Responsibility and accountability: AI, governance and the rule of law

Richard Sannerholm
ILAC
Nordic Conference in Law and IT

A rule of law perspective on AI and automated decision-making in governance

How to regulate technology – how the technology we use regulates us.

I. Relevance of the rule of law when regulating AI in governance?
II. How AI governance affects the rule of law?

Al, governance and the rule of law

• Perennial problem: how to manage the coordination of relationships between individuals and social systems?

• Most start with checklists (eight is the magic number): Fuller, Finnis, Bingham, Raz – Council of Europe/Venice Commission, European Commission, World Justice Project

• Thus: legality, prospective rules, general in character, non-discrimination, access to justice… and from this, a tendency to checklist regulation

Council of Europe: "To create a regulatory framework for AI, specific principles based on the protection of human rights, democracy and the rule of law".

• Risks: (a) separating principles from the overarching aim of the rule of law. (b) not accounting for other factors affecting the rule of law (c) Rule of law as a box to check: i.e. legality of automated decisions in Sweden (public administration at state level)

• A different starting point - teleological (what is the point of the rule of law?). Power, and minimizing arbitrary power.

AI, governance and the rule of law

• How AI governance affects power and exercise of power.

• Post-decisional or pre-decisional accountability when governance is automated

• Where is accountability located?

• Responsible but not accountable public agencies?

From the sublime to the mundane: local governance and the robustness to handle automated governance

• GDPR, EU Commission expert group on AI and the limits of checklists

• EU P on outsourcing AI to private parties “… this should not compromise the protection of public values and fundamental rights in any way; … public procurement terms and conditions should reflect ethical standards imposed on public authorities when applicable”

• System and competencies at risk (Agency for Digital Development)

• Emergence of a new professional group in public administration that is short term, problem-solving, external – public ethos (Agency for Public Management)