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*The Administrative Judge Further Defines the Boundaries of Administrative Power in the Age of Automation. Some Reflections on the Consiglio di Stato Judgment No. 4520 of 5 June 2026**

Benedetto Marsili
(PhD student, University of Naples Federico II)

Consiglio di Stato, sec. V, 5 June 2026, no. 4520

The use of algorithms in public competitive selection procedures requires the public administration to ensure the clarity and transparency of the decision-making process. Accordingly, it must make available essential information concerning the algorithm employed, thereby ensuring that the algorithmic decision-making process is reliable and subject to ex post review.

ABSTRACT The judgment of Consiglio di Stato of 5 June 2026 (No. 4520) clarifies the proper use of digital tools in administrative action, particularly in the context of public competitive examinations, affirming the need to comply with the principles of transparency, verifiability and full judicial review of administrative decisions. Particular attention is devoted to the application of the principle of proximity of evidence, under which the burden rests on the administration to demonstrate the proper functioning of the algorithmic system used.

KEYWORDS: Algorithmic decision-making - Public recruitment procedures - Transparency - Judicial review - Burden of proof - Outsourcing

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1. *Facts of the Case*

A candidate in a public recruitment procedure brought an action before the Regional Administrative Court (Tribunale Amministrativo Regionale, TAR), alleging the unlawfulness of the entire selection procedure. The claim was based on the fact that the competition had been administered through an IT platform entrusted to a third-party provider, while neither the technical characteristics of the system nor the specific methods for the collection, storage, and marking of the examination papers had been disclosed.

The TAR declared the application inadmissible, holding that the claimant had failed to adduce evidence capable of demonstrating the specific unlawfulness of the decision excluding him, having instead raised only general objections to the selection procedure as a whole.

The claimant subsequently appealed to the Consiglio di Stato, which ordered a technical expert assessment (verificazione) to ascertain the reliability of the IT system used to administer the written examination. The assessment concluded that it was impossible to reach a definitive technical opinion as the administration had failed to disclose the source code of the algorithmic system employed, together with the remaining technical documentation necessary to reconstruct its operation.

In light of these findings, the Consiglio di Stato upheld the appeal, holding that the unavailability of the technical information necessary to reconstruct the functioning of the IT system prevented an effective judicial review of the lawfulness of the recruitment procedure.

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2. *Algorithmic Decision-Making in Administrative Proceedings: Judicial Principles and Regulatory Developments*

The judgment under review provides significant insights into the issue of algorithmic administrative decision-making. In this context, this expression refers to all administrative proceedings in which the use of technology goes beyond performing a merely instrumental or operational support function and instead contributes, to a greater or lesser extent, to the formation of the administrative authority's decision.[1]

The growing use of these decision-making models,[2] has taken place without a comprehensive legal framework defining the conditions, principles, and limits governing their use. As a result, the administrative courts have been required to strike a balance between the goals of efficiency and simplification pursued through the digitalisation of administrative action and the procedural safeguards protecting individuals. These safeguards include, in particular, the principles of transparency, impartiality, and judicial review of administrative power.[3]

In developing the legal framework governing algorithmic decision-making, the case law has clarified that it does not constitute an autonomous form of administrative decision-making. Rather, it represents a procedural mechanism through which the public administration exercises its functions.[4]

It follows from this characterisation that algorithmic administrative proceedings are compatible with the constitutional principles of impartiality and good administration enshrined in Article 97 of the Italian Constitution,[5] provided that they remain subject to the general rules laid down in Law No. 241 of 1990 and to the principles of transparency, statement of reasons, and judicial review.[6] It should be noted, however, that the case law has also made clear that algorithmic decision-making cannot be adequately regulated through a mechanical transposition of the procedural framework established by Law No. 241 of 1990, as this framework was developed at a time when the exercise of administrative functions through algorithms had not yet become a major legal issue. Hence, the distinctive features of this mode of exercising administrative power, together with the risks it entails, cannot be adequately addressed through the mere application of traditional procedural rules.[7]

