



*Better  
Access to  
Case Law*

# On-line Publication of Court Decisions in the EU

**Report of the Policy Group of the  
Project 'Building on the European  
Case Law Identifier'**

**15 February 2017**

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### **Disclaimer**

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## Executive Summary

As everywhere in society, also to the judiciary the internet has brought a revolution. Apart from the growing possibilities for on-line proceedings, by offering the opportunity to publish vast quantities of court decisions on-line, the judiciary can increase its visibility and transparency substantially.

Over the last decades, governments and judicial authorities have developed different views on the extent to which and how these opportunities for on-line publication should be utilized.

This report contains an extensive comparative research on the on-line publication of court decisions in Europe. It focusses on three main themes – policy and practices with regard to on-line publication, data protection and Open Data – and two accessory topics: citation practice and the implementation of the European Case Law Identifier.

Although some EU Member States are obviously more advanced than others, we withstood the temptation to make any ranking: not only are there substantial differences between (types of) courts within one Member State, the weighing of the many aspects involved would be very subjective and distract the attention from the many improvements that are still possible everywhere.

The wide variety of policies and practices is maybe one of the most important conclusions of this report. In this summary, we will give a short overview of the nature and extent of this variety.

First of all, there are substantial differences as to the existence of legal or policy frameworks regarding the on-line publication of court decisions. Some countries have extensive legislation, prescribing the publication of decisions within specific categories. Other countries have a judicial policy guideline, while some have no legal/policy framework at all.

Although in general there seems to be a relationship between the existence of a legal framework and the number of decisions published, this is not a law of the Medes and Persians. And while a lenient publication policy might be assumed to be conducive for judicial transparency, the availability of vast repositories might be hampering easy access to those decisions that reflect important legal developments. Large collections need ease of access, and also in this regard differences can be witnessed. Some countries have one portal where all case law can be searched, others have many different websites; search possibilities range from absent to rather sophisticated.

Since court decisions often contain details about the most sensitive events in people's lives, data protection is one of the most pressing issues with regard to the on-line publication of court decisions. Many Member States have a policy of anonymising all decisions before they are published, but some jurisdictions have a less stringent policy, and anonymise only on request or in specific types of cases. Differences can be observed also regarding the way in which anonymisation is done: some courts use (real or fake) initials, others replace the anonymised elements by meaningful labels or by fake data.

While published court decisions are important base materials for legal professionals, academic researchers, journalists and private companies in the legal information market, Open Data – the idea that public data should be freely available to everyone to (re-)use as they wish – has not gained a strong foothold yet within European judiciaries. In most countries technical facilities to ease harvesting the published decisions are absent, and the formats in which the documents are published do not allow easy processing by computers.

Since legal citations within and between court decisions and other legal sources are of the utmost importance for organizing legal knowledge, such references should be well-structured – and hence computer readable. Legal citation guides do not exist in most countries, although many jurisdictions do have a persistent practice. The European Case Law Identifier (ECLI) could play an important role in improving the European legal information architecture; it is being implemented in a growing number of jurisdictions.

After an introductory section, the five themes (publication, data protection, Open Data, legal citation and ECLI) are discussed in separate sections. Section 7 contains reports for all 28 EU Member States as well as for three European courts: the Court of Justice of the European Union, the European Court of Human Rights and the Boards of Appeal of the European Patent Organization.

Section 8 contains the conclusions and a set of 25 recommendations.

# 1 Introduction

## 1.1 Court Decisions on the Internet

Paragraph 1 of article 6 of the European Convention on Human Rights reads:

*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

The underlined passage – ‘Judgment shall be pronounced publicly’ – is absolute and unrestricted. Over the years, the European Court of Human Rights (ECHR) has developed an extensive doctrine on how these words should be interpreted,<sup>1</sup> but for sure this passage does not establish an obligation to publish on the internet each and every decision. The most important argument against publication of court decisions in authentic form must be the unlawful interference with private life ex article 8 of the European Convention and – more explicitly – article 8 of the Charter of Fundamental Rights of the European Union,<sup>2</sup> since court decisions contain (often sensitive) personal data. But also an obligation to publish all decisions in an anonymised form cannot be established under international or European law. Nevertheless, soft law instruments, state practice and national law point into the direction of an obligation to publish at least a selection of judicial decisions on the internet.

The reasons for publishing court decisions already existed before the internet came into existence and are twofold. The first reason is the public scrutiny of the judge, the second is public knowledge on the development of law. Before the start of the internet age, the first function, although sometimes imperfect, was performed by the public pronouncement of the judgment; the second by courts themselves or by commercial publishers, offering printed selections of important decisions.

Because of the ease with which documents can be published on the internet, a wide tendency to publish court decisions on the internet can be observed nowadays.

This report serves to assess the state of play with regard to the publication of court decisions on the internet within all Member States of the European Union, as well as at three European

<sup>1</sup> M. van Opijnen, 'Court Decisions on the Internet; Development of a Legal Framework in Europe', in: Journal of Law, Information & Science, 24 (2) (2016) [www.jlisjournal.org/abstracts/Opijnen.24.2.html](http://www.jlisjournal.org/abstracts/Opijnen.24.2.html).

<sup>2</sup> [CELEX:12012P/TXT](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT).



courts: the Court of Justice of the European Union (CJEU), the European Court of Human Rights and the Boards of Appeal of the European Patent Organization (EPO).

## 1.2 Overview of Contents

The research is focused on three main themes and two accessory topics. In Section 2 the basic features of publication will be discussed: legal and policy frameworks as well as actual practice. Data protection is the subject of Section 3, also here attention will be paid to legal frameworks and on how data protection is organised. Section 4 is about Open Data: to what extent should published decisions be available for re-use, and to what extent is this really the case? The accessory topics are discussed in Section 5 (citation practice) and Section 6 (ECLI).

While the Sections 2 to 6 give a descriptive and general overview of the global state of play within the EU, Section 7 contains descriptions of all individual Member States and the three European courts. Finally, Section 8 contains conclusions and recommendations.

While the three European courts (Court of Justice of the European Union, Boards of Appeal of the European Patent Organization and the European Court of Human Rights) all have their own subsection within Section 7, they are not included in the descriptive parts and statistics of sections 2 to 6, since they are in too many ways incomparable with the Member States.

This study is limited to the on-line publication of court decisions in public databases, where 'public databases' are defined as: repositories that can be accessed on the internet by anybody for free. Hence, databases that are only accessible for a fee, on subscription or for a limited group of people have not been taken into account.

## 1.3 On the Research

Gathering information on the practice of thousands of courts from more than thirty jurisdictions on a variety of topics regarding the publication of court decisions is a task that can hardly be done fully right.

To be as complete as possible we started out with a questionnaire that was sent to the 28 Member States and the three European jurisdictions. The questionnaire contained five segments:

1. On publication;
2. On data protection;
3. On Open Data;
4. On citation;
5. On ECLI.

The questionnaire was answered by the CJEU as well as by 23 Member States.<sup>3</sup> On processing the questionnaires it turned out that not all of them covered all courts within the Member States,<sup>4</sup> were sometimes not fully answered or that the information needed to be validated against and/or completed by publicly available sources. We also used these publicly available sources for gathering information on the jurisdictions that did not respond to the questionnaire or supplied information on a limited number of courts only.

For this desk research we used the European e-justice portal,<sup>5</sup> Wikipedia<sup>6</sup> as well as a wide variety of web portals, legislative and case law databases of all Member States and European jurisdictions.

In December 2016 a draft version of the report was sent to the members of the EU Council Working Party of e-Law as well as to the respondents to the questionnaire to give them an opportunity to validate the facts. Nevertheless, the authors remain fully responsible for the final version of the report.

Both the answers to the questionnaire as well as our desk research revealed such a wide variety in practices that it is nearly impossible to simplify these practices into statistical quantifications. Nevertheless, we have made graphics where possible, while resorting to a more qualitative description where needed.

## 1.4 Editorial and Terminological Remarks

To maximize the readability of the report we used the following conventions:

- In listings of the EU Member States (e.g. in section 7 and in all tables) protocol order is used;<sup>7</sup>
- When referring to entities or sources in other languages the English name/label is used; the label in the original language is added (once) in text (in case of institutions) or in a footnote (for legislation a.s.o.);
- For names of courts many different labels exist, but for a better understanding we have ‘harmonized’ all these names into the following basic types:
  - District court: court of first instance;
  - Regional court: intermediate level as it exists in some countries. Often both court of appeal for district court decisions as well as court of first instance for cases with higher financial value or more severe crimes. If no such intermediate level courts exist, courts of first instance are always called ‘district courts’;
  - Court of appeal: in general the last court before the court of highest instance;

<sup>3</sup> Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Hungary, Malta, Netherlands, Austria, Portugal, Romania, Slovenia, Slovakia, United Kingdom (Scotland). See also Annex II.

<sup>4</sup> See for an overview Annex II.

<sup>5</sup> [e-justice.europa.eu](http://e-justice.europa.eu).

<sup>6</sup> [wikipedia.org/](http://wikipedia.org/).

<sup>7</sup> [publications.europa.eu/code/en/en-370100.htm](http://publications.europa.eu/code/en/en-370100.htm).

- Supreme Court: the court of highest instance in civil and criminal proceedings;
- Administrative court: court of first instance in administrative proceedings;
- Administrative court of appeal: court of second instance in administrative proceedings;
- High Administrative Court: court of highest instance in administrative proceedings;
- Council of State: court of highest instance in administrative proceedings, mostly also performing other (advisory) functions;
- Constitutional Court: court guarding the constitution, often by judging the constitutionality of legislation;
- Council for the Judiciary: organisation administering and/or representing the courts, not being a ministry of justice.

Apart from these courts also other (specialized) courts exist; in general their names have been translated literally.

- The terms 'court decisions' and 'case law' are used interchangeably.

## 2 Publication of Court Decisions

In most EU Member States court decisions are published on the internet, but the extent to and the way in which decisions are published varies substantially, not only between Member States, but also within Member States. For some aspects relating to publication of court decisions therefore we cannot simply compare country by country, but a subdivision has to be made as per type of court. The following typology is being used:

- Constitutional court;
- Supreme court;
- Courts of appeal;
- District courts;
- High administrative court(s);
- Lower administrative courts.

With regard to which decisions should be published we use a terminology inspired by Recommendation R(95)11 of the Committee of Ministers of the Council of Ministers:<sup>8</sup>

- Negative selection: all decisions are published, unless if the grounds on which they are based are stated according to a standard formula or formula clause, especially in case of rejections on procedural grounds, or if there are specific reasons not to publish a specific decision, e.g. for the protection of minors, state security or data protection.
- Positive selection: decisions are not published unless they meet specific criteria, which are formulated beforehand. Such criteria can be objective or subjective, broad or narrow, concrete or vague, procedural or substantive.

An overview of the case law publication characteristics per Member State, as described in this section, can be found in Figure 6 in section 2.7.

### 2.1 Legal Framework

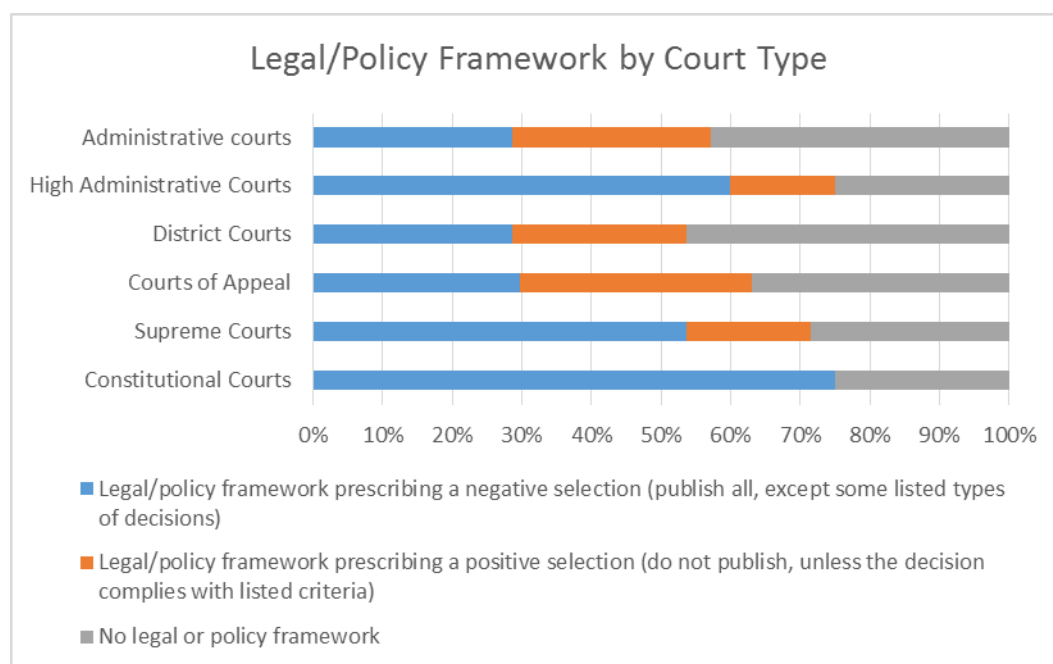
Some Member States have a specific legal framework regarding the publication of court decisions, in some other Member States this is governed by a policy framework, e.g. guidelines by a Council for the Judiciary or a Ministerial Decree. Figure 1<sup>9</sup> gives an overview of the existence of such legal or policy frameworks for the six different court types, and what

<sup>8</sup> Council of Europe Committee of Ministers, Recommendation R(95)11 Concerning the selection, processing, presentation and archiving of court decisions in legal information retrieval systems.

<sup>9</sup> For this and other tables it should be borne in mind that they show percentages, not actual numbers. These percentages are based on factual existence of courts and the availability of information. E.g. for the constitutional courts the 100% is constituted by those Member States that actually do have a constitutional court and of which the information is actually known. These latter two facts can be derived from Figure 6 in section 2.7.

these frameworks – if they exist – prescribe: a negative selection or a positive selection. The most explicit instructions for publication according to a negative selection exist for the highest courts: constitutional courts, supreme courts and high administrative courts. A legal obligation for the negative selection for lower courts (district courts, court of appeal and first instance administrative courts) exists in just over 20% of the Member States: Bulgaria, Denmark,<sup>10</sup> Estonia, Latvia, Lithuania, Poland,<sup>11</sup> Romania and Slovakia.

Figure 1. Legal / policy framework by court type.



To function properly, both types of selections need more detailed guidelines, either in the legal/policy framework itself, or in instructions to those making the selection. Especially for the positive selection these criteria are often absent, or at least not published on the internet. Some Member States have detailed criteria for negative selection (e.g. Latvia, Lithuania); (published) detailed guidelines for positive selection are rare, the Netherlands being an exception to this rule.

## 2.2 Actual Publication

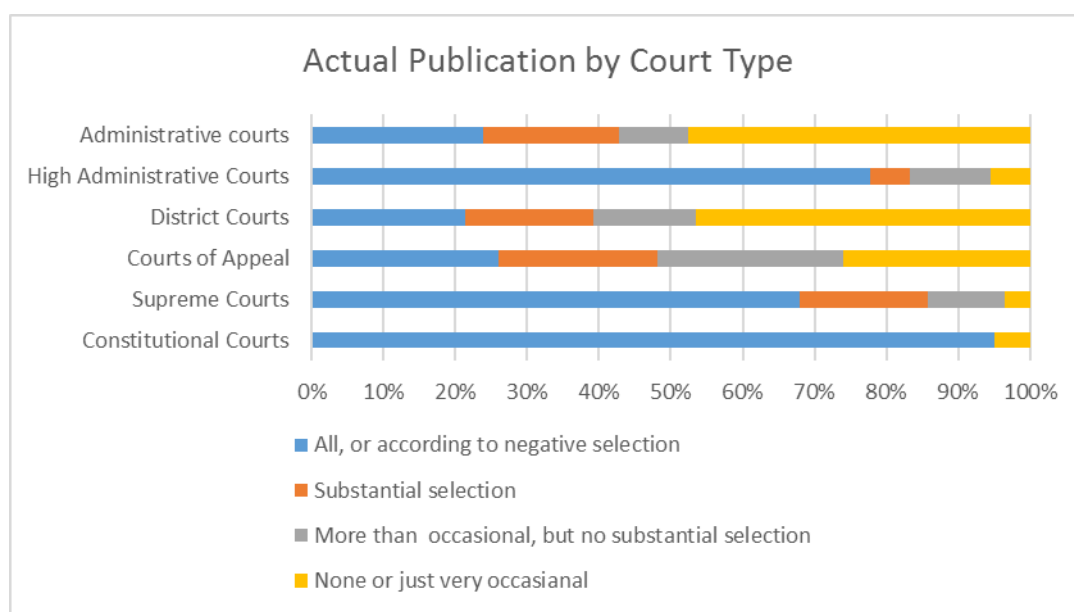
The fact that a legal or policy framework exists doesn't necessarily imply that daily practice is in compliance with this framework. Organisational or technical obstacles can impede implementation, or, the other way around, developed practices can be so sufficient that a regulatory framework is not deemed necessary.

<sup>10</sup> Not implemented yet.

<sup>11</sup> Only for the administrative courts.

Figure 2 shows the actual publication by court type. Nearly all constitutional courts within the EU publish all their decisions. Also, nearly 80% of the high administrative courts and a little over 60% of the supreme courts publish all their decisions. The situation for the first instance courts and the courts of appeal is quite the opposite: more than half of them don't publish decisions at all, or at least no substantial selection.

Figure 2. Actual publication of decisions by court type.



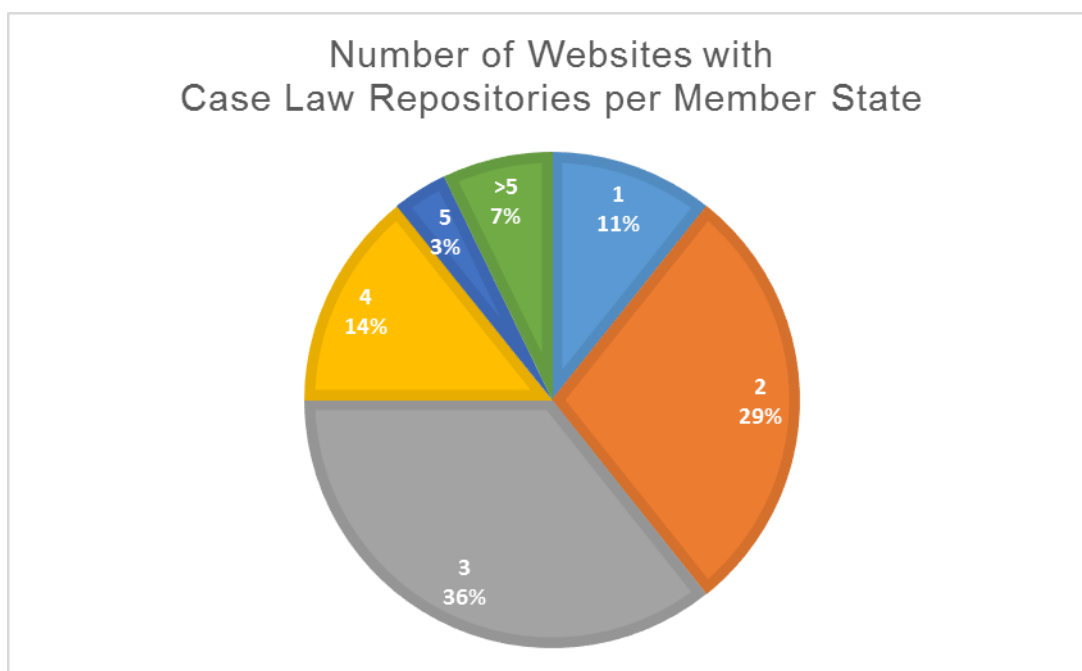
## 2.3 Portal policy

This report is only about public case law databases, but the research showed that in many Member States also non-public databases exist. In some countries (e.g. Spain) it concerns an internal database of the judiciary containing many additional metadata and search options not available for the public, in some countries (e.g. the Netherlands) there is an internal database with non-anonymised decisions without additional metadata, and in some other countries private-public-partnerships run a database that is available to the courts but also to legal professionals and others upon payment of a fee (e.g. Italy).

In a vast majority of the Member States more than one database exists. Constitutional courts always have their own website/database, as do most supreme courts, high administrative courts and specialized courts. In many countries though district courts, courts of appeal and administrative courts share a database/website. A portal website for the whole judiciary sometimes offers the only access to all decisions (e.g. Malta, Austria, Portugal, Finland) or all without the constitutional court (e.g. Spain), sometimes it co-exists with court-specific websites, where the latter offer a different selection or differ in accessibility, e.g. with regard to metadata or search capabilities (e.g. France, Germany).

Figure 3 shows the variety in the number of public websites with court decisions; two or three websites are the most common. Given the differences in the national situations it is difficult to draw any conclusion from it, but in general it might be expected that a high number of web portals complicates the lives of legal professionals and citizens: they are confronted with different search interfaces and formats, and on many occasions would have to query more than one database to find the decisions they are looking for.

*Figure 3. Number of websites per Member State containing repositories with court decisions.*



## 2.4 Relationship with Publishers

Before the World Wide Web came into existence, in most countries a selection of court decisions was published by commercial publishers. According to the answers in the questionnaires, in most EU Member States commercial publishers do not play any significant role in the public databases that have emerged. An exception can be seen in Italy, where access to the most important case law database is restricted to legal professionals and subscribers.<sup>12</sup>

In almost all Member States commercial publishers are free to re-use and re-publish decisions that have been published in public databases. Often publishers also (try to) collect decisions that are not in the public databases; in e.g. Lithuania publishers are not allowed to, they can only re-use decisions which are made available to all.

<sup>12</sup> See section 7.15.3.

## 2.5 Completeness and Authoritativeness

At most courts the decisions are always published in full. In Austria, the operative part is often published separately; for many lower court decisions this is the only publication, while for higher courts (also) the full decision is published.

Once a decision is published, it is never to be unpublished – except in rare situations in relation to data protection (see section 3). In some countries historic materials are added, e.g. in Belgium<sup>13</sup> and Cyprus.<sup>14</sup>

Asked whether the decisions published on the website were considered to be authentic, about half of the respondents answered positively, the other half negatively. It has to be acknowledged that the term ‘authentic’ in this context is quite complicated. In a strictly legal sense court decisions published on the internet cannot be considered to be authentic. First of all, in many cases they will be anonymised, whereby actually changing the authentic text. But even if not anonymised and even if published in PDF, they will not be authentic because they lack a digital signature.

Nevertheless, in practice court decisions published on a judiciary website are considered to be an authoritative version; apart from anonymisation they are assumed to be textually identical to the authentic version sent to the parties to the case.

The term of publication differs widely, but is hard to quantify: even within courts substantial differences exist. Landmark decisions are sometimes published with priority, e.g. in the Netherlands.<sup>15</sup>

Since decisions might be used by lawyers to back their arguments or by judges to motivate their own decisions, it is extremely important to know whether a decision is already irreversible because its term for appeal has passed or whether it has been appealed and if so, whether it has been upheld, quashed or it is still pending. Nevertheless, this information is hardly available in any public database. In e.g. Estonia<sup>16</sup> this problem is solved by only publishing decisions that have entered into force, i.e. which are irrevocable. In the Netherlands formal relationships (like appeal or cassation) are visible in the database, but pending appeals are not. Also in Estonia, Croatia and Slovakia such appeal relations are visible. The Finnish Supreme Court has a separate database with pending cases.<sup>17</sup>

## 2.6 Accessibility

While ‘access’ to court decision has to do with the legal status of the published decisions, ‘accessibility’ is about the ease with which the information contained in individual decisions

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<sup>13</sup> See Section 7.4.3.

<sup>14</sup> See Section 7.16.3.

<sup>15</sup> See Section 7.22.2.

<sup>16</sup> See Section 7.9.2.

<sup>17</sup> [finlex.fi/fi/oikeus/kko/vl/](http://finlex.fi/fi/oikeus/kko/vl/).



or a whole repository can be accessed. It encompasses aspects like document formats, search engines, metadata and translations.

Nowadays, all decisions are created in digital format natively, and published on a website in three different formats: Word, PDF or (X)HTML. Publication formats often vary from court to court within one Member State and at some courts the same decisions are published in more than one format. Occasionally there are differences between older decisions (e.g. published in PDF) and more recent decisions (e.g. published in (X)HTML). This wide variety makes it difficult to draft a precise picture, but roughly speaking 20% seems to be published in Word, 40% in PDF and 40% in (X)HTML.

Translations can be of interest for the public abroad, especially if they relate to EU law, human rights, trade law or intellectual property. Only a small number of courts publish all or a substantial collection of their decisions into another language, mostly into English. Especially constitutional courts have a habit of such translations, e.g. in Slovenia, Poland, Czech Republic, Latvia and Croatia.

Metadata are an important element with regard to accessibility: they are essential to specify a search request, filter the results or facilitate the understanding and contextualizing of a decision. Identifying metadata, like name of court, date of decision and case number are always present, as well as – in most cases – type of decision, field of law and chamber or division within the court. More descriptive metadata, like head notes, abstract or some other kind of description are less widely available, and in most cases only for the highest jurisdictions. One of the most important reasons is probably the fact that creating such metadata requires time and well-trained human resources, means usually only available for smaller collections. Most published decisions do not have in-text hyperlinks to legislation or other case-law, and only in rare situations such relations are available in the metadata. Slovakia and Croatia offer some examples.

From Figure 4 it can be learned how many metadata are available in public databases: most of them have between eight and eleven different types of metadata available.

Figure 4. Number of metadata available in public case law databases, based on information from the questionnaires. Reading example: five databases have eleven different types of metadata available. This graph is based on the information in Figure 7.

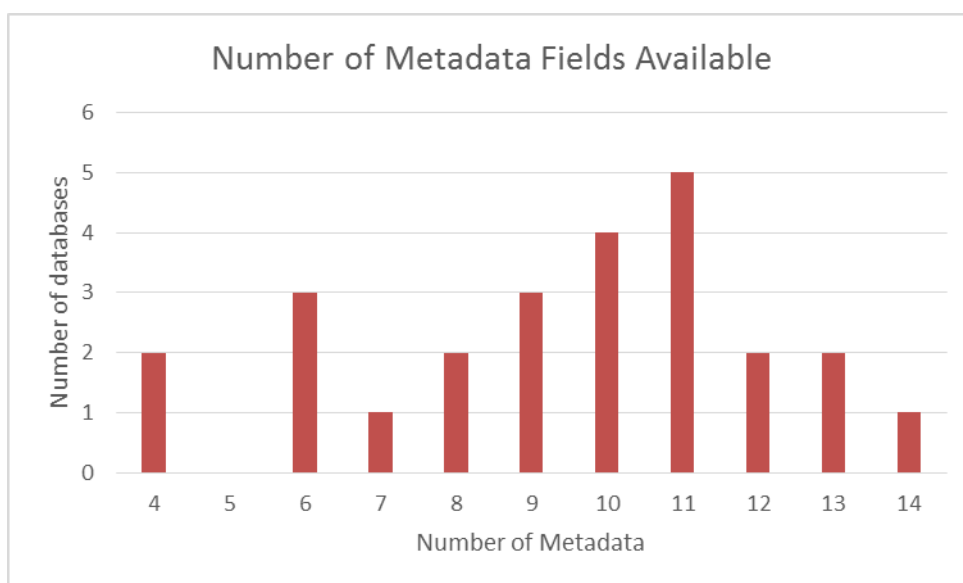
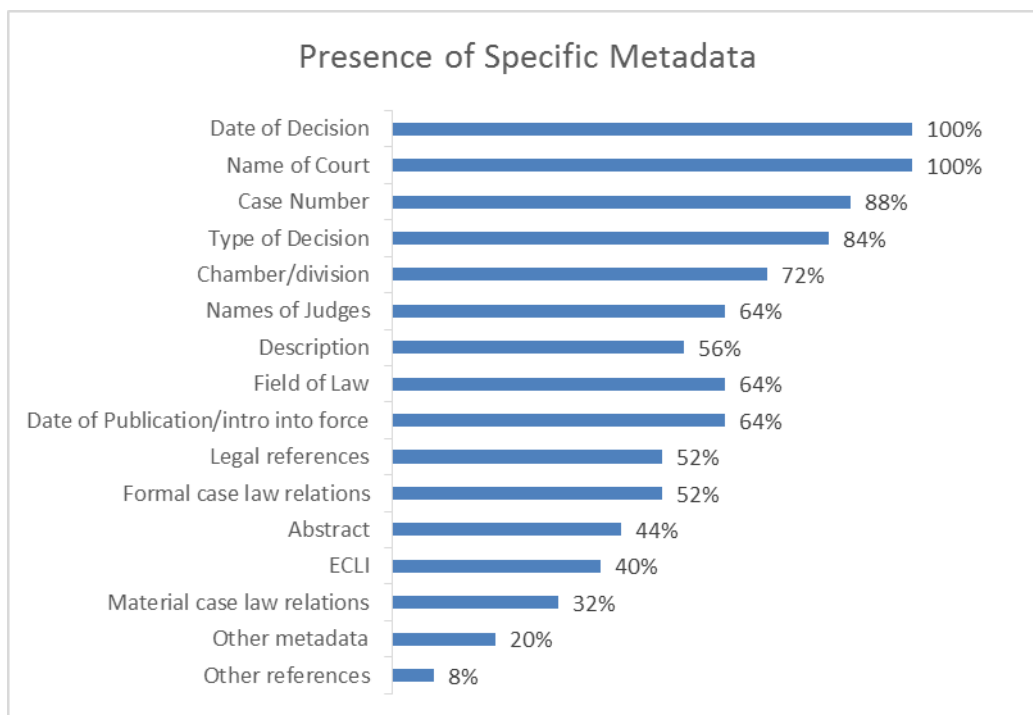


Figure 5 shows the actual presence of specific metadata. Name of court and date of decisions are always supplied, but obviously the case number is not, as are many other metadata.

