2024, Vol. 23, I. 3. https://doi.org/10.1017/S15375 92724001099.

regulatory postures in different jurisdictions depending on the institutional incentives and pressures they face.

The global value chain and convention theory, emerging from economic sociology and global production network studies, sees private regulatory governance as a function of structural market power and coordination across transnational economic chains. Lead firms—such as digital platforms—set de facto standards for compliance, content acceptability, and commercial practices, thereby shaping the conduct of other actors in the ecosystem. Regulation in this context is performative: it organizes how actors relate to each other within a value chain. The state is often sidelined, intervening only intermittently or reactively. Public and private regulation are thus not dichotomous but exist in a dynamic of displacement and rearticulation. In the digital context, major platforms impose rules not only on users but also on advertisers, developers, and content creators, often without direct public oversight. Their regulatory reach rivals or exceeds that of public law, particularly in areas like speech governance or online labor.

The neo-gramscian and critical views, drawing from critical theory, are focusing on structural and diachronic elements, this approach interrogates the ideological and material foundations of private regulatory governance. Rather than seeing it as filling gaps left by the state, it views private regulation as embedded within broader structures of capitalism. Legal frameworks—especially those concerning property, contracts, and intellectual rights—constitute the very possibility of private governance, which is exercised in ways that reinforce corporate hegemony and social inequalities. Public regulation is not absent, but complicit, as it legitimizes private authority while masking its coercive dimensions. In the case of platform governance, this view highlights how content moderation, data extraction, and algorithmic control serve the interests of dominant firms under the guise of neutrality or community norms. The rule of law, under this paradigm, is often subordinated to market logics unless actively reclaimed through democratic contestation.

Taken together, these five approaches offer a nuanced, interdisciplinary understanding of private regulatory governance. Rather than treating public and private regulation as mutually exclusive spheres, they emphasize their interdependence, co-evolution, and contestation. In the context of social media platforms, this suggests that content moderation and platform rules cannot be viewed as isolated corporate practices but as part of complex, overlapping regulatory regimes that blur traditional distinctions between state and market, law and code, public power and private authority.[9] Recognizing this hybridity is essential for any meaningful inquiry into the legitimacy, accountability, and legal limits of private governance in the digital sphere.

According to Newman and Bach there are two distinct models of self-regulation that are particularly relevant to understanding its application in digital contexts. The legalistic model, typified by the United States, arises in environments where the public sector lacks strong central regulatory authority. In such settings, firms are motivated to adopt self-regulatory measures as a preemptive strategy, aiming to reduce exposure to litigation or fragmented regulatory pressures. Conversely, the coordinated model, more characteristic of the European Union, features stronger public-private cooperation, wherein the state plays a facilitating and incentivizing role, often supporting industry-led initiatives through funding, soft law instruments, or formal recognition.

These arrangements offer tangible advantages in fast-moving sectors like the digital economy, where state regulation may lag behind technological innovation. Self-regulation can enhance flexibility, reduce compliance burdens, and facilitate innovation. Yet its legitimacy remains deeply contested. Critics argue that self-regulation often serves symbolic purposes, as it only deflects public scrutiny without delivering meaningful accountability. More seriously, it

[9] GRABS, J. – AULD, G.–CASHORE, B.: Private regulation, public policy, and the perils of adverse ontological selection. In: *Regulation & Governance*, 2023, Vol. 15., I. 4., pp. 1183-1208. https://doi.org/10.1111/rego.12354.

may enable industry capture: when dominant actors co-opt regulatory processes to entrench their own interests, marginalize competitors, and resist external oversight.[10] Without transparency, independent enforcement, and procedural safeguards, self-regulation may reinforce power asymmetries and generate outcomes that diverge from the public interest.[11]

Self-regulation presents clear advantages in highly dynamic sectors such as digital platforms, where the pace of technological development often outstrips the state's regulatory capacity. By allowing for greater flexibility, speed, and adaptability, it can reduce compliance burdens and foster innovation.[12] However, the effectiveness and legitimacy of self-regulation are far from guaranteed. One major critique is that it may serve a primarily symbolic function, used by dominant firms to enhance public legitimacy while avoiding substantive accountability. A further concern is the risk of industry capture, whereby the regulatory process is effectively controlled by the very actors it is meant to constrain, leading to rules that primarily reflect industry interests. In the absence of robust monitoring, enforcement mechanisms, and external oversight, self-regulation may exacerbate power asymmetries and produce outcomes misaligned with the public interest.

In the context of social media platforms—such as Facebook, YouTube, and TikTok—self-regulation takes the form of internal content governance mechanisms, including terms of service, community guidelines, and algorithmic moderation practices. These instruments not only delineate acceptable behavior but also determine the visibility and reach of speech online, effectively regulating the digital public sphere. While platforms present these mechanisms as evidence of responsible governance, they often operate without meaningful transparency, external review, or procedural safeguards. This raises concerns about quasi-public power being exercised by private entities through opaque and unaccountable procedures.[13]

III. MODERATION PROCEDURES AND DECISIONS OF THE PLATFORMS

In this section, we will examine the content moderation procedures of online platforms, and the remedies against their decisions.

The primary regulatory instruments of social media platforms – as already mentioned - are their community guidelines. (We examined Facebook's, TikToks and Youtube's community guidelines for this section.) These general terms and conditions define the contractual relationship between the platform and the user under private law.[14] Although unilaterally determined by platforms and required for access, their impact often extends beyond a typical private contract. They form the basis for decisions - such as content removal or account suspension - that directly affect fundamental rights, especially freedom of expression and equal treatment.[15]

This dual character illustrates the broader challenge of internet governance, which operates through a mix of self-regulation, corporate policy, national and international legal norms. Platforms' rules function within this hybrid framework, that blurs the conventional distinction

[10] NEWMAN, A.L. – BACH, D.: Self-regulatory trajectories in the shadow of public power: Resolving digital dilemmas in Europe and the United States. In: *Governance*, Vol. 17., I. 3., 2004, pp. 387-413. https://doi.org/10.1111/j.0952-1895.2004.00251.x.

[11] LAPSÁNSZKY, A.: A médiaigazgatás eljárásrendje, szankciórendszer, társszabályozás. In: KOLTAY, ANDRÁS (ed.): *Magyar és európai médiajog.* Budapest: Wolters Kluwer, 2025. pp. 371.392.

[12] BENYUSZ, M.–HULKÓ, G.: Regulation of social media's public law liability in the Visegrad States. In: *Institutiones Administrationis Journal of Administrative Sciences*, 2023, Vol. 1., No. 1, pp. 6-16. https://doi.org/10.54201/iajas.v1i1.3.

[13] NEWMAN, A.L.–BACH, D.: Self-regulatory trajectories in the shadow of public power: Resolving digital dilemmas in Europe and the United States. In: *Governance*, Vol. 17., I. 3., 2004, pp. 387-413. https://doi.org/10.1111/j.0952-1895.2004.00251.x.

[14] BALOGH, V.: Digitalization and consumer protection enforcement. In: *Institutiones Administrationis Journal of Administrative Sciences*, 2022, Vol. 2., No. 1, pp. 85-99.

[15] SUZOR, N.: A constitutional moment: How we might reimagine platform governance. In: Computer Law and Security Review, 2020, Vol. 36., Article No. 105381, pp. 1-4. https://doi.org/10.1016/j.clsr.2019.105381.

between public and private authority, lacking the force of state law yet profoundly influencing users' rights and obligations.[16]

Content moderation serves both a gatekeeping and an organizing function: it determines what content is permissible and how it is ranked or promoted.[17] It is a socio-technical process involving both human and automated actors, shaped by legal norms, corporate interests, and user agency, through which platforms decide and filter what is appropriate according to policies, legal requirements and cultural norms.[18]

Moderation typically begins with automated detection systems, offering speed and scale but limited contextual sensitivity. These opaque "black box" algorithms often lack transparency, and their decisions are difficult to externally review.[19] User reporting complements automation, enabling contextual assessment, though it may be biased by personal or political views. Final decisions may rest with AI or human moderators, whose capacity, workload, and training influence outcomes. Independent fact-checkers may also contribute, but their role is advisory, and their assessments are often too slow to prevent viral spread. Courts and public authorities provide legal oversight but are comparatively slow and limited in scope. While state processes ensure strong procedural safeguards, platform processes offer efficiency, often at the cost of legal guarantees.

These mechanisms rarely operate in isolation. In practice, the above moderation tools do not operate in isolation but rather in combination. The procedures themselves may be initiated - using classical administrative law terminology - ex officio (by algorithms or moderators) or upon request (i.e., based on user reports). Ultimately, decisions are made either by algorithms or by humans. In the latter case, the decision-makers may be the platform's own internal moderators or external partners. Remedies against these decisions include recourse to the platform's internal complaint-handling system as well as to external bodies (state authorities, courts, dispute resolution bodies).

The guidelines of the three platforms examined cover similar sensitive content areas, yet differ in emphasis and interpretation. This can lead to inconsistent enforcement across platforms, undermining legal certainty. Platforms often err on the side of over-removal to reduce liability, especially in legally ambiguous contexts.[20]

But what about remedies against platform decisions? First, it is important to clarify that platforms often use the terms "complaint" and "complaints process" not to refer to an appeal of a decision affecting the user, but rather to the process by which a user reports content they believe to be unlawful, and which the platform then reviews. Notably, these complaints are often handled by algorithms rather than by a human reviewer (basically using the aforementioned content moderation methods). The complaints process is thus essentially a user-initiated procedure against another user's content, not an appeal of a decision concerning the user themselves.

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16 KETTEMANN, M. C.: *The normative order of the internet: A theory of rule and regulation online*. Oxford: Oxford University Press, 2020. https://doi.org/10.1093/oso/9780198865995.003.0006.

17 SANDER, B.: Democratic Disruption in the Age of Social Media: Between Marketized and Structural Conceptions of Human Rights Law. In: *European Journal of International Law*, 2021, Vol. 32, I. 1, pp. 159-193. https://doi.org/10.1093/ejil/chab022.

18 ZENG, J.–KAYE, D. B.: From content moderation to visibility moderation: A case study of platform governance on TikTok. In: *Policy and Internet*, 2022, Vol. 14., I. 1, pp. 79-95. https://doi.org/10.1002/poi3.287.

19 SÍTHIGH, D. M.: The mass age of internet law. In: *Information and Communications Technology Law*, 2008, Vol. 17, I. 2, pp. 79-94. https://doi.org/10.1080/13600830802204187.

20 FISCHMAN A.O.: Regulating online content moderation: Taking stock and moving ahead with procedural justice and due process rights. In: JENS SCHOVSBO (eds.): *The Exploitation of Intellectual Property Rights - In Search of the Right Balance.* ATRIP Intellectual Property series, Edward Elgar Publishing, 2023. pp. 5-27. https://doi.org/10.4337/9781035311460.00006.

Turning to procedures that genuinely qualify as redress, we can distinguish between the internal and external remedies available to users. Internal remedies are referred to by various names across different platforms (e.g., "appeal," "internal review," etc.), but their essence is the same, i.e. they allow users to challenge decisions that directly affect them, such as account suspensions, content removals, or demonetization. Also, these are processes in which the platform itself reviews its own previous decision at the user's request. From the perspective of the right to due process, the internal appeal mechanisms of the platforms cannot be considered genuine remedies, as they are not conducted by a body independent of the platform, such as a court.[21]

Similarly reactive, but externally administered, are the official state-based redress mechanisms—appeals to courts or administrative authorities—which provide a higher level of procedural guarantees. Also falling under external remedies are procedures administered by independent dispute resolution bodies, which can offer oversight of platform decisions without being directly tied to the platform.

Ultimately, there is a structural tension between the decentralized, algorithmically-driven logic of platform moderation and the slow but legally robust mechanisms of state oversight. The central challenge lies in ensuring that efficiency does not come at the expense of procedural fairness and rights protection.

IV. PRIVATE POWER, PUBLIC FUNCTIONS: RETHINKING LEGAL ACCOUNTABILITY IN PLATFORM GOVERNANCE

4.1 Platforms as Quasi-Public Authorities: The Blurring of Public and Private Power

Based on what we gathered so far on platform governance, self-regulation and content moderation so far, in this section, we explore how the distinction between public and private power has become increasingly blurred in recent years, particularly in the context of digital platforms.

Max Weber famously defined power as "the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability rests".[22] Traditionally, power has been classified into two basic categories: public and private. Private power arises in interpersonal contexts—for instance, between a parent and child or a teacher and student—while public power is closely linked to the state, which is regarded as the supreme authority capable of enforcing its will through institutionalized coercion over all other actors within its territory. In this classical conception, public power is legitimate force used to serve both collective and individual interests.[23]

However, public authority as an impersonal, institutional force is a relatively recent historical development. In earlier political orders, the state itself was often indistinguishable from the private will of the sovereign. The well-known dictum attributed to Louis XIV, "L'état, c'est moi,"—though likely apocryphal—captures the essence of this period, when power rested with the monarch personally rather than with a neutral state apparatus. Even then, rulers were often constrained by parallel political structures and power centers. Beginning in the fifteenth century, the idea of public power gradually shifted from personal rule and the will of individual leaders to a system of impersonal authority exercised through state organs. In modern democracies, public power is meant to be distinct from private interests and is exercised through transparent and accountable institutions. Nevertheless, large private actors such as multinational

[21] SAPUTRA, R.– ZAID M.– EMOVWODO, S. O.: The Court Online Content Moderation: A Constitutional Framework. In: *Journal of Human Rights, Culture and Legal System*, 2022, Vol. 2, I. 3, pp. 139-148. https://doi.org/10.53955/jhcls.v2i3.54.

[22] WEBER, M.: *Gazdaság és társadalom. A megértő szociológia alapvonalai*. Budapest, Közgazdasági és Jogi Könyvkiadó, 1987.

[23] PETTIT, P.: *On the People's Terms*. Cambridge University Press, 2012. https://doi.org/10.1017/cbo9781139017428.

corporations have continued to wield significant influence—formally distinct from public power, yet indirectly shaping political and social life.[24]

Given that history has known periods in which public authority was not separated from private dominance, it is worth asking whether, in our contemporary context, a non-state actor—such as a social media platform—might exercise a comparable form of public power. In today's digitized world, the classical dichotomy between public and private is becoming untenable. Certain forms of private power increasingly perform public functions and directly affect core domains of social and political agency. As a result, contemporary theorists argue that the classification of power should not be based solely on its source (state or private), but on its effects—specifically, the kinds of choices it limits and the societal roles it shapes.[25]

Social media platforms like Facebook, TikTok, and YouTube now exert considerable influence over who can speak, what can be said, and how content is prioritized or suppressed. These platforms regulate access to the digital public sphere through private legal instruments, such as community guidelines, which from a private law perspective are considered general terms and conditions, and algorithmic curation. Although these instruments are unilaterally determined by the platform and acceptance is required for access to the service, their impact extends far beyond a typical private contract. These rules can lead to content removal, account suspension, or visibility restrictions—measures that significantly affect users' fundamental rights, including freedom of expression and equal treatment.

Platforms thus enjoy broad discretion to define acceptable behavior, based not only on legal compliance but also on commercial interests, business models, and reputational considerations.[26] This practice fits within what regulatory theory terms "self-regulation": a hybrid form of governance that exists between formal state regulation and market freedom. Self-regulatory frameworks are developed by social media platforms to govern their own behavior or the behavior of those who use their services and, increasingly, to shape public discourse.[27] In this light, platform rules take on a quasi-public character—they are not merely private arrangements, but powerful governance mechanisms whose societal reach rivals that of public law.[28]

This functional sovereignty, exercised through algorithmic tools and internal policies, brings with it significant normative concerns. While offering speed and scalability, platform governance often lacks transparency, legal clarity, procedural fairness, and effective remedies. Users are frequently subjected to opaque decisions with limited avenues for contesting them. In some instances, self-regulation even enables industry capture, allowing dominant actors to entrench their influence while escaping democratic scrutiny.

In response to this accountability gap, legal scholars have advanced the framework of digital constitutionalism, which aims to extend core constitutional principles—such as transparency, fundamental rights protection, and procedural accountability—to powerful private actors whose decisions have public consequences. Platforms that define rules, resolve disputes, and mediate participation in public discourse are effectively assuming quasi-legislative and adjudicative functions. In the absence of democratic legitimacy or institutional oversight, this transfer of

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[24] TEMESI, I.: Közigazgatás és közhatalom. In: JAKAB, ANDRÁS (et. al.) (Eds.): *Internetes Jogtudományi Enciklopédia*. 2022. http://ijoten.hu/szocikk/kozigazgatas-es-kozhatalom.

[25] AYTAC, U.: Digital Domination: Social Media and Contestatory Democracy. In: *Political Studies*, 2024, Vol. 72, I. 1., pp. 6-25. https://doi.org/10.1177/00323217221096564.

[26] SUZOR, N.: A constitutional moment: How we might reimagine platform governance. In: Computer Law and Security Review, 2020, Vol. 36., Article No. 105381, pp. 1-4. https://doi.org/10.1016/j.clsr.2019.105381.

[27] NEWMAN, A. L. – BACH, D.: Self-regulatory trajectories in the shadow of public power: Resolving digital dilemmas in Europe and the United States. In: *Governance*, Vol. 17., I. 3., 2004, pp. 387-413. https://doi.org/10.1111/j.0952-1895.2004.00251.x.

[28] KETTEMANN, M. C.: *The normative order of the internet: A theory of rule and regulation online*. Oxford: Oxford University Press, 2020. https://doi.org/10.1093/oso/9780198865995.003.0006.

authority raises serious concerns about the erosion of individual autonomy, the distortion of public debate, and the weakening of legal certainty.[29]

In conclusion, platforms are increasingly performing regulatory functions once reserved for the state, thereby blurring the boundaries between private enterprise and public authority. This development has led to the rise of quasi-public domination—a form of private power that governs public domains without being subjected to public accountability. As platforms influence political participation and shape the architecture of public communication, they operate as de facto public authorities or functional sovereigns. For this reason, their governance practices must be assessed not only through the lens of private law, but also against the normative standards traditionally applied to public power under the rule of law.

4.2. Digital Constitutionalism: Towards a Normative Framework for Platform Accountability

While platforms often defend self-regulation as a pragmatic response to the demands of complexity, speed, and global scalability, the implications of these practices extend far beyond operational efficiency. The content moderation systems, community guidelines, and algorithmic tools employed by social media platforms govern not only private interactions but also shape the architecture of public discourse. In doing so, they expose a growing normative gap between the private power platforms wield and the legal frameworks available to constrain it. As a result, legal scholars increasingly argue that core rule of law principles—such as transparency, public justification, proportionality, and access to effective remedies—should be extended to private actors when their decisions significantly affect fundamental rights. From this perspective, the legitimacy of platform governance is no longer determined solely by contractual compliance, but by its alignment with broader constitutional and ethical standards.

This development has given rise to theoretical frameworks that seek to conceptualize the unique nature of platform power. A growing body of literature suggests that the digital environment fosters new forms of "functional sovereignty" or "quasi-public domination," where private actors exercise powers traditionally associated with the state, yet without being subject to equivalent public obligations. These analyses question whether constitutional principles—historically developed to restrain public authority—should now be applied horizontally to regulate powerful non-state actors whose decisions bear public consequences.

Traditionally, the rule of law has functioned as a safeguard against arbitrary public authority, requiring that state power be exercised through general, predictable, and non-discriminatory norms. Yet in today's globalized and digital context, private actors—particularly large technology platforms—can wield similarly far-reaching power over individuals' rights and freedoms. Platforms such as Facebook, TikTok, and YouTube increasingly engage in unilateral rule-making, content moderation, and enforcement decisions that resemble the actions of public regulators, but without being subject to equivalent constitutional constraints. Their governance structures are typically grounded in private legal instruments—most notably terms of service—which nonetheless regulate essential domains of social, economic, and political participation. These decisions are often rendered through opaque algorithmic processes, internal codes of conduct, and AI-driven moderation systems that operate as "black boxes," concealing the rationale behind platform actions and frustrating users' efforts to understand, contest, or appeal them. The lack of transparency and procedural safeguards entrenches structural power asymmetries and undermines accountability.

This transformation reveals a deeper paradox within the modern rule of law: while it aspires to restrain arbitrary authority, the very legal constructs that legitimize corporate autonomy—

[29] AYTAC, U.: Digital Domination: Social Media and Contestatory Democracy. In: *Political Studies*, 2024, Vol. 72, I. 1., pp. 6-25. https://doi.org/10.1177/00323217221096564.

such as property rights and contractual freedom—can also shield powerful private actors from democratic oversight. In this sense, legality does not necessarily equate to legitimacy or justice; rather, it may serve to entrench private domination under the guise of legal formality. As platforms assume quasi-public roles without corresponding public obligations, a normative gap emerges between their societal influence and the legal mechanisms available to constrain it—prompting legal scholars to explore new paradigms, such as digital constitutionalism, to recalibrate the relationship between private governance and fundamental rights.[30]

In response to this growing legitimacy gap, legal scholars have increasingly turned to the framework of *digital constitutionalism*—a normative project aimed at extending core constitutional principles to the governance structures of digital platforms. As Celeste explains, digital constitutionalism aspires to protect fundamental rights and rebalance power in the digital environment by embedding transparency, due process, and enforceable safeguards into platform regulation. It represents "an ideology that aims to establish and guarantee the existence of a normative framework for the protection of fundamental rights and the balancing of powers in the digital environment".[31] Similarly, De Gregorio argues that as platforms exercise state-like regulatory powers over speech, data, and user interactions—without corresponding democratic legitimacy—constitutional limits must be imposed to protect individuals and preserve the integrity of the public sphere.[32]

This call for constitutional oversight arises from the recognition that private regulatory governance poses serious rule of law concerns. Platforms unilaterally create and enforce rules that shape users' access to information, participation in public discourse, and even opportunities for social and political engagement. However, these terms of service are not subject to democratic negotiation and often allow for arbitrary, opaque, and non-reviewable decisions. As a result, key rule of law principles—such as legal clarity, non-arbitrariness, and the right to an effective remedy—are frequently absent from platform governance. From a constitutional perspective, the core danger lies in the privatization of functions traditionally carried out by the state, without the corresponding procedural guarantees that ensure transparency, justification, and accountability. Platforms now act as de facto governors of the digital public sphere, yet their authority remains largely unchecked, creating a structural legitimacy deficit.

Addressing this deficit is the central challenge of digital constitutionalism. While platforms may not need to replicate the full institutional machinery of constitutional democracies, their regulatory influence over key aspects of public life demands legal frameworks that reflect their quasi-public status. As Suzor underscores, voluntary commitments to ethics and transparency are not sufficient. To ensure that digital governance respects individual rights and adheres to principles of justice, platforms must be subject to enforceable procedural safeguards, institutional oversight, and substantive constitutional values. Embedding these principles into private regulatory systems is not merely aspirational—it is essential to restoring legitimacy, trust, and fairness in the digital environment.[33]

While this study primarily provides a theoretical and conceptual mapping of these governance dynamics, it is important to acknowledge that the European Union's (DSA) has already taken concrete steps toward addressing several of the deficits identified above. The DSA introduces harmonized transparency obligations, requires reasoned decision-making in

[30] KAMPOURAKIS, I.–TAEKEMA, S. – ARCURI, A.: Reappropriating the rule of law: between constituting and limiting private power. In: *Jurisprudence*, 2023, Vol. 14., No. 1., pp. 76-94. https://doi.org/10.1080/20403313.2022.2119016.

[31] CELESTE, E.: Digital constitutionalism: a new systematic theorization. In: *International Review of Law, Computers and Technology*, 2023, Vol. 33., I. 1. pp. 76-99. https://doi.org/10.1080/13600869.2019.1562604.

[32] DE GREGORIO, G.: The rise of digital constitutionalism in the European Union. In: *International Journal of Constitutional Law*, 2021, Vol. 19., No. 1., pp. 41-70. https://doi.org/10.1093/icon/moab001.

[33] SUZOR, N.: Digital Constitutionalism: Using the Rule of Law to Evaluate the Legitimacy of Governance by Platforms. In: *Social Media and Society*, July-September 2018, pp. 1-11. https://doi.org/10.2139/ssrn.2909889.

content moderation, and mandates internal complaint-handling as well as out-of-court dispute settlement mechanisms. It also restricts the exclusive reliance on automated systems and emphasizes human oversight and accountability in moderation processes. These innovations represent an important step toward aligning platform governance with rule-of-law principles and procedural fairness. Nonetheless, the practical effectiveness and enforceability of these mechanisms remain open questions—particularly in light of the asymmetry between public regulators and global platforms. As the present article serves as a theoretical foundation for understanding these normative challenges, a subsequent study will undertake a detailed legal and empirical analysis of the DSA's implementation and its capacity to remedy the structural deficits of platform governance.[34]

V. CONCLUSION

This paper has examined the phenomenon of platform self-regulation through the theoretical lens of digital constitutionalism. Our starting premise was that digital platforms—particularly very large online platforms (VLOPs)—increasingly exercise normative and adjudicative powers that were once the exclusive domain of the state. Despite formally operating under private law, their governance practices have significant public effects, especially in relation to fundamental rights and democratic participation. This evolution necessitates a reevaluation of how constitutional principles and the rule of law should be applied in the digital age.

In response to the first research question—namely, what motivates platforms to engage in self-regulation—we found support for the first hypothesis: platform self-regulation is not merely a technical response to scale or complexity, but a strategic tool to preserve autonomy, minimize legal risk, and strengthen market position. Community guidelines and algorithmic enforcement mechanisms allow platforms to retain control over the boundaries of discourse while projecting an image of responsibility and responsiveness.

Regarding the second research question, which explored the quasi-public nature of platform governance, our analysis confirmed the second hypothesis: while these regulatory functions are rooted in private legal instruments, they increasingly resemble public forms of authority in both scope and effect. Platforms shape access to the digital public sphere, adjudicate disputes, and influence users' rights and freedoms—often without the procedural guarantees or accountability mechanisms required of public actors. As such, they operate as functional sovereigns whose power transcends the traditional public-private divide.

Finally, in addressing the third research question—whether digital constitutionalism offers a viable normative framework—we partially confirmed the third hypothesis. Digital constitutionalism does provide a compelling conceptual foundation for extending rule of law values to private governance regimes. However, its success ultimately depends on whether these values—such as transparency, due process, and rights protection—can be translated into binding, enforceable standards through legal and institutional reform. Voluntary ethical commitments or soft law initiatives are unlikely to suffice in addressing the legitimacy gap created by privatized rule-making and enforcement.

In sum, this study has argued that platform governance cannot be adequately understood through the lens of private law alone. The powers exercised by online platforms increasingly resemble those of public institutions, particularly in their capacity to structure public discourse, adjudicate rights, and enforce normative boundaries. While platform self-regulation may appear efficient and flexible, it raises serious concerns regarding legitimacy, fairness, and the protection of fundamental rights.

[34] Regulation (EU) 2022/2065 of the European Parliament and of the Council (DSA).

The broader implication is that constitutional values must evolve in response to the shifting locus of power in digital societies. If platforms act as de facto public authorities, they must be held to standards befitting that role. This does not necessarily mean replicating state structures or imposing identical legal obligations. Rather, it entails reimagining governance in a way that reflects the public significance of platform power, and that upholds the core values of the rule of law—transparency, accountability, fairness, and fundamental rights—in the digital environment.

Ultimately, digital constitutionalism should be seen not as a fixed solution, but as a normative horizon: a framework that helps guide legal reform, policy innovation, and public deliberation in the face of unprecedented transformations in how power is organized and exercised online.

KEYWORDS
digital constitutionalism; platform governance; content moderation; rule of law; quasi-public power

KĽÚČOVÉ SLOVÁ
digitálny konštitucionalizmus; správa digitálnych platforiem; moderovanie obsahu; právny štát; kvázi-verejná moc

BIBLIOGRAPHY

1. Regulation (EU) 2022/2065 of the European Parliament and of the Council (DSA)
2. FACEBOOK'S COMMUNITY GUIDELINE: https://transparency.meta.com/hu-hu/policies/community-standards/
3. TITKTOK'S COMMUNITY PRINCIPLES: https://www.tiktok.com/community-guidelines/en/community-principles
4. YOUTUBE'S COMMUNITY GUIDELINES: https://www.youtube.com/intl/ALL_hu/howyoutubeworks/policies/community-guidelines/
5. AYTAC, UGUR: Digital Domination: Social Media and Contestatory Democracy. In: *Political Studies*, 2024, Vol. 72, I. 1., pp. 6-25. https://doi.org/10.1177/00323217221096564
6. BALOGH, VIRÁG: Digitalization and consumer protection enforcement. In: *Institutiones Administrationis Journal of Administrative Sciences*, 2022, Vol. 2., No. 1, pp. 85-99.
7. BEAUMIER, GUILLAUME - NEWMAN, ABRAHAM: When Serving the Public Interest Generates Private Gains: Private Actor Governance and Two-Sided Digital Markets. In: *Perspectives on Politics*. 2024, Vol. 23, I. 3. https://doi.org/10.1017/S1537592724001099
8. BENYUSZ, MÁRTA - HULKÓ, GÁBOR: Regulation of social media's public law liability in the Visegrad States. In: *Institutiones Administrationis Journal of Administrative Sciences*, 2023, Vol. 1., No. 1, pp. 6-16. https://doi.org/10.54201/iajas.v1i1.3
9. CELESTE, EDOARDO: Digital constitutionalism: a new systematic theorization. In: *International Review of Law, Computers and Technology*, 2023, Vol. 33., I. 1. pp. 76-99. https://doi.org/10.1080/13600869.2019.1562604
10. DE GREGORIO, GIOVANNI: The rise of digital constitutionalism in the European Union. In: *International Journal of Constitutional Law*, 2021, Vol. 19., No. 1., pp. 41-70. https://doi.org/10.1093/icon/moab001

11. FISCHMAN-AFORI, ORIT: Regulating online content moderation: Taking stock and moving ahead with procedural justice and due process rights. In: JENS SCHOVSBO (eds.): *The Exploitation of Intellectual Property Rights - In Search of the Right Balance.* ATRIP Intellectual Property series, Edward Elgar Publishing, 2023. pp. 5-27. https://doi.org/10.4337/9781035311460.00006
12. GRABS, JANINA - AULD, GRAEME – CASHORE, BENJAMIN: Private regulation, public policy, and the perils of adverse ontological selection. In: *Regulation & Governance*, 2023, Vol. 15., I. 4., pp. 1183-1208. https://doi.org/10.1111/rego.12354
13. KAMPOURAKIS, IOANNIS - TAEKEMA, SANNE – ARCURI, ALESSANDRA: Reappropriating the rule of law: between constituting and limiting private power. In: *Jurisprudence*, 2023, Vol. 14., No. 1., pp. 76-94. https://doi.org/10.1080/20403313.2022.2119016
14. KETTEMANN, MATTHIAS C.: *The normative order of the internet: A theory of rule and regulation online*. Oxford: Oxford University Press, 2020. https://doi.org/10.1093/oso/9780198865995.003.0006
15. LAPSÁNSZKY, ANDRÁS: A médiaigazgatás eljárásrendje, szankciórendszer, társszabályozás. In: KOLTAY, ANDRÁS (ed.): *Magyar és európai médiajog.* Budapest: Wolters Kluwer, 2025. pp. 371.392.
16. NEWMAN, ABRAHAM L. – BACH, DAVID: Self-regulatory trajectories in the shadow of public power: Resolving digital dilemmas in Europe and the United States. In: *Governance*, Vol. 17., I. 3., 2004, pp. 387-413. https://doi.org/10.1111/j.0952-1895.2004.00251.x
17. PATYI, ANDRÁS: Issues of fundamental procedural rights and procedural constitutionality in the Fundamental Law. In: *Institutiones Administrationis Journal of Administrative Sciences*, 2022, Vol. 2., No. 1, pp. 6-23. https://doi.org/10.54201/iajas.v2i1.27
18. PETTIT, PHILIP: *On the People's Terms*. Cambridge University Press, 2012. https://doi.org/10.1017/cbo9781139017428
19. SANDER, BARRIE: Democratic Disruption in the Age of Social Media: Between Marketized and Structural Conceptions of Human Rights Law. In: *European Journal of International Law*, 2021, Vol. 32, I. 1, pp. 159-193. https://doi.org/10.1093/ejil/chab022
20. SAPUTRA, RIAN - ZAID M. - EMOVWODO, SILAAS OGHENEMARO: The Court Online Content Moderation: A Constitutional Framework. In: *Journal of Human Rights, Culture and Legal System*, 2022, Vol. 2, I. 3, pp. 139-148. https://doi.org/10.53955/jhcls.v2i3.54
21. SÍTHIGH, DAITHÍ MAC: The mass age of internet law. In: *Information and Communications Technology Law*, 2008, Vol. 17, I. 2, pp. 79-94. https://doi.org/10.1080/ 13600830802204187
22. SUZOR, NICOLAS: Digital Constitutionalism: Using the Rule of Law to Evaluate the Legitimacy of Governance by Platforms. In: *Social Media and Society*, July-September 2018, pp. 1-11. https://doi.org/10.2139/ssrn.2909889
23. SUZOR, NICOLAS: A constitutional moment: How we might reimagine platform governance. In: Computer Law and Security Review, 2020, Vol. 36., Article No. 105381, pp. 1-4. https://doi.org/10.1016/j.clsr.2019.105381
24. TEMESI, ISTVÁN: Közigazgatás és közhatalom. In: JAKAB, ANDRÁS (et. al.) (Eds.): *Internetes Jogtudományi Enciklopédia*. 2022. http://ijoten.hu/szocikk/kozigazgatas-es-kozhatalom

25. VÁCZI, PÉTER: Fair and effective public administration. In: *Institutiones Administrationis Journal of Administrative Sciences*, 2022, Vol. 2., No. 1, pp. 161-170. https://doi.org/10.2139/ssrn.4217563
26. WEBER, MAX: *Gazdaság és társadalom. A megértő szociológia alapvonalai*. Budapest, Közgazdasági és Jogi Könyvkiadó, 1987.
27. ZENG, JING - KAYE, D. BONDY VALDOVINOS: From content moderation to visibility moderation: A case study of platform governance on TikTok. In: *Policy and Internet*, 2022, Vol. 14., I. 1, pp. 79-95. https://doi.org/10.1002/poi3.287

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AUTOMATED DECISION-MAKING IN ADMINISTRATIVE PENAL MATTERS

AUTOMATIZOVANÉ ROZHODOVANIE VO VECIACH SPRÁVNEHO TRESTANIA

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https://doi.org/10.33542/SIC2025-S-07

ABSTRACT

Automated decision-making in administrative punishment brings new challenges in the area of legal regulation and state responsibility. This article analyses the existing legal regulations that determine the conditions of liability for damage caused by artificial intelligence decisions in administrative law, with an emphasis on administrative punishment. Particular attention is paid to Act No. 514/2003 Coll. on liability for damage caused in the exercise of public authority and its applicability to cases of incorrect official procedures of systems using artificial intelligence. The paper also assesses the impact of European legislation, in particular the Artificial Intelligence Act (AIA) and the GDPR, on liability relationships in public administration. The article also deals with mechanisms for judicial review of artificial intelligence decisions, the need for transparency and ethical issues of automated decision-making. It concludes by identifying key challenges and recommendations for the regulation of artificial intelligence in administrative punishment.

ABSTRAKT

Automatizované rozhodovanie v správnom trestaní prináša nové výzvy v oblasti právnej regulácie a zodpovednosti štátu. Tento článok analyzuje existujúcu právnu úpravu, ktoré určujú podmienky zodpovednosti za škodu spôsobenú rozhodnutiami umelej inteligencie v správnom práve s akcentom na správne trestanie. Osobitná pozornosť je venovaná zákonu č. 514/2003 Z. z. o zodpovednosti za škodu spôsobenú pri výkone verejnej moci a jeho aplikovateľnosti na prípady nesprávneho úradného postupu systémov využívajúcich umelú inteligenciu. Príspevok tiež hodnotí vplyv európskej legislatívy, najmä Aktu o umelej inteligencii (AIA) a Nariadenia o GDPR, na zodpovednostné vzťahy vo verejnej správe. Článok sa zaoberá aj mechanizmami súdneho preskúmania rozhodnutí umelej inteligencie, potrebou transparentnosti a etickými otázkami automatizovaného rozhodovania. Vo výsledku identifikuje kľúčových výziev a odporúčaní na reguláciu umelej inteligencie v správnom trestaní.

I. INTRODUCTION

The use of artificial intelligence in public administration decision-making processes is one of the most pressing challenges for legal regulation in the context of the digital transformation of the state. In areas involving simple administrative tasks, algorithmic automation can significantly streamline the exercise of public power. However, when it comes to administrative punishment, fundamental legal issues arise concerning the preservation of fundamental rights,

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the principle of legality, accountability for the exercise of public power and the possibility of effective judicial protection.

The aim of this paper is to analyse the possibilities and limits of the use of artificial intelligence systems in the field of administrative punishment, both from the perspective of national legislation and European Union law. Particular emphasis is placed on the question of how the legal regulation of state liability should be set up in cases where automated decision-making causes harm to an individual.

The research is based on an analytical-deductive method of legal interpretation, supported by a comparison of the legal regulations of the Slovak Republic, the Czech Republic and the relevant European Union law, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (hereinafter referred to as "GDPR") and Regulation (EU) 2024/1689 of the European Parliament and of the Council (EU) 2024/1689 of 13 June 2024 laying down harmonised rules in the field of 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 (the Artificial Intelligence Act) (hereinafter referred to as the "AIA"), The starting point is also practical scenarios for the possible use of artificial intelligence (hereinafter also referred to as "AI") in decision-making and the legal consequences thereof.

The basic structure of the analysis is determined by the following research questions:

1. Under what conditions is it legally permissible for an algorithmic system to take a decision in administrative punishment without human intervention?
2. Who is liable for damage caused by a decision taken by an automated system and under what circumstances?
3. Is the existing legal framework in the Slovak Republic and the European Union sufficient to protect the fundamental rights of data subjects when artificial intelligence is used in administrative punishment?

In the Slovak Republic, this is a topic that has not yet been systematically addressed by legal theory. The discussion is mainly taking place at the ethical-technological level or in connection with digitalisation as a whole. In contrast, in the Czech Republic, expert dialogue is already taking place at the level of administrative law, particularly at law faculties, where several expert events focusing on automated decision-making and its legal limits have been held over the past three years. The aim of this paper is to build on these research impulses, expand them with a Slovak perspective, and point out the need for a conceptual regulatory approach.

II. LEGAL FRAMEWORK AND LIMITS OF AUTOMATION

Although the Constitution of the Slovak Republic does not expressly regulate the regime of administrative offences, the fundamental principles of the rule of law – in particular the principle of legality – apply by analogy. This follows from Article 2(2) of the Constitution of the Slovak Republic, according to which public authorities may act only on the basis of the law, within its limits and in the manner prescribed by law. This requirement has international legal implications, in particular through the International Covenant on Civil and Political Rights (Article 15) and the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 7). The European Court of Human Rights has long emphasised that any interference with an individual's rights, including sanctions, must be foreseeable, clear and legally certain – and these requirements also apply to administrative proceedings of a criminal nature (e.g. in the cases of Malige v. France and Jussila v. Finland). These principles are also reinforced by

Council of Europe recommendations, such as Recommendation CM/Rec(2007)7 on good public administration and Recommendation R (91) 1 on administrative sanctions.[2]

In this context, the principle of legality requires that administrative sanctions may only be imposed on the basis of a legal authorisation. The specific types of offences, as well as the sanctions and the conditions for their imposition, must be clearly defined in law in order to ensure legal certainty and protection against arbitrary exercise of public power. This requirement is also reflected in the decisions of the Constitutional Court of the Slovak Republic, which has repeatedly pointed out the need to respect constitutional guarantees in administrative punishment (e.g. PL. ÚS 10/2014). In this spirit, Recommendation No. R (91) 1 of the Committee of Ministers of the Council of Europe expressly stipulates that the applicable administrative sanctions and the circumstances under which they may be imposed shall be laid down by law, thereby clearly strengthening the scope of application of the principle *of nulla poena sine lege* even outside the framework of criminal law.

The administrative authorities must act in accordance with the law and are required to issue decisions that are lawful and free from legal defects. Decisions in administrative penalty cases where automation is used must meet the same requirements as any other decision taken by public authorities.[3] The following text sets out, in our opinion, the basic conditions that must be met for the use of automation in administrative proceedings to be lawful.

Thus, public authorities may only act within the limits of the law and in a manner consistent with legal regulations.[4] This means that if an administrative authority wishes to use automated tools in its decision-making, it must have a clear and legally established legal basis for doing so. The second requirement is to ensure that automated data processing complies with legal standards. The tool used must work exclusively with data whose processing is permitted by law, and this data must be accurate, up-to-date and of high quality.

The third condition concerns transparency towards the data subjects. Anyone affected by a decision influenced by automation must be informed that such technologies have been used. At the same time, an explanation must be provided as to how automation contributed to the outcome of the decision. The fourth condition is respect for the fundamental rights of data subjects, in particular the right to a fair trial.

In this context, the concept of rule of law by design is increasingly emphasised in European legal debate. The principles of the rule of law should not only be subject to ex post judicial review, but should be incorporated into the design of algorithmic tools in advance. Such an approach makes it possible to preventively address the legal risks of automation and strengthen trust in public decision-making.[5]

This includes the obligation of public authorities to clearly justify their decisions and guarantee the possibility of judicial review, thereby ensuring effective protection of citizens' rights.[6]

In the introduction to this article, we mentioned individual strategies at the national level and the advantages of artificial intelligence in terms of automated decision-making, but we must

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2 KISELYOVÁ, Z. Zásada zákonnosti v kontexte správnych deliktov právnických osôb. In: Zborník príspevkov z konferencie Katedry verejnej správy a regionálnych vied, Akadémia Policajného zboru, 2022. pp. 3–4.

3 JANDEROVÁ, J. Konflikt zásady zákonnosti a ochrany práv nabytých v dobré víře v přezkumném řízení ve světle judikatury českých soudů. In: VAČOK, J., HAVELKOVÁ, M. a DŽAČKOVÁ, M. (zost.). Právoplatnosť správnych rozhodnutí – právna istota vs. legalita: zborník z vedeckej konferencie konanej dňa 26. októbra 2018 na pôde Právnickej fakulty, Univerzity Komenského v Bratislave, ktorá sa uskutočnila v rámci projektu VEGA č. 1/0686/18 „Prieskum právoplatných individuálnych správnych aktov v kontexte právnej istoty a spravodlivosti“. Bratislava: Univerzita Komenského v Bratislave, Právnická fakulta, 2018. p. 90.

4 Article 2(2) of Act No. 460/1992 Coll. Constitution of the Slovak Republic.

5 HUBKOVÁ, P. EU Administrative Decision-Making Delegated to Machines – Legal Challenges and Issues. Acta Universitatis Carolinae – Iuridica, 2024, vol. 70, no. 2, p. 108.

6 HUBKOVÁ, P. (2024). Automatizace ve správním rozhodování a soudní přezkum. Správní právo, p. 5.

remember that we are also bound by Community law, specifically the General Data Protection Regulation, or GDPR.

