

## The dilemmas of automated decision making in administrative proceedings – comments in the context of § 14 1b of the Administrative Procedure Code

Dylematy automatycznego podejmowania decyzji w postępowaniu administracyjnym –  
uwagi na tle art. 14 § 1b Kodeksu postępowania administracyjnego

Дилеммы автоматического принятия решений в административном  
производстве – комментарии к статье 14 § 1b Административного-  
процессуального кодекса

Дилеми автоматичного прийняття рішень в адміністративному провадженні –  
уваги з перспективи ст. 14 § 1b Кодексу адміністративного провадження

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**Summary:** The issue of automated administrative decision making sparks numerous doubts related to the regulations concerning the legal basis for such solution and the issue of ensuring appropriate procedural guarantees for the participating parties. The doctrine lacks consistent assessments regarding interpretation of § 14 1b of the Administrative Procedure Code which projects the possibility of handling cases utilizing an automatically generated missive. Through utilizing the dogmatic method this study engages in the analysis and assessment of this provision in terms of the capacity for automated decision making through utilizing artificial intelligence and its influence on the legal position of an individual. Furthermore, this study presents the postulates concerning regulating algorithmic decision making as a separate mode of jurisdictional proceedings.

**Key words:** automated decision issuing, algorithmic decision making, automated administrative act

**Streszczenie:** Problematyka automatycznego podejmowania decyzji administracyjnych wywołuje wiele wątpliwości związanych z regulacją podstaw prawnych takich rozstrzygnięć oraz zapewnieniem odpowiednich gwarancji procesowych stronom. W doktrynie brak jest zgodnych ocen co do interpretacji treści art. 14 § 1b Kodeksu postępowania administracyjnego przewidującego możliwość załatwiania spraw z wykorzystaniem pisma generowanego automatycznie. W opracowaniu, przy zastosowaniu metody dogmatycznej dokonano analizy i oceny tej regulacji pod kątem możliwości wydawania decyzji automatycznie przy użyciu sztucznej inteligencji oraz ich wpływu na pozycję prawną jednostki. Przedstawiono również postulaty dotyczące regulacji trybu algorytmicznego podejmowania decyzji jako odrębnego trybu postępowania jurysdykcyjnego.

**Słowa kluczowe:** automatyczne wydawanie decyzji, algorytmiczne podejmowanie decyzji, automatyczny akt administracyjny

**Резюме:** Вопрос автоматического принятия административных решений вызывает много сомнений, связанных с регулированием правовой основы таких решений и предоставлением сторонам адекватных процессуальных гарантий. В доктрине нет единых оценок относительно толкования содержания статьи 14 § 1b Административного-процессуального кодекса, предусматривающей возможность урегулирования дел в форме автоматически генерируемого письма. В исследовании, используя догматический

метод, проведен анализ и оценка данного нормативного акта с точки зрения возможности вынесения решений в автоматическом режиме с использованием искусственного интеллекта и их влияния на правовое положение физического лица. Также представлены постулаты регулирования порядка принятия алгоритмических решений как отдельного порядка юрисдикционного производства.

**Ключевые слова:** автоматическое принятие решений, алгоритмическое принятие решений, автоматизированный административный акт

**Резюме:** Питання автоматичного прийняття адміністративних рішень викликає чимало сумнівів, пов'язаних з врегулюванням правової основи таких рішень та надання відповідних процесуальних гарантій сторонам. У доктрині немає послідовних оцінок щодо тлумачення змісту ст. 14 § 16 Кодексу адміністративного провадження, який передбачає можливість врегулювати питання у формі автоматично сформованого листа. З застосуванням догматичного методу у дослідженні було проаналізовано та оцінено цей нормативний акт з точки зору можливості автоматичного винесення рішень за допомогою штучного інтелекту та їх впливу на правове становище особи. Також були викладені постулати щодо врегулювання алгоритмічного режиму прийняття рішень як окремого способу юрисдикційного провадження.

**Ключові слова:** автоматичне прийняття рішень, алгоритмічне прийняття рішень, автоматичний адміністративний акт

## Introduction

Development of modern information-communication technologies and artificial intelligence is like a digital tornado based on a never-ending spiral of communication.<sup>1</sup> This development paves the way for modernizing operations of administrative bodies through introduction of automation of certain individual actions and procedures into realization of public tasks. This trend also encompasses the issue of algorithmic decision making (*ADM*).<sup>2</sup>

Computerization as such does not oppose the basic expectations towards the administrative procedures. However, applying technology may proceed in a manner which raises doubts regarding the issue whether such actions are consistent with the constitutional guarantees and general provisions of the administrative procedure.<sup>3</sup> Thus appropriate introduction of regulations concerning automated handling of cases into the statutory acts is of major significance.

<sup>1</sup> See: K. Werbach, *Introduction: An Endless Spiral of Connectivity?*, in: *After the Digital Tornado. Networks, Algorithms, Humanity*, ed. K. Werbach, Cambridge 2020, pp. 1 ff.

<sup>2</sup> R. Koulu, *Human Control over Automation: EU Policy and AI Ethics*, *European Journal of Legal Studies* 2020, vol. 12, no. 1, pp. 9 ff.