Figure 5. Relative presence of metadata in public case law databases. This graph is based on the information in Figure 7.



With a growing number of decisions published for the average user (whether layman or lawyer) it becomes increasingly difficult to separate the wheat from the chaff, in other words: to distinguish the few decisions with jurisprudential value in a collection that might contain hundreds of thousands of cases.<sup>18</sup> While the problem for the moment is ignored by many web portals, some courts show practices worth studying. Both the Finnish Supreme Court and High Administrative Court decide themselves on whether a decision establishes precedence; these decisions are included in two separate databases on Finlex, where also databases with other decisions of these courts can be found.<sup>19</sup> The Belgium Council of State follows a comparable practice, additionally, it only includes the most important parts of the decision in this database, linking to the full text in the general database.<sup>20</sup>

## 2.7 Overview Member States

Figure 6 contains an overview per Member State about the framework for publication and the actual practice. Information about available metadata is shown in Figure 7.

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<sup>18</sup> See on this topic also: M. van Opijnen, 'Towards a Global Importance Indicator for Court Decisions', in *Legal Knowledge and Information Systems - JURIX 2016: The Twenty-Ninth Annual Conference, Nice*, ed. by F. Bex and S. Villata (Amsterdam: IOS Press, 2016), p. 155-160.

<sup>19</sup> See Section 7.29.3.

<sup>20</sup> See Section 7.4.3.

Figure 6. Overview of publication characteristics per Member State.

	Constitutional Court		Supreme Court		Courts of Appeal		District Courts		High Administrative Court		Administrative Courts		Total number of websites
	Framework	Actual contents	Framework	Actual contents	Framework	Actual contents	Framework	Actual contents	Framework	Actual contents	Framework	Actual contents	
Belgium	FW-N		FW-P		FW-P		FW-P		FW-N		No		4
Bulgaria	No		FW-N		FW-N		FW-N		FW-N		FW-N		4
Czech Republic	FW-N		FW-P		FW-P		FW-P		FW-N		FW-P		3
Denmark	---	---	FW-N		FW-N		FW-N		---	---	---	---	2
Germany	FW-N		FW-N		No		No		FW-N		No		>5
Estonia	---	---	FW-N		FW-N		FW-N		---	---	FW-N		2
Ireland	---	---	No		No		No		---	---	No		3
Greece	No		No		No		No		No		No		1
Spain	FW-N		FW-P		FW-P		FW-P		FW-P		FW-P		2
France	FW-N		FW-N		FW-P		FW-P		FW-N		FW-P		5
Croatia	No		No		No		No		No		No		3
Italy	FW-N		FW-N		FW-N		FW-N		FW-N		FW-N		3
Cyprus	---	---	No		---	---	No		---	---	---	---	2
Latvia	FW-N		FW-N		FW-N		FW-N		FW-N		FW-N		3
Lithuania	FW-N		FW-N		FW-N		FW-N		FW-N		FW-N		3
Luxembourg	FW-N		No		No		No		No		No		1
Hungary	FW-N		FW-N		FW-P		FW-P		---	---	FW-P		2
Malta	No		No		No		No		No		---	---	2
Netherlands	---	---	FW-N		FW-P		FW-P		FW-N		---	---	2
Austria	FW-N		FW-N		FW-P		FW-P		FW-N		FW-P		2
Poland	FW-N		FW-P		No		No		FW-N		FW-N		3
Portugal	No		No		No		No		No		No		3
Romania	FW-N		FW-N		FW-N		FW-N		---	---	---	---	4
Slovenia	FW-N		FW-N		FW-P		No		FW-P		No		3
Slovakia	FW-N		FW-N		FW-N		FW-N		---	---	---	---	3
Finland	---	---	FW-N		No		No		FW-N		No		1
Sweden	---	---	FW-P		FW-P		No		FW-P		FW-P		4
United Kingdom	---	---	No		No		No		---	---	---	---	>5

**Legend**

--- Court does not exist

**Framework**

No No legal/policy framework  
FW-P Positive selection  
FW-N Negative selection

**Actual contents:**

None or just very occasional  
More than occasional, but no substantial selection  
Substantial selection  
All, or according to negative criterion

Figure 7. Metadata available in the public case law databases of the Member States. Note: only information from questionnaires was used (see Annex II). Member States that have not replied to the questionnaire are left blank.

	Name of Court	Chamber/division	Date of Decision	Date of Publication/intro into force	Type of Decision	Field of Law	Case Number	ECLI	Description	Abstract	Names of Judges	Formal case law relations	Material case law relations	Legal references	Other references	Other metadata	Total
Belgium	Yes	No	Yes	No	Yes	No	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes		10
Bulgaria	Yes	Yes	Yes	No	Yes	No	Yes	No	No	No	Yes	Yes	No	No	No	Yes (1)	8
Czech Republic Supreme Court	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	Yes	No		9
Czech Republic Constitutional Court	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	No	Yes (2)	12
Denmark	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	No	Yes (3)	11
Germany	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No		13
Estonia	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	Yes	Yes	No	No	No		9
Ireland																	
Greece	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	Yes	Yes	Yes	Yes	No		9
Spain																	
France	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No		11
Croatia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	No	Yes	No		11
Italy Constitutional Court	Yes	No	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No	No	No	No		8
Italy Court of Auditors	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No	No	No	No	No		4
Cyprus	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	No		10
Latvia	Yes	No	Yes	No	No	Yes	Yes	No	No	No	No	No	No	No	No		4
Lithuania	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	No		12
Luxembourg																	
Hungary	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No	Yes	No		7
Malta	Yes	Yes	Yes	No	Yes	No	Yes	No	No	No	Yes	No	No	No	No		6
Netherlands	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes	No	Yes	No	Yes (4)	11
Austria	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	No		10
Poland																	
Portugal	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	No	No	No		10
Romania	Yes	Yes	Yes	No	Yes	Yes	No	No	No	No	No	No	No	Yes	No		6
Slovenia Supreme Court	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		14
Slovenia Constitutional Court	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No		13
Slovakia	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes	No	Yes (5)	11
Finland																	
Sweden																	
United Kingdom Scotland	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	No	No	No	No	No	No		6
<b>Total</b>	<b>25</b>	<b>18</b>	<b>25</b>	<b>16</b>	<b>21</b>	<b>16</b>	<b>22</b>	<b>10</b>	<b>14</b>	<b>11</b>	<b>16</b>	<b>13</b>	<b>8</b>	<b>13</b>	<b>2</b>	<b>5</b>	

(1) Case type; decision status; decision number; information about hearings, etc.

(2) Dissenting/concurring opinions, result of the proceedings, whether challenged at ECHR.

(3) The names of the parties if not anonymized, prosecutor's file number, names of lawyers.

(4) Commercial identifiers

(5) Nature of decision

More detailed information per Member State is available in section 7.

### 3 Data Protection

Most courts within the Member States of the EU render decisions anonymous before they are published. In this paragraph the legal and policy frameworks are discussed (section 3.1), as well as various practical aspects of the anonymisation (section 3.2). A specific section is dedicated to the anonymisation issues in relation to the reference for a preliminary ruling (section 3.3).

An overview of the case law data protection characteristics per Member State, as described in this section, can be found in Figure 14 in section 3.4.

#### 3.1 Factual Practice and Legal Framework

It should be noted that the timing of this study could not be more interesting as regards to the personal data protection regime in the European Union. On 4 May 2016, the text of the General Data Protection Regulation (GDPR)<sup>21</sup> was published in the EU Official Journal. It entered into force on 24 May 2016 and it shall apply from 25 May 2018. Also on 4 May 2016 the Data Protection Directive for the police and criminal justice sector<sup>22</sup> was published. The Member States must have it transposed into their national law by 6 May 2018.

Therefore, we find ourselves in a somewhat transitional period, since the legal framework and environment in the Member States might have to be adjusted and further harmonized in the coming years and this process might have implications on the regimes governing the anonymisation of court decisions. As always, the objective will be to find the balance between the need for guaranteeing a high level of protection of personal data while at the same time meeting the need for access to justice, for access to case law, the need for transparency and scrutiny. For the moment though our research focused on the current legal and policy framework within the Member States, based on the ‘old’ Data Protection Directive.<sup>23</sup> In this report the publication of court decisions is regarded as ‘processing of personal data’, and hence the Data Protection Directive can be assumed to be applicable.

<sup>21</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 4.5.2016, p. 1–88; [data.europa.eu/eli/reg/2016/679/oj](http://data.europa.eu/eli/reg/2016/679/oj).

<sup>22</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, p. 89–131; [data.europa.eu/eli/dir/2016/680/oj](http://data.europa.eu/eli/dir/2016/680/oj).

<sup>23</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995; [data.europa.eu/eli/dir/1995/46/oj](http://data.europa.eu/eli/dir/1995/46/oj).

Although theoretically exceptions could have been made in national implementation measures, such exceptions have not surfaced in our research.

As can be learned from the questionnaire and desk research there are notable differences with regard to anonymisation of court decisions, not only between Member States but also within Member States.

For a proper overview, a distinction has to be made between three types of jurisdictions:

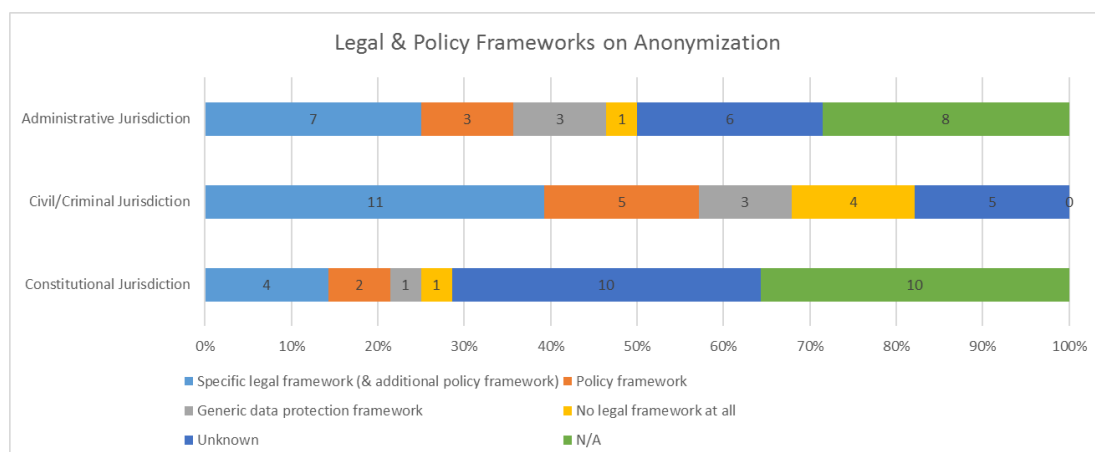
- Constitutional courts;
- Civil and criminal courts;
- Administrative courts.

Although an overview is given of the situation within these three jurisdictions, the main focus will be on the most common jurisdiction of civil and criminal proceedings.

Figure 8 gives an overview of different frameworks. A distinction has been made between:

- Specific legal framework: there are specific legal provisions about whether or not judicial decisions have to be anonymised, in most cases in the same act that regulates the publication itself. They might be detailed or general, possibly with an elaboration in a policy framework;
- Policy framework: there are no legal provisions on the anonymisation of court decisions, but there are policy guidelines, e.g. by a Council for the Judiciary or a Supreme Court;
- Generic data protection framework: the general data protection framework is regarded as being applicable on the publication of court decisions, but there are no specific legal/policy rules;
- No legal framework: there are no specific rules while also the general data protection framework is considered not to be applicable;
- Not applicable: no courts of this type exist. For the existence of an administrative jurisdiction the existence of a High Administrative Court has been decisive;
- Unknown: no information was supplied by the questionnaire and could not be found by desk research.

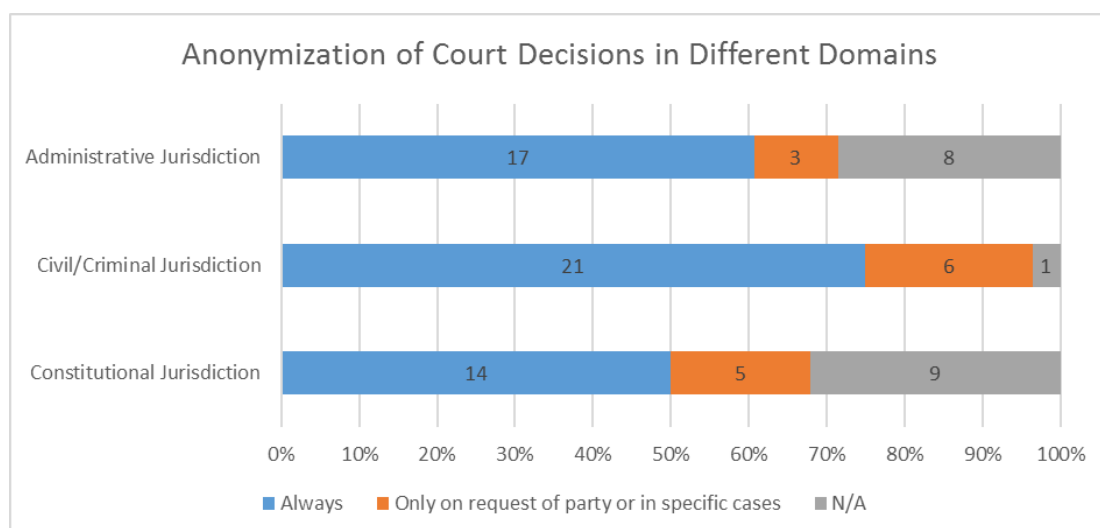
Figure 8. Existence of legal and policy framework on anonymisation of published court decisions.



Since a legal/policy framework can e.g. prescribe that decisions in general do not have to be anonymised, factual anonymisation has to be distinguished from the availability of such a framework.

Figure 9 gives an overview on the basic question whether decisions are anonymised by default, or only as an exception: on request of the data subject or by a decision of the judge *ex officio*. The comparison between framework and actual anonymisation per court in each of the Member States can be looked-up in Figure 14 in section 3.4.

Figure 9. Anonymisation of court decisions in different types of jurisdiction. The scale is in percentages; the digits in the bars are the absolute numbers. For the existence of an administrative jurisdiction the existence of a High Administrative Court has been decisive.



It can be learned from Figure 9 that only within a very limited number of courts decisions are not anonymised by default.



As to the question which data actually have to be anonymised there is such a wide variety in solutions that a general classification is quite impossible.

Some frameworks prescribe 'personal data' to be anonymised, hence leaving it to practical implementation what is to be understood as 'personal data'. Other frameworks prescribe quite meticulously which data have to be anonymised,<sup>24</sup> sometimes with an escape clause like 'and other personal data'.

A distinction between natural persons and legal persons is made everywhere: as a general rule, natural persons have to be anonymised, legal persons do not. Also as a general rule, people professionally involved with a court case are not anonymised, like judges, clerks, lawyers, bailiffs, court experts, interpreters and custodians.<sup>25</sup>

In the questionnaire, ten Member States<sup>26</sup> stated they have also specific rules for those decisions that should not be anonymised; generally, this applies to cases in which public figures are a party to the case which is connected to their role in public life.

In case a person is of the opinion that his personal data are not sufficiently anonymised, he can resort to the relevant procedures under generic data protection law; only four Member States<sup>27</sup> reported the existence of a specific complaints procedure.

### 3.2 Practical Aspects of Anonymisation

With regard to the practical aspects of anonymisation several questions spring to mind. First there is the question how an anonymisation is presented textually. These are the main options:

- A. Completely obscuring the data, e.g. by deleting or blackening the personal data or by replacing them by dots or 'XXXX'. An important disadvantage of this method is the illegibility of the remaining text, since one is not able to see whether two obscured elements are actually the same (e.g. the distinction between 'witness No. 5' and 'witness No. 6');
- B. Using initials, either by shortening names into initials or by choosing random initials. In case real initials are used, reidentification might be rather easy if the specific combination of initials is rare. Such reidentification risk is reinforced if the remaining letters are not just deleted but replaced by a number of dots that equals the original number of characters;
- C. Replacement by fake data, e.g. names by (often the same) fake names, numbers by random numbers, a.s.o. This method might have as a disadvantage that it cannot be determined what has been replaced and what not. On the other

<sup>24</sup> E.g. in Slovakia, see Section 7.28.4.

<sup>25</sup> An exception is to be found in the ROLII database of Romania (see Section 7.26.4).

<sup>26</sup> Belgium, Czech Republic, Germany, Denmark, Estonia, Spain, Lithuania, Hungary, Netherlands, Slovakia.

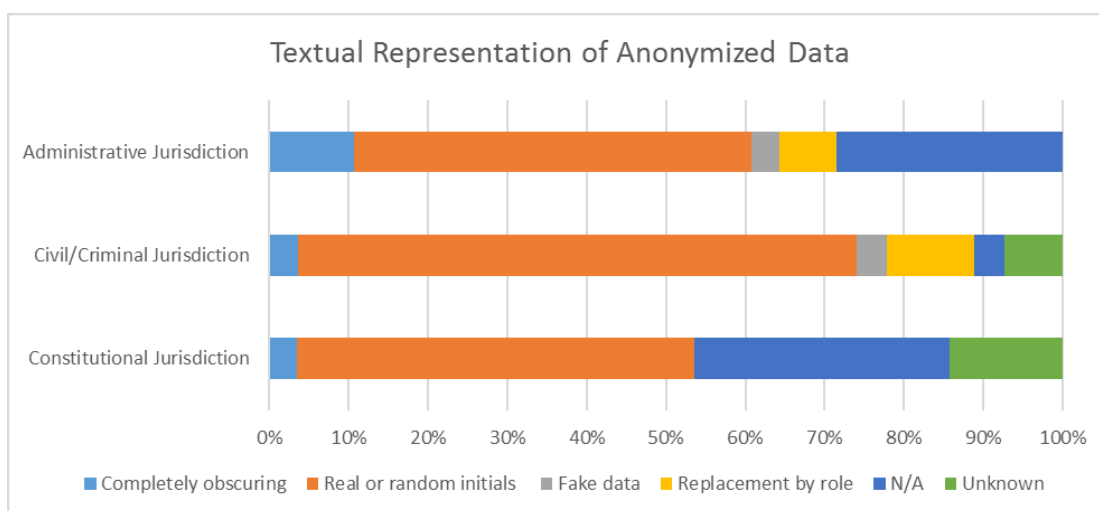
<sup>27</sup> Czech Republic, Lithuania, Hungary, Austria.

hand, reidentification might be made more difficult because of the ‘data noise’ created.

- D. Replacement by role, whereby every string to be anonymised is replaced by a label describing the role of the element within the text; for readability it is necessary to make such labels distinguishable from the surrounding text, e.g. by placing them between square brackets, e.g.: [witness No. 5].

Figure 10. gives an overview of how anonymisation is textually represented.

*Figure 10. Textual representation of anonymised data. If there is more than one practice per court (type), the most dominant one has been chosen. Due to e.g. language barriers the anonymisation method could not be established for all courts.*



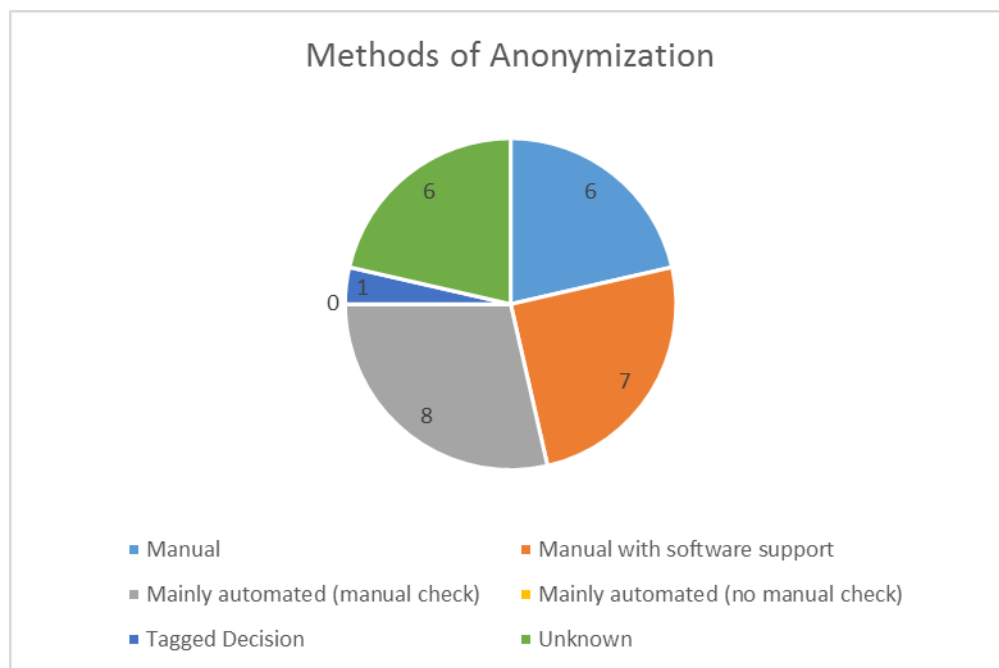
A second practical aspect of anonymisation is how it is being achieved. The following methods can be distinguished:

- A. Completely manual after the decision has been rendered;
- B. Manual with some software support (e.g. a sophisticated find-and-replace function);
- C. Mainly automated with sophisticated natural language processing technologies, with manual monitoring and correction;
- D. Mainly automated with sophisticated natural language processing technologies, without manual monitoring and correction;
- E. While drafting the decision all personal data are tagged by judge or clerk so they can be automatically replaced if and when the decision is published;

Since the method of anonymisation cannot be detected, the only source for information was the questionnaire. Figure 11 shows the distribution of the various methods over the Member States. It shows that nowhere decisions are automatically anonymised without a manual

check afterwards, and that only in one country (Cyprus) tagging of the elements that have to be anonymised is already done during drafting stage. The other options are distributed quite evenly.

Figure 11. *Methods of anonymisation. If more than one method is used, only the most sophisticated one has been counted.*



Also with regard to the question by who the anonymisation is actually performed only the answers to the questionnaire could be used.

The options are:<sup>28</sup>

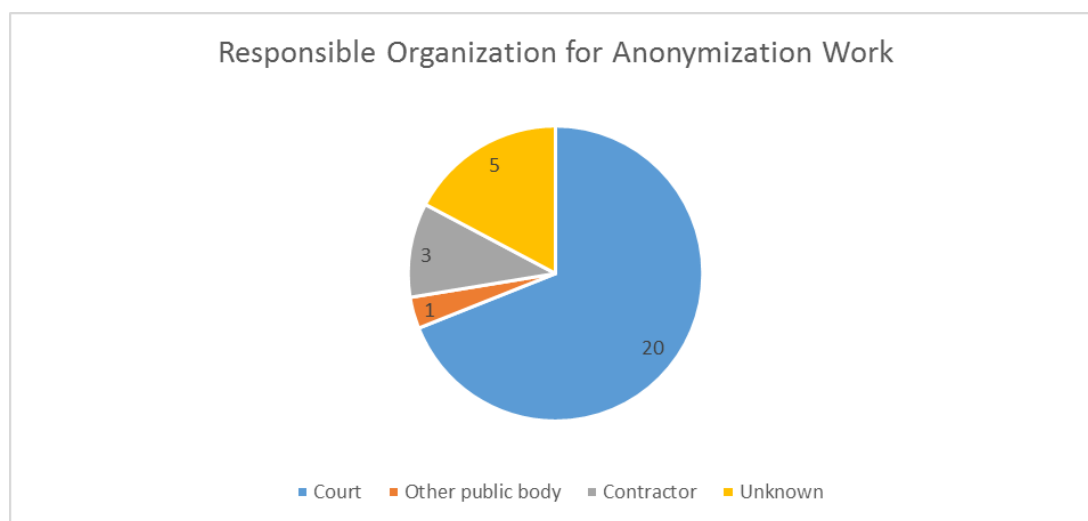
- A. Court;
- B. Other judiciary or governmental organisation;
- C. Contractor.

Figure 12 shows that in most cases the court itself is responsible for the anonymisation process. In Spain another judiciary organisation is responsible and in three Member States (Romania, France and Greece) there is a contractor.<sup>29</sup>

<sup>28</sup> In the questionnaire it was asked: “Who is responsible for the anonymisation?” Obviously, the word ‘responsible’ has been interpreted in different ways. Hence, the options have been condensed to the categories mentioned here.

<sup>29</sup> In Greece the Bar Association of Athens is responsible. In France a contractor as well as the courts themselves are responsible; this explains why the total in Figure 12 is 29 and not 28.

Figure 12. Responsible type of organisation for the anonymisation.



### 3.3 Anonymisation in the Reference for a Preliminary Ruling

In cases which are referred to the Court of Justice of the EU within the framework of the preliminary reference procedure (Article 267 of the Treaty on the Functioning of the European Union - TFEU), personal data can be anonymised.<sup>30</sup>

Article 95 of the Rules of Procedure of the Court of Justice reads:

- 1) Where anonymity has been granted by the referring court or tribunal, the Court shall respect that anonymity in the proceedings pending before it.
- 2) At the request of the referring court or tribunal, at the duly reasoned request of a party to the main proceedings or of its own motion, the Court may also, if it considers it necessary, render anonymous one or more persons or entities concerned by the case.

In addition, paragraphs 27 and 28 of the ‘Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings’ read:

27. Under the preliminary ruling procedure, the Court will, as a rule, use the information contained in the order for reference, including nominative or personal data. It is therefore for the referring court or tribunal itself, if it considers it necessary, to delete certain details in its request for a preliminary ruling or to render anonymous one or more persons or entities concerned by the dispute in the main proceedings.
28. After the request for a preliminary ruling has been lodged, the Court may also render such persons or entities anonymous of its own motion, or at the request of the

<sup>30</sup> See also section 7.1.4.

referring court or tribunal or of a party to the main proceedings. In order to maintain its effectiveness, such a request for anonymity must, however, be made at the earliest possible stage of the proceedings, and in any event prior to publication in the Official Journal of the European Union of the notice relating to the case concerned, and to service of the request for a preliminary ruling on the interested persons referred to in Article 23 of the Statute.

In the questionnaire Member States were asked which of the following options describes best their practice on the referral of preliminary proceedings to the Court of Justice?

- A. There is a policy that both the order for reference and the decision itself are always anonymised.
- B. There is a policy that only the order for reference but not the decision itself is anonymised.
- C. There is a policy that the decision itself but not the order for reference is anonymised.
- D. We only anonymise if parties ask us to do so; the initiative is with the parties to the case.
- E. We only anonymise if parties ask us to do so, but we inform the parties about this option.
- F. In principle, we never anonymise order for reference or judgments when referring a case to the Court of Justice.
- G. We do not have a common policy, it is left to the discretion of the courts.<sup>31</sup>

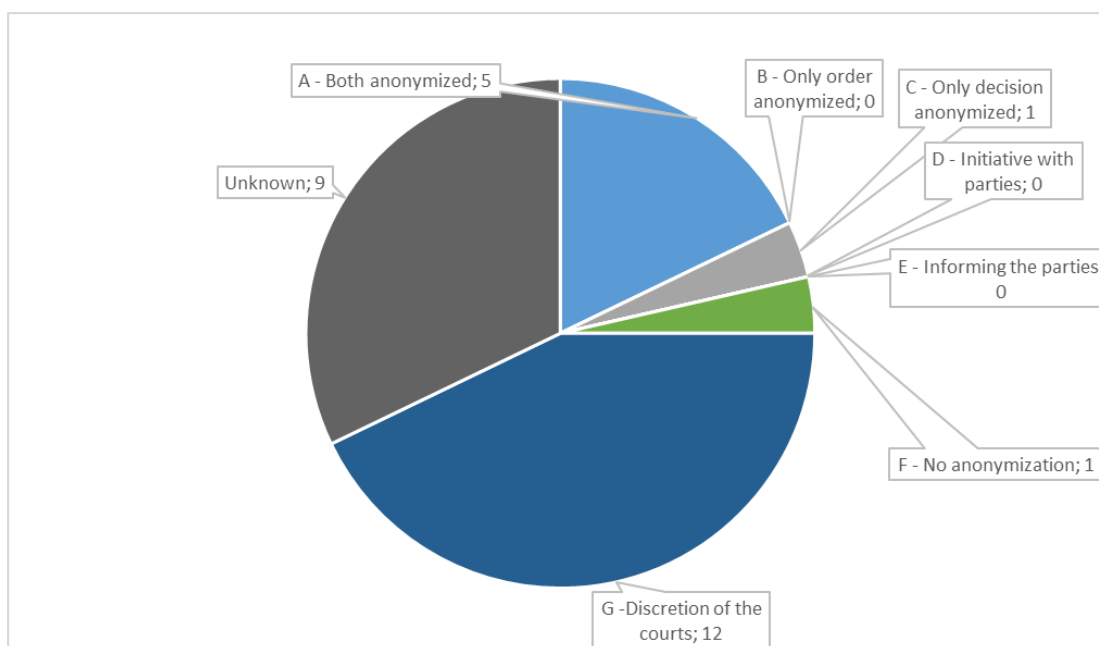
Figure 13 shows that in most of the Member States (10) it is left to the discretion of the courts. Only in four Member States both the order for reference as well as the decision are anonymised.