Thus, the case law has also clarified that decisions involving the use of algorithms must provide individuals with specific safeguards.[8] Among these, particular importance attaches to the principle of transparency, which requires not only that the administration ensure access to information concerning the algorithm employed, but also that it takes all necessary measures to enable individuals to understand the logic and criteria on which the algorithm operates. Equally important is the principle of non-exclusivity of algorithmic decision-making, according to which the use of an algorithm cannot completely replace human involvement. Rather, effective oversight by the public authority must be maintained throughout the decision-making process, in accordance with the human-in-the-loop paradigm.[9] Finally, this framework is complemented by the principle of non-discrimination, which seeks to ensure that the use of algorithmic systems does not result in differential treatment lacking an objective justification or otherwise incompatible with the constitutional principles of equality and impartiality governing administrative action.[10]

These judicial developments have subsequently found partial recognition in both European Union and Italian legislation

[1] L. Torchia, *Lo Stato digitale*, 2nd ed., Bologna, Il Mulino, 2025, especially 130.
[2] For a comprehensive analysis of the evolution of the digital administrative act, see R. Cavallo Perin and I. Alberti, *Atti e procedimenti amministrativi digitali*, in R. Cavallo Perin and D.U. Galetta (eds.), *Il Diritto dell'Amministrazione Pubblica digitale*, 2nd ed., Turin, Giappichelli, 2025, 138.
[3] A.G. Orofino, *The Implementation of the Transparency Principle in the Development of Electronic Administration*, in *European Review of Digital Administration & Law*, vol. 1, issue 1-2, 2020, 123-142; L. Torchia, *Pubblica amministrazione e transizione digitale*, in *Giornale di diritto amministrativo*, no. 6, 2024, 734-735.
[4] Consiglio di Stato, sec. VI, 13 December 2019, no. 8472.
[5] Consiglio di Stato, sec. VI, 4 February 2020, no. 881.
[6] A. Simoncini, *Amministrazione digitale algoritmica. Il quadro costituzionale*, in R. Cavallo Perin and D.U. Galetta (eds.), *Il Diritto dell'amministrazione pubblica digitale*, 1.
[7] Consiglio di Stato, sec. VI, 13 December, no. 8472/2019; see also L. Torchia, *Lo Stato digitale*, 146.
[8] *Ex multis*, Campania Regional Administrative Court., sec. III, 14 November 2022, no. 7003.
[9] G. Gallone, *Riserva di umanità e funzioni amministrative*, Milan, Cedam, 2023.
[10] Council of State, sec. VI, no. 881/2020.

Article 30 of the new Italian Public Contracts Code incorporates, in the field of public procurement, the principles progressively developed by the administrative courts with regard to algorithmic decision-making. First, the provision expressly recognises the possibility of using artificial intelligence systems in public procurement procedures, acknowledging their potential to improve the efficiency, speed and quality of administrative action.[11] At the same time, however, it makes the use of such systems conditional upon compliance with the principles discussed above. To that end, the provision requires automated decisions to comply with the principles of transparency, understood as the accessibility and intelligibility of the algorithm's operation, non-exclusivity and non-discrimination. The principle of non-exclusivity requires effective human oversight throughout the decision-making process, ensuring that the use of an algorithm does not entirely replace human involvement. Finally, the principle of non-discrimination seeks to prevent differential treatment that lacks an objective justification or is otherwise incompatible with the constitutional principles of equality and impartiality governing administrative action.[12]

By contrast, Regulation (EU) 2024/1689 (the AI Act) constitutes the European Union's first comprehensive legislative framework governing the development, placing on the market, and use of artificial intelligence systems. The Regulation is based on a risk-based approach, under which the obligations imposed on providers and deployers of AI systems are calibrated according to the level of risk that such systems may pose to individuals' fundamental rights and to the interests protected by the legal order.

