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*Artificial Intelligence, State Liability and Human in the Loop**

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ABSTRACT This Article examines the application of the Portuguese regime of non-contractual State liability to damage caused by artificial-intelligence systems used by the Public Administration. It argues that liability should depend on the system's degree of autonomy and human involvement: fault-based liability may apply to rule-based systems, whereas machine-learning systems call for a risk-based approach. Effective human oversight and a specific framework for State liability are therefore essential.

KEYWORDS: Artificial intelligence - State liability - Public Administration - Human in the loop - Risk-based liability

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1. *Introduction*

The use of artificial intelligence in Public Administrations is an inescapable reality. Several forms of administrative activity increasingly rely on artificial-intelligence models, including automated administrative decision-making.[1]

Although its use may raise some concerns – discrimination, opacity, unpredictability, violations of data protection and other fundamental rights – there are significant advantages associated with it.

Some of the most striking advantages are the '3Es' – efficiency, effectiveness, and economy in the sound management of public action. Celerity, improvement in the quality of public services, standardization, either of decision-making or of other relevant administrative tasks, are also often recalled.

Not surprisingly, Public Administration justifies the use of artificial-intelligence models on better performing public services and the good-administration principle. In Portugal, it is enshrined in Article 267 of the Constitution and Article 5 of the Administrative Procedure Code (dedicated to good administration, affirming the need for the Public Administration to be guided by 'criteria of efficiency, cost-effectiveness, and celerity'). General administrative principles establish a common ground of juridical bases whenever a complete legal regime fails to respond to technological challenges.

European law is also called to rule on this matter, although it sets general rules.

On one hand, Article 22 of European Data Protection Regulation (2016/679) establishes a principle prohibiting decisions based solely on automated processing – including profiling – without human intervention, whenever such decisions produce legal effects concerning individuals, or similarly significantly affecting them. However, it admits exceptions determined by Member States.

On the other hand, the Artificial Intelligence Act (2024/1689) institutes a common ground, based on a risk approach, and establishes basic principles like transparency, explainability and human oversight. The risk level determines the admissibility of using artificial-intelligence models and imposes specific rules. The Public Administration is not excluded, *per se*, from using artificial-intelligence systems.

Portugal is still missing a clear regime for artificial-intelligence use in the Public Administration.[2]

At this point, the most important rules may be found in Article 94 and Article 62 of the Administrative Procedure Code. One must

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[1] For recent developments, see https://digital.gov.pt/pt; and: Agência para a Reforma Tecnológica do Estado, *Guia para a inteligência artificial*, 2026: https://bo.digital.gov.pt/api/assets/etic/03da55eb-a8b8-47eb-a221-4a685eb082ea.

[2] On this issue, see C. Sarmento e Castro, *A Administração eletrónica no CPA e os atuais desafios do algoritmo*, in *Revista de Direito Administrativo*, no. 6, November 2025, 23 ff.

necessarily infer from the second part of Article 94(2) an interpretation that legitimizes electronic administrative acts automatically performed by software in scenarios of purely rule-based administrative intervention.[3] Article 62 allows electronic service counters to carry out the automated issuance of administrative acts.

Some simplification laws (like Decreto-Lei 135/99, of 22 April,[4] and some specific regulations like Decreto-Lei 112/2017, which establishes that recreational fishing licenses are obtained through the ATM network), also support the Public Administration's use of artificial intelligence in decision-making.

Article 9 of the Portuguese Charter of Human Rights in the Digital Era admits decisions made by the use of algorithms.[5]

The legal solutions encountered should be interpreted in line with the European principle of risk, taking into account the degree of autonomy possessed by the digital mechanisms, and the associated risk level.

The intensive and growing use of artificial intelligence requires to rethink the Portuguese legal framework governing administrative activity.[6]

Law has slowly adapted to this new paradigm, considering some of its challenges. But, in Portugal, none of the above-mentioned rules sets a sufficiently clear regulation for the Public Administration's use of artificial intelligence. This regulatory change is particularly challenging given the divergent regulatory signals – stemming from European-level regulation *versus* the legal frameworks established in certain European countries – regarding the distinction between deterministic systems and autonomous learning systems.[7]

One particular matter that law must resolve concerns liability for damages caused to citizens or businesses by the Public Administration's use of artificial-intelligence models.

