TechLitigation
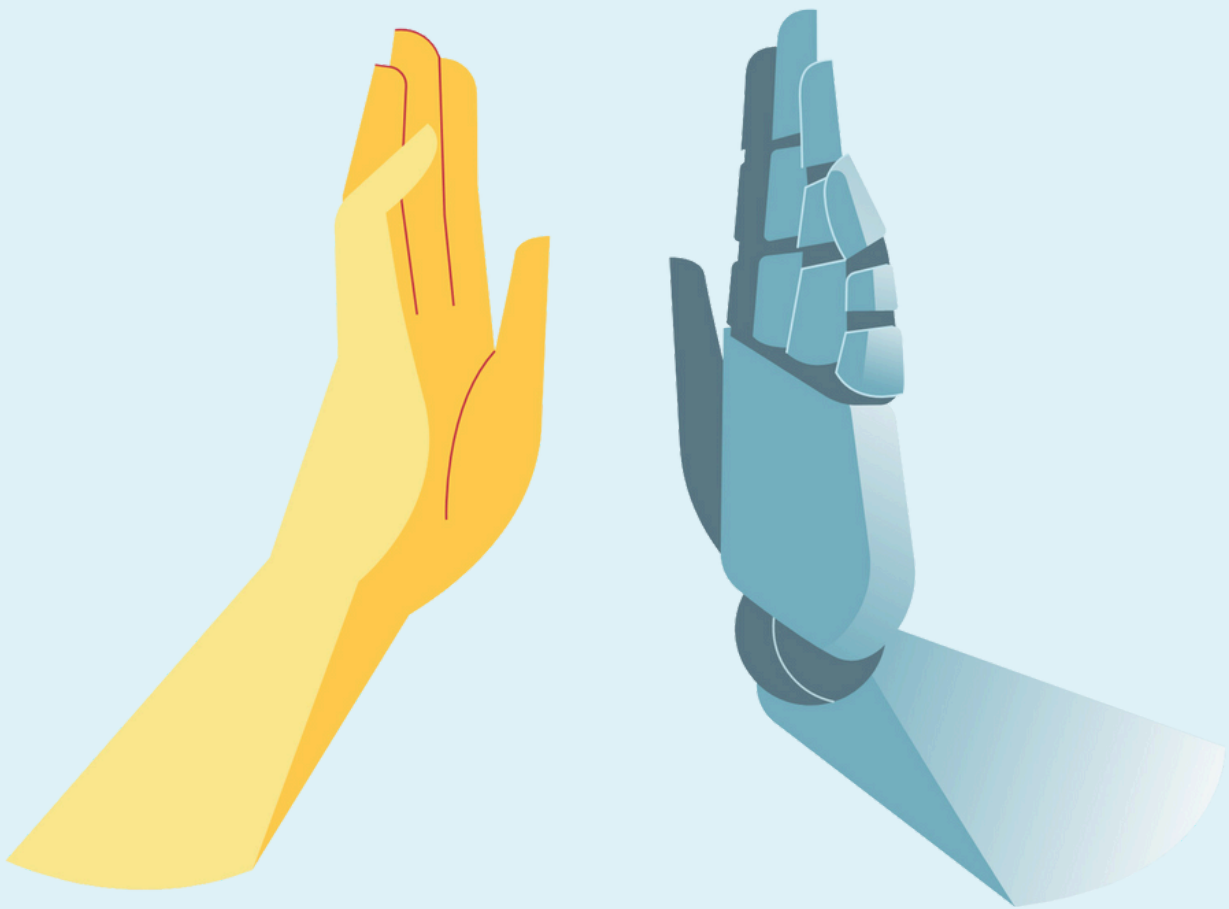
Case Law Database on Automated Decision-Making

A Guide for National Rapporteurs

The Tech Litigation Database is part of the Algorithmic Fairness for Asylum Seekers (AFAR) Project.

It is funded by the Volkswagen Stiftung, and is hosted at the Centre for Fundamental Rights at the Hertie School.