From this perspective, the AI Act identifies a number of high-risk sectors, subjecting AI systems used in those areas to a particularly stringent regime of legal obligations and oversight. These include, among others, systems deployed in administrative procedures concerning access to public benefits and services, recruitment and employment management, education, public safety, and, more generally, the provision of essential services.[13]

For these categories of AI systems, the Regulation first requires that the entire lifecycle of the algorithm be governed by a continuously updated risk management system, designed to identify, assess, and mitigate the risks that the AI system may pose to individuals' fundamental rights and to the interests protected by the legal order.[14]

The Regulation further requires that the operation of AI systems be adequately documented and sufficiently transparent to ensure, on the one hand, that the competent authorities are able to verify their compliance with the applicable legal requirements and, on the other, that affected individuals are able to understand the essential elements of the automated decision-making process. To this end, the AI Act requires providers to prepare technical documentation describing the functioning of the AI system, to ensure the automatic recording and retention of logs generated during its operation, and to provide clear instructions for use enabling the system to be deployed in accordance with the requirements of the Regulation.[15]

Furthermore, the Regulation precludes public authorities from delegating their decision-making powers entirely to artificial intelligence systems, requiring that effective human oversight be maintained throughout the decision-making process. To this end, the person responsible for supervision must be placed in a position to understand how the AI system operates, critically assess its outputs, and, where necessary, intervene by correcting, overriding, or suspending the automated decision-making process whenever errors, anomalies, or outcomes incompatible with the objectives pursued are identified.[16]

[11] On the relationship between private parties and public administration in public procurement, see R. Spagnuolo Vigorita, *La fiducia nell'amministrazione e dell'amministrazione: riflessioni intorno all'articolo 2 del nuovo codice dei contratti pubblici,* in *Federalismi*, no. 17, 2023, 271-280.

[12] A. Di Martino, *Tecnica e potere dell'amministrazione per algoritmo*, Naples, Editoriale Scientifica, 2023, especially 235.

[13] L. Cotino Hueso, *Scope and delimitation of high-risk systems in the Artificial Intelligence Act*, in L. Cotino Hueso and D.U. Galetta (eds.), *The European Union Artificial Intelligence Act. A Systematic Commentary*, Naples, Editoriale Scientifica, 2025, 301.

[14] P. Lazzara, *Governance pubblica e vigilanza sui sistemi di intelligenza artificiale nel nuovo regolamento UE 2024/1689,* in *Rivista trimestrale di scienza dell'amministrazione*, no. 1, 2026.

[15] Automatic records of the operations performed by the system during its operation.

[16] F. Di Porto and M. Fontana, *La regolazione di fronte alle sfide dell'intelligenza artificiale*, in R. Cavallo Perin and D.U. Galetta (eds.), *Il diritto dell'amministrazione pubblica digitale*, Turin,

In implementation of the regulatory framework established by Regulation (EU) 2024/1689 (the AI Act), the Italian legislature enacted Law No. 132 of 23 September 2025. The Act adopts the AI Act's underlying axiological and systematic approach, reaffirming the principle that the development and use of artificial intelligence systems must take place in full compliance with the principles of the Italian Constitution and the legal order of the European Union.[17]

For the purpose of the present study, the provision of greatest relevance is undoubtedly Article 14, which, although framed in rather general terms, regulates the use of artificial intelligence systems in the exercise of administrative functions. It reflects the principles discussed above by stipulating that artificial intelligence may be used to improve administrative action, provided that its use is subject to specific transparency safeguards. In particular, the reasoning underlying the decision and the logic of the system must remain accessible and comprehensible.

3. *The Innovative Significance of the Judgment*

The judgment under consideration illustrates the practical impact of the legislative provisions discussed above. It is no coincidence that the Consiglio di Stato expressly refers to the recent judgment of the Regional Administrative Court for Lazio (TAR Lazio) No. 1895/2026, which also relies on Regulation (EU) 2024/1689. In particular, the court refers to the AI Act's classification of artificial intelligence systems used in personnel recruitment procedures as 'high-risk' systems, which must be subject to effective human oversight. Moreover, the Consiglio di Stato also refers to one of its earlier judgments, No. 4929/2025, in which it held that, pursuant to Article 30 of the Public Contracts Code, preference should be given to open-source solutions and that the algorithm must be made knowable through the availability of the source code, the model used, and all relevant technical documentation.

