RESPONSIBILITY FOR NULL AND VOID DECISIONS MADE BY ARTIFICIAL INTELLIGENCE

ZODPOVEDNOSŤ ZA NULITNÉ ROZHODNUTIA VYDANÉ UMELOU INTELIGENCIOU[1]

***Miroslava Franc Kupcová*[2]**

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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

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[2] JUDr., Pavol Jozef Šafárik University in Košice, Faculty of Law, Slovak Republic
Univerzita Pavla Jozefa Šafárika v Košiciach, Právnická fakulta, Slovenská republika.

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

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

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CONTACT DETAILS OF THE AUTHOR

JUDr. Miroslava Franc Kupcová
ORCID: 0009-0002-8585-9107
PhD student
Pavol Jozef Šafárik University in Košice, Faculty of Law
Department of Constitutional Law and Administrative Law
Kováčska 26, 040 75 Košice, Slovak Republic
E-mail: miroslava.francova@student.upjs.sk