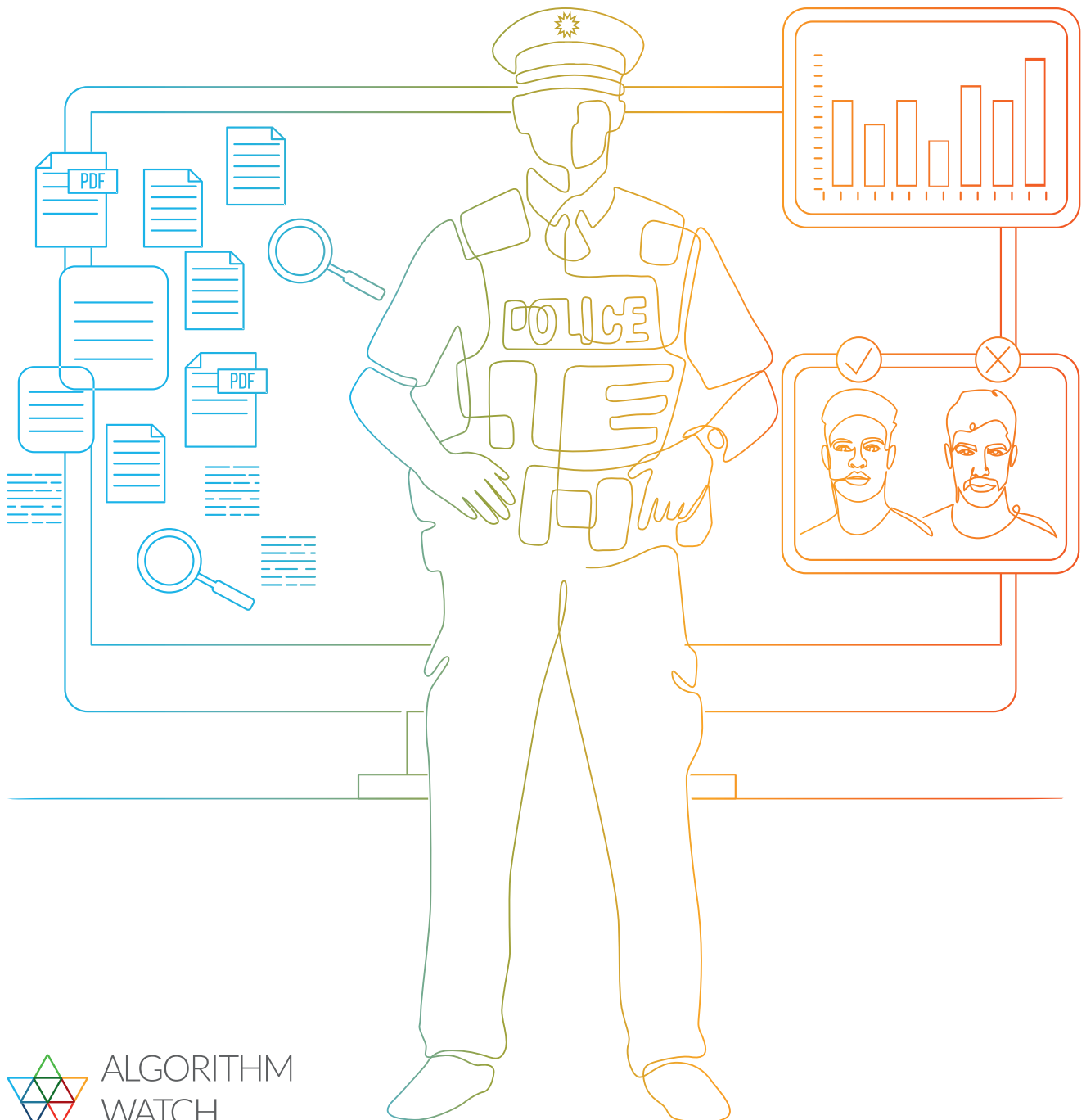


Automating Injustice:

'Predictive' policing and criminal 'prediction' and profiling systems used by law enforcement and criminal justice authorities in Germany

March 2025



CONTENTS:

/ INTRODUCTION	3
/ EMPIRICAL CASES	10
1. Geographic ‘predictive’ policing and crime ‘prediction’ systems	10
1.1. Kriminalitätsbelastete Orte, kbO (Places affected by crime) – Berlin Police	11
1.2. Pre-Crime Observation System (PRECOBS) – Bayerisches Landeskriminalamt, BLKA (Bavarian State Office of Criminal Investigation)	16
2. Individual crime ‘prediction’ and profiling systems in law enforcement and criminal justice	21
2.1. Palantir	21
2.1.1. hessenDATA – Hesse State Police, Germany	24
2.1.2. Datenbankübergreifende Analyse und Recherche DAR – State Police North Rhine-Westphalia	28
2.1.3. Verfahrensübergreifende Recherche und Analyse VeRA – Bavarian State Police	29
2.2. RADAR individual risk assessment tools	32
2.2.1. RADAR-iTE – Bundeskriminalamt, BKA (Federal Criminal Police Office)	33
2.2.2. RADAR-rechts – Bundeskriminalamt, BKA (Federal Criminal Police Office)	42
2.2.3. RADAR-Haft – Bundeskriminalamt, BKA (Federal Criminal Police Office)	46
2.3. Fluggastdaten-Informationssystem (Passenger Name Record information system) – Bundeskriminalamt, BKA (Federal Criminal Police Office)	48
3. Prison ‘suicide prevention’ systems	53
3.1. Ereignisgesteuerte Videoüberwachung mit automatisierter Situationseinschätzung als Instrument der Suizidverhinderung in Justizvollzugsanstalten (EVAS) – Ministry of Justice, North Rhine-Westphalia	53
3.2. Einsatz künstlicher Intelligenz zur Suizidprävention und Verbesserung der Sicherheit in niedersächsischen Justizvollzugsanstalten – Ministry of Justice Lower Saxony	57
/ CONCLUSION	59
/ Policy Recommendations	62

/ INTRODUCTION

German police and criminal justice authorities and prisons are increasingly directing their focus towards digital possibilities for ‘predicting’ and ‘preventing’ crimes and other incidents that may occur in the future. German police have significantly increased their operational use of ‘predictive’ data analysis and algorithms in recent years, including geographic crime ‘prediction’ and individual profiling and data analysis, while criminal justice authorities such as the German Federal Criminal Police Office (Bundeskriminalamt or BKA) are also now using systems to profile individuals and ‘predict’ their risk of committing certain acts in future. In addition, German prisons are also seeking to profile prisoners and use ‘predictive’ algorithmic systems to influence decision-making.

This report examines selected systems developed or used in Germany by police, criminal justice authorities and prisons, considers the level of transparency and seeks to address it by detailing how the systems work, what data they use, and other inputs and functions, as well as how these data-based and algorithmic systems reinforce and exacerbate discrimination in Germany.

Geographic crime ‘prediction’ systems

The rise and fall in Germany of location-based criminal ‘prediction’ systems in recent years shows how fragmented digital innovation works: When the number of burglaries were discussed in the media and politically as a security problem in the 2010s, several federal states introduced location-based ‘predictive’ policing software from 2014 on. The systems analyze patterns in crime data on burglaries and calculate the time and place in which they are likely to occur.

Among other things, the geographic ‘predictive’ policing systems implemented by police in Germany are intended to support approaches of a strategy described as ‘targeted policing’, which aims to focus police resources – as early as possible – on the places and people that these institutions consider to pose the greatest threat. This approach is guided by the

assumption that crime is concentrated at particular places, people, times and days: *“If police can target their resources on these risky people, places, and times, they will be more effective at reducing crime in their jurisdictions.”*¹

By 2018, six federal states were experimenting with five different systems.² In Germany, the hype surrounding location-based systems has since died down, with only three federal states still using such systems. There is no reliable data on the impact of geographic crime ‘prediction’ systems on crime rates. It remains unclear whether these systems actually have any effect³, therefore, the analyses could lead to pre-emptive action without any evidence. The use of these geographic crime ‘prediction’ systems may also result in racial profiling: police officers directed to ‘predicted’ locations could reinforce and exacerbate bias against populations of racially minoritized and economically deprived people, profiling and targeting individuals at the algorithmically calculated ‘hotspots’ merely based on their assumptions.

Individual crime ‘prediction’ and profiling systems

Individual crime ‘prediction’, profiling and ‘risk’ assessment tools have been introduced in Germany to assess the alleged future ‘risk’ of so-called Islamist⁴

- 1 Braga, Anthony A., Barao, Lisa, ‘Targeted Policing for Crime Reduction’, Handbook on Crime and Deviance, Handbooks of Sociology and Social Research, Springer, 2019, https://doi.org/10.1007/978-3-030-20779-3_17
- 2 Knobloch, Tobias, ‘Vor die Lage kommen: Predictive Policing in Deutschland’, Stiftung Neue Verantwortung, 29 August 2018, <https://www.stiftung-nv.de/sites/default/files/predictive.policing.pdf>
- 3 Ibid.
- 4 The terms ‘terrorist’, ‘terrorism’, ‘Islamist’, ‘extremism’, ‘extremist’ and ‘radicalization’ are ill-defined, imprecise and easily misused. As they routinely appear in laws, policies, government statements and academic research, however, they are used in this report for ease of reference. This does not imply that their use or definition by government institutions is endorsed. Per Amnesty UK, ‘This Is The Thought Police: The Prevent duty and its chilling effect on human rights’, November 2023, <https://www.amnesty.org.uk/files/2023-11/Amnesty%20UK%20Prevent%20report%20%281%29.pdf>

or right-wing terrorists or terrorism supporters. In the field of countering Islamist terrorism, the assessment of future violence is now at the forefront of police work, i.e., “an unspecified threat that could develop in the future” and “for which circumstantial evidence may be sufficient.”⁵

These individual risk assessment tools are intended to help the police focus their resources on the people who pose the highest risk. The Federal Criminal Police Office has developed the *RADAR* risk assessment tool, that is designed to assess and differentiate between the “medium” or “high risk” posed by a person. However, the authorities are aware that *RADAR* is only of limited use and must be accompanied by individual police and expert assessments. The extent to which *RADAR* may also incorporate elements that reinforce discrimination is unclear, as the full list of data used by the system is not known. There is now also a new tool for right-wing extremists potentially prepared to use violence: *RADAR-rechts*.

However, islamophobia and prejudice against Muslims play a fundamental role in the categorization of individuals from such backgrounds as potential terrorists. Following an increase in ‘Islamist’ attacks and attempted attacks in Western Europe and in Germany, law enforcement, criminal justice and security authorities have focused heavily on this form of violence.⁶ Vague terms such as “Gefährder” (endangerer) and “relevante Person” (persons who may play an important role) have been introduced as working concepts for the police.

These classifications lack a clear legal definition or scientific basis and consistent application, and anti-Muslim prejudice could lead to premature suspicions⁷ as

well as discriminatory application and subsequent consequences. Felix Hanschmann, a legal scholar from Bucerius Law School in Hamburg has criticized these classifications: “The term ‘Gefährder’ always has a racist component.”⁸ Anti-Muslim racism is part of everyday life in Germany for many people of Muslim faith or who are perceived as such: “On the one hand, it manifests itself through open hostility and attacks. But it is also deeply rooted in the center of society in the form of prejudice, marginalization and rejection”, says the lawyer and Islam scientist Mathias Rohe, the founding director of the Erlangen Centre for Islam and Law in Europe (EZIRE) and one of the coordinators of the Independent Expert Group on Islamophobia (UEM).⁹

Simon Egbert, researcher at the Bielefeld University in the research project “The Future of Prediction”, takes a critical view on this shift towards ‘predictive’ systems for averting abstract dangers:

“The earlier you know something, the better – and technical tools that promise to provide this knowledge keep coming. The line between police information gathering and the possible final offence is becoming longer and longer, more questionable and more prone to error.”¹⁰

Crime ‘prediction’ and other profiling systems in prisons

Compared to other countries, Germany’s prisons are still in the early stages of digitalization, although the first research projects for ‘predictive’ AI systems for prisons are taking place. Since the federalism reform in 2006, responsibility for criminal detention lies with individual federal states. However, prison conditions, political and legal priorities and objectives as well as technical equipment vary from state to state.

5 Bundeszentrale für politische Bildung, ‘Gefährder’, 13 January 2020, <https://www.bpb.de/themen/migration-integration/kurzdossiers/migration-und-sicherheit/302982/gefaehrder/> (translated from German)

6 Bundeskriminalamt, ‘Abteilung Islamistisch motivierter Terrorismus/Extremismus (TE)’, https://www.bka.de/DE/DasBKA/OrganisationAufbau/Fachabteilungen/IslamistischmotivierterTerrorismusExtremismus/IslamistischmotivierterTerrorismusExtremismus_node.html

7 Hanschmann, Felix, ‘Gefährder – eine neue alte Figur im Öffentlichen Recht’, *Kritische Justiz*, Vol. 50, No. 4, 2017, pp. 434-447, Nomos Verlagsgesellschaft, <https://www.jstor.org/stable/26427899>

8 Netzpolitik, ‘Der Begriff des Gefährders hat immer auch eine rassistische Komponente’, 17 May 2019, <https://netzpolitik.org/2019/der-begriff-des-gefaehrders-hat-immer-auch-eine-rassistische-komponente/> (translated from German)

9 Mediendienst Integration, Antimuslimischer Rassismus ist bis in die Mitte der Gesellschaft verwurzelt, 29 June 2023, <https://mediendienst-integration.de/artikel/antimuslimischer-rassismus-ist-bis-in-die-mitte-der-gesellschaft-verwurzelt.html> (translated from German)

10 Interview Egbert, Simon, Postdoctoral Researcher ‘The Future of Prediction’, University of Bielefeld, 4 October 2023

The RADAR tools noted above are currently being further developed for assessing the influence of prison experiences for incarcerated or formerly incarcerated persons on their radicalization process and their future potential for violence.

Two federal states have also launched research projects (see chapter 3) to analyze how existing video surveillance can be augmented with machine-learning algorithms to supposedly detect suicide attempts early on – one of the biggest challenges in German prisons. However, the test results of one of the projects show that the algorithms do not work reliably. The systems intrude deeply into the privacy of incarcerated people, while at the same time there is a high risk of false negatives or positives – with potentially life-threatening consequences.

Fragmented landscape

In Germany, data-based ‘predictive’ and profiling systems are emerging in a fragmented landscape. The German police and security institutions are strongly characterized by federalism: Legislative and administrative competencies in the area of security authorities/police lie primarily with the 16 federal states, with the exception of certain individual federal competencies. This fragmented political structure has restricted the digitalization of the 20 federal and state police forces in Germany to some extent in recent years. It has led to the confusing co-existence of different data-based systems and varying information management practices across the country, as well as challenges for nationwide and international cooperation. The Federal Criminal Police Office paints a picture of the current situation:

“The current heterogeneous IT landscape of German police forces no longer fulfils the requirements of modern police work. It is characterized by in-house developments, special solutions, different file formats and data collection rules. In addition, the information architecture of the police forces in Germany is based on a large

number of different data pools that are barely or insufficiently connected with each other.”¹¹

According to the Federal Ministry of the Interior, data must often *“be processed manually and multiple times, creating more work for police staff and increasing the likelihood of errors.”¹²* In 2017, problems with the accreditation of journalists for the G20 summit in Hamburg revealed flaws of the police and intelligence services’ databases, such as incorrect assignments, unlawful deletion practices, inclusion of individuals due to trivial matters and false accusations or charges that were never pursued.¹³ The *Netzpolitik* platform described the data problems as the *“tip of the iceberg”*:

“It can be assumed that tens of thousands of other people in Germany are listed in police databases with outdated entries due to mistakes, invalid reasons, without any conviction by a court or due to a lack of deletion practice. Most of them are probably not even aware of this, as there is no obligation to inform the people concerned if someone gets into such a database.”¹⁴

‘Big Data’ analytics, Palantir and Platformization

According to Simon Egbert from the Bielefeld University there is an *“emergence of more complex algorithmic procedures that are less theory-driven and more data-*

-
- 11 Bundeskriminalamt, ‘Das Programm 20/20’, https://www.bka.de/DE/UnsereAufgaben/Ermittlungsunterstuetzung/ElektronischeFahndungsInformationssysteme/Polizei2020/Polizei2020_node.html (translated from German)
 - 12 Federal Ministry of the Interior and Community, ‘P20, Police 20/20’, July 2023, https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2023/BMI23018.pdf?__blob=publicationFile&v=6, p. 3
 - 13 Netzpolitik, ‘Datenskandal bei der Polizei: Offenbar zehntausende Unschuldige gespeichert’, 30 August 2017, <https://netzpolitik.org/2017/datenskandal-bei-der-polizei-offenbar-zehntausende-ungerechtfertigt-gespeichert/>
 - 14 Netzpolitik, ‘Datenskandal bei der Polizei: Offenbar zehntausende Unschuldige gespeichert’, 30 August 2017, <https://netzpolitik.org/2017/datenskandal-bei-der-polizei-offenbar-zehntausende-ungerechtfertigt-gespeichert/> (translated from German)

*driven, as well as the linking and networking of different data and platforms”, described as “platformization”.*¹⁵

In 2016, the federal and state governments agreed to modernize the police IT architecture with the “Police 2020” program; by 2020, a “uniform network system with central data storage” should be created to “significantly improve the quality of the data, as in future it will only be recorded once in a uniform system according to the same rules and processed uniformly through the use of central services.”¹⁶

On this platform, new systems currently used by some police forces will be made available to others if required.¹⁷ However, modernization is progressing slowly and has long since exceeded the original schedule. The project has therefore been renamed “Police 20/20” or “P 20” (after the 20 police forces involved at state and federal level). The different police systems, applications and processes are now to be gradually merged by 2030.

Software from the controversial US company Palantir was also to be made available nationwide via the “Police 20/20” program, with the aim of making it easier for police forces to quickly search and analyze large amounts of data such as that on police databases.¹⁸ The systems allow to access and merge data from multiple police databases, such as an individual’s history of being stopped, questioned or searched by police, alongside data on ‘foreigners’, as well as data from external sources such as data

extracted from social media or mobile devices, cell tower and call log data, among other sources. The systems also allow the profiling and targeting of people for whom there is no evidence of involvement in alleged crimes, people who are not suspected of crime, and even those known to the police as victims and witnesses.

The Federal Ministry of the Interior and Community put the plan of a nationwide Palantir rollout on hold in 2023.¹⁹ Regardless, two federal states, Hesse and North Rhine-Westphalia, are currently using Palantir software (*hessenDATA/DAR*). Bavaria is still testing *VeRA* and has also concluded a framework agreement that enables other federal states to purchase Palantir software without a new, lengthy tendering process.²⁰

The Palantir data profiling systems have been tested or even used without a clear – or indeed, any – legal basis. Legal experts have warned that the Palantir software merges different data pools that were collected for completely different purposes, creating complex and detailed personal profiles and that the data analysis functions as “a black hole” for affected persons.²¹ Prior to a judgment by the Federal Constitutional Court in 2023, data of people not even considered to be involved in alleged crime, such as witnesses, was also included by states such as Hesse. “People can be arbitrarily targeted by the police – often discriminated groups are affected”, a legal expert at the Gesellschaft für Freiheitsrechte worries. “Because they don’t find out about the data being analyzed, they can’t even defend themselves.”²²

15 Egbert, Simon, Krasmann, Susanne (2019), ‘Predictive Policing. Eine ethnographische Studie neuer Technologien zur Vorhersage von Straftaten und ihre Folgen für die polizeiliche Praxis’, Universität Hamburg, 30 April 2019, <https://www.wiso.uni-hamburg.de/fachbereich-sowi/ueber-den-fachbereich/fachgebiete/fachgebiet-kriminologische-sozialforschung/predictive-policing/egbert-krasmann-2019-predictive-policing-projektabschlussbericht.pdf> (translated from German)

16 Federal Ministry of the Interior and Community, ‘P20, Police 20/20’, https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2023/BMI23018.pdf?__blob=publicationFile&v=6, p. 3

17 Ibid.

18 Deutscher Bundestag, ‘Kleine Anfrage der Fraktion der CDU/CSU Entscheidung des Bundesministeriums des Innern und für Heimat bezüglich der Einführung der polizeilichen Analyse-Software Bundes-VeRA’, 4 September 2023, <https://dserver.bundestag.de/btd/20/082/2008205.pdf>

19 Federal Ministry of the Interior, E-Mail, 3 November 2023

20 Bayerisches Landeskriminalamt, ‘Noch erfolgreichere Polizeiarbeit – Zuschlag für neues Recherche- und Analysesystem der Bayerischen Polizei: Höchste Ansprüche an Datensicherheit und Datenschutz’, 7 March 2022, <https://www.bayern.de/herrmann-blka-erteilt-zuschlag-fuer-neues-analysesystem/>

21 Gesellschaft für Freiheitsrechte, ‘GFF erhebt Verfassungsbeschwerde gegen uferlose Big Data-Methoden im Polizeigesetz von NRW’, 6 October 2022, <https://freiheitsrechte.org/ueber-die-gff/presse/pressemitteilungen-der-gesellschaft-fur-freiheitsrechte/pm-stop-data-mining> (translated from German)

22 Ibid.

Structural discrimination in policing and the criminal legal system

Discrimination by police, law enforcement and the criminal legal system (or data-based systems) is still rarely recognized as a structural or institutional problem in Germany.

In policing, the discriminatory police practices of racial and ethnic profiling, resulting in stops, identity checks and searches based on racialized characteristics such as skin color or (presumed) religious affiliation have long been criticized by victims, victims’ associations, academics, human rights organizations and international organizations.²³ After the murder of African-American George Floyd by police in the US in 2020, tens of thousands of people in many German cities protested against racism and police violence, with Black and other racialized individuals making their experiences of racism and police violence in Germany visible to a wider audience.²⁴

As the Black authors of the Afroensus 2020, a survey of 6000 Black, African and Afro-diasporic people in Germany, point out *“the general public is still pre-occupied with the question of whether there really is institutional racism within the German police force or whether these are supposedly isolated cases. This is not a question for Black, African and Afro-diasporic people, for whom it is a reality of life.”*²⁵ 8 out of 10 Afroensus respondents stated that they had been discriminated against in contact with the police in the previous two years, and over half of the respondents had been stopped by the police at least once in their lives for no

recognizable reason.²⁶ Racialized and minoritized ethnic people are checked by the police more often than average and are reported more often by victims.²⁷

According to the 2023 report “Being Black in the EU” by the European Union Agency for Fundamental Rights, almost half of people of African descent in 13 EU countries are confronted with racism and discrimination in their everyday lives. Racist harassment and racial profiling by the police are particularly widespread, Germany fares particularly badly. 33% of the respondents in Germany have experienced police checks in the five years before the survey.²⁸

According to Berlin police officer Oliver von Dobrowolski, the founder of the initiative Better Police, few individuals within the police forces publicly criticize the structural problems, and discrimination and racism still find their way into training and the police service.²⁹ He describes the situation as follows:

*“It’s not just Minneapolis that has a police problem, Ankara or Minsk – in Germany, too, we have been confronted with at least weekly accusations of police violence, right-wing extremist chat groups, connections to the Reichsbürger and prepper scene, racial profiling and a catastrophic error culture. Responsible politicians traditionally dismiss this as “regrettable individual cases.”*³⁰

23 Bundeszentrale für politische Bildung, ‘Racial Profiling, institutioneller Rassismus und Interventionsmöglichkeiten’, 27 April 2020, <https://www.bpb.de/themen/migration-integration/kurzdossiers/migration-und-sicherheit/308350/racial-profiling-institutioneller-rassismus-und-interventionsmoeglichkeiten/>

24 Zeit, ‘Zehntausende Menschen protestieren deutschlandweit gegen Rassismus’, 7 June 2020, <https://www.zeit.de/gesellschaft/zeitgeschehen/2020-06/demonstration-anti-rassismus-polizeigewalt-deutschland-protest-black-lives-matter>

25 Each One Teach One (EOTO), Citizens For Europe (CFE), ‘Afroensus 2020, Perspektiven, Anti-Schwarze Rassismuserfahrungen und Engagement Schwarzer, afrikanischer und afrodiasporischer Menschen in Deutschland’, 2021, <https://afroensus.de/reports/2020/Afroensus-2020.pdf> (translated from German)

26 Ibid.

27 Mediendienst Integration, ‘Kriminalität in der Einwanderungsgesellschaft’, November 2023, <https://mediendienst-integration.de/desintegration/kriminalitaet.html#:~:text=Die%20j%C3%A4hrliche%20%22Polizeiliche%20Kriminalstatistik%20PKS,Rund%20270.000%20Betroffene%20waren%20Ausl%C3%A4nder>

28 European Union Agency for Fundamental Rights, ‘Being Black in the EU. Experiences of people of African descent’, 2023 http://fra.europa.eu/sites/default/files/fra_uploads/fra-2023-being-black_in_the_eu_en.pdf, p. 73

29 Zeit, ‘Wir können uns nicht alles erlauben’, 7 March 2023 <https://www.zeit.de/zeit-verbrechen/2023/19/oliver-von-dobrowolski-polizei-struktureller-rassismus>

30 BetterPolice, ‘BetterPolice’, 21 April 2021, https://better-police.de/wp-content/uploads/2021/04/210410_Pressemitteilung_BetterPolice.pdf (translated from German)

The extent to which people of (perceived) so-called migration background (who were either not born with German citizenship themselves or have at least one parent who was not born with German citizenship) or foreign origin are subject to more frequent police checks has hardly been empirically investigated in Germany to date. The European Commission against Racism and Intolerance (ECRI), set up by the Council of Europe, drew the attention of its member states to the problem of racial profiling in police work back in 2007.³¹ However, the ECRI recommendation to commission a nationwide study in Germany on racial profiling with the aim of collecting data on the phenomenon, developing measures to end existing racial profiling and prevent future racial profiling has not yet been implemented.³² In 2020, the then Minister of the Interior Horst Seehofer stopped a planned, nationwide study on racial profiling and racism in the police force.³³

The research project MEGAVO (“Motivation, Einstellung und Gewalt im Alltag von Polizeivollzugsbeamten”, Motivation, attitudes and violence in the day-to-day work of police officers) by the German Police University funded by the Federal Ministry of the Interior, examined police work conditions and attitudes until August 2024, focusing primarily on the perspective of the police and their own experiences of violence.³⁴ According to a preliminary report, the police officers surveyed often responded to questions about the existence of institutional racism with the statement that such cases could only be “*regrettable individual cases that could be found far away from their own orga-*

nizational unit”.³⁵ However, the researchers observed stereotyping and reifications in everyday police work: “*For example, Bulgarians were referred to as having certain problematic characteristics.*”³⁶

Individuals with a foreign citizenship are overrepresented among the suspects recorded by the police, those convicted by the courts and those imprisoned.³⁷ In total, 5,628,584 alleged offences were recorded by the Polizeiliche Kriminalstatistik PKS (police crime statistics) for 2022, of the 2,093,782 suspects, 37.4% were non-German. The crime clearance rate in 2022 was 57.3%.³⁸ Suspects are not yet convicted criminals, and acquittals in court are not taken into account by the PKS. Furthermore, the PKS data reflects only offences that come to the attention of the police through their own investigations or reports to the police – the so-called “Hellfeld” (“bright field”), which is just “*a small section of crime.*”³⁹

The high figures related to individuals with a foreign citizenship can be partly explained by socio-demographic factors, such as economic, societal and housing conditions, among other factors, which are often more challenging for migrants than for non-migrants.⁴⁰ Immigration ‘offences’, such as alleged

31 European Commission against Racism and Intolerance ECRI, ‘General Policy Recommendation N° 11 on combating Racism and Racial Discrimination in Policing’, 4 October 2007 <https://rm.coe.int/ecri-general-policy-recommendation-no-11-on-combating-racism-and-racia/16808b5adf>

32 European Commission against Racism and Intolerance ECRI, ‘ECRI conclusions on the implementation of the recommendations in respect of Germany subject to interim follow-up’, 20 September 2022, p. 4, <https://rm.coe.int/ecri-conclusions-on-the-implementation-of-the-recommendations-in-respe/1680a807d2>

33 Bundesministerium des Inneren und für Heimat, Seehofer: ‘Keine Rassismus-Studie in der Polizei’, 20 October 2020, <https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/10/keine-studie-rechtsextremismus-polizei.html>

34 Deutsche Hochschule der Polizei, ‘Polizeistudie – MEGAVO’, <https://www.polizeistudie.de/>

35 Deutsche Hochschule der Polizei, ‘Projekt MEGAVO Zwischenbericht 2023’, 4 April 2023, <https://www.polizeistudie.de/wp-content/uploads/projekt-megavo-zwischenbericht-2023-04-04.pdf>, p. 14 (translated from German)

36 Ibid. (translated from German)

37 Bundeszentrale für Politische Bildung, ‘Migration und Kriminalität – Erfahrungen und neuere Entwicklungen’, 25 September 2020, <https://www.bpb.de/themen/innere-sicherheit/dossier-innere-sicherheit/301624/migration-und-kriminalitaet-erfahrungen-und-neuere-entwicklungen/#footnote-target-14>

38 Bundeskriminalamt, ‘PKS 2022 Bund - Falltabellen’, <https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/PolizeilicheKriminalstatistik/PKS2022/PKSTabellen/BundFalltabellen/bundfalltabellen.html?nn=211742>

39 Bundeskriminalamt, ‘Kriminalstatistisch-kriminologische Analysen und Dunkelfeldforschung’, https://www.bka.de/DE/UnsereAufgaben/Forschung/ForschungsprojekteUndErgebnisse/Dunkelfeldforschung/dunkelfeldforschung_node.html (translated from German)

40 Mediendienst Integration, ‘Kriminalität in der Einwanderungsgesellschaft’, November 2023, <https://mediendienst-integration.de/desintegration/kriminalitaet.html#:~:text=Die%20j%C3%A4hrliche%20%22Polizeiliche%20Kriminalstatistik%20PKS,Rund%20270.000%20Betroffene%20waren%20Ausl%C3%A4nder>



‘illegal’ entry are also included in crime data. Among refugees in particular, young men are overrepresented.⁴¹ According to Christian Walburg, a lawyer and criminal scientist at the University of Münster, there is no *“simple formula for correlations between migration and crime”*, and *“looking solely at the proportion of foreigners in crime statistics blurs this realization rather than shedding any light on it.”*⁴²

Individuals with a foreign citizenship are also overrepresented in German prisons: According to the Federal Statistical Office Destatis, around 84.4 million people lived in Germany at the end of 2022, 12.3 million of whom were foreign nationals, which corresponds to 14.6% of the total population.⁴³ As of March 31, 2023, there were a total of 44,232 prisoners and persons in preventive detention in German prisons, 28,673 of whom were German nationals and 15,559 of whom were foreign nationals, around 35% of the prison population.⁴⁴ In some federal states such as Baden-Württemberg, about every second incarcerated individual in prison has a foreign citizenship.⁴⁵

Data, in which such structural and institutional biases, over-representations and discrimination are represented, is used to create, develop and operate the data-based ‘predictive’ and profiling systems which are the subject of this report.

