

USE OF ARTIFICIAL INTELLIGENCE IN THE PUBLIC SECTOR: LEGAL FRAMEWORK AND EXPERIENCES OF THE EU AND THE REPUBLIC OF SERBIA

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Abstract

Artificial intelligence is slowly becoming a general-purpose technology applicable in all areas of social life. Social existence in a certain territory is determined by the connection of citizens and state institutions, that is, public exposure and work in favor of the general interest of citizens through various branches of the state or services known as the public sector. We are thus witnessing the penetration or gradual introduction of artificial intelligence in the public sector or public administration with the aim of easier servicing and improvement of the benefits that the state should provide to citizens. The benefits are reflected in the realization of certain rights of citizens as well as in the improvement of economic activities in which citizens and society are very interested.

In the paper, we analyze the introduction and use of certain artificial intelligence systems in the public sector, i.e. in its individual parts, we look at its disjointed elements that vary from country to country, attempts to establish common terms and patterns, and we investigate sensitive and critical areas of public services based on the taxonomy EU. In this context, the connection between digitization and the creation of e-administration, which potentially includes artificial intelligence systems, is interesting, requiring capacity building and the acquisition of new skills and knowledge for public administration employees. The emphasis in the paper is on the legal framework for their use provided by the EU Regulation on artificial intelligence, especially on the categorization of certain artificial intelligence systems into prohibited and high-risk systems that could be used in the public sector. A special part of the paper is devoted to the assessment of the anticipated use of artificial intelligence systems in the public sector in the Republic of Serbia by establishing a legal framework with soft law norms such as the Strategy for the Development of Artificial Intelligence in the Republic of Serbia for the period 2020-2025. which was adopted in 2019 and the Ethical guidelines for the development, implementation and use of reliable and responsible Artificial Intelligence from 2023.

Keywords: *public sector, public administration, artificial intelligence systems, digitization, taxonomy, public services.*

1. Introduction

The public sector, public administration, public services, public companies and other subjects with the sign public indicate, in fact, a greater or lesser degree of involvement of state institutions in the management of certain segments of social flows from which citizens should receive and have a common and immediate benefit. Today, the term public in the social order of any country is an association or a

synonym for something that was previously state, statist or institutional inherent in the state structure, which leads us to public management. It is management to a greater or lesser extent connected with the decisions of state bodies and institutions in the economic and social sphere, which directly affects the daily life of citizens. In the historical context, there is a significant step forward and a difference in approach, when state authorities understood state administration as sufficient in itself, without greater sensitivity to the needs and rights of citizens, compared to today's public approach of the state. Thus, in today's approach, the principles and rules of good management and governance are predominant, precisely for the benefit of the citizens themselves, local communities and society as a whole.

Today, the state's orientation towards citizens' needs for easier, faster and simpler access to services that are essential for their lives and economic activities is on the scene, with the disappearance of the harsh, inappropriate and ostentatious approach of state bodies and public officials in their daily work towards individuals. In a word, the public sector is predominantly related to general, public common interests, while public administration as part of it implies good governance where individuals, groups and communities are at the center of achieving social and economic interests in accordance with guaranteed human rights. It should be a management system built in favor of the needs and in the service of citizens, with a pronounced value and social function of every modern state. The efficiency of the public sector and contribution to the well-being of citizens is actually one of the most important priorities and elements for citizens to decide which political option to give their trust during democratic election processes. Help in building an efficient public sector with a human face is welcome and relies on the education system, the introduction of innovations and the use of high technologies. In such an environment and at this achieved level of development, there is a possibility of further improvement of the postulate of good administration and realistic servicing of administrative requests and needs of citizens by introducing certain tools and systems, of which artificial intelligence systems (hereinafter: AI) stand out. In this segment, the EU has a leading role, especially after the adoption of the Regulation on AI or Artificial Intelligence Act (AIA), which, among other things, defines the use of certain AI systems in public administration, categorizing them in accordance with risk assessment and the degree of danger they carry in everyday life and interaction with citizens. From the perspective of the Western Balkans, we look at the intended use of AI systems in the public sector in the Republic of Serbia by establishing a legal framework with soft law norms such as the Strategy for the Development of Artificial Intelligence in the Republic of Serbia for the period 2020-2025. which was adopted in 2019 and the Ethical Guidelines for the Development, Application and Use of Reliable and Responsible AI from 2023.