It is to this topic that we will devote our brief remarks.

2. *Non-Contractual State Liability for Damages Arising from Public Action*

In the absence of a specific Portuguese regulation on compensation for damages arising from the use of artificial intelligence by the public sector, the standards of public-liability law should apply.[8]

Therefore, the general regulation for non-contractual State civil liability is currently the legal model applicable to damage arising from the use of artificial intelligence in the Public Administration.[9]

Although the expression 'non-contractual civil liability of the State' might appear to refer to the civil law regime governing relations between private parties, it actually refers to the liability regime applicable to actions taken in the course of the administrative activity – whether by public entities or by private entities exercising

[3] As I have previously argued, see C. Sarmento e Castro, www-administraçãopública.pt, Faculdade de Direito da Universidade de Coimbra, 2017, available online at: https://estudogral.uc.pt/bitstream/10316/87466/1/Administra%c3%a7%c3%a3o%20P%c3%bablica%20e%20novas%20tecnologias.pdf; Id., *A Administração eletrónica no CPA e os atuais desafios do algoritmo*, cit., 23 ff.

[4] Article 13-A: 'Certain acts within administrative procedures may be performed via the public network of automated teller machines or dedicated payment terminals; these must be widely publicized, specifically by being posted on the website of the competent service'.

[5] '2. Decisions made using algorithms that have a significant impact on the individuals concerned must be communicated to those individuals and must be subject to appeal and audit, in accordance with the law'. For references to Article 9, see R. Pedro, *Artificial intelligence on public sector in Portugal: first legal approach*, in *Juridical Tribune*, vol. 13, issue 2, June 2023, www.researchgate.net/publication/372085176_Artificial_intelligence_on_public_sector_in_Portugal_first_legal_approach#fullTextFileContent.

[6] As previously argued, see C. Sarmento e Castro, *A Administração eletrónica no CPA e os atuais desafios do algoritmo,* cit.

[7] Some countries – such as Italy (Law no. 132/2025) and Finland (Section 53 of the Administrative Procedure Act) – have excluded the use of machine-learning techniques for fully automated decision-making by requiring effective human responsibility for decision-making, whereas the European Artificial Intelligence Act does not exclude such use but rather imposes enhanced human oversight.

[8] M. Rebelo de Sousa and A. Salgado de Matos, *Direito Administrativo Geral*, vol. 3, 2nd ed., Lisbon, Dom Quixote, 2009, 476-477; V. Moreira, *Direito Administrativo (Lições à 3.ª turma do 2.º ano da licenciatura em Direito da FDUC*), Coimbra, 2012, 634 ff.; M. Aroso de Almeida, *Teoria Geral do Direito Administrativo*, 4th ed., Coimbra, Almedina, 2017, 493 ff.; D. Freitas do Amaral, *Curso de Direito Administrativo*, vol. 2, 3rd ed., Coimbra, Almedina, 2016, 545 ff.

[9] See also R. Pedro, *Artificial intelligence on public sector in Portugal: first legal approach,* cit., 149. On the liability of public administration for damage caused by the use of artificial intelligence, see B. Garcia*, A responsabilidade civil extracontratual do Estado e demais entidades públicas por danos decorrentes da utilização de inteligência artificial no exercício da função administrativa*, AAFDL, 2025

administrative functions.

The State-liability framework has constitutional standing in Article 22 of the Constitution of the Portuguese Republic. Indeed, Article 22 on the 'Liability of public entities' provides that 'Jointly with the officeholders of their entities and organs and their staff and agents, the state and other public entities are civilly liable for actions or omissions that are committed in or because of the exercise of their functions and result in a breach of rights, freedoms or guarantees or in a loss to others'.

