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**Colloquium organized by the Council of State
of the Netherlands and ACA-Europe**

“An exploration of Technology and the Law”

The Hague 14 May 2018

Answers to questionnaire: Latvia



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An exploration of Technology and the Law

Technological advances are changing society more profoundly (and more rapidly) than ever before. This could have far-reaching implications for legislation and case law in the near future or even today.

A debate is now under way in various European countries about recent and future technological advances, including the development of self-driving cars, the increasing use of big data and the emergence of self-learning supercomputers, such as IBM's Watson. The fundamental question being asked is what social impacts these developments will have.

A debate is also going on among Europe's administrative courts and legislative advisory bodies about the relationship between these accelerating technological advances and the law, which is not evolving at the same pace. Precisely where and to what extent these developments intersect with the work of administrative courts and legislative advisory bodies is a theme we aim to address at the ACA Colloquium on 15 May 2018. This is unlikely to be the last time that the ACA will need to consider the relationship between technology and the law. Therefore another aim of the meeting will be to think about an agenda for the future and how we can keep up with developments as they unfold.

Given the breadth of the subject area and the limited time available at the Colloquium, the theme of technology and the law needs to be clearly delineated and specified. To this end, we would like to know which specific topics within this broad theme each country considers relevant.

Below you will find a number of exploratory questions relating to five potential themes that I have identified: digital decision-making, digital proceedings, digital dispute settlement, technology-neutral legislation and digital enforcement. These are followed by two open questions to encourage you to share your ideas on other relevant topics that we might discuss at our Colloquium on 15 May next year.

I would be grateful if you would send me your response by 15 September 2017 at the latest. After analysing the responses and selecting the definitive topics, we will send you a second, more comprehensive questionnaire in October.

Digital decision-making

The use of 'Big Data' and algorithms enables decisions to be taken more rapidly and more frequently, for example on whether to issue permits, award grants or pay benefits. Critics warn of 'government by robots' that is hard to keep in check, while proponents argue that such technology will improve the justification and efficiency of decision-making.

1. Do administrative bodies in your country make use of automated decision-making? By 'automated decision-making' we mean decisions based on automated files or computer models.

✓ Yes

Please provide an example.

As far as the Supreme Court of Latvia is aware, automated liked decision making is applied for such a simple decisions as, for example, speed driving and declaration of place of residence. According to law "On Declaration of Place of Residence", in Latvia, every person have a duty to declare his or her place of residence in order to be reachable in terms of legal relations with the State or local government. According to Article 7 Office of Citizenship and Migration Affairs must register information regarding declared place of residence and must ensure the computerised processing, protection and storage, and also updating in the Population Register of the information provided by the person if the declaration of a place of residence is submitted electronically. Thus if a person declares his or her place of residence electronically, this declaration is accepted and stored electronically. This act informs the state, on one hand, and triggers responsibility of person concerned to be reachable at the declared place in terms of legal relations with the State, on other hand.

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Please also indicate what consequences automated decision-making has for you when assessing decisions in a judicial capacity and/or what particular aspects you have to consider when drafting advisory opinions on legislative proposals relating to this topic.

So far there were no any case law on the matter. However, there should not be any difference in review of such a decisions. Everyone's rights must be respected, even if the decision is adopted mechanically.

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Is there a public debate in your country on this issue? Is the introduction of such a system under consideration? What advantages and disadvantages have been identified?

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Do you consider this topic suitable for a more detailed exchange of ideas at the Colloquium and, if so, what aspects of this topic warrant discussion?

We do not reject such a topic.

Digital proceedings

An increasing number of countries now permit (or require) proceedings to be conducted digitally. The benefits of such a system are usually emphasised (e.g. efficiency gains), but how do digital proceedings relate in practice to principles such as access to the courts?

2. Are digital (paperless) forms of legal proceedings used in your country? Is it possible in your country to conduct proceedings digitally, for example online? If so, is this optional or mandatory?

✓ Yes

Please describe your experiences, positive and/or negative.

There are so called “electronical case-folders” (partial electronical) as in many European countries. People have the right to submit their documents to the Court electronically and further the case folder is stored electronically in National Court’s Information System. However, there are not digital proceedings in whole. In some cases some parties may participate in court hearings via Skype, however, these are exceptional cases.

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Would you like to see the introduction of digital proceedings in your country? Is this under consideration? Is there a public debate on this issue? What advantages and disadvantages have been identified?

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Do you consider this topic suitable for a more detailed exchange of ideas at the Colloquium and, if so, what aspects of this topic warrant discussion?

We do not reject such a topic.

Digital dispute settlement in the public sector without involving the courts

If a party knows in advance that they have virtually no chance of winning a case, there is little point in instituting proceedings. Computer programs can analyse tens of thousands of judgments and use the results to predict the outcome and the chance of success or failure.

3. In your country, are you aware of parties using computer systems within the public domain in the settlement of disputes prior to possible court proceedings? Examples may include systems that predict the outcomes of new cases on the basis of case law analysis, allowing parties to decide whether or not to pursue legal proceedings or settle out of court.

✓ Yes

Please provide an example. Is it only parties to proceedings that make use of such systems, or do the courts also use them to assist them in reaching judgments? Is there any debate in your country on the use of such systems, for example in relation to fundamental rights and legal protection?

We are aware of the Online Dispute Resolution platform (ODR platform) which is a web-based platform developed by the European Commission. Its objective is to help consumers and traders resolve their contractual disputes about online purchases of goods and services out-of-court. However, we are not aware of any system that predicts the outcomes of new cases on the basis of case law analysis.