-
- 41 Walburg, Christian, ‘Kriminell oder kriminalisiert? Die Rolle der Polizei bei Verdachtsschöpfung und Konstruktion der „Ausländerkriminalität“’ In: Hunold, D., Singelstein, T. (Eds.) *Rassismus in der Polizei*, Springer VS, Wiesbaden, 2022, https://doi.org/10.1007/978-3-658-37133-3_18
- 42 Bundeszentrale für Politische Bildung, ‘Migration und Kriminalität – Erfahrungen und neuere Entwicklungen’, 25 September 2020, <https://www.bpb.de/themen/innere-sicherheit/dossier-innere-sicherheit/301624/migration-und-kriminalitaet-erfahrungen-und-neuere-entwicklungen/#footnote-target-14> (translated from German)
- 43 Federal Statistical Office Destatis, ‘Pressemitteilung Nr. 235 vom 20. Juni 2023’, 20 June 2023, https://www.destatis.de/DE/Presse/Pressemitteilungen/2023/06/PD23_235_12411.html
- 44 Statista, ‘Anzahl der deutschen und der ausländischen Strafgefangenen und Sicherheitsverwahrten in den Justizvollzugsanstalten in Deutschland von 2014 bis 2023’, 19 January 2024, <https://de.statista.com/statistik/daten/studie/225/umfrage/gefingene-und-verwahrte-seit-dem-jahr-2000/>
- 45 Ministerium der Justiz und für Migration, ‘Daten und Fakten’, <https://jum.baden-wuerttemberg.de/de/justiz/justizvollzug/daten-und-fakten>

/ EMPIRICAL CASES

When new data-based and ‘predictive’ or profiling systems are introduced in Germany, the details of how they work usually only become known gradually and sometimes after years of delay. For example, this has occurred only through parliamentary enquiries and investigative journalism or, in the case of the Palantir software, following a committee of enquiry in Hesse and legal complaints. This presents challenges for fully understanding and analyzing the data sources, the design of the systems, the scope, the impact, and possible discriminatory effects of these data-based ‘predictive’ and profiling systems.

In some cases, the testing, introduction and further development of new data-based systems are accompanied by evaluations by scientific partner institutions. In other cases, evaluations are completely absent. In addition, the inputs and functioning of the algorithms are usually not made public, meaning that no external, independent scientific evaluation can take place. Requests under the Freedom of Information Act are rejected in most cases with reference to arguments like security concerns.

For this report, documents from the German Bundestag and state documents, publicly available police documents and other open-source documents, media reports and academic papers were analyzed, as well as data and information from police, security and judicial authorities. Interviews with academics, practitioners from deradicalization work and those with lived experience of the criminal legal system helped to locate the systems in their context and to understand their impact as well as possible weaknesses and discriminatory effects.

The following report analyses the scope, functioning and application of selected geographic crime ‘prediction’ and individual risk assessment systems used by police forces, criminal justice authorities and prisons. Furthermore, the report describes their potential problematic and discriminatory effects. The empirical analysis of the cases has been conducted until February 2024, until when most sources were last accessed.

1. GEOGRAPHIC ‘PREDICTIVE’ POLICING AND CRIME ‘PREDICTION’ SYSTEMS

Geographic crime ‘prediction’ systems aim to identify and direct police attention and resources on alleged ‘hotspots’ of crime, where a particularly high concentration of crime is suspected.

Berlin police operate a data analysis and crime ‘prediction’ strategy described as “places affected by crime” (kbO), focusing on locations and areas. However, these ‘hotspots’ tend to be places where racially minoritized groups live and work, and as such, due to these police designations, they are at a particularly high risk of being targeted there. Those affected experience being stopped and questioned by police because of their skin color, and they are often treated disrespectfully or even violently.⁴⁶

With geographic ‘predictive’ policing software such as *PRECOBS*, police forces endeavor to calculate as accurately as possible the locations where crimes such as residential burglaries will take place in the near future. These locations can be dynamic, i.e., they do not necessarily establish long-term hotspots. Nevertheless, checks at ‘predicted’ locations have a similar impact, in that stereotypes among police officers about possible offender profiles may lead to the targeting of marginalized individuals.

Matthias Monroy, Editor of the German civil rights journal *Bürgerrechte & Polizei/CILIP*, warned at the time of the introduction of the system in Bavaria that bystanders could come under scrutiny: “*Who do the police stop more often when they assume that a burglary*

⁴⁶ Schmid, Lina, ‘Grundrechte in Gefahr(engebieten). Verfassungsrechtliche Beurteilung der polizeilichen Praxis «kriminalitätsbelasteter Orte»’, In: ‘Mythos Generalverdacht. Wie mit dem Mythos Clankriminalität Politik gemacht wird’, Nautilus Flugschrift, p. 162

is imminent in the next few hours or days? I'd say it's more likely to be people in scruffy clothes, people of a different skin color, or in hoodies – certain patterns that already exist among the police.”⁴⁷

1.1. KRIMINALITÄTSBELASTETE ORTE, KBO (PLACES AFFECTED BY CRIME) – BERLIN POLICE

Used for: Geographic crime ‘prediction’ data analysis
Created: unknown

Berlin police classify certain locations allegedly affected by crime in the city as “Kriminalitätsbelastete Orte” (kbO) – “places affected by crime”. From the police’s point of view, the classification as kbO allows them to “control the identity of relevant persons, increase the risk of detection and thus prevent criminal offences.”⁴⁸

In kbOs the police are legally allowed to carry out identity checks and searches of people or objects in these locations regardless of any concrete suspicion – “depending on behavior”.⁴⁹ Police forces in other German cities also designate such areas with location-based, greatly extended police powers, which are known under different names, e.g. “Besondere Kontrollorte” (special control areas) in Bremen⁵⁰ or “Gefährlicher Ort” (dangerous place) in Hamburg.⁵¹

In Berlin, according to the police, the kbO classification is based on an “overall assessment”, which includes crime data and unspecified “additional information”. The prerequisite is that “offences of considerable importance” such as robbery, arson, grievous bodily harm, regular pickpocketing for the purpose of making a profit, gang pickpocketing or drug trafficking are “arranged, prepared or committed” at a kbO. The assessment is reviewed several times a year.⁵² The procedure is described as “a statistically based assessment without hard quantification”, as crime statistics on the frequency, type or severity of crime do play a role, but the determination is ultimately based on police assessments – “So it’s not completely arbitrary, but it’s not straight-forward and easily comprehensible either.”⁵³

Berlin police kept the list of kbO locations secret for years, ostensibly to prevent criminals from adapting to controls. In an internal message by the Berlin police, they claim it would be “fatal if criminals play cat and mouse with the police, because we tell them exactly where a suspicionless check is possible and where not.”⁵⁴ In 2017, the Berlin Senate determined that kbO names must be published by the police.⁵⁵ Seven areas are currently classified as kbO, which, according to a report to the House of Representatives for 2022, are characterized by the following types of offence:

- Alexanderplatz (violent offences, pickpocketing, narcotics offences);
- Görlitzer Park/Wrangelkiez (open trafficking in narcotics, associated crimes such as dangerous and grievous bodily harm, damage to property);
- Hermannplatz/Donaukiez (illicit trafficking)

47 Süddeutsche Zeitung, ‘Unbeteiligte geraten ins Kontrollraster’, 12 September 2014, <https://www.sueddeutsche.de/digital/ueberwachung-mit-predictive-policing-unbeteiligte-geraten-ins-kontrollraster-1.2115126> (translated from German)

48 Abgeordnetenhaus Berlin, ‘Bericht des Senats gemäß § 21 Absatz 4 Allgemeines Sicherheits- und Ordnungsgesetz (ASOG) für das Jahr 2021’, 22 July 2022, <https://pardok.parlament-berlin.de/starweb/adis/citat/VT/19/DruckSachen/d19-0444.pdf> (translated from German)

49 Polizei Berlin, ‘Kriminalitätsbelastete Orte’, <https://www.berlin.de/polizei/polizeimeldungen/fakten-hintergruende/artikel.1078268.php> (translated from German)

50 Polizei Bremen, ‘Besondere Kontrollorte’, <https://www.polizei.bremen.de/dienststellen/besondere-kontrollorte-20622>

51 Taz, ‘„Gefährlicher Ort“ ist rechtswidrig’, 14 November 2020, <https://taz.de/Urteil-zu-Polizeikontrollen-in-Hamburg!/5725938/>; see also <https://www.buergerschaft-hh.de/ParlDok/dokument/56239/%C3%BCbergang-von-gefahrengewebieten-zu-gef%C3%A4hrlichen-orten.pdf>

52 Polizei Berlin, ‘Kriminalitätsbelastete Orte’, <https://www.berlin.de/polizei/polizeimeldungen/fakten-hintergruende/artikel.1078268.php>

53 Interview Rehak, Rainer, Computer Scientist, Weizenbaum Institute for the Networked Society, 5 September 2023

54 Berliner Zeitung: ‘Hohe Kriminalität: Polizei veröffentlicht Liste der gefährlichsten Orte in Berlin’, 7 June 2017, <https://www.berliner-zeitung.de/mensch-metropole/hohe-kriminalitaet-polizei-veroeffentlicht-liste-der-gefaehrlichsten-orte-in-berlin-li.15862> (translated from German)

55 Ibid.

in narcotics, brutality and property offences, pickpocketing);

- Hermannstraße/Bahnhof Neukölln (narcotics offences, assaults, robberies, pickpocketing);
- Kottbusser Tor (narcotics offences and pickpocketing, or robberies as accompanying crimes);
- Rigaer Straße (politically motivated offences such as damage to property, arson and assault);
- Warschauer Brücke (trafficking in narcotics and associated crimes such as bodily harm, robbery and sexual offences).⁵⁶

Narcotics offences and associated crimes dominate in almost all areas defined as kbOs. Only the Rigaer Straße kbO is attributed with politically motivated crime from the “left-wing extremist scene.”⁵⁷ There have been repeated conflicts around the left-wing housing project Rigaer 94 in recent years, culminating in the police clearing the house illegally without an eviction order in 2016.⁵⁸

All areas labelled as hotspots are in the area of Directorate 5 (City) of the Berlin police, which is responsible for the central Berlin districts of Friedrichshain-Kreuzberg, the northern part of the Neukölln district and the Mitte borough of the Mitte district. The Brennpunkt- und Präsenzeinheit BPE (hotspot and presence unit) is responsible for policing the crime hotspots.⁵⁹

The exact geographical coordinates of kbOs are not made public. According to the Berlin police, location designations can include surrounding areas and can

be reduced or enlarged depending on developments. In 2020, the Alexanderplatz, Kottbusser Tor, Rigaer Straße, Warschauer Brücke kbO had an area of less than 300,000 square meters; the Görlitzer Park/Wrangelkiez, Hermannplatz/Donaukiez, Hermannstraße/Bahnhof Neukölln kbO had an area over 300,000 square metres. In April 2020, for example, the Görlitzer Park kbO was expanded to include parts of Wrangelkiez, i.e., to include neighboring streets. This was justified by the “significant increase in considerable criminal offences in parts of the Wrangelkiez that particularly affect the population’s sense of security, such as robberies and offensive drug dealing.”⁶⁰

According to the police, as soon as the security situation “improves sustainably”, the kbO will be lifted. However, in principle, police measures such as raids or identity checks can still be carried out – “e.g., on suspicion of a criminal offence or to avert a danger, as is the case everywhere in the city.”⁶¹



Figure 1: The Görlitzer Park kbo in Berlin-Kreuzberg is one of the places where racial profiling frequently occurs.⁶²

56 Abgeordnetenhaus Berlin, ‘Bericht des Senats gemäß § 21 Absatz 4 Allgemeines Sicherheits- und Ordnungsgesetz (ASOG) für das Jahr 2022’, 9 May 2023, <https://www.parlament-berlin.de/adoss/19/IIIPlen/vorgang/d19-0979.pdf>

57 Ibid. (translated from German)

58 Tagesspiegel, ‘Rigaer Straße’, <https://www.tagesspiegel.de/berlin/themen/rigaer-strasse>; taz, ‘Gericht: Räumung war illegal’, 13 July 2017, <https://taz.de/Hausprojekt-Rigaer-Strasse-94-in-Berlin/!5323199/>

59 Polizei Berlin, ‘Direktion 5 (City)’, <https://www.berlin.de/polizei/dienststellen/landespolizeidirektion/direktion-5/>

60 Abgeordnetenhaus Berlin, ‘Schriftliche Anfrage der Abgeordneten Niklas Schrader und Anne Helm (LINKE) vom 01. Dezember 2021 (Eingang beim Abgeordnetenhaus am 02. Dezember 2021) zum Thema: Kriminalitätsbelastete Orte in Berlin – Stand 2021 und Antwort vom 14. Dezember 2021 (Eingang beim Abgeordnetenhaus am 15. Dez. 2021)’, 15 December 2021, <https://pardok.parlament-berlin.de/starweb/adis/citat/VT/19/SchrAnfr/S19-10282.pdf>, p. 2f (translated from German)

61 Police Berlin, ‘Kriminalitätsbelastete Orte’, <https://www.berlin.de/polizei/polizeimeldungen/fakten-hintergruende/artikel.1078268.php> (translated from German)

62 Credit: Sonja Peteranderl, Görlitzer Park Berlin, 2024

Exacerbating and reinforcing racial profiling

The police’s justifications for establishing or maintaining a kbO, such as increasing the “sense of security”, appear scattered. In the past, the police rejected a Freedom of Information Act request on their reasons for classifying the Rigaer Straße as a kbO and its exact coordinates, citing “reasons to protect the residents”, stating that “The aim is to avoid stigmatization based on the place of residence and to ensure that the feeling of safety is not impaired.”⁶³ Computer scientist Rainer Rehak, who had sued for the release of information about Rigaer Straße, considers this secrecy to be counterproductive:

“So; the residents thought to themselves (...) we have police lights, cars, hundreds of cars here at night and you don’t want to tell us on paper so that we don’t have a strange feeling of security. The feeling of insecurity arises precisely because we are not told what is going on.”⁶⁴

The initiative Ihr Seid Keine Sicherheit (ISKS) (‘You Are Not Safety’) points out that the “general sense of security” referenced by the police is based on “bourgeois white ideas and is presented as seemingly universally valid.”⁶⁵ The initiative states that the police “repeatedly act according to racist logic or carry out increased checks on groups of people who are already socially marginalized.” The checks at kbOs are “often the result of racist and classist suspicions”.⁶⁶

The police also base their checks at kbOs on certain perceptions of potential offenders. The 2022 annual report of the Senate Department for the Interior, Digitalization and Sport, for example, highlights “in particu-

lar groups of young refugees, people from the homeless and drinking milieu as well as young people with a focus on entertainment” in relation to the the Alexanderplatz kbO, who according to the police, “recurrently” appear as perpetrators of crimes⁶⁷. The previous year’s report also mentioned “people of Eastern European origin.”⁶⁸ The police also refer to “clan crime phenomena” at the Hermannplatz/Donaukiez and Hermannstraße/Bahnhof Neukölln kbO.⁶⁹ The term “clan crime” is a controversial and racist term, as there is no uniform definition and no scientific authority. In practice it covers suspects of mostly Arab, Turkish and Kurdish origin and sometimes a wide range of offences from organized crime to parking offences.⁷⁰

Checks carried out by the police or other state authorities on the basis of racist attributions are supposed to be prohibited by law in Germany (Article 3 of the Basic Law). Discrimination exists “if the racial attribution was a criterion within a ‘bundle of motives” (e.g., conspicuous luggage or behavior) for the decision to carry out a stop. A reference to skin color is generally not justifiable in police checks.⁷¹ However, this ban on discrimination is circumvented by location-based criminalization, as criticized by legal expert Lina Schmid:

63 Semsrott, Arne et al., Best of Informationsfreiheit, ‘Transparenz mit der Brechstange’, 19 December 2018, https://media.ccc.de/v/35c3-9507-best_of_informationsfreiheit#t=1646 (translated from German)

64 Ibid. (translated from German)

65 Ibid. (translated from German)

66 ISKS, ‘Gegenbericht zum Jahresbericht der Berliner Polizei zu den sogenannten kriminalitätsbelasteten Orten vom 22.07.2022’, 15 March 2023, <https://www.ihrseidkeinesicherheit.org/presse-und-publikationen> (translated from German)

67 Abgeordnetenhaus Berlin, ‘Bericht des Senats gemäß § 21 Absatz 4 Allgemeines Sicherheits- und Ordnungsgesetz (ASOG) für das Jahr 2022’, 9 May 2023, <https://www.parlament-berlin.de/ados/19/IIIPlen/vorgang/d19-0979.pdf> (translated from German)

68 Abgeordnetenhaus Berlin, ‘Bericht des Senats gemäß § 21 Absatz 4 Allgemeines Sicherheits- und Ordnungsgesetz (ASOG) für das Jahr 2021’, 22 July 2022, <https://pardok.parlament-berlin.de/starweb/adis/citat/VT/19/DruckSachen/d19-0444.pdf> (translated from German)

69 Abgeordnetenhaus Berlin, ‘Bericht des Senats gemäß § 21 Absatz 4 Allgemeines Sicherheits- und Ordnungsgesetz (ASOG) für das Jahr 2022’, 9 May 2023, <https://www.parlament-berlin.de/ados/19/IIIPlen/vorgang/d19-0979.pdf> (translated from German)

70 Chahrour et al., ‘Mythos Generalverdacht. Wie mit dem Mythos Clankriminalität Politik gemacht wird’, Nautilus Flugschrift, October 2023, p. 12f

71 Antidiskriminierungsstelle des Bundes, ‘Ausweiskontrolle! Rein zufällig nur bei Ihnen’, https://www.antidiskriminierungsstelle.de/SharedDocs/aktuelle-faelle/DE/Ethnie_Rassismus/Ethnie_Racial_Profiling_Bahn.html (translated from German)

“Criminalized here – instead of racialized groups of people, as is usual with racial profiling – are entire places and the people who frequent these places. This opens up space for the police to carry out racial profiling in a hidden manner, because: Even if all people are supposedly checked, (...) in practice, however, it is still primarily BIPoC that are targeted by the police.”⁷²

She points out that places classified as kbO are usually frequented by a high proportion of people who are perceived as migrants. The stigmatization of a place by classifying it as ‘dangerous’ can in turn lead to harsh enforcement action by the police.⁷³ Oliver von Dobrowolski, who was deployed as a Berlin police officer at a hotspot unit monitoring the Kottbusser Tor, Görlitzer Park and Alexanderplatz kbO, reports that it *“often happened that colleagues were inappropriately harsh with people or treated them in a discriminatory manner.”⁷⁴*

Expert interviews for a study of Berlin police conducted by the Technical University Berlin also revealed that

“[P]eople affected were questioned as perpetrators, witness statements were not recorded or people involved were not addressed at all [...] In communication, people affected were constantly interrupted, treated impatiently, rudely, disrespectfully, sometimes even aggressively addressed or shouted at or touched without words.”⁷⁵

72 Schmid, Lina, ‘Grundrechte in Gefahr(engebieten). Verfassungsrechtliche Beurteilung der polizeilichen Praxis «kriminalitätsbelasteter Orte»’, In: ‘Mythos Generalverdacht. Wie mit dem Mythos Clankriminalität Politik gemacht wird’, Nautilus Flugschrift, Oktober 2023, p. 167 (translated from German)

73 Ibid.

74 Zeit, ‘We can’t get away with everything’, 07 March 2023, <https://www.zeit.de/zeit-verbrehen/2023/19/oliver-von-dobrowolski-polizei-struktureller-rassismus> (translated from German)

75 TU Berlin, ‘Zusammenfassung Berliner Polizeistudie. Eine diskriminierungskritische, qualitative Untersuchung ausgewählter Dienstbereiche der Polizei Berlin’, https://www.static.tu.berlin/fileadmin/www/10002449/PDF_s/Publikationen/Forschungsberichte/Zusammenfassung_Bericht_Polizeistudie_ZTG_TU_Berlin.pdf (translated from German)

According to the residents’ initiative Wrangelkiez United, the checks at kbO Görlitzerpark/Wrangelkiez almost exclusively affect People of Color/Black people – *“regardless of what they are doing or where they are going.”⁷⁶* Students at a language school in the neighborhood are also checked on their way to class. Black men regularly experience controls in the park, as they report in video interviews with the Wrangelkiez United initiative:

“When the police are present [...] then dark-skinned people like me are checked for no real reason – it’s not that we’ve committed any offences. It’s because of what we look like.”⁷⁷

According to ISKS, in places such as the Görlitzer Park/Wrangelkiez kbO, those affected are *“visibly separated and criminalized from all non-controlled persons”* and measures such as restraining orders are used as a *“strategy of displacement and invisibilization of marginalized people.”⁷⁸*

The Berlin Register, a reporting center for discriminatory incidents in Berlin, states that Friedrichshain-Kreuzberg was the district with the most recorded racial profiling incidents (14) in 2022, with unprovoked checks on Black people/People of Color in places such as Görlitzer Park, Kottbusser Tor and Warschauer Straße, which are *“often carried out in a disproportionately violent or humiliating manner against BPOC.”⁷⁹* The reporting center also presumes a high number of unreported cases. According to the initiative KOP – Kampagne für Opfer rassistisch motivierter Polizeigewalt (Campaign for Victims of Racist Police Violence), some of those affected refrain from making the incident public or reporting it because their resi-

76 Wrangelkiez United, ‘Perspektiven: Realitäten von Geflüchteten’, Video, <https://wrangelkiezunited.noblogs.org/> (translated from German)

77 Ibid. (translated from German)

78 Ibid. (translated from German)

79 Koordinierung der Berliner Register, ‘Jahresbericht 2022 der Berliner Register’, 18 September 2023, https://berliner-register.de/documents/1940/2023-Register-Jahresbericht-2022_web.pdf (translated from German)

dency status is unclear and they fear repercussions for their asylum procedure, for example.⁸⁰

Hotspot policing as “self-fulfilling prophecy”

The classification of a place as kbO and the ensuing increased police presence there can lead to its long-term categorization as a ‘hotspot’. Due to the increased police presence, more crimes are recorded at this location, and the statistical basis for police presence there is then reinforced by these increased controls on site:

“As soon as it comes to control offences, especially drug-related crime, it’s a self-fulfilling prophecy. Where there is a lot of police presence, I check a lot, so I see a lot of offences – that’s why I continue to check a lot there and have even more offences.”⁸¹

The phenomenon that more police presence in one place leads to more statistically recorded incidents or suspected offences is referred to in criminology as the “Lüchow-Dannenberg syndrome”. In the mid-1980s during a time of anti-nuclear protests in Lüchow-Dannenberg in Lower Saxony there was increased police presence. In this region, but not in neighboring regions, a considerable increase in the number of young suspects was registered, although the protests were less attended than expected.⁸² In addition, once an alleged offence has been recorded by police, numerous factors can influence the outcome of the investigation, such as the respective police leadership’s focus on certain offences. Only suspects are recorded in police crime statistics: *“This does not take into account whether the suspicion of an offence is sufficient for a subsequent indictment and conviction or whether the proceedings are discontinued.”⁸³*

80 Kampagne für Opfer rassistisch motivierter Polizeigewalt KOP, ‘Chronik rassistisch motivierter Polizeivorfälle für Berlin von 2000 bis 2023’, <https://kop-berlin.de/wp-content/uploads/2023/11/Chronik.pdf>

81 Interview N. N., Police, September 2023

82 KrimLex, ‘Polizeiliche Kriminalstatistik PKS’, http://www.krimlex.de/artikel.php?BUCHSTABE=P&KL_ID=142

83 Ibid. (translated from German)

If the police concentrate their checks on certain groups of people, these people are then disproportionately included in crime statistics and thus provide the justification for future intensified checks on the same alleged groups of suspects:

“If people are checked more frequently compared to the rest of the population, the above-average checks can also lead to more ‘hits’ in this group. These ‘hits’ are recorded as successes. However, this is a success in the sense of a self-fulfilling prophecy, i.e., a confirmation of one’s own assumptions.”⁸⁴

A lack of scientific analysis and data collection on the police’s kbO practices means that it remains unclear whether police actually fulfil their goal of ‘preventing’ crime: The kbO practice *“cannot therefore be proven to be obviously unsuitable. On the other hand, however, there is no evidence to date of its suitability”*.⁸⁵ Furthermore, personal data that is collected during kbO checks – whether justified or not – is stored by the police⁸⁶ and may be included in future data analyses by other systems.

84 Nationaler Diskriminierungs- und Rassismusmonitor NaDiRa, ‘Institutioneller Rassismus in der Polizei’, 30 August 2022, https://www.dezim-institut.de/fileadmin/user_upload/Demo_FIS/publikation_pdf/FA-5383.pdf (translated from German)

85 Schmid, Lina, ‘Grundrechte in Gefahr(engebieten). Verfassungsrechtliche Beurteilung der polizeilichen Praxis «kriminalitätsbelasteter Orte»’, In: ‘Mythos Generalverdacht. Wie mit dem Mythos Clankriminalität Politik gemacht wird’, Nautilus Flugschrift, Oktober 2023, p. 168 (translated from German)

86 Ibid., p. 166

1.2. PRE-CRIME OBSERVATION SYSTEM (PRECOBS) – BAYERISCHES LANDESKRIMINALAMT, BLKA (BAVARIAN STATE OFFICE OF CRIMINAL INVESTIGATION)

Used for: Geographic crime ‘prediction’ system

In use: Since October 2014 (discontinued October 2021)

In Germany, geographic crime ‘prediction’ software was initially introduced as a political response to the rise in burglary figures nationwide and the public debate surrounding them.⁸⁷ By 2018, six federal states in Germany were using five different location-based ‘predictive’ policing systems to identify urban areas where residential burglaries, commercial burglaries or vehicle thefts are most likely to occur.⁸⁸

In October 2014, Bavaria became the first German state to use software to try to ‘predict’ residential burglaries as part of a pilot project in the metropolitan areas of Munich and Nuremberg.⁸⁹ The Pre-Crime Observation System (PRECOBS) software was being used within regular operations by 2016. However, the contract with the manufacturer expired on 1 October 2021 and the use of the software was discontinued.⁹⁰

PRECOBS was developed by the Oberhausen-based Institut für musterbasierte Prognosetechnik IfmPt (Institute for Pattern-Based Prediction Technology), which was acquired by Logobject Deutschland GmbH in 2021. The company has claimed that ‘predictive’ policing can make predictions for offences such as

burglaries, vehicle offences, robberies and arson.⁹¹ According to the Bavarian State Office of Criminal Investigation (Bayerisches Landeskriminalamt or BLKA), PRECOBS was supposed to enable:

“policy activity to be better planned on the basis of valid, scientifically sound forecasts of crime trends. The aim is to identify risk areas in which suitable measures can be taken to counter future criminal offences.”⁹²

PRECOBS is based on the ‘near-repeat phenomenon’ theory, which is the observation that there is an increased incidence of subsequent offences in the immediate spatial and temporal vicinity of certain crimes. Using offence data from the recent past, statistical methods calculate the extent to which subsequent offences could take place in the next seven days in an area limited to 500 meters. Police then patrol areas calculated as at future ‘risk’ in order to prevent these ‘predicted’ offences.⁹³

The system shows police officers a map with certain areas marked with different color codes, with the colors representing the different statistical probabilities, or ‘predictions’ calculated by the system as to whether crimes will occur in these areas in the near future. According to the Bavarian State Office of Criminal Investigation, the prerequisites for reliable predictions are data quality and quantity and repeat offences⁹⁴ – the software can only be applied to offences that are committed serially and where patterns can be identified.

