European Review of Digital Administration & Law - Erdal
2026, Volume 7, Issue 1, pp. 149-161
ISSN 2724-5969 – ISBN 979-12-218-2846-7 – DOI 10.53136/9791221828467 15

*The Cognitive Function of Artificial Intelligence in Migration Administrative Procedures: The New Face of the Algorithmic State or the Real Identity of the Surveillance State?**

Luigi Previti
(Assistant Professor of Administrative Law, University of Palermo)

ABSTRACT **The work aims to investigate the role of artificial intelligence in the field of migration, as a specific area of public action where national and public security requirements intersect with the need to protect individual rights. In particular, the analysis focuses on the cognitive function currently performed by artificial intelligence in this context, highlighting its potential applications within Italian migration procedures, as well as the necessary safeguards required to prevent distortive uses. The article concludes with some reflections on the legal conditions that must be met to ensure that the dissemination of these technologies takes place in a manner consistent with the protection of human rights within the Italian legal system, taking into account the most recent legislative developments.**

KEYWORDS: Artificial intelligence - Cognitive function - Recognition of international protection - Entry visa - Expulsion on grounds of social dangerousness

TABLE OF CONTENTS: 1. Introduction. – 2. International Protection and Artificial Intelligence between Legality and Opportunity. – 3. Entry Visas and Artificial Intelligence: Towards a Reassessment of the Discretionary Powers of Italian Embassies. – 4. Expulsion Orders on Grounds of Social Dangerousness and Predictive Policing: Towards the Emergence of the Surveillance State? – 5. Final Remarks.

1. *Introduction*

The programming of migration flows, border control within the Schengen Area and the administrative management of migrants represent particularly fertile areas in which to assess, in concrete terms, both the potential and the critical issues associated with the ongoing process of digitalisation of public functions. At the same time, they provide an opportunity to reflect on the challenging task of identifying a satisfactory balance between the multiple interests deserving of protection in this field.[1]

This circumstance is confirmed by the numerous legislative measures adopted at the European level, aimed not only at establishing new systems for the exchange and sharing of data and information relating to migrants, but also at outlining a new – apparently neutral, yet still uncertain – face of the traditional State. In recent years, this development has prompted contrasting legal, philosophical and sociological reflections.[2]

*Article submitted to double-blind peer review.

[1] On the influence of modern information technology on the reinterpretation of traditional methods of performing administrative functions, see G. Duni, *L'amministrazione digitale*, Milan, Giuffrè, 2008; A.G. Orofino, *Forme elettroniche e procedimenti amministrativi*, Bari, Cacucci, 2008; F. Costantino, *Autonomia dell'amministrazione e innovazione digitale*, Naples, Jovene, 2012; G. Carullo, *Gestione, fruizione e diffusione dei dati dell'amministrazione digitale e funzione amministrativa*, Turin, Giappichelli, 2017; B. Marchetti, *Amministrazione digitale*, in B.G. Mattarella and M. Ramajoli (eds.), *Funzioni amministrative. I Tematici*, *Enciclopedia del diritto,* vol. III, Milan, Giuffrè, 2022, 75 ff.; A. Lalli (ed.), *L'amministrazione pubblica nell'era digitale*, Turin, Giappichelli, 2022; L. Torchia, *Lo Stato digitale*, Bologna, Il Mulino, 2025; R. Cavallo Perin and D.U. Galetta (eds.), *Il diritto dell'amministrazione pubblica digitale*, Turin, Giappichelli, 2025. More specifically, with reference to administrative immigration law, see M. Savino, *La libertà degli altri. La regolazione amministrativa dei flussi migratori*, Milan, Giuffrè, 2012; M. Savino, *Immigrazione*, in B.G. Mattarella and M. Ramajoli (eds.), *Funzioni amministrative. I Tematici*, 599 ff.; M. Consito, *La tutela amministrativa del migrante involontario. Richiedenti asilo, asilanti e apolidi*, Naples, Jovene, 2016; M. Interlandi, *Fenomeni immigratori tra potere amministrativo ed effettività delle tutele*, Turin, Giappichelli, 2018.

[2] The interest of European institutions in implementing centralised information systems and databases to support the identification of migrants and control the legality of entries into the Schengen area has led to the introduction of numerous operational tools over time. One example is EURODAC (*European Asylum*

On the one hand, several theoretical approaches have highlighted the risks associated with the transformation of the supranational institutional framework into an essentially freedom-restricting apparatus, designed to firmly repress the rights of migrants and asylum seekers through the predictive and cognitive capacities of increasingly sophisticated algorithms (the so-called *Surveillance State*). On the other hand, more moderate positions have emerged, emphasising not only the significant dangers involved, but also the potential benefits of the technological modernisation of State functions, particularly with a view to rethinking the timelines and bureaucratic schemes that have so far characterised administrative action in the migration field (the so-called *Algorithmic State*).[3]

This opposition between different interpretative perspectives appears destined to intensify following the adoption of the final text of the European Regulation on artificial intelligence (hereinafter, referred to as AI Act). In fact, rather than introducing a regulatory framework centred on the protection of migrants' rights 'at all costs', the Regulation provides for several significant derogations from the safeguards generally established for the so-called 'high-risk' AI systems, namely those systems that pose a significant risk to the health, safety or fundamental rights of natural persons and that may materially influence the outcome of decision-making processes.[4]

Dactyloscopy Database), the database for comparing fingerprints and other biometric data of asylum seekers and irregular migrants (EC Regulation No. 2725/2000 of 11 December 2000, subsequently replaced by EU Regulation No. 603/2013 of 26 June 2013 and, finally, by EU Regulation No. 2024/1358 of 14 May 2024), the SIS (*Schengen Information System*), the information system that allows for the verification of alerts on persons or objects sought in the Schengen area (EC Regulation No. 1987/2006 of 20 December 2006, later replaced by EU Regulation No. 2018/1862 of 28 November 2018), the VIS (*Visa Information System*), the computerised system for sharing data on visas for entry into the Schengen area (EC Regulation No. 767/2008 of 9 July 2008), ECRIS-TCN (*European Criminal Record Information System for Third Country Nationals*), the European system linking national criminal records to enable the exchange of information on criminal convictions handed down against third-country nationals (EU Regulation No. 2019/816 of 17 April 2019), EUROSUR (*European Border Surveillance System*), the external border surveillance system managed by Frontex, which is based on the exchange of information between Member States and aims to improve situational awareness and risk awareness at the Union's borders (EU Regulation No. 1052/2013, now replaced by EU Regulation No. 2019/1896), as well as the Europol and Interpol databases. The management, interoperability and strengthening of these databases are currently entrusted to EU-LISA (*European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice*) and, in part, to Frontex (*European Border and Coast Guard Agency*).

