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*The New Liabilities of Algorithmic Administration – France**

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ABSTRACT The use of algorithms by the administration largely falls within the rules of traditional administrative liability. However, given the specific nature of algorithmic decision-making – and the difficulty citizens face in proving fault – one can envisage certain novel applications.

KEYWORDS: Algorithmic administration - Liability - Faulty liability - Damage - Discrimination - Presumption of fault

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1. *Introduction*

The case of the wrongful arrest of Xavier Dupont de Ligonnes in October 2019 highlights the limitations of the use of algorithms by public authorities.[1] To identify the suspect, the Scottish police compared the fingerprints of the wanted person with those of the person arrested. However, the technology used by the Scottish police is not the same as that used by the French police: the man arrested by mistake would probably not have been considered a suspect by the French police.[2] Nevertheless, such a scenario also highlights the difficulties raised by the administrative use of algorithms in terms of liability: the damage suffered by the man who was mistaken for Xavier Dupont de Ligonnes was not the result of an error made by the algorithm, but of a difference in practice between two countries and hasty media coverage. For the algorithmic administration to be held liable, the algorithm must be the cause of a triggering event, whether fault-based or not, of direct and certain harm, and a causal link must be established between them. However, this causal link between the algorithm and the harm is very often absent, as the triggering event lies elsewhere.

The French public authorities have been using algorithms for a long time (for example, to calculate personal income tax), but their use has grown significantly.[3] There are many possibilities, but the most frequent uses can be summarised as follows: algorithms are used by the administration to allocate rights or calculate amounts (particularly in tax and social matters), match supply and demand (for the allocation of university places, for example), predict a situation or risk (in policing or fraud), or identifying an individual (using facial recognition technology) or an offence (such as vehicle geolocation technology used to monitor paid parking). These uses can give rise to different administrative decision-making processes, depending on the respective roles of the algorithm and human intervention.[4]

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[1] Xavier Dupont de Ligonnès has been wanted for the quintuple murder of members of his family since 2011. In October 2019, several media outlets reported that he had been arrested by the Scottish authorities (see, for example, J.-M. Décugis and E. Pelletier, *Xavier Dupont de Ligonnès arrested on Friday in Scotland*, in *Le Parisien*, 11 October 2019), before realising that the man arrested was someone else entirely.

[2] C. Potti, *Affaire Xavier Dupont de Ligonnès : Comment en est-on arrivé à croire à une fausse piste ?, 20 minutes*, 12 October 2019; *Affaire Dupont de Ligonnès : comprendre le flou autour des empreintes digitales*, in *Le Parisien*, 12 October 2019.

[3] B. Barraud, *L'algorithmisation de l'administration*, in *Revue Lamy Droit immatériel*, no. 150, 2018, 42; J.-B. Auby, *Le droit administratif face aux défis du numérique*, in *Actualité juridique droit administratif,* 2018, 835; Fasc. 109-55: *Algorithmes publics. Utilisation d'algorithmes dans l'Administration*, *JurisClasseur Administratif*, 20 June 2024.

[4] P. Combeau, *L'élaboration de la décision administrative à l'ère du numérique*, in Association française de droit administratif, *Le droit administratif au défi du numérique*, Paris, Dalloz, 2019, 191; A.-L. Girard, *Volonté et décision administrative algorithmique*, Paris, Dalloz, 199; J.-B. Duclercq, *L'automatisation algorithmique des décisions administratives individuelles*, in *Revue de droit public,* 2019, 295; E. Untermaier-Kerléo, *Les nouveaux visages de la décision administrative : d'une administration assistée à une administration automatisée*, in *La semaine juridique, administrations et collectivités territoriales,* 2018, 2339; C. Lequesne-Roth, *Algorithmes et finances publiques*, in J. Bousquet, T.

The term 'algorithmic administration' thus refers to the use of algorithms in decision-making that enables the administration to perform its law enforcement function. This implies excluding the use of algorithms in the administration of justice. Admittedly, administering justice means ensuring the enforcement of laws, and therefore, in a way, justice is part of the executive function traditionally attached to the administration. Nevertheless, the principle of separation calls for the distinction of the administration strictly speaking from the judicial bodies.[5]

French law allows the administration to use algorithms, both as an aid to decision-making and as the exclusive basis for administrative decisions. Indeed, while Article 22 of the General Data Protection Regulation[6] establishes a principle prohibiting legal decisions based exclusively on automated processing of personal data, it nevertheless permits a Member State to provide for exceptions to this prohibition in principle, provided that this is accompanied by 'appropriate measures to safeguard the rights and freedoms and legitimate interests of the data subject'.[7] French law thus authorises 'individual administrative decisions' to be taken on the sole basis of automated processing of personal data, subject to certain reservations.

