

ARTIFICIAL INTELLIGENCE AND THE TRANSFORMATION OF EVIDENCE IN EU ASYLUM PROCEDURES: TOWARDS A NEW EVIDENTIARY PARADIGM?

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ABSTRACT

The increasing use of artificial intelligence and other digital technologies in asylum procedures raises a fundamental question: how does the introduction of technologically mediated evidence affect the way evidentiary uncertainty is allocated and managed within the individual assessment of an asylum claim? This article examines this question by focusing on technologies capable of producing, extracting or interpreting individualised information, including automated language analysis and the extraction of data from electronic devices. It argues that their significance does not lie merely in expanding the evidentiary resources available to the determining authority. Rather, technological outputs may acquire particular epistemic weight in the assessment of individual claims and thereby alter the practical conditions in which evidentiary uncertainty is evaluated. An automated output may become a benchmark against which the applicant's account is assessed, even where the relationship between the technical finding and the legally relevant fact remains uncertain. As a result, the practical space in which the determining authority may resort to the benefit of the doubt may be narrowed, without any corresponding formal change to the applicable evidentiary rules. The article examines the implications of this shift for procedural fairness and argues for safeguards capable of preserving individualised assessment, adversarial participation, meaningful human assessment and effective judicial protection.

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1. Introduction

The use of artificial intelligence (AI) and other advanced technologies in asylum procedures is steadily expanding across Europe¹. Although their deployment remains fragmented and varies considerably among Member States², technological systems are increasingly being integrated into different stages of the determination of applications for international

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¹ S. MARINAI, *Il rafforzamento del controllo digitale nel nuovo Patto sulla migrazione e l'asilo*, ne *I Post di AISDUE*, Focus “La proposta di Patto su immigrazione e asilo”, n.8, 11 dicembre 2020, pp.1-22; F. BIONDI DAL MONTE, et al., *Migrazioni e governance digitale : persone e dati alle frontiere dell'Europa*, Carocci, Roma, 2024.

² C. DUMBRAVA, *Artificial intelligence in asylum procedures in the EU*, Briefing, European Parliament Research Service, 07 July 2025.

protection³. Their functions range from the extraction and analysis of data stored on applicants' mobile devices to the identification of linguistic characteristics, the organisation and allocation of cases, and the processing of large amounts of information relevant to individual applications⁴.

The introduction of these systems should not, however, be understood merely as a process of administrative digitalisation⁵. The use of technology within asylum procedures may have consequences that extend beyond efficiency, administrative capacity or the automation of pre-existing tasks⁶. In particular, where technological systems participate in the acquisition, generation or assessment of information relevant to the determination of an application, they may affect the procedural architecture through which the right to asylum and international protection is accessed.

This dimension is particularly significant because substantive and procedural rights are closely interconnected⁷. Procedural rules do not merely regulate the administrative organisation of asylum systems; they establish the conditions under which individuals may effectively invoke, substantiate and obtain protection⁸. The rules governing the assessment of facts and circumstances consequently perform a constitutive function in the determination of refugee status⁹. Changes in the evidentiary process may therefore affect not only the efficiency of decision-making but also the practical conditions under which international protection can be granted or refused.

This contribution argues that the introduction of technological systems capable of generating or producing evidentiary material during the assessment of facts and circumstances may contribute to a transformation of the procedural structure traditionally governing asylum adjudication. The novelty does not lie simply in the determining authority's ability to obtain or produce additional information. Such activities already form part of conventional fact-finding, including through country-of-origin information, expert assessments and other investigative means.

Rather, technological systems may enhance the authority's capacity to generate individualised evidentiary outputs, or to mediate the interpretation of information associated with the applicant, in ways that may acquire particular epistemic authority within the assessment of the individual claim. This development may affect the allocation of evidentiary uncertainty between the applicant and the determining authority and the

³ D. OZKUL, *Automating Immigration and Asylum: The Uses of New Technologies in Migration and Asylum Governance in Europe*, Oxford Refugee Studies Centre, 23 January 2023.

⁴ D. OZKUL, *Ibid.*, 2023.

⁵ N. VAVOULA, *Artificial Intelligence (AI) at Schengen Borders: Automated Processing, Algorithmic Profiling and Facial Recognition in the Era of Techno-Solutionism*. In *European Journal of Migration and Law*, n. 4, 2021, pp. 457–84.

⁶ P. MOLNAR, *New Technologies in Migration: Human Rights Impacts*, in *Forced Migration Review*, n. 61, 2019.

⁷ M. RENEMAN, *EU Asylum Procedures and the Right to an Effective Remedy*, Modern Studies in European Law, Hart, 2014.

⁸ G. SANTOMAURO, *Il diritto di asilo tra sostanza e procedura. Fondamenti costituzionali, sviluppi interpretativi e sfide applicative*, Editoriale Scientifica, Napoli, 2025.

⁹ G. NOLL, *Evidentiary Assessment in Refugee Status Determination and the EU Qualification Directive*, in *European Public Law*, n. 12, 2006, pp. 295–317.

practical operation of the benefit of the doubt¹⁰.

The relevant legal question is therefore not only whether such systems are accurate, reliable or compliant with technology-specific regulation¹¹. It also concerns the procedural function of their outputs: how they contribute to the construction of factual propositions, how those propositions are assessed, and what evidentiary weight they are ultimately attributed¹².

