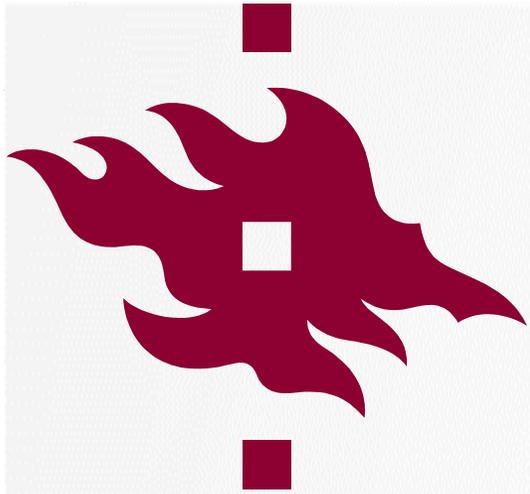


REGULATING AUTOMATED DECISION-MAKING IN THE PUBLIC SECTOR –

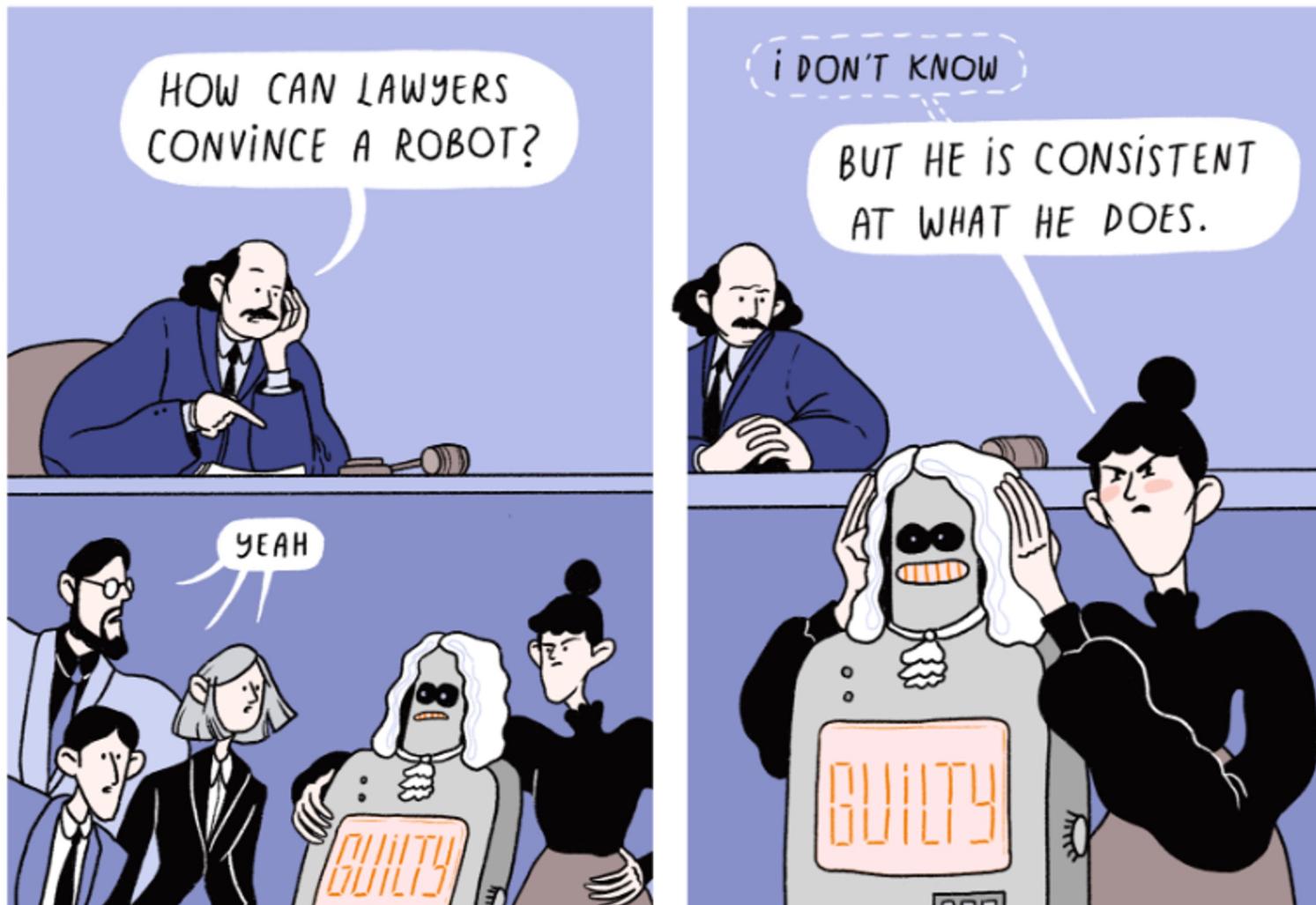
CASE FINLAND

Doctoral Researcher Hanne Hirvonen, University of Helsinki
2.11.2022





BACKGROUND OF THE TOPIC



University of Helsinki, Legal Tech Lab and A. Mäkijärvi 2021



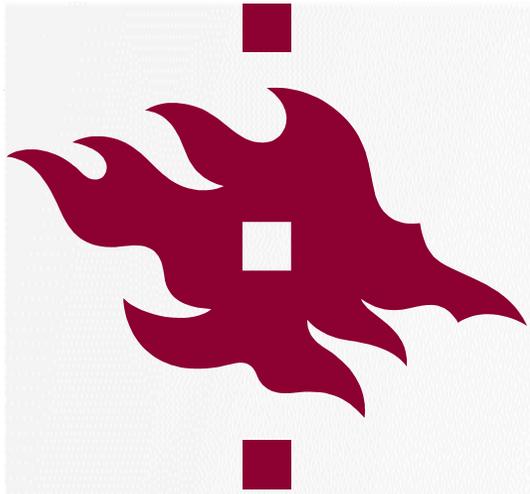
MATTER OF URGENCY?

- Practical problem – GDPR article 22
- Technological development
- Rapid advances in the field of AI-driven operations and services
- The amount of data, computational power and complexity of algorithms
- New machine learning systems
- Growing interest, possibilities of new technologies
- Automated decision-making in the public sector growing
- (See for example Automating Society Report 2020, Når algoritmer sagsbehandler – Rettigheder og retssikkerhed i offentlige myndigheders brug af profileringsmodeller 2021, Re-humanising automated decision-making Workshop report from the ADM: Nordic Perspectives research network 2020)



OR NOTHING NEW?

- BUT
- Technology is constantly evolving (long continuum)
- Authorities have been utilizing different technologies for years
- Hype around AI, rule based practices used for decades
- Nordic legal research has recognized problems concerning i.a. automation more than 30 years ago



CASE FINLAND



PARLIAMENTARY OMBUDSMAN'S DECISION

- taxpayer complaints: incorrect tax decisions
- the deputy ombudsman asked for a clarification (2018)
- fully automated process
- procedure is not based on appropriate and precise legislation
- good administration and legal certainty?
- official accountability?
- transparency?
- See: "Skatteförvaltningens automatiserade beslutsförfarande uppfyller inte grundlagens krav – Pressmeddelanden" 26.11.2019 <https://www.oikeusasiamies.fi/sv/-/verohallinnon-automatisoitu-paatoksentehtomenettely-ei-tayta-perustuslain-vaatimuksia>



CONSTITUTIONAL LAW COMMITTEE

- Proposal concerning the processing of personal data by the Immigration Service
- Included a section on automated decision-making
- Constitutional law committee considered the proposal problematic (twice)
 - principles of good administration (Constitution 21 §)
 - official accountability (Constitution 118 §)
- Needs to be regulated
