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The exercise of administrative function in the era of Predictive and Generative Artificial Intelligence: principles of trust and result and judicial perspectives

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Sommario

1. Artificial Intelligence and Administrative Function; - 2. Administrative Artificial Intelligence (AAI); - 3. The reference principles of algorithmic administrative proceedings, considering the perceived risks and the case law: trust and control of the outcome; - 4. (Non) conclusive deductions.

Abstract

The essay by the author focuses on the exercise of administrative function in the era of Predictive and Generative Artificial Intelligence (AI). It begins by discussing the ethical and legal implications of AI, highlighting the need to balance its potential benefits with concerns about its application in public administration. The author argues that AI is becoming increasingly integrated into the administrative decision-making process, pushing towards closer interaction between AI and humans. However, they emphasize the need to establish principles and rules to ensure the protection of individual freedoms and the pursuit of the public good. The author also examines the role of administrative justice in the context of AI, highlighting the need for more thorough judicial oversight of the outcomes of automated administrative decisions. Finally, they propose adopting the principles of "trust" and "result" as a guide for regulating algorithmic administrative action, emphasizing the importance of ensuring transparency and effectiveness of decisions, as well as legal compliance.

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1. Artificial Intelligence and Administrative Function.

Just as with the nuclear era, the so-called Artificial Intelligence (AI) era, following the now full maturation of the digital or informatics revolution, evokes fears, ethical doubts, the need for regulation, and risks regarding its effects on people's lives. However, at the same time, it promises unimaginable developments and positive progress in scientific fields, particularly in healthcare, industry, economy, and society. Every technological advancement, after all, represents a new "power" inherently both destructive and constructive, depending on its use and on the ability of organized human societies to control such power.

As well noted, "*It is a matter of evoking not a certain catastrophe, but a danger in progress, further facilitated by the astonishing naivety of those who fail to see its advance. The response of the erudite is well-known: also in the past dangers have been evoked with the introduction of machines, but these fears have proven regressive and fallacious; the important thing is to understand that the machine will always be subject to human control, indeed it will transform dangerous, dirty, and menial work into work of intelligence and programming, while unleashing new human creativity. Such a reply, though deserving attention, does not seem to perceive the problem being discussed today. Regardless of the more general observation that the fact that a danger has been effectively countered in the past does not mean that the current danger is still the same, it must absolutely not be overlooked that the situation in which humanity finds itself today has characteristics of absolute novelty, for which adequate critical processing tools are needed*"[1].

Even just two initial thoughts can be useful to understand the aforementioned reference: 1) the legal systems, including constitutional ones, of States and regulatory discipline in general regarding digitalization and AI are still quite incomplete and altogether insufficient[2]; 2) technological development and the possible applications of AI are predominantly in the hands of "GAFAM" or "BATX" and the relative "power", therefore, appears to belong to private multinationals at the moment.

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[1] G. Limone, *L'algoritmo e il mondo della vita. Nuovi appunti sul fondamentalismo macchinico nell'era contemporanea*, in *rivista «Persona. Periodico internazionale di studi e dibattito»*, n. 1-2, Artetetra, Capua 2017, pp. 1-60, ISSN 2239-6667, Unofficial English translation of "*Si tratta di evocare non una catastrofe certa, ma un pericolo in atto, per giunta facilitato dall'ingenuità dotta e incredibile di chi non ne vede l'avanzare. La risposta dei dotti è nota: anche in tempi passati sono stati evocati pericoli per l'introduzione delle macchine, ma queste paure si sono dimostrate regressive e fallaci; l'importante è capire che la macchina sarà pur sempre sottoposta al controllo dell'uomo, anzi trasformerà il lavoro pericoloso, sporco e servile in lavoro di intelligenza e programmazione, mentre libererà nuova creatività umana. Una tale replica, pur meritevole di attenzione, non sembra percepire il problema di cui si sta oggi parlando. A prescindere dalla più generale osservazione per cui il fatto che in passato si sia contrastato efficacemente un pericolo non significa che il pericolo attuale sia ancora quello stesso, non va assolutamente trascurato che la situazione in cui si trova il genere umano oggi ha connotati di assoluta novità, per la quale occorrono adeguati strumenti di elaborazione critica*".