87 Interview Egbert, Simon, Postdoctoral Researcher ‘The Future of Prediction’, University of Bielefeld, 4 October 2023

88 Knobloch, Tobias, ‘Vor die Lage kommen: Predictive Policing in Deutschland’, Stiftung Neue Verantwortung, 29 August 2018, <https://www.stiftung-nv.de/sites/default/files/predictive.policing.pdf>

89 Landeskriminalamt Bayern, E-Mail, 6 March 2023

90 Süddeutsche Zeitung, ‘Aus für Software gegen Einbrecher’, 27. Oktober 2021, <https://www.sueddeutsche.de/bayern/polizei-muenchen-aus-fuer-software-gegen-einbrecher-folgeprojekt-moeglich-dpa.urn-newsml-dpa-com-20090101-211027-99-753795>

91 Logobject, ‘PRECOBS Predictive Policing’, <https://logobject.com/loesungen/precobs/>

92 Landeskriminalamt Bayern, E-Mail, 6 March 2023

93 Ibid.

94 Wired, ‘Einst Stoff für Hollywood, jetzt Realität: Die Polizei ermittelt mit Algorithmen’, 04/2016

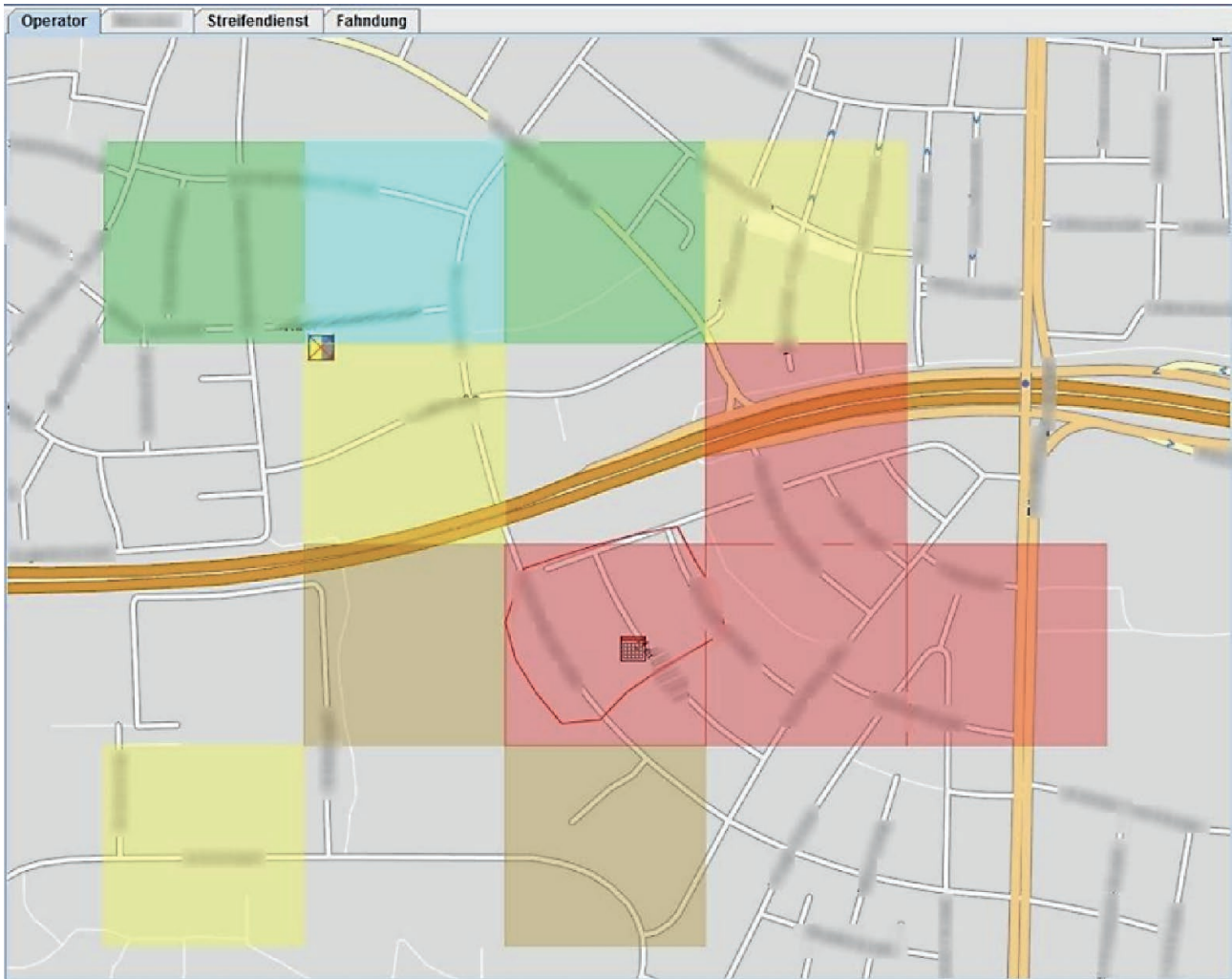


Figure 2: A screenshot of the PRECOBS colour-coded mapping on a location. Credit: Sonja Peteranderl

According to Günter Okon, a former chief inspector for the Bavarian State Office of Criminal Investigation, *PRECOBS* continuously analyzed information in police burglary reports such as time of the crime, crime scene (type of house, location), modus operandi, items stolen and patterns that point to organized gangs and serial burglaries.⁹⁵ For the algorithm to recognize such patterns, so-called ‘triggers’ were stored in *PRECOBS* databases, which flag anticipated

subsequent offences, as well as anti-triggers, which speak against the anticipated occurrence.⁹⁶

As part of *PRECOBS*, police data is used to profile different offence types and offenders themselves. If, for example, a window was smashed with a stone during

⁹⁵ Ibid.

⁹⁶ Gerstner, D., ‘Predictive Policing als Instrument zur Prävention von Wohnungseinbruchdiebstahl: Evaluationsergebnisse zum Baden-Württembergischen Pilotprojekt P4’, Hrsg. v. Albrecht/Ese/Sieber. Freiburg i. B., Max-Planck-Institut für ausländisches und internationales Strafrecht, 2017, https://pure.mpg.de/rest/items/item_2498917_4/component/file_3014304/content

a burglary, according to Okon, this is more likely to indicate a “junkie” profile (a derogatory term for a person with a substance use disorder) and the system would not trigger an alert. Instead, the Bavarian police were concerned with individuals who were profiled as “professional, travelling offenders who have a certain degree of planning and are very difficult to identify.”⁹⁷ In the case of a burglary in Munich, for example, access at dusk, a forced patio door and stolen cash pointed to a pattern that alerted PRECOBS: according to police assumptions, professional serial offenders want to break into a home as quickly as possible and leave it again as inconspicuously as possible.⁹⁸

When PRECOBS triggered an alert for a potential future crime in Bavaria, it was first evaluated by analysts (operators), who then briefed the operational teams based on their assessment. The operators say they were able to readjust the software if they discovered a phenomenon the program had failed to detect.⁹⁹ “It is people, not computers, who decide the ‘whether’ and ‘how’ of police measures”, Joachim Herrmann, Bavaria’s Minister of the Interior, said.¹⁰⁰ The system also allegedly drew the police’s attention to areas that they had not previously recognized as ‘risk’ zones. According to the system’s data analyses, professional criminals targeted terraced houses with good transport links particularly frequently in Munich, for example. Patrols were then stepped up in the identified risk areas and potential suspects were checked. According to the police, some suspects in Munich who had burglary tools with them were arrested.¹⁰¹

According to the Bavarian Minister of the Interior, Joachim Herrmann, the number of residential burglaries in Munich fell by 29% between October 2014 and March 2015, and by as much as 42% in the areas PRECOBS had forecasted as ‘risk’ zones. In the PRECOBS zones in Central Franconia, the number of residential burglaries fell by 17.5%. In addition, the arrest of 26 people “who were caught spying on crime scenes, for example” was attributed to the targeted patrolling of PRECOBS alert areas. “We assume that PRECOBS has made an important contribution to this positive development”, Herrmann said.¹⁰²

No proven successes

On 1 October 2021, seven years after the start of the pilot project, Bavaria decided to discontinue the operation of the software.¹⁰³ According to the Bavarian State Office of Criminal Investigation, a sharp decline in the number of residential burglaries in Bavaria and the limited amount of data had led to a reduction in forecasts and limited efficiency. The figures fell “disproportionately, so that targeted operational control was no longer possible. The initially envisaged expansion to other areas or use in other police departments proved to be unfeasible with the options available in PRECOBS.”¹⁰⁴ Nevertheless, similar systems could replace PRECOBS in the future. The Bavarian State Office has stated that, overall, software-based forecasting systems can “make a valuable contribution to the further development of existing approaches to combating crime.”¹⁰⁵

97 Wired, ‘Einst Stoff für Hollywood, jetzt Realität: Die Polizei ermittelt mit Algorithmen’, 04/2016 (translated from German)

98 Münchner Merkur, ‘Neues Computerprogramm kann Einbrüche in Bayern vorhersagen’, 26 July 2017, <https://www.merkur.de/bayern/wenn-computer-ploetzlich-verbrechen-vorhersagt-8520188.html>

99 Wired, ‘Einst Stoff für Hollywood, jetzt Realität: Die Polizei ermittelt mit Algorithmen’, 04/2016

100 Bayerisches Staatsministerium des Innern, für Sport und Integration, ‘Herrmann berichtet über Erfahrungen des Precobs-Tests in München und Mittelfranken’, 24 June 2015, <https://www.stmi.bayern.de/med/pressemitteilungen/pressearchiv/2015/204/index.php>

101 Wired, ‘Einst Stoff für Hollywood, jetzt Realität: Die Polizei ermittelt mit Algorithmen’, 04/2016 (translated from German)

102 Bayerisches Staatsministerium des Innern, für Sport und Integration, ‘Herrmann berichtet über Erfahrungen des Precobs-Tests in München und Mittelfranken’, 24 June 2015, <https://www.stmi.bayern.de/med/pressemitteilungen/pressearchiv/2015/204/index.php> (translated from German)

103 Süddeutsche Zeitung, ‘Aus für Software gegen Einbrecher’, 27 Oktober 2021, <https://www.sueddeutsche.de/bayern/polizei-muenchen-aus-fuer-software-gegen-einbrecher-folgeprojekt-moeglich-dpa.urn-newsml-dpa-com-20090101-211027-99-753795>

104 Landeskriminalamt Bayern, E-Mail, 6 March 2023

105 Ibid.

However, the true effect of ‘predictive’ policing systems cannot be proven, as *“success in the logic of predictive policing means that no burglary or theft occurs”*.¹⁰⁶ As researcher Tobias Knobloch states:

*“We don’t know how well the localization of crime hotspots works because the effect is very difficult to measure. Other possible contributing factors cannot be isolated in such a way that the effects can be directly attributed to predictive policing.”*¹⁰⁷

In Bavaria, for example, *PRECOBS* was part of a five-point package of measures by the Bavarian police against burglary, which included Bavaria-wide control campaigns and prevention measures.¹⁰⁸ These or other, unconsidered factors could have contributed to the fall in the number of cases.

In the meantime, the hype surrounding geographic crime ‘prediction’ algorithms – and *PRECOBS* in particular – has died down in Germany. In the geographic crime ‘prediction’ field, the trend has shifted towards in-house developments that police forces can use and adapt indefinitely without having to buy expensive license fees from private corporations. Today, only three of the six federal states still use location-based crime ‘prediction’ systems, all of which were developed internally or together with police force technology partners: North Rhine-Westphalia uses *SKALA* (System zur Kriminalitätsauswertung und Lageantizipation, System for Crime Analysis and Situation Anticipation)¹⁰⁹, Berlin uses *KrimPro* (Kriminalitätsprognose Wohnraumeinbruch, Crime

Forecast for Residential Burglary)¹¹⁰ and Hesse uses *KLB-operativ* (Kriminalitätslagebild, Crime Situation Awareness)¹¹¹.

According to Simon Egbert, Postdoctoral researcher at Bielefeld University, there is still no scientific evidence of success for any of the systems:

*“The number of cases of residential burglaries has now fallen sharply – albeit also in federal states where predictive policing is not used. Case numbers develop in certain waves, the question is always how much police activity has to do with this. Breaking it down to a specific activity such as predictive policing is methodologically very difficult and has not yet been possible in the precise form required.”*¹¹²

In relation to some uses of geographic crime ‘prediction’ systems, evaluation studies were carried out, such as an evaluation of North Rhine-Westphalia’s system *SKALA*, a geographic crime prediction tool which used residential demographic data from a commercial profiling company.¹¹³ However, even this 180-page-report was unable to provide concrete evidence of the system’s impact.¹¹⁴ The report states that expectations were *“generally high”* before the system was introduced and that it was hoped that *“forecasts would be accurate, more offenders could be arrested as a result, that detection figures would increase, that domestic burglaries would decrease and that targeted management of the police forces would be possible”* – in

106 Knobloch, Tobias, Vor die Lage kommen: Predictive Policing in Deutschland, Stiftung Neue Verantwortung, 29 August 2018, <https://www.stiftung-nv.de/sites/default/files/predictive.policing.pdf> (translated from German)

107 Ibid. (translated from German)

108 Bayerisches Staatsministerium des Innern, für Sport und Integration, Herrmann berichtet über Erfahrungen des Precobs-Tests in München und Mittelfranken, 24 June 2015, <https://www.stmi.bayern.de/med/pressemitteilungen/pressearchiv/2015/204/index.php>

109 Polizei NRW, Skala, <https://polizei.nrw/raumbezogene-forschung-skala>

110 Berliner Morgenpost, Vorhersage-Software: So genau ist das Programm der Polizei, 11 Februar 2019, <https://www.morgenpost.de/berlin/article216410297/Vorhersage-Software-So-genau-ist-das-Programm-der-Polizei.html>

111 CDU Fraktion Hessen, Landesweite Einführung der Prognosesoftware „KLB-operativ“, 30 October 2017, <https://www.cdu-fraktion-hessen.de/presse/landesweite-einfuehrung-der-prognosesoftware-und-bdquo-klb-operativ-un/>

112 Interview Egbert, Simon, Postdoctoral Researcher ‘The Future of Prediction’, University of Bielefeld, 4 October 2023

113 Fair Trials, ‘Automating Injustice: the use of artificial intelligence and automated decision-making systems in criminal justice in Europe’, September 2021, https://www.fairtrials.org/app/uploads/2021/11/Automating_Injustice.pdf

114 Interview Egbert, Simon, Postdoctoral Researcher ‘The Future of Prediction’, University of Bielefeld, 4 October 2023

the meantime, “disillusionment has set in”.¹¹⁵ A further evaluation of SKALA in June 2018 was more direct, stating that:

*“There are no robust statistical results that indicate an effect of SKALA – in the sense of a connection between measures and the subsequent events (e.g., arrests, prevention of WED [residential burglary]).”*¹¹⁶

Simon Egbert generally considers the ‘predictive’ policing approach for crime prevention to be “highly questionable”. Even if the police were to increase patrols in the predicted danger zones, the likelihood of them encountering alleged perpetrators at precisely that time is “incredibly low”. The more urban an area is, the less time the police have for preventive patrols, as they have other concerns – more manpower and resources would be needed to really enforce policing in response to geographic crime ‘prediction’ alerts.¹¹⁷

Racial profiling in predictive areas

The use of this geographic crime ‘prediction’ system may also lead to racial profiling. As Egbert notes: “The instruments themselves are not ethnicity-related on a technical level, but racial profiling can still take place on the ground depending on the implementation and accompanying narratives.”¹¹⁸

In conversations with police officers, he has found that they “perceive the forecast areas as a cognitive danger zone” where they check suspects. According to Egbert, ideas of foreign perpetrators influence the police officers’ control behavior, although it is actually unclear who the real perpetrators are due to the low clearance rate of burglaries in Germany:

*“Despite the lack of data, many police forces and Ministries of the Interior agreed that the sharp rise in the number of residential burglaries has to do with the EU’s eastward expansion and that gangs from Eastern Europe are systematically travelling through Germany and committing burglaries. Predictive policing is always about visible minorities that are held responsible for the increase in the number of cases – and the patrols naturally paid more attention to them in the forecast areas.”*¹¹⁹

Geographic crime ‘prediction’ software such as PRE-COBS does not necessarily establish chronic risk areas that the police perceive as permanent hotspots, patrol regularly and thus establish them in the long term – instead, the software-supported forecasts can guide patrols to more narrowly-defined and changeable areas such as streets (hotspots) allegedly prone to future burglaries that the police did not necessarily have on their radar.

Given the lack of scientific evidence, therefore, whether ‘predictive’ policing actually works is questionable. Furthermore, although the systems do not collect any personal data and instead refer to geographic areas, the checks in the alleged risk zones can still have discriminatory effects on individuals, given the existing structural and institutional discrimination by police in Germany towards people from racially minoritized backgrounds. Police suspicion towards racially minoritized people in those areas, for example, can reinforce racial profiling and police targeting of marginalized communities.

115 Landeskriminalamt NRW, ‘Kooperative Evaluation des Projektes SKALA’, 30 April 2018, https://lka.polizei.nrw/sites/default/files/2018-06/160430_Evaluationsbericht_SKALA.pdf (translated from German)

116 Ibid.

117 Interview Egbert, Simon, Postdoctoral Researcher ‘The Future of Prediction’, University of Bielefeld, 4 October 2023

118 Interview Egbert, Simon, Postdoctoral Researcher ‘The Future of Prediction’, University of Bielefeld, 4 October 2023

119 Interview Simon Egbert, Postdoctoral Researcher ‘The Future of Prediction’, University of Bielefeld, 4 October 2023

2. INDIVIDUAL CRIME ‘PREDICTION’ AND PROFILING SYSTEMS IN LAW ENFORCEMENT AND CRIMINAL JUSTICE

Individual crime ‘prediction’ instruments are designed to predict an individual’s future risk of certain actions, such as those defined under national laws as crimes. In recent years, police in Germany have shifted their focus away from geographic crime ‘prediction’ algorithms towards the introduction or development of individual crime ‘prediction’ and profiling systems.

The Bundeskriminalamt or BKA (Federal Criminal Police Office) in Germany has developed two individual ‘risk’ assessment tools in-house called *RADAR* (‘Rule-based Analysis of Potentially Destructive Offenders for the Assessment of Acute Risk’) to assess the potential ‘risk’ posed by certain individuals, and identify so-called dangerous individuals who are considered to pose a particularly ‘high risk’. When the *RADAR-iTe* tool was first developed, the focus was on so-called ‘Islamist’ individuals, while the newer *RADAR-rechts* tool focuses on right-wing extremists.

Meanwhile, several German states are using controversial ‘big data’ mining and analysis software from US manufacturer Palantir. This system is intended to analyze data from various police databases and other sources for identifying alleged terrorism suspects, for example. The German versions of Palantir’s *Gotham* software have been described as a “preliminary stage of predictive policing.”¹²⁰ By combining data and network analyses, not only can existing assumptions be reinforced but new suspicions can also be generated, even for individuals previously unknown to the police. Currently, the versions of Palantir used in Germany do not yet generate ‘risk’ scores for individual alleged suspects, but in other countries, Palantir’s ‘predictive’

technology is already used to make predictions about individuals, such as their ‘likelihood’ to commit certain acts, including terrorism.¹²¹ In Germany, Palantir analyses could be combined with subsequent analyses by systems that perform individual crime ‘prediction,’ like the *RADAR* systems.

Increasingly, the Federal Criminal Police Office is using commercial data in analysis by individual crime ‘prediction’ algorithms for counter-terrorism purposes, as in the case of passenger name records (PNR).¹²² The flight data collected by the passenger’s name records information system can also be incorporated into Palantir analyses, or analyzed separately. In this system, algorithms seek to identify patterns considered suspicious in the data, posing the risk that passengers could be wrongly suspected by police.

2.1. PALANTIR

Three German federal states currently hold licenses for ‘big data’ analysis programs based on Palantir’s *Gotham* software. The software has already been deployed in Hesse (*hessenDATA*) and North Rhine-Westphalia (*DAR*), while Bavaria is still testing *VeRA*. Bavaria has also signed a framework agreement with Palantir, which enables other federal states and federal authorities to purchase the software from Palantir without having to go through another complex tendering process.¹²³

120 Sommerer, Lucia, ‘Personenbezogenes Predictive Policing, Kriminalwissenschaftliche Untersuchung über die Automatisierung der Kriminalprognose’, *Nomos*, 2020, p. 92 (translated from German)

121 The Verge, ‘Palantir has secretly been using New Orleans to test its predictive policing technology’, 27 February 2018, <https://www.theverge.com/2018/2/27/17054740/palantir-predictive-policing-tool-new-orleans-nopd>

122 Bundeskriminalamt, ‘Informationsvideo zur Fluggastdatenspeicherung’, Video, <https://www.bka.de/DE/UnsereAufgaben/Aufgabenbereiche/Zentralstellen/Fluggastdatenspeicherung/InformationenUeberblick/filmDeutsch.html?nn=99758>

123 Bayerisches Landeskriminalamt, ‘Noch erfolgreichere Polizeiarbeit – Zuschlag für neues Recherche- und Analysesystem der Bayerischen Polizei: Höchste Ansprüche an Datensicherheit und Datenschutz’, 7 March 2022, original source no longer available

Palantir

Palantir is internationally known for its ties to state secret services, opacity and controversial business practices.¹²⁴ Early funding stemmed from In-Q-Tel, the venture capital arm of the Central Intelligence Agency (CIA). The CIA, the National Security Agency NSA, the Federal Bureau of Investigation (FBI), and the US army are part of the customer list.¹²⁵

Palantir initially focused solely on the development of technology for law enforcement, national security, military tactics, or warfare.¹²⁶ The tech company, founded in 2003, grew rapidly: *“Palantir has become the go-to company for mining massive data sets for intelligence and law enforcement applications, with a slick software interface and coders who parachute into clients’ headquarters to customize its programs,”* Forbes reported in 2013. Palantir software *“turns messy swamps of information into intuitively visualized maps, histograms and link charts.”*¹²⁷

The company shrouds itself in secrecy: Many agreements only become known months or years after they have been concluded, while ethical concerns are apparently of secondary importance to it. The company allegedly worked with the now bankrupt British company Cambridge Analytica that harvested and analyzed data from Facebook users to influence inter-

national elections with microtargeting campaigns.¹²⁸ Palantir has also signed contracts with the US military, for example for AI technology for deploying and monitoring unmanned aerial vehicles (UAV). Alphabet Inc.’s Google abandoned a similar project (known as “Maven”) after internal protests.¹²⁹

In 2020, it was revealed that Palantir software is used by the US Immigration and Customs Enforcement (ICE) to track down undocumented migrants in order to deport them.¹³⁰ Palantir played a central role in expanding raids, detentions and deportations of family members of unaccompanied minors during the Trump administration. Marisa Franco, co-founder of the Latinx organization Mijente, recounted that in 2017, ICE agents:

*“arrested 443 people using Palantir’s software – including the parents, family members and other sponsors of unaccompanied children, as well as any undocumented people encountered during the operation. Though the operation was eventually deemed a failure – almost none of those arrested could be prosecuted – officials were sold on the tactic of deterring migration by targeting parents.”*¹³¹

Amnesty International has warned of *“a high risk that Palantir is contributing to human rights violations of asylum-seekers and migrants through the ways the*

124 Spiegel, ‘Wie sich eine unheimliche US-Firma in Europa breitmacht’, 2 April 2021, <https://www.spiegel.de/ausland/palantir-wie-sich-eine-unheimliche-us-firma-in-europa-breitmacht-a-41bea3d3-0002-0001-0000-000176983007>

125 Forbes, ‘How A ‘Deviant’ Philosopher Built Palantir, A CIA-Funded Data-Mining Juggernaut’, 14 August 2013, <https://www.forbes.com/sites/andygreenberg/2013/08/14/agent-of-intelligence-how-a-deviant-philosopher-built-palantir-a-cia-funded-data-mining-juggernaut/?sh=5afccb0e7785>

126 Time, ‘How Palantir Is Shaping the Future of Warfare’, 10 July 2023, <https://time.com/6293398/palantir-future-of-warfare-ukraine/>

127 Forbes (2013), ‘How A ‘Deviant’ Philosopher Built Palantir, A CIA-Funded Data-Mining Juggernaut’, 14 August 2013, <https://www.forbes.com/sites/andygreenberg/2013/08/14/agent-of-intelligence-how-a-deviant-philosopher-built-palantir-a-cia-funded-data-mining-juggernaut/?sh=5afccb0e7785> (translated from German)

128 CNBC, ‘Palantir worked with Cambridge Analytica on the Facebook data it acquired, whistleblower alleges’, 27 March 2018, <https://www.cnbc.com/2018/03/27/palantir-worked-with-cambridge-analytica-on-the-facebook-data-whistleblower.html>

129 Yahoo Finances, ‘Palantir Extends Controversial Defense Contract That Google Abandoned’, 29 September 2022, <https://finance.yahoo.com/news/palantir-extends-controversial-defense-contract-105911110.html>

130 Vice, ‘Palantir’s CEO Finally Admits to Helping ICE Deport Undocumented Immigrants’, 24 January 2020, <https://www.vice.com/en/article/pkeg99/palantirs-ceo-finally-admits-to-helping-ice-deport-undocumented-immigrants>

131 Guardian, ‘Palantir filed to go public. The firm’s unethical technology should horrify us’, 4 September 2020, <https://www.theguardian.com/commentisfree/2020/sep/04/palantir-ipo-ice-immigration-trump-administration> (translated from German)

company’s technology facilitates ICE operations.”¹³² At the end of 2020, the Soros Fund announced it would sell its stake in Palantir because it “does not approve” of its business practices.¹³³

Despite these controversies, governments around the world continue to use Palantir software to analyze highly sensitive data, with the company now also developing products for industries such as finance and healthcare.¹³⁴ During the Coronavirus pandemic, Palantir benefited from the urgent need for health data analytics in several European countries.¹³⁵ However, in Greece, the Greek data protection authority opened an inquiry into the use of Palantir,¹³⁶ while in the UK, Palantir’s agreement with the National Health Service (NHS) is also subject to a legal challenge.¹³⁷

Palantir’s deals in the policing world are also accompanied by secrecy: In New Orleans, Palantir and the New Orleans Police Department (NOPD) used ‘predictive’ policing technology for six years without the public’s knowledge. Even city council members were unaware of the project:

“The company provided software to a secretive NOPD program that traced people’s ties to other gang members, outlined criminal histories, analyzed social media, and predicted the likelihood that individuals would commit violence or become a victim.”¹³⁸

The agreement with the Mayor of New Orleans was framed as a philanthropic ‘pro bono’ partnership, so that the public procurement process was circumvented. *“Because the program was never public, important questions about its basic functioning, risk for bias, and overall propriety were never answered”,* The Verge points out.¹³⁹

The German tech platform *Police IT* criticizes the company’s “oil-lamp business model”, noting that Palantir usually attracts new customers with manageable acquisition costs, but then often incurs high follow-up costs during ongoing operations.¹⁴⁰ Furthermore, the company complicates the termination of business relationships: when the New York Police department (NYPD) wanted to transition to a new system and have data previously processed with Palantir software analyzed by a competitor, Palantir asserted contractual rights to data processed by its system.¹⁴¹

132 Amnesty, ‘Palantir Technologies Contracts Raise Human Rights Concerns before NYSE Direct Listing’, 28 September 2020, <https://www.amnestyusa.org/press-releases/palantirs-contracts-with-ice-raise-human-rights-concerns-around-direct-listing> (translated from German)

133 CNBC, ‘George Soros’ fund is offloading Palantir shares because it ‘does not approve’ of its business practices, 19 November 2020, <https://www.cnn.com/2020/11/19/george-soros-is-offloading-palantir-shares-due-to-business-practices.html>

134 Lanzing, Marjolein, ‘Traveling technology and perverted logics: conceptualizing Palantir’s expansion into health as sphere transgression’, *Information, Communication & Society*, 14 November 2023, DOI:10.1080/1369118X.2023.2279557

135 Spiegel (2021), ‘Wie sich eine unheimliche US-Firma in Europa breitmacht’, 2 April 2021, <https://www.spiegel.de/ausland/palantir-wie-sich-eine-unheimliche-us-firma-in-europa-breitmacht-a-41bea3d3-0002-0001-0000-000176983007>

136 BalkanInsight, ‘Analysis Data, Spies and Indifference: How Mitsotakis Survived His ‘Watergate’’, 12 June 2022, <https://balkaninsight.com/2023/06/12/data-spies-and-indifference-how-mitsotakis-survived-his-watergate/>

137 The Guardian, ‘NHS England faces lawsuit over patient privacy fears linked to new data platform’, 30 November 2023, <https://www.theguardian.com/society/2023/nov/30/nhs-england-faces-lawsuit-patient-privacy-fears-new-data-fdp-platform>

Palantir in Germany

Palantir describes its *Gotham* analysis software as an “AI-enabled operating system that facilitates and accelerates human decision-making in all functions and task areas”; the tool “enables customers to link, enrich and present huge amounts of data at a glance in near real

138 The Verge (2018), ‘Palantir has secretly been using New Orleans to test its predictive policing technology’, 27 February 2018, <https://www.theverge.com/2018/2/27/17054740/palantir-predictive-policing-tool-new-orleans-nopd>

139 Ibid.

140 Police IT, ‘Top-Insider von Rola bzw. T-Systems als neue Lobby-Vertreter von Palantir’, 1 August 2022, <https://police-it.net/top-insider-von-rola-und-t-systems-neue-lobby-vertreter-von-palantir> (translated from German)

141 Brennan Center, ‘Palantir Contract Dispute Exposes NYPD’s Lack of Transparency’, 20 July 2017, <https://www.brennancenter.org/our-work/analysis-opinion/palantir-contract-dispute-exposes-nypds-lack-transparency>

time”.¹⁴² The standard software version has modules that enable, for example, the comparison of relevant investigation data with forensic extracts, radio cell tower analysis or geotemporal searches. The platform can also be customized by the “*independent development of new applications and special modules,*” even “*without extensive programming knowledge.*”¹⁴³

No machine-learning or ‘AI’ components are currently used in the Palantir software procured and used by states in Germany. Legal and data protection experts fear that this could change in the future;¹⁴⁴ however, they consider the software to be problematic even in its current version. Jürgen Bering, legal expert and project coordinator at the Gesellschaft für Freiheitsrechte (GFF), criticizes the complex person profiles that the data analysis creates:

*“The use of such software for advanced data analysis can very quickly lead to the creation of personal profiles that represent a deep intrusion into privacy. It must therefore be precisely limited for what purposes the software may be used and which specific data may be analyzed. It is often argued that such systems are intended to fight terrorism and child abuse, but in practice they are more likely to be used for offences such as drug-related crime.”*¹⁴⁵

In Hesse, North Rhine-Westphalia and possibly also Bavaria, the Palantir systems were tested or even introduced without an adequate legal basis.