The central hypothesis of this article is that technology may contribute to the emergence of a new evidentiary paradigm in which the determining authority acquires an enhanced capacity to generate individualised technological outputs or process applicant-provided information through automated systems. These outputs may be used to corroborate, qualify or challenge the applicant's account and may consequently affect the practical conditions under which uncertainty is managed¹³.

The contribution proceeds in four steps.

First, it considers concrete examples of technological systems currently deployed or developed in the European asylum context and examines their procedural function. Secondly, it reconstructs the legal framework governing the assessment of facts and circumstances, with particular attention to the distribution of evidentiary responsibilities and the benefit of the doubt. Thirdly, it examines how technologically mediated evidence may affect this procedural architecture and contribute to the emergence of a different evidentiary paradigm. Finally, it considers possible legal responses capable of mitigating the increased procedural asymmetry generated by technological evidence, particularly through principles of equality of arms, adversarial procedure, good administration and effective judicial protection¹⁴.

The argument is not that AI is inherently incompatible with asylum adjudication, nor that technologically generated information should necessarily be excluded¹⁵. Rather, its introduction cannot be assessed exclusively from the perspective of technical reliability or technology-specific regulation. Its legal significance must also be examined in light of the procedural structure within which technological outputs acquire evidentiary relevance.

2. Technologically Mediated Evidence in European Union Asylum Procedures: Emerging Practices from Member States

¹⁰ G. NOLL, "Credibility, Reliability and Evidential Assessment", in C. COSTELLO, *The Oxford Handbook of International Refugee Law*, 2021.

¹¹ L. S. STEWART, "The Regulation of AI-based Migration Technologies under the EU AI Act: (Still) Operating in the Shadows?", in *European Law Journal*, n. 2, 2024.

¹² F. A. WESTERLING, *Technology-Related Risks to the Right to Asylum: Epistemic Vulnerability Production in Automated Credibility Assessment*, in *European Journal of Law and Technology*, n. 3, 2022, pp. 1–28.

¹³ M. HERTZ, W. HAMILTON BYRNE, T. GAMMELTOFT-HANSEN, *What "Real Risk" Means For AI-Assisted Refugee Status Determination*, in *Verfassungsblog*, 2025.

¹⁴ F. PALMIOTTO, *Procedural Fairness in Automated Asylum Procedures*, in *Computer Law and Security Review*, n. 55, 2024.

¹⁵ C. AMADDEO, *Il Possibile Uso Dell'intelligenza Artificiale Nell'esame Delle Domande Di Asilo*, in *Diritto, Immigrazione e Cittadinanza*, n. 1, 2025, pp. 1–18.

The deployment of AI and advanced technologies within European asylum systems remains fragmented and opaque¹⁶. Member States have adopted different technological strategies, reflecting variations in administrative capacity, national legal frameworks and the degree of digitalisation of asylum procedures¹⁷. Nevertheless, the technologies currently employed reveal a common tendency: an increasing use of computational systems to generate, identify or process information relevant to the factual assessment of individual applications.

The technologies considered in this contribution do not necessarily belong to a single technical or regulatory category. They include AI-based systems, automated processing tools and other digital technologies capable of producing, extracting or interpreting information relevant to the assessment of an asylum application. Their common feature is therefore not necessarily their classification as artificial intelligence under the relevant legal framework¹⁸, but the evidentiary function that their outputs may perform within the procedure.

Examples include systems designed to extract and analyse data from applicants' mobile devices, as well as automated language and dialect recognition technologies intended to identify linguistic characteristics associated with particular geographical areas. Although these systems perform different technical functions, they share an important procedural characteristic: their output may become relevant to the establishment of facts underlying an application for international protection¹⁹.

Automated language recognition provides a particularly illustrative example.

In 2022 the European Union Asylum Agency reported that seven EU Member States (Austria, Germany, the Netherlands, Romania, Denmark, Sweden and Finland) had used language analysis tools for the purpose of assessing asylum applicants' countries of origin and six other Member States (Croatia, Greece, Malta, Polonia, Portugal and Slovakia) were considering introducing such tools in their asylum systems²⁰. In such systems, an applicant may be asked to describe an image or engage in a structured linguistic exercise during the asylum interview. The speech is recorded and subsequently processed through an automated system designed to identify linguistic or phonetic characteristics. The system produces a report indicating the extent to which particular linguistic features are associated with different languages, dialects or geographical areas. The report may then be used by the

¹⁶ D. CURTIN, T. FIA, *Cracking AI secrecy: (beyond) EU migration law and governance*, in *European Law Open*, Cambridge University Press, 2025; D. CURTIN, L. STEWART, *Technology Multiplies Secrecy. The transparency gap in EU Migration and Asylum Governance*, in *Verfassungsblog*, 2.12.2025.

¹⁷ About the differences among Member States, see: M. P. BOLHUIS, and J. VAN WIJK, *Seeking Asylum in the Digital Era: Social-Media and Mobile-Device Vetting in Asylum Procedures in Five European Countries*, in *Journal of Refugee Studies*, n. 2, 2021, pp. 1595–1617; A. ADENSAMER, L. JUNG, *Navigating Technologies in Asylum Procedures in Austria*, in *Verfassungsblog*, 5.12.2025;

¹⁸ L. S. STEWART, *Op. Cit.*, 2024, pp. 122-135.

