



The European Law Students' Association



Helga Pedersen
Moot Court Competition

CASE

Orwell vs. Valdora

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HELGA PEDERSEN

MOOT COURT COMPETITION



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ORWELL vs. VALDORA

Facts

1. The applicant, Ms Lyra Orwell, was born in 1987. She is a national of Valdora, a Council of Europe Member State, and lives in Meganissi, Valdora's capital. She holds a Master's degree in comparative linguistics. She used to work as a freelance interpreter.
2. For the past decade, the applicant has been sharing posts and reels focused on the study of language and the etymology of words. By the end of 2023, she had gained more than 80,000 followers across various social media platforms. The applicant explained complex linguistic matters in a simple and easily understandable language. She frequently engaged with her followers about word etymology and also commented on questions of importance for Valdoran society. She had no criminal record and was widely respected for her contribution to bringing language learning closer to students and the general public.
3. In recent years, Valdora has been deeply divided over the use of artificial intelligence (AI) in public administration, especially in criminal justice. While the government has argued that generative AI tools are crucial for modernising law enforcement, critics have warned that they lack transparency and could undermine the rule of law and protection of human rights in Valdora. On several occasions, the applicant publicly opposed the use of AI tools in criminal proceedings, calling them unreliable and dangerous.

Criminal proceedings against the applicant

4. In January 2024, the Valdoran news outlet "The Tribune" published an article about an extensive romance scam. The article speculated that the scam involved at least three Valdoran social media influencers who had emotionally and financially manipulated at least 50 victims, and defrauded them of more than EUR 1,000,000 over the past three years. According to "The Tribune", the scammers used multiple false identities and contacted their victims over various dating platforms or other social media. The scammers built trust with their victims by developing the illusion of a genuine online romantic relationship. They would send the victims their photographs, voice messages, and engaged in numerous telephone and video calls. Once they gained the victims' confidence, they persuaded them under various pretexts to send the scammers significant amounts of money (e.g. cash transfers, bank transfers, credit card payments, cryptocurrency, to cover the scammers' pretended medical emergencies or joint trips that never materialised).
5. The article was widely shared on social media - some social media users speculated about possible identities behind the scam accounts, and hinted that one of the three suspects was the applicant.
6. On 15 February 2024 the applicant was arrested at her house. The police seized her personal electronic devices, which were forensically analysed. The experts from the police unit on cybercrime and digital forensics did not find any scam-related communications or financial transactions from victims on the applicant's devices or her personal bank accounts. They found some deleted files that could potentially, but not conclusively, link the applicant's devices to some of the scam profiles.



They also found a wallet with digital currency worth around EUR 20,000, but were unable to directly link it to the scam. The applicant's Opengram profile (the most widely used social media platform in Valdora) had been hacked in the past. The police established that hackers had gained control over the applicant's profile for one week in 2012. However, the police did not find any conclusive connection between the applicant's profile and the scam.

7. Valdora's Cybercrime Authority, following the Meganissi District Court's approval, relied on the AI system Orion (see below) in the proceedings against the applicant. Orion found that at least three scam profiles had been used by the applicant. According to Orion's analysis, the profiles used in the scam matched the applicant's online behaviour with 96.4% accuracy. The system highlighted the scam profiles' close resemblance to the applicant's writing style, time-of-day activity, emoji usage, and phrasing patterns (referring to the applicant's social media accounts, articles, and her publicly available interviews). As there was no evidence pointing to any other individuals, the investigation focused solely on the applicant.

8. The applicant denied all allegations and claimed that she was the victim of an AI-enabled identity theft. She argued that someone with access to sophisticated generative AI tools could have cloned her writing style, face, and voice, using large volumes of data from her public posts and videos. She contended that Orion's conclusions lacked hard evidence that would directly link her to the scam. There were no scam-related communications or financial transactions from the victims on her devices or personal bank accounts.

9. In the course of the investigation, the Valdoran prosecutor requested Opengram to share user data in respect of all scam profiles and all of the applicant's accounts. Opengram refused the request, citing privacy reasons. The applicant's own request to Opengram was refused without citing any reason.

10. On 11 March 2024, the applicant was formally charged under Articles 232 (aggravated fraud), 244 (abuse of telecommunications for criminal purposes), and 261 (identity theft) of the Valdoran Criminal Code.

11. The applicant requested the Meganissi District Court to order the Valdoran Ministry of Public Administration and Artificial Intelligence to grant her access to Orion's source code, training data, and audit report, arguing these were necessary to verify the reliability of Orion's conclusions. The court denied the request on grounds of national security. The defence was, however, permitted to formulate written questions to the Ministry. The court forwarded these questions to the Ministry and the answers were included in the case file. The Ministry confirmed that the development and training of Orion had fully complied with officially approved methodologies.