The introduction of Palantir’s *Gotham* software to police in Germany has been accompanied by critical discussions from the outset. Critics in Germany

142 Palantir, ‘Gotham’, 2024, <https://www.palantir.com/platforms/gotham/>

143 ‘Wie Palantir die Digitalisierung deutscher Polizeien unterstützt’, 3 March 2023 <https://blog.palantir.com/wie-palantir-die-digitalisierung-deutscher-polizeien-unterst%C3%Bctzt-3791d65bccb6> (translated from German)

144 LTO, ‘Alle Puzzleteile einer Gefahr zusammenbringen’, 20 December 2022, <https://www.lto.de/recht/hintergruende/h/bverfg-1bv154719-1bvr263420-automatisierte-datenauswertung-polizei-hessen-hamburg-muendliche-verhandlung/>

145 Interview Bering, Jürgen, Lawyer, legal expert & project coordinator Gesellschaft für Freiheitsrechte, 1 June 2023

consider the dependence on the tech company to be problematic; they condemn that US intelligence services and military are among Palantir’s customers.¹⁴⁶ One police officer, who considers the system indispensable for police work, does not trust Palantir: “I think working with Palantir is playing with the devil.”¹⁴⁷

The extent to which the concerns are justified is difficult to investigate due to the lack of transparency: Freedom of Information Act (FOIA) requests to obtain documents related to Palantir are often declined by German government departments and police.¹⁴⁸ In Bavaria, a source code review of the Palantir software was carried out by the Fraunhofer Institute for Secure Information Technology (SIT)¹⁴⁹, but the report has been kept secret. Despite providing significant infrastructure and operational tools for the police, as it is a private company that just provides infrastructure, Palantir is not required to respond to FOIA requests.

2.1.1. hessenDATA – Hesse State Police, Germany

Used for: Individual data analysis and profiling

Created: 2017 trial, since 2018 roll-out

Hesse was the first German federal state to purchase software from Palantir, calling it an “*analysis platform to effectively combat Islamist terrorism and serious and organized crime*”.¹⁵⁰ According to the Hessian Police Headquarters for Technology (Hessisches Polizeipräsidium für Technik), *hessenDATA* enables the discovery

146 Spiegel (2021), ‘Wie sich eine unheimliche US-Firma in Europa breitmacht’, 2 April 2021, <https://www.spiegel.de/ausland/palantir-wie-sich-eine-unheimliche-us-firma-in-europa-breitmacht-a-41bea3d3-0002-0001-0000-000176983007>

147 Interview N. N., Police, Juni 2023

148 FragDenStaat, ‘Informationsfreiheitsanfragen’, <https://fragdenstaat.de/anfragen/?page=1&q=palantir>

149 Bayerisches Landeskriminalamt, ‘Projekt VeRA: Ergebnis der Quellcodeüberprüfung’, 8 March 2023, original source no longer available.

150 Ted, ‘Analyse- oder Wissenschaftssoftwarepaket’, 2018/S 023-048139, Bekanntmachung vergebener Aufträge, Ergebnisse des Vergabeverfahrens, Lieferauftrag, 02/02/2018, <https://ted.europa.eu/udl?uri=TED:NOTICE:48139-2018:TEXT:DE:HTML&tabId=0> (translated from German)

of offence and offender relationships based on existing police databases:

“Particularly in the area of serious and organized crime, the police depend on being able to quickly identify the right piece of the puzzle in this flood of data, which is needed to get an overall picture and thus avert danger in line with the situation. With hessenDATA, data pools can be brought together quickly and precisely for analysis and the available mass data can be effectively assessed.”¹⁵¹

The software was tested at Frankfurt am Main police headquarters in 2017, and the roll-out began in 2018. The tool is currently used in all regional police headquarters and the State Criminal Police Office to target what is described as ‘serious’ and ‘organized’ crime as well as ‘state security’ crime. Around 2,000 users have received the required training within the Hesse police to use the platform.¹⁵²

The mobile application version of the platform, *hessenDATA Mobile* was also introduced in mid-2018. The application was intended to enable special units to coordinate better and become “significantly more responsive” to “effectively combat terrorists or serious criminals in operational situations”.¹⁵³ The application is currently used by operational units of the Hesse state security services as well as special task forces such as the Mobile Einsatzkommando (MEK, Mobile Task Force) or the Spezialeinsatzkommando (SEK, Special Task Force). *hessenDATA Mobile* provides “all the functions of the desktop version required for operational use in a reduced version and thus represents a communicative link to the employees in the special operations departments.”¹⁵⁴

Peter Beuth, the Hessian Minister of the Interior advertises *hessenDATA* as “gangster-fighting software” to great PR effect.¹⁵⁵ Police users describe the tool as visually “not very spectacular”, but as user-friendly and time-saving:

“You can imagine HessenDATA as being similar to the flip charts in crime thrillers, on which people and networks of relationships are depicted – only electronically. The data that hessenDATA analyses is not new data – but without the software you would have to query a wide variety of systems, cache the data somewhere in Excel tables and try to establish any relationships. Hessendata makes work much easier. I can filter thousands of pieces of data instead of having to look at thousands of pieces of data.”¹⁵⁶

151 Hessisches Polizeipräsidium für Technik, E-Mail, 14 November 2023 (Translated from German)

152 Ibid.

153 Crisis Prevention, ‘Smarte und schlagkräftige Sicherheitsbehörden’, 12 August 2019, <https://crisis-prevention.de/sicherheit/smart-e-schlagkraeftige-sicherheitsbehoerden.html> (translated from German)

154 Hessisches Polizeipräsidium für Technik, E-Mail, 14 November 2023 (translated from German)

155 Hessisches Ministerium des Innern und für Sport, ‘Polizei-Analyseplattform zum Schutz vor Terroristen und Schwerstkriminellen’, 27 June 2023, <https://innen.hessen.de/presse/polizei-analyseplattform-zum-schutz-vor-terroristen-und-schwerstkriminellen> (translated from German)

156 Interview N. N., Police, January 2024

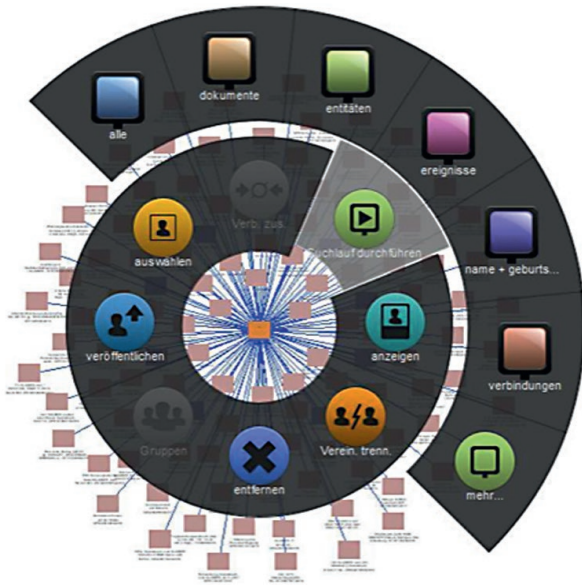


Figure 3: A screenshot of the hessenData system showing some of the data and data sources it makes available. (Credit: Netzpolitik)¹⁵⁷

Currently, *hessenDATA* can include the following information as part of its analyses and profiling:

- police data from the Polizeiauskunftssystem POLAS database (an information system for the search for individuals or objects);
- incident and case processing data;
- traffic data;
- telecommunications data;
- police information exchange;
- state registers;
- manually imported data from confiscated devices relevant to an investigation; and

¹⁵⁷ Netzpolitik, 'Hinweise zu bestimmten Milieus': Bundesländer testen Polizei-Software mit Palantir-Funktion, 17 September 2019 <https://netzpolitik.org/2019/hinweise-zu-bestimmten-milieus-bundeslaender-testen-polizei-software-mit-palantir-funktion/>

- manually imported data extracted from internet sources such as social media.¹⁵⁸

hessenDATA analyses do not use machine learning.¹⁵⁹ When the police launch a search request, linked databases are automatically searched. The system does not access the original police databases, but mirrored databases that are stored on police servers at the Hessian Centre for Data Processing and are regularly updated.¹⁶⁰

The system can link data on people with known images, contact details and vehicles, described as follows:

“A blue box with a head symbolizes a person. If a photo of the person is available, the photo is shown there. From there, for example, a connecting line goes to a car with “owner” written above it, the next red or orange box represents a vehicle – and then a line goes to a telephone number.”¹⁶¹

While *hessenDATA* does not calculate an individual risk score, it creates extensive individual profiles. The system can show which incidents a person has been involved in, including: when they have been stopped and where, if they were arrested at a burglary, whether they have been caught with drugs and where they live.¹⁶² Data from unlawful identity checks, including checks as a result of racial profiling that are stored in police databases could also be displayed in this context. As the system merges data from different systems, some of which may contain errors or confusion, especially in the case of ‘foreign’ names, innocent individuals could be labelled suspects.

¹⁵⁸ Hessisches Polizeipräsidium für Technik, E-Mail, 14 November 2023

¹⁵⁹ Hessisches Ministerium des Innern und für Sport, 'Polizei-Analyseplattform zum Schutz vor Terroristen und Schwerstkriminellen', 27 June 2023, <https://innen.hessen.de/presse/polizei-analyseplattform-zum-schutz-vor-terroristen-und-schwerstkriminellen>

¹⁶⁰ Hessischer Landtag, 'Drucksache 19/6864. Zwischenbericht Teil A des Untersuchungsausschusses 19/3 zu Drucksache 19/6574', 03 January 2019, <https://starweb.hessen.de/cache/DRS/19/4/06864.pdf>, p. 69f

¹⁶¹ Interview N. N., Police, January 2024

¹⁶² Interview N. N., Police, October 2023

Until the verdict of the Federal Constitutional Court in February 2023, regulations allowed “a broad inclusion of data of uninvolved persons who could therefore be subjected to further police investigative measures, although they have not been given any attributable reason for this”¹⁶³. This means that people who had no recorded or even suspected involvement in an alleged crime, including data of victims of a crime or witnesses from the case processing database ComVor were included:

“Before the verdict, many contact persons were also analyzed. The ComVor database was mirrored and used in full: It contains injured parties, witnesses and reports from accident parties. You can no longer use the data of a person who was injured in a traffic accident to solve a burglary – this is now restricted to serious crime.”¹⁶⁴

hessenDATA facilitates incredibly invasive surveillance, and it has been used significantly for non-violent crimes which do not fit the designation of its use for ‘serious’, ‘organized’ or ‘state security’ crime. In the past, *hessenDATA* was frequently used to investigate burglaries, according to a police officer. If a case officer had a court order for a radio cell analysis, the telephone providers had to provide all telephone numbers that were logged in near the crime scenes at certain times. This data was then analyzed with *hessenDATA* and the numbers were displayed on a map so that matches with the crime scenes and times became visible. “You can see: We have X burglaries and certain telephone numbers stand out – from this we can deduce that person Y is behind them and we are already one step further”¹⁶⁵. According to the Federal Commissioner for Data Protection and Freedom of Informa-

tion, an average delivery to the police for radio cell searches contains around 100,000 items of data.¹⁶⁶

According to Hesse’s Minister of the Interior Peter Beuth, *hessenDATA* was used “on a daily basis” in 2022 to combat ‘serious’, ‘organized’ and ‘politically motivated’ crime.¹⁶⁷ However, there are only a few examples of success in preventing serious political crimes that are publicly known. For example, in the run-up to the Germany-wide police raid against members of the far-right, anti-government group “Reichsbürger” (Reich citizens) in December 2022, *hessenDATA* made it possible to “recognise the network of relationships between the people involved around one of the main suspects in-depth and with the necessary speed and to show relevant connections.”¹⁶⁸

According to the Ministry of the Interior, *hessenData* prevented a terrorist attack by a young Iraqi man, ‘Deday A’ in 2018.¹⁶⁹ Facebook data analysis revealed chats about building bombs.¹⁷⁰ ‘Deday A’ had also tried to persuade others via Facebook and Telegram to carry out attacks for ISIS.¹⁷¹ He was arrested in 2018. According to the 2019 court verdict, he was “determined” to “manufacture an explosive device and

163 Bundesverfassungsgericht, ‘Urteil vom 16. Februar 2023’, 16 February 2023, https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2023/02/rs20230216_1bvr154719.html (translated from German)

164 Interview N. N., Police, October 2023

165 Ibid.

166 Bundesverfassungsgericht (2023), ‘Urteil vom 16. Februar 2023’, 16 February 2023, https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2023/02/rs20230216_1bvr154719.html

167 Hessisches Ministerium des Innern und für Sport (2023), ‘Stellungnahme Informationen zu hessischen Datenanalyse-Regelungen durch die Polizei’, 20 December 2022, <https://hessen.de/presse/informationen-zu-hessischen-datenanalyse-regelungen-durch-die-polizei>

168 Hessisches Ministerium des Innern und für Sport, ‘Polizei-Analyseplattform zum Schutz vor Terroristen und Schwerstkriminellen’, 27 June 2023, <https://innen.hessen.de/presse/polizei-analyseplattform-zum-schutz-vor-terroristen-und-schwerstkriminellen> (translated from German)

169 Ibid.

170 Süddeutsche Zeitung, ‘Wo die Polizei alles sieht’, 18 October 2018, <https://www.sueddeutsche.de/digital/palantir-in-deutschland-wo-die-polizei-alles-sieht-1.4173809>

171 beck-aktuell, ‘OLG Frankfurt am Main verurteilt IS-Anhänger wegen geplanten Schwarzpulver-Anschlags’, 10 September 2019, <https://rsw.beck.de/aktuell/daily/meldung/detail/olg-frankfurt-am-main-verurteilt-is-anhaenger-wegen-geplanten-schwarzpulver-anschlags-zu-jugendstrafe-auf-bewahrung>

detonate it at an unknown time in an unknown place to kill and injure many people of non-Muslim faith.”¹⁷²

‘Deday A’ was sentenced to a two-year juvenile sentence on probation and was released from pre-trial custody. His plans were apparently not as concrete as the police success stories suggest: *“He was not about to make a breakthrough in building a bomb”*, local media quoted a spokeswoman for the Attorney General’s Office as saying in 2018 – they had intervened *“at an early stage”*.¹⁷³ The platform *Police IT* assumes that the tough intervention should also demonstrate the relevance of the controversial *HessenDATA* platform:

“The accurate characterization [...] would be that of a ‘Gefährder’. But there are many of them. So, it was a bad outcome for the Iraqi Deday A., who was instrumentalized to justify a controversial procurement decision.”¹⁷⁴

According to a report by *Legal Tribune Online* in 2022, the police categorized around 12,000 of the 14,000 *hessenDATA* queries per year as ‘preventive measures’ against criminal offences, while the remaining 2,000 queries were classified as ‘defense against serious threats’. The platform for lawyers described this categorization as dubious:

“In fact, it is (...) often about criminal prosecution. However, as there is no legal basis for hessenDATA in the Code of Criminal Procedure, the police have to argue preventively (...) For example, the conclusion is drawn from a series

of criminal offences that further offences must be prevented.”¹⁷⁵

2.1.2 Datenbankübergreifende Analyse und Recherche DAR – State Police North Rhine-Westphalia

Used for: Person-related data analysis and profiling

Created: 2020 trial, state-wide deployment since 2022

North Rhine-Westphalia prepared the project description for its *DAR* (cross-database analysis and research) software in March 2019 and then initiated a Europe-wide tender. The contract with Palantir was made public at the beginning of 2020.¹⁷⁶ Test operations began in October 2021, which the State Commissioner for Data Protection of North Rhine-Westphalia criticized as “unlawful” – she saw “no legal basis” for the *DAR* analyses.¹⁷⁷ According to a report by local media, due to legal conflicts between the data protection commissioner and the Ministry of the Interior, the software then only ran in test mode for a year and a half.¹⁷⁸

In April 2022, the state parliament passed a new police law permitting use of the software. *DAR* has been in live operation since May 2022. However, data on the number of *DAR* queries are not available.¹⁷⁹ In 2022, the police in North Rhine-Westphalia used the system on a daily basis. According to the State Office for Central Police Services (Landesamt für Zentrale

172 Oberlandesgericht Frankfurt am Main, ‘Staatsschutzsenat verurteilt Deday A. zu Jugendstrafe von zwei Jahren auf Bewährung’, 10 September 2019 (translated from German)

173 HNA, ‘Trotz Staatsschutz und Festnahme, Akute Terrorgefahr ist im Kreis nicht gegeben’, 19 March 2018, <https://www.hna.de/lokales/witzenhausen/trotz-staatsschutz-und-festnahme-akute-terrorgefahr-ist-im-kreis-nicht-gegeben-9704095.html> (translated from German)

174 *Police IT*, ‘Vom Zweitnutzen verhinderter Terroranschläge’, 10 September 2019, <https://police-it.net/hessendata-terroranschlag-angeblich-verhindert> (translated from German)

175 LTO (2022), ‘Alle Puzzleteile einer Gefahr zusammenbringen’, 20 December 2022, <https://www.lto.de/recht/hintergruende/h/bverfg-1bv154719-1bvr263420-automatisierte-datenauswertung-polizei-hessen-hamburg-muendliche-verhandlung/> (translated from German)

176 Ministerium des Innern des Landes Nordrhein-Westfalen, Sitzung des Innenausschusses am 15.04.2021, Antrag der Fraktion Bündnis 90/Die Grünen vom 01.04.2021, ‘Aktueller Sachstand zur Software Gotham-Palantir’, 14 April 2023, <https://www.landtag.nrw.de/portal/WWW/dokumentenarchiv/Dokument/MMV17-4988.pdf>

177 Landesbeauftragte für Datenschutz und Informationsfreiheit Nordrhein-Westfalen, E-Mail, 11 December 2023

178 WDR, ‘NRW-Polizei: Knapp 40 Millionen Euro für umstrittene Palantir-Software’, 25 September 2022, <https://www1.wdr.de/nachrichten/landespolitik/nrw-polizei-datenbank-software-palantir-kosten-100.html>

179 Landesamt für Zentrale Polizeiliche Dienste Nordrhein-Westfalen, E-Mail, 19 December 2023

Polizeiliche Dienste), *DAR “integrates data from various existing information systems and enables users to collaborate dynamically, securely and efficiently.”* A mobile application is not currently used in NRW. Around 2,000 police users have been trained on using *DAR*.¹⁸⁰

The Gesellschaft für Freiheitsrechte (GFF) has lodged a constitutional complaint against the current legal basis for this data analyses in October 2022. A decision is expected in 2024.¹⁸¹ According to GFF, the North Rhine-Westphalian legislator is authorizing this *“serious encroachment on fundamental rights that is too far-reaching and with inadequate procedural safeguards.”*¹⁸² The State Commissioner for Data Protection of North Rhine-Westphalia has also criticized the serious infringement on the fundamental rights of those affected:

*“The software regularly breaches the principle of purpose limitation and searches all data stored by the police. This also includes data of persons who – unlike troublemakers in the sense of police law and criminals – have not themselves given cause for the storage and against whom there is no such suspicion. This includes complainants, witnesses and victims.”*¹⁸³

In light of the decision by the Federal Constitutional Court in February 2023, the State Commissioner for Data Protection believes that the law in North Rhine-Westphalia also needs to be adjusted, the scope of application of *DAR* needs to be limited and procedural precautions that take into account the rights of those affected need to be improved.¹⁸⁴

180 Landesamt für Zentrale Polizeiliche Dienste Nordrhein-Westfalen, E-Mail, 19 December 2023

181 Interview Bering, Jürgen, Lawyer, legal expert & project coordinator Gesellschaft für Freiheitsrechte, 1 June 2023

182 Gesellschaft für Freiheitsrechte, GFF erhebt Verfassungsbeschwerde gegen uferlose Big Data-Methoden im Polizeigesetz von NRW: Der Einsatz von „Data Mining“ braucht strenge Voraussetzungen, 6 October 2022, <https://freiheitsrechte.org/ueber-die-gff/presse/pressemitteilungen-der-gesellschaft-fur-freiheitsrechte/pm-stop-data-mining> (translated from German)

183 E-Mail, Landesbeauftragte für Datenschutz und Informationsfreiheit Nordrhein-Westfalen, 11 December 2023

184 Ibid.

2.1.3 Verfahrenübergreifende Recherche und Analyse VeRA – Bavarian State Police

Used for: Person-related data analysis and profiling

Created: trial started in 2022

Bavarian Police are currently testing *VeRA* (Verfahrenübergreifende Recherche und Analyse - cross-procedural research and analysis), a Palantir-based system that supports the analysis of large data sets to, as they say, *“combat and prosecute serious and organized crime and terrorism.”*¹⁸⁵ In the coalition agreement for the 2023–2028 legislative period, the governing parties CSU and Freie Wähler emphasised the key role of research and analysis tools for police work, describing *VeRA* as *“a decisive building block”*.¹⁸⁶

In March 2022, the police announced that they were awarding the contract to Palantir.¹⁸⁷ This was followed by a source code review of the Palantir software by the Fraunhofer Institute for Secure Information Technology (SIT).¹⁸⁸ According to the Bavarian State Police, the code review did not reveal any vulnerabilities that would allow data to be leaked without sufficient internal access rights or to outsiders (like Palantir employees); operation would be possible *“without any major security concerns.”*¹⁸⁹ However, the Fraunhofer report of 2023 is classified as secret, meaning that an

185 Bayerisches Landeskriminalamt (2022), Noch erfolgreichere Polizeiarbeit – Zuschlag für neues Recherche- und Analysesystem der Bayerischen Polizei: Höchste Ansprüche an Datensicherheit und Datenschutz, 7 March 2022, <https://www.stmi.bayern.de/med/pressemitteilungen/pressearchiv/2022/59/index.php>

186 CSU/Freie Wähler, Freiheit und Stabilität. Koalitionsvertrag für die Legislaturperiode 2023 – 2028, https://www.csu.de/common/download/Koalitionsvertrag_2023_Freiheit_und_Stabilitaet.pdf

187 Bayerisches Landeskriminalamt (2022), Noch erfolgreichere Polizeiarbeit – Zuschlag für neues Recherche- und Analysesystem der Bayerischen Polizei: Höchste Ansprüche an Datensicherheit und Datenschutz, 7 March 2022, <https://www.polizei.bayern.de/aktuelles/pressemitteilungen/025971/index.html>

188 Bayerisches Landeskriminalamt (2022), Projekt VeRA: Ergebnis der Quellcodeüberprüfung, 8 March 2023, <https://www.polizei.bayern.de/aktuelles/pressemitteilungen/045266/index.html>

189 Ibid.

external review of the document, the procedure and the results is impossible.

Before *VeRA* can be operationally used by police, the Bavarian Police Duties Act (Polizeiaufgabengesetz, PAG) still needs to be amended. According to a spokesperson for the Bavarian State Police, the implementation will then take place gradually, with the first *VeRA* training sessions for police analysts expected to begin in spring 2024.¹⁹⁰

In mid-2022, the Bavarian State Ministry of the Interior, Sport and Integration stated that the following police databases can be searched using *VeRA* in future:

- the case processing system VBS;
- the case processing system FBS;
- the Bavarian police search database INPOL-Land; and
- the police correspondence system EPost.

Depending on the case, relevant information from the operations management system ELS (for the management of mobile task forces in the field) or the program for processing traffic offences ProVi may also be made available.

In addition, investigation-related data from radio cell towers, from investigation reports or investigation-related extracts from IT forensics can be imported manually, for example data from confiscated devices such as mobile phones. In individual cases, it should also be possible to manually initiate queries from *VeRA* for the police databases INPOL-Bund and INPOL-Fall. According to the plans, non-police data such as residents’ registration data, the Central Register of Foreigners (Ausländerzentralregister or AZR) with data from individuals with a foreign citizenship who live or have lived in Germany for more than three months, the National Weapons Register, the Federal Motor Transport Authority and flight data could also

be manually integrated if needed, as well as investigation reports from Internet research such as data from social networks.¹⁹¹

According to the Bavarian Police, the test phase began in mid-November 2022, initially exclusively in what they say is a ‘test’ environment. After completion of the source code review by the Fraunhofer Institute, the police began to use real data in March 2023, yet continued to refer to their process as a ‘test’. The Bavarian Police are operating the software with data from the case processing system VBS, the case processing system FBS, the Bavarian police’s search database INPOL-Land and the police correspondence system EPOST810. As the project continues, the software will also use data from the operations management system ELS and the program for processing traffic offences ProVi.¹⁹²

In November 2023, Bavaria’s public broadcasting service *Bayerischer Rundfunk* criticized the use of real people’s data during the trial phase.¹⁹³ While the police consider the current laws for the ‘trial’ to be sufficient, legal experts have doubts about this. The Bavarian State Commissioner for Data Protection has pointed out the risk that legal conflicts could arise: If the police receive evidence of criminal offences during the trial, they would be obliged to investigate them by law, but the legal basis for the regular operation of *VeRA* is still lacking.¹⁹⁴ The Bavarian police rule out such conflicts: *“Purely technical function tests are carried out and no police investigations are conducted. Only employees of the VeRA project group receive results*

190 Polizei Bayern, E-Mail, 20 November 2023

191 Bayerischer Landtag, Schriftliche Anfrage der Abgeordneten Benjamin Adjei, Katharina Schulze BÜNDNIS 90/DIE GRÜNEN vom 24.03.2022, Offene Fragen nach dem Zuschlag für neues Recherche- und Analysesystem der Bayerischen Polizei (verfahrenübergreifende Recherche und Analyse – VeRA) an Palantir Technologies GmbH; Antwort des Staatsministeriums des Innern, für Sport und Integration vom 13.05.2022, 30 June 2022, https://www1.bayern.landtag.de/www/ElanTextAblage_WP18/Drucksachen/Schriftliche%20Anfragen/18_0022731.pdf

192 Polizei Bayern, E-Mail, 5 December 2023

193 Tagesschau/BR, ‘Testet Bayern Palantir ohne Rechtsgrundlage?’, 30 November 2023, <https://www.tagesschau.de/investigativ/br-recherche/palantir-software-polizei-100.html>

194 Ibid.

*on how the data is processed, which problems occur and which possible solutions need to be developed.*¹⁹⁵

After a review of the ‘test’ project, the Bavarian Commissioner for Data Protection called on the police to “suspend the test operation of VeRA until open questions have been clarified.”¹⁹⁶ A decision has not yet been made, but the police are not obliged to follow his instructions.¹⁹⁷ The Commissioner has repeatedly criticized the project in recent years. According to the Commissioner, a large proportion of the data that investigators are to gain access to via VeRA has been collected for completely different purposes than combating terrorism and organized crime. The law must ensure that the software is only used in “existential emergencies”.¹⁹⁸

The “Police 20/20” and “Bundes-VeRA” initiative

Bavaria’s framework agreement with Palantir also enables other federal agencies and State authorities to purchase VeRA without having to go through a lengthy procurement procedure of their own. The nationwide introduction of Palantir has been promoted by the Federal Ministry of the Interior in recent years under the name *Bundes-VeRA* (*Federal VeRA*). The initiative aims to standardize the software used in the various federal states and authorities as part of the “Police 20/20” police database merger program and simplify the exchange of information across federal states.¹⁹⁹

195 Polizei Bayern, E-Mail, 05 December 2023

196 Bayerischer Rundfunk, ‘Palantir-Software: Bayerisches LKA soll Testbetrieb stoppen’, 26 January 2024, <https://www.br.de/nachrichten/bayern/palantir-software-bayerisches-lka-soll-testbetrieb-stoppen,U2OTyOI> (translated from German)

197 Ibid.

198 Heise, ‘Möglicher Datenabfluss: Polizei-Software VeRA auf dem Prüfstand’, 8 July 2022, <https://www.heise.de/news/Moeglicher-Datenabfluss-Polizei-Software-VeRA-auf-dem-Pruefstand-7165927.html>

199 Deutscher Bundestag, ‘Kleine Anfrage der Fraktion der CDU/CSU Entscheidung des Bundesministeriums des Innern und für Heimat bezüglich der Einführung der polizeilichen Analyse-Software Bundes-VeRA’, 4 September 2023 <https://dserver.bundestag.de/btd/20/082/2008205.pdf>

In 2023, however, the Federal Ministry of the Interior decided not to set up the planned joint *Bundes-VeRA* platform with the Federal Criminal Police Office and the Federal Police. Federal states can still decide to acquire Palantir software independently.²⁰⁰ To date, no further concrete Palantir acquisition plans are known. According to the Federal Ministry of the Interior, the research and analysis capability that *Bundes-VeRA* was to provide as part of P20 is to be developed in the future “under its own digital expertise”.²⁰¹ However, a police officer who is familiar with the massively delayed P20 program believes it is unrealistic to develop an in-house alternative to Palantir software in the near future:

“[I]t would take about a decade to develop a system of our own – if we were to get round to it and agree on a list of requirements and not spend years discussing what it needs to be able to do.”²⁰²

Meanwhile, the three federal states that are already using or testing Palantir software – Hesse, North Rhine-Westphalia and Bavaria – are continuing to push for a nationwide introduction of Palantir.

