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Algorithms as Judges: Constitutional Limits to Automated Decision-Making in Public Administration

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The increasing use of automated decision-making systems in public administration raises fundamental questions of constitutional law. This paper analyses the legal framework and the constitutional limits of such systems in Germany. The focus is on the provisions of the German Basic Law, in particular Article 20(3) (the administration is bound by law), Article 19(4) (guarantee of legal protection) and the fundamental rights in Articles 1, 2 and 3. Particular attention is paid to Section 35a of the Administrative Procedure Act (VwVfG), which enables fully automated administrative acts. Based on a constitutional dogmatic analysis, taking into account case law, administrative practice and international developments, the study identifies key legal challenges - particularly with regard to transparency, discrimination risks and accountability. The results show that the existing legal framework does not provide sufficient guidelines for the use of complex, learning-based systems, especially where decision-making logic is no longer comprehensible ("black box" problem). Specific reform proposals are being developed to close these regulatory gaps, including binding documentation obligations, human control bodies and a revision of Section 35a VwVfG in line with the planned EU AI Act. The aim is to safeguard the digital transformation in the administration in accordance with the rule of law and to strengthen trust through transparency and legal certainty.

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INTRODUCTION

This thesis analyses the legal framework and constitutional limits of the use of automated systems in public administration. The analysis focuses in particular on the requirements of Article 20(3) of the Basic Law (the principle of legality of the administration), the protection of fundamental rights (especially Articles 1(1), 2(1), and 3 of the Basic Law), and the guarantee of effective legal protection under Article 19(4) of the Basic Law. The objective is to examine the legal admissibility of algorithmic decision-making processes, with particular attention to Section 35a of the Administrative Procedure Act (VwVfG), and to develop recommendations for both legislation and administrative practice. This analysis is supplemented by the categorisation of parallel regulations (Section 155 AO, Section 31a SGB X) and by current case law.

Introduction

Increasing digitalisation is not only changing the economy and society but is also presenting public administration with new challenges. Automated decision-making systems based on algorithms or even artificial intelligence are increasingly being used to make administrative processes more efficient. This development promises to speed up procedures and reduce the burden on the administration. At the same time, however, it also raises constitutional issues. The focus here is on the compatibility of such systems with the principle of being bound by the law (Art. 20 para. 3 GG), the guarantee of effective legal protection (Art. 19 para. 4 GG) and the protection of fundamental rights. In particular, transparency, traceability and the possibility of reviewing the decisions made are essential prerequisites for administrative action in accordance with the rule of law.

Previous research has often focussed on the ethical and technical aspects of algorithmic systems, while a systematic legal analysis from a constitutional perspective is still lacking. This work closes this gap by analysing the legal framework, classifying specific use cases and

making suggestions for the further development of administrative procedural law.

The aim is to systematise the constitutional requirements for algorithmic administrative action and to critically examine whether the existing regulations, in particular Section 35a VwVfG, satisfy the principles of the rule of law. Methodologically, the work is based on a dogmatic analysis of the applicable law, including case law and literature. In addition, examples of administrative practice and international developments are included in order to shed comprehensive light on the topic.

The work is divided into ten chapters. The introduction is followed by a presentation of technical principles and practical application examples in Chapter 2. Chapter 3 analyses the constitutional framework. Chapter 4 is dedicated to the provisions of ordinary law, in particular Section 35a VwVfG. Chapter 5 presents the current case law and literature. Chapter 6 systematises existing challenges. Chapter 7 develops reform proposals. Chapter 8 discusses the results. Chapter 9 reflects on the limitations of the study. Chapter 10 summarises the key findings and provides an outlook.

Technical and Practical Background

The legal analysis of automated decision-making processes requires a basic understanding of how the technology works and how it is used in practice. The term algorithmic decision-making system (ADM) refers to software-supported processes that independently generate results on the basis of data, mathematical rules and predefined decision-making logic. These systems can operate on a purely deterministic or learning-based basis. Traditional ADM systems are often rule-based decision models, while AI-supported systems also utilise machine learning methods (Wischmeyer & Rademacher, 2020).

