AUTOMATED DECISION-MAKING AND THE ROLE OF ARTIFICIAL INTELLIGENCE IN RESOLVING DISPUTES OVER ILLEGAL CONTENT ON DIGITAL PLATFORMS

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ABSTRACT

The increasing volume of digital content in the virtual world of digital platforms and its potential to contain illegal elements creates significant challenges for moderation and the resolution of related disputes. Automated decision-making, supported by artificial intelligence (AI), is becoming a key tool in the initial identification and processing of illegal content. In particular, this article explores the legal aspects of using AI in this context, with an emphasis on its role in the first stage of the decision-making process. Peripherally, the author also touches on technical aspects.

The article will analyse the legal framework of the European Union, in particular the new Digital Services Regulations (DSA). We will focus our investigation on the extent to which automated decision-making is compatible with the requirements of transparency, fairness and the protection of users' fundamental rights.

The paper also offers insights into redress mechanisms that allow users to challenge AI decisions and possibly escalate disputes to a higher level, where human moderators or independent entities adjudicate them. Finally, we propose recommendations for legislation and digital platforms to harmonise the use of AI in content moderation, considering the need to protect fundamental rights, the efficiency, and transparency of the entire process.

The ambition of this article is to contribute to the ongoing debate on the balance between automation and human intervention in content moderation and dispute resolution, identifying the opportunities and risks associated with the use of AI on digital platforms.

Keywords*: artificial intelligence, automation, dispute settlement, digitisation, online platforms*

1. INTRODUCTION

In the current era of diversity and variety of legal relationships and legally relevant communications between humans that transcend national dimensions, the age-old problem of the so-called "enforceability" of the law is re-emerging in a new

social context. The concept of the enforceability of law has now taken on a sophisticated form. It has already become a kind of fetish. The opposite of this concept is the 'unenforceability' of the law. The relationship between enforceability and unenforceability is flexible.

At one time, enforceability dominates; at another, and more often, the unenforceability of the right (legal obligations, claims) prevails, even though the entitled persons involved in the legal procedures for enforcing rights apply standard methods and forms. However, they are not always successful.

The centre of our interest in this study is to present considerations concerning the issue of applying and enforcing rights through a specific system of methods, the common denominator of which is that they are an alternative to the court system. These methods, which to some extent compete with and yet complement judicial adjudication and which, if used appropriately and effectively, could contribute to relieving the burden on state courts, face many challenges, as do judicial proceedings. One of the most significant challenges today is the impact of technological advances. In this article, we will address the issue of dispute resolution on digital platforms. Digital services and digital platforms, such as marketplaces, social networks, app stores, and online platforms for travelling and accommodation, play an increasingly important role in various business contractual relationships. In addition to the indisputable benefits, their use is associated with spreading misinformation and other illegal and harmful activities. Harmful activities and content can be, and currently are, blocked in terms of the Digital Services Act, which gives rise to various disputes that can be effectively resolved in an alternative dispute resolution.

In this article, the analysis will proceed from the general to the specific, as the issue under study arises from the broader framework of out-of-court dispute resolution based on the contractual delegation of decision-making power to other bodies. In this article, we will mainly use the methods of analysis and deduction. We plan to analyse the new legislation in the context of the existing legal environment. In this article, we follow the development of methods of out-of-court dispute resolution. Particular attention will be given to disputes arising in the digital environment of online platforms, which currently represents a significant setting for the diverse activities of many individuals and groups. The article highlights and analyses the challenges associated with adjudicating disputes in the digital environment on these platforms. These disputes affect the content published within the digital platform environment.

Methods that rank among the alternatives to traditional court proceedings have a much longer history of use than dispute resolution through the state apparatus.

Disputes have arisen since the beginning of human society. Disputes and conflicts are inherent to coexistence within certain social groups. Naturally, each social unit member protects their rights and legitimate interests in different ways. Society was not immune to conflict even before the formation of the first state units, the creation of the state apparatus and the related state enforcement of specific behaviour or performance. It was necessary to resolve disputes in more acceptable ways, based on mutual communication and mediation by a third party, who did not, however, possess coercion in today's sense through the state authorities, but exerted his personality on the parties by the force of his authority and led them to settle the conflict (resolve the dispute).

Recently, we have been closely following the trend of resurgence and promotion of these communication and dispute resolution methods. Forms and methods of dispute resolution that lack the authority of state coercion are emerging. Disputants who are faced with an existing dispute are encouraged to try to settle the dispute themselves, i.e., to resolve it with the assistance of an independent third party. Only at the end, i.e., behind these methods, should dispute resolution be handled by professionals in the service of the state, such as judges.

