

# CHAPTER 1

## AUTOMATED ADMINISTRATIVE DECISIONS AND COMPARATIVE STUDIES

*Angela Ferrari Zumbini\**

### *Abstract*

The chapter analyses the growing use of automated administrative decisions and highlights the procedural risks that arise when public authorities rely on algorithms and AI. It argues that, despite the efficiency gains associated with automation, essential guarantees such as transparency, participation, access to reasons and human oversight become more difficult to ensure. The introductory section situates these issues within ongoing national and supranational regulatory responses and recent judicial disputes in Europe, China and the United States. The article then sets out the research objectives: to determine whether the problems caused by automation are shared across legal systems and to identify how different jurisdictions protect the rights of individuals affected by automated decisions. It explains that these questions are investigated through the Common Core methodology, adapted from private law and applied here to administrative law through a factual questionnaire and hypothetical cases. The methodological section clarifies how legal formants, national reports and case-based comparisons reveal the practical operation of procedural safeguards in automated settings. Finally, paragraph 4 describes the multinational research team, the drafting and revision of the questionnaire, and the structure of the volume, which includes national reports, case analyses and comparative chapters. Together, the article provides the conceptual and methodological foundation for a systematic comparative study of automated administrative decision-making.

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\* Full Professor of Public and Administrative Law, Federico II University of Naples. Principal Investigator of the research project Prin 2022 (Under 40) “The dark side of algorithms under the comparative lens: automated administrative decisions between efficiency and due process” funded by the Italian Ministry of University and by the European Union - NextGenerationEU Grant Agreement no. E53D23006810006.

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### 1. Introduction

Automated administrative decisions, i.e. decisions made using algorithms and Artificial Intelligence (AI), are becoming increasingly common in many jurisdictions, including European countries, China, and the United States. Nevertheless, automated administrative decisions pose new risks to procedural guarantees and transparency. The research proposed here aims to carry out a comparative analysis using the ‘Common Core’ methodology (see *below*) to understand the problems arising from the use of algorithms and AI by public authorities in different legal systems and to verify what solutions can be introduced to guarantee the procedural rights of individuals in automated administrative proceedings.

The automation of decisions is now becoming an essential feature of administrative action. The benefits in terms of efficiency are already widely recognised (algorithms can ensure that numerous decisions are taken more quickly and avoid the risk of bias, thus strengthening impartiality<sup>1</sup>); however, it can also generate significant risks in many respects, especially regarding procedural rights and transparency. For example, how can individuals ‘participate’ in an automated decision? How is the transparency of an algorithm guaranteed? Are the source codes accessible? And is access to the source code sufficient, in itself, to make the logic of the AI system used intelligible? How is the obligation to give reasons applied to automated decisions?

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<sup>1</sup> Of course, there is also the risk that the algorithm itself may be built or trained on biased information, but here we are referring to the possibility of neutralising human bias.

The issue of automating decision-making processes in administrative law and the threats this poses to procedural rights have so far been neglected in comparative studies, despite the widespread use of algorithms and AI by public administrations. In many legal systems, various disputes concerning the compatibility of algorithm-based decision-making with the right to a fair trial and the principle of transparency have already come to the attention of the courts.

Many national legislatures have intervened on this issue, as have various supranational bodies. As early as 2016, Article L300-2 of the French *Code des relations entre le public et l'administration* equated the source code of algorithms used by public authorities to administrative documents and recognised a right of access to it. In 2018, Germany introduced a new Article 35a into its Administrative Procedure Act to allow the adoption of administrative acts by automatic means, but only in cases where the authorities lack discretionary powers. Also in 2018, Estonia issued the *e-State Charter*, enabling citizens to know the level of protection of their rights in relation to electronic services provided by public administrations. In 2021, Spain adopted the *Carta de Derechos Digitales*, a soft law instrument whose Article XVI establishes 'digital rights vis-à-vis public authorities'. In September 2025, Italy approved Law 132, whose Article 14 regulates the use of AI by public authorities, requiring them to ensure that data subjects are aware of how AI works and that its use is traceable. It is well known that the European Union has adopted the Artificial Intelligence Act, which is already under review for possible simplification.

