INTERNATIONAL ASSOCIATION OF JUDGES

2nd STUDY COMMISSION

Answers of the Dutch Association of Judges on the questionnaire
How data protection rules are impacting on the way judges work in civil litigation?

1. In your jurisdiction is a court considered to be a data controller for data protection law purposes in all, or any, of the following situations:

a. When performing its judicial functions?

The court store data while performing its juridical functions enclosed to the cases, or the court decisions. During these functions, the court is a data controller for the data protection law (GDPR). But the court is not a data controller om behalf of the authorities on a general basis.

The Dutch "Autoriteit Persoongegevens" (AP)/ "Authority Personal Data" is a controller for data protection law on a general basis in the Netherlands. The AP is by law not entitled when courts do their normal judicial functioning (art. 55.3 GPDR/AVG).

b. For purposes connected with the administration of justice, including the publication of a judgment or court decision, or a list or schedule of proceedings or of hearings in proceedings?

Yes, the court will be a data controller in these situations (GDPR), according to a decision of the Court of First Instance Noord-Nederland 20-12-2018, ECLI:NL:RBNNE:2018:5385. In the commentaries it is said the ruling is wrong.
The basis of registration is the Ministerial Order of the Court on Duty (BODG). This is based on art. 11 Judicial Organisation Act (Wet RO). It gives not a basis for inquiries by phone.

c. For purposes connected with the efficient management and operation of the courts and for statistical purposes?

Unknown.

2. In your jurisdiction does a data subject (e.g. a party to litigation, a witness, or a party whose interests may be affected by the litigation) have a right to information regarding the processing of their personal data by or on behalf of the courts?

Yes, they have a right to such information. See the Privacy Statement of the Council of the Judiciary.

3. In your jurisdiction does a data subject whose personal data is published in a court document such as a judgment, have the right to seek rectification of allegedly inaccurate or inappropriatelydisclosed personal data?

No, they do not have such right. This is only possible in a pending case.

4. In your jurisdiction is personal data contained in a judgment or decision of a court, or in a list or schedule of proceedings or hearings, generally made accessible to the public? If so, are there exceptions and what are they? If not, is there a redaction requirement, or alternative requirement, to be implemented before a judgment / list/schedule can be published so as to safeguard the rights of data subjects?

Yes, a judgement or decision of a court can be made accessible to public.
We do not publish all, only about 5% of the 1.5 million court decisions each year. The intention is to grow to 75%. The problem is the duty to anonymizes, that is done by hand and a lot of work.
If the decisions are published they will normally be anonymized on behalf of natural persons on the basis of the Anonymization Guideline. Legal persons as companies are not anonymized. There are exceptions, for example to protect personal data or personal information. This data will not be published.

When someone asks for a non published decision, he/she can in general obtain a court decision.

Information on running procedures is in theory public but in practice rather difficult to obtain. Especially in civil cases where the digital system is only accessible by lawyers.

Court hearings are normally accessible for the public, only exemptions in family law, about minors and cases with very sensitive personal data. A list or schedule of proceedings or hearings is available for the press and the Supreme Court (SC) ruled in a Landmark Cassation case in the Interest of the Law, it had to be given to anyone who want this kind of information. It is in principle not necessary to inform about the names of the parties, within the scope under AVG/GPDR (Hoge Raad 21 april 2023, ECLI:NL:HR:2023:658, Iris Select BV e.a. - griffier Rechtbank Den Haag/greffier court of first instance The Hague). The Attorney General stated in the Conclusion/Advice before this decision that the basis for an obligation to provide information on pending cases is provided in existing legislation and case law on openness of the handling of a case. The SC followed this in a very elaborate decision. The general idea is that information is public and the courts work transparent. But the practice is different. The Supreme Court ruled that a lot of practical effect has to be arranged by the courts themselves. The decision of the SC is welcomed in the doctrine, but there are many questions not solved. For example information about the names of the judges in duty in the tried cases.

5. How are complaints addressed in your jurisdiction concerning alleged breaches by the courts of the rights of data subjects? Does your jurisdiction have a person or body with special responsibility for the supervision of data processing operations of courts when acting in their judicial capacity?

Yes, we do have a body with special responsibility for these questions. The local court will also have a responsibility (GDPR).

6. In your experience have data protection rules impacted adversely on your judicial independence? If so, how have they done so?

No, it has not.

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