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Would you like to see such systems introduced? Is this under consideration? Is there a public debate in your country on this issue? What advantages and disadvantages have been identified?

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Do you consider this topic suitable for a more detailed exchange of ideas at the Colloquium and, if so, what aspects of this topic warrant discussion?

We do not reject such a topic.

Technology-neutral legislation

If a statutory definition contains the words 'written' or 'in writing', does the definition also apply in a paperless context? If a self-driving car causes an accident, who is liable? The software manufacturer?

4. Does your country have experience of legislation framed in a way that is technology-neutral or that otherwise takes account of future technological developments?

✓ Yes

Please provide an example in the context of your legislative advisory role and indicate whether or not the legislation in question succeeded in this regard, and why.

It is common that the legal wording and terms in futuristic domains are formed very general so that it would cover future technological developments. For example, the Law on the Security of Information Technologies does not enumerate all the information technologies but gives general description of them. However, there are also problems that specific futuristic domains lack of legislation or the legislation itself cannot reach the speed of the technological development. For example, recently there was discussion on flying drones with cameras which causes problems for privacy and security, but were not regulated at the moment.

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Does the lack of such legislation cause problems in your society or in other respects? Please provide an example.

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5. How do the courts (administrative or otherwise) in your country deal with legislation that is framed in terms of specific technologies? Do they apply strict interpretations in such cases or is it possible, or even customary, to apply a broader interpretation in order to resolve a problem? Is there any form of debate on this topic, for example with regard to fundamental rights?

At the moment there is not any case law on this matter. The necessity to interpret legal norms strictly or more broadly depends on the respective matter and the purpose of the respective legislation. If the case concerns infringement of human rights, the legislation that is framed in terms of specific technologies most likely will be interpreted strictly. However, in other cases the courts may see that the wording of the legislation is formed intentionally by the legislator to cover all the specific futuristic developments. In such cases the general terms (wording) of law most likely will be interpreted more broadly.

As for futuristic developments in general, there are different debates, seminars and conferences devoted to legal challenges in futuristic domains of law. However, as for the manner of interpretation of the legislation – more broadly or strict – as far as the Court is aware, there is no considerable debate.

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Do you consider this topic suitable for a more detailed exchange of ideas at the Colloquium and, if so, what aspects of this topic warrant discussion?

We do not reject such a topic.

Digital dispute settlement in the public sector without involving the courts

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Digital enforcement

More and more European countries are using digital data to enforce a range of legislation. In the Netherlands, digital data is used for a variety of purposes, such as vehicle speed checks on motorways and in lorries (by means of a tachograph), corporate and private tax returns filed online, and risk profiles developed by law enforcement authorities. In terms of fundamental rights and other such issues, what are the legal boundaries of digital enforcement?

6. Do you know of cases in your country where automated data analyses are used for enforcement-related purposes, for instance to identify risk profiles? Perhaps the tax authorities use data analysis from various sources, for example, to perform targeted audits?

✓ Yes

Please provide an example. What specific angles of approach do you, as a legislative adviser and/or administrative judge, consider important in this regard?

As in many European countries, digital data and analyses are used to control vehicle speed checks on motorways, corporate and private tax returns filed online, declaration of person's place of residence if the application is filed electronically.

In 2017 in tax law electronic time tracking system for construction sites was introduced. This system requires employers of big construction sites to register electronically working hours of their employees on construction site. To fulfil the mention, law requires every employer to wear his or her electronic device. As a result, information gathered by the electronic time tracing system is used by State Revenue Agency, State Labour Inspectorate and the State Audit Office to enforce the law.

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Is the introduction of digital enforcement under consideration? Is there a public debate in your country on this issue? What advantages and disadvantages have been identified?

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Do you consider this topic suitable for a more detailed exchange of ideas at the Colloquium and, if so, what aspects of this topic warrant discussion?

We do not reject such a topic.

Digital dispute settlement in the public sector without involving the courts

Open-ended question for administrative jurisdictions

Are there technological developments (other than those already mentioned) that you believe will soon have far-reaching consequences for administrative courts (particularly developments you have already encountered or expect to encounter)?

Please list these developments in order of importance and explain why you consider them significant. Please also indicate whether you would like to discuss one or more of these topics in more detail in The Hague.

In Latvia, many state agencies start to develop their own official mobile phone (smart phone) applications to promote communication with citizens and better perform governmental responsibilities. For example, the State Environmental Service has developed an application for citizens which is meant to submit information about environmental pollution and illegal waste landfill. This application allows to take a photo of illegal waste landfill, set a geographical location and further directly notify the state agency on the pollution. The agency further takes necessary steps to recover the environment. Identical applications are developed by the State Official Language Centre and the State Revenue Agency.

It would be interesting to learn if and what kind of official phone applications are developed by state institutions in other countries to help perform better their governmental responsibilities and at the same to approach their citizens easily. Also, it would be interesting to learn what are the legal consequences of mobile phone submissions to state institutions.

Open-ended question for legislative advisory bodies

Are there technological developments (other than those already mentioned) that you have already encountered or expect to encounter and believe will soon have far-reaching consequences for the legislative process and legislative advisory bodies in general?

Please list the developments in order of importance and explain why you consider them significant. Please also indicate whether you would like to discuss one or more of these topics in more detail in The Hague.