The Constitution determines the existence of a public duty to indemnify, resulting from damages caused by the State and other public entities.[10]

The provision enshrines a general principle of public-authority liability, manifesting as the liability of the Administration itself, rather than merely that of the individuals holding office within its bodies, or its employees. This constitutes a direct liability on the part of the Administration, not merely a subsidiary one.

This constitutional provision establishes a genuine fundamental right to reparation for damages caused by acts or omissions of the Public Administration.

It also protects an objective guarantee arising from the principle of the Rule of Law, enshrined in Article 2 of the Portuguese Constitution.

Furthermore, it incorporates an institutional guarantee stemming from the very existence of the State as an administrative entity. During its operations – carried out by the individuals holding office within its bodies, and its employees – it may cause some damage. Consequently, such harmful action gives rise to the compulsory liability of public authorities.

It is important to emphasize that the constitutional concept of public liability is not limited to damages resulting from activities involving fault. The Portuguese Constitution enshrines a broad concept of liability.

Although the constitutional liability regime could be understood as directly applicable in certain respects, there is a general regulation governing liability arising from the exercise of public functions.

The Portuguese legal framework of State liability was established by Law no. 67/2007, of 31 December 2007, amended by Law no 31/2008, of 17 July 2008, which governs the 'non-contractual civil liability of the State and other public entities'.

It applies to the State and other public-law entities, and to the liability of officeholders, public officials and agents, employees, members of corporate bodies, and legal representatives or auxiliaries. It also extends the regime to private entities acting with public-authority prerogatives. The regulation encompasses both damages caused by the State and other public entities, and damage produced by private entities that perform public functions.[11]

The civil liability of the State and other public entities comprises administrative civil liability for unlawful acts (*responsabilité pour faute*), administrative civil liability for risk (*responsabilité pour risque*), and compensation for sacrifice (*responsabilité pour rupture d'égalité devant les charges publiques*): fault-based, risk and sacrifice liability are the general liability regimes set out by law.

The mechanism under Articles 7 to 10 of the Law establishes liability for damages arising from unlawful actions or omissions.

Article 11 enshrines liability based on risk whereby the Public Administration is liable for damages resulting from particularly dangerous administrative activities, objects or services.[12]

Under Article 16, a mechanism for compensation for sacrifice defines the State obligation to compensate individuals for the burden imposed, or for the sufferance caused by abnormal damages resulting from public-interest reasons.

In light of this principle of public liability and the fundamental right of those harmed by the exercise of public powers to claim compensation, there is no doubt that damage caused by the use of artificial intelligence must give raise to public liability. This is an

[10] See J.J. Gomes Canotilho and V. Moreira, *Constituição da República Portuguesa Anotada*, vol. 1, Coimbra, Coimbra Editora, 2007, 423.

[11] C.A. Fernandes Cadilha, *Regime da Responsabilidade Civil Extracontratual do Estado e Demais Entidades Públicas*, Coimbra, Coimbra Editora, 2011.

[12] Law no. 67/2007, of 31 December, also stipulates a regime of civil liability for damages resulting from political-legislative functions (Article 15). It introduced a regime of State civil liability for abnormal damage caused to citizens' legally protected rights and interests by acts performed in the exercise of political-legislative functions. Articles 13 and 14 govern liability arising from the exercise of judicial functions.

essential requirement of compatibility with the Rule of Law.

However, artificial intelligence models defy traditional mechanisms of human imputation.

The key question to resolve is how the liability regime operates when public authorities use artificial intelligence. Part of the difficulty results from heterogeneous solutions of artificial intelligence.

Two main interconnected factors must guide the solutions – the human-in-the-loop[13] and risk. These might be the game changers in the definition of the applicable regime.

3. *Non-Contractual State Liability for Damages Arising from the Use of Artificial Intelligence in Public Administration Activity*

To define the applicable liability regime in conflicts involving Artificial Intelligence in administrative decision-making, one must consider the nature of the artificial-intelligence system that caused the damage. The choice between the regimes – for administrative civil liability for unlawful acts, for administrative civil liability for risk, and for compensation for sacrifice – should depend on the system's decision-making autonomy and, consequently, on its risk level.[14]

Regarding the use of artificial intelligence by the Public Administration, there are different levels of automation and human intervention, reflecting different levels of nature and autonomy.