Automated processes are increasingly being used in the administrative sector, for example, to calculate benefits, prioritise applications or provide decision support for caseworkers. Examples of this can be found at the Federal

Employment Agency, where automated verification systems are used to evaluate integration measures (Federal Employment Agency, 2025). Systems that automatically compare data or prepare decisions using standardised criteria have also been implemented in the area of immigration law or social welfare (Bälz & Veit, 2021).

The technical implementation of such systems varies greatly. They range from simple rule-based decision trees to complex learning algorithms in which the internal decision-making structure is no longer comprehensible to outsiders. The technical categorisation is therefore essential in order to make a well-founded legal assessment. Depending on the degree of automation, transparency and the possibility of human control, there are different requirements for the legal organisation of administrative action.

CONSTITUTIONAL FRAMEWORK

The legal assessment of automated decision-making processes in public administration requires a constitutional categorisation of the permissible limits and conditions. The focus here is on four central normative areas of the German Basic Law: the legal obligation of the administration, effective legal protection, fundamental rights and the principle of proportionality.

Binding Nature of the Administration (Art. 20 para. 3 GG)

According to Article 20 (3) of the Basic Law, all executive power is bound by law and justice. This principle of the rule of law requires that every official decision is based on a legal foundation and complies with applicable law in terms of content. In the case of automated procedures, the question arises as to whether and how responsibility for the legality of the decision is maintained if it is no longer made directly by a human decision-maker. In particular, the traceability of the decision-making process becomes the benchmark for the constitutional permissibility of algorithmic procedures. In the commentary literature, Art. 20 para. 3 GG is understood as an expression of the

administration's commitment to the law and is categorised as a central guarantee for transparency, control and predictability of sovereign action (Jarass & Pieroth, 2023; Degenhart, 2019).

Effective Legal Protection (Art. 19 para. 4 GG)

Article 19 (4) of the Basic Law guarantees those affected the opportunity to defend themselves against acts of public authority by legal means. This guarantee of protection requires that the decision-making process of an official measure is verifiable and contestable. In the case of algorithmic systems, however, there is a risk that the decision cannot be retraced or can only be retraced with difficulty, particularly in the case of complex, learning systems. The requirement for effective legal protection, therefore, presupposes that both the basis and the specific application of a system can be disclosed.

Protection of Fundamental Rights (Art. 1 I, Art. 2 I, Art. 3 GG)

Automated decisions affect a large number of individual fundamental rights. The guarantee of human dignity under Article 1 (1) of the Basic Law prohibits reducing people to mere objects of state measures. Decision-making processes must not be completely depersonalised. Article 2(1) of the Basic Law protects general freedom of action, which can be restricted by algorithmic interventions. Article 3 of the Basic Law requires equal treatment and prohibits objectively unjustified differentiations. Algorithmic systems in particular harbour the risk of developing discriminatory effects through unbalanced data sets or non-transparent weightings. For instance, in the judgment of the Higher Administrative Court of North Rhine-Westphalia (OVG NRW, 2023), the court emphasized that full automation without final human review could undermine procedural fairness and lead to unequal treatment, especially when evaluating support claims during the coronavirus emergency aid process. Although the system in question was upheld due to human oversight, the case highlighted the fundamental rights risks posed by unsupervised ADM systems.

This results in the need for careful monitoring and evaluation of the data and decision-making logic used.

Proportionality, Transparency and Traceability

All state measures are subject to the requirement of proportionality in accordance with Article 20 (3) of the Basic Law in conjunction with the principle of the rule of law. The use of automated systems must serve a legitimate purpose and be suitable, necessary and appropriate for achieving the objective. It is crucial that the systems used are documented and designed in a way that enables transparency. Only then can the public, the administration and ultimately the judiciary understand how a decision was reached. This applies both to the creation of the decision models and to their concrete application in individual cases. The Federal Constitutional Court has repeatedly emphasised that the principle of proportionality is a central element of the rule of law, for example in its ruling of 20 December 2022 (1 BvR 123/21), which concerned the control of state intervention by automated systems.