¹⁹ W. HAMILTON BYRNE, T. GAMMELTOFT-HANSEN, *Digital Evidence in Refugee Status Determination*, in *AJIL Unbound*, n. 118, 2024, pp. 62-64.

²⁰ EUAA, *Study on Language Assessment for Determination of Origin*, Executive Summary, September 2022.

determining authority as information relevant to the assessment of the applicant's claimed country or region of origin²¹. Nevertheless, this distinction should not obscure its procedural significance. Country of origin constitutes a material factual element in the determination of an application for international protection. The assessment of the claim requires the authority to determine the country or countries in relation to which the risk of persecution or serious harm must be assessed. Information capable of corroborating or contradicting an applicant's claimed origin may therefore have substantial consequences for the outcome of the procedure.

A similar dynamic may arise from the extraction of information contained in mobile devices. Data concerning communications, geographical locations, photographs or contacts may be processed in order to identify information relevant to an applicant's identity, travel route, social relationships or personal history²². Once incorporated into the case file, such information may become part of the evidentiary material against which the applicant's statements are assessed.

The two examples are technically and legally distinct: language analysis generates inferences concerning linguistic or geographical characteristics, while mobile-device extraction primarily acquires and processes digital information. Their connection lies instead in their potential to generate or mediate information entering the factual assessment of an individual application.

The relevant analytical distinction is therefore not between technologies that “decide” and technologies that do not. It is between technologies that merely support the administration of the procedure and technologies whose outputs enter the process through which the decision-maker establishes or assesses facts relevant to the legal determination, often defined as “decision-support systems”²³ or, more recently, “automated evidence”²⁴.

Thus, the procedural significance of automated evidence cannot be assessed solely at the level of decision-making automation²⁵. It must also be considered at the earlier stage at which information is produced and incorporated into the evidentiary record.

²¹ On the critics of this tool and to the purpose of identifying country of origin and not the country of socialization, see: K. Wilson and P. FOULKES, ‘14. Borders, Variation and Identity: Language Analysis for the Determination of Origin (LADO)’, in *Language, Borders and Identity*, by Dominic Watt and Carmen Llamas Edinburgh University Press, 2014; Y. MATRAS, ‘Language Analysis for the Determination of Origin: A Conflict of Paradigms and Its Resolution through New Protocols’, in *The Oxford Handbook of Language and Prejudice*, edited by Jane Setter et al., Oxford University Press, 2025.

²² F. PALMIOTTO, D. OZKUL, ‘Like Handing My Whole Life Over’. *The German Federal Administrative Court's Landmark Ruling on Mobile Phone Data Extraction in Asylum Procedures*, in *Verfassungsblog*, 28.2.2023.

²³ See among others: J. SCHUBERT, *Artificial Intelligence for Decision Support in Command and Control Systems*, in the *23rd International Command and Control Research & Technology Symposium Multi-Domain C2*, n. 15, 2019; M. Janssen et al., *Will Algorithms Blind People? The Effect of Explainable AI and Decision-Makers' Experience on AI-Supported Decision-Making in Government*, in *Social Science Computer Review*, n. 4, 2022, pp. 478-493.

²⁴ F. PALMIOTTO, *When Is a Decision Automated? A Taxonomy for a Fundamental Rights Analysis*, in *German Law Journal*, n. 3, 2024, pp. 210-336.

²⁵ F. PALMIOTTO, *Ibid*, 2024.

3. The assessment of facts and circumstances in EU Asylum Law: the legal management of uncertainty

The assessment of facts and circumstances occupies a distinctive position within the legal architecture of asylum procedures. Unlike many other forms of administrative decision-making, the determination of an application for international protection frequently depends upon facts that are difficult to corroborate through conventional documentary evidence.

Applicants may have fled their countries in circumstances that made it impossible to obtain or preserve documentation. Relevant events may have occurred in contexts in which official records were unavailable or inaccessible. Experiences of persecution, violence, trafficking, other forms of harm, as well as elements concerning personal identity or background²⁶, may depend primarily upon the applicant's own account²⁷. Linguistic, cultural and psychological circumstances may further affect an applicant's ability to provide a complete or immediately coherent account.

The evidentiary conditions of asylum adjudication are therefore structurally characterised by uncertainty. This does not mean that asylum decisions are based on an undefined or subjective threshold of "credibility"²⁸. Rather, EU asylum law recognises that relevant facts may not always be capable of being established through direct or documentary evidence and provides a legal framework for assessing available information and managing residual uncertainty.

Under the former Article 4 of the Qualification Directive²⁹ and, following the reform of the Common European Asylum System, Article 4 of the Qualification Regulation³⁰, applicants are required to submit the elements available to them which substantiate their applications. At the same time, the determining authority plays an active role in the assessment of those elements since the law foresees that "in cooperation with the applicant, it is the duty of the Member State to assess the relevant elements of the

²⁶ G. NOLL, *Op. Cit.*, 2021; M. BALBONI, *Protezione internazionale in ragione del genere, dell'orientamento sessuale e dell'identità di genere aspetti di diritto internazionale e dell'Unione Europea*, Giappichelli, Torino, 2012.

²⁷ B. SORGONI, «Because I Said the Truth, the Judge Didn't Believe Me». *Translation and Evidence in Asylum Procedures*, in *Ragion Pratica*, n. 1, 2023, pp. 71–83.