The GDPR, as the date of its adoption suggests, is a regulation that is "older" than our first experiences with artificial intelligence, for example in the form of the language assistant ChatGPT[7] . In terms of the structure of this regulation, we find that, unlike the 1995 Directive, the GDPR already contains terms referring to the internet, such as websites, social networks and links. However, it does not mention artificial intelligence or related concepts such as autonomous systems, intelligent technologies, profiling, automated decision-making, machine learning or big data. This difference stems from the fact that the GDPR responded to challenges associated with the internet that were not relevant when the previous directive was drafted but had become crucial by the time the GDPR was drafted. In contrast, artificial intelligence and its societal impacts have only gained importance in recent years.[8]

Although the GDPR does not directly address issues related to artificial intelligence, its provisions are applicable to many of them. A fundamental element of the GDPR is the concept of personal data[9] , which defines its scope. The Regulation applies only to data relating to specific individuals, excluding anonymised information, data not related to individuals or data relating to general phenomena. Personal data includes any information that identifies a natural person directly or indirectly, such as a name, location data, online identifiers or specific characteristics of an individual.[10]

It is precisely in the interpretation of the GDPR articles that we find certain limits to the use of artificial intelligence in practice, particularly in terms of its scope of application. These "limits" represent a barrier to the application and implementation of artificial intelligence in everyday practice.

Article 22 of the GDPR gives data subjects the right not to be subject to decisions based solely on automated processing, including profiling, which produce legal effects or significantly affect them. This right ensures that if the data subject uses artificial intelligence for decision-making, for example when assessing applications for banking products, it must be possible for these decisions to be reviewed by a human being. However, this legal situation raises the question of whether the use of artificial intelligence is financially justified at all, since if the decision in question has to be reviewed by a human being, this creates an undesirable financial and time burden ( ), which demonstrably reduces the efficiency of automated decision-making.[11]

Restrictions can also be found in Articles 13 to 15 of the GDPR, which require the data subject to provide individuals with understandable information about automated decisions, without requiring full disclosure of the algorithm, but the explanation must be sufficiently clear for the individual to understand the reasons for the automated decision. However, some artificial intelligence systems, such as neural networks, can be difficult to explain. This problem is known as the black-box AI effect, where it is not possible to explain an algorithmic decision retrospectively. Please note that this is a fundamental problem, especially for decisions with legal implications. If it is not clear why a particular output was adopted, the right to a fair trial

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7 Available online: https://help.openai.com/en/articles/6825453-chatgpt-release-notes [accessed on 12 January 2025].

8 See Available online: https://spravy.rtvs.sk/2023/11/popularita-umelej-inteligencie-na-slovensku-je-na-vzostupe-vyuzivaju-ju-najma-studenti-strednych-a-vysokych-skol/ [accessed on 12 January 2025].

9 Article 4 (1) of the GDPR*, 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.*

10 GARAYOVÁ L., KARPAT A.: Ochrana osobných údajov v kontexte umelej inteligencie. [online]. April 2022. Available at: https://www.epi.sk/odborny-clanok/ochrana-osobnych-udajov-v-kontexte-umelej-inteligencie.htm [accessed on 12 January 2025].

11 *Ibid.*

is eroded.[12] This may lead to data subjects avoiding the use of more advanced, albeit more effective, AI technologies in order to comply with the requirements of the GDPR.[13]

The Artificial Intelligence Act (AIA), adopted by the European Union and entering into force on 1 August 2024, is a milestone at European level. This legislation, the first of its kind in the world, establishes uniform rules for the development and use of artificial intelligence systems within the EU. The regulation is based on a risk-based approach, categorising AI systems according to their potential risk to society. The main objective of the act is to ensure the trustworthy use of artificial intelligence while protecting the fundamental rights of citizens. The European AI Agency, established in February 2024 to support cooperation with Member States in enforcing this Regulation, also plays a key role in oversight and coordination.[14]

The AIA defines four levels of risk based on severity, with the most serious being unacceptable risk, high risk, limited risk and minimal or no risk. Artificial intelligence systems that pose a clear threat to the safety, livelihood and rights of people are prohibited by the A . Such systems include, for example, social scoring by governments or toys using voice assistance that encourage dangerous behaviour.[15]

Based on the above, it follows that if a state is interested in using artificial intelligence, it is limited in the type of artificial intelligence it chooses, as each of these risks entails different obligations under the AIA.

III. LEGAL SUBJECTIVITY

The use of automated decision-making systems in administrative proceedings is inevitably linked to the legal status of these systems themselves. If a decision has legal effects but is not issued directly by a natural person, there is a need to analyse whether and to what extent an algorithm or artificial intelligence system can be considered a legally relevant entity. This question touches on the very core of legal personality and requires a theoretical approach that goes beyond the traditional binary frameworks of legal dogma.

This is precisely why we need to revise the traditional understanding of legal subjectivity. According to this view, legal theory should not perceive legal subjectivity as a purely binary concept – something that either exists or does not exist, that belongs to one person and not to another. Instead, it recommends considering whether certain entities could have legal subjectivity to varying degrees or only in certain contexts.[16]

This view opens up space for a so-called spectral model of legal subjectivity, which allows for a more flexible approach to new phenomena such as animals, hybrid entities or algorithmic systems. In practice, this means that a certain entity – even if it is not a traditional bearer of rights and obligations – may be granted a specific scope of legal relevance, such as the right to protection, the prohibition of cruelty, or the ability to produce legal effects through its actions.

This approach is also applicable to the field of automated decision-making, where artificial intelligence is not a legal entity in the traditional sense, but makes decisions that have a direct impact on the rights and obligations of individuals. Considering partial or con e legal subjectivity can thus provide a conceptual framework for formulating rules of responsibility,

[12] HUBKOVÁ, P. EU Administrative Decision-Making Delegated to Machines – Legal Challenges and Issues. Acta Universitatis Carolinae – Iuridica, 2024, vol. 70, no. 2, p. 109.

[13] *Ibid*.

[14] HIGH-LEVEL EXPERT GROUP ON ARTIFICIAL INTELLIGENCE (AI HLEG). *Regulatory framework on AI.* [online]. European Commission, [cited on 12 January 2025]. Available at: https://digital-strategy.ec.europa.eu/sk/policies/regulatory-framework-ai.

[15] Available at: https://digital-strategy.ec.europa.eu/sk/policies/regulatory-framework-ai [accessed on 12 January 2025].

[16] KURKI, V. A. J. The Legal Status of Animals: Moving toward a Comparative and Interdisciplinary Analysis. Law & Philosophy, 2023, p. 7.

regulation, and protection of fundamental rights in an environment where there is no longer an exclusively human decision-maker.

I believe that if legal subjectivity means the ability to bear the consequences of one's actions, current AI systems do not meet this basic requirement. They are not capable of independent will, acting with intent or bearing responsibility. They have no consciousness, will, property or capacity to be sanctioned in the legal sense of the word. They objectively lack the attributes that make a human being or legal entity a legal actor.

Granting them legal personality without the possibility of real sanctions would therefore mean creating a legally empty concept – a formal structure without content. Such an approach could undermine the fundamental principles of legal certainty and responsibility that are essential to the functioning of any legal system.

Nevertheless, I admit that it may be useful to consider a contextual or functional approach, especially when it comes to the need to clearly assign legal effects to the actions of algorithmic systems. However, such an approach must not obscure the fact that responsibility must always be specific, identifiable and enforceable, regardless of how sophisticated the tool used in decision-making is.

IV. TRANSPARENCY AND THE RIGHTS OF DATA SUBJECTS

The use of artificial intelligence in decision-making processes can have a significant impact on human rights, which is why these new technologies require systematic solutions at the level of state policy. The European Commission has responded to these concerns by setting up the High-Level Independent Expert Group on Artificial Intelligence ([17]). This advisory body on artificial intelligence was tasked with providing recommendations and guidelines to support the development of trustworthy and ethical artificial intelligence in Europe.[18]

The expert group addressed several challenges in developing the document "Ethical Guidelines for Trustworthy Artificial Intelligence". The document directly addresses the issue of algorithm transparency, emphasising the principle of "[19] ", which includes important levels of limitation in terms of artificial intelligence systems, such as system models, data models and business models.[20]

The system model tells us what type of artificial intelligence is used. Authors Mesarčík and Gyurász list two large subgroups, namely generative artificial intelligence systems, which include Image generators: DALL-E, Midjourney, Stable Diffusion, Large language models: GPT-4, Gemini, LLaMA. Code generation tools: Copilot. Sound generation tools: VALL-E, resemble.ai. The second large group consists of recommendation systems that work by recommending relevant content within an application. An example of this is Spotify, which recommends similar songs based on previously played songs that match the songs the user has listened to.[21]

The data that artificial intelligence works with and learns from is clarified in the monitoring principle by the data model monitoring subtest, under which we can subsume the documentation of data files.

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17 HIGH-LEVEL EXPERT GROUP ON ARTIFICIAL INTELLIGENCE (AI HLEG). *Regulatory framework on AI.* [online]. European Commission, [accessed on 12 January 2025]. Available at: https://eucrim.eu/news/ai-high-level-expert-group-publishes-ethics-checklist/.

18 *Ibid.*

19 Note: For the purposes of this article, we use the term "monitoring" to refer to the analysis of the entire life cycle of artificial intelligence, from model design to implementation and subsequent application in practice.

20 HIGH-LEVEL EXPERT GROUP ON ARTIFICIAL INTELLIGENCE (AI HLEG). *Regulatory framework on AI.* [online]. European Commission, [accessed on 12 January 2025]. Available at: https://eucrim.eu/news/ai-high-level-expert-group-publishes-ethics-checklist/.

21 For more details, see MESARČÍK, M., GYURÁSZ Z. et al. *Law and Artificial Intelligence.* 1st edition. Bratislava: Faculty of Law, Comenius University in Bratislava, 2024.

The final level monitored is the business model, which ensures the transparency and impartiality of artificial intelligence systems. In order to ensure proper punishment, artificial intelligence must make decisions in a predictable and auditable manner, without hidden preferences. Business model monitoring focuses on the economic interests of the operator, the method of financing, conflicts of interest and the influence of external actors. These factors must be regulated to prevent manipulation of decisions or discrimination against certain groups.

In practice, monitoring is carried out in several ways. The first is detailed documentation of data sets, which includes information on the origin of the data, the pre-processing methods used and the changes made to them. The second important element is the description of algorithms and models, which includes a precise record of the machine learning methods used, their parameters and outputs, allowing for their subsequent review. The third aspect is the recording of decision-making processes, i.e. the storage of logs, metadata and model versions, which make it possible to understand why a particular output was adopted. [22]

Ex post control plays an important role in the public sector, where AI-based decisions can have a significant impact on citizens, for example in the areas of social benefits, healthcare and others. This is why regulation emphasises audit mechanisms, the comprehensibility of AI models and compliance with ethical principles. In this context, explainable AI methods also play an important role, as they enable the decision-making processes of machine learning-based models to be understood and interpreted. The implementation of these approaches contributes to increasing the trustworthiness of AI systems and, at the same time, enables the effective resolution of any problems arising from their automated decisions.[23]

From the perspective of protecting individual rights, it is essential that procedural safeguards are put in place to ensure fairness, transparency and the possibility of redress in the event of incorrect decisions generated by AI systems. The digital transformation of public administration must be accompanied by mechanisms ensuring legal certainty for citizens.[24]

One of the fundamental principles of positive law is the right to a fair trial, which remains relevant in the digital environment. Article 46(1) of the Constitution of the Slovak Republic enshrines the fundamental right of individuals to seek judicial or other protection provided by law. This provision forms the primary constitutional basis for judicial proceedings and proceedings of other public authorities competent to provide legal protection. At the same time, it represents the entry point into the constitutional regulation of individual aspects of the right to judicial and other legal protection, thereby ensuring legal certainty and fair procedural conditions for every individual.[25]

As we have already mentioned, if administrative decisions are based on algorithmic analysis or predictive models, citizens should be able to understand the logic behind the decision and be informed of its consequences. This principle is based on the concept of digital dignity, according to which individuals retain control over their data and decisions. This also includes the possibility of lodging an appeal, which is a key remedy in administrative proceedings. If a citizen disagrees with a decision made on the basis of artificial intelligence, they must have the right to appeal and request a review by a human being, i.e. an administrative authority or a

[22] LIPTON, Z.C. *The Mythos of Model Interpretability.* [online]. 2016. Available at: https://arxiv.org/abs/1606.03490 [accessed on 12 January 2025].

[23] DOSHI-VELEZ, Finale and Been KIM. *Towards A Rigorous Science of Interpretable Machine Learning.* [online]. 2017. Available on the internet: https://arxiv.org/pdf/1702.08608 [accessed on 12 February 2025].

[24] CORVALÁN, J.G. Digital and Intelligent Public Administration: *Transformations in the Era of Artificial Intelligence.* A&C – Revista de Direito Administrativo & Constitucional, 2018, vol. 18, no. 71, pp. 55-57. Available online: https://pdfs.semanticscholar.org/4933/d69462ff5086c93dbcfa304fd6763ad47c9a.pdf [accessed on 12 February 2025].

[25] Ruling of the Constitutional Court of the Slovak Republic under file no. I. ÚS 258/2021.

court. Purely algorithmic decision-making must not be final without the possibility of human intervention in order to avoid discriminatory or unpredictable outcomes. [26]

In our opinion, the possibility of judicial review of AI decisions will be an important point. If algorithmic systems affect citizens' rights in areas such as social benefits, tax assessment or administrative penalties, there must be a mechanism in place to allow independent courts to review the legality of such decisions. It will be important to ensure that legislation lays down clear rules on how judicial review is to be carried out and what evidence may be used to prove that a decision taken by artificial intelligence is incorrect.

This probably opens up a debate *de lege ferenda* on the shifting of the burden of proof – who should bear the burden of proof? A deeper analysis of the above raises the question of whether the burden of proof should be borne by the citizen who finds themselves in a weaker position or by the public administration that uses automated decision-making systems and artificial intelligence- . In situations where algorithmic processes decide on the rights and obligations of individuals, it becomes clear that the asymmetry of knowledge and technological expertise works to the detriment of citizens.

In order to maintain the effectiveness of judicial protection, we would propose the introduction of a procedural mechanism for the expert explanation of algorithmic decisions by the courts. These expert analyses could serve as a tool for translating technical outputs into legally comprehensible evidence.

V. DECISION-MAKING IN ADMINISTRATIVE PENALTY AND ACCOUNTABILITY RELATIONSHIPS BETWEEN ENTITIES

As we mentioned in the introduction, there are many potential uses for artificial intelligence in public administration. These include, for example, automatic transcription of spoken words, translations, automatic data verification or alerts to important facts in decision-making, the drafting of decisions or the performance of other preparatory tasks. At the same time, the possibility of using artificial intelligence in administrative punishment is increasingly being mentioned.[27]

If an administrative law norm is violated, we can talk about administrative or administrative liability. Administrative punishment is essentially parallel to criminal law in terms of domestic law. Administrative punishment as such can be characterised by the fact that it is imposed for less serious offences than those covered by criminal law. Legal practice and case law confirm the considerable similarity between these two branches of law. At both national and international level, the term ‘accusation’ refers not only to an accusation of having committed a criminal offence, but also to an accusation of having committed an administrative offence.[28]

In the context of administrative punishment, the use of artificial intelligence poses a particular challenge, as this is an area where public authorities decide on the rights and obligations of individuals, often in a repressive manner. It is precisely in these cases that the requirements for effective decision-making come into conflict with the principles of the rule of law, such as legality, the principle of the rule of law (nd transparency, and the individualisation of decisions while respecting everyone's right to a fair trial.

Of course, it is necessary to distinguish between the type of entity that has violated an administrative law norm. In this context, there are two types of entities: public administration

[26] CORVALÁN, J. G. Digital and Intelligent Public Administration: Transformations in the Era of Artificial Intelligence. A&C – Revista de Direito Administrativo & Constitucional, 2018, vol. 18, no. 71, pp. 58-64. Available online: https://pdfs.semanticscholar.org/4933/d69462ff5086c93dbcfa304fd6763ad47c9a.pdf [accessed on 12 February 2025].

[27] STRAKOŠ, J. Právní aspekty automatizace ve správním trestání v kontextu strojového učení. Správní právo, vol. 2024, no. 6–7, p. 489.

[28] Compare MESARČÍK, M., GYURÁSZ Z. et al. *Law and artificial intelligence.* 1st ed. Bratislava: Faculty of Law, Comenius University in Bratislava, 2024.

bodies, where the result of such a violation is an unlawful decision or incorrect official procedure. In the case of the second entity, it is the entity administered by it, i.e. a natural or legal person who has violated administrative law norms, for which it may be sanctioned in accordance with the relevant regulations.[29]

The question of whether the state can be held liable for damage caused by a decision of an automated system is extremely topical and legally complex. From a legal point of view, the question arises as to whether the provisions of Act No. 514/2003 Coll. can be used to determine liability for such damage that could arise as a result of a breach of the state's obligations, and to what extent its application is possible. In the Slovak legal system, the issue of liability for damage is primarily regulated by Act No. 514/2003 Coll. on liability for damage caused in the exercise of public authority ([30]), This Act is based on the constitutional framework, specifically Article 46(3) of the Constitution of the Slovak Republic, which guarantees the right to compensation for damage caused by an unlawful decision of a court, other authority or public administration body, as well as by incorrect official procedure[31] .

In the case of incorrect official procedure, let us imagine that an independently operating "automated" system for processing traffic offences (e.g. speeding) incorrectly assigns a fine to a citizen on the basis of incorrectly evaluated data.[32] If the citizen had no effective remedy or if the system repeatedly generated incorrect decisions, this could constitute incorrect official procedure within the meaning of Act No. 514/2003 Coll.

In this context, we note that the exercise of public power means decision-making and official procedures that determine the rights and obligations of natural or legal persons. However, it should be emphasised that this term is not comprehensively defined. It only applies to cases in which a public authority or public- al body issues individual decisions within the framework of legal application processes. This brings us, as we mentioned at the beginning, to systems that are considered high-risk, meaning that their use will be determined by a wide range of tests, assessments and controls.

In the case of intelligent systems, it would therefore be necessary to examine whether their decisions can be considered as the exercise of public authority within the meaning of the aforementioned Act. If artificial intelligence acted autonomously without direct human intervention, the question could arise as to whether the state bears objective responsibility for its actions. On the other hand, if the system were only a decision-making support tool, liability could be limited to cases of incorrect official procedure, for example if the state failed to ensure adequate control mechanisms or supervision of its functioning.[33]

However, cases of so-called hybrid decision-making, where the system formally only "proposes" a solution, but the decision-maker automatically adopts it in practice, remain problematic. We note that in such cases, responsibility may be diluted, making it difficult to identify the entity responsible for an unlawful decision.[34]

In algorithmic decision-making, there is a significant risk that the process will not be sufficiently transparent or comprehensible to the data subject, which may constitute a violation of the principle of legality and the right to a fair trial. At the same time, in the case of automated

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[29] KOŠIČIAROVÁ, S. Správne právo hmotné. Všeobecná časť. Plzeň : Aleš Čeněk, 2022, p. 263.

[30] E.g. Section 3(1)(a) and (d) of Act No. 514/2003 Coll. on liability for damage caused in the exercise of public authority, as amended.

[31] SVÁK, J. In: OROSZ, L., J. SVÁK a kol. Ústava Slovenskej republiky. Komentár. 1. zväzok (základné princípy a ľudské práva). Bratislava: Wolters Kluwer, 2021. pp. 623–625.

[32] For example, in the case of poor calibration of measuring devices.

[33] MESARČÍK, M., GYURÁSZ Z. et al. *Law and Artificial Intelligence.* 1st edition. Bratislava: Faculty of Law, Comenius University in Bratislava, 2024. pp. 126, 125.

[34] HUBKOVÁ, P. EU Administrative Decision-Making Delegated to Machines – Legal Challenges and Issues. Acta Universitatis Carolinae – Iuridica, 2024, vol. 70, no. 2, p. 110.

sanctions, it is unclear how individuals can effectively exercise their rights of redress if the algorithm does not decide on the basis of individually assessed facts, but only on the basis of structured data.[35]

We can distinguish between different degrees of automation and propose their classification in terms of their interference with fundamental rights. Such a distinction is essential for determining in which cases algorithmic decision-making may be permissible and in which it may not. In the area of administrative penalties, it is necessary to uphold the principle that the more serious the interference with an individual's rights (e.g. a fine or other penalty), the greater the level of human control over the decision must be.[36]

We would suggest applying a proportionality test to assess the permissibility of automated decision-making. The criteria are, in particular: the severity of the interference, the transparency of the process, the category of the person concerned (e.g. vulnerable groups) and the existing control mechanisms.[37] In the case of administrative offences, which are often directed against ordinary citizens, such a test must be mandatory before any automated system is introduced.

Therefore, as a minimum, public authorities should be required to carry out an *ex ante* assessment of the impact of automated decision-making before any system that is intended to decide on sanctions is deployed. At the same time, the right to individual justification, the possibility of an effective remedy and the technical auditability of the decision-making algorithm must be ensured.

VI. CONCLUSION

The automation of decision-making processes in public administration is an important step towards the modernisation of the state. At the same time, however, it is an area that interferes with the fundamental rights of individuals and must therefore be accompanied by strict legal control. The use of artificial intelligence in administrative punishment, where public administration often decides on the rights and obligations of individuals in a repressive manner, requires particular attention.

In the introduction, we posed three fundamental research questions: (1*)* under what conditions is it legally permissible to use artificial intelligence in decision-making processes in administrative punishment, (2*)* how is public authority held accountable for unlawful or erroneous decisions made by algorithms, and (3*)* what minimum legal guarantees must be ensured in such decision-making. We answered these questions through a combination of legal analysis of Slovak law and comparison with current European and academic approaches.

It has been shown that the use of artificial intelligence in administrative punishment is only permissible if the fundamental principles of the rule of law are upheld: legality, transparency, proportionality, the right to defence and effective remedies. It is precisely in cases of repressive decisions, such as administrative sanctions, that the level of human control over the decision must be higher, the more serious the interference with the rights of the individual. This is also pointed out by Almiotto, who calls for the application of a proportionality test before any automated system is deployed.

The responsibility of public authorities for decisions taken with the aid of artificial intelligence remains an open question. Although Act No. 514/2003 Coll. provides a basis for assessing unlawful decisions or incorrect official procedures, so-called hybrid decision-making (where human intervention is only formal) leads to a dilution of responsibility and weakens the

[35] BRKAN, M. Do Algorithms Rule the World? Algorithmic Decision-Making and Data Protection in the Framework of the GDPR and Beyond. International Journal of Law and Information Technology, 2019, Vol. 27, pp. 91–121.

[36] ALMIOTTO, F. When Is a Decision Automated? A Taxonomy for a Fundamental Rights Analysis. Forthcoming in German Law Review.

[37] *Ibid.* 14-17.

possibility of identifying the entity that should bear the consequences. In such cases, legal certainty may be weakened and the right to a fair trial may be violated.
From the point of view of legal certainty, it is therefore essential that public authorities carry out an ex ante impact assessment before deploying any AI system, ensure the auditability of the algorithm, preserve the right to individual justification of decisions and establish effective remedies. This is the only way to ensure that technological progress does not conflict with the principles of good governance and the protection of fundamental rights.

In conclusion, the article identified the key conditions for the admissibility of artificial intelligence in administrative penalty decision-making processes, pointed out shortcomings in the area of accountability and proposed specific measures to strengthen legal safeguards. The use of artificial intelligence in public administration must therefore not be seen as a technocratic issue, but as a fundamental legal challenge requiring clear normative definition, expert oversight and, above all, respect for the fundamental rights of individuals.

KĽÚČOVÉ SLOVÁ
umelá inteligencia, správne trestanie, zodpovednosť štátu, automatizované rozhodovanie, správne súdnictvo, právna regulácia

KEY WORDS
artificial intelligence, administrative punishment, state responsibility, automated decision-making, administrative justice, legal regulation

BIBLIOGRAPHY

1. CORVALÁN, Juan Gustavo. Digital and Intelligent Public Administration: *Transformations in the Era of Artificial Intelligence*. A&C – Revista de Direito Administrativo & Constitucional, 2018, roč. 18, č. 71, s. 55-57. Dostupné online: https://pdfs.semanticscholar.org/4933/d69462ff5086c93dbcfa304fd6763ad47c9a.pdf[cit. 2025-02-12]. https://doi.org/10.21056/aec.v18i71.857
2. DOSHI-VELEZ, Finale a Been KIM. *Towards A Rigorous Science of Interpretable Machine Learning*. [online]. 2017. Dostupné na internete: https://arxiv.org/pdf /1702.08608 [cit. 12. februára 2025].
3. HIGH-LEVEL EXPERT GROUP ON ARTIFICIAL INTELLIGENCE (AI HLEG). *Regulatory framework on AI*. [online]. European Commission, [cit. 12. januára 2025]. Dostupné z: https://eucrim.eu/news/ai-high-level-expert-group-publishes-ethics-checklist/.
4. HUBKOVÁ, Petra. *Automatizace ve správním rozhodování a soudní přezkum*. [online]. Maastricht: Maastricht University, 2023. Dostupné z: https://cris.maastrichtuniversity.nl/ws/portalfiles/portal/222140194/PHubkova_Automatizace_ve_spr_vn_m_rozhodov_n_a_soudn_p_ezkum_pre-print.pdf.
5. JANDEROVÁ, Jana. Konflikt zásady zákonnosti a ochrany práv nabytých v dobré víře v přezkumném řízení ve světle judikatury českých soudů. In: VAČOK, Juraj, HAVELKOVÁ, Mária a DŽAČKOVÁ, Marianna (zost.). *Právoplatnosť správnych rozhodnutí – právna istota vs. legalita: zborník z vedeckej konferencie konanej dňa 26. októbra 2018 na pôde Právnickej fakulty, Univerzity Komenského v Bratislave, ktorá sa uskutočnila v rámci projektu VEGA č. 1/0686/18 „Prieskum právoplatných individuálnych správnych aktov v kontexte právnej istoty a spravodlivosti“*. Bratislava: Univerzita Komenského v Bratislave, Právnická fakulta, 2018. s. 223.
6. K rade vlády pozri bližšie: https://mirri.gov.sk/sekcie/informatizacia/dokumenty/rada-vlady-sr-pre-digitalizaciu-vs-a-jdt/statut-rady-a-zapisy/ [cit. 30. januára 2025].

7. KOŠIČIAROVÁ, S. (2022). *Správne právo hmotné. Všeobecná časť*, Aleš Čeněk, 494 s. ISBN 9788073808884
8. LIPTON, Zachary C. *The Mythos of Model Interpretability*. [online]. 2016. Dostupné na internete: https://arxiv.org/abs/1606.03490 [cit. 12. januára 2025]. https://doi.org/10.1145/3236386.3241340
9. MESARČÍK, M., GYURÁSZ Z. a kol. *Právo a umelá inteligencia*. 1. vyd. [online]. Bratislava: Právnická fakulta Univerzity Komenského v Bratislave, 2024. Dostupné na internete: https://www.flaw.uniba.sk/fileadmin/praf/Pracoviska/Ustavy/UPITPDV/E-KNIHY/Pravo_a_umela_inteligencia_ucebnica_01.pdf [cit. 12. 02 2025].
10. Ministerstvo investícií, regionálneho rozvoja a informatizácie Slovenskej republiky. Národná koncepcia informatizácie verejnej správy 2021 [online]. Bratislava: MIRRI SR, 2021. Dostupné z: https://mirri.gov.sk/wp-content/uploads/2021/12/Narodna-koncepcia-informatizacie-verejnej-spravy-2021.pdf.
11. Nález Ústavného súdu Slovenskej republiky pod sp. zn. I. ÚS 258/2021.
12. SVÁK, J. In: OROSZ, L., J. SVÁK a kol. *Ústava Slovenskej republiky. Komentár. 1. zväzok (základné princípy a ľudské práva).* Bratislava: Wolters Kluwer, 2021, 892 s. ISBN 9788057103813
13. HUBKOVÁ, P. EU Administrative Decision-Making Delegated to Machines – Legal Challenges and Issues. Acta Universitatis Carolinae – Iuridica, 2024, roč. 70, č. 2, s. 22. https://doi.org/10.14712/23366478.2024.25
14. BRKAN, M. Do Algorithms Rule the World? Algorithmic Decision-Making and Data Protection in the Framework of the GDPR and Beyond. International Journal of Law and Information Technology, 2019, Vol. 27, pp. 91–121. Dostupné z: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3124901 [cit. 12. 04. 2025]. https://doi.org/10.1093/ijlit/eay017
15. ALMIOTTO, F. When Is a Decision Automated? A Taxonomy for a Fundamental Rights Analysis. Forthcoming in German Law Review, s. 1-27 Dostupné z: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4578761 [cit. 12. 04. 2025].
16. KISELYOVÁ, Zuzana. Zásada zákonnosti v kontexte správnych deliktov právnických osôb. In: Zborník príspevkov z konferencie Katedry verejnej správy a regionálnych vied, Akadémia Policajného zboru, 2022. 8 s.
17. STRAKOŠ, J. Právní aspekty automatizace ve správním trestání v kontextu strojového učení. Správní právo. 2024, roč. 2024, č. 6–7, s. 489.
18. KURKI, V. A. J. The Legal Status of Animals: Moving toward a Comparative and Interdisciplinary Analysis. Law & Philosophy, 2023, s. 81

Regulations:

1. Act on Artificial Intelligence Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules in the field of 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 (the Artificial Intelligence Act).
2. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
3. Act No. 460/1992 Coll. Constitution of the Slovak Republic.
4. Act No. 514/2003 Coll. on liability for damage caused in the exercise of public authority, as amended.

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LIMITS OF THE USE OF ARTIFICIAL INTELLIGENCE IN THE ALTERNATIVE RESOLUTION OF ADMINISTRATIVE DISPUTES[1]

LIMITY VYUŽITIA UMELEJ INTELIGENCIE V ALTERNATÍVNOM RIEŠENÍ SPRÁVNYCH SPOROV

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https://doi.org/10.33542/SIC2025-S-08

ABSTRACT

The integration of artificial intelligence (AI) into public administration presents both opportunities and significant risks, challenging the traditional principles upon which public administration is founded. While AI is still finding its place within decision-making processes, it is essential to consider its application in transforming public administration from a purely authoritative model to a more cooperative one. This paper proceeds from the premise that the regulated integration of AI can act as an indirect catalyst for enhancing the legitimacy and acceptance of ADR within public administration. It examines the risks associated with AI, such as algorithmic bias and non-transparency, and within this framework, analyses the limitations of ADR in the Slovak and broader regional context. The paper concludes that the potential of AI can be best realised through a hybrid model, wherein AI serves as a support tool for a human conciliator or mediator. This requires a robust legal framework that guarantees transparency, accountability, and procedural justice. Four key conditions for successful implementation are identified, suggesting that technology can help overcome cultural resistance and foster trust in consensual dispute resolution.

ABSTRAKT

Integrácia umelej inteligencie (AI) do verejnej správy prináša príležitosti, ale tiež nezanedbateľné riziká spočívajúce v spochybnení tradičných princípov, na ktorých je verejná správa vybudovaná. Aj keď si AI svoj bezpečný priestor v rozhodovacej činnosti iba hľadá, je potrebné uvažovať aj o jej využití v prospech pretvárania verejnej správy z čisto autoritatívnej na kooperatívnu. Tento príspevok vychádza z predpokladu, že regulovaná integrácia AI môže pôsobiť ako nepriamy katalyzátor na zvýšenie legitimity a akceptácie ADR vo verejnej správe. Skúma riziká AI, ako sú algoritmická predpojatosť a netransparentnosť, a v tomto kontexte analyzuje aj limity ADR v slovenskom a regionálnom kontexte. V závere sa konštatuje, že potenciál AI je možno realizovať prostredníctvom hybridného modelu, kde AI slúži ako podporný nástroj pre ľudského konciliátora alebo mediátora. Vyžaduje si to silný právny rámec zaručujúci transparentnosť, zodpovednosť a procesnú spravodlivosť. Identifikujú sa štyri kľúčové podmienky úspešnej implementácie, ktoré naznačujú, že technológia môže pomôcť prekonať kultúrny odpor a posilniť dôveru v konsenzuálne riešenie sporov.

[1] The contribution was prepared as part of solving the tasks of the VEGA grant 1/0505/23 „Possibilities of using alternative dispute resolution methods in public administration.“

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I. INTRODUCTION

In the contemporary development of the rule of law state, one significant factor is the gradual and increasingly extensive integration of artificial intelligence (AI) into the mechanisms of administration, governance, and decision-making. Digital technologies are permeating the activities of public administration and becoming the primary communication platform between citizens and public authorities, thereby bringing about a fundamental and profound transformation of public administration from analogue to digital. This process extends far beyond the mere acceptance and incorporation of new technological possibilities.

From the perspective of the speed and scale of digitalisation, it is possible, in our view, to speak of a paradigmatic change, which is often manifested in the modification of operational and managerial procedures, in the institutional structure, and, not least, in the normative framework for the exercise of public authority. The traditional principles of public administration and legal regulation by administrative law are thus exposed to challenges arising from the effort to keep pace with technological progress and its application in the private sphere. This progress necessarily brings with it changed societal expectations regarding the manner, speed, and quality of the exercise of public authority.

The aforementioned paradigmatic change did not occur in a single leap. The first signs of acceptance of the then-available forms of AI can be identified in the adoption of expert systems in the 1980s, which were primarily used in financial administration for control and fraud detection[3]. The acceptance and effort to integrate technological development into the activities of public administration are undoubtedly also connected with the 'New Public Management' (NPM) movement, whose goal was to implement tools typical of and proven in the private sector into public administration.[4] Bovens and Zouridis identify this process as a shift from 'street-level' bureaucracy to 'system-level' bureaucracy[5]. The trend initiated by NPM has now evolved into a trend also referred to as 'New Public Analytics', which is characterised by the use of technologies based on data and predictions generated by machine learning, often with the political motivation of financial savings[6].

The aim of this paper is, based on an in-depth analysis of the limits, expected benefits, and risks of introducing AI systems in public administration, and taking into account the low level of integration of alternative dispute resolution (ADR) procedures in its decision-making activities, to identify the possibilities and conditions for using AI to increase the rate of acceptance of consensual solutions in the decision-making processes of public administration. The primary focus of this paper will be on the area of individual decision-making processes.

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3 VATAMANU, A. F. and M. TOFAN. *Integrating Artificial Intelligence into Public Administration: Challenges and Vulnerabilities*. Administrative Sciences, 15(4), 149. p. 2. ISSN 2076-3387. https://doi.org/10.3390/admsci1504014.9.

4 SMUHA, N.A. *The Use of Algorithmic Systems by Public Administrations: Practices, Challenges and Governance Frameworks.* In: SMUHA, N.A. (ed.). The Cambridge Handbook of the Law, Ethics and Policy of Artificial Intelligence. Cambridge : Cambridge University Press, 2025, p. 385. DOI 10.1017/9781009367783.

5 Street-level bureaucracy is carried out by officials in direct contact with citizens and with a wide degree of discretion. In practice, officials are policy-makers, applying legal regulations to the unique and often complex situations of individuals. With the advent of information and communication technologies (ICT), this model is gradually changing as officials are eliminated from the direct decision-making process, giving rise to system-level bureaucracy with automated decision-making and the significant, though hidden, influence of the creators and administrators of information systems. Efficiency is expected from the elimination of prejudice or a lack of uniformity and inconsistency in decision-making. The risk, however, lies in 'digital rigidity', in which the system does not take into account the specifics of an individual case, which subsequently leads to injustice. On this, see BOVENS, M. and S. ZOURIDIS. From street-level to system-level bureaucracies: How information and communication technology is transforming administrative discretion and constitutional control. Public Administration Review, 2002, 62(2): 174–184. Accessible at: https://onlinelibrary.wiley.com/doi/abs/10.1111/0033-3352.00168.

6 SMUHA, N.A. *The Use of Algorithmic Systems by Public Administrations: Practices, Challenges and Governance Frameworks.* In: SMUHA, N.A. (ed.). The Cambridge Handbook of the Law, Ethics and Policy of Artificial Intelligence. Cambridge : Cambridge University Press, 2025, pp. 386, 387. DOI 10.1017/9781009367783.

The fundamental hypothesis of this paper is the premise that the integration of AI systems into Slovak public administration, if guided by the principles of legality, transparency, efficiency, and accountability, can, after the adaptation of national legislation, serve as an indirect and strong catalyst to support trust in the use of ADR in public administration and its acceptance by both citizens and the state.

From this hypothesis arises the primary research question: Under what legal and institutional conditions could the integration of AI into Slovak public administration serve as an indirect catalyst for increasing the legitimacy and acceptance of ADR in administrative procedures with a contentious element?

This question can be answered based on the response to two secondary, partial research questions:

1. Which models and methods of using AI in ADR in the public sector could serve as a viable plan for the Slovak context, balancing innovation with the protection of fundamental rights?
2. How must the current Slovak legal framework for managing AI and for administrative procedure be reformed to create a synergistic relationship in which technological modernisation through AI supports trust in the use of consensual, amicable dispute resolution?

In seeking answers to these questions, we have primarily utilised a qualitative, socio-legal methodology. We combine a doctrinal legal analysis of Slovak and European legislation with a comparative study of administrative practices in other European states and a theoretical analysis based on the principles of procedural and administrative justice. The research is primarily focused on the Slovak Republic, but it necessarily draws on broader European and international models. The analytical part is based on a content analysis of legal and doctrinal texts and on a normative-analytical assessment of the impacts of the principles of procedural and administrative justice (transparency, accountability, efficiency) on mediation/ADR in public administration. The primary frame of reference is the Slovak Republic; foreign findings serve for functional comparison. The subject matter is administrative procedures and horizontal conciliatory mechanisms between parties in administration, not judicial proceedings or private/family law regimes.

Regarding the terminology used, it should be noted that in some parts of the paper we speak generally of ADR, while in others only of mediation, as it is the most common form of ADR in the public administration of other states. This allows for more effective comparison and work with foreign sources. Nevertheless, it is, of course, necessary to reflect the difference between mediation as a process with precise rules and procedures, conducted by a mediator, and a facilitated conciliatory process, which may also be carried out using mediation techniques and is managed by an official, often with the authority to decide the matter by way of an authoritative administrative decision (conciliation).

II. THE NASCENT DIGITAL STATE: EXPECTATIONS AND RISKS.

2.1. Public administration as a dynamic system in the digital era.

The digital transformation of governance can be analysed at several interconnected levels between the strategic vision and the reality of public administration practice.[7] Criado and Gil-Garcia examine and analyse the impact of AI on the functioning of public administration at three levels.

[7] DAVID, G. *Artificial Intelligence: Opportunities and Challenges for Public Administration*. In: Canadian Public Administration. 2024, vol. 67, p. 402. ISSN 1754-7121. DOI: 10.1111/capa.12580; KRIŠTOFÍK A., *Využitie (asistenčných) systémov založených na strojovom učení v ODR a ich klasifikácia podľa aktu o umelej inteligencii* [Use of (Assistance) Systems Based on Machine Learning in ODR and Their Classification under the Artificial Intelligence Act], Právny obzor, 106 (2), 2023, p. 116-126. ISSN 0032-6984. https://doi.org/10.31577/pravnyobzor.2023.2.03.

The macro-level pertains to the central institutional and governmental levels of administration and the political governance of the state, or international and supranational organisations. It is manifested in the creation of strategies, plans, and regulatory frameworks that shape the central, overarching policy in relation to AI[8]. Directives at this level, however, may impose a legislative burden on member states, often presenting them with complex challenges in complying with regulations and implementing approved strategies[9].

The meso-level is defined at the level of organisational and sectoral tasks and examines the impact of digitalisation on the implementation of public administration and public policies in the restructuring of workflows and service delivery procedures.[10] It is at this, typically national, level that non-acceptance or conflict most often occurs due to established practice, natural institutional inertia, and resistance to change, which act as barriers to the seamless implementation of goals from the macro-level[11].

Finally, at the micro-level, the subject of examination is the individual behaviour of public employees and private persons in their interaction with public administration conducted through AI. It is primarily at this level that the change in the position of the official is manifested, who is supplemented or replaced in decision-making by algorithmic tools, which quite justifiably leads to questions about the nature and significance of discretion in automated decision-making and also about the issue of accountability in the digital exercise of administration[12].

From the aforementioned multi-level dynamics, it follows that there is tension along two lines. Tension between the macro-level, caused by the creation of strategies and regulations that do not reflect the specifics and capabilities of the meso- and micro-levels, and conversely, tension caused by the fact that the micro- and meso-levels are already implementing technologies in their activities in practice, but the macro-level fails to reflect this reality through the timely adoption of legal regulation. This legal gap is, at least temporarily, filled by non-binding rules of soft law, such as ethical codes and principles[13]. Such a reactive approach to norm-setting and regulation contributes to the weakening of legal certainty regarding the legality of the procedures of public authorities and the associated accountability.

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8 CRIADO, J.I., R. SANDOVAL-ALMAZÁN and J.R. GIL-GARCIA. *Artificial intelligence and public administration: Understanding actors, governance, and policy from micro, meso, and macro perspectives*. In: Public Policy and Administration. 2025, vol. 40, no. 2, p. 175. ISSN 1749-4192. DOI: 10.1177/09520767241272921. DOI: 10.1177/09520767241272921.

9 KEVICKÁ, M. *Digitálna stratégia EÚ - právny rámec pre inovatívnu Európu*. [EU Digital Strategy: The Legal Framework for an Innovative Europe] In: DRAŽOVÁ, P. and V. ŤAŽKÁ (eds.). Bratislavské právnické fórum 2024: Právo a technológie v 21. storočí optikou európskeho práva. Bratislava : Univerzita Komenského v Bratislave, Právnická fakulta, 2024, pp. 31,32. ISBN 978-80-7160-728-1, [online]. [cit. 2025-10-01]. Accessible at: https://dspace.uniba.sk/handle/123456789/225?show=full.

10 CRIADO, J.I., R. SANDOVAL-ALMAZÁN and J.R. GIL-GARCIA. *Artificial intelligence and public administration: Understanding actors, governance, and policy from micro, meso, and macro perspectives.* In: Public Policy and Administration. 2025, vol. 40, no. 2, p. 6. ISSN 1749-4192. DOI: 10.1177/09520767241272921. DOI: 10.1177/095 207 672 41272921.

11 JAKAB, R. *National Report on Automation in Decision-Making in Public Administration in Slovakia.* In: Acta Universitatis Carolinae–Iuridica. 2024, no. 2, pp. 153,154. ISSN 2336-6478. DOI: 10.14712/23366478.2024.28; see also KREMSER, K. *Digitalizácia verejnej správy: legislatívny rámec, strategické dokumenty a prax na Slovensku*. [Digitalisation of Public Administration: Legislative Framework, Strategic Documents, and Practice in Slovakia] In: MASLEN, M. (ed.). Elektronizácia a digitalizácia verejnej správy. Trnava : Trnavská univerzita v Trnave, Právnická fakulta, 2024, pp. 75,76. ISBN 978-80-568-0714-9, [online]. [cit. 2025-10-01]. Accessible at: https://publikacie.iuridica.truni.sk/wp-content/uploads/2025/01/Zbornik-Maslen-Spravne-pravo_2.korektura.pdfhttps://dspace.uniba.sk/handle /123456789/225?show=full.

12 DAVID, G. *Artificial Intelligence: Opportunities and Challenges for Public Administration*. In: Canadian Public Administration. 2024, vol. 67, p. 396. ISSN 1754-7121. DOI: 10.1111/capa.12580.

