ARTIFICIAL INTELLIGENCE IN THE CZECH GOVERNMENT: POLITICAL AND ECONOMIC HYPE, BUREAUCRATIC PARALYSIS, AND DEMARCATION WITH THE EUROPEAN UNION

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Abstract

Until recently, the use of artificial intelligence in the Czech government was limited to chatbots communicating with clients and internal analyses. More sophisticated applications require a solid foundation in prior informatisation and digitisation, which remains perfunctory in Czechia, according to international assessments. In addition, the legal uncertainty surrounding artificial intelligence decision-making calls for a national legislative response. Specifically, it should address (de)personalisation, verifiability and the use of personal data as input in machine learning. The European Union's Artificial Intelligence Act is not sufficient in this regard.

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1. Introduction: Defining the Topic, and Artificial Intelligence**

In discussing the deployment of artificial intelligence (AI) in government, this article adopts a broad definition of government, encompassing not only the administration but also the police and judiciary. Nevertheless, it is important to note that it will not cover the entire government. Specifically, the article will not address the deployment of AI in military training, nor will it address the potential use of such technology in warfare. The military is exempt from the emerging civilian legal frameworks, although its use in war remains subject to humanitarian laws[1].

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The deployment of AI in the processes of lawmaking and the formulation of domestic and foreign policy may give rise to concerns that people could become dominated by robots. Nevertheless, its capacity to verify the consistency of drafts or to identify potential risks may prove beneficial. Even computers from previous generations were capable of outperforming chess champions, a competition which is often equated with politics. It would therefore be prudent to consider the deployment of AI in these areas. That said, the primary reason for considering the use of AI today is its potential to relieve the human workforce of routine tasks and enhance overall performance[2].

The research in this article extends to public services, including education, healthcare, and infrastructure. It should be noted that the definition of "public services" is not precise, as the private sector plays a significant role in the delivery of these services, but which this report will not address specifically. Industry, agriculture, transportation, and banking/insurance will only be mentioned if subject to administration or adjudication.

The article will not provide a detailed account of the contribution of the Czech software industry to the development of AI. The software industry has flourished for decades in the Czech Republic, which has a long industrial tradition. This success can be attributed to the technical schools and universities in the country, as well as the enthusiasm of many individuals. Additionally, the relatively low salaries in the Czech Republic have enabled the industry to gain a foothold in international markets. It is reasonable to suppose that the Czech software industry has begun making a meaningful contribution to AI[3]. It would therefore be remiss to

rapidly become a topic of growing interest among law faculty members. The article has been enhanced with the assistance of the DeepL app.

[1] International Committee of the Red Cross and Geneva Academy (A. Greipl), *Expert Consultation Report on AI and Related Technologies in Military Decision-Making on the Use of Force in Armed Conflicts* (Geneva: ICRC, March 2024), at https://www.geneva-academy.ch/joomlatools-files/docman-files/Artificial%20Intelligence%20And%20Related%20Technologies%20In%20Military%20Decision-Making.pdf, accessed 6 October 2024.

[2] Concerning the European Union as a unique supranational organisation, see C. Starke & M. Lünich, *Artificial intelligence for political decision-making in the European Union: Effects on citizens' perceptions of input, throughput, and output legitimacy*, 2 Data&Policy (2020), doi:10.1017/dap.2020.19.

[3] Concerning the recent progress of artificial intelligence worldwide and the contribution of particular countries to it, see the publications and reports of

disregard this industry, as it may also offer insights pertaining to the ethical and legal implications of AI and its implementation in the aforementioned public sector.

The process of computerisation has been underway for five decades, with the earliest instances emerging under Czechoslovak Socialism. However, the digitalisation of various data, interconnection in institutional networks, and the rise of the Internet, with robust information and communication technologies, have enabled novel applications of IT, which facilitate the management of complex processes based on sophisticated data analysis. This article will focus particularly on developments in AI, which will be regarded as the most sophisticated form of this kind of IT, comprising data analysis based on machine learning and self-improvement, with the capacity to interact with the general public in human language.

It is therefore necessary to distinguish between AI and automated algorithms. Traffic speed surveillance, based on a radar connected to a camera, results in the identification of vehicles and the issuance and delivery of orders, becoming now a reality. Similarly, the calculation of property taxes has been automated, with no use of AI. Experts have identified several distinct levels of AI, which allows us to avoid the dichotomy between what is often referred to as 'usual' or 'old' IT and what is now being called 'new' AI. Nevertheless, the ability to automate appears to be a prerequisite for the practical implementation of AI.

2. Economic, Political, Societal, and Academic Hype

The discourse on AI in the Czech Republic is shaped by a multitude of actors from diverse backgrounds. The media, including newspapers, are directing public attention to the potential applications of AI. A considerable number of news outlets have reported that the Czech private sector is utilising or planning to utilise AI. In addition to demonstrating awareness of the technical prerequisites, experts and managers also exhibit a clear understanding of the need for effective governance. The aforementioned webpages provide information regarding

Human-Centered Artificial Intelligence at Stanford University (see https://hai.stanford.edu, accessed 6 October 2024), especially its annual reports. Unfortunately, rankings often indicate the 'top 10', to which Czechia (unlike Israel, Singapore, and Switzerland) does not belong.

conferences, which have attracted the participation of politicians, private enterprises, academia, research institutes, ministries, and regional and local authorities, thereby indicating a general interest in AI. However, the most pertinent participants in this discourse are private stakeholders (a), the government (b), and academia (c).

2.1. Interest Representation and Emergent Lobbying

The Czech Association for Artificial Intelligence (*Česká asociace umělé intelligence*)[4], established in 2023, appears to be the primary organisation for Czech business entities engaged in education and networking related to AI. The association represents over 220 companies and institutions, including prominent software providers, advertising agencies, construction and machinery companies, educational institutions, financial services providers, regulatory bodies, and universities.

As might be expected, this association is calling for the Government to pay closer attention to, and offer greater support and preference for, the field of AI. Nevertheless, there is no evidence of lobbying in relation to specific legislative proposals. It is conceivable that even the industry itself is uncertain with regard to its position and interests.

2.2. Government Policies on Artificial Intelligence

The government's approach to AI reflects a convergence of private sector interest and government engagement. In order to align with the approach taken by other countries and meet the expectations of the European Union, the Ministry of Industry and Trade prepared the National Artificial Intelligence Strategy for the Czech Republic in 2019, which was subsequently approved by the Cabinet[5]. Following the parliamentary election held in 2021, which resulted in a different governing coalition, the Cabinet updated the National Strategy for Artificial Intelligence in the Czech Republic 2030 in July 2024[6].

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[4] Using the new domain established for this technology in its webpage, which is, surprisingly without an English translation, see https://asociace.ai, last accessed 6 October 2024.

[5] Ministerstvo průmyslu a obchodu, *Národní strategie umělé inteligence v České republice* (2019), at https://vlada.gov.cz/assets/evropske-zalezitosti/umela-inteligence/NAIS_kveten_2019.pdf, last accessed 6 October 2024.

[6] Ministerstvo průmyslu a obchodu, *Národní strategie umělé inteligence České republiky 2030* (2019), at https://www.mpo.gov.cz/assets/cz/rozcestnik/pro-media/tiskove-zpravy/2024/7/AI_strategie.pdf, last accessed 6 October 2024.

These documents reiterate European Union initiatives and discuss the purported capabilities of the Czech IT industry and related academic research in the field of informatics in general and AI in particular. They promise the widespread use of the latter in a broad range of activities, including research, development, and innovations, education and expertise, the labour market and workforce, industry and business, and, crucially to this report, in public administration and public services.