In fact, when an algorithm is used in the administrative decision-making process, three rules apply. First, the use of data revealing a person's alleged racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership of a natural person, or to process genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health, or data concerning a natural person's sex life or sexual orientation.[8] Secondly, individual administrative decisions based on algorithmic processing must, under penalty of nullity, include an explicit statement informing the data subject.[9] Thirdly, the data controller shall ensure control of the algorithmic processing and its developments to be able to explain, in detail and in an intelligible form, to the data subject how the processing has been implemented in relation to him or her'.[10]

In addition to the question of the legality of the use of algorithms by the administration,[11] there is also the question of the implementation of its liability if it turns out that it is the cause of damage to citizens. Appeals on this basis are likely to increase in the coming years. In France, administrative liability – a term that refers to the state of being legally responsible for something and is therefore more limited than the term 'responsibility' – may be incurred on the basis of wrongful conduct (*responsabilité pour faute*), but not only. The French administrative judge acknowledges that the administration may be held liable without fault (*responsabilité sans faute*) when it has caused serious and special damage (*responsabilité pour rupture d'égalité devant les charges publiques*) or exposed the citizen to a special risk (*responsabilité pour risque*).

Regard to liabilities of algorithmic administration, the first difficulty may be identifying the person responsible: the administration sometimes uses private companies to establish or operate the algorithm. However, the administration remains the decision-making authority, the one that carried out the mission in the context of which the harmful event occurred. Furthermore, the administration has an obligation to retain control of the algorithm and must not be able to exonerate itself from liability.[12] We therefore believe that this

Carrère and S. Hammoudi (eds.), *L'action publique algorithmique : risques et perspectives*, Paris, Mare et Martin, 2022; C. Lequesne-Roth, *L'aide algorithmique à la décision*, in Association française de droit administratif, *La police administrative*, Dalloz, 2025, 65; C. Lequesne-Roth, *IA et ordre public. Des principes à l'impériosité des modèles opératoires*, in *Revue française de droit administratif,* 2025, 39.

[5] On this issue, see C. Bordère, *La justice algorithmique : Analyse comparée (France/Québec) d'un phénomène doctrinal*, Paris, Dalloz, 2025. The *Conseil d'Etat* adopted a Charter for the Use of Artificial Intelligence in Administrative Justice, 2025, available online.

[6] Regulation (EU) No. 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons regarding the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

[7] Art. 22, 2. b) of Regulation (EU) No. 2016/679.

[8] Art. 6 of Law No. 78-17 of 6 January 1978 on information, files and freedoms.

[9] Art. L. 311-3-1 of the Code of Relations between the Public and the Administration.

[10] Art. 47 of Law No. 78-17 of 6 January 1978.

[11] For an overview, see G.J. Guglielmi, *Contrôle des algorithmes et droit du contentieux administratif français*, in *Revue générale du droit*, 2023; L. Cluzel-Métayer, *The Judicial Review of the Automated Administrative Act*, in *European Review of Digital Administration and Law*, vol. 1, issue 1–2, 2020, 101.

[12] This does not exclude, in practice, an 'automation

possibility should be ruled out from the outset.

As others have written before us, the question is whether the traditional frameworks of French administrative liability are 'appropriate, adaptable, or whether they need to be changed or new ones created'. In other words, when algorithms change the decision-making framework of the administration, do they imply 'a different form of administrative liability',[13] a 'new liability'? The answer to this question is generally no: 'in general, administrative liability law absorbs digital technology into its matrix with more certainties than doubts'.[14] This is also the conclusion reached by the French administrative supreme court itself, which points out that it is important 'not to overestimate the novelty represented by the spread of artificial intelligence systems in administrative action with regard to issues of administrative liability'.[15]

It is indeed possible to have some certainty regarding the terms and conditions of the liability of algorithmic administration. The use of algorithms by the administration largely falls within the rules of traditional administrative liability (2). However, it is possible to imagine, and here we leave the realm of certainty and venture into the realm of speculation, certain original deployments due to the specific nature of algorithmic decision-making (3).

