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“An exploration of Technology and the Law”

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Answers to questionnaire: Lithuania



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ANSWERS TO THE QUESTIONNAIRE BY THE SUPREME ADMINISTRATIVE COURT OF LITHUANIA

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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.

In order to create technologically advanced, public and administrative services, to digitalize as much as possible administrative services, and to aim to provide all of them through one access point Lithuania has created an "E-Government gateway" portal. It was launched in January 2004, and massively revamped in 2008. The eGovernment Gateway portal intends to offer a so-called one-stop-shop to public information and services for citizens and businesses. It includes links to public information and public services by redirecting citizens and businesses to appropriate websites of public authorities. Other services are tools for electronic personal identification, centralised access to the electronic public services, online payment for the requested services and online tracking of the service provision process. User's identification in the portal can be enabled via eBanking systems, the national identity card, eSignature certificates or mobile signatures from certain operators. The available services multiply on occasion. In 2016, there were twenty-two services available for citizens, and nineteen services for businesses.

Few public services are based on automated or semi-automated decision-making models. In the context of automated decision-making, one should note the working methods of the State Tax Inspectorate. An electronic declaration system has been available in Lithuania since 2004. This fully transactional system enables electronic filing of all tax returns – Income tax returns, corporate tax returns, VAT returns – and also provides multiple ways to fill-in and submit declarations and notification on the status of declarations. The system of the State Tax Inspectorate automatically generates income, land, public and private interest declarations for citizens via online platform. For example, debts claimed by the tax authorities are usually calculated in an automatic way.

Meanwhile, other administrative bodies use semi-automated decision-making, which enables them to automate several stages of administrative procedure. For example, an individual concerned can obtain building or renovation permit through the 'Infostatyba' information system. Even though permits have not yet become digital, submitting documents and filling in forms have become fully digitalized. Another example, which merits a mention, is the use of stationary speed radars. The competent bodies receive the information regarding the over speeding automatically; however, it still requires civil servants to evaluate the data and make a decision based on provided material.

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.

It is true that electronic collaboration between public administrations can make these procedures quicker, simpler and cheaper for all parties concerned. Nevertheless, there are some concerns regarding the increased use of information systems. For example, while carrying out judicial review, it is somewhat more complicated for competent courts to settle a dispute when the disputed legal act is generated by automated decision-making system. Such decisions more often than not will be without detailed motives, i.e. commonly, decisions contain only formal references to the legal acts without any evaluation of the individual circumstances in the light of those acts. Furthermore, it is not easy for the individuals concerned to determine a particular civil servant who is responsible for drafting such act in order to clarify the situation, which, in turn, could help in delimiting the scope of the dispute. Thus, it becomes harder for people to implement the right to a judicial defence. All of these points are taken into consideration by the court when the dispute is being solved and may result in sending the case back to the competent administrative authority in order to draw a consistent and comprehensive administrative act. This naturally prolongs the proceedings.

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?

Yes

Please describe your experiences, positive and/or negative.

Electronic submission of claims, the possibility to monitor, advance proceedings online and electronic communication between courts and lawyers in general ease access to justice and reduce delays and costs. ICT systems in courts also play an increasingly important role in cross-border cooperation among judicial authorities.

Indeed, digital (paperless) forms of legal proceedings are commonly used in courts. Such proceeding is known as e-case, which can be used via internet platform – E-service Portal of Lithuanian Courts. For private parties e-case is optional; however, the summons and other

procedural documents are transmitted mandatory via electronic form to public authorities, lawyers and their assistants, bailiffs and their assistants, financial institutions, and insurance undertakings.

In using E-service Portal of Lithuanian Courts private parties and administrative bodies can submit relevant documents and monitor any stage of proceedings, e.g.:

- view the information of the cases, in which entity is a party to the proceedings;
- listen to the audio records of the court hearings;
- familiarize with the particular stages of court proceedings;
- form and deliver the procedural documents to the court:
- fill in the documents according to the prepared forms;
- receive notices about the admission of the documents, the discovered errors, the hearings of the case;
- pay the stamp-duty, fines imposed by the court and ordered costs of litigation to the State.

Nevertheless, the negative aspect of the e-case is unstable system base, which stores all documents and information. The system may experience crashes and errors, which may lead courts to a postponement of their work. Furthermore, e-case might sometimes contain documents that are of low quality, which causes misunderstandings among judges and parties. On a positive note, the e-case allows to access the ongoing case and all related documents without going to the court and such system is user-friendly and cost-effective (the case and documents do not have to be printed).

The Court also uses automatic impersonation of decisions. This function allows person using the program to anonymise the decision by clicking only few buttons. The program targets full names, surnames, personal codes, and cadastral numbers and changes them into the text with neutral (none identified) symbols.

Another technology, which is used in the courts, is audio and video recording. During oral proceedings in the court, the proceedings are always recorded. The court has technical capabilities to arrange video conferences; hence parties are not required to be present in the court room during proceedings.

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?

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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?

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?

.....

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?

Currently, the State does not contain any kind of such systems, and there is no public debate on this subject. However, there are online search systems (paid and free), which provide access to the legal acts and jurisprudence of the courts.

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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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.

.....

No

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

The emergence of new technologies and increased use of them in public administration and judicial proceedings made a review of the existing legislation topical. In Lithuania, the legislator has successfully updated the text of legal acts and has included modern terms regarding new technologies. Many legal acts contain terms such as “electronic form”, “digital copy”, “electronically”, etc., thus, the use of new terms poses no difficulties in their application.

The lack of legislation on more advanced technologies such as self-driving cars has very low impact on the decision-making, because in the practise innovative technologies are not so widely used.

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?

Administrative courts apply broader interpretations in the cases of specific technologies. Nevertheless, such interpretations depend on individual terms used in the law.

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?

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?

Please refer to the answer to Question number 1. Additionally, it can be noted that automated data analysis system may cause problems related to the protection of personal data.

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.

As mentioned above, it is strongly believed that e-case and automated decision-making will have the biggest impact on courts work. Indeed, there is a tendency that a number of individuals and entities using e-case rapidly increases each year. Such rise is caused by benefits that e-case provides (for example, easy access to the case, lower stamp-duty, etc.). Hence, Courts electronic platform (LITEKO) deals with bigger amount of information and naturally needs to be updated regularly in order to prevent crashes and errors. In practice, system malfunctions do cause certain problems, which can delay dispute settlement. To name a few, access to the main documents of the case becomes harder or impossible, signing e-case timely becomes more difficult, loading time of e-documents increases significantly. These errors cause a great challenge for the courts and currently are one of the biggest considerations.

Turning to the question of public administration, one should note that even though currently automated decision-making is not widely used, there is a tendency that such systems will be used more often in a near future. Accordingly, it may cause certain problems for the courts. In this regard, please refer to the answer to Question number 1.

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.