2. The place of AI in the public sector based on the EU Artificial Intelligence Act

The use of AI systems in the public sector is part of the increasingly pronounced need for their use in everyday life and to facilitate the lives of citizens. There are obvious differences in the conceptual definition of individual components of the public sector and its variations from country to country. The use of AI in the public sector generally requires and implies organizational changes, optimization of processes, improvement of the administrative-business environment and consideration of the best performance and results that certain AI systems bring to the daily work of public services and public administration as parts of the public sector. The public sector is most often identified with the areas of action of the state and private entities that include public health, transport, traffic and public communications as areas that have the greatest potential for the introduction of AI systems aimed at the well-being of individuals and the entire social community. Some research points to significant economic benefits from the use of AI in the public sector, such as economic growth and an increase in the number of jobs, especially highly qualified labor and labor with a special degree of knowledge and skills in the application of such systems (Gartner, 2017). A highly qualified workforce together with AI can significantly contribute to the efficiency and quality of public services. AI systems have their utility value and justification in the areas of public service provision, such as social protection, occupational safety, sustainability of public investments, etc. Public sector is a generic

term that includes public services, public bodies, public administration and public enterprises which, despite the penetration of private initiatives, remain dominantly recognizable functions of the state in interaction with citizens (Tieman, Van Veenstra, Bodea, 2021).

The first indications of a framework for the use of AI in the public sector of EU member states appear within the project of digitization of public administration contained in the ministerial Tallinn Declaration on e-Government adopted in 2017 (European Commission, 2017a). This temporal context is important because AI enters the scene after digitization or overlaps with the last phase of digital innovation, that is, it is not independent of the technologies developed to improve the functioning of digital government and governance. The principles of digitization and application of AI in the public sector are based on the rules of good governance and the basic human right to good administration. The EU, together with the OECD¹, established a joint Guide for good public administration as an integral part of improving the functioning of the public sector (SIGMA, 2024). The right to good administration is also a human right provided for in Article 41 of the EU Charter on Fundamental Rights. (OJ C 364). Public services are services of general interest that largely contribute to better living conditions of the general population, that is, they respond to the public. According to the definition of the European Parliament, a public service is: "an economic activity of general interest that is defined, created and controlled by state authorities and which is subject, to varying degrees, to a special legal regime, regardless of whether it is actually carried out by the public or a private body" (European Parliament, 2024a). Public services are provided by the Treaty of Rome, in the part that refers to the internal market, and above all to the freedom of movement of goods and services, competition rules, including the prohibition of state intervention that would affect competition. The Maastricht Treaty added public services in the area of consumer and environmental protection, as well as the creation of trans-European networks in transport, energy infrastructure and telecommunications (European Parliament, 2024b). The Treaty of Lisbon extends public services to all four freedoms inside and outside the single market. Public services do not only refer to economic activities, but include: 1) non-economic services, such as the police, judiciary and social security systems, which are not subject to specific EU norms or rules of the internal market and competition, 2) social services of general interest that relate to the needs of vulnerable citizens and are based on the principles of solidarity and equal access (economic and non-economic), such as social security schemes, employment services and social housing (European Commission, 2017b).

The introduction of AI in the public sector is related to the use of large databases, which presupposes the resolution of ambiguities in the terminology and vocabulary used in the daily work of the administration in order to adapt them to machine language and terminology recognized by AI systems. For the purposes of connecting and organizing knowledge systems when using AI in the public sector at the EU level, there is a taxonomy of public services as a key element for standardizing the description of public services, which will make them more understandable, simpler and more accessible to all citizens. Taxonomy is in fact a (controlled) dictionary with a hierarchical structure, i.e. a "knowledge organization system", a set of words that is organized into a "dictionary" in order to control the use of terms used in the subject area in order to facilitate their storage and retrieval (Hlava, 2012). In the public sector, there is a system of storing and organizing terms that represent key concepts of the public organization, such as groups of services, types of content, roles, personalities and areas of knowledge. The Public Sector Taxonomy consists of term names and tags that are specific to public service information. One of the good examples of what a complex system of terms looks like, hierarchically arranged in a dictionary, is the taxonomy of the World Bank (World Bank, 2016).

