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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: Romania - High Court  
of Cassation and Justice**



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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.

- o Yes  
Please provide an example.

Taking into account the experience gained in the judiciary, respondents to this questionnaire are unable to make an exhaustive overview of the use in administration of automatic electronic systems for the issuance of decisions.

As an example, we have knowledge that in Romania there is an electronic system for issuing the minutes for offenses in the case of vehicles that circulate on national roads without having paid the fee provided by the law.

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.

Regarding the judiciary consequences of the mentioned system for issuing the minutes we have to expose the following elements.

According to the law, the finding of contravention is by means of approved technical means (which are part of the computer system for issuing, managing, monitoring and controlling the toll for the use of public roads) located on the national road network in Romania (identification of the vehicle and the holder, date, the time and place of the deed). The minute of the offense was issued with the same technical means and was communicated to the offender. This record did not include the handwriting signature of the finding agent, but only the mention that the documents were generated and signed electronically by using the electronic signature.

The High Court of Cassation and Justice, in the framework of the mechanism of unifying the non-unitary judicial practice (appeal in the interest of the law) issued a decision by which, in interpreting the legal provisions, it was binding for all the courts that these minutes of finding and sanctioning of contraventions, concluded with the help of technical means and sent to

persons sanctioned by contravention on paper, are punished by absolute nullity in the absence of the handwriting signature of the observing agent.

In order to rule on this judgment, the High Court of Cassation and Justice held that the electronic signature generated in an electronic system and to which an electronic signature is affixed produces legal effects only if it is used in electronic communications systems and procedures regulated by law . Such an act generated in an electronic system, but communicated on paper, through postal services, is valid and produces legal effects only if it bears the handwriting signature of the determining agent.

In conclusion, a document generated and signed in electronic system is valid and produces legal effects only under the conditions strictly regulated by the law on electronic signature (which regulates the legal regime of electronic signatures and electronic documents, as well as the conditions for the provision of services certification of electronic signatures). In other words, acts which, according to the law, are generated and produce legal effects in an electronic system may be valid and may produce legal effects specific to documents issued on paper only to the extent that they meet the requirements laid down by law for paper documents.

- o No  
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?  
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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?
  - o Yes  
Please describe your experiences, positive and/or negative.

In Romania, for the regulation of information technology applications, specific laws were issued in the following areas:

- in the area of electronic commerce:
  - o Law no. 365/2002 on electronic commerce;
  - o Government Emergency Ordinance No.34/2014 on consumer rights in contracts concluded with professionals, as well as for amending and completing some normative acts
- in the field of copyright:
  - o Law No.8/1996 on copyright and related rights
- in the field of electronic documents:
  - o Law No.455/2001 on electronic signature
- in the field of electronic payments:
  - o Law No.127/2011 on the issuance of electronic money
- in the field of online advertising:
  - o Law No.158/2008 on misleading advertising and comparative advertising
  - o Law No.148/2000 on advertising
  - o Law No.457/2004 on advertising and sponsorship for tobacco products
- in the field of privacy and protection of personal data:
  - o Law No.677/2011 on the protection of individuals with regard to the processing of personal data and the free movement of such data
  - o Law no.506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector
  - o Decision No.52/2012 on the processing of personal data by means of video surveillance; Decision No.32 / 2011 on the conditions for the processing of the personal numerical code and of other personal data having a general applicability identification function
  - o Law No.238/2009 on the regulation of the processing of personal data by the structures / units of the Ministry of Administration and Interior in the activities of preventing, investigating and combating criminal offenses, as well as maintaining and securing the public order
  - o Law No.102/2005 on the establishment, organization and functioning of the National Supervisory Authority for Personal Data Processing

- People's Advocate Order No.52/2002 on the approval of the Minimum Security Requirements of Personal Data Processing
- in the field of cybercrime:
  - Law No.161/2003 contains provisions on prevention and fight against cybercrime
  - Law No.64/2004 on the ratification of the Council of Europe Convention on Cybercrime, adopted in Budapest on 23 November 2001
- in the field of pornography on the Internet:
  - Law No.196/2003 on preventing and combating pornography
- in the field of electronic communications:
  - Law No.154/2012 on the regime of the electronic communications network infrastructure
  - Emergency Government Ordinance No.11/2011 on electronic communications
  - Government Emergency Ordinance no.22/2009 on the establishment of the National Authority for Administration and Regulation in Communications
  - Order No.461/2009 for the approval of the National Strategy on the implementation of the universal service in the electronic communications sector
- in the area of eGovernment:
  - Government Decision No.195/2010 on the approval of the national strategy "e-Romania"
  - National Electronic System - Law no.161/2003
  - Single electronic contact point - Government Emergency Ordinance No.49/2009 on freedom of establishment of service providers and freedom to provide services in Romania; Government Decision No.922/2010 on the organization and operation of the Single Electronic Contact Point.
  - Electronic systems for payment of taxes and dues: Government Ordinance No.24/2002 on the collection by electronic means of local taxes and fees; Government Emergency Ordinance No.193/2002 on the introduction of modern payment systems; Order No.435/2005 on the procedure of selecting processors of online payments with cards in order to operationalize the Virtual Payment System; Government Decision No.1235/2010 approving the implementation of the National Electronic System of Online Payment of Taxes and Taxes using the bank card; Order