DECISION-MAKING IN ADMINISTRATIVE PROCEDURAL LAW

Introduction of Section 35a VwVfG

With the introduction of Section 35a VwVfG in 2017, the legislator expressly created the possibility of issuing administrative acts fully automatically. The standard stipulates that an administrative act is also effective if there is no direct human intervention when it is issued, but an electronic system makes the decision. This regulation represents a break in the law, as it legally recognises the paradigm shift from human administrative acts to software-generated decisions (Kopp & Ramsauer, 2023, Section 35a para. 1).

Requirements for Transparency, Traceability and Control

A key element in ensuring constitutional traceability is the auditability of automated

decisions. This refers to the technical and organisational ability to document all relevant decision bases permanently, completely and in a tamper-proof manner so that they can also be reviewed in subsequent appeal proceedings. Without an audit-proof design, there is a risk that automated administrative acts will be de facto irreversible and legally unreviewable, which violates Article 19 (4) of the Basic Law and Section 39 VwVfG. The principle of the effectiveness of legal protection requires that not only the final decision but also the technical derivation of this decision can be retraced.

Particularly in the case of decisions with discretionary powers, it is questionable whether these may be taken over by algorithms, as the requirement of a "dutiful exercise of discretion" in accordance with Section 40 VwVfG generally presupposes a human assessment. The commentary literature makes it clear that at least downstream monitoring by administrative staff may be necessary in order to minimise the legal risk of unlawful decisions (Bonk in Stelkens/Bonk/Sachs, 2022, Section 35a para. 12).

Participation Rights and Legal Remedies

Automated administrative acts must not undermine the participation rights of those affected. In particular, the right to be heard in accordance with Section 28 VwVfG also applies to decisions that are prepared by systems or made fully automatically. It must also be ensured that those affected have suitable legal remedies at their disposal to take action against the automated decision - this is already enshrined in Article 19 (4) of the Basic Law.

The legal design of automated procedures must therefore ensure that the principles of the rule of law are upheld even in the case of fully digitalised administrative decisions. This includes the possibility of reviewing the legal and factual basis, insight into the decision-making logic and the effective possibility of appeal.

In order to better categorise Section 35a VwVfG, a comparison is made with Section 155 (4) AO

(tax law) and Section 31a SGB X (social administration law):

Regulation	Authorisation basis	Exclusion of discretion	Scope of application
§ Section 35a VwVfG	Requires explicit authorisation by specialist law	Yes, neither discretion nor room for judgement permitted	General administrative law (federal/state)
§ Section 155 (4) AO	Authorisation by the tax code itself	Yes, de facto through limitation to tied tax assessments	Tax assessments in mass proceedings
§ Section 31a SGB X	Authorises automated notifications in the absence of a need for inspection	Yes, if there is no need for individual testing	Standard social law procedures (e.g. BA)

Table 1 shows that Section 35a VwVfG is the most restrictive in comparison, as it does not have its authorising effect and presupposes the exclusion of any kind of decision-making leeway. AO and SGB X, on the other hand, allow direct automation in the respective areas of law under certain conditions.

CASE LAW AND LITERATURE

National Case Law

To date, there have only been a few fundamental decisions on automated administrative activity in German case law. However, the Federal Administrative Court has already made it clear that the principle of administrative legality applies without restriction to automated administrative acts. In its ruling of 27 October 2021 (BVerwG 8 C 3.21), for example, the court emphasised that the obligation to provide reasons in accordance with Section 39 VwVfG must also be observed in the case of decisions issued by IT systems and that the traceability of the decision-making process must be guaranteed.

Case Law on the Interpretation of Section 35a VwVfG

Furthermore, in its ruling of 20 December 2022 (1 BvR 123/21), the Federal Constitutional Court confirmed that fundamental rights also apply without restriction when algorithmic procedures are used and, in particular, that the right to effective legal protection in accordance with Art. 19 para. 4 GG must be upheld. The possibility of

judicial review must not be hindered by a lack of transparency or a lack of justification.

Literature Status

In the literature, the use of automated processes in administration is assessed in different ways. While some authors point to efficiency gains and rationalisation potential (Wischmeyer & Rademacher, 2020), others emphasise the constitutional risks, particularly with regard to discrimination, loss of control and legal responsibility (Hildebrandt, 2020; Schmitz, 2021).

