



Strasbourg, 27 January 2011

CCJE-GT(2011)1

**CONSULTATIVE COUNCIL OF EUROPEAN JUDGES
(CCJE)**

Questionnaire with a view of the preparation of Opinion No. 14 on the non-materialisation of the judicial process and the use of IT by judges and court staff

**QUESTIONNAIRE
RESPONSE OF THE NETHERLANDS**

Questionnaire with a view of the preparation of Opinion No. 14 on the non-materialisation of the judicial process and the use of IT by judges/court staff

1. Access to courts

a) May legal proceedings be instigated by electronic means?

At present, proceedings may be instigated by electronic means in administrative cases .

In the Agenda for the Judiciary 2011-2014 (the multi annual strategic plan) the Judiciary has expressed the goal that in 2014 legal proceedings in all civil, criminal and administrative proceedings can be instigated by electronic means. To that purpose a number of pilot projects which allow parties to instigate a case by electronic means are running, e.g. for money claims and insolvency cases.

b) Is there relevant legislation?

Yes, on the 1st of July 2010 the Act on “Electronic communication in administrative proceedings before the court” (Wet elektronisch verkeer met de bestuursrechter”) came into force.

c) What are the main requirements for instigating legal proceedings by electronic means? (multiple choice possible)

- The parties must submit the claim with a qualified electronic signature
- The parties must fill in a downloadable form to be submitted electronically
- Other, please specify - The parties must fill in a form on a secured web site to be submitted electronically.

d) To what extent are legal proceedings instigated by electronic means in practice?

This has been possible since October 2010, since then the number of cases filed by electronic means are doubling each month (at present 216 cases in total).

2. Procedure within courts

a) Once a claim has been issued electronically, does the procedure differ from a traditional procedure?

No, the normal rules apply as to the rules of proceedings.

b) Does the electronic procedure differ according to the type of case (civil, criminal, administrative, etc.)?

Yes.

c) How does the court communicate with the parties:

<i>With parties who use electronic means themselves:</i>	<i>With other parties:</i>
<input type="checkbox"/> by traditional means?	<input type="checkbox"/> by traditional means?
<input type="checkbox"/> by using electronic communication?	<input type="checkbox"/> by using electronic communication?
<input checked="" type="checkbox"/> both	<input checked="" type="checkbox"/> both

- d) Do specific electronic means exist for the communication between lawyers and courts? Please specify.

In family and civil law cases lawyers can access the case-register through a secured website.

In family law proceedings there is a possibility to submit petitions and documents relevant for the procedure electronically.

- e) Do electronic files exist?
- If an electronic file exist, is there a paper file as well?
- If both exist, which is the "authentic" file?

Yes, in criminal procedures electronic files exist in cases that are dealt with by a single judge. In these cases either the public prosecution or the court scans the paper file. In more complex cases that are dealt with by a three judge panel the e-file is being developed

There is also a pilot-project which introduces the use of electronic files in insolvency cases.

The authentic file is the one that reaches the court first.

- f) If yes, is there relevant legislation?

A decree that regulates the electronic police report came into force on 1 February 2011. Legislation is being prepared which will deal with the e-file in criminal cases.

After the procedure at the court the legislation concerning Public Records is relevant.

- g) What are the main requirements with respect to electronic files?

1. Integrity of the data (meaning the data are correct and reliable).The electronic version should be identical to the non-electronic version and in case of doubt the parties involved and the judge should have access to the original documents.

2. An electronic signature is also required. This signature should be of the highest possible security level.

- h) Are there special regulations and safeguards with respect to electronic files containing particularly sensitive information (e.g. health information, information concerning secret services)?

The regulations are stated in the Personal Data Protection Act. Furthermore security measures may be introduced through special authorisations which will limit and protect access to certain sources or information.

- i) What happens when the authenticity of an electronic document is doubtful/controversial among the parties?

Parameters have been introduced for e-files with the aim of limiting discussions on the authenticity (automatic conversion of documents in PDF-a and adding date etc). Nevertheless if authenticity is controversial the electronic document will not be taken in consideration during trial. A new electronic document will be made which will be taken in consideration during trial. Legislation which will regulate this issue is being drafted.

- j) If parties wish to submit documents which are **not** in an electronic form (e.g. documents on paper), what procedure will the parties and the courts follow?

The regular procedure will be followed.

