

Helga Pedersen
Moot Court Competition



ANSWERS TO CLARIFICATION QUESTIONS

HELGA PEDERSEN
MOOT COURT COMPETITION

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The European Law Students' Association



Note for Teams:

Several questions were related to substantive claims and arguments that the teams are expected to develop themselves or were unclear in their essence. These questions have not been answered. Further, duplicate questions have been deleted.

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Part I: Facts of the case, procedural steps, domestic law and court process in Valdora

1. What were the dates of the hearings before the court of first instance during which (a) the Applicant requested access to Orion's source code, training data and audit report (Case, par. 11), (b) the prosecution submitted the interviews with the three victims A, B, and C and called the first expert witness (Case, par. 12), and (c) the expert witnesses from both parties and the court testified (Case, par. 13-15)?

Not relevant for the purpose of the case. The hearings took place before the adoption of the judgment.

2. Was the applicant informed prior to the hearings about the additional evidence mentioned in paragraph 12?

Yes.

3. What were the justifications given to refuse Ms Orwell's request on national security grounds, and what was the permissible subject-matter of the written questions allowed as an alternative/counter-balancing measure to this decision?

See facts of the case for the available information.

4. Were the responses by the Ministry of Public Administration and Artificial Intelligence to Ms. Orwell's questions open to challenge or cross-examination during trial or further follow-up questions by Ms. Orwell? If so, was the defence able to question ministry officials about the following topics: a) the technical functioning of Orion, b) Orion's training data/error rate, and/or c) the processing of the applicant's own data or were answers to some or all of these points refused on national security grounds?

Yes, to the permitted extent - see facts of the case.

5. Did the prosecution further pursue access to the data initially denied by Opengram, given that the applicant had herself requested access? Was the inability of both the applicant and the prosecution to access Opengram taken into consideration in the domestic courts' judgments?

No further requests were made. The courts were aware of Opengram's response and considered it in their judgments.

6. Were there any more-trustworthy evidence such as device IDs, fingerprints etc or they only considered her writing style?

For the available evidence, see facts of the case.



7. In which way the applicant was connected to defraud of 30000 euros, what was the causal link?

The question is not clear – for the relevant facts, see the case. The causal link (or lack thereof) is for the teams to argue.

8. Did the prosecuting authorities have the right to challenge or modify the conclusions generated by Orion, or were they required to accept them as valid (as is)?

All relevant information is included in the facts of the case.

9. Please provide the date and contents of the Meganissi District Court's order authorising Orion's use in this case, and specify any fairness/transparency safeguards the court imposed.

Orion's use was authorized in the pre-trial phase, upon the prosecution's request. The authorization was granted in line with the domestic legislation (please see relevant law)

10. Please provide the exact questions the applicant submitted to the Ministry and the Ministry's answers, as included in the case file.

For the relevant information, see facts of the case.

11. Does the Valdoran national legislation provide procedural guarantees in criminal proceedings, such as access of the defence to all evidence against them and the possibility to comment on it, or the principle of free evaluation of evidence?

Yes, the defence has access to all evidence, provided the access is not prohibited for national security reasons. See facts of the case.

12. Did the court-appointed expert (paragraph 15) have full access to Orion's source code, training data and audit report?

Yes.

13. Was there any separate criminal investigation regarding applicant's allegations that she became a victim of an identity theft, and if so - when and with what results?

There was no separate criminal investigation/separate set of criminal proceedings in this regard.

14. On what legal and factual grounds were the Applicant's arrest and the opening of the investigation based, including whether any preliminary findings or outputs of the AI system Orion informed those decisions?

See facts of the case.



15. Was the investigation conducted in connection with the Applicant's Opengram account that had been hacked in 2012, and if so, how did the authorities evaluate the potential impact of that incident on the reliability of the digital evidence obtained?

There was no separate investigation in 2012. As for the current proceedings, the authorities assessed all information and data that was available to them. The incident was taken into consideration but no relevant links could be established to the facts of the case at hand.

16. On what grounds was access to the Applicant's own Opengram account restricted, and why did Opengram refuse to provide user data to the Applicant without citing any reasons, including whether such refusal was based on Valdoran law, a judicial decision, or the platform's internal policy?

See facts of the case.

17. Did the authorities that entered Ms Orwell's house and investigated her electronic devices act under a warrant issued by a national court, given that any information obtained from that search could later be used as evidence during the trial, if so, did the Supreme Court nonetheless declare her appeal inadmissible without considering the merits of her case?

Yes, there was a warrant.

18. Was the information that was not disclosed to the Applicant, provided to the Valdoran courts and to the independent expert from the Valdoran Academy of Sciences?

The expert appointed by the court and the courts of all instances had access to Orion's source code and training data.

19. Was the scammer claiming to be Ms Lyra Orwell herself, or was the scam carried out under the guise of a different individual?

Both.

