

THE CHALLENGE OF COLLABORATION – ICT IMPLEMENTATION NETWORKS IN COURTS IN THE NETHERLANDS

Florian HENNING
Gar Yein NG

Abstract

Increasingly, public sector organisations are adopting Information and Communication Technologies (ICT) in order to improve their operations, a tendency that is commonly referred to as “e-government”. However, e-government also comes with some major challenges for public administrators in introducing and managing those e-services, because they are usually located at the nexus of technological innovation and organisational and institutional change. In order to achieve the expected benefits from ICT in public organisations, work processes need to be re-engineered, whilst responsibilities and authority locations are shifting. A particular challenge in this respect is the trend towards e-services that cut across traditional organisational boundaries and integrate information flows between a number of different organisational actors with complex settings of strongly divergent backgrounds, practices and interests. Good examples of this, and the focus of this paper, are e-services in the judiciary (“e-justice”). In this paper, we address the issue of mediation required to motivate actors for collaboration in joint e-justice services. Our main research question therefore is: What is the role of legal frameworks for mediation and legitimization of collaborative implementation in inter-organisational e-justice projects? We will address this question by means of a case study analysis on judicial videoconferencing in the Netherlands, a project called “Telehoren en Telepleiten” (THTP).

Florian HENNING

Research Fellow, Maastricht Graduate School of Governance,
Maastricht University, Holland
Tel.: +31 43 3884650
Email: florian.henning@maastrichtuniversity.nl

Gar Yein NG

Assistant Professor, Legal Studies Department,
Central European University, Hungary
Tel.: +36 1 327-3000/2248
Email: gyng@ceu.hu

1. Introduction¹

Increasingly, public sector organisations are adopting Information and Communication Technologies (ICT) in order to improve their operations, a tendency that is commonly referred to as “e-government”. However, e-government also comes with some major challenges for public administrators in introducing and managing those e-services, because they are usually located at the nexus of technological innovation and organisational and institutional change. In order to achieve the expected benefits from ICT in public organisations, work processes need to be re-engineered, whilst responsibilities and authority locations are shifting. A particular challenge in this respect is the trend towards e-services that cut across traditional organisational boundaries and integrate information flows between a number of different organisational actors with complex settings of strongly divergent backgrounds, practices and interests. Good examples of this, and the focus of this paper, are e-services in the judiciary (“e-justice”).

Of particular importance with regard to digital information exchange in such multi-actor settings is the collaboration between the different organisational actors who integrate data exchange and other work processes in the context of a joint e-service. Empirical research in e-government shows that cross-organisational collaboration by public managers is difficult to achieve (Fountain, 2002) and needs to be legitimised both normatively and functionally (Contini, 2008). Such legitimisation adds to the transparency and accountability of the implementation of ICT in government in general. In this paper, we address the issue of mediation required to motivate actors for collaboration in joint e-justice services. Our main research question therefore is: What is the role of legal frameworks for mediation and legitimisation of collaborative implementation in inter-organisational e-justice projects? We will address this question by means of a case study analysis on judicial videoconferencing in the Netherlands, a project called “Telehoren en Telepleiten” (THTP). THTP uses videoconferencing technology to establish an audiovisual connection between detention centres and courtrooms, so that in contrast to “traditional” hearings, the defendant can remain in the detention centre.

Following the section on research methods, the major theoretical foundations of this paper will be presented. The paper will then introduce the situation and role of THTP in the justice system, and how the project is being implemented with regard to inter-organisational collaboration. We will then examine the role of the various mediation mechanisms discovered in our empirical data. In the concluding section, we will present our argument that legitimisation of joint e-justice projects requires a new kind of decentralised project management, which builds on a cyclical model that differentiates between the role of laws and what we call “collaboration protocols”:

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quasi-binding technical and procedural arrangements among actors that are created ad-hoc during the implementation process.

2. Methodology

The choice of THTP as a case study was taken because it has sufficient actors across the system to give us an idea of how collaboration and communication worked and how the legal framework might affect them; a project that would affect a sufficiently large part of the organisation to change its working methods and which requires interoperability with other organisations. The legal framework was already in place, and a pilot had been completed at the time the research was being conducted. Given the fact that this project completed its first pilot test in immigration cases only, there is limited data available in criminal cases²; therefore our analysis in the following restricts itself to the application of THTP in immigration cases. This makes a difference because the internal and legal procedures of the courts for criminal and immigration cases are very different and involve very different actors.

