

CHAPTER 3

CHINA

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I. Is there a national act containing a legal definition of Automated Administrative Decisions?

No. There has been no national legislation in China containing a legal definition of automated administrative/public/state/government decisions. While Article 24 of the PRC *Personal Information Protection Law* (PIPL) prescribes that personal information processors using personal information for automated decision-making should ensure transparency and fairness in decision-making, it leaves the term “automated decision-making” undefined. In fact, the Chinese translation of automated administrative/public decisions (自动化行政/公共决策) remains an academic term and has not made its way into any formal legal document in China so far.

II. Is there a general legal basis (either at the constitutional level or in the Administrative Procedure Act) for the use of algorithmic automation and/or artificial intelligence (AI) by public authorities (government, agencies, local authorities, and specialised bodies)? If no such legal basis exists, are there any legislative provisions that permit public authorities to experiment with algorithmic automation or AI?

No. In China, there is no general legal basis at the constitutional or statutory level for automated decision-making by State/public administration, at least explicitly. The closest thing can be found in Article 33 of the PIPL, which states that “The activities of State organs in processing personal information shall be subject to this Law; If there are special provisions in this section, the provisions of this section shall apply.” Since there is no special provision in the PIPL regarding State organs' automated decision-making, one can logically deduce from Article 33 that the legal requirements of transparency and fairness in automated decision-making by private bodies, as prescribed in Article 24

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of the PIPL, should equally apply to State agencies. Furthermore, while there is neither explicit prohibition nor explicit authorisation in Chinese law regarding public administration experimenting with or utilising AI or algorithmic automation, it is generally believed that public agencies in China are not barred, as a matter of principle, from partially automating their decision-making using algorithms or AI. In actuality, they are already doing this.

III. Do public authorities rely on algorithmic automation/AI in their daily operations? If yes, to what extent? Which areas are most affected by automation (e.g., security, policing, immigration, transport, tax management, welfare, health and employment services, education, justice, or digital identity)?

Yes, they do. Since there is no systematic and comprehensive empirical research on automated administrative decision-making in China, it is very hard to pinpoint the specific percentage of administrative tasks that are currently automated in this country. But it is safe to say that the impact of AI on Chinese public administration is of considerable breadth and depth. For instance, the existing English literature has already reported on automated public decision-making in China in the areas of public health¹, courts², public security (police)³, local government⁴, financial regulation⁵, social credit system⁶, and content moderation⁷, to name just a few.

IV. What legal requirements – e.g. in terms of privacy, cybersecurity, quality of the datasets, impact assessments,

¹ H. Yu, J. Willaing Zeuthen, Local Politics in the Age of Automated Decision-Making in China: A Case Study of the Henan Health Code Scandal, 33 *Journal of Contemporary China* 923 (2023).

² S. Papagiannenas, N. Junius, *Fairness and Justice through Automation in China's Smart Courts*, 51 *Computer Law & Security Review* (2023).

³ D. Sprick, *Predictive Policing in China: An Authoritarian Dream of Public Security*, 9 *NAVEIÑ REET: Nordic Journal of Law and Social Research* 299 (2019).

⁴ Y. Li, Y. Fan, L. Nie, *Making Governance Agile: Exploring the Role of Artificial Intelligence in China's Local Governance*, 40 *Public Policy and Administration* 1 (2023).

⁵ J. Gruin, *Financializing authoritarian capitalism: Chinese Fintech and the Institutional Foundations of Algorithmic Governance*, 5 *Finance and Society* 84 (2019).

⁶ K. Werbach, *Orwell That Ends Well? Social Credit as Regulation for the Algorithmic Age*, in *U. Ill. L. Rev* 101 (2022).

⁷ B. He, J. Wu, *Four Models of Algorithmic Bureaucracy in China*, in D. Brzezinski et al. (eds.), *Algorithms, Artificial Intelligence and Beyond* (2024).

transparency obligations, access to codes, the right to explanations, compulsory human involvement, and the right to obtain a review or remedy – apply to the use of algorithmic automation or AI by public authorities? Are there sector-specific regulations on Automated Administrative Decisions (e.g., public procurement, taxation etc.)?

As already mentioned, as the PIPL applies to State organs, the legal requirements of transparency, fairness and cybersecurity, as well as the right to access information, the right to an explanation, and the right to refuse automated decision-making with no human participation – which, according to the PIPL, apply to private entities – also apply to public agencies. While there is no domain-specific regulation on this front, in theory, public agencies face the same legal requirements as private organisations when it comes to automated decision-making. The biggest challenge, however, lies in implementation. There has not been a single judicial case so far in China where a citizen has sued the government with regard to automated administrative decision-making. The most notable case of public accountability in this area was the 2022 “red code” scandal, in which the local government of Henan, a province in central China, used the COVID-19 health code system to arbitrarily turn the codes of individuals planning to protest against a banking fraud scandal to “red”, effectively restricting their movement and preventing them from participating in demonstrations. When the news broke out, Chinese netizens protested about the abuse of power, but, in the end, only a few low-ranking officials were demoted, leaving the impression that the PIPL was more or less powerless vis-à-vis the State.

V. Who builds the algorithmic technologies used by public authorities? Are these developed by public entities, private companies, or a hybrid body?

This, of course, varies in individual cases and scenarios. However, typically in China, public agencies cooperate with private tech companies to develop algorithms used in automated administrative decision-making. Most notably, local governments across China collaborated with private tech companies to develop “health codes” during the COVID-19 pandemic, which were then used to generate a QR code that identifies the individual’s public health risk level as red, yellow, or green. The colour of one’s health code can essentially restrict travel and access to facilities. Chinese tech giants such as Alibaba and Tencent played a very active role in helping local authorities design, operate, and maintain the health code systems, while smaller players

were also involved in various localities to do the same. The organisational structure of this public-private collaboration was primarily contract-based, with public agencies outsourcing tech services to private companies.

VI. Is there a centralised infrastructure for digital data management, or are there several infrastructures? If the latter is true, is interoperability guaranteed, and to what extent? Are there any rules or procedures governing the exchange of information between different administrative bodies?

There is no centralised infrastructure for digital data management in public administration in China. In fact, one of the perennial challenges facing China's e-government and algorithmic governance development is the fragmentation of data and the related infrastructure. Interoperability and data sharing among public agencies have been serious problems for decades. In 2016, the State Council (China's central government) promulgated the *Interim Measures for the Administration of Sharing Government Information Resources*⁸, which established the principle of data sharing among government agencies. Numerous central departments and local authorities followed suit by issuing similar policies to promote data sharing in their respective jurisdictions. Yet it has been well documented that the central mandate for increased interagency data sharing has been far from fully implemented for a variety of sociopolitical, legal and technical reasons⁹.

⁸ https://www.gov.cn/zhengce/content/2016-09/19/content_5109486.htm.

⁹ L. Zhou, R. Huang, B. Li, "What is Mine is not Thine": Understanding Barriers to China's Interagency Government Data Sharing from Existing Literature, 42 Library & Information Science Research (2020).