Firstly, it is important to distinguish decision-making models from artificial-intelligence models built to support administrative decisions.

Secondly, it is relevant to separate rule-based decision-making models, executing predetermined instructions as static tools, from adaptative and autonomously learning decision-making models.

The greater the system's autonomy, the greater the difficulty in grounding liability for damages in a judgment of human causation.

Traditionally, public compensation for damage caused by public organizations subordinates liability to damage, unlawful acts, individual fault and a linear causal link.[15] Non-contractual civil liability aims to compensate for harm suffered by a citizen arising from the exercise of administrative functions. The obligation to indemnity may result from the use of artificial systems when damages are caused.[16]

Nevertheless, the growing autonomy of systems used by public bodies to perform administrative tasks compels us to seek a basis for liability that goes beyond traditional models of damage, unlawfulness, linear causality and individual fault-based liability.

Besides decision autonomy, artificial intelligence has driven another relevant change: the use of algorithms entails new layers of responsibility; although they are not 'the' responsible party to whom the administrative decision will be credited, data scientists, algorithm encoders, technology companies, data centers, are now part of the decision-making procedure.

4. *Rule-Based Models, Linear Causality and Fault-Based Liability*

For some years, the Public Administration has been using algorithms in decision-making procedures. In most cases, they are predetermined static algorithms, limited to executing predetermined instructions.[17] The operations of these algorithms are based on if-then logic: 'If' the condition or factual elements are met, 'then,' consequently, the system acts as programmed. In these rule-based algorithms, the Public Administration knows the prerequisites defined by the legal rule and can explain how the facts of a case relate to that legal rule, justifying the reasoning of the decision. They perform

[13] E. Carloni, *Critica dell'amministrazione artificiale*, Bologna, Il Mulino, 2025, 169.

[14] Likewise, see R. Pedro, *Artificial intelligence on public sector in Portugal: first legal approach*, cit.

[15] L. Pica, *Rethinking the Foundations of the State's Civil Liability Regime in the Performance of the 'Artificially Intelligent' Tax Administration*, in *European Review of Digital Administration & Law – Erdal,* vol. 7, issue 1, 2026, 97.

[16] On this obligation, see R. Pedro, *Artificial intelligence on public sector in Portugal: first legal approach*, cit.

[17] Of particular evidence are J. Ponce Solé, *Inteligencia artificial, Derecho administrativo y reserva de humanidad*, in *Revista General de Derecho Administrativo*, no. 50, 2019; J. Ponce Solé, *Inteligencia artificial, decisiones administrativas discrecionales totalmente automatizadas y alcance del control judicial: ¿indiferencia, insuficiencia o deferência?*, in *Revista de Derecho Público – Teoría y Método*, vol. 9, 2024; J. Ponce Solé, *Algorithmic and AI Transparency in the European Union: the Spanish Case*, in *European Review of Digital Administration & Law - Erdal*, vol. 5, issue 2, 2024, 47 ff.; G. Gallone, *Riserva di umanità e funzioni amministrative*, Milan, Cedam, 2023, 218 ff.

closed, predetermined, and predictable decisions or actions.

Although one cannot immediately link damage to guilty human behaviour (with an ethical-legal and necessarily human approach), because there is neither human interface, nor direct human decision, we may still find human action at the foundation of the automatic administrative result. There always is decisive human behaviour and power of choice in support of the electronic administrative decision.

When the authority competent to perform the administrative act decides to use an artificial-intelligence rule-based model, it defines the conditions for the performance of the automated administrative act by selecting the software to be used, outlines the logic to fit legal rules, and remains overall responsible.

That is the case of an automated rule-based decision-making system: for example, an automatic decision on education grants, based on the programmed verification of the existence of legal prerequisites.