- k) Must paper documents be kept? If yes, how long?

The original paper file is being kept.

For closed cases a Central Digital Archive is being set up for e-files. The rules are set out by the Public Records Act.

- l) What is the procedure when a judge's or court clerk's hand signature is prescribed? Does digital signature exist?

A hand signature is always required. A digital signature for the judges and court clerks is in development. The main obstacle is the level of security of such a digital signature.

- m) Do parties have access to the complete court file:

- Yes, always
 Yes, but specific conditions may apply due (to protect witnesses)
 No

Please indicate, if appropriate, the relevant legislation.

The Dutch Criminal Procedural Code and the Personal Data Protection Act.

- n) Do the parties or their lawyers have the possibility to follow the state of the proceedings via internet (secured)?

At present this is possible for lawyers through a secured web-site in civil and family law cases both in first instance and in appeal.

- o) Is the access to electronic files within the court regulated? Please specify.

Yes, judges and court staff may only access electronic files in cases that are allocated to them.

- p) Have judges/court staff access:

<i>Judges</i>		<i>Court staff</i>	
<input type="checkbox"/>	to all court files?	<input type="checkbox"/>	to all court files?
<input checked="" type="checkbox"/>	only to files within their jurisdiction?	<input checked="" type="checkbox"/>	only to files within their jurisdiction?

3. Oral hearing

- a) Are there oral hearings based on electronic means (e.g. judges act based on electronic files accessible in computer)?

Yes, in criminal procedures by a single judge. For more complex cases that are dealt with by a three judge panel this is in development.

- b) Are the expertise, the draft decision written by the reporter and personal notes accessible for judges in computer?

Yes, in criminal procedures.

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- c) Is the complete file accessible for the parties or their lawyers during the hearing (also in computer)?

No, the feasibility to develop this will be studied.

- d) Has technical equipment been installed in courts enabling to project documents on screens visible to judges, parties and audience?

It is being installed in every court in the Netherlands (19 first instance courts, 5 courts of appeal, the Supreme Court and three superior administrative courts).

- e) Are oral hearings audio or video recorded?

It is possible to record an oral hearing, but it is not standard.

- f) Is video conference in public hearing used:
- for the hearing of witnesses?
 - for the hearing of experts?
 - for the hearing of parties?
 - other? Please specify.

Please indicate the relevant legislation as well as the restrictions, if appropriate.

In detention cases of aliens (awaiting expulsion) video conference in public hearing is used.

- g) If possible, please detail how many courts have been equipped with an adequate and sufficient electronic equipment to assist judges, court clerks and parties during oral hearings?

	<i>100% of courts</i>	<i>+50% of courts</i>	<i>-50% of courts</i>	<i>-10% of courts</i>
Electronic files access	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Electronic data base of jurisprudence	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Screen projectors	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Internet access	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Video conferencing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Audio conferencing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Video recording	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Audio recording	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4. Information services for judges

Are there central databases accessible for judges containing:

<i>Database run by State</i>	<i>Database run by a private institution</i>
national legislation	national legislation
European legislation	European legislation
national case-law	national case-law
international case-law	international case-law
law review articles	law review articles

Please specify the private institution.

The Netherlands Council for the Judiciary has developed Porta Juris. Porta Juris is a portal which contains all the above stated databases. The databases of private institutions are accessible through the central database for the Judiciary. The Council for the Judiciary pays for the licences.

5. Practical court work

- a) What is the work of the judge:
- in writing the documents?
 - in delivering the documents?
 - in registering the documents?

The judge will either get a draft decision from the court clerk or draft the decision himself, depending on the sector and the level (first instance, appeal or cassation). The judges have no role in delivering and registering the documents. This is done by the administration of the courts (registration) and bailiffs (delivering of the case)

- b) What is the work of the court staff:
- in writing the documents?
 - in delivering the documents?
 - in registering the documents?

In the first instance courts the decisions are prepared by the judicial support staff. The courts are not responsible for the delivering of the documents. The court registration registers the documents.

- c) Is there enough staff to do this work? Please specify.

In general yes, but on local levels difficulties may occur.

- d) Do judges write their decisions themselves on their computer?

See under a.

- e) Do judges use specific techniques (e.g. voice recognition, structure or model of decision available in a database)? Please specify.

