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*Artificial Intelligence and the Drafting of Administrative Justice Decisions**

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ABSTRACT This article analyses the potential and risks of using artificial intelligence to draft administrative justice decisions, particularly in France. The article shows that this use of AI is possible in certain respects, but comes up against the limits set by French and European law.

KEYWORDS: Artificial intelligence – Administrative justice – Algorithms – European Union Law

1. *Introduction*

What part can artificial intelligence (AI) play in drafting administrative court decisions? This question raises an entire imaginary world in which a robot-judge would replace men in dispensing justice.[1]

Yet just a few years ago, administrative judges (like many of us) knew nothing about artificial intelligence, which can be defined as "a computer system capable of making an autonomous choice, distinct from that of the person who designed it or who uses it".[2] More precisely, the AI Act adopted on 13 June 2024 at the European Union level gives the following definition: "machine-based system designed to operate with varying levels of autonomy, that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments".[3]

Today, judicial activity is seen as a particularly promising sector for deploying AI.[4] It is also one of the fields in which the deployment of AI arouses the most fantasies, echoed in the movies: Spielberg's film Minority Report, adapted from a short story by Philip K. Dick, comes to mind. In the administrative justice sector, AI can be used in a wide variety of ways: feeding the much-talked-about "predictive justice",[5] helping judges to search documentary databases, performing time-consuming or fastidious tasks such as classifying statistical data relating to cases, anonymising or pseudonymising decisions, translating certain documents and even court decisions, automatically generating a hearing report…[6] French judicial courts have even experimented using AI to propose a personal-injury compensation benchmark (the Datajust tool, introduced by decree n°2020-356 of 27 March 2020 – finally abandoned[7]).

The various uses of AI in the world of administrative justice are likely to be based on two major artificial intelligence techniques: "expert systems" in the form of decision trees (providing the algorithm with instructions and rules to reach a decision) and "machine

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[1] F. Rouvière, *Le raisonnement par algorithme: le fantasme du juge-robot*, in *Revue trimestrielle de droit civil,* 2018, 530.

[2] S. Merabet, *Vers un droit de l'intelligence artificielle*, Paris, Dalloz, Nouvelle bibliothèque de thèses, No. 60, 2020, 83.

[3] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on 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 (Artificial Intelligence Act) (Text with EEA relevance), Art. 3.1.

[4] Conseil d'État, *Intelligence artificielle et action publique. Construire la confiance, servir la performance*, 2022, 297.

[5] A. Garapon, *Les enjeux de la justice prédictive,* in *La semaine juridique,* 2017, 31; Y. Gaudemet, *La justice à l'ère des algorithmes*, in *Revue du droit public*, 2018, 651; B. Plessix, *Vers une justice administrative prédictive?,* in *Le droit administratif au défi du numérique*, Paris, Dalloz, 2019, 81; F. Rouvière, *La justice prédictive, version moderne de la boule de cristal*, in *Revue trimestrielle de droit civil,* 2017, 527.

[6] Conseil d'État, *Intelligence artificielle et action publique*, 297; see also European Commission, Directorate-General for Justice and Consumers, *Study on the use of innovative technologies in the justice field: final report*, Publications Office, 2020, https://data.europa.eu/doi/10.2838/585101.

[7] C. Coulon, *Datajust, ou l'outil référentiel numérique des préjudices corporels: aussitôt né, aussitôt enterré?*, in *Responsabilité Civile et Assurance*, No. 5, 2020, 3-4.

learning" (feeding the algorithm with previous court decisions, for example).[8]

But can AI draft administrative justice decisions? To write means to produce a text in an elaborate form that complies with the rules of the genre to which it belongs, according to the Larousse dictionary. Generative AIs like ChatGPT, which are perfectly capable of writing texts, are already questioning the relationship between humans and language and writing, which are initially an attribute of humans, enabling them to express their thoughts. To imagine that AI could write, not just any text, but even an administrative court decision, rendered "in the name of the French people", goes even further. It directly touches on the function of judging and questions the aims of justice as well as the qualities that can be expected of it.