<sup>3</sup> M. Wilbrandt-Gotowicz, *Zasada efektywnej ochrony sądowej na tle zjawisk europeizacji, automatyzacji i pragmatyzacji jurysdykcji administracyjnej*, in: *Kierunki rozwoju jurysdykcji administracyjnej*, eds. M. Kruś, L. Staniszevska, M. Szewczyk, Warszawa 2022; cf. M. Sakowska-Baryła, *Czy używanie sztucznej inteligencji stoi w sprzeczności z podstawowymi oczekiwaniami wobec procedur ochrony*

The goal of this study is to analyze and assess (through utilizing the dogmatic method) the basis for automated handling of administrative cases in the context of Article 14 of the Administrative Procedure Code.<sup>4</sup> The definition and scope of administrative procedure automation, the doubts in interpretation regarding the acceptability of handling cases through automated decision making and the possible consequences of this provision for the procedural rights of an individual as well as the postulates for changes will all be briefly considered in the study.

### 1. The concept and scope of automation in the administrative procedure

The automation is understood as “utilizing devices which take over certain human cognitive, intellectual and decision-making actions, until now performed by a human being operating an object (e.g. a machine tool, an aeroplane, a bank) or performing creative work (e.g. designing, construction works, learning), for the purpose of gathering and processing information.”<sup>5</sup> Contemporarily automation is usually based on using computers and inherently related information-communication techniques, including the techniques utilizing algorithmic data processing. It is a phenomenon common in operations of administrative bodies.

However, the degree of automation of public administration bodies may be related to various displays of these operations. Firstly, we should indicate the factographic systems covering public registers and other public databases which act as sources of appropriately sorted data furnished with search and browse functions which facilitate an administrative body in determining factual state of affairs, the catalogue of involved parties (participants of the proceedings) and their contact details and thus facilitate carrying out jurisdictional proceedings or issuing certificates. Secondly, the work of an official is characterized by the increasing importance of legal information search systems, including databases of legal acts and judicial rulings, which are helpful in determining the legal status of a case. Thirdly, automation largely concerns the communication systems related to electronic delivery of documents (e.g. through using e-PUAP or delivering documents to the electronic delivery address entered into the electronic addresses database) or deliveries made

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*danych osobowych?*, in: *Prawo sztucznej inteligencji i nowych technologii*, eds. B. Fischer, A. Pązik, M. Świerczyński, Warszawa 2021.

<sup>4</sup> The Act of 14 June 1960 – the Administrative Procedure Code, consolidated text: Journal of Laws [Dziennik Ustaw] 2023 item 775 as amended.

<sup>5</sup> <https://encyklopedia.pwn.pl/haslo/automatyzacja;3872577.html> [access: 3.01.2023].

to an account within a computerized information system and thus ensures implementation of the principle of active participation of a party in the proceedings or the principle of convincing through utilizing modern communication tools. However, among the Decision Support Systems (DSS) we may also count the automated resolution systems based on algorithmic administrative decision making, i.e. issuing a decision which is generated automatically by a computerized information system.<sup>6</sup> The last aspect rises particular doubts regarding adopting a subjective (related to the instrumental role of a machine as a tool utilized by a human and in the same breath a component of the office providing services) or subject (related to effecting legal actions by a machine as a subject of law) theory of utilizing automatic resolution systems.<sup>7</sup>

The displays of automation of a process may be observed in the administrative proceedings' initiation stage (notification); investigation stage (summons); resolution stage (automated decision making) as well as irrespectively of the stage of proceedings (proof of submission, proof of receipt, official acknowledgement of receipt) or outside of a jurisdictional proceedings (certificates).

Therefore utilizing processes of an automated data processing system under administrative procedures is characterized by diversity and its multi-aspect character. These processes may refer to the issues of communication between an administrative body and a party to the proceedings or facilitate determining the factual or legal state of a case as well as aid an individual in obtaining a confirmation of factual or legal state. In the listed fields utilizing automated techniques should guarantee security and certainty of applying the law as well as objectivity and diligence of data processing. However, the auxiliary and secondary character of this aspect of administrative operations' automation as a tool assisting an administrative body in handling cases is certain. The greater dilemmas are evoked by the concept of utilizing automation directly for adopting resolutions in cases, i.e. the so called algorithmic decision making, or issuing decisions through the use of 'artificial intelligence.' Subjecting these processes to 'machine thinking' and bypassing the existing role of a natural person acting as a guardian of an administrative body or a person authorized to make a decision on

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<sup>6</sup> Cf. W.R. Wiewiórowski, *Systemy wspomaganie decyzji i systemy automatycznego rozstrzygnięcia*, in: G. Wierczyński, W.R. Wiewiórowski, *Informatyka prawnicza*, Warszawa 2016, p. 85.

<sup>7</sup> See: G. Sibiga, M. Maciejewski, *Automatyzacja w nakładaniu administracyjnych kar pieniężnych*, in: *Administracyjne kary pieniężne w demokratycznym państwie prawa*, ed. M. Błachucki, Warszawa 2015, pp. 73 ff.; G. Sibiga, W. Wiewiórowski, *Automatyzacja rozstrzygnięć i innych czynności w sprawach indywidualnych załatwianych przez organ administracji*, in: *Informatyzacja postępowania sądowego i administracji publicznej*, ed. J. Gołaczyński, Warszawa 2010, pp. 231 ff.; G. Sibiga, *Stosowanie technik informatycznych w postępowaniu administracyjnym ogólnym*, Warszawa 2019, p. 40.

the behalf of an administrative body brings forth a number of dilemmas regarding securing legal rights of an individual, procedural guarantees, wording and construction of an administrative act or administrative power. Verifying whether this is a real problem in the context of the domestic administrative procedural law requires analyzing provisions of the code.