Not anonymising the order and the decision might lead to a situation where personal data are anonymised on a national website, but not in the Official Journal or the Curia website.

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<sup>31</sup> This involves also the situation in which courts declare they have never been confronted with the question because they haven't initiated such proceedings up until now.

Figure 13 Anonymisation in the referral for a Preliminary Ruling.



### 3.4 Overview Member States

Figure 14 contains an overview of various aspects of the anonymisation of court decisions per Member State.

Figure 14. Overview of data protection characteristics per Member State. Where more than one practice exists within one court or group of courts, only the most dominant one is included.

	Constitutional Court			Civil/Criminal Courts			Administrative Courts			All courts		
	Framework	Factual Practice	Representation	Framework	Factual Practice	Representation	Framework	Factual Practice	Representation	Work Process	Responsible Organization	Art. 267 TFEU
Belgium	Unknown	Anon	Init	Legal	Anon	Init	Unknown	Req	Obsc	Man	Court	G
Bulgaria	Unknown	Anon	Unknown	Legal	Anon	Init	Legal	Anon	Init	Unknown	Court	G
Czech Republic	Legal	Req	Init	Legal	Anon	Init	Legal	Anon	Init	Man	Court	G
Denmark	N/A	N/A	N/A	General	Anon	Role	N/A	N/A	N/A	AutMan	Court	G
Germany	General	Anon	Init	General	Anon	Init	General	Anon	Init	Man	Court	A
Estonia	N/A	N/A	N/A	Legal	Req	Init	N/A	N/A	N/A	ManSup	Court	G
Ireland	N/A	N/A	N/A	No	Req	Init	N/A	N/A	N/A	AutMan	Unknown	Unknown
Greece	N/A	N/A	N/A	Unknown	N/A	N/A	General	Anon	Obsc	AutMan	Cont	C
Spain	Unknown	Anon	Unknown	General	Anon	Fake	General	Anon	Fake	Unknown	Pubb	A
France	Policy	Anon	Init	Policy	Anon	Init	Policy	Anon	Init	AutMan	Court Cont	G
Croatia	Unknown	Anon	Init	Policy	Anon	Init	Policy	Anon	Init	ManSup	Court	G
Italy	Policy	Req	Init	Legal	Req	Init	Legal	Req	Init	Man	Court	Unknown
Cyprus	N/A	N/A	N/A	No	Req	Unknown	N/A	N/A	N/A	Tagged	Court	F
Latvia	N/A	Req	Init	Legal	Anon	Role	Legal	Anon	Role	AutMan	Court	G
Lithuania	Unknown	Anon	Unknown	Legal	Anon	Init	Legal	Anon	Init	AutMan	Court	Unknown
Luxembourg	Unknown	Anon	Obsc	Unknown	Anon	Obsc	Unknown	Anon	Obsc	Unknown	Unknown	Unknown
Hungary	Unknown	Anon	Unknown	Legal	Anon	Unknown	N/A	N/A	N/A	ManSup	Court	G
Malta	Unknown	Req	Init	Unknown	Req	B	Unknown	Req	Init	Man	Court	Unknown
Netherlands	N/A	N/A	N/A	Policy	Anon	Role	Policy	Anon	Role	ManSup	Court	G
Austria	Legal	Anon	Init	Legal	Anon	Init	Legal	Anon	Init	AutMan	Court	A
Poland	Unknown	Anon	Init	Unknown	Anon	Init	Unknown	Anon	Init	Unknown	Unknown	Unknown
Portugal	No	Anon	Init	No	Anon	Init	No	Anon	Init	ManSup	Court	G
Romania	Unknown	Anon	Init	Policy	Anon	Init	N/A	N/A	N/A	AutMan	Cont	G
Slovenia	Legal	Req	Init	Policy	Anon	Init	Unknown	Anon	Init	ManSup	Court	A
Slovakia	Legal	Anon	Init	Legal	Anon	Init	N/A	N/A	N/A	ManSup	Court	A
Finland	N/A	N/A	N/A	Unknown	Anon	Init	Unknown	Anon	Init	Unknown	Unknown	Unknown
Sweden	N/A	N/A	N/A	Legal	Anon	Init	Legal	Anon	Init	Unknown	Unknown	Unknown
United Kingdom	N/A	N/A	N/A	No	Req	Init	N/A	N/A	N/A	Man	Court	Unknown

<b>Legend</b>			<b>Work Process</b>		
N/A Not applicable			Man Manual		
Unknown No information available			ManSup Manual with software support		
<b>Framework</b>			AutMan Mainly automated (manual check)		
No No framework			AutNoMan Mainly automated (no manual check)		
General General data protection framework			Tagged Tagged Decision		
Legal Specific legal framework			<b>Responsible Organization</b>		
Policy Specific policy framework			Court Court		
<b>Factual Practice</b>			Pubb Other public body		
Anon Always Anonymized			Cont Contractor		
Req Only on request of party or in specific cases			<b>Art. 267 TFEU</b>		
<b>Representation</b>			A Both anonymized		
Obsc Completely obscuring			B Only order anonymized		
Init Real or random initials			C Only decision anonymized		
Fake Fake data			D Initiative with parties		
Role Replacement by role			E Informing the parties		
			F No anonymization		
			G Discretion of the courts		

More details per Member State can be found in section 7.

## 4 Open Data

‘Open Data’ refers to the principle that public data should be available for re-use by public and private bodies, without restrictions on copyright, patents or other mechanisms of control.

At the EU level the legal framework as defined in Directive 2003/98/EC on the re-use of public sector information, as amended by Directive 2013/37/EU is of relevance. This ‘PSI Directive’ is based on the principle that public data<sup>32</sup> have to be made available for re-use upon request, but in many Member States as well as within the EU itself there is growing tendency to make available also pro-actively those datasets that can be considered to be of public interest. The Directive also applies to information that is already available on the internet.

In this section we will discuss licence types and technical features with a view to measure to what extent public repositories with court decisions meet the requirements of Open Data. An overview per Member State is presented in Section 4.3.

### 4.1 Licences

Different types of licences can be used. Legal restrictions on full re-use can apply e.g. because of intellectual property rights or for data protection reasons.

For classifying the licences use has been made of the Creative Commons licence types.<sup>33</sup> As can be learned from Figure 15 most Member States do not impose any or little restrictions on re-use (licence CC-BY or CC0 ). One Member State (Lithuania) requires that the information is not amended and the source is cited (BY-SA). Three Member States (Greece, Spain and Ireland), do not permit commercial re-use (BY-NC-ND).

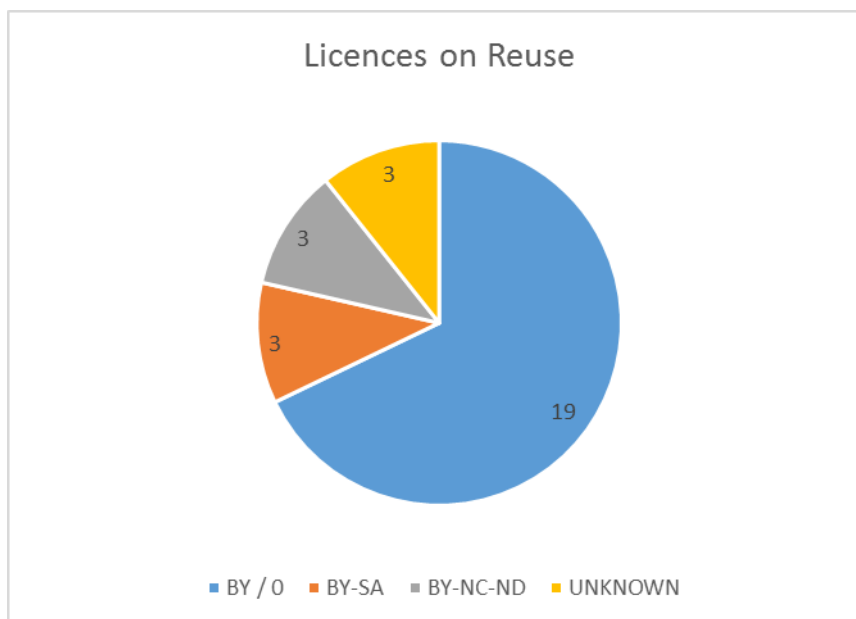
Some countries also require their re-users to respect data protection rules.

<sup>32</sup> The scope of ‘public data’ is defined by article 1 of the PSI Directive. See also e.g. [ECLI:DE:BVerwG:2016:140416U7C12.14.0.](https://eur-lex.europa.eu/eli/dir/2016/1404/160707c12_14_0)

<sup>33</sup> [creativecommons.org/choose/](https://creativecommons.org/choose/).



Figure 15. Types of licences on re-use.



The PSI Directive also covers the possible re-use of public materials that are not actively published by public bodies themselves. In other words: they should be made available for re-use if requested for and if access is not restricted by article 1 (2) PSI Directive or national access regimes (article 1 (3) PSI Directive). In many countries there are specific provisions on acquiring court decisions on request, but these are not drafted for the objective of re-use and not for large amounts of decisions. In the questionnaire many countries also pointed to the problem of data protection: decisions have to be anonymised before made available for the re-use request, and according to the PSI Directive in such situations there is no obligation to respond positively to such a request and/or a financial compensation can be asked for to cover the costs of such an operation.

## 4.2 Technical Features

Re-users of repositories with court decisions are best served with specified technical solutions to facilitate the easy download of the sometimes hundreds of thousands of documents that are available. Of course, they can be obtained via the website. Amongst technicians this is called 'screen scraping': by detecting how a website is built, a script can be written that automatically downloads all documents. This solution can cause overloaded server for the information providers, and a lot of work for the re-users. Therefore, specific solutions like an FTP site or, more modern: a web service, are better options.

Nevertheless, as Figure 16 shows, a minority of Member States offer one of these options. In most Member States re-users have to resort to screen-scraping.<sup>34</sup> In some Member States (e.g. Croatia, Bulgaria) this is practically impossible because a CAPTCHA is used for every single document.

Figure 16. Availability of technical connections for harvesting documents.

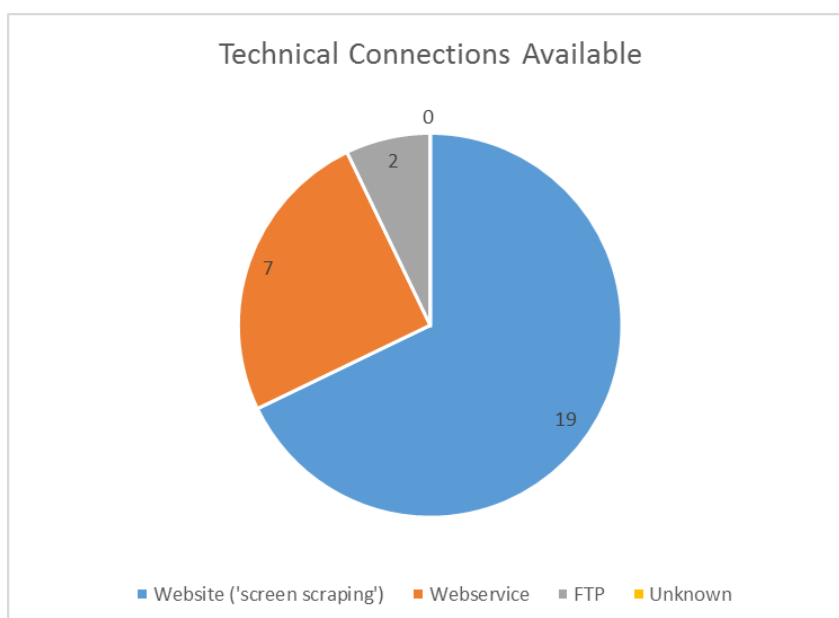
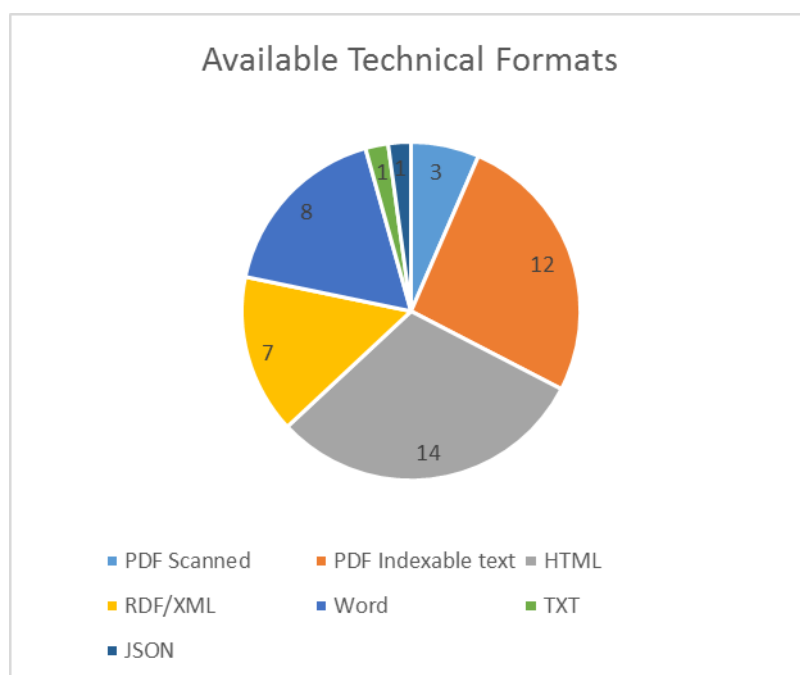


Figure 17 visualizes which data formats are available for re-users. Since web services or FTP are hardly available it won't surprise that the technical formats offered are in majority those formats which are used on the website as well: PDF (with indexable text), HTML and Word. In those Member States offering a web service RDF/XML is the most common format.

<sup>34</sup> Not in all cases we have been able to verify whether a 'web service' in the technical sense is really available in case this option was ticked in the questionnaire.

Figure 17. Technical formats available. Since one Member State can offer more than one data format, the total is more than 28.



The metadata which are available at the website, are – in a legal sense – comparably available as the documents themselves, although the technical format might differ. If the decisions themselves are available in XML, metadata generally are contained in that file, while if the decisions are available in Word, metadata have to be collected separately via e.g. screen scraping.

### 4.3 Overview Member States

Figure 18 gives an overview of the Open Data characteristics per Member State. More details for each Member State can be found in Section 7.

Figure 18. Overview per Member States of Open Data characteristics.

	License	Download	Format		
Belgium	BY / 0	Website	BF	A	PDF Scanned
Bulgaria	BY / 0	Website	CE	B	PDF Indexable text
Czech Republic	BY / 0	Website	CE	C	HTML
Denmark	BY / 0	Website	ABE	D	RDF/XML
Germany *	BY / 0	Webservice	BCD	E	Word
Estonia	BY / 0	Website	BC	F	TXT
Ireland	BY-NC-ND	Website	C	G	JSON
Greece	BY-NC-ND	Website	BE		
Spain	BY-NC-ND	Website	B		
France	BY / 0	FTP	D		
Croatia	BY / 0	Website	BC		
Italy	BY-SA	Website	D		
Cyprus	BY / 0	Website	AE		
Latvia	BY / 0	Website	BE		
Lithuania	BY-SA	Webservice	C		
Luxembourg	UNKNOWN	Website	C		
Hungary	BY / 0	Webservice	E		
Malta	BY / 0	Website	AB		
Netherlands	BY / 0	Webservice	D		
Austria	BY / 0	FTP	D		
Poland	UNKNOWN	Website	C		
Portugal	BY / 0	Website	C		
Romania	BY / 0	Webservice	C		
Slovenia	BY / 0	Webservice	BC		
Slovakia	BY / 0	Website	BDG		
Finland	BY / 0	Webservice	D		
Sweden	UNKNOWN	Website	C		
United Kingdom	BY-SA	Website	BCE		

\* This refers to court decisions provided on [www.Rechtsprechung-im-Internet.de](http://www.Rechtsprechung-im-Internet.de).

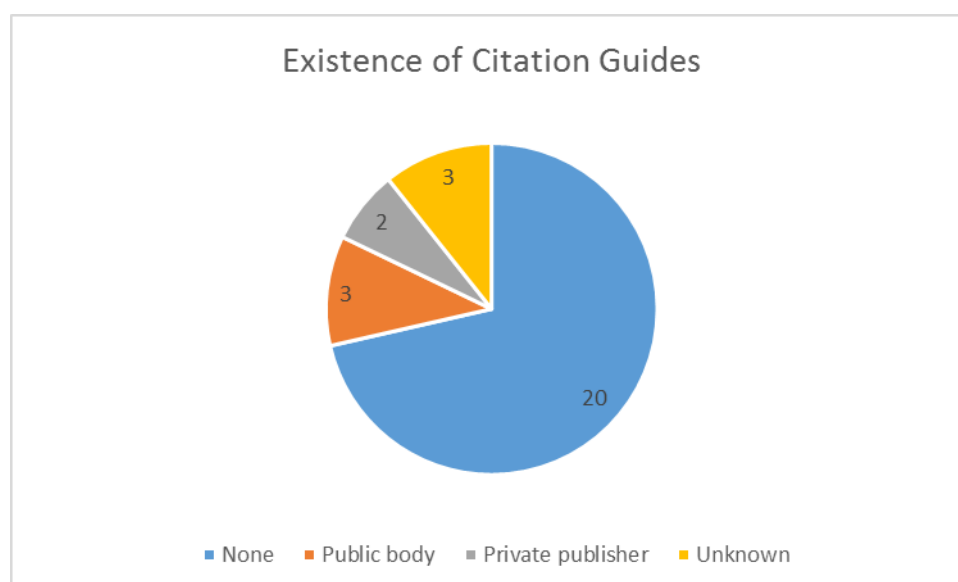
## 5 Citation Practice

When judges, lawyers or academics are citing legal sources, e.g. court decisions, they can use a variety of methods to do so. Therefore, in some countries legal citation exists, prescribing how to cite the different sources. The best-known example might be the (in)famous American Bluebook.<sup>35</sup>

According to the answers on the questionnaire the number of EU Member States having comparable citation guides is rather limited.

Figure 19 reveals that only five Member States have such guides, three edited by a public entity (Belgium, Ireland and the United Kingdom), and two edited by a private entity (the Netherlands and Austria). Internal guidelines which are not published have not been included.

Figure 19. Existence of citation guides.



Notwithstanding the (non) existence of citation guides, there are specific habits within the legal community on how to cite court decisions.

The dominant methods of citation are displayed in Figure 20. It shows that the case number (in combination with the name of the court and often the date of the decision) is the predominant way of citing, with ECLI and commercial references (e.g. to case law periodicals) following on some distance.

<sup>35</sup> Harvard Law Review Association e.a., *The Bluebook: A Uniform System of Citation*, 19 edn (Harvard Law Review Association, 2010).

Figure 20. Preferred way of citing case law. Since some Member States use more methods of citation, the total is more than 28.

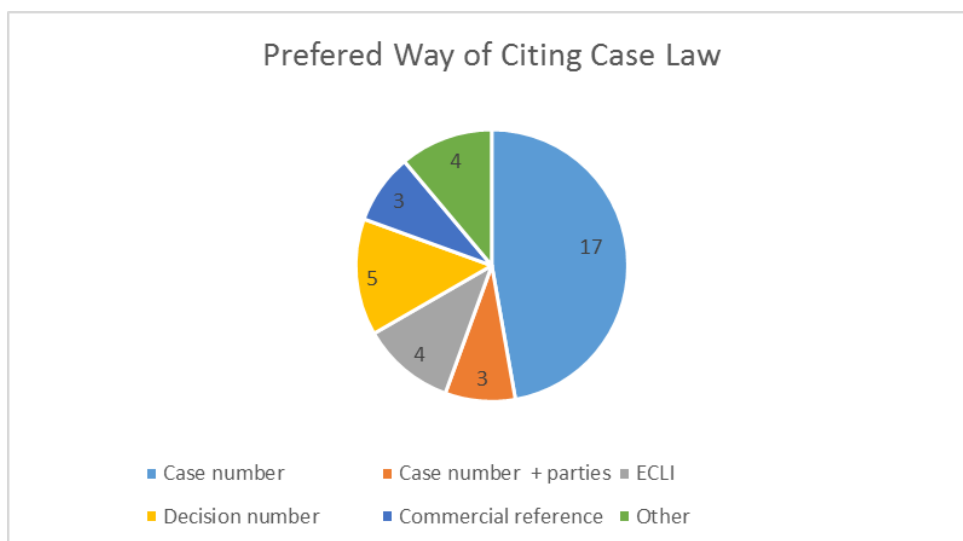


Figure 21 shows the existence of citation guides and the preferred citation styles per Member State.

Figure 21. Existence of citation guides and preferred styles of citing case law per Member State.

	Citation guidelines	Preferred citation	
Belgium	Public body	A	A Case number B Case number + parties C ECLI D Decision number E Commercial reference F Other
Bulgaria	None	F	
Czech Republic	None	A	
Denmark	None	AE	
Germany	None	AC	
Estonia	None	A	
Ireland	Public body	BD	
Greece	None	ADE	
Spain	None	ACD	
France	None	A	
Croatia	None	A	
Italy	None	D	
Cyprus	None	F	
Latvia	None	F	
Lithuania	None	A	
Luxembourg	Unknown	Unknown	
Hungary	None	AE	
Malta	None	B	
Netherlands	Private publisher	C	
Austria	Private publisher	A	
Poland	Unknown	Unknown	
Portugal	None	AF	
Romania	None	A	
Slovenia	None	A	
Slovakia	None	A	
Finland	Unknown	Unknown	
Sweden	None	AC	
United Kingdom	Public body	BD	

## 6 The European Case Law Identifier

The European Case Law Identifier (ECLI) has been established by the EU Council Conclusions in 2010.<sup>36</sup> The univocal identifier (the 'ECLI') can be used for decisions of all courts within the European Union and other European organisations. Also a set of metadata has been established to facilitate cross-border searchability of case law repositories.<sup>37</sup>

In its Conclusions the Council also decided on having a EU wide search facility for decisions that have an ECLI assigned. This 'ECLI Search Engine',<sup>38</sup> part of the European e-Justice portal,<sup>39</sup> went live on 4 May 2016.<sup>40</sup>

In this Section we limit ourselves to the question whether and to what extent ECLI has been introduced at the courts, as well as whether a connection to the ECLI Search Engine has been made. Details per Member States can be found in Section 7.

Figure 22 shows the distribution with regard to the implementation of ECLI.

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<sup>36</sup> Council conclusions inviting the introduction of the European Case Law Identifier (ECLI) and a minimum set of uniform metadata for case law, OJ C 127, 29.4.2011, p. 1–7, [CELEX:52011XG0429\(01\)](#).

<sup>37</sup> See e.g. M. van Opijnen and A. Ivantchev, 'Implementation of ECLI - State of Play', in *Legal Knowledge and Information Systems - JURIX 2015: The Twenty-Eighth Annual Conference, Braga*, ed. by A. Rotolo (Amsterdam: IOS Press, 2015), p. 165-168.

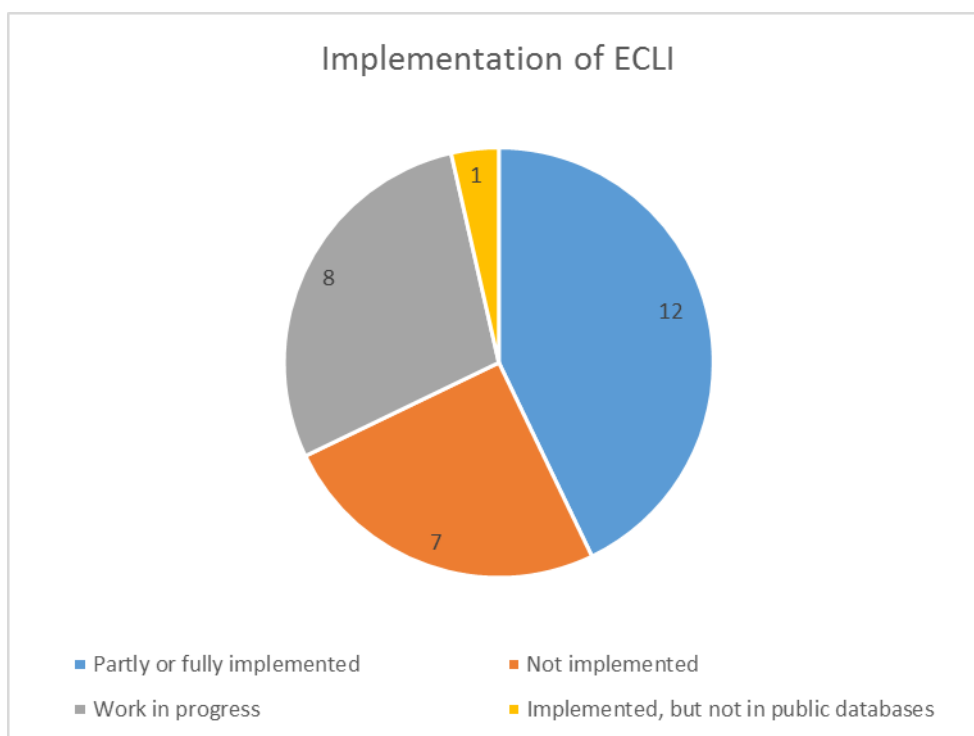
<sup>38</sup> [e-justice.europa.eu/content\\_ecli\\_search\\_engine-430-en.do](http://e-justice.europa.eu/content_ecli_search_engine-430-en.do).

<sup>39</sup> [e-justice.europa.eu/home.do](http://e-justice.europa.eu/home.do).

<sup>40</sup> M. van Opijnen, 'Gaining Momentum. How ECLI Boosts Accessibility of Case Law in Europe', in *Law via the Internet, Limassol, Cyprus*, 2016).  
[www.lvi2016.org/sites/default/files/presentations/mark-van-opijnen-paper.pdf](http://www.lvi2016.org/sites/default/files/presentations/mark-van-opijnen-paper.pdf).



Figure 22. State of play regarding the implementation of ECLI.



How these implementations of ECLI are distributed over the EU can be seen on the map in Figure 23.

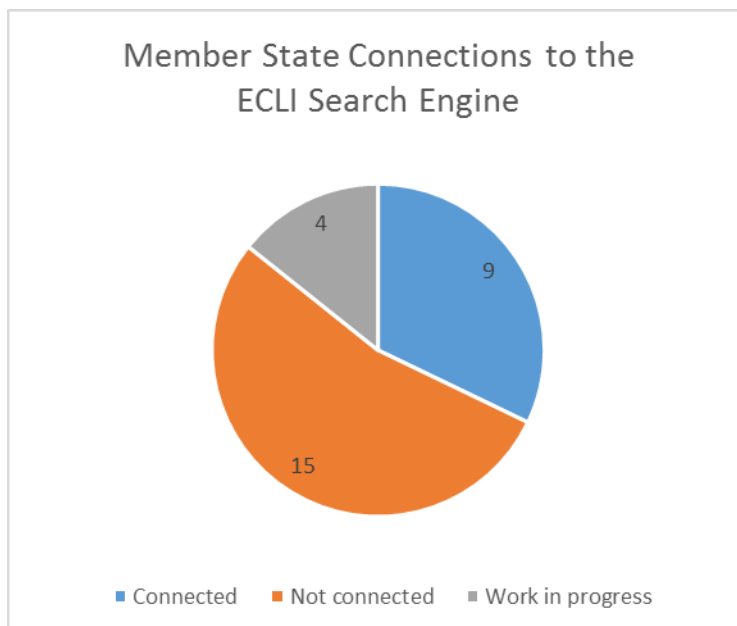
Figure 23 Map on the implementation of ECLI.



In Figure 24 Member States' connections to the ECLI Search Engine are visualized. Connected are the Czech Republic, Germany, Greece, Spain, France, Croatia, Italy, Netherlands and Slovenia, while work is in progress in Belgium, Estonia, Cyprus and Latvia. It should be mentioned here that also the Jurifast database of the Association of Council of State and Supreme Administrative Jurisdictions of the European Union (ACA-Europe) is indexed by the

ECLI Search Engine – as far as the decisions contained therein have an ECLI assigned by the rendering Member State.

Figure 24. Number of connections to the ECLI Search Engine.