The terms of the subject still need to be clarified. Distinctions should be made amongst the type of decision that AI could be likely to draft; between whether the AI directly drafts the decision or whether it "merely" provides assistance to the judge in drafting it; between the stages in the process where it can intervene (at the stage of the *rapporteur*'s work, of the public *rapporteur*'s conclusions, at the end of the collegiate deliberation, or all of these at the same time?).

The drafting of administrative justice decisions has been the subject of a Vademecum published by the French Conseil d'État.[9] The Conseil d'État stresses that drafting a judicial decision is a "balancing act" between sometimes contradictory requirements: ensuring the intelligibility of the decision, its authority and its acceptability to the parties, while complying with the time constraints of the court proceeding. It also points out that there is a "trademark" for administrative court decisions: clarity and rigour of reasoning, restraint and elegance of expression, accuracy and precision of terms.[10] The drafting of a decision is therefore a matter of style and substance, but also of form: the decision can be long or short, with dashes, paragraphs, etc. It follows rules, a form of grammar that we assume can be copied by AI. But, at the same time, the drafting of a legal decision is the culmination of the judge's reasoning:[11] it is the translation of the function of judging, and this is why the interference of AI here raises concerns.

The use of AI to draft court rulings is worth exploring, because it is no longer fiction. In January 2023, Colombian judge Padilla used ChatGPT to hand down a court decision. He clarified that the machine had not made the decision but helped as a "secretary".[12] A few months later, the Brazilian judge Jefferson Rodrigues (or rather his assistant) used ChatGPT to write his decision, which turned out to be riddled with errors... The process was reported by the losing party's lawyer, who had become aware of it.[13]

The deployment of AI in drafting decisions by French administrative judges appears attractive in many respects (1), but also entails risks that should be highlighted (2).

2. *An appealing use*

Using artificial intelligence to draft administrative justice decisions is possible and offers advantages - which must then be counterbalanced.

2.1. *A possible use*

Artificial intelligence can be used in two ways when drafting an administrative judicial decision.

AI can initially be confined to the role of "assistant to the court",[14] to provide assistance in drafting the decision. It can be used as a tool by the judge to find precedents in databases, identify and analyse the issues to be resolved, summarise the parties' arguments, and propose a draft decision over which the judge would ultimately retain control.[15]

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[8] Conseil d'État, *Intelligence artificielle et action publique*, 298.

[9] Conseil d'État, *Vademecum sur la rédaction des décisions de la juridiction administrative*, 10 December 2018 *(Vademecum on the drafting of administrative court decisions),* in https://www.conseil-etat.fr/Media/actualites/documents/2018/12-decembre/vade-mecum-redaction-decisions-de-la-juridiction-administrative.

[10] Conseil d'État, *Vademecum*, 3.

[11] F. Malhières, *Les méthodes de rédaction des décisions de justice en droit administratif*, in *Les méthodes en droit administratif,* Dalloz, 2018, 57.

[12] France Culture, Esprit de justice (A. Garapon), *L'impact de ChatGPT sur la justice (et nos vies)*, 15 March 2023.

[13] Libération et AFP, *Erreur de Code. Un juge brésilien s'aide de l'IA et rend une sentence pleine de fautes*, 14 November 2023, available at https://www.liberation.fr/societe/police-justice/un-juge-bresilien-saide-de-lia-et-rend-une-sentence-pleine-de-fautes20231114_WO2LQDDJ65CU5CR3RNMO564VNI/.

[14] Conseil d'État, *Intelligence artificielle et action publique*, 297.