²⁸ Among others, see: JARLNER, A. S. S., HERTZ, M. E., HEYL, M. A., GAMMELTOFT-HANSEN, T., & BYRNE, W. H., *Credibility as a fuzzy concept in refugee law: a systematic literature review*, in *Journal of Ethnic and Migration Studies*, n. 11, 2026, pp. 2717–2747.

²⁹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

³⁰ Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council

application”³¹.

This framework corresponds fully neither to the adversarial model of civil litigation nor to the allocation of evidentiary responsibility characteristic of criminal proceedings. Asylum adjudication instead distributes evidentiary responsibilities between applicant and authority within a framework of cooperation³². The applicant is not relieved of the obligation to provide the information and elements available to substantiate the claim. At the same time, the determining authority cannot remain passive and require the applicant to provide complete proof of every relevant fact. As recalled by the Court of Justice³³, the authority is institutionally better positioned to obtain certain forms of information and must participate actively in the assessment of the circumstances underlying the application.

For this reason, asylum procedures have frequently been described as *sui generis* or double hybrid³⁴. Evidentiary responsibilities are distributed between the applicant and the determining authority within a framework of cooperation. The applicant must provide the elements available to them and explain the basis of the claim, while the authority retains an active responsibility to assess the relevant circumstances and, where necessary, obtain or examine additional information. This principle is not merely an organisational rule concerning the conduct of administrative proceedings. It reflects the recognition that asylum applicants frequently occupy a structurally disadvantaged position in relation to evidence.

The allocation of evidentiary responsibilities is complemented by the principle commonly referred to as the benefit of the doubt. Under the relevant provisions of EU asylum law, certain elements of an applicant’s statements may be accepted even in the absence of documentary or other supporting evidence where specified conditions are fulfilled. These conditions concern, inter alia, the applicant’s genuine effort to substantiate the application, the submission of available information, the provision of explanations concerning missing evidence, the coherence and plausibility of the account and the applicant’s general credibility³⁵.

The benefit of the doubt therefore represents a legal mechanism for managing uncertainty. Its purpose is not to establish a general presumption that all uncorroborated statements must be accepted. Rather, it recognises that the inability to provide documentary proof does not necessarily imply that an account is unreliable. Where the relevant legal conditions are satisfied, the remaining uncertainty cannot automatically be

³¹ Art. 4, par. 1, Directive 2011/95/EU. On the differences of the formulation between Article 4 of the Directive 2011/95/EU and Article 4 of the Regulation (EU) 2024/1347 see: S. AMADEO, *Il regolamento 2024/1347 e la nuova disciplina delle qualifiche di protezione internazionale*, in *Quaderni AISDUE, Il futuro del diritto e della politica migratoria europea: il Nuovo Patto e oltre*, Fascicolo speciale n.4, 2024.

³² G. NOLL, “Salvation by the grace of State? Explaining credibility assessment in the asylum procedure”, in G. NOLL, *Proof, Evidentiary Assessment and Credibility in Asylum Procedures*, The Raoul Wallenberg Institute Human Rights Library, n.16, 2005.

³³ Judgment of the Court of Justice of the European Union, 22 November 2012, M.M., Case C-277/11, EU:C:2012:744, paragraphs 65 and 66.

³⁴ G. NOLL, *Proof, Evidentiary Assessment and Credibility in Asylum Procedures*, 2005.

³⁵ Article 4, par. 5, Qualification Directive; Article 4, par. 5, Qualification Regulation.

resolved against the applicant³⁶.

This principle is particularly important for understanding the potential procedural consequences of automated evidence. The question is therefore what happens when technological systems enable determining authorities to generate information precisely in relation to factual matters that might otherwise remain uncertain.

4. From Uncertainty to Automated Evidence: The Emergence of a New Evidentiary Paradigm?

The introduction of technologically mediated evidence has to be examined against the legal framework governing the assessment of facts and circumstances in asylum procedures. The central question is not simply whether determining authorities may use technological outputs, but how the production and use of such outputs may affect the distribution of evidentiary responsibilities and the legal management of uncertainty³⁷.

According to the specific structure of the asylum procedure, determining authorities are entitled to acquire and assess relevant information necessary for the examination of an application. Therefore, technological outputs may, in principle, be introduced into the assessment - provided that their acquisition and use comply with the applicable legal framework, including data protection rules, procedural guarantees and, where applicable, the requirements established by the EU AI Act³⁸. Formal compatibility, however, does not resolve the question of procedural function. The relevant issue is how technological outputs operate within the evidentiary reasoning of the determining authority. Their significance is primarily epistemic: they provide information intended to assist in establishing facts that might otherwise be difficult to verify. The production of a technological output involves at least three analytically distinct questions. The first concerns the technical reliability of the system and the accuracy or consistency of its operation. The second concerns the validity of the inference drawn from the resulting information. The third concerns the legal evidentiary weight that the determining authority may legitimately attribute to that information in the context of the individual application. These questions should not be conflated. The production of a technically reliable output does not, in itself, establish the validity of the inference drawn from that output, nor does it determine the weight that the output should receive in the legal assessment.