[2] J.B. Auby, *Conclusioni,* in *L'amministrazione digitale*, Ed.Scientifica, Napoli, 2023, pp. 287.

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Naturally, there are deep-seated doubts concerning the human spirit, prompting ethical-philosophical reflections,[3] ultimately leading to questions of whether the "machine" exists and whether abstract thought is exclusive to human intelligence. Moreover, the tendency to anthropomorphize thinking machines (specific characteristic of the so-called strong AI)[4] leads to imagining a sad and spectral future of human replacement or, at least, machine dominance over human beings. [5]

At the same time, weak AI (assuming that such a definition is still valid) is considered a positive technological revolution, as long as well-governed, in the constant pursuit of a balance between "computational output and human supervision".[6] After all, the protection of freedoms "does not encounter substantially new problems in the face of algorithms and machine decisions because it is still humans who are the protagonists of the entire phenomenon",[7] even though when these technical sciences also concern the methods through which administrative power is exercised, then one must wonder how to ensure compliance with values and rules that protect or are instrumental to constitutionally protected freedoms. This question is even more relevant in cases of exercising discretionary administrative power through unknowable volitional mechanisms of an informatic system that "learns" on its own through the acquisition of uncontrolled or uncontrollable "big data," and tends to supplant human decision-making.

Moreover, the pervasiveness of so-called technical sciences and the speed with which AI evolves, with unimaginable applications until recently, end up conditioning, for the most part uncontrollably, many aspects of human life: the more specialization

[3] See G. Chimirri, *IA Intelligenza Artificiale – Etica delle macchine pensanti*, Asterios, n. 64, 2021 for very rich bibliographic references, both concerning works of computer science and the digital world, and essays on the philosophy of technology, science, and culture, epistemology, and sociology.

[4] It has already been pointed out in G. Terracciano, *I.I.A. (intelligenza artificiale amministrativa) e sindacato giurisdizionale*, in *Amministrativamente*, no. 2 (preview), 2022, 1-10; see also, G. Terracciano, *Automazione e processo amministrativo: una convivenza difficile?*, in *Amministrativamente*, no. 1, 2022, 25-32, that in order to address the problem at a systemic level, it is necessary, once again, to highlight the *summa divisio* between automated procedures in which the algorithm is 'servant' (traditional), that is, it is able to systematize, collect, and reprocess data solely to facilitate human decision-making, and strong artificial intelligence algorithms, which are capable of self-learning and autonomously representing the decision-making process, replacing human determination with abductive, deductive, and predictive functions. Strong algorithms, as mentioned, present a high risk of lack of domain, when the process of continuous self-learning and constant reprocessing of the data originally inputted into the system, leads to the so-called black-box effect, generating an infinite series of automatic inferences, progressively less understandable, accessible, and subject to scrutiny.

[5] Of interest is the analysis by V. Tenore, *L'intelligenza artificiale può sostituire un giudice?*, EA Anicia, 2023, conducted in the legal-procedural field, which highlights the usefulness of AI (so-called weak AI) as a mere auxiliary tool, however, of the individual.

[6] This also in the field of public law and in the exercise of public functions, as highlighted by G. Gallone, *Riserva di umanità e funzioni amministrative*, Cedam, 2023, pp. 165 e ff.

[7] See, V.Caputi Jambrenghi, *Libertà e autorità*, II, Editoriale scientifica, 2023, pp. 253 ff.

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and complexity of sciences grow, the more urgent and common the demand for values and meaning becomes.[8]

The theme of the dominion of sciences, particularly those with almost immediate concrete applications, such as those concerning digitalization or the so-called artificial intelligence, becomes fundamental, due to the trap of ease of use versus the incomprehensibility of operating rules (in other words, algorithms).