[15] L. Pécaud-Rivollier and S. Robin, *Justice et intelligence artificielle, préparer demain: épisode I*, in *Dalloz*

The question then arises as to whether the AI itself can draft the legal decision. From a theoretical point of view, it is possible to consider that the mathematical logic that permeates the operation of algorithms is not so far removed from the judge's syllogistic reasoning. As Professor Plessix has noted, "all legal scholars who favour formal logic" have long "expressed the wish for a law imbued with mathematical rigour and based on purely deductive logic". Somewhat provocatively, a parallel could be drawn between Montesquieu's metaphor of a judge as the "mouth of law" and the "robot-judge of the 21st century".[16]

Moreover, drafting legal decisions follows a certain grammar, rules that the Conseil d'Etat has set out in its *Vademecum*, and that AI can reproduce by mimicry. We tried it out, and asked ChatGPT to draft an administrative court decision. The result was striking as regards the form and structure of the decision (without going into detail about the substance). All the features of a Conseil d'État decision were present: application number, mention of the rapporteur and public rapporteur, 'In the name of the French people', visa, analysis of internal and external legality, *dispositif*, etc. When it comes to form, the AI can draft a text that resembles a court decision.

In terms of content, it would seem that certain court decisions could be drafted by artificial intelligence. Indeed, the Conseil d'État notes that "The drafting of court decisions is [...] an interesting field for the deployment of AI systems": some decisions do not involve any assessment, and are therefore "completely automatable".[17] This is the case for decisions not to admit a cassation appeal before the Conseil d'État, which are "made up of data that exist in the information systems" (identity of the parties, dates of registration of submissions, conclusions and arguments, texts cited, systematic references such as the citation of Article L. 822-1 of the Code of Administrative Justice). It is also conceivable that an IA could draft orders dismissing cases for lack of a mandatory lawyer or orders for jurisdictional incompetence.[18]

Other countries have used AI systems to participate directly in the judging function and propose solutions to judges.[19] In Argentina for example, the Prometea tool includes a function consisting of "recommending a solution to litigation concerning the allocation of housing or social benefits". The software automatically produces the draft decision, enabling 1000 decisions relating to the right to housing to be drawn up in 45 days, compared with 174 without it.[20] The Constitutional Court of Colombia has deployed a similar system: the PretorIA software can analyse more than 2000 decisions in five seconds and generate a document in one minute, with significant success rates.

Therefore, AI may play a role in drafting legal decisions, from which administrative courts could derive some benefits.

2.2. *An advantageous use*

What advantages could be expected from using AI to draft administrative court rulings? Could this tool improve the quality of administrative justice? Following the work of Professor Frydman, the quality of administrative justice can be measured based on three criteria: procedural, substantive and managerial efficiency criteria.[21]

On a procedural level, the most fervent supporters of AI could argue that replacing humans with AI would guarantee impartial justice. Indeed, algorithms and their implacable mechanics seem able to keep at bay the prejudices likely to influence judicial decisions, stemming from multiple factors (what the judge ate for breakfast, how tired he is…[22]). However, it may be argued that algorithms are designed by humans and

actualité, 14 April 2020.

[16] B. Plessix, *Vers une justice administrative prédictive?*, in *Le droit administratif au défi du numérique*, Paris, Dalloz, 2019, 81.

[17] Conseil d'État, *Intelligence artificielle et action publique*, 297.

[18] Conseil d'État, *Intelligence artificielle et action publique*, 305.

[19] The following examples can be found in Conseil d'État, *Intelligence artificielle et action publique,* 304.

[20] J. G. Corvalan and E.M. Le Fevre Cervini, *Prometea experience. Using AI to optimize public institutions*, in *Rivista interdisciplinare sul diritto delle amministrazioni pubbliche* (CERIDAP), 2, 2020.

[21] B. Frydman, *L'évolution des critères et des modes de contrôle de la qualité des décisions de justice*, in *La qualité des décisions de justice*, in *Actes du colloque de Poitiers, Commission européenne pour l'efficacité de la justice, Ed. Conseil de l'Europe*; J.-M. Sauvé, *La qualité de la justice administrative*, in *Revue Française d'administration publique,* 3, 2016, 667.