Particular attention should be paid to the meaning of that emerges from the judgment. Whereas existing case law had recognised the knowability of the algorithm primarily as a corollary of the principle of administrative transparency, the Consiglio di Stato now places particular emphasis on its judicial dimension. The Court held that the failure to make available the source code, system logs, and technical documentation of the algorithm constitutes not only a breach of the administration's transparency obligations but also has direct implications for the allocation of the burden of proof, as it prevents the courts from effectively reviewing the operation and lawfulness of the algorithmic administrative procedure. To appreciate the significance of this ruling, it is necessary to examine some of its key passages more closely.

3.1. *The Principle of the Proximity of Evidence in Digitalised Administrative Procedures*

The judgment under review expressly refers to the principle of the proximity of evidence and applies it, for the first time, within the context of algorithmic administrative proceedings.

This principle, developed through case law, constitutes a criterion for allocating the burden of proof and applies where only one of the parties is in a position to prove a particular fact, in which case the burden of proof rests on that party. In such circumstances, the burden of proof falls on the party that is in the best position to provide such evidence, thereby preventing the opposing party from being required to discharge an impossible or excessively onerous evidentiary burden.[18]

Giappichelli, 2025, 368.

[17] M. Biasi and M. Sciacca (eds.), *AI, diritto e giustizia. Dall'AI Act alla L. n. 132/2025*, Milan-Udine, Mimesis, 2026.

[18] See Consiglio di Stato, sec. III, 18 August 2025, no. 7058, which held that art. 64, para. 1, of the Italian Code of Administrative Procedure establishes a correlation between the burden of proof and the availability of the relevant evidence. Accordingly, that burden applies only insofar as the evidence is accessible to the party concerned. Under the flexible criterion inspired by the principle of proximity to evidence, where the private applicant does not have access to the necessary evidence, the corresponding burden falls on the public administration, which is required to produce the documents in its possession pursuant to art. 64, para. 3, of the Code. On this point, see F. Saitta, *Vicinanza alla prova e codice del processo amministrativo: l'esperienza del primo lustro*, in *Juidicum*, 15 June 2015; M. Franzoni, *La 'vicinanza della prova', quindi…*, in *Contratto e impresa*, no. 2, 2016, 360; A. Giussiani, *Sulla 'vicinanza' della prova del vizio di cosa venduta*, in *Rivista di diritto processuale,* no. 4*,* 2020, 1320; A. Panzarola, *Riflessioni in tema di onere della prova nei processi amministrativo e civile*, in *Diritto*

In the case at hand, the judgment represents a significant development of this principle. The dispute before the Court did not require the assessment of a material fact in the traditional sense, but rather an examination of the proper functioning of an IT system used to conduct a public recruitment procedure. Accordingly, the issue concerned the technical analysis of a digital platform, namely the software employed and the additional technical information required to reconstruct the process through which examination papers were acquired, stored, and assessed.

It is evident that technical information of this nature cannot be immediately understood or accessed by the interested party, who can obtain it only through the exercise of the right of access.[19] Indeed, in the context of algorithmic administrative proceedings, the right of access assumes an essential function, as it constitutes the instrument through which the recipient of an administrative measure can understand and verify the functioning of the algorithmic system underlying the administrative decision. Consequently, the right of access must necessarily extend to all technical elements that enable the reconstruction of the automated decision-making process, including the source code, log files, the data used, the algorithm's operating criteria, and any further information necessary to make its logical and decision-making pathway comprehensible.[20]

Conversely, where the administration fails to disclose such information to the interested party, it would be almost impossible for the latter to provide evidence, in judicial proceedings, of the unlawfulness of the administrative action.

