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The Impact of Artificial Intelligence on the Future Functioning of Administrative Courts*

Abstract

The study presents the evolution of court decision-making justifications over time and the recent impact of electronic case law databases, particularly the Central Database of Administrative Court Judgments and commercial legal websites, on the structure of justifications for administrative court judgments. The issues discussed include the function of justifying a judgment, its communicativeness, the addressee of the statement, the problem of excessive length of some justifications, duplication of the content of other statements, and judicial justifications. Additionally, an effort was made to address the question of whether algorithms or artificial intelligence response generators could potentially replace humans in issuing even the simplest court decisions or writing their justifications in the near future. The discussion addressed whether technology enables this, if humans consent to it, and the legal and ethical risks involved, particularly the shifting of responsibility for the content of the justification to a bot operating with artificial intelligence. Finally, the question of whether even the most technologically advanced program using artificial intelligence will be able to take into account extra-legal judicial directives in a possible judgment and its justification will be addressed. Such directives may include the judge's inner sense of justice, his sensitivity, or his conscience.

KEYWORDS: administrative court, judge, human assistant, robot, artificial intelligence, judgment, algorithmic justice, deep thinking

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1 General remarks

While the presentation of the fundamental reasons behind court decisions was already established in ancient Rome, its significance was not as pronounced as it is in the present day. In ancient times, the judge did not provide the reasons for the judgment publicly and in each case, but only after filing an appeal and for the internal use of the higher court. Currently, there is no doubt that the justification of the judgment is an integral element not only of a fair judicial process within the meaning of international[1], regional[2], European[3] and constitutional standards[4]. It is also a cornerstone of a democratic state of law, as it eliminates the sense of arbitrariness of the judgment and provides persuading arguments[5].

The responsibility for preparing the justification for the judgment falls upon the judge who issued it. This justification must meet certain standards. According to Article 141 section 4 of the Law on Proceedings before Administrative Courts[6], the justification of the judgment should include a concise presentation of the state of the case, the allegations raised in the complaint, the positions of the other parties, the legal basis for the decision and its explanation. If, as a result of accepting the complaint, the case is to be reconsidered by the administrative body, the justification should also include instructions on further proceedings. The situation is slightly different in cassation proceedings before the Supreme Administrative Court,

1 Art. 14 of International Covenant on Civil and Political Rights, 1966 r. Extensively about this issue: Michał Kowalski, *Prawo do sądu administracyjnego. Standard międzynarodowy i konstytucyjny oraz jego realizacja* (Warszawa: Wolters Kluwer, 2019), 11 and Michał Kowalski, „Standard światowy ONZ", [in:] *System prawa sądownictwa administracyjnego*, Vol. I, ed. Grzegorz Łaszczyca, Wojciech Piątek (Warszawa: Wolters Kluwer, 2023), 270.

2 Alex Carroll, *Constitutional and Administrative Law* (London: Pearson, 2017), 413.

3 Art. 6 European Convention for the Protection of Human Rights and Fundamental Freedoms (Dz. U. z 1993 r., Nr 61, poz. 284 – art. 6) na ten temat Michał Kowalski, Standard regionalny Rady Europy", [in:] *System prawa sądownictwa administracyjnego*, 290; oraz art. 47 Charter of Fundamental Rights of the European Union (Dz. U. UE.C. 2007 r., Nr 303, poz. 1). Jacek Chlebny, „Standard unijny ochrony sądowej", [in:] *System prawa sądownictwa administracyjnego*, 309.

4 Art. 45 Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz. U. Nr 78, poz. 483 ze zm.-powoływanej dalej jako Konstytucja RP).

5 Michał Kowalski, *Prawo pomocy w systemie ochrony praw człowieka* (Warszawa: Wydawnictwo Sejmowe, 2013, 220).

6 THE ACT of 30th August 2002 Law on proceedings before administrative Courts (Dz. U. z 2024 r., poz. 935 – consolideted texst).

which, in accordance with Art. 183 section 1 and 2 considers the case in the scope of a cassation appeal, but ex officio takes into account the invalidity of the proceedings. The parties may invoke a new justification for the cassation appeal.