2. *The Submission of Algorithmic Administration by the Faulty Liability*

The use of algorithms by the administration may lead to adopt illegal individual decisions, which may constitute misconduct (2.1). However, to hold the administration liable on this basis, the applicant must prove that they have suffered harm other than simply being subject to an illegal administrative decision, justifying the exercise of a liability claim (2.2).

2.1. *Faulty Illegality*

An administrative decision based on an algorithm that is unlawful amounts to a fault attributable to the administration, as under French administrative law any illegality constitutes a fault.[16] This is the case when the administration disregards the rules governing the use of algorithms, for example if the administrative decision results from the prohibited use of data. On the other hand, in the event of a failure by the administrative authority to comply with rules of external legality (illegality due to lack of jurisdiction, form or procedure), irregularity gives rise to a right to compensation only if it is 'likely to have influenced' the decision taken.[17] Faulty illegality may also be the result of an error in the decision-making process based on the algorithm. These errors can be the result of a multitude of causes.

For example, the data used by the algorithm may be incorrect. This is the case, for example, when an individual is refused approval to work as a security guard because he is registered in the system for processing offences for acts of violence against his wife. However, although the applicant's wife did file a complaint at the police station, he was not prosecuted, and the complaint alone is not sufficient to establish the facts justifying his registration in the system.[18] In this case, it was human error (he should not have been registered) that led the machine to declare an individual dangerous, prompting another human being to make an illegal decision.

bias' leading the administration to automatically or excessively rely on the results produced by the algorithm (L. Cluzel-Métayer and S. Hammoudi, *Le contrôle de l'administration sur l'intelligence artificielle*, in *Revue française de droit administratif,* 2025, 201).

[13] C. Testard, *L'administration numérique : une responsabilité administrative confortée*, in *Actualité juridique droit administratif,* 2021, 1267.

[14] *Ibid*. Similarly, see S. Saunier, *Responsabilité administrative et Intelligence artificielle publique*, in *La semaine juridique, administrations et collectictivités territoriales,* no. 50, 2025, 2348.

[15] Conseil d'Etat, Study at the request of the Prime Minister, *Intelligence artificielle et action publique : construire la confiance, servir la performance*, 2022, 149.

[16] Conseil d'Etat sect., 26 January 1973, no. 84768, City of Paris v. Driancourt, *Lebon*. 78; Conseil d'Etat, 30 January 2013, no. 339918, Imbert, *Lebon,* 9; *Actualité juridique droit administratif* 2013, 261; *ibid*. 792, chron. Domino and Bretonneau; *Actualité juridique droit de l'immobilier* 2015, 100, study Gilbert.

[17] Regarding a defect of incompetence, Conseil d'Etat, 24 June 2019, no. 407059, EARL Valette, *Lebon*, 221, concl. Cortot-Boucher; regarding a procedural defect, Conseil d'Etat, 18 November 2015, no. 380461, *Lebon,* 386, concl. Bokdam-Tognetti; Conseil d'Etat, 11 April 1986, no. 37470, Centre de réadaptation et de cure médicale et maison de retraite de Quingey; Conseil d'Etat, 20 March 1985, *Commune de Villeneuve-le-Roi c/ Epoux Ruby*, no. 33848, *Revue administrative* 1986, 43, note Pacteau; on a defect of form, Conseil d'Etat, sect. 1 February 1980, Rigal, *Lebon*, 274 ; *Actualité juridique droit administratif* 1981, 43, concl. Baquet.

[18] Cour administrative d'appel de Versailles, 10 November 2015, 14VE00757.

The data error may also come from the algorithm itself. This sometimes happens with the use of automated number plate recognition systems, which are used to locate vehicles and ensure that their owners have paid the appropriate parking fees. These systems, which have a margin of error, sometimes locate vehicles in places where they have not been parked. The judge ruling on abuse of power found a material error in such a case.[19] Here, it is the data provided by the algorithm itself that forms the basis of an unlawful decision, which could conceivably constitute a wrongful act.

The decision resulting from the use of the algorithm may also be marred by a calculation error. This was established by the administrative judge in relation to a school assignment decision, when the applicants were able to demonstrate that, according to the scale established by the education authority, their child should have obtained more points.[20]

Finally, faulty illegality may arise from the follow-up to the use of the algorithm. The result of the algorithm must often be checked and compared with other elements, otherwise the administration may take an illegal decision. In this sense, an individual had his driving licence withdrawn following an offence detected by automatic speed cameras, even though his sister had certified in a letter to the public prosecutor that she was driving the vehicle at the time of the offence and had paid the fixed fine herself. According to the administrative judge, the absence of a legal basis for the decision was sufficient to characterise a fault on the part of the public service and to trigger the State's liability.[21]

In most cases, such situations will constitute service faults attributable to the administration as an institution. According to case law 'only facts that reveal private concerns, that result from behaviour incompatible with the obligations imposed in the exercise of public functions or that, given their nature and the conditions in which they were committed, are particularly serious' are likely to constitute personal misconduct and engage the liability of the agent.[22] A simple data entry error or misinterpretation, although attributable to the individual and not to the machine, cannot be considered as individual fault.