To address this issue, the judgment establishes that the claimant may fulfil the burden of proof by merely indicating a number of specific circumstances capable of casting doubt on the regularity of the algorithmic decision-making process.[21] Such circumstances are sufficient to justify the exercise of the administrative court's investigative powers, allowing the court to obtain all technical elements and documents necessary to reconstruct the algorithm's logical pathway and to assess the correctness of its operation.[22]

Although the judgment is of considerable significance, the same conclusion can also be derived by reference to the principle of party disposition (*principio dispositivo con metodo acquisitive)* as qualified by the court's investigative powers, which underlies Italian administrative proceedings.[23] Under this principle, the claimant is not required to provide full proof of the contested facts, but merely a *prima facie* showing (principio di prova), which is satisfied where the claimant presents the court with a plausible reconstruction of the relevant facts and legal arguments.[24]

However, the evidentiary phase of judicial

processuale amministrativo, no. 2, 2025, 295; V. Tulumello, *Riflessioni in tema di vicinanza della prova e obblighi di chiarimento in materia di contratto di agenzia*, in *Judicium*, 17 April 2026.

[19] T. Miele, *Il procedimento amministrativo e il diritto di accesso*, Turin, Giappichelli, 1995; S. Bellomia, *Il diritto di accesso ai documenti amministrativi e i suoi limiti*, Varese, Giuffrè, 2000; G. Clemente di San Luca, *Diritto di accesso e interesse pubblico*, Naples, Editoriale Scientifica, 2006; A. Simonati and M. Calabrò*, L'accesso dei privati alle informazioni e agli atti amministrativi: la multiforme applicazione del principio di trasparenza*, in Vv. Aa., *Studi in memoria di Antonio Romano Tassone*, Naples, Editoriale Scientifica, 2017, 2513*;* A. Corrado, *Il principio di trasparenza e i suoi strumenti di attuazione*, in M.A. Sandulli (ed.), *Principi e regole dell'azione amministrativa*, 4th ed., Milan, Giuffrè, 2023, 188.

[20] A.G. Orofino, *L'attuazione del principio di trasparenza nello svolgimento dell'amministrazione elettronica*, in *Judicium*, 19 October 2020; B. Marchetti and J. Ponce, *Algoritmi, diritto di accesso e buon andamento: quale equilibrio? Il caso Bosco*, in *Giornale di diritto amministrativo*, no. 2, 2026, 71.

[21] In the present case, the relevant circumstances include the failure to electronically sign the examination papers, the absence of a timestamp, the impossibility of verifying the personal attribution of the submissions, the use of a platform managed by an external economic operator, and the unavailability of the technical documentation relating to the software employed.

[22] F. Benvenuti, *L'istruzione nel processo amministrativo*, Padua, Cedam, 1953; V. Spagnuolo Vigorita, *Notazioni sull'istruttoria nel processo amministrativo*, in *Diritto processuale amministrativo,* 1984, especially 10; C.E. Gallo, *L'istruttoria processuale*, in S. Cassese (ed.), *Diritto amministrativo speciale*, 2nd ed., Milan, Giuffrè, 2003, 4391; F. Saitta, *Onere della prova e poteri istruttori del giudice amministrativo dopo la codificazione*, in *Diritto e processo amministrativo*, 2013, 93; L. Giani, *La fase istruttoria*, in F.G. Scoca (ed.), *Giustizia amministrativa*, 10th ed., Turin, Giappichelli, 2025, 370; P. Provenzano and M. Sinisi, *La fase istruttoria*, in M.A. Sandulli (ed.), *Il giudizio amministrativo, principi e regole*, 2nd ed., Naples, Editoriale Scientifica, 2026, 551.

[23] C. Silvano, *Il principio dispositivo con metodo acquisitivo alla luce del principio di trasparenza e del processo di digitalizzazione della pubblica amministrazione: un'analisi critica*, in *Diritto processuale amministrativo*, no. 2, 2025, 379-404.