Given the lack of empirical data and research in the implementation processes of ICT in the justice sector, and especially of videoconferencing, we have opted for an exploratory research approach. Next to an analysis of relevant policy documents, we have conducted semi-structured interviews with actors in various positions of policy making and implementation of the project (see Table 1)³. Our respondent sample was selected by a snowballing method and to reflect the views of all relevant participating organisations and both strategic actors (such as policy makers) and implementing actors (such as officials within implementing organisations and IT suppliers). We started the snowballing at the highest strategic level (the Ministry of Justice), and “zoomed in” from there to actors that carry out the practical implementation of the project.

Table 1: List of interviewees

| Respondent ID | Organisation Type | Function |
|---------------|---|-------------------------------------|
| 1 | Ministry of Justice | Senior Official e-justice Programme |
| 2 | Council for the Judiciary | Programme Manager |
| 3 | Dienst Justitiële Inrichtingen ⁴ | Project Leader |
| 4 | Council for the Judiciary | Programme Manager |
| 5 | Court of Appeal | Senior Clerk |
| 6 | AVEX ⁵ | Project Leader |
| 7 | Court | Clerk |
| 8 | Detention Centre | Head of Department |

2 At the time of conducting this research, not enough courts have been using THTP for criminal cases. Furthermore, THTP in immigration cases involves more organisations and therefore was the more interesting case for the purposes of this paper.

3 We follow methodological recommendations from Creswell, 1998; Maso, 1996; Warren, 2001.

4 Department of Detention (DJI).

5 AVEX and KPN were the private companies supplying the hardware for the project.

Due to the fact that this is a single case study, we make no claims of generalisability. Rather, we chose for an exploratory approach in order to identify possible motivation factors and their working mechanisms as a basis for further research questions in this field, as well as for the purpose of case-specific policy recommendations.

3. Theoretical framework

For successful implementation, a project needs to be legitimised not only functionally (i.e. technical requirements of interoperability and collaboration), but also normatively (i.e. in terms of legal certainty) (Contini, 2008). For both of these independent, yet connected legitimisation requirements, mediation is necessary in order to find the right balance between the needs of the different organisations.

An integrated service delivery project like THTP by definition implies the concerted action of multiple policy actors in the context of policy networks. Most broadly, policy networks have been defined as “(more or less) stable patterns of social relations between interdependent actors, which take shape around policy problems and/or policy programmes” (Kickert, Klijn, and Koppenjan, 1997).

A particular kind of interdependency emerges when such multi-actor networks have a central ICT component, because these projects require a high degree of both organisational and technological interoperability. Interoperability refers to “the ability of distinct systems to communicate and share semantically compatible information, perform compatible transactions, and interact in ways that support compatible business processes to enable their users to perform desired tasks” (RAND, 2008). Organisational interoperability refers to the common definition of project goals and the re-design of primary operational processes. Technological interoperability refers to the technological design that is necessary to connect the relevant services and systems.

Interoperability requires the collaboration of all actors, which is “a process in which autonomous actors interact through formal and informal negotiation, jointly creating rules and structures governing their relationship and ways to act or decide on the issues that brought them together; it is a process involving shared norms and mutually beneficial interactions” (Thomson and Perry, 2006). Collaboration thus requires “structured agreements” between actors on the joint organisational architecture within which partners interact (Ansell and Gash, 2007). It also requires actors to share activities and act together within the shared structure (Ansell and Gash, 2007; Bryson, Crosby, and Middleton Stone, 2006; Gray and Wood, 1991; Kahn, 1996; Kraus, 1980; McGuire, 2006), but also sometimes in an informal and non-structured way. Finally, collaboration also means power sharing.

In professional bureaucracies, such as the judiciary (Mintzberg, 1983; Ng, 2007), motivating actors to change routines and to collaborate across organizational boundaries is problematic, and the integration of services therefore needs to be legitimated (Contini and Lanzara, 2008). Crucial for legitimising transformational technology is what Contini (2008) describes as “mediation”, that is, reducing conflicting “logics” of the various actors in a process of translating the traditional procedures and practices into a new,

technology-driven context. Mediation is required in two dimensions: on the one hand, between legal codes and the requirements of the technological and organizational requirements of the project, and between all involved actors on the other.⁶

In highly regulated contexts as judiciaries, legitimating technology that changes an organisation's way of operating cannot simply be implemented on the mere functional basis that "it works", but also requires a normative (i.e. legal) basis. As our case study confirms, the resulting entanglements of transformative information technology and institutional setting reflects what Contini (2008) calls "assemblages": complex adjustment processes of institutions and technology. Importantly, assemblages differ from the related concept of "information infrastructures" in that the former highlights the condition of "constant development", making it a dynamic process of mutual mediation between information technology and systems of rules. The relevant legislation thus forms an important mediation element of the setting within which organisational actors decide to collaborate for a service. Nevertheless, due to their network setting, legitimating organisational change in joint e-justice projects needs more than a legal framework alone (Fountain, 2007), and we therefore also have to pay attention to the mediation of other "conflicting logics" as well. In this research, we have applied Herzberg's (1987) concepts of hygiene and motivation factors to create conditions in which technology may be accepted and implemented with more chances of success. Hygiene factors describe the absence of "demotivators" (such as for instance legal uncertainty) and thus are a condition that paves the way for legitimation of the technology (such as legislation). Motivation factors, on the other hand, are factors that need to be present to create conditions to ensure successful implementation of technology.

