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

“An exploration of Technology and the Law”

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Answers to questionnaire: Hungary



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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.

The Hungarian General Administrative Procedure Act (Act CL of 2016) regulates a so-called automated decision-making procedure for cases where all the evidence and relevant data are available to the authorities, and the decision-making does not involve discretion or opposing parties (e.g.: traffic fines). In these cases the body providing e-governance services shall bring its decision and convey such decision to the clients without human intervention.

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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.

The above mentioned automated decisions are adopted at first instance. The clients can either file an appeal within public administration or can challenge the automated procedure itself. In either case, the authority has to carry out a full-length administrative procedure, resulting in a “regular” administrative decision. Since these final administrative decisions are delivered in full-length administrative procedures, the automated decisions are usually not reviewed directly, only the second instance or the repeated first instance decisions are challenged at the courts.

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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?

Since in Hungary automated decision-making does not bring up questions related to the judicial activities, we do not consider this topic suitable for a more detailed 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.

Digital judicial procedural rules have been introduced recently in Hungary, however, the judicial procedure has not been completely digitalised. Using the digital form of the judicial procedure is only mandatory for corporate clients, state entities and legal counsels (Act CCXXII of 2015, Section 9). Natural persons can opt for the electronic procedure, but they are not obliged to use it. This duality means that in an administrative case the court usually has to communicate with the parties both electronically and in paper.

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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?

This topic may be suitable for a more detailed discussion. It may be worth discussing how digital proceedings can ensure that individuals (mostly natural persons) have access to the courts even if they are not able to use digital means, without having to keep both a paper version and an electronic version of the case documents.

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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.

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?

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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?

We have no information of such a system or a public debate on the introduction of such a system. However, it would be useful to create a database that is able to analyse the judgements and make predictions, as it would increase both transparency and efficiency.

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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?

It would be interesting for us to hear about pilot projects or working systems in this field, in order to evaluate its advantages.

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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.

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No

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

To our knowledge, the Hungarian legislature has not adopted technology-specific legal acts, nevertheless, the most important and fundamental acts (e.g. Civil Code, Code on the Civil Procedure, Act on the General Administrative Procedure) are usually framed in a way that the legal terms may provide for enough flexibility. In this way, the broad legal terms might be adapted for future technological developments. For instance, documentary evidence under the Code of Civil Procedure includes both paper and electronic documents.

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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 do not have enough data on this subject to identify general tendencies. Nevertheless, administrative courts usually apply a strictly text-based approach when interpreting legislation, in order to ensure the legality of decisions. If the legislation uses specific technological terms, it is usually not possible to broaden the interpretation in order to adapt the rule to a different factual/technological setting.

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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?

Since Hungary has limited experience in technology-neutral legislation, a more detailed discussion of this topic would be of interest for us. Especially, how to create a legal environment that both enhances flexibility in adapting to future technological developments and is able to protect the basic principles of administrative law (legality, protection of legitimate expectations, etc.)

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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?

Automated data analysis is used in traffic control, traffic fines are delivered in an automated procedure (See: Digital decision-making). As mentioned above, these decisions are usually not reviewed directly by administrative judges, since they can be appealed or challenged, in which case the procedure is not automated, but a full-length procedure.

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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?

We would consider this a suitable topic as well, in order to be provided with a better picture of how these digital databases could be used in legal enforcement in different fields of administrative law.

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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.