The Artificial Intelligence in the Sphere of the Administrative Law

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INTRODUCTION

The extraordinary development of Artificial Intelligence (from now simply AI) in the context of administrative law, both in policy and in the main sectors of its organisational, administrative and jurisdictional activity, begins a new era. The term AI contains a series of notions: machine-learning, robotics, game theory, the development of complex algorithms, artificial neutral networks, etc. Administrative sector organizations has addressed the influence of AI on decision-making process, looking mainly at efficiency and rationalization. However, recent adoptions of AI have been challenged because of their discriminatory nature. As a result, questions emerged on the accountability of AI supported decision-making processes in the public sector. This process generates a lot of issues, with particular regard to the intermediation of the administrative provision. The so-called administrative relationship that is established between citizen and administration, rendered functional by the issue of a legislative measure, is affected by this process even before a provision is issued, not to mention the effects on the interaction between an administrative decision and its consequent effects on judicial review.

The automated administrative measure generates a series of advantages but also hides pitfalls not only for the public administration but also for the citizen himself. A computerised decision must not damage citizens but must be open to control. We are, therefore, faced with a double challenge, both technological and legal. A wise use of AI systems and programs should increase efficiency and performance in public service, while at the same time complying with constitutional and legal requirements and those norms in general that characterise administrative law. A legal challenge must restrict the use of new forms of technology and determine its application without placing unjustified and unnecessary obstacles in the way of technological development. AI will not only help the administrative assistant in the preliminary phases of the administrative process, concerning the admissibility, eligibility, validity and compatibility of applications, but also play a much more important role in the decision-making phases. However, this highly idealized and simplified vision risks undermining the fundamentals of administrative action inherent in the identification of the public interest in practice and the weighting in decision-making as well as the possible distortions of the administrative function.

The aim of this research is, therefore, to investigate, with a critical approach, the impact and the resulting effect that artificial intelligence has had in the sphere of Italian administrative law, also in relation to specific national circumstances within the EU area. On the 21 April 2021 European Commision proposed a new Union legislation to regulate AI. The Commission's proposal marks a defining moment in the history of AI, since it will ultimately lead to the first comprehensive legislative measure globally containing binding rules on AI.

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BACKGROUND

Artificial Intelligence: "The Science of Making Machines do Things"

The research in the IT field on "artificial intelligence" is aimed at deepening the theoretical foundations, the methodologies and techniques that allow the design of hardware and software systems capable of providing the electronic processor with performance that, for a common observer, would be of exclusive competence of human intelligence (Amigoni, Schiaffonati, & Somalvico, 2008). AI was programmatically established as a discipline in 1956 during a seminar held at Dartmouth College in Hanover in New Hampshire. Marvin Minsky, a famous American mathematician and scientist, gave the following definition to the AI: "*artificial intelligence is the science of making machines do things that would require intelligence if done by men*" (Stonier, 1992).

Through "artificial neural networks", which transmit the connections of the human brain to the computer, the machine should be able to understand the natural language, to learn and interpolate incomplete information and self-perfecting (Buscema, 1993). The automation of activities is becoming more and more widespread. There is no human involvement in the automated decision making so data is taken by a computer program equipped with an appropriate algorithm. AI is responsible for a given final result of the data analysis based on certain rules. These rules can be economic indicators, medical quantifiers, or the law and therefore an algorithm. It is crucial, that a computer program prepares the final solution on the basis of the output data, without human intervention.

The technical possibilities of using automated decision making have expanded considerably and thus seem to be created for use by public authorities in repetitive activities. The progress in machine learning and the possibility of using large and diverse sets of variable data (Big Data) allows for a wide use of AI in decision-making processes. Most often, within the automated decision making framework a distinction is made between processes that are relatively simple in nature, processes that are more complex in nature, and processes that require abstract thinking. It should be remembered, however, that administrative law is not a binary code that can be easily and simply algorithmized (Bateman, 2020), but a law that serves the collective and individual needs of citizens resulting from the coexistence of people in communities, with all the cultural and social heritage that will or will not be possible to convert into a binary code, and thus to automate administrative processes. It is interesting to observe the relationship between the automated decision and the discipline of the processing of personal data. The General Data Protection Regulation (new EU regulation 2016/679 on personal data), recalls the right of the interested party not to be subjected to a decision that may include a measure, which assesses personal aspects that concern him, which is based solely on automated processing and that produces legal effects that affect him. In particular, pursuant to art. 22, paragraph 1 of the GDPR, the interested party has the right not to be subjected to a decision based solely on automated processing, which produces legal effects that affect him or that affect his person.

Therefore, the right of the interested party not to be subjected to decisions based solely on automated processing can, however, be limited by any legislative measures, necessary and proportionate, aimed at safeguarding public interests such as national security, defense, prevention, the investigation, detection and prosecution of crimes.

But any state can give the administrations, through suitable legal provisions and in limited circumstances, a power of adopting decisions based solely on automated data processing (Pizzetti, 2016). As part of the administrative activity, numerous applications of the AI in the exercise of public functions and in the provision of services. In Australia, for example, there is the use of automated information