4. Empirical analysis

4.1. Description of THTP within the judicial system and collaboration requirements

4.1.1. Purpose and history of THTP: a brief overview

THTP was introduced by the Ministry of Justice in 2007 with the intention to create more efficient proceedings in criminal and immigration-related cases by using videoconferencing technology (Respondent 1). The primary strategic goals of THTP are to save transport costs of detained immigrants and of expert witnesses and to yield cost savings from efficiency gains in scheduling hearings (e.g. less delays from transport) (Ministerie van Justitie, 2009; Tweede Kamer der Staten-Generaal, 2007). Ancillary policy goals of THTP include environmental concerns (reduced carbon emissions), reduced traffic, increased security and better treatment of the detainees. There are three levels of actors: the Ministry of Justice, national implementation and management organisations, and local organisations where the technology has to operate.

6 This definition thus implies that mediation here is a very different concept from mediation or arbitration in the judicial understanding in the context of alternative dispute resolution.

THTP started a pilot between the court of Maastricht and the detention centre in Dordrecht in 2007. In the preparation phase, the results from orientation discussions were turned into implementation guidelines. This preparation phase will be finished by the end of 2009 and THTP will gradually be rolled out to all Dutch courts and detention centres.

4.1.2. *Interoperability and collaboration requirements in THTP*

The actors needing to collaborate in its use are the judges, clerks, lawyers, representatives of the IND⁷, translators, and the defendants. Actors' collaborative behaviour is influenced by the extent to which the new project requires them to change routines, and whether this is a welcome change or not. The absence of the Ministry of Justice as an actor needing to collaborate to make this project work is noteworthy. This group represents the organisations where the technology had to be implemented and where changes from technologies are most noticeable.

Generally speaking, three major processes in the judicial chain require changes due to the introduction of THTP: the planning of hearings, the transport, and the actual hearing. The most basic collaboration requirement for organisations is that the system has to be used (or *not* used) according to the strategic goals and legal-technological specifications. The use of THTP is not mandatory, and therefore stands and falls with the willingness of organisations and individual judges to use it. THTP furthermore demands a high degree of organisational and technological interoperability from the actors involved in order to function well.

In terms of organisational interoperability, the central requirement is a logistical model on the planning of hearings because of the organisational interdependence that emerges. Changes to the planning are also required because whereas previously, all actors had to be present in the court room, the freedom of choice for lawyers whether to go to the court (telehoren) or to the detention centre (telepleiten), implies changes in the preparation of a hearing, especially with regard to stricter access regulations to detention centres (visitors to detention centres have to be registered ahead of time, a new responsibility that now falls to the clerks). This requires the courts (more specifically, the clerks) and the detention centres to communicate in a structured and reliable manner.

Organisational interoperability in THTP does not only require organisations to adjust externally (to each other), but also internally: instead of bringing the defendant from the detention centre to the court by car, they now have to be transported *within* the detention centre, requiring intra-organisational adjustments (Respondent 3). Moreover, changes in the actual hearing cause shifts in responsibilities and cost and require intra-organisational adjustment: for instance, the guarding of the defendants is now being carried out by personnel of the detention centre rather than the court.

7 Immigratie en Naturalisatie Dienst: This is the department of immigration and naturalisation in the Netherlands.

Also, the admission of lawyers and translators to the detention centre requires increased security efforts and costs for the detention centres. Finally, during the hearing, the judge, lawyer, translator and the defendant have to fulfil their functions in a telemediated context instead of physical presence. For instance, the exchange of documents during the hearing now has to take place via a “visualizer”.

In terms of technological interoperability, issues of concern are both the fulfilment of technological requirements by all actors, as well as the joint management of technology. Based upon testing of various technological videoconferencing options and a user requirements study, a range of technological requirements for THTP has been set up, which all partners have to fulfil. THTP also has to be compatible with existing technological architecture frameworks (Respondent 2)⁸.