[22] L. Pécaud-Rivollier and S. Robin, *Justice et intelligence artificielle, préparer demain: épisode I*, in *Dalloz actualité,* 14 April 2020.

reproduce their own biases. As a result, any biases that influence the decision will no longer be the judge's, but rather those of the computer scientist creating the code.

On a substantive level, would the reasoning carried out by an AI be more accurate and rigorous than the reasoning of a judge? The answer is negative: even if the drafting of court decisions is largely 'standardised',[23] the machine may lack finesse and may miss certain drafting subtleties. It is also doubtful whether ChatGPT's style is elegant: the AI can undoubtedly produce a text in Shakespearean sonnets, but its style remains stilted and pompous. It's a kind of… robotic style. Therefore, even if the style of the administrative judge is not literary,[24] it can be assumed that the decision written by a generative AI could not be written better than the decision of a judge made of flesh and bone, and endowed with thought.

Finally, the expected gains from using AI to draft administrative justice decisions mainly relate to managerial efficiency. Firstly, the use of AI offers an advantage regarding speed of justice: this point is important since the reasonable time for judgement is a requirement of the right to a fair trial.[25] Indeed, AI calculates faster than humans, "and does not suffer from fatigue".[26] In the case of the Brazilian court decision drafted by ChatGPT, the overwork suffered by Brazilian judges was initially put forward to justify recourse to this tool.[27] Secondly, the use of AI to draft judicial decisions would make it possible to reduce the cost of justice. Indeed, as the Conseil d'État pointed out, this technology can lead to a reduction in staff numbers, savings on the costs inherent in lengthy training courses, make it possible to deal with mass litigation at virtually constant cost, and could even ensure a form of territorial uniformity in case law.[28]

Thus, the advantages of using AI are not substantial or procedural, but rather related to managerial efficiency. However, these benefits must be balanced with the risks involved in using AI to draft an administrative justice decision.

3. *A risky use*

Using AI to draft an administrative justice decision presents dangers and faces limits.

3.1. *A dangerous use*

Drafting a legal decision is the culmination of legal reasoning: it lies at the very heart of the judicial function. The use of AI at this stage conceals dangers and even illustrates "the excesses of the digital civilisation".[29] These dangers arise on a technical, legal and civilisational level.

One of the main technical dangers is algorithmic bias. Artificial intelligence works based on algorithms that depend on the way a computer scientist has programmed them. They can therefore reproduce the biases of this initial coder. Biases can also result from the data sets on which the AI performs its training. The selection of input data may be biased or partial, and in all cases these data were initially provided by a human being: the learning algorithm will therefore mechanically reproduce the cognitive biases of the humans who designed and trained it, as mentioned earlier.[30]

Beyond the biases, the risk of error is not negligible: the initial computer coder has the arduous task of translating a literary language into mathematical language, which is particularly complex and subtle when it comes to administrative justice (what is an inoperative plea, a public order plea… ?).[31] By their very nature, these models are "simplifications", hence carry a risk of error in the initial coding.[32]

Finally, artificial intelligence is prone to "hallucinations": it invents, affabulates and presents false statements as true (with great

[23] Conseil d'État, *Intelligence artificielle et action publique*, 297.
[24] C. Chauvet, *Le style administratif comme littérature*, in *Les racines littéraires du droit administratif* (dir. A.-L. Girard, A. Lauba, D. Salles), Faculté de droit et des sciences sociales de Poitiers, 2021, 143; see also A. Hachemi, *Maximes, adages, formules, aphorismes du droit administratif*, in *Les racines littéraires du droit administratif, cit.,* 163.
[25] Conseil d'État, 28 June 2002, Magiera, No. 239575; European Court of Human Rights, *Kudla c/ Pologne*, 26 October 2000, No. 30210/96.
[26] As the Conseil d'État's study humorously notes, 300.
[27] *Libération* article, *cit*.
[28] Conseil d'État, *Intelligence artificielle et action publique*, 297.
[29] B. Plessix, *Vers une justice administrative prédictive?*, 90.
[30] On this topic, see N. Kordzadeh and M. Ghasemaghaei, *Algorithmic bias: review, synthesis, and future research directions*, in *European Journal of Information Systems*, 31(3), 2022, 388-409.
[31] B. Plessix, *Vers une justice administrative prédictive?*, 90.
[32] C. O'Neil, *Algorithmes. La bombe à retardement*, Paris, Les arènes, 2018, 38.