As we have previously noted,[18] an electronic decision resulting from the use of rule-based artificial-intelligence models will always be attributable to human intent. This intent is discernible, in its most significant aspects, in the human choice to employ artificial intelligence to decide, in the selection of the program to reach the decision, and in the definition of the decision's logic.

However, other aspects – while less essential and not constitutive of the decision itself – also reveal human will, such as the initiative to select input data and its submission into the system, or the search for and obtainment of data from other administrative entities. The same applies to the decision to issue a notification, or the choice to fully automate this communication.

Fully automated administrative decisions use software selected and approved by the Public Administration. Although administrative acts are performed by a machine without direct human intervention, there still is a 'human-in-the-loop'. The 'human element' lies in the choice of software and, for rule-based systems, in its decisional logic, which renders the human responsible for the automatic administrative act, predetermined and expressed by the machine.[19]

The link to the human element is reinforced by the requirement for human oversight, which stems, in particular, from European legal standards.[20]

All these choices have a common ground: the public organization defines the reasoning of the decision, transposing the logic of law into a pre-established algorithmic logic. Therefore, it determines the result.

It is the human element that enables decision-making, as rule-based software relies on algorithms that solve problems based on a finite number of pre-established instructions. Moreover – the result is preconditioned to predetermined administrative rules, even if the procedure to get there involves technological elements.

In this case, the automatic decision is a non-autonomous machine decision: a static predetermined algorithm fixes the terms of the encoded result. And the human willpower will still be there, and it is capable of justifying the subjective State liability, both for the decision to adopt an automatic procedure, and for the definition of the prerequisites and their necessary consequences.[21]

This indirect-liability logic may also be inspired by the model that dispenses with the need to attribute fault to the administrative agent, already existing in Portuguese

[18] C. Sarmento e Castro, *www-administraçãopública.pt*, cit.

[19] C. Sarmento e Castro, *A Administração eletrónica no CPA e os atuais desafios do algoritmo*, cit., 23 ff.

[20] Like Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence, on Article 14, regulating human supervision on high-risk artificial intelligence systems (14(1) – 'High-risk AI systems shall be designed and developed in such a way, including with appropriate human-machine interface tools, that they can be effectively overseen by natural persons during the period in which they are in use').

[21] Justifying human administrative will on the rule-based software: C. Sarmento e Castro, www-administraçãopública.pt, cit.; P. Gonçalves, *O acto administrativo informático (o direito administrativo português face à aplicação da informática na decisão administrativa),* in *Scientia Iuridica*, no. 267, Universidade do Minho, Braga, January-June 1997, 47 ff., 70; C. Amado Gomes and S. Lopes Luís, *O dom da ubiquidade administrativa: reflexões sobre a actividade administrativa informal*, in *Revista do Instituto do Direito Brasileiro*, vol I, no. 7, 2012, 3999 ff. (at 4012-4014), available online at: www.icjp.pt/sites/default/files/media/1128-2457.pdf; P. Otero, *Manual de Direito Administrativo*, vol. I, Coimbra, Almedina, 2014, 485; M. Prata Roque, *Administração Eletrónica e Automatização: contributos para uma Reformulação da Teoria Geral das Atuações Administrativas,* in *Estudos em Homenagem a Rui Machete*, Coimbra, Almedina, 2015, 755 ff.

legislation, in Article 7 (no 3 and 4) of State-liability regulation. It allows to hold the Public Administration directly liable, provided the suffered damage results from an 'abnormal functioning of the service', granting protection from depersonalization.[22]

However, the intermediation of the above-mentioned new actors is undeniable, adding new layers of responsibility: data scientists, algorithm encoders, technology companies, data centers… And their intervention may be relevant in the ultimate (re)distribution of liability, bringing the issue of eventual joint responsibility to the forefront.

That being said, one must conclude that if automation is founded on a rule-based algorithm, it may grant transparent explainability of reasoning. Therefore, causal link and assumption of fault are admissible and may be invoked under Articles 7 to 10 of the Law on the liability for damages arising from unlawful actions or omissions.

Yet, one critical point should be underlined: the growing complexity of reasoning and explanation.