[3] For an analysis of the impact of digitalisation on the immigration sector, see P. Molnar and L. Gill, *Bots at the Gate. A Human Rights Analysis of Automated Decision-Making in Canada's Immigration and Refugee System*, Toronto, University of Toronto, 2018; M. Forti, *AI-driven migration management procedures: fundamental rights issues and regulatory answers*, in *BioLaw Journal*, no. 2, 2021, 433 ff.; N. Vavoula, *Immigration and Privacy in the Law of the European Union. The case of Information System*, Leiden, Brill, 2022; C. Derave, N. Genicot and N. Hetmanska, *The risks of trustworthy artificial intelligence: the case of the European travel information and authorization system*, in *European Journal of Risk Regulation*, vol. 13, no. 3, 2022, 389 ff.; A. Musco Eklund, *Limits to discretion and automated risk assessments in EU border control: Recognising the political in the technical*, in *European Law Journal*, vol. 30, no. 1-2, 2024, 103 ff.; F. Tassinari, *Data Protection and Interoperability in EU External Relations*, Leiden, Brill, 2024; F. Biondi Dal Monte, M. Forti and L. Raineri, *Migrazioni e governance digitale. Persone e dati alle frontiere dell'Europa*, Rome, Carocci, 2024; P. Molnar, *The Walls Have Eyes: Surviving Migration in the Age of Artificial Intelligence,* New York, The New Press, 2024; M. Leggio, *La digitalizzazione della funzione conoscitiva pubblica nel settore migratorio*, in *Adim Blog*, November 2024; Z. Vasilkov, *Artificial intelligence in the service of border control in the EU*, in *Adim Blog*, December 2024; A. Rinaldi and S.A. Teo, *The Use of Artificial Intelligence Technologies in Border and Migration Control and the Subtle Erosion of Human Rights*, in *International and Comparative Law Quarterly*, vol. 74, no. 1, 2025, 61 ff. Among the main studies promoted by European institutions, see, at least, European Commission, *Opportunities and Challenges for the Use of Artificial Intelligence in Border Control, Migration and Security*, Brussels, 2020, available at op.europa.eu/en/publication-detail/-/publication/c8823cd1-a152-11ea-9d2d-01aa75ed71a1/language-en.

[4] See Article 6, paragraph 3, and Annex III, paragraph 7, of EU Regulation No. 2024/1689 of the European Parliament and of the Council of 13 June 2024, which includes among high-risk systems those intended to be used, in accordance with European or national law, in the field of 'migration, asylum and border control management', in particular: *a)* AI systems intended to be used by or on behalf of competent public authorities or by Union institutions, bodies, offices or agencies as polygraphs or similar tools; *b)* AI systems intended to be used by or on behalf of competent public authorities or by Union institutions, bodies, offices or agencies to assess a risk, including a security risk, a risk of irregular migration, or a health risk, posed by a natural person who intends to enter or who has entered into the territory of a Member State; *c)* AI systems intended to be used by or on behalf of competent public authorities or by Union institutions, bodies, offices or agencies to assist competent public authorities for the examination

Entering this complex scientific debate, the present article seeks to analyse the possible operational uses of artificial intelligence systems within Italian administrative procedures in the field of migration. The focus will be placed, in particular, on three specific areas: *a)* procedures for the recognition of international protection; *b)* procedures for the issuance of entry visas; *c)* procedures for the adoption of expulsion orders on grounds of social dangerousness.[5]

More specifically, after highlighting the opportunities and limits associated with the substantial cognitive function performed by advanced technologies within the procedures under consideration,[6] the analysis will attempt to identify the conditions and prerequisites necessary to allow their use and dissemination.

This assessment will also take into account the recent amendments introduced by Law No. 132 of 23 September 2025, entitled 'Provisions and delegations to the Government on artificial intelligence', which aims to facilitate the correct implementation of the AI Act within the Italian legal system.

2. *International Protection and Artificial Intelligence between Legality and Opportunity*

In the context of administrative procedures aimed at recognising international protection, the use of artificial intelligence can play an important cognitive role in several specific areas.

Firstly, the computing power achieved by the most advanced IT systems can be a valuable tool for improving the forecasting of migration flows.[7]

Consider, for example, the use of platforms and databases capable of providing accurate information on the characteristics of likely asylum seekers arriving in the coming months, such as those relating to countries of origin, average age, ethnicity, language, main reasons for departure, etc.[8]

From this perspective, the information contained in algorithmic forecasts would enable public authorities to prepare appropriate strategies, infrastructure and reception services in advance, improving the

of applications for asylum, visa or residence permits and for associated complaints with regard to the eligibility of the natural persons applying for a status, including related assessments of the reliability of evidence; *d)* AI systems intended to be used by or on behalf of competent public authorities, or by Union institutions, bodies, offices or agencies, in the context of migration, asylum or border control management, for the purpose of detecting, recognising or identifying natural persons, with the exception of the verification of travel documents. For an initial comment on the provisions of the AI Act on migration, see L.S. Stewart, *The regulation of AI-based migration technologies under the EU AI ACT: (Still) operating in the shadows?,* in *European Law Journal*, vol. 30, no. 1-2, 2024, 122 ff.; N. Vavoula, *Where the AI Act Falls Short*, in *Verfassungblog*, December 2024; E. Brouwer, *AI and Migration, Asylum and Border Control Management: The Impact of the AI Act*, in O. Tambou and M. Sweeney, *European regulation on AI and beyond: what regulation for AI?*, Brussels, Bruylant, 2025, 233 ff.

[5] The scope of the investigation here proposed certainly does not exclude the fact that some artificial intelligence systems can be used in other specific areas, such as sea rescue operations, to identify boats travelling to Europe, or in the case of virtual assistants (chatbots), to provide information about active services and the documentation required to complete asylum or visa applications.

[6] On the importance of information for administrative decisions, see at least F. Levi, *L'attività conoscitiva della pubblica amministrazione*, Turin, Giappichelli, 1967; E. Carloni, *Le verità amministrative. L'attività conoscitiva pubblica tra procedimento e processo*, Milan, Giuffrè, 2011; most recently, M. Falcone, *Ripensare il potere conoscitivo pubblico tra algoritmi e Big Data*, Naples, Editoriale Scientifica, 2023.

[7] On this point, see M. Carammia and J.C. Dumont, *Can We Anticipate Future Migration Flows?*, in *OECD Migration Policy Debates*, no. 16, 2018; A. Beduschi, *International migration management in the age of artificial intelligence*, in *Migration Studies*, no. 3, 2021, 581 ff.; C. Dumbrava, *Artificial intelligence at EU borders. Overview of applications and key issues*, European Parliamentary Research Service, July 2021, especially 20 ff.; G. Romeo, *Gli strumenti di previsione dei flussi migratori: quali problemi giuridici?*, in *Adim Blog*, December 2022; S. Penasa, *Artificial Intelligence and the governance of migration: potentialities and pitfalls between technological neutrality and political design*, in *Opinio Juris in Comparatione*, no. 1, 2022, 94 ff.; D. Ozkul, *Automating Immigration and Asylum: The Uses of New Technologies in Migration and Asylum Governance in Europe*, Oxford, Refugee Studies Centre, University of Oxford, 2023, especially 15 ff. On the feasibility of this use of artificial intelligence, see European Commission, *Feasibility study on a forecasting and early warning tool for migration based on Artificial Intelligence technology*, Brussels, 2020, available at https://op.europa.eu/en/publication-detail/-/publication/5afa29f0-700a-11eb-9ac9-01aa75ed71a1/language-en. The document highlights, in particular, five requirements necessary for the proper functioning of algorithmic prediction in the sector under consideration: *a)* adequate legal basis; *b)* data to inform the AI-Tool; *c)* appropriate AI Architecture; *d)* hosting structure; *e)* organisation and governance structure.