20. In relation to para. 18: "The applicant's right to a fair trial had not been violated, as the applicant had been given an opportunity to present her case, propose expert witnesses, cross-examine the prosecution's witnesses, pose questions to the Ministry about Orion, review the answers, and refer to them in her defence". Could the Case Authors, please, clarify the substance of the Ministry's answers and the questions posed by the applicant? Most specifically, did the answers include concrete facts and data regarding the Orion system's operational effectiveness, as well as its false positive rates, and the methodology of the audit performed, or were they confined to non-specific and general answers?

All available information is included in the facts of the case.



21. In relation to para. 11, regarding the domestic Valdora Court: “The court denied the request on grounds of national security.” Could the case authors please provide the specific legal reasoning given by the domestic court for denying disclosure of the data and the application of the algorithm, and explain how it would harm national security in this case?

The reference was made to national security, without additional information.

22. Are there any rules, legal provisions or principles in the national legal order that restrict or guide the national judge’s discretion in assessing the evidence?

Judges are guided by the Constitution and the ECHR case-law.

23. Could you give us more information about paragraph 6 for the hacking incident? What did the hackers gain from this action?

No additional information is available as there was no investigation.

24. Provided documents do not include Opengram’s private policy, could you share Opengram’s private policy?

All relevant information is included in the facts of the case.

25. How did the police recover deleted files from the applicant’s devices when they arrested her and scanned her electronic devices on February 15, 2024?

Their forensic experts used forensic tools for digital evidence including those that are used for recovering deleted files.

26. What are the rules in the Valdoran Code of Criminal Procedure concerning the possibility of using private expert opinions as evidence? Especially should an opinion like that be approved by the court or the prosecutor or can it be freely added to the evidence?

See facts of the case.

27. We know the Applicant was not allowed access to Orion’s source code, audit report, or training data, but was the applicant able to see any of Orion’s text output used against her in her case (i.e. just the conclusions it drew and reasoning)?

Yes. The applicant could see the conclusions.



Part II: About Orion as an AI system, its audits, methodology, transparency framework, and general legal environment in Valdora

28. Is the invocation of national security applied on a case-by-case basis or does it operate under a predetermined and legally defined framework?

There is no comprehensive definition of national security in the domestic legislation.

29. Did Valdora choose to give domestic effect to the Framework Convention on AI through direct self-execution or did it implement the convention by adopting specific legislative or administrative measures as provided for in article 1(2) and article 3(1)(b) of the Convention?

Please see facts of the case.

30. What specific concerns are addressed in Orion's human rights due diligence and impact assessment?

The assessment is ongoing and the specific aspects addressed will become public once it is completed.

31. Considering Orion's approval in 2024 and the applicant's arrest on February 15, 2024, had the AI been used in other cybersecurity investigations before this case?

Orion was approved on 3 January 2024 and has been used in 20 other complex investigations, with the applicant's being the first case that has reached court stage.

32. Does Orion automatically generate conclusions, or are its outputs reviewed by human analysts before being submitted to court? Is this prescribed by the protocol?

Automatically.

33. Besides the positive identification on behalf of the three victims, what other independent evidence was presented and accepted by the court to fulfil the legal requirement that at least one other piece of evidence corroborates Orion AI system's findings?

Please see facts of the case.

34. Did the independent expert provide anything further, such as a quantitative assessment, a mooted range of probability, or specific scenarios under which a false positive from the Orion AI system might theoretically occur?

The court appointed expert had access to source code and training data and the statement was made in view of all the available information. The statement was made in general – no technology provides 100% perfect output all the time and, therefore, a false positive could not be excluded. The expert was not able to assess the probability of this happening.



35. Regarding the Valdoran Ministry of Public Administration and AI's confirmation (in §11) that the development and training of Orion "had fully complied with officially approved methodologies", are these "officially approved methodologies" publicly available, and are they the same as, derived from, or directly aligned with the current technical or legal standards for AI systems established by the European Union or other recognised international bodies?

Valdora is not an EU Member State. The methodologies are internal instructions of the Ministry of Public Administration and AI.

36. Could the authors of the case clarify whether Orion included ethical oversight mechanisms and human rights safeguards during its development, what those mechanisms were, and how were they overcome?

Orion was approved by the Ministry of Justice in 2024 after internal testing and certification which included general assessment on potential impact on human rights and obligations under the human rights treaties to which Valdora is a State Party. Ethical oversight mechanism was to be established following the first review which is currently ongoing.

37. Does the national legislation protecting Orion's source code and training materials, or its preparatory works, provide any substantive grounds or policy considerations for treating Orion's data as a matter of national security?

The reasoning is not publicly available information.

38. Ad para 13, what was Altair's report based on since it did not have access to Orion's full data and why was it chosen as an expert for Respondent?

Altair was chosen as it specialises in creating custom AI tools for the public and private sector and it based its report on explaining how relevantly similar AI tools function.

39. The case noted that the Valdoran government was doing a human rights impact assessment on Orion (as required by law), have either party seen this report and has it been concluded?

It is done every 3 years (please see facts of the case) and it is still ongoing.

40. What criteria is the Valdoran government using to conduct its human rights impact assessment on Orion?

It considers its general obligations under the human rights treaties to which Valdora is a State Party.