5. *Artificial Intelligence, Machine Learning Algorithms and Risk Liability*

Demonstrating the causal link between the damage and an objectively culpable act or omission tends to be a problem when the Public Administration makes use of machine-learning algorithms.[23] Their autonomy, self-learning, evolutionary, and adaptative capabilities give them a certain unpredictable character, far from the predetermined rule-based algorithms.

Machine learning algorithms lack transparency and explainability, making it hard to establish a causal link as there is no effective control over the technological procedure by those whose administrative power is expressed in an algorithmic decision. Challenging machine-learning decisions to claim direct damage based on fault and the causal link would be impossible or extremely difficult.

Given these circumstances, it seems clear that making the public entity's liability dependent on the injured party proving a causal link would turn out to be too difficult. Article 7 of the general State liability regime, on fault-based liability, does not adjust to evolutionary and autonomous algorithms.

One way to resolve the issue might be to legally insist that, in such cases, there is always – however remote – a link to the public-organization functions, and, consequently, to the public organization whose representatives, in the exercise of their powers, decided to use artificial-intelligence models, determined the goals of their use, and fixed minimum parameters for action.

Although an administrative decision may result from a machine-learning algorithm, with no immediate subjective link, the algorithms are 'technical extensions'[24] of the exercise of administrative function, linking to the competent organization, and binding it.[25]

Consequently, there should be no doubt that a public entity deciding to use artificial intelligence in administrative activities – specifically for decision-making – bears responsibility for any harm caused to individuals or companies as an effect of such use.

Even without the existence of an immediate human will, the law may consider that having the power to issue administrative decisions by means of an algorithmic system may determine a liability relation based on the legitimate assumption and expectation that decisions are imputable to the authorities in charge of the competence.[26] This assumption – which protects trust – gains reinforced importance when agentic models may even decide when to act: the Public Administration should be accountable for the result, disregarding intention or direct action.

Still, the liability layers demand other criteria, as other actors take part in the

[22] C. Marques da Costa, *Os Reflexos da Automatização da Administração Pública na sua Responsabilidade*, Master's thesis, Universidade Católica Portuguesa, Lisbon, 2020, available at https://ciencia.ucp.pt/pt/studentTheses/os-reflexos-da-automatiza%C3%A7%C3%A3o-da-administra%C3%A7%C3%A3o-p%C3%BAblica-na-sua-resp; T. Barbosa Costa Ferreira, *A responsabilidade pela prática de atos administrativos automatizados*, Universidade Católica, 2025, 43, available at: https://repositorio.ucp.pt/entities/publication/4c054ff8-9dff-4955-aa2c-ee89a0ab5dba.

[23] C. Sarmento e Castro, *www-administraçãopública.pt*, cit., 626 ff.; T. Barbosa Costa Ferreira, *A responsabilidade pela prática de atos administrativos automatizados,* cit.

[24] L. Pica, *Rethinking the Foundations of the State's Civil Liability Regime in the Performance of the 'Artificially Intelligent' Tax Administration*, cit.

[25] L. Pica, *Rethinking the Foundations of the State's Civil Liability Regime in the Performance of the 'Artificially Intelligent' Tax Administration*, cit.

[26] L. Pica, *Rethinking the Foundations of the State's Civil Liability Regime in the Performance of the 'Artificially Intelligent' Tax Administration*, cit.

technical procedure leading to the result, and, furthermore, none of them controls it entirely.

Liability may result from the human-supervision obligation to prevent damage. It is a duty of care imposed on the algorithmic Administration to avoid misuse, malfunctioning, errors, malicious prompt injections that could jeopardize results, data biases, or wrongful modelling criteria.[27]

Therefore, liability should also result from the inherent risk of using machine-learning algorithms. It is not difficult to find algorithmic systems that can go wrong, with heavy consequences: facial-recognition systems, automatic evaluation of exams, the denial of housing or other social benefit, personal-income tax calculation, student grants' distribution, fraud-detection algorithms, or hospital triage … The recognition of inherent risks may justify public liability for damage with no direct causal link between the fact and the damage, with no imputation of the fact to the public body or officials, and with no unlawful act.[28]

Liability based on risk is crucial to ensure effective judicial protection. Therefore, it is an essential element to uphold the Rule of Law.