[24] A. Travi, *Lezioni di giustizia amministrativa*, Turin, Giappichelli, 2026, 276.

review concerning algorithmic decision-making is particularly insightful. Administrative decisions based on the use of algorithmic systems raise distinctive issues not only at the substantive level but also in procedural terms. Administrative courts are called upon to review the legality of instruments characterized by a high degree of technical and computational complexity. Consequently, there is a need to identify procedural mechanisms capable of bridging the knowledge gap that inevitably arises between the court and the algorithmic system subject to judicial scrutiny.[25]

One of these instruments is certainly the technical verification (*verificazione*), which makes it possible to carry out a sufficiently precise assessment of the knowability of the algorithm's decision-making process.[26]

However, even the verifier can reach a reliable technical assessment only if provided with the elements necessary to reconstruct the functioning of the algorithmic system. To this end, it is essential that the administration makes available to the court the source code and all technical documentation capable of reconstructing the automated decision-making process. In the absence of such information, the evidentiary activity is inevitably compromised, since the lack of these elements prevents the verification of the algorithm's proper functioning and, consequently, the assessment of the lawfulness of the administrative action.[27]

Against this background, as noted above, that the main point of interest of the present judgment lies in the Consiglio di Stato's finding that the inability to reconstruct the operation of the algorithmic system cannot operate to the detriment of the claimant. Conversely, it is submitted that the consequences of the unavailability of the technical documentation should fall on the administration, which, having chosen to rely on an algorithmic decision-making process and being, or at least expected to be, in possession of the information necessary to document its operation, is required to demonstrate its lawfulness. The failure to produce the source code and the other relevant technical information therefore does not merely constitute a lack of documentation. Rather, it amounts to a failure to discharge the burden of proof incumbent upon the administration under the principle of proximity of the evidence.

4. *Externalisation of Administrative Functions and Public Administration Responsibility*

From this perspective, the principle of the proximity of evidence strengthens the accountability requirements governing administrative action. Accordingly, where the administration chooses to exercise public functions through algorithmic tools, it also assumes the obligation to adopt all necessary measures to ensure their correct and lawful use.[28]

This conclusion is further supported by the fact that the legislature has expressly provided that public administrations are required to adopt adequate technical, organizational, and training measures aimed at ensuring the responsible use of artificial intelligence and enhancing the skills of the personnel responsible for its deployment.[29]

In this regard, the judgment of the Consiglio di Stato reaffirms a further principle of particular importance concerning the outsourcing of administrative activities to private economic operators, including developers and managers of digital platforms.[30] This principle is based on the premise that the use of algorithmic systems does not alter the traditional criteria for attributing administrative action, which continue to be grounded in the principles of legality and organic identification

[25] M.B. Armiento, *Pubblica amministrazione e intelligenza artificiale*, Naples, Editoriale Scientifica, 2024, 305.

[26] F.G. Scoca, *Commento all'art. 66 c.p.a.*, in A. Quaranta and V. Lopilato (eds.), *Il processo amministrativo, commento al d.lgs. 104/2010*, Milan, Wolters Kluwer, 2011, 560; A. Travi, *Lezioni di giustizia amministrativa*, cit., 282.

[27] A.G. Orofino, *La trasparenza oltre la crisi. Accesso, informatizzazione e controllo civico*, Bari, Cacucci, 2020.

[28] However, Simoncini advances a different perspective, arguing that judges, whose professional training is essentially legal, may need to rely extensively on technical expertise when assessing algorithmic systems. In his view, such assessments do not merely concern the facts or documents at issue in the proceedings, but may extend to the very 'algorithmic rule' to be applied, thereby creating a potential tension with the fundamental principle iura novit curia. A. Simoncini, *Amministrazione digitale algoritmica*, 1.

[29] Art. 14, para. 3, law No. 132/2025

[30] For a thorough examination of the phenomenon A. Di Martino, *Tecnica e potere dell'amministrazione per algoritmo*, cit., 240.

(*immedesimazione organica*).[31]

Accordingly, the administrative decision remains legally attributable to the competent public authority, which retains full responsibility for the exercise of public power even where the formation of administrative will relies on the contribution of IT tools or artificial intelligence systems.[32]

On this basis, the role of the person responsible for the administrative procedure assumes particular importance. Such person is required to ensure the proper conduct of the proceedings, even where algorithmic decision-making is employed, not only by guaranteeing compliance with the principles of transparency and participation of interested parties, but also by verifying the reliability of the results generated by the algorithm.[33]

Furthermore, in light of the considerations set out above, the responsibility of the administration cannot be regarded as limited to the final stage of the procedure. Rather, it also extends to the design phase of the algorithm and, more specifically, to the selection of the data provided to the system for the purposes of reaching a decision.[34] The competent official is therefore required to verify that the outcome produced by the algorithmic system is, overall, consistent with the public interest pursued and compatible with the principles of reasonableness, proportionality, and impartiality governing the exercise of administrative power.