On a national level wizards and formats have been made for (a part of) standard documents, decisions and verdict in all sectors (civil, criminal, administrative).

- f) Is modern technology used to monitor the length of proceedings and for case flow management within the court (eg. alert system)?

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Yes all cases are registered in the primary process systems. Queries have been built which will provide the courts on a local level with data which may be used to monitor the length of proceedings etc.

- g) Are data concerning the work of each judge contained in a database which can be used for statistics, evaluations, etc. ? Please specify

Yes, but only statistical information is used.

6. Internet

- a) Is internet accessible for each judge in his/her office? Is this access limited ? Please specify.

Yes. There are no limitations, but there is a protocol for emails and internet use.

- b) Do all courts have their own website? Please specify which court and the content of the website.

There is one overarching web site for the whole judicial organisation (www.rechtspraak.nl) on which every court has a sub website. The sub web sites contain the contact information of the court, news of the court and general information about the court.

An intranet for the judicial organisation also exists, which also has a national part and local websites for the courts.

7. Use of private personal computers/laptops by judges and court staff

- a) May a judge use his private PC/laptop for professional purposes (e.g. at home or on the way home and back?)

Yes, it's their own responsibility.

- b) May e-mails be send from the court to a judge's private e-mail address and vice versa containing professional information?

No, this is not in compliance with the national protocol for email and internet use. In the near future, judges and the staff will be able to log-in at home on the secured network of the court.

- c) Does this require special technical safeguards (e.g. excluding access by third persons, family members, etc.)? Please specify.

Not applicable.

- d) Is the situation the same for all court staff?

Yes.

8. Use of data

- e) Is the data contained in the procedure used for another aim than the procedure itself?

No.

f) Is this data used for statistics?

No.

g) If yes:

- who produces these statistics?

- how and by whom are these statistics used?

On a local level data could be used for statistics, but only if it is in compliance with the Personal Data Protection Act

On a national level data are used for statistics, but these data only concern the number of specific types of cases. These statistics are used for benchmarking and for the financing of the Judiciary (The Netherlands has an output based financing system).

9. Data security

a) Does legislation exist to protect personal data processed through the electronic infrastructure of a court?



Yes



No

b) If yes, are there requirements applicable to processing data in courts?



rules on access to data by the person concerned or other persons/institutions



correction and deletion requirements

other. Please specify.

The Personal Data Protection Act states that each organisation should set up standards. The Government has developed standards that are also used by the Judiciary.

c) If there is a general Data Protection Commissioner, has he or she already dealt with IT at the judiciary?

The Dutch Data Protection Authority is the supervisor and occasionally advises the Judiciary (in the case of e-Archives).

d) Is there a special Data Protection Commissioner in each court (e.g. a judge with this additional task)?

No, but there is a special Data Protection Commissioner at the Netherlands Council for the Judiciary who works for the whole Judiciary.

10. Participation of judges

Who decides about the electronic infrastructure of a court? Are judges implicated in the relevant decisions concerning the implementation of IT in courts?

The IT governance structure for the Dutch Judiciary is organised as follows:

IT-Direction - The Council for the Judiciary ;

IT-Demand – For each IT project judges and other court staff are invited to join the project teams;.

IT-Implementation – “Spir-it”, the IT implementation organisation of the Judiciary

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11. Conclusion

Please give your opinion on the advantages and disadvantages of the development of IT in courts?

Access to justice implies nowadays that the judiciary communicates also electronically. If the judiciary fails to perform in this area it will loose public trust.

It is perhaps useful to distinguish several dimensions of the use of IT by the judiciary. One dimension is the development of websites that can provide general and more individual information (help desks) to the citizens and that offer easy access to relevant case-law and other sources of information. Another dimension is the development of e-filing of cases. Of pivotal importance are guarantees with regard to the security of these systems, also in view of data protection, and with regard to the authenticity of the electronic documents. Where relevant, personal contact between the judge and the parties in a hearing should be maintained. A third dimension is the development of IT-systems for internal use by the judges and the staff (access to legal sources, wizards, formats etc.).

The goal of the Netherlands Council for the Judiciary is that by 2014 all cases can be brought digital to trial, that the progress in the proceedings can be followed through the Internet and that in some cases the proceedings will be entirely digital, except for the oral statements.

Experience shows that IT project are complex, very costly and are not always successful. The development of IT instruments in smaller pilots is advisable.
