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**Colloquium organized by the Council of State
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“An exploration of Technology and the Law”

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Answers to questionnaire: Turkey



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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.

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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.

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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?

There is no public debate in our country yet in this regard. No work has yet been done to put such a system into practice.

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 can be taken up as a topic of debate in the seminar.

-In the case the computers are allowed to take decisions without the investigation of the judge, how the discretionary authority, personal conviction and the interpretation of the statutory/legal provisions will be made by computers.

-Considering that each case file is not exactly the same as the other and there are subtle variations even in similar cases, the question of whether the possibility of erroneous decision (misjudgement) making will increase if an automatic decision making mechanism is used.

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.

Judicial proceedings can be performed digitally on the internet in our country. This is an optional application, there is no obligation.

In the Uyap Judiciary Network, people can use the "Uyap Citizen Portal" and the lawyers can use "Uyap Lawyer Portal" to follow the progress of their files online.

With Lawyer Information System (Lawyer Portal) lawyers can investigate the case files assigned to them (and also the case files which are not assigned to any lawyer yet by taking approval from the relevant judge on the internet) in the system and can take copies from these files, they can add documents to the case files in the system with electronic signature, open a new case file and pay the fee. According to this lawyers, thanks to this information system, can do almost all of their transactions from their offices except entering the courtroom.

With Citizen Information System (Citizen Portal) the citizens can use their T.R. identification numbers to learn important phase informations about the case files (such as the matter of the case, the merit of the case, the parties of the case, the date of the trial, the stage of the trial, whether it has been decided, whether it has been turned over from the appeal) seen in judicial and administrative jurisdictions under UYAP. However, citizens who do not have e-signature or mobile signature in this system can not view the contents of the documents in the file in terms of information security. Citizens need access to the UYAP Citizen Portal through an e-signature or mobile signature so that they can open a new case file, pay fees, examine the system's case files in detail, add documents to the case files and copy them from these files.

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?

This issue can be discussed.

- **The way in which information security can be achieved in digital judicial proceedings,**
- **The contribution to the quick and accurate execution of the digitally run judicial proceedings can be discussed.**

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?

Decisions issued by high courts in our country (Constitutional Court, Court of Cassation, Council of State) and having case-law are published on the internet sites of the relevant courts. Parties or related institutions have the opportunity to determine their preferences, such as not opening the case or going to reconciliation, by following the published decisions.

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?

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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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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.

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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?

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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 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?

In our country, automatic data analysis is used by various institutions. For example; The tax offices have access to taxpayer bank information, land registry records, and the data obtained from these sources are used by the relevant departments for audits. Also, during the loans extended by the banks, transactions are made taking into consideration the risk reports showing the last 5 years' payment histories about the persons at the Risk Center of the Banking Association of Turkey.

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.

For the Administrative Courts there are no technological developments that we think will soon have comprehensive results. However, UYAP Information System which is developed in accordance with the electronic signature infra-structure is currently used;

- **A central information system has been established with UYAP, and full functional integration between the judicial and judicial support units was provided in this system. Thanks to the full integration of UYAP and its archive in a centralized electronic environment, accurate and consistent information has been opened to all users, mainly judges, prosecutors and judicial personnel, within the framework of the authorities recognized by the legislation. Users are able to access this information quickly and easily, while the judiciary units are able to exchange all kinds of information and documents between them in an electronic environment almost instantaneously.**
- **Written correspondence between the units in the judicial system can be done rapidly in the electronic medium in the paperless office logic.**
- **In the case of the proceedings and the inquiries, the instructions which are requested by the mail and lasted for months can be transmitted to the counterpart through the on-line connection in UYAP and can send the reply immediately after carrying out the unit transaction.**
- **All case files concerning a person in Turkey are available on-line for our judges and prosecutors. This information can be accessed instantly, making it both more accurate and quicker to decide.**
- **As of September 21, 2011, the video conferencing system under the name of SEGBIS (Audio Visual Information System) has started to be used by the courts (especially judicial units). With this system, video conferencing and recording of statements are provided for those who are outside the judiciary or who are not present at the court.**
- **UYAP integrates with other computer networks in the public sector, enabling the flow of information and documents to be realized in the shortest possible time. For example; Due to the integration provided by the Criminal Records, MERNIS, TAKBIS, POLNET and Central Bank databases, population registration, criminal registration, driving license registration, title registration**

and exchange rates can be brought to jurisdiction authorities within a few seconds.

- **As a result of UYAP and POLNET integration, law enforcement officers are able to question the people sought in UYAP. Thus, as the information exchange about the people wanted between the judicial units and the law enforcement officers is realized on-line, the wanted persons can be followed effectively and the unjust treatments are prevented by removing the mistakes that occurred earlier in the interim process. Capture and detention times are closely monitored.**
- **By allowing the lawyers to follow their files from their offices and citizens to follow their files on the internet and by allowing the judges and prosecutors to access the files within their authorities even from their homes, the space limit was removed in the judicial activities and the files of the persons concerned could be tracked more effectively so that the judiciary got speed and efficiency by saving time.**

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.