No.168/2011 for the approval of the Methodological Norms regarding the National Electronic System for Online Payment of Taxes and Taxes using the bank card; Order No.73/2011 for the approval of the Technical Norms regarding the national electronic system for online payment of taxes using the bank card; Government Decision No.1173/2003 on the electronic award of international road haulage authorizations; Government Ordinance No.19/2003 on the compulsory use of the electronic system for the collection of statistical data;

- Public procurement by electronic means: Law No.98/2016 on public procurement; Decision No.395/2016 for the approval of the Methodological Norms for the application of the provisions regarding the award of the public procurement contract / framework agreement
- The unique statement on the obligations to pay the social contributions, the income tax and the nominal record of insured persons: Government Decision No.1397/2010 on the model, content, manner of submission and management of the Statement on the obligations to pay social contributions, income tax and nominal records of insured persons
- National Health Insurance Card: Law No.95/2006 on Health Reform; Order No.520/2011 for the approval of the computer specifications of the national system of national health insurance cards (National Health Insurance House)
- Electronic identity card: Government Ordinance No.69/2002 on the legal status of the electronic identity card.

According to this specific laws there are used digital (paperless) forms of legal proceedings and the proceedings are conducted digitally. For example, the employers are obliged to submit declarations regarding the obligations to pay the social contributions, the income tax and the nominal record of the insured persons by electronic means of distance transmission through the e-Romania portal.

Regarding the use of technology in public administration, the National Electronic System was established by Law no. 161/2003 as a public utility information system in order to ensure access to public information and the provision of public services to natural and legal persons. The Operators of the National Electronic System are: the General Inspectorate for Communications and Information Technology subordinated to the Ministry of Communications and Information Technology, for the "e-Government System"; Ministry of Public Administration, for the "e-administration system"; the authority established by the Supreme Defense Council of the country, under the conditions approved by it, for the National Defense and Safety System. Within the National

Electronic System, other natural or legal persons, such as banks, notaries, experts, under the law, may participate.

The National Electronic System data are available on [www.e-guvernare.ro](http://www.e-guvernare.ro), which includes references to electronic applications applicable in the following areas: submission of declarations, virtual payment desks, public procurement, transport authorizations, Unique Contact Point, payment of fees by legal entities e-Tax, Land Book Extract.

In order to implement the IT systems in the public administration, the Agency for Digital Agenda of Romania has been set up which has the following objectives: national implementation of IT systems providing e-Government services; the operation of information systems providing eGovernment services; implementing regulations on e-government specific activities in line with the Digital Agenda Strategy for Romania; the operation of interfaces between the information systems of public institutions and citizens or the business environment, being a gateway of their access to public electronic services provided by the public administration.

Regarding the judiciary system:

- in Romania, it is not permitted judiciary proceedings to be conducted digitally (online);
- the digital (paperless) forms of procedural documents are used in Romania, but they are optional, not mandatory. For example, according to Civil Procedure Code, the implementation of digitally proceedings is limited to the following: applications may also be filed in electronic form if the conditions laid down by law are met; the request for legal action transmitted by electronic mail or electronically registered shall be recorded and given a certain date by the application of the entry stamp; communication of procedural documents may also be effected by electronic mail if the party has indicated to the court the appropriate data for that purpose; court sessions are recorded, and the parties, at their request and at their expense, can obtain an electronic copy of the record of the hearing in their case; court records may also be kept in electronic format;
- at the level of the whole country, the portal of the courts of law (<http://portal.just.ro>) was implemented, which includes the records of the cases before the courts, the stage of their solution and the pronounced solutions. This portal is the result of the project "Development of the use of electronic tools for the management of the procedures for the communication of summonses and the insertion in the court portal of a general search engine", a project co-financed by the European Union through the specific program "Criminal Justice".

The judiciary system is in a continuous process of information technology implementation, but this is slow, although the benefits of the system work are known and appreciated. It is worth to mention that the online (digital or

electronic) conduct of the proceedings is difficult to be implemented because, according to the Code of Civil Procedure, the trial is conducted in accordance with the principles of contradictory (which usually involves the presence of the parties before the judge), the oral (in principle, the judgments being heard orally) and the publicity (the court sessions are public, except the cases provided by law).

Regarding the use of digital technology, it is mentioned that it is implemented much easier and much faster in administration than in the judiciary, which is characterized by a certain traditional inertia.

- o No  
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?

In our opinion, the introduction of digital proceedings has at least the following advantages: the speed of the procedure, the elimination of bureaucracy, the simplification of procedures.