The following reasons may invalidate the proceedings: if the judicial process was inadmissible; if the party did not have judicial or procedural capacity, an authority was appointed to represent it or its legal representative, or if the party's representative was not duly authorized; if the same case is pending in proceedings initiated before an administrative court or if such a case has already been legally resolved; if the composition of the adjudicating court was contrary to the law or if a judge excluded by law took part in the consideration of the case; if the party has been deprived of the opportunity to defend its rights or if the provincial administrative court has ruled on a case falling within the jurisdiction of the Supreme Administrative Court. In other situations, the Supreme Administrative Court's judgment is limited to a reference to the allegations formulated in the cassation appeal[7].

It should be emphasized that in the light of paragraph 11 section 1 and 2 of the resolution that established the Code of Professional Ethics of Judges, the judge is responsible for explaining procedural issues to the parties and providing the reasons for the ruling in a manner that is comprehensible to them. Furthermore, in the reasons for the judgment, the judge should refrain from formulations that exceed the substantive need to justify the court's position and that may violate the dignity or honor of entities involved in the case or third parties[8].

I would like to mention the process of shaping justifications for court justifications over the years and the recent impact of electronic case law databases on the justifications for administrative court judgments. This concerns the function of justifying a judgment, its communicativeness, taking into account the addressee of the statement, the problem of excessive length of some justifications, duplication of the content of other statements and judicial justifications.

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7 Michał Kowalski, „Między jawnością a sprawnością postępowania przed sądem administracyjnym (kilka refleksji związanych z pandemią i jej zakończeniem)" *Państwo i Prawo*, No. 12 (2023): 126-140.

8 Uchwała Nr 25/2017 Krajowej Rady Sądownictwa z dnia 13 stycznia 2017 r. publ. www.krs.pl.

I would like to inquire about the potential for algorithms or artificial intelligence response generators to replace humans in issuing even the simplest court decisions or in writing their justifications in the near future. Does technology allow it, does humans agree to it, and what are the legal and ethical risks involved, in particular in terms of „shifting responsibility" for the content of the justification onto a bot operating with artificial intelligence.

Finally, the question must be asked whether even the most technologically advanced program using artificial intelligence will be able to take into account extra-legal judicial directives in the judgment and its justification, such as, among others: the judge's inner sense of justice, his sensitivity, or his conscience?

2 The impact of artificial intelligence on the administrative courts

The justifications for the judgments of both the Supreme Administrative Tribunal, which operated from 1922 to 1939, and the single-instance Supreme Administrative Court, which operated in the years 1980-2003, were much shorter than currently the case under the two-instance administrative courts, which have existed since January 1, 2004. A review of selected administrative court jurisprudence from the last 100 years, i.e. in the years 1922-2022, indicates that before the introduction of computers and electronic databases of jurisprudence, justifications written by hand and then transcribed on typewriters were on average 3-4 pages long. Some of these documents exhausted legal issues discussed in just 1-2 pages. They were written in simple and communicative language, understandable to most recipients. The situation was similar in the period of single-instance administrative judiciary in the years 1980-2003. The justifications, written then mainly by hand and typed, rarely exceeded seven pages of text.

At present, some court decisions made by provincial administrative courts or the Supreme Administrative Court are several dozen pages long. On the one hand, case law databases and search algorithms have been shown to facilitate the work of judges and their assistants. On the other hand, these tools have also been observed to create a temptation to copy entire justifications of previous judgments or their extensive fragments.

It has been documented that these justifications are often written without the use of a computer keyboard, instead relying on the „copy-paste" method. Justifications for court decisions constructed in this way sometimes do not contain elements that would allow them to be individualized in a specific case, and are limited only to faithful reproduction of previous justifications.

These types of justifications for judgments do not adequately fulfill the basic argumentative function, meaning they do not effectively persuade. They are not strictly aimed at solving the legal issues essential for resolving the case.