[8] Indeed, forecasts are more reliable when they concern the short to medium term (a few months), especially when they aim to predict the occurrence of emergency situations, such as the outbreak of humanitarian crises or armed conflicts. However, this does not rule out the possibility of making forecasts over a longer period (several years), especially when predicting the occurrence of certain events, such as climate change.

quality of solutions offered to migrants and reducing, where possible, the adoption of emergency organisational and operational measures.[9]

This use of artificial intelligence would certainly have a significant impact both in terms of procedural efficiency and in terms of operational resources. In this sense, algorithmic knowledge would enable competent public offices not only to adopt internal management rules tailored to the most likely issues raised by individual cases, but also to take prompt action on the training and professional development of officials who will examine and decide on individual cases.[10]

Secondly, a further area of application for modern technology can be identified by considering the investigation activities entrusted by the legal framework to the Territorial Commissions of Italian Prefectures.[11]

As is well known, individuals forced to leave their country of origin due to a 'well-founded fear' of persecution are often unable to produce the documentary evidence necessary to fully prove the facts and events they describe. This circumstance has led the European legislator, on the one hand, to recognise a genuine reduction in the burden of proof on asylum seekers during the administrative procedure and, on the other, to strengthen the powers of the Territorial Commissions and (in the event of an appeal) of the courts called upon to review the final decision taken by the Prefectural authority.[12]

In fact, the fact-finding investigations conducted in this area are not always sufficiently adequate, since administrative officials often limit themselves to a summary examination of the documentation and statements made by the person concerned, failing to take into account the difficulties encountered by the migrant, for example, in formalising the asylum application and reporting the known facts.[13]

[9] Among the most interesting applications is the JETSON project, promoted by the UNHCR in 2017 to monitor the movement of displaced populations inside and outside Somalia, 'using supervised machine learning'. In particular, as stated on the project's official website (https://jetson.unhcr.org/story.html): 'Mathematical evidence shows that there are certain factors, such as food insecurity and violent conflict, as well as the appeal of the destination region, in terms of price, distance, and stability, that cause people to move. Certain combinations of these factors are more likely to make people move than others'. Currently, the project is being used to study the relationship between climate change and forced population movements. In fact, 'this application allows the user to run analysis on satellite imagery to extract information about extreme weather events (e.g., droughts/floods) and derive a calculation for anticipatory action (e.g. building predictive models with that data)'. In similar terms, see also the IT-FLOWS project, funded through Horizon 2020 programme resources to: *a)* 'design models to predict migration in the EU'; *b)* 'develop a trustworthy tool – the EUMigraTool– to be exclusively used by municipalities and civil society organisations'; *c)* 'provide policy recommendations for receiving migration flows in the EU in accordance with human rights'; *d)* 'identify sentiment that could lead to potential risks of tension between people residing in the EU (EU citizens, their non-EU family members, migrants including refugees) to protect vulnerable people'; *e)* 'provide policy recommendations solutions for optimising integration of refugees in host countries' (https://itflows.eu/about/). About the possibility of using artificial intelligence to support the selection of refugees to be included in resettlement programmes, by training special software to analyse variable parameters such as the economic opportunities offered by potential destination territories, on the one hand, and the previous work experience and socio-political characteristics of refugees, on the other, see M. Forti, *Il reinsedimento nell'era dell'Intelligenza artificiale: potenziali rischi e possibili rimedi nel diritto UE*, in *Adim Blog*, January 2024.

[10] Consider the possibility of obtaining timely relevant information about Unaccompanied Foreign Minors who will arrive in Italy in the coming months. According to data from the Italian Ministry of Labour and Social Policies, this phenomenon has grown exponentially in recent years, with approximately 5,000 arrivals in January 2020 and over 17,000 arrivals by the end of 2025, most of whom are 16 or 17 years old and come from Egypt, Ukraine, Tunisia and Bangladesh. The statistical reports are available at www.lavoro.gov.it/temi-e-priorita/immigrazione/focus-on/minori-stranieri/pagine/dati-minori-stranieri-non-accompagnati.

[11] See Article 10, paragraph 3, letter a), of EU Directive No. 2013/32 of 26 June 2013 (the so-called Procedures Directive) and Article 8, paragraph 2, of Legislative Decree No. 25 of 28 January 2008, according to which Member States must ensure that applications for international protection are examined and decisions taken on an individual, objective and impartial basis.

[12] See Article 4, paragraph 1, of EU Directive No. 2011/93 of 13 December 2011 (the so-called Qualifications Directive) and Article 3 of Legislative Decree No. 251 of 19 November 2007. In doctrine, see M. Consito, *I procedimenti amministrativi sul riconoscimento allo straniero degli status di protezione internazionale*, in *Diritto amministrativo*, no. 2, 2017, 393 ff.; L. Pergolizzi, *I principi dell'istruttoria nel procedimento per il riconoscimento della protezione internazionale. Riflessioni sul piano processuale*, in *Diritto dell'economia*, no. 3, 2020, 443 ff.; F. Biondi Dal Monte and E. Rossi, *Diritto e immigrazioni. Percorsi di diritto costituzionale*, Bologna, Il Mulino, 2022, 115 ff.; P. Morozzo Della Rocca (ed.), *Immigrazione, asilo e cittadinanza*, Santarcangelo di Romagna, Maggioli, 2024, 68 ff.; G. Santomauro, *Il diritto di asilo tra sostanza e procedura*, Naples, Editoriale Scientifica, 2025, 341 ff.

[13] Indeed, the lack of information regarding the personal

In this context, the use of data and information provided by algorithmic systems could be useful in calculating the percentage risk that asylum seekers may suffer persecution or inhuman and degrading treatment if removed from Italian territory.

Such an application would appear to be covered by an appropriate legal basis if the knowledge provided by the software is regarded as falling within the category of the 'various sources' suitable for providing 'accurate and up-to-date information' that public authorities are required to evaluate when making their decisions.[14]

However, to fully guarantee the legitimacy of the administrative procedure, it would be necessary to pay attention to the origin and the nature of the information used for training and learning the software.[15]

In this regard, it should be established in advance whether the data to be used for algorithmic predictions should only be that provided by the competent public authorities – such as data held by the Ministry of Foreign Affairs and the Ministry of the Interior of the host country, as well as by international bodies and organisations operating in the sector[16] – or whether forms of private participation should also be envisaged, for example by permitting the use of data held by non-governmental organisations,[17] research bodies and associations, both national and international, that are most active in protecting migrants' rights.[18]

In any case, regardless of the legal nature of the entity providing the cognitive material, appropriate tools and resources must be put in place to ensure constant supervision of information quality, given that the process of collecting and processing data must be periodically monitored and, if necessary, corrected and supplemented.[19]

From this perspective, alongside issues related to data processing and software management, it is essential to clearly affirm, in line with the general provisions of the recent Law No. 132/2025, the ancillary, fact-finding and never genuinely decision-making role of artificial intelligence within administrative procedures.

Only such an approach would make it possible to comply with the general principles developed in legal scholarship and case law and, ultimately, codified at legislative level: *a) the principle of algorithmic transparency*,

history of asylum seekers is often exacerbated by the absence of efficient registry services in the country of origin of the person concerned.

[14] See Article 10, paragraph 3, letter b), of EU Directive No. 2013/32. On this point, see N. Kinchin and D. Mougouei, *What Can Artificial Intelligence Do for Refugee Status Determination? A Proposal for Removing Subjective Fear*, in *International Journal of Refugee Law*, vol. 34, no. 3-4, 2022, 373 ff., especially 388.