13 KLUČKA, J. *Úloha a dôležitosť etických pravidiel v systémoch umelej inteligencie*. [The Role and Importance of Ethical Principles in Artificial Intelligence Systems.] Právny obzor, 108, 2025, č. 3, s. 241. ISSN 0032-6984 https://doi.org/10.31577/pravnyobzor.2025.3.02.

Within larger integrated supranational groupings, such as the European Union, a different pace of adoption and acceptance of AI in public administration is also evident. A 2019 study drew attention to this fact, revealing that in Western Europe, 30% of respondents reported using AI, while in Eastern Europe, only 3% did[14]. The reason may also be that while in the private sphere the implementation of new technologies is motivated by profit, its integration in public administration is aimed at the creation of 'public value'. This is a concept that transcends mere cost-effectiveness and includes principles such as equality, justice, and political feasibility. In this context as well, it is possible to point to the importance of ethical rules, which form a delicate balance between technological progress and the protection of human rights and the values of a democratic society, such as privacy, justice, and transparency[15].

2.2. The entry of AI into decision-making processes

The political communication of the need for broader integration of AI into the public sector and its expected benefits, addressed to the public, is mostly limited to highlighting greater efficiency, consisting of higher speed and economy in decision-making activities. AI systems promise modernisation consisting of more responsive, accurate, and cost-effective administration[16]. Public administration also approaches the ways in which it deploys technologies into its activities with this vision.

The first possible method consists of developing its own systems. While this requires a significant volume of public funds, it increases transparency and contributes to so-called 'digital sovereignty'. The second method involves purchasing and subsequently adapting a tool developed by a private entity. With this method, control by the operating organisation is already limited, and part of the operation and maintenance tools are outsourced. Finally, the third and, from a risk perspective, most unsuitable method is the use of publicly available tools such as ChatGPT in public administration activities, as this increases the risk of compromising confidentiality and the protection of personal data or protected data.[17]

Regardless of the method of implementation, provided that the necessary principles regarding security, transparency, and 'public value' are observed, AI tools and applications can contribute to supporting the efficiency and functionality of internal management processes, simplifying, clarifying, and generally improving the provision of public services, as well as increasing the quality of the public policy-making process by public administration[18]. This is also confirmed by several empirical studies, which have shown a statistically significant relationship between the level of digitalisation of public administration and the quality of governance in EU countries.[19]

According to estimates, 60-70% of the time of public administration employees is currently spent on internal or largely routine activities that could be automated, allowing employees to

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[14] WŁODYKA, E.M. *Implementation of e-Government and Artificial Intelligence in Polish Public Administration.* In: *TalTech Journal of European Studies*. 2024, vol. 14, no. 2, pp. 122. ISSN 2674-4619. https://doi.org/10.2478/bjes-2024-0019.

[15] KLUČKA, J. *Úloha a dôležitosť etických pravidiel v systémoch umelej inteligencie*. [The Role and Importance of Ethical Principles in Artificial Intelligence Systems.]Právny obzor, 108, 2025, č. 3, s. 242. ISSN 0032-6984 https://doi.org/10.31577/pravnyobzor.2025.3.02.

[16] BABŠEK, M., D. RAVŠELJ, L. UMEK and A. ARISTOVNIK. Artificial Intelligence Adoption in Public Administration: An Overview of Top-Cited Articles and Practical Applications. In: AI. 2025, vol. 6, no. 3, p. 7. ISSN 2673-2688. https://doi.org/10.3390/ai6030044.

[17] WEERTS, S. *Generative AI in public administration in light of the regulatory awakening in the US and EU.* In: Cambridge Forum on AI: Law and Governance. 2025, vol. 1(e3), p.6. ISSN 3033-3733. doi:10.1017/cfl.2024.10.

[18] BABŠEK, M., D. RAVŠELJ, L. UMEK and A. ARISTOVNIK. *Artificial Intelligence Adoption in Public Administration: An Overview of Top-Cited Articles and Practical Applications*. In: *AI*. 2025, vol. 6, no. 3, p. 19. ISSN 2673-2688. https://doi.org/10.3390/ai6030044.

[19] VATAMANU, A. F. and M. TOFAN. *Integrating Artificial Intelligence into Public Administration: Challenges and Vulnerabilities*. Administrative Sciences, 15(4), 149. p. 16. ISSN 2076-3387. https://doi.org/10.3390/admsci15040149.

focus on work of greater significance. A practical example of suitable areas for automation in external decision-making processes could be the automation of fraud detection in the processing of tax returns in Poland to reduce the VAT[20] gap, or the use of AI-powered chatbots for providing information, or the automated assessment of claims for social benefits. However, these procedures carry risks of the dehumanisation of interactions between the citizen and the state, or the risk of bias in the training data. Finally, in the area of policy-making, potentially significant benefits of AI can be seen in predictive modelling, which allows for more effective estimation and allocation of resources, but at the same time raises contentious questions of accountability for predictive errors and, not least, questions of the democratic legitimacy of governance by means of artificial intelligence. AI can also be used in public administration to strengthen democratic processes, as several experiments have shown its possible role as a mediator of discussion, which will be addressed in the following sections of this article[21].

2.3. Expectations, benefits, and risks

Although the promise of efficiency in AI-driven public administration is undeniably attractive, its integration into public administration is also associated with a whole range of ethical and normative challenges related to reflecting the fundamental principles of the rule of law.

The first identified risk is possible algorithmic bias and discrimination. Training AI systems on historical data can lead to the replication of historical prejudices and result in unjust outcomes, which can even lead to the reinforcement of social inequality[22]. This risk is confirmed by well-known failures of automated systems that have impacted hundreds or thousands of families and individuals and, in some cases, have even led to the resignation of governments[23]. Documented incidents (the Robodebt scheme in Australia, the British Post Office scandal, the Polish system for classifying the unemployed, the SyRI system in the Netherlands) point to the risk of creating systematic injuries with mass effects.[24]

Another major challenge is the so-called ‘black box’ problem, or algorithmic opacity, which consists in an insufficient understanding of complex AI systems and the logic of their decision-making, which is in direct conflict with the principles of good public administration or procedural administrative law. According to these principles, every decision must be duly reasoned[25]. In some jurisdictions, this problem has led to a ban on fully automated decisions in cases that require administrative discretion[26]. According to some authors, large language models also lack true legal understanding and offer only a convincing simulation of this conviction. They lack the "intrinsic judgment, ethical intentionality, and contextual awareness"

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20 WŁODYKA, E.M. *Implementation of e-Government and Artificial Intelligence in Polish Public Administration*. In: TalTech Journal of European Studies. 2024, vol. 14, no. 2, pp. 123. ISSN 2674-4619. https://doi.org/10.2478/bjes-2024-0019.

21 TESSLER, M.H. et al. *AI can help humans find common ground in democratic deliberation*. In: Science. 2024, vol. 386, eadq2852. p. 246. ISSN 1095-9203. DOI: 10.1126/science.adq2852.

22 KLUČKA, J. *Úloha a dôležitosť etických pravidiel v systémoch umelej inteligencie*. [The Role and Importance of Ethical Principles in Artificial Intelligence Systems.] Právny obzor, 108, 2025, č. 3, s. 240. ISSN 0032-6984 https://doi.org/10.31577/pravnyobzor.2025.3.02.

23 SMUHA, N.A. *The Use of Algorithmic Systems by Public Administrations: Practices, Challenges and Governance Frameworks.* In: SMUHA, N.A. (ed.). The Cambridge Handbook of the Law, Ethics and Policy of Artificial Intelligence. Cambridge : Cambridge University Press, 2025, pp. 388, 389. DOI 10.1017/9781009367783.

24 SANCHEZ-GRAELLS, A. *Resh(AI)ping Good Administration: Addressing the Mass Effects of Public Sector Digitalisation.* In: Laws. 2024, vol. 13, no. 1, p. 7,8. ISSN 2075-471X. https://doi.org/10.3390/laws13010009.

25 CHAUDHARY, G. *Unveiling the Black Box: Bringing Algorithmic Transparency to AI*. In: Masaryk University Journal of Law and Technology. 2024, vol. 18, no. 1, pp. 99,100. ISSN 1802-5951. DOI: 10.5817/MUJLT2024-1-4, obdobne NEŠPOR, J. *Automated Administrative Decision-Making: What Is the Black Box Hiding?* In: Acta Universitatis Carolinae–Iuridica. 2024, no. 2, p. 72. ISSN 2336-6478. DOI: 10.14712/23366478.2024.23.

26 NEŠPOR, J. *Automated Administrative Decision-Making: What Is the Black Box Hiding?* In: Acta Universitatis Carolinae–Iuridica. 2024, no. 2, p. 72. ISSN 2336-6478. DOI: 10.14712/23366478.2024.23.

that should be present in public administration decision-making, and reliance on AI conclusions carries the risk of a 'silent erosion of legal authority'[27]. The still-frequent 'hallucinations' of these language models also call into question the principle of legal certainty and the predictability of law.[28]

Merely leaving a human in the decision-making process (human-in-the-loop) as a guardian of the aforementioned principles does not necessarily mean solving the problem of technical opacity. Research conducted by Alon-Barkat et al. has also reliably revealed the existence of cognitive biases in relation to employees working with AI, such as automation bias, i.e., the tendency of human operators to uncritically accept the outputs of an automated system[29]. The human element also represents a weakness in cybersecurity. The use of public administration employees as a 'human firewall' often encounters a frequent absence of basic digital skills among employees[30]. Moreover, human intervention, for example, in the appeal process, often has only an ad hoc character. While it may lead to the correction of a specific unlawful or ethically incorrect decision, it does not address the possible systemic bias that is the cause of such an unlawful decision[31]. Deep learning models essentially preclude the applicability of real-time human control, so it is probably necessary to direct considerations more towards the possibilities of ex post review of larger sets of decisions, with the subsequent possibility of identifying and correcting negative patterns[32].

2.4. Establishing legal frameworks

In response to these risks, the European Union has adopted Regulation (EU) 2024/1689 as a groundbreaking legislative framework based on the acceptance of existing risks. It designates some AI practices as an 'unacceptable risk' and, in the case of practices designated as 'high-risk', which includes many applications used in public administration, it mandatorily imposes strict obligations to increase the safety of their use[33]. The long-term effectiveness of the adopted regulation is questionable, given the relatively slow pace and often low quality of national legislation reflecting the adopted legal regulation, as well as the enormously rapid pace of technological progress in the field of AI[34]. Smuha and Yeung also warn of the risks arising from

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27 PRINCE TRITTO, P. and I.C. TORRES ORTEGA. *Jurists of the Gaps: Large Language Models and the Quiet Erosion of Legal Authority*. In: Masaryk University Journal of Law and Technology. 2025, vol. 19, no. 2, p. 179. ISSN 1802-5951. DOI: 10.5817/MUJLT2025-2-4.

28 WEERTS, S. *Generative AI in public administration in light of the regulatory awakening in the US and EU*. In: Cambridge Forum on AI: Law and Governance. 2025, vol. 1(e3), p. 16. ISSN 3033-3733. doi:10.1017/cfl.2024.10.

29 ALON-BARKAT, S. and M. BUSUIOC. *Human-AI Interactions in Public Sector Decision Making: "Automation Bias" and "Selective Adherence" to Algorithmic Advice*. In: Journal of Public Administration Research and Theory. 2023, vol. 33, no. 1, pp. 154,155. ISSN 1477-9803. https://doi.org/10.1093/jopart/muac007.

30 WŁODYKA, E.M. *Implementation of e-Government and Artificial Intelligence in Polish Public Administration.* In: TalTech Journal of European Studies. 2024, vol. 14, no. 2, pp. 129. ISSN 2674-4619. https://doi.org/10.2478/bjes-2024-0019.

31 KLUČKA, J.: *Úloha a dôležitosť etických pravidiel v systémoch umelej inteligencie*. [The Role and Importance of Ethical Principles in Artificial Intelligence Systems.] Právny obzor, 108, 2025, č. 3, s. 248. ISSN 0032-6984 https://doi.org/10.31577/pravnyobzor.2025.3.02.

32 KRIŠTOFÍK A., *Využitie (asistenčných) systémov založených na strojovom učení v ODR a ich klasifikácia podľa aktu o umelej inteligencii* [Use of (Assistance) Systems Based on Machine Learning in ODR and Their Classification under the Artificial Intelligence Act], Právny obzor, 106 (2), 2023, p. 123, ISSN 0032-6984. https://doi.org/10.31577/pravnyobzor.2023.2.03.

33 SMUHA, N.A. and K. YEUNG. *The European Union's AI Act: Beyond Motherhood and Apple Pie?* In: SMUHA, N.A. (ed.). The Cambridge Handbook of the Law, Ethics and Policy of Artificial Intelligence. Cambridge : Cambridge University Press, 2025, pp. 229. DOI 10.1017/9781009367783.

34 PINTÉROVÁ, J. *Právna regulácia umelej inteligencie z európskej a medzinárodnej perspektívy a jej vybrané ústavnoprávne a správno-právne súvislosti*. [Regulating Artificial Intelligence: European and International Perspectives and Selected Constitutional and Administrative Law Implications] In: Justičná revue. 2024, 107(4), p. 362. ISSN 1335-6461. https://doi.org/10.31577/pravnyobzor.2024.4.02.

the relatively weak establishment of independent oversight[35]. In this context, Klučka proposes the introduction of external verification mechanisms, such as an AI audit, the aim of which would be to assess whether systems meet the expected ethical and legal rules[36].

From the considerations presented, it is clear that the gradual integration of AI into the decision-making (norm-setting, managerial-organisational, and individual) activities of public administration is an inevitable transformative event to which public administration will have to respond to trends and technological innovations that are already becoming commonplace in the private sector and are often a catalyst for more efficient, economical, and modern functioning. The task of states in the near future will be to establish legal frameworks for the use of AI systems by public administration in such a way as to guarantee, to the greatest extent possible, the preservation of the principles of transparency, reviewability, and predictability of decision-making, but also the duty to fully ascertain the material facts and the free assessment of evidence, discretion, accountability for erroneous and unlawful decisions, or the right of citizens to be heard in the decision-making process.

It is clear that legal research on the use of AI in public administration needs to focus on an in-depth and partial analysis of individual areas, methods, and forms of public administration activity and subject them to a risk assessment, or a weighing of potential benefits and risks. In this paper, we focus this analysis specifically on an area that, even at present and without significant AI integration, is not sufficiently established in the legal regulation or practice of Slovak public administration: the use of mediation, mediation techniques and procedures, or other ADR in public administration.

III. COOPERATIVE PUBLIC ADMINISTRATION: A THREAT TO LEGALITY OR A PATH TO A NEW FORM OF LEGITIMACY?

3.1. The legal and theoretical basis for the use of ADR in public administration

The concept of ‘cooperative public administration’, resulting from the integration of consensual and cooperative elements into decision-making processes, has been gaining increasing attention over the last two decades, especially in the member states of the Council of Europe[37]. The primary legal and political context for the use of consensual approaches in public administration was set by the Council of Europe through soft law, primarily formed by the Recommendation of the Committee of Ministers of the Council of Europe CM/Rec(2001)9[38]. The European Commission for the Efficiency of Justice (CEPEJ) has in recent years become the main driving force of this agenda, particularly through documents such as the Guidelines on how to drive change towards the better implementation of the existing Council of Europe Recommendation concerning alternatives to litigation (2007) or the European Handbook for the creation of mediation legislation (2019). In the context of these documents, mediation in public administration is defined as a voluntary and confidential

[35] SMUHA, N.A. and K. YEUNG. The European Union’s AI Act: Beyond Motherhood and Apple Pie? In: SMUHA, N.A. (ed.). The Cambridge Handbook of the Law, Ethics and Policy of Artificial Intelligence. Cambridge : Cambridge University Press, 2025, pp. 229. DOI 10.1017/9781009367783.

[36] KLUČKA, J.: *Úloha a dôležitosť etických pravidiel v systémoch umelej inteligencie*. [The Role and Importance of Ethical Principles in Artificial Intelligence Systems.] Právny obzor, 108, 2025, č. 3, s. 247. ISSN 0032-6984. https://doi.org/10.31577/pravnyobzor.2025.3.02.

[37] MOLITORIS, P. and V. ŽOFČINOVÁ. *Možnosti využitia mediácie v správnych veciach v Slovenskej republike a vo vybraných európskych štátoch*. [Possibilities of using mediation in administrative cases in the Slovak Republic and in selected european countries]. In: Studia Iuridica Cassoviensia. 2024. Roč. 12, č. 2, p. 154, ISSN 1339-3995. DOI: 10.33542/sic2024-2-10.

[38] COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE. (2001). Recommendation (2001) 9 of the Committee of Ministers of the Council of Europe on alternatives to litigation between administrative authorities and private parties. available at: https://rm.coe.int/16805e2b59.

process in which a neutral third party helps the parties to a dispute reach a mutually satisfactory agreement[39].

The academic discourse in this area is quite polarised. Proponents of the use of mediation and mediation techniques in public administration proceed from the assumption that it will increase the efficiency of administration or the processes of administrative justice, while also leading to an improvement in the relationship between the state and the citizen[40], and for these reasons, they speak of the introduction of mediation in public administration as a "necessary measure"[41]. Even authors who perceive mediation more as an element alien to public administration acknowledge its potential for a strong legitimising effect[42].

Sceptics tend to speak of a conceptually problematic implementation of a private-law institute into public administration, which could become a 'Trojan horse for the rule of law' based on the principle of legality and the protection of the public interest[43]. They mostly proceed from the conclusion that traditional, hierarchically conducted administrative procedures and decision-making processes do not offer space for consensual negotiation, especially not between a state authority and a private person, if the subject of the procedure is a public-law relationship[44]. This briefly demonstrated conflict of opinion is manifested in the long-term discrepancy between the political pressure from the Council of Europe and the reality of public administration practice, which was also revealed by CEPEJ's own monitoring from 2018 and subsequently 2022, which confirmed that the initiatives of the Council of Europe and CEPEJ had "little or no effect"[45] in the field of public administration in most member states. The Slovak Republic is undoubtedly among these states.

3.2. Limits on the application of ADR in the decision-making processes of public administration in the Slovak Republic and neighbouring states

There are several reasons why the Slovak Republic has not, at the normative level, reflected any of the recommendations or conclusions of the Council of Europe concerning ADR in public administration (except consumer ADR). Not least among these is undoubtedly the resistance of the traditionally authoritative decision-making public administration to new elements that have no tradition in this environment, but also the insufficient 'bottom-up pressure' that does not create a real demand for such legislative regulation. It is not that compromise solutions, settlements, or agreements reached with the assistance of public administration bodies do not occur in the environment of public administration decision-making processes (especially at the

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[39] ŻOŁĄDŹ, J. *Mediacja w sferze administracji publicznej jako przedmiot badań politologicznych.* Wrocławskie Studia Politologiczne, 2011. 12, p. 66. ISSN 2957-2444. available at: https://wuwr.pl/wrsp/article/view/5944.

[40] on this point, see also YAROSHENKO, O. et al. *Alternative resolution of public law disputes in administrative proceedings of european union member states*, In: PA PERSONA E AMMINISTRAZIONE, 10(1), 2022. pp. 901–925. ISSN 2610-9050. available at: https://journals.uniurb.it/index.php/pea/article/view/3578.

[41] YAROSHENKO, Oleg et. al.: *The use of Mediation in Administrative Proceedings: The Experience of European Union Member States*. In.: Revista Relacoes Internacionais do Mundo Atual Unicuritiba. 2021. Volume 3. Num. 32. p. 85, ISSN 2316-2880, DOI: http://dx.doi.org/10.21902/Revrima.v3i32.5510, available at https:// portaldeperiodicos. animaeducacao. com.br/index.php/RIMA/issue/view/1392.

[42] HOHMANN, B. *Possibilities for the Application of Alternative Dispute Resolution Methods in the Administrative Procedure.* In: European Journal of Multidisciplinary Studies, 2018. 3(4), p. 97. ISSN 2414-8385 DOI: 10.26417/ejms.v3i4.p90-98.

[43] BALTHASAR, A.: *Alternativní řešení sporů ve správním právu – významný krok vpřed pro větší spokojenost občanů, nebo trojský kůň pro právní stát?* In.: SKULOVÁ, Soňa., POTĚŠIL, Lukáš. a kol.: Prostředky ochrany subjektívních práv ve veřejné správě – jejich systém a efektivnost. 1. vydání. Praha: C. H. Beck, 2017, p. 419-426, ISBN 978-80-7400-647-0.

[44] VUČETIĆ, D. *Is mediation viable in administrative matters?* In: Facta Universitatis, Series: Law and Politics. 2016. Vol. 14, No 4, p. ISSN 2406-1786. DOI 10.22190/FULP1604495V.

[45] CEPEJ. *Roadmap of the CEPEI-GT-MED (2018)8.* available at: https://rm.coe.int/road-map-for-mediation-based-on-the-cepej-gt-med-report-on-the-impact-/16808c3fd5; BOUSSARD, S., SALEM, K.: *State of play of the practice of mediation in administrative disputes in the Member States of the Council of Europe.* [citované: 8. september 2024]. https://rm.coe.int/cepej-gt-qual-2022-1rev-en-state-of-play-of-the-practice-of-mediation-/1680ab3db7.

level of municipal self-government), but as a rule, these procedures happen informally, and their legal basis may be questionable.

The legal order of the Slovak Republic lacks a legislative framework that would define the space for settlement or mediation in the decision-making activities of public administration while respecting the principles and limits arising from the public-law nature of the regulation[46]. The Act on Mediation, even after its several amendments and adjustments, is still adapted exclusively to private-law and family disputes. The Administrative Procedure Code[47] is silent on this issue, although in its basic rules it imposes a duty on administrative authorities to try, in suitable procedures, to lead the parties to a settlement (§ 3(4) of the Administrative Procedure Code). The Act does not address how to assess the suitability of procedures. The use of ADR in public administration is, in addition to legislative silence, internally limited by the obligation of administrative authorities to protect the public interest and the rights of third parties in their decision-making. Consequently, an administrative authority could not accept, for example, a mediation agreement that would be contrary to the public interest or would adversely affect the legally protected rights and interests of persons who are not parties to the procedure and parties to the mediation[48]. Despite these limitations, there is a narrow space in practice for the informal application of so-called horizontal mediation, especially in expropriation proceedings, construction proceedings, or proceedings on minor offences and administrative delicts[49].

However, the problematic nature of integrating mediation into the decision-making of public administration is not a Slovak specific. Since 2017, Poland has created a legal framework for both horizontal (between the parties themselves) and vertical mediation (between the parties and the administrative authority) in administrative procedure. Despite the fact that this regulation was accompanied by considerable media support, official statistics from 2018-2022 show that at most a handful of administrative procedures are resolved by mediation annually[50]. Poland thus belongs to the countries where mediation in public administration is legally enshrined but in practice is virtually non-existent[51]. This state of affairs is attributed mainly to the internal conflict between the goals of mediation and the essence of administrative procedure, which is fundamentally non-contentious and unilateral, focused on the authoritative application of the law[52]. The introduction of vertical mediation is perceived by authorities as a non-systemic, revolutionary element that disrupts the division of roles between the administrator and the administered and forces the administrative authority to negotiate the application of the

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46 MOLITORIS, P. *Možnosti a limity využitia mediácie a mediačných techník v právnoaplikačných procesoch vo verejnej správe* [Possibilities and limits of the use of mediation and mediation techniques in the legal-application processes in public administration] In: Mediácia a multidisciplinarita ako kľúč k harmonickým riešeniam konfliktov. 2024. Bratislava: Inštitút mediácie a mimosúdneho riešenia sporov, 2024. p. 178. ISBN 9788097477325.

47 Act No. 71/1967 Coll. on Administrative Procedure (the Administrative Procedure Code).

48 MOLITORIS, P. *Možnosti a limity využitia mediácie a mediačných techník v právnoaplikačných procesoch vo verejnej správe* [Possibilities and limits of the use of mediation and mediation techniques in the legal-application processes in public administration] In: Mediácia a multidisciplinarita ako kľúč k harmonickým riešeniam konfliktov. 2024. Bratislava: Inštitút mediácie a mimosúdneho riešenia sporov, 2024. p. 181. ISBN 9788097477325.

49 MOLITORIS, P. and V. ŽOFČINOVÁ. *Možnosti využitia mediácie v správnych veciach v Slovenskej republike a vo vybraných európskych štátoch*. [Possibilities of using mediation in administrative cases in the Slovak Republic and in selected european countries]. In: Studia Iuridica Cassoviensia. 2024. Roč. 12, č. 2, p. 161, ISSN 1339-3995. DOI: 10.33542/sic2024-2-10.

50 *Klapa mediacji, ale uproszczenia działają - resort rozwoju ocenia wprowadzone procedury*. [citované 16. september 2025] https://www.prawo.pl/samorzad/uproszczeniaprocedur-administracyjnych-nie-zawsze-dzialaja,516368.html.

51 KALISZ, A. AND SERHIEIEVA, A. *When a State Is a Party to a Dispute (Court-)Administrative Mediation in Poland and in Ukraine (A Comparative Perspective)*. In: Review of European and Comparative Law. 2023. 53(2), p. 134. ISSN 2545-384X. DOI: 10.31743/recl.15967. A similar situation exists, for example, in Portugal or Ukraine.

52 SUWAJ, Robert: *Mediation as a new form of settling administrative matters in Poland*. In: Przegląd Ustawodawstwa Gospodarczego. 2019. p. 18. DOI 10.33226/0137-5490.2019.12.4.

law[53]. According to Przylepa-Lewak, the low use of mediation is also contributed to by the reluctance of public employees to risk accountability for such an agreed outcome, and not least by the deeply rooted cultural patterns in the perception of public administration as a power-authoritative executor of public authority[54].

In 2021, Ukraine adopted a law on mediation explicitly allowing mediation also in administrative disputes. In this environment, too, its application remains very low, partly due to the limited discretion of administrative authorities[55]. In Hungary, an institute similar to mediation using an impartial person as an intermediary (the so-called *Hatósági közvetítő*) existed in the legal regulation of Art. 41 of Act CXL: 2004, i.e., the administrative procedure code effective until 2017. The new legal regulation of administrative procedure (2016. évi CL. törvény az általános közigazgatási rendtartásról) effective from 2018 no longer contains such an institute. Bereczki states that the reason for the change was probably the fact that the official mediator was not appointable directly based on the administrative procedure code, but always only if a special regulation allowed it, and a special legal regulation allowing mediation in specific types of procedures apparently seems sufficient. Moreover, the original legal regulation was used in practice only to a very limited extent[56]. The Czech legal regulation does not explicitly regulate the use of mediation in the decision-making processes of public administration, but the consensual approach is not entirely alien to it, as it offers a very detailed and functional regulation of public-law contracts, which can in certain cases, replace authoritative decisions[57].

Given the historical similarities in the construction of the principles of public administration and the cultural proximity of the environment of neighbouring states, it can be assumed, also in relation to the Slovak Republic, that a direct transposition of the broad model of mediation in public administration recommended by the Council of Europe and CEPEJ into the Slovak legal order would probably not have a significant impact on practice. Reform efforts should therefore be directed towards the systematic building of a legal framework for the use of horizontal mediation in public administration, especially within processes that have a direct impact on the rights and obligations of individuals and in which a conflict of interests of individual parties occurs. Vertical mediation would be conceivable primarily in administrative judicial review (outside the scope of this article) or in pre-rule-making consultations, not in routine first-instance administrative proceedings.

The key research question of this article also stems from the aforementioned partial conclusion, namely whether the gradual, broader introduction of legally regulated AI into decision-making processes can contribute to a greater interest in mediation or mediation techniques, on the basis of strengthening trust in this tool, with the promise of more effective, fairer, more acceptable, and faster decisions by public administration. Therefore, in the Slovak context, we recommend proceeding from horizontal forms, in precisely defined types of procedures with a conflict between the parties, where the public interest and the rights of third parties can be procedurally protected.

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53 KUŁAK-KRZYSIAK, K. AND ŚWITAL, P. *Mediation as Means of Communication for Public Administration in Settling Administrative Disputes.* In: Review of European and Comparative Law, 2023. 54(3), pp. 281. ISSN 2545-384X. DOI: 10.31743/recl.16226.

54 PRZYLEPA-LEWAK, A. *Mediation as a Form of Communication in Administrative Proceedings*. In: Annales universitatis Mariae Curie – Skłodowska, Lublin, VOL. LXIX, 2. 2022. p. 71. DOI:10.17951/g.2022.69.2.61-73.

55 KALISZ, A. AND SERHIEIEVA, A. *When a State Is a Party to a Dispute (Court-)Administrative Mediation in Poland and in Ukraine (A Comparative Perspective).* Review of European and Comparative Law. 2023. 53(2), p. 137. ISSN 2545-384X. DOI: 10.31743/recl.15967.

56 BERECZKI, I. *A közigazgatási perek során elrendelt közvetítés alkalmazásának egyes kérdései*. In: Iustum Aequum Salutare. XIV. 3. 2018. p. 142,143.

57 e.g., the planning agreement pursuant to § 130 et seq. of Act No. 283/2021 Coll., the Building Act; § 68 of Act No. 114/1992 Coll., on the Protection of Nature and Landscape.

IV. A ROBOT AS MEDIATOR?

Given the described limits, it is crucial to examine where AI has the highest added value in the use of ADR and mediation in public administration without undermining legality—especially in assistive, not autonomous, roles. The use of AI in mediating disputes has been the subject of research in the field of private law essentially since the beginning of the massive digitalisation of society. More recent research also confirms that AI can be used not only as a subject that decides but also as a sophisticated tool helping to find common ground, thereby expanding the framework of its potential use in the field of justice and public administration[58]. Thus, the dominant question is no longer whether an algorithm can replace a human arbitrator or mediator, but under what conditions this is possible and whether such an approach would truly be beneficial.

With the advent of the internet, platforms for online dispute resolution (ODR) began to appear, especially in the field of e-commerce[59]. The development of ODR led to the concept of technology as the 'fourth party' in two phases. In the first phase, technology was only a passive component of communication and served only as the technical background for a human communication facilitator. In the second phase, it became an active component, supplementing or even replacing the human facilitator. Despite high expectations from the substantive integration of AI into ODR, where it actively responds to the content of communication and proposes solutions, 'assistive' technologies requiring human input and supervision continue to dominate in ODR. This phenomenon is attributed both to the conservatism of institutions and to technological limitations[60]. Despite this, it is precisely in the ODR environment that the basis for modern approaches to ADR can be seen, in which sophisticated AI actively analyses data, predicts the outcome of the dispute, and with increasing autonomy proposes solutions, thereby shifting the active role from the human to the machine[61].

The use of AI in the ADR environment is multi-layered. In practice, it offers possibilities for automated document analysis and predictive forecasting of outcomes, or suggestions for settlement strategies. An example is the automated arbitration process via the SAMA platform in India. The platform uses data analysis from earlier cases and proposes solutions[62]. Several similar assistive systems to support negotiation operate in the field of family and family property or labour law[63]. Despite this partial integration, there are still several specific problems that hinder the full integration of AI into conciliatory and mediation processes, which in essence do not differ much from the problems we pointed out in the first part of this paper.

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58 TESSLER, M.H. et al. *AI can help humans find common ground in democratic deliberation*. In: Science. 2024, vol. 386, eadq2852. p. 34. ISSN 1095-9203. DOI: 10.1126/science.adq2852.

59 AHMAD, N. *Smart Resolutions: Exploring the Role of Artificial Intelligence in Alternative Dispute Resolution*, Cleveland State Law Review, 2025. 73(2), p. 280. ISSN 0009-8876. available at https://engagedscholarship.csuohio.edu/clevstlrev/vol73/iss2/6, ALESSA, H. *The Role of Artificial Intelligence in Online Dispute Resolution: A Brief and Critical Overview*, Information & Communications Technology Law, 2022. 31(3), p. 321. ISSN: 1469-8404. DOI: 10.1080/13600834.2022.2088060.

60 KRIŠTOFÍK A., *Využitie (asistenčných) systémov založených na strojovom učení v ODR a ich klasifikácia podľa aktu o umelej inteligencii* [Use of (Assistance) Systems Based on Machine Learning in ODR and Their Classification under the Artificial Intelligence Act], Právny obzor, 106 (2), 2023, p. 117 ISSN 0032-6984. https://doi.org/10.31577/pravnyobzor.2023.2.03.

61 CANDEIAS, T. de J. *Artificial Intelligence's Role in Enhancing Conflict Resolution within the Online Dispute Resolution (ODR) System.* SSRN Electronic Journal. 2023. p. 9. ISSN 1556-5068. https://doi.org/10.2139/ssrn.4559439.

62 KARTHIKEYAN, C. *AI (Artificial Intelligence) for Conflict Resolution and Negotiation: Enhancing Mediation and Collaboration Through Intelligent Technology*. In: Özsungur, F. (ed.) Navigating Organizational Behavior in the Digital Age With AI. Hershey, PA: IGI Global (Business Science Reference), p. 22. ISBN 979-8-3693-8445-9 https://doi.org/10.4018/979-8-3693-8442-8.ch002.

63 KRIŠTOFÍK A., *Využitie (asistenčných) systémov založených na strojovom učení v ODR a ich klasifikácia podľa aktu o umelej inteligencii* [Use of (Assistance) Systems Based on Machine Learning in ODR and Their Classification under the Artificial Intelligence Act], Právny obzor, 106 (2), 2023, p. 118. ISSN 0032-6984. https://doi.org/10.31577/pravnyobzor.2023.2.03.

4.1. Who will trust robots? Specific problems in the use of AI in amicable conflict resolution

First and foremost is the problem of algorithmic bias[64], which can create a 'vicious feedback loop' leading to the reinforcement of initial prejudices. This problem was also addressed, for example, by the research of Tessler et al. from 2023. The research team created, on the basis of AI, a so-called Habermas machine, which, from a group of several presented attitudes of a research sample of people—actors in a dispute—on a certain contentious issue, created several possible solutions that could be accepted by the participants. It then predictively determined which of its generated solutions would be liked to what extent by the individual actors in the dispute. From the solutions, it created an imaginary 'ranking' of acceptable solutions for each actor in the dispute. It then determined the overall winner using the Schulze computational method. From the perspective of this article, the study presented a significant result in relation to prejudices. If AI systems were designed to use the Habermas machine model, the system, after a phase of human criticism of its results marked by tendencies towards prejudice, would be able to attach higher weight to minority opinions and would not express their simple share in the overall group, thereby demonstrating the ability to support inclusivity[65]. However, a substantial part of publicly available generative AI systems does not work in this way.

Another problem in the introduction of AI in ADR is the black box problem, which greatly weakens trust in the true expertise and impartiality of the proposed solutions, which is, however, a necessary prerequisite for any mediation or conflict facilitation. Even the presence of a human mediator, who in reality does not have enough information about how the AI system they are using works and based on what algorithms it produces its results, does not eliminate this problem.

A specific problem for the field of ADR is the absence of unique human qualities in AI, such as emotional intelligence, life and work experience, or the ability to understand abstract legal and moral concepts (good faith, justice), which are a necessary prerequisite for achieving results based on consensus and at the same time justice in the context of the specific mediated or conciliated case[66]. Finally, it is necessary to point out the factor of confidentiality, which is significantly threatened by the use of AI as a possible third party in a conflict. This is one of the key factors of ADR, and its frameworks are rigorously regulated by the GDPR[67].

4.2. Will artificial intelligence replace human officials in conciliation proceedings?

The broader integration of AI into mediation and other ADR will likely depend not only on suitable and similar legal regulation but, not least, on its acceptance by clients. In this area, empirical research applying the so-called Unified Theory of Acceptance and Use of Technology (UTAUT) has provided very useful answers. According to a recent study from the USA, it was found that even if mediation clients, as actors in a dispute, believe that AI is effective, their willingness to turn to a mediator who uses it depends on their trust that the mediator will use AI responsibly and ethically. In this context, significant factors for higher acceptance of AI in

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64 AHMAD, N. *Smart Resolutions: Exploring the Role of Artificial Intelligence in Alternative Dispute Resolution*, Cleveland State Law Review, 2025. 73(2), pp. 285. ISSN 0009-8876. available at https://engagedscholarship.csuohio.edu/clevstlrev/vol73/iss2/6.

65 TESSLER, M.H. et al. *AI can help humans find common ground in democratic deliberation*. In: Science. 2024, vol. 386, eadq2852. p. 123. ISSN 1095-9203. DOI: 10.1126/science.adq2852.

66 AHMAD, N. *Smart Resolutions: Exploring the Role of Artificial Intelligence in Alternative Dispute Resolution*, Cleveland State Law Review, 2025. 73(2), p. 286. ISSN 0009-8876. available at https://engagedscholarship. csuohio. edu/clevstlrev/vol73/iss2/6.

67 see also SARTOR, G. and LAGIOIA, F. The impact of the General Data Protection Regulation (GDPR) on artificial intelligence. Brussels : European Parliament. 2020. DOI: [10.2861/293].

ADR processes are, in particular, transparency and proactive information from the human facilitator about the manner and extent of AI use.[68]

These findings are fully consistent with the assertion that (iterative) processes that also contain feedback from a human (human-in-the-loop) are perceived by users as more valuable. In Tessler's experiment, solutions generated by AI and revised based on human criticism were significantly preferred over solutions without a human element. This proves that the active participation of the user supports trust in the correctness of the result[69]. On the other hand, Tessler's research showed that when comparing outputs, participants demonstrated a statistically significant preference for consensual solutions generated by AI over those proposed by a human mediator (56% vs 44%), with the AI output receiving higher ratings for both the degree of agreement and overall quality[70].

The degree of acceptance of the use of AI in mediation also differs significantly depending on the role it is intended to perform. A high degree of acceptance exists for preparatory, so-called 'back office' tasks consisting of summarising documents and planning. Conversely, a low degree of acceptance relates to use 'at the table', i.e., use visible during a live meeting with the actors in the dispute for tasks such as real-time sentiment analysis, or for the use of anonymised data from other cases for training AI. Somewhere in the middle is the acceptance of the use of AI for predictive purposes[71].

The cited research suggests that even if regulatory legislation is adopted, the future of AI in the amicable resolution of disputes probably does not lie in full automation, but in a reasonable degree of cooperation between human and machine. The solution appears to be a hybrid model, using AI for processing vast amounts of data and performing routine tasks. The irreplaceable role of human personnel will be to evaluate the AI-produced data on the basis of ethically formed judgment, applying principles of justice based on human emotional intelligence.

V. CONCLUSION

One of the key aspects hindering the broader acceptance of mediation in public administration, based also on a brief comparison of the experiences of neighbouring states, appears to be a lack of interest on the part of both the state and the administered entities. The reasons on the part of the state largely stem from the fear that an employee of an administrative authority, by entering into negotiation and conciliation, relinquishes their neutrality, loses the necessary distance essential for reflecting the public interest, and essentially becomes a party to the dispute. This problem would be eliminated if legislation explicitly allowed the use of external professional mediators in resolving conflicts arising from the decision-making activities of public administration authorities. With this, of course, questions would arise related to the control of the mediation agreement by an official, its approval, or questions related to the costs of mediation.

We believe that even the idea of an official trained in mediation techniques acting as a "mediator" is not entirely unacceptable. It is precisely in this respect that a suitably dimensioned artificial intelligence system could be helpful. The use of AI to an extent and in a manner precisely regulated by law and under the control of an official could lead to the identification of a space for possible agreement while preserving the legal frameworks and public interest, as

[68] CHOI, Y. Using AI in My Disputes? Clients' Perception and Acceptance of Using AI in Mediation, Conflict Resolution Quarterly, Early View (online first, 28 May 2025). p. 9. https://doi.org/10.1002/crq.21483.

[69] TESSLER, M.H. et al. AI can help humans find common ground in democratic deliberation. In: Science. 2024, vol. 386, eadq2852. p. 169. ISSN 1095-9203. DOI: 10.1126/science.adq2852.

[70] TESSLER, M.H. et al. *AI can help humans find common ground in democratic deliberation*. In: Science. 2024, vol. 386, eadq2852. p. 97, 100. ISSN 1095-9203. DOI: 10.1126/science.adq2852.

[71] CHOI, Y. Using AI in My Disputes? Clients' Perception and Acceptance of Using AI in Mediation, Conflict Resolution Quarterly, Early View (online first, 28 May 2025). p. 8. https://doi.org/10.1002/crq.21483.

well as to the production of framework proposals for possible agreements. The official acting as a conciliator, against whom the disputing parties might suspect a targeted preference for a solution advantageous only to one of the participants, or to the state, would thus become an independent conciliator overseeing a fair, structured, and transparent process. For the sake of correctness, it should be stated here that if an official with the authority to also decide the matter by way of an authoritative administrative decision were to lead the parties to one of the agreement proposals generated by AI using mediation techniques, it is no longer appropriate to speak of mediation, but rather of conciliation aimed at an amicable consensual resolution of the dispute between the parties, which, however, does not diminish the potential benefit.

A prerequisite for the acceptance of the outlined approach would be, in addition to clear and detailed legislation, the elimination of the 'black box' problem. This would require the development, or ideally a share in the development, of proprietary AI systems within the public administration environment with sufficient security guarantees for the protection of personal data, the principle of legality, and the public interest. Such processes, based on purposefully designed algorithms, should be clearly auditable by state bodies with precisely defined powers. The interest of officials in using this type of tool could be stimulated precisely by the fact that they would not be facilitating parties in sensitive cases towards a solution that they would also have to propose from the position of a public authority. Another factor for overcoming institutional inertia and the cultural resistance of officials could be the expected higher efficiency and reduction of the administrative burden resulting from the digitalisation of the preparation of documents, but also from the expected lower rate of challenges to the adopted solutions through appeals and legal actions.

Therefore, if we were to answer the key question concerning the applicable methods of using AI in ADR and the consequent necessary legal framework, it is necessary to point to four key conditions:

First, it is necessary to focus primarily not only on incorporating the possibility of mediation in the decision-making processes of public administration into the mediation act, but also on the preparation and adoption of specific and precise procedural rules that, in accordance with the principle of legality, clearly define the powers of public administration authorities in mediation and conciliation procedures. The implementation of mediation into public administration should, in the first instance, concern only cases allowing for horizontal mediation, and even then, mainly in procedures with a private-law subject of conflict between the parties.

Second, it is necessary to reflect that AI in conciliatory processes should not be used as an autonomous arbitrator or conciliator, but only as a supportive tool within a hybrid model, in which a human would remain the conciliator ensuring communication on the path to consensus. Potential errors of a fully automated system could, in the long term, weaken trust not only in AI systems in public administration but also in ADR itself for resolving this type of dispute.

Third, the design of legal regulation should always take into account the principles of good public administration and the fundamental procedural principles of the rule of law. The AI platforms used should therefore be designed to strengthen the principles of transparency, neutrality, and efficiency. The use of suitably configured platforms would allow for the depersonalisation of certain stages of the conciliatory process with an emphasis on independence and impartiality.

Fourth, the deployment of technologies also requires the adoption of a synergistic legal framework, not only in terms of standards of transparency, oversight, and accountability in the use of AI in public administration, but also in terms of procedural regulations that specifically regulate the use of digital technologies and AI in decision-making activities.