The aforementioned strategies establish and revive internal advisory and coordination boards for AI, comprising representatives from the majority of ministries and specialised agencies. The documents also address the security issues associated with AI and its legal and ethical implications. However, they do so in general terms, without identifying – even with a brief mention – the principal issues this report addresses.

2.3. Intellectuals and Academics

A number of intellectuals have expressed their reservations regarding the ethical implications of AI in various media outlets. Some express concern that its development may lead to intensified control over the population, while others fear that it may result in unemployment, as well as the subjugation or even extermination of humans. Such concerns have been a feature of Czech culture for the past century. In 1920, Karel Čapek published the novel and theatre play R. U. R. (Rossum's Universal Robots), in which he explored the development of robots, their manufacture, empowerment and subsequent rebellion. The term 'robot' has been adopted into numerous languages, deriving from the Czech word for *corvée*[7].

Nevertheless, it would be inaccurate to suggest that this innovative information technology is the subject of permanent or significant attention. Recent crises have become more urgent. In any case, the majority of the general public, including those in the professions, possess a limited understanding of the characteristics of AI, its accomplishments, constraints, and future prospects.

It is beyond doubt that the rapid development of AI also has an impact on academia. Informaticians are engaged in both theoretical and practical pursuits, whereas other experts are concerned with the deployment of such technologies in their research. Funding is provided through grants.

[7] K. Čapek, *Loupežník. R.U.R. Bílá nemoc* (1983) 340 f.

Such attention also gives rise to scholarly debate on the ethical[8] and legal implications of AI. A brief full-text search of the Internet with relevant keywords (e.g. 'AI' and 'law') reveals a considerable interest in this area. A number of commissioned studies[9], in addition to several monographs[10] and dozens of papers[11], have been published on the ethical and legal aspects of AI.

3. Perfunctory E-Government: Analysis and Explanation

The widespread interest in AI has led to a closer examination of its use by the Ministry of the Interior in its "Analysis and Evaluation of Potential for Deploying of Automatisation and Artificial Intelligence in Public Administration Agendas" of 2023[12].

In addition to reiterating European and national initiatives and strategies, as well as examples of the deployment of artificial intelligence abroad, this analysis presents examples of the use of AI in the Czech public administration sector that do not align with the established definitions. These examples include the use of AI by administrative authorities, including the police, but exclude the judiciary, which is regarded as an independent third branch of government administered by the Ministry of Justice. They also

[8] Among others, see A. Jedličková, *Etické aspekty rozvoje umělé inteligence* (Ethical aspects of development of artificial intelligence), 13(2) Anthropologia integra 55–62 (2022).

[9] Ústav státu a práva Akademie věd ČR (the State and Law Institute, Czech Academy of Sciences) [A. Krausová, J. Matejka, A. Ivančo, E. Fialová, V. Žolnerčíková, T. Ščerba], *Výzkum potenciálu rozvoje umělé inteligence v České republice. Analýza právně-etických aspektů rozvoje umělé inteligence a jejích aplikací v ČR* (2018), at https://vlada.gov.cz/assets/evropske-zalezitosti/aktualne/AI-pravne-eticka-zprava-2018:final.pdf, accessed 6 October 2024.

[10] L. Kolaříková & F. Horák, *Umělá inteligence & právo* (2020); B. Štědroň, *Právo a umělá inteligence* (2020); J. Zibner, *Umělá inteligence jako technologická výzva autorskému právu* (2022).

[11] J. Provazník & J. Mulák, *Roboti za mřížemi - je české trestní právo připraveno na rozvoj umělé inteligence?*, in T. Gřivna, H. Šimánová, M. Richter (eds.), *Vliv nových technologií na trestní právo* (2022) 256–279.

[12] Ministerstvo vnitra, *Analýza a zhodnocení potenciálu využití automatizace a umělé inteligence v agendách veřejné správy* (2023), at https://www.mvcr.cz/soubor/analyza-a-zhodnoceni-potencialu-vyuziti-automatizace-a-umele-inteligence-v-agendach-verejne-spravy.aspx, last accessed 6 October 2024.

encompass the use of AI in public services such as education, healthcare, and public infrastructure.

Among the events addressing this issue, the Conference on Artificial Intelligence in Public Administration, organised by the Southern Bohemian Region on 4-5 April 2024, is worthy of note[13], as published presentations and interviews voice the concerns raised in this text.

The aforementioned analysis and evaluation makes reference to both automation and AI from the outset. This distinction provides an impetus to review the transformations and modernisations deemed a prerequisite for AI, or anticipated as preceding its meaningful deployment, namely, electronic informatisation. Therefore, the following sub-sections will examine the extent to which public administrations and entities have successfully experimented with informatisation. Yet, it will also be demonstrated that these processes have been uneven and have resulted in a general perception of inefficiency with regard to e-government. Subsequently, we will examine the historical and institutional factors that have contributed to this perception.

3.1. Preliminary Phases of Digitalisation

The preliminary phases of digitalisation are outlined here in a way that is accessible to a general audience, including lawyers and politicians. In the case of individuals belonging to the middle-aged or older age groups, such as the author, it may be possible to rely on their recollection of events, given that the relevant developments date back to before the year 2000. The computerisation of data management began with the use of computers with printers as an enhanced writing apparatus with memory for texts, other software for activities extending beyond writing, the digitalisation of existing data stored on paper, the transformation of these data into information, the collection of new data in digitalised form, the establishment and operation of internal networks of computers, the implementation of a robust backup of data, and interconnection via the Internet.

To exemplify the efficacy of digitalisation in the private and autonomous sectors, we may consider the case of Masaryk University, the author's *alma mater* and place of employment. A

[13] For information available to the general public (in Czech), see http://aivs.kraj-jihocesky.cz, last accessed 6 October 2024, encompassing presentations and interviews with speakers.

number of its faculties were at the vanguard of software, applications and databases pertinent to their respective research and educational activities. In the field of law, computers were initially used as typewriters and as tools to facilitate access to legal databases. The advent of the Internet facilitated access to legal documents and, subsequently, to a certain body of literature.

Then, the majority of educational and administrative agendas underwent a gradual transition to a variety of internal and hybrid information systems. This transformation, embodied in the Information System (colloquially 'IS') of Masaryk University[14], began in 2000, at the outset of the author's academic career in 1998. It was a gradual process, and one might suggest that until recently the vestiges of the previous non-electronic management remained.

It is evident that this informatisation was not without significant effort. In parallel with this development, IT departments expanded at faculties, while several specialised centres emerged. The introduction of computers, their interconnection, subscription to software and databases, including electronic libraries, has led to significant rise in operating costs. Furthermore, it is important to consider the financial implications of electricity consumption and its impact on the environment.

A similar level of creativity has also been observed in numerous municipalities. The author's home city of Brno has recently consolidated its communication with residents regarding public transport, waste disposal, and even decentralised administration in a single user-friendly portal, BrnoiD[15].

The Czech Republic is distinct in this regard. For instance, tax returns and reports on public health and social insurance contributions are based on comparable data and would therefore benefit from integration. The electronic version is available, but its usability is limited. Consequently, a considerable number of individuals who are not legally required to do so continue to submit paper forms, either generated by concerned authorities, or prepared by, among others, the website of a prominent newspaper. These forms are ultimately delivered in person or sent via postal service.

[14] For an English version aimed at international students and observers, see https://is.muni.cz/?lang=en, last accessed 6 October 2024.

[15] For an English version aimed at international users, see https://www.brnoid.cz/en, last accessed 6 October 2024.