With regard to the management of the technology, a collaboration challenge is that SSC-I, the ICT organisation within the department for detention (Dienst Justitiële Inrichtingen, DJI) which is responsible for the management of the THTP system, has to coordinate her actions with ICTRO, the ICT organisation within the Council for the Judiciary (Raad voor de Rechtspraak, RvdR)⁹ which is responsible for the electronic network of the courts (Respondent 3). Whilst courts and detention centres were also interacting before THTP, this was mostly on practical matters, and the mutual adjustment of working processes in THTP is new, because it includes much more joint steering and planning (Respondent 8). Here again, one notices the absence of the Ministry of Justice. The ministry does not have a daily task of management, either for technology or management.

Most of the collaboration problems mentioned by our respondents related to its actual introduction by individual courts and its application by individual judges. As already indicated above, the organisational culture of Dutch courts and judges strongly emphasises the protection of their independence, and courts thus are by default wary of entering any arrangements that would expose them to any kind of (inter-organisational) dependence and demand some kind of standardisation and adjustment. As one respondent emphasises: “Any proposals from the Ministry of Justice will be carefully analysed for effects on their independence. Here in the Netherlands, there is a very strong culture of judges being independent.” (Respondent 5). Overall, the main partner organisations - courts, detention centres, and the transport service (Dienst Vervoer en Ondersteuning, DVandO) - do not seem to have strong self-interest in the expected benefits from THTP. Whereas the Ministry of Justice is the organisational actor who initiated the overall benefit agenda, it is not involved to a great extent in the operational reality of the project implementation (Respondent 5). It thus becomes clear that in steering inter-organisational e-justice projects without a clear hierarchical authority such as THTP, the major chain partners need to be motivated to adopt the project and make the necessary adjustments for interoperability. The following sections

8 This also includes the non-ICT physical courtroom setting, such as the lay-out of the court room, the position of the different actors etc.

9 Hereafter referred to as „Council“.

will therefore investigate the mediation necessities and mechanisms for motivating actors to collaborate.

4.2. The limited role of legal rules for collaboration in e-justice implementation

Videoconferencing had already been used in Dutch courts before THTP. In his book, van den Hoogen describes pilot projects that took place in the 1990s in some courts in the Netherlands (van den Hoogen, 2007, p. 50). In one case in particular, he describes how one judge in Rotterdam ends the pilot because the procedure used does not comply with the criminal procedure. In this case, a prosecutor wished to use videoconferencing to charge a suspect held in detention. The judge said that this was not in compliance with articles 54 (3) of the Criminal Procedure Code (Wetboek van Strafvordering), which is essentially the right to be prosecuted in person as soon as you are charged with a crime (Rb. Rotterdam 28 maart 1995, NJ 1995, 478.) Therefore, it was extremely important for the second attempt for judicial videoconferencing that it can rest on a legal framework in the form of legislation. Two laws were therefore passed before the pilot could be started (Respondents 2, 3): the Law on Videoconferencing (Tweede Kamer der Staten-Generaal, 2006), and the Law on Videoconferencing in Criminal Law (Tweede Kamer der Staten-Generaal, 2007).

When we first started this project, we expected to find that such traditional forms of legislation or at least administrative rules would have a large role to play in influencing how collaboration works between the actors. What we have found, however, is that in implementing ICT projects in the justice system, a new mediation strategy is applied that shifts the emphasis from the traditional legislative dimension to a regulation by “collaboration protocols”. The rule system of THTP emerges from the implementation process itself and the participation of all actors, rather than in a hierarchical form.

We use the term collaboration protocols to describe these “soft” legal arrangements¹⁰. Even though they are as such not binding for organisations in the strict sense of legislation, they do have quasi-binding authority because of their immediate relevance for the safeguarding of smooth operations (Respondent 4). In this sense, “the coordination of the project is crucial, not the legal framework [...]” (Respondent 5). For the purpose of differentiating the distinct roles of laws and collaboration protocols, we have found the distinction between “hygiene factors” and “motivation factors” (Herzberg, 1987) useful. It helps to assess which factors are more likely to create incentives to implement projects that change working methods, and which factors are likely to help avoid dissatisfaction in the process. Motivation factors are the factors creating job satisfaction, whereas hygiene factors are independent factors to avoid job dissatisfaction. The function of the legal framework seems to be to “clear

¹⁰Our concept of “collaborative protocols” should not be confused with another, purely technical meaning of the term in the context of information systems: the technical meaning refers to data transmission protocols (e.g. the Internet Protocol, IP), whereas we refer to general arrangements regulating inter-organizational collaboration (which can include also technical protocols).

the ground” with regard to legal uncertainty, but other mediation factors seem to be necessary to motivate actors for collaboration.