The enumeration of methods that qualify as alternatives to judicial proceedings varies from one jurisdiction to another. Anglo-American legal culture, especially American law, is a source of alternative dispute resolution techniques that are not yet well known in our conditions. The extent to which these methods of dispute resolution are used also differs. In the context of American legal culture, they are widely recognised and used and are generally preferred over dispute resolution before state courts. The Federal ADR Act of 1998 also requires every federal court to make some form of alternative dispute resolution available. In the European context, depending on the country, the ADR system is only slowly gaining traction and is gradually displacing the state judiciary from its previously unchallenged position. However, there is undoubtedly a distinction between the various European countries. The United Kingdom, for example, has a long-established tradition of out-of-court dispute resolution. 1990 the Centre for Dispute Resolution (CEDR) was established in the United Kingdom, representing the country's philosophy of Alternative Dispute Resolution (ADR).

The concept of alternative dispute resolution encompasses methods of dispute resolution that differ from litigation based on specific criteria. The essential characteristic that distinguishes these methods is the voluntary submission of the parties, or those already in dispute, to the form of dispute resolution in question. Parties interested in resolving their disputes through a more moderate method can use arbitration and mediation in Slovak conditions. These forms of out-of-court dispute resolution are legally regulated in the Slovak legal order.

2. DISPUTE RESOLUTION THROUGH THE PRISM OF DIGITALISATION

Naturally, digitalisation will also affect decision-making to some extent. The aforementioned degree is decisive, since, until now, decision-making has been in the hands of thinking human beings. It is questionable and extensively debated whether someone/something other than human beings can intervene in deciding the outcome of this process. The *Barysė and Sarel* study analysed how the public perceives the use of AI at different stages of the judicial process. The research showed a public inclination in favour of the use, especially in the search and information gathering phase. The public was even less in favour of using artificial intelligence in the actual decision-making, evidence analysis and decision creation phases.[1] *Jesus Dias and Satiro* present a critical perspective on the role of AI in the justice system[2]. They point to the risk of standardisation of decisions and the retreat of the individual approach in decision-making. The use of generative artificial intelligence in judicial decision-making is analysed in a study by *Socol de la Osa and Remolina*[3], including case studies from Colombia, Mexico, Peru and India. It focuses on the need for regulatory measures such as ex-ante controls, stakeholder involvement, verification processes and continuous audits. A key area that is often under scrutiny is the intervention of AI in human rights. Sartor considers the extent to which the demands of law and ethics in relation to artificial intelligence may pull in different directions, or rather overlap, and explores how they can be coordinated while remaining in productive dialectical tension. Specifically, he argues that human/foundational rights and social values are central to both ethics and law. Although they may be formulated in different ways, they can provide a useful normative reference for linking ethics and law in addressing normative issues arising in the context of artificial intelligence.[4]

The ADR field creates a more suitable environment for the application of aspects of AI than the state judiciary. One of the first ADR systems using artificial intelligence (AIDR) was developed by the RAND Corporation in the 1970s and 1980s to support the settlement of product liability disputes in California. This system modelled human and insurer actions and decision-making processes for a series of

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1 Barysė, D.; Sarel, R., *Algorithms in the court: does it matter which part of the judicial decision-making is automated?*, Artif Intell Law 32, 117–146, 2024, https://doi.org/10.1007/s10506-022-09343-6.

2 Jesus Dias, S.A.; Sátiro, Máximo, R. *Artificial inteligence in the judiciary: A critical vie,* Futures 164, 2024, https://doi.org/10.1016/j.futures.2024.103493.

3 Socol de la Osa DU; Remolina, N., *Artificial intelligence at the bench: Legal and ethical challenges of informing – or misinforming – judicial decision-making through generative AI*, Data & Policy. 2024, 6:e59.