Legal cases against Palantir

Following a constitutional complaint by the Gesellschaft für Freiheitsrechte (GFF), the Federal Constitutional Court ruled in February 2023 that the data analysis regulations in the police laws of Hamburg and Hesse violate the right of individuals to determine the disclosure and use of their personal data as they “do not contain a sufficient threshold for interference” and demanded adjustments to the regulations.²⁰³ The broad legal framework previously allowed police analysts to “create comprehensive

200 Bundesinnenministerium, E-Mail, 3 November 2023

201 Ibid.

202 Interview N. N., Police, October 2023

203 Bundesverfassungsgericht (2023), ‘Urteil vom 16. Februar 2023, Leitsätze zum Urteil des Ersten Senats vom 16. Februar 2023 - 1 BvR 1547/19 - 1 BvR 2634/20 - Automatisierte Datenanalyse’, 16 February 2023, https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2023/02/rs20230216_1bvr154719.html (translated from German)

profiles of individuals, groups and milieus with a single click and also to subject numerous uninvolved persons to further police measures who have left data in any context and in whose cases the automated data analysis had put the police on the wrong track.”²⁰⁴

Since the ruling of the Federal Constitutional Court, Hesse has had to limit the scope of analyses and data sources, and on 12 July 2023 the new regulation (§ 25a HSOG) came into force.²⁰⁵ Current statistical analyses on the number and category of queries are not yet available in Hesse.²⁰⁶ *“There was a groan when the verdict came and colleagues realized that they were no longer allowed to do so much”,* says one hessenDATA user, describing the change from a police perspective.²⁰⁷

A further constitutional complaint against the regulation on data analysis enshrined in the North Rhine-Westphalia Police Act is still ongoing, with a decision expected in 2024.²⁰⁸ Charlotte Baldauf, a lawyer at the Gesellschaft für Freiheitsrechte (GFF), warns that the data analyses by Palantir software are *“a black hole”* in terms of fundamental rights – with a high risk of discrimination:

“It remains unclear which data the Palantir software collates and analyses to create personality profiles – this violates the fundamental right to determine one’s own data. People can be arbitrarily targeted by the police – often discriminated groups are affected. Because they don’t find out about the data being analyzed, they can’t even defend themselves.”²⁰⁹

204 Ibid.

205 Justizportal Nordrhein-Westfalen, § 25a HSOG Hessisches Gesetz über die öffentliche Sicherheit und Ordnung (HSOG) Landesrecht Hessen, https://www.lexsoft.de/cgi-bin/lexsoft/justizportal_nrw.cgi?xid=169564,130

206 Hessisches Polizeipräsidium für Technik, E-Mail, November 2023

207 Interview N. N., Police, October 2023

208 Interview Bering, Jürgen, Lawyer, legal expert & project coordinator Gesellschaft für Freiheitsrechte, 1 June 2023

209 Gesellschaft für Freiheitsrechte (2022), ‘GFF erhebt Verfassungsbeschwerde gegen uferlose Big Data-Methoden im Polizeigesetz von NRW, 6 October 2022’, <https://freiheitsrechte.org/ueber-die-gff/presse/pressemitteilungen-der-gesellschaft-fur-freiheitsrechte/pm-stop-data-mining> (translated from German)

2.2. RADAR INDIVIDUAL RISK ASSESSMENT TOOLS

Another individual profiling and ‘risk’ assessment tool has been introduced in Germany, for profiling people and assessing ‘risk’ of involvement in terrorism offences. *RADAR* is an individual ‘risk’ assessment tool that is now being used to analyze and profile ‘Islamist’ (*RADAR-ite*) and right-wing suspects (*RADAR-rechts*) who are considered to have a high potential for violence.

The tool is intended to evaluate mainly the risk of those previously identified as “Gefährder” (endangerer) – a specific threat classification – and “relevant persons” to assess ‘high risk’ individuals among them who need to be prioritized in order to subsequently coordinate interventions.²¹⁰ The blurry working terms “Gefährder” and “relevant person” for persons who are suspected of committing or supporting violence have become established among security authorities and police. However, these terms have been criticized as vague and unscientific, raising concerns about risks of false suspicion. The selection process for the group of individuals who are then assessed using *RADAR* is therefore questionable.

The assessment of an individual’s ‘violence potential’ is now at the forefront of police work. With such an approach, and the use of the *RADAR* systems, the assessment of the threat shifts from something based on actual evidence of an action or involvement in an action, to an unspecified, abstract risk that *could* develop in the future, estimated only on the basis of circumstantial evidence.

The *RADAR* tools were introduced following fatal terror attacks, including on the Berlin Christmas market at the end of 2016²¹¹ and the assassination of the pol-

210 Bundeskriminalamt, ‘RADAR (Regelbasierte Analyse potentiell destruktiver Täter zur Einschätzung des akuten Risikos)’, https://www.bka.de/DE/UnsereAufgaben/Deliktsbereiche/PMK/Radar/radar_node.html

211 Tagesspiegel, ‘Gedenken an Opfer in Berlin: Terroranschlag an der Gedächtniskirche jährt sich zum siebten Mal’, 11 December 2023, <https://www.tagesspiegel.de/berlin/gedenken-an-opfer-in-berlin-terroranschlag-an-der-gedachtniskirche-jahrt-sich-zum-siebten-mal-10908199.html>

itioner Walter Lübcke in 2019 by a right-wing extremist with multiple previous convictions.²¹² Following the 2016 Christmas market attack, the head of the Federal Criminal Police Office (Bundeskriminalamt, BKA) explained that “We have learned that we need to focus even more on the person and try to minimize the risk they pose with a package of measures tailored to their individual profile.”²¹³ German authorities have since directed increased attention and resources to assess the ‘risk’ potential of people known to the police for some time, including through the use of the *RADAR* tools to profile individuals and predict their likelihood or ‘risk’ of committing such acts.²¹⁴

The two existing risk assessment tools *RADAR-iTE* and *RADAR-rechts* are currently being evaluated and further developed to be able to better assess incarcerated people or people who have been previously been imprisoned (*RADAR-Haft*).

2.2.1 RADAR-iTE – Bundeskriminalamt, BKA (Federal Criminal Police Office)

Used for: Individual risk assessment

Created: *RADAR-iTE* 2016/2017; *RADAR-iTE 2.0* 2019

RADAR-iTE is an acronym for *Regelbasierte Analyse Potentiell Destruktiver Täter zur Einschätzung des Akuten Risikos – islamistischer Terrorismus* (“Rule-based Analysis of Potentially Destructive Offenders for the Assessment of Acute Risk – Islamist Terrorism”). *RADAR-iTE* is a ‘risk’ assessment tool for assessing people allegedly involved with ‘Islamist’ extremism who are already known to the police and considered potentially violent. The tool is intended to help the police to concentrate their resources on those people who are considered to have the highest potential

for violence,²¹⁵ and the Federal Criminal Police Office describes the function of *RADAR-iTE* as follows:

“[A] person for whom a minimum amount of information is available about events in their life is assessed with regard to the risk they pose of committing a serious violent offence in Germany and assigned to a risk scale in order to prioritize intervention measures.”²¹⁶

RADAR-iTE was developed by the Federal Criminal Police Office in collaboration with the Forensic Psychology Working Group of the University of Konstanz. Development began in the beginning of 2015 and was completed in September 2016. The tool was used for the first time in the beginning of 2017 and gradually introduced to all German federal states by summer 2017. As part of the subsequent RISKANT research project (“Risikoanalyse bei islamistisch motivierten Tatgeneigten” – “Risk analysis for Islamist-motivated potential offenders”) funded by the Federal Ministry of Education and Research, *RADAR-iTE* was evaluated and updated to the current version, *RADAR-iTE 2.0*. The tool has been integrated as a web application, but the original assessment questionnaire in the form of an Excel chart can still be used as an alternative.²¹⁷ Since May 2019, German police forces have been using the revised version *Radar-iTE 2.0*.²¹⁸

RADAR-iTE is mainly used to assess individuals motivated by ‘Islamist’ extremism who have been previously classified as “Gefährder” (“endangerers”) or “relevant persons”. According to a statement by the Federal Criminal Police Office from 2017, however, *RADAR-iTE* assessments were also conducted for persons who were not “formally classified as a

212 Tagesschau (2023), ‘Ein Untersuchungsausschuss, vier Meinungen’, 27 June 2023 <https://www.tagesschau.de/inland/innenpolitik/luebcke-mord-untersuchungsausschuss-100.html>

213 Tagesspiegel, ‘BKA-Leiter Holger Münch: „Die Gefährderzahl hat sich verfünffacht“’, 19 December 2018, <https://www.tagesspiegel.de/politik/die-gefahrderzahl-hat-sich-verfunffacht-4616764.html>

214 Ibid.

215 Bundeskriminalamt, ‘RADAR (Regelbasierte Analyse potentiell destruktiver Täter zur Einschätzung des akuten Risikos)’, https://www.bka.de/DE/UnsereAufgaben/Deliktbereiche/PMK/Radar/radar_node.html

216 Ibid.

217 Bundeskriminalamt, E-Mail, 17 November 2023

218 Bundeskriminalamt, E-Mail, 10 February 2023

Gefährder and/or relevant person”.²¹⁹ The classification as “Gefährder” or “relevant person” as well as the risk assessment with *RADAR-ITE* is the responsibility of the respective federal state police in Germany in which the person concerned last resided. The Federal Criminal Police Office acts as the central office for the risk assessment and is in contact with the state police forces.²²⁰

The “Gefährder” classification: vague and discriminatory

In recent years, the terms “Gefährder” and “relevant person” have become established among security authorities and police forces.

In the context of an increase in ISIS-inspired attacks in Western Europe and Germany, the German security authorities and police forces have further focused their efforts to target so-called ‘Islamism’ in Germany. In 2016, the most serious ‘Islamist’ terrorist attack to date in Germany occurred at a Christmas market in Berlin. 13 people were murdered (one of them died years later as a result of injuries), and more than 70 people were injured.²²¹

Instead of the prosecution of specific criminal offences, the focus of counter-terrorism is now on pre-emption, and assessing the individual violence potential, “i.e., an unspecified threat that could develop in the future” and “for which circumstantial evidence may be sufficient.”²²²

In 2022, the Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz or BfV) counted a total of 27,480 persons in Germany as ‘Islamists’, 11,000 of whom were considered ‘Salafists’, the most populous ‘Islamist’ movement in Germany in terms of numbers.²²³ However, it is not transparent how these individuals were categorized as ‘Islamists’ or Salafists and therefore it is unclear whether the classification of each individual in this group is justified.

According to the Federal Office for the Protection of the Constitution, not a single confirmed ‘Islamist’-motivated attack happened in Germany in 2022, allegedly “because the German security authorities succeeded in recognizing and preventing threats in advance”.²²⁴ However, the number of global ‘Islamist’ attacks had already fallen between 2015 and 2019 substantially worldwide and “improvements have plateaued in the last three years.”²²⁵ Yet in November 2023, the President of the Federal Office for the Protection of the Constitution Thomas Haldenwang warned that al-Qaeda and ISIS are calling for attacks with reference to the Israel-Gaza conflict: “The danger is real and higher than it has been for a long time.”²²⁶

It is in this context that the “Gefährder” designation has risen. According to the Federal Criminal Police Office’s definition a “Gefährder” is a person for whom “certain facts justify the assumption that he or she will commit politically motivated offences of considerable significance”²²⁷, such as a terrorist attack. A person is considered “relevant” if he or she “assumes the role of

219 Der Spiegel, ‘Vorverurteilung durch Algorithmen’, 16 September 2019 <https://www.spiegel.de/netzwelt/netzpolitik/vorverurteilung-durch-algorithmen-warum-gefaehrder-prognosen-gefaehrlich-sind-a-1286995.html> (translated from German)

220 Bundeskriminalamt, ‘Politisch motivierte Kriminalität’ https://www.bka.de/DE/UnsereAufgaben/Deliktsbereiche/PMK/pmk_node.html (translated from German)

221 Tagesspiegel (2023), ‘Gedenken an Opfer in Berlin: Terroranschlag an der Gedächtniskirche jährt sich zum siebten Mal’, 11 December 2023, <https://www.tagesspiegel.de/berlin/gedenken-an-opfer-in-berlin-terroranschlag-an-der-gedachtniskirche-jaehrt-sich-zum-siebten-mal-10908199.html>

222 Bundeszentrale für politische Bildung (2020), ‘Gefährder’, 13 January 2020 <https://www.bpb.de/themen/migration-integration/kurzdoziers/migration-und-sicherheit/302982/gefaehrder/#footnote-target-7> (translated from German)

223 Bundesamt für Verfassungsschutz, ‘Zahlen und Fakten’, https://www.verfassungsschutz.de/DE/themen/islamismus-und-islamistischer-terrorismus/zahlen-und-fakten/zahlen-und-fakten_node.html (translated from German)

224 Ibid. (translated from German)

225 Institute for Economics and Peace, ‘Global Terrorism Index 2023’, <https://www.economicsandpeace.org/reports> (translated from German)

226 Tagesschau, ‘Anschlagsgefahr so hoch wie lange nicht mehr’, 29 November 2023, <https://www.economicsandpeace.org/wp-content/uploads/2023/12/GTI-2023-web.pdf>

227 Bundeskriminalamt, ‘Politisch motivierte Kriminalität’, https://www.bka.de/DE/UnsereAufgaben/Deliktsbereiche/PMK/pmk_node.html (translated from German)

a leader, supporter/logistician or actor within the Islamist scene and there are objective indications that allow the prognosis that he or she promotes, supports, commits or participates in politically motivated offences of considerable significance, or is a contact or companion of a dangerous person, an accused person or a suspect of a politically motivated offence of considerable significance.”²²⁸

The terms “Gefährder” and “relevant person” are not legally defined categories, but working terms used by the police. They are criticized by academics and experts as vague and based on opaque and inconsistent police assessments rather than conclusive evidence of a future criminal offence,²²⁹ and the police refuse to disclose exactly how these categories are determined. Maximilian Ruf, Director of the Research Department at the Violence Prevention Network, an NGO that works with ideologically vulnerable people and violent offenders from the right-wing and the ‘Islamist’ spectrum, draws attention to the fact that the categories “Gefährder” and “relevant person” lack a legal definition, but have a “*certain legal impact*”. So-called Gefährder “*are first and foremost people who have not committed a criminal offence and in the case of relevant persons, it is sometimes enough to have contact with a dangerous person.*”²³⁰

The case of Murat Kurnaz shows the extreme consequences of being (incorrectly) labelled as a “Gefährder”. In November 2001, Murat Kurnaz, a Turkish citizen who was born and raised in Germany, was arrested by the police in Pakistan and then detained by the USA in a Kandahar prison and in Guantánamo, a US detention center in Cuba that later became known for its brutal methods of interroga-

tion and torture that violate human rights.²³¹ Kurnaz describes his experience as follows:

“I was 19 when a patrol picked me up in Pakistan, where I wanted to study the Koran – and the Americans took me to a secret prison in Kandahar shortly afterwards. During the interrogations, they tied me to a beam with my arms up and my feet a little above the ground, and I hung there for five days. A doctor checked my pulse every few hours. I was sure I was going to die. In Guantánamo, I was blasted by loudspeakers and spotlights every night for five years.”²³²

The US CIA agents and even German intelligence agents who interviewed Kurnaz in 2002 considered the young man harmless. The CIA agents were aware that many innocent people were wrongly imprisoned in Guantánamo, but they feared that after their mistreatment those released “*would become martyrs on their return*” and possibly carry out attacks which “*would cause great damage to those politically responsible.*”²³³

Despite his innocence, the German Chancellery, Ministry of the Interior and intelligence service leaders continued to frame Kurnaz as a “Gefährder”, preventing his return to Germany. According to the then head of the Chancellery, Steinmeier, “*it was not a question of establishing the guilt of the person concerned, but rather his assessment as a possible security risk.*”²³⁴ He said Kurnaz had been found to have ‘Islamist’ radicalization tendencies, his Bremen social circle was “*not completely harmless*” and the circumstances of Kur-

228 Bundeskriminalamt, ‘Politisch motivierte Kriminalität’, https://www.bka.de/DE/UnsereAufgaben/Deliktsbereiche/PMK/pmk_node.html (translated from German)

229 e. g. Böhm, Maria Laura, ‘Der ‚Gefährder‘ und das ‚Gefährdungsrecht‘, Göttinger Universitätsverlag, 2011 https://univerlag.uni-goettingen.de/bitstream/handle/3/isbn-978-3-86395-004-0/GSK15_boehm.pdf;jsessionid=548D-E2335711D3B38BF651AA4A2B3C16?sequence=1 or Hanschmann, Felix, ‘Gefährder’ – eine neue alte Figur im Öffentlichen Recht’, Kritische Justiz, Vol. 50, No. 4 (2017), pp. 434-447, <https://www.jstor.org/stable/26427899>

230 Interview Ruf, Maximilian, Director Research Department at the Violence Prevention Network, 6 October 2023

231 Amnesty, ‘Würdelos bis zum Ende’, Magazin der Menschenrechte, March 2007, <https://www.amnesty.ch/de/ueber-amnesty/publikationen/magazin-amnesty/2007-1/fall-murat-kurnaz>

232 Zeit, ‘Ihr habt alle Chancen!’, 12 October 2017, <https://www.zeit.de/2017/42/integration-guantanamo-sozialarbeit-fluechtlinge> (translated from German)

233 Zeit, ‘Der gehört nicht hierher’, 22 February 2007, <https://www.zeit.de/2007/09/Kurnaz/komplettansicht> (translated from German)

234 Deutscher Bundestag, ‘hib-Meldung, ‘Schapper: Kurnaz galt 2002 als Gefährder”, 26 February 2007, https://webarchiv.bundestag.de/archive/2007/0814/aktuell/hib/2007/2007_047/01.html (translated from German)

naz’s trip to Pakistan had supposedly still not been fully clarified.²³⁵ Until October 2005, the Chancellery and the Ministry of the Interior were still resisting Kurnaz’s re-entry into Germany, although the accusations had long been considered unfounded. After the 2005 federal elections, the new Chancellor Angela Merkel made it possible for Kurnaz to return to Germany in 2006.²³⁶

According to Maximilian Ruf, anti-Muslim bias leads to the police and authorities treating Muslim youths differently from white young men with similar problematic behavior, so they are more quickly considered a threat:

“Security authorities, but of course also society as a whole, are unfortunately often much more cautious or prejudiced towards Muslim religious practice than in relation to the problematic behavior of German, white youths and right-wing structures. In the case of right-wing extremist or right-wing extremist young people, it is much easier to assume that they are just young people who are fooling around or are in a phase of marginalization or rebellion than in the case of Muslim religious practice. In our experience, Muslim young people tend to be targeted much more quickly by the authorities, partly because society reacts differently to them.”²³⁷

Social and political context

This prejudice follows media and political debates which are often centered on the stereotype of violent young men with a migrant background, such as the

discussion about “Intensivtäter” (prolific offenders),²³⁸ the problematization of the so-called “refugee crisis” in 2015 (an influx of refugees to Germany that was primarily influenced by the Syrian conflict), or the attacks on police and firefighters on New Year’s Eve 2022/2023.²³⁹ The suspected perpetrators of violence are constructed as a homogeneous group, with a “generalized view of the origin of the perpetrators.”²⁴⁰ Instead of analyzing social causes, there is often a call for harsher punishments and anti-immigration measures. Conflict researcher Andreas Zick says: *“We are living in times of crisis and the migration card is being pulled out again.”²⁴¹*

Xenophobic and Islamophobic rightwing movements such as Pegida (“Patriotic Europeans against the Islamization of the Occident”) or the right-wing extremist party Alternative for Germany (AfD) tie in strategically with such enemy images and are mobilizing against alleged “foreign infiltration” and allegedly liberal immigration and asylum policies.²⁴²

The AfD is instrumentalizing the population’s existing hostility towards Muslims as a “vote-seeking strategy”²⁴³. At a secret meeting of AfD politicians, neo-Nazis and businesspeople in 2024 they planned to expel millions of people from Germany if they have the supposedly wrong skin color or origin or are not sufficiently “assimilated”, even if they are German

235 Deutscher Bundestag (2007), ‘Steinmeier: Haltlose Vorwürfe im Fall Kurnaz’, 29 March 2007, https://webarchiv.bundestag.de/archive/2007/0814/aktuell/hib/2007/2007_047/01.html (translated from German)

236 Süddeutsche Zeitung, ‘Merkel setzte sich sofort für Kurnaz ein’, 17 May 2010, <https://www.sueddeutsche.de/politik/rueckkehr-nach-deutschland-merkel-setzte-sich-sofort-fuer-kurnaz-ein-1.784410>

237 Interview with Maximilian Ruf, Director Research Department at the Violence Prevention Network, 6 October 2023

238 Puschke, Jens, ‘Intensivtäter – Neuartige Kontrolle mittels tradierter Zuschreibung’, *vorgänge*, 2007, pp. 63-72

239 Tagesschau, ‘Woher kam die Gewalt?’, 18 January 2023, <https://www.tagesschau.de/inland/innenpolitik/silvester-debatte-101.html>

240 Deutschlandfunk, ‘Da wird wieder die Migrationskarte gezogen’, 3 January 2023, <https://www.deutschlandfunkkultur.de/silvester-gewalt-andreas-zick-100.html> (translated from German)

241 Ibid.

242 Bundeszentrale für politische Bildung, Pegida’, <https://www.bpb.de/themen/rechtsextremismus/dossier-rechtsextremismus/500835/pegida/>

243 Bitzl, C., Kurze, M. Rechtsextreme Muslimhetze: Die Instrumentalisierung von Religion als Vote-Seeking-Strategie der AfD’, *Z Religion Ges Polit* 5, 471–502 (2021), 27 September 2021, <https://doi.org/10.1007/s41682-021-00076-y>

citizens.²⁴⁴ Despite its increasingly extreme program, the AfD’s influence is growing.²⁴⁵ The political scientist Gilda Sahebi, author of “Wie wir uns Rassismus beibringen” (How we teach ourselves racism), warns against attributing racism solely to the party. She sees the AfD as a “product of this society”.²⁴⁶

A report on hostility towards Muslims in Germany published in 2023 by the Unabhängiger Expertenkreis Muslimfeindlichkeit UEM (Independent Expert Group on Hostility towards Muslims) found that anti-Muslim racism is “widespread in large parts of German society”. UEM was convened by the Federal Ministry of the Interior and for Home Affairs in September 2020 in response to right-wing extremist terrorist attacks such as the Hanau attack on 19 February 2020.²⁴⁷ Hostility towards Muslims is described by UEM as “the attribution of generalized, largely unchangeable, backward and threatening characteristics” towards Muslims and people perceived as Muslim. As a result, “consciously or unconsciously a ‘foreignness’ or even hostility is constructed”, which can lead to “multi-layered social exclusion and discrimination processes that take place discursively, individually, institutionally or structurally and can even extend to the use of violence.”²⁴⁸

The reactions to the Christmas market attack in 2016 reveal how the “Gefährder” classification efforts can be driven by certain events and political factors:

“After the attack on Breitscheidplatz, for example, significantly more people were initially categorized as being a risk – not least because the police authorities wanted to play it safe.

244 Correctiv, ‘Geheimplan gegen Deutschland’, 10 January 2024, <https://correctiv.org/aktuelles/neue-rechte/2024/01/10/geheimplan-remigration-vertreibung-afd-rechtsextreme-november-treffen/>

245 Der Spiegel, ‘Das schärfste Schwert’, 10 November 2023, <https://www.spiegel.de/politik/deutschland/afd-hoehenflug-hilft-jetzt-nur-noch-ein-parteeiverbot-a-cc651f72-fead-4d82-87ba-80af198df0f1>

246 Gilda Sahebi, X, 30 December 2023 <https://twitter.com/GildaSahebi/status/1741034548903788990>

247 Bundesministerium des Innern und für Heimat, ‘Pressemitteilung, Unabhängiger Expertenkreis stellt Bericht zur Muslimfeindlichkeit in Deutschland vor’, 29 June 2023, <https://www.bmi.bund.de/SharedDocs/kurzmeldungen/DE/2023/06/dik-uem.html>

248 Ibid.

However, with more than 700 people now categorized as a ‘Gefährder’, there is a danger of not being able to see the wood for the trees.”²⁴⁹

As of 1st November 2023, 487 people are classified as dangerous (“Gefährder”) in the phenomenon of ‘politically-motivated’ crime for religious ideology. Of these “Gefährder”, 90 are imprisoned in Germany, 216 are living freely in Germany, 181 are abroad. 54 of the “Gefährder” are female. Similarly, 504 persons are classified as ‘relevant persons’ in relation to their religious ideology. 23 of these are imprisoned in Germany, 428 are living freely in Germany and 53 are abroad. Of these ‘relevant persons’, 130 are female.²⁵⁰

The consequences of being categorized as a “Gefährder” can be serious: police interrogations, surveillance, observations or even imprisonment may follow.²⁵¹ Foreigners could be deported or denied entry to Germany. It is sufficient “that the established facts indicate a considerable risk that the threat posed by a foreigner could materialise at any time and turn into a concrete terrorist threat and/or an equivalent threat to the internal security.”²⁵²

The RADAR-iTE risk assessment process

The RADAR-iTE risk assessment tool is used to further enrich and condense the information available on ‘Gefährder’ or ‘relevant persons’ – to prioritize individuals from this very large group who are believed to pose a particularly ‘high risk’.

According to the Federal Criminal Police Office, around 800 people from the ‘Islamist’ spectrum have

249 Deutschlandfunk, ‘Was sich seit dem Breitscheidplatz geändert hat’, 19 December 2017 <https://www.deutschlandfunk.de/innere-sicherheit-was-sich-seit-dem-breitscheidplatz-100.html> (translated from German)

250 Bundeskriminalamt, E-Mail, 17 November 2023

251 LTO, ‘Einheitlich, aber folgenlos?’, 11 May 2017, <https://www.lto.de/recht/hintergruende/h/einstufung-gefaehrder-begriff-konsequenzen-definition-bestimmtheit/>

252 Deutscher Bundestag, ‘Einstufung als Gefährder und Aufenthaltsrecht’, 27 January 2021, <https://www.bundestag.de/resource/blob/829728/96f37dbfbcc5199f2c3dc44236303205/WD-3-020-21-pdf-data.pdf> (translated from German)

been assessed by *RADAR-iTE* in Germany since the beginning of 2017.²⁵³

The system was developed on the basis of police experience and forensic-psychological findings.²⁵⁴ *RADAR-iTE* consists of (1) a so-called case chronology, a standardized processing of all information available on a case, and (2) a risk assessment questionnaire for the analysis of risk-increasing and risk-reducing factors (risk and protective factors), which are offset against each other and assign the person with a risk category (“moderate” or “high” risk).²⁵⁵ Following the *RADAR-iTE* risk assessment, the police will then discuss ‘intervention’ measures for ‘high risk’ individuals in order to prevent potential violence from occurring.²⁵⁶ These ‘interventions’ are considered in more detail below, but include police surveillance and observation, police approaching the profiled individual, and even deportation.

For the case chronology (1), the scattered information available on a person is first brought together in one document; this *“reconstructed biography creates an overall picture of a person if sufficient information is available and provides insights into personal developmental processes and disruptions as well as their current life situation.”*²⁵⁷ Only *“objectively observable behavior”*²⁵⁸ is described; subjective assessments, evaluations or assumptions should be avoided; the case chronology should also refer to source documents.²⁵⁹

The *RADAR-iTE* assessment is usually limited to a remote diagnosis, without any direct contact with the individual being assessed:

*“The data that can be collected in the context of police or other official activities naturally only sheds light on certain facets of a person. In addition, the instrument must be suitable for an assessment based solely on the file. Unlike in a clinical context (e.g. in a psychiatric assessment in court), no exploration of the subject is possible; often there is not even any personal contact between the assessor and the person being assessed.”*²⁶⁰

A risk assessment form (2) with standardized questions and response categories (“yes”, “no” or “not known”) is intended to enable a uniform assessment of risk-increasing and risk-reducing characteristics. The first version of *RADAR-iTE* comprised 73 items,²⁶¹ while *RADAR-iTE 2.0* consists of 59 items (risk and protective features).²⁶² The evaluation and revision of the tool, which also included interviews and surveys of police users, police experts in the field of counter-terrorism and forensic-psychological experts from theory and practice, as well as systematic literature research on the characteristics of violent extremist offenders.²⁶³

The questionnaire includes topics such as *“violence against people”, “Interaction with authorities and other institutions”* and *“military and travels”*. Aspects such as experience with weapons and explosives²⁶⁴ or access

253 Bundeskriminalamt, E-Mail, 17 November 2023

254 Bundesministerium für Bildung und Forschung, ‘Risikoanalyse bei islamistisch motivierten Tatgeneigten’, https://www.sifo.de/sifo/shareddocs/Downloads/files/projektumriss_riskant.pdf?__blob=publicationFile&v=1

255 Sonka et al. (2020), ‘RADAR-iTE 2.0: Ein Instrument des polizeilichen Staatsschutzes’, *Kriminalistik*, 2020, 74(6), p. 387

256 Sonka et al. (2020), ‘RADAR-iTE 2.0: Ein Instrument des polizeilichen Staatsschutzes’, *Kriminalistik*, 2020, 74(6), p. 386

257 Sonka et al. (2020), ‘RADAR-iTE 2.0: Ein Instrument des polizeilichen Staatsschutzes’, *Kriminalistik*, 2020, 74(6), p. 387 (translated from German)

258 Ibid.

259 Ibid.

260 Ibid.

261 Sonka et al. (2020), p. 389, Celina et al, ‘RADAR-iTE 2.0: Ein Instrument des polizeilichen Staatsschutzes’, *Kriminalistik*, 2020, 74(6), p. 389

262 Bundeskriminalamt, E-Mail, 10 February 2023

263 Sonka et al. (2020), p. 386, Celina et al, ‘RADAR-iTE 2.0: Ein Instrument des polizeilichen Staatsschutzes’, *Kriminalistik*, 2020, 74(6), p. 390

264 Österreichisches Bundesministerium für Inneres, ‘Gewaltrisiko bewerten’, *Öffentliche Sicherheit*, 3-4/17, p. 66 https://www.bmi.gv.at/magazinfiles/2017/03_04/files/deutschland.pdf

to weapons and military experience,²⁶⁵ stays in war zones and participation in hostilities there, entry and exit from war and conflict regions, previous convictions, involvement in ‘politically-motivated’ criminal offences in the past, involvement in a radicalized scene and other social issues play a role.²⁶⁶ For example, questions include *“What is his private life like? Is the person more of a loner or does he operate in a group? Does he have contacts outside the Islamist scene? Does he have a job?”*²⁶⁷

Members of parliament had initially feared that the analysis of individual experiences of violence e. g. in the context of wars could also bring refugees from conflict zones – for whom *“a lived experience of violence or traumatization is the rule rather than the exception”* – into the focus of “Gefährder” classifications or *RADAR-iTE* analyses. The Federal Criminal Police Office has claimed that in relation to violence, *RADAR-iTE* *“focuses on perpetrator behavior and not on victim behavior.”*²⁶⁸ Nevertheless, these kinds of profiling points mean that someone who has travelled from a conflict zone or who uses certain routes for tourism or for family visits may be profiled as suspicious or a ‘risk’.

