

# Suing the Algorithm: The Mundanization of Automated Decision-Making in Public Services through Litigation

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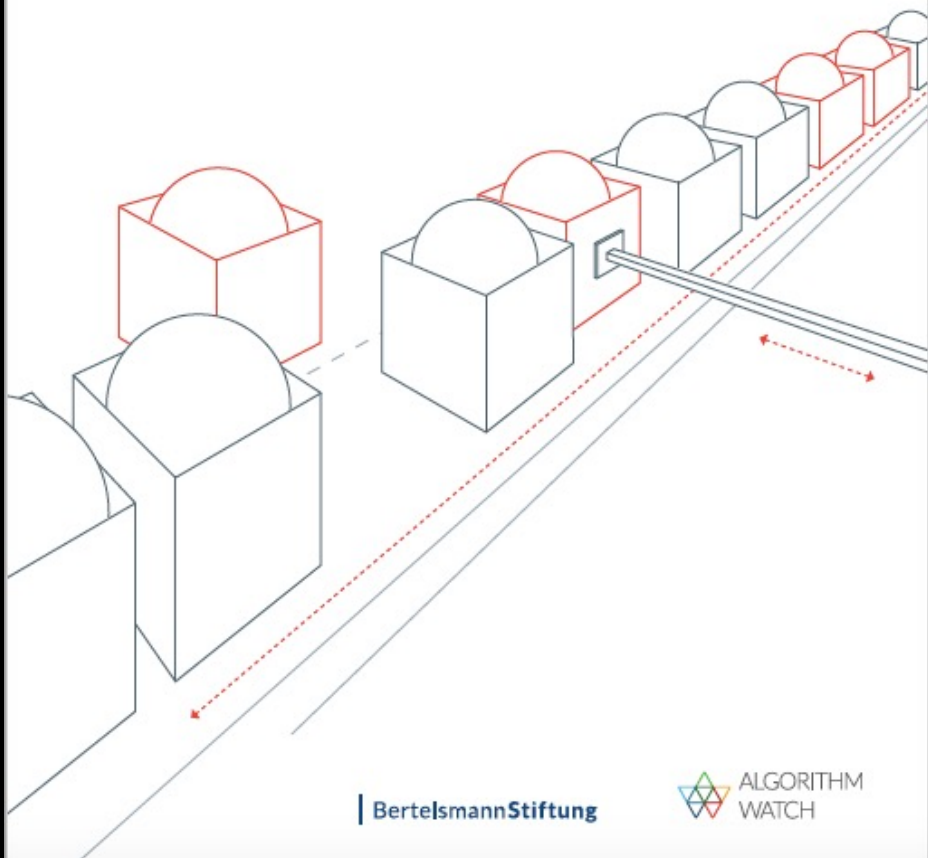
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# Automating Society

## Taking Stock of Automated Decision-Making in the EU



A report by AlgorithmWatch in cooperation with Bertelsmann Stiftung, supported by the Open Society Foundations



BertelsmannStiftung



# REPORT

# AUTOMATING SOCIETY

## 2020



ALGORITHM WATCH

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# The emergence of the digital welfare state

- Increasing use of algorithmic automation in public services (for example UK universal income/ citizen scoring, algorithmic sorting Austrian Employment Services)
- Number of mapping initiatives: automated decision-making in public services across Europe by AlgorithmWatch Automating Society 2, City of Helsinki AI register, City of Amsterdam Algorithm Register
- 2019 UN Special Rapporteur for extreme poverty and human rights submitted a report on uses of digital technologies in welfare states to the UN General Assembly

# Mundanization of Technology

- Making sense of complex technical systems through mundanization
- Developing an everyday understanding of technology
- Highlighting certain aspects of technology while ignoring, mitigating, forgetting others
- Part of mundanization: defining automated decision-making

# Context: Automated Decision-Making in the Swedish Public Sector

- Increasing use and interest on the municipal level as well as among governmental state agencies
- Extend to which ADM is used depends on definition
- Swedish National Audit Office (Riksrevisionen): mapping of ADM in a report (Automatiserat beslutsfattande i statsförvaltningen, RIR 2020:22)
- Since 1970s automated decisions
- 13 agencies made 148 mio decisions affecting private persons or companies directly in 2019 of which 137 were automated, of these 121 mio were fully automated
- 80 per cent of the automated decisions are made by Försäkringskassan, Skatteverket and Transportstyrelsen

# Trelleborg model: automation of social benefit applications

- Since 2017, Trelleborg municipality has introduced fully automated decisions on (follow-up) applications for social benefits
- 46,000 residents
- rule-based algorithms as decision support systems rather than automated robots to which task are fully delegate (Robotic Process Automation)
- Reduced the number of case workers from 11 to 3
- With introduction in 2017 number of welfare recipients reduced by 450



När robotar sköter handläggningen  
ägnar sig kommunen  
åt medborgarna

Figure 1: Email signature image Trelleborg municipality, 2019. "When robots take care of the processing, the municipality takes care of the citizens"

“So what is automated decision-making actually? This is the question. In our process, when we refer to social benefits, this is mainly a question whether you are available for the job market or not. And the evaluation of this question, this decision, if you are available or not is taken in job market process by a civil servant. And then this decision is taken to a higher organizational level and becomes part of decision by the public agency. So, in that sense, we do not have fully automated decisions.” (unit manager Trelleborg municipality).