Judge of the English Court of Appeal supports the use of ChatGPT, but reserves the possibility of inadmissibility of using artificial intelligence in areas that go beyond someone's knowledge and thus make substantive verification of the claims contained therein impossible. While a legal professional may verify the truthfulness or correctness of some opinions or statements generated by artificial intelligence, it is unlikely that such an assessment can be made in fields such as medicine, engineering, and other areas requiring highly specialized knowledge. An English appellate judge acknowledged incorporating content generated by a chatbot using an artificial intelligence algorithm in the judgment's rationale. He described it as "very useful" for concisely summarizing an area of law. However, the judge also underscored the potential risks associated with excessive reliance on artificial intelligence, particularly when users lack fundamental knowledge on the subject. The downside to tools like ChatGPT is their occasional tendency to „hallucinate" or generate false information. However, the judge emphasized that he takes full responsibility for what he assesses and does not try to shift the responsibility to someone else. Commenting on the judge's position, a spokesman for the Judicial Office for England stated:

> The Judicial College provides training on fundamental aspects of adjudication, including the drafting and delivery of judgments. The judiciary regularly reviews training content and guidance to keep pace with developments in legal practice, legislation and technology[9].

9 See „English judge finds ChatGPT 'jolly useful'", Irish Legal News.

3 The role of a judge and artificial intelligence

According to the European Commission Communication, artificial intelligence (AI) is defined as systems that demonstrate intelligent behavior by analyzing the environment and taking actions – to some extent autonomously – to achieve specific goals. These systems can be software-based and operate in the virtual world, such as voice assistants, image analysis software, search engines, speech and facial recognition systems, or they can be embedded in devices such as advanced robots, autonomous cars, drones or the Internet of Applications Things. These systems can also be utilized for tasks such as translation, subtitle generation in videos, and spam filtering.

In the Commission's assessment, artificial intelligence is therefore an important element of digital transformation. It is now difficult to imagine life without its numerous applications in goods and services, and we will face many related changes in areas such as work, business, finance, health, safety, agriculture and others. Artificial intelligence is present in our reality in various situations: when we use a virtual assistant or organize our working day, traveling in an self-driving car, or through phones that suggest songs or restaurants that we may like. The European Commission document also envisions AI activities in the areas of technology, ethics, law and economics. Therefore, the integration of AI was considered a significant strategic challenge. However, the idea of using artificial intelligence in the near future to issue court decisions and provide justifications – essentially replacing judges with robots operating on specific algorithms – seems like science fiction. In my opinion, neither technology nor, more importantly, society is currently ready for this.

On February 19, 2020, the European Commission published the White Paper on Artificial Intelligence – A European Approach to Excellence and Trust. his document outlines the fundamental principles that will guide the future EU regulatory framework for artificial intelligence within the European Union. The document underscored the imperative to ground this framework in the fundamental values of the European Union, notably respect for human rights, as outlined in Article 2 of the Treaty on European Union (TEU). The European Union Agency for Fundamental Rights[10] (FRA)

10 Summary of the Report of the European Union Agency for Fundamental Rights, *Fixing the future. Artificial Intelligence and Fundamental Rights* (Luxembourg, 2021). www.fra.europa.eu.

report on Artificial Intelligence and Fundamental Rights supports this objective by analyzing the impact of the use of Artificial Intelligence on fundamental rights. Drawing on specific use cases of AI in selected areas, it focused on the situation on the ground regarding fundamental rights challenges and opportunities when using AI. The FRA report focuses on specific use cases of AI in selected areas, analyzing the challenges and opportunities for fundamental rights in the context of AI implementation. The report is based on 91 interviews with public administration officials and employees of private companies in selected EU Member States. These individuals were asked about the use of AI, their knowledge of fundamental rights issues, and practices for assessing and mitigating the risks associated with the use of AI. Additionally, 10 interviews were conducted with experts who address potential fundamental rights challenges related to AI in various ways. This group included public authorities (such as supervisory and control authorities), non-governmental organizations, and lawyers.