One of the classifications of public services from the taxonomy adopted at the EU level, which is the result of the harmonization of public services between member states, are public services categorized and placed in a catalog that should be used by AI systems and includes: joint life in the family, social security,

¹ See more about AI in the Public sector at the OECD Observatory <https://oecd-opsi.org/work-areas/ai/>

health and medical care, learning and education, work and unemployment, housing and construction (European Commission, 2019). The basis for this categorization is the Single Digital Gateway Regulation from 2018, which offers citizens and businesses simple access to the information, procedures, and support and problem-solving services they need to exercise their rights in the internal market. This regulation contributes to greater transparency of rules and regulations related to various business and life events in areas such as travel, retirement, education, employment, health, consumer rights and family rights (EU Regulation No. 2018/1724). All this is closely related to the new generation of Union legislation on access to digital services for entrepreneurs and citizens. Namely, the Core Public Service Vocabulary Application Profile (CPSV-AP) grew into an interoperable European policy for the public sector through the adopted EU Regulation for strengthening interoperability in the public sector (EU Regulation No. 2024/903). This established the conditions for the upgrade and adoption of the package of Regulations on Digital Services, which includes the Regulation on Digital Service and the Regulation on Digital Market with the aim of creating a safer digital space in which the basic rights of users are protected and the establishment of equal conditions for companies (European Commission, 2024).

The introduction and application of AI in public services contributes to efficiency, saving time and costs, improving services, improving accessibility and including new services. The use of AI should also enable personalized services, maintenance, prediction and creation of public policies.² The application of AI in public services is increasing and expanding to the areas of inspection, law enforcement and for the internal optimization of various services. A good example of the use of AI systems in the public sector in the field of public health was the use of innovative solutions after the outbreak of the Covid 19 pandemic that the world faced from 2020 to 2023. At that time, EU member states developed applications for informing and controlling citizens, based on applications for predicting the spread of viruses and human behavior, through cooperation with research institutes and supervisory bodies. This application of AI-based applications during the pandemic indicates the flexibility of the public sector in adapting and using high technologies without prior experience, imposed by a crisis situation. (Timan et al, 2021).

Finally, the use of AI systems in the public sector is defined by the EU Regulation on AI, which classifies some of them for use in the public sector as prohibited and high risk. More concretely, the Regulation considers that certain AI systems that present an unacceptable risk will be prohibited, systems classified as high risk will be detailed and controlled, and low risk AI systems will be left to voluntary self-regulation, certification or labeling (Artificial Intelligence Act - AIA, 2024).³ As a special area that requires special attention in the application of individual AI systems, the availability and enjoyment of certain basic private and public services and benefits required for full participation in society or improvement of citizens' living standards is emphasized. More precisely, these are public services for natural persons who apply for basic benefits and public assistance services from public services or health services, social assistance benefits, or social services that provide protection in cases such as maternity, illness, accidents at work, ageing or old age and loss of employment, as well as social and housing assistance. These are people whose quality of life depends to a large extent on these benefits and services and are therefore in a vulnerable position in relation to the competent services. If AI systems are used to determine whether public services should be provided, refuse, reduce, terminate or determine compensation for these benefits and services, including determining whether users have a legitimate right to such benefits or services, such AI systems can significantly affect the livelihood of those users and violate their basic rights such as the right to social protection, the right to non-discrimination, the right to human dignity or an effective remedy, and as such these AI systems should be classified as high risk (AIA 2024 , Preamble 58).

²More about AI in the public sector see the European Commission website <https://joinup.ec.europa.eu/collection/elise-european-location-interoperability-solutions-e-government/artificial-intelligence-public-sector>

³ The Regulation is an act of secondary EU law with direct effect and direct application on the territory of all member states. Regulations are called laws or acts in the literature and by EU institutions, so the title of the EU Regulation on AI uses the name Artificial Intelligence Act - AIA. The paper uses terms and numbers from the Legislative resolution of the European Parliament that adopted this Regulation.

Prohibited AI systems that have a significant effect on the work of public services refer to social services for certain categories of persons and refer to: placing on the market, putting into use or using an AI system that exploits any weakness of a person or a certain group of persons due to age, disability or of a specific social or economic position with the aim or effect of significantly distorting the behavior of that person or a person belonging to that group in a way that causes that person or another person significant harm or can reasonably be expected to cause it (AIA 2024, Article 5, paragraph 1 point d).