Meanwhile, the officials of the three authorities (the tax office, the chosen health insurance fund, and the social security administration) have access to computers on their desks, while the internal databases accumulate the principal data and metadata. Nevertheless, there is still a long way to go before the situation in the Czech Republic reaches that of countries where the authorities collate e-documents and propose calculations for their taxpayers. Moreover, there is no suggestion that the three reports in question will be integrated, even if they all concern income.

3.2. Mediocre Rankings and Critical Perception of E-government

The results of international rankings on this issue confirm a certain scepticism, with the rankings indicating a general level of mediocrity. One may cite the ranking in recent annual versions of the E-government Development Index[16] and E-Participation Index[17], calculated by the United Nations Organisation, or the Key Information and Communication Indicators[18], calculated by the Organisation for Economic Co-operation and Development, or the Digital Economy and Society Index, calculated by the European Union[19]. This relatively low level of development contrasts markedly with the advancement of informatics in the private sector and autonomous hybrid institutions.

The general public is aware of this issue. The prevailing sentiment is one of widespread criticism. Politicians have pledged to implement improvements. From time to time, the authorities initiate major electronic and digital transformation projects. Yet, a number of these e-government initiatives have ultimately proved

[16] For information on UN E-Government Development Index (EGDI), see https://publicadministration.un.org/egovkb/en-us/About/Overview/-E-Government-Development-Index, last accessed 6 October 2024. In 2024, Czechia is ranked 22th among the 27 EU member states.

[17] For information on the UN E-Participation Index, see https://publicadministration.un.org/egovkb/en-us/About/Overview/E-Participation-Index, last accessed 6 October 2024. In 2024, Czechia was ranked 20th among the 27 EU member states.

[18] OECD provides the following ICT indicators: access to computers from home, ICT employment, ICT goods exports, ICT investment, ICT value added, Internet access; for a portal see https://www.compareyourcoungry.org/key-indicators, accessed 6 October 2024.

[19] For EU DESI see https://digital-strategy.ec.europa.eu/en/policies/desi, accessed 6 October 2024. Czechia was ranked 19th.

unsuccessful. Such an outcome may have political repercussions. In a recent development, Prime Minister Petr Fiala has dismissed the Minister of Regional Development, Ivan Bartoš, due to significant shortcomings in digitalisation pertaining to construction administration. This reform has been met with criticism from local and regional politicians, as well as the opposition[20].

A recurring discourse in the media highlights the hypothesis that prominent software developers often gain a dominant position in public procurement due to the limited expertise of their officials, in addition to bureaucratic inaction[21].

3.3. Bureaucratic Paralysis, Legal Remnants, and Decentralisation

As previously stated, a multitude of historical and structural factors contribute to the perception, both at the indicator level and among the Czech population, of an inadequacy in the country's public infrastructure.

The Czech Republic has demonstrated a lack of investment in the improvement of its administrative capabilities. This is evidenced by the absence of research institutes within its borders and the underdevelopment of professional education and training. A significant proportion of state officials, including those in ministerial roles, are remunerated at a level that is below the market rate. In such circumstances, it is difficult for authorities to attract experts. A recent news item revealed that even the Cabinet Office, which serves the Prime Minister and the Cabinet in its entirety, was unable to find an IT expert for several months[22]. This was attributed

[20] For coverage in Europewide news, see T. Nicholson, *Pirates jump ship: Czech ruling coalition loses a member*, Politico (25 September 2024), at https://www.politico.eu/article/pirates-party-czech-republic-quitting-crisis-regional-elections-petr -fiala-ruling-coalition-member/, last accessed 6 October 2024.

[21] For instance, in the aftermath of the catastrophic flooding in Central Europe in September 2024, many have expressed regret at the failure of the state to construct a reservoir, which could have mitigated the damage caused to two cities downstream. It is important to note that the communication strategy employed with the residents of the affected village was inflexible, which ultimately led to their official resistance and the emergence of environmentalist activism. However, the primary focus of criticism is the approval procedures.

[22] M. Nejedlý, *Úřad vlády hledal ajťáka deset měsíců. Stát je není schopný zaplatit* (The Cabinet Office sought an IT-person for ten months, the State is unable to pay them), Seznam Zprávy (25 August 2024), at

to the significantly higher wages in the private sector in a prosperous capital with zero unemployment.

Nevertheless, this underfinancing also affects teachers, social workers, police officers and professional soldiers. Czechia demonstrates a tendency to undervalue the importance of its public sector. The judiciary has been the sole branch of government to enjoy privileged remuneration, which has been effectively protected from erosion by the Constitutional Court. Physicians and nurses have successfully negotiated increased remuneration following threats to seek employment abroad. This apparent neglect appears to have ideological underpinnings. While a 'slim state' may be an idealistic concept, in practice, it can be both underfunded and overburdened.

It would be remiss not to mention the legacy of the Czech Republic's socialist past. As might be expected, the author of this article, who is a law professor, places great emphasis on the role of law as an instrument of the state in a wide range of areas of governance. During the period of Czechoslovak socialism, legal thinking became somewhat rudimentary[23]. The emphasis on individual rights and freedoms in the post-socialist era, the clashes between formalists and rebels, and the influx of new legislation have led to chronic instability.

In the academic world, a lack of understanding of the distinctive national character of Czech law leads to a tendency to prioritise prestigious publications in foreign languages, such as English, while paying insufficient attention to practical matters. However, there is no consensus on this diagnosis, even within the academic legal community. Many would argue that no such crisis exists or that the nation and its state have already overcome it.

Furthermore, decentralisation gives rise to a further problem. All observers would classify the Czech Republic as a unitary state. Indeed, the central government (stát, i.e. the state in Czech) is responsible for enacting all significant laws and for controlling taxation and redistribution. The allocation of resources by the state to regions and municipalities represents a significant

https://www.seznamzpravy.cz/clanek/domaci-politika-zacarovany-kruh-stat-neni-schopny-zaplatit-ajtaky-digitalizace-je-drazsi-258310, last accessed 6 October 2024.

[23] For an international readership on socialist and post-socialist law, see U. Kischel, *Rechtsvergleichung* (2015) 571–594, or the same chapter in English translation (U. Kischel, *Comparative Law* (2019, A. Hammel translator).

aspect of the political and economic landscape. Additionally, the role of complex subsidies, including those financed by the European Union, is considerable.

The state is divided into thirteen regions and the capital city, which constitute the first level of government. The second tier comprises six thousand municipalities. The larger cities are subdivided into autonomous circuits or wards. The regions and municipalities (which are divided into three categories for the implementation of national law) participate in the enforcement of state laws (which have been delegated to them) in addition to self-governance (which is conducted on an independent basis). These subdivisions have been the subject of criticism on the grounds that the regions lack a tradition of their own. Indeed, there were autonomous provinces in the past: Bohemia, Moravia and Silesia. The number of municipalities is notably high in comparison to the majority of other countries[24]. The socialist regime amalgamated many of the traditional subdivisions, so the process of democratisation resulted in the re-establishment of minor municipalities. Concurrently, the state halted this process by imposing a requirement of one thousand residents for the establishment of new ones. Nevertheless, efforts to consolidate the existing entities have encountered considerable resistance. The formation of voluntary consortia has rarely been successful.

The management of this enforcement process is characterised by a notable degree of decentralisation, with the use of IT playing a pivotal role. For instance, three apex courts, which belong to different subdivisions, developed their own internal information systems independently.

