AI-based Bulk Surveillance: Emerging Threat to Privacy or Gold Standard for Compliance?

POPULAR SCIENCE SUMMARY

Surveillance, as a means of covert observation, has been used for centuries to monitor the activities of individuals of interest to state authorities. Generally, it can be divided into individual (targeted) and untargeted (also known as indiscriminate or bulk, and most commonly, mass) surveillance.

Bulk surveillance is employed in the execution of state security tasks. This measure involves collecting extensive datasets for subsequent analysis, revealing previously unknown connections between information. In this way, bulk surveillance enables the discovery of new types of threats to public security.

One fundamental limitation to the use of this measure is the recurring controversy over the legality of collecting massive amounts of data on a large proportion of the population when most of this information has no connection to actual threats to state security. In theory, one possible solution to this problem is the use of machine learning (AI) algorithms in the process of analysing the data and determining the relevance of the collected information.

The project aims to investigate the impact of using AI systems to ensure that indiscriminate electronic surveillance aligns with the European model of human rights protection. Subsequently, it seeks to develop a legal framework for regulating AI-based bulk surveillance used by public authorities in the European Union.

Defined in this way, the project's objective aligns with the most recent trend in the European discussion on the future of bulk surveillance systems, particularly concerning algorithmic surveillance. Notably, the potential associated with the use of AI in electronic surveillance is actively researched not only in legal sciences but also by the secret services of many European countries. The first legal regulations for the implementation of AI-based surveillance systems were adopted in July 2023 in France.

The project primarily focuses on EU law, encompassing legislative initiatives and the jurisprudence of the European courts (CJEU and ECtHR), and the regulatory model for AI-based surveillance being developed in selected Member States (Germany, France, Belgium) and third countries (UK, US).

An interdisciplinary approach to the problem under study will allow the development of an updated model for the legal regulation of untargeted surveillance measures based on an assessment of the regulatory potential of specific AI technologies. In other words, key answers for determining how to regulate AI-based surveillance will be provided not only through the application of classical research methods used in legal sciences but also through the use of methods specific to technical sciences, including experimental research.

As the scope of the project is at the center of the European discussion on the legality of the use of indiscriminate surveillance measures, the results obtained will not only make a significant contribution to strengthening human rights protection mechanisms but can also be directly used in legislative work on the regulation of this technology in Member States and at the level of EU law.