Personal misconduct could be established in cases where an official misuses an algorithm to harm a citizen, for example by deliberately entering incorrect data. The misconduct, committed during or in connection with the performance of official duties, would not be entirely unrelated to the service, which could lead to cumulative liability.[23]

Thus, with regard to the characterisation of misconduct, algorithmic administration is not unique: as the *Conseil d'Etat* pointed out in a study for the French government, an illegal administrative decision, whether or not it is taken by or with the aid of an artificial intelligence system, is always wrongful and likely to engage the liability of the administration from which it originates.[24]

2.2. *Damage Other than Simple Submission to an Illegal Decision*

The illegal use of an algorithm by the administration may engage its liability if it results in direct and certain damage to the citizen.[25] The damage must then be caused by this illegality.[26] This involves, with a counterfactual thinking, determining whether the illegality influences the content of the administrative decision: if it appears that the administration would have taken the same decision if it had not committed an illegal act, it follows that the cause of the alleged damage lies not in the faulty illegality, but in the decision itself. Therefore, the administrative judge refuses to accept liability of the public authority since there is no causality between the illegality and the damage suffered.[27]

[19] Conseil d'Etat, 18 November 2024, no. 472912, Mme H., *Lebon*, 301; *Actualité juridique droit administratif,* 2024, 2142.

[20] Tribunal administratif, Paris, 7 December 2022 Affelnet, no. 2021161, *Les petits affiches* February 2023, concl. Pottier.

[21] Cour administrative d'appel de Marseille, 17 May 2011, 09MA02024.

[22] Conseil d'Etat, 30 December 2015, no. 391800, Commune de Roquebrune-sur-Argens, *Lebon* tables 725; *Actualité juridique droit administratif* 2016, 1575, note. Rihal.

[23] Conseil d'Etat, 26 July 1918, Epoux Lemonnier, concl. Blum, *Revue de droit public* 1919, 55; Conseil d'Etat, 10 January 1934, Dénoyelle, *Lebon*, 58.

[24] Conseil d'Etat, Study at the request of the Prime Minister, *Intelligence artificielle et action publique : construire la confiance, servir la performance*, cit., 149.

[25] Conseil d'Etat, 30 January 2013, no. 339918, Imbert, cit.

[26] Conseil d'Etat, sect. 19 June 1981, no. 20619, Carliez, *Lebon*, 274; *Actualité juridique droit administratif* 1982, 103, concl. Genevois.

[27] Conseil d'Etat, 18 November 2015, no. 380461,

French administrative law adopts a relatively flexible approach to damage, as it does not link its recognition to the infringement of a subjective right: damage exists whenever an interest is harmed.[28] Nevertheless, to engage the liability of the algorithmic administration, the applicant must demonstrate that they have suffered damage other than simply being subject to an unlawful administrative decision, justifying the exercise of an action for liability in addition to, or in lieu of, an action for legality. The liability action is not intended to replace the legal action.[29] For example, in the case of a decision that unlawfully denies a citizen a right based on an algorithm (a social assistance benefit, for example), the citizen cannot claim the mere financial damage associated with the non-granting of the benefit. In the examples mentioned above, the administrative judge agreed to recognise that decisions resulting from the algorithmic process caused compensable damage such as the loss of an opportunity to obtain employment, the resulting loss of income, the cost of retaking the driving test, disruption to living conditions and moral damage.[30] Algorithmic administrative decisions are not unique in this respect and are analysed in the same way as any other administrative decision.