## **2. New wording of the principle of written form under the Administrative Procedure Code**

Article 14 of the Administrative Procedure Code in its wording adopted on 5 October 2021 as a result of the amendment effected through the Act of 18 November 2020 on electronic deliveries<sup>8</sup> is of particular importance for the issues discussed herein. The principle of written form expressed in this provision was modified; previously the principle referred to handling cases in written form or in the form of an electronic document, in the understanding of the Act of 17 February 2005 on the IT development of the bodies performing public tasks,<sup>9</sup> delivered through electronic communication means as two equivalent forms of administrative actions<sup>10</sup>. Consistently with the new wording cases are to be handled and concluded in writing in a paper form or in an electronic form. The amendment to Article 14 of the Administrative Procedure Code was not restricted to the issues which can be considered as directly related to service by electronic means, including the will to put the terminology matrix in order. In the added paragraphs 1b and, in particular, 1c the legislator referred to the issue of utilizing specific techniques related to development of IT technology for handling cases under administrative proceedings. Consistently with Article 14 § 1b of the Administrative Procedure Code: “cases can be handled with the use of automatically generated missives affixed with a qualified electronic seal of an appropriate body of public administration [...]”. In turn, in light of Article 14 § 1c of the Administrative Procedure Code, cases can be handled through online services made available by public administration bodies following certification of a party to the proceedings or other participant of the proceedings in the manner determined in Article 20a Section 1 or 2 of the IT development act. Analogous regulations were projected in the amended Article 126 § 2 and § 3 of the

<sup>8</sup> Consolidated text: Journal of Laws 2023 item 285 as amended.

<sup>9</sup> Consolidated text: Journal of Laws 2023 item 57 as amended (hereinafter: the IT development Act).

<sup>10</sup> See: M. Jachowicz, M. Kotulski, *Forma dokumentu elektronicznego w działalności administracji publicznej*, Warszawa 2012, p. 88.

Tax Ordinance.<sup>11</sup> The wording and contents of Article 14 § 2 of the Administrative Procedure Code were, in turn, not modified.

Both regulations, § 1b and 1c, despite appearing successively, do not concern the subjectively equivalent “manner of handling cases.” Their essence and scope of applying IT techniques are also different. Handling cases through online services primarily pertains to the manner of communication between a body and a participant of proceedings. In this context it may relate to the act of using public e-services consisting of downloading a certificate or submitting an application for initiation of proceedings and, subsequently, downloading the issued decision in an electronic form. This legal basis corresponds to the administrative bodies utilizing IT systems designed for handling particular specific cases (e.g. Tax Portal, e-Tax Office, PUE ZUS) after authorizing a party to or a participant of the proceedings within an IT system in the manner defined in Article 20a Section 1 or Section 2 of the IT development act. In practice, utilizing online services will with the greatest frequency relate to automatic generation of missives (e.g. delivery receipts, certificates) discussed in Article 14 § 1b of the Administrative Procedure Code. However, importantly the phrase “handling cases with use of automatically generated missives,” consistently with the grammatical understanding, exceeds using only the specified technique of handling cases and may also cover the form in which cases are handled which in theory could consist of an automated decision. The far-reaching assertion which permits issuing automatically (algorithmically) generated decisions, also known as automated administrative acts,<sup>12</sup> on the basis of Article 14, § 1b of the Administrative Procedure Code merits and requires more expansive analysis. However, I do not perceive legal solutions regarding handling cases through use of automatically generated missives or online services as a deviation from the principle of written form expressed in Article 14 § 1a but instead as the modality of said principle referring to missives in electronic form.<sup>13</sup>

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<sup>11</sup> The Act of 29 August 1997 – Tax ordinance, consolidated text: Journal of Laws 2022 item 2651 as amended (hereinafter: Tax ordinance).

<sup>12</sup> See: I. Gontarz, *Automatyczny akt administracyjny – postulaty de lege ferenda w zakresie ogólnych ram prawnych*, in: *Skuteczność w prawie administracyjnym*, ed. C. Martysz, 2022 [LEX database].

<sup>13</sup> Unlike B. Adamiak according to whom: “The act on service by electronic means (Parliamentary Document No. 239) introduces the admissibility of departure from the general principle of written form realized through preserving missives in paper or electronic form in favour of other, simplified form of creating missives which departs from the requirement of preserving a missive in an electronic form,” B. Adamiak, *Kodeks postępowania administracyjnego. Komentarz*, 2021 [Legalis database], Commentary on Article 14, point 10.