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About the Project

Within the AFAR project, we are thrilled to announce the creation of the "Tech Case Litigation Database," a groundbreaking initiative aimed at consolidating a comprehensive collection of global tech litigation cases. This pioneering database represents a significant leap in the field, offering valuable insights into the legal landscape surrounding new technologies on a worldwide scale.

The "New Tech Case Law Database" is poised to be an essential resource for researchers, policymakers, and practitioners in technology law. By collaborating with us, you will have the opportunity to shape this resource and make a lasting impact on the legal community worldwide. You can see a preview of the database here (please do not share the link yet).

The database is hosted at the Centre for Fundamental Rights of the Hertie School and funded by the Volkswagen Stiftung.

Your Role

As we aim to have a global scope, we are inviting legal scholars from around the world to join us as National Rapporteurs for this ambitious endeavour. The primary task of National Rapporteurs is to contribute to the database by reporting new cases in the field of new tech litigation.

National Rapporteurs will play a pivotal role in enriching our database with pertinent case information. The reporting process is designed to be practical, straightforward, and time-efficient. Rapporteurs will be required to complete a Google Form, providing essential details about the cases they encounter, including case name, jurisdiction, type of technology involved, and rights at stake (see below section "How to Add a Case").

We understand that the lives of legal scholars are busy, and that's why we've made this task as hassle-free as possible. Rapporteurs are expected to contribute cases as they come across them during their research, which means no significant time commitment is required.

Recognition and Credits

In recognition of your invaluable contribution, your name will be prominently displayed on the respective case page in the database as "Author". As part of the team, your name and affiliation will be displayed on the "About Page" of the website. By becoming a National Rapporteur, you will play an instrumental role in creating a truly global and representative repository of new tech case law.

Selecting a Case

Before adding a case, it is important to carefully evaluate whether the judgment or decision fits the database's scope. In this section, you can find helpful information on how to select your case. If doubts persist, do not hesitate to contact Francesca Palmiotto (francescapalmiotto@gmail.com).

The database covers decisions or judgments broadly on automated decision-making. Our ambition is to have a **global scope**. Therefore, cases from all over the world are welcome.

For the moment, we focus on contesting uses of automated decision-making systems in the **public sphere**. This includes areas such as criminal law, migration and asylum, welfare state, social benefits, tax enforcement, law enforcement, education, detention and prison. If extremely relevant, landmark cases on automated decision-making in other areas, such as banking or work management, can be added.

Example:
The first CJEU judgment on Article 22 GDPR relates to credit scoring. However, due to the importance of the judgment, it is added to the database.

National rapporteurs can also suggest new areas of litigation (e.g., generative AI and copyright). We will be more than happy to discuss your ideas and enrich the database.

We do not provide a strict definition of "**automated decision-making**" (ADM), as the database precisely aims to investigate how judges and other authorities approach this concept. For the purpose of selecting cases, we conceive ADM as any automated system used to replace, support, or aid human decision-makers. It is irrelevant whether the systems made a fully automated decision or not. We also do not restrict the scope based on the type of technology contested (whether it is an Artificial Intelligence system or not is irrelevant).

Example:
Cases on automated assessment of mobile phone data in asylum proceedings are in the database. The automated system analysing the phone data does not make the final decision (whether to grant international protection or not), but it does influence decision-makers in identifying the country of origin of asylum seekers, and it is used to assess their credibility, which is a crucial element of asylum decision-making.

We do not add judgments or decisions that cover only data protection issues without any automated decision-making systems. Even if the case is grounded on the right to data protection or data protection laws, it must always involve an automated decision-making system.

Examples:
The case *La quadrature du Net and Others* (CJEU, Joines Cases C-511/18, C-512/18 and C-520/18) covers predominantly data protection issues. However, it is included in the

database as it addresses the use of automated risk assessment (which justifies follow-up actions by authorities on individuals flagged at risk) of travellers flying into the EU.

The case *Gluckhin v Russia* (ECtHR, 4 July 2023) [violation of Article 8 and 10 ECHR] concerning the use of facial recognition technology to identify, locate, arrest and convict a protestor in Russia <u>is included</u> in the database, as the technology was used to take different decisions (identification and subsequent arrest, evidence of identification and subsequent conviction).