Public universities, regional schools, hospitals, and other public institutions and enterprises (social services, infrastructure) also purchase or develop software and operate their information systems independently for a variety of purposes. The author has already expressed appreciation for his university, noting that some universities operate less user-friendly information systems, and

[24] M. Plaček, D. Špaček, O. František, M. Křápek, P. Dvořáková, *Does excellence matter? National quality awards and performance of Czech municipalities*, 24(4) J. East Eur. Man. 589–613 (2019), at https://dx.doi.org/10.5771/0949-6181-2019-4-589, accessed 6 October 2024; L. Matějová, J. Nemec, M. Křápek, D. Klimovský, *Economies of Scale on the Municipal Level: Fact or Fiction in the Czech Republic?*, 10(1) NISPAcee J. Pub. Admin. 39–59 (2017), at https://dx.doi.org/10.1515/nispa-2017-0002, accessed 6 October 2024.

mentioned the experiments carried out in his city (although he has not provided information on the situation in other municipalities). Indeed, many professionals and clients consider locally developed solutions to be superior, given their negative experiences with national projects and the associated sunk costs.

As indicated in the analysis of the application of AI in the public sector, ministries, regions, and municipalities are engaged in the acquisition and operation of a range of artificial intelligence-based solutions. Furthermore, the financing of this initiative is diverse, involving also the European Union's cohesion programmes[25].

4. Artificial Intelligence in the Czech Government and Public Sector

A review of the literature on the deployment of AI in the Czech administration reveals that it is used to assist clients in preparatory communication, enhance information, improve client documents, and reduce officials' need to respond[26].

It is anticipated that the deployment of chatbots will result in cost savings, with officials being released from their current duties to undertake other tasks. It may be the case that this deployment serves to mitigate deficiencies in the provision of guidance to clients or subjects, or in the complexity of governance.

The 2023 "Analysis and Evaluation" by the Ministry of the Interior does not indicate the deployment of AI for the purpose of identifying suspicious behaviour, instances of non-compliance, or breaches of established regulations[27]. Nor does it indicate any deployment of AI in decision-making as the core activity of the executive branch. However, according to the analysis, the Czech Police have initiated a notable deployment of AI, utilising

[25] Ministerstvo vnitra, cit. at 12, 45–49, listing municipal improvement projects financed by cohesion funds, several involving elements of artificial intelligence.
[26] Ministerstvo vnitra, cit. at 12, 34 mentioning, among others, the municipalities and their districts, Praha 5, Plzeň and Hradec Králové, the Czech Social Security Administration (Česká správa sociálního zabezpečení).
[27] In this regard, the analysis stresses that the Netherlands has deployed AI assertively in the context of welfare fraud, triggering judicial scrutiny: Ministerstvo vnitra, cit. at 12, 60 (mentioning the Dutch system of discovering fraud in social security Syri; for academic discussion of this case, see M. van Bekkum & F. Zuiderveen Borgesius, *Digital welfare fraud detection and the Dutch SyRI judgment*, 23(4) Eur. J. Soc. Sec. 323–340 (2021).

innovative software to enhance facial recognition and combat cybercrime.

In this context, we do not place undue reliance on a single analysis concerning rapidly developing innovative technologies. It seems reasonable to posit that a significant proportion of municipalities did not respond to the questionnaire sent to them by the Ministry, given the constant influx of requests they are subjected to and the fact that this reporting was not obligatory. It is not necessary for other parties to distinguish between the various types of software and applications that this text examines with regard to AI.

It is pertinent to inquire whether there is cause for concern regarding the potential covert deployment of AI, particularly in the light of concerns about its legal and political implications. The extent of such covert deployment abroad is largely unknown, although it is believed to be significant in some countries, such as the People's Republic of China. Given the pivotal role of AI in this scoring of behaviour, there are ongoing scholarly debates about its methods and impact[28].

Nevertheless, the circumstances appear to be distinct in the Czech Republic. Firstly, there is a demand to modernise public administration. Secondly, the management of personal data is subject to restrictions and control, and it is not within the power of state authorities to ignore this.

As to the first point, examples of unpopular administrative law include tax evasion, non-compliance with overly complex building regulations, and the avoidance of regulatory requirements in various business sectors. Moreover, the situation may worsen in the future, particularly with the adoption of the intrusive requirements of the European Green Deal, which calls for a significant reduction in greenhouse gas emissions[29]. It seems reasonable to expect that the authorities would be well advised to select agendas that could be more effectively and intensively

[28] Among others, Z. Zuo, *Governance by Algorithm: China's Social Credit System* (2020), at https://www.finance.group.cam.ac.uk/system/files/documents/GovernancebyAlgorithm_CERF_Zhenbin6.16.2020.pdf, accessed 6 October 2024.

[29] For the role of innovative information and communication technologies in this rapidly expanding EU policy, see I. Kawka, *E-government and environmental protection. Towards more sustainability*, in A. Sikora & I. Kawka (eds.), *The European Green Deal and the impact of climate change on the EU regulatory framework. Searching for coherence* (2024) 55–74.

enforced with AI, a course of action that would enjoy considerable public support.

As to the second point, it would be difficult to hide the use of AI if its acquisition were made transparent acquisition through public procurement. The possibility of experimental use of AI sponsored by software producers cannot be ruled out, although there is no evidence to suggest that this is the case. Notwithstanding the aforementioned transparency, the supply of goods and services to the public sector represents a lucrative opportunity, or so it is perceived by many. Critics point to the potential for software vendors to encourage dependency among their clients. The situation may be different with regard to AI, as the deployment of such technology may facilitate its learning capabilities. Indeed, unofficial sources indicate that Microsoft has offered its AI language model to Czech ministries for the purpose of analysing their databases.

Four public sectors in particular seem to be the ideal candidates for covert AI experimentations: the judiciary, healthcare, education, and infrastructure and utilities.

As to justice, the report by the Ministry of the Interior does not address the judiciary, as this is the responsibility of the Ministry of Justice. Similarly, other reports and media sources do not refer to the use of AI in this branch of government. We will return to the relationship between Czech courts and AI in the next section.

Regarding healthcare, it should be stressed that the Czech population expect optimal healthcare with comprehensive coverage. Indeed, international rankings indicate that the quality of Czech healthcare is better than in other post-socialist countries[30]. One might debate whether the tradition encompasses the legacy of socialism, the regulated competition between hospitals and other service providers, and the multiplicity of public health insurance funds that contract these providers. The implementation of AI in the field of medicine, with the objective of enhancing diagnostic and therapeutic procedures, would undoubtedly constitute a valuable contribution if it were feasible. Both public and private

[30] Unfortunately, the most comprehensive and thus convincing European Health Consumer Index (see https://healthpowerhouse.com/publications/, accessed 6 October 2024) ceased to emerge since 2018. For surrogates, see Legatum Prosperity Index – Health sub-index, at https://www.prosperity.com/rankings, accessed 6 October 2024. Czechia usually ranked the best among post-socialist countries or at par with Estonia and Slovenia in these rankings.

hospitals are equally capable of deploying these technologies. However, it is evident that this is a matter that extends beyond the purview of the government.

As to education, research in universities and research institutes includes advanced information technologies and a comprehensive understanding of AI. It seems reasonable to assume that AI will also be deployed in other scientific, technological and medical research. From the students' perspective, it is not uncommon for students to use the Internet when composing essays, albeit in ways that are not in accordance with academic standards and ethics. Universities adopt disciplinary measures and search programs to combat plagiarism. The advent of AI has recently become a significant concern, particularly among students and young researchers who are well-versed in digital technologies and online communication. They are rapidly acquiring knowledge about publicly available chatbots, which are becoming increasingly sophisticated. Universities require students to attest that they have not used such resources in the preparation of their assignments, or they provide guidance on the acceptability of their use[31]. It would be useful to determine whether the updates to these anti-plagiarism programs have already reached the level of AI. One may hope that AI could be conceived of as a dedicated, perceptive, and patient educator of students and pupils, including those with special needs. Nevertheless, it seems that for the time being, use of AI in education is minimal. Even Masaryk University, which is widely regarded as one of the most advanced universities in the field of informatics and which has an IT faculty of offering curricual specialised in AI[32], as revealed by an informal inquiry conducted by the author as an insider, engages in experimentation with this technology only in the context of internal analyses. It does not utilise AI in teaching students.