Our findings provide strong partial support for the stated hypothesis that AI can act as an indirect catalyst for the use of ADR in the activities of public administration. This conclusion is consistent with theory and available studies (Tessler, Choi), but the extent of this effect in the Slovak Republic depends on the implementation of the four conditions mentioned above. It is clear that the digitalisation of processes in itself will not resolve the conflict between the consensual nature of ADR and the authoritatively conceived principle of legality and protection of the public interest. The creation of an effective, fair, transparent, and functional procedural framework that allows for the safe use of AI in various forms and levels of public administration decision-making can lead to the disruption of the deeply sceptical attitude of public administration towards amicable solutions. In the long term, a functioning method of using AI in public administration can create the necessary impetus for re-evaluating the role of ADR in its decision-making processes, both on the part of the administering authorities and on the part of the administered entities.

KEY WORDS
mediation, alternative dispute resolution, public administration, administrative procedure, artificial intelligence

KĽÚČOVÉ SLOVÁ
mediácia, alternatívne riešenie sporov, verejná správa, správne konanie, umelá inteligencia

BIBLIOGRAPHY

1. Act No. 71/1967 Coll. on Administrative Procedure (the Administrative Procedure Code)
2. AHMAD, N. Smart Resolutions: Exploring the Role of Artificial Intelligence in Alternative Dispute Resolution, Cleveland State Law Review, 2025. 73(2), pp. 273–298. ISSN 0009-8876. available at https://engagedscholarship.csuohio.edu/clevstlrev/vol73/iss2/6
3. ALESSA, H. *The Role of Artificial Intelligence in Online Dispute Resolution: A Brief and Critical Overview*, Information & Communications Technology Law, 2022. 31(3), pp. 319–342. ISSN: 1469-8404. DOI: 10.1080/13600834.2022.2088060.
4. ALON-BARKAT, S. and M. BUSUIOC. Human-AI Interactions in Public Sector Decision Making: "Automation Bias" and "Selective Adherence" to Algorithmic Advice. In: *Journal of Public Administration Research and Theory*. 2023, vol. 33, no. 1, pp. 153–169. ISSN 1477-9803. https://doi.org/10.1093/jopart/muac007
5. BABŠEK, M., D. RAVŠELJ, L. UMEK and A. ARISTOVNIK. *Artificial Intelligence Adoption in Public Administration: An Overview of Top-Cited Articles and Practical Applications*. In: *AI*. 2025, vol. 6, no. 3, p. 44. ISSN 2673-2688. https://doi.org/10.3390/ai6030044
6. BALTHASAR, A.: *Alternativní řešení sporů ve správním právu – významný krok vpřed pro větší spokojenost občanů, nebo trojský kůň pro právní stát?* In.: SKULOVÁ, Soňa., POTĚŠIL, Lukáš. a kol.: Prostředky ochrany subjektívních práv ve veřejné správě – jejich systém a efektivnost. 1. vydání. Praha: C. H. Beck, 2017, p. 419-426, ISBN 978-80-7400-647-0
7. BERECZKI, I. A közigazgatási perek során elrendelt közvetítés alkalmazásának egyes kérdései. In: Iustum Aequum Salutare. XIV. 3. 2018. pp. 131-149 available at https://publikacio.ppke.hu/id/eprint/295/
8. BOVENS, M. and S. ZOURIDIS. *From street-level to system-level bureaucracies: How information and communication technology is transforming administrative discretion*

and constitutional control. Public Administration Review, 2002, 62(2): 174–184. [online]. [cit. 2025-10-01]. Available at: https://onlinelibrary.wiley.com/doi/abs/10.1111/0033-3352.00168

9. CANDEIAS, T. de J. Artificial Intelligence's Role in Enhancing Conflict Resolution within the Online Dispute Resolution (ODR) System. SSRN Electronic Journal. 2023. ISSN 1556-5068. https://doi.org/10.2139/ssrn.4559439
10. CEPEJ. *Roadmap of the CEPEI-GT-MED (2018)8*. available at: https://rm.coe.int/road-map-for-mediation-based-on-the-cepej-gt-med-report-on-the-impact-/16808c3fd5
11. COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE. (2001). Recommendation (2001) 9 of the Committee of Ministers of the Council of Europe on alternatives to litigation between administrative authorities and private parties. available at: https://rm.coe.int/16805e2b59
12. CRIADO, J.I., R. SANDOVAL-ALMAZÁN and J.R. GIL-GARCIA. Artificial intelligence and public administration: Understanding actors, governance, and policy from micro, meso, and macro perspectives. In: *Public Policy and Administration*. 2025, vol. 40, no. 2, pp. 173–184. ISSN 1749-4192. DOI: 10.1177/09520767241272921
13. DAVID, G. Artificial Intelligence: Opportunities and Challenges for Public Administration. In: *Canadian Public Administration*. 2024, vol. 67, pp. 388–406. ISSN 1754-7121. DOI: 10.1111/capa.12580
14. EUROPEAN PARLIAMENT AND COUNCIL OF THE EUROPEAN UNION. *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)*. In: Official Journal of the European Union. L series, 2024.
15. HOHMANN, B. *Possibilities for the Application of Alternative Dispute Resolution Methods in the Administrative Procedure*. In: European Journal of Multidisciplinary Studies, 2018. 3(4), pp. 90-98. ISSN 2414-8385 DOI: 10.26417/ejms.v3i4.p90-98
16. CHAUDHARY, G. Unveiling the Black Box: Bringing Algorithmic Transparency to AI. In: *Masaryk University Journal of Law and Technology*. 2024, vol. 18, no. 1, pp. 93–122. ISSN 1802-5951. DOI: 10.5817/MUJLT2024-1-4
17. CHOI, Y. *Using AI in My Disputes? Clients' Perception and Acceptance of Using AI in Mediation*, Conflict Resolution Quarterly, Early View (online first, 28 May 2025). https://doi.org/10.1002/crq.21483
18. JAKAB, R. National Report on Automation in Decision-Making in Public Administration in Slovakia. In: *Acta Universitatis Carolinae–Iuridica*. 2024, no. 2, pp. 147–157. ISSN 2336-6478. DOI: 10.14712/23366478.2024.28
19. KALISZ, A. AND SERHIEIEVA, A. *When a State Is a Party to a Dispute (Court-)Administrative Mediation in Poland and in Ukraine (A Comparative Perspective)*. In: Review of European and Comparative Law. 2023. 53(2), p. 129-148. ISSN 2545-384X. DOI: 10.31743/recl.15967
20. KARTHIKEYAN, C. *AI (Artificial Intelligence) for Conflict Resolution and Negotiation: Enhancing Mediation and Collaboration Through Intelligent Technology'*. In: Özsungur, F. (ed.) Navigating Organizational Behavior in the Digital Age With AI. Hershey, PA: IGI Global (Business Science Reference), pp. 21–50. ISBN 979-8-3693-8445-9 https://doi.org/10.4018/979-8-3693-8442-8.ch002
21. KEVICKÁ, M. *Digitálna stratégia EÚ - právny rámec pre inovatívnu Európu*. In: DRAŽOVÁ, P. and V. ŤAŽKÁ (eds.). Bratislavské právnické fórum 2024: Právo a

technológie v 21. storočí optikou európskeho práva. Bratislava : Univerzita Komenského v Bratislave, Právnická fakulta, 2024, pp. 25–34. ISBN 978-80-7160-728-1, [online]. [cit. 2025-10-01]. available at: https://dspace.uniba.sk/handle/123456789/225?show=full

22. *Klapa mediacji, ale uproszczenia działają - resort rozwoju ocenia wprowadzone procedury*. [online]. [accessed 16.09.2025] available at://www.prawo.pl/samorzad/uproszczenia-procedur-administracyjnych-nie-zawsze-dzialaja,516368.html
23. KLUČKA, J.: *Úloha a dôležitosť etických pravidiel v systémoch umelej inteligencie*. Právny obzor, 108, 2025, č. 3, s. 240 - 254. ISSN 0032-6984 https://doi.org/10.31577/pravnyobzor.2025.3.02
24. KREMSER, K. *Digitalizácia verejnej správy: legislatívny rámec, strategické dokumenty a prax na Slovensku*. In: MASLEN, M. (ed.). Elektronizácia a digitalizácia verejnej správy. Trnava : Trnavská univerzita v Trnave, Právnická fakulta, 2024, pp. 69–77. ISBN 978-80-568-0714-9. , [online]. [cit. 2025-10-01]. Accessible at: https://publikacie.iuridica.truni.sk/wp-content/uploads/2025/01/Zbornik-Maslen-Spravne- pravo_2.korektura.pdf https://dspace.uniba.sk/handle/123456789/225?show=full
25. KRIŠTOFÍK A., *Využitie (asistenčných) systémov založených na strojovom učení v ODR a ich klasifikácia podľa aktu o umelej inteligencii* [Use of (Assistance) Systems Based on Machine Learning in ODR and Their Classification under the Artificial Intelligence Act], *Právny obzor,* 106 (2), 2023, pp. 116–126. ISSN 0032-6984. https://doi.org/10.31577/pravnyobzor.2023.2.03
26. KUŁAK-KRZYSIAK, K. AND ŚWITAL, P. *Mediation as Means of Communication for Public Administration in Settling Administrative Disputes*. In: Review of European and Comparative Law, 2023. 54(3), pp. 279-301. ISSN 2545-384X. DOI: 10.31743/recl.16226
27. MOLITORIS, P. and V. ŽOFČINOVÁ. Možnosti využitia mediácie v správnych veciach v Slovenskej republike a vo vybraných európskych štátoch. [Possibilities of using mediation in administrative cases in the Slovak Republic and in selected european countries]. In: Studia Iuridica Cassoviensia. 2024. Roč. 12, č. 2, pp. 154-164, ISSN 1339-3995. DOI: 10.33542/sic2024-2-10
28. MOLITORIS, P. Možnosti a limity využitia mediácie a mediačných techník v právnoaplikačných procesoch vo verejnej správe [Possibilities and limits of the use of mediation and mediation techniques in the legal-application processes in public administration] In: Mediácia a multidisciplinarita ako kľúč k harmonickým riešeniam konfliktov. Bratislava: Inštitút mediácie a mimosúdneho riešenia sporov, 2024. pp. 174-181. ISBN 9788097477325.
29. NEŠPOR, J. Automated Administrative Decision-Making: What Is the Black Box Hiding? In: *Acta Universitatis Carolinae–Iuridica*. 2024, no. 2, pp. 69–83. ISSN 2336-6478. DOI: 10.14712/23366478.2024.23
30. PINTÉROVÁ, J. Právna regulácia umelej inteligencie z európskej a medzinárodnej perspektívy a jej vybrané ústavnoprávne a správno-právne súvislosti. In: *Justičná revue*. 2024, 107 (4), pp. 361–383. ISSN 1335-6461
31. PRINCE TRITTO, P. and I.C. TORRES ORTEGA. Jurists of the Gaps: Large Language Models and the Quiet Erosion of Legal Authority. In: *Masaryk University Journal of Law and Technology*. 2025, vol. 19, no. 2, pp. 179–204. ISSN 1802-5951. DOI: 10.5817/MUJLT2025-2-4

32. PRZYLEPA-LEWAK, A. *Mediation as a Form of Communication in Administrative Proceedings.* In: Annales universitatis Mariae Curie – Skłodowska, Lublin, VOL. LXIX, 2. 2022. pp. 61-73. DOI:10.17951/g.2022.69.2.61-73
33. SANCHEZ-GRAELLS, A. Resh(AI)ping Good Administration: Addressing the Mass Effects of Public Sector Digitalisation. In: *Laws*. 2024, vol. 13, no. 1, p. 9. ISSN 2075-471X. https://doi.org/10.3390/laws13010009
34. SARTOR, G. and LAGIOIA, F. The impact of the General Data Protection Regulation (GDPR) on artificial intelligence. Brussels : European Parliament. 2020. DOI: [10.2861/293].
35. SMUHA, N.A. and K. YEUNG. *The European Union's AI Act: Beyond Motherhood and Apple Pie*? In: SMUHA, N.A. (ed.). The Cambridge Handbook of the Law, Ethics and Policy of Artificial Intelligence. Cambridge : Cambridge University Press, 2025, pp. 228–258. DOI 10.1017/9781009367783
36. SMUHA, N.A. *The Use of Algorithmic Systems by Public Administrations: Practices, Challenges and Governance Frameworks*. In: SMUHA, N.A. (ed.). The Cambridge Handbook of the Law, Ethics and Policy of Artificial Intelligence. Cambridge : Cambridge University Press, 2025, pp. 383–410. DOI 10.1017/9781009367783
37. SUWAJ, Robert: *Mediation as a new form of settling administrative matters in Poland*. In: Przegląd Ustawodawstwa Gospodarczego. 2019. pp. 18-26. DOI 10.33226/0137-5490.2019.12.4.
38. TESSLER, M.H. et al. AI can help humans find common ground in democratic deliberation. In: *Science*. 2024, vol. 386, eadq2852. 99. 34-326. ISSN 1095-9203. DOI: 10.1126/science.adq2852
39. VATAMANU, A. F. and M. TOFAN. *Integrating Artificial Intelligence into Public Administration: Challenges and Vulnerabilities*. Administrative Sciences, 15(4), 149. pp. 2-23. ISSN 2076-3387. https://doi.org/10.3390/admsci15040149
40. VUČETIĆ, D. Is mediation viable in administrative matters? In: Facta Universitatis, Series: Law and Politics. 2016. Vol. 14, No 4, ISSN 2406-1786. DOI 10.22190/FULP1604495V
41. WEERTS, S. Generative AI in public administration in light of the regulatory awakening in the US and EU. In: *Cambridge Forum on AI: Law and Governance*. 2025, vol. 1(e3), pp. 1–19. ISSN 3033-3733. doi:10.1017/cfl.2024.10
42. YAROSHENKO, O. et al. Alternative resolution of public law disputes in administrative proceedings of european union member states, In: PA PERSONA E AMMINISTRAZIONE, 10(1), 2022. pp. 901–925. ISSN 2610-9050. available at: https://journals.uniurb.it/index.php/pea/article/view/3578
43. YAROSHENKO, Oleg et. al.: The use of Mediation in Administrative Proceedings: The Experience of European Union Member States. In.: Revista Relacoes Internacionais do Mundo Atual Unicuritiba. 2021. Volume 3. Num. 32. p. 64-88, ISSN 2316-2880, DOI: http://dx.doi.org/10.21902/Revrima.v3i32.5510, available at https:// portaldeperiodicos.animaeducacao.com.br/index.php/RIMA/issue/view/1392
44. ŻOŁĄDŹ, J. Mediacja w sferze administracji publicznej jako przedmiot badań politologicznych. Wrocławskie Studia Politologiczne, 2011. 12, pp. 65-81. ISSN 2957-2444. available at: https://wuwr.pl/wrsp/article/view/5944

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REMOVAL OF ILLEGAL CONTENT ONLINE – CONFLICTS BETWEEN SLOVAK AND EU LEGISLATION?[1]

ODSTRAŇOVANIE NELEGÁLNEHO OBSAHU ONLINE - ROZPORY MEDZI SLOVENSKOU LEGISLATÍVOU A LEGISLATÍVOU EÚ?

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https://doi.org/10.33542/SIC2025-S-09

ABSTRACT

The author compares Slovak and EU legislation and points out the fields that appear to be problematic. It seems that the Slovak Media Act and the European DSA regulation perceive differently what is covered by illegal content. This could restrict the proper application of the DSA in the Slovak Republic. In the paper, particular attention is paid to disinformation and terrorist content. Based on the different perception of illegal content under the Slovak Media Act and the DSA, the author asks the question who should decide whether it is illegal content. Namely, in Slovakia, the Digital Services Coordinator and the authority issuing orders to act against illegal content are one and the same administrative authority. Finally, the author points to a third problem, namely which platforms are covered by Slovak or EU regulation.

ABSTRAKT

Autorka porovnáva slovenskú legislatívu a legislatívu EÚ, a poukazuje na oblasti, ktoré sa javia ako problematické. Zdá sa, že slovenský mediálny zákon a európske nariadenie DSA vnímajú odlišne, čo je pokryté nezákonným obsahom. To by mohlo obmedziť riadne uplatňovanie DSA v Slovenskej republike. V článku sa osobitná pozornosť venuje dezinformáciám a teroristickému obsahu. Na základe rozdielneho vnímania nelegálneho obsahu podľa slovenského mediálneho zákona a nariadenia DSA si autorka kladie otázku, kto by mal rozhodovať o tom, či ide o nelegálny obsah. Konkrétne na Slovensku je koordinátorom digitálnych služieb a orgánom vydávajúcim príkazy konať proti nezákonnému obsahu jeden a ten istý správny orgán. Napokon autorka poukazuje na tretí problém, a to na ktoré platformy sa vzťahuje slovenská alebo európska regulácia.

I. INTRODUCTION

On 01.08.2022, the Slovak Media Act[3] came into force, which established a unique mechanism aimed at preventing the dissemination of illegal content on online platforms. From 17.02.2024, the European DSA Regulation[4] applies in its entirety, aiming to ensure that what is

[1] This article was prepared with the support and is the output of the research project funded by the Slovak Research and Development Agency, no. APVV-24-0171, entitled *Digital balance – moderating illegal content and resolving disputes on digital platforms.*

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[3] Act No. 264/2022 Coll. on Media Services.

[4] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

illegal offline is also illegal online. The Slovak legislator was thus ahead of the European one when it comes to regulating illegal content in the digital space. This consequently required him to react and harmonise Slovak and European legislation, which is why the Media Act was amended. Nevertheless, there may be a conflict between the Slovak law and the European regulation that needs to be resolved in order for the DSA to be properly applied in the Slovak Republic.

While the regulations are directly applicable and do not require implementation, the DSA contains a number of provisions that require national regulation. For example, Article 49 et seq. of the DSA regulates the position of the Digital Services Coordinator, whereby EU Member States had to designate their Digital Services Coordinators by 17.02.2024. The Slovak Republic did not fulfil its obligation in time and therefore the European Commission decided to open an infringement procedure.[5] Subsequently, the Media Act was amended and with effect from 24.07.2024, the Council for Media Services is the Slovak Digital Services Coordinator under the DSA.[6] As a result, the Council for Media Services will participate in the work of the European Board for Digital Services and decide on:
(1) certification of an out-of-court dispute settlement body and decertification under the DSA,
(2) the granting, suspension and cancellation of trusted flagger status under the DSA,
(3) the granting of vetted researchers status and the termination of vetted researchers access to data under the DSA.[7]

As another example, orders to act against illegal content are regulated in Article 9 DSA. According to the DSA Recital, this Regulation should harmonise only certain specific minimum conditions that such orders should fulfil in order to give rise to the obligation of providers of intermediary services to inform the relevant authorities about the effect given to those orders. Therefore, this Regulation does not provide the legal basis for the issuing of such orders, nor does it regulate their territorial scope or cross-border enforcement.[8] In the legal conditions of the Slovak Republic, the legal basis for the issuance of such orders is the Media Act, which in its Section 153 regulates the decision on preventing the dissemination of illegal content, which the Council for Media Services is competent to issue.

At this point a number of issues arise, which we will look at in more detail below. In particular, (i) the different understanding of illegal content under the Slovak Media Act and the European Regulation, (ii) who should decide whether it is illegal content, and finally (iii) which platforms are covered by the Slovak or EU regulation, seem to be problematic.

In the paper, the author uses traditional methods of legal scientific research. The general scientific methods used in the paper are the method of analysis, the method of synthesis and the descriptive method. The descriptive method has been used to approach the current legislation in removing illegal content online. The method of analysis has been used regarding relevant legal provisions to identify the shortcomings of the legislation and the subsequent formulation of *de lege ferenda* proposals. The method of synthesis has also been used alongside the analysis method. Among the special methods, the method of comparison has been used to examine the conflicts between Slovak and EU legislation in removing illegal content online.

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5 April infringement package: key decisions. 24 April 2024. Available from: https://ec.europa.eu/ commission /presscorner /detail/en/inf_24_1941 [Accessed 5 March 2025].
6 Section 110(3)(w) of the Media Act.
7 Section 110(3)(x) and (y) of the Media Act.
8 Rec. 31 DSA.

II. WHAT IS MEANT BY "ILLEGAL CONTENT"?

Both the Slovak Media Act and the European DSA Regulation work with the concept of illegal content. However, their meaning differs, and in a significant way.

The Media Act contains a definition of illegal content in its Section 151(2). Illegal content is defined as content which:

- fulfils the elements of child pornography under Section 132(4) of the Criminal Act[9],
- fulfils the elements of extremism material under Section 130(7) of the Criminal Act,
- incites an act which fulfils the elements of one of the terrorism offences,
- approves an act which fulfils the elements of one of the terrorism offences, or
- fulfils the elements of the offence of denying and approving the Holocaust, offences of political regimes and crimes against humanity under Section 422d of the Criminal Act, the offence of defamation of nation, race and beliefs under Section 423 of the Criminal Act or the offence of incitement to national, racial and ethnic hatred under Section 424 of the Criminal Act.

To summarise, the Slovak legislator, in defining illegal content, has limited itself to content that fulfils the elements of child pornography, fulfils the elements of extremist material, incites or approves an act that fulfils the elements of one of the terrorism offences, and fulfils the elements of certain extremism offences. In addition, the legislator has helped itself in defining illegal content by referring to the provisions of the Criminal Act, which forces the Council for Media Services to assess whether the content fulfils the elements of an offence. Only the law enforcement authorities or the court, depending on the stage of the criminal proceedings, have the power to establish the existence of the elements of an offence *in concreto*.[10] Moreover, as a preliminary matter, the administrative authority cannot make a conclusion as to whether and by whom the offence was committed.[11]

It is incomprehensible why the Slovak legislator did not include all extremism offences under "illegal content", especially such content that fulfils the elements of any offence committed for a specific hate motive (Section 140(e) of the Criminal Act[12]). It is also incomprehensible why the Slovak legislator considers illegal content as content that incites or approves only an act that fulfils the elements of one of the terrorism offences. We believe that incitement and approval of an offence are dangerous forms of criminal complicity in the digital space in association with any offence, not only with terrorism offences, as this normalises illegal conduct. According to the UN Strategy and Plan of Action on Hate Speech, Incitement is a very dangerous form of speech, because it explicitly and deliberately aims at triggering discrimination, hostility and violence, which may also lead to or include terrorism or atrocity crimes.[13]

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9 Act No. 300/2005 Coll., the Criminal Act.

10 Detail of the comments of the General Prosecutor's Office of the Slovak Republic on the draft Act on Measures to Increase the Security and Trustworthiness of Online Platforms. Available from: https://www.slov-lex.sk/pripomienky/legislativne-procesy/SK/LP/2023/129/pripomienky/a3dfb4a0-34ef-400f-b4eb-f84c4080bbb2/detail#error=login_required&state=67241a5c-d240-4dcb-8a54-6cee2e4db5db.

11 See Section 40(2) of Act No. 71/1967 Coll. on Administrative Procedure (Administrative Procedure Code). The Media Act does not exclude the application of this provision of the Administrative Procedure Code to proceedings to prevent illegal content, see Section 225(1) of the Media Act.

12 Hatred of a group of persons or an individual because of their real or perceived membership of a race, nation, nationality, ethnic group, real or perceived origin, colour, gender, sexual orientation, political opinion or religion.

13 United Nations. The Strategy and Plan of Action on Hate Speech. 2019. Available from: https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf [Accessed 5 March 2025].

The Explanatory Report to the Media Act does not indicate what led the legislator to define the term illegal content in this way. The Explanatory Report is limited to stating that "it is serious content which, for example, fulfils the elements of child pornography, extremist material, incites terrorism, endorses such conduct or incites hatred".[14] However, the term illegal content under the Media Act does not include the amount of hate-inciting content that is commonly encountered in the digital space.

As mentioned above, the DSA does not provide a legal basis for issuing orders to act against illegal content, whereas in the legal conditions of the Slovak Republic this legal basis is the Media Act, which in its Section 153 regulates the decision on preventing the dissemination of illegal content. If such a decision is intended to have the effect of an order to act against illegal content, then it must contain a reference to the legal basis for the decision, including a reference to the DSA.[15]

In view of the above, we believe that the Slovak law understands "illegal content" quite restrictively. If the Media Act intends to be the legal basis for issuing orders to act against illegal content under the DSA, then it is necessary to address how illegal content is understood under the DSA regulation.

According to Article 3(h) of the DSA, "illegal content" means any information that, in itself or in relation to an activity, including the sale of products or the provision of services, is not in compliance with Union law or the law of any Member State which is in compliance with Union law, irrespective of the precise subject matter or nature of that law. In other words, any content that in a concrete case is in conflict with legal provisions is illegal.[16] The definition of "illegal content" does not only focus on illegal content per se, it also covers illegal activities like the provision of services in infringement of consumer protection law.[17]

According to the DSA Recital, the concept of "illegal content" should be defined broadly to cover information relating to illegal content, products, services and activities. In particular, that concept should be understood to refer to information, irrespective of its form, that under the applicable law is either itself illegal, such as illegal hate speech or terrorist content and unlawful discriminatory content, or that the applicable rules render illegal in view of the fact that it relates to illegal activities. Illustrative examples include the sharing of images depicting child sexual abuse, the unlawful non-consensual sharing of private images, online stalking, the sale of non-compliant or counterfeit products, the sale of products or the provision of services in infringement of consumer protection law, the non-authorised use of copyright protected material, the illegal offer of accommodation services or the illegal sale of live animals.[18] It is irrelevant what kind of legal provision justifies the illegality.[19]

The DSA basically refers to the entire legal system of EU Member States to express what is illegal for the purposes of the DSA.[20] The goal of Article 9 DSA is clearly to cover all possible criminal, administrative, or civil orders that one might find in national law.[21]

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[14] Explanatory Report to the draft Act on Measures to Increase the Security and Trustworthiness of Online Platforms. Available from: https://www.slov-lex.sk/elegislativa/legislativne-procesy/SK/LP/2023/129.

[15] Section 153(2)(f) of the Media Act.

[16] HOFMANN, F. In: HOFMANN, F. and RAUE, B.. *Digital Services Act: Article-by-Article Commentary*. Baden-Baden: Nomos Verlagsgesellschaft, 2025. p 81.

[17] Ibid.

[18] Rec. 12 DSA.

[19] HOFMANN, F. In: HOFMANN, F. and RAUE, B. *Digital Services Act: Article-by-Article Commentary.* Baden-Baden: Nomos Verlagsgesellschaft, 2025. p 82.

[20] HUSOVEC, M. *Principles of the digital services act*. New York: Oxford university press, 2024. p 31.

[21] Ibid. p 153.

In the context of illegal and harmful content, the DSA does not present a clear position, which is problematic and should be resolved.[22] We agree with the statement that "different regulatory approaches should be implemented to deal with illegal and harmful content, if this terminology is not adopted, freedom of speech and expression may be undermined".[23]

For comparison with UK legislation, in contrast to the OSA's very precise definition of what constitutes illegal content, and exhaustive listing of „priority illegal content" the DSA is more open-ended.[24] However, „illegal content" under the OSA[25] still includes more content than the Slovak Media Act. With a divergence in the treatment and understanding of harm, with the UK defining it in terms of specific activities or instances causing physical or psychological harm and the EU considering it in terms of the harm to both individuals and society, comes a correlative divergence in regulatory model.[26] In the EU, the consideration of a harm ecosystem and the systemic nature of the threats, specifically including content such as disinformation, results in a more holistic approach to platform responsibility.[27]

It is obvious that the concept of "illegal content" under the DSA is much broader than the concept of "illegal content" under the Media Act, which might cause issues in the application of law. Is it even necessary for the Slovak Media Act to define what is "illegal content"? We believe it is not. The fact that it is illegal content is, after all, implied by a number of specific regulations, in particular the Criminal Act or the Misdemeanours Act[28], but also by private law regulations. Illegality can arise from EU regulations, national constitutional law, laws or even national regulations.[29]

III. DISINFORMATION

Disinformation is not an exclusively digital phenomenon. Still, digital media and associated transformations feature strongly in the discussion of disinformation and their regulation.[30] The Internet provides space for exercising freedom of expression. In addition to spreading hate speech, the extremist scene uses the Internet to create and spread misleading information (disinformation), fake news or conspiracy theories.[31]

The DSA does not deal with the term "disinformation" in a coherent way. First of all, the articles of the DSA do not contain the term "disinformation". They only explicitly address

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22 TURILLAZZI, A., TADDEO, M., FLORIDI, L., & CASOLARI, F. *The digital services act: an analysis of its ethical, legal, and social implications*. In: Law, Innovation and Technology. Taylor & Francis, 2023. pp. 83–106. https://doi.org/10.1080/17579961.2023.2184136.

23 Ibid.

24 LAW, S. *Effective enforcement of the Online Safety Act and Digital Services Act: unpacking the compliance and enforcement regimes of the UK and EU's online safety legislation.* In: Journal of Media Law. Taylor & Francis, 2024. pp. 1–38. https://doi.org/10.1080/17577632.2025.2459441.

25 Online Safety Act 2023.

26 FARRAND, B. *How do we understand online harms? The impact of conceptual divides on regulatory divergence between the Online Safety Act and Digital Services Act*. In: Journal of Media Law. Taylor & Francis, 2024. pp. 1–23. https://doi.org/10.1080/17577632.2024.2357463.

27 Ibid.

28 Act 372/1990 Coll. on Misdemeanours.

29 HOFMANN, F. In: HOFMANN, F. and RAUE, B. *Digital Services Act: Article-by-Article Commentary*. Baden-Baden: Nomos Verlagsgesellschaft, 2025. p 82.

30 JUNGHERR, A.a Ralph SCHROEDER. *Disinformation and the Structural Transformations of the Public Arena: Addressing the Actual Challenges to Democracy*. In: Social Media + Society, 2021; PEUKERT, Alexander. *Desinformationsregulierung in der EU: Überblick und offene Fragen.* In: Juristen Zeitung, 2023, volume 78, pp. 278-296; PEUKERT, A. *Modi der Plattformregulierung in den Bereichen Urheberrecht, Hassrede und Desinformation*. In: KIRCHNER, R. et al. (eds.). Digitalisierung im Recht der EU. Baden-Baden: Nomos, 2023. http://dx.doi.org/10.2139/ssrn.4306988.

31 ROMŽA S., FERENČÍKOVÁ S. and KLIMEK L. *Dual Sanctioning of Hate Crimes and Hate Speech as Part of Extremism in the Slovak Republic.* In: Access to Justice in Eastern Europe. Kyiv: LLC VD Dakor, 2024. pp. 93-111 https://doi.org/10.33327/AJEE-18-7.2-a000218.

"illegal content", which does not necessarily cover false information.[32] The term "disinformation" is only used in the recitals of the DSA. In general, recitals are not binding and serve as additional information to interpret a regulation.[33]

Disinformation can be war propaganda that is illegal under international law or someone's belief that the Earth is flat.[34] Unlawful disinformation (e.g. war propaganda) is likely to justify more stringent treatment than lawful disinformation (e.g. flat earthers) already because the legislature said one is unlawful while the other is not.[35]

It is difficult to acknowledge a single definition of disinformation in the EU. Multiple rules or communications establish different elements, and scholars do not seem to agree on any particular one.[36] What seems clear is that most legal definitions agree that disinformation is characterised by a subjective element (the intentionality of the actor) that distinguishes it from unintentional forms of misleading information and an objective one (the risk caused by it).[37]

Neither the Media Act nor other Slovak legislation currently regulates disinformation. With effect from 26.02.2022, the Cybersecurity Act[38] introduced sections 27b and 27c, which regulate "blocking". The institute of blocking websites is rather unique in the legislation of democratic states, as there is a very thin line between when this means will be appropriate and when it will show signs of censorship.[39] Decisions to block harmful content or harmful activity directed to or from the Slovak Republic's cyberspace have been issued by the National Security Office. Such a decision could only be issued until 30.09.2022, and thus no such decision can be issued currently. The Cybersecurity Act works with a vague legal concept of "serious disinformation" without specifying it further.

What is meant by serious disinformation? One might conclude that it is the kind of disinformation that is dangerous. Not all disinformation has the potential to endanger the lives and health of individuals or democracy itself. A common example of disinformation that is not dangerous is the claim that the Earth is flat. It can be said that the state has no interest in blocking a website that spreads such claims. Disinformation may be clearly harmful, but they don't have to be illegal - for example, disinformation about the effectiveness of wearing face masks during a pandemic may be false, but they don't have to be an alarmist news under the Criminal Act, whereas disinformation about the location of a bomb clearly will.[40] Disinformation that affects democratic electoral processes are also dangerous. It can lead to very serious human rights violations, including the right to political participation. Both the EU DSA and the above mentioned UK OSA are very good at providing a legal basis for service providers to remove content that is considered illegal.[41] However, even in doing so they both do not protect enough

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32 JANSEN, N. *The Ability of the Digital Services Act (DSA) to Fight Disinformation* [online] [Accessed 10 July 2024]. Available from: http://dx.doi.org/10.2139/ssrn.5076281.

33 Ibid.

34 HUSOVEC, M. *The Digital Services Act's red line: what the Commission can and cannot do about disinformation*. In: Journal of Media Law. Taylor & Francis, 2024. pp. 47–56. https://doi.org/10.1080/17577632.2024.2362483.

35 Ibid.

36 DEL MORAL SÁNCHEZ, M. *The DSA and the Fight against Online Disinformation in the Context of EU Law: Avenues for Internal Dialogue and External Territorial Extension*. Florence: European University Institute, 2024. (RSC Working Paper; 2024/19; Centre for a Digital Society). [online] [Accessed 10 July 2024] Available from: https://cadmus.eui.eu/handle/1814/76896.

37 Idem.

38 Act No. 69/2018 Coll. on Cybersecurity.

39 KRAJŇÁK, A.. *Hranice slobody prejavu na internete II*. Banská Bystrica: VIA IURIS, 2023. s 82.

40 Ibid. p 102.

41 ABRUSCI, E. *The UK Online Safety Act, the EU Digital Services Act and online disinformation: is the right to political participation adequately protected?**. In: Journal of Media Law. Taylor & Francis, 2024. pp. 1–28. https://doi.org/10.1080/17577632.2024.2425551.

citizens against factual false content or harassing content that could impact the right to vote or the right to run for office.[42]

For several reasons, the Slovak blocking legislation has been described as unconstitutional and even worse than the blocking legislation in the Russian Federation before the start of the war in Ukraine.[43] There is no doubt that the blocking legislation has been "slop-built", which has caused the legislator to disregard the relevant ECtHR case law on website blocking. It is true that the situation required a rapid response, but the Slovak legislator has not corrected the shortcomings of this legislation even after three years, despite efforts to amend the inadequate legislation. Disinformation is not the only threat to democracy, so are regulatory overreach and alarmist warnings against disinformation.[44] We consider the blocking legislation to be an unfortunate example of the application of the concept of defending democracy in practice. The application of this concept is certainly appropriate in combating disinformation, but the legislator should bear in mind that this combat must be waged by constitutionally pure means.

Regarding the combating of disinformation, it should be added that there are no criminal instruments in Slovak legislation that could be used to prosecute disinformation. Theoretically, the offence of defamation under Section 373 of the Criminal Act, the offence of harming the rights of others under Section 375 of the Criminal Act or the offence of spreading alarmist news under Section 361 et seq. of the Criminal Act can be taken into account. In the past, there have been attempts to introduce a new criminal offence of dissemination of false information. A paragraphed version of such a proposal has already been drafted; the publication of socially harmful disinformation was to be punishable by one to five years' imprisonment.[45] In the end, however, even the ruling coalition did not agree on a new criminal offence. We share the point of view according to which the introduction of such an offence would constitute an unconstitutional restriction of freedom of expression for several reasons - contradiction with the principle of legality of criminal law *nullum crimen sine lege certa* or the guarantee of freedom of expression by the Constitution of the Slovak Republic, which also guarantees the right to receive information.[46]

In view of the above, it can be concluded that although the DSA is supposed to provide protection even against disinformation, there are no instruments in the Slovak national law that would allow the DSA to be applied in this regard. Slovak legislation does not regulate disinformation, unless, for example, it is the dissemination of alarmist news, which is a criminal offence. However, such a criminal offence is not covered by the Media Act, therefore the Council for Media Services cannot issue a decision on preventing the dissemination of illegal content that would be disinformation.

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42 Ibid.

43 HUSOVEC, M. *Súčasné blokovanie dezinformačných stránok je ústavne problematické. Čo s tým?* In: Denník N. Available from:https://dennikn.sk/2818631/sucasne-blokovanie-dezinformacnych-stranok-je-ustavne-problematicke-co-s-tym/[Accessed 5 March 2025].

44 KOSSEFF, J. *Liar in a Crowded Theater: Freedom of Speech in a World of Misinformation.* Baltimore: Johns Hopkins University Press, 2023. https://doi.org/10.56021/9781421447322.

45 ŠNÍDL, V. *Polícia odmietla vyšetrovať predvolebný deepfake. Nikto súdny mu vraj nemohol veriť.* Denník N. Available from: https://dennikn.sk/3777044/policia-odmietla-vysetrovat-predvolebny-deepfake-nikto-sudny-mu-vraj-nemohol-verit/ [Accessed 5 March 2025].

46 See more FERENČÍKOVÁ, S. and VÍNEROVÁ B. *Páchatelia extrémizmu v kontexte preventívnych opatrení boja proti extrémizmu.* In: Košicené dni trestného práva 2024, VIII. ročník: zborník vedeckých príspevkov z celoštátnej interdisciplinárnej vedeckej konferencie s medzinárodnou účasťou : Košice, 19.-20.06.2024. Košice: Univerzita Pavla Jozefa Šafárika, ŠafárikPress, 2024. p 332.

IV. WHO SHOULD DECIDE WHETHER IT IS ILLEGAL CONTENT?

According to the DSA, national judicial or administrative authorities, including law enforcement authorities, may order providers of intermediary services to act against one or more specific items of illegal content or to provide certain specific information.[47] The authority issuing the order (or, where applicable, the authority specified therein) shall transmit it to the Digital Services Coordinator from the Member State of the issuing authority.[48] After receiving the order from the judicial or administrative authority, the Digital Services Coordinator of the Member State concerned shall, without undue delay, transmit a copy of the order to all other Digital Services Coordinators.[49]

It can be deduced from the wording of the DSA that it assumes that the authority issuing orders to act against illegal content and the Digital Services Coordinator are two different authorities. However, in the Slovak legal conditions, both the Digital Services Coordinator and the authority issuing orders to act against illegal content (i.e. decisions on preventing the dissemination of illegal content) are the same administrative authority, namely the Council for Media Services. While the DSA does not assume that these orders will be issued by the Digital Service Coordinator itself, it does not rule this out either. It can also be deduced from the wording of the DSA that orders to act against illegal content can also be issued by a court or by an administrative authority other than the Council for Media Services, but this is not assumed in Slovak law.

Following on from the first chapter of this article, the question that arises at this point is whether the Council for Media Services should decide what illegal content is. As noted above, in defining illegal content in the Media Act, the legislator has helped itself by referring to the provisions of the Criminal Act, which forces the Council for Media Services to assess whether the content fulfils the elements of an offence. On the other hand, the too restrictive definition of illegal content in the Media Act seems to us to be in conflict with the DSA, since the term illegal content is to be interpreted broadly according to the DSA Recital. This means that it should include content that violates the provisions of criminal law, but also, for example, content in violation of consumer protection laws or in violation of copyright law. It is therefore a broad area, and the Council for Media Services cannot objectively even have competence to decide on all these matters.

V. TERRORIST CONTENT

The DSA is flanked by a number of specific instruments to strengthen and particularize the protections against online harms.[50] For example, illegal content is also regulated by the Terrorist Content Regulation[51].

As mentioned above, the Slovak Media Act also defines illegal content as content that incites or approves an act that fulfils the elements of one of the terrorism offences.[52] However, in our view, the Council for Media Services should not decide on terrorist content at all.

The Terrorist Content Regulation, which applies from 07.06.2022, is probably the most significant in this area, as it sets out uniform rules to deal with the misuse of hosting services for the public dissemination of terrorist content online. The Terrorist Content Regulation

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47 Rec. 31 DSA.
48 Art. 9 DSA.
49 Ibid.
50 PEHLIVAN, C.N. *The Digital Services Act (DSA): A New Era for Online Harms and Intermediary Liability*. Global Privacy Law Review, 2023, pp. 53–59 [online] [Accessed 10 July 2024] Available from: https://ssrn.com/abstract=4364923.
51 Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online.
52 Section 151(2)(b) and (c) of the Media Act.

regulates in its Article 3 the removal orders that oblige hosting service providers to remove terrorist content or to disable access to terrorist content in all Member States. The removal orders ensure that terrorist content is eliminated across borders within one hour of receipt of the removal order or sooner.[53]

Article 4 of the Terrorist Content Regulation regulates the procedure for cross-border removal orders. The procedure here is specific in that the authority which issued the removal order shall submit a copy of it to the competent authority of the Member State where the hosting service provider has its main establishment or where its legal representative resides or is established. That competent authority may inspect it in order to determine whether it seriously or manifestly infringes this Regulation or the fundamental rights and freedoms guaranteed by the Charter. Such orders will in principle have cross-border effects. However, if the competent authority finds an infringement, it shall take a reasoned decision on that finding, with the result that the removal order should cease to have legal effects.

According to Article 12 of the Terrorist Content Regulation each Member State shall designate the authority or authorities competent to:

(a) issue removal orders pursuant to Article 3;
(b) scrutinise removal orders pursuant to Article 4;
(c) oversee the implementation of specific measures pursuant to Article 5;
(d) impose penalties pursuant to Article 18.

In Slovak legal conditions, the officer of the Police Force is competent to issue removal orders pursuant to Article 3 and to scrutinise removal orders pursuant to Article 4, which follows from Section 29b(1) and (2) of the Police Force Act[54]. The Council for Media Services is competent to oversee the implementation of the special measures pursuant Article 5 and to impose penalties pursuant Article 18, as follows from Section 110(3)(t) and (u) of the Media Act.

Here, a possible conflict between national and EU legislation becomes apparent. It is the police officer who is competent to issue removal orders. However, the Slovak Media Act regulates the procedure for the prevention of illegal content, which may result in a decision on preventing the dissemination of illegal content, and thus also content that incites or approves an act that fulfils the elements of one of the terrorist offences. However, the Council for Media Services decides in this procedure. It is implicit in the Media Act itself that the Council for Media Services is only competent to oversee and impose penalties in relation to terrorist content, not to issue removal orders (see Section 110).

In practice, orders to remove terrorist content were issued by the National Criminal Agency of the Presidium of the Police Force.[55] However, this has been abolished and replaced by the Office for the Fight against Organised Crime.

It can be assumed that decisions on preventing illegal content that incites or approves an act that fulfils the elements of one of the terrorist offences will not be issued by the Council for Media Services. To date, no such decision has been issued. This would contravene both the

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[53] *COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL First Progress Report on the EU Security Union Strategy COM(2020) 797 final*. Available from: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0797.

[54] Act 171/1993 Coll. on the Police Force.

[55] *Teroristický útok na Zámockej ulici v Bratislave: bezprostredné a preventívne aktivity Rady pre mediálne služby na zamedzenie šírenia nelegálneho a škodlivého obsahu*. p 47. Available from: https://rpms.sk/sites/default/files/2023-03/Teroristicky_utok_na_Zamockej_ul_Bezprostredna_a_preventivne_aktivity_RpMS_na_zamedzenie_sirenia_nelegalneho_a_skodliveho_obsahu.pdf.