The main conclusions of the study were that a wider range of rights should be taken into account when using devices using artificial intelligence, depending on the technology and area of application. In addition to rights relating to privacy and data protection, equality and non-discrimination and access to justice, other rights may be considered. These include, for example, human dignity, the right to social security and social assistance, the right to good administration (particularly important for the public sector) and consumer protection (particularly important for businesses). The report emphasized that, depending on the context in which AI is used, any other rights protected under the Charter of Fundamental Rights should be taken into account. Research by the Fundamental Rights Agency shows that the use of artificial intelligence affects various fundamental rights. In addition to specific situation-related aspects that affect different rights to varying degrees, fundamental rights-related topics that have emerged in research and that have repeatedly applied to most AI-related cases include: the need to ensure the non-discriminatory use of AI (the right to non-discrimination), the requirement for lawful processing of data (right to personal data protection) and the ability to complain about decisions based on artificial intelligence and seek redress (right to an effective remedy and access to a fair trial). The two main fundamental rights highlighted in the interviews were data protection and non-discrimination. Moreover, effective ways of filing complaints about the use of artificial intelligence, related to the right to a fair trial and an effective remedy, have been repeatedly pointed out. It is worth emphasizing that the conclusions

of the report of the EU Agency for Fundamental Rights emphasize that access to justice is both a process and a goal, and is crucial for people wishing to benefit from the protection of procedural and substantive rights. Human rights include, among others: the right to a fair trial and an effective remedy under Art. 6 and 13 ECHR and Art. 47 of the Charter of Fundamental Rights of the European Union[11]. Therefore, the concept of access to justice obliges states to guarantee every person the right to go to court – or, in certain circumstances, to an alternative dispute resolution body – to obtain a remedy in the event of a violation of individual rights. According to these arrangements, a victim of a violation of human rights resulting from the development or use of a system based on artificial intelligence algorithms by a public or private entity must have access to legal remedies before a national authority. In accordance with the relevant case law under Art. 47 of the Charter and Art. 13 ECHR, a remedy must be effective both in practice and in law and means a regulation ensuring access to a court within the meaning of the Convention of the Council of Europe and the European Union[12].

In this regard, it is crucial to acknowledge that the underlying rationale for the judgment frequently does not stem from a straightforward evaluation of the applicable legal provisions in the specific case. In this context, it is not without significance whether the justification for the judgment complies with the law. However, it is equally important to consider whether it aligns with the prevailing social sense of justice.

Judgments that are solely based on the syllogistic understanding of legal provisions and previous case law may lead to recipients and the public perceiving them as „unrealistic" or simply „unfair" due to their failure to consider the extra-legal factors of a particular case.

Sometimes it can even mean uncompromising and uncompromisingly defending one's position towards others. Then it can be assumed that a judge who has these features will justify the ruling not only in a way that meets the formal and substantive requirements, but also in a way that meets his social needs, in particular in terms of satisfying the need for justice. In my opinion, the application of this type of judicial directives is beyond the reach of even the most advanced artificial intelligence programs.

11 Summary of the *Report of the Fundamental Rights Agency*, 5.
12 Ibidem, 10.

4 Final reflections

It is important to acknowledge that the concept of justice is both general and subjective. However, its comprehension can be delineated within the framework of humanism and the prevailing understanding of good and evil. It seems that this way of perceiving court decisions and their justification goes far beyond the use of even the most advanced artificial intelligence algorithms in their creation. The purpose of a legal norm, as determined by the judge during the adjudication process, often stems from logical principles. Additionally, the judge may ascertain the original intent of a legal action based on their general, professional, and life knowledge, experience, and occasionally, their worldview or human conscience.

This understanding aligns with the contemporary role of a judge not only as a *statutory* judge, but as a constitutional, European and conventional judge, who is an authoritative representative of the judicial power, and not just a representative of an ordinary legislator It appears that the application of this type of case law directives is beyond the capacity of even the most advanced artificial intelligence programs.