### 3. Handling affairs through utilizing automatically generated missives – interpretation dubitations

The phrase “Cases can be handled through using automatically generated missives” contained in Article 14 § 1b of the Administrative Procedure Code is not clear. The following aspects rise doubts in particular: does the provision covers jurisdictional proceedings or the proceedings concerning issuing certificates?; does the provision refer to handling cases through resolution regarding legal situation of an individual or the actions taken during proceedings?; can an administrative decision generated automatically serve as a missive when handling cases?; can Article 14 § 1 b of the Administrative Procedure Code serve as an independent process basis for issuing this type of resolutions? Wishing to determine the scope for applying this regulation we should in the first place reconstruct legislator’s understanding of terms which comprise the adopted norm such as, a) a (administrative) case; b) resolving (and handling) a case; c) the definition of an automatically generated missive or d) using automatically generated missives for resolving (handling) cases.

A) Owing to rooting the analyzed regulation in the Administrative Procedure Code we should relate the term ‘case’ to the cases handled under administrative proceedings, i.e. ‘administrative cases.’ The existence of an administrative case (and in consequence, resolving/handling it) is being treated as one of the most important axioms of administrative proceedings which serves as a focus for the essence of the administrative procedure: a singular, unique, individual and specific relation between a fact and the law which always presents an opportunity for substantiation and applying a material legal law norm as a result of carrying out jurisdictional proceedings.<sup>14</sup> The scope of these proceedings is defined by Article 1, point 1 and 2 of the Administrative Procedure Code through combining it with the proceedings carried out before public administration bodies under appropriate cases individually resolved through a decision or handled silently as well as with the proceedings before other state bodies and other entities if such entities are appointed by law or on the grounds of the arrangements concerning handling such cases.

Accepting the aforementioned wording and understanding of a case in reference to Article 14 §1b of the Administrative Procedure Code would equate with recognizing this provision as referring to jurisdictional proceedings but simultaneously accepting that it does not apply to cases other than those handled under the proceedings specified in Article 1, point 1 and 2 of the Administrative

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<sup>14</sup> Cf. J. Zimmermann, *Aksjomaty postępowania administracyjnego*, 2017 [LEX database], Chapter III.

Procedure Code. Due to the fact that the justification for the amending act provides the action of issuing certificates as an example of applying the discussed provision the legislator, *in essence*, refers to the broader understanding of the concept of an administrative case. This understanding covers both “a set of factual and legal circumstances under which a state administration body applies an administrative law norm with the goal of establishing a legal situation on the part of the entity (entities) in the form of granting (not granting) the desired authorization or in the form of imposing a specific obligation”<sup>15</sup> as well as the subject of all proceedings before an appropriate administrative body to which provisions of the Administrative Procedure Code apply.<sup>16</sup> Thus among the discussed cases we may count the cases handled under jurisdictional proceedings as well as other proceedings to which provisions of the Administrative Procedure Code apply (e.g. issuing certificates, processing complaints and applications).

B) In the discussed provision resolving cases through utilizing automatically generated missives and not managing and handling cases through such means is being emphasized. Therefore, in contrast to the contents of Article 14 § 1a of the Administrative Procedure Code which concern the principle of written form, utilizing this type of missives should pertain to the final stages of proceedings. Consistently with Article 104 § 1 of the Administrative Procedure Code the basic form of resolving a case is issuing a decision which concludes the case in its entirety or in part in terms of case’s essence or a decision which concludes the case in a given instance (e.g. a decision remitting the case). Another legally admissible manner of resolving a case is resolving a case silently or through approved administrative settlement. Under the assumption of the legislator utilizing broader understanding of a term ‘case’ a case may be also resolved through other means, e.g. by issuing a certificate under the circumstances stipulated in Article 217 of the Administrative Procedure Code.

Applying automatically generated missives solely to the final stages of a case would exclude the possibility of applying these missives during the proceedings if such missives could serve handling and resolving a case. Doing so appears to not be justified in the context of electronic delivery receipts which are automatically generated by a computerized IT system under which a given public e-service is being made available at different stages of the proceedings. The broad understanding of the phrase “resolving cases through using automatically generated

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<sup>15</sup> W. Dawidowicz, *Zarys procesu administracyjnego*, Warszawa 1989, p. 8.

<sup>16</sup> For more on the issue see: A. Wilczyńska, *Sprawa z zakresu administracji publicznej na tle pojęć sprawy administracyjnej i sprawy cywilnej – zagadnienia teoretycznoprawne*, Zeszyty Naukowe Sądownictwa Administracyjnego 2008, no. 5, pp. 83 ff.; T. Kielkowski, *Sprawa administracyjna*, Kraków 2004.



missives” as a phrase referring to all missives issued under proceedings, i.e. the missives which are to be used in handling and concluding a case and thus resolving a case, is evidenced by the contents of the justification for the draft discussing developing and implementing “the foundation for automatically handling and resolving cases through utilizing a qualified electronic seal of an administrative body” under Article 14 § 1b of the Administrative Procedure Code which would enable “automatically issuing certificates and confirmations of the actions taken within the framework of online services.” However, in the light of lack of uniformity of the phrases used between the individual editorial units of Article 14 of the Administrative Procedure Code assuming that the legislator is in this context acting rationally is disputable (§ 1a discusses handling and resolving a case in writing separately).

- C) In the analyzed provision the legislator uses the term “automatically generated missives” without defining it. It appears that the term means a particular, qualified form of a missive preserved in an electronic form (consistently with the principle of the written form). Among automatically generated missives I count these electronic documents which are created without direct involvement or with minimal involvement of a human being in the process of generating contents of a given document and which are a result of a computerized IT system downloading and appropriately compiling data, in particular on the basis of the data contained in public resources, registers or submitted by an applicant.<sup>17</sup> The contents of such automatically generated missive are not directly created by a human being but instead created by a computerized IT system through utilizing appropriate data resources, missive templates and algorithms determining type of contents on the basis of the data considered in a given case.