The topic has attracted scientific debate<sup>2</sup>, although most studies have so far been published in national languages and have focused on

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<sup>2</sup> For Italy, see G. Avanzini, *Decisioni amministrative e algoritmi informatici* (2019); D.U. Galetta, *Transizione digitale e diritto ad una buona amministrazione: fra prospettive aperte per le Pubbliche Amministrazioni dal PNRR e problemi ancora da affrontare*, in *federalismi.it* (2022), pp. 103 ff.; the issue No 1 of 2003 of the journal CERIDAP; the research published by the IRPA's Digital State Observatory; in the United Kingdom, P. Craig, *Administrative Law* (2021 9<sup>th</sup> ed.), esp. chapter 10, and R. Williams, *Rethinking Administrative Law for Algorithmic Decision Making*, 42 *Oxford J. Legal St.* 468 (2022); in the United States, F. Pasquale, *The Black Box Society: The Secret Algorithms that Control Money and Information* (2015); C. Coglianese, D. Lehrs, *Regulating by Robot: Administrative Decision Making in the Machine-Learning Era*, 105 *Georgetown L. J.* 1147 (2017); C. Coglianese, *Administrative Law in the Automated State*, 150 *Daedalus* 104 (2021); in Spain, J. Ponce, *Inteligencia artificial, Derecho administrativo y reserva de humanidad: algoritmos y procedimiento administrativo debido tecnológico* <http://laadministracionaldia.inap.es/noticia.asp?id=1509505>; on the impact of the AI Act on administrative decisions, J. Ponce, A. Cerillo I Martinez (eds), *The EU Artificial Intelligence Act and the Public Sector. Humans and AI Systems in Public Administration in*

domestic cases and regulations rather than comparative analysis. There are also many supranational initiatives addressing the issue, such as the Council of Europe's Framework Convention on Artificial Intelligence and human rights, democracy and the rule of law, adopted in September 2024<sup>3</sup> and the EU Fundamental Rights Agency's 'Artificial Intelligence, Big Data and Fundamental Rights' project, as well as the European Law Institute's 'Artificial Intelligence and Public Administration' project and the 'Information in the EU's Digitalised Governance' (INDIGO) project, coordinated by the University of Luxembourg in collaboration with five other universities, dealing with the impact of digitalisation on the implementation of European policies.

However, comparative studies seeking to verify whether the problems that arise in the various legal systems are similar, if not identical, and whether the solutions are also similar or reveal differences are still lacking. This volume aims to fill a gap in the literature on comparative administrative law by comparing the rules and decisions adopted by the countries under consideration on the use of algorithms and AI in administrative proceedings.

## 2. Research objectives

The research aims to answer two questions: (1) whether the problems and risks generated by the use of algorithms and AI in administrative decision-making are similar in different legal systems, and (2) what solutions these systems adopt to guarantee the procedural rights of those involved in automated administrative proceedings.

This, in turn, prompts us to ask and answer a series of further and more specific questions: What risks to administrative action arise from automated procedures? Which of the rules and procedural safeguards currently in force in relation to non-automated administrative procedures are jeopardised or become more difficult to apply when automation relies on intelligent algorithms? At what point does technology have the greatest impact on people's rights and, in particular, in which procedures? Do the general principles of law governing

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*the Light of the European Regulation on Artificial Intelligence of 2024* (2024); in France, the Association française pour la recherche en droit administratif published the volume *Le droit administratif au défi du numérique* (2019).

<sup>3</sup> See the Special Issue of the Italian Journal of Public Law no. 4/2025, edited by A. Ferrari Zumbini, P. Monaco & Silvia Venier, *The Council of Europe's Framework Convention on Artificial Intelligence. Comparative, EU, International and Sectoral Perspectives*.

administrative action in most, if not all, national legal systems (such as impartiality, transparency, and the protection of legitimate expectations) also apply to automated administrative procedures? If so, how are these principles applied in practice? Which techniques, methods, and rules impinge on the effective implementation of these principles, and with what results?

These questions must be urgently addressed. Over recent decades, the CJEU has increasingly relied on the doctrine of general principles of law common to the legal systems of the Member States. A growing proportion of EU policies is implemented through shared administration models, i.e. by national bodies supported by EU agencies. In this regard, several initiatives have been undertaken, mostly by academics and partly by the EU itself, to simplify and unify EU administrative procedures. The CoCEAL project (see below) demonstrates the existence of a common core of administrative rights across Europe, recognising, however, that many differences persist and require detailed comparative examination. Can the same conclusion be drawn vis-à-vis the European Union, even when public decision-making involves the use of an intelligent algorithm?

The main objective of the research project was to complete this investigation, the results of which are published in this volume. To achieve this, the research team employed an innovative method to compare national legal systems in relation to the principles and rules that govern (and ensure control over) the exercise of algorithmic power by public authorities in Europe, China, and the United States. This methodology not only made it possible to identify areas where convergence is already evident or most likely to occur, but also to highlight factors that could hinder the integration process, at least in the short term.

Applying the Common Core methodology to automated administrative decisions offers a profound understanding of European administrative norms and practices, highlighting the deep-rooted factors that shape European administrative legal cultures.