High-risk AI systems for the public sector under the name "Access and use of basic private services and basic public services and benefits" contain:

(a) AI systems intended for use by or on behalf of public authorities to evaluate the eligibility of natural persons for basic benefits and services of public assistance, including health services, as well as for the allocation, reduction, cancellation or return of such benefits and services;

(b) AI systems intended for evaluating the creditworthiness of natural persons or determining their credit rating, with the exception of AI systems used to detect financial fraud.

(c) AI systems intended for risk assessment and pricing in relation to natural persons in the case of life and health insurance;

(d) AI systems intended for evaluating and classifying emergency calls from natural persons or for dispatching or prioritizing the dispatch of emergency services, including police, fire and medical assistance, as well as patient triage systems in the provision of emergency care. (AIA 2024, Article 6 paragraph 2 and point 5, Annex III)

The risks and damage that AI systems can cause can be unfathomable, which represents a serious limitation for its wider use, primarily in the field of human rights protection. The general impact of the AI system on human rights is the subject of special research that is not part of this paper, but as an example of abuse of these systems in the public sector, the case of SiRI should be mentioned. Namely, the use of predictive systems in the public sector has had unintended consequences, especially when applied in the form of (semi) algorithmic decision making (ADM). SiRI, for example, was an AI-based system that used data from many different databases, including personal and sensitive data, to assign citizens a predictive risk score (the risk of committing a crime or misdemeanor). In its verdict, the Dutch court declared this system illegitimate and harmful to human rights, i.e. a violation of the right provided for in Article 8 of the European Convention on Human Rights (ECHR), which protects the right to respect for private and family life, home and correspondence (Rechtspraak. 2020).

3. Normative framework for the application of AI in the public sector in Serbia

The public sector of the Republic of Serbia is regulated by laws on state administration, public services, local self-government, public enterprises, as well as special laws that include public activities of general interest such as health, education, science and research, social protection, employment, traffic and transport, etc. The second generation of laws is much more related to the application of AI in the public sector, such as the Law on Electronic Administration ("Official Gazette of the RS", No. 27/18), the Law on Electronic Communications ("Official Gazette of the RS", No. 44/10, 60/13 - US, 62/14, 95/18 - other laws) and the Law on Information Security ("Official Gazette of RS", no. 6/16, 94/17, 77/19). These laws establish the field of electronic administration where the performance of public administration tasks using information and communication technologies enables the application of AI systems in public administration, an enhanced system of using electronic communications for large-scale data transmission with a high degree of reliability of public mobile networks, which are a prerequisite for application of AI systems and the associated protected information security system.

The use of artificial intelligence in the public sector relies on the aforementioned normative framework, which is additionally strengthened by the Strategy for the Development of Artificial Intelligence in the Republic of Serbia for the period 2020-2025. ("Official Gazette of RS", No. 96/2019, hereinafter: Strategy) which was adopted in 2019, and by which Serbia is mapped as one of the few countries in

Southeast Europe with such a document. Another soft law instrument that regulates certain sensitive segments of the use of AI in the national legal framework is the Ethical Guidelines for the Development, Application and Use of Reliable and Responsible Artificial Intelligence from 2023 ("Official Gazette of RS", No. 23/2023). , hereinafter: Guidelines). The guidelines define high-risk AI systems, principles and conditions for the application and use of reliable and responsible AI. The Strategy and Guidelines follow and were created on the basis of EU standards, that is, at that time, the proposal of the Regulation on AI and UNESCO's recommendations for ethical AI (UNESCO, 2021).

As for the Strategy itself, it contains a part related to the public sector, identifying work segments as well as certain services within the public sector in which the application of AI-based solutions would be most effective. Three key areas have been identified in which AI can significantly contribute to the public interest, the public good and the provision of better services to citizens, namely: public administration, health and medicine as well as traffic, road infrastructure and mobility in urban areas. When applying the AI system in the provision of public services, it is necessary to ensure reliability, protection of privacy and user data, as well as the possibility of interaction with an official, that is, the provision of services with human intervention (Title 4.2.3 of the Strategy). Data is a necessary and predominant prerequisite for the introduction and use of certain AI systems in the public sector, bearing in mind that the public sector can be innovatively connected to proposing solutions in the field of AI as the main user of those systems. Thus, during the consultations carried out as part of the development of the strategic framework for the development of AI, data related to the business operations of companies, data related to taxation, data from the field of traffic and data from the field of health were preliminarily identified as priority for opening (Title 4.3.2.1 Strategies). This coincides with trends in the EU where, after a comparative analysis of 13 national AI strategies, awareness campaigns, incentives to improve data quality and employee training are in fact prevalent in almost all countries (Misuraca, Noordt, 2020).