12. The prosecution submitted additional evidence, such as interviews with three victims (A, B, and C). The victims provided multiple photographs of the applicant and voice messages allegedly received from her, relied on a number of phone and video calls allegedly with the applicant in the relevant period, and identified the applicant as the individual who defrauded them of EUR 30,000 in total. The victims introduced a formal claim in the criminal proceedings for EUR 25,000, EUR 3,000, and EUR 2,000 respectively. The applicant argued that the photographs had been stolen from her public social media profiles, and that the scammers must have created deepfakes of her voice and image to communicate with the victims through telephone and video calls.



The expert witness called by the prosecution analysed the photographs and voice messages the scammer sent to the victims, and compared them with the applicant's voice and facial features. The expert's findings were inconclusive.

13. The prosecution relied heavily on Orion's analysis and called an expert from the private company Altair, which specialises in creating custom AI tools for the public and private sector. The expert confirmed the reliability of Orion's findings. The defence was provided with the expert's report and was able to cross-examine him. The defence argued that the expert's testimony was not objective because the expert did not have full access to Orion's findings, its source code, training data, and audit report. In any case, it was in the interest of a company like Altair to promote reliability and further use of AI tools such as Orion. According to the defence, reliance on this expert's evidence undermined the fairness of the criminal proceedings against the applicant.

14. The court also heard Ms. S, an expert called by the applicant. Ms. S was an AI ethicist from the Valdoran Technical University specialising in ethical considerations involving development and use of AI tools. She testified that she could not give a full opinion on Orion as she did not have access to Orion's source code, training data, and audit report. In her opinion, the answers provided by the Ministry could not replace direct access to Orion's data. She also testified that modern deepfake images and videos are becoming more and more undetectable even for trained experts.

15. The court also appointed an independent expert from the Valdoran Academy of Sciences who testified that while Orion had proven to be a reliable AI tool, a false positive could theoretically not be excluded. The expert was unable to conclude whether the voice messages were authentic or not. As there was no recording of the actual telephone and video calls between the victims and the scammer, the expert was unable to examine them. The expert appointed by the court and the courts of all instances had access to Orion's source code and training data.

16. On 15 October 2024, the Meganissi District Court found the applicant guilty as charged, and sentenced her to four years and three months' imprisonment. The applicant was ordered to repay EUR 30,000 to victims A, B, and C to fully compensate them for the pecuniary damage caused. The court held that while it had not been possible to find any evidence of the applicant's involvement in the scam on her electronic devices, the strength of the AI evidence combined with the positive identification by three victims sufficed to prove guilt beyond reasonable doubt. The court dismissed concerns over the use of Orion, stating the defence had not provided credible evidence to rebut Orion's conclusions. It also ruled that there was no concrete indication that the applicant herself was the victim of identity theft.

17. The applicant appealed, arguing that the first-instance court had violated her rights under Article 6(1) and 6(3)(b) of the European Convention on Human Rights (the Convention).

18. On 20 January 2025, the Meganissi Court of Appeal upheld the applicant's conviction. It concluded that the first-instance court had not erred by relying on a duly certified AI system. On the contrary, such approach was permissible under the national law and there were no serious doubts about Orion's reliability. The court noted that the applicant had failed to demonstrate specific flaws in Orion's methodology in her case. The applicant's general concerns about Orion's reliability could not override the concrete forensic findings that had "consistently assisted in resolving complex cybercrime."



The court concluded by emphasising that traditional forensic tools were insufficient to combat modern types of cybercrime, and that sophisticated tools, such as Orion, were absolutely indispensable. 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.

19. On 1 February 2025, the applicant submitted a human-rights appeal to the Supreme Court of Valdora. She complained that her right to a fair trial, the principle of equality of arms, and the right to prepare her defence had been violated in the criminal proceedings against her (Article 6(1) and 6(3)(b) of the Convention). On 29 June 2025, the Supreme Court declared the appeal inadmissible. The Supreme Court concluded that the lower courts had properly applied domestic law. There was no indication of any violation of the applicant's human rights.

20. On 6 August 2025, the applicant lodged an application before the European Court of Human Rights, alleging violations of Article 6(1) and 6(3)(b) of the Convention. She argued that her conviction was based on inaccessible and unchallengeable evidence generated by a non-transparent AI system. She also alleged that she was unable to prepare an effective defence.

Law

21. Valdora is a Council of Europe Member State. It is not a Member State of the European Union. It has ratified all major Council of Europe and United Nations human rights treaties and all additional protocols to the Convention. It has signed the 2024 Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law.

