

Words of thanks

First of all I want to thank Simone and Regina for organizing this event.

It happens frequently that initiatives about a special lecture fade away after the first performance, but you continued the lectures and I am really very grateful for all the work you have done.

In particular I want to thank Janneke for her fantastic and inspiring lecture. You gave us a broad overview on the problems that rise with the use of algorithms in Big Data, IoT, and Artificial Intelligence with regard to the human rights in our democratic society.

You are one of the most excellent specialists in the field of human rights and I am very happy that you are here this afternoon. You published more about the protection of human rights in a complex society and you gave remarkable thoughts not only about procedures in court, but also about the interchange between private and public rules where it was suggested to work with covenants or public-collective partnerships.

As a former Crown member of the Social Economic Council (SER) I am very sensitive to these ideas. Maybe it does not work very quickly, but - on the other hand - it will result in more commitment and acceptance by the people.

Actually we see that the Dutch government is working more and more with arrangements (akkoorden) more or less in the way you have written about. So this approach will be a serious point of attention when we look at the development of Big Data and A.I. in our society. We can think about a "Digitisation covenant" (digitaliseringsakkoord), because many ethical questions have to be solved.

If Simone agrees, I would like to stress two actual issues with regard to the problems stated by Janneke in her lecture.

The system Risk Indication

First: there is a lot of publicity in the newspapers about SyRi – System Risk Indication – a new form of predictive policing.

The tool allows central and local government authorities to combine broad categories of data – data that previously were stored in different systems. The combined files are then analysed with secret algorithms to identify some people as more likely to commit benefit

fraud. If the analysis of SyRi points out that somebody is a risk his/her name will be mentioned in a special Register that is accessible to government authorities.

With this method all the inhabitants of a certain area are screened with an investigation of almost all the data the governments have stored. Think about : taxes, pensions, social benefits, bank accounts, energy and water consumption, work, home, education. And this method is since its introduction exclusively used in areas with a high proportion of low-income residents, migrants and ethnic minorities.

Here we see an instrument with a high risk for our democratic society. There is a clash with several fundamental rights. The action is disproportional, because of the not aligned profiling applied on all the civilians in a certain area. Such steps are only allowed if based on a concrete suspicion of somebody.

The problem is made much worse by the fact there was no debate in parliament or media attention in the period 2012 – 2014, when the law introducing SyRi was launched.

I was astonished about these facts because in that period I was a member of the Senate and no word was spoken about this issue. In the NRC of last week you can see that my colleagues – both in the House and in the Senate – were surprised also. After doing some research I now know that the draft law was in the Senate tabled in the Committee of Social Affairs. I was not a member of that committee. My colleagues there did not give an alert, because in their opinion the draft was a collection of several “procedural elaborations or corrections” etc. all regarding a change of the Social Security Organization. So only “something institutional”.

But now we know better!!

I am happy that a number of NGO's sued the government demanding to stop the work with SyRi. In my view they have a strong case. Even the minister, Lodewijk Asscher, who signed the draft and sent it to Parliament, is actually one of the opponents. This case will be a good example of constitutional review where the court can decide that the parliament has to take the opportunity to reconsider the SyRi actions.

Anyway it is remarkable that a special rapporteur of the UN wrote an amicus curiae letter to the court in The Hague. And as an old friend I am eager to join him.

The robot judge

A second – and my last – point to stress is in the field of procedural rights, influenced by Big Data and AI. These techniques can support the judge to gather data, to compare several cases, to control the consistency of reasoning and to explain decisions better. But that is it!! I can tell you that my colleague Jaap van den Herik (present here) and I had during the last years many debates in public meetings about his statement :”computers can do justice”. And in our performances he was the true believer: “computers can do it – so there will be a robot judge”. I was the agnost: I denied. Just as I still do now.

Jaap had a lot of reasons to be happy: we see that AI develops with more data disposable, correlations become more powerful and algorithms can learn themselves. Jaap tells about Watson – the IBM supercomputer – having beaten the world champion in chess and even in Go, a still more complicated game, the best world player lost the game from the machine. My standard reply is if it would be possible, it is very dangerous. Remark: the algorithms are not transparent – for the convict and also for the judge. The algorithms are not transparent concerning with the handling of the facts and the value of the variables. So there is no equality of arms between the parties, not a fair process.

But more important: I say: it is not possible that a robot can replace the judge. As you all know, chess is a game with a very, very big number of possibilities to make a choice. But the rules to play are limited, the framework is closed. That is not the case in the judiciary: laws (the framework) are language and words never are fully clear.

A judge can say always: “it ain’t necessarily so”: in this special case I interpret the rules in another way.” There are always new (kinds of) solutions possible.

But decisive in the debate between the mathematician and the lawyer will be the normative argument: it is unacceptable that a human being will be sentenced by a machine. The dignity of a human is our highest value. And I am proud that in a recent European Law, the GDPR (General Data Protection Regulation) is stated (art. 22) “The data subject shall have the right not to be subject to a decision based solely on automated processing...”

A robot-judge working with non-transparent algorithms is a blackbox, that has given in a testcase the conclusion: “6 month in jail. This is my calculation, and that’s it.”

So, ladies and gentlemen: beware!!!