In the light of vagueness of regulations this provision could pertain to all types of missives created by an administrative body over the course of proceedings (jurisdictional proceedings or other proceedings regulated by codices), including decisions. It would mean indirectly introducing into the Polish legal order the so called automated administrative act. As the subject literature indicates “an automated administrative act is nothing else but an administrative act (a decision or a ruling) generated by using or through the process of automated decision making.<sup>18</sup> This process is characterized by a limited involvement of an official whose role consists of verifying correctness of the produced resolution

<sup>17</sup> M. Wilbrandt-Gotowicz, in: *Doręczenia elektroniczne. Komentarz*, ed. M. Wilbrandt-Gotowicz, Warszawa 2021, p. 440.

<sup>18</sup> The so called ADM – *automated decision making system* or the *algorithmic decision making*.

and in extreme cases is only ritualistic in character and boils down to confirming the resolution by affixing official's signature.<sup>19</sup> However, it is prudent to mention that on the basis of Article 14 § 1b of the Administrative Procedure Code the provisions regarding affixing a signature of a public administration official to a missive do not apply to automatically generated missives. Such missives should instead bear a qualified electronic seal of a body. In turn, under Article 107 § 1, point 8 of the Administrative Procedure Code, one of the obligatory elements of a decision is a signature indicating name, surname and official station of an employee of the administrative body authorized to issue the decision.<sup>20</sup>

Determining whether the legislator intended to introduce automated decision making is difficult. The justification of the draft lacks any direct reference to this issue. In the part referring to the contents of Article 14 § 1b the proposed regulation is justified solely through the need for developing "the foundation for automated handling and resolving of cases through utilizing qualified electronic seal of an administrative body."<sup>21</sup> Therefore the concept of an automatically generated missive was to refer primarily to the missives of non-authoritative character such as certificates and delivery receipts. However, such approach to an automatically generated missive which is to be used by a body to resolve a case does not fit in with the definition of a decision (contained in Article 104 of the Administrative Procedure Code) as an act which concludes and resolves a case when issued by an appropriate body.

- D) Further doubts concern establishing the relation between an automatically generated missive and the act of resolving a case. It is so because Article 14 § 1b of the Administrative Procedure Code does not *explicitly* state that the cases can be resolved with an automatically generated missive (similarly to Article 104 of the Administrative Procedure Code 14 § 1b refers to a decision) but "with use of automatically generated missives." Such wording supports the possibility of utilizing automatically generated missives at all stages of proceedings (and not only jurisdictional proceedings). Simultaneously this wording emphasizes the instrumental character of an automatically generated missive as a tool for resolving a case – a fact which would lead to the assertion that these missives are only, due to the manner of their creation (through use of algorithmic systems), a specific form of missives commonly utilized by an administrative body. These

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<sup>19</sup> I. Gontarz, *Automatyczny akt administracyjny...*

<sup>20</sup> In reference to provisions see Article 124 § 1 of the Administrative Procedure Code.

<sup>21</sup> The justification for the Act of 18 November 2020 on electronic deliveries, p. 91.

missives can include summons, notifications, protocols, transcripts, certificates but also administrative acts.

In this context a concept emerged in the doctrine indicating that the possibility of resolving a case automatically covers “solely the stage of externalizing the contents of the operations of resolving a decision, a ruling, a certificate.”<sup>22</sup> According to authors it would mean that it is possible to issue an administrative decision (an act understood as creating a material or digital document) in the form of an automatically generated missive whereas it would be still impossible to carry out proceedings in an automated manner, without human involvement.<sup>23</sup>

The above opinion is contested. The view that the contents of Article 14 § 1b of the Administrative Procedure Code do not allow for carrying out the entirety of proceedings without human involvement, i.e. in a fully automated manner, is not questionable as a result of the necessity of adhering to the general principles of the proceedings. However, I do not agree with the view that automation as understood under Article 14 § 1b should pertain solely to the externalization stage regarding contents of the resolution. It is so because the issue does not consist of introduction of a new manner of communication (including the communication regarding resolution) effected through and online service as is the case under Article 14 § 1c nor a new manner of resolving cases (which can be effected only in paper or electronic written form, in exceptional circumstances orally or in a different manner indicated in Article 14 § 2 of the Administrative Procedure Code). The essence of resolving a case through utilizing an automatically generated missive consists of creating contents of the resolution through automatic process, i.e. by generating the missive through a computerized IT system. In the case of a decision, which itself is an act of applying law, specifying the legal situation of an individual under resolution proceedings would be a result of algorithmic application of law. Therefore this provision does not pertain solely to externalization of the resolution but also to the manner in which the resolution is reached. Therefore I would express scepticism towards relating the automatically generated character of the decision with approaching the decision solely as a missive utilized to resolve a case and therefore solely as a tool for externalization of the manner in which a case is being handled and resolved instead of treating generating missives automatically as an act of applying law. Doing so would constitute an unjustified departure from

<sup>22</sup> See: B. Adamiak, *Kodeks...*, Commentary on Article 14, point 10; M. Wierzbowski, J. Róg-Dyrda, *Szanse, zagrożenia i bariery prawne związane z wykorzystaniem sztucznej inteligencji w kontekście zasad postępowania administracyjnego*, in: *Administracja w demokratycznym państwie prawa. Księga jubileuszowa Profesora Czesława Martysza*, ed. A. Matan, Warszawa 2022, p. 800.