A fictitious case of a Berlin ‘Salafist’ that was used for *RADAR-iTE* training courses for police officers also indicates the kind of activities considered by a *RADAR-iTE* risk analysis, as well as demonstrating the most basic of ethnic and religious profiling:

*“The young German converted to Islam three years ago, is increasingly frequenting the relevant scene hang-outs, shares Salafist propaganda videos on social media and has made several threatening gestures on the fringes of demonstrations. He recently returned from a holiday in Turkey – not as planned, however, but over two weeks late. It is suspected that he received instructions from the terrorist organization IS in Syria.”*²⁶⁹

According to the Federal Criminal Police Office, the role of online radicalization was also taken into account in the development of *RADAR-iTE*.²⁷⁰

Mental health problems and suicidal tendencies are another, deeply concerning part of the assessment.²⁷¹ In the original version of the tool, the mental health questions included were: *“Is there any evidence of mental illness? Have there been suicide attempts?”*²⁷² Some studies on the mental health of people who have been convicted or who are considered by security authorities to be susceptible to extremist attitudes indicate that a significant proportion of them may have mental problems and disorders. However, the scientific framework for the relationship between mental health and radicalization processes has not yet been sufficiently developed and the results of many studies are limited due to insufficient data and methodological deficits.²⁷³ It is therefore questionable whether the influence of mental health factors on radicalization processes or the willingness to use violence can be assessed – especially if an assessment is undertaken remotely, as is the case with *RADAR-iTE*. Moreover, it is incredibly ethically concerning to

265 Welt (2017), ‘So funktioniert das Radar für radikale Islamisten’, 12 June 2017, <https://www.welt.de/politik/deutschland/plus165451390/So-funktioniert-das-Radar-fuer-radikale-Islamisten.html> (translated from German)

266 Deutscher Bundestag, ‘Drucksache 18/13422, Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. André Hahn, Martina Renner, Kersten Steinke und der Fraktion DIE LINKE’, 28 August 2017, <https://dserver.bundestag.de/btd/18/134/1813422.pdf>

267 Welt (2017), ‘So funktioniert das Radar für radikale Islamisten’, 12 June 2017, <https://www.welt.de/politik/deutschland/plus165451390/So-funktioniert-das-Radar-fuer-radikale-Islamisten.html>

268 Deutscher Bundestag (2017), ‘Drucksache 18/13422, Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. André Hahn, Martina Renner, Kersten Steinke und der Fraktion DIE LINKE’, 28 August 2017, <https://dserver.bundestag.de/btd/18/134/1813422.pdf> (translated from German)

269 Bundesakademie für Sicherheitspolitik, ‘Auf dem RADAR-iTE: Gefährder besser einschätzen’, 5 February 2018 <https://www.baks.bund.de/en/node/1144> (translated from German)

270 Bundeskriminalamt, E-Mail, 10 February 2023

271 Bundeskriminalamt, E-Mail, 17 November 2023

272 Welt (2017), ‘So funktioniert das Radar für radikale Islamisten’, 12 June 2017, <https://www.welt.de/politik/deutschland/plus165451390/So-funktioniert-das-Radar-fuer-radikale-Islamisten.html>

273 Bundeszentrale für politische Bildung, ‘Psychische Gesundheit von radikalisierten Straftätern in Haft und Bewährungshilfe’, 23 October 2023, <https://www.bpb.de/themen/infodienst/541995/psychische-gesundheit-von-radikalisierten-straftaetern-in-haft-und-bewaerungshilfe/>

include people’s mental ill-health as a contributing factor to their ‘risk’ of committing crime.

In the *RADAR-iTE* questionnaire, the caseworkers not only enter whether a characteristic is present or not, but also take into account the “*temporal dimension*”²⁷⁴ – whether a problem behavior is continuously present over a longer time span, as well as which risk and protective factors are currently present. In this way, *RADAR-iTE* takes into account dynamic developments. The description of protective factors, some of which can reduce risk, should help to more realistically assess a person’s risk and identify starting points for intervention measures: “*If protective factors are not taken into account, there would be a danger of overestimating the risk, which would be accompanied by too high a number of ‘false positives’.*”²⁷⁵

The answers are analyzed both quantitatively and qualitatively. First, the available ‘risk’ factors, assigned a value of +1 each, are added together, and selected protective factors (with a value of -1 each) are subtracted. Based on the sum value, the person is assigned to either the “high” or “moderate” risk category (depending on a person either exceeding or falling below a defined risk threshold value). In the first version of *RADAR-iTE*, the assessed persons were assigned to a three-level risk scale (high, conspicuous or moderate risk). After an evaluation, the tool was reduced to just two risk categories for clarity.²⁷⁶

However, this calculation model can be overridden by a qualitative analysis. Individual ‘risk’ characteristics are additionally or exclusively evaluated qualitatively by the caseworkers for the presence of so-called “red flags”, described as “*individual characteristics or combinations of characteristics that may imply such problem-*

atic behavior that the person is directly classified as high risk, regardless of the sum value.”²⁷⁷

A qualitative evaluation of protective factors can also result in a “green flag”, whereby the case handler gains the impression that an individual is not posing a ‘risk’ at all (false positive), a low ‘risk’ or despite the initial profiling, in reality, an individual is taking a different, positive path. In this case, police can decide whether a future assessment with *RADAR-iTE* is even necessary – an individual who is assessed as not posing a ‘risk’ in the eyes of the case workers could be taken off the system instead of being assessed periodically with *RADAR-iTE*.²⁷⁸

The risk assessment should normally be repeated after a year at the latest. In the case of high-risk individuals, the risk assessment is “*usually done much earlier*”²⁷⁹. It is unclear whether the regular reassessments of high-risk individuals are actually carried out every three months or in the event of new findings as originally envisaged by the Federal Criminal Police Office²⁸⁰. The Federal Criminal Police Office and the state police forces do not provide any more detailed information on the assessment process or the assessment intervals.

Impact of RADAR-iTE

It is unknown how many of the 800 individuals from the ‘Islamist’ spectrum assessed by *RADAR-iTE* since the beginning of 2017²⁸¹ have been categorized (once or several times) in the “high” or “moderate” risk category (not all of them are currently still subject to ongoing assessment), as only risk category results for certain periods have been made public.

274 Sonka et al. (2020), ‘RADAR-iTE 2.0: Ein Instrument des polizeilichen Staatsschutzes’, *Kriminalistik*, 2020, 74(6), p. 387

275 Sonka et al. (2020), ‘RADAR-iTE 2.0: Ein Instrument des polizeilichen Staatsschutzes’, *Kriminalistik*, 2020, 74(6), p. 388

276 Deutscher Bundestag (2019), ‘Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. Andre Hahn, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE’, Drucksache 19/12401, 30 August 2019 <https://dserver.bundestag.de/btd/19/128/1912859.pdf>

277 Sonka et al. (2020), ‘RADAR-iTE 2.0: Ein Instrument des polizeilichen Staatsschutzes’, *Kriminalistik*, 2020, 74(6), p. 388 (translated from German)

278 Ibid.

279 Ibid.

280 Welt (2017), ‘So funktioniert das Radar für radikale Islamisten’, 12 June 2017 <https://www.welt.de/politik/deutschland/plus165451390/So-funktioniert-das-Radar-fuer-radikale-Islamisten.html>

281 Bundeskriminalamt, E-Mail, 17 November 2023

In October 2018, 40% of the 386 persons evaluated with the first version of RADAR-iTE were assessed as “high risk”, 50% as “moderate”, and 10% as “conspicuous”. As of 19 August 2019, the BKA had results for a total of 497 people: 186 (37%) were classified as “high risk” with regard to committing a violent offence and 311 persons (63%) were classified as “moderate risk”²⁸².

The “moderate risk” classification by *RADAR-iTE* indicates “no immediate need for action”. The “high risk” classification indicates “a high need for action”. For the “high-risk persons”, meetings to discuss cases are held under the direction of the Federal Criminal Police Office by the Risk Management Working Group (AG RIMA) of the Joint Counter-Terrorism Centre (GTAZ). These meetings are to exchange information with the federal state police forces and other authorities (e.g., the Federal Office for Migration and Refugees), to create a consensual assessment of the person and their risk potential, and to agree on intervention measures.²⁸³ The federal states are responsible for implementing them,²⁸⁴ so consequences may vary.

These ‘intervention’ measures can include various forms of information-gathering such as observation and surveillance, or “Gefährderansprachen”, whereby police may approach a “Gefährder” for the purpose of averting the ‘predicted’ danger or preventing the ‘predicted’ criminal offence. Some federal states have extended the possibility of ‘preventive detention’ (Vorbeugegewahrsam) to ‘avert danger’ from several days to several weeks or even months.²⁸⁵

Individuals who are to be deported can also be detained for several months (Abschiebebewahrsam).²⁸⁶ Asylum procedures for individuals who are categorized as “Gefährder” or “relevant person” are halted “until the investigating authorities have reliable evidence that can be used in court.”²⁸⁷ Several federal states have attempted to deport people categorised as “Gefährder” who do not have German citizenship. The federal government also promotes a so-called “Rückführungsoffensive” (“repatriation offensive”): In 2021, 22 “Gefährder” and six “relevant persons” were deported, and by the end of August 2022, five “Gefährder” and one “relevant person” were deported.²⁸⁸

It is dubious, and potentially unlawful, that individuals can be subjected to such serious punitive consequences based on a mere ‘prediction’ or profile of alleged activity, without objective evidence. In 2020, the Federal Administrative Court (Bundesverwaltungsgericht, BVerwG) cancelled a deportation order against a Turkish citizen classified by the police as a “Gefährder” – the court found “neither a particular danger to the security of the Federal Republic nor a terrorist threat.”²⁸⁹

The police, criminal justice and security authorities believe that *RADAR-iTE* enables a standardization that “makes the assessment of potential risk persons transparent and comprehensible and improves intra- and

282 Deutscher Bundestag (2019), ‘Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. Andre Hahn, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE’, Drucksache 19/12401, 30 August 2019 <https://dserver.bundestag.de/btd/19/128/1912859.pdf>

283 Bundeskriminalamt, ‘RADAR (Regelbasierte Analyse potentiell destruktiver Täter zur Einschätzung des akuten Risikos)’, https://www.bka.de/DE/UnsereAufgaben/Deliktsbereiche/PMK/Radar/radar_node.html

284 Sonka et al. (2020), ‘RADAR-iTE 2.0: Ein Instrument des polizeilichen Staatsschutzes’, *Kriminalistik*, 2020, 74(6), p. 390

285 MDR, ‘Sachsen-Anhalt will Polizei-Gewahrsam bei Terrorverdacht verlängern’, 17 December 2023 <https://www.mdr.de/nachrichten/sachsen-anhalt/polizei-gewahrsam-gesetz-aenderung-terrorverdacht-100.html>

286 Tagesspiegel, ‘Neue Plätze für 40 Straftäter – im Abschiebeknast’, 31 January 2024, <https://www.tagesspiegel.de/berlin/losung-fur-berliner-massregelvollzug-neue-platze-fur-40-straftater-im-abschiebeknast-11137660.html>

287 Deutscher Bundestag, ‘Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. André Hahn, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE, Drucksache 19/5202, Personenpotentiale islamistischer „Gefährder“’, 9 November 2018, <https://dserver.bundestag.de/btd/19/056/1905648.pdf> (translated from German)

288 Tagesschau, ‘Warum die Abschiebepläne kaum einzuhalten sind’, 4 October 2022, <https://www.tagesschau.de/investigativ/ndr-wdr/koalition-abschiebungen-gefaehrder-101.htm>

289 beck-aktuell, BVerwG hebt Abschiebungsanordnung gegen polizeilich als Gefährder eingestuften Türken auf, 15. January 2020, <https://rsw.beck.de/aktuell/daily/meldung/detail/bverwg-hebt-abschiebungsanordnung-gegen-polizeilich-als-gefaehrder-eingestuften-tuerkischen-staatsangehoerigen-auf> (translated from German)

inter-agency-communication.²⁹⁰ However, independent scientific evaluations of the tool are still lacking, and the Federal Criminal Police Office is also keeping the questionnaire and the complete list of all protection and risk factors under wraps; so far, only some items are publicly known.

The researchers from the Federal Criminal Police Office and the University of Konstanz acknowledge the challenge *“that the focus is not on a person’s likelihood of reoffending – as is usually the case in risk assessment – but on the risk of committing a specific offence for the first time.”*²⁹¹ They also acknowledge that the ‘Islamist’ spectrum is very large and diverse, that the probability that a terrorist attack will actually occur is very low – and *“only a very small proportion of those classified as a Gefährder or relevant person exceed the threshold for action in the sense of a politically-motivated serious act of violence.”*²⁹²

Research into the tool acknowledges that incorrect *RADAR-iTE* risk categorizations (false positives/negatives) may occur, but believe that this would become obvious during the individual qualitative case assessment.²⁹³ The Federal Criminal Police Office emphasizes that *RADAR-iTE* can only help with the prioritization of cases, but cannot replace a case-by-case assessment: *“RADAR-iTE should rather be seen as a complimentary support tool.”*²⁹⁴

According to the Federal Criminal Police Office, the *RADAR-iTE* assessment relates to *“observable behaviour – and not to characteristics such as a person’s beliefs or*

*religiosity.”*²⁹⁵ Nevertheless, certain data points used in the assessments – such as associates and contacts or travel – can clearly lead to discrimination, for example, a spontaneously extended holiday trip to Turkey.²⁹⁶

Concerns have also been raised about the authorities increasingly assessing women with their tools, but that women-specific risk and protection factors are not yet systematically taken into account enough by the tools.²⁹⁷

2.2.2 RADAR-rechts – Bundeskriminalamt, BKA (Federal Criminal Police Office)

Used for: Individual risk assessment tool
Created: 2022

Since 2022, following the example of *RADAR-iTE*, right-wing extremists who are categorized as ‘potentially violent’ or holding a “relevant” position in the right-wing scene, are now assessed using the new tool *RADAR-rechts*.

The Federal Criminal Police Office have stated that the aim is to *“prioritise people from the right-wing spectrum who are known to the police (especially “Gefährder” and “relevant persons”) with regard to the risk of committing a life-threatening right-wing motivated act of violence”*²⁹⁸. The *RADAR-rechts* assessment process is based on the *RADAR-iTE* tool for ‘Islamists’, but the items assessed were not directly transferred to the new tool due to the *“differences in the respective phenomenon areas.”*²⁹⁹

290 Sonka et al. (2020), ‘RADAR-iTE 2.0: Ein Instrument des polizeilichen Staatsschutzes’, *Kriminalistik*, 2020, 74(6), p. 387

291 Ibid. (translated from German)

292 Sonka et al. (2020), ‘RADAR-iTE 2.0: Ein Instrument des polizeilichen Staatsschutzes’, *Kriminalistik*, 2020, 74(6), p. 386

293 Sonka et al. (2020), ‘RADAR-iTE 2.0: Ein Instrument des polizeilichen Staatsschutzes’, *Kriminalistik*, 2020, 74(6), p. 391

294 Bundeskriminalamt, ‘RADAR (Regelbasierte Analyse potentiell destruktiver Täter zur Einschätzung des akuten Risikos)’, https://www.bka.de/DE/UnsereAufgaben/Deliktsbereiche/PMK/Radar/radar_node.html

295 Bundeskriminalamt, ‘Presseinformation: Neues Instrument zur Risikobewertung von potentiellen Gewaltstraftätern’, 2 February 2017, original source no longer available

296 cf. Bundesakademie für Sicherheitspolitik (2018), ‘Auf dem RADAR-iTE: Gefährder besser einschätzen’, 5 February 2018 <https://www.baks.bund.de/en/node/1144>

297 Interview with Maximilian Ruf, Director Research Department at the Violence Prevention Network, 6 October 2023

298 Bundeskriminalamt, E-Mail 10 February 2023 (translated from German)

299 Ibid. (translated from German)

The RADAR-rechts assessment process

The *RADAR-rechts* assessment process follows the *RADAR-iTE* procedure. In a first step, caseworkers create a biographical case chronology with all available information on events from the person’s life that is supposed to contribute to a better overall understanding of the individual. The risk assessment questionnaire then uses standardized question and answer categories to ask about supposed risk-increasing and risk-reducing characteristics. The person being assessed is then assigned either moderate risk (no immediate need for action) or high risk (immediate need for action).

The risk and protective items relevant for *RADAR-rechts* that influence the risk of life-threatening, right-wing motivated violence were developed in collaboration with the Centre for Criminology (KrimZ)³⁰⁰ as a scientific partner, based on a systematic literature review and expert interviews. Scientific and practical experts then gave feedback on the relevance and applicability of the factors in the policing context. The Brandenburg Police University conducted the accompanying legal research, while the State Offices of Criminal Investigation of North Rhine-Westphalia³⁰¹ and Saxony and the Directorate for State Security and Intelligence from Austria were involved as associated partners.³⁰²

RADAR-rechts comprises a total of 38 items (risk and protective factors). Compared to *RADAR-iTE 2.0* for persons from the ‘Islamist’ scene, which comprises 59 risk and protection characteristics, the tool for right-wing extremists is significantly reduced.³⁰³ According to the Federal Criminal Police Office, the information collected as part of the *RADAR-rechts* questionnaire also only relates to “*observable behavior – and not to*

characteristics that reflect a person’s attitudes or personal characteristics.”³⁰⁴

Very few details are known about the specific risk and protective factors that are used for the assessment of right-wing individuals, and the Federal Criminal Police Office does not provide any information on request. It could be assumed that data points used in *RADAR-iTE*, such as experience with weapons or the military and social behavior are relevant for both groups. In addition, according to Maximilian Ruf, Director of the Research Department at the Violence Prevention Network, typical right-wing scene factors must be taken into account:

*“Behavioral characteristics differ. (...) The behavior and group dynamics in right-wing scenes and groups are simply different from those in Islamist groups, where it is often about supposedly religious practices – depending on the milieu, right-wing groups are more likely to be about going to concerts together, experiencing violence, drinking alcohol, but of course also about political work, events, etc.”*³⁰⁵

For individuals identified by *RADAR-rechts* as high-risk, individual case meetings are held in the GETZ-R, the Counter-Terrorism Centre for Combating Right-Wing Extremism/Terrorism. The aim of the working group is to facilitate the exchange of information with the federal state agencies and other authorities involved, to create a consensual assessment of the person and their risk potential and to decide on intervention measures across all authorities.³⁰⁶

The potential interventions are – apart from the deportations of foreigners on a large scale – presumably similar to the consequences of *RADAR-iTe* assessments for high risk ‘Islamists’, including informa-

300 The Centre for Criminology (KrimZ) in Wiesbaden is the central research and documentation institute on criminological issues of the Federal Republic of Germany and all its federal states.

301 Bundeskriminalamt, ‘RADAR-rechts’, https://www.bka.de/DE/UnsereAufgaben/Deliktsbereiche/PMK/PMKrechts/RADAR/radar_node.html

302 Ibid.

303 Bundeskriminalamt, E-Mail, 10 February 2023

304 Bundeskriminalamt, ‘RADAR-rechts’, https://www.bka.de/DE/UnsereAufgaben/Deliktsbereiche/PMK/PMKrechts/RADAR/radar_node.html (translated from German)

305 Interview with Ruf, Maximilian, Director Research Department at the Violence Prevention Network, 6 October 2023

306 Bundeskriminalamt, ‘RADAR-rechts’, https://www.bka.de/DE/UnsereAufgaben/Deliktsbereiche/PMK/PMKrechts/RADAR/radar_node.html

tion-gathering such as observation and surveillance, ‘preventive detention’ or “Gefährderansprachen”, whereby police may approach a “Gefährder” for the purpose of averting the ‘predicted’ danger or preventing the ‘predicted’ criminal offence. In the past (before the introduction of *RADAR-rechts*), several violent, right-wing hooligans classified as “Gefährder” were banned from leaving Germany during certain events like soccer events or demonstrations and had to report regularly to the police.³⁰⁷

The hesitant classification of right-wing extremists as “Gefährder”

RADAR-rechts risk assessments are also based on the controversial pre-selection of people classified as “Gefährder” and “relevant persons”. However, in recent years, the police forces have been much more hesitant to categorize right-wing extremists as dangerous than ‘Islamists’. When the terrorist neo-Nazi organization NSU (National Socialist Underground) revealed itself in 2011, only four right-wing extremists were categorized as “Gefährder” in Germany.³⁰⁸

Between 2000 and 2007, the NSU murdered nine people with a migration background, mainly small business owners, as well as a police officer. The police investigations into the perpetrators were unsuccessful, with leads pointing to potential right-wing perpetrators not pursued, or insufficiently. Police files disappeared, and the series of murders was not recognized as racially motivated. In addition, the victims and their families were stigmatized, and many investigators held unfounded suspicions about organized crime in the victims’ surroundings.³⁰⁹ Anti-migrant discrimination is also evident in the special investigation commissions’ names, such as “Half Moon”

or “Bosporus”, with the media framing the murders prejudicially as “Döner-Morde” (kebab murders).³¹⁰

According to scientists and researchers, German security authorities have been structurally “blind to the right” for too long and have neglected or even trivialized the threat posed by right-wing extremism, despite the fact that right-wing extremist acts of violence and attacks have repeatedly taken place since the end of the Second World War.³¹¹ Extremism researcher Fabian Virchow believes that the left-wing extremist violence of the Red Army Faction (RAF) of the 1970s and 1980s in Germany overshadowed right-wing attacks because it was mainly directed against the economic and political elite, and was therefore more of a focus of the government than acts of violence against asylum seekers and the political left by right-wing terrorists.³¹² Terrorism researcher Carolin Görzig has alleged that “State authorities have given right-wing extremists a kind of grace period.”³¹³

According to the Federal Ministry of the Interior, the NSU attacks, the murder of the politician Dr Walter Lübcke in 2019 and the right-wing extremist attacks in Halle in 2019 and Hanau in 2020 have “revealed a new dimension of the extremist threat.”³¹⁴

Recently, right-wing extremism has been labelled a top priority for the government: “Right-wing extremism remains the greatest extremist threat to democracy in Germany”, Federal Minister of the Interior Nancy Faeser confirmed in June 2023. With 20,967 offences in 2022, including 1,016 violent offences, the number

307 Zeit, ‘Der Polizist als Hellseher’, 16 Juli 2007, <https://www.zeit.de/online/2007/29/Gefaehrder>

308 Tagesschau, ‘Immer mehr rechte Gefährder’, 26 June 2022

309 Bundeszentrale für politische Bildung, ‘Vor 10 Jahren: Aufdeckung des NSU’, 3 November 2021, <https://www.bpb.de/kurz-knapp/hintergrund-aktuell/343019/vor-10-jahren-aufdeckung-des-nsu/>

310 Ibid.

311 SWR2, ‘Wissen, Rechtsterrorismus in Deutschland – Von der Nachkriegszeit bis heute’, 17 February 2023, <https://www.swr.de/swr2/wissen/rechtsterrorismus-in-deutschland-von-der-nachkriegszeit-bis-heute-104.html>

312 Ibid.

313 MDR, ‘Staat auf rechtem Auge blind’, 5 August 2022, <https://www.mdr.de/geschichte/zeitgeschichte-gegenwart/politik-gesellschaft/terror-von-rechts-deutschland-anschlag-halle-100.html> (translated from German)

314 Bundesministerium des Innern und für Heimat, ‘Rechtsextremismus bekämpfen: Aktionsplan gegen Rechtsextremismus’, 15 March 2022, https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2022/aktionsplan-rechtsextremismus.pdf;jsessionid=434C7A2B7F1FE5781F7BFAAB8E48BCE2.live891?__blob=publicationFile&v=3

of right-wing extremist offences is at a high level. The potential number of right-wing extremist individuals in 2022 was 38,800, of which around 14,000 are considered to be “violence-oriented”.³¹⁵

However, the number of right-wing people categorized as “Gefährder” or “relevant person” is still relatively low – as is the number of RADAR-rechts assessments. RADAR-rechts has been used since May 2022, and as of 1 November 2023, the German police classified just 77 persons from the right-wing extremist scene as “Gefährder” and 185 people as “relevant persons”. By November 2023, the Federal Criminal Police Office had received about 60 risk assessments of persons from the right-wing spectrum – mainly people who were classified as “Gefährder” at the time of the assessment.³¹⁶

Inconsistency, opacity and discrimination

Neither the protection and risk factors considered in RADAR-iTE nor for the newer RADAR-rechts tool are known in their entirety, which makes it difficult to comprehensively assess the tool, the particular items, possible problems and their discriminatory potential:

“The tools are not particularly transparent, the item lists are explicitly not published because they are afraid of anti-profiling, that something could leak out to the people to be assessed (including the clients of practice organizations), who would then be able to play or trick these mechanisms.”³¹⁷

Despite the repeated claims and apparent attempts of the German authorities, the categorization of “Gefährder” and “relevant persons” carried out by the federal police forces are not in any way consistent or standardized. They are untransparent and appear to be based on subjective police judgements. A clear and comprehensible, universal legal definition is missing.

315 Bundesministerium des Inneren, ‘Rechtsextremismus’, <https://www.bmi.bund.de/DE/themen/sicherheit/extremismus/rechtsextremismus/rechtsextremismus-node.html>

316 Bundeskriminalamt, E-Mail, 17 November 2023

317 Interview Ruf, Maximilian, Director Research Department at the Violence Prevention Network, 6 October 2023

This is particularly problematic because the assessment is mainly based on an assessor’s preliminary suspicion, and this can have far-reaching personal consequences for individuals concerned.

People who have contact with persons classified as “Gefährder” may quickly be targeted by the authorities. Parliamentarians of the left-wing party Die Linke criticized the general lack of objectivity of the categorizations and voiced their concern *“that these classifications entail the risk for these persons of becoming the subject of police measures even more so, such as through the linking of their data in the RADAR-iTE instrument.”*³¹⁸

The differential treatment of the two groups at the center of these ‘predictive’ and profiling tools – people considered ‘Islamists’ and right-wing individuals – is stark, evidenced in the numbers of those individuals classified as ‘Islamist’ “Gefährder” and “relevant persons” compared to the few right-wing individuals given the same classification. This is clear evidence of prejudicial, discriminatory and Islamophobic approach of the German authorities.

The follow-up intervention measures based on the RADAR ‘risk’ assessments also vary depending on individual cases and are not public. Maximilian Ruf, Director of the Research Department at the Violence Prevention Network, can understand that the police forces *“have to think about where to focus their resources, but this goes hand in hand with stigmatization processes.”*³¹⁹ According to Ruf, the police measures could have a negative impact on exit and resocialization processes – e.g., if surveillance or “Gefährder” warnings take place in such a noticeable way that the social environment or workplace learns about them.³²⁰

318 Deutscher Bundestag (2019), ‘Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. Andre Hahn, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE’, Drucksache 19/12401, 30 August 2019 <https://dserver.bundestag.de/btd/19/128/1912859.pdf>

319 Interview Ruf, Maximilian, Director Research Department at the Violence Prevention Network, 6 October 2023

320 Interview with Ruf, Maximilian, Director Research Department at the Violence Prevention Network, 6 October 2023

2.2.3 RADAR-Haft – Bundeskriminalamt, BKA (Federal Criminal Police Office)

Used for: Updates for the existing individual ‘risk’ assessment tools

Created: In development

The two existing risk assessment tools *RADAR-iTE* and *RADAR-rechts* are currently being evaluated to assess whether they may be further enhanced for the assessment of incarcerated people or people who have previously been imprisoned. The research project “RADAR-Haft”, or “RADAR-detention” (1 September 2022 – 31 August 2024) is being led by the Federal Criminal Police Office, while the Centre for Criminology (KrimZ) is responsible for improvements of the assessment tools as a scientific partner. The Ministry of Justice and the North Rhine-Westphalia correctional system are also involved as partners.³²¹

The aim of the project is described as follows

“The adapted instrument versions are intended to take into account current or past detention periods when prioritizing the potential of persons on the basis of risk and protection characteristics with regard to the commission of a serious, politically motivated act of violence.”³²²

Apparently, the influence of prison experience on an individual’s potential for violence could not be adequately captured in assessments by *RADAR-iTE* or *RADAR-rechts*. KrimZ points out that *“the informative value of the instruments for a population that is in prison or has a prison sentence in their biography is limited under certain circumstances.”³²³* This is significant, as a notable proportion of the group of people classified as “Gefährder” who have already been or

may be assessed with *RADAR-iTE* or *RADAR-rechts* have detention experiences.