The fourth sector comprises infrastructure and utilities, including road transport, water and sewerage, and other services

[31] See the document available at the author's Masaryk University, at https://www.muni.cz/o-univerzite/uredni-deska/stanovisko-k-vyuzivani-ai, accessed 6 October 2024, also available in English at https://www.muni.cz/en/about-us/official-notice-board/statement-on-the-application-of-ai, last accessed 6 October 2024.

[32] See the promotional information of the Master's degree programe in Artificial Intelligence and Data Processing at Masaryk University: https://www.muni.cz/en/bachelors-and-masters-study-programmes/22961-artificial-intelligence-and-data-processing, last accessed 6 October 2024.

provided by entities under the control of the state, regions and municipalities. It is reasonable to assume that these entities have commenced to deploy AI to optimise their services in a manner similar to that observed in other developed countries.

There has been no recent information on the use of AI in leading hospitals or public health insurance funds for treatment efficiency, the allocation of scarce resources, or the identification of futile treatment. These funds frequently demonstrate benevolence towards requests for financing innovative treatments, including those that are exorbitantly expensive and presented as promising. In some instances, administrative courts have compelled them to do so. It is reasonable to posit that many educators have long aspired to have robots evaluate written examinations. The advent of AI may facilitate this, including the use of chatbot examiners. It seems reasonable to suggest that the use of AI in both industries will give rise to significant upheaval.

5. The Absence of Specific Provisions for Artificial Intelligence in Government

The absence of a specific legal provision addressing the deployment of AI in the Czech Republic is a notable gap in the country's legislative framework. Additionally, no proposals such as a law or statute on the subject were put forth to enact legislation pertaining to AI.

Nevertheless, it would be erroneous to view this absence as anomalous. Globally, many states have yet to implement comprehensive legal frameworks to address the rapidly evolving field of AI.

It is important to note that there is no explicit provision addressing AI, either in general or in specific legislation. The adjective and substantive "*umělá intelligence*" are the settled equivalent of "Artificial Intelligence" in the absence of an abbreviation such as AI (spelt in English) that stands for it. It would be erroneous to exclude complex descriptions using alternative terminology. Nevertheless, no category or aspect of AI or its sectoral deployment is addressed by such descriptions.

5.1. A Lack of National Laws

A comprehensive search of Czech national legislation in available databases has revealed only a limited number of instances

where the term is used in the entire corpus of Czech law, particularly in selected codes. All the references are irrelevant to the research in question[33].

At the time these pages were written, neither general (horizontal) addressing procedures and authorities nor specific legislation addressing industries or concerns addressed the issue of AI, including its creation as software and its deployment with meaningful provisions.

As mentioned above, several municipalities have started to deploy AI. Nevertheless, the identified modes of use do not necessitate the establishment of a legal framework. It is possible that some local laws may refer to this deployment, but it is unlikely that any specific guidelines will be set forth by municipal authorities.

5.2. Exception: Attorneys and Artificial Intelligence

It is questionable whether soft law should be regarded as equal to genuine (i.e. 'hard') law. Nevertheless, there is an emerging inclination to view such documents as a potential source of guidance. Especially, elucidations by the authorities responsible for the enforcement of the law, encompassing its diverse typology, could provide some insights into their policy.

The 2023 opinion of the Leadership of the Czech Bar Association, which represents the legally mandated self-government of attorneys, constitutes a notable example in this regard[34]. It outlines the desirable and undesirable modes of AI,

[33] These documents address statistics of economic activities, classification of tertiary education (studying informatics encompassing artificial intelligences at technical universities and vocational schools) and considering related software as intellectual property. In some cases, it is unclear whether real artificial intelligence is at stake.

[34] Představenstva České advokátní komory, *Usnesení AD12/2023 Představenstva České advokátní komory ze dne 12.9.2023, Stanovisko k užívání umělé inteligence (AI) při poskytování právních služeb*, at https://www.cak.cz/cs/download/23.%20sch%C5%AFze%20-%20prosinec%202023.pdf, accessed 6 October 2024. This document seems to be an excellent preliminary assessment of AI. Among others, it underscores the lack of definition, or the existence of various systems of artificial inteligence. It is considered acceptable to resort to AI for preparatory administrative purposes, but rejects delivery of legal services by AI. AI can communicate with the public and deliver general consultations comparable to articles in legal journals, but considers it inappropriate to confuse advised clients. It underlines the unpredictability of AI and also reiterates confidentiality concerning AI learning.

while emphasising the variability and reiterating the importance of confidentiality. As such, it forms a noteworthy exception to absent policies on AI.

5.3. No Evaluation of Artificial Intelligence by Courts

In the Anglo-American legal system, which is based on common law, courts develop laws that are then considered precedents. Even statutory law is subject to judicial interpretation. Notwithstanding the Czech Republic's civil law system, it is conceivable that AI could be addressed when applying the principles of administrative and judicial proceedings. There is actually no doubt that the use of AI without the establishment of specific legal provisions could result in judicial scrutiny. It is also reasonable to assume that the highest courts will not refrain from scrutinising specific provisions that permit the deployment of AI and stipulate such oversight if plaintiffs challenge the principles and fundamental rights involved. However, it appears that Czech courts have not yet had the opportunity to do so.

As regards the three Czech apex courts – namely the Constitutional Court, the Supreme Court (for civil and criminal matters) and the Supreme Administrative Court –, it is possible to access their judgments via search engines. These search engines are visibly different from one another, which is a result of the independent development of information systems and webpages mentioned above. A review of the judgments of these apex courts reveals that approximately one dozen of them contained the expression "artificial intelligence". Nevertheless, these decisions seems also to be irrelevant to our search for principles and guidelines for the deployment of AI; the author's sole regret is that he lacked the benefit of AI in conducting this research.

As regards the lower courts, it should be noted that Czech law provides for one appeal in matters of administrative matters and two appeals, namely ordinary and extraordinary (revision), in civil and criminal cases of major importance. In addition, the Constitutional Court accepts individual constitutional complaints. It should also be noted – and this confirms the underdevelopment of IT in the Czech Republic – that there is no systematic publication of the judgments of inferior courts. The ministerial database of Czech judgments[35] is not fully comprehensive. It may be inferred

[35] See the database at https://rozhodnuti.justice.cz, last accessed 6 October 2024.

from this limited accessibility that superior courts frequently reverse these judgments.

That being said, the main problem of the Czech judiciary is that, notwithstanding the stabilisation and improvements that have occurred over the past few decades, the adjudication process can still take years. As a result of the proclivity of superior courts to vacate the judgments of inferior courts and issue guidelines for reconsideration, the adjudication process can span a considerable length of time, often up to a decade. Complex cases in which the interpretation of general provisions emerges, conflicting values play a role (so-called 'hard cases' in legal theory), and the application to new phenomena emerges are particularly prone to delay. Objections to the use of AI based on general principles would undoubtedly fall into this category of cases.