The contemporary use of artificial intelligence by lawyers in the form of chatbots, coding, predictive analytics and machine learning may suggest the future use of artificial intelligence to collect, select and present trial materials, including evidence, to judges. The literature also mentions humanoid witnesses, cyber experts, and autonomous sources of evidence. However, it should be remembered that at least some of the evidence collected in this way may be untrue or contain significant gaps. They may also be collected taking into account the political, social or ethical preferences assigned to the bot by the program creator. In courts, such programs can be used, for example, to monitor the lines of case law, which may be helpful in maintaining their uniformity. Pilot programs are also being implemented to replace court officials in the simplest and often time-consuming activities with assistants operating on the basis of artificial intelligence algorithms. These algorithms may be tasked with finding documents and searching files, as well as presenting the evidence collected in this way to judges and their human assistants or other highly qualified specialists and court officials.

Could the utilization of artificial intelligence programs influence the adjudication process of judges in the near future? It seems unlikely. These solutions are merely supplementary, and in the most basic instances, they can substitute for or assist court officials. However, they do not supplant

highly qualified assistants or the judges who ultimately determine case outcomes and are accountable for guiding the judgment and its rationale.

Judge of the High Court Leonie Reynolds addresses this issue, emphasizing the necessity of striking a balance between the standards of a democratic state of law, including the jurisprudence standard of a judge, and the use of technologies based on artificial intelligence. According to the Irish judge, technology can improve the efficiency of the justice system and open the law to society in a way that was not possible before. According to Judge Reynolds,

> AI technology has consistently raised concerns about coded bias and any use of it [...] should be viewed with the utmost skepticism and potentially should be avoided as it would likely be considered an interference with a fair judicial process. Technology has significantly improved judicial efficiency, but algorithmic justice poses a potentially serious threat to fundamental rights[13].

Sharing this position, one must emphasize that the essence of humanity lies in the constant pursuit of understanding the processes occurring in the human body, mind, world, and universe, as well as the attempt to recreate them through technological advancements, particularly those involving artificial intelligence algorithms. In earlier stages of civilization, this idea inspired cultural and artistic creators, including Michelangelo and Leonardo da Vinci. Even earlier, at the dawn of time, the power to judge other people was seen as part of divine power, and fasting as its derivative in royal power. As stated in the Sermon on the Mount: „For the first time in the history of the world, we hand over – officially and voluntarily – part of our divine power into the hands of judges. Judges [...] behold, you receive one of our attributes: the power to judge"[14] (other people)[15].

Finally, it should be stated that the specific nature of the administration of justice by judges of administrative courts, based on extensive legal knowledge, high specialization and extensive professional and life experience, means that for a long time the only real substantive support for the judge will be her or his well-educated and strongly trusted *human assistant*. In my opinion, judges will not be replaced by artificial intelligence

13 Some conclusions of Judge Leonie Reynolds' speech on *Technology and the Rule of Law* delivered during the international seminar of the Institute of the European Justice Training Network (EJTN, REFI) in Rome on May 2-3, 2024.

14 Ewa Łętowska, Krzysztof Pawłowski, *O prawie i mitach* (Warszawa: Wolters Kluwer, 2013), 228.

15 Author's note.

in the near future, even for the simplest tasks related to their duties. While many young law students believe that algorithms can, among other things, develop the ability to feel, and consider it only a matter of time, I remain skeptical. This position is partially supported by ongoing work in the field of deep learning, a subfield of machine learning where multi-layered neural networks are trained to process data. These advancements may allow artificial intelligence to develop highly advanced skills, which, in my opinion, could pose a serious threat to humanity and civilization. However, they will not assist administrative courts or their judges in the near future[16]. The conclusion is that artificial intelligence, even if taught decision-making through algorithmic justice, will remain too far removed from the human sense of fairness. One might argue that each civilization, guided by its own system of values, can develop a unique justice system and appoint individuals responsible for delivering judgments. Perhaps a future artificial intelligence civilization will develop similar mechanisms, but it will lack the uniquely human ability to judge others.

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