

AI based forecast in judicial proceedings

3rd webinar on Artificial Intelligence in the justice field

<https://webcast.ec.europa.eu/3rd-ai-webinar-predictive-justice>

Nov. 18, 2021

francesco.contini@cnr.it



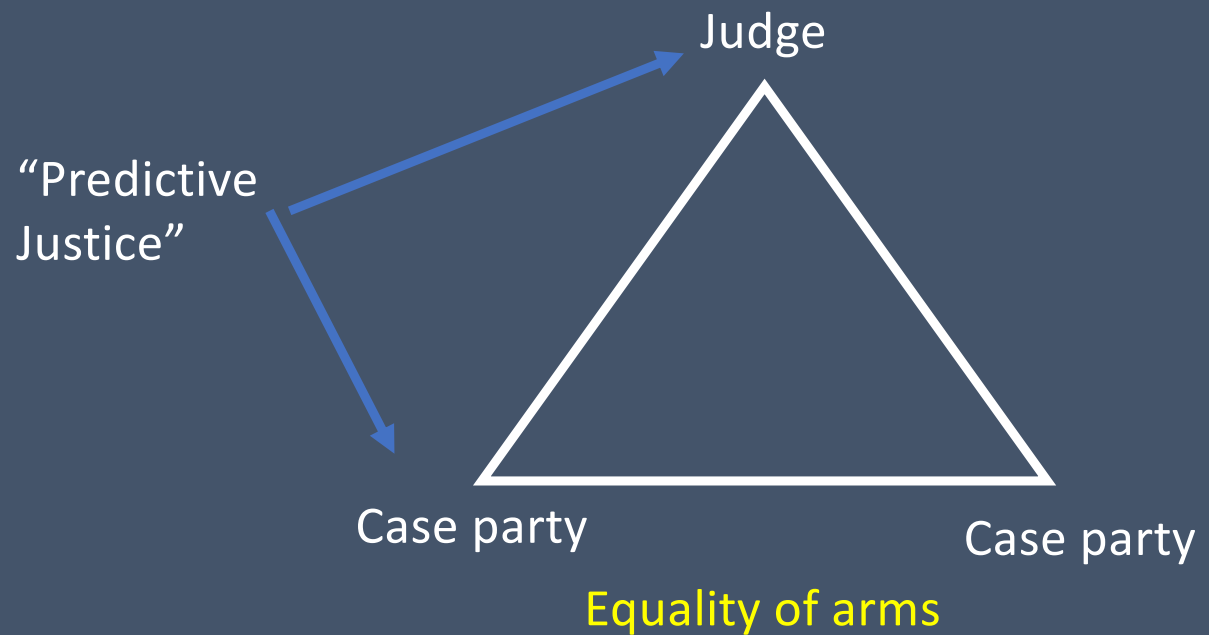
Technology in context

- “Predictive justice”: machines that anticipate or suggest the outcome of a specific case
- Forecast / suggestion / input / support

Legal analytics

General legal analysis

Analysis of caselaw of a given court section, legal area





Inputs from “traditional court tech”

- Registration, case management, e-justice platforms, e-CODEX
- They are (must be) legal: use authorised to fulfil specific tasks within the judicial process
- They are performative (change or register changes of status)
- They are (must be) accountable: in the case of an error in the proceeding, it can be ascertained if the error is due to human behaviour or to a “malfunctioning of the machine”

Divorce form error 'could have led to unfair settlements'

17 December 2015 | UK



An urgent investigation has been launched after a software error was discovered in an online form used by divorcing couples in England and Wales.

theguardian

Revealed: divorce software error hits thousands of settlements

Exclusive: Ministry of Justice urgently examining extent of Form E fault which miscalculated spouses' financial worth



Divorce judgments and payment orders handed down by courts may have been founded on faulty financial information. Photograph: David Sanger