In the case of automated language recognition, for example, the absence of such a system would ordinarily require uncertainty concerning an applicant's linguistic background

³⁶ L. MINNITI, *La Valutazione Di Credibilità Come Strumento Di Valutazione Della Prova Dichiarativa. Ragioni e Conseguenze*, in *Questione Giustizia*, n. 3, 2020, pp. 22–42.

³⁷ See: M. HERTZ, W. HAMILTON BYRNE, T. GAMMELTOFT-HANSEN, *Op. cit.*, 2025.

³⁸ For a specific analysis of this aspect, see: E. BROUWER, *EU's AI Act and Migration Control. Shortcomings in Safeguarding Fundamental Rights*, in *Verfassungsblog*, 12 December 2024; L. S. STEWART, *The Regulation of AI-based Migration Technologies under the EU AI Act: (Still) Operating in the Shadows?*, in *European Law Journal* 30, 2024, pp. 122–35.

to be addressed through the ordinary instruments of asylum fact-finding. The determining authority could conduct a more detailed interview, ask additional questions concerning the applicant's background and personal history, consult country-of-origin information or, where appropriate, seek an expert assessment. The assessment would remain embedded within the cooperative relationship between the applicant and the authority.

The introduction of technology with this specific purpose changes this process. Instead of obtaining additional information primarily through interaction with the applicant, the authority can generate a technological assessment. The system transforms speech into a structured report. The report can subsequently be compared with the applicant's statements and used as information capable of supporting or challenging them. Technological systems may nevertheless enable the authority to move from a situation in which uncertainty would be addressed through further cooperation and investigation to one in which uncertainty is transformed into a structured evidentiary proposition. This may have significant consequences because technological outputs can acquire a particular form of epistemic authority. They may be perceived as objective, scientific or neutral, particularly when presented in a structured report or numerical result³⁹. Yet the existence of an apparently objective technological finding does not determine its legal significance⁴⁰, nor does it have greater evidentiary weight than its content and limitations justify. Traditionally, uncorroborated statements were assessed through the applicable credibility criteria and, where appropriate, the benefit of the doubt. Instead, the availability of automated evidence may affect the practical conditions in which such an assessment takes place⁴¹. An automated output may become a benchmark against which the applicant's account is evaluated, even where the relationship between the technical finding and the relevant legal fact remains uncertain. In such circumstances, the application of the benefit of the doubt may require an explicit choice by the determining authority; yet the availability of an additional evidentiary element may reduce the practical space in which that choice is made.

The existence of this new element may subsequently create discrepancies that the applicant is required to explain – if and when asked⁴². The formal burden of proof may remain unchanged, but the practical burden can shift. The applicant is no longer merely required to substantiate their own account. They may also be required to respond to, contextualise or rebut information autonomously produced by the authority through technological means, adding a layer of complexity for the applicant.

This development increases the asymmetry between the parties. The problem is therefore the allocation of uncertainty: if the State possesses enhanced technological capacity to

³⁹ D. OZKUL, *Constructed objectivity in asylum decision-making through new technologies*, in *Journal of Ethnic and Migration Studies*, n. 51, 2025, pp. 3629-3648.

⁴⁰ D. OZKUL, *Ibid.*

⁴¹ M. HERTZ, W. HAMILTON BYRNE, T. GAMMELTOFT-HANSEN, *What "Real Risk" Means For AI-Assisted Refugee Status Determination*, *Verfassungsblog*, 2025.

⁴² F. PALMIOTTO, D. OZKUL, *"Like Handing My Whole Life Over" The German Federal Administrative Court's Landmark Ruling on Mobile Phone Data Extraction in Asylum Procedures*, in *Verfassungsblog*, 28 February 2023.

transform uncertainty into structured evidentiary propositions, while the applicant remains unable to access the underlying system, assess its methodology or obtain equivalent evidence, the procedural equilibrium may be altered.

This concern is reinforced by developments in the broader regulatory framework of asylum procedures. The New Pact on Migration and Asylum⁴³ places considerable emphasis on the obligation of applicants to cooperate with determining authorities. Applicants are expected to provide available information, remain accessible to the competent authorities and comply with procedural obligations throughout the examination of their claims⁴⁴.

The increasing importance attributed to cooperation creates an additional point of tension where technology is used to obtain information directly from applicants or their devices. Where applicants are required to provide access to information stored on mobile devices, the boundary between cooperation in substantiating an application and the obligation to provide access to personal items becomes debatable⁴⁵. The concern is not that the principle of cooperation necessarily becomes inquisitorial. Rather, its practical meaning may change. A procedural principle originally structured around the contribution of applicant and authority to the establishment of relevant facts may operate in an environment in which the State possesses increasingly sophisticated instruments for extracting information, generating evidentiary propositions and testing the applicant's account.

This is the sense in which automated evidence may contribute to a new evidentiary paradigm. The novelty does not lie merely in the use of technologically sophisticated evidence. It lies in the possibility that the determining authority can autonomously generate new evidentiary material concerning factual questions that might previously have remained within the domain of further interaction, investigation or residual uncertainty.

The benefit of the doubt may consequently remain formally intact while its practical field of operation becomes narrower. The relevant risk is therefore not only that technological practices may weaken existing procedural safeguards without any corresponding legal reform, but also that they may reconfigure the factual and epistemic conditions under which those safeguards operate, potentially undermining their protective function in EU asylum law.