The search for rules and values does not (or not only) concern the topic of digital or digitized administrative act which, however, at present, seems to be the result of an administrative process which must respect the norms safeguarding the formal and substantial correctness of the act itself.[9]

Similarly, the search does not seem to primarily concern parameters and rules of so-called traditional algorithms (so-called weak AI), which are the result of mathematical processes that allow a simple verification of correctness and are "controllable," to the extent that it is possible to verify the adequacy of the translation into mathematical language of legal rules.[10]

Instead, they become decisive and essential for the possibility of "dominating" algorithms resulting from the application of self-learning neural systems or artificial intelligence (that is, with input data not controlled by a human responsible), thus allowing sufficient comprehensibility and transparency (and not just knowability) in the programming phase, and then possible scrutiny in the exercise of power and evaluation of consequences, even on the merit level (taking into account not only binding acts, but also those with discretionary content, perhaps as a result of predictive evaluations).

After all, administrative decision, whether human or generated by AI, must be justified, and the control over the respect of public interest in the of exercise of power can only belong to the (administrative) Judge, who must be endowed with strengthened oversight power, precisely due to the greater technological complexity, which makes the volitional mechanisms hardly knowable or impenetrable.[11]

This is even more true when it is precisely the judicial power that equips itself with technological infrastructures and uses artificial intelligence for predictive functions of

[8] G. Limone, *Dare dignita` alla speranza e speranza alla dignita`. L'essere umano concreto al centro delle scienze e della vita: un crocevia di paradossi teorici ed etici*, Prolusione all'inaugurazione dell'anno accademico 2006/2007 della Seconda Universita` degli Studi di Napoli.

[9] S. De Felice, *Intelligenza artificiale e "Invalidità e giustiziabilità dinanzi al giudice amministrativo"*, in *www.giustizia-amministrativa.it*, July 2021.

[10] M. Corradino, *Intelligenza artificiale e pubblica amministrazione: sfide concrete e prospettive future*, in *www.giustizia-amministrativa.it*, September 2021.

[11] See, Cons. Stato, sec. VI, n. 881/2020, with the comment of A. Valsecchi, *Algoritmo, discrezionalità amministrativa e discrezionalità del giudice* (Nota a Cons. Stato, sez. VI, sent. del 4 febbraio 2020, n. 881), in *iusinitinere*, 14/09/2020.

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decision outcomes,[12] with the risk of a virtual, automatic, and valueless justice, regulated by algorithms that act for mere uncritical reproduction of precedents.[13]
What appears evident from those initial introductory thoughts is the need to establish general principles and rules to protect people's freedoms through the construction of a complex and delicate system of safeguards sound at the international level, which, however, does not represent an irrational restraint of technological progress.
Moreover, national regulatory systems, which, based on different legal orders, establish specific principles and criteria for the use of AI to ensure full compliance, formally and substantially, with the public interest, both regarding the exercise of public power and the actions of private entities, are also necessary. Among these, the principles of "trust" and "achievement" are considered particularly relevant, according to an exploration which deserves to be further deepened.[14]

2. Administrative Artificial Intelligence (AAI).

It is believed that the distinction between "weak" artificial intelligence, as decision support, and "strong" artificial intelligence, as actual decision-making, in a perspective of strict opposition is to be considered outdated, as well as that between predictive AI and generative AI, which tends to highlight a distinction in terms of outcome or utilization.
In reality, systems based on artificial intelligence, especially those functional to the exercise of public administrative powers, accompany the entire decision-making process of the exercise of public power.
In fact, all phases of the decision-making process can be affected and conducted through algorithmic modules, both in procedural and judicial contexts.
Every decision presupposes an activity of collection and evaluation of factual and legal elements as prerequisites, namely a *dataset*, which within algorithmic processes is represented by digitized information, so that even the fact is "algorithmized".
The importance of input data is universally recognized, both in terms of quantity and quality: what needs to be added is the necessity that collection and inputting are

[12] G. Terracciano, *L'applicazione in campo giuridico delle reti artificiali. Il programma "Giurinet"*, in T.A.R., 1998, II, 497.