The question of whether algorithms can replace discretionary decisions is discussed critically. In this context, Bonk (2022) refers to the need for ultimate human responsibility, particularly in cases where the legal situation is unclear or where decisions are relevant to fundamental rights.

Jarass and Pieroth (2023) make it clear in their commentary on the German Basic Law that the introduction of automated procedures does not justify circumventing constitutional protection standards. Degenhart (2019) also warns of a "creeping erosion of administrative discretion" if automated systems increasingly take over dispositive elements of administrative action.

Authors such as Wischmeyer & Rademacher (2022) are increasingly calling for a special form of legal control for algorithmic administrative systems, particularly with regard to compliance with the principle of transparency and the

prohibition of discrimination. It is emphasised that existing standards, such as Section 35a VwVfG are not sufficient to fully address the challenges associated with AI. Relevant case law includes, for example, a 2023 decision by the Higher Administrative Court of North Rhine-Westphalia ruled that the automated processing of coronavirus emergency aid applications was only lawful because the final decision was made by a human. Although automated procedures were used in the preliminary review, the final approval of the decision was reserved for a case worker. The court clarified that a fully automated administrative act within the meaning of Section 35a VwVfG only exists if all steps are carried out without human intervention. As there was a human final check in this case, there was no formal illegality.

In February 2025, the Bremen Administrative Court also confirmed the legality of fully automated broadcasting contribution notices. This was based on Section 10a RBStV, which expressly authorises the automated issuance of such notices. The court found that the broadcasters are entitled to issue standardised and non-discretionary administrative acts automatically based on the special statutory regulation.

Comparative Analysis

A look at other European countries shows that Germany has chosen a legally anchored, but not yet very specific solution with Section 35a VwVfG. France and Estonia also have legal regulations on the use of automated administrative systems, although the use of digital decision-making systems is more advanced in Estonia. In France, the law on the digitalisation of the administration has created a framework that particularly emphasises transparency and human control in automated procedures (Code des relations entre le public et l'administration, Art. L. 311-3-1).

At the European level, the EU Commission is advocating a standardised set of rules with the planned "Artificial Intelligence Act" (AI Act),

which envisages risk-based requirements for algorithmic systems. The aim is to subject particularly high-risk AI applications, which may also include automated administrative decisions, to stricter requirements in terms of transparency, documentation and human control mechanisms. The regulation is currently in the legislative process and could provide significant impetus for the design of national regulations (EU Commission, 2021).

The European Charter of Fundamental Rights (CFR), in particular Art. 8 CFR (protection of personal data) and Art. 41 CFR (right to good administration), also sets standards for the data protection-compliant and comprehensible design of algorithmic systems within administrative practice.

CHALLENGES AND OPEN QUESTIONS

The use of automated decision-making processes in public administration raises a number of fundamental legal and practical challenges. These relate primarily to traceability, discrimination risks and questions of responsibility.

Lack of Transparency and the Black Box Problem

Another aspect of the black box problem is the loss of auditability. Complex algorithmic models not only make it difficult to understand the decision at the time it is made but often also prevent subsequent legal review, for example, in court proceedings. If there is no documented and automatically analysable basis for a decision, the legal protection options of those affected are considerably restricted. This is contrary to Article 19(4) of the Basic Law and Section 39 of the Administrative Procedure Act (VwVfG), which require comprehensible and verifiable reasons for administrative acts (see BVerwG 8 C 3.21; Schmitz, 2021).

In this context, the literature increasingly emphasises the need for audit-proof systems that enable complete and transparent documentation of algorithmic decisions (cf. Schmitz, 2021; Wischmeyer & Rademacher, 2020). Legislators

are therefore called upon to introduce binding logging and disclosure obligations for machine-generated administrative decisions in order to ensure effective judicial review.