<sup>23</sup> M. Wierzbowski, J. Róg-Dyrda, *Szanse...*, p. 799.

the classical dogma of an administrative act as an act authoritatively shaping legal situation of an individual.

This does not change the fact that adopting an automatically generated resolution would have to be preceded with introduction of the data which describe the factual state of a given case (possibly partially 'downloading' the data from other existing databases) by an official handling a given case and by developing an algorithm for generating missives pertaining to a given type of cases. The first action is principally personal in character – individualistic and appropriate for a given case. The second action would require previously preparing a decision-making model for the specific type of cases, an action which according to myself would relate to the necessity of establishing a legal basis in reference to automatic issuance of an administrative act (instead of issuance of only certificates) in a given type of cases.

The phrase regarding resolving a case not with an automatically generated missive but 'through use of automatically generated missives' supports the subject theory and not the subjective theory regarding utilizing automated resolution systems. Under such approach an automatic system is not being treated as a legal body performing a legal action but as a tool utilized by a human and, at the same time, as a component of the office rendering services for a body and operating on the behalf of the body.<sup>24</sup>

#### **4. Possible consequences of provisions of Article 14 of the Administrative Procedure Code in reference to handling cases through use of automatically generated missives**

As a result of performing a grammar interpretation of Article 14 § 1b of the Administrative Procedure Code we may arrive at the conclusion that in theory the range of applications of this provision is extensive. It is so because the language scope covers resolving cases which are, in principle, resolved through issuing decisions. Only the broad understanding of terms 'case' and 'resolving a case' opens this regulation to simplified proceedings, including issuing certificates and the documents produced over the course of proceedings such as e.g. summons, delivery receipts or notifications.

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<sup>24</sup> For more on the issue see: G. Sibiga, M. Maciejewski, *Automatyzacja...*, pp. 73 ff; G. Sibiga, W. Wiewiórowski, *Automatyzacja...*, pp. 231 ff.

Ascertaining that the algorithmic decision making was introduced into the Administrative Procedure Code would mean a revolutionary change. It would not be an isolated case in Europe because regulations concerning an automated administrative act are in effect in e.g. Norway, Germany or France.<sup>25</sup> Unsurprisingly, contradictory assessment regarding the scope of application and implications of the introduced regulation appeared in Polish doctrine.<sup>26</sup> It is, however, unquestionable that the legislator did not analyze in depth the potential consequences of covering automated decision making under Article 14 § 1b and, perhaps, these consequences were unintentional.

The Act of 8 June 2022 on altering certain acts with the goal of automating certain cases handled by the National Revenue Administration<sup>27</sup> which operates on the basis of analogous contents of Article 126 of the Tax ordinance fits in with this trend. The provisions of the National Revenue Administration Act of 16 November 2016<sup>28</sup> and the provisions of the ordinance of the Minister of Finances of 6 July 2022 regarding the electronic Tax Office<sup>29</sup> amended by the aforementioned act project that the cases consisting of issuing automatically generated ZAS-DFU and ZAS-DF certificates indicated in Article 306i § 1 of the Tax ordinance are handled through the electronic Tax Office (see: Article 35b § 6 of the National Revenue Administration Act). Issuing automatically generated missives by the head of the NRA covers only the certificates indicated hereinabove and the official delivery and reception receipts (see: Article 35d § 5 and 35e § 11 of the NRA Act). Thus it does not pertain to automated administrative acts.<sup>30</sup>

<sup>25</sup> See: I. Gontarz, *Automatyczny akt administracyjny...*; F. Geburczyk, *Automated Administrative Decision-Making under the Influence of the GDPR – Early Reflections and Upcoming Challenges*, *Computer Law & Security Review* 2021, vol. 41, pp. 10–15; E. Weitzenboeck, *Simplification of Administrative Procedures through Fully Automated Decision-Making: the Case of Norway*, *Administrative Sciences* 2021, no. 11, pp. 149 ff.

<sup>26</sup> See: B. Adamiak, *Kodeks...*, Commentary on Article 14, point 10; M. Wierzbowski, J. Róg-Dyrda, *Szanse...*, pp. 799 ff.; I. Gontarz, *Automatyczny akt administracyjny...*

<sup>27</sup> *Journal of Laws* 2022 item 2707.

<sup>28</sup> *Journal of Laws* 2023 item 615 as amended (hereinafter: NRA Act).

<sup>29</sup> *Journal of Laws* item 1426.

<sup>30</sup> See also: the regulation covering the automatically generated notification regarding the threat of disclosure in the Register of Public Liabilities or the written warning issued to a debtor before commencement of debt enforcement which are indicated in Article 15 § 1b and Article 18c § 1a of the act of 17 June 1966 on enforcement proceedings (consolidated text: *Journal of Laws* 2022 item 479 as amended) or certain data generated automatically in the Register of School and Education Institutions as well as in the Educational Information System discussed in Article 7 Section 1a, Article 35 Section 4, Article 44 Section 4, Article 58 Section 2, Article 78 Section 3 and Article 92 of the Act of 15 April 2011 on the Educational Information System (consolidated text: *Journal of Laws* 2022 item 2597 as amended).