[13] See V. Tenore, cited work; C. Napoli, *Algoritmi, intelligenza artificiale e formazione della volontà pubblica: la decisione amministrativa e quella giudiziaria*, in *Riv. AIC*, 3, 2020.

[14] See the monograph by M. Falcone, *Ripensare il potere conoscitivo pubblico tra algoritmi e big data,* Editoriale Scientifica, 2023, which – correctly – highlights how the regulatory discipline being approved at the European Union level favors an approach to minimizing the (inescapable) risk associated with the introduction of AI-based management systems, applying the principles of accuracy, robustness, and security of AI systems, while also giving adequate relevance to the principle of human oversight, along with the need to ensure a certain degree of transparency, but above all, the correct management of datasets (pp. 294 ff.)

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supervised and somehow "certified", as indeed happens in "analogical" administrative proceedings.

Administrative Artificial Intelligence must therefore concern the entire decision-making process, mapping all processes through the elaboration of conduct rules, alerts, and monitoring indicators of their implementation, in order to ensure algorithmic transparency, accessibility, and scrutiny, allowing for the identification of essential guarantees and legality criteria that reconcile a fair degree of machine autonomy with the contrast to deviations, vulnerabilities, or system errors.[15]

It appears necessary, thus, to formalize a legal statute concerning the production and utilization of artificial intelligence in the administrative proceeding context, to be translated in concrete rules based on additional criteria to those in force for analogical proceedings, always implementing constitutional principles of legality and good governance: ultimately, reference shall be made to criteria and rules of "algorithmic governance".

Obviously, it is already possible to find research and decalogs in this regard, inspired by constitutional and regulatory principles related to administrative activity, aimed at avoiding inequalities or discriminations and in the interest of impartial action; [16] at the same time, others argue that existing regulations regarding administrative proceedings are considered sufficient or applicable[17].

However, the impression is that AAI is not just a simple tool to assist the human decision-maker, but it already has within itself the tendency to "merge" with the human decision-maker, if not tendentially to replace it, at least when there is no administrative discretion or exercise of political-administrative power, or when the public and private interests involved in the action are not particularly relevant. For this reason, it seems necessary to elaborate rules of good algorithmic administration, with the setting of operational provisions for the use of automated models with control or oversight in the data acquisition phase and verification of results downstream of the decision.

In other words, there seems to be a need for a diversified discipline on computerized proceedings with the use of AAI, including procedural protocols that guarantee adversarial proceedings and do not restrict the right to defense, but above all, allow for effective verifiability and scrutinization in terms of the correct pursuit of the public interest.

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[15] See, already, G. Terracciano, *I.I.A. …*, cited work.

[16] E. Carloni, *I principi della legalità algoritmica. Le decisioni automatizzate di fronte al giudice amministrativo*, in *Dir.Amm.*, 2/2020, 271 ff.; D. Ponte - G. Pernice, *L'intelligenza artificiale e l'algoritmo a contatto col diritto amministrativo: rischi e speranze*, in *www.giustizia-amministrativa.it*, October 2021.

[17] M.C.Cavallaro, G. Smorto, *Decisione pubblica e responsabilità dell'amministrazione nella società dell'algoritmo*, in *Federalismi*, 16/2019, 18 ff.

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The need to verify the correctness and appropriateness of administrative decisions does not only concern the algorithm itself, as the Italian administrative Courts seems to believe at present, but should be extended in scope in order to evaluate and control the entire "algorithmic" process, that is, the decision-making process as a whole, with the assignment of a more penetrating judicial oversight power, also on the output resulting from the adoption of a specific decision or on the administration's behavior, in compliance with constitutional principles of good governance and impartiality.

Ultimately, no one can doubt the need for a fair degree of traceability and transparency of processes, but the control of the results of administrative action becomes fundamental, both in terms of conformity to legal parameters and especially in terms of the "right" pursuit of the public interest: procedural and judicial control, both of legitimacy and of merit.