BBC

Sign in

NEWS

2 Financial Details Summaries

2.20 Summary of your capital (Parts 1 to 5).

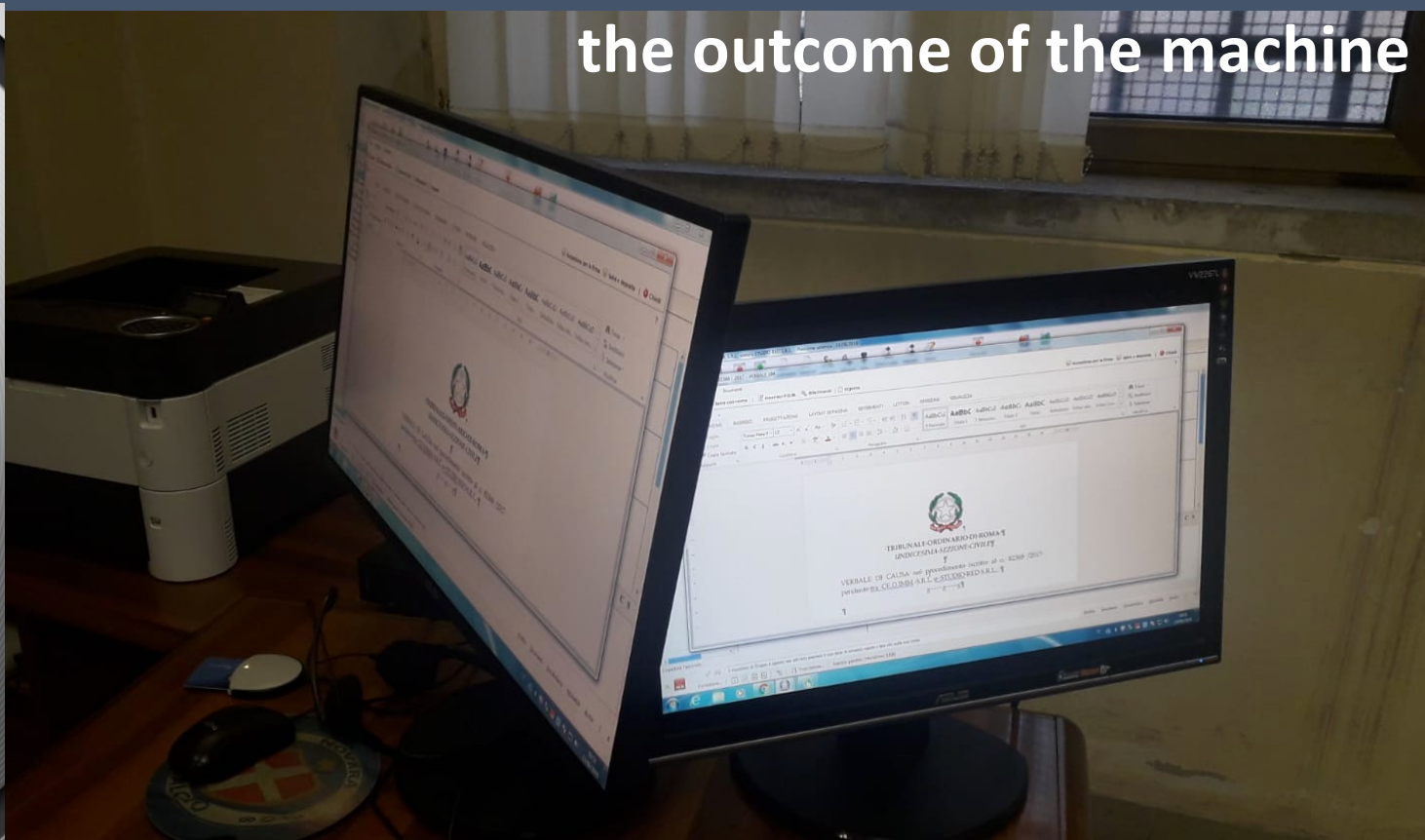
Description	Reference of the section on this statement	Value
Current value of your interest in the family home	A	
Current value of your interest in all other property	B	
Current value of your interest in personal assets	C	
Current value of your liabilities	D	
Current value of your interest in business assets	E	
Current value of your pension and PPF compensation assets	F	
Current value of all your other assets	G	
TOTAL value of your assets (Totals A to G less D):		£



Consiglio Nazionale delle Ricerche
francesco.contini@cnr.it

Inputs form AI already used in Judicial Proceedings

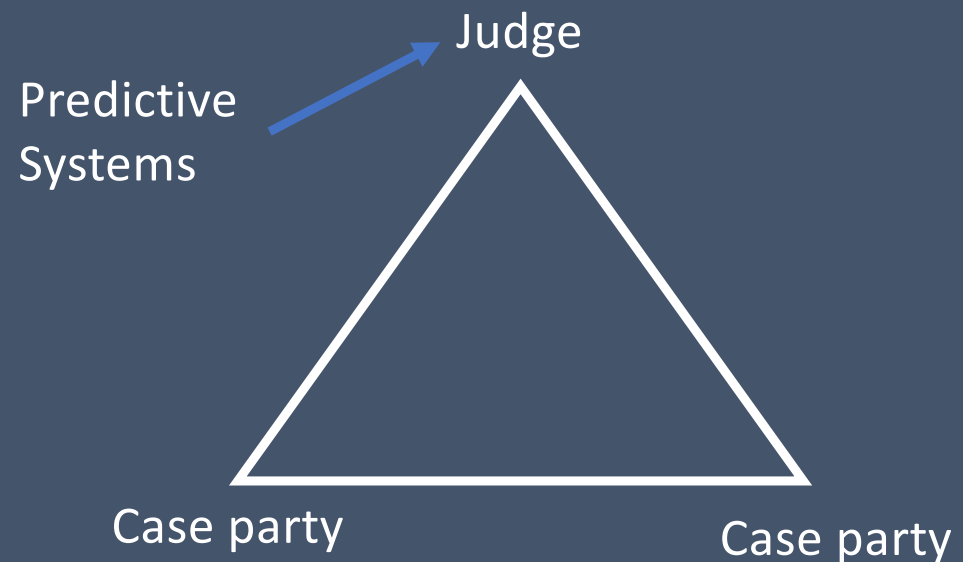
“Accountability transfer”: humans are accountable for the use of the outcome of the machine





Judicial Independence and impartiality

- Judges must be protected by undue influences
 - Introduction of evidences into proceedings
 - Professional ethical standards (Bangalore principles of j conduct)
- Predictive systems are designed to “help” hence influence judicial proceedings
- How to make the system accountable?
- How to make legal a system if is not accountable?
- Are we building a new channel for undue influences?





Judges vis a vis predictive systems

- Caseload pressure
- Challenges to judicial independence
 - Higher pressure make it hard to resist to the prediction / forecast
 - The judicial context is particularly vulnerable to the threats posed by such technologies if used in the course of judicial proceedings
- Pressures to follow the “suggestion” are strong
- Is this desirable even with “certified” “accountable” AI?



Predictive justice does not exist!

- «Prediction does not exist» Gemma Galdon Clavell 18 nov 21 h. 12,36
- Justice > legal dimension 6.1 ECHR, art 47 EU Charter
 - Fair and public hearing
 - Motivated decision
- Justice > Socio-physiological dimension (procedural justice) " perceived fairness of court proceedings " Voice Neutrality and Understanding (inter alia)
- «Justice is not achieved»
- We do not have predictive justice, we have decisional forecast in judicial proceedings
- The context of usage is as important as the features of technology
- The challenge is to find contexts (human law machines) in which AI based forecast can be properly used