### **3. Methodology**

As mentioned, the project applied the comparative Common Core method to a new form of power exercised by public authorities. Originally associated with ‘The Common Core of European Private Law’ project (see section 3.1 below), this method has been successfully applied since 2016 by the ERC-funded CoCEAL project (see section 3.2). The

CoCEAL<sup>4</sup> results have amply demonstrated that the distinction between civil law and common law countries, traditionally considered of the utmost importance in the field of administrative law, does not in fact provide a useful key to describing how administrative law originated and evolved in Europe (and elsewhere). Applying this method (albeit with some adjustments) to the emerging field of automated administrative decisions can shed light on trends and solutions that are still largely unexplored (see paragraph 3.3 below).

### 3.1. The Common Core methodology

The Common Core of European Private Law project was launched in 1993 by Mauro Bussani and Ugo Mattei<sup>5</sup> to identify and highlight the similarities and differences between European legal systems in private law. Methodologically, it relies on a factual approach combined with the identification of legal formants<sup>6</sup>. These encompass all factors affecting law in action: regulatory provisions, doctrine, case law and *obiter dicta*, administrative decisions, and institutional practices.

The primary research tool used in the Common Core project is the factual questionnaire, comprising hypothetical cases drafted with a sufficient specificity to require *rapporteurs* to take into account all the legal formants and meta-legal factors that could be of practical relevance to the resolution of the case in a given legal system, such as political, economic, and social considerations. Once a questionnaire on a given topic has been approved, team members draft national reports explaining how the cases presented in the questionnaire would be handled and resolved in their respective legal systems. Their responses are then collected, compared, and published in the 'The Common Core Project of European Private Law' series<sup>7</sup>.

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<sup>4</sup> G. della Cananea, *The Common Core of European Administrative Laws. Retrospective and Prospective* (2023).

<sup>5</sup> M. Bussani, U. Mattei, *The Common Core Approach to European Private Law*, 3 Columbia J. European L. 339 (1998).

<sup>6</sup> On legal formants, as identified by Schlesinger and Sacco, see R.B. Schlesinger (ed.), *Formation of Contracts: A Study of the Common Core of Legal Systems* (1968); R. Sacco *Legal Formants: A Dynamic Approach to Comparative Law*, 39 American J. Comparative L. 343 (1991).

<sup>7</sup> The series, originally published by Cambridge University Press, <https://www.cambridge.org/core/series/common-core-of-european-private-law/9A1F0195629A3C0607233F14029C3A25> is now published by Intersentia, <https://intersentia.com/en/product/series/show/id/45176/>.

### 3.2. The application of the Common Core methodology to administrative law

Applying the Common Core method to administrative law in Europe aims to verify which principles are shared, which differ (and why), and how these principles are understood and applied in concrete terms in European legal systems. The European Research Council has funded this line of research through an Advanced Grant<sup>8</sup>.

The studies carried out within the CoCEAL project have so far investigated – and continue to explore – the legal principles and rules applicable to administrative action, as manifested in diverse activities and procedures, providing a comparative analysis of the different solutions from a bottom-up perspective<sup>9</sup>. Over one hundred scholars from across Europe and beyond have participated in the fifteen international meetings held to date.

CoCEAL's main objective is to explore an important area of administrative law, namely administrative procedure, to ascertain whether and to what extent there is a 'common core' of administrative rights in Europe, i.e. whether, behind and beyond the countless differences that exist between European countries, there are some shared and connecting elements that can be legally formulated in terms of general principles of law and mechanisms, as well as any rules for their application. The results are (and will be) published by Oxford University Press in the new series 'The Common Core of European Administrative Law'<sup>10</sup>.

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<sup>8</sup> The research project is called 'The Common Core of European Administrative Laws (CoCEAL)', funded by an ERC Advanced Grant, Grant Agreement No. 694697, Principal Investigator Prof. Giacinto della Cananea.

<sup>9</sup> G. della Cananea, M. Bussani, *The 'Common Core' of administrative laws in Europe: A framework for analysis*, 26 Maastr. J. Europ. & Comp. L. 1 (2019).

