

DFF

Digital
Freedom Fund

The Digital Freedom Fund (DFF) supports partners in Europe to advance digital rights through strategic litigation. This is one of a series of case studies, which highlight the work of DFF's grantees working to protect digital rights.

Key actors

A coalition of organisations and individuals have worked collaboratively to challenge an automated surveillance system used by the authorities to determine the risk of an individual committing welfare fraud in the Netherlands.

A group of civil rights NGOs in the Netherlands, called the Platform for the Protection of Civil Rights (Platform Bescherming Burgerrechten), partnered with the Public Interest Litigation Project (PILP) of the Dutch Section of the International Commission of Jurists (Nederlands Juristen Comité voor de Mensenrechten, NJCM); a Dutch privacy rights NGO (Privacy First); an organisation working on civil rights for mental health patients (KDVP Foundation); and an organisation that protects the interests of clients of social and welfare services (Landelijke Cliëntenraad – the National Clients' Council).

Other key actors include two prominent Dutch authors (Tommy Wieringa and Maxim Februari) and the Federation of Dutch Trade Unions (Federatie Nederlandse Vakbeweging, FNV), the largest trade union in the Netherlands.

The legal team consists of Anton H. Ekker, Douwe M. Linders (SOLV Advocaten), Jelle Klaas (PILP), Ab van Eldijk (KDVP), Vincent Bohre (Privacy First), and Tijmen Wisman and Ronald Huissen (Platform Bescherming Burgerrechten).

Case background

This case concerns the Dutch government's use of an automated surveillance system called SyRI (System Risk Indication), which is used to detect possible benefits and tax fraud. This form of predictive policing generates risk profiles of citizens through secret algorithms, which have been introduced without consultation and without adequate oversight. The tool analyses data that is pooled from a variety of government databases (across different state departments) to look for patterns that determine a risk of fraudulent behaviour.

The coalition of civil society groups and activists argued in their lawsuit that the use of SyRI is undemocratic, violates human rights standards and is a threat to the functioning of the rule of law in the Netherlands. Their arguments were upheld by the District Court of the Hague and, in February 2020, the use of SyRI was declared unlawful.

This case is likely to have far-reaching effects beyond the Netherlands. It is an important legal challenge to the controversial use of predictive policing technology and the undemocratic use of undisclosed algorithms by government departments. Similar technologies are being introduced across Europe without consultation and they risk violating human rights and unfairly targeting vulnerable citizens.

NJCM, Platform Bescherming Burgerrechten and others v. The Netherlands (the SyRI case)

Case facts at a glance

Court

Rechtbank Den Haag (District Court of The Hague)

Hearing date

29 October 2019

Case outcome

In February 2020, the court concluded that the use of the automated surveillance system, SyRI, was unlawful as it violates the right to privacy.

Creating public awareness and scrutiny of the 'digital welfare state'

The coalition of civil rights activists in this case also designed an influential advocacy strategy to create public awareness of the SyRI case. The case is emblematic of governments' increased digitisation of social protection provision, otherwise referred to as the 'digital welfare state,' which can be seen in countries across the globe. This case has helped to encourage greater scrutiny of this development, which can threaten the right to privacy and discriminate against the poorest members of society.

The UN Special Rapporteur on extreme poverty and human rights, Philip Alston, has sought to raise awareness of the dangers of the digital welfare state at the international level.

“ **There is a grave risk of stumbling, zombie-like, into a digital welfare dystopia ... big technology companies (frequently referred to as “big tech”) operate in an almost human rights-free zone, and this is especially problematic when the private sector is taking a leading role in designing, constructing and even operating in significant parts of the digital welfare state.**

Philip Alston, UN Special Rapporteur on extreme poverty and human rights

The decision in the SyRI case now sets a strong legal precedent for other courts to follow. It is the first time a court has stopped the use of data-driven technologies by welfare authorities on human rights grounds. Other governments will now need to look carefully at the way that they use technology in their social security systems to ensure that the rights of their citizens are protected.

Risks of predictive policing to detect welfare and tax fraud

There is a growing trend for governments to use digital technologies to try to detect welfare and tax fraud. Of particular concern is that these sorts of programmes are rolled out in neighbourhoods with higher numbers of residents on welfare, despite a lack of evidence to demonstrate that welfare fraud is more prevalent in these areas. This creates a vicious cycle, resulting in the targeting of socially and economically disadvantaged neighbourhoods where many residents are more likely to be immigrants and/or from racial and ethnic minority groups. This factor was considered by the court in the SyRI case.

“ **There is already a gap between people who have a good income and those who are suffering and working multiple jobs just to get by. And then those people are subjected to systems like SyRI just because they are on a low income. That makes people angry, and threatens to undermine democracy.**

Maureen van der Pligt, the Federation of Dutch Trade Unions (Federatie Nederlandse Vakbeweging, FNV)

DFF's support



Financial assistance

DFF provided financial support that enabled the claimants to take on this litigation.



Strategy meetings

Grantees benefitted from the opportunity to meet and brainstorm with other lawyers in the DFF

network at events such as a litigation retreat in Belgrade, a meeting on future proofing our digital rights, and an event connecting the digital rights field to academia.



Making connections

DFF helped to connect PILP with the UN Special Rapporteur on extreme poverty and human rights. This gave PILP an opportunity to underline the importance of the SyRI litigation to the Special Rapporteur and his team. In October 2019, the Special Rapporteur submitted a filing in support of the claimants in the case.

“ **DFF has been an inspiration on developing impact litigation. It was extremely helpful to be involved in the strategy meetings and have the opportunity to talk with other professionals.**

Jelle Klaas, Litigation director, Public Interest Litigation Project of NJCM