Finally, Figure 25 shows the details on ECLI implementation per Member State.

Figure 25. Implementation of ECLI and connections to the ECLI Search Engine per Member State. Since the questionnaire did not contain a specific question on foreseen connections to the ECLI Search Engine, 'implementing' is only indicated in the last column if known from other information sources.

	ECLI	ECLI Search Engine
Belgium	Implementing	Implementing
Bulgaria	Implementing	No
Czech Republic	Yes	Yes
Denmark	Implementing	No
Germany	Yes	Yes
Estonia	Implementing	Implementing
Ireland	No	No
Greece	Yes	Yes
Spain	Yes	Yes
France	Yes	Yes
Croatia	Yes	Yes
Italy	Yes	Yes
Cyprus	Implementing	Implementing
Latvia	Implementing	Implementing
Lithuania	No	No
Luxembourg	No	No
Hungary	No	No
Malta	Not public	No
Netherlands	Yes	Yes
Austria	Yes	No
Poland	No	No
Portugal	Implementing	No
Romania	Implementing	No
Slovenia	Yes	Yes
Slovakia	Yes	No
Finland	Yes	No
Sweden	No	No
United Kingdom	No	No

## 7 Reports per Member State / Organisation

This chapter contains specific information on the main themes regarding the on-line publication of court decisions in the 28 Member States and the three international organisations that have implemented ECLI. Although as much information as possible from the questionnaires has been used, we also used desk research for gathering additional information or for collecting basic information on those countries that had not replied to the questionnaire.

For reasons of comparability we use the same scheme for all 31 entities, although we do not have information available on all topics for all entities. This is due to incomplete questionnaires or – in case the questionnaire was not answered – information not available on the web or via alternative channels.

Also, information from the multiple-choice questions that was aggregated in the Sections 2 till 6 is not replicated here. Not to impede the readability of the text we have moved information on references to the footnotes.

## 7.1 European Union

### 7.1.1 Introduction

The Court of Justice of the European Union (CJEU) was established in 1952. It has undergone several name and organisational changes. It reviews the legality of the acts of the EU institutions, ensures that Member States comply with obligations under the Treaties and interprets European Union law at the request of the national courts.

The CJEU has its seat in Luxembourg and currently consists of two courts: the Court of Justice and the General Court, the latter being created in 1988. In 2004 the Civil Service Tribunal was established, but its jurisdiction was fully transferred to the General Court on 1 September 2016.

### 7.1.2 The Legal Framework on Publication

Article 20.3 of the Rules of Procedure of the Court of Justice<sup>41</sup> and article 35.3 of the Rules of Procedure of the General Court<sup>42</sup> state that the Registrar is in charge of the publications and, in particular, of the case law in the European Court Reports.<sup>43</sup> Only the Rules of Procedure of the General Court add to this: “*And of the dissemination on the internet of documents concerning the General Court.*” This is elaborated in point 56 of the Practice Rules for the Implementation of the Rules of Procedure of the General Court:

*The Registrar shall ensure that the case-law of the Court is made public in accordance with arrangements adopted by the Court. Information concerning those arrangements shall be available on the internet site of the Court of Justice of the European Union.*<sup>44</sup>

A selection of decisions is published in the Reports. The criteria for the Court of Justice, since 1 May 2004:<sup>45</sup>

- Judgments of the full Court and of the Grand Chamber;
- Judgments delivered in preliminary ruling proceedings by Chambers of five Judges and Chambers of three Judges;

<sup>41</sup> [eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2012.265.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2012.265.01.0001.01.ENG).

<sup>42</sup> [eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2015.105.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.105.01.0001.01.ENG).

<sup>43</sup> For the former Civil Service Tribunal comparable provisions could be found in article 20.3 of the Rules of Procedure of the European Union Civil Service Tribunal ([eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.206.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.206.01.0001.01.ENG)) and article 17.1 of the Instructions to the Registrar of the European Union Civil Service Tribunal ([eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.206.01.0046.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.206.01.0046.01.ENG)).

<sup>44</sup> [eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2015.152.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.152.01.0001.01.ENG).

<sup>45</sup> These selection rules are copied from: [curia.europa.eu/jcms/jcms/P\\_106308/](http://curia.europa.eu/jcms/jcms/P_106308/).

- Judgments delivered other than in preliminary ruling proceedings by Chambers of five Judges and Chambers of three Judges, ruling with an Advocate General's Opinion; and
- Opinions delivered pursuant to Article 218(11) of the Treaty on the Functioning of the European Union (TFEU).

Unless decided otherwise by the formation of the Court concerned, the following are thus, as a rule, no longer published in the Reports:

- Judgments delivered other than in preliminary ruling proceedings by Chambers of three or five Judges ruling without an Advocate General's Opinion; and
- Orders.

It has also been possible, since September 2011, for Chambers of three or five Judges to decide, exceptionally, not to publish a preliminary ruling in the Reports.

For the General Court the criteria for publication in the digital Reports are, from September 2005:

Unless decided otherwise by the formation of the Court concerned, the following have been published in the Reports:

- judgments of the Grand Chamber;
- judgments of Chambers of five Judges.

The formation of the Court concerned decides on the publication of judgments of Chambers of three Judges on a case-by-case basis.

Judgments of the General Court ruling by a single Judge and orders involving a judicial determination are not published in the Reports, unless decided otherwise.

Certain decisions may be published in the form of extracts.

Decisions which are not published in the reports are nevertheless available on the internet.

### 7.1.3 Public Access to Court Decisions

A selection of decisions (see publication criteria in section 7.1.2) is published in the Reports of cases (or 'European Court Reports' – ECR).

With effect from 1 January 2012 (General Reports) and 1 January 2010 (Reports of Staff Cases) respectively, the Reports are published exclusively in digital format on the EUR-Lex site. The Curia website also gives access to the Reports.<sup>46</sup>

The general Reports also contain information (key-words, subject and disposal) on the decisions which, by virtue of the publication criteria, are not published in the Reports. Those

<sup>46</sup> Court of Justice: [http://curia.europa.eu/jcms/jcms/P\\_106320?rec=RG&jur=C](http://curia.europa.eu/jcms/jcms/P_106320?rec=RG&jur=C);  
General Court: [http://curia.europa.eu/jcms/jcms/P\\_106319?rec=RG&jur=T](http://curia.europa.eu/jcms/jcms/P_106319?rec=RG&jur=T) and  
[http://curia.europa.eu/jcms/jcms/P\\_106318?rec=FP&jur=T](http://curia.europa.eu/jcms/jcms/P_106318?rec=FP&jur=T);  
Civil Service Tribunal: [curia.europa.eu/jcms/jcms/P\\_106317?rec=FP&jur=F](http://curia.europa.eu/jcms/jcms/P_106317?rec=FP&jur=F).

decisions are nevertheless accessible, under the 'case-law' section of the Curia website,<sup>47</sup> in the languages available, that is to say, the language of the case and the language of the deliberation.

On average, the number of decisions published in the ECR equals the number which is not in the ECR.

Decisions and summaries published in the ECR are translated in all official European languages – other decisions are only available in the language of the case and the language of the deliberation.

All decisions of CJEU published or being the subject of information in the ECR are also published on EUR-Lex, where additional metadata are added.

#### 7.1.4 Data Protection

For the Court of Justice, the issue of anonymity is especially relevant for the References for a Preliminary Ruling. In the section concerned (Title III) of the Rules of Procedure of the Court of Justice article 95 states:

1. *Where anonymity has been granted by the referring court or tribunal, the Court shall respect that anonymity in the proceedings pending before it.*
2. *At the request of the referring court or tribunal, at the duly reasoned request of a party to the main proceedings or of its own motion, the Court may also, if it considers it necessary, render anonymous one or more persons or entities concerned by the case.*

To emphasize the responsibility of the national courts, an additional guideline 'Anonymity in judicial proceedings before the Court of Justice' was drafted.<sup>48</sup> The final two paragraphs of this guidelines read:

*Under the preliminary ruling procedure, the Court of Justice will, as a rule, use the information contained in the order for reference, including nominative or personal data. It is therefore for the referring court or tribunal itself, if it considers it necessary, to delete certain details in its request for a preliminary ruling or to render anonymous one or more persons or entities concerned by the dispute in the main proceedings.<sup>49</sup> After the request for a preliminary ruling has been lodged, the Court may also render such persons or entities anonymous of its own motion, or at the request of the referring court or tribunal or of a*

<sup>47</sup> [curia.europa.eu/juris/recherche.jsf?language=en](https://curia.europa.eu/juris/recherche.jsf?language=en).

<sup>48</sup> [curia.europa.eu/jcms/upload/docs/application/pdf/2015-11/tra-doc-en-div-c-0000-2015-201508723-05\\_00.pdf](https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-11/tra-doc-en-div-c-0000-2015-201508723-05_00.pdf).

<sup>49</sup> Point 27 of the Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings ([eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:338:0001:0006:EN:PDF](https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:338:0001:0006:EN:PDF)).



*party to the main proceedings. In order to maintain its effectiveness, such a request for anonymity must, however, be made at the earliest possible stage of the proceedings.*<sup>50</sup>

*Where a party considers it necessary that its identity or certain information concerning it should not be disclosed in a case brought before the Court of Justice, it may request that the Court ‘anonymise’ the relevant case, in whole or in part. To be effective, such an application must, however, be made as early as possible. On account of the increasing use of new information and communication technologies, granting anonymity becomes much more difficult if the notice of the case concerned has already been published in the Official Journal of the European Union or, in preliminary ruling proceedings, if the request for a preliminary ruling has already been served on the interested persons referred to in Article 23 of the Statute, about one month after the request has been lodged at the Court.*<sup>51</sup>

The practice regarding the referring by national courts is discussed in section 3.3.

For the General Court, article 66 of the Rules of Procedure reads:

*On a reasoned application by a party, made by a separate document, or of its own motion, the General Court may omit the name of a party to the dispute or of other persons mentioned in connection with the proceedings, or certain information, from those documents relating to a case to which the public has access if there are legitimate reasons for keeping the identity of a person or the information confidential.*

This is elaborated in points 68 to 70 of the Practice Rules:<sup>52</sup>

- 68. Where a party considers that his identity should not be made public in a case brought before the Court, he may request, pursuant to Article 66 of the Rules of Procedure, that the Court ‘anonymise’ the relevant case, in whole or in part.*
- 69. The application for anonymity must be made by a separate document stating appropriate reasons.*
- 70. In order to ensure that anonymity is preserved, it is recommended that the application be made at the outset of the proceedings. On account of the dissemination of information concerning the case on the internet, granting anonymity becomes much more difficult if the notice of the case concerned has already been published in the Official Journal of the European Union.*

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<sup>50</sup> Ibidem, point 28.

<sup>51</sup> Point 8 of the Practice Directions to parties concerning cases brought before the Court (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014Q0131%2801%29&from=EN>).

<sup>52</sup> See footnote 44.

Additional information can be found in 'Anonymity in judicial proceedings before the General Court of the European Union'.<sup>53</sup>

*In view of the development of search engines on the internet and the fact that anyone can now freely access information contained in publications relating to court proceedings, the Registrar of the General Court consistently draws the attention of representatives of parties before the General Court to Article 35(3) and Articles 79 and 122 of the Rules of Procedure of the General Court concerning the publication and the dissemination on the internet of documents relating to cases brought before the General Court, as well as to Article 66 of the aforementioned Rules of Procedure. The party's representative will accordingly be invited to consider whether there are in his case legitimate reasons for keeping a person's identity confidential, and, if so, to make a reasoned application for anonymity, by a separate document.*

*In order to be effective, any such application must be submitted to the Registry prior to the publication or the dissemination on the internet of the documents concerned.*

EUR-Lex publishes the versions as sent by the CJEU. If there is a post-publication decision regarding anonymisation of the Court decision, the Court sends a new version of the judgment to the Publications Office, which then replaces the original version on EUR-Lex. If the anonymisation concerns the Court communications published in the Official Journal of the European Union, the anonymisation is done by the Publications Office. Temporary solutions may be applied while the issue is still under discussion or until a final technical solution is implemented.

### 7.1.5 Open Data

Decisions of the CJEU can be downloaded and re-used by anybody free of charge and without any restrictions.

On the Curia website documents are available in (X)HTML from 2006 onwards; in scanned PDF from 1954 to 2005.

All decisions of the CJEU can also be found on the EUR-Lex website, all in PDF and (X)HTML. On EUR-Lex also a web service is available for XML download of the metadata. Published Court documents are stored in the CELLAR from where they can be retrieved by everybody via a REST web service.<sup>54</sup>

<sup>53</sup> [curia.europa.eu/jcms/upload/docs/application/pdf/2015-11/tra-doc-en-div-c-0000-2015-201508724-05\\_00.pdf](https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-11/tra-doc-en-div-c-0000-2015-201508724-05_00.pdf).

<sup>54</sup> A user manual can be found at: [publications.europa.eu/documents/2050822/0/CEM-EEU-External+End+User+manual-v15+00.pdf](https://publications.europa.eu/documents/2050822/0/CEM-EEU-External+End+User+manual-v15+00.pdf);

The SPARQL endpoint is available at: [publications.europa.eu/webapi/rdf/sparql](https://publications.europa.eu/webapi/rdf/sparql).

### 7.1.6 ECLI

The CJEU has assigned ECLI to all its decisions (from 1954 till today). ECLI is visible and searchable on the Curia website as well as on EUR-Lex. The CJEU is connected to the ECLI Search Engine.

### 7.1.7 Citation Guidelines

The CJEU has developed an internal Vademecum, containing citation guidelines. These guidelines are – summarized – also available on the internet.<sup>55</sup> These guidelines prescribe the following elements for citations: [type of decision] [full name of the decision], [usual name of the decision], [case number], [optional: 'not published', if the decision is not published in full in the ECR], [ECLI without its first element], [optional: paragraph]. Example: *Judgment of 12 July 2005, Schempp, C-403/03, EU:C:2005:62, paragraph 22*.

This prescription also has been adopted by the Interinstitutional Style Guide,<sup>56</sup> maintained by the Publications Office.

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<sup>55</sup> [curia.europa.eu/jcms/jcms/P\\_126035/](https://curia.europa.eu/jcms/jcms/P_126035/).

<sup>56</sup> [publications.europa.eu/code/en/en-250903.htm](https://publications.europa.eu/code/en/en-250903.htm).

## 7.2 Council of Europe

### 7.2.1 Introduction

The European Court of Human Rights is an international court set up in 1959. It rules on individual or State applications alleging violations of the civil and political rights set out in the European Convention on Human Rights (hereinafter: the Convention), which has been ratified by the 47 Member States of the Council of Europe.

From 1 November 1998 the ECHR has sat as a full-time court and individuals can apply to it directly. The judgments are binding on the countries concerned and have led governments to alter their legislation and administrative practice in a wide range of areas. The Court is based in Strasbourg.

### 7.2.2 The Legal Framework on Publication

Article 44, section 3 of the Convention reads:

*The final judgment shall be published.*

This is elaborated in Rule 78 of the Rules of Court,<sup>57</sup> but electronic publication is not mentioned specifically.

Since 1998 a selection of decisions is published in the *Reports of Judgments and Decisions*.<sup>58</sup> This selection is made by the Bureau<sup>59</sup> following a proposal by the Jurisconsult.<sup>60</sup> The volumes of the reports are available in electronic form as well as in a paperback version.<sup>61</sup> (Nearly) all decisions though are included in the HUDOC database (see section 7.2.3 below).

On 18 December 2002 the Committee of Ministers adopted *Resolution Res(2002)58 on the publication and dissemination of the case-law of the European Court of Human Rights*,<sup>62</sup> which reads:

(...)

*The Committee of Ministers, (...)*

*Considering the importance of the European Convention on Human Rights (...) as a constitutional instrument for safeguarding public order in Europe, and in particular of the case-law of the European Court of Human Rights (...);*

<sup>57</sup> [www.echr.coe.int/Documents/Library\\_2006\\_RoC\\_ENG.pdf](http://www.echr.coe.int/Documents/Library_2006_RoC_ENG.pdf).

<sup>58</sup> Before the Reports came into existence, the decisions of the Court were published in the printed *ECHR Series A*.

<sup>59</sup> Composed of the President and Vice-Presidents of the Court as well as the Presidents of the Sections.

<sup>60</sup> The official responsible to help the Court to maintain the quality and consistency of its jurisprudence.

<sup>61</sup> [www.echr.coe.int/Pages/home.aspx?p=caselaw/reports&c=](http://www.echr.coe.int/Pages/home.aspx?p=caselaw/reports&c=).

<sup>62</sup> [search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016804de33a](http://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804de33a).

*Considering that easy access to the Court's case-law is essential for the effective implementation of the Convention at national level, as it enables to ensure the conformity of national decisions with this case-law and to prevent violations;*

*Considering the respective practices of the Court, of the Committee of Ministers in the framework of its control of the execution of the Court's judgments, and of the member states with respect to the publication and dissemination of the Court's case-law;<sup>63</sup>*

*(...)*

*Recalling Article 12 of the Statute of the Council of Europe, according to which the official languages of the Council of Europe are English and French, Invites the Court to review its practice as regards the publication and dissemination of its judgments and decisions. It stresses in this respect the importance for the Court that:*

- i. its judgments and decisions are made available immediately in an electronic database on the Internet;*
- ii. its main judgments, important decisions on admissibility and information notes on case-law are made accessible rapidly, in both paper and electronic form (CD-Rom, DVD, etc.);*
- iii. it indicates rapidly and in an appropriate manner, in particular in its electronic database, the judgments and decisions which constitute significant developments of its case-law.*

### 7.2.3 Public Access to Court Decisions

All judgments and decisions of the Court (with the exception of decisions taken by committees of three judges pursuant to Article 28 of the Convention), including those not published in the Reports, are available in the Court's case law database HUDOC.<sup>64</sup>

<sup>63</sup> With regard to the publication of the case law of the ECHR in the Council of Europe Member States see Recommendation Rec(2002)13 of the Committee of Ministers to member states on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights ([rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063ca51](http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168063ca51)), recommending that the government of member states: "(...) ii. Ensure that judgments and decisions which constitute relevant case-law developments, or which require special implementation measures on their part as respondent states, are rapidly and widely published, through state or private initiatives, in their entirety or at least in the form of substantial summaries or excerpts (together with appropriate references to the original texts) in the language(s) of the country, in particular in official gazettes, information bulletins from competent ministries, law journals and other media generally used by the legal community, including, where appropriate, the Internet sites". Not too many EU member states follow this recommendation.

<sup>64</sup> [www.echr.coe.int](http://www.echr.coe.int).

In 2007 a register with pending cases was added<sup>65</sup> as well as extended summaries.<sup>66</sup> In 2009 RSS-feeds were introduced,<sup>67</sup> and also translations in other languages than the official languages of the Court (English and French). Such translations are made by third parties and not authorized by the Court.<sup>68</sup> Following the last instruction of the abovementioned Resolution Res(2002)58, HUDOC uses a system to classify decisions as to their legal importance. Originally having three levels, in 2012 the Reports were added as a separate category.

The ECHR spends a lot of effort in making its case law as accessible as possible, a.o. by case law information notes, videos, guides on specific topics and research reports.<sup>69</sup>

#### 7.2.4 Data Protection

For long, decisions of the ECHR were anonymised only in exceptional cases. With the normal rule laid in down in Rule 33 of the Rules of Court, Rule 47 par. 3 of the Rules of Court read by then:

*Applicants who do not wish their identity to be disclosed to the public shall so indicate and shall submit a statement of the reasons justifying such a departure from the normal rule of public access to information in proceedings before the Court. The President of the Chamber may authorise anonymity in exceptional and duly justified cases.*<sup>70</sup>

However, in 2008 this paragraph was changed. The last sentence now reads:

*The President of the Chamber may authorise anonymity or grant it of his or her own motion.*<sup>71</sup>

In the Practice Notes, section 'Institution of proceedings', paragraph 12(b)<sup>72</sup> the applicant is instructed to state how the anonymisation – if granted – should be done: by using his or her initials or by a single letter (e.g. 'X' or 'Y').

Furthermore, in January 2014 a specific section 'Requests for Anonymity' was added to the Practice Notes, reading:

#### **General principles**

<sup>65</sup> [hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-2049030-2167571](http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-2049030-2167571).

<sup>66</sup> [hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-2162467-2300035](http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-2162467-2300035).

<sup>67</sup> [hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-2874810-3153104](http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-2874810-3153104).

<sup>68</sup> [www.echr.coe.int/Documents/HRTF\\_standards\\_translations\\_ENG.pdf](http://www.echr.coe.int/Documents/HRTF_standards_translations_ENG.pdf).

<sup>69</sup> For an overview: [www.echr.coe.int/Pages/home.aspx?p=caselaw/analysis](http://www.echr.coe.int/Pages/home.aspx?p=caselaw/analysis).

<sup>70</sup> [www.echr.coe.int/Documents/Library\\_2006\\_RoC\\_ENG.pdf](http://www.echr.coe.int/Documents/Library_2006_RoC_ENG.pdf).

<sup>71</sup> Now par. 4 of Rule 47: [www.echr.coe.int/Documents/Rules\\_Court\\_ENG.pdf](http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf).

<sup>72</sup> Included in the Rules of Court document referred to in footnote 71.

*The parties are reminded that, unless a derogation has been obtained pursuant to Rules 33 or 47 of the Rules of Court, documents in proceedings before the Court are public. Thus, all information that is submitted in connection with an application in both written and oral proceedings, including information about the applicant or third parties, will be accessible to the public.*

*The parties should also be aware that the statement of facts, decisions and judgments of the Court are usually published in HUDOC on the Court's website (Rule 78).*

### **Requests in pending cases**

*Any request for anonymity should be made when completing the application form or as soon as possible thereafter. In both cases the applicant should provide reasons for the request and specify the impact that publication may have for him or her.*

### **Retroactive requests**

*If an applicant wishes to request anonymity in respect of a case or cases published on HUDOC before 1 January 2010, he or she should send a letter to the Registry setting out the reasons for the request and specifying the impact that this publication has had or may have for him or her. The applicant should also provide an explanation as to why anonymity was not requested while the case was pending before the Court.*

*In deciding on the request the President shall take into account the explanations provided by the applicant, the level of publicity that the decision or judgment has already received and whether or not it is appropriate or practical to grant the request.*

*When the President grants the request, he or she shall also decide on the most appropriate steps to be taken to protect the applicant from being identified. For example, the decision or judgment could, inter alia, be removed from the Court's website or the personal data deleted from the published document.*

### **Other measures**

*The President may also take any other measure he or she considers necessary or desirable in respect of any material published by the Court in order to ensure respect for private life.<sup>73</sup>*

## **7.2.5 Open Data**

All decisions of the ECHR can be re-used by anybody without cost or any restriction. There are no technical facilities available, so actually obtaining the data requires some technical skills.

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<sup>73</sup> Ibidem.

### 7.2.6 ECLI

In the fall of 2015 ECLI was assigned to all decisions in the HUDOC database. Currently, no connection to the ECLI Search Engine has been made.

### 7.2.7 Citation Guidelines

A 'Note explaining the mode of citation and how to refer to the judgments and decisions of the Court (old and new)' is published on the website of the ECHR.<sup>74</sup> The rules are quite complex and it could be noted that the included formatting instructions and the use of the name of the case (being name of applicant and defendant state) complicate the usability in electronic processing and cross-border settings.

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<sup>74</sup> [www.echr.coe.int/documents/note\\_citation\\_eng.pdf](http://www.echr.coe.int/documents/note_citation_eng.pdf).



## 7.3 European Patent Organisation

### 7.3.1 Introduction

The European Patent Organisation is an intergovernmental organisation that was set up in 1977 on the basis of the European Patent Convention (EPC). It has two bodies, the European Patent Office and the Administrative Council, which supervises the Office's activities.

The boards of appeal, though integrated in the organisational structure of the EPO, are independent of the Office in their decisions and are bound only by the European Patent Convention. Currently, there are 28 technical boards of appeal, the Legal Board of Appeal, the Enlarged Board of Appeal and the Disciplinary Board of Appeal. Members and chairmen of all boards are appointed for a term of five years.

The technical boards of appeal and the Legal Board examine appeals from the decisions of the receiving section, the examining and opposition divisions of the Office. To ensure uniform application of the law, or if an important point of law arises, a question can be referred to the Enlarged Board of Appeal, either by a board of appeal or by the President of the Office.

The Disciplinary Board of Appeal hears appeals against decisions of the European Patent Institute's Disciplinary Committee and the Disciplinary Board on infringement of the rules of conduct for professional representatives before the EPO.

### 7.3.2 The Legal Framework on Publication

Article 129 of the EPC prescribes that the EPO shall periodically publish a European Patent Bulletin as well as:

*An Official Journal containing notices and information of a general character issued by the President of the European Patent Office, as well as any other information relevant to this Convention or its implementation.*

The most important decisions of the Boards of Appeal are disseminated via in the Official Journal, which is, according to article 14, par. 7 EPC, published in the three official languages of the EPO (French, German and English).

Moreover, the decisions of the Boards of Appeal materialize in the relevant text of the decisions, and are hence visible to the public via the Boards of Appeal decisions database and the European Patent Register.

### 7.3.3 Public Access to Court Decisions

The public is informed about the decisions of the boards via the European Patent Register<sup>75</sup> and the Official Journal of the EPO;<sup>76</sup> a database of decisions is also available online.<sup>77</sup> A systematic overview is published regularly ('Case Law of the Boards of Appeal').<sup>78</sup> The Boards of Appeal publish an Annual Report as well, supplying statistics and summarizing a selection of cases.<sup>79</sup>

The database of decisions can be searched by a variety of parameters. Pending petitions<sup>80</sup> and pending referrals to the Enlarged Board of Appeals<sup>81</sup> are listed separately.

### 7.3.4 Data Protection

Decisions of the Boards of Appeal are not anonymised.

### 7.3.5 Open Data

Article 5.2 of the 'Terms and conditions of use for the website of the European Patent Office' read:<sup>82</sup>

- 4) *This right to use does not allow the user to copy all - or a substantial part of - data, data structure and software of EPO databases made available on the Website; in particular, it does not allow any use of data mining, robots, or similar data-gathering and extraction tools.*
- 5) *Any commercial use of the content of EPO databases available on the Website to provide database search or information retrieval services, including marketing-related activities such as, but not limited to, search aids to the EPO or third parties, requires the conclusion of a separate Licence Agreement with the EPO.*

Technically, this is enforced by the use of the Robots Exclusion Protocol based on a 'Fair use charter for the EPO's online patent information products'.<sup>83</sup>

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<sup>75</sup> [register.epo.org/regviewer](http://register.epo.org/regviewer).

<sup>76</sup> [www.epo.org/law-practice/legal-texts/official-journal.html](http://www.epo.org/law-practice/legal-texts/official-journal.html).

<sup>77</sup> [www.epo.org/law-practice/case-law-appeals/advanced-search.html](http://www.epo.org/law-practice/case-law-appeals/advanced-search.html).

<sup>78</sup> [www.epo.org/law-practice/case-law-appeals/case-law.html](http://www.epo.org/law-practice/case-law-appeals/case-law.html).

<sup>79</sup> E.g. for 2015: [www.epo.org/law-practice/legal-texts/official-journal/2016/etc/se3.html](http://www.epo.org/law-practice/legal-texts/official-journal/2016/etc/se3.html).

<sup>80</sup> [www.epo.org/law-practice/case-law-appeals/eba/pending-petitions.html](http://www.epo.org/law-practice/case-law-appeals/eba/pending-petitions.html).

<sup>81</sup> [www.epo.org/law-practice/case-law-appeals/eba/pending.html](http://www.epo.org/law-practice/case-law-appeals/eba/pending.html).

<sup>82</sup> [www.epo.org/footer/terms.html#Copyright](http://www.epo.org/footer/terms.html#Copyright).

<sup>83</sup> [www.epo.org/searching-for-patents/helpful-resources/fair-use.html](http://www.epo.org/searching-for-patents/helpful-resources/fair-use.html).

### 7.3.6 ECLI

The Boards of Appeal have assigned an ECLI to all decisions in their database, which is also indexed by the ECLI Search Engine. The ECLI can be used as well to retrieve decisions from the Boards of appeal decisions database.

### 7.3.7 Citation Guidelines

There are no official citation guidelines at the Boards of Appeal, but generally patent publications are cited by use of the European patent application number, other decisions by use of the decision case number.

## 7.4 Belgium

### 7.4.1 Introduction

The judiciary in Belgium counts 255 courts, in four tiers:

- Local courts:
  - Fifteen police courts (*tribunal de police/politierechtbank*);
  - 187 Justices of Peace (*juge de paix/vrederechter*);
- Courts of first instance:
  - Thirteen Tribunals of first instance (*tribunal de première instance/rechtbank van eerste aanleg*);
  - Nine Labour tribunals (*tribunal du travail/arbeidsrechtbank*);
  - Nine Commercial Tribunals (*tribunal de commerce/rechtbank van koophandel*);
- Courts of Appeal:
  - Five Labour courts (*cour du travail/arbeidshof*);
  - Five Courts of Appeal (*cour d'appel/hof van beroep*);
- Highest Courts:
  - The Supreme Court (*Cour de cassation/Hof van Cassatie*);
  - Eleven Assize courts (*cour d'assises/hof van assisen*), a non-permanent jury-based court without for specific criminal cases.

