

Raad
van State



**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: Greece



Colloquium co-funded by the «Justice » program of the European Union

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.

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.

V No. If by automated decision-making someone means decision making after assessments or evaluations. Though, tax authorities use mechanisms and methods to calculate taxes and issue the relative acts.

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?

No.

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?

There could be a discussion about individuals rights related to automated decision making, such as the right to be informed, the right of access, the right of rectification, the right of erasure, the right of restrict processing, and data portability. Moreover, the role of the Judge in the new framework.

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.

The IT system of the Council of State and Administrative Courts allows the electronic filling of cases and provides information about the status of the cases brought before these Courts. To be more specific it is optional to file an application or an action in form of a pdf or a word document. Furthermore, the Judgements of the Court are notified to the State Authorities digitally, using a web-service.

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?

Yes. A fully digitalized procedure is absolutely necessary in order to achieve acceleration and efficiency of administrative justice in Greece. This topic is under consideration and, recently there has been a public debate on that issue (a new book about e-justice has been published and numerous conferences about e-justice had been conducted). The main advantages are a) acceleration and b) public expenses reduction and, on the other hand, the disadvantages are the risks of new technology such as, data protection and security.

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?

Yes, the main aspects of this topic that warrant discussion are the safeguards, which will allow a fully digital proceedings. Furthermore, we would suggest that some of the countries that permit digital legal proceedings to exhibit a model of case that its proceedings were conducted digitally.

It would be also useful to mention these proceedings, such as digital recordings of hearing, digital evidence and analyse the risks that each one could have.

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?

No, there is no such an ongoing conversation, at least as far as the public sector is concerned. The system set-up (i.e. the selection of the assessment criteria) is the main issue to be solved. To be more precise, such method of "judicial prediction" seems to be a very useful tool not only for lawyers but also for the Greek business world and even for the schools of Law. The advantages are quite obvious (effective legal assistance, fast legal proceedings, best analysis of risks, better research for university students). On the other hand, the disadvantages are extremely serious and they have to do with certain questions ("How are predictive algorithms constructed?," "How do we use the algorithms?" and "How does the outcome of such prediction affects the judges and the lawyers and, in general the judicial impartiality, the fair trial and the rule of 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?

Yes, but only as far as the public sector is concerned, in cases when public authorities act as applicants before administrative courts. It would be extremely interesting an exhibition of a prediction model and an analysis of the methods that are adopted to predict the outcome of a case, mentioning the guaranties that should be asked.

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.

.....

V No

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

Yes. In cases where e-proceedings have been established, the rest of the legislative framework relevant to the proceedings before the administrative courts is not updated, thus causing problems to the judges and the secretaries. For example, the law provides that an application for annulment before the Greek Council of State should be filed in paper form (an original and two copies). There is no provision for legally valid "e-copies" or for digital duplication of an e-application. So, those applicants who prefer the on-line filling are obliged to file the application also in paper form.

.....

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?

When it comes to the protection of human rights, the courts apply broader interpretation of terms related to technology. For example, the word "intrusion" in private life is to be broadly interpreted, when examining the means used in order to intrude in a person's private sphere. Another example; The Greek Constitution provides that "Secrecy of letters and all other forms of free correspondence or communication shall be absolutely inviolable". The terms "letters" and "all other forms of free correspondence or communication" are not construed in the context of their original meaning. On the contrary, the courts update the meaning of those terms to adjust them to the present, where the communication through the use of technology is dominant.

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?

Yes, there is space for more ideas and discussion about the techniques that the court could use in order to reach the most accurate interpretation of that terms. It could be useful to present examples through the jurisprudence of the courts that have dealt with the problem.

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?

V 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?

Tax audits are conducted after analysis of data exported from the Ministry's of Finance data base, where all entities (privates and corporations) are registered regarding their tax profile. The main risk in such inquiries is the abuse of personal data.

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?

.....

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?

Yes. Such implementation methods could be introduced in the field of the execution of judgments.

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.

1. Interoperability among courts and civil services. Very important issue for speeding up justice.
2. E- justice (on-line hearing and deliberation) . Very important issue for making justice more accessible to all citizens, regardless their geographical proximity to the courts.
3. Funding of the technology reforms in justice . The most important issue is to convince governments or the EU to fund keeping the judicial systems up with the technological evolution.

All these topics need to be discussed.

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.