



Digital Transformation of Public Administration

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Agenda

- Digital Transformation as a Long Lasting Dream
- Emerging Active Role of Administrative Law
- Crucial Challenges to Legal Principles
- Concluding Remarks

Digital Transformation as a Long Lasting Dream



- IT development has always been reflected in Public Administration (PA)
- Objectives of IT use constant over time
- Fields of application and focus varied depending on IT development
 - Mainframe computer -> calculation-driven mass procedures (tax, social benefits) -> efficiency by centralized computer centers
 - Personal computer -> decentralized computer-assisted work -> networking
 - Internet-Protocol -> interface with citizens; E-Government -> electronic workflow
 - Advanced technology and capacities plus AI: overall transformation
- History of overambition and underperformance
 - Immediate costs but only long-term savings
 - Importance of organization and personnel underestimated

Emerging Active Role of Administrative Law



- Constitutional law as point of reference
 - Rule of Law; Right to a good administration
 - Human Rights (esp. Personality Rights)
- Administrative law in development
 - Removal of obstacles (for electronic mass administration)
 - e.g. exceptions to APA Obligations (to state reasons; to be heard)
 - Enabling electronic interaction
 - “electronic signatures” enable E-Government with “signed” applications
 - Accelerating the transformation
 - legal objectives for provision of online services and electronic file-keeping
 - Regulating risk-technology (AI)
 - **Missing:** Comprehensive legal framework for major IT-planning

Crucial Challenges to Legal Principles

- IT pressure for centralization vs autonomy of administrative units
 - e.g. gateways, standard-setting
- Technology-driven efficiency vs procedural rights
 - analog access and analog participation
- Fixed algorithms vs sensitivity to individual cases
 - e.g. right to be heard; opt-out for electronic services
- Technical flaws vs rule of law
 - e.g. quality assurance
- Black box decisions vs accountability
 - e.g. AI-based decisions

ECJ on AI

C-817/19 (PNR), June 21, 2022



- As regards the criteria...according to the very wording of Article 6(3)(b) of the PNR Directive those must be ‘pre-determined’ criteria. that requirement precludes the use of artificial intelligence technology in self-learning systems (‘machine learning’), capable of modifying without human intervention or review the assessment process and, in particular, the assessment criteria on which the result of the application of that process is based as well as the weighting of those criteria.
- It is important to add that use of such technology would be liable to render redundant the individual review of positive matches and monitoring of lawfulness required by the provisions of the PNR Directive. ... given the opacity which characterises the way in which artificial intelligence technology works, it might be impossible to understand the reason why a given program arrived at a positive match....

Concluding Remarks

- Administrative Law should provide for a more comprehensive approach to IT use in PA
 - Proposal: legal framework which requires a transparent decision on opportunities, the design and risk-mitigation-measures of major IT-planning
- AI challenges our understanding of a statement of reason
 - Proposal: Make use of AI transparent and establish fora of discussion



Thank you

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Back-Up Slides

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Current State of Play in Germany and Europe I



- Focus on digital services and bundling gateways
 - Germany:
 - Administrative services must be offered electronically by December 2022 (Onlinezugangsgesetz)
 - Bundling in gateways with additional services (i.a. “only once”; payment)
 - Europe:
 - Single digital gateway for administrative services and complementary services (Digital Single Gateway Regulation)
- Incoherent regulation concerning entitlement of citizens
 - Germany: reluctance out of consideration for implementation difficulties; varying approaches to gear citizens toward electronic services
 - Europe: entitlements for existing services

Current State of Play in Germany and Europe II



- Approaches to automated decision-making
 - European General Data Protection Regulation (Art. 22 GDPR)
 - Prohibition unless authorized by a Member State and accompanied with suitable measures to safeguard the data subject`s rights, freedoms and legitimate interests
 - > i.a. specific information, the right to direct intervention of a person, the possibility to express one's point of view, as well as an explanation of the decision taken and a right to challenge it.
 - Additional transparency-rules in the GDPR
 - German Administrative Laws:
 - Different provisions in general administrative law (VwVfG), tax law (AO) and welfare law (SGB)
 - Approach: general exclusion in cases of statutory discretion and opportunity for citizens to point out individual circumstances

Current State of Play in Germany and Europe III



- Emerging framework for AI
 - Draft of a European regulation
 - Risk-based approach
- Shortcomings of current approaches
 - Focus on realization of online services neglects aspects of procedure and quality management
 - Focus on automated decision-making and AI neglects the factual influence of algorithms in other decision-architectures
 - Focus on risks neglects the need for systematic search of improvement of PA by use of IT
 - Focus on electronic services neglects the overall need to ensure sufficient points of personal contact between citizens and administration