Apart from these courts, dealing with civil and criminal proceedings Belgium also has a Constitutional Court (*Cour constitutionnelle/Grondwettelijk Hof*).

Administrative cases are handled by a variety of administrative courts, for which the Council of State (*Conseil d'État/Raad van State*) acts as the High Administrative Court.

### 7.4.2 The Legal Framework on Publication

On 10 August 2005 the Federal Legislative Power enacted the Act on the Phenix information system,<sup>84</sup> of which specifically articles 7 and 9 are of relevance. It states that:

- There should be a publicly available database with judicial decisions;
- Containing the decisions which are important for society and the development of the law;
- Each court makes its own selection of decisions to be published, according to selection criteria determined by Royal Decree, established after consultation with the Committee of users.

<sup>84</sup> *Wet 10 augustus 2005 tot oprichting van Phenix*

[www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=2005081057&table\\_name=wet](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2005081057&table_name=wet).

This Royal Decree does not exist yet. Nevertheless, such selection guidelines were established by the Phenix Steering Committee (*Beheerscomité*) which was responsible under this law before it was amended in 2014.<sup>85</sup> These 'Selection rules for judicial decisions in the external database' were published on 5 October 2007 in the Belgium Official Journal (*Belgisch Staatsblad*).<sup>86</sup>

Meanwhile the Supreme Court has its own instruction on the publication of its decisions. This instruction is established by the Office of the *Procureur Général*<sup>87</sup> and prescribes (i.a.) that only legally important decisions are to be published, which is assumed to be the case when there is no precedent in the last three years, or when a precedent in that period concerned a different context.

With regard to the Council of State, the publication of (nearly all of) its decisions is governed by article 28 of the Statutes on the Council of State, coordinated on 12 January 1973,<sup>88</sup> the Royal Decree on the publication of decisions of the Council of State<sup>89</sup> and a Ministerial decree of 3 February 1998.<sup>90</sup>

#### 7.4.3 Public Access to Court Decisions

Decisions of all courts in civil and criminal cases from 1994 onwards can be searched in the 'Juridat' database.<sup>91</sup> The number of decisions published is quite limited. Amongst others, the Commission for the Modernization of the Judiciary (*Commission de Modernisation de l'Ordre Judiciaire*) made a plea for a broader publication.<sup>92</sup>

<sup>85</sup> Statute of 12 May 2014 amending and coordinating various justice related statutes (*Wet houdende wijziging en coördinatie van diverse wetten inzake Justitie (II)*) [www.ejustice.just.fgov.be/cgi/loi/change\\_lg.pl?language=nl&la=N&table\\_name=wet&cn=20140512\\_02](http://www.ejustice.just.fgov.be/cgi/loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=20140512_02).

<sup>86</sup> *Selectieregels voor de rechtspraak opgenomen in de externe gegevensbank voor de rechtspraak* [www.ejustice.just.fgov.be/cgi/article\\_body.pl?language=nl&caller=summary&pub\\_date=2007-10-05&numac=2007009841](http://www.ejustice.just.fgov.be/cgi/article_body.pl?language=nl&caller=summary&pub_date=2007-10-05&numac=2007009841).

<sup>87</sup> Office of the 'Procureur Général', *Instructions pour la publication des arrêts de la cour de cassation*, (2015).

<sup>88</sup> *Wetten op de Raad van State, gecoördineerd op 12 januari 1973* [www.raadvst-consetat.be/?action=doc&doc=927](http://www.raadvst-consetat.be/?action=doc&doc=927).

<sup>89</sup> *Koninklijk besluit betreffende de publicatie van de arresten van de Raad van State* [reflex.raadvst-consetat.be/reflex/pdf/Mbbs/1997/08/08/34084.pdf](http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/1997/08/08/34084.pdf).

<sup>90</sup> *Ministerieel besluit van 3 februari 1998 tot bepaling van het informatienetwerk dat toegankelijk is voor het publiek en van de magnetische drager met het oog op de raadpleging en de registratie van de arresten van de Raad van State* [reflex.raadvst-consetat.be/reflex/pdf/Mbbs/1998/02/17/38452.pdf](http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/1998/02/17/38452.pdf).

<sup>91</sup> [jure.juridat.just.fgov.be](http://jure.juridat.just.fgov.be).

<sup>92</sup> Commission de Modernisation de l'ordre judiciaire, *Verslag gewijd aan de bekendmaking van rechterlijke beslissingen. De veer, de Pelikan en de cloud*, (2014), [justitie.belgium.be/sites/default/files/downloads/Verslag%20bekendmaking%20rechterlijke%20beslissingen.pdf](http://justitie.belgium.be/sites/default/files/downloads/Verslag%20bekendmaking%20rechterlijke%20beslissingen.pdf).

The Constitutional Court publishes all decisions in its own database.<sup>93</sup> The Council of State has two databases: one for its substantive decisions (since 1994) and one for all decisions on non-admissibility.<sup>94</sup> The Council of State publishes all its decisions with an exception for aliens' cases, unless they are of specific legal relevance.

As concerns making old court decisions available via the internet, the Supreme Court collaborated with the library of the law faculty of the University of Leuven to scan historic versions (back to 1942) of the *Arresten van het Hof van Cassatie* (the official publication of the Dutch versions of the published decisions of the Supreme Court). They are now as PDF published on the website of the Court,<sup>95</sup> together with historic volumes of *Pasicrisie* (the French version, back to 1832) that have been digitized by Google Books.<sup>96</sup>

#### 7.4.4 Data Protection

The Phenix Act<sup>97</sup> prescribes that:

- The selected decisions that contain personal data should be anonymised;
- The anonymisation rules are to be determined by Royal Decree.

This Royal Decree does not exist yet, but in practice decisions in the Juridat database are anonymised before publication. In the database of the Council of State decisions are not anonymised, with as only exception decisions in which the Aliens Act is applied.<sup>98</sup>

The Belgium Data Protection Authority (*Commissie voor de bescherming van de persoonlijke levenssfeer*) has published an opinion stating that also the names of lawyers, judges and clerks have to be anonymised,<sup>99</sup> but according to the report of the Commission of the Modernisation of the Judiciary<sup>100</sup> the Data Protection Authority changed its opinion with regard to the anonymisation of people professionally involved.

#### 7.4.5 Open Data

For the Juridat database there are no legal restrictions on re-use but there are no services to facilitate download, so re-users are confined to screen scraping (both PDF and text). The

<sup>93</sup> [www.const-court.be/](http://www.const-court.be/).

<sup>94</sup> Both on [www.raadvst-consetat.be/?page=caselaw&lang=nl](http://www.raadvst-consetat.be/?page=caselaw&lang=nl).

<sup>95</sup> [justitie.belgium.be/nl/rechterlijke\\_orde/hoven\\_en\\_rechtbanken/hof\\_van\\_cassatie/documenten/arresten\\_van\\_cassatie](http://justitie.belgium.be/nl/rechterlijke_orde/hoven_en_rechtbanken/hof_van_cassatie/documenten/arresten_van_cassatie).

<sup>96</sup> [justice.belgium.be/fr/ordre\\_judiciaire/cours\\_et\\_tribunaux/cour\\_de\\_cassation/documents/pasicrisie](http://justice.belgium.be/fr/ordre_judiciaire/cours_et_tribunaux/cour_de_cassation/documents/pasicrisie)

<sup>97</sup> See footnote 84.

<sup>98</sup> [www.raadvst-consetat.be/?page=caselaw](http://www.raadvst-consetat.be/?page=caselaw).

<sup>99</sup> *Commissie voor de bescherming van de persoonlijke levenssfeer, 'Aanbeveling nr 03/2012 van 8 februari 2012'.*

[www.privacycommission.be/sites/privacycommission/files/documents/aanbeveling\\_03\\_2012\\_0.pdf](http://www.privacycommission.be/sites/privacycommission/files/documents/aanbeveling_03_2012_0.pdf).

<sup>100</sup> See footnote 92.

Council of State – of which most decisions published are not anonymised – requires re-users to take the Act Protection Act into account.<sup>101</sup>

If re-users want to collect decisions which are not published on the internet they have to pay a fee. The minister of finance has the authority to exempt specific legal magazines from this fee<sup>102</sup> – which might be at odds with the non-discrimination principle of the PSI Directive.

#### 7.4.6 ECLI

In Belgium ECLI has not yet been introduced, but within the BO-ECLI project work for the implementation of ECLI is ongoing.

#### 7.4.7 Citation Guidelines

In Belgium two legal citation guidelines, one in French<sup>103</sup> and one in Dutch,<sup>104</sup> are issued by interuniversity bodies. In general they are abided by legal professionals, although the courts themselves do not always strictly follow the guidelines; the aforementioned selection instruction of the Office of the ‘Procureur général’<sup>105</sup> contains some citation guidelines for the Court of Cassation that deviate from the interuniversity guidelines. Additionally, (Dutch section of) the Court of Cassation uses its own list of abbreviations.<sup>106</sup>

Despite the different abbreviations used, the general way of citing decisions is by using the combination of court, judgment date and case number. The use of ECLI is only mentioned in the Dutch interuniversity guide, its use is mandatory for decisions of the CJEU.<sup>107</sup>

<sup>101</sup> [www.raadvst-consetat.be/?page=caselaw](http://www.raadvst-consetat.be/?page=caselaw).

<sup>102</sup> See footnote 92, par. 3.4.1.

<sup>103</sup> P. Vandernoot and others, Guide des citations, références et abréviations juridiques (Wolters Kluwer, 2010).

[www.legalworld.be/legalworld/uploadedFiles/TOCS/fr/Guide\\_des\\_citations\\_et\\_r%C3%A9f%C3%A9rences/GUIAB\\_VB\\_9010\\_final.pdf?LangType=2060](http://www.legalworld.be/legalworld/uploadedFiles/TOCS/fr/Guide_des_citations_et_r%C3%A9f%C3%A9rences/GUIAB_VB_9010_final.pdf?LangType=2060).

<sup>104</sup> Interuniversitaire Commissie Juridische Verwijzingen en Afkortingen, Juridische verwijzingen en afkortingen (Wolters Kluwer, 2015). [www.verwijzingen-en-afkortingen.be](http://www.verwijzingen-en-afkortingen.be).

<sup>105</sup> See footnote 87.

<sup>106</sup> Hof van Cassatie, Verwijzingen & afkortingen (2014), [justitie.belgium.be/sites/default/files/downloads/Afkortingen%202014%2006%2006.pdf](http://justitie.belgium.be/sites/default/files/downloads/Afkortingen%202014%2006%2006.pdf).

<sup>107</sup> See footnote 104, p. 48.

## 7.5 Bulgaria

### 7.5.1 Introduction

For civil and criminal cases Bulgaria has a three-tier judiciary system. 28 District courts (*Районен съд*) are the courts of first instance. At the next level there are five courts of appeal (*Окръжен съд*), and the Supreme Court (*Върховен касационен съд*) serves as the court of highest instance.

For administrative cases Bulgaria has a two-tier system: the district courts act as courts of first instance, their decisions can be appealed at the High Administrative Court (*Върховен административен съд*). Bulgaria also has five military courts (*Военни съдилища*) and a Constitutional Court (*Конституционен съд на Република България*). The Supreme Judicial Council (*Висш Съдебен Съвет*) is the administrative body for the court system.

### 7.5.2 The Legal Framework on Publication

Section 1 of article 64 of the Judiciary System Act<sup>108</sup> stipulates: “*Judicial acts shall be published on the website of the respective court as soon as they are adopted (...)*.”

This rule is elaborated by a policy framework, adopted by the Supreme Judicial Council with its decision from 29-10-2009.<sup>109</sup> The most relevant parts of this decision reads:

- 25.1. The publication of the operative part of the judgment shall be done immediately after its announcement, and the reasoning after its preparation.
- 25.2. All final contentious judicial acts shall be published, including those that put an end to or impede the continuation of the proceedings.
- 25.3. Court decisions rendered in non-contentious proceedings, proceedings on interlocutory appeals in civil and criminal cases, except those who put an end to or impede the continuation of proceedings, shall not be published (...).
- 25.4. (...)
- 25.5. (...)
- 25.6. The (...) courts shall update their internal rules for the organisation of publication of judicial acts (...)
- 25.7. (...) (T)he websites of the courts shall publish and store the judgments rendered in the current year as well as those in the previous year. In view of the forthcoming introduction of the centralized web interface for publication of

<sup>108</sup> Закон за Съдебната Власт [www.vks.bg/vks\\_p04\\_06.htm](http://www.vks.bg/vks_p04_06.htm).

<sup>109</sup> No. 25 in Protocol No. 42; 29-10-2009 [vss.justice.bg/page/view/2395](http://vss.justice.bg/page/view/2395). By its decision the Supreme Judicial Council adopted a proposal by the Working Group of the ‘Consultative Forum of Regional Courts’, implemented with the financial support of Operating Program Administrative Capacity (co-financed by the EU through the European Social Fund) to solve problems in the practical implementation of the obligations of the courts under Art. 64 of the Judiciary System Act.



judicial acts, this interface will ensure the storage and public access to the published court decisions and after that period.

An example of the internal rules drawn up by each court according to § 25.6 can be found at the district court of Sandanski (САНДАНСКИ).<sup>110</sup>

### 7.5.3 Public Access to Court Decisions

The Supreme Court publishes all of its decisions since 2009 in a variety of ways, catering for different purposes,<sup>111</sup> e.g. an alphabetical index of key phrases,<sup>112</sup> a glossary of key phrases<sup>113</sup> or a search by specific metadata.<sup>114</sup> It also offers a separate list of decisions in cases of exceptional importance and interest.<sup>115</sup>

Decisions of the district courts and the courts of appeal since 2009 can be accessed in a database managed by the Supreme Judicial Council.<sup>116</sup> It offers a basic search by some metadata or free text. Every search requires using a Captcha.

The High Administrative Court has its own database<sup>117</sup> in which it publishes all of its decisions and opinions since 2002 in HTML format.

The Constitutional Court publishes its decisions in full text in HTML or Word format; some metadata are also available.<sup>118</sup>

### 7.5.4 Data Protection

Article 64 of the Judiciary System Act<sup>119</sup> reads:

1. Judicial acts shall be published on the website of the respective court as soon as they are adopted, subject to the requirements of the Personal Data Protection Act and to the Classified Information Protection Act.
2. The acts referred to in paragraph 1 shall be published in a way not making it possible to identify the individuals mentioned in such acts.
3. Case acts affecting the civil or health status of individuals shall be published without their reasoning.

The policy framework of the Supreme Judicial Council<sup>120</sup> specifies:

<sup>110</sup> [rs-sandanski.com/index.php?a=pravila](http://rs-sandanski.com/index.php?a=pravila).

<sup>111</sup> An overview is available at [www.vks.bg/vks\\_p10.htm](http://www.vks.bg/vks_p10.htm).

<sup>112</sup> [www.vks.bg/vks\\_p15a.htm](http://www.vks.bg/vks_p15a.htm).

<sup>113</sup> [www.vks.bg/vks\\_p15b.htm](http://www.vks.bg/vks_p15b.htm).

<sup>114</sup> [www.vks.bg/vks\\_p03.htm](http://www.vks.bg/vks_p03.htm).

<sup>115</sup> [www.vks.bg/vks\\_p10\\_01.htm](http://www.vks.bg/vks_p10_01.htm).

<sup>116</sup> [legalacts.justice.bg](http://legalacts.justice.bg).

<sup>117</sup> [www.sac.government.bg/court22.nsf/\(\\$All\)/\\$searchform?SearchView](http://www.sac.government.bg/court22.nsf/($All)/$searchform?SearchView).

<sup>118</sup> [constcourt.bg/acts](http://constcourt.bg/acts).

<sup>119</sup> See footnote 108.

<sup>120</sup> See footnote 109.

- 25.4. The published judicial acts shall not contain the names, PIN and addresses of the individuals involved in the process.
- 25.5. The judicial acts within the hypothesis of Art. 64 para. 2 JSA shall be published without the reasoning part, whereas the operative part shall be published without the names, PIN and addresses of the individuals involved in the process.

#### 7.5.5 Open Data

No legal restrictions apply regarding the re-use of data from the Bulgarian case law databases. There are not technical facilities, so re-users have find their own technical solutions. The re-use of the lower court decisions is practically impossible since every download is protected by a Captcha.

#### 7.5.6 ECLI

ECLI has not been introduced yet in Bulgaria, although statements on starting an implementation have been made.<sup>121</sup>

#### 7.5.7 Citation Guidelines

In Bulgaria no citation guidelines exist. When citing court decisions preferably use is made of the name of the court, the judgment date and the case number (and if necessary also the type of decision), but often one or more of the elements are left out.

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<sup>121</sup>

[ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=8946&no=1](http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=8946&no=1).

## 7.6 Czech Republic

### 7.6.1 Introduction

In the Czech Republic there are 86 district courts (*Okresní soudy*), eight regional courts (*Krajské soudy*), two courts of appeal (*Vrchní soudy*), the Supreme Court (*Nejvyšší soud České republiky*), the High Administrative Court (*Nejvyšší správní soud České republiky*) and the Constitutional Court (*Ústavní soud České republiky*).

District courts act as courts of first instance in most civil and criminal cases. Against their decision an appeal may be lodged at the regional courts. In some special cases (e.g. cases of special legal importance) an extraordinary appeal can be brought to the Supreme Court. In some situations regional courts act as courts of a first instance. Their decisions may be appealed at a court of appeal and in certain cases it is possible to lodge an extraordinary appeal at the Supreme Court. While the courts in second instance discuss the matter on the principle of an appeal, the Supreme Court decides the extraordinary appeal on the cassation or revision principle.

Complaints against decisions of administrative bodies are decided in first and only instance by specialized chambers of the regional courts. Appeal is possible at the High Administrative Court.

The Constitutional Court decides on individual constitutional complaints or on the constitutionality of legal acts.

### 7.6.2 The Legal Framework on Publication

According to Article 24 paragraph 1 of the Act on Courts and Judges,<sup>122</sup> the Supreme Court has to publish selected decisions of the Supreme Court and other courts in the 'Collection of judgments and opinions'. The law is silent on the availability of the Collection online.

With regard to the Constitutional Court, the Constitutional Court Act<sup>123</sup> mentions in Article 57 seven types of decisions that should be published in the Collection of Laws (*Sbírka zákonů*). The law does not mention publication on the internet.

A comparable provision for the High Administrative Court can be found in Article 22 of the Code of Administrative Justice.<sup>124</sup> The High Administrative Court has to publish its own decisions as well as a selection of decisions of the administrative courts.

<sup>122</sup> Act no. 6/2002 Coll., *Zákon o soudech a soudcích* [portal.gov.cz/app/zakony/zakon?q=6/2002](http://portal.gov.cz/app/zakony/zakon?q=6/2002).

<sup>123</sup> In English available at: [www.usoud.cz/fileadmin/user\\_upload/ustavni\\_soud/www/Pravni\\_uprava/AJ/Constitutional\\_court\\_act\\_182\\_1993.pdf](http://www.usoud.cz/fileadmin/user_upload/ustavni_soud/www/Pravni_uprava/AJ/Constitutional_court_act_182_1993.pdf).

<sup>124</sup> Act No. 150/2002 Coll. (*Soudní řád správní*). In English available at [nssoud.cz/docs/caj2002.pdf](http://nssoud.cz/docs/caj2002.pdf).

### 7.6.3 Public Access to Court Decisions

Decisions of the Supreme Court since 2010 are published in its database,<sup>125</sup> which can be searched with a variety of parameters. Decisions of district, regional, and appellate courts are barely published.

The Constitutional Court has its own 'NALUS' database,<sup>126</sup> with a wide variety of search options, with the judgments available in Word and HTML. Since 2007 all decisions have been published, included all historic judgments. A selection of about 220 judgments has been translated into English.<sup>127</sup>

The High Administrative Court publishes all of its decisions as well as a substantial collection of the lower administrative courts in PDF format on its website.<sup>128</sup>

### 7.6.4 Data Protection

As laid down in article 115 of the Office Code of the Supreme Court, information identifying natural persons, as well as confidential information like trade secrets are anonymised before decisions are published; legal persons and people professionally involved with the case are not anonymised. While in most cases names are replaced by their initials, specific rules apply to criminal proceedings regarding minors, where name and surname are to be replaced by an alias.

Different rules apply to the decisions of the Constitutional Court.<sup>129</sup> These decisions are anonymised on request of the data subject or on the initiative of the judge. The Analytical Department, which is responsible for anonymisation, issued additional guidelines – e.g. names of asylum seekers are always anonymised while names of minors are almost always anonymised.

### 7.6.5 Open Data

All decisions that have been published can be downloaded for re-use. There is no specific technical service to facilitate re-users. On the website of the Supreme Courts documents are only available in Word format, on the website of the Constitutional Court also in (X)HTML.

### 7.6.6 ECLI

Decisions of the Supreme Court have been indicated with ECLI since April 2012, decisions of the Constitutional Court since March 2014. Currently extension to other courts is being

<sup>125</sup> [nsoud.cz/JudikaturaNS\\_new/ns\\_web.nsf/WebSpreadSearch](http://nsoud.cz/JudikaturaNS_new/ns_web.nsf/WebSpreadSearch).

<sup>126</sup> [nalus.usoud.cz](http://nalus.usoud.cz).

<sup>127</sup> [usoud.cz/en/decisions/](http://usoud.cz/en/decisions/).

<sup>128</sup> [nsoud.cz/main0Col.aspx?cls=JudikaturaSimpleSearch&pageSource=0&menu=188](http://nsoud.cz/main0Col.aspx?cls=JudikaturaSimpleSearch&pageSource=0&menu=188).

<sup>129</sup> Pursuant to article 59(3) of the Constitutional Court Act (see footnote 123).

implemented. For the mentioned courts all decisions rendered have an ECLI assigned. The ECLI is visible in the public database, not only in the metadata but also on the documents. The Czech Republic is connected to the ECLI Search Engine.

#### 7.6.7 Citation Guidelines

There exist no citation guidelines in the Czech Republic. In practice, judicial decisions are cited by using the combination of court name, decision date and case number.



Better  
Access to  
Case Law

BO-ECLI  
[www.bo-ecli.eu](http://www.bo-ecli.eu)  
[info@bo-ecli.eu](mailto:info@bo-ecli.eu)

This project is co-funded by  
the European Union



## 7.7 Denmark

### 7.7.1 Introduction

The judiciary organisation in Denmark is a three-tier system. Cases are heard by 24 district courts (*byretter*), by two courts of appeal (*landsretter*) and the Supreme Court (*Højesteret*). The courts of appeal (and in some cases the Supreme Court) are also the appellate court for the Maritime and Commercial Court (*Sø- og Handelsretten*). Appeals from the Land Registration Court (*Tinglysningsretten*) are heard by the Court of Appeal of Western Denmark. Apart from the courts is the Special Court of Indictment and Revisions (*Den Særlige Klageret*). Courts are administered by a Council for the Judiciary (*Domstolsstyrelsen*). Denmark does not have a constitutional court, neither does it have separate courts for administrative justice, as the administrative courts are part of the regular judicial courts.

### 7.7.2 The Legal Framework on Publication

The legal framework for the publication of court decisions is formulated in art. 9 a of the Act on Court Administration,<sup>130</sup> stating that the Council for the Judiciary is to create and operate a database for the publication of court decisions. Additional rules are under preparation by the Council for the Judiciary, but have not yet been defined.

### 7.7.3 Public Access to Court Decisions

The Council for the Judiciary is in the process of implementation of the aforementioned database. The Supreme Court<sup>131</sup> and the Maritime and Commercial Court<sup>132</sup> already publish a limited number of their decisions (in PDF) on their own websites.

### 7.7.4 Data Protection

Currently published court decisions are anonymised in accordance with applicable law, and for the aforementioned database in the making, internal anonymisation guidelines will be drafted. The details of these guidelines have yet to be elaborated, but will be in accordance with the Data Protection Act (*Persondataloven*).<sup>133</sup> As a general rule, data of legal persons will not be anonymised.

<sup>130</sup> Act No. 401 of 26-06-1998 (*Lov om Domstolsstyrelsen*) [retsinformation.dk/Forms/R0710.aspx?id=87562](https://retsinformation.dk/Forms/R0710.aspx?id=87562), as amended by the Act to amend the Administration of Justice Act, the Act on Court Administration and Court Fees Act (Act. No. 1867 of 29-12-2015, *Lov om ændring af retsplejeloven, lov om Domstolsstyrelsen og lov om retsafgifter*) [retsinformation.dk/Forms/R0710.aspx?id=176776](https://retsinformation.dk/Forms/R0710.aspx?id=176776).

<sup>131</sup> [domstol.fe1.tangora.com/New-S%C3%B8geside.31488.aspx](https://domstol.fe1.tangora.com/New-S%C3%B8geside.31488.aspx).

<sup>132</sup> [domstol.fe1.tangora.com/page13990.aspx](https://domstol.fe1.tangora.com/page13990.aspx).

<sup>133</sup> [www.retsinformation.dk/forms/r0710.aspx?id=828](https://www.retsinformation.dk/forms/r0710.aspx?id=828).

### 7.7.5 Open Data

In Denmark there are no legal restrictions to the re-use of court decisions. Given the limited number of decisions published, there are no technical facilities; documents are available in PDF and/or Word format.

### 7.7.6 ECLI

ECLI has not been introduced yet in Denmark, but its implementation is part of ongoing work regarding the renewal of the case law publication system.

### 7.7.7 Citation Guidelines

In Denmark no official citation guidelines exist. In practice, decisions published in a commercial law report are cited by their publication reference.<sup>134</sup> Other decisions are cited using name of court, date of judgment and case number.

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<sup>134</sup> The Danish weekly law report (*Ugeskrift for Retsvaesen* (UfR)) being the most important. References are formatted as [abbreviation of law report] [year of publication].[page number] [court abbreviation], e.g.: UfR 2006.480 H.

## 7.8 Germany

### 7.8.1 Introduction

The judicial system in Germany consists of ordinary courts, specialized courts and constitutional courts. The highest jurisdictions have competence at the federal level, the lower jurisdictions have competence at the state level.

The ordinary courts decide in criminal and civil matters and are organised in four tiers: district courts (*Amtsgerichte*), regional courts (*Landgerichte*), courts of appeal (*Oberlandesgerichte*) and the Federal Supreme Court (*Bundesgerichtshof*).

Specialized courts are organised in three tiers. For labour disputes: labour courts (*Arbeitsgerichte*), labour courts of appeal (*Landesarbeitsgerichte*) and the Federal Labour Court (*Bundesarbeitsgericht*). For disputes regarding social security: social courts (*Sozialgerichte*), social courts of appeal (*Landessozialgerichte*) and the Federal Social Court (*Bundessozialgericht*), for other administrative disputes there are the administrative courts (*Verwaltungsgerichte*), administrative courts of appeal (*Oberverwaltungsgerichte* or *Verwaltungsgerichtshöfe*) and the Federal Administrative Court (*Bundesverwaltungsgericht*). For financial and fiscal disputes a two-tier system exists: the fiscal courts (*Finanzgerichte*) and the Federal Fiscal Court (*Bundesfinanzhof*). For patent law the Federal Patent Court (*Bundespatentgericht*) is competent, with the Supreme Court acting as court of cassation.

Finally, the Federal Constitutional Court (*Bundesverfassungsgericht*) guards the federal constitution.

### 7.8.2 The Legal Framework on Publication

There is no general provision imposing that court decisions have to be published. However, in some fields of law there are rules that state that (parts of) the decision have to be published, e.g.:

- Article 31 paragraph 2, third sentence of the Federal Constitutional Court Act<sup>135</sup> stipulates that in case a law has been declared compatible or incompatible with the constitution or other federal law, or if it is voided, the relevant operative part of the decision shall be published in the Federal Law Gazette (*Bundesgesetzblatt*) by the Federal Ministry of Justice and Consumer Protection.
- Article 98 paragraph 4, third sentence of the Labour Court Act<sup>136</sup> states that the rulings on the validity of collective labour agreements (although not the full decision with reasons) have to be published in the Official Gazette (*Bundesanzeiger*)<sup>137</sup> – which is in electronic format.

<sup>135</sup> Bundesverfassungsgerichtsgesetz [www.gesetze-im-internet.de/bverfgg/\\_31.html](http://www.gesetze-im-internet.de/bverfgg/_31.html).

<sup>136</sup> Arbeitsgerichtsgesetz [www.gesetze-im-internet.de/arbogg/\\_98.html](http://www.gesetze-im-internet.de/arbogg/_98.html).

<sup>137</sup> [www.bundesanzeiger.de](http://www.bundesanzeiger.de).



Apart from these very specific situations the Federal Administrative Court has stated already in 1997<sup>138</sup> that there is a duty on the courts to publish decisions in which the press and the general public might have an interest. This duty is derived *inter alia* from the constitution.

