Summary

The main goal of my analysis is to examine the possibility of treating the algorithms used in automated decision-making as information or official document subjected to the right to access information or the right to access official documents in European law (i.e. the law of the Council of Europe and law of the European Union – EU).

The book is inspired by research which envisions the possibility of considering computer code as law. Automated decision-making is a technique based on algorithms and data analysis, which is used both in the private and in the public sector. In the latter, it can have substantial influence on how law is enforced and can even lead to its modification or creation. Therefore, access to algorithms is important for the transparency of the decision-making process in the public sector, particularly in the light of its discriminatory potential (*algorithmic bias*). The analysis addresses concerns which arise when automated decision-making seems not to be compliant with the prohibition of discrimination in European law.

The existing regulations, adopted in the area of personal data protection, do not address the systemic challenges linked to automated decision-making. They are focused on the situation of a particular individual and the decision made in their case. Both the provisions adopted in the General Data Protection Regulation (GDPR) and the Convention 108+ adopted by the Council of Europe are focused on solutions such as prohibition of automated decision making (limited by a number of exceptions) or providing access to the logic standing behind a particular decision.

However, algorithms used in automated decision-making are not subjected to regulations which would increase their level of transparency. In my book I analyse the extent to which the right to access information based on Art 10 of the European Convention of Human Rights (ECHR) according

to its interpretation by the European Court of Human Rights (ECrHR), can be perceived as an alternative to the rights granted to the individual by data protection laws. As per the ECrHR's case law, the necessary criteria for evoking the right to access information include the purpose of seeking the access, the function of the applicant filing for the access, the readiness and accessibility of information and its significance from the perspective of public interest, however, the state has the possibility to evoke exceptions to the right to access information. These exceptions need to be foreseen in law, protect one of the interests included in Art 10(2) of the ECHR and be necessary in democratic society. The ECrHR's criteria do not exclude the possibility of regarding an algorithm used in the public sector for automated decision-making as information.

The approach to the right to access information in EU law is different. Firstly, the issue was raised as one of the methods of democratization of the EU. Due to this, it came to encompass the right to access official documents of the EU's institutions, bodies and offices and agencies. Secondly, it is called the right to access official documents and as such was included in Art 42 of the Charter of Fundamental Rights (the Charter).

On the basis of the analysis of the term *document* in EU law I conclude that it is possible, in certain circumstances, to consider an algorithm as an official document. However, due to the focus on the right to access official documents (Art 42 of the Charter), EU law lacks the perspective which would link the right to access information with Art 11 of the Charter, corresponding in its content with Art 10 of the ECHR. As a result, the role of recent case law of the ECrHR concerning the right to access information is overlooked in EU law and its potential impact on the interpretation of this right is hindered.