This need for evaluation and control of the result of algorithmic administrative action involves both the function of active administration and the judicial function, which investigate and operate on a hierarchy of interests emerging from the case, sharing the difficulty of interpreting, executing, and applying norms and principles often with a high content of abstractness in the concreteness of factual reality.[18]

3. The reference principles of algorithmic administrative proceedings, considering the perceived risks and the case law: trust and control of the outcome.

To understand the need for a paradigm shift regarding the criteria for algorithmic administrative action, it may be useful to take advantage of an application, based on an algorithm, of virtual assistance (ChatGPT), essentially developed as a language model that self-feeds (therefore without predictive or generative functions), which ends up reproducing, due to the mass of data processed, the prevalent thought spread on the internet. When asked, "In your opinion, what are the risks of introducing artificial intelligence in the context of the administrative activity of public institutions?", the response was as follows:

"*The introduction of artificial intelligence (AI) in the context of the administrative activity of public institutions can pose several risks. Here are some of the main ones:*

***Algorithmic bias**: AI algorithms can reflect biases present in the data with which they are trained. If historical data reflects discrimination or inequalities, AI could perpetuate these problems, exacerbating them or even making them more difficult to detect.*

[18] G. Terracciano – A. Colarusso, *L'indizio nella decisione amministrativa (teoria e prassi dell'inferenza probatoria nell'esercizio della funzione amministrativa e del potere giurisdizionale),* editoriale scientifica, Napoli, 2021.

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Lack of transparency: *AI algorithms can be extremely complex and difficult to understand for those who are not experts in the field. This can lead to opacity in administrative decisions, resulting in a lack of accountability and difficulty in explaining actions.*
Data protection and security: *The use of AI requires large amounts of data, often sensitive, to train the algorithms. This raises concerns about data privacy and security, especially if adequate measures are not taken to protect them from unauthorized access or abuse.*
Technological unemployment: *Automating administrative tasks through AI could lead to a reduced demand for human labor in some sectors, causing technological unemployment and potentially increasing socioeconomic inequalities.*
Decay of human skills: *If administrative decisions are significantly delegated to AI, there may be a decay of human skills necessary to critically assess situations, make complex ethical decisions, and creatively solve problems.*
Manipulation and fraud: *AI algorithms could be subject to manipulation or fraudulent attacks, both internally and externally. This could lead to distorted or harmful decisions that undermine trust in the administrative system.*
To mitigate these risks, it is necessary to adopt measures such as transparency in the use of AI, continuous evaluation of algorithms to identify and correct any biases, rigorous data protection, ongoing training for human operators, and the creation of adequate accountability and oversight mechanisms. Additionally, it is essential to involve diverse stakeholders, including experts in ethics, law, and civil society, in the decision-making process regarding the implementation of AI in public institutions."
Furthermore, when asked, the system added: "*Certainly, the introduction of artificial intelligence (AI) in the context of the administrative activity of public institutions can offer a series of advantages:*
Operational efficiency: *AI can automate repetitive and tedious processes, allowing public institutions to manage their administrative activities more efficiently and quickly. This could reduce document processing times, improve staff productivity, and optimize resource allocation.*
Improved decision-making: *AI algorithms can analyze large amounts of data and identify patterns and trends that would otherwise be difficult to detect. This can support public institutions in making more informed, evidence-based decisions, both in public policy and internal management.*
Reduction of human errors: *AI can help reduce human errors in administrative tasks, especially in tasks that require precision and consistency. This could improve the accuracy of decision-making processes and reduce the risk of errors that could have negative consequences.*
Better customer service: *Implementing AI systems can improve the experience of citizens and users of public services. AI-based chatbots or virtual assistants can provide immediate*

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answers to common questions, reducing waiting times and improving accessibility to public services.