The Federal Constitutional Court made a comparable decision in 2015,<sup>139</sup> stating that: “It is widely accepted that from Rule of Law, the principle of democracy and the principle of separation of powers a legal obligation to be deducted that calls for the publication of court decisions that deserve public attention.”<sup>140</sup>

It is up to the courts’ organisational discretion how they comply with this duty. The aforementioned decisions do not determine that court decisions have to be provided free of charge or that internet databases have to be created. Nor do they give any guidance on how ‘public attention’ is to be interpreted. Some courts do have guidelines on selection criteria, but these are not publicly available.

### 7.8.3 Public Access to Court Decisions

The Federal Ministry of Justice and Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*), all federal courts and many state justice administrations publish full-text court decisions on the internet. Links to the respective websites can be found on the Portal of the justice authorities of the federal and state governments (*Justizportal des Bundes und der Länder*).<sup>141</sup>

The Federal Ministry of Justice and Consumer Protection operates the public database ‘Court Decisions on the Internet’ (*Rechtsprechung im Internet*).<sup>142</sup> The database contains the decisions from 2010 onwards of the seven federal courts. The portal also offers links to the websites of the federal courts and the states (*Bundesländer*) that publish (a selection of) full-text decisions, not all of which can be accessed for free.

The federal courts all publish their decisions on their own websites as well.<sup>143</sup> Several projects are ongoing to make older decisions available.

<sup>138</sup> [ECLI:DE:BVerwG:1997:260297U6C3.96.0.](#)

<sup>139</sup> [ECLI:DE:BVerfG:2015:rk20150914.1bvr085715.](#)

<sup>140</sup> Par. 20: “Es ist weithin anerkannt, dass aus dem Rechtsstaatsgebot einschließlich der Justizgewährungspflicht, dem Demokratiegebot und dem Grundsatz der Gewaltenteilung grundsätzlich eine Rechtspflicht zur Publikation veröffentlichungswürdiger Gerichtsentscheidungen folgt.”

<sup>141</sup> [www.justiz.de/online Dienste/rechtsprechung/index.php](http://www.justiz.de/online Dienste/rechtsprechung/index.php).

<sup>142</sup> [www.rechtsprechung-im-internet.de](http://www.rechtsprechung-im-internet.de).

<sup>143</sup> Federal Supreme Court:

[juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/list.py?Gericht=bgh&Art=en&Sort=3](http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/list.py?Gericht=bgh&Art=en&Sort=3).

Federal Constitutional Court:

[www.bundesverfassungsgericht.de/SiteGlobals/Forms/Suche/Entscheidungensuche\\_Formular.html?language=de](http://www.bundesverfassungsgericht.de/SiteGlobals/Forms/Suche/Entscheidungensuche_Formular.html?language=de).

Federal Administrative Court: [www.bverwg.de/entscheidungen/entscheidungen.php](http://www.bverwg.de/entscheidungen/entscheidungen.php).

Federal Fiscal Court: [www.bundesfinanzhof.de/entscheidungen/entscheidungen-online](http://www.bundesfinanzhof.de/entscheidungen/entscheidungen-online).

Federal Labour Court:

#### 7.8.4 Data Protection

Although there is not specific legal framework covering the anonymisation of court decisions, there is a consensus that constitutional rights of the individual require full anonymisation. This has e.g. been expressed by the Federal Administrative Court in its cited decision from 1997.<sup>144</sup> Most courts have internal anonymisation guidelines with details on what and how to anonymise; these guidelines are not published. If necessary, the respective authority documenting court decisions (further) anonymises decisions. Anonymisation is not required for public figures and people professionally involved, and also if the text cannot be fully understood without names, a lower level of anonymisation is applied (e.g. place names may be written out). In general anonymisation of names of persons and geographical places is achieved by replacing them by their initials. If data protection so requires (e.g. in very sensitive cases and/or if the initials are very common), random initials can be used.

#### 7.8.5 Open Data

Article 5 paragraph 1 of the Act on Copyright and Related Rights (*Urheberrechtsgesetz*)<sup>145</sup> states that court decisions and official head notes do not benefit from copyright protection.<sup>146</sup> The website Court Decisions on the Internet<sup>147</sup> offers a web service for download in XML format. Also PDF and (X)HTML can be freely downloaded.<sup>148</sup>

#### 7.8.6 ECLI

In Germany ECLI has been implemented at the Federal Constitutional Court, the Federal Supreme Court, the Federal Administrative Court, the Federal Fiscal Court and the Federal Labour Court. Implementation for other courts is work in progress, both at the federal as well as at the state level. Implementations differ per court with regard to the use for all decisions

[juris.bundesarbeitsgericht.de/cgi-bin/rechtsprechung/list.py?Gericht=bag&Art=en](http://juris.bundesarbeitsgericht.de/cgi-bin/rechtsprechung/list.py?Gericht=bag&Art=en).

Federal Social Court:

[juris.bundessozialgericht.de/cgi-bin/rechtsprechung/list.py?Gericht=bsg&Art=en](http://juris.bundessozialgericht.de/cgi-bin/rechtsprechung/list.py?Gericht=bsg&Art=en).

Federal Patent Court:

[juris.bundespatentgericht.de/cgi-bin/rechtsprechung/list.py?Gericht=bpatg&Art=en](http://juris.bundespatentgericht.de/cgi-bin/rechtsprechung/list.py?Gericht=bpatg&Art=en).

<sup>144</sup> See footnote 138.

<sup>145</sup> In English version available at:

[www.gesetze-im-internet.de/englisch\\_urhg/englisch\\_urhg.html](http://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html).

<sup>146</sup> This has been the subject of a long court proceedings, for a summary: M. van Opijnen, 'Court Decisions on the Internet; Development of a Legal Framework in Europe', in: Journal of Law, Information & Science, 24 (2) (2016) [www.ilisjournal.org/abstracts/Opijnen.24.2.html](http://www.ilisjournal.org/abstracts/Opijnen.24.2.html).

<sup>147</sup> See footnote 142.

<sup>148</sup>

[www.rechtsprechung-im-internet.de/jportal/portal/t/6gm/page/bsjrsprod.psml?cmsuri=%2Ftechnik%2Fde%2Fimpressum%2Fbsjrsdownload.jsp](http://www.rechtsprechung-im-internet.de/jportal/portal/t/6gm/page/bsjrsprod.psml?cmsuri=%2Ftechnik%2Fde%2Fimpressum%2Fbsjrsdownload.jsp).

and the visibility of the ECLI on the decision documents. Currently the decisions of the Federal Administrative Court and the Federal Constitutional Court are indexed by the ECLI Search Engine.

### 7.8.7 Citation Guidelines

Germany does not have general official citation guidelines, although non-official/commercial guidelines are often used in practice.<sup>149</sup> The Federal Administrative Court has issued its own citation guidelines, to be used in the decisions of the Court itself.<sup>150</sup> They prescribe the use of court name, case number, judgment date and ECLI.

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<sup>149</sup> T.M.J. Möllers, *Juristische Arbeitstechnik und wissenschaftliches Arbeiten*, 7th edn (Vahlen, 2014).

<sup>150</sup> Bundesverwaltungsgericht, *Richtlinien für die Zitierweise und die Verwendung von Abkürzungen in den Entscheidungen des Bundesverwaltungsgerichts* <[www.bverwg.de/medien/pdf/zitierrl.pdf](http://www.bverwg.de/medien/pdf/zitierrl.pdf)>.

## 7.9 Estonia

### 7.9.1 Introduction

Estonia has a three-level court system. First instance courts are county courts. The four county courts, in turn, are divided into regional courthouses. Second instance courts are two courts of appeal, also divided into regional courthouses. The court of highest instance is the Supreme Court, which reviews decisions of lower instance courts by way of cassation proceedings. The Supreme Court also functions as the court of constitutional review.

### 7.9.2 The Legal Framework on Publication

The legal framework in Estonia consists of the following acts:

- The Courts Act<sup>151</sup> provides the legal bases for courts administration and court service.
- The Code of Administrative Court Procedure<sup>152</sup> states that court judgment is publicly announced through the court office or pronounced in a court session pursuant to sections 453 and 454 of the Code of Civil Procedure; a judgment which has become final is published in the designated location of the computer network. This does not affect the entry into force of the judgment.
- The Code of Civil Procedure<sup>153</sup> provides that a court judgment which has entered into force is published in the computer network at a place prescribed for such purpose. This does not affect the entry into force of the judgment. The court publishes on its own initiative or at the request of the data subject only the conclusion of the judgment or does not publish the judgment if the judgment contains sensitive personal data and publication of the judgment together with the personal data may materially breach the inviolability of private life of the person even if the provisions of subsection (2) of this section are applied.
- The Code of Criminal Procedure<sup>154</sup> provides that a court judgment and a court ruling which have entered into force and which terminate proceedings shall be published in the computer network in the place prescribed therefor, except in the case pre-trial proceedings continue in the criminal matter in which the court ruling was made.

<sup>151</sup> Kohtute seadus [riigiteataja.ee/en/eli/516032015002/consolide](http://riigiteataja.ee/en/eli/516032015002/consolide).

<sup>152</sup> Halduskohtumenetluse seadustik [riigiteataja.ee/en/eli/530032015001/consolide](http://riigiteataja.ee/en/eli/530032015001/consolide).

<sup>153</sup> Tsiviilkohtumenetluse seadustik [riigiteataja.ee/en/eli/514032016001/consolide](http://riigiteataja.ee/en/eli/514032016001/consolide).

<sup>154</sup> Kriminaalmenetluse seadustik [riigiteataja.ee/en/eli/527012016001/consolide](http://riigiteataja.ee/en/eli/527012016001/consolide).

- The Constitutional Review Court Procedure Act<sup>155</sup> provides the competence of the Supreme Court as the court of constitutional review, the procedure for having recourse to the court and rules of court procedure.

Also the following regulations and policy guidelines are of relevance:

- The Statutes of the Ministry of Justice;<sup>156</sup>
- The Statutes of the Court Information System<sup>157</sup> specify where exactly in computer network the court judgments/rulings which have entered into force will be published/or are made available to the public. Court judgments/rulings are made available to the public via the State Gazette (official online publication of the Republic of Estonia) court judgments/ruling search engine.
- The Rules of Procedure of county, administrative and circuit court offices;<sup>158</sup>
- Procedure of first and second instance courts statistics and decisions database;<sup>159</sup>
- Rules of Procedure of Supreme Court;<sup>160</sup>
- Unified Principles of filling the Court Information System of the Court Management Advisory Committee.<sup>161</sup>
- 

### 7.9.3 Public Access to Court Decisions

All judgments/rulings of all courts (county, administrative, circuit, Supreme Court) which have entered into force and are published by the courts are made available to the public via the State Gazette search engine (*Riigi Teataja*).<sup>162</sup> The Supreme Court makes all of its decisions available also on its own webpage.<sup>163</sup> The Supreme Court publishes around 450 judgments annually, the other courts publish around 30.000 decisions, which is more than 90% of the judgments rendered.

All the decisions are published, except the decisions which have been made in closed proceedings and/or are considered not to be published due to data protection restrictions. There are also some exceptions stated in law. For example, in the Code of Civil Procedure it is stated that if a judgment is rendered in closed proceedings, only the date for the publication of the judgment and any changes therein, the case number and a notation that the proceeding is closed are published. The date for the making public of a judgment is

<sup>155</sup> Põhiseaduslikkuse järelvalve kohtumenetluse seadus  
[riigiteataja.ee/en/eli/521012014004/consolide](http://riigiteataja.ee/en/eli/521012014004/consolide).

<sup>156</sup> Justiitsministeeriumi põhimääruse kinnitamine [riigiteataja.ee/akt/129072015005](http://riigiteataja.ee/akt/129072015005).

<sup>157</sup> Kohtute infosüsteemi põhimäärus [riigiteataja.ee/akt/995360?leiaKehtiv](http://riigiteataja.ee/akt/995360?leiaKehtiv).

<sup>158</sup> Maa-, haldus- ja ringkonnakohtu kantselei kodukord [riigiteataja.ee/akt/972583?leiaKehtiv](http://riigiteataja.ee/akt/972583?leiaKehtiv).

<sup>159</sup> Esimese ja teise astme kohtute statistika ja lahendite andmekogu pidamise kord  
[riigiteataja.ee/akt/163738](http://riigiteataja.ee/akt/163738).

<sup>160</sup> Riigikohtu kodukord [riigikohus.ee/?id=569](http://riigikohus.ee/?id=569).

<sup>161</sup> Kohtute infosüsteemi täitmise ühtsed põhimõtted kohtuasjade ja –menetluste infosüsteemis kajastamiseks.

<sup>162</sup> [riigiteataja.ee/kohtulahendid/koik\\_menetlused.html](http://riigiteataja.ee/kohtulahendid/koik_menetlused.html).

<sup>163</sup> [www.riigikohus.ee/?id=11](http://www.riigikohus.ee/?id=11).

removed from the website after 30 days from making the judgment public; for the reason specified in subsection 38 (1) or (2) of this Code (Declaration of proceeding closed), the court has the right to make public, based on a reasoned ruling, only the conclusion of a judgment. All other judgments are published full text.

#### 7.9.4 Data Protection

Apart from the Personal Data Protection Act,<sup>164</sup> also the legal framework on the publication of court decisions, described in § 7.9.2, contains provisions on data protection.<sup>165</sup> In general personal information of natural persons is only anonymised in the cases described or on request of the data subjects. The Criminal Records Database Act contains a provision stating that the name of the convict is not to be anonymised if it relates specific criminal acts. Names of public authorities are never anonymised.

#### 7.9.5 Open Data

Due to the fact that court decisions contain personal data and data subjects have the right to turn to the court with the request of anonymising their personal data, bulk download of published decisions is not being facilitated.

#### 7.9.6 ECLI

In Estonia ECLI has not yet been introduced, but within the BO-ECLI project work for the implementation of ECLI is ongoing.

#### 7.9.7 Citation Guidelines

In Estonia no official citation guidelines exist. In practice reference is often made to a University guide.<sup>166</sup> Court decisions are mostly cited by the combination of (abbreviated) court name, decision date and case number.

<sup>164</sup> *Isikuandmete kaitse seadus*, [www.riigiteataja.ee/en/eli/512112013011/consolide](http://www.riigiteataja.ee/en/eli/512112013011/consolide).

<sup>165</sup> § 175 (3) (4) of the Code of Administrative Court Procedure (see footnote 152); § 462 (2)(3)(4) of the Code of Civil Procedure (see footnote 153); § 408.1 (2-5) of the Code of Criminal Procedure (see footnote 154); § 28 of the Criminal Records Database Act (*Karistusregistri seadus*) [riigiteataja.ee/en/eli/504022016009/consolide](http://riigiteataja.ee/en/eli/504022016009/consolide).

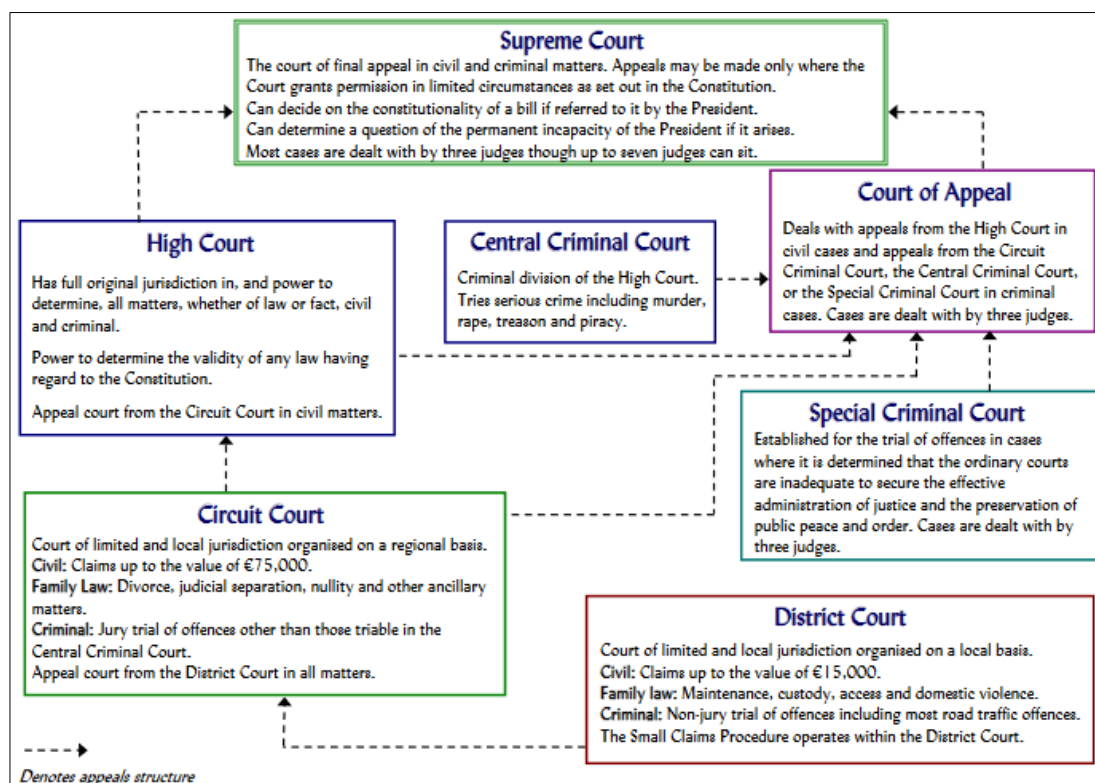
<sup>166</sup> J. Sootak, *Writing and Formatting Student Works. A Guide for Law Students* (Tallinn: University of Tartu, School of Law, 2016). [issuu.com/iuridicum/docs/guide\\_2016](http://issuu.com/iuridicum/docs/guide_2016).

## 7.10 Ireland

### 7.10.1 Introduction

Ireland has a rather complicated Courts System that is best described by the scheme in Figure 26. Ireland does not have a Constitutional Court, but both the Supreme Court and the High Court have jurisdiction in constitutional affairs.

Figure 26. Courts System in Ireland.<sup>167</sup>



Ireland does not have separate administrative courts. A variety of tribunals deal with administrative issues; their decisions are subject to appeal by the Circuit Court or the High Court. A Commercial Court is effectively a specialist division within the High Court.

### 7.10.2 The Legal Framework on Publication

In Ireland no binding rules exist regarding the publication of court decisions.

<sup>167</sup> Source: Courts Service Ireland.

[www.courts.ie/Courts.ie/library3.nsf/\(WebFiles\)/4A29B135606B086D80257F5A003C192C/\\$FILE/Structure%20of%20the%20courts%20February%202016.pdf](http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/4A29B135606B086D80257F5A003C192C/$FILE/Structure%20of%20the%20courts%20February%202016.pdf).

### 7.10.3 Public Access to Court Decisions

On the website of the Courts Service decisions from all courts are published.<sup>168</sup> All reserved judgments from the supreme courts are published. Judgments delivered *ex tempore* are only published if they contain a particular point of law.

From the circuit and district courts only a very limited selection has been published. Decisions can be listed by court or by year, a basic search function is available.

The case law of the Supreme Court is also available on its own website,<sup>169</sup> where a separate list of 32 important judgments from between 1934 and 2006 is offered.<sup>170</sup>

Irish court decisions are also published on the website of BAILII, the British and Irish Legal Information Institute,<sup>171</sup> as well as on the website or IRLII, the Irish Legal Information Institute.<sup>172</sup> The collections of these two websites do not fully overlap.

### 7.10.4 Data Protection

In Ireland, court decisions are not anonymised unless so required by statute or directed by the court. It concerns cases heard in camera and those in which statutory provisions require that the name of the victim may not be disclosed. Also decisions which contain sensitive personal data are anonymised.

### 7.10.5 Open Data

Court judgments are the copyright of the courts. One is free to reproduce and/or re-use published judgments free of charge, provided that the Courts Service is identified as the source. Bulk download of court decisions though is not allowed, as stated on the website<sup>173</sup> and effectuated by the Robots Exclusion Protocol.<sup>174</sup> The cases on IRLII are actually on BAILII, as a result the restrictions of the latter apply.<sup>175</sup>

<sup>168</sup> [www.courts.ie/Judgments.nsf/Webpages/HomePage?OpenDocument&l=en&p=055](http://www.courts.ie/Judgments.nsf/Webpages/HomePage?OpenDocument&l=en&p=055).

<sup>169</sup> [www.supremecourt.ie/SupremeCourt/sclibrary3.nsf/pagecurrent/FC8669CC7760FF1A80257315005A41C0?opendocument&l=en](http://www.supremecourt.ie/SupremeCourt/sclibrary3.nsf/pagecurrent/FC8669CC7760FF1A80257315005A41C0?opendocument&l=en).

<sup>170</sup> [www.supremecourt.ie/SupremeCourt/sclibrary3.nsf/pagecurrent/9FA0AA8E8D261FC48025765C0042F6B3?opendocument&l=en](http://www.supremecourt.ie/SupremeCourt/sclibrary3.nsf/pagecurrent/9FA0AA8E8D261FC48025765C0042F6B3?opendocument&l=en).

<sup>171</sup> See Section 7.31.3.

<sup>172</sup> [irlii.org](http://irlii.org).

<sup>173</sup> [www.courts.ie/courts.ie/library3.nsf/pagecurrent/7145BAE1955B002080257FB8004D3E1E?opendocument&l=en](http://www.courts.ie/courts.ie/library3.nsf/pagecurrent/7145BAE1955B002080257FB8004D3E1E?opendocument&l=en).

<sup>174</sup> [www.courts.ie/robots.txt](http://www.courts.ie/robots.txt).

<sup>175</sup> See Section 7.31.5.



### 7.10.6 ECLI

In Ireland ECLI has not yet been introduced.

### 7.10.7 Citation Guidelines

Academics at the University of Limerick, Dublin Institute of Technology and the National University of Ireland Galway have developed 'OSCOLA Ireland',<sup>176</sup> based on the Oxford University Standard for Citation of Legal Authorities (OSCOLA), which is the most common guide for legal citation in the United Kingdom.<sup>177</sup> Regarding case law citations there are no major differences.

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<sup>176</sup> [legalcitation.ie/](http://legalcitation.ie/).

<sup>177</sup> See section 7.31.7.

## 7.11 Greece

### 7.11.1 Introduction

The Greek Constitution establishes two jurisdictions: the civil/criminal and the administrative, which are organised in three tiers: the courts of first instance (lower courts), the courts of appeal and the Supreme Courts. The three branches (civil, criminal and administrative) are organised as follows.

For civil justice the first tier consists of the magistrate courts (*ειρηνοδικεία*) and the courts of first instance (*πρωτοδικεία*). The second tier are the courts of first instance, hearing appeals from magistrate courts, and the courts of appeal (*εφετεία*), hearing appeals from the courts of first instance. The third tier is formed by the Supreme Court (*Άρειος Πάγος*).

In criminal justice, for most felonies mixed jury courts (*μεικτά ορκωτά δικαστήρια*) are the first instance court, with mixed jury courts of appeal (*μεικτά ορκωτά εφετεία*) as second instance court. Misdemeanors and other felonies are tried in two instances (depending on the infringement) by criminal magistrate courts (*πταισματοδικεία*), one-member courts of misdemeanors (*μονομελή πλημμελειοδικεία*), three-member magistrates' courts (*τριμελή πλημμελειοδικεία*), three-member courts of appeal (*τριμελή εφετεία*) and five-member courts of appeal (*πενταμελή εφετεία*). The Supreme Court is the court of highest instance.

The Hellenic Council of State (*Συμβούλιο της Επικρατείας*) is at the top of the hierarchy of ordinary administrative courts (administrative courts of first instance (*διοικητικά πρωτοδικεία*) and administrative courts of appeal (*διοικητικά εφετεία*)). The Court of Audit (*Ελεγκτικό Συνέδριο*) has jurisdiction in specific administrative cases and has final jurisdiction, e.g. in adjudicating on pension cases as well as on cases related to the audit of public accounts and the liability of civil or military public servants.

Both the Council of State and the Court of Audit also exercise administrative functions.

Greece does not have a constitutional court, but, in principle, all courts can decide upon the constitutionality of provision of law and when there are contradictory rulings by the courts, the case is referred to the non-permanent Supreme Special Court (*Ανώτατο Ειδικό Δικαστήριο*) which issues the final decision. It also decides on cases of constitutionality of laws or jurisdictional or electoral disputes. It convenes only when a case belonging to its special competence arises.

### 7.11.2 The Legal Framework on Publication

Greece does not have a legal framework regarding the publication of court decisions.

### 7.11.3 Public Access to Court Decisions

The administrative justice website publishes all the decisions of the administrative courts, including the Council of State (*Συμβούλιο της Επικρατείας*). All administrative judges have

access to all decisions. Other users have, for the time being, access to a limited number of anonymised decisions of the Council of State. All the decision of the Council of State since its creation in 1929 are available on the internet.<sup>178</sup>

Other Greek courts do not publish decisions on the internet.

The Supreme Court publishes a limited selection of its case law, searchable by various metadata, but not full-text.<sup>179</sup>

#### 7.11.4 Data Protection

In Greece there is not specific legal or policy framework on the anonymisation of published court decisions. Nevertheless, according to a decision of the Hellenic Data Protection Authority (*Αρχής Προστασίας Δεδομένων Προσωπικού Χαρακτήρα*) decisions published on the internet should not contain any information that could help the public to identify the parties involved. For the decisions of the Council of State anonymisation is carried out by the Athens Bar Association.

#### 7.11.5 Open Data

In Greece there are no legal restrictions on re-use, but there are no technical facilities either. Most decisions are only available in Word or (scanned) PDF.

#### 7.11.6 ECLI

In Greece ECLI has been introduced in the database of the Hellenic Council of State. This database is also indexed by the ECLI Search Engine.

#### 7.11.7 Citation Guidelines

In Greece no official citation guidelines exist. In practice, decisions which are published in law reviews are cited by their (abbreviated) court name, decision number, decision date/year and their reference, if any.<sup>180</sup> Other cases are cited with (abbreviated) court name, decision date and decision number. Decisions of the Council of State are cited by decision number and year of decision.

<sup>178</sup>

[www.adjustice.gr/webcenter/portal/ste/ypiresies/nomologies?\\_adf.ctrl-state=11nzrl11\\_208&\\_afLoop=6041498781748192#!](http://www.adjustice.gr/webcenter/portal/ste/ypiresies/nomologies?_adf.ctrl-state=11nzrl11_208&_afLoop=6041498781748192#!).

<sup>179</sup> [www.areiospagos.gr/nomologia/apofaseis.asp](http://www.areiospagos.gr/nomologia/apofaseis.asp).

<sup>180</sup> Made up of: [abbreviated title of law review] [volume number]/[year], [page number]. Examples of law reviews are *Νομικό Βήμα* (abbreviated *NoB.*) for civil cases and *Εφαρμογές Δημοσίου Δικαίου* (abbreviated *Εφαρμογές Δ.Δ.*) for administrative and constitutional law.

## 7.12 Spain

### 7.12.1 Introduction

In Spain, the General Council of the Judiciary (*Consejo General del Poder Judicial*) is a constitutional collegiate, autonomous body composed of judges and other jurists, exercising administrative functions within the judiciary with a view to guarantee the independence of the judges during the exercise of the judicial function.

The Supreme Court (*Tribunal Supremo*) has five divisions: civil, criminal, administrative, labour and military. The National Criminal and Administrative Court (*Audiencia Nacional*) has four divisions: appeals, criminal, administrative and labour). The 17 High Courts of the Autonomous Communities (*Tribunales Superiores de Justicia*) comprise has four divisions (civil, criminal, administrative and labour). The 50 Provincial Courts (*Audiencias Provinciales*) have one president and two or more judges. They hear civil and criminal cases. A single judge sits in all the courts with the exception of the Supreme Court, the National Criminal and Administrative Court, the high courts of the autonomous communities and the provincial courts.<sup>181</sup> Lower courts include Courts of First Instance and Courts of Inquiry (*Juzgados de primera instancia e instrucción*), Justice of Peace (*Los Jueces de Paz*)

Spain also has a Constitutional Court (*Tribunal Constitucional de España*).

### 7.12.2 The Legal Framework on Publication

The legal framework in Spain consists of:

- Article 560-10 of the Organic Law on the Judiciary<sup>182</sup> provides that the General Council of the Judiciary is responsible for the official publication of judicial decisions of the Supreme Court and other courts.
- In article 619-1 of this Act the Judicial Documentation Centre (*el Centro de Documentación Judicial, CENDOJ*) is appointed as the technical body of the General Council of the Judiciary responsible for: *'The selection, sorting, processing, distribution and publication of legislative, jurisprudential and doctrinal legal information.'*<sup>183</sup>

<sup>181</sup> The BO-ECLI questionnaire was answered for the Supreme Court; the National Criminal and Administrative Court, the seventeen High Courts of the Autonomous Communities and the fifty Provincial Courts.

<sup>182</sup> *Ley Orgánica del Poder Judicial*.

[boe.es/buscar/act.php?id=BOE-A-1985-12666&tn=1&p=20151028](http://boe.es/buscar/act.php?id=BOE-A-1985-12666&tn=1&p=20151028).