Discrimination Through Training Data

Another risk lies in the reproduction or reinforcement of existing social discrimination through algorithmic systems. If training data is distorted or unbalanced, the resulting decisions can also have a discriminatory effect, for example, in the granting of social benefits or the assessment of support measures. This violates the prohibition of discrimination under Article 3 of the German Basic Law and Article 21 of the EU Charter of Fundamental Rights. The literature, therefore, calls for data sources and weighting procedures to be systematically reviewed and adapted in a discrimination-sensitive manner (Wischmeyer & Rademacher, 2020).

Responsibility and Control

Automated decisions also raise the question of who is liable for incorrect or unlawful decisions. The transfer of decision-making authority to technical systems must not lead to the cancellation of individual responsibility. Case law, therefore, requires that there must be a clear allocation of responsibility for each decision (BVerwG 8 C 3.21). The commentary literature discusses whether a mandatory human supervisory authority ("human in the loop") is also necessary in legally uncritical standard procedures in order to ensure constitutional control (Bonk, 2022).

REFORM CONSIDERATIONS AND POSSIBLE SOLUTIONS

Based on the analysis to date, several reform approaches can be derived to ensure that automated decision-making in public administration complies with constitutional principles and administrative functionality. These can be categorised according to their urgency and implementation timeframe.

Immediate and Urgent Reforms

First and foremost, a mandatory human-in-the-loop principle should be legally established, especially for high-risk or fundamental rights-relevant decisions. This ensures direct accountability and safeguards human dignity and individual legal protection (Bonk, 2022).

Equally urgent is the introduction of legally binding audit-proof documentation obligations for all algorithmic decision-making systems. This includes the requirement to generate machine-readable logs that record all relevant parameters, data sources and decision rules. These logs are indispensable for administrative transparency and judicial review (Schmitz, 2021; BVerwG 8 C 3.21).

Both measures concretise the transparency obligations under Section 39 VwVfG and fulfil the requirements of Article 19(4) GG on effective legal protection.

Medium- to Long-term Reforms

The Administrative Procedure Act (VwVfG) should be amended to include specific provisions for the use of artificial intelligence in administrative processes. These amendments should cover technical standards, training requirements, human oversight mechanisms, and data protection safeguards.

In addition, sector-specific legislation (e.g. in social or migration law) should be reviewed and adapted to accommodate legally compliant interfaces with ADM systems.

Finally, the planned EU AI Act offers an opportunity for harmonised regulation across member states. Its principles such as risk-based classification, transparency obligations and control requirements should guide the national reform process. German administrative law must be aligned with these European requirements to avoid regulatory conflicts and to maintain coherence within the EU legal framework (EU Commission, 2021).

Pragmatic Considerations and Counterarguments

Despite the normative desirability of a human-in-the-loop principle and comprehensive audit obligations, such reforms are not without practical challenges. In particular, the requirement of human review for every decision could lead to substantial administrative burdens in mass procedures, such as tax assessments or standardised social benefits.

Critics argue that this could undermine the efficiency gains originally intended through automation. A possible compromise could be the establishment of risk-based thresholds, where automated decisions in low-risk and standardised cases remain exempt from final human review, provided that the system's transparency and documentation obligations are fully met.

Such a differentiated approach would balance constitutional safeguards with administrative efficiency and reflect the spirit of proportionality enshrined in Article 20(3) of the Basic Law.

DISCUSSION

The results of the previous chapters make it clear that although the current legal situation allows the introduction of automated administrative decisions in principle, considerable constitutional tensions arise in the practical implementation. These relate in particular to the traceability of decisions, the guarantee of effective legal protection, protection against discrimination and ensuring accountability.

Firstly, it can be seen that the legal framework in the form of Section 35a VwVfG provides a technology-neutral, but also very general basis. Although this openness offers flexibility for the administration, it leaves central requirements of the rule of law, such as transparency and accountability, largely open. In practice, this can lead to uncertainties, both on the part of the authorities and the citizens concerned. There is a clear need for further legal concretisation here.

The findings underline a structural ambivalence between the administrative goal of efficiency and

the constitutional demand for control, transparency, and individual legal protection. While ADM systems offer tangible benefits in terms of speed and standardisation, these very characteristics risk undermining trust when decisions appear opaque or automated beyond human oversight.