It is estimated that no such cases are pending before the lower courts. There is clearly no reason to file complaints or take legal action if the central state, regions, municipalities and public services do not apply AI in a way that is detrimental towards individuals. Should this situation change, it is expected that attorneys will begin to publicise potential cases, thereby initiating a process of informed debate. In any case, even if the higher Czech courts do issue rulings in this regard, it would be a mistake to take the first published judgments handed down by these courts as the definitive case law on the specific interpretive issue in question. In such instances, a divergence of opinion may necessitate the intervention of an extended panel or plenary.

6. The Permissibility of Deploying AI without Specific Legislation

In the absence of any explicit AI regulation in the Czech legal framework, the crucial question that this paper addresses is whether the deployment of AI in administrative, judicial, and police contexts is permissible without being specifically legislated.

The following considerations are based on the author's interpretation of existing provisions and recognised principles. Following an examination of the current position of legal scholarship on these issues (section 6.1), the subsequent sections will evaluate the potential for claims to emerge (section 6.2). Thereafter, the various approaches that administrative judges may adopt in response to complaints or actions filed by clients or

subjects will be considered (section 6.3-6.7). The following conclusions (section 6.8) will remain applicable until such time as the national legislature reacts by enacting specific legislation or provisions to approve the use of AI, define its characteristics, and either restrict or prohibit its use.

6.1. The Stance of Legal Scholarship

Many Czech authors addressing the legal and ethical aspects of AI have written their texts in English to meet the expectations of scientometrics as set out by their respective institutions, as well as the promises made to grant agencies. It would be unfair to criticise these texts for failing to discuss Czech law, given that there is currently no general legislation or specific provisions addressing AI and its use in the Czech Republic, and that the lack of use of AI by the public sector and it limited diffusion in the private sector have not yet attracted significant judicial scrutiny. Nevertheless, it is a pity that these texts did not examine the legality of AI in accordance with existing Czech legislation and did not suggest amendments to address the challenges and potential issues associated with this innovative information technology.

In the light of the above, we particularly appreciate the recent publications[36] and academic projects that have set this endeavour in motion, resulting in a series of insightful reflections[37]. Furthermore, it could be beneficial to consider the international literature on this topic, as similar issues are present in other countries[38].

6.2. Modes of Deployment

The previous sections have identified several potential uses of AI in government and public services. It is necessary to distinguish between them according to the potential risks they pose to those affected by them.

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[36] Among others, R. Polčák, *Umělá inteligence v justici* (Artificial intelligence in judiciary) 26(1) Soudce 4–17 (2024), and A. Karpjáková, *Zcela automatizované AI systémy a tvorba odůvodnění soudního rozhodnutí v civilním procesu* (forthcoming, courtesy of the author).

[37] Namely, the monothematic issue of Acta Universitatis Carolinae – Iuridica (2024) 2.

[38] For a meta-analysis of existing literature, see R. Madan & M. Ashok, *AI adoption and diffusion in public administration: A systematic literature review and future research agenda*, 40 Gov't Inf. Q. (2023), https://doi.org/10.1016/j.giq.2022.101774, last accessed 6 October 2024.

The potential applications of AI in optimising public services, including those pertaining to education, healthcare, social services, culture, sport and infrastructure, are beyond the scope of this discussion inasmuch as they are in principle beneficial to people. These uses only need to be scrutinised if the benefits for different groups of citizens or clients lead to increased inequality, as the main beneficiaries are those who already have access to high-quality public services. However, caution should be exercised before characterising this as a discriminatory practice.

The use of AI to help customers understand the information they need, to facilitate their submissions, or otherwise to assist them in administrative procedures, thereby reducing the burden on public officials and administrations, also appears to be an acceptable course of action[39]. Only the extent to which such AI can replace the tasks of authorities, where the relevant regulations allow the use of AI by public officials, may be open to question.

Reliance on AI in the justice sector may raise particular issues. The use of AI in judicial proceedings in civil matters may be seen as favouring one party over another, which could be perceived as a violation of the principle of "equality of arms". The use of AI to search for instances of non-compliance with legal requirements or restrictions will inevitably be challenged by those who have been caught, prosecuted, and sanctioned. It is possible that even individuals, enterprises, and institutions that comply with the relevant requirements may perceive such monitoring as an intrusion into their activities. It would be reasonable to posit that any authority deploying such technology should expect to be called to account for its use, particularly if it is not kept in strict confidence.

The most sensitive form of AI in the justice sector however remains its potential use in the drafting of administrative or judicial decisions. When computer software is able to analyse the facts of a case, to evaluate the evidence presented, to consider the relevant legal frameworks, to determine the verdicts, and to formulate related reasonings, AI assumes the role of a decision-maker in lieu of humans.

In addition to its applications in relation to citizens and clients, it is important to consider the role of AI in the analysis of data and documentation, including files and decisions, with a view

[39] For fresh reflection of experiences abroad, namely in Singapore, to domestic readership, see T. Svoboda, *Chatboty ve veřejné správě – stručný nástin* (Chatbots in public administration-short overview), Správní právo 501–516 (2024).

to improving institutional policy. In addition to the considerations regarding data protection, there is a potential for this technology to exert control over the actions of employed officials. It is evident that this would be a highly sensitive issue. The implementation of this technology in the context of legal decision-making is likely to elicit significant opposition from those who are accustomed to exercising influence and discretion in this domain.

6.3. Limitations Regarding the Judicial Functions

The judges or judicial panels involved in the adjudication process are always identifiable in Czechia[40]. A comprehensive set of regulations governs the assignment of cases to specific courts and judges, as well as the designation of deputies. The guidelines for recusals are applicable, while judges are obliged to recuse themselves in the event of a conflict of interest; however, they are not permitted to do so in other cases. It is possible for judicial assistants (clerks) and support personnel (secretaries) to assume preparatory tasks and provide support, including checking language, but they are typically not permitted to make decisions. Something similar occurs in administrative proceedings, in which there is almost always an identifiable "official person" involved[41], despite the possibility of collaboration among various officials in preparing decisions based on complex inputs and a more collective, de-personalised approach to the management of many routine cases. It would therefore be reasonable to conclude that reliance on automated computer operating AI to make decisions in lieu of these individuals would be illicit in the absence of an explicit exception.

This conclusion is confirmed by the fact that the automated aggregation of data and the use of algorithmic systems in judicial and administrative proceedings would probably put considerable pressure on the individual officials involved. There is no doubt that the decision-making process, especially within the judicial system, is characterised by a high degree of personalisation. This can, in certain instances, give rise to a heightened risk for judges presiding over criminal or sensitive civil cases. This is one of the reasons why, in civil law jurisdictions, judges attempt to distance themselves

[40] Nobody could imagine "faceless judges" in contemporary Czechia. Any law introducing them for adjudication of the most serious crimes would undoubtedly face constitutional scrutiny.

[41] See §14 zákon č. 500/2004 Sb., Správní řád (Code of Administrative Procedure).

verbally from the proceedings by addressing plaintiffs, defendants, and witnesses in the third person: "The court requests that you ...".

Nevertheless, it might be interesting to consider whether capable judges and officials could use AI in lieu of their assistants and clerks. In Brno, the judicial capital of the Czech Republic and the home of the three aforementioned highest courts, it is widely acknowledged that, in many routine cases, judicial assistants draft documents that are then reviewed and refined by judges. The directors, chiefs, and bosses of authorities, agencies, institutions, and companies approve the decisions prepared by their assistants, often without in-depth knowledge of the individual cases, by signing papers or clicking in information systems. One might ask whether AI could improve and speed up their work. In addition, with regard to the analysis of legal materials, it is possible that AI could be used to filter case law and literature into categories as either relevant or irrelevant. This task is laborious and prone to the exclusion of relevant cases. It is conceivable that AI could be similarly prudent, but much faster. It could then make connections with facts.