<sup>183</sup> *El Centro de Documentación Judicial es un órgano técnico del Consejo General del Poder Judicial, cuyas funciones son la selección, la ordenación, el tratamiento, la difusión y la publicación de información jurídica legislativa, jurisprudencial y doctrinal.*

### 7.12.3 Public Access to Court Decisions

The database of CENDOJ is the only public database in which decisions are published.<sup>184</sup> The decisions published are available in full-text as PDF-documents with some additional metadata. A more comprehensive system – also containing legal analyses, classification and legal references – is also catered for by CENDOJ, but only available to the judiciary.

Of the mentioned courts (the Supreme Court; the National Criminal and Administrative Court, the seventeen High Courts of the Autonomous Communities and the fifty Provincial Courts) all decisions are published ( $\pm$  250.000 yearly). Of the first instance courts, only a small selection is published ( $\pm$  10.000 yearly); criteria for this selection are not published.

Decisions are not published on pronouncement, but after notification to all parties involved in the proceedings. The decisions are made available in one of the official languages (Spanish, Basque, Catalan and Gallego). If the Court renders the decision in more than one of these languages all linguistic versions are published.

The Constitutional Court publishes all its decisions on its own website<sup>185</sup> with a small selection translated into English.<sup>186</sup>

### 7.12.4 Data Protection

In Spain the Personal Data Protection Law<sup>187</sup> is applicable on the publication of court decisions. All decisions are anonymised before being published; not only names but also other data that can identify a person are removed. Legal entities and people professionally involved with the proceedings are not anonymised.

### 7.12.5 Open Data

The CENDOJ database described in § 7.12.3 can be consulted by everybody, but it is not allowed to bulk download the decisions and/or to re-use them for commercial purposes. The re-use of this information for the development of databases or commercial purposes must follow the procedures and legal requirements set for by CENDOJ.

<sup>184</sup> [www.poderjudicial.es/search/indexAN.jsp](http://www.poderjudicial.es/search/indexAN.jsp).

<sup>185</sup> [www.tribunalconstitucional.es](http://www.tribunalconstitucional.es).

<sup>186</sup> [www.tribunalconstitucional.es/en/jurisprudencia/restrad/Pages/ResolucionesTraducidasHome.aspx](http://www.tribunalconstitucional.es/en/jurisprudencia/restrad/Pages/ResolucionesTraducidasHome.aspx).

<sup>187</sup> *Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal.* [www.boe.es/buscar/act.php?id=BOE-A-1999-23750](http://www.boe.es/buscar/act.php?id=BOE-A-1999-23750).

### 7.12.6 ECLI

In Spain ECLI has been implemented for all decisions in the CENDOJ database,<sup>188</sup> which makes this the most voluminous implementation thus far. The ECLI is also visible on the decision documents in the database. Spain is connected to the ECLI Search Engine.

### 7.12.7 Citation Guidelines

No official citation guidelines exist in Spain. In practice decisions are cited by the national judgment code 'ROJ',<sup>189</sup> ECLI or by the combination of court name, decision date and case number.

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<sup>188</sup> See footnote 184.

<sup>189</sup> *Repositorio Oficial de Jurisprudencia*; it contains a court code, year of decision and serial number. The elements which are used in ROJ are used in the Spanish ECLI as well.

## 7.13 France

### 7.13.1 Introduction

France has a court system in which administrative law has separate courts, and criminal and civil law share the courts in second and third instance, but have different courts in first instance.

In civil proceedings the first layer is formed by different types of courts, having different competences: 307 district courts (*tribunal d'instance*), 161 regional courts (*tribunal de grande instance*), 134 commercial courts (*tribunal de commerce*), 210 labour courts (*conseil de prud'hommes*) and 115 social security tribunals (*tribunal des affaires de la sécurité sociale*).<sup>190</sup> The second tier for all these courts are 37 courts of appeal (*cours d'appel*), with the Supreme Court (*Cour de Cassation*) as the court of highest instance.

In criminal proceedings the first tier is the formed by police courts (*tribunal de police*), located at the district courts, criminal courts (*tribunal correctionnel*), located at the regional courts, and assize courts (*cour d'assises*), being non-permanent courts for the most serious crimes, located in every *département*. For all criminal proceedings the courts of appeal and the Supreme Court form the second tier, except for the assize courts, that have the assize courts of appeal (*cours d'assise d'appel*) as the second tier.

Also for administrative proceedings a three-tier hierarchy is in place. 42 Administrative courts (*tribunaux administratifs*) form the first tier, eight administrative courts of appeal constitute the second layer. The Council of State (*Conseil d'État*) is the court of highest jurisdiction.

France also has a Constitutional Court (*Conseil Constitutionnel*). The Court of Conflicts (*Tribunal des conflits*) which solely handles jurisdictional conflicts between the administrative and the ordinary judiciaries. The Court of Auditors (*Cour de comptes*) is a semi-judicial institution charged with conducting legislative and financial audits.

### 7.13.2 The Legal Framework on Publication

The Decree No. 2002-1064 of 7 August 2002 on the public dissemination of legal information law on the internet<sup>191</sup> on public service for access to law on the internet, establishes an obligation to publish case law on the internet. Article 1 § 3 prescribes that the following decisions have to be published:

<sup>190</sup> There are also local courts (*juridiction de proximité*), but as of 1 January 2017 their functions will be taken over by the district courts (Law No. 2011-1862 of 13 December 2011, loi n° 2011-1862 du 13 décembre 2011 ([www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000024960344](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000024960344).) and therefore they will be disregarded here.

<sup>191</sup> Décret n° 2002-1064 du 7 août 2002 relatif au service public de la diffusion du droit par l'internet [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000413818&dateTexte=&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000413818&dateTexte=&categorieLien=id).

- a) Decisions and judgments of the Constitutional Court, the Council of State, the Supreme Court and the Court of Conflicts;
- b) Those judgments and judgments of the Court of Auditors and other administrative, judicial and financial jurisdictions which were selected according to the rules of each court order; (...)

Article R433-3 of the Judicial Organisation Code<sup>192</sup> assigns to the Documentation Service of the Supreme Court the management of a legal database containing all decisions of the Supreme Court – those which are published in a monthly bulletin pursuant to article R433-4 as well as the unpublished decisions – as well as the ones of particular interest of other jurisdictions.

To this end such decisions are to be sent to the Supreme Court. More refined selection criteria have been defined – including the specificity of the topic and the novelty of solution/interpretation – but they are not published.

### 7.13.3 Public Access to Court Decisions

Since 2002, most of the court decisions published can be accessed via the legal portal Legifrance.<sup>193</sup> The Supreme Court,<sup>194</sup> the Council of State,<sup>195</sup> Court of Auditors<sup>196</sup> and the Constitutional Court<sup>197</sup> also have their own online database. The highest jurisdictions publish all or most of their decisions, the number of decisions from lower courts is very limited.

Some courts translate a selection of their judgments into English.

### 7.13.4 Data Protection

In France the National Commission on Informatics and Liberty (*Commission Nationale de l'Informatique et des Libertés*) published an opinion in 2001 on the dissemination of personal data in internet case law databases.<sup>198</sup> The opinion is based on the general data protection act,<sup>199</sup> calls for anonymisation of identifying data of natural persons in published court

<sup>192</sup> *Code de l'organisation judiciaire*

[www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006071164&idArticle=LEGIARTI000018921800](http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006071164&idArticle=LEGIARTI000018921800).

<sup>193</sup> [www.legifrance.gouv.fr](http://www.legifrance.gouv.fr).

<sup>194</sup> [www.courdecassation.fr/jurisprudence\\_2/](http://www.courdecassation.fr/jurisprudence_2/).

<sup>195</sup> [www.conseil-etat.fr/Decisions-Avis-Publications/Decisions/ArianeWeb](http://www.conseil-etat.fr/Decisions-Avis-Publications/Decisions/ArianeWeb).

<sup>196</sup> [www.ccomptes.fr/Nos-activites/Cour-des-comptes/Les-contrôles/Jurisprudence](http://www.ccomptes.fr/Nos-activites/Cour-des-comptes/Les-contrôles/Jurisprudence).

<sup>197</sup> [recherche.conseil-constitutionnel.fr/?expert=2](http://recherche.conseil-constitutionnel.fr/?expert=2).

<sup>198</sup> *Délibération n°01-057 du 29 novembre 2001 portant recommandation sur la diffusion de données personnelles sur internet par les banques de données de jurisprudence.* [www.legifrance.gouv.fr/affichCnil.do?oldAction=rechExpCnil&id=CNILTEXT000017653503](http://www.legifrance.gouv.fr/affichCnil.do?oldAction=rechExpCnil&id=CNILTEXT000017653503).

<sup>199</sup> *Loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés.* [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460).



decisions. In an evaluation in 2006 the Commission reinforced its 2001 opinion.<sup>200</sup> Legal persons and names of persons professionally involved do not have to be anonymised.

### 7.13.5 Open Data

Re-use of court decisions published on Legifrance is allowed, and facilitated by an FTP connection offering XML files.

The general Open Licence is applicable,<sup>201</sup> but an additional statement has been produced to prevent re-users from re-identifying anonymised data subjects.<sup>202</sup>

The internal databases maintained by the Supreme court,<sup>203</sup> are only accessible on subscription. They can be used for e.g. academic research or other re-use, but the subscription contract imposes strict rules on the anonymisation of any document from this database if disseminated. The Council of State also offers a licence for more detailed information from its database, but without any right to re-use.

This situation has been changed by article 21 of the Law on the Digital Republic,<sup>204</sup> introducing a new article L. 111-13 to the Judicial Code, reading:<sup>205</sup>

*Art. L. 111-13. - Without prejudice to the specific provisions governing access to and publication of judgments, judicial decisions shall be made available to the public free of charge, with due respect for the privacy of the persons concerned.*

*This availability to the public is preceded by an analysis of the risk of re-identification of persons.*

*Articles L. 321-1 to L. 326-1 of the code of relations between the public and the administration are also applicable to the re-use of the public information contained in these decisions.*

*A decree in Conseil d'Etat shall lay down the conditions for the application of this Article in respect of decisions of first instance, appeal or cassation.*

The decree mentioned in the last paragraph has not been adopted yet.

<sup>200</sup> *Bilan de l'application de la recommandation de la Commission nationale de l'informatique et des libertés du 29 novembre 2001 sur la diffusion de données personnelles sur Internet par les banques de données de jurisprudence: pour un encadrement législatif renforçant la protection des données à caractère personnel en matière de diffusion de décisions de justice.* [www.cnil.fr/sites/default/files/typo/document/Bilan\\_BDD\\_jurisprudence\\_decisions\\_de\\_justice.pdf](http://www.cnil.fr/sites/default/files/typo/document/Bilan_BDD_jurisprudence_decisions_de_justice.pdf).

<sup>201</sup> [www.etalab.gouv.fr/wp-content/uploads/2014/05/Open\\_Licence.pdf](http://www.etalab.gouv.fr/wp-content/uploads/2014/05/Open_Licence.pdf).

<sup>202</sup> CNIL, Opening up case law datasets of Legifrance (*Ouverture des jeux de données de jurisprudence de Légifrance*) [www.cnil.fr/fr/ouverture-des-jeux-de-donnees-de-jurisprudence-de-legifrance](http://www.cnil.fr/fr/ouverture-des-jeux-de-donnees-de-jurisprudence-de-legifrance).

<sup>203</sup> See § 7.13.2.

<sup>204</sup> LOI n° 2016-1321 du 7 octobre 2016 pour une République numérique, [www.legifrance.gouv.fr/eli/loi/2016/10/7/ECFI1524250L/jo](http://www.legifrance.gouv.fr/eli/loi/2016/10/7/ECFI1524250L/jo).

<sup>205</sup> Code de l'organisation judiciaire, [www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071164&dateTexte=20161124](http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071164&dateTexte=20161124).

### 7.13.6 ECLI

In France ECLI is implemented for the Constitutional Court, the Supreme Court and the Council of State. On the Legifrance website<sup>206</sup> the ECLI is also available on the decision documents. This French decisions are also indexed by the ECLI Search Engine.

### 7.13.7 Citation Guidelines

France does not have general official citation guidelines, but various unofficial (commercial) guidelines exist.<sup>207</sup> As a general practice, the (abbreviated) name of the court, the decision date and the case number is used. Sometimes the name of the chamber is added to the name of the court.

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<sup>206</sup> See footnote 193.

<sup>207</sup> E.g. S. Cottin, *La gestion de la documentation juridique* (Parijs: Lextenso éditions, 2011).

## 7.14 Croatia

### 7.14.1 Introduction

The judiciary in Croatia is a three-tier system. It consists of 15 regional courts (*županijskih sudova*) and 24 district courts (*općinskih sudova*). Special courts are the eight commercial courts (*trgovački sudova*), four administrative courts (*upravni sudova*) and 22 misdemeanor courts (*prekršajni sudova*), which can be appealed at, respectively, the High Commercial Court (*Visoki trgovački sud Republike Hrvatske*), the High Administrative Court (*Visoki upravni sud Republike Hrvatske*), the High Misdemeanour Court (*Visoki prekršajni sud Republike Hrvatske*). The Supreme Court (*Vrhovni sud Republike Hrvatske*) is the highest jurisdiction. Croatia also has a Constitutional Court (*Ustavni sud Republike Hrvatske*).

### 7.14.2 The Legal Framework on Publication

In Croatia there is no legal framework requiring the publication of judicial decisions.

### 7.14.3 Public Access to Court Decisions

Since 2003, most decisions of the Supreme Court are published in its case law portal (*Sudska praksa*).<sup>208</sup> Relevant decisions from the High Commercial Court, the High Administrative Court, the High Misdemeanour Court and some regional and district courts are published in this database as well.

The Constitutional Court of has its own database with decisions,<sup>209</sup> containing full texts of selected decisions, rulings and reports translated in English, as well as the summaries of important decisions, rulings and reports that have been translated in English and published in 'Selection of Decisions of the Constitutional Court of the Republic of Croatia'.<sup>210</sup>

The High Administrative Court publishes a selection of decisions on its own website.<sup>211</sup>

### 7.14.4 Data Protection

Personal data of the parties, their lawyers or legal representatives, witnesses, expert witnesses, relatives of and persons close to the parties as well as state officials are anonymized following the provisions of the Personal Data Protection Act, the Book of Rules

<sup>208</sup> [sudskapraksa.csp.vsrh.hr/home](http://sudskapraksa.csp.vsrh.hr/home).

<sup>209</sup> [www.usud.hr/hr/praksa-ustavnog-suda](http://www.usud.hr/hr/praksa-ustavnog-suda).

<sup>210</sup> [www.usud.hr/en/case-law](http://www.usud.hr/en/case-law).

<sup>211</sup> [www.upravnisudrh.hr/praksa/frames.php](http://www.upravnisudrh.hr/praksa/frames.php).

for Courts and the Rules for Anonymity of the Supreme Court.<sup>212</sup> Anonymization is done by replacing names by initials.<sup>213</sup>

#### 7.14.5 Open Data

Batch download – and re-use – of documents in the case law database of the Croatian Supreme Court is held to be illegal.<sup>214</sup> It is enforced by using a captcha for every access, as well as the Robots Exclusion Protocol.

#### 7.14.6 ECLI

In Croatia ECLI has been introduced recently. Croatia is also connected to the ECLI Search Engine.

#### 7.14.7 Citation Guidelines

Neither official nor unofficial citation guidelines exist in Croatia. Court decisions are usually cited by the (abbreviated) name of the court, the case number and the date of the decision.

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<sup>212</sup> *O Anonimizaciji Sudskih Odluka.*

[sudskapraksa.csp.vsrh.hr/static/pdfs/hr/Anonimizacija\\_odluka\\_Pravila\\_II\\_VSRH.pdf](https://sudskapraksa.csp.vsrh.hr/static/pdfs/hr/Anonimizacija_odluka_Pravila_II_VSRH.pdf).

<sup>213</sup> *Upute o Načinu Anonimizacije Sudskih Odluka.*

[sudskapraksa.csp.vsrh.hr/static/pdfs/hr/Anonimizacija\\_odluka\\_Upute\\_III\\_VSRH.pdf](https://sudskapraksa.csp.vsrh.hr/static/pdfs/hr/Anonimizacija_odluka_Upute_III_VSRH.pdf).

<sup>214</sup> [sudskapraksa.csp.vsrh.hr/home](https://sudskapraksa.csp.vsrh.hr/home).

## 7.15 Italy

### 7.15.1 Introduction

Regular criminal jurisdiction and civil jurisdiction is exercised by Justices of the peace, district courts, Courts of Appeal and the Supreme Court. Besides these regular courts, there are Juvenile Courts and the Surveillance Court, sitting both as a single judge and as a panel of judges.

Four types of jurisdiction have specialized courts. (1) Administrative jurisdiction is a two-tier system, consisting of administrative courts (*Tribunali Amministrativi Regionali*) and the Council of State (*Consiglio di Stato*). (2) The Court of Auditors (*Corte dei Conti*) reviews matters concerning public accountancy. (3) Military criminal cases are decided by the Military Courts (*Tribunali Militari*), the Military Appeals Courts (*Corti Militari di Appello*) and the Military Surveillance Courts (*Tribunali Militari di Sorveglianza*). (4) Finally, the Provincial Fiscal Commissions (*Commissioni Tributarie Provinciali*) and the Regional Fiscal Commissions (*Commissioni Tributarie Regionali*) have jurisdiction in matters concerning taxation. Additionally, the Regional Courts and High Court of Waters (*Tribunali regionali delle acque pubbliche* and *Tribunale superiore delle acque pubbliche*) have jurisdiction over all matters of dispute regarding water belonging to the Italian State.

Article 134 of the Constitution establishes the Constitutional Court (*Corte costituzionale*).

### 7.15.2 The Legal Framework on Publication

There is no general provision imposing that court decisions have to be published in ways different from the deposit in the chancelleries and in judicial secretaries<sup>215</sup>.

However, a provision that actually mentions the online publication of the judgment as a way of dissemination of the decision is article 51 paragraph 2 of the Personal Data Protection Code<sup>216</sup>, which provides that decisions of courts at all levels and instances that have been filed at the court's clerk's office shall be made accessible also by means of the information systems and the institutional sites on the Internet, in compliance with the provisions referred to in Chapter III "Legal information Services" of Personal Data Protection Code. In addition, in 2010, the Italian Data Protection Authority<sup>217</sup> has drafted the Guidelines on personal data

<sup>215</sup> Relevant provisions by Codes of Civil and Criminal Procedure as well as by Criminal Code refer to publication through the deposit in the chancelleries and in judicial secretaries of the sentence: article 133 of the Code of Civil Procedure entitled "Publication and communication of the judgment"; article 545 of the Code of Criminal Procedure entitled "Publication of the judgment"; article 36 of Criminal Code entitled "Publication of criminal conviction".

<sup>216</sup> *Decreto legislativo 30 giugno 2003, n. 196* [www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/4814258](http://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/4814258) (English version).

<sup>217</sup> *Garante per la protezione dei dati personali* [www.garanteprivacy.it/home\\_en](http://www.garanteprivacy.it/home_en)

protection in the reproduction of judicial decisions for the purpose of legal information communication.<sup>218</sup>

The purpose of these Guidelines is to provide useful guidance to courts, legal publishers and any public and private stakeholders carrying out reproduction activities of judicial decisions, on paper and on online format, as well as through online services for legal information purposes, in order to ensure compliance with the principles relating to protection of personal data under the Personal Data Protection Code. In particular the Guidelines in point 2 entitled “Dissemination of judgments and other judicial decisions” reads that the Personal Data Protection Code encourages the widest possible dissemination of judgments and other judicial provisions for which it has been fulfilled, by depositing in the chancelleries and in judicial secretaries, the burden of the publication required by the provisions of civil and criminal procedure codes. The dissemination of such judgments can be achieved by the same judicial authority also through the information system and the institutional websites,<sup>219</sup> respecting some cautionary measures in the Code,<sup>220</sup> designed to protect the rights and dignity of people involved. With the compliance to these precautions, the dissemination (in any form and even in full text) of judgments and other judicial decisions is permitted.<sup>221</sup>

The online publication of Constitutional Court decisions on its website is the result of an independent decision of the Court taken in 1999 in order to remedy the delays encountered in the publication on the Official Journal (as prescribed by law).

Furthermore, specific rules (*Regolamento per l'accesso ai dati telematici*)<sup>222</sup> for accessing online data are provided by the administrative courts and the Council of State. This *Regolamento* states that the identification data of pending issues before the administrative courts shall be made accessible to those interested by online publication. The decisions of the administrative court, made public by the deposit in the office, are simultaneously published on the internal information system and on the website, observing the provisions required by the legislation on protection of personal data, in compliance with Article 51 of Personal Data Protection Code.

<sup>218</sup> *Linee guida in materia di trattamento di dati personali nella riproduzione di provvedimenti giurisdizionali per finalità di informazione giuridica* 2 December 2010 in Official Gazette no. 2 of 4 January 2011 [www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/1774813](http://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/1774813).

<sup>219</sup> Article 51, paragraph 2 of *Decreto legislativo 30 giugno 2003, n. 196*.

<sup>220</sup> Article 52, paragraph 1 to 6 of *Decreto legislativo 30 giugno 2003, n. 196*.

<sup>221</sup> Article 52, paragraph 7 of *Decreto legislativo 30 giugno 2003, n. 196*.

<sup>222</sup> *Regolamento per l'accesso ai dati telematici* [www.giustizia-amministrativa.it/cdsintra/cdsintra/Regoleaccesso/Regolamentoperlaccessoaidatitelematici/index.html](http://www.giustizia-amministrativa.it/cdsintra/cdsintra/Regoleaccesso/Regolamentoperlaccessoaidatitelematici/index.html)

### 7.15.3 Public Access to Court Decisions

Most of the court decisions published can be accessed via the legal information retrieval system *ItalggiureWeb*,<sup>223</sup> managed by the Electronic Documentation Centre of the Supreme Court.<sup>224</sup> *ItalggiureWeb* is accessible free of charge only for judges, lawyers and civil servants, other users are charged.

The Constitutional Court, the Court of Auditors and the Council of State have their own free online databases.

The database of the Constitutional Court<sup>225</sup> contains full text versions of all (around 20.000) decisions rendered since its foundation, except for those rendered in disputes between the Court and its employees. The Court's judgments are published in the online Official Journal as well. The database of the Court of auditors<sup>226</sup> includes decisions available in html format since 1993. The database of the Council of State and of the administrative courts<sup>227</sup> contains decrees, orders, opinions and decisions.

Furthermore, the Electronic Documentation Centre of the Supreme Court gives access, free of charge to all (contrary to *ItalggiureWeb*), to full text judgments rendered by the Supreme Court from the last 5 years, through *SentenzeWeb*,<sup>228</sup> which is implemented by the *ItalggiureWeb* database. The system offers a watermarked copy of the original image with indexable text.

### 7.15.4 Data Protection

The legal basis for data protection and anonymisation regarding court decisions is formulated in three specific provisions:

- Article 52 of Personal Data Protection Code<sup>229</sup> entitled 'Information Identifying Data Subjects' determines the rules for anonymisation of court decisions. Anonymisation provided by this article does not have an effect on the judgment, but it is only for dissemination purposes. On the basis of the provision decisions are anonymised:
  - On request of the data subject before the decision is published in order to protect data subjects' rights or dignity. The provision provides a right of a data subject to request on legitimate grounds, by depositing the relevant application with either the court's clerk's office or the secretariat of the authority in charge of the proceeding,

<sup>223</sup> [www.italgiure.giustizia.it](http://www.italgiure.giustizia.it)

<sup>224</sup> *Centro Elettronico di Documentazione (C.E.D.)*  
[www.cortedicassazione.it/corte-di-cassazione/it/ced.page](http://www.cortedicassazione.it/corte-di-cassazione/it/ced.page)

<sup>225</sup> [www.cortecostituzionale.it/actionGiurisprudenza.do](http://www.cortecostituzionale.it/actionGiurisprudenza.do)

<sup>226</sup> [servizi.corteconti.it/bds/](http://servizi.corteconti.it/bds/)

<sup>227</sup> [www.giustizia-amministrativa.it/cdsintra/cdsintra/AmministrazionePortale/Ricerca/index.html?tipoRicerca=Provvedimenti&showadv=true](http://www.giustizia-amministrativa.it/cdsintra/cdsintra/AmministrazionePortale/Ricerca/index.html?tipoRicerca=Provvedimenti&showadv=true)

<sup>228</sup> [www.italgiure.giustizia.it/sncass](http://www.italgiure.giustizia.it/sncass)

<sup>229</sup> See footnote 216.

prior to finalisation of the latter, that said office or secretariat add a notice to the original text of the judgment or measure to the effect that the data subject's name and other identification data as reported in the judgment or measure must not be referred to if said judgment or measure are to be reproduced in whatever form for legal information purposes on legal journals, electronic media or else by means of electronic communication networks.

- On initiative of judicial authority issuing the judgment and/or taking the measure at stake.
- Always in cases of data regarding the identity of children and of parties to proceedings concerning family law and civil status. In these cases the provision requires to omit, not only the identity and other identifying data of the protected persons, but also other data also related to third parties from which it may be inferred indirectly the identity of these data subjects
- Always in cases referred to article 734 bis of Criminal code (sexual offenses and prostitution).

Article 52 shall also apply in case of arbitration proceedings.

- Article 7, paragraph 3 (Right to Access Personal Data and Other Rights) of the Personal Data protection Code<sup>230</sup> which provides that a data subject shall have the right to obtain: a) updating, rectification or, where interested therein, integration of the data; b) erasure, anonymisation or blocking of data that have been processed unlawfully, including data whose retention is unnecessary for the purposes for which they have been collected or subsequently processed; c) certification to the effect that the operations as per letters a) and b) have been notified, as also related to their contents, to the entities to whom or which the data were communicated or disseminated, unless this requirement proves impossible or involves a manifestly disproportionate effort compared with the right that is to be protected.

The applicability of article 7 may relate to the subsequent publication of the decisions in the publicly online accessible databases. In this case, the request of updating data will no longer be addressed directly to the clerk of the judicial authority, or his chancellery, but to the publisher/distributor who provided the publication and dissemination.

- Guidelines on personal data protection in the reproduction of judicial decisions for the purpose of legal information communication<sup>231</sup> provided by the Italian Data Protection Authority. Section 3.3 entitled "Anonymisation requested by the judge: in particular, sensitive data" gives the judicial authorities a specific responsibility in the careful assessment of the anonymisation. This responsibility is strongly accentuated in cases

<sup>230</sup> See footnote 216.

<sup>231</sup> See footnote 218.



where personal data involved, if disseminated indiscriminately, can have negative consequences on the various aspects of social life and relationship of the person concerned (for example, in family or workplace fields). It is the case when in the judicial provisions, sensitive data are included and, among these, data disclosing the state of health or sex life of the persons concerned.

A special mention should be given to the anonymisation policy of the Constitutional Court. There is a tendency of the Court to anonymise personal data on labor issues and social security, in order to protect workers. The Court is then used to anonymise the data in the event of judgments brought to its attention in any criminal case. In most cases, in fact, the judgments that arise from such cases have yet to be established definitively.

### 7.15.5 Open Data

Only Constitutional Court decisions are made available in open data format for re-use, even for commercial purposes, with CC BY SA licence through a zip file download of the datasets in XML. The full text and metadata available for re-use are in XML. At the moment all decisions (except for those rendered with regard to disputes arising between the Court and its employees) can be downloaded from the official website of the Court. In the near future, it will be possible to download the data from a dedicated data portal.

It is worth mentioning that Article 52 of the *Codice dell'amministrazione digitale*<sup>232</sup> as modified by the Legislative Decree 26 August 2016, No. 179<sup>233</sup> provides that the information and documents that the public administration publishes without express adoption of a licence are released as open data.

### 7.15.6 ECLI

At the end of 2016, ECLI has been introduced by the Constitutional Court (around 20.000 decisions). In January 2017 the Supreme Court introduced ECLI as well (more than one million decisions). Both courts are also connected to the ECLI Search Engine. Within the BO-ECLI project, implementation for other courts is ongoing (Court of Auditors and Council of State).

<sup>232</sup> Article 52 of *Decreto legislativo 7 marzo 2005, n. 82*.

[www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-03-07;82!vig=](http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-03-07;82!vig=)

<sup>233</sup> *Decreto legislativo 26 agosto 2016, n. 179*

[www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2016-08-26;179!vig=](http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2016-08-26;179!vig=)

### 7.15.7 Citation Guidelines

In Italy, no legal citation guidelines exist, official nor unofficial. Generally, court decisions are cited by the (abbreviated) name of the court, decision date or date of deposit and number of decision.

The most important Italian legal publishers (*Giuffrè-Elsevier*, *Giappichelli*, *UTET-Wolters Kluwer*, *CEDAM- Wolters Kluwer*) adopt their citation guidelines which are only valid for their online or print publications. Judicial authority/body (including, in case, the chamber), type of decision and date (date of the deposit or date of the decision) are therefore abbreviated and/or presented differently according to each publisher.