***Cost savings**: If implemented correctly, AI can lead to significant cost savings for public institutions. By automating processes and reducing reliance on human labor, institutions can reduce operating costs and allocate resources more efficiently.*

***Innovation**: AI offers new opportunities for innovation in administrative practices and public services. Through data analysis and the development of customized solutions, institutions can continuously improve their processes and offer more effective, tailored services to the needs of citizens."*

In the face of a generalist approach (common thought) that points out risks and benefits that may result from any introduction of technological innovations, especially computer-based ones, and that reproduce human fears and exaltations regarding the unknown, it is instead necessary to be ready to manage a different perspective of development, which sees AI as a possible protagonist of administrative decision-making, in both predictive and generative functions, suitably combined.

This diverse perspective requires a different approach, as it must be recognized that the action criteria regulating public behavior do not appear sufficient to ensure that the exercise of public power, in the era of AI, is effectively directed towards maximizing the public interest.

This also applies to the exercise of judicial power, which cannot remain confined to the traditional paradigm that does not allow for effective scrutiny of the merits of administrative decisions.

In algorithmic proceedings, and therefore following the use of AAI, it will not be possible to discern the exercise of technical discretion from that of administrative discretion, especially in cases of applications based on algorithms resulting from machine learning, which would remain opaque to understand even with maximum transparency and accessibility, considering that they would be alphanumeric strings or formulas that do not allow evaluations similar to those that could be made in relation to human behavior.

As already highlighted elsewhere: "*In other words, the process of subsumption between concrete facts and norms is not easily delineated, and the discretion inherent in every decision, whether human or automated, is characterized by a continuous comparison between input elements and experiential data, with cycles tending to infinity. The factual and legal assumptions become blurred, and the inquiry ends up being simultaneous with the decision, indistinguishable*".[19]

It has also already been noted that in the face of the ability of technoscience to generate extraordinarily invasive effects in the sphere of communities, there is not

[19] G. Terracciano, I.I.A. …, cited work.

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the same capacity of technoscience to predict with adequate certainty what will happen.[20] Yet, predictive systems seem to possess a persuasive force capable of becoming "influential" to the point of being determining factors in collective choices (not only in the political field). Thus, AI is able to transcend mere predictive function to be able to direct every "causal element" towards the supposed event, concretely achieving prediction: predictive capacity or primary causal element (of an event that would not have occurred without the prediction)?

In Italy, Administrative Courts, especially the Council of State, have acknowledged the existence of administrative decisions with the use of algorithms, for example in hiring procedures and allocations of teachers with automated procedures, establishing limits and conditions for the admissibility of automated decisions in the administrative context, setting criteria: of knowability, transparency, and accessibility of the procedure[21]; of the non-exclusivity and human dominion of the decision; of the non-discriminatory nature of the data entered into the system[22].

However, these judicial approaches are of a traditional matrix, limited by the kind of judgment that is exclusively of legitimacy and not of merit.

What still seems to be lacking is the recognition of the limited nature of this judicial response, in front of the need not to limit the evaluation on the existence of legitimacy gaps in algorithmic administrative action, but instead to broaden the judicial power to verify concretely the result and consequences of administrative action, to assess the effective pursuit of the public interest, and in compliance with criteria of justice and fairness, not just legality.

In other words, it is necessary to acknowledge that the legislative principles and criteria regulating the action of public administrations through *analogical* procedures are not sufficient to guarantee legality and, above all, democracy in proceedings characterized by the use of non-traditional algorithms, i.e., those stemming from machines evolved through self-learning, which make the Black box inherently indecipherable,[23] or so-called recursive, i.e., those that use recursion technique to solve a problem by subdividing it into smaller sub-problems of the same type.[24]

An adjustment of the reference principles seems necessary also to avoid slowing down the use of AI in the public sector, which, on the contrary, in the private sector

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[20] G. Limone, *Dare dignita` alla speranza e speranza alla dignita`. L'essere umano concreto al centro delle scienze e della vita: un crocevia di paradossi teorici ed etici*, Prolusione all'inaugurazione dell'anno accademico 2006/2007 della Seconda Universita` degli Studi di Napoli.