According to Article 11 of the Portuguese civil liability regime, 'the State and other public law entities are liable for damages arising from especially dangerous administrative activities, objects, or services'.[29] Article 11 enshrines liability based on risk whereby Public Administration is liable for damages resulting from particularly dangerous administrative activities, objects or services.

Unlike the general private law regime, which recognizes protection only for the consequences of certain expressly named activities, administrative liability based on risk establishes a general rule imposing liability regardless of fault whenever damage arises from an especially dangerous activity.

It is this exposure to danger that justifies public liability based on risk, excluding fault: whoever creates the risk must bear the consequences, especially when making intensive use of machine-learning technologies and agentic algorithms that heighten some potential danger (for human rights, for equality…).

Consequently, the State and other public law entities must be liable for damages arising from especially dangerous administrative activities, objects, or services.[30]

Liability must be extended to the use of decision-making support models based on artificial intelligence, as they might be determinant for the decision, namely when automation biases find their way.

6. *Decision-Making Support Models and Human in the Loop*

Some artificial-intelligence models are used exclusively to support decision-making procedures, keeping a human in the loop. The strictly instrumental nature of some algorithms tends to adjust to a principle of human liability for the use of artificial intelligence: the administrative act still depends directly on the human will, although this administrative decision might have been founded on algorithmic preparatory procedures. This is the case where an artificial intelligence model assists the human decision-maker.

The instrumental use of artificial intelligence accommodates the causal link requirement because it keeps a human in the loop for effective decision-making. It will be a human, and not the algorithm, who will assume the direct decision and, therefore, take the blame or fault for any damage, even if there was an algorithmic assistant.

The damage that may occur from the use of supporting artificial-intelligence model will always come as a result of the decision-maker's choice to use algorithms in a supporting role. If an LLM model is used to prepare a decision, the decision-maker will be accountable. Therefore, it must be critically used, bearing in mind the liability resulting from this option.

As a result, challenging an administrative act may involve challenging the auxiliary

[27] S. Philibert, *The new liabilities of algorithmic Administration – France*, in *European Review of Digital Administration & Law*, vol. 7, issue 1, 2026, 35.

[28] L. Pica, *Rethinking the Foundations of the State's Civil Liability Regime*, cit.

[29] 'Except where, under general principles, it is proven that there was "force majeure" or contributory negligence on the part of the injured party; in the latter case, the court may, taking into account all circumstances, reduce or exclude compensation'.

[30] The Portuguese legal framework governing State liability provides for certain exceptions: 'Except where, under general principles, it is proven that there was *force majeure* or contributory negligence on the part of the injured party; in the latter case, the court may, taking into account all circumstances, reduce or exclude compensation'.

algorithm, because it may have had a decisive role in the outcome.

7. *Concluding Remarks*

Public-Administration liability is essential to uphold the Rule of Law.

Although the Public Administration could still be accountable for rule-based mechanisms on a fault-based logic, machine-learning techniques break the subjective chain.

The assumption of depersonalization and a risk-liability approach are now essential.

To harness the potential of the use of artificial intelligence in the Public Administration, and to reinforce confidence in both rule-based and machine-learning models, risks must be mitigated with human supervision.

However, risks must also give rise to compensation for citizens and firms whenever damage occurs as a result of an artificial-intelligence model's activity.

A robust governance framework for the use of artificial intelligence in Public-Administration activity must comprise a special State-liability regime.

The present regulation on the civil liability of the State and other public entities' covers liability for unlawful acts, for risk, and compensation for sacrifice.

Although Portuguese and European continental classic fault-based rules may still be applicable in some circumstances, the expansion of the use of machine-learning algorithms turns risk liability principles into crucial mechanisms. They may ensure damage compensation, legal certainty, plain access to justice and jurisdictional guarantees, and the protection of fundamental rights, aligning the use of artificial intelligence with the Rule of Law.