[15] The importance of the quality of data processed by software for the legitimate and correct use of various artificial intelligence applications in administrative migration procedures (and beyond) is now well established in doctrine. In this regard, see L.S. Stewart, *Fair and efficient asylum procedures and artificial intelligence: quo vadis due process?,* in *Computer Law and Security Review*, vol. 55, no. 4, 2024, especially 6 ff.; F. Palmiotto, *Procedural fairness in automated asylum procedures: Fundamental rights for fundamental challenges*, in *Computer Law and Security Review*, vol. 55, no. 4, 2024, especially 6 ff.

[16] These sources also include databases managed by the EUAA (*European Union Agency for Asylum*), Frontex and other relevant EU agencies, as well as those managed by the National Commission on Asylum Law at the Italian Ministry of the Interior.

[17] Consider, for example, Amnesty International, Human Rights Watch, Emergency, Action Aid, etc.

[18] On this point, see A. Beduschi, *International migration management in the age of artificial intelligence*, cit., 584-585, who notes that 'it is important that quantitative as well as qualitative datasets, such as those collected by independently funded academic research projects, are used to train AI algorithms for use in migration management. For example, algorithms could analyse datasets composed of extensive qualitative interviews with migrants to discover patterns and make predictions about people's intentions to migrate. They could then triangulate these findings with statistical and other quantitative data sources (such as the number of arrivals and the number of asylum applications in a set period and territory) to predict large movements of people. These algorithms could also be used to monitor and evaluate government policies and programmes'.

[19] This solution inevitably leads to the exclusion, in the field of immigration, of software powered by unsupervised data, such as that processed by software implementing LLMs (Large Language Models), such as Chatgpt or Gemini AI, or found in electronic devices or on social networks belonging to migrants. On this subject, see also V.H. Jagerovic, *Smartphone Data Extraction in the Context of Asylum. Enhanced Obligation to Collaborate in the Asylum Procedure Regulation and Lack of Meaningful Consent*, in *European Journal of Migration and Law*, vol. 27, no. 2-3, 2025, 179 ff.; A. Palazzi, *Quando l'intelligenza artificiale contribuisce a decidere in materia di asilo: prospettive e questioni aperte nel diritto dell'Unione europea*, in *Diritto Immigrazione Cittadinanza*, no. 3, 2025, 7 ff., which notes that, despite the inherent risks associated with the opacity of algorithmic processes and the presence of interpretative errors, tools for extracting data from mobile devices could help determine the country of origin of asylum seekers, with specific implications for the credibility of the statements made by the person concerned and for the assessment of the risk of persecution in the event of return.

understood as the knowability of the various data used by the software, its operating methods and its concrete role within the procedural activity; *b) the principle of algorithmic non-discrimination*, understood as the possibility of verifying the prediction or proposal made by the software, confirming or modifying it where inaccuracies or errors are found;[20] *c) the principle of non-exclusivity of the algorithmic decision*, given that, as noted above, the intervention of the Territorial Commission remains central in conducting the investigation, formulating the reasoning and choosing the content of the final decision.[21]

Ultimately, within the procedures under consideration, technological innovation should be used as a (potential) tool for further knowledge, which complements (and does not replace) the instruments for acquiring and evaluating facts and information already available to the Territorial Commissions, with a view to offering a broader, and never the unique possible, interpretation of the case under examination.[22]

Moreover, the objective of exploiting the potential advantages of a procedure that significantly affects the fundamental rights of migrants must not lead to an underestimation of the serious dangers arising from the deliberate misuse of IT systems, particularly where such misuse is aimed at prejudicing the legal position of asylum seekers.

In this regard, it is appropriate to highlight the risk that the software available to the administration may be used to replicate the implementation of security-oriented migration policies that undermine fundamental rights and the inherent dignity of the person.[23]

[20] As is easy to understand, the risk of algorithmic discrimination is significantly increased by using different national and European databases, as well as by the discretion exercised by public authorities in choosing the evaluation criteria underlying the functioning of the software. On these aspects, see A.F. Westerling, *Technology-related Risks to the Right to Asylum: Epistemic Vulnerability Production in Automated Credibility Assessment*, in *European Journal of Law and Technology*, vol. 13, no. 3, 2022; M. Forti, *Addressing Algorithmic Errors in Data-Driven Border Control Procedures*, in *German Law Journal*, vol. 25, no. 4, 2024, 635 ff.

[21] These principles have been incorporated in the field of public contracts (Article 30 of Legislative Decree No. 36/2023) and the field of economic activity controls (Article 9 of Legislative Decree No. 103/2024). In general, on the supporting role of artificial intelligence, see, most recently, Article 14 of Law No. 132/2025. Among the most recent studies on the subject, see L. Previti, *La decisione amministrativa robotica*, Naples, Editoriale Scientifica, 2022; S. Demkova, *Automated Decision-Making and Effective Remedies*, London, Edward Elgar Publishing, 2023; A. Di Martino, *Tecnica e potere nell'amministrazione per algoritmi*, Naples, Editoriale Scientifica, 2023; G. Gallone, *Riserva di umanità e funzioni amministrative*, Milan, Wolters Kluwer Italia, 2023; V. Visone, *La dimensione algoritmica della funzione amministrativa*, Naples, Editoriale Scientifica, 2023; I. Alberti, *L'istruttoria nel procedimento amministrativo*, Turin, Giappichelli, 2024; M.B. Armiento, *Pubbliche amministrazioni e intelligenza artificiale*, Naples, Editoriale Scientifica, 2024; C. Ramotti, *Administrative action in the age of algorithmic transformation. From rule-based procedures to principle-guided decision-making*, Turin, Giappichelli, 2025; D.U. Galetta, *Artificial Intelligence and Public Administration*, Naples, Editoriale Scientifica, 2025.

[22] Among the AI systems that retain an investigative (and therefore admissible) role in proceedings are those used since 2017 by the German federal authorities and, since 2023, by the EUAA to support the processing of asylum applications, facilitating, in particular, the recognition of the asylum seeker's country of origin through the analysis of the language spoken by the interviewee (known as Language Analysis for the Determination of Origin or LADO). See EUAA, *Strategy on Digital Innovation in Asylum Procedures and Reception Systems*, September 2023, available at www.euaa.europa.eu/publications/euaa-strategy-digital-innovation-asylum-procedures-and-reception-systems; D. Ozkul, *Automating Immigration and Asylum: The Uses of New Technologies in Migration and Asylum Governance in Europe*, cit., 40 ff.; C. Manzotti, *A European language detection software to determine asylum seekers' country of origin: Questioning the assumptions and implications of the EUAA's project*, in *Adim Blog*, November 2024; C. Dumbrava, *Artificial intelligence in asylum procedures in the EU*, European Parliamentary Research Service, July 2025.