4 Sartor, G., *Artificial intelligence and human rights: Between law and ethics*, Maastricht Journal of European and Comparative Law, 27(6), 2020, pp.705-719, https://doi.org/10.1177/1023263X20981566.

hypothetical disputes.[5] *Tan, Westermann et al*. investigated whether large language models are capable of acting as a mediator. Specifically, they looked at whether they are able to analyse the conversation in a dispute, select the appropriate type of intervention, and generate appropriate intervention responses as a mediator.[6] As part of their research, Westermann and team even introduced an experimental platform, LLMediator: the GPT-4 Assisted Online Dispute Resolution.[7] The use of AI in arbitration is advocated by Broyde and Mei, emphasising the importance of respecting contractual autonomy and creating an environment that allows the full potential of AI to be exploited.[8] In particular, they argue that the Federal Arbitration Act (FAA) almost uniquely among federal laws allows such unconventional adjudication methods, provided both disputants agree by contract to use AI as their preferred method for resolving disputes.

European legislation has long focused on out-of-court methods for settling disputes. In 2013, Directive 2013/11/EU on Alternative Dispute Resolution for Consumer Disputes (ADR Directive) was adopted to ensure that EU consumers can access high-quality, independent, impartial, transparent, efficient, and swift out-of-court dispute resolution procedures. The same year, Regulation 524/2013 on online dispute resolution (ODR Regulation) was adopted to create a European online platform for resolving disputes between consumers and traders arising from online purchases. In November 2024, the European Council adopted a regulation to shut down the European Online Dispute Resolution Platform (ODR platform) and eliminate the associated obligations for administrations and online businesses. In line with the Commission's proposal, the Council believes that the performance level of the existing ODR platform does not justify the public and private costs required for its maintenance. Regulation 2024/3228 swiftly abolishes the European ODR platform. The ADR Directive and the ODR Regulation provided a reference framework for out-of-court online dispute resolution for consumer disputes in the EU. However, both proved to be less effective and successful than intended. The relationship between the Directive and the Regulation is also influenced by the fact that only certified ADR bodies could be included in the ODR system established by the Regulation. High-quality ADR entities are essential for the ef-

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5 Abbot, R.; Elliott, B.S., *Putting the Artificial Intelligence in Alternative Dispute Resolution: How AI Rules Will Become ADR Rules. Amicus Curiae*, Series 2, Vol. 4. No 3, 2023, pp. 685-706, https://doi.org/10.14296/ac.v4i3.5627.

6 Tan, J. *et al. "Robots in the Middle: Evaluating LLMs in Dispute Resolution."*, *ArXiv* abs/2410.07053 (2024): n. pag.

7 Westermann, H.; Savelka, J.; Benyekhlef, K. LLMediator: GPT-4 Assisted Online Dispute Resolution. ."*ArXiv* arXiv:2307.16732, (2023): n.pag.

8 Broyde, M.J.; Mei, Y., *Don´t Kill the Baby! The Case for AI In Arbitration*, Journal of Law & Business, Vol. 21, No.1 (2024). 119-173.

fective functioning of other instruments closely linked to ADR, particularly the ODR platform.[9]

The catalogue of national (Slovak) legislation regulating dispute resolution methods beyond traditional forms has been enhanced by the Act on Alternative Dispute Resolution for Consumer Disputes, adopted in November 2015 and coming into force on 1 January 2016. This legislation transposes the directive on alternative dispute resolution for consumer disputes and implements the regulation on online dispute resolution for consumer disputes into the Slovak legal framework. It was enacted to ensure a high level of consumer protection while contributing to the effective functioning of the internal market by guaranteeing that consumers can, in the event of a dispute with a seller, approach an alternative dispute resolution body that conducts independent, impartial, transparent, adequate, rapid, and fair procedures for resolving consumer disputes.

The settled out-of-court methods of dispute settlement are supplemented by the Act on Alternative Dispute Resolution with another alternative method, namely, alternative dispute resolution. Following the approach of the ADR Directive, the Act uses this term for the dispute settlement process. However, in the foreign literature,[10] alternative dispute resolution refers to the entire range of out-of-court dispute resolution methods. Mediation and arbitration are considered the cornerstones of alternative out-of-court dispute resolution. For the purposes of the Act in question, alternative dispute resolution for consumer disputes is deemed to be a specific procedure of an ADR entity aimed at reaching an amicable settlement of a dispute between the parties to the dispute. The consumer is the only person legitimised to bring a dispute resolution claim through this new method. The seller is not entitled to initiate proceedings under this law. The Act confers jurisdiction in the field of alternative dispute resolution on so-called alternative dispute resolution entities. ADR entities are ADR bodies and authorised legal persons. ADR entities are public authorities which are obliged by law to resolve disputes depending on their subject matter competence. These bodies became ADR entities ex lege, having been entered in the list of entities maintained by the Ministry of Economy of the Slovak Republic as of 1 January 2016.