Only by adhering to these principles can it be ensured that the increased efficiency resulting from the use of automated tools does not lead to an improper—avoidance of administrative responsibility or, even more seriously, to the replacement of human assessment with algorithmic evaluation.[35]

This principle has also received express recognition under national legislation. Indeed, Article 14 of Law No. 132 of 2025 provides that artificial intelligence performs a merely instrumental and supportive function in relation to administrative decision-making, excluding the possibility that it may replace the exercise of administrative power. The final decision, in fact, remains with the administration, who retains both decision-making autonomy and full responsibility for the administrative procedure and the measure adopted.

5. *Final Remarks*

The judgment under review forms part of the progressive development of case law concerning algorithmic administrative proceedings, making a particularly significant contribution from the perspective of judicial safeguards. The most relevant aspect of the decision does not lie solely in the recognition of a right of access to the source code and to the technical documentation concerning the operation of the system, but rather in having brought the issue of algorithmic transparency within the framework of the rules governing administrative litigation.

Through the application of the principle of proximity of evidence, the Consiglio di Stato clarifies that, where the administration chooses to exercise public power through algorithmic systems, it bears the burden of demonstrating the regularity of the automated procedure and the proper functioning of the tool employed. This results in a significant strengthening of the effectiveness of judicial review, insofar as it prevents the technical opacity of the algorithm from becoming an obstacle to assessing the lawfulness of administrative action and, consequently, to the effective exercise of the right of defence by the recipient of the administrative measure.

The innovative nature of this solution also invites broader systemic reflection. The principle of proximity of evidence operates

[31] Torchia similarly argues that algorithmic administrative power must be governed by the same principles and remain subject to the same constraints and conditions as traditional administrative power. In her view, any form of exemption would entail a historically regressive and constitutionally problematic return to the regime of substantial immunity that once characterised public authority. L. Torchia, *Lo Stato digitale*, 130.

[32] M.C. Cavallaro, *Imputazione e responsabilità delle decisioni automatizzate*, in *European Review of Digital Administration & Law - Erdal*, vol. I, nos. 1-2, 2020, 69-74.

[33] A. Di Martino, *Tecnica e potere dell'amministrazione per algoritmo*, cit., 281

[34] M.C. Cavallaro, *Imputazione e responsabilità delle decisioni automatizzate*, cit., 72

[35] With regard to the principle of legality, *ex multis*: F. Satta, *Principio di legalità e pubblica amministrazione nello Stato democratico*, Padua, Cedam, 1969, especially 19; A. Travi, *Giurisprudenza amministrativa e principio di legalità*, in *Diritto pubblico,* no. 1, 1995, 91; P. Santoro, *Legalità e legittimità: garanzie pluriordinamentali e livelli di controllo*, in *Foro amministrativo*, 2000, 273; N. Colleo, *Il principio di legalità nel diritto amministrativo in evoluzione. Riflessioni sulla sua attualità e sul suo avvenire, tra fattori di crisi e rapporti con il potere normativo delle autorità amministrative indipendenti*, in *P.A. Persona e amministrazione*, no. 2, 2022, 487.

only once a dispute has arisen and the matter has been brought before the court. It therefore constitutes a response that comes into play only at the litigation stage of the relationship between the administration and the individual, when the administrative decision has already been adopted and judicial proceedings have already commenced.

The real issue, therefore, is not merely to determine the allocation of the burden of proof in judicial proceedings, but rather to ask whether the legal system currently provides adequate rules to prevent such disputes by imposing, ex ante, appropriate standards of transparency, traceability, and verifiability for algorithmic decisions.