Laws and collaboration protocols are not separate, but seem to work hand in hand. Both are results from a feedback loop between pilots and application of the legal framework. Laws fulfil a crucial function *ex ante* as hygiene factors by giving legal certainty and thus the “green light” for the project to be implemented. However, this legislation needs to be flexible enough to allow the creation of collaboration protocols *ex post*, which give greater definition to the implementation steps and application of THTP. Essentially, collaboration protocols emerge directly from the implementation rather than being codified *ex-ante*. In THTP, the project pilot is the starting point for a national working group to discuss the pilot, and translate the experiences into protocols and implementation guidelines for future use by other courts and detention centres. Such an approach has the advantage of providing practice-based evidence supporting the implementation in organisations where scepticism still exists. The other reason to do it in this way is to allow the courts to participate in the creation of standards for collaboration, which they must then abide by. Additionally, the problem that ICT develops and changes faster than legislation can adapt to it has to be addressed, so that often, organisations are reluctant to use technology that has not been normatively legitimated by legislation. By using collaboration protocols for legitimisation, this problem of differing maturing rates between law and technology is reduced. The Ministry of Justice can monitor the pilots in order to give practice-based advice to legislators. There is thus no central steering from above, but implementation functions as a learning loop, and the results in the form of collaboration protocols act as the guidance to lead the way for future implementation.

The way this was done in the concrete context of THTP was that a “national working group” was established and charged with the formulation of guidelines for operational implementation on the basis of experiences from the pilot. This model will be written into a handbook¹¹ to give the necessary guidance to operate THTP: “Without such guidance, you can install all the technology in the world, but you wouldn’t know how to properly operate videoconferencing within the procedural framework” (Respondent 7).

Collaboration protocols then take on a quasi-binding status: “In fact this is binding, which was the idea when they started documenting the experiences of the pilot” (Respondent 8). This quasi-binding status, however, applies only to organisations that have agreed to participate in the project. For example, courts have the right to opt out, but once they agree to participate, procedural and technical protocols become binding for them (Respondent 7).

4.3. Interoperability requirements in the implementation network

As the previous section has established, the legislation alone is only a hygiene factor and cannot sufficiently mediate all instances of “conflicting logics”. The following

¹¹ The THTP handbook is still in its final stages of preparation.

section will highlight where mediation is required in the network of THTP and where this has been addressed by collaboration protocols.

4.3.1. *Meso level*

An important network characteristic is the diversity of its actors and their interests (Ansell, 2006, p. 76; Klijn, 1997, p. 31). In order for a common vision to emerge, the interviews strongly suggest that social dynamics between actors matter. Especially trust towards the chain partners and the expectation of a more or less stable relationship plays a role in this respect, and are perceived by the respondents to be directly related to the communication between the partners: “It’s a question of getting used to each other. If people have to sit and negotiate with each other repeatedly, [...] then you get to know each other better and a readiness to take into account each other’s interests emerges” (Respondent 3). Moreover, positive prior experiences of working together with the chain partners were seen as a source of trust. Finally, peer pressure among organisations was also seen by respondents as a social dynamics factor that could motivate actors to join and collaborate. A bottom-up approach that builds upon protocols that emerge from inclusive consultation procedures which are intertwined directly with implementation practice thus seems to best fit the bill.

We found that resource distribution also appears to matter greatly in relation to expected gains. Virtually all respondents mentioned a “sow-harvest problem”, meaning that those having to invest in a participation in THTP are not necessarily the ones that reap the benefits from it. For implementing organisations like courts and detention centres, making THTP possible means having to invest their own funds in expensive technology and considerable administrative costs. Yet the benefits seem to greatly go towards DJI (in terms of resulting cost-savings from transport) and the Ministry of Justice (as initiator of the policy). Nonetheless, the data also evidenced that the courts do have their interests in THTP, for instance the savings in time, or that they can use the videoconferencing technology for other purposes (e.g. having savings from holding “rogatoire commissies” by video¹², or for teaching partnerships with universities). It is therefore understandable then that especially the judiciary (i.e. the courts and the Council) see a redistribution mechanism as a major motivation factor: “The only argument that’s accepted by all the courts is the saving of time, hearings don’t get delayed any more. That’s the only gain, otherwise we just pay a lot. So we really are thinking of a reward model how to redistribute this in order to motivate also the smaller courts” (Respondent 4).

Diverse organisational cultures also create a need for inclusive mediation. Especially the strong emphasis of courts and judges on judicial independence and due process made for central mediation requirements that were addressed by collaboration protocols (Ng, 2007). One respondent emphasised this: “The courts in the Netherlands are not

12 This is where judges from one jurisdiction hear witness testimony from another jurisdiction, usually from abroad.

in a hierarchical structure, and are highly independent. So if the boss doesn't want to introduce [THTP], then they won't." (Respondent 5). The Ministry therefore is left in a dilemma between its desire for centralised standardisation and the sensitivity for independence, and needs to take on a mediating role: "The role the Ministry wishes to take in such large projects is to help them, facilitate the process, but we don't want to be busy all day with trying to get them to work." (Respondent 1). Responsibility for implementation is thus left to be shared between both the Council and the DJI (Ministerie van Justitie, 2008).