In the event of external illegality of the decision, it is not easy to prove such damage, since it does not affect the substance of the administrative decision. What about, for example, the failure to mention the use of the algorithm required by Article L. 311-3-1 of the Code des Relations entre le Public et l'Administration (French code of relations between the public and the administration, CRPA) which would constitute a defect in form? Unfortunately, this failure is still common.[31] The failure to mention it has no impact on the administrative decision itself and is not sufficient to engage the administration's liability for the decision taken. On the other hand, it deprives the citizen of important guarantees: knowing how the decision taken against them was made and challenging it accordingly. An applicant might be tempted to argue that, in the absence of the mention, they were unable to have a decision overturned, and that this caused them harm other than being subject to an unlawful decision (e.g. the costs and time spent in vain contesting the decision). But this would imply being certain that the decision would have been overturned if they had known that the decision was the result of an algorithm, and therefore prejudging the outcome of the legality review. Can they invoke the loss of opportunity to have the decision overturned? This is unlikely, especially since the absence of any mention of the algorithm does not imply a total lack of reasoning. Article L. 211-2 of the CRPA requires that individual decisions unfavourable to the citizen be justified in fact and in law, which is likely to concern many decisions based on algorithms (but not all!). It is unlikely that an individual will be able to claim direct and certain harm due to the absence of any mention of the algorithm.

Most litigation relating to the liability of algorithmic administration will be based on fault, and in this respect is not particularly specific. We must now leave the comfortable path of certainty and try to guess what might be new about the liability of algorithmic administration.

3. *The Potential Originality of Algorithmic Administration Liability*

Several authors have already attempted to anticipate the original developments that algorithmic administration liability could undergo, and a multitude of hypotheses have

Lebon, 396, concl. Bokdam-Tognetti; Conseil d'Etat, 24 June 2019, no. 407059, EARL Valette, *Lebon*, 221, concl. Cortot-Boucher; Conseil d'Etat, 9 February 2011, no. 332627, *Lebon*, 34; *Actualité juridique droit administratif* 2011, 1393; note Jacquemet-Gauché; Conseil d'Etat, sect., 21 March 2011, no. 306225, Kruppa, *Actualité juridique droit administratif,* 2011, 1278, note F. Barque ; *Justice & cassation,* 2012, 295, note de Quelen and Foussard; *Revue française de droit administratif,* 2011, 340, concl. Legras.

[28] H. Belrhali, *Responsabilité administrative*, 3rd ed., LGDJ-Lextenso, 2024, 295.

[29] Conseil d'Etat, 8 November 2000, Commune de Faa'a, no 194039; Conseil d'Etat, 18 October 2024, Coll. de St Martin, no 474903; *Actualité juridique droit administratif* 2024, p. 1995; Conseil d'Etat, 9 March 2018, Communauté de communes du pays roussillonnais, no. 405355, *Actualité juridique droit administratif* 2018, 1790, note Connil; Conseil d'Etat, sect., 16 October 1981, Ville de Levallois-Perret, *Lebon*, 372; Conseil d'Etat, sect., 2 May 1959, Lafon, *Lebon,* 282.

[30] Cour administrative d'appel de Marseille, 17 May 2011, 09MA02024; Cour administrative d'appel de Versailles, 10 November 2015, 14VE00757.

[31] N. Lasbleiz, *Le contentieux des décisions administratives automatisées*, in *Revue française de droit administratif,* 2025, 21; L. Pellissier, M. Zimmer, N. Wagener and P. Ducros, *L'ineffectivité du droit d'accès à l'information sur les algorithmes : une étude empirique*, in *Revue des droits et libertés fondamentales,* chron. no. 45, 2025.

been considered.[32] As already indicated, the liability of algorithmic administration will, for the most part, be less original than the process itself. This does not exclude the possibility that new cases of no-fault liability on the part of the administration may be necessary (3.1). Certain adjustments may also be envisaged to facilitate the implementation of algorithmic liability for fault (3.2).

3.1. *The Possible Extension of Cases of Strict Liability of the Administration*

In French administrative law, the administration may be held liable in the absence of fault on two grounds: the risk associated with certain activities of the administration[33] and the breach of equality before public burdens.[34] At first glance, no-fault liability is intended to play a subsidiary role regarding algorithmic administration, since, in most cases, the decision that caused the damage will be illegal and therefore constitute a fault. For the time being, the administrative judge has never recognised no-fault liability on the part of algorithmic administration.[35]