22. All rights guaranteed by the Convention and its Protocols have their equivalent in the Valdoran Constitution.

Criminal Code and Code of Criminal Procedure

23. Article 232 (Fraud and Aggravated Fraud) provides:

(1) A person who, with intent to unlawfully obtain a financial or other material benefit, deceives another by false representation or by concealing facts, thereby causing that person a financial loss, shall be guilty of fraud. [...]

(2) Where a fraud is committed within the meaning of paragraph (1) above:

- (a) through the use of digital or telecommunications technologies; or
- (b) against multiple victims; [...]

it shall be considered an aggravated fraud and be punishable by imprisonment of 4 up to 8 years.

24. Article 244 (Abuse of Telecommunications for Criminal Purposes) provides:

(1) Whoever utilises telecommunications systems, including but not limited to the internet and social media platforms, for the purpose of facilitating, committing, or concealing a criminal offence shall be guilty of the offense of abuse of telecommunications for criminal purposes.

(2) The offence is punishable by imprisonment of up to 2 years and/or a fine of up to EUR 10,000.



25. Article 261 defines identity theft as a use or manipulation of another person's identity for the purpose of deception, fraud, or reputational harm. This includes creating or using synthetic identities, including those generated or enhanced by AI tools. The offence is punishable by imprisonment of up to 6 years and/or a fine of up to EUR 50,000.

26. Article 278 (Use of Artificial Intelligence in Criminal Proceedings) provides:

(1) "Artificial intelligence system" means a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations or decisions that may influence physical or virtual environments.

(2) The law enforcement authorities may use an artificial intelligence system provided that:

- (a) it is duly registered in the national register of artificial intelligence tools used in the public sector;
- (b) it has been approved by the Ministry of Justice following a technical and legal audit;
- (c) its use in the particular criminal proceedings is authorised by a competent court;
- (d) the competent court shall ensure fairness and transparency of the criminal proceedings respecting the defendants' human rights.

(3) The defendant has the right to be informed of the use of evidence generated by artificial intelligence in the proceedings against them, provided such information is not protected under the national security laws or similar restriction regimes.

27. Article 279 (Expert Evidence and Equality of Arms):

- (1) Both the prosecution and the defence shall have the right to present expert evidence.
- (2) The court shall not refuse expert testimony unless it is manifestly irrelevant, redundant, or intended to delay proceedings.
- (3) The court has the discretionary power to appoint an expert either *ex officio* or upon express request of a party.

28. Article 335 (Sentencing):

Where a person is convicted of two or more criminal offences arising from the same or closely connected conduct, the court will impose only one sentence, reflecting the overall seriousness of the offence. The sanction shall not exceed the highest sanction for the most serious offence, increased by up to one-third.

1. Article 340 (Reparations to Victims of Criminal Offences) states:

Provided that victims of a criminal offence make a specific compensation claim in the context of the criminal proceedings, the criminal court shall have the authority to order the convicted person to fully or partially compensate the victims for any pecuniary and non-pecuniary damage caused by the convicted person.

Court system

2. The district courts have jurisdiction to hear criminal cases at first instance. Both the defendant and the prosecution can submit appeals. Appeals must be filed with the competent court of appeal within 30 calendar days from the date when the decision was served on the respective party to the proceedings.



3. The defendant and the prosecution may challenge decisions of courts of appeal within 30 calendar days and bring a human-rights appeal before the Supreme Court. However, the Supreme Court will only hear cases that represent *prima facie* violation of human rights or issues fundamental to the rule of law or general protection of human rights in Valdora. The assessment as to whether the Supreme Court has competence to review individual cases is exclusively with the Supreme Court. Its decisions on admissibility and/or merits are final and not subject to any further challenge. Valdora does not have a constitutional court.

Orion

4. Orion is a forensic AI system within the meaning of Article 278 of the Valdoran Criminal Code. It was developed by the Valdoran Ministry of Public Administration and Artificial Intelligence under the oversight of the Valdoran Ministry of Justice. It was designed to assist in cybercrime investigations by analysing how individuals behave and interact online. Orion's analysis includes typing speed, language patterns, emoji use, sentence structure, time-of-day activity, and metadata. 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.
5. It is registered in the national register of AI tools used in the public sector. Orion is not open source, and its source code and training data are protected under the national security legislation. Use of Orion in criminal proceedings must be authorised by a court, and its results must be corroborated by at least another piece of evidence. Orion was approved on the 3rd of January 2024 and has been used in 20 other complex investigations, with the applicant's being the first case that has reached court stage.
6. A human rights due diligence and impact assessment of Orion is required every three years. The first review was ongoing at the time of the present proceedings before the European Court of Human Rights. An ethical oversight mechanism was to be established following the first review.