4.3.2. *Micro level*

It is not only at the meso level that network characteristics play a role for collaborative behaviour, but that individual actors play an important role as well. Especially the fact that judges have the final say whether or not to apply THTP, is a case in point. Moreover, since judges had been extremely concerned whether the visual and sound quality of the technology would be as clear as if the hearing would take place in court (Respondents 2, 3, 8), they had, together with representatives from the ICT departments of both DJI (SSC-I) and the Council (ICTRO), been heavily involved in specifying the technological requirements (Respondent 8) which eventually formed the basis with the contracted suppliers of technology¹³. The contractual agreement with these suppliers, in turn serves as a binding frame for the choice of technology of organisations willing to implement THTP (Respondent 7). Here we see again that collaboration protocols were a more adaptive way of handling the need for mediation than laws, because collaboration protocols have the advantage that implementation is more empirical in the sense that it is practice based, therefore laws develop at the same time as ICT. This fuses them together, like Siamese twins, which creates a dependent relationship between the two. Where this does not occur, there is a failure of policy implementation, as we saw with the previous attempt to introduce videoconferencing.

4.3.3. *External determinants*

Our empirical data also revealed a range of other collaboration determinants that are part of the external environment of this project. It is important to point out these external uncertainties, as they highlight to the need for a flexible framework that build upon collaboration protocols as opposed to the corset of a legislative frame.

Beyond the immediate policy context, it is also the broader political and social contexts that respondents reported to have an effect. For instance, a clerk at one of the courts has mentioned the strategic and procedural consequences for THTP of changing patterns of illegal immigration into the Netherlands: for instance, if illegal immigration will become overly prominent at a certain border, this will affect from where the lawyers come, which in turn will affect where they will go for the hearing (thus whether telehoren or telepleiten will be used more prominently). Moreover, he

¹³KPN/AVEX had been chosen as hardware suppliers, whereas software is supplied by Tandberg.

observed that with the decrease in illegal immigration into the Netherlands over the past few years, it became more difficult for the Ministry of Justice to communicate the strategic goal of financial savings through THTP (since less immigrants would have to be transported) (Respondent 7). Another social context that plays an important role is public opinion. This concerns both the ICT affinity of society in general, as well as public perception of e-government and e-justice developments.

An issue where both technology and actors' perceptions come together are expected threats from technology failures, such as viruses, hacker attacks, lightening or fires (Respondent 3). Possible areas of damage resulting from technological failure are damage to people (safety), distortion of the legal procedure, damage to the actors' reputation, financial or material damage, and the political consequences of such possible damage. Keeping in mind that expectations of threats are both a substantive as well as a perceptual issue, inclusive consultation and good monitoring of the perception of such possible threats is thus indispensable for successful mediation. Collaboration protocols also have emerged to cope with the need for troubleshooting guidelines for cases of technological failure or threats (Ministerie van Justitie, 2007). Protocols solve these issues better than laws because there must be a certain amount of flexibility between the judges, ICT organisation, and the transport service. Furthermore, collaboration protocols offer transparency of the relations between organisations, thereby enhancing accountability in the project.

Most of these external factors are beyond the influence of central steering approaches. Since they cannot be influenced directly, they should therefore rather be seen as contingencies within which other mediation mechanisms should be set and carefully monitored.

4.4. Project management

In the analysis of our interviews we were able to discern some unexpected trends in steering policies and the translation of old practices in relation to due process into new procedures within THTP.

The bottleneck of the traditional, hierarchical approach to implementing ICT projects from the central level has been described as being a lack of coherence between legislation and project implementation. Therefore the Ministry of Justice has, within the "e-justice" programme, shifted to a mix of hierarchical and horizontal steering, so that they can start and support projects within the justice system at the same time as developing appropriate legal frameworks to support implementation. This symbiotic approach is depicted in the theoretical scheme in Figure 1 below. After the project has been normatively legitimated by passing a legal framework, implementation starts. This process of hierarchical steering is indicated by the smaller rectangle in the upper-left of the scheme. The reality of the project implementation within the inter-organisational network then creates a variety of operational complexities and thus a need for functional legitimacy. This is achieved by means of horizontal steering (indicated by the larger rectangle in the lower right), which involves consultative

mediation that result in the collaboration protocols necessary for legitimisation. Although we did not observe this in our case study, there is also a possibility that this consultation might eventually also cause an adjustment of the legislative basis (as indicated by the dashed arrow).