[21] E. Prosperetti, *Accesso al software e al relativo algoritmo nei procedimenti amministrativi e giudiziali. Un'analisi a partire da due pronunce del TAR Lazio*, in *Diritto e Informatica*, 4/2019, 979 ff.; N. Muciaccia, *Algoritmi e procedimento decisionale: alcuni recenti arresti della giustizia amministrativa*, in *Federalismi*, 10/2020.

[22] D. Ponte –G., Pernice, *L'intelligenza artificiale e l'algoritmo a contatto col diritto amministrativo: rischi e speranze*, in *www.giustizia-amministrativa.it*, October 2021.

[23] M.Corradino, *Intelligenza artificiale …*, cited work.

[24] G.E. Sacks, *Teoria della ricorsività*, Rend. Sem. Mat, Politecnico di Torino, conference 23 January 1996.

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seems to have no limits at present, with the effect of further aggravating the existing technological gap between large private enterprises and States. Legality, good governance, impartiality, transparency, accountability, responsibility, prevention, precaution, proportionality, humanity, are principles and criteria that undoubtedly must be respected with due adaptations, to which it must be added, as specific to the algorithmic proceeding and in order to achieve algorithmic "truth", at least those of trust and result.[25]

4. (Non) conclusive deductions.

Deciphering the principles of trust and result concerning algorithmic administrative action does not seem to be a straightforward task. Therefore, it may be necessary to start from some considerations that can be summarized as follows: a) general regulation regarding predictive and generative AI is currently entirely inadequate and predominantly oriented towards risk assessment; b) specific legislation on AAI and algorithmic administrative procedures is practically non-existent; c) technology and resources directed towards research in this field are predominantly controlled by private multinational corporations (GAFAM – BATX); d) the risks of altering the Authority-Freedom relationship due to uncontrolled AI usage in public power exercises are perceived as severe; e) the concentration of AI "power" in the hands of private multinational corporations, coupled with the absence of public supervision and control, could lead to a form of Technocracy that would strongly influence governments of States (whether democratic or not) or even replace them; f) It does

[25] About principles and criteria of algorithmic proceedings, see recently: G. Resta, *Governare l'innovazione tecnologica: decisioni algoritmiche, diritti digitali e principio di uguaglianza*, in Politica del diritto, 2, 2019, 199 ff.; G. Resta, *Algoritmi, diritto, democrazia*, in *Giustizia civile.com*, Editoriale, 2019; A. Celotto, *Come regolare gli algoritmi. Il difficile bilanciamento fra scienza, etica e diritto*, in *Analisi giuridica dell'economia*, 1, 2019, 47 ff.; P. Zuddas, *Intelligenza artificiale e discriminazioni*, in *Liber amicorum per Pasquale Costanzo*, on *www.giurcost.org*, 2020; M.C. Cavallaro e G. Smorto, *Decisione pubblica e responsabilità dell'amministrazione nella società dell'algoritmo*, in *Federalismi.it*, 2019; G.C. Feroni, C. Fontana, E.C. Raffiotta, *AI Anthology, Profili giuridici, economici e sociali dell'intelligenza artificiale*, Il Mulino, Bologna, 2022; G. Carullo, *Dati, banche dati, blockchain e interoperabilità dei sistemi informatici nel settore pubblico*, in R. Cavallo Perin e D.U. Galetta (ed. by), *Il Diritto dell'Amministrazione Pubblica digitale*, Giappichelli, Torino, 2020, 191-221; A.G. Orofino, *L'attuazione del principio di trasparenza nello svolgimento dell'amministrazione elettronica*, in *Judicium*, 2020; B. Ponti, *L'amministrazione come fornitore e come fruitore di dati personali pubblici: sono praticabili soluzioni basate sulla Big Data Analytics/Machine Learning?*, in R. Cavallo Perin (ed. by), *L'amministrazione pubblica con i Big Data*, Torino, 2021, 233-250; N. Rangone, *Intelligenza artificiale e intelligenza umana a supporto di una buona amministrazione*, in *Munera*, n. 2/2022; F. Luciani, *Brevi note sull'innovazione tecnologica come strumento di buona amministrazione*, in *La cittadinanza europea*, n. 2/2022, 199-218; G.M. Racca, *La responsabilità delle organizzazioni pubbliche nella trasformazione digitale e i principi di collaborazione e buona fede*, in *Dir. Amm.*, n. 3/2022; V. Fanti, *Intelligenza artificiale e diritto amministrativo: prospettive, limiti, pericoli*, in *Dir. e proc. amm.*, 2022, 1002; G. Gallone, *Riserva di umanità e funzioni amministrative. Indagine sui limiti dell'automazione decisionale tra procedimento e processo*, cit., Milano, 2023; A. Romeo, *Certezza del diritto e amministrazione di risultato alla prova della trasformazione digitale*, in *Scritti in onore di Maria Immordino*, Napoli, 2022; P. Rubechini, *Tecnologia blockchain e fiducia amministrativa*, Napoli, 2023.