At the same time, however, we appreciate that some disadvantages can also be considered, such as the difficulty of agreeing digital procedures with the principles / rules on good administration and the right to a fair trial; there is a possibility to affect the substantiation of individual decisions because not all situations can be framed in a predefined pattern.

Also circumscribed to the disadvantages, it is worth mentioning the recent jurisprudence determined by a situation in which the use of digital procedures interferes with the rules of civil procedure. Thus, by Decision No. 34 of May 15, 2017, pronounced in the preliminary ruling procedure, the High Court of Cassation and Justice gave an interpretation in principle to the provisions of the Civil Procedure Code, establishing that it is not considered to be filed in due time the procedural document transmitted by fax or e-mail, on the last day of the period (that is counted on days) after the time at which the activity ceases at the court.

Regarding the activity of the administration, we consider the jurisprudence of the Constitutional Court regarding the communication procedure of the fiscal acts by publishing on the website of the National Agency for Fiscal Administration. The Constitutional Court has noted that the legal provisions which provide for this possibility of communication of fiscal acts are constitutional and do not contravene the fundamental norms regarding free access to justice, the right to defense and the right to property (Decision no.1288 of 2 December 2008).

With reference to the same situation, the Constitutional Court has ruled that the procedure of communication of the fiscal act by publishing on the web site of the fiscal body is a last and subsidiary method of communicating the act, used only if the other means of communication (by remission act directly and under signature, by mail with acknowledgment of receipt or by fax or e-mail, if

confirmation of receipt of the act) could not be fulfilled for objective reasons. The finding of abusive use of this method of communication of administrative acts is the exclusive jurisdiction of the court, which is bound to determine whether the communication procedure has been accomplished according to its purpose or legal provisions (Decision No.667 of April 30, 2009).

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?

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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.

- o 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?

.....

- o No  
  
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?

In Romania there is not such a system and there is no public debate on this issue.

We can say that there are some public case-law databases (including on the web page of the High Court of Cassation and Justice, the case-law is published in the sections of every chamber of the court).

These case-law databases can be successfully used only by law professionals and do not allow, in the sense of the question, to persons without specialized

training to prefigure the solution in a particular dispute prior to court proceedings.

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 consider that this subject is suitable for a more detailed exchange of ideas, especially from the perspective of the real possibility of configuring a computer system that is able to indicate to the interested person the correct prefigured solution in the particular case.

## 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?

o 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.

For example, Law no. 365/2002 on electronic commerce contains provisions that, in our opinion, are technologically neutral. The purpose of the law is to establish the conditions for the provision of information society services as well as to provide for offenses related to the security of the domains used in electronic commerce, the issuance and use of electronic payment instruments and the use of identification data to conducting financial operations to provide a framework favorable to free movement and the safe development of these services. At the same time, the same law expressly provides that the provision of information society services by natural or legal persons is not subject to any prior authorization and is carried out in accordance with the principles of free and fair competition, in compliance with the legal provisions in force.

We also appreciate that Law No. 677/2011 (for the protection of individuals with regard to the processing of personal data and the free movement of such data) includes technologically neutral provisions, which provide that this regulation applies to the processing of personal data relating to the provision of publicly available electronic communications services through public electronic communications networks, including public electronic communications networks involving devices data collection and identification. In this respect, irrespective of the evolution of technology, we consider it technologically neutral to the law that "communication" means any information exchanged or transmitted between a determined number of participants by means of an electronic communications service public.

o No

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?

We think it may be relevant the answer to the question no.1, as follows:

According to the law, the finding of contravention is by means of approved technical means (which are part of the computer system for issuing, managing, monitoring and controlling the toll for the use of public roads) located on the national road network in Romania (identification of the vehicle and the holder, date, the time and place of the deed). The minute of the offense was issued with the same technical means and was communicated to the offender. This record did not include the handwriting signature of the finding agent, but only the mention that the documents were generated and signed electronically by using the electronic signature.

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In conclusion, a document generated and signed in electronic system is valid and produces legal effects only under the conditions strictly regulated by the law on electronic signature (which regulates the legal regime of electronic signatures and electronic documents, as well as the conditions for the provision of services certification of electronic signatures). In other words, acts which, according to the law, are generated and produce legal effects in an electronic system may be valid and may produce legal effects specific to documents issued on paper only to the extent that they meet the requirements laid down by law for paper documents.

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?

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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?

o 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?

From the magistrate's point of view, we must emphasize that the judge has a legal obligation to interpret and enforce the law in relation to the factual circumstances of the dispute, which may also include technological aspects, which naturally form part of the social reality. Even in the natural situation, in which the trial presents elements requiring special specialization, the judge has the possibility to appeal to the opinion of some specialists in the field (technological, fiscal, etc.) to solve the problem of law. Thus, irrespective of the specialty (technological or other nature) of the dispute, the Civil Procedure Code provides that the judge can not refuse to judge on the grounds that the law does not provide, is unclear or incomplete.

o No

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?

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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.

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.