In this approach, the Ministry merely has a coordinative role, to initiate and supervise projects for modernising the justice system in general and at the local level (Respondent 1). In line with the decentralised steering approach, there are several working groups that involve representatives from the different organisations and which serve as a discussion platform for negotiation of interests. However, with increasing experience and interoperability in the actual implementation, the working group became less important. One of the main difficulties with doing things in this way is that it is often unclear who is responsible for the final results. Given the requirement of judicial independence and the role of both the Council and the Ministry of Justice to protect it, it is very difficult to manage the courts to implement projects in a standardised fashion.

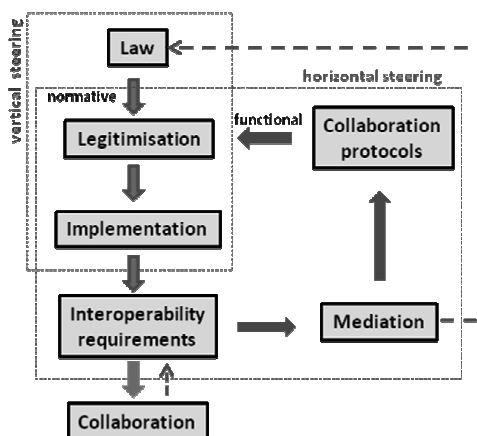


Figure 1: Symbiotic steering model for legitimizing collaboration in interorganisational e-justice networks

Therefore, at the meso level, there is a national working group to implement THTP. This group is composed of project leaders from the DJI and the Council and tasked with negotiating strategies based on the experience from practice. A central aspect of this is the consultation of other actors, such as lawyers, and the IND (Ministerie van Justitie, 2008). As respondent 3 reports, “the reason for the low degree of resistance is also that in such projects, we’re mostly involved in the legislative process. We advise on the legal framework”. The complexity of this steering structure has the effect that it is not always clear to the Ministry of Justice what is happening within this particular steering group. Furthermore, there are smaller working groups between the courts and DJI, where they discuss the purchase of technologies, and how to implement videoconferencing between them (Respondents 1, 2).

This process is important to give a sense of participation and ownership. According to Respondent 7, it allows everyone a chance to voice their concerns. Furthermore, this gives courts which have not yet implemented THTP the chance to talk to courts that have done so and see how it works in practice, which can reduce the obstacle of scepticism (Respondents 1, 7). It is also possibly easier for organisations to work with each other if they have bilateral discussions to create procedural protocols and guidelines, rather than being forced to work through bodies such as the Ministry of Justice or the Council. Internally, however, it is left to each organisation to set their own intra-organisational protocols on how to operate THTP (Respondent 8). Several respondents at a more strategic steering level held that informal interpersonal contacts serve the purpose of creating a trust base and thus can help to motivate actors to collaborate. The usefulness of these informal communication channels as a mediation factor can partly be explained by the fact that they are not fixed, but developing dynamically and according to actors' needs.

In conclusion, in spite of the complexity and slowness criticised by some respondents, this combined approach results in an e-service that has been normatively legitimated in advance, and that is functionally legitimated by being based on experience and being owned by everyone involved, and therefore more likely to succeed. Even if ultimate responsibility rests with the Ministry of Justice for implementing THTP, they try to avoid steering top-down only, and they try to ensure ownership by the other partners. It seems that inter-organisational delivery of e-services requires a more decentralised approach to network management. The decentralised approach to network management chosen for THTP is in contrast to fixed laws and traditional bureaucratic ways of dividing responsibilities and roles in those laws.

5. Conclusions

In this paper, we presented an exploratory study on the role of legal frameworks for mediation and legitimisation of collaborative implementation in inter-organisational e-justice projects. In our analysis of the case of the Dutch THTP project, we have found that mediation was of central importance in the implementation process for THTP in the Netherlands. In the case of THTP, we have seen that with a diversity of actors, there are conflicting logics about the implementation of information technology, which can result in a resistance to collaboration. In order to reduce this resistance, mediation has been necessary to motivate actors to collaborate. We have also found that this need has been addressed by collaboration protocols, rather than legal rules, to create stability, paving the way for interoperability and successful implementation.

This innovative way of implementation has resulted in the Ministry of Justice facilitating normative and functional legitimacy for this project on the one hand, by ensuring that there is consultative process ownership by the participating partners in the project. On the other hand, the legitimacy of the process was enhanced by developing the legal framework whilst supporting the piloting of projects.