[23] In particular, with reference to the EURODAC system, prevailing doctrine stated that, compared to EU Regulation No. 603/2013, the provisions contained in the new EU Regulation No. 2024/1358, aimed at increasing the amount of biometric data stored, reducing the minimum age for data collection from fourteen to six years, allowing the storage of collected data for ten years, and authorising the use of physical coercion for their collection, have contributed to altering the original purpose of the instrument, establishing a mechanism of generalised surveillance of European mobility that systematically violates the right to privacy of migrants. On these issues, see E. Brouwer, *Eurodac: Its Limitations and Temptations*, in *European Journal of Migration and Law*, vol. 4, no. 2, 2002, 231 ff.; V. Ferraris, *Eurodac e i limiti della legge: quando il diritto alla protezione dei dati personali non esiste*, in *Diritto Immigrazione Cittadinanza*, no. 2, 2017; N. Vavoula, *Immigration and Privacy in the Law of the European Union. The case of Information System*; M. Forti, *Flussi migratori e protezione dei dati personali: alla ricerca di un punto di equilibrio tra sicurezza pubblica e tutela della privacy dei migranti e dei rifugiati all'interno del territorio europeo*, in *MediaLaws*, no. 2, 2020, 212 ff.; F. Tassinari, *From Eurodac to interoperability and back: transferring personal data for resettlement and admission purposes*, in *Adim Blog*, August 2024; C. Napolitano, *Digitalizzazione delle procedure di*

Accordingly, artificial intelligence systems should not be employed to assess, directly or indirectly, the credibility of the applicant – as occurs, for example, when migrants are subjected to polygraph tests – nor to formulate questions to be asked during the interview.[24]

In fact, in both cases, the risk of asking inappropriate questions or questions based solely on statements provided by other migrants in previous interviews is so high that the use of algorithmic support is difficult to justify, even if formally lawful.[25]

On the contrary, it seems reasonable to support the development and the training, based on specific guidelines defined at the national and European level, of conversational artificial intelligence applications to which the public authority can address requests for clarifications regarding procedural steps, appropriate safeguards to be ensured, or remedies to be adopted in the presence of certain factual circumstances.

Such a use of the algorithmic cognitive function would seem particularly useful for standardising the procedures followed by officials of the various Territorial Commissions when conducting hearings, with a view to reducing the occurrence of manifestly discriminatory episodes against the person being heard or the occurrence of procedural defects that could invalidate the legitimacy of the administrative action.[26]

3. *Entry Visas and Artificial Intelligence: Towards a Reassessment of the Discretionary Powers of Italian Embassies*

The second procedural area concerns administrative procedures relating to the issuance of entry visas by embassies.[27]

Firstly, consider the possibility of exploiting the algorithmic forecasting capacity to monitor, over the coming months or years, the evolution of certain national parameters (economic, financial, productive, demographic, social security-oriented, etc.) and, on that basis, to determine the number and type of visas deemed necessary.

In particular, the application of predictive systems of this type in Italy could be important, for example, in planning annual and three-year quotas for issuing entry visas for work purposes. To be truly accurate and based on factual circumstances, such planning should also be conducted considering the cognitive insights provided by the various databases managed at the national level.[28]

From this perspective, the use of interconnected intelligent platforms and systems, constantly fed by sufficiently

ingresso: il difficile equilibrio tra la sicurezza pubblica e il rispetto dei diritti fondamentali degli immigrati, in *Adim Blog*, September 2024; A. Bugnoli, *La riforma del sistema Eurodac e il GDPR: quali conseguenze per i minori stranieri?*, in *Adim Blog*, July 2025; E. Celoria and V. Ferraris, *Eurodac: dalla gestione delle domande di protezione internazionale al controllo della mobilità*, in *Quaderni AISDUE*, no. 4, 2024, 11 ff.

[24] However, these limitations and precautions do not appear to be provided for in the AI Act, which expressly allows the use of polygraphs and similar tools in migration matters. On the contrary, the use of AI systems aimed at automatically transcribing the interview conducted by the asylum seeker before the competent national authorities may be considered admissible, as recently tested in Italy through the S.IN.D.A.C.A. project (*Information System for the Documentation of Asylum Commission Hearings*). In this regard, see C. Amaddeo, *Il possibile uso dell'intelligenza artificiale nell'esame e nella valutazione della richiesta di protezione internazionale*, in *Diritto Immigrazione Cittadinanza*, no. 1, 2025, 3 ff.

[25] See C. Dumbrava, *Artificial intelligence in asylum procedures in the EU*, cit., 10, who outlines that using AI systems to assess individual applications based on historical data about previous applications may undermine a primary safeguard against mistakes and discrimination, because 'AI systems may interfere with the authorities' obligation to carry out an individualised assessment of applications for international protection'. Moreover, 'an AI system trained on data about past persecution may not be able to determine the existence of a well-founded fear of future persecution. This is also because evidence from past persecution cannot provide insight into a claimant's subjective fear'.

[26] With reference to recent initiatives undertaken by European institutions, see EUAA, *Strategy on Digital Innovation in Asylum Procedures and Reception Systems*, especially 28 ff., which supports, in addition to the dissemination of the aforementioned intelligent tools for recognising the language spoken by asylum seekers (LADO), the development of projects aimed at improving the timing and accessibility of registration procedures for migrants ('to optimise the use of resources and improve efficiency in scheduling personal interviews, case-referral and follow-up communication with applicants') and projects aimed at improving the management of asylum cases by offices in various respects, such as 'extracting case-relevant COI and case-law from large amounts of data, supporting risk analysis, filtering open source intelligence or applicants' mobile devices'.

[27] With reference to Italian regulations for the issuance of entry visas, see P. Morozzo Della Rocca (ed.), *Immigrazione, asilo e cittadinanza*, cit., 23 ff.; M. Savino, *Le libertà degli altri*, cit., 228 ff.; M. Savino, *Immigrazione*, 601 ff.; F. Biondi Dal Monte and E. Rossi, *Diritto e immigrazioni*, cit., 78 ff.

[28] See Article 3 of Legislative Decree No. 286 of 25 July 1998, entitled 'Consolidated text of provisions concerning immigration regulations and rules on the status of foreign nationals'.

accurate analyses, documents and data on the average age of employed persons, labour market dynamics, and fluctuations in supply and demand in the country's main economic sectors, could stimulate the adoption of a serious legal immigration policy by public authorities. This would also take into account the national requirements for the financial sustainability of the welfare system.[29]

Secondly, consider the possibility of using artificial intelligence technologies to support Italian embassies in carrying out fact-finding checks related to the fulfilment by migrants of the entry requirements, such as the verification of the economic conditions necessary for the issuance of an entry visa.[30]

As is well known, the administrative checks carried out in this area are not limited to verifying certain quantitative thresholds, but they aim at assessing, in a completely discretionary manner, the reliability of the financial guarantees provided by the applicant when submitting the visa application.

Here too, the assistance offered by technology would seem to be particularly significant, especially if we consider that the use of appropriately trained software, based on criteria that are well defined and knowable from the outside, could not only speed up the daily document analysis work undertaken by embassies, but also make the final decision more transparent and justified than those taken so far.

On this view, the predetermination of assessment parameters and risk indicators suitable for constraining the operation of the software, in any case under constant human supervision, could facilitate understanding of the logical-legal procedure followed by the administrative authority in examining individual cases.