Nevertheless, it is conceivable that the use of an algorithm may give rise to risks for citizens without this use necessarily resulting in an unlawful administrative decision. A certain risk is inherent in some uses of algorithms: for example, facial recognition technologies can make mistakes and identify the wrong person to the administration.[36] These systems are still limited,[37] but could become widespread in the future. An individual could thus be arrested by the police due to an error or approximation on the part of the algorithm and be tempted to take action against the administration, invoking, for example, the trauma associated with their arrest. However, the administrative decision would not be illegal, since it is natural for the police to make mistakes and follow leads that turn out to be wrong during a police investigation. The judge could then admit that the administration is exposing citizens to a risk that could engage its strict liability.[38] However, administrative case law recognises the administration's strict liability when 'the risk taken by it is the cause of an abnormal situation for the victim'.[39] However, in the hypothetical case, the risk is that the algorithm will lead the administration to make a bad decision, without it necessarily being illegal. Such a risk does not correspond to any of the scenarios already accepted by case law.[40] The closest comparison would be the case of

[32] S. Hammoudi, *La responsabilité des algorithmes publics*, in J. Bousquet, T. Carrère and S. Hammoudi (eds.), *L'action publique algorithmique : risques et perspectives*, cit., 99; C. Testard, *L'administration numérique : une responsabilité administrative confortée,* cit.; S. Saunier, *Responsabilité administrative et Intelligence artificielle publique,* cit.; M. Decaux, *La responsabilité administrative en matière de police face au numérique*, in *Cahiers de la recherche sur les droits fondamentaux* 2023, 21; E. Barbin, *Le contrôle juridictionnel de l'outil numérique d'aide à la décision administrative*, in *Revue française de droit administratif,* 2021, 491.

[33] Conseil d'Etat, 28 March 1919, Regnault-Desroziers, *Lebon*, 329; *Revue de droit public,* 1919, 239, concl. Corneille, note Jèze; Conseil d'Etat, sect. 3 February 1956, Ministre de la justice v. Thouzellier, *Lebon*, 49; *Actualité juridique droit administratif,* 1956, 96, chron. Gazier, *Recueil Dalloz*, 1956, 597, note Auby; *Revue de droit public* 1956, 954, note Waline.

[34] Conseil d'Etat, 30 November 1923, Couitéas, *Lebon* 789; *Revue de droit public* 1924, p. 75, concl. Rivet; *ibid.,* 208, note Jèze ; Conseil d'Etat, 8 June 2017, no. 390424, Bozidarerie *et al*., *Lebon*, 793, *Actualité juridique droit administratif*, 2017, 1971, note Pouillaude, La Semaine juridique – Administrations et collectivités territoriales, 2017, 2166, note Vioujas.

[35] Some applicants have tried this: Tribunal administratif de Grenoble, 7 July 2022, no. 2002399 (rejected due to characterisation of a fault on the part of the administration); TA Paris, 24 March 2023, no. 2215821 (no prejudice).

[36] For a summary of facial recognition technologies, see Commission nationale de l'informatique et des libertés (CNIL), *Reconnaissance faciale: pour un débat à la hauteur des enjeux*, 2019. See also R. Medard Inghilterra, *L'instauration d'une ''technopolice'' administrative en milieu urbain: cadre et enjeux juridiques*, in *Revue des droits de l'homme*, no. 25, 2024; M. Bartolucci, *L'expérimentation de la vidéosurveillance algorithmique*, in *Droit Administratif,* no. 11, 2023, study 7; M. Decaux, *La responsabilité administrative en matière de police face au numérique,* cit.

[37] Automated image processing was notably trialled during the Olympic and Paralympic Games in Paris (Art. 10 of Law No. 2023-380 of 19 May 2023 on the 2024 Olympic and Paralympic Games and containing various other provisions, JORF No. 0116 of 20 May 2023). On the use of facial recognition technologies, see C. Lequesne, *Facial Recognition Through the Lens of National Legislations – France*, in *European Review of Digital Administration & Law*, vol. 6, issue 1, 2025, 37–47.

[38] Which would then fall under the jurisdiction of the judicial judge (Tribunal des conflits, 13 May 2024, No. 4305, SEMITAN v. Minister of Justice, *Droit administratif* 2024, alert. 99, A. Courrèges; *La semaine juridique Administrations et collectivités* 2024, 2227, note Renard; *Actualité juridique droit administratif,* 2024, 1813, note Lemaire; Tribunal des conflits, 8 February 2021, Minister of Justice v. Rahmani).

[39] J. Petit and P.-L. Frier, *Droit administratif*, 19th ed., Paris, LGDJ-Lextenso, 2025-2026, 766.

[40] For a summary, see J. Petit and P.-L. Frier, *Droit administratif*, cit.; B. Plessix, *Droit administratif général*, 5th ed., Paris, LexisNexis, 2024, 1724–1743.

liability of hospital services in the event of failure of the healthcare products and devices they use.[41] However, the specific context of the public hospital service and the life-threatening risks associated with it prevent any generalisation.