In order to substantiate this hypothesis, it may be useful to consider the deployment of autonomous vehicles as a further example of AI. It is indubitable that these vehicles are capable of error, yet it is equally true that human drivers are prone to similar mistakes. With the implementation of certain enhancements, it is conceivable that AI could operate a motor vehicle with a greater degree of proficiency than some individuals currently permitted to do so. It seems reasonable that AI will soon surpass humans in the ability to describe and assess facts, starting with routine cases[42]. From this perspective, there may soon be a greater willingness to rely on AI in decision-making processes.

6.4. Limitations Deriving from General Guidelines for Administrative Decision-making

In the Central European legal tradition, there are codes that delineate the procedures to be followed by the judicial and administrative authorities, as well as the requirements for the

[42] Similar conclusions, with regard to routine cases, have been proposed by R. Polčák, *Umělá inteligence ve správní praxi*, Správní právo 62–72 (2024) and L. Pavlíček, *Algoritmizované rozhodování u triviálních právních otázek*, 29 Revue pro právo a technologie 229–271 (2024).

reasoning of decisions in the absence of specific legislation. In order to comply with these guidelines, it is necessary to take into account the allegations made, the evidence presented, the generally available information and the applicable legal framework. In practice, this intellectual activity of judges and officials manifests as a description of the reasons (reasoning) that accompany the decision. These texts are written in natural languages and vary in style from one country to another. Notwithstanding the homogenising effects of national and institutional education and training, these decisions nonetheless reveal the individuality of their author.

It is possible to exercise control over reasoning by re-examining the evidence or the applicable laws. At higher levels of the judicial system, complaints and appeals may contain evidence of factual and legal errors. However, it is not possible to control the thinking of the judges and officials who produce the reasoning.

Until recently, little was known about what happens in the human brain and its different parts. Scientific observation of blood circulation and electrical impulses with modern diagnostic methods can locate responses to impulses in the human brain. However, we are still a long way from being able to visualise cognition, thought, knowledge, and ideas. Medical diagnostics, even if technically and economically feasible, would be intrusive and therefore unethical.

One objection to decision making by AI is the so-called black box, our inability to check its operation. Perhaps not all AI demonstrates this phenomenon, but a review must take into account large amounts of data, so such an analysis may require a different AI system. Nevertheless, what should be acknowledged is that even an AI that renders text based on impulses from the aforementioned black box is no different from our inability to follow processes in our brains directly[43].

6.5. Limitations Regarding Cybersecurity and Personal Data Protection

Another reason against the use of AI in government is that it may compromise confidentiality and security. It is therefore important to reiterate that civil servants and judges must respect

[43] Among Czech authors reflecting on the issue in administrative law, see J. Nešpor, *Automated Administrative Decision-Making: What Is the Black Box Hiding?*, 2 Acta Universitatis Carolinae Iuridica 69–84 (2024).

confidentiality, even though some fail to do so. Physical barriers have protected paper files from unauthorised intrusion with the potential for viewing, alteration and destruction. Converting this information into electronic form requires cybersecurity against both espionage and sabotage. Undoubtedly, legal penalties have supported the former barriers and should support the latter.

The question is whether AI can remain confidential to its providers when personal or other sensitive data are required for the internal learning processes inherent in this advanced information technology. There is no need to reiterate the protection of personal data in Europe, as this issue is universal. Nevertheless, the European Union's General Data Protection Regulation has led to interpretations that have restricted many benign activities[44], and it is to be feared that this will also be the case with AI.

6.6. Comparing Artificial and Human Intelligence

It may be worth noting that all government systems select public officials as decision-makers partly on the basis of their perceived ability to make decisions. In addition to knowledge, other virtues – such as caution, perfectionism, decisiveness, resilience, calmness and perseverance – are valuable and their opposites undesirable. Education and training in schools and centres, examinations, assessments, observation of performance and interviews in selection processes have served this purpose.

In the education, army, police and transport sectors, some authorities use psychological tests to screen potential civil servants and judges. The psychology of decision-making should not be completely forgotten, as there are some interesting studies. As mentioned above, judges received the privileged salaries mentioned earlier thirty years ago, when the judiciary was on the verge of collapse. As for newcomers, the Ministry of Justice relies heavily on the psychological testing of newcomers, not to exclude extremes, but to select the best when there is no consensus on excellence in law. Psychologists can serve as gatekeepers in this regard. In this context, it may be helpful to ask AI experts whether the industry is considering the possibility of AI exhibiting preferred

[44] The author agrees with criticism of the GDPR by politician-lawyer A. Voss, *Fixing the GDPR: Towards Version 2.0. Position Paper* (2021), at https://www.axel-voss-europa.de/wp-content/uploads/2021/05/GDPR-2.0-ENG.pdf, last accessed 6 October 2024.

psychological traits. Perhaps it is time to incorporate psychology into the development of AI.

Another argument for comparing machines to humans is that, in many sectors, machines – stationary and mobile – have become more powerful, resilient, precise, careful, durable and reliable than humans. Improvements were slow over thousands of years, but have accelerated with the industrial revolution with motors. Then came automated production in assembly lines and so forth. Some occupations became obsolete and others were reduced. Mechanisation and automation allowed the growth of the service sector, shifting people from agriculture and industry to the service sector. Protests against this, such as the British Luddites, were largely unsuccessful. There is no doubt that these machines and the way they operate create inherent risks. The use of machines has a history of accidents and tragedies, leading to safety standards for temperature, electricity, gas, pressure, weight, speed or radiation. AI is now extending these developments to typical "white collar" jobs, but the problem remains the same: the impact on the workforce and the risks inherent in this innovative technology.

6.7. The (Non-)Personhood of Artificial Intelligence

Thinking about the psychology of AI can lead us astray. Indeed, some people fear the rebellion of robots, while others would indulge in them and acknowledge their personhood. We suggest sobriety here. Firstly, personhood does not depend on physical or mental strength. We now grant it to every living human, and reject exceptions even in cases of severe disability. History teaches us – with slavery, serfdom, prejudice against foreigners, and disdain towards the mentally disabled – that this is not self-evident. Secondly, people personalise animals, toys, motors, vehicles or fictional characters. This personalisation may be even greater in the case of human-like robots (androids).

When it comes to AI in government, some have already begun to perceive "the (virtual) Big Brother is watching you". This is not necessarily a negative feeling; someone may admire such AI in the service of human control.

Despite these developments, for the time being, we refuse to consider AI as deserving of recognition of its personhood and legal

subjectivity[45] as we encounter computers and software. We may come to a different conclusion with regard to genetically modified or artificially nurtured cyborgs, but they are not yet among us.

6.8. What Comes Next?

In the light of the above, we believe that there are two possible approaches to managing AI in government in the near future. The former views it as a risky technology, while the second considers it as an intrusive procedure. Fortunately, these approaches are not mutually exclusive.

Let us start with the first. Machines can be dangerous. There are even technologies that can be dangerous for entire populations, such as nuclear power. A few decades ago, people were justifiably afraid that nuclear bombs and missiles would wipe out humankind. Global warming and the climate crisis, caused mainly by the burning of fossil fuels, are a current concern. Dangerous activities may be carried out by a few individuals or by a large number of people, each contributing to the risky outcome in varying degrees.

As mentioned above, the law has barely taken into account technological improvements in administration and justice, health care, or education. Nevertheless, technological improvements have come about, with typewriters replacing pens, computers replacing typewriters, and digital databases replacing the management of paper files. Digitalisation has allowed a radically more intensive use of personal data that previously remained hidden in files behind locks. From this perspective, AI in government is another disruptive technology requiring evaluation.

