

JUDGE PROFILING – A THREAT OR THE WAY FORWARD?

Profiling

French prohibitions

Arguments in favour of the prohibition

Equality of arms

Forum shopping

External factors and judicial culture

GDPR

Arguments in opposition to the prohibition

Public Sector Information

Predictability

Self-monitoring and evaluation



Profiling

Article 4 paragraph 4. of GDPR

An automated data processing technique that consists of applying a “profile” to a natural person, in particular in order to make decisions about him or her or to analyse or predict personal preferences, behaviours and attitudes:



Judge profiling

CEPEJ 2018: further scientific research is needed before considering using it

X should not be used for giving advantage to litigants

✓ may be used for assist judges reviewing their own decision-making

THE FRENCH PROHIBITION

Article 33 of the Justice Reform Act

- ***“The identity data of magistrates and members of the judiciary cannot be reused with the purpose or effect of evaluating, analysing, comparing or predicting their actual or alleged professional practices.”***
- ‘The ban resides upon a regulation of the algorithms which exploit the data resulting from decisions, in order to ensure a transparency on the methodologies implemented (...) Profiling of judges and registry officials will also be prohibited so as not to undermine the proper functioning of justice’
 - Names of judges on their decisions? – Right to a fair trial – Article 6 par. 1. ECHR

ARGUMENTS IN FAVOUR OF THE PROHIBITION

Equality of arms

- fair balance between the *opportunities* afforded the parties involved in litigation.

Forum shopping

- a malicious activity or parties exercising their rights?
- point of jurisdictional rules in the dawn of online courts?

External factors

Decision-making in panels

Fiction of logical syllogism

Data protection

- personal data vs. public sector information
 - Directive (EU) 2019/1024 on open data and the re-use of public sector information (Open Data Directive)

PERSONAL DATA VS PUBLIC SECTOR INFORMATION

FOI

- Freedom of Information Law
- social control of state power and spending public money
- Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information

PSI

- Law on the Re-use of Public Sector Information
- Economic interests
- Act LXIII. of 2012 on the reuse of **public data**
 - Public information
 - Information of public interest
 - Judicial decisions

ARGUMENTS IN OPPOSITION TO THE PROHIBITION

Predictability

Self-monitoring

Evaluation of professional performance of judges

CONCLUSIONS

THANK YOU FOR YOUR ATTENTION!

ANY QUESTIONS?

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