As of 1st November 2023, 90 of the 487 “Gefährder” in the category of religious ideology (mostly ‘Islamists’) were imprisoned in Germany – almost 20%, while of the 504 people classified as “relevant persons”, 23 were imprisoned in Germany (almost 5%).³²⁴ It is unknown how many of the other “Gefährder” or “relevant persons” had previous prison experiences or were on probation. Data on current or past prison sentences of the 77 alleged “Gefährder” and 185 “relevant persons” from the right-wing extremist scene (as of 1 November 2023) are not available.³²⁵

As of March 31, 2023, there were a total of 44,232 prisoners and persons in preventive detention in German prisons, 28,673 of whom were German nationals and 15,559 of whom were foreign nationals, around 35% of the prison population.³²⁶ In some federal states such as Baden-Württemberg, almost every second incarcerated individual in prison has a foreign citizenship.³²⁷

According to extremism experts like Maximilian Ruf, prison experience can play a key role in radicalization or deradicalization processes; people can be very vulnerable when in prison, leaving them open to influence from ‘extremist’ views, while it can also provide a space away from certain influences. As imprisonment has very different effects, case-by-case assessments are essential:

“It can happen that prison prevents contact with the former scene and increases the willingness to leave the extremist scene. However,

321 Kriminologische Zentralstelle, ‘Weiterentwicklung der Risikobewertungsinstrumente RADAR-iTE und RADAR-rechts für den Haftkontext’, 1 September 2022, <https://www.krimz.de/forschung/pmk/radar-haft.html>

322 Ibid. (translated from German)

323 Kriminologische Zentralstelle, ‘Tätigkeitsbericht 2022’, April 2023, https://www.krimz.de/fileadmin/dateiablage/download/T%C3%A4tigkeitsbericht_2022.pdf, p. 18 (translated from German)

324 Bundeskriminalamt, E-Mail, 17 November 2023

325 Bundeskriminalamt, E-Mail, 17 November 2023

326 Statista, ‘Anzahl der deutschen und der ausländischen Strafgefangenen und Sicherungsverwahrten in den Justizvollzugsanstalten in Deutschland von 2014 bis 2023’, 19 January 2024, <https://de.statista.com/statistik/daten/studie/225/umfrage/gefingene-und-verwahrte-seit-dem-jahr-2000/>

327 Ministerium der Justiz und für Migration, ‘Daten und Fakten’, <https://jum.baden-wuerttemberg.de/de/justiz/justizvollzug/daten-und-fakten>

it is also possible that people only come into contact with extremists while in prison, that contact with other criminal milieus develops or that an increased risk of violence makes them even more vulnerable. Interactions with fellow inmates, guards and staff are also interesting aspects from which a lot can be learnt. [...] it is important to obtain a broad picture of the situation and not just rely on a single tool.”³²⁸

Researchers of the Radicalization Awareness Network (RAN) point out that people considered to be ‘radicalized’ or at risk of radicalization are not a homogenous group, and include individuals who have not committed any criminal offences, and are unlikely to ever do so: *“Being radicalized does not necessarily mean that a person will definitely commit a violent act.”³²⁹*

Alternatives

There are alternatives to the RADAR-Haft suspicion-led profiling. In addition to general support measures such as professional and social support for incarcerated people or people on probation who have committed violent acts for ideological reasons, experienced trauma after fighting in a foreign conflict, have developed specialized military skills or are linked to extremist networks, specialized interventions and procedures are necessary, such as *“unique interventions on a psychological and/or religious basis.”³³⁰*

As well as Christian chaplains, some prisons in Germany employ Muslim imams who hold religious services, deal with the personal problems of incarcerated individuals and who are available around the clock. However, this is not a widespread service.

The Muslim prison counselor Husamuddin Meyer laments the lack of spiritual counselling in many German prisons and warns: *“If there is no official religious counselling in the form of an imam in most prisons, this function is often taken over by dubious to dangerous fellow inmates.”³³¹*

As part of the RADAR-Haft research project, recommendations for better cooperation and improved workflows between the judiciary and police are supposedly also being developed.³³² In practice, most likely the planning and implementation of measures following RADAR assessments will differ from state to state, and even prison to prison.³³³

Further development

There have also been demands from security circles and most recently from the right-wing extremist AfD party to introduce a RADAR tool to assess the risk of *“left-wing extremist violent offenders”*, but the AfD’s motion on this in 2023 was rejected by the other parliamentary groups in the Bundestag.³³⁴ However, according to the Federal Criminal Police Office, the federal and state security authorities are already intensively focusing on left-wing people who are considered potentially violent. Due to the significantly lower number of people categorized by the police as politically motivated left-wing ‘Gefährder’, *“such a pre-selection is currently not necessary.”³³⁵* Even the conservative federal state of Bavaria, which takes particularly tough action against left-wing climate

³²⁸ Interview Ruf, Maximilian, Director Research Department at the Violence Prevention Network, 6 October 2023

³²⁹ Radicalisation Awareness Network RAN, ‘Ansätze für gewaltbereite extremistische Straftäter und Bekämpfung der Radikalisierung in Gefängnissen und während der Bewährung’, https://home-affairs.ec.europa.eu/system/files/2020-09/ran_pp_approaches_to_violent_extremist_de.pdf, p. 3 (translated from German)

³³⁰ Ibid.

³³¹ Bundeszentrale für politische Bildung, ‘Gefängnisse als Orte der Radikalisierung – und der Prävention?’, 6 June 2018, <https://www.bpb.de/themen/infodienst/270445/gefaengnisse-als-orte-der-radikalisierung-und-der-praevention/>

³³² Kriminologische Zentralstelle (2022), ‘Weiterentwicklung der Risikobewertungsinstrumente RADAR-iTE und RADAR-rechts für den Haftkontext’, <https://www.krimz.de/forschung/pmk/radar-haft.html>

³³³ Interview Ruf, Maximilian, Director Research Department at the Violence Prevention Network, 6 October 2023

³³⁴ Deutscher Bundestag, ‘Beschlussempfehlung und Bericht des Ausschusses für Inneres und Heimat (4. Ausschuss) zu dem Antrag der Abgeordneten Martin Hess, Dr. Bernd Baumann, Dr. Gottfried Curio, weiterer Abgeordneter und der Fraktion der AfD, 05 July 2023’, <https://dserver.bundestag.de/btd/20/075/2007597.pdf>

³³⁵ Bundeskriminalamt, E-Mail, 13 February 2023

activists³³⁶, believes there is *“currently no urgent need for RADAR”* in relation to left-wing ‘extremism’.³³⁷

According to the Federal Government, the number of classified “Gefährder” and relevant persons plays a decisive role in determining the need for new tools. However, there is *“no minimum number of classified persons from which the development of a risk assessment instrument must begin.”*³³⁸ Other criteria such as demands from the federal states could also contribute to the decision to develop such a tool.³³⁹

The Federal Criminal Police Office also no longer considers the development of RADAR for organised crime, an iteration which was initially discussed, to be feasible.³⁴⁰

2.3. FLUGGASTDATEN- INFORMATIONSSYSTEM (PASSENGER NAME RECORD INFORMATION SYSTEM) – BUNDESKRIMINALAMT, BKA (FEDERAL CRIMINAL POLICE OFFICE)

Used for: Individual profiling and ‘risk’ assessment
Created: 2018

Security authorities worldwide are increasingly analyzing so-called ‘passenger name records’ (PNR), personal data collected by airlines for business purposes from all passengers when booking a flight.

PNR data includes the passenger’s name, travel dates, itineraries, seat numbers, baggage details, contact details and payment methods.³⁴¹ The German Passenger Name Record Act (Fluggastdatengesetz, FlugDaGe)³⁴², which came fully into force in May 2018, obliges airlines to transfer passenger data records relating to flights departing, landing or stopping over in Germany to the Federal Criminal Police Office (Bundeskriminalamt, BKA) and regulates the processing of this data. The Act implements a 2016 EU Directive on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.³⁴³

Since 2018, the Passenger Information Unit (PIU) set up at the Federal Criminal Police Office has centrally recorded the transmitted data using the Passenger Information System. The Federal Office of Administration (Bundesverwaltungsamt) is responsible for receiving and processing the data on behalf of the Federal Criminal Police Office. The data is automatically compared with national and international police databases (technical hits), but the system also searches for specific, previously defined ‘patterns’, which are intended to indicate persons previously unknown to the police who are ‘criminals’ or ‘terrorists’.

The German Commissioners for Data Protection at federal and state level have criticized this approach of matching all passengers with *“abstractly formulated*

336 Spiegel, ‘Immer mehr Klimaaktivisten in bayerischer Präventivhaft’, 02 September 2023, <https://www.spiegel.de/politik/muenchen-vor-der-iaa-immer-mehr-klimaaktivisten-in-bayerischer-praeventivhaft-a-88743eda-2066-4df4-b949-bae7ebdb5e11>

337 BLKA Präsidialbüro, E-Mail March 2023

338 Deutscher Bundestag, ‘Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Benjamin Strasser, Stephan Thomae, Renata Alt, weiterer Abgeordneter und der Fraktion der FDP, Rolle des Analysetools RADAR als Instrument im Kampf gegen gewalttätigen Extremismus und Terrorismus’, 2 September 2021 <https://dserver.bundestag.de/btd/19/322/1932271.pdf>

339 Ibid.

340 Ibid.

341 Europäischer Rat, ‘EU-Richtlinie zu Fluggastdatensätzen (PNR-Daten)’, 31 August 2022, <https://www.consilium.europa.eu/de/policies/fight-against-terrorism/passenger-name-record/>

342 Bundesministerium der Justiz, ‘Gesetz über die Verarbeitung von Fluggastdaten zur Umsetzung der Richtlinie (EU) 2016/681* (Fluggastdatengesetz - FlugDaGe)’, 6 June 2017, <https://www.gesetze-im-internet.de/flugdag/BJNR148410017.html>

343 Bundeskriminalamt: ‘Gesetz zur Umsetzung der Richtlinie (EU) 2016/681 (Deutsches Fluggastdatengesetz)’, https://www.bka.de/DE/UnsereAufgaben/Aufgabenbereiche/Zentralstellen/Fluggastdatenspeicherung/RelevanteDokumente/Umsetzungsgesetz/umsetzungsgesetz_node.html

‘Gefährder’ profiles (patterns)” even before the introduction of the Passenger Name Record Act.³⁴⁴

“They are used to generate suspects, i.e., to track down travelers who could pose a threat and are not yet known to the security authorities.”³⁴⁵

The Federal Criminal Police Office describes the purpose of the system as follows:

“By comparing the data with police wanted databases, the entry and exit of wanted criminals can be recognized at an early stage and necessary measures by the security authorities can be initiated in a timely manner. Patterns, for example for drug trafficking routes, can be created on the basis of security authority insights. This enables targeted checks and the disclosure of specific personal connections, travel routes and criminal networks.”³⁴⁶

The PNR information system was developed internally by the Federal Criminal Police Office based on existing IT components. Since the system went live in 2018, airlines have transmitted data from their booking systems to the Federal Criminal Police Office in the form of so-called “pushes”, and also forward data to the Federal Criminal Police Office from service providers such as travel agencies. In mid-August 2022, 156 airlines were connected to the system. According to estimates by the German government, in June 2022 data from around 86% of all air passenger traffic in Germany was processed by the PNR information system. The connection of further airline companies

depends on the growth of the aviation industry, so there is no limit to the expansion of the system.³⁴⁷

In 2022, the airlines transmitted around 424 million PNR data records, which related to around 121 million passengers. In 2023, around 385 million PNR records were generated by 31 October, relating to 107 million passengers.³⁴⁸ On each flight, several “pushes”, or transmissions of passenger name records, can take place per passenger, depending, among other things, on how often their data changes. For passengers traveling several flights or frequent flyers, there are also several data records. According to the German Passenger Name Record Act, passenger data must generally be transmitted 48 to 24 hours before the scheduled departure time of the flight and again immediately after boarding. The passenger data stored in the so-called flight data register can also be used retrospectively for investigations. The data can comprise around 20 categories:³⁴⁹

1. the passenger’s family name, name at birth, given names and any doctoral degree;
2. PNR record locator;
3. date of reservation and issue of ticket;
4. date(s) of intended travel;
5. address and contact information, including telephone number and e-mail address;

344 Bundesbeauftragte für den Datenschutz und die Informationsfreiheit (BfDI), ‘Stellungnahme zum Fluggastdatengesetz’, 13 April 2017, https://www.bfdi.bund.de/SharedDocs/Downloads/DE/DokumenteBfDI/Stellungnahmen/2017/StgN_Fluggastdaten.html?nn=251944 (translated from German)

345 Ibid. (translated from German)

346 Bundeskriminalamt, ‘Informationsvideo zur Fluggastdatenspeicherung’, <https://www.bka.de/DE/UnsereAufgaben/Aufgabenbereiche/Zentralstellen/Fluggastdatenspeicherung/Informationen/ueberblick/filmDeutsch.html?nn=99758> (translated from German)

347 Bundesregierung, ‘Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Martina Renner, Nicole Gohlke, Dr. Gesine Löttsch, weiterer Abgeordneter und der Fraktion DIE LINKE’, Drucksache 20/3114 – Umsetzung des Urteils des Europäischen Gerichtshofs zur Anwendung der Fluggastpassagierdaten-Richtlinie in Deutschland, 30 August 2022 <https://dserver.bundestag.de/btd/20/032/2003218.pdf>

348 Deutscher Bundestag, ‘Anpassungs- und Änderungsbedarf im Fluggastdatengesetz, Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Martina Renner, Anke Domscheit-Berg, Nicole Gohlke, weiterer Abgeordneter und der Fraktion DIE LINKE’, Drucksache 20/6278, 27 April 2023, <https://dserver.bundestag.de/btd/20/066/2006629.pdf>

349 Bundesministerium der Justiz (2017), ‘Gesetz über die Verarbeitung von Fluggastdaten zur Umsetzung der Richtlinie (EU) 2016/681* (Fluggastdatengesetz - FlugDaG)’, 6 Juni 2017 <https://www.gesetze-im-internet.de/flugdag/BjNR148410017.html>

6. ticketing field information, including ticket number, date of ticket issuance, one- way tickets and automated ticket fare quote fields;

7. all baggage information;

8. any advance passenger information (API) data collected, including the type, number, country of issuance and expiry date of any identity document; nationality, family name, given name(s), gender, date of birth, airline, flight number, departure date, arrival date, departure port, arrival port, departure time and arrival time;

9. other name information;

10. all forms of payment information, including billing address;

11. complete travel itinerary for specific PNR data;

12. frequent flyer information;

13. travel agency and travel agent;

14. travel status of passenger, including confirmations, check-in status, no-show information, ticket without reservation;

15. split and divided PNR data;

16. general remarks, including all available information on unaccompanied minors under 18 years, such as name and gender of the minor, age, language(s) spoken, name and contact details of guardian on departure and relationship to the minor, name and contact details of guardian on arrival and relationship to the minor, departure and arrival agent;

17. seat number and other seat information;

18. code share information;

19. number and other names of travelers on the PNR; and

20. all historical changes to the PNR listed in numbers 1 to 19.

Bijan Moini, Legal Director of the non-profit organization Gesellschaft für Freiheitsrechte, points out that additional data can also be recorded via the user-defined blank text field.³⁵⁰

Automated cross-checking against police databases

The majority of the technical hits or “pushes” of the PNR information system occur during the automated cross-checks with existing police databases. When comparing passenger records with the search databases for wanted persons and information held on the police information system at the Federal Criminal Police Office (INPOL-Z), the Schengen Information System (SIS) and the Interpol database “Automated Search Facility – Stolen and Lost Travel Documents Database” (ASF-SLTD), the aim is to detect the entry or exit of alleged or suspected criminals or the use of stolen passports, for example.

Moini criticizes the data analysis of millions of passengers as “*mass surveillance without cause, which is disproportionate and violates fundamental rights.*” All data of all flight passengers is recorded, Moini continues, “*without any prior act or reason – and the data is not only stored by the airlines and retrieved by the police, if necessary, but is also transmitted in full to the Federal Criminal Police Office.*”³⁵¹

In 2022, the Court of Justice of the European Union (CJEU) criticized in a landmark ruling that the EU PNR directive significantly interferes with the right to respect for the private and family life of individuals, their home and their telecommunications, as laid down in the Charter of Fundamental Rights of the European Union, as well as the right to protection of personal data, which may be justified exclusively to combat serious crime. The five-year retention period for PNR data, which previously applied

350 Interview Moini, Bijan, Legal Director Gesellschaft für Freiheitsrechte, 29 September 2023

351 Ibid.

indiscriminately to all air passengers, was also declared illegitimate.³⁵²

The supposed matches (“technical hits”) generated automatically during the database cross-checks are verified individually by employees. “Technical hits” reveal a high error rate: between the system going live on 29 August 2018 and 31 March 2019, around 94,000 technical matches were generated during the automated cross-checks. Only 277 of these were classified as correct during the manual check and were then forwarded to the Federal Police for follow-up-measures – an accuracy rate of just 0.3%.³⁵³ In 2021, the airlines reported 211 million data records from around 62 million passengers. The automated comparison with the databases resulted in 304,135 technical hits, with 5,561 hits based on previously defined risk patterns. Of these, only 46,958 hits – around 15% of supposed hits – were forwarded after being validated by the manual check. The vast majority of the automatically generated hits were therefore false positives.³⁵⁴

Patterns for the generation of risk profiles

In addition to cross-checking PNR data with police and other state databases, police systematically search for patterns in this passenger data according to arbitrary predetermined criteria.³⁵⁵ A few thousand

pattern ‘matches’ are made every year. Around 5,500 pattern matches were recorded in 2021.³⁵⁶

The European Council considers this pattern matching to have the potential “to discover persons unsuspected of crime or terrorism before a specific data analysis shows they might be.”³⁵⁷ According to a working report by the European Commission, the patterns aim to identify atypical travel behavior or travel behavior known by criminals or terrorists.³⁵⁸ According to the Federal Criminal Police Office, the patterns are based “exclusively on security authority findings (*modi operandi*) on criminal offences and criminals.” Artificial intelligence (AI) or machine learning are not currently used to analyze or create a pattern, nor is the use of AI “currently planned”.³⁵⁹ The Federal Criminal Police Office refuses to provide further information, citing security concerns.

The risk factors that individual EU states use for these patterns include, for example:

- ticket bookings with travel agencies that also have known criminals as customers;
- luggage that does not match the duration of the journey or the destination and could therefore indicate money laundering or smuggling; or
- the booking of more expensive or longer travel routes that deviate from average tourist or business patterns.³⁶⁰

352 InfoCuria, ‘Judgment of the Court (Grand Chamber) of 21 June 2022 (request for a preliminary ruling from the Cour constitutionnelle – Belgium) – Ligue des droits humains v Conseil des ministres’, Case C-817/19’, 21 June 2022, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=264843&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=2064695>

353 Deutscher Bundestag, ‘Kleine Anfrage der Abgeordneten Andrej Hunko u. a. und der Fraktion DIE LINKE. Ausbau der Vorratsdatenspeicherung von Fluggastdaten’, BT-Drucksache 19/8810, <https://www.andrej-hunko.de/start/download/dokumente/1336-ausbau-der-vorratsdatenspeicherung-von-fluggastdaten-eu-pnr/file>

354 Deutscher Bundestag, ‘Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Martina Renner, Nicole Gohlke, Dr. Gesine Löttsch, weiterer Abgeordneter und der Fraktion DIE LINKE. Umsetzung des Urteils des Europäischen Gerichtshofs zur Anwendung der Flugpassagierdaten-Richtlinie in Deutschland’, Drucksache 20/3114, 30 August 2022, <https://dserver.bundestag.de/btd/20/032/2003218.pdf>

355 Interview Moini, Bijan, Legal Director Gesellschaft für Freiheitsrechte, 29 September 2023

356 Deutscher Bundestag, ‘Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Martina Renner, Nicole Gohlke, Dr. Gesine Löttsch, weiterer Abgeordneter und der Fraktion DIE LINKE. Umsetzung des Urteils des Europäischen Gerichtshofs zur Anwendung der Flugpassagierdaten-Richtlinie in Deutschland’, Drucksache 20/3114, 30 August 2022, <https://dserver.bundestag.de/btd/20/032/2003218.pdf>

357 European Council, ‘EU directive on passenger name record (PNR) data’, <https://www.consilium.europa.eu/en/policies/fight-against-terrorism/passenger-name-record/>

358 European Commission, ‘Commission Staff Working Document’, 24 July 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020SC0128>

359 Bundeskriminalamt, E-Mail, 17 November 2023

360 European Commission, ‘Commission Staff Working Document’, 24 July 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020SC0128>

In September 2019, in response to a lawsuit filed by the Gesellschaft für Freiheitsrechte, the Federal Criminal Police Office cited routes between Turkey and Germany as potentially suspicious routes – allegedly often used by ‘Islamist’ terrorists *“as they are also popular with tourists and therefore offer cheap prices and good camouflage opportunities.”*³⁶¹

The broad and unspecified nature of these ‘patterns’ and profiling of travelers could lead to many being put under false suspicion. Notwithstanding the clear discrimination of profiling and targeting passengers flying between Turkey and Germany, the use of an automated profiling system will only exacerbate that effect.

Follow-up measures

Depending on the case, the results are forwarded to the relevant authorities such as the Federal Police. The consequences depend on the individual case, and the measures can include investigations of people’s residency, covert police observation, targeted (overt) police controls, or rejections/refusal of entry or arrests.³⁶²

In 2022, a total of 19,827 person-related follow-up measures were ordered. In 2,585 of these cases (around 13%), the passenger controlled was not the intended individual (false positives). In 17,242 of the measures, the passenger encountered was the intended individual. In 7,367 of these cases, people’s residency was investigated, 4,976 people were subject to a police observation, 1,387 people were arrested, 3,381 cases resulted in a targeted (open) control, and 131 people were refused entry.

In 2023, a total of 10,147 person-related measures were carried out up to November 2023, of which 1,863 were false positives (around 18%). In the 8,284 cases in which the passenger encountered matched the intended person, the following measures were implemented: 2,178 residency investigations, 2,394

police observation/covert controls, 1,236 arrests, 2,303 targeted (open) checks, 173 rejections/refusals of entry.³⁶³ Millions of passenger data records are thus analyzed in order to carry out several thousand criminal or immigration investigations, the objective evidential basis of which is non-existent, or extremely tenuous.

Legal expert Moini warns:

*“The system automatically delivers lots of “hits” at first – but most of them are useless. And even a supposed “hit” is not automatically proof of the system’s efficiency – because it is unclear whether the person’s background check was justified.”*³⁶⁴

The Gesellschaft für Freiheitsrechte has filed lawsuits in Germany against the processing of passenger data as regulated in the German Passenger Name Record Act. GFF won two lawsuits before the Wiesbaden Administrative Court in December 2022 by referring to the Court of Justice of the European Union (CJEU) ruling: the CJEU’s press release states that *“the data of passengers on flights within the EU may only be processed if there are indications of terrorist threats on certain flight routes (...) Total surveillance of all flights, as regulated by the FlugDaG, is inadmissible.”*³⁶⁵ With regard to flights to or from non-EU countries, the German law would also have to be expanded to include a list of offences that limits data analysis to specific, serious criminal offences, according to the court.³⁶⁶

The Ministry of the Interior is currently examining the need for further steps with regards to the German Passenger Name Record Act; the Federal Criminal Police Office has already adapted its practice to the requirements of the European Court of Justice. The catalogue of criminal offences has been narrowed

361 Kanzlei Redecker Sellner Dahs, ‘Stellungnahme an das Verwaltungsgericht Wiesbaden’, 9 September 2021

362 Bundeskriminalamt, E-Mail, 17 November 2023

363 Bundeskriminalamt, E-Mail, 17 November 2023

364 Interview Moini, Bijan, Legal Director Gesellschaft für Freiheitsrechte, 29 September 2023

365 Verwaltungsgericht Wiesbaden, ‘Pressemitteilung Fluggastdatenspeicherung. Verarbeitung von Fluggastdaten rechtswidrig’, 22 December 2022, <https://verwaltungsgerichtsbarkeit.hessen.de/presse/verarbeitung-von-fluggastdaten-rechtswidrig> (translated from German)

366 Ibid.

down; during manual checks, an “*at least indirect relation to the flight movement*” is checked before further evaluation; for intra-European routes, a cross-check is now only carried out if there are indications for the respective flight route that justify the application of the PNR directive.³⁶⁷

In addition, passenger data records will no longer be stored generally for five years, but only for matches that have been manually verified again – in all other cases, the data will supposedly be automatically deleted after six months. The first batches of inadmissibly stored data were already deleted at the beginning of 2023. If passenger data is to be analyzed retrospectively for investigations, these so-called retrograde search requests must be approved by the Wiesbaden Administrative Court.³⁶⁸

The analysis and storage of passenger name record data is now limited, at least in law. Nevertheless, false positives can still occur and discriminatory profiles can still be created, based on algorithms that remain opaque, potentially problematic and may contain further discriminatory aspects, with potentially very serious criminal legal and immigration consequences.

3. PRISON ‘SUICIDE PREVENTION’ SYSTEMS

Criminal justice authorities in Germany develop first systems for ‘predicting’ suicides in prisons. North Rhine-Westphalia and Lower Saxony have launched research initiatives to analyze how existing video surveillance can be augmented with machine-learning algorithms to supposedly detect suicide attempts early on.

However, the test results of one of the projects show that the algorithms do not work reliably. The systems intrude deeply into the privacy of incarcerated people, while at the same time there is a high risk of false negatives or positives – with potentially life-threatening consequences.

3.1. EREIGNISGESTEUERTE VIDEOÜBERWACHUNG MIT AUTOMATISIERTER SITUATIONSEINSCHÄTZUNG ALS INSTRUMENT DER SUIZIDVERHINDERUNG IN JUSTIZVOLLZUGSANSTALTEN (EVAS) – MINISTRY OF JUSTICE, NORTH RHINE-WESTPHALIA

Used for: suicide prevention

Created: in development since 2019, tested in 2021

In 2019, the Ministry of Justice of North Rhine-Westphalia and the correctional system of North Rhine-Westphalia, together with the German IT company FusionSystems, started to develop an ‘artificial intelligence’ (‘AI’) system for the prevention of suicides in prisons as part of the research project “Ereignisgesteuerte Videoüberwachung mit automatisierter Situationseinschätzung als Instrument der Suizidverhinderung in Justizvollzugsanstalten” (EVAS), (“Event-controlled video surveillance with automated

³⁶⁷ Bundeskriminalamt, E-Mail, 17 November 2023

³⁶⁸ Ibid.

situation assessment as an instrument for suicide prevention in prisons”).³⁶⁹

According to the Ministry of Justice, the system is intended to recognize patterns that indicate a suicide attempt, assess suicide risk and alert prison staff in time with visual and acoustic alarms.³⁷⁰

In the future, the software could be connected to the camera surveillance systems already used in prisons in the so-called *Schlichtzellen*.³⁷¹ Incarcerated persons are taken into such specially equipped solitary confinement cells after aggressive behavior or potential risk of suicide, for example; the furniture is very reduced, and the entire inventory in these cells is secured to prevent self-harm and suicide attempts.

Based on alleged “expert knowledge” in suicide prevention (which is not detailed further), certain scenarios supposedly indicate an imminent risk of suicide.³⁷² To generate training data for the project in an ‘authentic’ setting, the IT company FusionSystems recreated a detention cell in a room in Chemnitz, and actors (students) were instructed to walk around the room and carry out various activities.³⁷³ The machine learning algorithm developed by FusionSystems was trained to analyze the surveillance camera images of the cell and to detect objects such as knives, scissors, ropes, lighters as well as conspicuous behavior such as certain movement patterns indicating suicidal intentions like forming a noose from a belt, knotting

a rope or tying a noose to the window grill, pulling out a knife or playing around with a large knife (behavior detection). Inconspicuous behavior such as performing squats, reading a book, or watching television (“negative scenarios”) were also recreated to teach the system to distinguish between harmless situations and “positive scenarios” that indicate a suicide risk.³⁷⁴ A developer describes the fine line between automatically distinguishing between very similar problematic and unproblematic behavior as follows:

“It would of course be great if we could recognize these specific movement sequences, something like tying a knot or pulling something over your head – but also differentiate this from non-critical things like pulling a jumper over your head.”³⁷⁵

According to the lead developer of the system, complex parameters need to be taken into account to “calculate the suicide potential”.³⁷⁶ The position of the person in the room and their proximity to an area classified as problematic also plays a role e. g. the barred window was assessed as having a higher “suicide potential” than the bathroom.³⁷⁷ Skeleton tracking was apparently also integrated to analyze movements.³⁷⁸ The team initially wanted to

369 Ministerium der Justiz des Landes Nordrhein-Westfalen, ‘Bericht zum TOP „Todesfälle und Suizide im Strafvollzug. 84. Sitzung des Rechtsausschusses des Landtags Nordrhein-Westfalen am 27.10.2021’, 25 October 2021, www.landtag.nrw.de/portal/WWW/dokumentenarchiv/Dokument/MMV17-5871.pdf

370 Ibid.

371 Justizministerium: ‘Einsatz Künstlicher Intelligenz im Justizvollzug zur Suizidprävention’, 22 October 2019, <https://www.land.nrw/pressemitteilung/einsatz-kuenstlicher-intelligenz-im-justizvollzug-zur-suizidpraevention>

372 Ministerium der Justiz des Landes Nordrhein-Westfalen (2021), ‘Bericht zum TOP „Todesfälle und Suizide im Strafvollzug. 84. Sitzung des Rechtsausschusses des Landtags Nordrhein-Westfalen am 27.10.2021’, 25 October 2021, www.landtag.nrw.de/portal/WWW/dokumentenarchiv/Dokument/MMV17-5871.pdf

373 FusionSystems, ‘Suizidprävention mit KI’, 12 September 2020, <https://www.fusionsystems.de/aktuelles-leser/suizidpraevention-mit-ki-c3bcnstlicher-intelligenz.html>

374 Ministerium der Justiz des Landes Nordrhein-Westfalen (2021), ‘Bericht zum TOP „Todesfälle und Suizide im Strafvollzug. 84. Sitzung des Rechtsausschusses des Landtags Nordrhein-Westfalen am 27.10.2021’, 25 October 2021, www.landtag.nrw.de/portal/WWW/dokumentenarchiv/Dokument/MMV17-5871.pdf

375 3Sat Nano, ‘Kann KI Suizide im Gefängnis verhindern?’, 10 September 2020 <https://www.3sat.de/wissen/nano/200910-ki-gegen-suizid-nano-100.html>

376 Süddeutsche Zeitung, ‘Mit Künstlicher Intelligenz Selbstmorde in Haft verhindern’, 22 October 2019, <https://www.sueddeutsche.de/panorama/justiz-duesseldorf-mit-kuenstlicher-intelligenz-selbstmorde-in-haft-verhindern-dpa.urn-newsml-dpa-com-20090101-191021-99-388894>

377 3Sat Nano (2020), ‘Kann KI Suizide im Gefängnis verhindern?’, 10 September 2020 <https://www.3sat.de/wissen/nano/200910-ki-gegen-suizid-nano-100.html>

378 Ministerium der Justiz des Landes Nordrhein-Westfalen (2021), ‘Bericht zum TOP „Todesfälle und Suizide im Strafvollzug. 84. Sitzung des Rechtsausschusses des Landtags Nordrhein-Westfalen am 27.10.2021’, 25 October 2021, www.landtag.nrw.de/portal/WWW/dokumentenarchiv/Dokument/MMV17-5871.pdf

derive “certain emotions”³⁷⁹ from “facial features”, but this was apparently not implemented in the software.