<sup>10</sup> The volumes containing the results of the CoCEAL research published to date in the Oxford University Press series edited by G. della Cananea and M. Bussani are as follows: G. della Cananea, R. Caranta (eds), *The Tort Liability of Public Authorities in European Law* (2020); G. della Cananea, M. Andenas (eds), *Judicial Review of Administration in Europe. Procedural Fairness and Propriety* (2021); M. Conticelli, T. Perroud (eds), *Procedural Requirements for Administrative Limits to Property Rights* (2022); G. della Cananea, J.B. Auby (eds), *General Principles and Sector-Specific Rules in European Administrative Laws* (2024); G. della Cananea, A. Ferrari Zumbini (eds), *Administrative Rulemaking and Planning in European Laws* (2025). Alongside these synchronic comparative studies, the research also explored a diachronic profile with the publication of two historical volumes: G. della Cananea, S. Mannoni (eds), *Administrative Justice Fin de siècle. Early Judicial Standards of Administrative Conduct in Europe (1890–1910)* (2021); G. della Cananea, A. Ferrari Zumbini, O. Pfersmann (eds),

### 3.3. Applying the Common Core methodology to automated administrative decisions

The emergence of automated administrative decisions is a global phenomenon, affecting not only Europe but also the rest of the world. This project investigates how legal systems balance the need for the efficiency and objectivity of administrative action (potentially facilitated by the use of algorithms and AI) with the protection of data subjects' rights. Of course, the rules governing administrative proceedings have always sought to strike a balance between efficiency and due process<sup>11</sup>; in automated administrative proceedings, this need is even more acute.

The project applied the factual methodology developed throughout the Common Core and CoCEAL projects to assess how different legal systems are currently seeking to balance these requirements. The research team prepared a questionnaire with seven case studies on automated administrative decisions to determine whether and how individual rights are guaranteed and effectively respected. The focus was mainly on traditional procedural guarantees, such as the right to be heard during proceedings, the obligation to give reasons, the right of access, judicial protection, and transparency. How do these rights apply when an individual is confronted with an algorithm used by a public authority?

This area has long given rise to judicial disputes, which are becoming increasingly frequent. Suffice it here to briefly mention three recent lines of litigation in Italy, the Netherlands, and the United States.

In Italy, a 2015 law established an extraordinary teacher recruitment plan using an algorithm. It was intended to assign each teacher a location by combining their ranking positions with their preferences, ostensibly ensuring the best possible assignment for higher-ranked candidates (according to the preferences expressed). However, the algorithm produced irrational results. Some highly ranked teachers were assigned to schools that were not their first choice and located very far from their homes, while lower-ranked teachers received their first choices. This situation, as is widely known and predictable, led to extensive litigation. Two rulings of the Council of State (Council of State,

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*The Austrian Codification of Administrative Procedure. Diffusion and Oblivion (1920-1970) (2023).*

<sup>11</sup> By way of example, see the special issue of the journal *Problemi di amministrazione pubblica*, dedicated to the theme *L'azione amministrativa tra garanzia ed efficienza (Administrative action between guarantee and efficiency)* published in 1981, which brings together the writings of Benvenuti, Nigro, Berti, Calandra, Badura, Giannini and Sandulli on the issue of the codification of administrative procedure.

Section VI, 8 April 2019, No. 2270 and 13 December 2019, No. 8472) found that, in general terms, the use of intelligent algorithms in administrative action should be neither denied nor stigmatised. Nevertheless, the administrative court ultimately annulled the automated decision regarding the assignment of school locations, considering the algorithm to be flawed, as the criteria and parameters adopted by the software had not been made public (and could therefore not be known by third parties) and no meaningful human supervision had been provided during or after the automated decision-making process. It thus appears that the administrative court is attempting to reconcile the search for innovative tools to manage the growing complexity of social life with the protection of individual and collective interests.

Similar disputes have arisen in litigation elsewhere and have attracted attention from national agencies and independent authorities responsible for matters of privacy; in these cases, too, the courts have had to determine which standards apply to public bodies when they opt to use algorithms in the performance of their duties.<sup>12</sup> Prime examples are the *Aerius* saga in the Netherlands, which concerned the lawfulness of using an algorithm to semi-automate the issuance of environmental permits, and the decision of the UK Court of Appeal of 11 August 2020 regarding a police pilot programme using automatic facial recognition technology (AFR) to search for possible suspects<sup>13</sup>. In the United States, a District Court in Idaho ruled on 28 March 2016 in a class action against the use of a corporate algorithm by the Idaho Department of Health and Welfare<sup>14</sup>.

The Common Core method has been applied in this project to study these and similar disputes, adapting it to the specific requirements of this project. In addition to the seven hypothetical cases, the questionnaire also includes questions on the state of legislation and doctrine on the use of intelligent algorithms by public administrations and the automation of decision-making processes in general.

The comparative analysis included Italy, France (which equated the source code of public algorithms with administrative documents in 2016), Germany (which in 2018 allowed the automated adoption of administrative acts, but only in cases where the power is not discretionary), Spain (which adopted the Charter of Digital Rights in

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<sup>12</sup> Raad van State, 17 May 2017, ECLI:NL:RVS:2017:1259; Raad van State, 18 July 2018, ECLI:NL:RVS:2018:2454.