Police Force Act and ultimately EU law, as the Terrorist Content Regulation in its Article 12 assumes for the establishment of an online register listing the competent authorities, and this register also currently shows that the Police Force of the Slovak Republic is competent to issue removal orders in the Slovak Republic.[56]

Going even further, we could conclude that the Council for Media Services should not even issue decisions on preventing the dissemination of illegal content that is extremist content. Both foreign literature and EU legislation devote their attention mainly to terrorism.[57] It even appears that the criminalisation of extremism is not common abroad; rather, extremism is subsumed under terrorism, or extremism is discussed alongside terrorism. This can be justified by the fact that abroad, the primary threat is terrorism, whereas in the Slovak Republic, the primary threat is right-wing extremism and its manifestations, whether in the real or digital world.

If the Counter-Terrorism Directive[58] is to be used in the fight against extremism[59], why should the Terrorism Content Regulation not also be used in this fight? If the Terrorism Content Regulation were also to apply to extremist content, this would bring our national legislation and practice into conflict with the EU legislation.

VI. WHICH PLATFORMS ARE COVERED BY SLOVAK AND EU LEGISLATION?

According to Section 9(1) of the Media Act, a "content sharing platform" is defined as *"an information society service whose main purpose or one of its main purposes or whose principal function is to store a large number of works and other objects of protection under a special regulation uploaded by its users and to disseminate them in accordance with a special regulation[60]"*. Examples of content sharing platforms are Facebook, Instagram or YouTube. Section 9(2) of the Media Act also contains a negative definition of a content sharing platform. Although it does not explicitly follow from that provision, the Council for Media Services will not include e.g. Telegram (IM communicator) in its remit, as it is a chat application[61]. However, in our view, it should be included, as it is increasingly resembling social networks in its functionalities.

In comparison, the DSA works with the term "online platform" meaning *"a hosting service that, at the request of a recipient of the service, stores and disseminates information to the public, unless that activity is a minor and purely ancillary feature of another service or a minor functionality of the principal service and, for objective and technical reasons, cannot be used without that other service, and the integration of the feature or functionality into the other service is not a means to circumvent the applicability of this Regulation"*.[62]

The DSA imposes due diligence obligations[63] on very large online platforms ("VLOPs"), particularly the annual assessment of systemic risks (specifically targeting illegal content and

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[56] *List of national competent authority (authorities) and contact points* is available from: https://home-affairs.ec.europa.eu/policies/internal-security/counter-terrorism-and-radicalisation/prevention-radicalisation/terrorist-content-online/list-national-competent-authority-authorities-and-contact-points_en.

[57] See more REPIŠČÁKOVÁ, D. *Boj proti extrémizmu prostriedkami boja proti terorizmu*. In: Správne právo bez hraníc. Košice: Univerzita Pavla Jozefa Šafárika, ŠafárikPress, 2024. pp. 203 – 222.

[58] Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism.

[59] REPIŠČÁKOVÁ, D. *Boj proti extrémizmu prostriedkami boja proti terorizmu*. In: Správne právo bez hraníc, Košice: Univerzita Pavla Jozefa Šafárika, ŠafárikPress, 2024. pp. 203 – 222.

[60] The Media Act refers at this point to Section 3 of Act No. 185/2015 Coll., the Copyright Act.

[61] Information provided by the Council for Media Services.

[62] Art. 3(i) DSA.

[63] On the due diligence obligations imposed by the DSA, see more STRINGHI, Elisabetta. *The due diligence obligations of the Digital Services Act: a new take on tackling cyber-violence in the EU?* In: International Review of Law, Computers & Technology. Taylor & Francis, 2024. pp. 215–229. https://doi.org/10.1080/13600869.2023.2295101.

negative impacts on fundamental rights)[64] as well as the implementation of reasonable, proportionate and effective mitigation measures to address these risks[65]. The DSA will apply to Telegram as a very large online platform ("VLOP") under certain conditions, and circumstances suggest that Telegram will soon become one. To be considered a VLOP, it would have to have an average monthly number of active recipients of the service in the EU equal to or greater than 45 million.[66] Telegram has not yet surpassed this threshold, but in February 2024 it had more than 40 million users in the EU.[67] It can therefore be expected that Telegram will soon exceed this threshold and will therefore be covered by the DSA, i.e. it should also be covered by the Slovak Media Act. However, it should also be pointed out that only some of Telegram's functionalities qualify as an online platform under the DSA.[68]

DSA requires very large platforms and search engines to assess and mitigate risks beyond illegal content – including negative effects to fundamental rights and to civic discourse and electoral processes.[69] In relation to the Telegram, this will be crucial, as it does practically nothing against harmful or illegal content and does not remove hate speech or death threats.[70] It has been noted that the ecosystem of radicalisation of public opinion, which influences discourse and destroys democratic values, has shifted to Telegram, dominated by disinformation sites, anti-system politicians or pro-Kremlin information.[71]

National legislation must also reflect these facts. Finally, they may not only concern Telegram, but also other platforms.

VII. CONCLUSION

In this paper, we focus on the conflicts between Slovak and EU legislation in the removal of illegal content online. In summary, we can state the following: the DSA has a much broader understanding of "illegal content" than the Slovak Media Act, which only defines illegal content as content that fulfils the elements of a few offences under the Criminal Act. The DSA does not only understand illegal content as content that violates the standards of criminal law, but also, for example, content in violation of consumer protection law or in violation of copyright law. The definition of illegal content under the Media Act is unnecessarily restrictive and omits a lot of content that is illegal and can occur online. Expanding the definition of illegal content in the Media Act to cover the concept of illegal content under the DSA may seem to be a solution. However, we believe that this is not even possible.

At this point, the question arose as to whether a definition of illegal content in the Media Services Act is actually necessary. The fact that it is illegal content is, after all, implied by the fact that the content violates the current legal order. Following on from this question, a second question arose, namely whether the Council for Media Services should decide what illegal

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64 Art. 34 DSA.

65 Art. 35 DSA.

66 Art. 33 DSA.

67 *Telegram still doesn't meet large platform requirements under DSA.* In: euronews. Available from: https://www.euronews.com/next/2024/08/21/telegram-still-doesnt-meet-large-platform-requirements-under-dsa [Accessed 5 March 2025].

68 Ibid.

69 JUDSON, E., KIRA, B., & HOWARD, J. W. *The Bypass Strategy: platforms, the Online Safety Act and future of online speech.* In: Journal of Media Law. Taylor & Francis, 2024. pp. 1–22. https://doi.org/10.1080/17577632.2024.2361524.

70 STRUHÁRIK, F. *MediaBrífing: Extrémisti sa presúvajú na Telegram a majú tam tisícky fanúšikov*. In: Denník N. Available from: https://dennikn.sk/2774016/mediabrifing-extremisti-sa-presuvaju-na-telegram-a-maju-tam-tisicky-fanusikov/?ref=mwat [Accessed 5 March 2025].

71 *Tok klamstiev: Telegram je priestorom neobmedzených možností pre dezinformácie a konšpirácie*. In: Investigatívne centrum Jána Kuciaka. Available from: https://www.icjk.sk/238/Tok-klamstiev-Telegram-je-priestorom-neobmedzenych-moznosti-pre-dezinformacie-a-konspiracie [Accessed 5 March 2025].

content is. As illegal content is a broad area according to the DSA, we believe that the Council for Media Services objectively cannot even have the competence to decide on all these matters.

On the other hand, the definition of illegal content under the Slovak Media Act includes terrorist content, which the Council for Media Services cannot decide on, as this would be in conflict with the Police Force Act and, ultimately, EU law. As we have indicated above, the Council for Media Services' decision-making on extremist content is also controversial.

In view of the above, we conclude that the definition of illegal content in the Media Act is not appropriate and that the Council for Media Services should not even decide what is illegal content. The fact that it is illegal content follows from a number of specific legal regulations, and it is for the courts or administrative authorities to decide whether it is illegal content in a particular case. In removing illegal content online, the Council for Media Services should primarily fulfil its role as Digital Services Coordinator under the DSA.

Last but not least, in the future it will be necessary to ensure that the Slovak Media Act applies to platforms covered by the DSA, including, for example, the aforementioned Telegram.

KEY WORDS
illegal content online, extremism, disinformation, terrorist content online, DSA, Terrorist Content Regulation

KĽÚČOVÉ SLOVÁ
nelegálny obsah online, extrémizmus, dezinformácie, teroristický obsah online, DSA, Nariadenie o teroristickom obsahu

BIBLIOGRAPHY

1. ABRUSCI, E. *The UK Online Safety Act, the EU Digital Services Act and online disinformation: is the right to political participation adequately protected?**. In: Journal of Media Law. Taylor & Francis, 2024. ISSN: 1757-7632. pp. 1–28. https://doi.org/10.1080/17577632.2024.2425551
2. *April infringement package: key decisions.* 24 April 2024. Available from: https://ec.europa.eu/commission/presscorner/detail/en/inf_24_1941 [Accessed 5 March 2025].
3. *COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL First Progress Report on the EU Security Union Strategy COM (2020) 797 final*. Available from: https://eur-lex.europa.eu/legal-content/ EN/TXT/ HTML/?uri=CELEX:52020DC0797
4. DEL MORAL SÁNCHEZ, Miguel. *The DSA and the Fight against Online Disinformation in the Context of EU Law: Avenues for Internal Dialogue and External Territorial Extension*. Florence: European University Institute, 2024. (RSC Working Paper; 2024/19; Centre for a Digital Society). ISSN 1028-3625. [online] [Accessed 10 July 2024] Available from: https://cadmus.eui.eu/handle/1814/76896 https://doi.org/10.2139/ssrn.4847475
5. *Detail of the comments of the General Prosecutor's Office of the Slovak Republic on the draft Act on Measures to Increase the Security and Trustworthiness of Online Platforms.* Available from: https://www.slov-lex.sk/pripomienky/legislativne-procesy/SK/LP /2023/129/pripomienky/a3dfb4a0-34ef-400f-b4eb-f84c4080bbb2/ detail#error=loginre quired&state=67241a5c-d240-4dcb-8a54-6cee2e4db5db

6. *Explanatory Report to the draft Act on Measures to Increase the Security and Trustworthiness of Online Platforms.* Available from: https://www.slov-lex.sk/elegislativa/legislativne-procesy/SK/LP/2023/129
7. FARRAND, B. *How do we understand online harms? The impact of conceptual divides on regulatory divergence between the Online Safety Act and Digital Services Act*. In: Journal of Media Law. Taylor & Francis, 2024. ISSN: 1757-7632. pp. 1–23. https://doi.org/10.1080/17577632.2024.2357463
8. FERENČÍKOVÁ, Simona and VÍNEROVÁ Bronislava. *Páchatelia extrémizmu v kontexte preventívnych opatrení boja proti extrémizmu.* In: Košicené dni trestného práva 2024, VIII. ročník: zborník vedeckých príspevkov z celoštátnej interdisciplinárnej vedeckej konferencie s medzinárodnou účasťou : Košice, 19.-20.06.2024. Editor Sergej ROMŽA, editor Dávid PRIŠČÁK, editor Matej BIROŠ. Košice: Univerzita Pavla Jozefa Šafárika, ŠafárikPress, 2024. ISBN 9788057403685. 439 pp.
9. HOFMANN, Franz and RAUE, Benjamin. *Digital Services Act: Article-by-Article Commentary*. Baden-Baden: Nomos Verlagsgesellschaft, 2025. ISBN 9783848786169. 1253 p.
10. HUSOVEC, M. *The Digital Services Act's red line: what the Commission can and cannot do about disinformation*. In: Journal of Media Law. Taylor & Francis, 2024. ISSN: 1757-7632. pp. 47–56. https://doi.org/10.1080/17577632.2024.2362483
11. HUSOVEC, Martin. *Principles of the digital services act*. New York: Oxford university press, 2024. ISBN 9780192882455. 482 p.
12. HUSOVEC, Martin. *Súčasné blokovanie dezinformačných stránok je ústavne problematické. Čo s tým?* [The current blocking of disinformation websites is constitutionally problematic. What to do about it?] In: Denník N. Available from: https://dennikn.sk/2818631/sucasne-blokovanie-dezinformacnych-stranok-je-ustavne-problematicke-co-s-tym/ [Accessed 5 March 2025].
13. JANSEN, Nora. *The Ability of the Digital Services Act (DSA) to Fight Disinformation* [online] [Accessed 10 July 2024]. Available from: http://dx.doi.org/10.2139/ssrn.5076281
14. JUDSON, E., KIRA, B., & HOWARD, J. W. *The Bypass Strategy: platforms, the Online Safety Act and future of online speech.* In: Journal of Media Law. Taylor & Francis, 2024. ISSN: 1757-7632. pp. 1–22. https://doi.org/10.1080/17577632.2024.2361524
15. JUNGHERR, Andreas a Ralph SCHROEDER. *Disinformation and the Structural Transformations of the Public Arena: Addressing the Actual Challenges to Democracy*. In: Social Media + Society, 2021. ISSN 2056-3051. https://doi.org/10.1177/2056305121988928
16. KOSSEFF, Jeff. *Liar in a Crowded Theater: Freedom of Speech in a World of Misinformation.* Baltimore: Johns Hopkins University Press, 2023. ISBN 9781421447322. https://doi.org/10.56021/9781421447322
17. KRAJŇÁK, Andrej. *Hranice slobody prejavu na internete II.* [The limits of freedom of expression on the Internet II] Banská Bystrica: VIA IURIS, 2023. p. 82.
18. LAW, S. *Effective enforcement of the Online Safety Act and Digital Services Act: unpacking the compliance and enforcement regimes of the UK and EU's online safety legislation.* In: Journal of Media Law. Taylor & Francis, 2024. ISSN: 1757-7632. pp. 1–38. https://doi.org/10.1080/17577632.2025.2459441
19. *List of national competent authority (authorities) and contact points* is available from: https://home-affairs.ec.europa.eu/policies/internal-security/counter-terrorism-and-

radicalisation/prevention-radicalisation/terrorist-content-online/list-national-competent-authority-authorities-and-contact-points_en
20. PEHLIVAN, Ceyhun Necati. *The Digital Services Act (DSA): A New Era for Online Harms and Intermediary Liability*. Global Privacy Law Review, 2023, pp. 53–59 [online] [Accessed 10 July 2024] Available from: https://ssrn.com/abstract=4364923 https://doi.org/10.54648/gplr2023005
21. PEUKERT, Alexander. *Desinformationsregulierung in der EU: Überblick und offene Fragen.* In: Juristen Zeitung, 2023, volume 78, pp. 278-296. ISSN 0022-6882. https://doi.org/10.1628/jz-2023-0095
22. PEUKERT, Alexander. *Modi der Plattformregulierung in den Bereichen Urheberrecht, Hassrede und Desinformation.* In: KIRCHNER, Raven et al. (eds.). Digitalisierung im Recht der EU. Baden-Baden: Nomos, 2023. http://dx.doi.org/10.2139/ssrn.4306988
23. REPIŠČÁKOVÁ, Diana. *Boj proti extrémizmu prostriedkami boja proti terorizmu.* [Countering extremism through counter-terrorism means] In: Správne právo bez hraníc. Eds. Radomír JAKAB, Eva BERNÍKOVÁ, Diana REPIŠČÁKOVÁ. Košice: Univerzita Pavla Jozefa Šafárika, ŠafárikPress, 2024. ISBN 9788057402930. pp. 203 – 222.
24. ROMŽA S., FERENČÍKOVÁ S. and KLIMEK L. *Dual Sanctioning of Hate Crimes and Hate Speech as Part of Extremism in the Slovak Republic.* In: Access to Justice in Eastern Europe. Kyiv: LLC VD Dakor, 2024. ISSN 2663-0583. pp. 93-111 https://doi.org/10.33327/AJEE-18-7.2-a000218
25. STRINGHI, Elisabetta. *The due diligence obligations of the Digital Services Act: a new take on tackling cyber-violence in the EU?* In: International Review of Law, Computers & Technology. Taylor & Francis, 2024. ISSN: 1364-6885. pp. 215–229. https://doi.org/10.1080/13600869.2023.2295101
26. STRUHÁRIK, Filip. *MediaBrífing: Extrémisti sa presúvajú na Telegram a majú tam tisícky fanúšikov.* [MediaBriefing: Extremists are moving to Telegram and have thousands of fans there] In: Denník N. Available from: https://dennikn.sk/2774016/mediabrifing-extremisti-sa-presuvaju-na-telegram-a-maju-tam-tisicky-fanusikov/?ref=mwat [Accessed 5 March 2025].
27. ŠNÍDL, Vladimír. *Polícia odmietla vyšetrovať predvolebný deepfake. Nikto súdny mu vraj nemohol veriť.* [Police refused to investigate the pre-election deepfake. Nobody sensible could believe him] Denník N. Available from: https://dennikn.sk/3777044/policia-odmietla-vysetrovat-predvolebny-deepfake-nikto-sudny-mu-vraj-nemohol-verit/ [Accessed 5 March 2025].
28. *Telegram still doesn't meet large platform requirements under DSA.* In: euronews. Available from: https://www.euronews.com/next/2024/08/21/telegram-still-doesnt-meet-large-platform-requirements-under-dsa [Accessed 5 March 2025].
29. *Teroristický útok na Zámockej ulici v Bratislave: bezprostredné a preventívne aktivity Rady pre mediálne služby na zamedzenie šírenia nelegálneho a škodlivého obsahu.* [Terrorist attack on Zamocka Street in Bratislava: immediate and preventive actions by the Council for Media Services to prevent the dissemination of illegal and harmful content] p 47. Available from: https://rpms.sk/sites/default/files/2023-03/Teroristicky_utok_na_Zamockej_ul_Bezprostredna_a_preventivne_aktivity_RpMS_na_zamedzenie_sirenia_nelegalneho_a_skodliveho_obsahu.pdf
30. *Tok klamstiev: Telegram je priestorom neobmedzených možností pre dezinformácie a konšpirácie.* [The flow of lies: the Telegram is a space of unlimited possibilities for disinformation and conspiracy] In: Investigatívne centrum Jána Kuciaka. Available

from:https://www.icjk.sk/238/Tok-klamstiev-Telegram-je-priestorom-neobmedzenych-moznosti- pre-dezinformacie-a-konspiracie [Accessed 5 March 2025].
31. TURILLAZZI, A., TADDEO, M., FLORIDI, L., & CASOLARI, F. *The digital services act: an analysis of its ethical, legal, and social implications.* In: Law, Innovation and Technology. Taylor & Francis, 2023. ISSN: 1757-9961. pp. 83–106. https://doi.org/10.1080/17579961.2023.2184136
32. United Nations. *The Strategy and Plan of Action on Hate Speech.* 2019. Available from: https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf [Accessed 5 March 2025].

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RISKS OF PARTIAL EXPLOITATION OF ARTIFICIAL INTELLIGENCE POTENTIAL IN ADMINISTRATIVE PROCEEDINGS[1]

RIZIKÁ PARCIÁLNEJ EXPLOATÁCIE POTENCIÁLU UMELEJ INTELIGENCIE V ADMINISTRATÍVNOM KONANÍ

Tibor Seman [2]

https://doi.org/10.33542/SIC2025-S-10

ABSTRACT

Administrative proceedings are an essential part of public administration activities. Their outcome is typically the issuance of a decision that grants rights, imposes obligations, or interferes with the legally protected interests of natural or legal persons. Artificial intelligence is a phenomenon with the potential to be utilized in many areas, including administrative proceedings. The introduction of artificial intelligence into the process of administrative proceedings can not only increase their efficiency and speed but also contribute overall to improving decision-making processes. For now, it is appropriate to consider the gradual implementation of artificial intelligence in administrative proceedings, meaning its use only in certain phases of the proceedings or in specific types of decisions. The involvement of artificial intelligence in the legal process of issuing individual administrative acts also brings with it various risks that must be taken into account. This paper focuses on examining the risks associated with the partial use of artificial intelligence in administrative proceedings, while also considering and evaluating both the benefits and potential risks that this technology - even when only partially integrated into decision-making processes - may bring to legal practice.

ABSTRAKT

Administratívne konanie je nevyhnutnou súčasťou činnosti verejnej správy. Jeho výsledkom je spravidla vydanie rozhodnutia, ktorým sa priznávajú práva alebo ukladajú povinnosti, prípadne sa zasahuje do právom chránených záujmov fyzických či právnických osôb. Umelá inteligencia predstavuje fenomén, ktorého potenciál je predurčený na využitie v mnohých sférach, nevynímajúc administratívne konanie. Zavádzanie umelej inteligencie do procesu administratívneho konania môže zvýšiť nielen jeho efektivitu a rýchlosť, ale celkovo prispieť k zlepšeniu rozhodovacích procesov. Zatiaľ je vhodné uvažovať o postupnej implementácii umelej inteligencie do administratívneho konania, teda využiť ju iba v niektorých fázach konania alebo len v niektorých typoch rozhodnutí. Zapojenie umelej inteligencie do právneho procesu vydávania individuálnych správnych aktov so sebou prináša aj viaceré riziká, ktoré je potrebné mať na zreteli. Príspevok je upriamený na skúmanie rizík, ktoré sú spojené s parciálnym využitím umelej inteligencie v administratívnom konaní, pričom zvažuje a hodnotí prínos ako aj potenciálne riziká, ktoré táto technológia, hoci len pri jej čiastočnom zapojení do rozhodovacích procesov, môže priniesť do právnej praxe.

[1] This article was prepared with the support and is the output of a research project supported by the Scientific Grant Agency VEGA no. 1/0062/25 entitled *Automatization of decion-making processes in public administration*.

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I. INTRODUCTION

Administrative proceedings represent a substantial part of the activities of public administration authorities and are generally aimed at issuing decisions regarding the rights and obligations of individuals or legal entities, or possibly affecting their legally protected interests. Artificial intelligence has vast potential across virtually all areas of human activity, including areas such as engineering,[3] healthcare,[4] art,[5] various branches of law,[6] science[7] and education. In the context of law and public administration, artificial intelligence is increasingly seen as a promising tool capable of contributing to the efficiency of decision-making processes. Among the fundamental principles of individual decision-making is the principle of legality, which must also be considered in the context of any partial implementation of artificial intelligence into administrative proceedings. Partial use of artificial intelligence may be considered, for instance, in the phase of gathering evidence as necessary groundwork for a decision. From the perspective of the possibilities offered by artificial intelligence technology, it holds particular potential for application specifically in administrative penal law - whether in sanctioning proceedings related to misdemeanors or other administrative offenses.

Artificial intelligence undoubtedly brings the potential to significantly transform the way public administration communicates with citizens - or, in a broader sense, with natural and legal persons as the recipients of administrative governance. Theoretically, this could mean less bureaucratic burden, faster execution of administrative proceedings, and the assumption of minimizing human error. In practice, however, not only the complete but even partial or fragmented application of artificial intelligence in administrative proceedings may interfere with citizens' rights, undermine the credibility of decision-making, and affect legal certainty as a whole.

The paper focuses on those phases of administrative proceedings and types of decision-making processes in which artificial intelligence can be utilized, through an analytical examination of the potential advantages it may bring, while also highlighting possible drawbacks, risks, and errors that cannot be entirely ruled out.

The aim of the paper is to identify areas of potential partial exploitation of artificial intelligence in administrative proceedings, to detect the main risks associated with this technology, to analyze its impact on the various phases and subjects of administrative proceedings, and finally, to formulate proposals and suggestions for mitigating these risks.

Several research methods were used in this paper, including the analysis of the current legal framework governing administrative proceedings, with an emphasis on potential phases

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[3] An example of the use of artificial intelligence is also climate measures, as discussed by Mgr. Bakošová. See also BAKOŠOVÁ, L.: *Climate Action Through Artificial Intelligence: International Legal Perspective* [*Klimatické opatrenia prostredníctvom umelej inteligencie: medzinárodnoprávny pohľad*] In: *STUDIA IURIDICA Cassoviensia*. 2022, Vol. 10, No.2, ISSN 1339-3995, pp. 3-24; doi.org/10.33542/SIC2022-2-01 [online, accessed 11.11.2025]. Available at: https://sic.pravo.upjs.sk/ecasopis/102022-2/1_bakosova_climate_action1.pdf.

[4] Artificial intelligence brings innovative approaches in healthcare as well. See BAKOŠOVÁ, L.: *Ethical and Legal Aspects of the Use of Artificial Intelligence in Health and Nursing Care* [*Etické a právne aspekty použitia umelej inteligencie v zdravotnej a ošetrovateľskej starostlivosti*] In: *STUDIA IURIDICA Cassoviensia*. 2020, Vol. 8, No.2, ISSN 1339-3995, pp. 3-18; doi.org/10.33542/SIC2020-2-01 [online, accessed 11.11.2025]. Available at: https://sic.pravo.upjs.sk/ecasopis/82020-2/1_bakosova_ethical_and_legal_aspects.pdf.

[5] See more, for example BUDAI, P.: *Artificial Intelligence and Music* [*Umelá inteligencia a hudba*] In: Slovenská hudba, 2022, Vol. 48, No 2, pp. 156-185; doi.org/10.4149/sh_2022_2_4 [online, accessed 14.11.2025]. Available at: https://www.elis.sk/download_file.php?product_id=7766&session_id=qn165v4d201lpbokc8cbq4juq2.

[6] See more, for example BARANCOVÁ, H: *Artificial Intelligence and Labour Law* [*Umelá inteligencia a pracovné právo*] In: Právny obzor, 107, 2024, No. 2, ISSN 0032-6984, doi.org/10.31577/pravnyobzor.2024.2.02; pp. 108–120.

[7] See more, for example LIPOVEC, A. – ARCET, B.: *Effectiveness of Generative Artificial Intelligence for Personalized Mathematics Learning* [*Učinkovitost generativne umetne inteligence za personalizirano učenje matematike*] In: Flogie, A., in: Čotar Konrad, S. (ed.): *Education in the Age of Generative Artificial Intelligence: International Guidelines and Research* [*Izobraževanje v dobi generativne umetne inteligence: mednarodne smernice in raziskave*]. University of Primorska Press, 2025, pp. 229-245; doi.org/10.26493/978-961-293-431-6.10 [online, accessed 14.11.2025]. Available at: https://www.hippocampus.si/ISBN/978-961-293-431-6/10.pdf.

suitable for the use of artificial intelligence. Additionally, interpretative and explanatory methods were applied to explain those legal provisions that potentially allow or at least do not exclude the partial use of artificial intelligence. Other research methods included the deductive and inductive approaches, particularly in identifying the risks associated with the use of artificial intelligence.

II. THE POTENTIAL FOR PARTIAL EXPLOITATION OF ARTIFICIAL INTELLIGENCE IN ADMINISTRATIVE PROCEEDINGS

2.1 What is Artificial Intelligence

In the broadest sense, artificial intelligence refers to techniques that enable machines to mimic human intelligence. In a narrower sense, it is defined as *"a field of computer science concerned with the development of systems capable of solving complex tasks such as recognition or classification - for example, in areas like image processing, written text or speech processing, or planning and control based on the analysis of large volumes of data."*[8] Artificial intelligence is *"the ability of a device to exhibit human-like capabilities such as reasoning, learning, planning, and creativity."*[9] *"These are intelligent systems designed to be able to think independently, learn, and make decisions. These systems are based on algorithms and machine learning and can be used for various tasks."*[10] Artificial intelligence operates through algorithms designed to perform specific tasks.[11] What is the most concise and perhaps the clearest expression and explanation of what artificial intelligence actually is? In its most concise form, artificial intelligence may be described as a *"thinking machine."*

2.2 What does partial exploitation of Artificial Intelligence mean

At present, the complete delegation of legal processes to artificial intelligence is still likely impossible. However, partial exploitation of artificial intelligence can be considered - that is, the introduction of AI only in selected parts of administrative proceedings. An example is the automated receipt and sorting of submissions, primarily applications, which entails interpreting their meaning and content, followed by assigning the submission to a specific department or unit of the public administration authority for processing. AI could also be used to recognize the urgency of handling submissions, which would be reflected in marking certain submissions as priority cases. Furthermore, the use of AI could be considered in the preparation of draft decisions, where, for instance, the justification section of the written decision would incorporate the submitted evidence taken into account by the administrative body during decision-making, as well as the formulation of the operative part of the decision. This phase would clearly relieve specific public administration employees from processing the decision's supporting materials. Their role would then be limited to reviewing the materials and verifying the written decision, without having to prepare the documents from scratch. Thus, it would only be a matter of

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8 KAPLAN, A: *Artificial Intelligence, Business and Civilization: Our Fate Made in Machines*. London: Routledge. ISBN 978-1-003-24455-4. DOI: https://doi.org/10.4324/9781003244554 [online, accessed 2025-08-27] Available at: https://www.taylorfrancis.com/books/mono/10.4324/9781003244554/artificial-intelligence-business-civilization-andreas-kaplan.

9 *Artificial Intelligence: Definition and Use - News - European Parliament* [*Umelá inteligencia: definícia a využitie – Spravodajstvo - Európsky parlament*]. [online] www.europarl.europa.eu, 2020-04-09, [accessed 2025-08-27]. Available at: https://www.europarl.europa.eu/topics/sk/article/20200827STO85804/umela-inteligencia-definicia-a-vyuzitie.

10 SLOVÁKOVÁ, A. I.: *Čo je to umelá inteligencia? 1 000 slov o nej od nej* [*What is Artificial Intelligence? 1,000 Words About It, By It*] [online, accessed 2025-08-27]. Available at: https://www.techbox.sk/co-je-to-umela-inteligencia-1-000-slov-o-nej-od-nej.

11 The use of algorithms in connection with artificial intelligence is not only a technical matter but also a matter of patents. This relationship is also discussed by Dr. Radka Kopčová. See also KOPČOVÁ, R.: *Legal Protection of Algorithms in the Context of Patent Law and Copyright Law* [*Ochrana algoritmov v kontexte patentového práva a autorského práva*] In: *STUDIA IURIDICA Cassoviensia*. 2025, Vol. 12, No.2, ISSN 1339-3995, pp. 80-98; doi.org/10.33542/SIC2024-2-06 [online, accessed 11.11.2025]. Available at: https://sic.pravo.upjs.sk/ecasopis/122024-2/06_Kopcova.pdf .

reviewing the work done by artificial intelligence, which would certainly take less time than producing the entire written form of the decision from scratch. Partial use of artificial intelligence would also include automated processing and exchange of information held by the administrative body in all proceedings, which would speed up the processing of data categorized as facts officially known to the administrative authority" *alebo* "facts established through official activities. Artificial intelligence would therefore not be a cardinal element of the decision-making activity, which would still remain human, but rather an important supplementary assistant in the individual administrative decision-making process. With continuous human supervision, artificial intelligence activities in precisely defined areas would significantly contribute to the effective and efficient conduct of administrative proceedings.

The gradual introduction of artificial intelligence into administrative proceedings is meaningful, primarily due to the potential need to eliminate identified shortcomings. Discussions about the use of artificial intelligence in the judicial application of law are appearing increasingly often among experts, yet with an evidently cautious approach regarding timing: *"The author believes that the use of artificial intelligence in the process of judicial application of law will be a natural step in the informatization of court proceedings. However, since this process is complex and time-consuming, we should not expect it to happen in the near future."*[12] It is understandable that any introduction of something new is approached cautiously and gradually. In relation to artificial intelligence, the so-called "black box problem" is emphasized. This so-called „black box problem" can be explained as follows: for a person who encounters the result of AI's activity, the algorithm of deep learning implemented by the AI - which produces an output, such as a decision, based on processed data - may not be - and in practice is not - understandable. The black box problem in the context of decision justification is also mentioned by Melanie Fink, an assistant professor at Leiden University in the Netherlands (Universiteit Leiden), together with Michèle Finck. In their article, they point out that a person may not be able to explain the specific reasons for a decision fundamentally influenced by an AI system, because neither the system nor the person fully understands it. *"As a result, public administration using such software may not be able to understand how the output was generated - just as the citizens affected by the respective decision cannot. There is a possibility that with the growing sophistication of AI techniques, this problem will deepen further."*[13] Finally, it is necessary to emphasize that insufficient reasoning of a decision is contrary to the right to a fair trial.[14] Moreover, the lack of reasoning in a decision in which artificial intelligence participated raises related questions of fairness, particularly in cases where the person whose rights or obligations were decided upon does not seek a review of such a decision.

The use of artificial intelligence in administrative proceedings should not be imagined as replacing a clerk with a robot. Artificial intelligence is intended to serve as an assistant; thus, only certain clerical tasks should be replaced by AI. In other words, human work, or a part of it, can or should be replaced by automated actions. This distinction is also highlighted by Professor Lilian Edwards, an expert in internet law at Strathclyde Law School, University of

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[12] NOWOTKO, Paweł Marcin: *AI in judicial application of law and the right to a court.* In: *Procedia Computer Science 192 (2021)*, p. 2224, [online, accessed 05.09.2025]. Available at: https://www.sciencedirect.com/science/article/pii/S1877050921017324?via%3Dihub.

[13] See more: Fink, M., & Finck, M.: *Reasoned A(I)dministration: explanation requirements in EU law and the automation of public administration* [online] In: *European Law Review*, 2022, 47(3), pp. 376-392, p. 377. [accessed 12.09.2025]. Retrieved from https://hdl.handle.net/1887/3439725.

[14] For more on the risks of insufficient reasoning of a decision and its impact on the (un)fairness of the process, see e.g. MOLNÁR, P.: *On Violation of the Right to a Fair Trial by Insufficient Reasoning of the Decision* [*K porušeniu práva na spravodlivý proces nedostatočným odôvodnením rozhodnutia*] In: *STUDIA IURIDICA Cassoviensia*. 2022, Vol. 10, No.1, ISSN 1339-3995, pp. 70-82 [online, accessed 11.11.2025]. Available at: https://sic.pravo.upjs.sk/ecasopis/102022-1/05_Molnar_ON_VIOLATION.pdf; doi.org/10.33542/SIC2022-1-05.

Strathclyde, Glasgow, United Kingdom, together with Michael Veale (who works at the Department of Science, Technology, Engineering and Public Policy (STEaPP), University College London).[15] Both are also cited by Advocate General Jean Richard De La Tour in his opinion on initiating preliminary proceedings, presented on September 12, 2024, to the Court of Justice of the European Union, submitted by the Verwaltungsgericht Wien (Administrative Court Vienna, Austria).[16] Partial use of artificial intelligence in the current scientific and technical stage of societal development would aims to reduce the workload of clerks without fully eliminating them as the human element in public administration.

III. SPECIFICS OF PARTIAL EXPLOITATION OF ARTIFICIAL INTELLIGENCE IN ADMINISTRATIVE SANCTION PROCEEDINGS

Artificial intelligence will undoubtedly find application in administrative proceedings involving the imposition of sanctions for administrative offenses. Especially in the detection and adjudication of such offenses. Even in this area, potential risks are identified, both in the detection and the sanctioning of offenses.[17] We refer to the occurrence of errors in the activities of artificial intelligence, which this technology may bring into legal practice, including the field of administrative sanction proceedings.[18]

Artificial intelligence is certainly a useful tool that can contribute not only to the efficiency of detecting offenses but also, to some extent, simplify the administrative processes associated with their adjudication. AI's ability to detect offenses through behavioral pattern recognition and the analysis of camera data will therefore be particularly valuable.

In connection with administrative offense law, artificial intelligence will also be capable of automatically processing data about committed offenses and their perpetrators. AI-based image recognition can be combined with the analysis of video recordings from camera systems. In the gradual process of introducing artificial intelligence into administrative proceedings, it cannot be ruled out that AI could conduct interrogations of the accused or witnesses, followed by comparing such statements and evaluating their consistency. Finally, artificial intelligence could also replace humans in qualifying specific unlawful conduct and in drafting decisions in administrative sanction proceedings, at least to the same extent as in other administrative proceedings. Artificial intelligence systems will need to prevent any manifestations of bias against participants in administrative proceedings. It can be reasonably assumed that the use of

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[15] More on the topic of replacing human work with automated systems, for example: EDWARDS L. - VEALE M.: *"Slave to the Algorithm? Why a "Right to Explanation" Is Probably Not the Remedy You Are Looking for"*. [online]. In: *Duke Law & Technology Review*. 2017, Vol. 16, No. 1, p. 82. [accessed 26.09.2025]. Retrieved from: https://scholarship. law. duke. edu/cgi/viewcontent.cgi?article=1315&context=dltr.

[16] Advocate General Jean Richard De La Tour's proposals, presented to the Court of Justice of the European Union on 12 September 2024, in Case C-203/22 involving Dun & Bradstreet Austria GmbH and Magistrat der Stadt Wien - opinion on initiating preliminary proceedings, submitted by Verwaltungsgericht Wien (Administrative Court Vienna, Austria). [online] In: Collection of Judgments of the Court of Justice of the European Union, ECLI:EU:C:2024:745, p. 20. [accessed 12.09.2025] Retrieved from: https://eur-lex.europa.eu/legal-content/SK/TXT/PDF/?uri=CELEX:62022CC0203.

[17] Historically, unlike today, it was unthinkable for unlawful conduct to be classified by anyone other than a human being. Even when determining whether a particular act should be categorized as a criminal offense or a misdemeanor, the task still fell exclusively to a human. For a detailed discussion of the historical aspects of classifying criminal offenses and misdemeanors, see, for example: FICO, M.: *Foundations of Criminal Liability in the Process of Unifying the Criminal Law of Interwar Czechoslovakia* [*Základy trestnej zodpovednosti v procese unifikácie trestného práva medzivojnovej Československej republiky*], Košice, Pavol Jozef Šafárik University in Košice, 2020, ISBN 978-80-8152-840-8; or FICO, M: *The Tripartition of Criminal Offenses in Interwar Czechoslovakia*, in: *Studia Iuridica Cassoviensia* [*Tripartícia trestných činov medzivojnovej Československej republiky*] In: *STUDIA IURIDICA Cassoviensia*. 2019, Vol. 7, No.2, ISSN 1339-3995, pp. 47-57; doi.org/10.33542/SIC2019-2-05 [online, accessed 14.11.2025]. Available at: https://sic.pravo. upjs.sk/ ecasopis/72019-2/5_FICO_Triparticia_trestnych_cinov.pdf.

[18] The author also dealt in greater detail with the topic of the use of artificial intelligence in detecting offenses and their adjudication in his paper titled *"The Use of Artificial Intelligence in Detecting Offenses and Their Adjudication"* presented at the nationwide interdisciplinary scientific conference *"Košice Days of Criminal Law 2025, 9th Edition,"* held in Košice on June 18 and 19, 2025. The mentioned paper will be published in the proceedings of the conference.

artificial intelligence will help not only to make the work of state authorities more efficient but that AI algorithms may even enable more accurate and objective decision-making. In detecting offenses, the recognition of unlawful conduct and its subsequent qualification as fulfilling the elements of a specific offense is applicable. Artificial intelligence is pre-programmed with definitions of unlawful conduct. In the area of road safety and traffic flow, this will involve detecting speeding or failure to obey traffic signals at intersections. If permitted by law de lege lata, artificial intelligence will be able to identify public space pollution and other forms of undesirable behavior from camera recordings. AI will be capable of instantly identifying a vehicle based on its license plate number from the footage and, using databases of human faces, gait patterns, or other characteristics, it can identify the person committing the unlawful act. Artificial intelligence will also be able to detect offenses committed throught electronic communication. Moreover, immediately after detecting unlawful conduct, AI will be able to signal the need for intervention by authorized personnel. When monitoring public spaces through camera systems, artificial intelligence can not only observe but also evaluate the recorded events. If necessary, it will notify the competent authority - for example, the municipal police - who can then carry out an immediate intervention against the perpetrator.

The use of artificial intelligence in the indicated manner will require legal regulation and compliance with the protection of fundamental rights and freedoms, particularly concerning the creation of databases necessary for the identification of individuals.

IV. RISK OF PARTIAL EXPLOITATION OF ARTIFICIAL INTELLIGENCE IN ADMINISTRATIVE SANCTION PROCEEDINGS

Although AI may initially seem unproblematic, the reality is quite the opposite. This "thinking machine" may be considered a helpful tool; however, at its current stage of development, it should, out of caution, be regarded rather as a "non-autonomous assistant" - and treated accordingly. One example is the task given to artificial intelligence to create a knowledge test. The AI generated a set of questions with answers and informed the human test-taker in advance that each question would have only one correct answer. Let us illustrate a model error made by the AI. Among the questions, there was one for which two out of four answers were correct. To make it easier to understand, the question could be: *"Which numbers are greater than 4?"* The answer choices were: a) 6, b) 3, c) 5, d) 1. Since the AI had clearly stated that only one answer would be correct, the respondent selected just one of the correct answers - in this case, **c)**. The AI then marked the answer as incorrect. However, not because both correct answers (a and c) should have been selected, but because, according to the AI, only answer a) was to be considered correct. When asked why only one of the two correct answers was accepted, the AI explained that in the materials it used, the answer listed first was marked as correct. This simple example demonstrates how AI behaved like a fool - it did not truly understand what it was doing and merely relied on various mixed sources to produce a final output. If this result had not been reviewed by a human, the outcome of the test would clearly have been incorrect. If such an error occurred in more serious tasks or processes, it could lead to significant or even severe consequences. From the perspective of the types of errors artificial intelligence can make, three basic categories of risks associated with its use in administrative proceedings can be identified. The first category consists of legal and procedural risks, the second category includes administrative and technological risks, and the third category comprises.

4.1 Legal and procedural risks

The use of artificial intelligence requires a legal basis. In our view, a general regulation on artificial intelligence (which we provisionally call it the *"Act on Artificial Intelligence and its Use in Public Administration"* or *"Act on Artificial Intelligence and its Use by Public*

Authorities") would not be sufficient for its deployment in administrative proceedings. A participant in the proceedings has the right to know who specifically made the decision in their case. This is connected to the right to be informed about which actions in the administrative process were performed by artificial intelligence - particularly when the matter involves an interference with legally protected interests or the imposition of obligations on the participant in the administrative proceeding.

Therefore, as a starting point, a rigorous legal framework governing the use of artificial intelligence in administrative proceedings is necessary. This should include provisions for the review or oversight of its procedures and the results of its actions, as well as the assignment of responsibility. Adequate legal regulation of artificial intelligence in administrative proceedings would prevent legal uncertainty regarding its use. It is not excluded that even within the general regulation of administrative procedure - i.e. Act No. 71/1967 Coll. on Administrative Procedure (Administrative Code), as amended - the operation of artificial intelligence could be codified. De lege ferenda (i.e., as a recommendation for future legislation), such codification would most appropriately be placed among the procedural rules, specifically within the principles that are binding in administrative proceedings and serve to interpret the provisions of the Administrative Code. The supplemented principle on the use of artificial intelligence would include a reference to the general regulation on artificial intelligence.

Another procedural legal challenge is the right to equal treatment. Among the fundamental rights and freedoms, equality in rights is placed at the very top of the Constitution of the Slovak Republic. *"People are free and equal in dignity and in rights. Fundamental rights and freedoms are inalienable, non-transferable, imprescriptible, and irrevocable."*[19] The first sentence of the cited article unequivocally enshrines equality in rights. If artificial intelligence is used only in relation to certain subjects or only in selected types of administrative proceedings, it may lead in inequality. For example, applications processed using AI may be assessed according to a different standard than those evaluated by a human. In practice, this could mean that two identical applications for the same allowance are processed differently simply because one went through an AI module and the other did not. One participant receives a response within two days, the other within two weeks. Furthermore, the responses or decisions may differ significantly. Such a situation impacts the principle of equality before the law, and therefore may represent a violation of equality as enshrined in Article 12 of the Constitution of the Slovak Republic.