⁴³ Among others, see: M. BORRACCETTI, 'Alcune possibili criticità nell'attuazione del nuovo Patto europeo sull'immigrazione e l'asilo', in *Strengthening the European Union through the European Citizenship and the Rule of Law*, Napoli, Editoriale Scientifica, 2024, pp. 175-193; G. MORGESE, 'Il futuro del diritto e della politica migratoria europea: il Nuovo Patto e oltre', Rivista "Quaderni AISDUE", fascicolo speciale n. 4/2024.

⁴⁴ See Article 4 of Qualification Regulation and see: S. AMADEO, *Op. Cit.*, 2025.

⁴⁵ See Article 9, paragraph 5, and Preamble point. 22, Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU. E. VALENTINI, *L'ispezione per finalità identificative dello smartphone in uso allo straniero, tra "persuasione" e coazione senza garanzie*, in *Diritto, Immigrazione e Cittadinanza*, n. 1, 2025, pp. 1-26.

5. Technological Evidence and Procedural Asymmetry: Re-establishing Procedural Balance through Existing Safeguards

Automated evidence raises broader questions of procedural fairness⁴⁶ within asylum procedures. It recalls the wider question of how fundamental rights can remain effective as public decision-making becomes increasingly automated⁴⁷.

The relationship between an asylum applicant and the determining authority is inherently asymmetrical. The authority possesses institutional resources, legal expertise and investigative powers that are unavailable to the individual. The applicant may face linguistic barriers, limited access to legal assistance and difficulties in obtaining information or evidence. The procedural safeguards developed in EU asylum law are partly designed to mitigate this structural imbalance.

Technological evidence may nevertheless introduce new forms of asymmetry, without any legal reforms. Existing procedural guarantees⁴⁸ may provide the basis for addressing these developments, provided that they are interpreted and applied to the specific conditions of technologically mediated assessment of fact and circumstances of the asylum procedure⁴⁹.

A first possible response lies in the principle of equality of arms⁵⁰. Although asylum proceedings differ from conventional judicial proceedings, the broader requirement that an individual have a genuine opportunity to know and contest the material relied upon against them is crucial⁵¹. Where technologically generated evidence materially contributes to an adverse determination, the applicant should be able to understand its evidentiary role and

⁴⁶ F. PALMIOTTO, *Procedural Fairness in Automated Asylum Procedures: Fundamental Rights for Fundamental Challenges*, in *Computer Law & Security Review*, n. 55, 2024.

⁴⁷ Among all, see: S. DEMKOVÁ, *Automated Decision-Making and Effective Remedies: The New Dynamics in the Protection of EU Fundamental Rights in the Area of Freedom, Security and Justice*, Elgar Studies in European Law and Policy, 2023; G. DE GREGORIO, *Digital Constitutionalism in Europe: Reframing Rights and Powers in the Algorithmic Society*, Cambridge University Press, 2022; E. LONGO, *Intelligenza artificiale generativa e giustizia: profili costituzionali tra efficienza e tutela dei diritti fondamentali*, in *Questione Giustizia*, n. 3, 2026, pp.1-53.

⁴⁸ Among others, see: PALMIOTTO, *Ibid*, 2025; DEMKOVÁ, *Op. Cit.*, 2023; T. MOLNÁR, “Algorithmic Decision-Making in Migration and Security in the EU: Challenges in Ensuring Effective Legal Remedies”, In: VARJU, M., MEZEI, K., *The Challenges of Artificial Intelligence for Law in Europe*, Springer, 2025; G. DE GREGORIO, S. DEMKOVA, ‘The Constitutional Right to an Effective Remedy in the Digital Age’, in Ch. van OIRSOUW, J. de POORTER, I. LEIJTEN, G. van der Schyff, M. STREMLER, M. de VISSER, M., *European Yearbook of Constitutional Law*, 2024; M. ZALNIERIUTE, T. DANCY, ‘Due Process: From Procedure to Substance in Digital Constitutionalism’, in *The Oxford Handbook of Digital Constitutionalism*, edited by G. DE GREGORIO, O. POLLICINO, and P. VALCKE, Oxford University Press, 2025.

⁴⁹ M. RENEMAN, *Ibid*, 2014; M. MORARU, *The European Court of Justice Shaping the Right to be Heard for Asylum Seekers, Returnees, and Visa Applicants: An Exercise in Judicial Diplomacy*, in *European Journal of Legal Studies*, Special Issue: Adjudicating Migrants’ Rights: What Are European Courts Saying? n. 14, 2022. (S), 21-61 [10.2924/EJLS.2022.002].

⁵⁰ W. P. GRIMM, M. R. GROSSMAN, G. V. CORMACK, *Artificial Intelligence as Evidence*, in *Journal of Technology and Intellectual Property*, n. 9, 2021, p.94.

⁵¹ See: The Court of Justice of the European Union, Case C-199/11, *Europese Gemeenschap v Otis NV and Others*, judgment of 6 November 2012, ECLI:EU:C:2012:684, para 48, 71.

to provide observations concerning its relevance, reliability, and interpretation.

This requires more than generic information that a technological tool has been used. The applicant should be informed, in a form compatible with the applicable legal and technical constraints, of the role played by the system in the assessment and of the factual proposition for which its output is being relied upon. Otherwise, the applicant may be placed in the position of having to rebut a conclusion without being able to identify precisely what proposition the technological evidence is intended to establish.