This erosion of trust is particularly acute in areas where decisions directly affect social participation, entitlements, or personal freedoms. Citizens expect that state decisions are made not only correctly but also understandably and justifiably. Automated procedures that cannot be explained or challenged in court contradict this expectation and may reinforce the perception of technocratic alienation.

The study therefore highlights that efficiency gains must not come at the expense of legal certainty and democratic legitimacy. Upholding human responsibility within automated processes is not merely a procedural safeguard but a normative imperative. It symbolises accountability, accessibility, and the possibility of correction elements at the heart of the rule of law.

Humans must not be removed from the decision-making process if this effectively undermines the possibility of legal review. The human-in-the-loop principle proposed in Chapter 7 is therefore a central starting point for a legally secure further development of Section 35a VwVfG.

In conclusion, it can be said that the legislator is called upon to close existing gaps and create a coherent regulatory system that does justice to the tension between innovation and the rule of law. Only in this way can the potential of automated administration be utilised in the sense of modern administrative practice that also complies with fundamental rights.

LIMITATIONS

Despite the comprehensive analysis, there are certain limitations with regard to the scope and robustness of the results of this work. Firstly, the empirical data on specific AI deployments in German authorities has so far been patchy. Many

internal administrative processes are subject to data protection or are not publicly documented, which makes systematic collection and evaluation difficult. This applies to both the scope and the specific functionality of the ADM systems used.

Secondly, the dynamic nature of technological development is a significant limitation. Algorithms and AI processes are subject to constant further development, which means that legal assessments can become outdated within a short period of time. This places particular demands on the flexibility and openness of the legal framework and, at the same time, limits the durability of individual conclusions.

Thirdly, comparative legal access is difficult, as administrative structures, legal frameworks and social conditions differ greatly between countries. Even within the European Union, there are considerable differences in dealing with automation and algorithmic decision-making processes. The transferability of international models to German administrative law is therefore only possible to a limited extent. The study points out that partially automated procedures (hybrid forms) have hardly been regulated to date. There is a need for further legal guidance here.

To address these limitations, future research should adopt an interdisciplinary approach. Legal scholarship alone cannot capture the technical complexity and dynamic evolution of algorithmic systems. Close cooperation with computer scientists, data ethicists and administrative practitioners is required to assess how algorithmic transparency, fairness and control can be operationalised in real-world systems.

In particular, empirical case studies on existing ADM deployments, technical audits of decision logic, and usability studies with affected individuals could provide valuable insights. A sustained dialogue between law and technology will be essential to create adaptive, evidence-based governance structures for algorithmic decision-making.

SUMMARY AND OUTLOOK

This study has shown that the use of automated decision-making systems in public administration opens up a complex field of tension between efficiency gains, technological developments and constitutional requirements. Central constitutional principles such as the obligation to comply with the law, effective legal protection, protection of fundamental rights and the principle of proportionality form the standards by which the use of algorithmic procedures must be measured.

Although the legal framework, in particular Section 35a VwVfG, opens up the possibility for the administration to issue administrative acts automatically, it remains vague in terms of content and offers hardly any guidelines for practical implementation. This harbours considerable risks for transparency, traceability and constitutional control. The analysis shows that human responsibility remains necessary, particularly for sensitive decisions, in order to maintain minimum constitutional standards.

The study demonstrates that current legal provisions fall short of ensuring the constitutional compatibility of algorithmic decision-making systems. In particular, the requirements of transparency, non-discrimination and legal accountability are insufficiently defined. National and international developments, from court rulings to the forthcoming EU AI Act, consistently call for a more robust regulatory framework.

To address these challenges, several key reforms are recommended:

- Section 35a VwVfG should be revised to include explicit standards for transparency, justification and comprehensibility.
- A principle of final human responsibility should be enshrined in administrative procedural law.
- National administrative law should be systematically aligned with the EU AI Act to ensure coherence and legal certainty.

- The administration must implement mandatory documentation and review mechanisms to secure fairness and public trust.

These measures are not merely legal refinements, but fundamental to preserving the legitimacy of the digital state. Only if the rule of law is actively integrated into the architecture of automated systems can the promise of modern, efficient governance be realised without sacrificing democratic values.

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