Another issue we consider significant in the use of artificial intelligence is responsibility for decisions in which AI has participated, or which it has rendered without human intervention. This is also linked to the requirement of the possibility to appeal such decisions. In our opinion, AI should not issue decisions against which no regular remedy is available. Likewise, if, for example, AI proposes a decision - meaning it fully prepares an administrative decision with all the necessary elements - it raises the question of who is responsible for the legal consequences of such a decision. The current legal framework allows individuals to seek compensation for damage caused by an unlawful decision. It also covers damage resulting from incorrect official procedures.[20] However, if the boundary between human and machine is unclear, this can lead to avoidance of responsibility. We believe that responsibility for such decisions should be clarified by introducing a mandatory human review, at least in proceedings concerning regular legal remedies.

[19] Article 12(1) of the Constitution of the Slovak Republic No. 460/1992 Coll., as amended.

[20] Currently, this responsibility is regulated by Act No. 514/2003 Coll. on Liability for Damage Caused in the Exercise of Public Authority and on Amendments to Certain Acts, as amended. According to this legal regulation, improper procedures or decisions involving artificial intelligence can be addressed by holding the state liable for damage caused by public authorities in the exercise of public authority, as well as by holding municipalities and higher territorial units (i.e., local self-government) liable for damage caused by territorial self-government authorities in the exercise of self-government.

Finally, automatically issued decisions can be problematic in terms of safeguarding the rights of the parties involved in the proceedings. Everyone has the right to be present during the hearing of their case. In the case of so-called classic, standard administrative proceedings, all the rights of the participant must be respected. Exceptions may apply to abbreviated proceedings, such as summary proceedings for misdemeanors. In practice, this is a well-established procedure used when it is indisputable that the accused committed the misdemeanor and if the case was not resolved through on-the-spot fine proceedings. Thus, the administrative authority may issue an sanctioning order for the misdemeanor without further proceedings. Unless otherwise provided by the Misdemeanor Act or a special law, a fine of up to 250 euros may be imposed in summary proceedings. The order has the same formal requirements as a misdemeanor decision and is always communicated in writing. Regarding the possibility of using a proper legal remedy, the accused may file an objection against the order within 15 days from the date of its delivery to the administrative authority that issued the order. If the objection is filed in time, the order is annulled, and the administrative authority continues with the proceedings, during which no other type of sanction may be imposed on the accused, except for a reprimand or a higher sanction than that stated in the order, provided no new significant facts are found during the misdemeanor hearing. This reflects the prohibition of worsening changes (reformatio in peius), i.e., the prohibition of changes detrimental to the accused. An order against which no timely objection has been filed has the effects of a final decision. Misdemeanors that are subject only to proceedings upon request (so-called request offenses) cannot be adjudicated in summary proceedings. An order cannot be issued if the accused is deprived of legal capacity or if their legal capacity is restricted.[21]

In the implementation of summary proceedings as a shortened type of administrative sanction proceedings, we can envision fully automated issuance of decisions based on evidence, while always preserving the right to file a regular legal remedy. By filing an objection, which is a proper legal remedy against an order imposing a penalty for a misdemeanor, the order is automatically revoked by law, and standard administrative proceedings are conducted in the matter. We hold the view that in misdemeanor cases decided by an order, after an objection is filed, a human must decide the case. We adhere to the requirement that in matters where artificial intelligence has made a decision, a human must always act after a remedy is filed. In other words, it is better that the outcome of one "thinking machine" is not reviewed by another "thinking machine." This requirement, in our opinion, should be formulated among the basic rules of administrative proceedings in the general regulation on administrative procedure. This would prevent an "unequal fight" (really unequal position) between a human participant on one side and a "thinking machine" on the other. We insist that even partially automated decisions must not exclude the "legal contest" between a human (participant in the proceedings) and a human (representative of state authority).

4.2 Administrative and technological risks

Among the risks associated even with the partial use of artificial intelligence in administrative proceedings, administrative and technological risks cannot be excluded.

If we consider the involvement of artificial intelligence in the first instance of administrative proceedings while the appeals process remains exclusively in human hands, this situation can be described as separate modules. This means that a module, as an independent unit of the system, is linked to AI activity in the first instance of the administrative procedure, but in the appeals process, the module relates only to human activity. This represents a certain fragmentation of processes, carrying the risk that the separate modules (e.g., AI at the beginning and a human at the end) might not communicate effectively, which may lead to duplicated

[21] Compare §§ 87(1) to (6) and § 13(2) of Act No. 372/1990 Coll. on Misdemeanors, as amended.

efforts or even loss of context. In every administrative proceeding, it is necessary to ensure that no data used by AI at the beginning is missing when the human operator gets involved in the final stage. Likewise, the human must always know precisely everything that the AI did, how it did it, and the reasoning behind it. As for how data loss could occur, the simple answer relates to cybersecurity. Multiple separate systems (in our case, the machine at the start and the human at the end) without centralized management must be sufficiently secured and resilient against cyberattacks, data breaches, and technological failures.

Finally, when introducing artificial intelligence across various public administration bodies with specific procedural requirements, including the need to master particular legal regulations, relevant case law, and administrative practices, financial waste could easily occur. Implementing separate AI components independently for different areas of public administration may be cost-inefficient. It is advisable to create a general model of an "assistant in administrative proceedings" to effectively carry out the required tasks, thereby avoiding duplicate investments across different categories of administrative authorities.

4.3 Ethical risks

In connection with the use of artificial intelligence, ethical considerations cannot be overlooked. These must also be taken into account in administrative proceedings. It is not only about processing personal data and the potential for their misuse. A risk in using artificial intelligence may lie in assuming technical completeness or even the perfection of AI's outputs. Clear rules must be established and legally anchored for any decision-making activity entrusted to artificial intelligence. Humans must have a clear and comprehensive understanding of how AI "thinks." AI must not be a "black box" with secret procedures. The reasoning of artificial intelligence must be understandable not only to the person representing state authority and acting on behalf of the state body but especially to the participant in the proceedings. Again, we point to a certain "contentiousness" of AI, as illustrated by the simple knowledge test, which demonstrated AI's susceptibility to errors and its persistence in faulty conclusions. Therefore, both the state authority and the participant in the proceedings must fully understand the reasoning of the artificial intelligence, with a clearly ensured possibility for the participant to defend themselves.

An indispensable factor to consider when evaluating the use of artificial intelligence in administrative proceedings is the potential for AI errors. Artificial intelligence acknowledges that it makes mistakes. When asked about the type of errors it may commit, it responded affirmatively. When asked about the type of errors it may commit, it responded affirmatively.[22] The errors that artificial intelligence itself admits to in its operation can be divided into five types.

The first and perhaps the most understandable cause of errors is those arising from imperfect data, since artificial intelligence draws its knowledge and learns from historical data. If these data are characterized by inaccuracy or incompleteness, the result of using such data will also be inaccurate or erroneous. Moreover, artificial intelligence acknowledges that in its operation it cannot only repeat these errors but even amplify their intensity. In our opinion, eliminating this risk should involve inputting all relevant data by a human, without allowing artificial intelligence to learn independently and uncontrollably on its own. The accuracy of the entered data should be the responsibility of a human, who should also supervise the supplementation or updating of the data with which the artificial intelligence works.

Another type of error is the incorrect interpretation of context, which can result not only in improper procedures but especially in wrong decisions. However, we believe that with precisely defined tasks for artificial intelligence, as well as by explaining to AI that human interactions

[22] We communicated with artificial intelligence on the platform chat.gpt.com.

often include irony, sarcasm, or meanings derived from a broader context, the risk of misinterpreting, for example, the content of a witness statement can be significantly reduced. For this reason, after the filing of appeals against decisions in which artificial intelligence has participated, the matter should be handled by a human who can appropriately correct the objections of the participants regarding any misinterpretation of the text.

The third type of errors that artificial intelligence acknowledges are technical errors of AI models. These involve incorrect forecasting, assumptions, or predictions, which are serious problems related to machine learning. This occurs as AI learns patterns from its training data set. Simply put, these errors are known as overfitting and underfitting.[23] Underfitting, also known as undertraining, which occurs when an artificial intelligence model fails to learn the correct relationships between data and consequently makes incorrect predictions. An AI that does not properly understand the data produces inaccurate results. In other words, when AI learns something incorrectly, it also interprets it incorrectly. Overfitting, by contrast, means overtraining. This is a situation where AI detects too many, often incorrect, relationships within the data. Unlike humans, who can identify and ignore unwanted anomalies in the data, AI may not be capable of doing so.

The fourth type of errors lies in the lack of transparency and the related responsibility. In this context, we mention the so-called "black-box" algorithms. A black box is a complex computer program whose internal functioning is not clearly visible or understandable to humans.[24] This complicates, or even hinders, the understanding of how artificial intelligence "thinks." Without a clear justification or explanation of why the AI made a particular decision and not another, it becomes more difficult to challenge AI-made decisions. Eliminating this undesirable phenomenon could involve appropriate educational methods and training processes, which would enable the AI to externally express the way it forms conclusions or judgments on which the administrative decision is based. Otherwise, even the official will be unable to answer why the AI recommended, for example, rejecting an application if the AI itself conceals the processes it used to reach that conclusion.

The last type of errors that artificial intelligence acknowledges are the consequences of the mistakes it makes. These consequences include not only legal but also ethical implications. Among these consequences is the risk of violating the rights of subjects in administrative proceedings, such as the incorrect classification of an irrelevant matter as an offense, which may lead to unjust sanctions. In this way, the involvement of artificial intelligence can also undermine the authority of public administration.

V. RISK OF EXPLOITING ARTIFICIAL INTELLIGENCE IN THE VARIOUS PHASES OF ADMINISTRATIVE PROCEEDINGS: CATEGORIZATION, EVALUATION AND PROPOSALS FOR FUTURE LEGISLATION (DE LEGE FERENDA)

5.1 Categorization and evaluation of risks associated with the integration of Artificial Intelligence into the various phases of administrative proceedings

Regardless of the specific areas or sectors of public administration involved, potential shortcomings or risks related to the involvement of artificial intelligence in decision-making processes may be similar or even identical.

This primarily concerns the initiation of administrative proceedings, whether initiated by a participant's request or ex officio. When administrative proceedings are initiated based on a

[23] A more detailed explanation of overfitting and underfitting, for example: *Co je overfitting? Trading Terminologie!* [online]. Available at: https://www.tradesmart.cz/co-je-overfitting-trading-terminologie/ [accessed 2025-09-25] or also *Co je overfitting/underfitting a jak funguje?* [online]. Available at: https://denik.mikulasske.cz/?p=2237 [accessed 2025-09-25]

[24] More detailed information about the "black box" phenomenon in artificial intelligence activities can be found, for example, at: *Black box.* [online]. Source: https://www.seoprakticky.cz/slovnik-pojmu/black-box/ [accessed 2025-09-25].

participant's request, the risk lies in correctly understanding the content of the submission and properly categorizing it for further processing. If the administrative proceeding is initiated ex officio, artificial intelligence is tasked with assessing whether the legal conditions for such initiation are met. Incorrect evaluation of these conditions could occur, which may then require human oversight to verify the correctness of this procedure. Thus, the expected assistance from artificial intelligence might become complicated by the necessity of controlling the correctness of both the initiation and non-initiation of administrative proceedings.

After the initiation of administrative proceedings, it is necessary to accurately and completely establish the factual situation and apply the relevant legal regulations to the specific case. The establishment of facts through evidence gathering, carried out by artificial intelligence, as well as obtaining the necessary materials for the decision, must be predefined by clearly assigning tasks for the artificial intelligence. Allowing too much freedom to artificial intelligence carries the risk of unintended autonomy or detachment from procedural requirements. This, in turn, will again require human oversight and potentially necessary correction. This applies whether the shortcomings relate to establishing the facts, evaluating evidence, or incorrectly applying legal regulations to the case.

If the task of artificial intelligence were only to prepare a draft decision, which would then be reviewed by a human, this draft would have to include the reasons. The problem could be an unclear explanation of the reasons for a particular decision.

If artificial intelligence is entrusted with issuing a decision, it is important to consider responsibility not only for the operational part but also for other formal requirements, especially for a clear and understandable justification. Thus, both the state authority and the participant in the proceedings must fully understand the reasoning of the artificial intelligence that prepared the decision, and the decision must clearly specify the extent of the AI's participation. Legal argumentation is essential in the reasoning of any decision.[25] Therefore, it is of utmost importance not to disregard the question of whether artificial intelligence possesses the capacity to formulate proper legal arguments.

Another important area of administrative proceedings is the use of remedies. Whether these are ordinary or extraordinary remedies, decision-making in cases where artificial intelligence is entrusted with this task requires review by a different subject to ensure procedural objectivity of both the decision and the preceding procedure. It is questionable whether artificial intelligence will be able to review a decision made by another artificial intelligence. Simply put, reviewing the decision and the preceding procedure is indispensable from the perspective of procedural objectivity by a different subject. The delegation of competence is a principle that must be insisted upon to ensure a fair process within the rule of law. So far, the optimal solution for reviewing decisions made by artificial intelligence appears to be the full involvement of a human.

Because verifying the reliability of involving artificial intelligence in individual administrative decision-making is necessary, it is advisable to proceed in a fragmented or partial manner. Only after adequately eliminating procedural risks and legal uncertainty caused by AI unpredictability should the scope of AI tasks in administrative proceedings be expanded."

[25] The importance and significance of legal argumentation is aptly mentioned by Associate Professor Martin Turčan. See also TURČAN. M: *A Bit of Empiricism: A Quantitative View of Selected Types of Legal Argumentation in the Decisions of Slovak and Czech Top Court* [*Trochu empírie: kvantitatívny pohľad na vybrané druhy právnej argumentácie v rozhodnutiach slovenských a českých vrcholových súdov*] In: *STUDIA IURIDICA Cassoviensia*. 2025, Vol. 13, No.2, ISSN 1339-3995, pp. 192-216 [online, accessed 11.11.2025]. Available online: https://sic.pravo.upjs.sk/ecasopis/132025-2/11_Turcan_Trochu_empirie_Kvantitativny_pohlad.pdf; doi.org/10.33542/SIC2025-2-11.

5.2 Suggestions for de lege ferenda (recommendations for future legislation)

With reference to the potential risks arising from the involvement of artificial intelligence in administrative proceedings, it is essential to consider measures to minimize or even eliminate undesirable impacts of AI participation. This applies both to individual stages of administrative proceedings and to specific administrative procedures.

For the initiation of administrative proceedings based on a party's motion, it is necessary to define the requirements for AI activity. Additionally, the sources against which the content of the submission will be verified must be clearly established. When administrative proceedings are initiated ex officio, the reasons for this procedure must be clearly specified, without any possibility of unauthorized modification or expansion.

We consider the a priori prohibition of self-learning a fundamental restriction on AI. Artificial intelligence must work only with a predefined set of materials, without the possibility of supplementing its *knowledge* from unverified sources. In other words, a human must provide AI with the complete set of materials as well as the requirements for processing them.

It is important to define AI tasks after the initiation of administrative proceedings to accurately ascertain the facts of the case and determine the scope of relevant legal regulations. This will help prevent any undesirable autonomy or detachment from the procedural requirements.

Finally, every type and stage of administrative proceedings in which AI is involved must always be subject to human oversight. Without exception, subsequent human review must be applied to decisions and procedures following the submission of remedies.

In the general regulation on administrative proceedings, currently governed by Act No. 71/1967 Coll. on Administrative Proceedings (the Administrative Procedure Code), as amended, we propose that decisions indicate which parts were prepared by artificial intelligence. Every administrative decision must clearly specify the role in which artificial intelligence participated. This can be addressed by introducing a new element of the administrative decision: a separate section of the written decision, referred to as the "addendum on the work of artificial intelligence." This requirement should be legally mandated not only in the general rules of administrative proceedings (i.e., in §§ 3 and 4 of the Administrative Procedure Code) but also in §§ 46 and 47, which regulate the formal requirements of decisions.

Regarding liability for any damage caused by a decision or procedural action performed by AI, it is necessary to clearly define the responsible entity, whether it is the public administration authority, the IT specialist assigning tasks to AI, or the person supervising AI activities.

Regarding remedies against decisions in which AI has participated, decision-making must be assigned to a human. This requirement should be enshrined in the general rules of administrative procedure, namely in the Administrative Procedure Code.

VI. CONCLUSIONS

Partial exploitation of the potential of artificial intelligence in administrative proceedings offers a promising way to improve the efficiency of administrative decision-making processes. Benefits are expected from every technical advancement, including artificial intelligence. AI can contribute to enhancing the quality of public administration activities. However, its integration into individual tasks must be cautious and gradual. In the event of errors, these must be eliminated as soon as possible to ensure that, ultimately, artificial intelligence delivers more benefits than harm. Nevertheless, even partial implementation of AI carries risks, as discussed in this paper. We also present proposals to support the safe integration of AI into decision-making processes, along with suggestions to minimize or eliminate the risks it entails.

It is advisable to develop a strategy and propose legal regulations for the gradual implementation of artificial intelligence into administrative proceedings. This should include

defining responsibility for incorrect procedures and decisions in which artificial intelligence participated, as the algorithms and programs for AI must be created and supervised by humans. If artificial intelligence is to formulate administrative decisions, it is essential to require for clear explanations of its "thought processes" and precise specification of how the involvement of AI influenced the outcome of the administrative proceeding.

With the partial implementation of AI in administrative proceedings, it will be necessary to provide training for public administration employees on the principles of AI operation. At the same time, employees should be encouraged to report deficiencies to improve the technology during its integration into public administration.

In this paper, we have identified three main categories of risks associated with the use of artificial intelligence in administrative proceedings: legal-procedural risks, administrative, technological, and ethical risks. Primarily, there will be a need for legal regulation establishing the right of a participant in administrative proceedings to be informed about which administrative activities were performed by AI. De lege ferenda, this provision will likely find its optimal place among the procedural rules governed by the general administrative procedure legislation. Namely the Administrative Procedure Code, which would formally incorporate the role of artificial intelligence. The proposed principle regarding the use of artificial intelligence would also include a reference to the general legislation on artificial intelligence.

We emphasize the need to preserve the right to equal treatment, as applications processed with the help of artificial intelligence may be evaluated according to different standards than those assessed by humans.

We consider it essential that, in proceedings involving appeals against decisions in which artificial intelligence participated, the decision-making should be carried out by a human and not again by artificial intelligence. This would ensure not only the delegation of competence but, most importantly, mandatory human oversight over artificial intelligence. We base this on our finding that artificial intelligence itself admits to its potential for errors and fallibility. Therefore, we do not believe it is appropriate for the outcome of one "thinking machine" to be reviewed by another "thinking machine." For this reason, we believe this requirement should be enshrined among the fundamental rules of administrative proceedings in the general administrative procedure legislation. This would prevent an "unequal contest" between a human participant in the proceedings on one side and a "thinking machine" on the other.

KEY WORDS

artificial intelligence, administrative procedure

KĽÚČOVÉ SLOVÁ

umelá inteligencia, administratívne konanie

BIBLIOGRAPHY

1. Act No. 71/1967 Coll. on Administrative Procedure (Administrative Code), as amended
2. Act No. 372/1990 Coll. on Misdemeanors, as amended
3. Act No. 514/2003 Coll. on Liability for Damage Caused in the Exercise of Public Authority and on Amendments to Certain Acts, as amended
4. Advocate General Jean Richard De La Tour's proposals, presented to the Court of Justice of the European Union on 12 September 2024, in Case C-203/22 involving Dun & Bradstreet Austria GmbH and Magistrat der Stadt Wien - opinion on initiating preliminary proceedings, submitted by Verwaltungsgericht Wien (Administrative Court Vienna, Austria). In: Collection of Judgments of the Court of Justice of the European

Union, ECLI:EU:C:2024:745, p. 20. [online, accessed 12.09.2025] Retrieved from: https://eur-lex.europa.eu/legal-content/SK/TXT/PDF/?uri=CELEX:62022CC0203
5. *Artificial Intelligence: Definition and Use - News - European Parliament* [*Umelá inteligencia: definícia a využitie – Spravodajstvo - Európsky parlament*]. [online] www.europarl.europa.eu, 2020-04-09, [accessed 2025-08-27] Available at: https://www.europarl.europa.eu/topics/sk/article/20200827STO85804/umela-inteligencia-definicia-a-vyuzitie
6. BAKOŠOVÁ, L.: *Climate Action Through Artificial Intelligence: International Legal Perspective* [*Klimatické opatrenia prostredníctvom umelej inteligencie: medzinárodnoprávny pohľad*] In: *STUDIA IURIDICA Cassoviensia*. 2022, Vol. 10, No.2, ISSN 1339-3995, pp. 3-24; doi.org/10.33542/SIC2022-2-01 [online, accessed 11.11.2025]. Available at: https://sic.pravo.upjs.sk/ecasopis/102022-2/1_bakosova climateaction1.pdf
7. BAKOŠOVÁ, L.: *Ethical and Legal Aspects of the Use of Artificial Intelligence in Health and Nursing Care* [*Etické a právne aspekty použitia umelej inteligencie v zdravotnej a ošetrovateľskej starostlivosti*] In: *STUDIA IURIDICA Cassoviensia*. 2020, Vol. 8, No.2, ISSN 1339-3995, pp. 3-18; doi.org/10.33542/SIC2020-2-01 [online, accessed 11.11.2025]. Available at: https://sic.pravo.upjs.sk/ecasopis/82020-2/1_bakosova_ethical_and_legal_aspects.pdf
8. BARANCOVÁ, H: *Artificial Intelligence and Labour Law* [*Umelá inteligencia a pracovné právo*] In: Právny obzor, 107, 2024, No. 2, ISSN 0032-6984, doi.org/10.31577/pravnyobzor.2024.2.02; pp. 108–120
9. BUDAI, P.: *Artificial Intelligence and Music* [*Umelá inteligencia a hudba*] In: Slovenská hudba, 2022, Vol. 48, No 2, pp. 156-185; doi.org/10.4149/sh_2022_2_4 [online, accessed 14.11.2025]. Available at: https://www.elis.sk/download file.php?product_id =7766&session_id=qn165v4d201lpbokc8cbq4juq2
10. *Black box.* [online]. Source: https://www.seoprakticky.cz/slovnik-pojmu/black-box/ [acesssed 2025-09-25]
11. *Co je overfitting? Trading Terminologie!* [online]. Available at: https:// www.tradesmart.cz/co-je-overfitting-trading-terminologie/ [accessed 2025-09-25]
12. *Co je overfitting/underfitting a jak funguje?* [online]. Available at: https:// denik.mikulasske.cz/?p=2237 [accessed 2025-09-25]
13. Constitution of the Slovak Republic No. 460/1992 Coll., as amended
14. EDWARDS L. - VEALE M.: *"Slave to the Algorithm? Why a "Right to Explanation" Is Probably Not the Remedy You Are Looking for"*. [online]. In: *Duke Law & Technology Review*. 2017, Vol. 16, No. 1, pp. 18-84. [accessed 26.09.2025]. Retrieved from: https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1315&context=dltr
15. FICO, M: *Foundations of Criminal Liability in the Process of Unifying the Criminal Law of Interwar Czechoslovakia* [*Základy trestnej zodpovednosti v procese unifikácie trestného práva medzivojnovej Československej republiky*], Košice, Pavol Jozef Šafárik University in Košice, 2020, ISBN 978-80-8152-840-8, 169 pp.
16. FICO, M: *The Tripartition of Criminal Offenses in Interwar Czechoslovakia*, in: *Studia Iuridica Cassoviensia* [*Tripartícia trestných činov medzivojnovej Československej republiky*] In: *STUDIA IURIDICA Cassoviensia*. 2019, Vol. 7, No.2, ISSN 1339-3995, pp. 47-57; doi.org/10.33542/SIC2019-2-05 [online, accessed 14.11.2025]. Available at: https://sic.pravo.upjs.sk/ecasopis/72019-2/5_FICO_Triparticia_trestnych_cinov.pdf
17. Fink, M., & Finck, M.: *Reasoned A(I)dministration: explanation requirements in EU law and the automation of public administration* [online]. In: European Law Review, 2022, 47(3), pp. 376-392, p. 377. [accessed 12.09.2025] Retrieved from https://hdl.handle.net/1887/3439725;

18. KAPLAN, A: *Artificial Intelligence, Business and Civilization: Our Fate Made in Machines*. London: Routledge. ISBN 978-1-003-24455-4. DOI: https://doi.org/10.4324/9781003244554 [online, accessed 2025-08-27]. Available at: https://www.taylorfrancis.com/books/mono/10.4324/9781003244554/artificial-intelligence- business-civilization-andreas-kaplan
19. KOPČOVÁ, R.: *Legal Protection of Algorithms in the Context of Patent Law and Copyright Law* [*Ochrana algoritmov v kontexte patentového práva a autorského práva*] In: *STUDIA IURIDICA Cassoviensia*. 2025, Vol. 12, No.2, ISSN 1339-3995, pp. 80-98; doi.org/10.33542/SIC2024-2-06 [online, accessed 11.11.2025]. Available at: https://sic.pravo.upjs.sk/ecasopis/122024-2/06_Kopcova.pdf
20. LIPOVEC, A. - ARCET, B.: *Effectiveness of Generative Artificial Intelligence for Personalized Mathematics Learning* [*Učinkovitost generativne umetne inteligence za personalizirano učenje matematike*] In: Flogie, A. - Čotar Konrad, S. (ed.): *Education in the Age of Generative Artificial Intelligence: International Guidelines and Research* [*Izobraževanje v dobi generativne umetne inteligence: mednarodne smernice in raziskave*]. University of Primorska Press, 2025, pp. 229-245; doi.org/10.26493/978-961-293-431-6.10 [online, accessed 14.11.2025]. Available at: https://www.hippocampus.si/ISBN/978-961-293-431-6/10.pdf.
21. MOLNÁR, P.: *On Violation of the Right to a Fair Trial by Insufficient Reasoning of the Decision* [*K porušeniu práva na spravodlivý proces nedostatočným odôvodnením rozhodnutia*] In: *STUDIA IURIDICA Cassoviensia*. 2022, Vol. 10, No.1, ISSN 1339-3995, pp. 70-82 [online, accessed 11.11.2025]. Available at: https://sic.pravo.upjs.sk/ecasopis/102022-1/05_Molnar_ON_VIOLATION.pdf; doi.org/10.33542/SIC2022-1-05
22. NOWOTKO, Paweł Marcin: *AI in judicial application of law and the right to a court* [online] In: *Procedia Computer Science 192 (2021)*, p. 2224, [accessed 05.09.2025]. Available at: https://www.sciencedirect.com/science/article/pii/S1877050921017324?via%3Dihub
23. SLOVÁKOVÁ, A. I.: *Čo je to umelá inteligencia? 1 000 slov o nej od nej* [*What is Artificial Intelligence? 1,000 Words About It, By It*] [online, accessed 2025-08-27]. Available at: https://www.techbox.sk/co-je-to-umela-inteligencia-1-000-slov-o-nej-od-nej
24. TURČAN. M: *A Bit of Empiricism: A Quantitative View of Selected Types of Legal Argumentation in the Decisions of Slovak and Czech Top Court* [*Trochu empírie: kvantitatívny pohľad na vybrané druhy právnej argumentácie v rozhodnutiach slovenských a českých vrcholových súdov*] In: *STUDIA IURIDICA Cassoviensia*. 2025, Vol. 13, No.2, ISSN 1339-3995, pp. 192-216 [online, accessed 11.11.2025]. Available online: https://sic.pravo.upjs.sk/ecasopis/132025-2/11_Turcan_Trochu_empirie Kvantitativny_pohlad.pdf; doi.org/10.33542/SIC2025-2-11

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AUTOMATION OF ADMINISTRATIVE PROCEEDINGS IN THE CZECH REPUBLIC: CRITICAL REFLECTIONS ON THE DRAFT "ADM AMENDMENT" TO THE ADMINISTRATIVE PROCEDURE CODE

AUTOMATIZACE SPRÁVNÍHO ŘÍZENÍ V ČESKÉ REPUBLICE: KRITICKÁ ANALÝZA NÁVRHU "AUTOMATIZAČNÍ NOVELY" SPRÁVNÍHO ŘÁDU

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https://doi.org/10.33542/SIC2025-S-11

ABSTRACT

This article examines the emerging regulation of automated administrative decision-making in the Czech Republic, with a focus on the recent proposal to introduce a new Section 15a into the Administrative Procedure Code. While the initiative reflects broader European efforts to digitalize public administration, it also exposes serious deficiencies in legislative technique, legal safeguards, and compliance with European law. The analysis situates the Czech debate against the background of existing domestic practices, such as algorithmic processing in tax administration and simplified enforcement mechanisms in traffic law, none of which presently authorize fully automated decisions. Using doctrinal analysis, critical regulatory assessment, and a targeted comparative perspective drawing on Sweden, Germany, and France, the article demonstrates that the Czech proposal fails to provide the necessary clarity, safeguards, and systemic preparation. It concludes that a responsible framework must be comprehensive, government-led, and accompanied by explicit criteria, robust safeguards, and institutional adaptation.

ABSTRAKT

Tento článek se věnuje vznikající regulací automatizovaného rozhodování ve správním řízení v České republice, a to se zvláštním zaměřením na recentní návrh novely správního řádu zavádějící nový § 15a. Přestože tato iniciativa odráží širší evropský trend digitalizace veřejné správy, návrh vykazuje zásadní nedostatky v legislativní technice, zakotvení procesních záruk a souladu s evropským právem. Analýza zasazuje českou debatu do kontextu stávajících domácích praktik, jako je algoritmické zpracování informací při správě daní či zjednodušené

[1] The research presented in this article was carried out with the support of the 4EU+ research project No. MA/25/F3/0/017 titled "Europe: the Laboratory for a Digital State". This article was prepared with the assistance of artificial intelligence tools, which were exploited in full alignment with current standards for academic writing and ethical guidelines. Specifically, ChatGPT by OpenAI (model GPT-5 and Deep Research mode) was used for literature review, as well as proofreading, language refinement and citation, whereas Anara by Anara Labs, Inc. and Elicit by Elicit, Inc. were used to facilitate literature research.

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mechanismy v oblasti dopravního práva, z nichž žádná v současnosti neumožňuje plně automatizované rozhodování. Pomocí doktrinální analýzy, kritického hodnocení regulace a cílené komparace se Švédskem, Německem a Francií článek poukazuje na to, že český návrh postrádá jednoznačnost, systémové záruky či komplexní přípravu. Autoři dospívají k závěru, že patřičné legislativní zakotvení automatizace musí být komplexní, vedené vládní iniciativou a doprovázené formulací spolehlivých záruk ochrany procesních práv a promyšlenou institucionální implementací.

I. INTRODUCTION

In recent years, automation has become one of the central themes of administrative reform across Europe. Digital technologies are no longer viewed merely as tools for supporting officials in routine work, but as potential instruments capable of reshaping the very way in which public authority is exercised. The debate has gradually shifted from abstract considerations about efficiency to concrete questions of legality, accountability and safeguards. The Czech Republic has now joined this discussion. At the end of 2024, a parliamentary proposal sought to amend the Administrative Procedure Code[5] by introducing a new Section 15a, which would open the door to the automated performance of certain acts in administrative proceedings.[6] While this initiative is undoubtedly timely and part of a broader European trend, it raises fundamental questions about the limits of automation in public law and thus warrants a much closer examination.

This article explores whether and how such a reform could be responsibly embedded in Czech administrative law and takes as its point of departure a simple but pressing research question: how should a legal provision enabling automated decision-making within Czech administrative proceedings be designed, and does the proposed Section 15a provide a satisfactory framework in terms of legislative technique, fundamental rights and administrative functionality? In order to approach this inquiry, the authors first outline the current state of automation in the Czech Republic, showcasing that although a number of tools have already been deployed, they operate primarily at the margins of decision-making, either as supportive instruments or as mechanisms outside the formal scope of administrative procedure. The article then turns to the amendment itself and subjects it to critical examination, with particular attention to its legislative quality, compatibility with European Union law, and the clarity of its drafting. Given the European dimension of automated administrative decision-making, the analysis further includes a targeted comparison with selected foreign jurisdictions (Sweden, Germany and France) chosen for their differing approaches to the regulation of automation in public law. The comparative perspective serves not as a blueprint for transplantation, but as a means of identifying criteria, safeguards and conceptual choices that can inform the Czech debate.

Methodologically, the article combines doctrinal legal analysis of Czech public law with a structured critique grounded in legislative drafting standards and principles of administrative legality, a GDPR-focused data protection analysis, and a limited comparative method directed at functional criteria rather than wholesale borrowing. Building on these strands, the final part adopts a de lege ferenda design approach, sketches the elements of a workable Czech framework that could harness the benefits of automation while preserving legal certainty, accountability and fundamental rights, and that aligns regulatory ambition with institutional

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5 Act No. 500/2004 Coll., the Administrative Procedure Code, as amended.

6 Parliamentary Print No. 845/0: Proposal by Members of Parliament Tomáš Dubský, Milada Voborská, Martina Ochodnická, Jiří Havránek, and Jiří Carbol for the enactment of a law amending Act No. 128/2000 Coll., on Municipalities (Municipal Establishment), as amended, and other laws in connection with supporting cooperation among municipalities.

capacity. At the same time, the article aspires to contribute to the broader scholarly discussion on the digitalization of public administration and its pitfalls. The Czech case serves as a useful case study of the promises and perils of introducing automation into administrative proceedings: it illustrates both the opportunities for efficiency and consistency, and the dangers of insufficiently considered regulation that risks undermining rights and eroding trust.

II. STATUS QUO OF AUTOMATION IN THE CZECH ADMINISTRATIVE PRACTICE

When it comes to the current state of affairs in the field of automation, it must be mentioned that there have already been several initiatives taking advantage of various tools of automation, even before the ADM amendment. Perhaps the most prominent example can be found in the area of tax administration, where the use of automated systems as part of the administrative activities is explicitly stipulated by the Czech Tax Code. A comparable though differently structured example can be found in the field of traffic enforcement, where the mechanisms enabled by the Road Traffic Act allow municipal authorities to resolve minor infractions outside the framework of the administrative proceeding, thus allowing the *praeter legem* automation of such processes. Further use-cases from the Czech administrative practice include the ANAKONDA application, , the ADAM application andthe Jenda application.[7]

In order to provide the reader with a clearer understanding of where the Czech Republic currently stands in terms of the automation efforts, the following passages will serve as a brief introduction to this status quo. The following examples illustrate how public administration in the Czech Republic is already looking for ways to use automated tools and artificial intelligence, despite the absence of explicit legislation. Such analysis offers valuable insight into current trends, possibilities, and limitations, which can serve as a guide for future, higher-quality legal anchoring of automated decision-making.

1. Legislative framework for automation in formal proceedings

As of today, Czech administrative law does not contain any general codification of automation in the Administrative Procedure Code. In other words, there is neither an explicit legal prohibition of administrative authorities relying on automated systems, nor an explicit authorization that would set out the conditions and safeguards for such use. Most importantly, the Administrative Procedure Code does not provide for the possibility of issuing administrative decisions automatically, without the involvement of a human official. Automated tools may therefore be employed in practice to support administrative work (see further) but the ultimate responsibility for decision-making remains with the authority and its officials.

A more explicit legal framework for automation exists in the area of tax administration, which is governed by the Tax Code.[8] Specifically, section 59a of the Tax Code allows tax authorities to carry out certain acts of tax administration solely on the basis of automated processing of personal data, provided that this does not amount to the issuance of a decision.[9] The provision requires that the algorithms and selection criteria used for such processing be described and retained in records of processing activities for at least one year, which constitutes

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[7] The authors of this article drew information about these applications from interviews with representatives of the relevant institutions.

[8] Czech Act No. 280/2009 Coll., the Tax Code, as amended.

[9] Sec. 59a (1) (b) of the Tax Code provides that the tax administration authority "*may carry out the performance of tax administration, provided it does not involve the issuance of decisions, exclusively on the basis of automated processing of personal data; the tax administrator shall include in the records of processing activities a description of the computer algorithms and selection criteria on which such processing is based and shall retain them for at least one year from their last use for the processing of personal data*" (translated by the author).

a safeguard enhancing the auditability of the use of automated systems. The provision, while expressly excluding automated decision-making, enables the financial administration to exploit algorithmic tools in preparatory and operational phases of its activities. For instance, automated systems may be used for risk analysis, for the identification of irregularities or suspicious patterns in tax returns, or for the selection of cases suitable for further inspection.[10] While these processes do not yet amount to automated decision-making in the sense of producing binding determinations, they demonstrate a gradual shift towards reliance on algorithmic tools within administrative practice.[11]

2. Automation of quasi-procedural acts of public administration

A somewhat different, but equally illustrative, example of automation in Czech administrative practice is provided by the field of traffic enforcement. Here, the relevant legal framework is not found in the Administrative Procedure Code, but in the Road Traffic Act,[12] which introduced a specific mechanism, colloquially referred to as "legal indulgences", which allows municipal authorities to deal with minor infractions in a simplified and highly standardized manner. [13] Under this arrangement, when an offence is detected (typically by automated monitoring devices such as speed or red-light cameras) the authority does not immediately initiate standard administrative proceedings pursuant to chapters II. and III. of the Administrative Procedure Code. Instead, the registered owner of the vehicle is invited to pay a fixed amount within the set deadline. If the payment is made, the authority defers the case without ever initiating formal proceedings. If the payment is not made, the authority then proceeds to investigate and prosecute the offence under the ordinary procedural framework.[14]

Although the notification issued to the vehicle owner does not constitute an administrative decision in the formal sense, this mechanism has the practical effect of resolving a large number of infractions outside the scope of ordinary proceedings. The entire process is standardized and can be (and already is[15]) largely automated. The detection of the violation by camera, the identification of the vehicle owner from the register, and the issuance of the invitation to pay may all be handled with minimal human involvement. In this sense, the Road Traffic Act enables a form of automation *praeter legem* (outside the framework of the Administrative Procedure Code), because the matter is concluded without the issuance of a formal decision. Hence, traffic enforcement demonstrates another pathway through which automation has

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[10] See e.g. MATRIANO, Maria Teresa, JABRI, Mariya Ahmed Al, JAHWARI, Maha Salim Al and KHAYARI, Samira Aamir Al. Artificial intelligence and impact on customs and taxation. In: HUSSAINEY, Khaled, ALBAIMANI, Nasser Salim and QAMASHOUI, Aziza Abdallah Al. *Digital transformation in customs and taxation: A Catalyst for Economic Resilience*, CRC Press, *2025*, pp. 239–254. See also TSIKALO, Yevhen, ZINEVYCH, Oleksandr, OSIPENKO, Denys, KULYK, Viktoriya, and LAGOVSKA, Olena. Using artificial intelligence to improve tax security and control over tax avoidance schemes. *Journal of Theoretical and Applied Information Technology*, 2024, vol. 102, no. 23, pp. 8530–8542.

[11] Such trend, especially when it comes to revenue administration, seems to be present in all European countries. See OECD. *Governing with Artificial Intelligence: The State of Play and Way Forward in Core Government Functions*. Paris: OECD Publishing, 2025. DOI: 10.1787/795de142-en.

[12] Sec. 125h of Act No. 361/2000 Coll., on Road Traffic and Amendments to Certain Acts (Road Traffic Act).

[13] This issue has been described in detail in SHARP, Vladimír. Smart Administrative Punishment: a Slippery Slope of Automated Decision-Making and its Economic Incentives in Public Law. In: *CERIDAP: Rivista interdisciplinare sul diritto delle amministrazioni pubbliche*, 2025, No. 4, pp. 156-178.

[14] The authors refer to this instrument as quasi-procedural act, since these acts cannot be considered decisions issued within the framework of a standard administrative proceedings, as no such proceedings precede the issuance of the notice under Sec. 125h of the Road Traffic Act. The very nature of these notices dictates that the process of their issuance be informal otherwise they would offer no flexibility as opposed to a standard, rather rigid administrative proceedings.

[15] The number of use cases among different administrative authorities withing the last years has been rising dramatically. Such cases are usually fairly easy to spot, since official documents in the Czech Republic are traditionally structured in a way allowing to detect the concrete official in charge of the agenda. In case of automation, it is often disclosed that it was prepared by a "Robot" bearing a certain identifier.

entered Czech administrative practice. It has not been introduced through the formal recognition of automated decision-making, but rather through legislative shortcuts that allow authorities to process large numbers of cases automatically while formally avoiding the issuance of automated decisions.

3. The ANACONDA project

The ANAKONDA (Application for Data Control) project, developed at the Centre for Regional Development of the Czech Republic, is a unique example of the use of artificial intelligence for the partial automation of public administration activities. It is used to check payment requests in subsidy programs. Its aim is to automate part of the formal and routine tasks involved in checking payment requests within various subsidy programs. In 2023, the Centre for Regional Development developed an internal AI concept that defined the main pillars of the introduction of new technologies: from communication and marketing to employee training and the key area of subsidy checks. ANAKONDA was selected as a pilot application because payment request processes are highly standardized. They contain similar types of attachments (invoices, contracts, account statements, lists of documents) that can be algorithmically classified, analyzed and compared with each other. This approach is in line with recommendations for the implementation of generative AI in public financial management, where the emphasis is on selecting processes with a high degree of routine and clearly structured data.[16]

The application works on the principle of automatic sorting and matching of documents, extraction of key data and cross-verification. Standard inputs (received from grant recipients) are identified, matched and analyzed by the system. ANAKONDA then compares the consistency of data across documents and generates an output checklist for staff, who can quickly determine whether the application meets the required criteria. The result is an automatically completed checklist with highlighting any discrepancies, which is then assessed by a human worker. In practice, this shortens a process that previously required four to eight hours of work to a few minutes. Currently, the system only covers some of the control items. Complete automation of controls is not realistic in the foreseeable future, as many tasks require human judgement, interpretation of purpose and assessment of context. With this approach, ANAKONDA ranks among projects reflecting the trend of so-called augmentative use of AI, where technology takes over routine and formally standardized tasks, while employees can focus on more analytically and value-demanding activities.[17] This is not an example of pure automation, where AI performs the entire task on its own, without human intervention (AI as a tool for complete human replacement), but rather a process of augmentation that is based on supporting and expanding human capabilities. AI does not take over the entire task, but helps humans make decisions or do their work better and faster. The human factor remains

[16] OECD. *Using Artificial Intelligence in Public Financial Management*. Paris: Public Governance Directorate, Committee of Senior Budget Officials, 2024. See also JANSSEN, Marijn; BROUS, Paul; ESTEVEZ, Elsa; BARBOSA, Luciano S.; JANOWSKI, Tomasz. Data governance: Organising data for trustworthy artificial intelligence. *Government Information Quarterly*, 2020, vol. 37, no. 3, article 10149.

