AUTOMATED DECISION-MAKING IN ADMINISTRATIVE PENAL MATTERS

AUTOMATIZOVANÉ ROZHODOVANIE VO VECIACH SPRÁVNEHO TRESTANIA

Alan Lengyel[1]

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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[1] Mgr., Comenius University Bratislava, Faculty of Law, Slovak Republic
Univerzita Komenského v Bratislave, Právnická fakulta, Slovenská republika.

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,

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[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

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[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

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[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

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[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

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CONTACT DETAILS OF THE AUTHOR
Mgr. Alan Lengyel
ORCID ID: 0009-0008-9749-1294
PhD student
Comenius University in Bratislava, Faculty of Law
Department of Administrative Law and Environmental Law,
Šafárikovo nám. č. 6, 810 00 Bratislava, Slovak Republic
Phone number: +421 2 592 44 380
E-mail: lengyel23@uniba.sk