- More info:
 - Utlåtande GrUU 7/2019 rd. https://www.eduskunta.fi/SV/vaski/Lausunto/Sidor/GrUU_7+2019.aspx
 - Utlåtande GrUU 62/2018 https://www.eduskunta.fi/SV/vaski/Lausunto/Sidor/GrUU_62+2018.aspx



NEW LEGISLATION

- The government's proposal to the parliament for **legislation on automatic decision-making in the public administration**
 - Given in September 2022 (HE 145/2022)
 - Constitutional Law Committee gave its opinion 20.1.2023 (PeVL 81/2022 vp)
 - In force? (election coming in April 23)
 - See in Swedish
https://www.eduskunta.fi/SV/vaski/HallituksenEsitys/Sidor/RP_145+2022.asp
[X](#)
- Obligations on development, introduction and monitoring of an ADM system
- Scope limited to the “rule-based” automation and fully automated decision-making



New chapter to the Administrative Procedure Act

- The base for the use of ADM (3 sections)
 - 1) “Förutsättningar för att avgöra ärenden automatiserat”
 - a) matter does not include discretion, or discretion made in advance
 - b) official appeals made to the authority can not be automated
 - 1) “Rättsskyddsförutsättning vid automatiserade avgöranden”
 - a) free appeal
 - 1) “Meddelande om automatiserat avgörande”
 - a) the use of automation need to be stated in the decision



New Chapter to the Act on Information Management in Public Administration

- “6 a kap. Informationshantering vid utveckling och användning av automatiserade verksamhetsprocesser”
 - Väsentlig dokumentering
 - Testning
 - Kvalitetskontroll och hantering av felsituationer
 - Beslut om införande av en automatiserad verksamhetsprocess
 - Informering om en automatiserad verksamhetsprocess
 - Ändring av behandlingsreglerna
 - Användning av uppgifter
 - Offentligt anställda arbetstagares tjänsteansvar
 - + Informationshanteringsnämnden



SUMMARY

- How (and why) ensure human control?
- The idea of “quality assurance”
- The aim is to control “the process of ADM”
- Notice, however, e.g:
 - Personal accountability vs. accountable legal entity?
 - Development documents should state who approved them, the person responsible for testing should also be named (Finland)
 - Legal protection, the right to appeal (Finland) vs. compliance and sanctions (EU)



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