The ADR bodies are: (i) the Regulatory Office for Network Industries, (ii) the Regulatory Authority for Electronic Communications and Postal Services, (iii) Slovak Trade Inspection.

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9 Biard, A., *"Monitoring Consumer ADR in the EU: a Critical Perspective."*, European Review of Private Law 2, 2018, pp. 171–96.

10 Born, G.B. International Commercial Arbitration, London. Kluwer Law International, 2001; Fouchard, P., Gaillard, E., Goldman, B., On International Commercial Arbitration, London: Kluwer law International, 1999.

3. DIGITAL SERVICES ACT AND ITS IMPACT ON DISPUTE RESOLUTION

The digital environment has become a space for various activities for individuals and groups. Nowadays, we can hardly imagine our personal and professional activities without the Internet and the possibilities it offers. Naturally, this space has gradually become subject to regulation, leading to stricter conditions for conducting activities. One of the most recent major adjustments at the European level includes two regulations: the Digital Markets Act (Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828) and the Digital Services Act (Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC). The Digital Services Act and Digital Markets Act aim to create a safer digital space where users' fundamental rights are protected and to establish a level playing field for businesses.[11]

The European Commission has presented a proposal for a Digital Services Act under the priority "A Europe fit for the digital age" and a Digital Markets Act proposal in December 2020. Since 17.02.2024, the DSA has been effective and fully applicable. Until the adoption of the DSA, the defined area was mainly regulated by Directive 2000/31/EC on electronic commerce. The Digital Services Act was adopted as an EU-wide regulation of internet content to provide intermediary services to limit illegal and harmful internet activities and spread misinformation and hoaxes. Joint action by Member States is expected to have a greater impact than individual interventions by all States.[12] DSA strengthens the protection of users of digital platforms and their fundamental rights in the digital environment by introducing transparent and proportionate rules. It balances the position of actors, i.e. users, digital platforms and public authorities in the digital environment in a way consistent with European values. It puts users and the rigorous protection of their fundamental rights at the centre.

The DSA provisions provide a comprehensive mechanism for resolving disputes relating to content published on digital platforms. DSA introduces a structured and transparent mechanism allowing users to contest content moderation decisions made by online platforms. In Article 20, DSA provides an internal complaint–handling system as the first level of the dispute settlement. According to

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11 European Commission, *The Digital Services Act package* [https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package], Accessed 23 April 2025.

12 Husovec, M*., Principles of the Digital Services Act,* Oxford University Press, 2024.

this Article, providers of online platforms shall provide service recipients with access to an effective internal complaint-handling system that enables them to lodge complaints, electronically and free of charge, against the decisions taken by the online platform providers. The recipient should be able to defend against decisions made by the provider of the online platform on the grounds that the information provided by the recipient constitutes illegal content or is incompatible with its terms and conditions. Providers usually make decisions against recipients' actions on the digital platforms. These decisions are:

(a) Whether or not to remove or disable access to or restrict visibility of the information,

(b) Whether or not to suspend or terminate the provision of the service, in whole or in part, to the recipients,

(c) Whether or not to suspend or terminate the recipient´s account,

(d) Whether or not to suspend, terminate or otherwise restrict the ability to monetise information provided by the recipients.

Internal complaint-handling systems should be easy to access, user-friendly and enable and facilitate the submission of sufficiently precise and adequately substantiated complaints. They must operate in a timely, non-discriminatory, diligent and non-arbitrary manner. The vast majority of moderation decisions potentially subject to Article 20 complaints are fully automated[13] – the only feasible way of monitoring content across online platforms with millions or billions of users.[14] A crucial question is, therefore, whether Article 20 requires complaints to be reviewed by human moderators. The answer not only implies potentially enormous investments of labour time and resources, but also has important implications for the overall effectiveness of the DSA.[15] In this context, the wording of Article 20 (6) is important. It states, *„Providers of online platforms shall ensure that the decisions, referred to in paragraph 5, are taken under the supervision of appropriately qualified staff, and not solely on the basis of automated means.*". What it means to make decisions under the supervision of appropriately qualified staff should be clarified. Does it mean that a human should supervise each decision? Such an interpretation would undoubtedly represent a significant complication of the essential mecha-

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13 Google Transparency Report, [https://transparencyreport.google.com/youtube-policy/removals?hl=en&total_removed_videos=period:2023Q2;exclude_automated:all&lu=total_removed_videos], Accessed 16 April 2025 .

