



# The German Federal Constitutional Court's 2023 Judgment on Automated Data Analysis

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# The complaint

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- lodged by NGO

# The judgment (1 BvR 1547/19, 1 BvR 2634/20)

# Settling the ground



# ADA as an encroachment of fundamental rights

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  - legitimate purpose (+)
  - furtherance of the purpose (+)
  - necessary (+)
  - proportionality *strictu sensu* / adequacy ?



# Factors in the adequacy test

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- »random data from the Internet«?

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- data sources

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  - broad ↔ limited



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    - ↔ machine learning / AI

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↔ information about persons not yet targeted by the police (and risk of discrimination)
- limitation to certain severe forms of criminality?

# Generic factors

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- **handling of errors**

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- administrative oversight
- transparency
- handling of errors
- legal remedies



Did the statutes under  
review pass the  
»adequacy test«?

# Constitutional review

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  - the exclusion of machine learning technology
- under review: far-reaching generic legal bases *without* sufficient safeguards
  - unconstitutional

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- *some barriers and guidance to the German legislature(s)*

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- *some* barriers and guidance to the German legislature(s)

## Literature:

*Johanna Sprenger/Dominik Brodowski*, Predictive Policing in Germany, in: Juliette Lelieur (Ed.), *Artificial Intelligence and Administration of Criminal Justice = RIDP 94.2 (2023)*, Antwerpen: Maklu, 2023, pp. 117–148.



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