[17] BULLOCK, Justin; YOUNG, Mary M.; WANG, Y. F. Artificial intelligence, bureaucratic form, and discretion in public service. *Information Polity*. 2020, vol. 25, no. 4, pp. 491–506. See also MIKALEF, P.; FJORTOFT, S. O.; TORVATN, H. Y. Artificial intelligence in the public sector: A study of challenges and opportunities for Norwegian municipalities. In: PAPPAS, I. O.; MIKALEF, P.; DWIVEDI, Y. K.; JACCHERI, L.; KROGSTIE, J.; MANTYMAKI, M. (eds.). *Digital Transformation for a Sustainable Society in the 21st Century*. Cham: Springer, 2019. (Lecture Notes in Computer Science; vol. 11701). pp. 267–277. Further see BULLOCK, Justin B. Artificial Intelligence, Discretion, and Bureaucracy. *The American Review of Public Administration*. 2019, vol. 49, no. 7, pp. 751–761.

responsible for comprehensive assessment and final decisions.[18] Both the AI Act and the OECD recommendations[19] emphasize that AI systems in the public sector should be deployed with clearly defined human oversight, comprehensible explanations of outputs, and clear assignment of responsibility. In the case of ANAKONDA, this means that the results of the algorithm serve only as a basis and the final decision remains with the employee.

Investments in human capacity development, organizational culture and trust in innovation adoption have also contributed significantly to the successful implementation of the above-mentioned projects. According to available studies, the acceptance of artificial intelligence depends not only on the technological readiness of organizations, but also on the willingness of employees to learn new procedures and adapt to organizational changes.[20] The main barriers to AI adoption in public administration therefore include a lack of trust and fears of potential errors.[21] The Centre for Regional Development responded to these issues by launching an internal AI academy, which uses webinars, tutorials and workshops to increase employees' digital literacy and support them in learning new tools. The academy also explains the possibilities and limitations of individual solutions, and its goal is not only to expand knowledge but also to strengthen employees' confidence in new technologies. Building on these capacity-building efforts, the Centre for Regional Development has also initiated the development of an internal chatbot named DORA, aimed at helping employees navigate internal procedures and administrative guidelines more efficiently. This practice is in line with the European trend: in addition to improving services to citizens, AI is most often used in public administration to strengthen internal management.[22] This approach also reflects the insight that the successful adoption of AI in the public sector depends not only on the availability of technologies but also on the ability of employees to understand these technologies and actively integrate them into their daily practice.[23]

4. The ADAM

The ADAM (Audit Data Management Assistant) application is another example of the gradual introduction of artificial intelligence tools into public administration in the Czech Republic. The project was launched in 2023 by the Audit Authority of the Czech Ministry of Finance as a proof-of-concept solution, reflecting the growing interest of the state administration in the use of tools based on large language models. ADAM was designed as an internal chatbot that provides quick access to the documentation of managing authorities (ministries responsible for the management of operational programs and the allocation of European funds). The purpose of the application is to facilitate the search for information in extensive sets of manuals and methodological guides, which form the basic support for the performance of audit activities. This functionality is of fundamental importance, particularly in the context of so-called operational audits and system audits, which require rapid orientation in

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[18] MADAN, Rohit; ASHOK, Mona. AI adoption and diffusion in public administration: A systematic literature review and future research agenda. *Government Information Quarterly* [online]. 2023, vol. 40, no. 1, article 101774.

[19] OECD. *Governing with Artificial Intelligence: The State of Play and Way Forward in Core Government Functions* [online]. Paris: OECD Publishing, 2025 [cit. 2025-10-12]. DOI: 10.1787/795de142-en.

[20] SCHEDLER, Kuno; GUENDUEZ, Ali A.; FRISCHKNECHT, Reto. How smart can government be? Exploring barriers to the adoption of smart government. *Information Polity*. 2019, vol. 24, no. 1, pp. 3–20.

[21] Ibidem. See also GESK, T. S.; LEYER, M. Artificial intelligence in public services: When and why citizens accept its usage. *Government Information Quarterly*. 2022, article 101704.

[22] VAN NOORDT, Colin; MISURACA, Gianluca. Artificial intelligence for the public sector: results of landscaping the use of AI in government across the European Union. *Government Information Quarterly*. 2022, vol. 39, no. 3, article 101714.

[23] MARAGNO, Giulia; TANGI, Luca; GASTALDI, Luca; BENEDETTI, Michele. Exploring the factors, affordances and constraints outlining the implementation of Artificial Intelligence in public sector organisations. *International Journal of Information Management*. 2023, vol. 73, article 102686.

complex and usually very extensive documentation. Experience to date shows that ADAM can deliver measurable organizational benefits. It reduces the time needed to search for specific information and allows employees to devote themselves to more complex professional tasks, reducing the problem of information fragmentation and complexity of decision-making processes, which are among the known barriers to effective management.[24] An expansion of functionalities towards the automation of selected processes (e.g. filling in checklists) is also being considered, which could further support the rationalization of audit activities. Even in this case, however, it is necessary to keep in mind that the growing use of artificial intelligence in government may bring governance, ethical and institutional challenges that require careful management to avoid unintended consequences.[25]

Several interesting aspects of the ADAM application can be highlighted. The first interesting aspect of the ADAM application is its governance dimension, in the sense of a mechanism for management and cooperation between actors, institutions and their data. On the one hand, the implementation of ADAM was conditional on voluntary inter-ministerial cooperation (supplying the necessary data and information), as the audit body does not have its own extensive documentation base. At the same time, ADAM reflects the principles of inter-institutional coordination and sharing of information and knowledge, which are key to innovation in the public sector.[26] From the outset, the project was intended not as a proprietary tool of a single body, but as a shared service for the entire implementation structure. Access to the application was also provided to the managing authorities themselves, which supports the horizontal transfer of innovation across the state administration. This brings ADAM closer to the need for shared digital tools and data platforms that can be used across institutions.[27] Secondly, due to strict cybersecurity requirements, ADAM was initially limited to working with publicly available data, with the integration of internal data expected in the future. Thirdly, the tool was not perceived as a final product from the outset, but as a feasibility study to test technical possibilities and institutional readiness. A strategy of gradual testing and presentation as a feasibility study was applied, which minimized resistance within organizations, in line with recommendations on innovation management in the public sector, according to which it is necessary to build legitimacy and trust step by step.[28]

5. JENDA

Another example of AI use in Czech public administration is the JENDA application, developed by the Ministry of Labor and Social Affairs of the Czech Republic, which represents an innovative step towards the digitization of public services in the area of social benefits and employment. It is a client zone accessible via a web interface and mobile application that allows citizens to submit selected applications online and track their status in real time. Users can submit online applications for parental allowance, state social assistance benefits, unemployment benefits or registration as job seekers via Jenda, and can also track their status

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[24] MEDAGLIA, R.; GIL-GARCIA, J. R.; PARDO, T. A. Artificial Intelligence in Government: Taking Stock and Moving Forward. *Social Science Computer Review*. 2021, vol. 41, no. 1, pp. 123–140.

[25] VALLE-CRUZ, David; GARCÍA-CONTRERAS, Rubén; GIL-GARCIA, J. Ramon. Exploring the negative impacts of artificial intelligence in government: the dark side of intelligent algorithms and cognitive machines. International Review of Administrative Sciences [online]. 2023, vol. 90, no. 2, pp. 353–368.

[26] KATTEL, Rainer; MAZZUCATO, Mariana. Mission-oriented innovation policy and dynamic capabilities in the public sector. *Industrial and Corporate Change*. 2018, vol. 27, no. 5, pp. 787–801. See also SCHEDLER, Kuno; GUENDUEZ, Ali A.; FRISCHKNECHT, *Op. cit.*, 2019.

[27] See MADAN, Rohit; ASHOK, Mona. *Op, cit.*, 2023.

[28] TANGI, Luca; COMBETTO, Matteo; HUPONT TORRES, Iván; FARRELL, Emily; SCHADE, Sven. *The Potential of Generative AI for the Public Sector: Current Use, Key Questions and Policy Considerations*. Luxembourg: Publications Office of the European Union, 2024. JRC139825.

in real time. In this way, the system eliminates the need for physical visits to the office and enhances the efficiency of public administration. This tool is in line with the European "digital by default" trend, which aims to simplify citizens' interaction with the state, minimize the administrative burden and enhance the user-friendliness of digital services.[29] A key prerequisite for the credibility of the system is the verification of the applicant's identity through Citizen Identity – e.g. bank identity or eGovernment Mobile Key. Jenda simplifies the submission of applications by automatically obtaining certain documents, such as proof of income or energy costs, from other registers. This approach is based on the *once-only* principle, according to which citizens should not be forced to provide the same information repeatedly to different authorities. After the application is submitted, it is processed by the back office, where formal checks and verifications are carried out and, if necessary, the user is asked to supplement the information via the application, thereby strengthening interactivity and two-way communication between the authority and the citizen. Finally, the application is forwarded to the Labor Office branch, where a decision is made on its approval or rejection.[30] The current version of Jenda only allows applications for selected types of benefits and interaction at the individual or household level – it is not intended for legal entities or representation. In the future, the challenge will be to expand functionality, ensure interoperability with other public administration systems, and maintain a balance between security and user-friendliness. The Jenda application thus faces a challenging step, as scaling pilot digital projects and integrating them into complex administrative ecosystems is the most difficult phase of digitalization reforms.[31]

III. THE ADM AMENDMENT AND ITS BACKGROUND

On 1st November 2024, a group of MPs of the Chamber of Deputies of the Parliament of the Czech Republic submitted a draft amendment[32] to the Municipalities Act,[33] which contained a rider amendment to the Administrative Procedure Code introducing a new provision, the main part of which reads as follows:

"***§ 15a Automated conduct of proceedings***

(1) Unless the nature of the matter under consideration, the protection of the rights of the persons concerned, or the protection of the public interest requires that the act in the proceedings be performed by an official, the act may be performed automatically without the participation of an official. In particular, the act cannot be performed in this manner if it requires the use of administrative discretion or if it concerns a decision on an appeal."[34]

According to the explanatory memorandum, the draft amendment seeks to explicitly regulate the use of automated processes in administrative proceedings, with this step reflecting the broader trend of digitalization in public administration and is intended to allow automation where appropriate, with the expected benefits of faster, simpler, cheaper, and more efficient

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29 EUROPEAN PARLIAMENT. Resolution (C/2023/444) of 18 April 2023 on eGovernment accelerating digital public services that support the functioning of the single market (2022/2036(INI)).

30 Available at: https://www.mpsv.cz/klientska-zona-jenda [cit. 2025-10-12].

31 OECD. *Governing with Artificial Intelligence: The State of Play and Way Forward in Core Government Functions* [online]. Paris: OECD Publishing, 2025 [cit. 2025-10-12]. DOI: 10.1787/795de142-en.

32 Parliamentary Print No. 845/0: Proposal by Members of Parliament Tomáš Dubský, Milada Voborská, Martina Ochodnická, Jiří Havránek, and Jiří Carbol for the enactment of a law amending Act No. 128/2000 Coll., on Municipalities (Municipal Establishment), as amended, and other laws in connection with supporting cooperation among municipalities.

33 Act No. 128/2000 Coll., on Municipalities.

34 Translated by the author. In the current situation, the amendment ended in the so-called third reading, i.e., discussion before the final vote on whether the Chamber of Deputies will adopt the bill or not. Given that new elections to the Chamber of Deputies took place on 3rd and 4th October 2025, the bill was not discussed during this election period. The fate of this amendment is uncertain at this time.

decision-making, as well as greater consistency and transparency. The memorandum stresses that the amendment does not prescribe which procedures must be automated. Instead, it creates a general procedural framework that enables automation where suitable. It further clarifies that the new provision will also apply by analogy to less formal administrative acts under Chapter IV. of the Administrative Procedure Code. Automation is expected to be applied primarily in simple and standardized first-instance cases, such as issuing extracts, certificates, or routine benefit decisions that can be verified against existing data.[35]

The draft expressly prohibits the range of cases in which administrative automated decision-making (AADM) cannot be used. This includes its usage in appeal proceedings and in cases where administrative authorities may exercise discretion. At the same time, the AADM law more or less specifically enshrines safeguards aimed at ensuring legality and protecting important interests while issuing decision via AADM. As the proposal specifically addresses only acts in administrative proceedings, according to Section 154 of the Administrative Procedure Act, such regulation would also apply to other, less formal (or more precisely less proceduralized) activities of public administration outside the scope of administrative proceedings.

At first glance, the prohibition of AADM usage in discretion cases is a clear inspiration by the German legislation, which is discussed in more detail below, as the authors themselves state in the explanatory memorandum.[36] The term "discretion" is not defined by law, although Czech legislation takes it into account, particularly with regard to the possible correctness or incorrectness of an issued act.[37] The definition of the term itself is then left to intensive case law dealing with the term. Whether the law provides the administrative authority with a certain degree of authority to choose one of several solutions provided by the legal norm, as the existence of a certain factual situation is not clear linked to a single legal consequence.[38] The authority to exercise discretion must fulfil the following characteristics: (i) a legal norm allowing for the application of discretion,[39] (ii) isolated cases of relative freedom in decision-making and the possibility to choose an appropriate solution within certain limits,[40] and (iii) the obligation to apply discretion and, above all, to justify it.[41]

The authors of the bill do not provide any arguments for prohibiting AADM in cases of administrative discretion, merely referring to foreign regulations in Germany and Norway.[42] One can only assume that the authors hope this restriction will ensure decision-making based on clear criteria and sufficient justification when exercising discretion. However, the question arises as to whether discretion is really the main corrective measure for the authorization or prohibition of AADM, as it is possible to imagine decisions without the possibility of using discretion that have more severe consequences than, for example, determining the amount of a fine.[43] These issues will be addressed in more detail later in this article.

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35 Explanatory memorandum to the Parliamentary Print No. 845, document No. 845/0.

36 Ibidem.

37 For example, Section 82 (2) of the Administrative Procedure Code.

38 Resolution of the Extended Chamber of the Supreme Administrative Court, Ref. No. 8 As 37/2011-154, dated April 22, 2014.

39 Judgment of the Supreme Administrative Court, ref. no. 7 As 21/2008-101, dated December 18, 2008.

40 Ruling of the Constitutional Court, ref. no. III. ÚS 2556/07, dated July 22, 2009, SKULOVÁ, Soňa. *Administrative discretion: basic characteristics and context of the term*. 1st ed. Brno: Masaryk University, 2003. Acta Universitatis Brunensis. ISBN 80-210-3237-5 40 p. and PETRMICH, Václav. *Administrative discretion and vague legal concepts*, Charles University, 2016. Judgment of the Supreme Administrative Court, ref. no. 4 As 75/2006-52, dated February 28, 2007, or judgment of the Supreme Administrative Court, ref. no. 2 Afs 207/2005-55, dated July 27, 2006.

41 Judgment of the High Court in Prague, Ref. No. 6A 99/92-50, dated 5 November 1993 or Judgment of the Supreme Administrative Court, Ref. No. 3 As 24/2004-79, dated 30 November 2004.

42 Explanatory memorandum to the Parliamentary Print No. 845, document No. 845/0, p. 38.

43 For example, decisions on building permits or decisions on granting citizenship.

IV. CRITICAL ASSESSMENT OF THE PROPOSED SOLUTION

While the parliamentary initiative to introduce automation into administrative procedure may at first appear commendable, the manner in which it was carried out is far from ideal. Rather than providing a carefully designed and robust legal framework, the proposed amendment suffers from serious procedural, substantive, and drafting deficiencies. The proposed amendment is not sufficiently thought through, and several critical problems can be identified.

1. Shortcomings of the legislative process

First of all, it is highly unusual, and from a rule-of-law perspective undesirable, that a reform of such significance should be introduced as a parliamentary bill rather than as a government bill. The distinction is not merely formal. A proposal of new act issued by MPs rather than by the government means, that such proposal is only subject to opinion of a government, however is not subject to cross-ministerial and external commentary proceedings, within which a number of professional institutions, courts, lawyers, and other public administration bodies could provide their expert opinions on this amendment.[44] Government bills, on the other hand, are subject to an extensive and structured preparatory process. They undergo inter-ministerial consultation, which serves as an essential quality-control mechanism by ensuring that the perspectives of all relevant ministries, agencies, and stakeholders are taken into account. This process is designed to highlight inconsistencies, uncover potential unintended consequences, and secure a more comprehensive evaluation of the legislative proposal. Government bills must also comply with the Government's Legislative Rules,[45] which lay down standards for the clarity, precision, and systematic consistency of legislative drafting. Moreover, they are reviewed by the Government Legislative Council, an expert advisory body tasked with ensuring that new legislative initiatives are coherent, legally sound, and compatible with the constitutional framework. Parliamentary bills, by contrast, bypass all of these stages. They are drafted without the benefit of a systematic interdepartmental review, without the discipline imposed by the Legislative Rules, and without expert oversight from the Legislative Council.

As a result, parliamentary bills tend to be less thoroughly researched and more vulnerable to errors and inconsistencies. Members of Parliament, unlike the executive, generally lack professional legislative staff and the institutional capacity required to prepare complex procedural legislation. In this instance, the weakness of the process is compounded by the fact that the amendment was not submitted as a stand-alone proposal but as a so-called "rider" attached to an unrelated bill. The use of legislative riders is widely criticized in comparative public law because it undermines transparency, excludes proper debate on the merits of the specific measure, and allows major reforms to pass without adequate scrutiny. This mode of introduction in itself suggests that the drafters underestimated both the systemic implications and the sensitivity of introducing automation into administrative proceedings.

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[44] ZBÍRAL, Robert. Bills in inter-ministerial consultation procedure: key phase of the legislative process, or moment for opportunity for trivial comments? [Návrhy zákonů v meziresortním připomínkovém řízení: zásadní fáze legislativního procesu, nebo přehlídka malicherných podnětů?] *Journal of Law and Jurisprudence [Časopis pro právní vědu a praxi]*, 2021, vol. 29, no. 2, pp. 261–289.

[45] Government of the Czech Republic. *Legislative Rules of the Government*, approved by Government Resolution of 19 March 1998, No. 188, and subsequently amended by Government Resolutions of 21 August 1998, No. 534; 28 June 1999, No. 660; 14 June 2000, No. 596; 18 December 2000, No. 1298; 19 June 2002, No. 640; 26 May 2004, No. 506; 3 November 2004, No. 1072; 12 October 2005, No. 1304; 18 July 2007, No. 816; 11 January 2010, No. 36; 14 December 2011, No. 922; 14 November 2012, No. 820; 15 December 2014, No. 1050; 3 February 2016, No. 75; 17 January 2018, No. 47; 11 January 2023, No. 22; 28 June 2023, No. 481; and 15 January 2025, No. 34.

2. Questionable compliance with EU law

A second fundamental problem concerns the compatibility of the proposed provision with European data protection law, in particular Article 22 of the General Data Protection Regulation (GDPR).[46] Article 22 (1) of GDPR lays down a clear principle: individuals have the right not to be subject to a decision based solely on automated processing, including profiling, if that decision produces legal effects concerning them or otherwise significantly affects them. In other words, fully automated decision-making that impacts individuals' rights or obligations is, as a rule, prohibited within the European Union.

The Regulation does, however, permit certain exceptions. Article 22 (2) allows Member States to authorize automated decision-making in their national law, but only under strict conditions. Most importantly, any such authorization must be accompanied by "suitable measures to safeguard the data subject's rights, freedoms, and legitimate interests." This typically entails clear technical and organizational safeguards, such as mechanisms for human oversight, the right to obtain human intervention, the possibility to express one's point of view, and the right to contest the automated decision. The aim is to prevent individuals from being subjected to opaque algorithmic outcomes that they cannot meaningfully challenge.

The draft amendment to the Administrative Procedure Code does not meet these requirements. First, the proposal was introduced as a parliamentary bill, and as such no Data Protection Impact Assessment (DPIA) was carried out.[47] The DPIA is not a mere bureaucratic formality, but a key tool required by the GDPR for assessing high-risk processing activities. Its purpose is to anticipate the risks of automation, identify vulnerabilities in data protection and procedural fairness, and propose mitigating measures before the law is adopted. The absence of a DPIA means that neither lawmakers nor the public have had the opportunity to evaluate the risks associated with algorithmic decision-making in the administrative sphere.

Second, the text of the amendment itself contains no safeguards whatsoever. There is no reference to technical standards ensuring data security, no requirement for auditability of the algorithms used, and no guarantee of protection against manipulation or error. Perhaps most strikingly, there is no provision for a "human in the loop." Contemporary data protection doctrine and practice regard some form of human oversight as indispensable whenever automated systems are applied to decisions with legal effects. Without such oversight, individuals may be deprived of the right to a fair hearing and effective remedy, both of which are guaranteed by the Charter of Fundamental Rights of the European Union and the Czech Constitution.

Third, the absence of safeguards creates a direct risk of infringement proceedings by the European Commission. The European Data Protection Board has consistently taken the position that Member States cannot simply authorize automated decision-making without specifying the accompanying protective measures. The authors believe that a provision as general and indeterminate as the proposed Section 15a would be considered insufficient under EU law. The Czech Republic could therefore find itself exposed not only to legal uncertainty domestically but also to the risk of EU-level litigation.

Finally, beyond the strictly legal incompatibility, the omission of safeguards undermines public trust. Citizens are unlikely to accept the legitimacy of automated acts if they are not

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[46] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

[47] See e.g. BIEKER, Felix; FRIEDEWALD, Michael; HANSEN, Marit; OBERSTELLER, Hannah; ROST, Martin. A Process for Data Protection Impact Assessment Under the European General Data Protection Regulation. In: SCHIFFNER, Stefan; SERNA, Jetzabel; IKONOMOU, Demosthenes; RANNENBERG, Kai (eds). *Privacy Technologies and Policy*. APF 2016. Lecture Notes in Computer Science, vol. 9857, Cham: Springer, 2016, pp. 21–37.

reassured that their rights will be adequately protected. Automation in administrative law inevitably raises concerns about transparency, accountability, and the possibility of error. By failing to address these concerns, the draft amendment risks fostering suspicion and resistance rather than confidence in digital governance.

The proposal therefore risks being incompatible with EU law, exposing the Czech Republic to potential infringement proceedings and undermining trust in the fairness of automated administrative procedures.

3. Deficiencies in legislative drafting

Perhaps the most striking weakness of the proposal lies in its drafting technique. Instead of laying down a clear and operational rule, the provision is constructed around a chain of conditionals and exceptions that obscure its meaning and invite inconsistent interpretation. The opening sentence provides that automation is permissible unless the nature of the matter, the protection of the rights of the parties, or the protection of the public interest requires that the act be performed by an official. This already sets a highly indeterminate standard. What kinds of matters are excluded by "the nature of the case"? How should authorities evaluate when the "public interest" demands human involvement? These open-textured formulations leave excessive discretion in the hands of the very authorities whose conduct the law is supposed to regulate.

The provision then adds a second layer of limitation, stating that automation may not be used "in particular" when administrative discretion is required or when a decision concerns an appeal. This drafting is problematic in several respects. First, the phrase "in particular" is unsuited to the task of defining exceptions to a rule. It implies that the list of exceptions is merely illustrative rather than exhaustive, leaving open the possibility that further, unspecified categories might also be excluded. The result is uncertainty as to the actual scope of application. Second, the relationship between the general exclusions in the first part of the provision and the "particular" exclusions in the second part is unclear. Are the latter to be regarded as illustrations of the former, or do they operate as separate and independent restrictions? The reader is left without guidance as to how these layers interact.

The drafting is also unsatisfactory from the perspective of legislative technique. Modern legislative standards, including the Czech Government's own Legislative Rules, emphasize clarity, precision, and the avoidance of indeterminate formulations. Provisions that impose obligations or create entitlements must be framed in such a way that both authorities and affected individuals can reasonably foresee the scope of their application. The proposed wording fails to meet this basic standard. Instead of clearly delineating when automation is permissible and when it is excluded, the provision creates a cloud of overlapping conditions whose interpretation would inevitably vary from one authority to another. This lack of clarity has practical consequences. For example, the reference to "administrative discretion" is not explained and can be considered rather restricting. In Czech administrative law, discretion can take many forms, ranging from the determination of sanctions to the balancing of competing interests. By design, each sanctioning constitutes the exercise of discretion, since the range of a certain administrative fine from 0 to 10 000 CZK technically gives the administrative authority a discretion to decide in 10 000 different ways, which would basically make the regulation obsolete. Does the prohibition apply only where broad evaluative judgment is required, or does it also cover cases involving minor elements of discretion such as setting procedural time limits? Similarly, the exclusion of appeals is self-evident, but the drafting leaves open whether preliminary acts within appeal proceedings may still be automated.

The cumulative effect is a provision that is more ambiguous than instructive. Instead of creating a framework for responsible use of automation, it invites divergent practices and legal disputes. Individuals affected by automated acts would struggle to predict whether the

procedure applied to them falls within the scope of the law, undermining the principle of legal certainty. From a constitutional perspective, such vagueness may also conflict with the requirement of legality in public administration, which demands that the exercise of public authority be based on clear and predictable rules.

V. TOWARDS BETTER SOLUTIONS

The debate about automation in administrative proceedings cannot remain confined to the Czech Republic alone. Since a number of European jurisdictions already regulate automated decision-making in public administration, it is worthwhile to look beyond national borders and take note of how other legal systems have addressed this issue. In particular, Sweden, Germany and France have developed distinct approaches to the problem, offering different criteria and safeguards that govern when and how automation may be used.

For this reason, the following chapter proceeds in two steps. First, it introduces selected foreign approaches in order to outline the spectrum of solutions that have already been adopted in Europe. Second, it turns back to the Czech Republic and considers how a sound and workable framework for automation might be constructed domestically.

1. Comparative insights

A. Sweden

Swedish legislation relating to AADM is the most stringent of those examined. Unlike other countries, it does not regulate any corrective measures in cases where AADM may or may not be used. It merely stipulates that an administrative decision may be issued automatically without further ado.[48]

At first glance, Swedish law appears to be progressive, but Swedish legal scholar J. Reichel further argues, that the "*Swedish law lacks any clear demarcation of when automated decision-making is to be allowed*".[49] However, this does not affect any prohibition of AADM under special legislation.For example, Swedish law stipulates that in certain cases, decisions may only be issued by specific individuals with special expertise, such as psychiatrists in cases involving involuntary care or in cases involving special requirements for proceedings within the framework of social services.[50] Such cases naturally prohibit the use of AADM in Sweden.

B. Germany

The Section 35a of Administrative Procedure Act of Germany (*Verwaltungsverfahrensgesetz)* allows an issuance of administrative decision entirely by administrative means, however only in cases where such is permitted by the special legislation and there is no room for the use of discretion.

The link between Czech and German legislation is clear. Unlike the Czech legislation, which provides specific safeguards, German legislator only relies upon the specific legislation to

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[48] Section 28 of the Swedish Administrative Procedural Act "*A decision can be made by an officer on their own or by several jointly or be made automatically. In the final processing of a matter, the reporting clerk and other officers can participate without taking part in the determination (…)"*.

[49] REICHEL, Jane. Regulating Automation of Swedish Public Administration. *CERIDAP: Rivista interdisciplinare sul diritto delle amministrazioni pubbliche*. 2023, vol. 1, no. 1, pp. 75–91.

[50] Sweden. *Government Bill 2021/22:125 – Elections and Decision-Making in Municipalities and Regions [Val och beslut i kommuner och regioner],* 24 February 2022. Available at: https://www.riksdagen.se/sv/dokument-lagar/dokument/proposition/val-och-beslut-i-kommuner-och-regioner_H903125.

provide with an authorization to issue acts automatically in specific procedures (such as Social Welfare proceedings[51] or Tax Assesment[52]). [53]

Czech legislation similarly allows the use of AADM according to general rules and attempts to cover all conceivable use cases in the definition of partial safeguards, unlike Germany, which does not rely on special provisions in specific proceedings. However, this does not affect the Czech legislature's authority to expressly prohibit AADM.

C. France

Last but not least, The French legislator did not take the path of negatively defining cases where AADM cannot be used but decided to address the specific details of decisions issued under AADM.

These specifics include the obligation to inform the data subject about the method and form of individual decision-making issued on the basis of AADM. The information must include (i) the extent and manner of the contribution of algorithmic processing to the decision-making; (ii) the data processed and their sources; (iii) the processing parameters and, where applicable, their weighting in relation to the situation of the person concerned; and (iv) the operations carried out in the course of the processing.[54]

Instead of restricting the use of AADM, French legislation focuses on ensuring the main elements of a lawful administrative decision, namely its justification and the provision of sufficient information for the purposes of challenging and/or remedying any defects in the said decision.

2. Architecture of a sound legal framework in the Czech context

Foreign experience demonstrates that the regulation of automated decision-making cannot be reduced to a single statutory formula. What proves functional in one jurisdiction may be unworkable in another, since legal systems differ in their reliance on discretion, in their distribution of procedural burdens, and in the very architecture of administrative proceedings. The Czech Republic is no exception. While comparative examples are useful as inspiration, the construction of a viable domestic framework requires close attention to the particularities of Czech administrative law.

One crucial point is the pervasive role of discretion. In some European systems, legislation largely limits itself to fixed standards, with relatively little space for administrative judgment. In such settings, a simple exclusion of all cases involving discretion can effectively delineate the permissible scope of automation. The Czech system, however, is built differently. Discretionary evaluation is present in a majority of administrative decisions, whether in the assessment of facts, the calibration of sanctions, or the balancing of competing interests. A blanket exclusion of discretionary decisions would therefore strip automation of most of its potential use.[55] If automation is to be integrated meaningfully, either the underlying system would have to be redesigned, for example by introducing fixed sanctions or indexes such as fines linked to average wages, or a more nuanced framework would need to be created that permits the use of automated tools even in proceedings involving elements of discretion.

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[51] Section 31a SGB X of Germany.

[52] Section 155 para. 4 AO of Germany.

[53] MARTINI, Mario; NINK, David. Subsumtionsautomaten ante portas? – Zu den Grenzen der Automatisierung in verwaltungsrechtlichen (Rechtsbehelfs-) Verfahren. *Deutsches Verwaltungsblatt*. 2018, vol. 133, no. 17, pp. 1128–1137.

[54] Sections L311-3-1 and R311-1-3-1-2 of the *Code des relations entre le public et l'administration*.

[55] Following the aforementioned example of a fine, the *en bloc* exclusion of all automation in cases concerning discretion would mean that no administrative punishment can be automated, since the imposition of every fine requires some degree of discretion in order to determine the fine *per se*.

A second issue is the allocation of procedural initiative. In the Czech Republic, it is the administrative authority that primarily carries the burden of being proactive, while the party to the proceedings plays a comparatively passive role (which is naturally not the case with the proceedings initiated by such party, where due activity and cooperation is expected).[56] Automation, however, typically assumes at least some degree of active participation by the individual, whether by reacting to a pre-formulated administrative order or by lodging objections against an automatically generated act. This suggests that a shift in procedural design may be necessary, at least towards wider use of simplified procedures such as order proceedings (*příkazní řízení*), in which the individual is required to file an objection to trigger a full review. Such a model would better align with the logic of automation while still preserving safeguards for individual rights.

Beyond these structural considerations, the introduction of automation requires a methodical and deliberate reform strategy. A reform of this magnitude should not be undertaken through a short parliamentary amendment but through a comprehensive government initiative. This would ensure that a Regulatory Impact Assessment and a Data Protection Impact Assessment are carried out, mapping both the expected benefits and the risks. Legislators should conduct a systematic survey of existing administrative proceedings to identify which types are suitable for automation and which are not. These proceedings should be listed explicitly and exhaustively in the law, or at the very least criteria must be established that allow authorities and citizens to know with certainty when automation is permitted. Such a framework must also be accompanied by clear safeguards. Technical and organisational measures need to be specified to guarantee data security, integrity, and auditability of automated processes. Human oversight should be integrated into the system, at least as an option for parties affected by automated acts. Given the technical complexity of automation, it is likely that a secondary regulation will also be necessary to detail the technical requirements and procedural guarantees.

Finally, an economic perspective should not be neglected. Automation should be targeted where it promises the greatest benefit for the efficiency of public administration and the saving of taxpayer resources. A serious economic assessment should therefore accompany the legal reform, identifying which areas of administrative practice will yield the greatest returns if automated.

All these considerations point to a broader conclusion: it is rather naïve to believe that good automation can be introduced by inserting a single provision into the Administrative Procedure Code. Properly embedding automation into Czech administrative law will require changes across a wide range of legal acts, adjustments in administrative practice, and new forms of oversight. In short, the reform must be systemic. Anything less risks producing the very opposite of what automation promises: not clarity and efficiency, but confusion, inconsistency, and erosion of trust in public administration.

VI. CONCLUSIONS

The debate over automation in public administration is no longer a matter of distant speculation. Across Europe, and increasingly also in the Czech Republic, automated tools are becoming a tangible part of administrative practice. What once seemed like a technical experiment is gradually turning into a structural question of how the state exercises authority and how citizens experience public power. This transformation carries with it undeniable

[56] Following the logic of associating the general aptitude for automation with the level of activity of the participant to the proceedings, it would appear beneficial to automate at least some steps in the participant-initiated proceedings. For instance, simple cases such as requests to supplement the application with the necessary attachments or termination of proceedings due to lack of procedural activity could be automated.

opportunities, but also risks that must not be overlooked. The debate around the insertion of Section 15a into the Czech Administrative Procedure Code exemplifies this duality: it signals a recognition that automation cannot be ignored, yet it also reveals how fragile and problematic the first steps can be if they are not accompanied by careful design and robust safeguards.
The analysis has shown that the Czech Republic already makes use of automation, though primarily outside the domain of binding administrative decision-making. The Tax Code expressly authorizes automated processing for supportive and preparatory tasks, while traffic enforcement relies on simplified mechanisms that dispose of cases without formal proceedings. These examples highlight that automation can be useful for efficiency and consistency, but they also show that the law has so far steered clear of permitting machines to issue decisions with direct legal effects.

Against this backdrop, the authors conclude that the proposed Section 15a, at least in its current wording, does not provide an adequate framework for moving towards automated administrative decision-making. Its drafting is vague and indeterminate, relying on conditionals and illustrative exclusions that obscure rather than clarify its scope. The nature of a parliamentary initiative meant that no proper preparatory process, no regulatory impact assessment, and no data protection impact assessment were undertaken. As a result, the authors find that the provision omits the safeguards required by EU law, particularly those derived from Article 22 of the GDPR. There is also no reference to auditability, security, human oversight, or the possibility for individuals to contest automated acts. Far from creating clarity, the draft risks introducing uncertainty and inconsistency into administrative practice while at the same time exposing the Czech Republic to possible conflict with European law.

The Czech debate can nonetheless draw valuable inspiration from comparative experience. Sweden, Germany, and France illustrate different models of how automation may be channeled through permissive simplicity, through restrictive authorizations, or through a focus on transparency and justification. Yet these examples also underscore that no single model can be transplanted wholesale. In the Czech context, an effective framework will require adjustments both to legal design and to procedural practice.

For these reasons, any future reform should be conceived as a systemic initiative led by the government, accompanied by comprehensive impact assessments, explicit criteria or enumerations of automatable proceedings, and enforceable safeguards for transparency, accountability, and oversight. Automation should be introduced first where it promises the most substantial benefits, both economically and administratively, while preserving citizens' rights and trust. It will not be enough to add a single provision to the Administrative Procedure Code: embedding automation into Czech administrative law will require a coordinated effort across multiple statutes and administrative practices. Ultimately, the Czech case is a reminder that automation in administrative law is not simply a matter of technology, but of legality and legitimacy. If implemented with care, it may indeed enhance efficiency, consistency and accessibility. If rushed through in a piecemeal manner, it risks undermining the very principles it is supposed to serve. The challenge for administrative law is therefore not whether to automate, but how to do so in a way that strengthens, rather than weakens, the rule of law in public administration.

KEY WORDS
artificial intelligence, automated decision-making, public administration, eGovernment, digitalization, digital state, section 15a, administrative procedure code

KLÍČOVÁ SLOVA
umělá inteligence, automatizované rozhodování, veřejná správa, eGovernment, digitalizace, digitální stát, § 15a, správní řád

BIBLIOGRAPHY

1. BIEKER, Felix; FRIEDEWALD, Michael; HANSEN, Marit; OBERSTELLER, Hannah; ROST, Martin. A Process for Data Protection Impact Assessment Under the European General Data Protection Regulation. In: SCHIFFNER, Stefan; SERNA, Jetzabel; IKONOMOU, Demosthenes; RANNENBERG, Kai (eds). *Privacy Technologies and Policy*. APF 2016. Lecture Notes in Computer Science, vol. 9857, Cham: Springer, 2016, pp. 21–37.
2. BULLOCK, Justin B. Artificial Intelligence, Discretion, and Bureaucracy. *The American Review of Public Administration*. 2019, vol. 49, no. 7, pp. 751–761.
3. BULLOCK, Justin; YOUNG, Mary M.; WANG, Y. F. Artificial intelligence, bureaucratic form, and discretion in public service. *Information Polity*. 2020, vol. 25, no. 4, pp. 491–506.
4. EUROPEAN PARLIAMENT. Resolution (C/2023/444) of 18 April 2023 on eGovernment accelerating digital public services that support the functioning of the single market (2022/2036(INI)).
5. GESK, T. S.; LEYER, M. Artificial intelligence in public services: When and why citizens accept its usage. *Government Information Quarterly*. 2022, article 101704.
6. JANSSEN, Marijn; BROUS, Paul; ESTEVEZ, Elsa; BARBOSA, Luciano S.; JANOWSKI, Tomasz. Data governance: Organising data for trustworthy artificial intelligence. *Government Information Quarterly*, 2020, vol. 37, no. 3, article 10149.
7. Judgment of the High Court in Prague, Ref. No. 6A 99/92-50, dated 5 November 1993
8. Judgment of the Supreme Administrative Court, ref. no. 2 Afs 207/2005-55, dated 27 July 2006.
9. Judgment of the Supreme Administrative Court, Ref. No. 3 As 24/2004-79, dated 30 November 2004.
10. Judgment of the Supreme Administrative Court, ref. no. 4 As 75/2006-52, dated 28 February 2007.
11. Judgment of the Supreme Administrative Court, ref. no. 7 As 21/2008-101, dated 18 December 2008.
12. KATTEL, Rainer; MAZZUCATO, Mariana. Mission-oriented innovation policy and dynamic capabilities in the public sector. *Industrial and Corporate Change*. 2018, vol. 27, no. 5, pp. 787–801.
13. MADAN, Rohit; ASHOK, Mona. AI adoption and diffusion in public administration: A systematic literature review and future research agenda. *Government Information Quarterly* [online]. 2023, vol. 40, no. 1, article 101774
14. MARAGNO, Giulia; TANGI, Luca; GASTALDI, Luca; BENEDETTI, Michele. Exploring the factors, affordances and constraints outlining the implementation of Artificial Intelligence in public sector organisations. *International Journal of Information Management*. 2023, vol. 73, article 102686.
15. MARTINI, Mario; NINK, David. Subsumtionsautomaten ante portas? – Zu den Grenzen der Automatisierung in verwaltungsrechtlichen (Rechtsbehelfs-) Verfahren. *Deutsches Verwaltungsblatt*. 2018, vol. 133, no. 17, pp. 1128–1137.
16. MATRIANO, Maria Teresa, JABRI, Mariya Ahmed Al, JAHWARI, Maha Salim Al and KHAYARI, Samira Aamir Al. Artificial intelligence and impact on customs and taxation. In: HUSSAINEY, Khaled, ALBAIMANI, Nasser Salim and QAMASHOUI, Aziza Abdallah Al. *Digital transformation in customs and taxation: A Catalyst for Economic Resilience*, CRC Press, *2025,* pp. 239–254.

17. MEDAGLIA, R.; GIL-GARCIA, J. R.; PARDO, T. A. Artificial Intelligence in Government: Taking Stock and Moving Forward. *Social Science Computer Review*. 2021, vol. 41, no. 1, pp. 123–140.
18. MIKALEF, P.; FJORTOFT, S. O.; TORVATN, H. Y. Artificial intelligence in the public sector: A study of challenges and opportunities for Norwegian municipalities. In: PAPPAS, I. O.; MIKALEF, P.; DWIVEDI, Y. K.; JACCHERI, L.; KROGSTIE, J.; MANTYMAKI, M. (eds.). *Digital Transformation for a Sustainable Society in the 21st Century*. Cham: Springer, 2019. (Lecture Notes in Computer Science; vol. 11701). pp. 267–277.
19. OECD. *Governing with Artificial Intelligence: The State of Play and Way Forward in Core Government Functions*. Paris: OECD Publishing, 2025. DOI: 10.1787/795de142-en.
20. OECD. *Governing with Artificial Intelligence: The State of Play and Way Forward in Core Government Functions* [online]. Paris: OECD Publishing, 2025 [cit. 2025-10-12]. DOI: 10.1787/795de142-en.
21. OECD. *Governing with Artificial Intelligence: The State of Play and Way Forward in Core Government Functions*. Paris: OECD Publishing, 2025. DOI: 10.1787/795de142-en.
22. OECD. *Using Artificial Intelligence in Public Financial Management*. Paris: Public Governance Directorate, Committee of Senior Budget Officials, 2024.
23. Parliamentary Print No. 845/0: Proposal by Members of Parliament Tomáš Dubský, Milada Voborská, Martina Ochodnická, Jiří Havránek, and Jiří Carbol for the enactment of a law amending Act No. 128/2000 Coll., on Municipalities (Municipal Establishment), as amended, and other laws in connection with supporting cooperation among municipalities.
24. PETRMICH, Václav. *Administrative discretion and vague legal concepts*, Charles University, 2016.
25. REICHEL, Jane. Regulating Automation of Swedish Public Administration. *CERIDAP: Rivista interdisciplinare sul diritto delle amministrazioni pubbliche*. 2023, vol. 1, no. 1, pp. 75–91.
26. Resolution of the Extended Chamber of the Supreme Administrative Court, Ref. No. 8 As 37/2011-154, dated April 22, 2014
27. Ruling of the Constitutional Court, ref. no. III. ÚS 2556/07, dated 22 July 2009
28. SCHEDLER, Kuno; GUENDUEZ, Ali A.; FRISCHKNECHT, Reto. How smart can government be? Exploring barriers to the adoption of smart government. *Information Polity*. 2019, vol. 24, no. 1, pp. 3–20.
29. SHARP, Vladimír. Smart Administrative Punishment: a Slippery Slope of Automated Decision-Making and its Economic Incentives in Public Law. In: *CERIDAP: Rivista interdisciplinare sul diritto delle amministrazioni pubbliche*, 2025, No. 4, pp. 156-178.
30. SKULOVÁ, Soňa. *Administrative discretion: basic characteristics and context of the term*. 1st ed. Brno: Masaryk University, Acta Universitatis Brunensis, 2003, ISBN 80-210-3237-5.
31. TANGI, Luca; COMBETTO, Matteo; HUPONT TORRES, Iván; FARRELL, Emily; SCHADE, Sven. *The Potential of Generative AI for the Public Sector: Current Use, Key Questions and Policy Considerations*. Luxembourg: Publications Office of the European Union, 2024. JRC139825.
32. TSIKALO, Yevhen, ZINEVYCH, Oleksandr, OSIPENKO, Denys, KULYK, Viktoriya, and LAGOVSKA, Olena. Using artificial intelligence to improve tax security and control

over tax avoidance schemes. *Journal of Theoretical and Applied Information Technology*, 2024, vol. 102, no. 23, pp. 8530–8542.
33. VALLE-CRUZ, David; GARCÍA-CONTRERAS, Rubén; GIL-GARCIA, J. Ramon. Exploring the negative impacts of artificial intelligence in government: the dark side of intelligent algorithms and cognitive machines. *International Review of Administrative Sciences* [online]. 2023, vol. 90, no. 2, pp. 353–368.
34. VAN NOORDT, Colin; MISURACA, Gianluca. Artificial intelligence for the public sector: results of landscaping the use of AI in government across the European Union. *Government Information Quarterly*. 2022, vol. 39, no. 3, article 101714.
35. ZBÍRAL, Robert. Bills in inter-ministerial consultation procedure: key phase of the legislative process, or moment for opportunity for trivial comments? [Návrhy zákonů v meziresortním připomínkovém řízení: zásadní fáze legislativního procesu, nebo přehlídka malicherných podnětů?] *Journal of Law and Jurisprudence [Časopis pro právní vědu a praxi]*, 2021, vol. 29, no. 2, pp. 261–289.