aplomb!). In fact, words are strung together according to statistical criteria: AIs are "stochastic parrots", repeating the texts from which they have learned, using only probabilities.[33] This is what happened with the judgement handed down by the Brazilian judge, where the AI invented decisions rendered by the Superior Court of Justice of Brazil.

These examples show that courts cannot rely entirely on AI systems supplied to them on a ready-to-use basis by private companies. They also raise questions of liability: could the courts take legal action against the AI system supplier if the algorithm malfunctioned and produced incorrect court decisions?[34]

The second danger is legal: using AI in legal proceedings, particularly to draft a court decision, risks infringing people's fundamental rights. Indeed, using this technology entails a risk of discrimination, inequality, and undermined independence and impartiality of judges.... This is precisely what is noted in the European AI Act, which classifies "AI systems intended for use in the administration of justice and democratic processes" as high-risk AI systems, "considering their potentially significant impact on democracy, the rule of law, individual freedoms as well as the right to an effective remedy and to a fair trial".[35]

Finally, the last risk is civilisational. It is the risk of a "dehumanised justice system, in which the human element no longer plays a role, or plays a lesser role".[36] The dangers also relate to the exercise of the work of judging: by entrusting part of their tasks to a machine, judges unlearn, dispense themselves from thinking... and there is a significant risk that they will in turn become an "automaton".[37] The result would be a major transformation of the judicial function. Ultimately, the social acceptability of justice would be compromised if artificial intelligence were to draft legal decisions.

Finally, there also are several limits to the use of AI to draft an administrative justice decision.

3.2. *A limited use*

The drafting of administrative justice decisions by artificial intelligence comes up against two major limitations.

The first is specific to the judge's work. Like all human beings, administrative judges do not limit themselves to calculations: they assess, make value judgements, have emotions and sensitivities... At first glance, one might think that administrative matters are less sensitive than criminal or labour litigation. But it is important to bear in mind the emotions that permeate litigation relating to foreign nationals, medical liability, the right to housing, administrative liability or administrative policing (as illustrated by the liability of mayors in the event of drowning).[38] The judge's sensitivity intervenes at every stage of the legal syllogism, whether it involves qualifying the facts (which presupposes taking into account numerous, complex factors specific to the individual situation in question), or applying the rule of law (for which the judge has a choice of methods[39]). And what about reversals of case law? Artificial intelligence is trained on the basis of past data, preventing creativity and risks leading to a "fossilisation" of administrative justice,[40] which would never be able to innovate. AI lacks imagination. Yet imagination is crucial in enacting solutions that balance contradictory principles in complex cases.

The other limit is external to the work of the administrative judge: it relates to French

[33] J.G. Ganascia, *Limitations des agents conversationnels et de l'IA generative,* available at www.universalis.fr/encyclopedie/intelligence-artificielle-generative/6-limitations-des-agents-conversationnels-et-de-l-ia-generative; E.M. Bender, T. Gebru, A. McMillan-Major, and S. Shmitchell. *On the Dangers of Stochastic Parrots, Can Language Models Be Too Big?*, In *Conference on Fairness, Accountability, and Transparency (FAccT '21)*, *March 3–10, 2021, Virtual Event, Canada*, New York, Association for Computing Machinery (ACM), 2021.

[34] A. Bensamoun, *Maîtriser les risques de l'intelligence artificielle: entre éthique, responsabilisation et responsabilité*, in *La semaine juridqiue,* 5, 2023.

[35] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence, pt 61.

[36] B. Plessix, *Vers une justice administrative prédictive?*, 94.