The other possibility is to see AI as an intrusive process. The elaborate rules we have today for obtaining evidence from objects, documents and witnesses, for presenting it to authorities and courts in administrative and judicial proceedings, and for evaluating them, have been developed over centuries. Our European imagination is filled with torture, coercion and deception. Not surprisingly, the legal codes governing the investigation and prosecution of crimes contain detailed rules on opening mail, searching notes and books, wiretapping, eavesdropping and search warrants. Failure to comply with these can result in the acquittal of

[45] Therefore, the author disagrees with K. Drachovská, *Umělá inteligence jako nositelka základních práv?* (Artificial intelligence as a subject of fundamental rights), 4 Právník 273–284 (2021), and with the foreign authors the author consulted to elaborate these arguments.

the accused. Similarly, policing laws in liberal democratic countries that can truly be called 'rule of law' states, specify in detail various weapons and other physical instruments and their permissible use. Many administrative laws permit certain forms of control while excluding others. In this context, AI may be seen as an innovative procedural tool that requires new legislation before authorities can use it.

7. European Union Legislation on Artificial Intelligence

It is well known that the EU has recently adopted many texts on digital technologies and AI. This development should be critically analysed. One does not have to be a fan of the European Union's recent wave of regulation in various fields. It is time to debate the use of competences by the EU institutions, as many doubt that the EU's regulatory powers always respect the principles of subsidiarity and proportionality.

Moreover, even those in favour of extensive supranational legislation have to admit that lengthy EU-made regulations and directives often do not provide detailed rules (regulatory density), but rather reiterate ambitions, objectives and principles.

At the same time, the transformation of directives into regulations and the preference for regulations in new areas are developments that can be welcomed with caution. It has become increasingly difficult and frustrating to implement detailed EU directives, and EU Member States' room for manoeuvre has diminished, as the level of detail of these texts has increased[46].

A prominent set of these laws is the package of digital acts, which embody the Digital Strategy as the European Union's flagship policy, promising technological and economic advancement. Sceptics may question this frenetic lawmaking with the phrase: 'the US innovates, China imitates, Europe regulates'. In more detail, Vagelis Papakonstatinou and Paul de Hert have identified several features of this digital lawmaking beyond the aforementioned "act-ification", such as GDPR mimesis (imitating its regulatory approaches) and regulatory brutality (ignoring emerging national approaches). Nevertheless, lawyers will have to apply these laws or help their clients and employers deal with

[46] F. Křepelka, *Transformations of Directives into Regulations: Towards a More Uniform Administrative Law?*, Eur. Pub. L. 781–805 (2021) and F. Křepelka, *Evropské zákony za obzorem* (European Laws Beyond the Horizon) (2023).

them, depending on their position, and interpret them accordingly[47].

The Artificial Intelligence Act (AIA) is part of this package. The Commission proposed this regulation in 2021, and the European Parliament, the Council and the advisory committees reached a consensus, leading to the publication of the European Union's final version in July 2024[48]. The AIA envisages its gradual entry into force over the years to come.

Of course, the AIA may not be the only possible response to the challenges posed by AI. Perhaps the text is over-cautious, and other nations will not emulate it[49]. We suggest comparing this prudence with other sensitive technologies beyond information technology, such as the genetic manipulation of plants and animals, bioethically sensitive treatments, and nuclear energy.

We do not need to examine in this article whether the AIA is an example of brutality against Member States, forcing them to abandon emerging national policies and laws on AI, as the Czech Republic has not yet addressed this technology. What we can say is that the AIA will apply to the administration and judiciary of Member States, despite their competence to organise and run their government, as the only sector that remains beyond the scope of the AIA is the military[50]. The AIA will also undoubtedly result in the prohibition of some e-government practices.

However, as legal scholars concerned with the legal dimension of national responses, we should question whether this regulatory regime is exhaustive and exclusive in terms of restrictions, requirements and procedures and, if not, whether it pre-empts national legislation[51]. If the law only sets minimum

[47] V. Papakostantinou & P. De Hert, *The Regulation of Digital Technologies in the EU. Act-ification, GDPR Mimesis and EU Law Brutality at Play* (2024).

[48] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), hereinafter "AIA".

[49] For similarly cautious pre-enactment scrutiny, B. Martens, *The European Union AI Act: premature or precocious regulation?*, Bruegel Analysis (2024), at https://www.bruegel.org/analysis/european-union-ai-act-premature-or-precocious-regulation, last accessed 16 October 2024.

[50] Art. 2(3) AIA.

[51] On this, see R. Schütze, *Supremacy without pre-emption? the very slowly emergent doctrine of community pre-emption*, 43(4) Common Market L. Rev. 1023–1048 (2006).

standards, the Member States can adopt stricter regulations, just as they can ban nuclear energy, restrict genetically modified seeds and plants, and regulate many bioethically sensitive medical interventions in different ways. The European Union acknowledges this differentiation between nations.

In terms of governance, EU Member States have many options. They could evaluate AI more rigorously, choose among the available AI systems, prohibit them altogether, or consider banning or restricting (some of them) by cautiously interpreting existing laws in the ways sketched out here. The same choices are indeed open to the EU institutions themselves, which could begin to consider adopting a legal framework for the use of AI by the EU in its expanding administration[52].

8. Conclusions: Desirable Approaches to Artificial Intelligence in Government

The lack of provisions on the use of AI in government has recently been critically reviewed by Aleš Kučera, a senior expert at the Chamber of Commerce. He reiterated that no relevant laws address the issue. In a recent conference presentation, he asked the iconic HAL 9000 from Kubrick's film based on Clarke's Space Odyssey whether this super-computer anticipated the use of AI by the Czech Republic in its government[53].

We do not need such a supercomputer to assess short-term prospects. As already mentioned, governance is the Achilles' heel in the Czech Republic, and e-government has become a sensitive issue. Experts point out that no authority wants to deal with AI issues a year before the parliamentary elections. We conclude that the precondition for the feasible use of AI in government is a modern e-government.

Under these conditions, we should not be surprised that Czech politicians and their advisors believe that the European

[52] For a reflection by a Czech author, see P. Hubková, *EU Administrative Decision-Making Delegated to Machines – Legal Challenges and Issues*, 2 Acta Universitatis Carolinae Iuridica 101–120 (2024).

[53] Hospodářská komora České republiky, sekce pro digitalizaci a podporu podnikání [A. Kučera], *AI ve veřejné správě. HALe, je to vůbec možné?* (AI in public administration. HAL, is it possible?) (4 September 2024), see https://www.government.cz/soubor/ai-ve-verejne-sprave-cr-je-to-vubec-mozne/, last accessed 16 October 2024.

Union's AIA covers all aspects of this innovative information technology. The Member States, in turn, need not, and should not, concern themselves with it.

We suggest that such an assumption is misleading. The AIA does not address the dilemmas posed by the use of AI in government. Given its potential for surveillance and decision-making in administration and justice, the use of AI should not be possible without an explicit legal framework. Otherwise, there is a risk that any use of AI by public authorities will come under judicial scrutiny. The national framework may be permissive or restrictive, general or specific to different agendas, but it should be there. Perhaps, a recent analysis delivered by the Organisation for Economic Cooperation and Development can catalyse our thinking on this issue[54].

[54] OECD, *Governing with Artificial Intelligence: Are governments ready?* (2024), at https://doi.org/10.1787/26324bc2-en, accessed 16 October 2024.