Detecting mental states and feelings through ‘AI’-based emotion or body language analysis is a highly invasive,³⁸⁰ scientifically unproven,³⁸¹ unreliable technology. It is also prone to racial or ethnic bias (for example, camera technology that has only been calibrated for light skin as opposed to dark skin), a bias in training data (facial expressions of Black men are more likely to be interpreted as “aggressive” than those of white men),³⁸² and cultural bias (different understandings of certain emotions, body language or facial expressions between cultures). Disruptive effects such as poor lighting conditions, unfavorable camera angles, or faces obscured or altered by hair, glasses or headscarves also influence the results of this fundamentally flawed technology.³⁸³

Depending on the characteristics detected, the algorithm assigns a specific “danger level” to the situation in the cell. According to a report from 2020, four different levels existed at that time: “danger level 0” represents an unproblematic situation (“person found with movement, person detected, detected movement reduces danger level”) while “danger level 3” represents the highest suicide danger level

(no person and no movement can be detected in the cell).³⁸⁴ The “danger level” is constantly recalculated; the officers in prison should be informed of the current situation via a color-coded visual alarm (e. g. traffic light system) and an additional acoustic alarm in the case of a high “danger level” to enable rapid intervention.

The fatal risk of false negatives

A developer told the German press agency *dpa* that the ‘AI’ detection system could “replace the current extremely stressful permanent video surveillance and the 15-minute individual checks of particularly suicidal prisoners” if it “proves to be safe”; the surveillance camera stream of the cell should only be transmitted to the prison’s monitoring center in the case of a high “danger level”.³⁸⁵

Although incorrect classification of suicide attempts could be fatal, so far, no scientific evaluation of the project has been undertaken, and no concrete data on success rates or false positives/false negatives has been published by the justice ministry. “The practical value of AI for the planned application depends largely on the error rates”, warned the State Commissioner for Data Protection of North Rhine-Westphalia in a statement on the project.³⁸⁶ She describes the potential consequences of the failure to recognize an actual suicide attempt (false negative rate) as well as the incorrect reporting of a suicide attempt when there is no such attempt (false positive rate) as follows:

“With a high false negative rate, there could be a higher number of successful suicide attempts if employees rely too heavily on the capabilities

379 Süddeutsche Zeitung (2019), ‘Mit Künstlicher Intelligenz Selbstmorde in Haft verhindern’, 22 October 2019, <https://www.sueddeutsche.de/panorama/justiz-duesseldorf-mit-kuenstlicher-intelligenz-selbstmorde-in-haft-verhindern-dpa.urn-newsml-dpa-com-20090101-191021-99-388894>

380 Article 19, ‘Emotional Entanglement: China’s emotion recognition market and its implications for human rights’, 19 November 2020, <https://www.article19.org/wp-content/uploads/2021/01/ER-Tech-China-Report.pdf>

381 Barrett, L. F. et al., ‘Emotional Expressions Reconsidered: Challenges to Inferring Emotion From Human Facial Movements’, *Psychological Science in the Public Interest*, 20(1), 1-68, 2019, <https://doi.org/10.1177/1529100619832930>, <https://journals.sagepub.com/doi/10.1177/1529100619832930>

382 Rhue, Lauren, ‘Racial Influence on Automated Perceptions of Emotions’, 9 November 2018, <https://ssrn.com/abstract=3281765> or <http://dx.doi.org/10.2139/ssrn.3281765>

383 Büro für Technikfolgen-Abschätzung beim Deutschen Bundestag (TAB), ‘Emotionserkennung mittels künstlicher Intelligenz –Perspektiven und Grenzen von Technologien zur Analyse von Gesichtsbewegungen’, Themenkurzprofil Nr. 48, Mai 2021, <https://www.bundestag.de/resource/blob/848996/b0a0e4dc737c35ee2626cdf2ffc8d31d/Themenkurzprofil-048-data.pdf>

384 3Sat Nano (2020), ‘Kann KI Suizide im Gefängnis verhindern?’, 10 September 2020, <https://www.3sat.de/wissen/nano/200910-ki-gegen-suizid-nano-100.html>

385 Süddeutsche Zeitung (2019), ‘Mit Künstlicher Intelligenz Selbstmorde in Haft verhindern’, 22 October 2019, <https://www.sueddeutsche.de/panorama/justiz-duesseldorf-mit-kuenstlicher-intelligenz-selbstmorde-in-haft-verhindern-dpa.urn-newsml-dpa-com-20090101-191021-99-388894>

386 Landesbeauftragte für Datenschutz und Informationsfreiheit Nordrhein-Westfalen, ‘Suizidprävention im Strafvollzug Vorlage 17/2727 und Vorlage 17/2875. Stellungnahme 17-2617’, 6 May 2020, <https://www.landtag.nrw.de/portal/WWW/dokumentenarchiv/Dokument/MMST17-2617.pdf> (translated from German)

*of the AI and supplementary measures are reduced. A high false positive rate can cause unnecessary disruption to prisoners and staff and can lead to staff to react more reluctantly to alerts from the AI over time.*³⁸⁷

On 15 April 2021, the system was tested in a prison in Düsseldorf; actors reenacted predefined scenarios in a cell. The Ministry of Justice drew the conclusion from the test that:

*“[I]n principle, AI systems are suitable for the automated detection of suicidal behavior. However, the detectors developed in the project (object, skeleton, behavior) are not yet of sufficient quality to reliably trigger the assistance system (.). It is not yet possible to use the assistance system in live operation.”*³⁸⁸

The Ministry believes that the main reason for the performance problems is the insufficient number of training videos (20 videos). It assumes that *“a significantly higher number of training data would lead to an improvement in quality and thus probably enable the system to be used at a later date.”*³⁸⁹ For the future, the ministry considered collaborating with the state of Lower Saxony, which is planning a similar project.³⁹⁰

According to the knowledge of the Commissioner for Data Protection and Freedom of Information of North Rhine-Westphalia, there have been no additional tests in prisons with actors – or with prisoners being monitored – so far.³⁹¹ There would be strict limits to the possible use of such a system, as *“prisoners must*

*also retain a sufficient degree of privacy (...). Only in acutely dangerous situations can the temporary observation of specifically endangered persons be considered and, under certain circumstances, AI may also be used for this purpose”.*³⁹² Her predecessor also noted that the planned ‘AI’ system would presumably be able to recognize other behavioral patterns or objects that are not related to a suicidal risk, such as the use of a smartphone in prison. It would therefore have to be ensured during further development *“that only verifiably relevant characteristics are used to assess an acute suicidal risk.”*³⁹³

A formerly incarcerated woman interviewed stated that truly effective suicide prevention would require the abolition of the prison system:

“Prison is not a therapeutic place, it’s not for rehabilitation, it’s for punishment. So, there is no help for people who are in need, it’s very depressing and I can see that people cannot pull along for long.”

But even in view of the current design of the prison system, she considers other measures to be more important than technology. She believes that the safety of incarcerated people cannot be improved with such “minimum means” like AI technology for suicide prevention, instead of “real advances” like investments in more staff, training for the staff, or the wellbeing of the people:

*“There are always ways to outsmart the camera, it is never guaranteed that such a system works. Every prisoner who is in that position is aware that he is being surveilled. It’s all about outsmarting each other. There are also other ways to prevent suicide: by therapy and empathy, having communal support, helping people, to find purpose in their lives.”*³⁹⁴

387 Landesbeauftragte für Datenschutz und Informationsfreiheit Nordrhein-Westfalen, ‘Suizidprävention im Strafvollzug Vorlage 17/2727 und Vorlage 17/2875. Stellungnahme 17-2617’, 6 May 2020, <https://www.landtag.nrw.de/portal/WWW/dokumentenarchiv/Dokument/MMST17-2617.pdf> (translated from German)

388 Ministerium der Justiz des Landes Nordrhein-Westfalen, ‘Bericht zum TOP „Todesfälle und Suizide im Strafvollzug. 84. Sitzung des Rechtsausschusses des Landtags Nordrhein-Westfalen am 27.10.2021’, 25 October 2021, www.landtag.nrw.de/portal/WWW/dokumentenarchiv/Dokument/MMV17-5871.pdf

389 Ibid.

390 Ibid.

391 Landesbeauftragte für Datenschutz und Informationsfreiheit Nordrhein-Westfalen, E-Mail, 3 November 2023

392 Ibid.

393 Ibid. (translated from German)

394 Interview, N. N., October 2023

3.2. EINSATZ KÜNSTLICHER INTELLIGENZ ZUR SUIZIDPRÄVENTION UND VERBESSERUNG DER SICHERHEIT IN NIEDERSÄCHSISCHEN JUSTIZVOLLZUGSANSTALTEN – MINISTRY OF JUSTICE LOWER SAXONY

Used for: suicide prevention

Created: in development

The three-year research project “Einsatz künstlicher Intelligenz zur Suizidprävention und Verbesserung der Sicherheit in niedersächsischen Justizvollzugseinrichtungen” (Use of artificial intelligence to prevent suicide and improve security in Lower Saxony’s correctional facilities) has been carried out in the federal state of Lower Saxony. On 28 March 2022, the FZI Forschungszentrum Informatik (FZI Research Centre for Information Technology), and the IT security company VOMATEC Innovations were awarded the contract for the project. The Lower Saxony Ministry of Justice expects the result to be an “operational software as a prototype”, which will probably first be implemented in the JVA Oldenburg, a prison in Oldenburg.³⁹⁵

The project proposal assumes that ‘AI’ camera-based situation and object recognition could “significantly support and thus facilitate the work of prison staff in preventing suicides and ensuring security in prisons.”³⁹⁶ Initially, the scope of the project included not only the application of algorithms for suicide prevention in special cells for incarcerated people at risk, but also more far-reaching, ‘AI’-enhanced camera surveillance approaches in other prison facilities or leisure areas of prisons:

“The use of camera-supported intelligent situation and object recognition is also imaginable when prisoners are outside during so-called

leisure hours, for example to be able to identify the transfer of prohibited objects between prisoners or the emergence of a physical altercation at an early stage.”³⁹⁷

To create a legal framework for the future deployment of such automated surveillance systems in prisons, an amendment to the Lower Saxony Prison Act (Niedersächsisches Justizvollzugsgesetz, NJVollzG) was drafted. The Commissioner for Data Protection at the time opposed the first draft of the amendment. She criticized the envisioned disproportionate, “potentially extensive use” of ‘AI’ and demanded that the very broadly defined scope of “maintaining security and order” had to be restricted to suicide prevention; in addition, the implementation had to be limited “exclusively to specially secured detention cells in which the prisoner may be placed especially if there is a risk of suicide.”³⁹⁸

This compounds the view of the Commissioner for Data Protection of North Rhine-Westphalia, who also specifically spoke out against the use of such systems for other purposes, such as “the transfer of prohibited objects” noted above.

In the amended Lower Saxony Prison Act, which came into force in July 2022, automation is now regulated in “Section 81a NJVollzG – Observation”: optical-electronic devices that automatically process image transmissions and recordings are restricted “to avert a danger to the life of the prisoner” in specially secured detention cells; camera surveillance is generally excluded in bathrooms.³⁹⁹

397 Niedersächsischer Landtag, ‘Antrag, Einsatz künstlicher Intelligenz zur Suizidprävention und Verbesserung der Sicherheit in niedersächsischen Justizvollzugsanstalten’, Drucksache 18/8729, 9 March 2021, https://www.landtag-niedersachsen.de/Drucksachen/Drucksachen_18_10000/08501-09000/18-08729.pdf (translated from German)

398 Landesbeauftragte für den Datenschutz Niedersachsen, ‘27. Tätigkeitsbericht 2021’, <https://lfd.niedersachsen.de/startseite/infotek/tatigkeitsberichte/2021/barbara-thiel-stellt-tatigkeitsbericht-2021-vor-212174.html> (translated from German)

399 Niedersächsisches Vorschrifteninformationssystem NIVORIS, ‘Niedersächsisches Justizvollzugsgesetz (NJVollzG)’, <https://voris.wolterskluwer-online.de/browse/document/a651eb30-4b2a-3c3d-a91f-3680a4d9510c>

395 Niedersächsisches Justizministerium, E-Mail, 13 February 2023

396 Ibid.

The Ministry of Justice is vague about the extent to which the planned ‘AI’ software will be used in prisons in Lower Saxony in the future: *“The exact use of the software is the subject of the research project. No reliable results are available at this time.”*⁴⁰⁰ According to the Ministry, requirements for the system were defined, application scenarios and monitoring concepts were developed and research was carried out in the first year of research; a prototype for recording and processing the video data is currently being developed and subsequently tested.⁴⁰¹

In contrast to the pilot project in North Rhine-Westphalia, the system in Lower Saxony is not trained with videos of actors re-enacting scenarios. Instead, only real recordings of suicide attempts and violence from prisons are used as training data:

*“The videos are to be recorded by the prisons in Lower Saxony during regular operation and made available to the research project. It is not yet possible to predict how many videos depicting suicide and violence will be collected during the course of the research project in order to train the AI.”*⁴⁰²

Given the average number of incidents per year, it seems unrealistic that there will be enough video recordings during the research period to generate sufficient training data that also covers conceivable risk situations and all imaginable situations indicating suicide events for prisoners.

Year	Suicides	Suicide attempts
2018	5 ⁴⁰³	33
2019	2	23
2020	7	22
2021	6	18
2022	8	26
2023 (until 23.05.2023)	2	11

Data Source: Ministry of Justice Lower Saxony

The risk of misinterpretation due to false negatives/ false positives could also be very high in this project. It is unclear whether the project would be terminated or extended if the videos were not sufficient as learning data. According to the Ministry of Justice, “open-end research” is being conducted.⁴⁰⁴

400 Niedersächsisches Justizministerium, E-Mail, 13 February 2023

401 Niedersächsisches Justizministerium, E-Mail, 16 May 2023

402 Niedersächsisches Justizministerium, E-Mail, 24 May 2023

403 The person had attempted suicide in 2017, and died in 2018.

404 Niedersächsisches Justizministerium, E-Mail, 30 May 2023

/ CONCLUSION

This report demonstrates how German police, criminal justice authorities and prisons are using, operating and developing ‘predictive’ policing systems, crime ‘prediction’ and profiling systems and other automated data-analysis systems, as well as introducing ‘AI’ video surveillance.

The expansion of systems like the individual risk assessment tool RADAR, the growing adoption of Palantir software in various regions of Germany, the automated analysis of millions of flight passenger records to identify suspicious travel patterns, and ongoing research projects aimed at developing AI-based tools for predicting suicide risk in prisons all highlight the increasing horizontal and vertical integration of automated data analysis systems.

This report also highlights how the ‘predictions’, profiles and other analyses generated by these systems can criminalize and discriminate against individuals, groups and entire geographical areas; how they frequently produce serious inaccuracies or false positives, potentially implicating innocent people; how they are used without robust scientific validation or evidence of their effectiveness; and how they often operate without a sufficient legal basis, with some systems even being deemed unlawful.

Racial profiling, racism and discrimination

The lack of publicly accessible evaluations and transparency regarding the inputs and functioning of algorithmic and automated data analysis systems prevents a comprehensive understanding of their biases and discriminatory impacts. However, numerous examples demonstrate how these systems, both directly and indirectly, contribute to racial profiling, racism, and other forms of discrimination, particularly targeting Muslims and individuals perceived as migrants.

Although location-based ‘predictive’ systems do not include data on specific individuals, it is predomi-

nantly racialized individuals and those from more economically disadvantaged backgrounds who are disproportionately subjected to police stops and checks – and their potential consequences – in the so-called ‘danger zones.’ The heightened police suspicion of racialized minorities in these areas often results in racial profiling.

The kbO crime ‘prediction’ system provides justification for the discriminatory targeting of specific areas and their residents, effectively circumventing legal protections against ethnic profiling. The Berlin police have identified groups such as refugees, homeless individuals, people of Eastern European origin, and those labeled under the ‘clan crime’ designation – which homogenizes Arabic, Turkish, and Kurdish people into a single bloc – as responsible for crime in these areas. Reports of discrimination in kbO-designated areas are high, with local residents stating that police disproportionately target Black people and people of color. Even police officers have admitted to discriminatory practices and violent treatment of individuals in these areas.

Geographic crime ‘prediction’ systems like *PRECOBS* may contribute to racial profiling, even if they do not include any discriminatory elements at a technical level. Given that their ‘prediction’ success rate is unclear, police officers may check or arrest people who happen to be at the ‘predicted’ burglary areas and match the discriminatory preconceptions of supposed offender profiles, such as individuals from Eastern Europe.

These checks and recorded incidents also feed back into crime data, distort them and can also influence further ‘predictive’ analyses. This creates a feedback loop where the same areas and profiles are repeatedly targeted.

Risk assessment systems designed to ‘prevent’ terrorism simplify complex individual situations into reductive models, even though the predicted offences

are exceedingly rare and most suspects will never commit a crime. For years, police interventions have disproportionately focused on racialized individuals, particularly Muslims, with their behavior frequently and unjustifiably interpreted as an indication of future ‘violence potential.’

Analytics software such as Palantir’s *Gotham* allows rapid access to diverse datasets from various sources and the creation of individual profiles. As the system merges data from different databases, some of which may contain errors or inaccuracies, particularly involving foreign-sounding names, innocent individuals risk being falsely labelled as suspects.

The automated search for patterns, based on assumptions and stereotypes, in passenger name records (PNR), such as travelling with little luggage, altered travel sections or travel routes via countries such as Turkey or Syria can also unjustly place individuals under increased scrutiny by authorities.

RADAR items are only partially known, making it impossible to fully assess the potential for discrimination. However, aspects such as the collection of sensitive information on mental health and suicidal tendencies are inherently problematic, as there is no scientific evidence that regarding the precise relationship between mental health issues and the radicalization process. Including employment information to profile individuals as potentially violent can lead to discrimination against those who are unemployed.

Criminalization and other punishments

Under the Berlin kbO system, as well as similar designations by police in other German cities, entire neighborhoods are labeled as having a high propensity for crime, with crime ‘predicted’ to occur there at higher rates. This results in an increased police presence in these areas, enabling ‘suspicionless’ stops, identity checks, and searches, thereby raising the likelihood of criminalizing individuals in those areas.

Palantir’s *Gotham* and similar data-driven analytics and profiling systems can also link suspects to individuals who only had incidental contact with them, sig-

nificantly broadening the scope of criminal suspicion and criminalizing people by association – even those who are not suspected of any criminal activity. For instance, prior to the Federal Constitutional Court’s ruling, hessenDATA also analyzed police databases containing information on witnesses.

The police assumption that an individual may commit an offence in the future or is associated with individuals who could potentially commit an offence can result in serious criminal and non-criminal consequences. The classification of primarily Muslim individuals as ‘Gefährder’ or ‘relevant persons,’ based on vague and inconsistent criteria, along with their evaluation by the RADAR-iTE risk assessment tool, can generate false suspicions. This can lead to surveillance, workplace or home visits by police, questioning, arrests, and even ‘preventive’ detention, all without any objective evidence of criminal wrongdoing.

The profiles created by RADAR-iTE are also shared with migration authorities, resulting in non-criminal but equally severe consequences. Individuals classified as ‘Gefährder’ may see their ongoing asylum proceedings halted, while many federal states pursue the deportation of alleged ‘high-risk’ foreign nationals, leading to actual deportations.

As part of the PNR information system, all flight passenger data is processed without evidence of any prior criminal activity or even suspicion, despite the high error rates associated with automated cross-checking of PNR data with police databases. Additionally, algorithms based on police assumptions look for supposedly suspicious patterns, such as certain flight routes (e.g., via Turkey) or the amount of luggage carried. The consequences can include investigations into residency status, police surveillance, checks, questioning, refusal of entry, or even arrests.

Inaccuracies – and lack of crime reduction

There is a lack of scientific or other evidence that these ‘predictive’ systems effectively reduce crime. Many systems are built on ‘police experience’ or ‘police expertise’, which are often vague, opaque and not scientifically reliable. This so-called ‘exper-

tise’ informs the development of algorithms that search for conspicuous travel patterns in flight data (PNR) or contributes to the labelling of individuals as “Gefährder” or “relevant person,” a preliminary step in *RADAR* risk assessments.

Analytics software like Palantir’s *Gotham* merges data from previously separate police and external databases, whose data quality is often questionable and which are now used for ‘predictive’ purposes such as the profiling of potential ‘terrorists.’

Reliable data on the use of the systems, the individuals affected, false positive/negative rates and the outcome of the systems is lacking. Moreover, since the success of systems such as *PRECOBS* or *RADAR* is the prevention of an abstract danger in the future and a variety of factors can influence crime rate trends, their success can only be assumed. It is impossible to provide concrete evidence of the effectiveness of these systems.

However, some initial findings on the false positive and false negative rates are alarming. When Federal Criminal Police Office employees manually reviewed the automatically generated technical “hits” generated by the PNR information system between 29 August 2018 and 31 March 2019, only 277 of around 94,000 technical matches were correct, an accuracy rate of just 0.3%. What is more, particularly in the sensitive area of suicide prevention, a single error can be fatal under certain circumstances. In a test of the suicide ‘prediction’ system in North Rhine-Westphalia, the system developed was deemed as “still” too unreliable.

Not only are there a lack of independent studies on the development and impact of systems for ‘predictive’ policing, crime ‘prediction,’ and automated data analysis in Germany, but there has also been no nationwide empirical study on institutional and structural discrimination or racial profiling by the police. Dirk Heidemann from the German Police University believes that a nationwide empirical study on institutional discrimination and racial profiling could “reveal the interconnectedness between racist knowledge

and the so-called police expertise that often guides their actions.”⁴⁰⁵

No legal basis and unlawful

Many of these controversial systems are developed, tested or operated without a sufficient legal basis for their use. Police forces and the Commissioners for Data Protection often disagree about the scope and the lawfulness of the systems.

In Hesse, the Police Act had to be clarified following a decision by the Federal Constitutional Court. The use of certain data sources by the Palantir software *hessenDATA* and some areas of application were subsequently restricted. The State Commissioner for Data Protection in North Rhine-Westphalia considers it necessary to amend the current law, limit the scope of application of *DAR* and improve the procedural precautions. In the opinion of the Commissioner for Data Protection in Bavaria, the legal basis for the current *VeRA* test with personal data in Bavaria has also been lacking.

Following a ruling of the Court of Justice of the European Union (CJEU) and lawsuits in Germany,⁴⁰⁶ the analysis of passenger name records has also been limited to terrorist offences and serious crime with an ‘objective’ connection to the transport of flight passengers and the initial five-year retention period has been reduced retrospectively.

The purposes for which ‘predictive’ software may be used and the specific data that can be analyzed are sometimes not precisely defined. The prison monitoring system in Lower Saxony was also originally intended for a broader purpose: the Commissioner for Data Protection in Lower Saxony demanded

⁴⁰⁵ Deutsche Hochschule der Polizei, Wir sind doch die Guten!, https://www.dhpol.de/microsite/dhpol-blog/fuehrung_in_der_polizei/kritikfaehigkeit.php

⁴⁰⁶ EU Crim, “CJEU: PNR Directive Valid if Limited to the “Strictly Necessary””, 4 August 2022 <https://eucriim.eu/news/cjeu-pnr-directive-valid-if-limited-to-the-strictly-necessary/>; Ligue des droits humains ASBL v Conseil des ministres, Case C817/19, 21 June 2022, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=261282&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=9622503>

that the very broadly defined scope of “maintaining security and order” had to be restricted to suicide prevention.

/ POLICY RECOMMENDATIONS

Prohibition

Geographic ‘predictive’ policing systems lead to discriminatory profiling and criminalization. Similarly, individual crime ‘prediction’ and ‘risk’ profiling systems perpetuate and reinforce discrimination on factors including but not limited to racial and ethnic origin, socio-economic status, migration status and nationality, resulting in unjust and discriminatory consequences, such as surveillance, stop and search, fines, questioning and other forms of police control. These systems can also lead to arrest, prosecution, as well as to detention to deportation.

The EU Artificial Intelligence Act introduces some prohibitions, for example for certain AI systems used for predictive policing based solely on profiling (Art. 5 d AI Act). On the basis of the evidence in this report and as demonstrated by others, a broader prohibition of such systems is needed. The use of geographic ‘predictive’ policing and crime ‘prediction’ systems, and AI-based video surveillance in prisons, should also be prohibited, due to the disproportionate risks that they pose.⁴⁰⁷

Transparency

Until now, individuals who have been subject to police measures due to ‘predictive’ policing or crime ‘prediction’ systems are generally unaware of this. People may not know that they may have been stopped and checked in a neighborhood, put under police surveillance, visited at their home or workplace, refused

entry at a border or even deported, due to a ‘prediction,’ ‘risk’ profile or other automated data analysis. The EU AI Act introduces certain transparency obligations for deployers of high-risk systems, for example if law enforcement bodies use systems for emotion recognition or “for assessing the risk of a natural person offending or reoffending [...], or to assess personality traits and characteristics or past criminal behavior of natural persons or groups”⁴⁰⁸. However, these transparency requirements do not cover all harmful and discriminatory uses discussed in this report, nor do they provide full and actionable public transparency. The use of any automated decision-making systems by police or criminal justice authorities must be made transparent, enabling affected individuals to exercise their rights and challenge automated predictions, profiles, or their resulting consequences.

By default, police and criminal justice authorities should publish relevant information on databased, algorithmic, or automated systems they use in a publicly accessible database. Such an Algorithm Transparency Register⁴⁰⁹ should include details about the system, how it works, the data it uses, the way it conducts analyses or generates outputs, its intended uses, and the potential consequences. If a system is classified for national security purposes, the competent oversight bodies need to have full and unfettered access to compensate for the lack of public transparency. Automated systems used by public bodies, such as the police and criminal justice authorities, must not be subject to legal restrictions such as intellectual property or trade secrecy that hinder the publication of relevant details about their development, use, operation, and full analysis of their outputs.

407 See also: European Digital Rights, “Prohibit predictive policing and profiling AI systems in law enforcement and criminal justice”, May 2023 <https://edri.org/wp-content/uploads/2022/05/Prohibit-predictive-and-profiling-AI-systems-in-law-enforcement-and-criminal-justice.pdf>

408 EU AI Act, Annex III, number 6 (d), https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202401689#anx_III

409 Full proposal for a Transparency Register for AI Systems in the Public Sector (in German), March 2023, <https://algorithmwatch.org/de/transparenzregister-oeffentliche-verwaltung-2023/>

Fundamental rights impact assessments

Many risks of AI and other automated systems depend on the context of their use. To evaluate and prevent the specific risks, law enforcement and justice authorities should be required to conduct thorough human rights impact assessments before deploying predictive policing, automated data analysis, and other AI systems. The EU AI Act requires that all deployers of high-risk AI systems in the public sector conduct a fundamental rights impact assessment.⁴¹⁰ Such impact assessments need to involve all relevant stakeholder groups, should be accessible to the public and all relevant oversight bodies and need to be monitored and updated as systems evolve.⁴¹¹

Notification and remedy

If an individual or group faces any policing or criminal justice consequences as a result of an automated decision-making system or data-based analyses, the police or criminal justice authority must notify the individual, and provide them with information about how to contest the decision or outcome. This information must be provided in a format and manner that is understandable to someone with no expertise or knowledge of these systems.

Individuals and groups must also have clear routes to challenge the outputs or consequences resulting from an automated decision-making system, with the potential for meaningful mechanisms for collective legal action, for example when it comes to claims of discrimination, in order to reduce the hurdles and costs associated with individual remedies.

410 EU AI Act, Article 27, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202401689#art_27

411 Proposal for an Impact Assessment Tool for AI uses in the public sector: <https://algorithmwatch.tech/impact-assessment-en/>; cf. AlgorithmWatch “Automated Decision-Making Systems in the Public Sector – An Impact Assessment Tool for Public Authorities”, June 2021 <https://algorithmwatch.org/en/adms-impact-assessment-public-sector-algorithmwatch/>

Digital literacy

Beyond transparency, accountability, and redress, we must also strengthen the competencies of all stakeholders. This includes promoting digital literacy by educating law enforcement, criminal justice professionals, and affected communities on the workings, limitations, and risks of predictive systems. By fostering a deeper understanding, we can enhance awareness, encourage critical evaluation, and support informed decision-making in the use of predictive technologies within law enforcement and justice processes.



This report was authored by Sonja Peteranderl and edited by AlgorithmWatch, Griff Ferris and Sofia Lyall.

STATEWATCH

Publication of the report was supported by Statewatch.

European Artificial Intelligence & Society Fund

Funding was provided by the European AI and Society fund.

Questions about the report and its recommendations can be directed to policy@algorithmwatch.org.

AW AlgorithmWatch gGmbH
Boyenstraße 41
10115 Berlin



This publication is licensed under a Creative Commons Attribution 4.0 International License <https://creativecommons.org/licenses/by/4.0/deed.en>