However, if the aforementioned principle of transparency in the functioning of the software is not ensured, the use of artificial intelligence in the procedure under consideration risks legitimising (once again) excessively restrictive, if not deliberately discriminatory, attitudes towards migrants' applications.[31] This phenomenon has been identified by some legal scholars with the term '*Smart Borders*', as an iconographic representation of institutional strategies that are only apparently innovative, but essentially conservative, about the admission of third-country nationals into the territory of the Union.[32]

In this regard, it is worth recalling one of the most significant applications tested in this area, namely the ETIAS system (*European Travel Information and Authorisation System*), which was designed to perform a filtering function with respect to short-term entries into the Schengen area.[33]

[29] On this point, see G. Romeo, *Gli strumenti di previsione dei flussi migratori*, 3 ff., who highlights the important 'democratic function' performed by the algorithmic forecasts: a function that can be achieved through the widespread dissemination of valuable information provided by IT systems, with a view to improving public understanding of the phenomenon of migration and enabling European citizens to verify the effectiveness of public policies implemented in this area.

[30] See Article 4 of Legislative Decree No. 286/1998.

[31] From this perspective, it should be remembered that some initiatives promoted in the past by European institutions have been criticised for their potential discriminatory effects and for undermining individual dignity. This was the case, for example, with the iBorderCtrl project, trialled between 2013 and 2019 in Hungary, Latvia and Greece and then funded through the Horizon 2020 programme with €4.5 million, aimed at identifying, at the time of border crossing, any false or contradictory statements made by migrants, through the use of a digital avatar capable of asking interviewees questions about their journey and recording their reactions in real time, also analysing micro-gestures and facial expressions. On this point, see J. Sánchez-Monedero and L. Dencik, *The politics of deceptive borders: biomarkers of deceit and the case of iBorderCtrl*, in *Information, Communication & Society*, vol. 25, no. 3, 2022, 413 ff.; M. Forti, *AI-driven migration management procedures: fundamental rights issues and regulatory answers*, cit., 439 ff., especially 442, who emphasises that, without the possibility of understanding the elements that determined the algorithmic decision, 'facial recognition systems could identify specific individuals as national security threats because of their facial features. Algorithms could suggest denying entry visas to a given category of people based on their ethnic background. Artificial intelligence tools used for humanitarian purposes or in the management of refugee camps could exclude certain people from receiving essential services based on factors such as spoken language or national origin'.

[32] On this subject, see E. Brouwer, *Digital borders and Real rights. Effective Remedies for Third-Country Nationals in the Schengen Information System*, Leiden, Martinus Nijhoff Publishers, 2008; N. Vavoula, *Artificial Intelligence at Schengen Borders: Automated Processing, Algorithmic Profiling and Facial Recognition in the Era of Techno-solutionism*, in *European Journal of Migration and Law*, vol. 23, no. 4, 2021, 457 ff.; S. Penasa, *Artificial Intelligence and the governance of migration*, cit., 99 ff., according to whom the politicisation of AI-based systems effectively leads to 'a strengthening of state practices that are aimed at curbing international migration and preventing certain individuals from reaching state territories'.

[33] See EU Regulation No. 2018/1240 of 12 September 2018. In addition to the ETIAS system, it is also worth mentioning the EES (*Entry/Exit System*), the system

The ETIAS system was developed to assess applications for entry authorisation submitted by third-country nationals who are exempt from the visa requirement and to calculate any risks to security, irregular immigration and public health arising from the admission of the applicant.

Specifically, it is capable of analysing the data uploaded by the migrant to the online platform, comparing it with the information contained in other interconnected databases[34] and determining, on the basis of predefined risk indicators, whether there are reasonable grounds for granting or denying authorisation to travel.[35] Where the automated data processing reveals no obstacles to refusal, the travel authorisation is issued within a few minutes, without any human intervention. Conversely, where the software identifies one or more risk indicators, the applicant's request is processed manually, first by an official from the ETIAS Central Unit set up at the European Agency Frontex and then by an official from the ETIAS National Unit located within the Member State responsible for examining the request.[36]

The legislative choice to assign the IT tool a mere alert role where grounds for refusing the authorisation request are found, while reserving the adoption of the administrative decision for a double human intervention, appears particularly commendable.

It represents the necessary compromise between the benefits associated with algorithmic efficiency and the need to protect procedural guarantees.[37]

Such an application not only reduces the impact of modern technologies on the individual legal sphere, but also offers interested individuals the opportunity to

managing entry and exit requests for the Schengen area by third-country nationals who require a short-term visa, governed by EU Regulation No. 2017/2226 of 30 November 2017. In particular, this system, managed by EU-LISA, collects the biometric data of the persons concerned (including facial images and fingerprints) and transfers it in real time to border operators who will carry out checks, with a view to gradually replacing stamps on travel documents, reducing visa fraud attempts and combating identity theft. Here too, the platform could give rise to discriminatory outcomes, as entry requests could be treated more or less favourably depending on the migrant's country of origin.

[34] This result is made possible by the adoption of EU Regulations No. 2019/817 and No. 2019/818 of 20 May 2019, aimed at ensuring interoperability between the main centralised information systems of the Union, namely the Visa Information System (VIS), the Schengen Information System (SIS), the system for comparing fingerprints and biometric data of migrants (EURODAC), the Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS) and the European Criminal Records Information System for third-country nationals (ECRIS-TCN). In summary, the two regulations aim to improve the identification of persons, thereby contributing to safeguarding national security, ensuring the efficient management of border controls and combating irregular immigration in the Schengen area. On this point, see F. Tassinari, *Data Protection and Interoperability in EU External Relations*; N. Vavoula, *Algorithmic Accountability Through the 'Human over the Loop' in Interoperable and EU AI-Reliant Large-Scale IT Systems for Migration and Security*, in *European Papers*, vol. 9, no. 3, 2024, 1229 ff. Moreover, the objective of achieving full interoperability of European information systems in the field of migration is expressly set by the European Commission, *A New Pact on Migration and Asylum*, COM (2020) 609 final, 23 September 2020, especially paragraph 4.2: 'Strong external borders also require up-to-date and interoperable IT systems to keep track of arrivals and asylum applicants. Once operational, different systems will form an integrated IT border management platform checking and keeping track of the right to stay of all third-country nationals, whether visa-free or visa holders, arriving in a legal manner on EU territory, helping the work of identifying cases of overstaying'.

[35] See Articles 20 and 33 of EU Regulation No. 2018/1240, which states that the risk indicators will consist of a combination of personal data, including age, sex, nationality, country and city of residence, level of education (primary, secondary, higher or none), and current occupation (job group). With reference to the ETIAS system and the various issues raised by its application, starting with the controversial definition of the aforementioned risk indicators by Frontex, see C. Derave, N. Genicot and N. Hetmanska, *The Risks of Trustworthy Artificial Intelligence: The Case of the European Travel Information and Authorisation System*, in *European Journal of Risk Regulation*, vol. 13, no. 3, 2022, 389 ff.; A. Musco Eklund, *Rule of Law Challenges of Algorithmic Discretion and Automation in the EU Border Control*, in *European Journal of Migration and Law*, vol. 25, no. 3, 2023, 249 ff.; C. Dumbrava, *Artificial intelligence at EU borders*, cit., especially 19 ff.; D. San-Martín Segura, *The quantification of behavioural forecast in administrative legal practice: the algorithmic risk assessment of the ETIAS*, in *Federalismi.it*, no. 3, 2025, 564 ff.

[36] See Articles 22 and 26 of EU Regulation No. 2018/1240.