The other possibility, which undoubtedly requires less flexibility in existing frameworks of thought, is the recognition of strict liability for breach of equality before public burdens, similar to that recognised regarding third parties for decisions on administrative searches ordered during a state of emergency by the opinion of the *Conseil d'Etat* in *Napol and others.*[42] The judge admits that the public authority may be held strictly liable by 'the occupants or owners of premises other than those covered by the search warrant but searched by mistake'. Could the use of algorithms by the police lead to an extension of cases of liability for breach of equality before public burdens due to error, without this error being illegal? Does the use of an algorithm as a decision-making aid change the framework established by the Napol opinion? The opinion states that strict liability cannot apply to 'the person whose behaviour justified the search' and those living with him. But if the search is the result of an error in the algorithm, it is difficult to attribute the search to the citizen. Of course, the specific context of the state of emergency[43] in relation to which the Napol advisory opinion was issued calls for caution. Nevertheless, it emphasises that the administration may cause damage to citizens by mistake, without this constituting a faulty illegality.

The breach of equality before burdens seems to be the most appropriate basis for considering cases of no-fault liability on the part of algorithmic administration. Indeed, it is not the situation that is abnormal (as in the case of risk) but the damage.[44] In a ruling dated 1 July 2025, a *Tribunal administratif* was called upon to rule on the no-fault liability of the administration due to a breach of equality before public burdens caused by the malfunctioning of online tax return software.[45] The judge dismissed the administration's liability on the grounds that the malfunction had not been proven. In this case, there was no question of an administrative decision being taken based on an algorithm, but it is nevertheless significant that the malfunctioning of a digital tool was considered from the perspective of a breach of equality before public burdens.

Whatever the legal basis relied upon, the strict liability of algorithmic administration may only be engaged where the applicant establishes the existence of abnormal damage, exceeding the burdens borne by all in the collective interest,[46] and special damage, affecting a limited number of persons. However, the abnormal nature of the damage is not obvious in the event of an error caused by the algorithm, without the administrative decision being illegal: the citizen would have to demonstrate that they suffered abnormal damage for someone who is stopped, apprehended and placed in police custody or searched by the police.

It is possible that the algorithmic activity of the administration will lead to the recognition of a new regime of no-fault liability. It may also lead to adjustments in the framework of fault-based liability, to facilitate the exercise of liability actions by claimants.

3.2. *Possible Adjustments to the Liability of Algorithmic Administration for Fault*

Algorithmic administrative decisions are unique because of how they are produced, not because of their purpose. This aspect may make it difficult for citizens to prove fault. This raises the question of whether their task should be facilitated.

This could be done regarding harm resulting from discriminatory algorithmic decisions. The risks of discrimination arising from the administrative use of algorithms have already been highlighted on numerous occasions.[47] It can arise from modelling bias

[41] Conseil d'Etat, 9 July 2003, AP-HP v. Mme Marzouk, *Lebon* 338; *Actualité juridique droit administratif,* 2003, p. 1946, note Deguergue ; *La semaine juridique – Administrations et collectivité,* 2003, 1397, note Chavrier.

[42] Conseil d'Etat, advisory opinion, ass., 6 July 2016, Napol et al., no. 398234, *Lebon* p. 320, concl. Bougeois-Machureau; *Recueil Dalloz* 2016, 1567; *Revue française de droit administratif* 2016, 943, note Le Bot; *Actualité juridique droit administratif* 2016, 1635, chron. Dutheillet de Lamothe and Odinet; *La semaine juridique Administrations et collectivités territoriales*, 2016, 2256, study Verpeaux; *Droit administratif* 2016, no. 38, note Eveillard.

[43] Law no. 55-385 of 3 April 1955 on the state of emergency.

[44] A. Simonneaux, *L'anormalité dans le droit de la responsabilité administrative*, Paris, Mare et martin, 2025.

[45] TA Bastia, No. 2200663, 1 July 2025.

[46] Conseil d'Etat, 5 August 1911, Charabot.

[47] Défenseur des droits, CNIL, *Algorithme : prévenir*

(discrimination is caused by the choice of criteria that define a model, their weighting and their relevance) or bias in the constitution of databases. This discrimination can be direct, when the algorithm is based on differentiation criteria that are in principle prohibited,[48] or indirect.[49] Since such discrimination is prohibited by French law,[50] these cases may give rise to legal action or even liability claims against the administration for negligence if the discrimination has caused harm to the citizen. Once again, the difficulty in proving discrimination lies in obtaining the problematic coding. In this context, the reversal of the burden of proof provided for in the Madame Perreux case law[51] may apply to disputes relating to discrimination caused by algorithms. Thus, it will be incumbent upon the administration to demonstrate that the challenged decision is justified by objective factors unrelated to discrimination.