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not seem possible (nor advisable) to halt or slow down technological progress, so efforts should focus on ensuring that AI is "manageable" (inclusive governance); g) complex or advanced algorithms based on self-learning are hardly evaluable (and understandable) *ex post* in terms of legitimacy or compliance with current rules of administrative action.

The approach to general regulation, both concerning the G7's 11 principles from Hiroshima and the upcoming Regulation (law) on AI from the European Union (which also established a European AI Office and provided for a European governance structure and similar national structures), is similar. Among other fundamental principles, there is a common recognition of the need for a clear system of accountability for entities that create, introduce, distribute, and use advanced AI systems. This corresponds to the need for assessment, control, and, it could be added, certification by public authorities to protect users (and administered citizens).

This approach can also be applied to more specific rules of algorithmic administrative action, and in this direction, the aforementioned two principles should be considered.

If "trust" refers to the relationship between the administrative Authority and the administrated subject, as recently established by the new Italian Public Procurement Code (n. 36 of 2023) – which is substantiated in mutual trust in the legitimate, transparent, and correct action of the administration, its officials, and, correspondingly, economic operators – then it also requires that the public Authority should supervise the quality and quantity of instrumental input data, for training purposes, to build the algorithm to be used within or in place of administrative proceedings. This oversight could converge into a sort of authorization or permission to use AI models or applications within the exercise of administrative activity, regardless of whether in-progress checks are self-certified or certified by economic operators or carried out by the public administration itself. The principle of trust in the correctness of public action regarding algorithm construction oversight would tend to diminish the importance of algorithm access and comprehensibility, inherently unfathomable and not subject to compliance evaluations with legal rules.

Ultimately, the principle of trust would play an essential role in controlling the technical prerequisites of the algorithm.

Judicial evaluation, too, of substantial correctness, and therefore legal correctness and, ultimately, fairness of the decision, would thus be focused on two essential aspects: the quantity and quality of data (input) and the final decision (output), with the process of elaboration and examination of the algorithm becoming almost irrelevant.

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The principle of result governs the final decision, in implementation of the principle of good administration (Art. 97 of the Constitution) and the criteria of effectiveness, cost-effectiveness, and efficiency.

The administrative decision, even algorithmic, can only be oriented towards the overall well-being of the administered, and thus the general public interest, albeit in pursuing the specific public interest, so that resource allocation is proportionate and responsible: good administration mainly concerns the ability of the final decision to achieve these goals by balancing all the public and private interests involved. However, what matters most is that the principle of result imposes effective evaluation, of merit and not just mere conformity to norms, of the final decision, both by the administrative authority overseeing the algorithmic process and by the judicial authority, which should focus not on formal or procedural defects (taking into account the initial authorization or authorization for algorithm use) but evaluate the administrative relationship as it is regulated in practice and the final decision (the administrative act produced by the AI system or with its assistance), to assess its conformity to the public interest, with full powers and reconsideration of the abuse of power, as a divergence between concrete action and the public interest to be pursued, in this noting the uselessness, in those fields, of the distinction between technical and administrative discretion.

Perhaps these are somewhat assertive considerations that need further development in line with technological advancements, and therefore, ultimately, they are only (non-)conclusive deductions.

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