Despite the results of the grammar interpretation of Article 14 § 1b of the Administrative Procedure Code it is improper due to the far reaching consequences of such interpretation for rights of an individual to ascertain that the legislator covered with this regulation all types of decisions without concern for limiting the scope of cases, types of acts or automation qualification criteria. Such extensive application is not projected in justification of the draft and does not fit in with the existing practice referring the specific provisions from the field of automation of the NRA operations to issuing certificates and delivery receipts. The admissibility of issuing automated administrative acts without existence of specific regulations taking into consideration their automated character would result in a major threat of violating procedural rights stipulated in the provisions of the Constitution and the general provisions of administrative procedure, e.g. the principle of considering public interest and legitimate interest of an applicant, principles of convincing, developing trust in public authorities, legality, two-stage procedures, objective truth or active participation of a party in proceedings. This threat is noticeably exacerbated in reference to the cases which are resolved on the basis of an administrative decision (in its broad understanding).

Therefore, despite the identifiable grammar interpretation of Article 14 § 1b of the Administrative Procedure Code under the assumption of rationality of the legislator, the necessity exists of referring to systemic and purposive interpretation limiting application of this provision in regards to decisions due to lack of broader regulations under the Administrative Procedure Code or specific provisions. Under the decision-making model of applying the law a decision should reflect both the act of determining a factual state as well as legal state of a case, subsumption and the act of determining legal consequences of the determined factual state. Even in the case of human involvement in determining factual and legal state of a case algorithmic decision issuance should meet the procedural guarantees of the involved parties, also in reference to directly shaping contents and justification of a resolution. Possible restrictions in this field should directly result from the act and adhere to the principle of proportionality. Therefore we cannot assume that if a body is appropriate for resolving a given case on the basis of the substantive law provisions said body can resolve this case also through use of a decision generated automatically on the basis of Article 14 § 1b of the Administrative Procedure Code. The manner in which a resolution is generated also should not be arbitrary. Therefore the values rooted in constitutional provisions and general provisions of administrative procedure should restrict bodies from the potential abuse of automatically generated missives through taking into consideration not only the linguistic meaning and interpretation of this provision but also the systemic and purposive interpretation.

The legal norm objectively restricting the possibility of issuing a decision automatically is Article 22 Section 1 of the GDPR.<sup>31</sup> Consistently with its contents each person whose personal details are being processed is entitled to not be submitted to a decision based solely on the automated processing of data, including profiling, which results in legal consequences or significantly influences a person in a different manner. One of the exceptions is the situation where an automated decision is permitted under the law of the European Union or its member state to which controller of the data is bound and which projects appropriate protection measures for rights, freedoms and legitimate interests of a person to which the data pertain. Therefore not only the requirement for a regulation was established in the national and European Union provisions regarding the capacity of appropriate bodies for issuing decisions through automated decision making but also it has been established that these regulations should project appropriate protective measures. The contents of Article 14 § 1b of the Administrative Procedure Code do not meet these requirements. In the light of the current lack of specific provisions limiting application of automatically generated decisions and projecting adequate protective measures Article 14 § 1b of the Administrative Procedure Code cannot serve as a basis for handling and resolving a case under jurisdictional proceedings utilizing automatically generated decisions.

## Conclusion

In interpreting Article 14 § 1b of the Administrative Procedure Code we must take into consideration the value of rooting provisions in laws which materialize as the constitutional provisions and general provisions of the administrative procedure. Thus this provision should not be interpreted without taking into consideration its systemic and functional interpretation. Thus Article 14 § 1b of the Administrative Procedure Code should not be perceived as an adequate legal basis for resolving cases through an automatically generated decision. Adopting a different stance would result in significantly weakening procedural guarantees, the risk of violating legal rights and creating a situation in which freedom of administration in algorithm-

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<sup>31</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.05.2016, p. 1.

mically shaping legal standing of an individual in each case would exceed the state legal regulations and the principle of legality.

Utilizing automatically generated missives, including administrative acts, in resolving cases under administrative proceedings may be undeniably beneficial from the point of view of procedural economy, consolidating the uniform case law, bolstering the principles of legal certainty and equality before the law. Therefore it is beneficial that the legislator noticed the opportunity for modernizing administrative operations through automating certain actions but doing so requires more comprehensive reflection and adequate legal framework.

Introduction of the possibility of substituting a human with a computerized IT system in the process of developing contents of a resolution should be preceded with the deliberations concerning redefining classical understanding of an administrative act, the analysis of the dilemmas regarding adopting subject or subjective theory of applying an automated resolution system and, primarily, with the considerations regarding the scope of admissibility of resolving cases with use of automatically generated missives and adequate procedural guarantees for the involved parties. In particular we should analyze in what types of cases (routine, simple) introducing such mechanism would be desirable; can this mechanism cover cases based on a discretionary decision of an administrative body; how the regulation concerning developing computerized IT systems for automated case resolution, including the algorithms for resolving particular types of cases, should be formed; how to ensure adequate level of procedural guarantees (incl. appeal avenues), including the scope within the framework of which possible departures from the standard for general proceedings provisions could be recognized as consistent with the constitutional interpretation of the principle of proportionality?