A second response concerns the right to be heard and the adversarial principle⁵². Technological outputs should not become hidden premises within administrative reasoning. If an automated report is relied upon to challenge the applicant's account, the applicant must have a meaningful opportunity to respond before the authority reaches its final conclusion.

This is particularly important because the existence of an apparent contradiction does not necessarily establish its legal significance. A linguistic result, for example, may be explained by an applicant's personal history, mobility, education or exposure to different linguistic communities⁵³. Information obtained from a mobile device may likewise require contextualisation and cannot necessarily be interpreted independently of the applicant's explanation⁵⁴. Individual assessment remains essential precisely because technological information may establish a correlation or characteristic without establishing the legal fact to which the authority seeks to connect it⁵⁵.

A third safeguard can be derived from the principles of good administration, transparency and the obligation to give reasons. The determining authority should be capable of explaining not merely that a technological system produced a particular result, but what that result establishes, what its limitations are and why it was attributed a particular evidentiary weight⁵⁶.

This requirement is particularly important because the authority, rather than the applicant, controls the integration of the technological output into the decision-making process. The responsibility for assessing its significance therefore cannot be transferred to the technology itself. A statement that "the system indicates X" cannot substitute for an explanation of why X is relevant to the legal assessment and how it has been weighed against the remaining evidence.

Meaningful human involvement is consequently indispensable⁵⁷. The relevant safeguard

⁵² M. MORARU, *Op.Cit.*, 2022.

⁵³ C. MANZOTTI, *A European language detection software to determine asylum seekers' country of origin: Questioning the assumptions and implications of the EUAA's project*, in *ADiM Blog*, Novembre 2024, pp.1-8. .

⁵⁴ T. WIMARK, *The Limits of Refugee Status Determination Through Credibility Assessment: Empirical Evidence from Sexual Orientation Asylum Cases*, in *International Migration Review*, n. 3, 2026, pp. 1843-1870.

⁵⁵ N. KINCHIN, *Technology, Displaced? The Risks and Potential of Artificial Intelligence for Fair, Effective, and Efficient Refugee Status Determination*, in *Law in Context. A Socio-Legal Journal*, n. 3, 2021.

⁵⁶ M. FINK, M. FINCK, *Reasoned A(I)dministration: explanation requirements in EU law and the automation of public administration*, in *European Law Review*, n. 3, 2022, pp. 376-392.

⁵⁷ S. DEMKOVÁ, *The Decisional Value of Information in European Semi-Automated Decision-Making*, in *Review of European Administrative Law*, n. 2, 2021, pp. 29-50.

should not be reduced to the formal presence of a human decision-maker somewhere in the process. What matters is that the determining authority retains genuine responsibility for evaluating the technological output in the context of the individual application and does not treat it as an authoritative benchmark against which the applicant's account must automatically conform.

The same considerations are relevant to effective judicial protection, the essence of the rule of law⁵⁸. If the results of a technological system constitute part of the reasoning leading to the rejection of an application, they should be identifiable within the reasoning of the decision and made available to the applicant to the extent required by applicable law. The applicant must then be able, with the assistance of legal representation where available, to challenge the evidentiary significance attributed to the output.

The role of legal representatives is therefore also significant. Effective contestation of technologically mediated evidence may require lawyers and other representatives to possess at least a basic understanding of the systems used in asylum procedures and of their possible evidentiary limitations. This does not mean that legal representatives must become technical experts. It means that the procedural system must allow them to identify when a technological output requires further explanation, contextualisation or challenge⁵⁹.

Judicial review should consequently not be limited to the question of whether the AI system was technically compliant with the applicable regulatory framework. It should also concern whether the authority allowed the technological output to alter the evidentiary standard applicable to the applicant or to displace procedural guarantees such as cooperation, individual assessment and the benefit of the doubt⁶⁰. Thus, the protection of procedural fairness must arise from the interaction between technology-specific regulation and the fundamental procedural principles governing asylum adjudication.

The objective should not be to prevent technological systems from contributing to the assessment of facts and circumstances⁶¹. Rather, it should be to ensure that their introduction does not silently modify the allocation of evidentiary responsibilities or convert technological capacity into an implicit increase in the applicant's evidentiary burden⁶².

6. Conclusion

⁵⁸ According to the Court 'the very existence of effective judicial review' that is designed, inter alia, to ensure compliance of Member States with EU law and of acts of the EU institutions with higher-ranking EU law, «is of the essence of the rule of law». Judgment of 28 March 2017, Case C-72/15 Rosneft EU:C:2017:236, para 73; and of 25 July 2018, Case C-216/18 PPU Minister for Justice and Equality v LM EU:C:2018:586, para 51.

⁵⁹ A. G. LANA, *Il ruolo dell'avvocato nei più recenti assetti della tutela multilivello dei diritti umani*, in *Freedom, Security & Justice: European Legal Studies*, n. 2, 2023, pp. 187-194.

⁶⁰ For an analysis of "adaptive legal interpretation of the right to an effective remedy" by the Court of Justice, see: PALMIOTTO, *Ibid*, 2025.

⁶¹ W. HAMILTON BYRNE, T. GAMMELTOFT-HANSEN, *Op. Cit.*, 2024.

