E-CAPSULE N.2 LEGALTECH APPLICATIONS FOR JUSTICE AUTHORITIES' ADMINISTRATIVE SUPPORT

AGENFOR INTERNATIONAL

Procura della Repubblica PRESSO IL TRIBUNALE DI FIRENZE

HfÖV Hochschule für Öffentliche Verwaltung Bremen

COMMISSAIRES DE JUSTICE CHAMBRE NATIONALE

RES PVBLICA 1995 ATHINA EPLO European Public Law Organization

De Nationale Kamer van Gerechtsdeurwaarders La Chambre Nationale des Huissiers de Justice

VR DIGIJUST Digitalising Justice via Combined Virtual Reality Training

EUROPEAN EXPERTISE & EXPERT INSTITUTE Shaping Expertise across European Justice Systems

CORTE DI APPELLO DI VENEZIA

Procura della Repubblica di Rimini

RIGHTS, GUARANTEES AND THE RISKS OF LARGE-SCALE INVESTIGATIONS

Large-scale investigations are resulting in large-scale criminal proceedings, i.e. investigations that are characterised by a longer investigation period and that significantly exceed the human and material resources required for average investigations by the police (and public prosecutor's office). Indicators for this can be, for example, the large number of crimes to be prosecuted, the number of suspects, the number of injured parties, or the amount of evidence to be evaluated. Reference can be done to cases like Enchrochat or Sky ECC, as an example.

The size of such proceedings, both in terms of personnel and data, can lead to a situation in which the rights of those involved in the proceedings, especially the accused, are not sufficiently guaranteed or protected.

In addition, there is a considerable risk that the available evidence has not been or will not be collected, evaluated and used in the process with sufficient justification, so that special process and project management is required due to the complexity of such proceedings.

Here, it can be helpful to use a system that is supported by AI applications during the administrative process; but not when it comes to decision-making (Art. 11 Directive 2016/680).

USE OF EVIDENCE DERIVING FROM INVESTIGATION CHARACTERISED BY PROFILING

In EU Law, the term 'profiling' refers to any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements (Art. 3 No. 4 Directive 2016/680).

The use of information collected by means of profiling is generally deemed inadequate before Member States' courts and thus constitutes a threat as to admissibility of evidence. However, law enforcement makes use of profiling methods a strategic level.
It must be clarified to what extent strategic profiling is considered adequate and up from which point in an investigation strategic profiling methods turn into individual profiling.

TECHNOLOGY-SUPPORTED PREDICTIVE JUDICIARY DECISION-MAKING

Predictive tools are regularly used in the judicial sector. These are applications such as VERA2, which are used to conduct individual risk analyses of radical individuals in order to determine their conditions of imprisonment and parole eligibility. Such systems are also used – or: could be used – to determine adequateness of alternative sanctions.

However, often these systems are neither partially nor fully automated – the underlying process of prognostic reasoning is still carried out by personnel trained in psychology and criminalistics. Consequently, the quality of decisions, especially related to alternative sanctions, depends too much on the evaluator's knowledge and competences.
The use of standardises technology-driven tools could improve the quality, at least when capitalised on for supporting measures.