In addition to the issue of discrimination, it is possible to ask whether a new obligation should be created regarding algorithmic administration. The *Conseil d'État* has raised the possibility of introducing a 'duty of care' in the use of algorithmic tools, based on the obligation to maintain public works in good condition,[52] which could lead to the recognition of a specific fault in such uses. The administration could then be held liable for failing to fulfil an obligation specifically incumbent upon it as a user, or even designer, of the algorithmic system.[53]

This would amount to establishing a presumption of fault. If the administration complies with its obligations to provide reasons and mention the algorithm, fault can be proven in most cases. However, this can be difficult when the algorithm makes a material error, such as when it mislocates a vehicle: the citizen does not have the photo that proves the administration's fault. To simplify disputes arising from such errors, the administrative judge has indicated that the authorities ruling on mandatory preliminary administrative appeals are required to verify that the photographs taken during the inspection are sufficient to confirm the information contained in the payment notice.[54] This solution should be extended to all cases where the citizen does not have all the information necessary to prove the administration's possible fault.

In conclusion, it seems excessive to refer to 'a new liability for algorithmic administration'. Admittedly, it seems new insofar as it concerns unprecedented cases. However, it is not particularly new in terms of the legal rules applied. The algorithm changes the way in which the administration makes certain decisions, and this may require adjustments in terms of proving error in this process, but it has no impact on the subject matter of the decision. The traditional rules of French administrative liability law remain, for the most part, entirely sufficient.

l'automatisation des discriminations, 2020; *Algorithmes, systèmes d'IA et services publics : quels droits pour les usagers ?*, 2024; J. Charpenet and C. Lequesne Roth, *Discrimination et biais genrés. Les lacunes juridiques de l'audit algorithmique*, in *Recueil Dalloz* 2019, 1852; F. Zuiderveen Borgesius, *Discrimination, intelligence artificielle et décisions algorithmiques*, Council of Europe study, 2018; L. Cluzel-Métayer, *Décision publique algorithmique et discriminations*, in M. Mercat-Bruns (ed.), *Nouveaux modes de détection et de prévention de la discrimination et accès au droit*, Société de législation compare, 2020; *Calculer : l'influence des algorithmes sur l'édiction des décisions administratives* in Association française de droit administratif, *Les méthodes en droit administratif*, Dalloz, 2018, 251.

[48] On this point, see the study conducted on the algorithm used by family allowance funds to detect social benefit fraud (G. Geiger, S. Pénicaud, M. Romain and A. Sénécat, *Profilage et discriminations : enquête sur les dérives de l'algorithme des caisses d'allocations familiales*, www.lemonde.fr, published on 4 December 2023).

[49] See on this point the decision of the Défendeur des droits, decision 2019-021 of 18 January 2019 on the functioning of the national platform for pre-registration in the first year of higher education (Parcoursup). The use of the apparently neutral criterion of the institution of origin by university algorithms could indirectly lead to discrimination against young people of immigrant origin, given the high level of residential and educational segregation observed in particular in the Île-de-France region.

[50] Art. 225-1 of the French Criminal Code.

[51] Conseil d'Etat, ass., 30 October 2009, Mme Perreux, no 298348, *Lebon* 407; *Actualité juridique droit administratif* 2009, 2028; *Recueil Dalloz* 2010, 553, obs. de Montecler, note Calvès; *ibid*. 2010, 351, note Chrestia ; *Revue française de droit administratif* 2009, 1125, concl. Guyomar; *ibid.,* 1146, note Cassia; *ibid.,* 1269, chron. Rambaud et Roblot-Troizier; *ibid.* 2010, 126, note Canedo-Paris; *ibid*., 201, chron. Santulli; *ibid.* 2011, 377, chron. Clément-Wilz, Martucci et Mayeur-Carpentier.

[52] Conseil d'Etat, 8 March 1991, Société Usinor, No. 70216.

[53] Conseil d'État, Study requested by the Prime Minister, Intelligence artificielle et action publique : construire la confiance, servir la performance, cit., 150.

[54] Conseil d'Etat, 18 November 2024, no. 472912, Mme H., cit.