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DIGITALIZATION OF THE LABOUR MARKET: EUROPEAN UNION MEASURES TO ENSURE LEGAL PROTECTION FOR EMPLOYEES

DIGITALIZÁCIA TRHU PRÁCE: OPATRENIA EURÓPSKEJ ÚNIE ZABEZPEČUJÚCE PRÁVNU OCHRANU ZAMESTNANCOV[1]

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https://doi.org/10.33542/SIC2025-S-12

ABSTRACT

Digitalization as a global phenomenon is fundamentally changing society in various areas, including the labour market. Digital technologies and the associated modernization are influencing the way work is organized and performed, posing a challenge for the European Union as an actor providing labour law protection to workers across member states. In this article, the authors address the issue of the legislative response of European Union bodies to current challenges in the transformation of labour relations in the digital age, while also paying attention to the necessary processes of transforming the legislative framework in the Slovak Republic. The issue has a significant ontological and philosophical dimension, as it touches on the very essence of human beings as subjects performing dependent work in the digital age. It is an open scientific problem that is not archival in nature but is developing dynamically alongside technological and social progress.

ABSTRAKT

Digitalizácia ako globálny fenomén zásadne mení podobu spoločnosti v rôznych oblastiach, trh práce nevynímajúc. Digitálne technológie a s tým súvisiaca modernizácia vplývajú na spôsob organizácie práce a jej výkon a predstavujú výzvu pre Európsku úniu ako aktéra poskytujúceho pracovnoprávnu ochranu pracovníkom naprieč členskými štátmi. Autorky sa v príspevku zaoberajú problematikou legislatívnej reakcie orgánov Európskej únie na aktuálne výzvy v oblasti transformácie pracovnoprávnych vzťahov v digitálnej ére, pričom pozornosť tiež venujú aj nevyhnutným procesom transformácie legislatívneho rámca v Slovenskej republike. Problematika má výraznú ontologicko-filozofickú dimenziu, keďže zasahuje do samotnej podstaty človeka ako subjektu, ktorý vykonáva závislú prácu v digitálnej ére. Ide o otvorený vedecký problém, ktorý nemá archívnu povahu, ale dynamicky sa vyvíja spolu s technologickým a spoločenským pokrokom.

[1] This article was written as part of the VVGS grant project No. 2025-3632 "Implementation of activation activities in the form of minor municipal services" and VEGA No. 1/0505/23 "Possibilities of using alternative dispute resolution (ADR) in public administration."

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I. INTRODUCTION

The process of gradual digitalization is fundamentally changing the structure of the labour market in the European Union. We are witnessing an era of expanding digital technologies, automation, artificial intelligence, and the development of digital platforms, which are leading to the emergence of new forms of employment, reducing costs, increasing efficiency, and enabling more flexible work organization. The effects of digitalization on the economy, society and quality of life imply significant challenges for the labour market, while there is a great need to increase people's confidence in their skill levels and to make the most of the digitalization of companies.[4] Requirements for work performance methods have changed significantly in recent years, mainly due to the continuous development of information and communication technologies.[5]

Artificial intelligence, which is already a reality in many areas, is also affecting labour relations.[6] The introduction of new digital technologies gives employers a competitive advantage, improves their products and services, and creates new job opportunities.[7] This is also confirmed by European Commission, according to which collaborative platforms offer the possibility of creating new job opportunities, flexible working conditions, and new sources of income.[8] Rapidly developing digital technology systems bring a wide range of benefits and advantages to the economic life of countries, on the other hand, the competitive advantage for employers is linked to concerns about the possible unpredictability of their behavior, especially in situations where decision-making processes that should involve human "intelligence" are also transferred to these systems.[9]

The introduction of digital systems, algorithmic control, and artificial intelligence systems brings with it many risks, particularly in relation to the observance of fundamental human rights such as the right to privacy, the protection of personal data, but also equality before the law and the prohibition of discrimination.

Despite the advantages, opportunities, and benefits that technological changes bring, they also place new demands on the legal protection of employees. Labour law in its "traditional" form no longer reflects and provides sufficient protection for the rights of employees working in the digital environment. These changes in the field of labour law are a precursor to the problems that legislators will have to deal with, as conflicts and disputes between employees and employers arise and are expected to continue to arise in the new era. The established method of resolving disputes in the field of labour law is through the courts, which involves disputes involving the protection of the weaker party. We are also seeing the emergence of alternative forms of dispute resolution, which have the potential to be a solid alternative in the future, particularly with the advent of digitalization in the workplace. Mediation is an effective tool for possible dispute resolution. The legal system of the Slovak Republic lacks the institution of court mediation as a separate institution for the alternative resolution of labour disputes. Although many EU Member States have adopted specific legislation on mediation and the courts fully encourage the parties to resolve their disputes out of court, mediation is still not

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4 VASILESCU, M.D. Digital divide, skills and perceptions on digitalisation in the European Union - Towards a smart labour market. In: PlosOne, 2020, vol. 15, no. 4. ISSN:1932-6203. DOI: https://doi.org/10.1371/journal.pone.0232032.

5 KATSABIAN, T. It's the End of the Working Time as We Know It – New Challenges to the Concept of Working Time in the Digital Reality. In: McGill Law Journal. 2020, vol. 65, no. 3, p. 380-419. ISSN: 1920-6356. DOI: https://doi.org/10.7202/1075597ar.

6 MORÁVEK, J. Změna některých výchozích paradigmat a její reflexe v právní úpravě pracovněprávních vztahů a sociálního zabezpečení. In Právník, 2021, vol. 160, no. 2, p. 136-152. ISSN: 0231-6625.

7 KEŠELOVÁ, D. et al. Vplyv robotizácie, automatizácie a digitalizácie na trh práce v SR. [online]. 2022. [Accessed 30. September 2025]. Available from https://ivpr.gov.sk/wp-content/uploads/2024/01/Vyskumna_sprava_digitalizacia.pdf.

8 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A single market for 21st century Europe.

9 BARANCOVÁ, H. Umelá inteligencia a pracovné právo. In: Právny obzor, 2024, vol. 107, no. 2, p. 112. ISSN 2729-9228. DOI: https://doi.org/10.31577/pravnyobzor.2024.2.02.

widespread in the EU. Radanova a Tvaronavičiené[10] are examining the challenges of regulating the profession of mediator at the European Union level. Its slower growth is mainly due to a lack of structured information about mediation and its advantages over litigation.[11]

If labour law is to truly fulfill its protective function, it must guarantee that adequate protection will apply to everyone for whom it is intended, taking into account the content and nature of the relationship in which they perform work for another person. If a certain group of persons performing dependent work were excluded from the application of this protection, this would render the normative regulation of labour law rules ineffective, which is highly problematic in terms of respect and trust in the law as an instrument for influencing social reality, and would also create the risk of social dumping, social exclusion, labour market segmentation, and other highly problematic phenomena.

The changing nature of work has become a controversial topic in public debate across society and beyond, with interest from think tanks, companies, international organizations, governments, employers, and the wider public continuing to grow.[12] The European Union plays an irreplaceable role in this area, actively addressing the challenges of labour market digitalization by formulating policy and legislative initiatives that take into account new forms of work and ensure labour protection for workers across EU member states.

The implementation of autonomous artificial intelligence systems has legal implications that affect various areas of social life, including administrative law and other public and private law disciplines. Scientific discussions across various legal disciplines are considering, for example, whether artificial intelligence can meet the legal characteristics of a legal entity or the legal characteristics of a natural person. It is questionable whether artificial intelligence can be a person "sui generis" (a so-called electronic person) and whether such highly autonomous action by artificial intelligence can constitute a legal act. In our opinion, there is an absence of volition and a lack of expression of subjective will as a fundamental requirement of a legal act, which makes it impossible to attribute legal personality to highly autonomous artificial intelligence that could also perform legal acts.

The philosophical implications of technological autonomy go far beyond the scope of ordinary legal issues. Modern autonomous systems are changing the fundamental paradigms of labor relations by shifting the boundaries between freedom and determination, between human will and algorithmic decision-making, creating a need to redefine the ethical and legal principles that form the basis of labor law protection.

In terms of the methods of scientific research used, we examined the substantive content of the contribution using the method of analysis of the legal status de lege lata, employing systematic qualitative analysis of legal regulations, which examines the dynamics of a particular event from the perspective of its legal regulation. For the purposes of a more in-depth analysis, we focused on the following research questions:

1. Is the current definition of "employee" and "dependent work" sufficient?
2. Is the European Union active in terms of legislative measures aimed at providing legal protection?

Given the considerable breadth of the issue, it is clear that it cannot be explained without an outline of the current legislative framework. Of the other methods of scientific inquiry, generalizing abstraction was appropriately used to draw conclusions. We used the analytical-

[10] RADANOVA, Y. and TVARONAVIČIENÉ, A. Free movement of mediators across the European Union: a new frontier yet to be accomplished? In: Access to Justice in Eastern Europe, 2024, vol. 7, no. 1, p. 83-106. ISSN: 2663-0583. DOI: https://doi.org/10.33327/AJEE-18-7.1-a000122.

[11] STEFAN, A. and PRYTYKA, Y. Mediation in the EU: common characteristics and advantages over litigation. In: InterEULawEast: Journal for the international and european law, economics and market integrations, 2021, vol. 8, no. 2, p. 175. ISSN: 1849-3734. DOI: https://doi.org/10.22598/iele.2021.8.2.9.

[12] VÁZQUEZ, I.G. et al. The changing nature of work and skills in the digital age. Luxembourg: Publications Office of the EU, 2019, p. 102. ISBN: 978-80-89517-48-0.

synthetic method mainly in the section on legislative sources, and we also relied on citation content analysis, which we used to interpret sources from professional literature and other related documents. We also applied semantic analysis, which allows us to penetrate the terminology of the issue under investigation as a basic postulate necessary for interpreting the content of the legal text. In the section presenting evaluative attitudes and conclusions, in addition to logical procedures, we applied the methods of causality and deduction, generalization, and the search for analogies.

II. ARTIFICIAL INTELLIGENCE AND THE LABOUR MARKET

Artificial intelligence (hereinafter referred to as "AI") is a term used to describe computer systems capable of performing tasks that typically require human intelligence. AI has become a transformative force in the labour market, changing the nature of work, job positions, and employment dynamics across various industries. As AI technologies continue to evolve, the impact of AI on the labour market is multifaceted and complex. Its development can bring benefits to citizens and businesses across Europe and can lead to increased productivity, task automation, improved decision-making processes, the creation of new jobs (in areas such as data analysis, machine learning, AI development), improved quality of existing jobs, and improved working conditions. However, the rise of AI also brings challenges. Technological progress brings growing uncertainty; among other things, technology can have a significant impact on the number of traditional jobs and the way work is done, which ultimately affects the quality of life of workers.[13,14] AI is changing the workplace by altering the content and design of work, the way employees communicate with each other and with machines, and the way work effort and efficiency are monitored.[15]

Although most AI systems do not pose a risk and can contribute to solving many societal challenges, some artificial intelligence systems create risks that need to be addressed in order to prevent undesirable outcomes.[16] The European Union has taken on this task by adopting *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* (hereinafter referred to as the "Artificial Intelligence Act"). The Artificial Intelligence Act is the first comprehensive legal framework for the use of artificial intelligence in the world and is binding and directly applicable in all Member States of the European Union.

The purpose of the Artificial Intelligence Act is to improve the functioning of the internal market, promote the deployment of trustworthy, human-centered artificial intelligence, ensure a high level of protection of health, safety, fundamental rights, including democracy, the rule of law, and the protection of the environment from the harmful effects of AI systems in the European Union, and to promote innovation. This legislation defines uniform rules for the development and use of AI technologies in the European Union, focuses on identifying and

[13] EUROPEAN COMISSION. Artificial Intelligence and the future of work. [online]. 2025. [Accessed 01. October 2025]. Available from https://europa.eu/eurobarometer/surveys/detail/3222.

[14] INTERNATIONAL ECONOMIC DEVELOPMENT COUNCIL. Artificial Intelligence Impact on Labor Markets. [online]. 2025. [Accessed 01. October 2025]. Available from https://www.iedconline.org/ clientuploads/ EDRP% 20Logos/AI_Impact_on_Labor_Markets.pdf.

[15] LANE, M. and SAINT-MARTIN, A. The impact of Artificial Intelligence on the labour market: What do we know so far? [online]. 2021. [Accessed 01. October 2025]. DOI: https://doi.org/10.1787/7c895724-en.

[16] EURÓPSKA KOMISIA. Akt o umelej inteligencii. [online]. 2025. [Accessed 01. October 2025]. Available from https://digital-strategy.ec.europa.eu/sk/policies/regulatory-framework-ai.

regulating AI systems according to their riskiness, and sets out obligations for providers, distributors, and users of AI systems.[17]

The Artificial Intelligence Act also has a fundamental and direct impact on how AI is introduced, used, and managed in the workplace. As we have already mentioned, the implementation of AI systems poses challenges for both employers and employees, which are addressed by the legislation in question.

One such challenge is the *lack of transparency* in the use of certain AI systems (e.g., algorithms and decision-making systems). Transparency, as defined in the regulation, means that AI systems are developed and used in a way that allows for adequate traceability and explainability, alerting people that they are communicating and interacting with an AI system, while also adequately informing those deploying the AI system about its capabilities and limitations, and those affected about their rights. In the workplace, AI systems are increasingly being used to make important decisions that affect employees (e.g., in recruitment, performance evaluation, task allocation, or dismissal). However, employees often do not know on what basis decisions are made and have no opportunity to challenge them. In this context, these are high-risk systems, which, according to Annex III, are: AI systems to be used for the recruitment or selection of natural persons, in particular for targeted job advertisements, the analysis and filtering of job applications, and the evaluation of candidates; AI systems to be used in deciding on the terms and conditions of employment, on career progression in employment or termination of contractual employment relationships, on the assignment of tasks based on individual behavior or personal characteristics or traits, or on the monitoring and evaluation of the performance and behavior of persons in such relationships. The Act on Artificial Intelligence in relation to high-risk AI systems introduces requirements for transparency, security (e.g., risk management system, quality management system, fundamental rights impact assessment system, obligation to prepare technical documentation, documentation retention, requirements for accuracy, reliability, and cybersecurity, etc.) and human oversight aimed at preventing or minimizing risks that may arise when using a high-risk AI system. *Employees are also often unaware of how to defend themselves against AI system decisions* due to the absence of legal mechanisms or the definition of a responsible person. The adoption of the Artificial Intelligence Act overcomes these shortcomings by introducing measures to ensure human oversight, a liability framework, and oversight systems.

III. WORK FOR DIGITAL WORKING PLATFORMS

In the context of the current digital era, we are witnessing a widespread dynamic growth of new electronic and digital forms of work, which bring opportunities and jobs available through various online application platforms. One subcategory of digital forms of work is "platform work," which is characterized by flexibility, a simple selection process, and relatively low qualification requirements for workers.[18] Platform work is a form of employment in which organizations or individuals use an online platform to access other organizations or individuals in order to solve specific problems or provide specific services in exchange for payment.[19] Digital work platforms support innovative services and new business models, create numerous opportunities for consumers and businesses, effectively match labour supply and demand, and offer opportunities to earn or obtain additional income, even for disadvantaged job seekers (e.g., graduates, people with disabilities, migrants, people from minority racial or ethnic

[17] ÚRAD PRE VEREJNÉ OBSTARÁVANIE. Nariadenie o umelej inteligencii. [online]. 2024. [Accessed 01. October 2025]. Available from https://www.uvo.gov.sk/aktualne-temy/aktualita/nariadenie-o-umelej-inteligencii.

[18] SÍPOS, A. Platformová ekonomika: Výzvy a príležitosti pre efektívnu právnu ochranu zamestnancov. In: Acta Facultatis Iuridicae Universitatis Comenianae, 2023, vol. 42, no. 2, p. 46. ISSN: 1336-6912. DOI: https://doi.org/10.62874/afi.2023.2.

[19] EURÓPSKA RADA, RADA EURÓPSKEJ ÚNIE. Pravidlá EÚ týkajúce sa práce pre platformy. [online]. 2025. [Accessed 05. October 2025]. Available from https://www.consilium.europa.eu/sk/policies/platform-work-eu/.

backgrounds). Digital labour platforms provide employers with broader access to consumers, opportunities to diversify their income and develop new areas of business, and consumers with better access to a wider range of products and services. The use of platform work has become standardised during the COVID-19 pandemic, and as a result of increased migration in connection with the war in Ukraine, the popularity of this type of employment continues to grow.

With the growing popularity of platform work, there has been an increased need for legal regulation, given that digital work platforms disrupt and relativize the existing legal framework in the areas of labour and social law. As they operate across European Union member states, they often exploit regulatory differences to their advantage. The European Union was the first legislator to take such a step with the adoption of *Directive (EU) 2024/2831 of the European Parliament and of the Council of October 23, 2024, on improving working conditions in platform work* (hereinafter referred to as the "Platform Work Directive"). The Platform Work Directive entered into force on December 1, 2024, and Member States are required to ensure its transposition by December 2, 2026.

The general objective of the Directive is to improve working conditions and protect personal data in the field of platform work. In order to achieve this objective, specific objectives have been set, namely: to introduce measures to facilitate the determination of the correct employment status of persons working for platforms; promoting transparency, fairness, human oversight, safety, and accountability in algorithmic control in the field of platform work, and improving transparency in the field of platform work (including in cross-border situations).

The legislation in question responds to several challenges. The first of these is the phenomenon of *incorrect classification of work as self-employment*,[20] which prevents the correct employment status of persons working for platforms from being determined and ensures their access to decent living and working conditions. Under Article 5, a legal presumption of an employment relationship is introduced if facts are found that indicate management and control in accordance with national law, collective agreements or established practice in Member States, taking into account the case law of the Court of Justice. At the same time, the burden of proof is shifted to the digital work platform, which, if it seeks to rebut the legal presumption, must prove that the contractual relationship in question is not an employment relationship. In connection with the incorrect classification of employee status, workers on digital labour platforms face *reduced labour and social protection* (no social insurance, holidays, obstacles to work or minimum wage). Based on the accurate determination of the employment relationship, workers have access to the rights arising from labour regulations and the social system.

Another challenge in relation to the development of the platform economy is the *lack of transparency in information about automated monitoring and automated decision-making systems* used to make or support decisions affecting people working for platforms, including the working conditions of platform workers (access to work tasks, income, health and safety, working time, access to training, promotion or equivalent measures, etc.). Article 9 introduces an information obligation for digital labour platforms regarding the use of automated monitoring or automated decision-making systems towards persons working for platforms, representatives of platform workers and, upon request, the relevant national authorities. In line with the above, Article 10 introduces an obligation for digital work platforms to monitor the impact of individual decisions taken or supported by automated monitoring and automated decision-making systems. Digital labour platforms are also required to ensure sufficient human resources for effective oversight and evaluation of the impact of individual decisions taken or

[20] In this context, it is a false self-employed activity, which is formally declared as self-employment, but meets the conditions characteristic of an employment relationship.

supported by automated monitoring and decision-making systems. Persons entrusted by a digital work platform with the function of oversight and evaluation must have the competence, training, and authority necessary to perform this function, including for the purpose of revoking automated decisions. The directive also guarantees persons working for platforms the right to an oral or written explanation of any decision taken by an automated decision-making system.

The lack of transparency also applies to *data processing through automated monitoring and automated decision-making systems.* Digital work platforms use these systems to make decisions about job allocation, performance evaluation, and termination of cooperation, while workers do not have transparent information about how these systems work, as a result of which they are unable to defend themselves against these decisions. Under Article 7, the systems defined above may not process any personal data relating to the emotional or psychological state of a person working for the platforms; no personal data in connection with private conversations, including communications with other persons working for platforms and representatives of persons working for platforms; personal data for the purpose of anticipating the exercise of fundamental rights, including freedom of association, the right to collective bargaining and collective action, or the right to information and consultation; personal data to infer a person's racial or ethnic origin, migration status, political opinions, religious or philosophical beliefs, disability, health status, including chronic illness or HIV status, emotional or mental state, trade union membership, sexual life or sexual orientation, and do not process any biometric data relating to a person working for platforms in order to identify that person by comparing that data with the biometric data of natural persons stored in a database; they do not collect any personal data during the period when the person working for the platforms does not offer or perform work for the platforms.

Digital labour platforms are often *international businesses that operate and implement business models in several Member States or across borders.* In such cases, it is not always clear which Member State is competent to apply the law or which entity is responsible for supervising the activities of the digital labour platform concerned. The competent national authorities also do not have easy access to data on digital labour platforms, including the number of people working for the platforms, their employment status and their working conditions. In order to avoid confusion, the Directive introduces a systematic and transparent system of information provision and mutual cooperation between the competent national authorities. The operation of digital work platforms in several Member States and varying degrees of legal regulation also lead to a *lack of legal certainty and different conditions for performing the same work.* The Platform Work Directive introduces a uniform legal framework for the entire European Union, establishing the same rules for digital work platforms in all Member States and thus protecting the rights of workers regardless of where they operate.

IV. PERSISTENT CHALLENGES, ADAPTATION NEEDS AND CHANGE IN THE NATURE OF EMPLOYMENT RELATIONS IN THE CONTEXT OF THE IMPACT OF DIGITALIZATION ON THE LABOUR MARKET

As mentioned above, the European Union is responding to various challenges related to the digitalization of the labour market. The institutions of the European Union play an irreplaceable role in shaping legislation that takes developments into account and, above all, ensures the protection of employees. Despite this, however, Member States continue to face and will continue to face various types of adaptation needs in the context of ongoing developments.

The digitalization of work activities has an inseparable impact on employee privacy, rest time, and family life.[21] The culture of constant availability causes an increased risk of

[21] VÍTKOVÁ, L. Nedostatky právnej úpravy práva zamestnanca na odpojenie. In: Legal Point, 2024, vol. 1, no. 1. ISSN: 1339-0104.

depression, anxiety, and burnout.[22] This trend has increased during the COVID-19 pandemic, when many employees were forced to work from home. Although this option saved many jobs and a large number of businesses, remote working has also proven to have its drawbacks. One example is the fact that many people continue to work outside their normal working hours (beyond the maximum working time), and as a result, the balance between work and private life has deteriorated significantly. Being constantly connected to work can also lead to health problems (disruption of mental and physical well-being).[23] In response to this, the European Parliament[24] calls for the adoption of new legislation enshrining the so-called right to disconnect, which means the right of workers not to perform work activities and not to engage in work-related communication outside working hours using digital tools such as phone calls, emails, or other messages. The right to disconnect should entitle workers to switch off their work tools outside working hours and not have to respond to their employer's requests without facing adverse consequences such as dismissal or other retaliatory measures. At the same time, employers should not require workers to work outside working hours. Employers should not promote a culture of "always on" work, in which workers who give up their "right to disconnect" are clearly favored over those who do not. Workers who report situations of non-compliance with the right to disconnect in the workplace should not be penalized. The second round of consultations between the European Commission and the social partners on this issue is currently underway and should result in a proposal for a legislative act enshrining the labour law protection of employees in relation to their right to disconnect.

Another urgent issue that will need to be addressed is the change in the structure of the labour market as a result of digitalization. The automation of manual and routine work is leading to the displacement of low-skilled workers from the labour market, which increases the need for activation measures in relation to people with lower qualifications or low digital literacy. Digital exclusion creates a need to actively engage people who are distant from the labour market in employment, with municipalities often taking on an irreplaceable role in providing assistance to residents in accordance with the principle of subsidiarity. Although the state retains key responsibility for employment levels, municipalities are active players in social inclusion, especially in smaller or disadvantaged regions. Municipalities are able to identify the needs of local communities and the unemployed, provide social counseling, support education and digital literacy, and, last but not least, directly create jobs, for example through activation measures. By organizing smaller municipal services, the municipality contributes to social activation and the maintenance of social habits, which is a transitional step towards stable employment.

The development and implementation of new technological systems and artificial intelligence is fundamentally changing the nature of labour relations and affecting many aspects of the working environment. First and foremost, artificial intelligence has a significant impact on job stability, with a decline in traditional full-time employment and an increase in flexible but often precarious forms of work. *Future legislation therefore faces the complex task of creating a balanced legal framework that provides adequate protection for employees.*

One of the aspect is the increased level of employee monitoring through artificial intelligence systems. These technologies enable detailed monitoring of work activities, including identifying whether an employee is actually working during working hours or engaging in

[22] WEBER, T. and ADĂSCĂLIȚEI, D. Right to disconnect: Implementation and impact at company level. Luxembourg: Publications Office of the European Union, 2023, p. 57. ISBN 978-92-897-2337-4. DOI: 10.13140/RG.2.2.19335.16800.

[23] EURÓPSKY PARLAMENT. Poslanci chcú v celej EÚ garantovať právo odpojiť sa od práce. [online]. 2021. [Accessed 08. October 2025]. Available from https://www.europarl.europa.eu/topics/sk/article/20210121STO96103/poslanci-chcu-v-celej-eu-garantovat-pravo-odpojit-sa-od-prace.

[24] European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect (2019/2181(INL)).

private activities, such as using social networks or playing games. For example, an artificial intelligence system can accurately recognize the actual use of working time to perform work tasks and can identify whether an employee is working or engaging in other activities during working hours. This is followed by the risk of sanctions against the employee by the employer, including unilateral termination of employment by the employer. Under Article 5 of the Artificial Intelligence Act, the use of various types of AI systems (e.g., systems for inferring the emotions of a natural person in the workplace) is prohibited,[25] or biometric categorization systems that individually categorize natural persons based on their biometric data in order to deduce or infer their race, political opinions, trade union membership, religious or philosophical beliefs, sex life or sexual orientation, etc.).

The use of artificial intelligence also extends to occupational health and safety. The Artificial Intelligence Act explicitly prohibits the use of systems that pose an unacceptable risk to the health and safety of employees. The aim of these measures is to ensure that technological progress does not come at the expense of human dignity or the physical or mental well-being of workers.

It is also important to consider the possibility of artificial intelligence intervening in the selection of suitable employees for employers, which may also have an impact on the termination of employment . For example, if artificial intelligence systems identify a violation of work instructions and procedures set by the employer, they may, assuming the employee is at fault, lead to the termination of employment by the employer for a breach of work discipline or a serious breach of work discipline. With such an assessment of work performance without the "soft techniques" of human intelligence, the degree of legal uncertainty is on the rise.

The nature of essential characteristics of dependent work is also changing. Currently, there is a boom in new forms of dependent work through information and digital technologies.[26] With regard to the impact of autonomous artificial intelligence systems on the field of work, the Artificial Intelligence Act applies to all categories of workers within the meaning of Article 45 of Treaty on the Functioning of the European Union, including workers working for platforms. It follows from the above that the regulation in question goes significantly beyond the conceptual definition of "employee" or "dependent work" as these basic legal concepts are defined in the Labour Code. Artificial intelligence is used to a greater extent in platform work, crowdworking with characteristic algorithmic control, which partly deviates from the content of the concept of "dependent work" as regulated by Section 1 of the Labour Code. For example, a ruling by the German Federal Labour Court granted legal status as an employee to a crowdworker with a high degree of independence in the performance of their work and with all the basic rights that an employee has in so-called "standard employment".[27] Automated monitoring and decision-making systems controlled by algorithms are increasingly replacing the functions that managers used to perform in companies. This includes not only the employer's instructions for assigning work tasks to employees and giving other instructions, but also evaluating the work performed, providing work incentives, and imposing possible sanctions. We also perceive as "non-standard" a situation where an employee does not even communicate with their "employer," but their work performance is evaluated by an end user through an automated system without human intervention. The employer's right to give instructions reflecting the employee's dependence and subordination, enshrined in several provisions of the Labour Code, is being transferred to a greater or lesser extent to artificial intelligence. According to the legal status de lege lata, an essential component of dependent work is the

[25] Except in cases where the use of the AI system is intended for putting into service or placing on the market for health or safety reasons.

[26] LACKO, M. Sociálna ochrana zamestnanca v digitálnej dobe. In: Zamestnanec v digitálnom prostredí. Košice: Univerzita Pavla Jozefa Šafárika v Košiciach, Vydavateľstvo ŠafárikPress, 2021, p. 36. ISBN: 978-80-574-0068-4.

[27] Decision of the Federal Labour Court BAG 1.12.2020-9 AZR 102/20, No. 132 on the term "dependence".

employee's subordination to the employer, and the employee's dependence in the area of labour relations is manifested by the employee's obligation to follow the instructions of their employer, whose culpable failure to comply may also lead to dismissal by the employer for breach of work discipline.

Due to the introduction of artificial intelligence systems into the field of labour relations, it will also be necessary to legislate on the legal status of employees in relation to instructions given by artificial intelligence, especially in situations where these instructions would be contrary to applicable law or would endanger the health of employees. Therefore, artificial intelligence systems must have the necessary legal frameworks in place. At the same time, in line with the preparation of legislation at EU level, human control of artificial intelligence systems is envisaged if these systems take over decision-making, particularly in relation to significant changes in employees' working conditions. If an employer decides to deploy artificial intelligence systems, it delegates a large part of its discretionary power to the artificial intelligence system. The instructions issued by artificial intelligence operating autonomously are not identical to the discretionary power of a specific employer or its senior employee. In this context, the question arises as to whether an employee is obliged to comply with such instructions from artificial intelligence. In such situations, a human element (human intelligence) should intervene in the process and verify the correctness of the instructions issued in order to protect the employees themselves. A different approach would be necessary for AI instructions relating to the protection of personal data, which take the legal form of recommendations that employees are not obliged to comply with, and a different approach would be necessary for AI instructions that are in the nature of decisions against which employees could appeal.[28]

Limiting human intervention in the management of work processes can also give rise to and cause new forms of discrimination. The data on which artificial intelligence learns can be discriminatory in itself, e.g. if the process of collecting or processing this data was discriminatory. So-called automated discrimination is more difficult to recognize, more abstract, more subtle, and therefore much less identifiable in practice and thus less sanctioned. For example, it is particularly difficult to prove the existence of indirect discrimination against employees or job applicants. Algorithmic systems still lack sufficient signaling mechanisms for comparing employees or individual groups of employees, which is required to identify indirect discrimination. Particularly in the area of anti-discrimination law, it would be necessary in the future to further expand the collective legal protection of employees and to strengthen the existing legal instruments for the prevention of discrimination against employees.

V. CONCLUSION

The world of work is constantly changing; it is a living process that reflects developments in the technological, social, and economic environment. This is not only a legal problem, but also a profound philosophical issue, whereby the philosophical dimension of the problem lies in redefining the relationship between humans and work in the context of technological autonomy, which raises new questions concerning human dignity, freedom, and responsibility of the subject in an era where the institution of will is reduced or transformed by the influence of autonomous artificial intelligence systems. The traditional model of dependent work is based on the ontological assumption of human dependence and subordination, where the employee exchanges time and performance for wages and legal protection. In the digital era, however, "time" as a basic category of labor law is losing its stability—work is performed within the

[28] BARANCOVÁ, H. Umelá inteligencia a pracovné právo. In: Právny obzor, 2024, vol. 107, no. 2, p. 116. ISSN 2729-9228. DOI: https://doi.org/10.31577/pravnyobzor.2024.2.02.

framework of constant availability, often without a clear definition of working hours and place of performance.

This raises a fundamental philosophical question: where does human autonomy end and digitally determined work performance begin? When an algorithm issues work instructions and evaluates performance, employees find themselves in a situation where they must respond to the decisions of a system that, while functionally rational, lacks moral and ethical responsibility. This is a problem of ethical imputation in an environment where there is no subject of will, which requires a new reflection on the fundamental principles of labor law—dignity, freedom, and responsibility.

In a socioeconomic context marked by the symbiotic dynamics established between the development of new technologies and the implementation of new forms of work organisation and management, the concept of digitalization becomes increasingly interesting as a structuring phenomenon of the labour market.[29] Fundamental changes in development will be brought about by another revolution – social revolution 5.0, which is linked to the advent of artificial intelligence. There is no doubt that the labour market will change. We are already witnessing this change, for example when we enter a grocery store and instead of five cashiers, we find self-service checkouts with one assistant.[30]

Digitalization, automation, robotization, the rapid advance of artificial intelligence, is no longer a futuristic vision. It is already indisputable that artificial intelligence is affecting, and will affect, the field of labour relations, specifically in the areas of employee data protection, the right to privacy, the right to protection of human dignity, the quality of working conditions, the safety and health protection of employees, methods of employee remuneration using algorithms, and consequently also the methods of performing managerial functions, the area of responsible labour relations, as well as the termination of employment.

Future labour legislation therefore faces the difficult task of creating an optimal legal framework for the legal status of employees when deploying artificial intelligence systems. According to the authors, it appears that the deployment of autonomous artificial intelligence systems also requires changes to the legal wording and a "redrawing" of the concept of dependent work and the optimal legislative formulation of the term "employee." The key findings of the paper confirm the need for a systematic review of legal concepts, processes, and relationships.

A significant change was brought about by the adoption of Act No. 261/2025 Coll., which amends and supplements certain acts in connection with the consolidation of public finances. Effective January 1, 2026, Act No. 311/2001 Coll. of the Labor Code will be amended. Among other things, there will be a change in the definition of the term "dependent work". The words *"during working hours determined by the employer*" will be deleted. This characteristic component of dependent work will no longer be an essential part of the definition of dependent work. The change in the definition of dependent work should help to detect so-called fictitious trades. This means helping to determine when people are forced to work in a trade, even though they are clearly performing work that is dependent work, and thus preventing such situations from arising. In fact, the fact that a self-employed person worked at a time determined by them and not at a time determined by their employer, even though the other defining characteristics of dependent work were met, was a frequent objection during inspections carried out by the labor inspectorate.

[29] CALDERÓN-GÓMEZ, D. et.al. The labour digital divide: digital dimensions of labour market segmentation. In: Work Organisation, Labour & Globalisation, 2020, vol. 14, no. 2, p. 23. ISSN: 1745-641X. DOI: https://doi.org/10.13169/workorgalaboglob.14.2.0007.

[30] DOLOBÁČ, M. Futurológia pracovného práva. In: Zamestnanec v digitálnom prostredí. Košice: Univerzita Pavla Jozefa Šafárika v Košiciach, Vydavateľstvo ŠafárikPress, 2021, p. 61. ISBN: 978-80-574-0068-4.

This amendment to the definition of dependent work is also intended to respond to the rise of flexible working arrangements, in particular remote working, teleworking, platform work, and the use of autonomous task management systems. The new wording of the definition allows for the inclusion of a broader spectrum of employment relationships in which the employee does not perform work during traditionally defined working hours but remains dependent on the instructions or evaluation of algorithmic systems. From this perspective, this is a fundamental step towards modernizing labor law concepts and adapting legislation to new technological and organizational models of work in the digital age.

With this statement, we have addressed the first research question posed in the introduction to this article. It will be necessary to consider a new legal model of the employer's so-called "instructional" right (the so-called digital instructional right), because the introduction of artificial intelligence into the field of labour relations will increasingly lead to the "delegation" of employer instructions to employees. The employer's right to give instructions to employees, enshrined in several provisions of the Labour Code, will be taken over to a greater or lesser extent by artificial intelligence. With the deployment of artificial intelligence in the field of labour relations, it is therefore reasonable to expect that new legal instruments will be adopted in the near future to prevent the violation or endangerment of employees' human rights in the context of labour relations, in particular the protection of privacy, personal data protection, and prohibition of discrimination, which also reflects the second research question. At the same time, we believe that current legal models of protection and liability for damage in the case of the deployment of artificial intelligence systems will not be sufficient.

We believe that future legal developments will depend on the ability of legislators to balance technological innovation with the preservation of fundamental labor law guarantees. In our opinion, legislation will need to continue to adapt to hybrid forms of employment, strengthen transparency, and expand accountability frameworks for autonomous systems. In this dynamically changing context of labor law protection, cooperation between legislators, labor law experts, and technology experts will be critical to ensure that legislation evolves in a way that effectively responds to the digitalization and automation of the labor market without compromising legal certainty or the social protection of employees. The authors' broader perspective emphasizes the importance of implementing future legislative developments in a thoughtful manner, taking into account new complex social and technological contexts.

The authors consider proposals to address this issue by introducing the principle of "algorithmic transparency" and the right of employees to have work instructions generated by artificial intelligence explained to them. They also address the issue of legally enshrining rest periods to protect against excessive working hours in the digital environment, as well as various participatory models of work management with the necessary involvement of employees in the evaluation of algorithmic systems. At the same time, it is necessary to legislatively define liability for damage caused by autonomous systems. Last but not least, it is necessary to support employee training in digital skills and legal protection in the digital work environment. These solutions create a solid foundation for further interdisciplinary research and the creation of legal standards that will not only respond to technological changes but also strengthen social standards and dignity in the workplace in the era of artificial intelligence.

KĽÚČOVÉ SLOVÁ
digitalizácia, umelá inteligencia, právna ochrana, zamestnanec

KEY WORDS
digitalization, artificial intelligence, legal protection, employee

BIBLIOGRAPHY

1. BARANCOVÁ, H. Umelá inteligencia a pracovné právo. In: Právny obzor, 2024, vol. 107, no. 2, p. 108-120. ISSN: 2729-9228. DOI: https://doi.org/10.31577/pravnyobzor.2024.2.02
2. CALDERÓN-GÓMEZ, D. et.al. The labour digital divide: digital dimensions of labour market segmentation. In: Work Organisation, Labour & Globalisation, 2020, vol. 14, no. 2, p. 7-30. ISSN: 1745-641X. DOI: https://doi.org/10.13169/workorgalaboglob.14.2.0007
3. DOLOBÁČ, M. Futurológia pracovného práva. In: Zamestnanec v digitálnom prostredí. Košice: Univerzita Pavla Jozefa Šafárika v Košiciach, Vydavateľstvo ŠafárikPress, 2021, p. 61. ISBN: 978-80-574-0068-4.
4. EUROPEAN COMISSION. Artificial Intelligence and the future of work. [online]. 2025. [Accessed 01. October 2025]. Available from https://europa.eu/eurobarometer/surveys/detail/3222
5. EURÓPSKA KOMISIA. Akt o umelej inteligencii. [online]. 2025. [Accessed 01. October 2025]. Available from https://digital-strategy.ec.europa.eu/sk/policies/regulatory-framework-ai
6. EURÓPSKA RADA, RADA EURÓPSKEJ ÚNIE. Pravidlá EÚ týkajúce sa práce pre platformy. [online]. 2025. [Accessed 05. October 2025]. Available from https://www.consilium.europa.eu/sk/policies/platform-work-eu/
7. EURÓPSKY PARLAMENT. Poslanci chcú v celej EÚ garantovať právo odpojiť sa od práce. [online]. 2021. [Accessed 08. October 2025]. Available from https://www.europarl.europa.eu/topics/sk/article/20210121STO96103/poslanci-chcu-v-celej-eu-garantovat-pravo-odpojit-sa-od-prace
8. INTERNATIONAL ECONOMIC DEVELOPMENT COUNCIL. Artificial Intelligence Impact on Labor Markets. [online]. 2025. [Accessed 01. October 2025]. Available from https://www.iedconline.org/clientuploads/EDRP%20Logos/AI_Impact_on_Labor_Markets.pdf
9. KATSABIAN, T. It's the End of the Working Time as We Know It – New Challenges to the Concept of Working Time in the Digital Reality. In: McGill Law Journal, 2020, vol. 65, no. 3, p. 380-419. ISSN: 1920-6356. DOI: https://doi.org/10.7202/1075597ar
10. KEŠELOVÁ, D. et al. Vplyv robotizácie, automatizácie a digitalizácie na trh práce v SR. [online]. 2022. [Accessed 30. September 2025]. Available from https://ivpr.gov.sk/wp-content/uploads/2024/01/Vyskumna_sprava_digitalizacia.pdf
11. LACKO, M. Sociálna ochrana zamestnanca v digitálnej dobe. In: Zamestnanec v digitálnom prostredí. Košice: Univerzita Pavla Jozefa Šafárika v Košiciach, Vydavateľstvo ŠafárikPress, 2021, p. 36. ISBN: 978-80-574-0068-4.
12. LANE, M. and SAINT-MARTIN, A. The impact of Artificial Intelligence on the labour market: What do we know so far? [online]. 2021. [Accessed 01. October 2025]. DOI: https://doi.org/10.1787/7c895724-en
13. MORÁVEK, J. Změna některých výchozích paradigmat a její reflexe v právní úpravě pracovněprávních vztahů a sociálního zabezpečení. In: Právník, 2021, vol. 160, no. 2, p. 136-152. ISSN: 0231-6625.
14. RADANOVA, Y. and TVARONAVIČIENĖ, A. Free movement of mediators across the European Union: a new frontier yet to be accomplished? In: Access to Justice in Eastern Europe, 2024, vol. 7, no. 1, p. 83-106. ISSN: 2663-0583. DOI: https://doi.org/10.33327/AJEE-18-7.1-a000122
15. STEFAN, A. and PRYTYKA, Y. Mediation in the EU: common characteristics and advantages over litigation. In: InterEULawEast: Journal for the international and

european law, economics and market integrations, 2021, vol. 8, no. 2, p. 175. ISSN: 1849-3734. DOI: https://doi.org/10.22598/iele.2021.8.2.9
16. SÍPOS, A. Platformová ekonomika: Výzvy a príležitosti pre efektívnu právnu ochranu zamestnancov. In: Acta Facultatis Iuridicae Universitatis Comenianae, 2023, vol. 42, no. 2, p. 46. ISSN: 1336-6912. DOI: https://doi.org/10.62874/afi.2023.2.
17. ÚRAD PRE VEREJNÉ OBSTARÁVANIE. Nariadenie o umelej inteligencii. [online]. 2024. [Accessed 01. October 2025]. Available from https://www.uvo.gov.sk/aktualne-temy/aktualita/nariadenie-o-umelej-inteligencii
18. VASILESCU, M.D. Digital divide, skills and perceptions on digitalisation in the European Union - Towards a smart labour market. In: PlosOne, 2020, vol. 15, no. 4. ISSN:1932-6203. DOI: https://doi.org/10.1371/journal.pone.0232032
19. VÁZQUEZ, I.G. et al. The changing nature of work and skills in the digital age. Luxembourg: Publications Office of the EU, 2019, p. 102. ISBN: 978-80-89517-48-0.
20. VÍTKOVÁ, L. Nedostatky právnej úpravy práva zamestnanca na odpojenie. In: Legal Point, 2024, vol. 1, no. 1. ISSN: 1339-0104.
21. WEBER, T. and ADĂSCĂLIȚEI, D. Right to disconnect: Implementation and impact at company level. Luxembourg: Publications Office of the European Union, 2023, p. 57. ISBN 978-92-897-2337-4. DOI: 10.13140/RG.2.2.19335.16800

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