The strategy foresees special measures and activities for the application of AI in the public sector with special indicators and analysis of effects. These measures specifically refer to the establishment of the Council for AI as a control development body and the opening of data that must be available for the implementation of AI systems. The strategy does not have the qualification of systems by risk level, that is, it does not contain a list of which AI systems are high-risk or prohibited for use in the public sector.

That classification is contained in the Guidelines, which define as high-risk AI systems in the public sector in the following areas:

- **management of critical infrastructure and its operation:** in particular, it includes systems that are intended for the management of road, transport traffic, water, gas, heating and electricity supply or are a security system of the aforementioned systems or are part of those security systems;
- **education and professional training:** in particular, it includes systems intended for determining the possibility of an individual's access to institutions for education and vocational training or for assigning individuals to those institutions, as well as systems intended for the evaluation of persons attending the aforementioned institutions, including systems that perform evaluation of tests (entrance exams) required for enrolling individuals in those institutions;
- **employment, management of employees/engaged persons and access to self-employment:** in particular, it includes systems that perform selection and employment/engagement of persons, including systems that perform advertisement of vacancies, screening, filtering, evaluation of candidates for a specific position (at interviews or tests) making the final decision on the employment/engagement of a person; systems that make decisions on labor-law issues of employees (advancement, rewards, bonuses, dismissals, change of job description, specific tasks of the employee) as well as systems that monitor and evaluate the success of employees, based on which decisions will be made regarding the employment relationship;
- **healthcare:** especially includes systems that analyze genetic and health data;

- **access and use of public and social services as well as basic private services:** in particular, it includes systems intended for evaluating the acceptability of individuals for the provision of public services and social benefits, as well as for making decisions on the approval, reduction, cancellation of such services, as well as the conditions under which such decisions are made they bring. It also includes systems for evaluating the creditworthiness of a person as well as establishing a credit rating, unless those systems are used for personal and non-commercial purposes; it also includes systems designed to function as a dispatcher for emergency medical or other emergency assistance services (firefighters, army, police, etc.), where such systems also prioritize the provision of such assistance.

For the listed areas of the public sector, in which the inclusion or use of AI systems is foreseen, measures are foreseen to protect the rights of citizens, primarily protection against discrimination (Chapter 6.5.2 Measure 5.2 of the Guidelines) and the application of the corpus of rules on the protection of personal data in accordance with standards EU from the General Data Protection Regulation, which is mostly already incorporated into the national legislation, i.e. the Personal Data Protection Act ("Official Gazette of RS", number 87/2018).

Conclusion

The application of AI in the public sector is currently a significant challenge, bearing in mind that the public sector and public functions are most often performed by each state through public administration and public services. The EU is in the process of building and unifying services into one cross-border public sector for which the member states will be responsible. The idea is to create conditions for simple, fast and efficient use of services and rights of citizens provided by the EU law for the area of the single market and consumer protection. All these measures are connected with digitization, the creation of efficient e-government and the application of standards and the protection of citizens' rights provided for by the EU Charter on Fundamental Rights. An additional element in this protection are the measures provided for the use of AI systems in the public sector provided by the Regulation on AI. Some of these systems are classified as unacceptable, i.e. prohibited and high risk. This leads us to the conclusion about the sensitivity of the use of AI in the public sector, which, in addition to its undoubted advantages, also carries a huge potential for abuse and possible injuries in cases of arbitrary, insufficiently skilled and improper management of AI systems..

The result of that malicious use or wrong use can lead to discrimination of citizens in the use of public services and social benefits, the distribution and availability of which is the responsibility of the public administration as an exponent of the state. That is why it is very important to implement the norms and standards foreseen by the EU Regulation on AI for the public sector, as well as to perform timely and comprehensive impact assessments before the establishment or introduction of individual AI systems in the work of public sector. The construction of such standards is necessary in the WB states, which at the national level, as candidate states, must anticipate and coordinate their normative frameworks for the protection of human rights when introducing the AI system into the work of public administration. The Strategy and Guidelines on AI that are in force in the Republic of Serbia are a good starting point for building a modern, modeled and accessible system of public services based on human-centric and reliable AI systems that will be a significant help in daily interaction and the provision of quality, fast and efficient services to citizens.

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