[37] This conclusion appears to be tenable, at the very least, with reference to the principle of formal legality, the principle of non-exclusivity of algorithmic decision, and the principle of algorithmic transparency. This does not, however, dispel the concerns rightly raised in the mentioned legal literature regarding compliance with the principle of non-discrimination and the principle of substantive legality. For a recent analysis of the concerns associated with the risk of standardisation in the statement of reasons for refusals issued by the ETIAS National Units, see A. Karaiskou and N. Vavoula, *Extrajudicial and Judicial Remedies in Algorithm-Assisted Decision-Making: The Case of EU IT Systems for Migration and Security*, in *Common Market Law Review*, vol. 63, no. 2, 2026, 371 ff., especially 407 ff.

participate in the decision-making process and to challenge any errors or procedural irregularities,[38] thereby limiting the emergence of subsequent disputes against public authorities.

4. *Expulsion Orders on Grounds of Social Dangerousness and Predictive Policing: Towards the Emergence of the Surveillance State?*

The third procedural area concerns the adoption of prefectural expulsion orders on grounds of social dangerousness.[39]

Consider, in particular, the use of software capable of facilitating prognostic assessments relating to the social dangerousness of a given migrant by drawing the necessary factual elements and information from specific interconnected databases made available to the Italian Prefectures.

Indeed, in this field a balance between the need for administrative efficiency and the need to protect the legal position of the person concerned seems more problematic to find.[40]

In fact, although the IT systems used in this area can broaden the public knowledge base, the risk of obscuring the delicate prognostic judgements entrusted by law to the public security authorities remains remarkably high.[41]

In this regard, not only the overall assessment of the circumstances and evidence gathered during the investigation phase could be influenced by the use of unsupervised data,[42] but the prognosis generated by the software itself could also assume, even if only at a psychological level, a decisive weight in the decision-making process (the so-called 'automation bias'). In any event, it could easily become a convenient means of justifying the adoption of expulsion orders that would otherwise be reasoned or unfounded.[43]

Consequently, to ensure compliance with the general principles above (transparency, non-discrimination, and non-algorithmic exclusivity), any predictive policing tool used by administrative authorities within the procedure under consideration should be limited to performing a simple alert function. The task of verifying the specific elements symptomatic of individual dangerousness reported by the platform, conducting further fact-finding investigations and providing adequate reasoning for the decision taken on a 'case-by-case' basis must remain with the competent official.

Such procedural guarantees appear necessary to ensure that the final decision also

[38] See Article 27, paragraph 1 and 4, of EU Regulation No. 2018/1240, according to which 'where the ETIAS National Unit of the Member State responsible deems the information provided by the applicant in the application form to be insufficient to enable it to decide whether to issue or refuse a travel authorisation, it may request additional information or documentation from the applicant'. Moreover, 'in exceptional circumstances and as a last resort after processing the additional information or documentation, when serious doubts remain regarding the information or documentation provided by the applicant, the ETIAS National Unit of the Member State responsible may invite the applicant to an interview in his or her country of residence at its consulate located the nearest to the place of residence of the applicant'.

[39] See Art. 13, paragraph 2, letter c), of Legislative Decree No. 286/1998. The instrument is one of the oldest and most studied in administrative immigration law, as evidenced by the fundamental study by O. Ranelletti, *La polizia di sicurezza*, in V.E. Orlando (ed.), *Primo trattato completo di diritto amministrativo italiano*, vol. IV, Milan, Società editrice libraria, 1904, 1012 ff. More recently, see M. Savino, *Le libertà degli altri*, cit., 265 ff.; M. Interlandi, *Fenomeni immigratori tra potere amministrativo ed effettività delle tutele*, 60 ff.; F. Biondi Dal Monte and E. Rossi, *Diritto e immigrazioni*, cit., 134 ff.; P. Morozzo Della Rocca (ed.), *Immigrazione, asilo e cittadinanza*, cit., 267 ff.

[40] In this regard, it should be noted that, among the prohibited applications, the AI Act only indicates assessments carried out in relation to natural persons aimed at determining the likelihood of them committing a crime or predicting the occurrence of an actual or potential crime, where such assessments are conducted solely on the basis of profiling techniques or individual personality traits, without carrying out a human assessment based on objective and verifiable facts. See Recital 42 and Article 5, paragraph 1, letter d), of the AI Act.

[41] On the various critical issues raised by the use of modern technologies in the field of so-called predictive policing, see A.G. Ferguson, *The Rise of Big Data Policing: Surveillance, Race and the Future of Law Enforcement*, New York, New York University Press, 2017; M.B. Armiento, *La polizia predittiva come strumento di attuazione amministrativa delle regole*, in *Diritto amministrativo*, no. 4, 2020, 983 ff.; M.B. Armiento, *Pubbliche amministrazioni e intelligenza artificiale*, 69 ff.; R. Ursi, *La sicurezza nelle città. Dallo spazio difendibile a Tecnopolis*, in *Munus*, no. 2, 2024, especially 600 ff.

[42] This critical issue, already highlighted in previous paragraphs, is widely applicable in the procedures under consideration. In this regard, consider the possibility for border authorities and police forces to collect and use messages and online content found on social networks and various chat apps to assess the individual's personal connections and links with potential criminals.

[43] See Recital 60, last sentence, AI Act: 'Nor should they be used to in any way infringe on the principle of non-refoulement, or to deny safe and effective legal avenues into the territory of the Union, including the right to international protection'.

complies with the long-standing guidelines established by case law, according to which prefectural expulsion orders on grounds of social dangerousness must be based on objective and verifiable circumstances, taking due account of the overall personality of the individuals concerned and the current nature of their social danger.[44]

Ultimately, compliance with the conditions outlined above is essential not only to prevent potential abuses by public authorities, but also to avert the consolidation, in the field of migration, of the Surveillance State paradigm, which aims to conceal, behind the opacity of source codes, the attempt to erode the safeguards and individual rights that have been achieved so far.

5. *Final Remarks*

The brief examination offered in the previous paragraphs allows some concluding remarks regarding the conditions and prerequisites for the lawful use of artificial intelligence systems within the Italian administrative procedures in the field of migration.

In this regard, reference must first be made to the provisions contained in the European regulation on artificial intelligence, which expressly establish: *a)* the principle of accuracy, non-discrimination and transparency of IT systems, also with a view to guaranteeing the 'right to good administration';[45] *b)* the obligation, for public authorities, to register in a specific European database managed by the Commission and to communicate the artificial intelligence systems they intend to use in the exercise of their institutional functions;[46] *c)* the obligation, for the providers, to design artificial intelligence systems in such a way as to enable the oversight of their functioning, in accordance with the 'by design' approach and the procedural guarantee of human intervention.[47]

However, despite the definition of these important precautions, the perspective adopted by the European legislator with regard to 'migration and asylum' does not seem to be oriented towards the protection of human rights 'at all costs'. On the contrary, in this area, European regulations have introduced several exceptions to the rules and principles established for other fields of application, often associated with the expanding demands of national security and the combating of international terrorism.