The case *Jehovah's Witnesses v. Finland* (ECtHR, 9 May 2023) [no violation of Article 8 ECHR] concerning the obligation to obtain consent when collecting personal data during door-to-door preaching <u>is not</u> included in the database, as there is no automated system involved.

The case *Bărbulescu v. Romania* (ECtHR, 5 September 2017) [violation of Article 8 ECHR] concerning the decision of a private company to dismiss an employee after monitoring his electronic communications <u>is not included</u> in the database as it only concerns the unlawful processing of personal data. The case could have been included if (hypothetically) the company had used an automated system to analyse the employee's data to determine their reliability or assess their performance.

We welcome cases from any judicial authority (lower or higher national court, international courts or tribunals) and non-judicial independent authority (such as Data Protection Authorities, Equality Bodies, or Ombudspersons). Judgments from higher courts should be preferred over judgments from lower courts. However, depending on the relevance of the case, judgments in the first instance can be added to the database.

Geographical scope	No restrictions
Authority	Judicial or extra judicial independent authorities
Technology	No restrictions
Areas	Public sphere, although landmark cases in other areas can be added
Automated Decision-Making	Broadly covering any automated system replacing, aiding, informing or supporting human decision-makers. Cases that relate only to data protection issues are outside the scope

Adding a Case

To add a case to the database, use the Google Form linked [here](). Please follow the instructions in the table below to fill in the form.

Category	Format	Instructions
Name of the Case	Country, Authority, Date, Case Name	This is how the case will be displayed on the database. Please follow the format and order rigorously
Date	Day, month, year	Indicate the date of the judgment of decision
Jurisdiction (country)	Short-answer text	Indicate the country of the decision or judgment
Jurisdiction (continent)	Select continent	Select the continent of the judgment or decision. This tagging allows us to show global trends in litigation
Type of Authority	Select the type of authority	Select between higher or lower national court, CJEU, international court (e.g. ECtHR), or Data Protection Authority
Name of Authority (English)	Short-answer text	Please indicate the name of the authority translated in English (e.g. Consiglio di Stato will be Council of State). A useful tool for legal translation is [IATE]()
Name of Authority (Original)	Short-answer text	Please indicate the original name of the authority. For authority's name in non-Latin alphabet, you can also provide a transliteration when possible
Summary	Long-answer text	Please add a summary of the judgment. This should be written by you and should provide key information on the case and the judgment/decision. Please do not copy paste any summary written by other authors. If you have published a comment on the case elsewhere, please paraphrase your summary. You can always add a link to your previous publication in the final box "Further resources or commentaries". **Please do not add any personal data of the parties to the case. Use the following terms instead:** Plaintiff: The party who initiates a legal action against another party, seeking a remedy for an alleged wrongdoing. Defendant: The party against whom a legal action is brought, accused of committing a wrongdoing or violating the plaintiff's rights.

		Appellant: The party who appeals a lower court's decision to a higher court, seeking a review and potential reversal of the lower court's ruling.
		Appellee: The party against whom an appeal is filed, defending the lower court's decision before a higher court.
		Petitioner: The party who files a petition with a court, usually seeking relief or redress in matters such as family law, administrative law, or constitutional law.
		Respondent: The party against whom a petition is filed, typically required to respond to the allegations or requests contained in the petitioner's filing.
Link	Add link	Please add the link to the judgment or decision. The database does not store any file. For privacy reasons, we will only link decisions or judgments that are already publicly available.
Area	Multiple Choice	Select the area of law or sector that resonates the best with the case. Multiple selection is allowed. If needed, you can add a new are using "other" button.
Technology Type 1	Multiple Choice	Select the type of technology contested, such as facial recognition, relation management, risk assessment. If needed, you can add a new category using "other" button.
Technology Type 2	Multiple choice (AI or Non-AI)	Does the judgment state whether the system is AI or not? Please select the option AI or Non-AI only if the judgment says so. Do not guess it. If the judgment is silent, please choose "Unknown"
Technology Type 3	Multiple Choice (solely ADM or partly ADM)	Does the judgment state whether the system took a or partly automated decision? Plese select the correct option only if the judgment says so. Do not guess it. If the judgment is silent, please choose "Unknown"
Technology Type 4	Multiple Choice (deployed, not deployed, tested)	Is the contested technology deployed, only tested or under development? If you cannot find this information, leave the question blank
Grounds for the Decision	Multiple Choice	We have four different options: national law, EU law, Human Rights Law, International Law. If needed, you can add another ground using "other". You can also select more than one ground