<sup>13</sup> *R (Bridges) v. Chief Constable of South Wales Police* [2020] EWCA Civ 1058.

<sup>14</sup> *KW v. Armstrong* (180 F. Supp. 3d 703).

2021), Austria (which in 2018 allowed automated administrative decisions that adversely affect people's rights only if explicitly authorised by law), Estonia (which appears to be a pioneer in the e-State sector), the Netherlands (where there is an ongoing and interesting legal dispute; see above), and the United Kingdom (where similar legal disputes are also ongoing; see above). Additionally, the project considered the European Union (where the CJEU has developed specific privacy safeguards<sup>15</sup> and, above all, the AI Act was adopted in 2024) and two non-European jurisdictions: China and the United States. This choice seemed appropriate not only because US case law on the subject is both ample and interesting, but also because both the Common Core project and the CoCEAL project have shown that including one or more non-European legal systems in comparative analysis provides an external perspective that sharpens the identification of similarities and differences. These two non-European legal systems were selected as they differ vastly yet share significant advances in AI development and use. The project also examined twelve Central and Eastern European legal systems (Albania, Bulgaria, Croatia, Latvia, Lithuania, Poland, the Czech Republic, Romania, Serbia, Slovenia, Turkey and Hungary), with the results published in 2025 Special Issue No. 2 of the *Italian Journal of Public Law*<sup>16</sup>.

#### **4. Research team and structure of the volume**

The research team comprises three units: the Tor Vergata University of Rome Unit (coordinated by Martina Conticelli, with Maurizia De Bellis and Livia Baldinelli); the University of Trieste Unit (coordinated by Marta Infantino, with Mauro Bussani, Andrea Crismani, and Paola Monaco); and the Federico II University of Naples Unit as project leader (coordinated by the undersigned Principal Investigator, with Giacinto della Cananea, Leonardo Parona, and Camilla Crea).

The team drafted a questionnaire containing six general questions and seven hypothetical cases (aiming to cover as many types and sectors as possible, including individual and general proceedings, planning proceedings, and proceedings concerning refusals of favourable measures, restrictive measures, and the detection of potential fraud in tax

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<sup>15</sup> See, for example, *Privacy International v. Secretary of State for Foreign and Commonwealth Affairs and others*, 6 October 2020, C-623/17.

<sup>16</sup> M. Bussani, A. Ferrari Zumbini, M. Infantino (eds), *The Law of the Algorithmic State in Central and Eastern Europe*, in *The Italian Journal of Public Law*, Special Issue, 2/2025.

and welfare). The questionnaire was sent to national experts and subsequently discussed with all of them at the workshop held in Rome in April 2024. During the discussion, one case was eliminated and replaced with another, one was added, and all were modified or supplemented to ensure they were theoretically possible as they stood in all the legal systems considered. Discussion was indispensable to ensure that all the national experts shared a common understanding and interpretation of the questionnaire and would provide answers suitable for comparison.

This volume is divided into four parts. Following this introduction, Part II presents the six general questions and the national experts' responses grouped by country to provide an overview of the rules governing automated decisions in each legal system. Part III details the seven hypothetical cases presented in the questionnaire at the beginning of the section, followed by the national experts' answers. For ease of reading and comparative analysis, these have been disaggregated so that the solutions from all the legal systems are summarised under each case, followed by the eleven answers for the respective legal systems. All national reports were originally completed at the end of 2024 and served as the basis for the subsequent comparative chapters. The Italian and United States reports were later updated in October 2025 in order to incorporate, respectively, the enactment of Italian Law No. 132/2025 on Artificial Intelligence and the institutional and policy changes that occurred during the Trump presidency.

Part IV is devoted to a comparative analysis of the responses received. The first chapter analyses the responses to the six general questions, examining in depth the legal bases, procedural requirements, and infrastructural aspects of automated administrative decisions. The subsequent three chapters analyse the answers regarding the seven hypothetical cases: Martina Conticelli focuses on individual proceedings (Cases 1 and 2); Giacinto della Cananea provides a comparative analysis of second-generation proceedings involving a large number of interested parties (Cases 3 and 4); and Maurizia De Bellis examines proceedings for restrictive measures (Cases 5, 6, and 7). Livia Baldinelli subsequently examines the developments that have occurred in the United States, elucidating the principal divergences between the Biden and Trump administrations with respect to the use of automated administrative decision-making. The volume closes with some concluding remarks.