One of the trickier aspects of implementing this project is that the technology has changed procedures to include actors not usually part of an actual hearing. This

means that, from a legal perspective, the courts have to accommodate DJI into its hearing procedures, and DJI actors must learn rules of due process in order to protect the legitimacy and integrity of the whole judicial process. From the organisations' perspective, it also means that there must be an adjustment of their working processes. However, these adjustments have to conform with the transparency requirements that apply to other judicial organisations. The detention centres thus are now subject to rules of due process that before had only applied to the courts. This means that there must be some form of motivation for change and collaboration (across different implementation levels and organisations), as the law makes little provision for this. Finally, we found that there is a sow-harvest problem in THTP (i.e. that benefits are reaped by actors who did not make the related investment).

What has been found in this research is that the legislative framework does not provide sufficient solutions for this situation. It has been left to the implementing organisations to create a set of collaboration protocols to meet these higher principles of procedural law. Collaboration protocols have been used as an important part of the motivation strategy, in order to mediate between laws and procedures, and between different organisational interests in order to create legitimacy.

An important part of the motivation strategy appeared to be a sense of societal responsibility. Public value generated by the project, for instance through decreases in environmental and security hazards, became increasingly prominent on project partners' agenda as they repeatedly interacted within mediation processes and witnessed first positive results of their collaboration. From our research, it appears that after negotiations start and the participants discuss and pinpoint bottlenecks, it becomes easier to gain momentum in the process. In this way, process ownership is safeguarded (although at the cost of an occasionally frustrating and slow process). This simultaneous process of project implementation and development of a rule system is important because it mediates between the different maturity rates of technology and legislation, keeping the two in tune. Furthermore, the problem of network diversity is muted by social dynamics between the actors. Especially trust among the chain partners and the expectation of a more or less stable relationship plays a role in this respect, and are perceived by the respondents to be directly related to the communication between the partners.

We do not argue that legislation did not play a role. In fact, we observed that the use of legislation ex-ante as a hygiene factor was of central importance to give a basis to start implementation, as well as the creation of collaboration protocols to form a basis for practical implementation and application issues for all organisations. This points to a conclusion that if the desired benefits from THTP want to be reached, it seems necessary to better motivate the major chain partners to adopt it and make the necessary adjustments for interoperability to make it work. What this has shown is that given the diversity of the network, there is an important need to motivate based on the need to legitimise the use of such technology. Such motivation requires mediation, which can be done initially through legislation. But since this merely acts

as a hygiene factor, it is not enough to legitimise the whole process. We have shown that collaboration protocols are the main tool for mediators to create stability for implementation. However, we have also shown that decentralised and protocol-based steering approaches come with their own set of trade-offs, and careful balancing has to be done on a case-to-case basis. Further research should look at what further tools are necessary for the mediators' kits for the successful implementation of e-justice projects.

Based on our findings, we suggest that further research should address in particular the following issues: First, this research has examined the implementation of ICT from a network management perspective and identified a need to legitimise e-justice policies within more informal institutional arrangements. However, we have not examined in great detail the political requirements of accountability and transparency that such informal institutional arrangements could potentially violate. Future studies should therefore investigate how this tension between the need for flexible arrangements (such as collaboration protocols) and the need for accountability can be resolved. Second, we have found that the sow-harvest problem is a central demotivating factor causing resistance among project partners to collaborate. Although the actors expressed a wish for a redistributive mechanism, this proved to be difficult and had not been achieved yet. The question of how to devise workable redistribution mechanisms to solve the sow-harvest problem therefore should be an important concern for future research.

Third, future studies should concentrate on the question of how project managers can cater to the identified need for consultation procedures and communication between actors, while at the same time preventing that processes get stalled by lengthy negotiations and actors get frustrated by slow progress. It should especially be investigated whether working groups like in the case of THTP are indeed the best way to create process ownership or whether other mediation procedures can provide the same results at less cost of actors' patience (and hence motivation). Fourth, and related to the previous point, future research needs to address the question of devising categorisations of issues that need to be dealt with by legislation and those issues that are left to negotiation and collaboration protocols. This could give project managers and policy makers a clearer picture on when to use more hierarchical or more decentralised steering methods. Finally, future research should also address the issues raised in this article in a comparative perspective, both across policy context (especially in less institutionalised sectors than the judicial domain) and across countries (especially comparing the highly consultation-oriented Dutch political culture with administrative systems that have a more centralised and hierarchical structure).

In sum, this case study has shown the need for new managing practices for collaboration in complex public sector ICT projects, especially in highly institutionalised domains as the justice sector. The THTP case also showed how such new steering approaches can work in practice. However, it also left some issues unresolved and gave rise to new questions. With the likely increase of collaborative ICT projects in the public sector in the future, these issues will certainly remain high on the agenda, not only in the administration of the judicial domain.

6. References

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