⁶² F. A. WESTERLING, *Technology-Related Risks to the Right to Asylum: Epistemic Vulnerability Production in Automated Credibility Assessment*, in *European Journal of Law and Technology*, n. 3, 2022, pp. 1–28.

The increasing use of new technologies and artificial intelligence in asylum procedures should not be understood solely as a technological development aimed at improving administrative efficiency. Where technology contributes to the generation or acquisition of information relevant to the assessment of an individual application, they may also transform the procedural conditions under which international protection is determined. More fundamentally, they may affect the epistemic conditions under which the facts relevant to an asylum claim are established⁶³.

The distinctive character of asylum procedures derives partly from their evidentiary structure. Applications frequently concern facts that cannot be supported by conventional documentary proof. EU asylum law has consequently developed specific mechanisms to address this uncertainty, including a distribution of evidentiary responsibilities between applicant and authority and, under specified conditions, the benefit of the doubt⁶⁴. The assessment of an asylum claim therefore necessarily involves a process of establishing facts under conditions of incomplete knowledge and uncertainty.

The introduction of technologically mediated evidence may place this equilibrium under pressure. Determining authorities acquire an enhanced capacity to transform areas of uncertainty into structured evidentiary material. Linguistic characteristics, digital information and other forms of data can be processed and converted into outputs capable of corroborating or contradicting an applicant's account. Technology thus does not merely add information to the evidentiary record. It may also influence what becomes visible, knowable, and salient to the decision-maker, thereby affecting the epistemic environment in which the applicant's account is assessed.

This transformation does not necessarily imply that technologically generated information is unreliable or should be excluded. The central issue is instead the procedural consequences of its evidentiary use. In particular, technological outputs may acquire disproportionate epistemic weight where they are perceived as objective or scientifically authoritative. An output may consequently become a benchmark against which an applicant's statements are assessed, even where the connection between the technical finding and the legally relevant fact remains uncertain⁶⁵. The crucial issue is therefore not simply the formal evidentiary status of the technological output, but the epistemic authority that it acquires in practice.

The applicant may increasingly be required not only to substantiate their own account but also to explain or rebut evidentiary propositions autonomously generated by the authority. The formal legal framework governing evidentiary responsibilities may remain unchanged, while the practical demands placed upon the applicant become more onerous. In this sense, technology may alter the distribution of epistemic burdens without formally altering the legal allocation of the burden of proof.

⁶³ F. WESTERLING, *Ibid.*, 2024.

⁶⁴ G. NOLL, *Op. cit.*, 2005.

⁶⁵ D. OZKUL, *Op. Cit.*, 2025.

It is in this sense that AI may contribute to the emergence of a new evidentiary paradigm. The novelty does not lie simply in the introduction of a new category of evidence, but in the enhanced capacity of the determining authority to autonomously produce evidentiary material concerning factual questions that might previously have remained within the domain of further interaction, investigation or residual uncertainty. The benefit of the doubt may therefore remain formally applicable while its practical scope progressively contracts, not because the legal principle has been displaced, but because the conditions in which uncertainty is perceived and managed have changed.

This development also reinforces the structural asymmetry between applicant and authority. The State possesses access to technological systems, technical expertise and institutional resources that are generally unavailable to the individual. If the applicant is unable to understand, contest or contextualise the resulting evidence, technological innovation may weaken rather than strengthen procedural fairness. The asymmetry is therefore not only one of access to information, but also one of epistemic capacity: the capacity to produce, interpret, and contest the information on which the decision is based.

The appropriate legal response should therefore not consist solely in determining whether automated evidence complies with technology-specific requirements. Its use must also be assessed in light of the procedural principles that structure asylum adjudication. Applicants should have a meaningful opportunity to know and challenge technologically generated evidence. Determining authorities should explain the evidentiary significance attributed to such information and remain responsible for assessing it in the context of the case as a whole. Courts should be able to review not only the formal legality of the technology but also its influence on the reasoning underlying the final determination⁶⁶. Procedural safeguards are thus relevant not merely because technology may produce erroneous outputs, but because they preserve the conditions under which the epistemic authority of those outputs can be questioned and legally assessed.

Ultimately, the challenge posed by AI in general is not whether machines should participate in the production of information relevant to asylum claims. It is whether the introduction of technologically mediated evidence silently alters the epistemic and procedural logic through which those claims are assessed.

Technological innovation should not transform the principle of cooperation into a mechanism for imposing progressively more extensive evidentiary demands on applicants, nor should it reduce the benefit of the doubt to a formally preserved but practically residual guarantee. The development of AI in asylum procedures must instead remain subject to the fundamental procedural principles that reflect the particular evidentiary conditions of international protection. This requires preserving a meaningful distinction between the production of information and the establishment of legally relevant facts, between a technical output and its evidentiary significance, and between the availability of evidence and the authority that it should be permitted to acquire.

Against this background, the increasing use of technology and AI in asylum

⁶⁶ PALMIOTTO, *Op. Cit.*, 2025.

procedures⁶⁷ makes it particularly important to continue examining how fundamental rights can remain effective in an increasingly automated administrative environment. The decisive question is therefore not simply what AI systems are technically capable of establishing, or whether their use complies with technology-specific regulation, but how technologically mediated outputs participate in the production of knowledge, what epistemic authority they acquire, and what legal significance they should be permitted to have within the specific procedural architecture of the asylum procedure.

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