Furthermore, I advocate for introduction of regulations regarding automated decision making (and resolutions) in administrative proceedings (including a definition of automated administrative proceedings) into the Administrative Procedure Code as a separate type of jurisdictional proceedings with reference to specific provisions and adjusted consistently with the principle of proportionality of procedural guarantees of an individual and the standards for automatically generated decisions and proceedings concluding with making such decisions (e.g. modelled after simplified proceedings). Developing a cohesive model regulation on the codex level would enable opening Polish administrative procedure to the modern IT technologies and simultaneously limiting the threat of dispersing and scattering regulations, at least in reference to the form as crucial for the legal standing of an individual as an administrative act. Through specific provisions a legislator could enable utilizing an automated administrative act in specific types of cases.



The domestic regulations should at the same time meet the requirements of Article 22 of the GDPR concerning appropriate protective measures for individuals. Possibly this should be accompanied by establishing a judicial control over automatically generated administrative acts which would ensure broader scope for hearing of evidence and competences regarding substantive resolution performed by administrative courts. The works on standardization of the Polish law agenda should also take into consideration the solutions from the field of automating administrative procedure implemented in other countries – an issue consciously left aside in this study do to its constraints.

*Translated by Monika Zielińska*

## Bibliography

- Adamiak B., *Kodeks postępowania administracyjnego. Komentarz*, 2021 [Legalis database].
- Dawidowicz W., *Zarys procesu administracyjnego*, Warszawa 1989.
- Doręczenia elektroniczne. Komentarz*, ed. M. Wilbrandt-Gotowicz, Warszawa 2021.
- Geburczyk F., *Automated Administrative Decision-Making under the Influence of the GDPR – Early Reflections and Upcoming Challenges*, Computer Law & Security Review 2021, vol. 41.
- Gontarz I., *Automatyczny akt administracyjny – postulaty de lege ferenda w zakresie ogólnych ram prawnych*, in: *Skuteczność w prawie administracyjnym*, ed. C. Martysz, 2022 [LEX database].
- <https://encyklopedia.pwn.pl/haslo/automatyzacja;3872577.html>. [access: 3.01.2023].
- Jachowicz M., Kotulski M., *Forma dokumentu elektronicznego w działalności administracji publicznej*, Warszawa 2012.
- Kielkowski T., *Sprawa administracyjna*, Kraków 2004.
- Koulu R., *Human Control over Automation: EU Policy and AI Ethics*, European Journal of Legal Studies 2020, vol. 12, no. 1.
- Sakowska-Baryła M., *Czy używanie sztucznej inteligencji stoi w sprzeczności z podstawowymi oczekiwaniami wobec procedur ochrony danych osobowych?*, in: *Prawo sztucznej inteligencji i nowych technologii*, eds. B. Fischer, A. Pązik, M. Świerczyński, Warszawa 2021.
- Sibiga G., *Stosowanie technik informatycznych w postępowaniu administracyjnym ogólnym*, Warszawa 2019.
- Sibiga G., Maciejewski M., *Automatyzacja w nakładaniu administracyjnych kar pieniężnych*, in: *Administracyjne kary pieniężne w demokratycznym państwie prawa*, ed. M. Błachucki, Warszawa 2015.
- Sibiga G., Wiewiórowski W., *Automatyzacja rozstrzygnięć i innych czynności w sprawach indywidualnych załatwianych przez organ administracji*, in: *Informatyzacja postępowania sądowego i administracji publicznej*, ed. J. Gołaczyński, Warszawa 2010.

- Weitzenboeck E., *Simplification of Administrative Procedures through Fully Automated Decision-Making: the Case of Norway*, *Administrative Sciences* 2021, no. 11.
- Werbach K., *Introduction: An Endless Spiral of Connectivity?*, in: *After the Digital Tornado. Networks, Algorithms, Humanity*, ed. K. Werbach, Cambridge 2020.
- Wierzbowski M., Róg-Dyrda J., *Szansa, zagrożenia i bariery prawne związane z wykorzystaniem sztucznej inteligencji w kontekście zasad postępowania administracyjnego*, in: *Administracja w demokratycznym państwie prawa. Księga jubileuszowa Profesora Czesława Martysza*, ed. A. Matan, Warszawa 2022.
- Wiewiórowski W.R., *Systemy wspomaganie decyzji i systemy automatycznego rozstrzygania*, in: G. Wierczyński, W.R. Wiewiórowski, *Informatyka prawnicza*, Warszawa 2016.
- Wilbrandt-Gotowicz M., *Zasada efektywnej ochrony sądowej na tle zjawisk europeizacji, automatyzacji i pragmatyzacji jurysdykcji administracyjnej*, in: *Kierunki rozwoju jurysdykcji administracyjnej*, eds. M. Kruś, L. Staniszevska, M. Szewczyk, Warszawa 2022.
- Wilczyńska A., *Sprawa z zakresu administracji publicznej na tle pojęć sprawy administracyjnej i sprawy cywilnej – zagadnienia teoretycznoprawne*, *Zeszyty Naukowe Sądownictwa Administracyjnego* 2008, no. 5.
- Zimmermann J., *Aksjomaty postępowania administracyjnego*, 2017 [LEX database].