“Ernst, no we do not call it like that anymore. That was a working name that we had, kind of. Just for us to better understand “what is this actually”? And to a certain degree it was some kind of robot, but actually an algorithm. But to make the whole thing a little bit livelier, so when I worked with a working group on this and we had a brain storming day where we were supposed to discuss what we are going to do we kind of... in order to be able to relate to something, and it is kind of difficult to relate to an algorithm, we came up with this exercise. Like a collective drawing exercise of the algorithm on a big flip chart paper, kind of. One person drew one part and then the next person drew another. In that way, we kind of developed a picture. And were like, so this is what you look like and he kind of was born then. And then it was our former head of administration who came up with that he should be called Ernst. But this is nothing we are still using. This was kind of in the beginning of everything”

(Interview with civil servant Trelleborg municipality, 17 October 2018).

# Litigation case 1: ADM as source code

- Journalist requested access to source code of the software used for the application processing
- Ruling Court of Appeal:
- “The software was developed for the specific needs of the municipality who now owns it. It is hence not a licensed software product that is still owned by a commercial company that has the software at its disposal for commercial interests. Furthermore, the court has reached to the opinion that no individuals will be harmed if the source code is shared with Fredrik Ramel as requested. Hence, the appeal should be allowed.”

# Litigation case 2: ADM as decision tree and interface

- Report to Parliamentary Ombudsmen by Union for Professionals SSR
- Request to get access to the decision tree and the interface of the software that civil servants are working with
- No reply as of last week

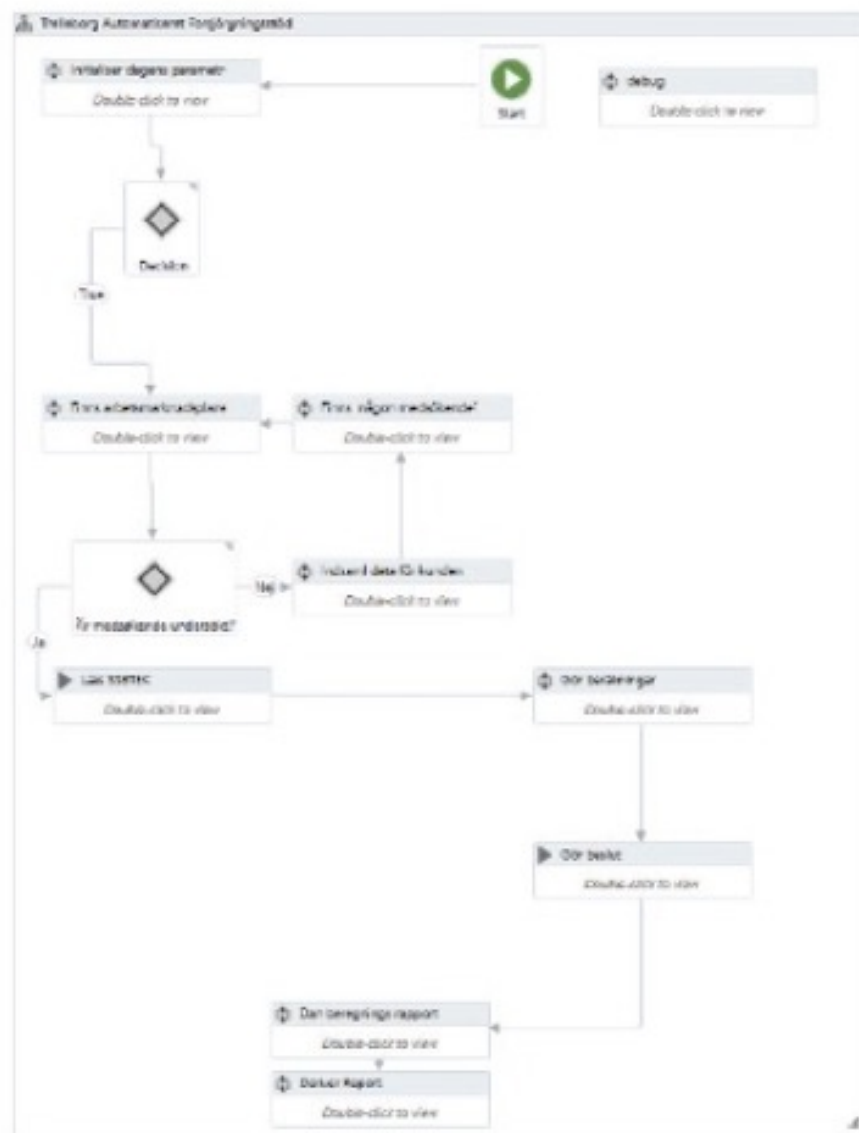


Figure 2: Screenshot UiPath of the decision tree of Trelleborg municipality's Robotic Process Automation system

# Conclusion

- Unstable definition and understanding of what algorithms in social welfare are
- Process of domesticating the algorithm: ongoing negotiation process with different actors involved