[37] B. Plessix, *Vers une justice administrative prédictive?*, 94; E. Jeuland, *Justice numérique, justice inique?*, in *Cahier de la Justice*, 2, 2019, 193.

[38] B. Plessix, *Vers une justice administrative prédictive?*, 94.

[39] Y. Gaudemet, *Les méthodes du juge administratif*, in *Librairie générale de droit et de jurisprudence*, re-ed. 2013, 105; Association française pour la recherche en droit administratif (AFDA), *Les méthodes en droit administratif,* Paris, Dalloz, 2018.

[40] Conseil d'État, *Intelligence artificielle et action publique*, 301.

and European regulations relating to the use of AI to draft an administrative justice decision.

In French law, article 47 paragraph 1 of the *Loi Informatique et Libertés* (the French Data Processing and Freedoms Act) introduces the principle of human guarantees into the judging. Under this article, "No judicial decision involving an assessment of a person's behaviour may be based on automated processing of personal data intended to evaluate certain aspects of that person's personality". However, this prohibition only applies to certain types of litigation (such as criminal and asylum litigation). However, as the Conseil d'Etat noted in its 2022 study,[41] the Constitution itself is an "obstacle" to the "AI itself taking the legal decision". Indeed, article 16 of the French *Déclaration des droits de l'Homme et du Citoyen* (DDHC) establishes the right to a fair trial and therefore to an independent and impartial judge.[42]

European law, whether Council of Europe or European Union law, also seeks to regulate the involvement of AI in the field of justice.

Within the Council of Europe, the European Commission for the Efficiency of Justice has issued an Action Plan 2022-2025 entitled "Digitalisation for a better justice". This action plan sets out seven recommendations to support the digitalisation of justice. The 4th is particularly interesting.[43] It establishes the principle of human justice and specifies that: "The digitalisation of justice shall make justice more efficient but must never seek to replace the judge. The judge must remain at the centre of the procedure".

In European Union law, the AI Regulation also addresses AI systems used by courts. The text distinguishes between the use of AI as an aid to judicial decision-making, which is considered to be "high-risk", and the use of AI for "purely ancillary administrative activities" (for example, the anonymisation or pseudonymisation of judicial decisions), which are not (pt 61).

More precisely, are considered to be high-risk: "AI systems intended to be used by a judicial authority or on their behalf to assist a judicial authority in researching and interpreting facts and the law and in applying the law to a concrete set of facts, or to be used in a similar way in alternative dispute resolution" (Annexe III, 8 a)).

Classification as a "high-risk" AI system entails compliance with several obligations. Some of these obligations are procedural: the system is subject to an ex-ante risk assessment and mitigation process, and to ex-post control. Other obligations are substantive: compliance with requirements relating to "the need for appropriate human control, a high level of robustness, security and accuracy, and the quality of the datasets used to feed the AI".[44] It should be noted that the Regulation does not mention the case of "fully automated" court decisions, which could have been included among the "prohibited practices". Indeed, the drafting of (administrative) court decisions should be placed at the heart of the "public order of humanity" that Samy Merabet attempted to define in his thesis, which refers to a sphere of activities protected from the interference of AI and in which the human guarantee is fundamental.[45]

[41] Conseil d'État, *Intelligence artificielle et action publique*, 297.
[42] Cons. const., 20 February 2003, No. 2003-466.
[43] G. Marti, *Justice et intelligence artificielle: de la promesse de l'aube aux liaisons dangereuses?*, in *Revue pratique de la prospective et de l'innovation,* 1, 2022, dossier 5.
[44] G. Marti, *Justice et intelligence artificielle*, dossier 5.
[45] S. Merabet, *Vers un droit de l'intelligence artificielle*, 2020; see also L. Huttner, *La décision de l'algorithme*, Paris, Dalloz, Nouvelle bibliothèque de thèses, 2024 (the author proposes to "protect the human nature of decision-making" (proposition No. 1, 593).