To this view, the so-called 'national security exception' is invoked both about the use of real-time remote biometric identification systems for individuals in spaces open to the public,[48] and about the provision of enhanced human surveillance obligations (involving at least two persons),[49] as well as about the accessibility of information relating to the IT systems used by public authorities.[50]

Indeed, more protective limitations and conditions appear to be established by the provisions contained in the recent Law No. 132/2025, which aims to facilitate the correct

[44] See Civil Cassation, Section I, 30 August 2002, no. 12721. On judicial review exercised in this matter, see A. Cassatella, *Il sindacato di legittimità sulle decisioni amministrative in materia migratoria*, in *Diritto processuale amministrativo*, no. 3, 2017, 816 ff.; C. Costanzo, *L'espulsione dello straniero pericoloso tra prevenzione amministrativa e controllo delle migrazioni*, in *Federalismi.it*, no. 17, 2023, 54 ff.; L. Galli, *Il sindacato giurisdizionale sull'attività amministrativa di gestione del fenomeno migratorio*, in A. Cassatella, R. Chieppa and A. Moliterni (eds.), *Il sindacato giurisdizionale dell'attività amministrativa*, Rome, La Tribuna, 2024, 303 ff.

[45] See Recital 60, AI Act.

[46] See Recital 131, AI Act.

[47] See Recital 73, AI Act, which adds that 'such measures should guarantee that the system is subject to in-built operational constraints that cannot be overridden by the system itself and is responsive to the human operator, and that the natural persons to whom human oversight has been assigned have the necessary competence, training and authority to carry out that role'.

[48] See Recital 33, AI Act, according to which 'law enforcement, border control, immigration or asylum authorities should be able to use information systems, in accordance with Union or national law, to identify persons who, during an identity check, either refuse to be identified or are unable to state or prove their identity, without being required by this Regulation to obtain prior authorisation. This could be, for example, a person involved in a crime, being unwilling, or unable due to an accident or a medical condition, to disclose their identity to law enforcement authorities'.

[49] See Recital 73, AI Act, which specifies that: 'Given the specificities of the areas of law enforcement, migration, border control and asylum, this requirement should not apply where Union or national law considers the application of that requirement to be disproportionate'.

[50] See Recital 131, AI Act: 'For high-risk AI systems in the area of law enforcement, migration, asylum, and border control management, the registration obligations should be fulfilled in a secure non-public section of the EU database'. Indeed, this circumstance will effectively make it impossible for the affected individuals, civil society, and journalists to know which technologies are being used by the public authorities, on which people, and in which countries.

implementation of the AI Act in the Italian system, while at the same time giving a national direction to the digital transition process promoted at the European level, especially in relation to economic and social risks and the impact on fundamental rights.[51]

On the one hand, the law reaffirms and clarifies certain principles already established at legislative and case-law level, including: *a)* the need to develop technology based on data and processes whose correctness, reliability, security, quality, appropriateness and transparency must be verified, 'in accordance with the principle of proportionality, in relation to the sectors in which they are used';[52] *b)* the respect for human autonomy and decision-making power, and the principles of harm prevention, knowability and explainability, in order to ensure human oversight and intervention in algorithmic processing;[53] *c)* the requirement for cybersecurity throughout the life cycle of IT systems, according to a proportional and risk-based approach, and the consequent implementation of effective security controls, also to guarantee their resilience against attempts to alter their use, behaviour, performance or security settings.[54]

On the other hand, with specific reference to the use of artificial intelligence in public administration, Italian law refers both to the right to know and trace the use of algorithmic technology by public authorities[55] and to the principle of the exclusive responsibility of the administrative authority for measures and procedures in which artificial intelligence has been used, which must maintain an 'instrumental and supportive function to the measure'.[56]

This regulatory framework, although commendable, is still limited to defining the general contours of overall institutional architecture. From this perspective, even the most stringent requirements laid down by Italian law do not yet allow for determining whether the concrete application of information technology in the field of immigration will represent a valuable opportunity to rethink the mechanisms and rules in force for border control and arrival management or, conversely, a new and formidable threat to the individual rights affected by administrative action.[57]

Therefore, beyond the simplistic representation of the effects produced so far by the current digital transformation process in the sector under consideration – which can be summarised by the two paradigms of the 'Surveillance State' and the 'Algorithmic State' – it appears reasonable to state that the use of artificial intelligence systems in administrative migration procedures will require the definition of more specific rules, tools and operational limits in the future, based on the actual level of risk posed by individual applications to human rights and the characteristics of the procedural context.

In addition, it should be noted that compliance with the guarantees set out in the multi-level regulatory framework is likely to remain illusory without the provision of an adequate organisational structure.[58] Such a structure must be equipped with qualified and specially trained personnel, capable of responding to any complaints related to the lack of transparency in the functioning of the computer system, correcting any errors in the data processed by the software, managing, in synergy with the National Cybersecurity Agencies (in Italy, ACN), any cyberattacks affecting the platform and the public database,[59] justifying administrative decisions

[51] See Art. 1, paragraph 1, Law no. 132/2025: 'This law establishes principles concerning the research, experimentation, development, adoption, and application of artificial intelligence systems and models. It promotes the proper, transparent, and responsible use of artificial intelligence in a human-centered perspective, aimed at seizing its opportunities. It ensures oversight of the economic and social risks and of the impact of artificial intelligence on fundamental rights'.
[52] Art. 3, paragraph 2, Law no. 132/2025.
[53] Art. 3, paragraph 3, Law no. 132/2025.
[54] Art. 3, paragraph 6, Law no. 132/2025.
[55] Art. 14, paragraph 1, Law no. 132/2025.
[56] Art. 14, paragraph 2, Law no. 132/2025.
[57] In this regard, part of the doctrine has pointed out that, pursuant to Art. 6 of Law no. 132/2025, the development and application of artificial intelligence systems and models for purposes of 'national security', such as in the context of terrorism prevention and counter-terrorism activities, will remain outside the scope of Italian regulation, except for the obligation to ensure compliance with the fundamental rights and freedoms enshrined in the Constitution. On this point, see S. Amato, *Nuove tecnologie e gestione delle migrazioni: profili critici e questioni giuridiche*, in *Ordine internazionale e diritti umani*, no. 4, 2025, 933-934.
[58] See M.S. Giannini, *In principio sono le funzioni*, in *Amministrazione civile*, no. 1, 1957, 11 ff.
[59] Among the several studies on this subject, see, at least, R. Ursi (ed.), *La sicurezza nel cyberspazio*, Milan, Franco Angeli, 2023; S. Rossa, *Cybersicurezza e pubblica amministrazione*, Naples, Editoriale Scientifica, 2023; E. Buoso, *Potere amministrativo e sicurezza nazionale cibernetica*, Turin, Giappichelli,

by explaining how artificial intelligence supported the investigation activity and what weight the algorithmic prediction or proposal carried in relation to the other elements evaluated.

Similarly, it should be noted that the objective of implementing the outlined organisational change within the administrative apparatus appears highly problematic in the absence of adequate instrumental resources, specifically designed in accordance with data protection legislation and with the principle of interoperability among different databases.

In short, the mentioned conditions and assumptions seem to constitute the essential foundations for rethinking the current institutional architecture in the field of migration from both a technological and rights-based perspective, in line with the well-known anthropocentric vision of European origin.

Such a vision leads to evaluating the ongoing digital transition in the public sector not only in terms of legality, but also in terms of appropriateness. It suggests, especially for procedures in which sensitive interests are involved, that the most advanced software should be assigned not only an 'investigative and supporting' function, but also a function that is 'de facto non-decisive', albeit relevant, in shaping the content of individual administrative measures.

2023; M. Matassa, *La sicurezza cibernetica come funzione pubblica*, Milan, Franco Angeli, 2025.