14 Griffin, R.; Stallman, E., A Systemic Approach to Implementing the DSA´s Human-in-the-Loop Requirement. Online: [https://verfassungsblog.de/a-systemic-approach-to-implementing-the-dsas-human-in-the-loop-requirement/],Accessed 16 April 2025; Duić, D.; Rošić, M., *Interoperability between the EU information systems – From an idea to the realisation*, Policija i Sigurnost, 31(2), 2022, pp. 118–148.

15 *Ibid.*

nisms of the functioning of digital platforms. Article 20 should be interpreted in the broader context of other provisions of the DSA, e.g. Article 56 of Preamble according to which recipients of the services should be able to easily and effectively contest certain decisions of providers of online platforms concerning the illegality of content or its incompatibility with the terms and conditions that negatively affect them. Therefore, providers of online platforms should be required to provide for an internal complaint-handling system which meets certain conditions that aim to ensure that the systems are easily accessible and lead to swift, non-discriminatory, non-arbitrary and fair outcomes, and are subject to human review where automated means are used. Such systems should enable all recipients of the service to lodge a complaint and should not set formal requirements, such as referral to specific, relevant provisions or elaborate legal explanations. The grammatical construction „are subject to human review where automated means are used" is linked with the internal complaint-handling system. In our opinion, it means that the internal complaint-handling system should be under human control. Not each decision.

Article 21 systematically builds on the previous provision and introduces dispute settlement through an external out-of-court system.

Article 21 foresees the establishment of certified out-of-court dispute settlement bodies. Alternative dispute resolution must comply with the requirements of speed, efficiency, and cost-effectiveness in at least one of the official languages of the Union institutions, and the procedural rules governing the certified body should be easily and publicly accessible.

The coordinator of digital services in the Slovak Republic is the Council for Media Services.[16] In Croatia, it is the Croatian Regulatory Authority for the Network Industry[17]. It is also the certification authority authorised to certify, for a maximum period of 5 years, an entity fulfilling the conditions contained in Article 21(3)(a) to (f) of the DSA, which include in particular the requirements of complete impartiality and independence from the providers of online platforms and from the recipients of the services provided by the providers of online platforms, including individuals or entities that may submit notifications, have sufficient knowledge and expertise in the area of illegal content and the area of application and enforcement of the terms and conditions of online platforms. At the same time, it should be ensured that the remuneration of the members of the body is independent of

[16] Overview of Digital Services Coordinators in EU: https://www.interface-eu.org/publications/overview-digital-services-coordinators-europe], Accessed 26 April 2025.

[17] Hrvatska regulatorna agencija za mrežne djelatnosti, [https://www.hakom.hr/], Accessed 26 April 2025.

the outcome of the proceedings, while the out-of-court dispute resolution offered by the certified body is to be easily accessible through electronic communication technologies and provides the possibility to initiate the settlement of disputes and to submit the necessary supporting documents online.

4. CONCLUSION

DSA introduces a structured and transparent mechanism that allows users to contest content moderation decisions made by online platforms. It encompasses a multilevel process that includes an internal complaint-handling system and an out-of-court dispute settlement system. Some consider the DSA to be the most procedurally detailed intermediary liability law after the US Digital Millennium Copyright Act. This mechanism grants users the right to receive a clear and reasoned explanation for moderation actions. Simultaneously, there is the possibility of challenging the decision through an effective internal complaint-handling system. The platform's internal complaint-handling system serves as the first level for users to protect their rights. Additionally, users can protect their rights through external independent online dispute settlement bodies certified by national certification authorities under the DSA. Six online dispute settlement bodies are certified in EU member countries (Malta, Ireland, Italy, Hungary, Austria, and Germany). Nevertheless, active discussions and actions in this area are ongoing in other member states.

This paper specifically addresses the issue of artificial intelligence's impact on decisions regarding people's entitlements. As a modern phenomenon, artificial intelligence introduces numerous uncertainties and questions, particularly in the realm of online platforms. Various aspects of artificial intelligence play a significant role in content moderation processes on these platforms. In this article, we explore whether AI tools in content moderation are entirely free from human control and what the wording in Article 20 of the DSA implies. We contend that AI and its tools occupy a relatively strong position in content moderation on digital platforms since not every decision to remove content is directly controlled by humans. Nonetheless, human influence and judgment remain substantial, especially during the development phase of the AI itself, its input parameters for subsequent decision-making, and, as we indicate in our article, during the control phase over the AI's decision-making system.

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