User	Multiple Choice	The User question asks you to indicate whether the natural or legal person using the automated system is private or public. If you cannot answer, please select NA.
Provider	Multiple Choice	The Provider question asks you to indicate whether the entity developing the automated system is private or public. If you cannot answer, please select NA.
Legal Requirements	Multiple Choice	Please select one or more keywords that represent the case. You can always add a new one using the "other" button
Further Resources or commentaries	Long-answer text	Here you can link any resource you want to suggest on the case

You can always modify your submission or correct typos or errors using the link in the email you received after submitting the form.

A case example is available in the next page.

Home > Case Law Database > EU, Court of Justice of the EU, 7 December 2023, Case C-634/21

EU, Court of Justice of the EU, 7 December 2023, Case C-634/21

⚖ Case Overview

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Country
EU, Europe

Deciding Body
Higher Court

Area
Data Protection

User
Private

Case Name
Case C-634/21

Authority (English)
Court of Justice of the EU

Technology
Trusthworthiness Assessment

Provider
Private

Decision Date
7 December 2023

Authority (Original)
Court of Justice of the EU

Grounds for Decision
EU law

Legal Requirement
Prohibition of automated decision-making

Case Summary

On the 7th of December 2023, the Court of Justice delivered two landmark judgments for the protection of the right to data protection against automated credit scoring (Schufa Holding C-634/21 and Joined Cases C-26/22 and C-64/22). Both cases concerned the compatibility of data processing by SCHUFA, a German credit agency, with the GDPR and the rights to privacy and data protection. In the first case on Article 22 GDPR, the Court of Justice held that credit scoring is an automated decision as it has a determining role in granting credit. According to the referring Court and the Advocate General (AG), SCHUFA's credit scoring qualifies under Article 22 of the GDPR, as it 'tends to predetermine the latter's decision as to whether to grant or refuse credit to the person concerned, so that it must be considered that that position is of a purely formal nature in the context of the process' (AG Opinion, point 47).

The Court of Justice followed the AG Opinion and held that Article 22 GDPR: "Must be interpreted as meaning that the automated establishment, by a credit information agency, of a probability value based on personal data relating to a person and concerning his or her ability to meet payment commitments in the future constitutes 'automated individual decision-making' within the meaning of that provision, where a third party, to which that probability value is transmitted, draws strongly on that probability value to establish, implement or terminate a contractual relationship with that person" According to the Court, since the automated crediting scoring – calculated by a credit information agency and communicated to a bank – plays a determining role in credit granting, establishing that value qualifies as a decision under Article 22 GDPR (C-634/21, para 50). Therefore, it is prohibited unless one of the exceptions set out in Article 22(2) of the GDPR is applicable and the specific requirements provided for in Article 22(3) and (4) of the GDPR are complied with (C-634/21, para 64).

Access to the full judgment

Full Judgment →

Futher notes on contested technology

→ AI Technology

→ Solely Automated-Decision

→ The technology is deployed

Additional resources

Palmiotto, F.; "'Scoring' for Data Protection Rights: The Court of Justice's First Judgment on Article 22 GDPR (Case C-634/21 and Joined Cases C-26/22 and C-64/22)", EU Law Live, 09/01/2024,

https://eulawlive.com/op-ed-scoring-for-data-protection-rights-the-court-of-justices-first-judgment-on-article-22-gdpr-case-c-634-21-and-joined-cases-c-26-22-and-c-64-22-by/

Author of the case note   Francesca Palmiotto