## 7.16 Cyprus

### 7.16.1 Introduction

Cyprus is a common law jurisdiction, the legal system being a remnant of the island's British colonial heritage. Cyprus has a two-tier court system. The Supreme Court (*Ανώτατο Δικαστήριο*) is the court of appeal and of highest instance for the six types of courts of first instance: district courts (*Επαρχιακά Δικαστήρια*), Assize Courts (*Κακουργιοδικεία*), Family Court (*Οικογενειακό Δικαστήριο*), Rent Control Tribunal (*Δικαστήριο Ελέγχου Ενοικιάσεων*), Industrial Disputes Tribunal (*Δικαστήριο Εργατικών Διαφορών*) and the Military Court (*Στρατοδικείο*).

### 7.16.2 The Legal Framework on Publication

In Cyprus there is no legal framework on the publication of court decisions. The Supreme Court has always published its decisions in paper reports.<sup>234</sup> There is no document setting out the policy framework. However, the Reports include a summary of the facts and ratio of the case, cases cited and keywords. Since 2002 the court distributes all judgments to the Bar Council and online publishers. As of about 2005 the first instance courts have also been distributing to online publishers a selection judgments for publication.

### 7.16.3 Public Access to Court Decisions

Important decisions of the Supreme Court and a small number of decision from district courts are published on the website of the Supreme Court<sup>235</sup> as Word documents; there is no search functionality.

Free access to all (including for re-use) is also provided on the website Cylaw.org, run by the Cyprus Legal Information Institute, on behalf of the Cyprus Bar Association.<sup>236</sup> This site contains decisions from 1883 onwards. Some decisions are translated into English.

### 7.16.4 Data Protection

In Cyprus court decisions are not anonymised by default, but only if minors or very sensitive data are involved. The data protection framework is generally not held applicable, although the matter has never been addressed by the Supreme Court of the Data Protection Authority.

<sup>234</sup> Cyprus Law Reports, in 1990 renamed to Decisions of the Supreme Court (*Αποφάσεων Ανωτάτου Δικαστηρίου*).

<sup>235</sup> [www.supremecourt.gov.cy/judicial/sc.nsf/DMLresnetJud\\_archive\\_gr?OpenForm](http://www.supremecourt.gov.cy/judicial/sc.nsf/DMLresnetJud_archive_gr?OpenForm).

<sup>236</sup> [cylaw.org](http://cylaw.org).

### 7.16.5 Open Data

The Supreme Court does have copyright on the metadata included in the published reports, but has granted permission for the metadata to be published online both on Cylaw.org and Leginet.eu. The Supreme Court, or the first instance courts, do not claim intellectual property rights on the text of the judgments, but the Supreme Court does reserve the right to authorise re-use of the metadata.

No specific technical facilities exist, documents can be downloaded in PDF or Word format.

### 7.16.6 ECLI

ECLI has not been implemented in Cyprus yet, but a project for implementation has started.

### 7.16.7 Citation Guidelines

Cyprus does not have published citation guidelines. Supreme Court decisions are generally cited by using the year, section, page and initials of the official Law Report where the judgment has been published. Otherwise the Supreme Court judgments are generally referenced by case number, court name and judgment date.

## 7.17 Latvia

### 7.17.1 Introduction

In the three-instance court system of Latvia judicial power in administrative, civil and criminal cases in Latvia is exercised by 26 city and district courts (*rajonu vai pilsētu tiesas*), five regional courts (*apgabaltiesas*) and the Supreme Court (*Augstākā tiesa*).

The Supreme Court (Department of Administrative Cases) is the first (and only) instance in certain cases related to Parliamentary elections and in reviewing applications on decisions of the Minister of the Interior on entering foreigners in the list of persons who are prohibited to enter the Republic of Latvia.

Administrative proceedings are heard by the District Administrative Court (*Administratīvā rajona tiesa*), the Regional Administrative Court (*Administratīvā apgabaltiesa*) and the Administrative Division of the Supreme Court (*Augstākās tiesas Administratīvo lietu departaments*).

The Constitutional Court (*Satversmes tiesa*) reviews cases concerning the compliance of laws and other legal provisions with the Constitution, as well as other cases subjected to its jurisdiction. The Constitutional Court of Latvia does not review administrative acts.

### 7.17.2 The Legal Framework on Publication

The legal framework regarding the publication of court decision is formulated in section 28.2 of the Law on Judicial Power,<sup>237</sup> which reads in full:

#### Availability of Court Decisions (judgments and procedural decisions)

(...)

- 5) Judgments taken during open court shall be published on the Internet homepage after entering into effect thereof, unless it has been laid down otherwise in the law. Similarly, procedural decisions shall be published in the amount stipulated by the Cabinet of Ministers. In publishing decisions, the information which discloses the identity of a natural person shall be hidden.

‘Regulation of the Cabinet of Ministers no.123 ‘On publication of court information online and preparatory treatment of court decisions’<sup>238</sup> prescribes which decisions have to be published and how the anonymisation is done.

<sup>237</sup> *Par tiesu varu* [likumi.lv/doc.php?id=62847](http://likumi.lv/doc.php?id=62847); English version: [vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Judicial\\_Power.pdf](http://vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Judicial_Power.pdf).

<sup>238</sup> *Noteikumi par tiesu informācijas publicēšanu mājaslapā internetā un tiesu nolēmumu apstrādi pirms to izsniegšanas* [likumi.lv/doc.php?id=187832](http://likumi.lv/doc.php?id=187832).

With regard to the Constitutional Court section 33 of the Constitutional Court Law<sup>239</sup> stipulates that all decisions have to be published, although an internet database is not mentioned.

### 7.17.3 Public Access to Court Decisions

According to the aforementioned Law on Judicial Power and the Regulation of the Cabinet of Ministers no.123 judicial decisions are to be published on National Courts Portal (*Latvijas Tiesas*),<sup>240</sup> unless provided otherwise. In practice (nearly) all decisions are published, although in most closed proceedings only summary judgments are published. The Court Administration (*Tiesu administrācija*) is responsible for the National Courts Portal. Administrative decisions have been published since 2007, civil and criminal decisions since 2013.

The Supreme Court has a separate database where it publishes a selection of its most important decisions.<sup>241</sup>

The Constitutional Court has its own database with all decided cases.<sup>242</sup> Many decisions and the search interface are available in English as well.<sup>243</sup>

### 7.17.4 Data Protection

Section III of the aforementioned Regulation 123<sup>244</sup> prescribes the anonymisation of court decisions before they are published. Person's names are replaced by a label and a random initial, other personal data by their label (like 'residence' or 'address'). Replaced strings are indicated two slashes, e.g. '/pers. B/'. People professionally involved in the proceedings are not anonymised.

Decisions of the Constitutional Court are not anonymised, except when the case has been decided in a closed hearing.

### 7.17.5 Open Data

There are no legal restrictions on reusing the published decisions. There are no services facilitating easy download; documents are only available in PDF format. Decisions of the Supreme Court are available in Word format.

<sup>239</sup> *Satversmes tiesas likums*; English version: [www.satv.tiesa.gov.lv/en/2016/02/04/constitutional-court-law/](http://www.satv.tiesa.gov.lv/en/2016/02/04/constitutional-court-law/).

<sup>240</sup> [manas.tiesas.lv/eTiesasMvc/nolemumi](http://manas.tiesas.lv/eTiesasMvc/nolemumi).

<sup>241</sup> [at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/](http://at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/).

<sup>242</sup> [www.satv.tiesa.gov.lv/cases/](http://www.satv.tiesa.gov.lv/cases/).

<sup>243</sup> [www.satv.tiesa.gov.lv/en/cases/](http://www.satv.tiesa.gov.lv/en/cases/).

<sup>244</sup> See footnote 238.

### 7.17.6 ECLI

ECLI has not been implemented in Latvia yet, but a project for implementation has started and is planned to finish in September 2017.

### 7.17.7 Citation Guidelines

In Latvia there are no official or unofficial legal citation guidelines. In practice, often the name of the court, the case number and the date of the decision are used for citing court decisions.

## 7.18 Lithuania

### 7.18.1 Introduction

The core of Lithuanian court system consists of courts of general jurisdiction, dealing with civil and criminal matters: the Supreme Court (*Lietuvos Aukščiausiasis Teismas*), the Court of Appeal (*Lietuvos apeliacinis teismas*), five regional courts (*apygardos teismai*) and 49 district courts (*apylinkės teismai*). Apart from the Court of Appeal these courts also hear cases of administrative offences. In 1999 a system of specialized administrative courts was established to hear administrative cases. It consists of the High Administrative Court (*Lietuvos vyriausiasis administracinis teismas*) and regional administrative courts (*apygardų administraciniai teismai*).

The Constitutional Court (*Lietuvos Respublikos Konstitucinis Teismas*) is not a part of the court system, but is a separate independent judicial body with the authority to determine whether the laws and other legal acts adopted by the Parliament (*Seimas*) are in conformity with the Constitution, and whether the legal acts adopted by the President and the Government comply with the Constitution and respective legislation.

### 7.18.2 The Legal Framework on Publication

In Lithuania court decisions are published according to the Law on Courts,<sup>245</sup> which regulates the types of decisions to be published (in essence, all final decisions). The Regulation on the publication of decisions,<sup>246</sup> adopted by the Council for the Judiciary (*Teisėjų taryba*), contains guidelines on selection criteria and publication order.

### 7.18.3 Public Access to Court Decisions

Published court decisions can be found in the Information System of the Lithuanian Courts (*Lietuvos teismų informacinė sistema*, LITEKO).<sup>247</sup>

The decisions of the Supreme Court (*Lietuvos Aukščiausiasis Teismas*), the Supreme Administrative Court (*Lietuvos vyriausiasis administracinis teismas*) and regional administrative courts (*apygardų administraciniai teismai*) are published in the Register of Legal Acts as well.<sup>248</sup>

<sup>245</sup> *Lietuvos Respublikos teismų įstatymas*

[e-tar.lt/portal/en/legalAct/TAR.522B3E415B52/TAIS\\_465353](http://e-tar.lt/portal/en/legalAct/TAR.522B3E415B52/TAIS_465353).

<sup>246</sup> *Teismų procesinių sprendimų bei teisėjų drausmės bylose priimtų sprendimų viešo skelbimo tvarka*

[e-tar.lt/portal/lt/legalAct/0a88ed90974d11e5a6f4e928c954d72b](http://e-tar.lt/portal/lt/legalAct/0a88ed90974d11e5a6f4e928c954d72b).

<sup>247</sup> [liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx](http://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx).

<sup>248</sup> [e-tar.lt/portal/lt/legalActSearch](http://e-tar.lt/portal/lt/legalActSearch).



Court decisions have been published since 2009, anonymised and in full-text. Yearly about 300.000 decisions are published, which is more than half of all decisions rendered. Decisions are published within five working days after entering into force.

The Constitutional Court has its own database with all decided cases.<sup>249</sup> All decisions and the search interface are available in English as well.<sup>250</sup>

#### 7.18.4 Data Protection

In Lithuania all published court decisions are anonymised. The legal framework can be found in the Law on Courts,<sup>251</sup> the Personal Data Protection Act<sup>252</sup> and the Regulation on the publication of decisions.<sup>253</sup> The latter document specifies which personal data have to be anonymised and also establishes that names of professionally involved people do not have to be anonymised. Article 19 prescribes that incorrect anonymisation due to improper application of technical measures has to be dealt with within two working days. According to article 18, requests to remove the additional information have to be examined within fourteen days.

#### 7.18.5 Open Data

In Lithuania the re-use of court decisions is regulated by the legal instruments mentioned in § 7.18.4 as well as by the Law on the Management of the State Information Resources.<sup>254</sup> According to Article 35 paragraph 5 the source of the data always has to be stated and the data cannot be changed. The documents are available in HTML, converted from Word.

#### 7.18.6 ECLI

In Lithuania ECLI has not yet been introduced.

<sup>249</sup> [www.lrkt.lt/lt/teismo-aktai/nutarimai-ispados-ir-sprendimai/138/y2016](http://www.lrkt.lt/lt/teismo-aktai/nutarimai-ispados-ir-sprendimai/138/y2016).

<sup>250</sup> [www.lrkt.lt/en/court-acts/rulings-conclusions-decisions/171/y2016](http://www.lrkt.lt/en/court-acts/rulings-conclusions-decisions/171/y2016).

<sup>251</sup> See footnote 245.

<sup>252</sup> *Lietuvos Respublikos asmens duomenų teisinės apsaugos įstatymas*  
[www.e-tar.lt/portal/lt/legalAct/TAR.5368B592234C/XSpzxvEjlg](http://www.e-tar.lt/portal/lt/legalAct/TAR.5368B592234C/XSpzxvEjlg).

<sup>253</sup> See footnote 246.

<sup>254</sup> *Valstybės informacinių išteklių valdymo įstatymas*  
[www.e-tar.lt/portal/lt/legalAct/TAR.85C510BA700A](http://www.e-tar.lt/portal/lt/legalAct/TAR.85C510BA700A).

### 7.18.7 Citation Guidelines

Lithuania does not have official citation guidelines. Court decisions are cited by using the (abbreviated) name of the court, the case number and the decision date. Unofficial guidelines prescribe that if a decision is published, a reference to it should be made.<sup>255</sup>

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<sup>255</sup> I. Žalėnienė and L. Šaltinytė, Rules on Citation and Bibliography, 2009), [www.mruni.eu/mru\\_lt dokumentai/mokslo\\_darbai/jurisprudencija/rules\\_on\\_citation\\_and\\_bibliography.doc](http://www.mruni.eu/mru_lt dokumentai/mokslo_darbai/jurisprudencija/rules_on_citation_and_bibliography.doc).

## 7.19 Luxembourg

### 7.19.1 Introduction

Civil and criminal justice in Luxembourg is organised in three tiers. The first instance level is comprised of three district courts (justices of peace, *justices de paix*, in criminal proceedings known as police courts (*tribunaux de police*)). Two regional courts (*Tribunaux d'arrondissement*) are the courts of appeal for the decisions of the district courts, but also are courts of first instance.

At the top of the hierarchy is the Supreme Court (*Cour Supérieure de Justice*), comprising the Court of Cassation (*Cour de Cassation*) and a Court of Appeal (*Cour d'Appel*).

Administrative justice is organised in two tiers. There is one Administrative Court of First Instance (*Tribunal Administratif*), whose decisions can be appealed at the High Administrative Court (*Cour Administrative*). For social insurance disputes the Arbitral Social Insurance Council (*conseil arbitral des assurances sociales*) has jurisdiction, with the Supreme Social Insurance Council (*conseil supérieur des assurances sociales*) as the appellate court.

Luxembourg also has a Constitutional Court (*Cour Constitutionnelle*).

### 7.19.2 The Legal Framework on Publication

According to article 14 of the Law of 27 July 1997 on the Organisation of the Constitutional Court<sup>256</sup> decisions of the Court have to be published in the Official Journal. For the publication of the decisions of other courts there is no legal framework.

### 7.19.3 Public Access to Court Decisions

All court decisions published in Luxembourg are published on the website of the judiciary. The decisions of the Constitutional Courts are published in PDF-format.<sup>257</sup> There is no search engine available. Judgments of the administrative courts are published in Word-format, searchable full-text.<sup>258</sup> Judgments of the Supreme Court are published from 2007 onwards (2002 for labour and criminal cases).<sup>259</sup>

### 7.19.4 Data Protection

All published decisions are anonymised. Some names are replaced by initials, other personal data are generally replaced by a series of dots.

<sup>256</sup> *Loi du 27 juillet 1997 portant organisation de la Cour Constitutionnelle*  
[eli.legilux.public.lu/eli/etat/leg/loi/1997/07/27/n6](http://eli.legilux.public.lu/eli/etat/leg/loi/1997/07/27/n6).

<sup>257</sup> [www.justice.public.lu/fr/jurisprudence/cour-constitutionnelle/index.html](http://www.justice.public.lu/fr/jurisprudence/cour-constitutionnelle/index.html).

<sup>258</sup> [www.justice.public.lu/fr/jurisprudence/juridictions-administratives/index.php](http://www.justice.public.lu/fr/jurisprudence/juridictions-administratives/index.php).

<sup>259</sup> [www.justice.public.lu/fr/jurisprudence/cour-cassation/index.html](http://www.justice.public.lu/fr/jurisprudence/cour-cassation/index.html).

#### 7.19.5 Open Data

There does not seem to be any restriction on the re-use of published decisions in Luxembourg, but there are no technical facilities. All documents are published in PDF.

#### 7.19.6 ECLI

In Luxembourg ECLI has not yet been introduced.

#### 7.19.7 Citation Guidelines

There is no knowledge of citation guidelines in Luxembourg.

## 7.20 Hungary

### 7.20.1 Introduction

Hungary has a four-tier judicial system. For all cases which are not attributed to other courts the 111 district courts (*járásbíróságok*) act as courts of first instance. The twenty regional courts (*törvényszékek*) can both act as courts of first instance or hear appeals against decisions of the district courts or the twenty administrative and labour courts, that have jurisdiction in administrative and labour law. Five regional courts of appeal (*ítélőtáblák*) hear appeals from the regional courts. The Supreme Court (*Kúria*) is the court of highest instance for all jurisdictions.

Hungary also has a Constitutional Court (*Alkotmánybíróság*).

### 7.20.2 The Legal Framework on Publication

The legal basis for the publication of court decisions in Hungary is Act CLXI of 2011 on the Organisation and Administration of the Courts,<sup>260</sup> section 51: 'Responsibilities of Courts Relating to the Publication of Court Decisions; the Register of Court Decisions' (articles 163-165).

It can be summarized as follows:<sup>261</sup>

Section 163.

- 1) The Supreme Court shall publish uniformity decisions, decisions on principle and decisions on substance; the courts of appeal shall publish decisions on substance; the administrative and labor courts shall publish decisions on substance, if the reviewed administrative decision was adopted in a single instance proceeding and no ordinary appeal may be lodged against the court decision. These decision shall be published in the Register of Court Decisions in digital format (*Bíróági Határozatok Gyűjteménye*).
- 2) In the Register of Court Decisions:
  - a) Decisions on order for payment or enforcement, decisions in company registry, bankruptcy and liquidation procedures, and in procedures related to any register maintained by the court do not have to be published;
  - b) Decisions in family matters are not to be published if so requested by either of the parties; and
  - c) Decisions adopted in criminal proceedings regarding sexual offenses are not published if the victim did not authorize so, upon a request to do so by the court.
- 3) Annexes to published decisions (court decisions or other rulings by public bodies that were overruled or reviewed by the published court decision) shall also be published.

<sup>260</sup> 2011. évi CLXI. törvény a bíróságok szervezetéről és igazgatásáról  
<[net.jogtar.hu/jr/gen/getdoc2.cgi?docid=A1100161.TV](http://net.jogtar.hu/jr/gen/getdoc2.cgi?docid=A1100161.TV)>.

<sup>261</sup> This is not intended to be a literal translation.

- 4) The publication of decisions shall be governed by the relevant provisions of the Act on Public Procurement.
- 5) The president of the court may order the publication of other rulings beyond the ones referred to in subsections (1)-(4).

#### Section 164.

- 1) The decision shall be published in the Register of Court Decisions within thirty days after the decision is rendered in writing.
- 2) Any correction to an already published decision is published in the Register of Court Decisions within five working days after it became binding.

#### Section 165.

- 1) The published decisions shall contain the description of the court, the field of law, the year of adoption and the number of the decision.
- 2) The court shall specify, at the time of publication, the specific legislative provisions on the basis of which it was adopted.
- 3) The President of National Office for the Judiciary (*Országos Bírósági Hivatal*) shall ensure that the texts of decisions and the laws indicated can be searched in the Register of Court Decisions.

Regulations for the administrative implementation of the abovementioned provisions are laid down in Directive 6 of 2015 on the 'Code of Administration of the Courts'<sup>262</sup> of the National Office for the Judiciary, articles 168-172.

### 7.20.3 Public Access to Court Decisions

The Register of Court Decisions (*Bírósági Határozatok Gyűjteménye*) for the decisions of all courts is available via the website of the National Office for the Judiciary.<sup>263</sup> Decisions have been published since December 1996.

The Constitutional Court makes its decisions available in a database on its own website.<sup>264</sup>

<sup>262</sup> 6/2015. (XI.30.) OBH utasítás a bíróságok igazgatásáról rendelkező szabályzatról

[birosag.hu/obh/obh-elnokenek-dontesei/2015/62015-xi30-obh-utasitas-birosagok-igazgatasarol-rendelkezo](https://birosag.hu/obh/obh-elnokenek-dontesei/2015/62015-xi30-obh-utasitas-birosagok-igazgatasarol-rendelkezo).

<sup>263</sup> [birosag.hu/ugyfelkapcsolati-portal/anonim-hatarozatok-tara](https://birosag.hu/ugyfelkapcsolati-portal/anonim-hatarozatok-tara).

<sup>264</sup> [www.mkab.hu/hatarozat-kereso](https://www.mkab.hu/hatarozat-kereso).

#### 7.20.4 Data Protection

The legal basis for data protection regarding court decisions is formulated in the section 52 (article 166) of the aforementioned Act on the Organisation and Administration of the Courts.<sup>265</sup> It can be translated as:

- 1) *Where any reference is made to a person in a decision published in the *Bírószági Határozatok Gyűjteménye* (Register of Court Decisions), it shall be consistent with his role in the proceedings, however, the identification data of a person shall be erased in a manner so as not to prejudice the relevant facts of the case.*
- 2) *Unless otherwise provided for by law, in the published decision it is not necessary to erase the following:*
  - a) *the surname and forename or forenames (hereinafter referred to collectively as name) and title of any person, unless otherwise provided for by law, performing any State or municipal government function, or performing other public duties, acting as such, if this person is involved in the proceedings in connection with discharging his public function;*
  - b) *name of any lawyer acting as an agent or defense counsel;*
  - c) *name of the respondent being a natural person, who loses the lawsuit, and the name and registered office of legal person or unincorporated organisation if the decision was adopted in a case where there is legal recourse in the public interest in accordance with the relevant legislation;*
  - d) *name and address of the association or foundation, and the name of its representative;*
  - e) *information of public interest.*
- 3) *If the hearing was held in part or in whole in closed session, and there is no other way to ensure the protection of the interest defined by law, underlying the demand that the public be not admitted, certain parts of the decision or the whole of the decision shall not be published in the register, or certain parts of the published decision or the whole of the published decision shall be removed from the register.*
- 4) *Withdrawal of a decision adopted in a hearing that was held in part or in whole in closed session from the *Bírószági Határozatok Gyűjteménye*, or non-disclosure may be requested in civil actions by the party, or by the injured party in criminal proceedings. The relevant person may submit the request within one year from the date of publication of the decision to the President of OBH, who shall comply with the request without delay, at the latest within five working days following the date of receipt thereof.*
- 5) *Protection of classified information shall be provided for in the publication of court decisions as well.*

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<sup>265</sup> See footnote 260.

6) *Apart from what is contained in this Section, the decision may not be edited.*

#### 7.20.5 Open Data

In Hungary published court decisions can be freely downloaded and re-used. Documents are available in Word format.

#### 7.20.6 ECLI

In Hungary ECLI has not yet been introduced.

#### 7.20.7 Citation Guidelines

In Hungary there are no official or unofficial citation guidelines. Decision published in the monthly official journal of the Supreme Court of Hungary, the 'Court Decisions' (*Bírószági Határozatok* (BH)) or in the more important yearly publication 'Official Collection of the Decisions of the Supreme Court of Hungary' (*Legfelsőbb Bíróság határozatainak hivatalos gyűjteménye* (EBH)) are cited by the abbreviation of the publication, the year of publication and serial number (e.g. 'EBH2001.418').

Other decisions are cited by using the name of the court and the case number, with the decision date added optionally.



## 7.21 Malta

### 7.21.1 Introduction

The courts in Malta are divided into Superior and Inferior courts. Judges sit on the Superior Courts, which, in Malta, are made up of the Constitutional Court, the Court of Appeal, the Court of Criminal Appeal, the Criminal Court and the Civil Court. The Inferior Courts are the Court of Magistrates (Malta) and the Court of Magistrates (Gozo). The latter court has both a superior and an inferior jurisdiction.

### 7.21.2 The Legal Framework on Publication

In Malta there is no a legal framework which imposes online publication of court decisions. Apart from the general 'Digital Malta Strategy'<sup>266</sup> there is also no specific policy framework with regard to case law publication.

### 7.21.3 Public Access to Court Decisions

Judgments Online (*Sentenzi Online*)<sup>267</sup> basically caters two collections:

- Selected Judgments.  
This service includes a number of judgments (a selection) given from 1944 onwards. A selected number of judgments given from 1944 to 2000 has already been published in a collection of books called '*Kollezzjoni ta' Deċiżjonijiet tal-Qrati Superjuri ta' Malta*'. Currently there is an ongoing initiative whereby important judgements given from 2001 onwards, are being indexed as well. Till to date it was not possible to publish the whole text of the judgements given from 1944 to 2000. Instead a summary of key legal points taken is offered. Judgements between 1967 and 1984 have not been published.
- Judgements Archive 2001 Onwards.  
This archive holds decisions from the 1st of January 2001 onwards, superior and inferior, civil and criminal as well as those of the civil tribunals.

### 7.21.4 Data Protection

In Malta published court decisions are anonymised if they concern minors, violent indecent assault and if they are family cases. In other cases anonymisation can be granted by the judge on request of the data subject. Anonymisation is done by replacing names with random initials. In some cases the judge can decide to exclude certain parts of the decision (the text 'omissis' will be displayed instead).

<sup>266</sup> [digitalmalta.org.mt/en/Pages/Home.aspx](http://digitalmalta.org.mt/en/Pages/Home.aspx).

<sup>267</sup> [justiceservices.gov.mt/CourtServices/Judgements/default.aspx](http://justiceservices.gov.mt/CourtServices/Judgements/default.aspx).

### 7.21.5 Open Data

In Malta everybody is free to download and re-use court decisions. There are no technical facilities; documents are available in PDF format only.

### 7.21.6 ECLI

ECLI has been introduced in the internal database of the Maltese judiciary, but it is not being displayed on the public website.<sup>268</sup>

### 7.21.7 Citation Guidelines

In Malta no citation guidelines exist. Court decisions are cited by using the name of the court, date of judgment, the case number and the style of cause.<sup>269</sup>

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<sup>268</sup> [e-justice.europa.eu/newsManagement.do?plang=en&action=show&idNews=50](https://e-justice.europa.eu/newsManagement.do?plang=en&action=show&idNews=50).

<sup>269</sup> Compare section 7.31.7

## 7.22 The Netherlands

### 7.22.1 Introduction

The court system in the Netherlands is composed of eleven district courts (*rechtbanken*) that act as courts of first instance in all fields of law. For criminal, civil and fiscal proceedings there are four courts of appeal (*gerechtshoven*) with the Supreme Court (*Hoge Raad der Nederlanden*) as highest instance court.

For administrative proceedings (not being fiscal proceedings) three different courts act as appellate (and highest) court: the Central Appeals Tribunal (*Centrale Raad van Beroep*) for social security cases, the Trade and Industry Appeals Tribunal (*College van Beroep voor het bedrijfsleven*) for economic administrative law and the (Administrative Jurisdiction Division of) the Council of State (*Afdeling Bestuursrechtspraak van de Raad van State*) for all administrative cases not decided by other courts.

The Council for the Judiciary (*Raad voor de rechtspraak*) is part of the judiciary system, but does not administer justice itself. Its tasks are operational in nature and include the allocation of budgets, supervision of financial management, HR policy, ICT, housing and quality management. The Supreme Court and the Council of State do not operate under the Council for the Judiciary. There is no constitutional court in the Netherlands.

### 7.22.2 The Legal Framework on Publication

There is no legal framework on the publication of judicial decisions in the Netherlands, but all courts mentioned in § 7.22.1 and the Council for the Judiciary drew up Selection criteria for the publication of court decisions in the national case law database.<sup>270</sup> Translated, they can be summarized as follows:

#### Article 1

(Contains terminology)

#### Article 2

(Establishes the courts to publish decisions from)

#### Article 3

Negative criterion: from the highest jurisdictions and specialized chambers (e.g. on intellectual property) in principle all decisions have to be published.

#### Article 4

Positive objective criteria for other courts

Section 1: objective criteria regarding specific procedures.  
Decisions in these procedures always have to be published:

<sup>270</sup> *Besluit selectiecriteria uitsprakendatabank Rechtspraak.nl* <[rechtspraak.nl/Uitspraken-en-nieuws/Uitspraken/Paginas/Selectiecriteria.aspx](https://rechtspraak.nl/Uitspraken-en-nieuws/Uitspraken/Paginas/Selectiecriteria.aspx)>.

- Art. 267 TFEU: preliminary reference to CJEU (reference to the Court as well as follow-up decision);
- Actio popularis in consumer law;
- Application art. 101 / 102 TFEU (competition law), based on art. 15 par. 2 of Council Regulation (EC) No 1/2003 of 16 December 2002;
- Decisions regarding Lugano Convention 2007, based on art. 3 of the Second Protocol to New Lugano Treaty;<sup>271</sup>
- Conflicts on art. 8 of the Hague Convention on the Civil Aspects of International Child Abduction;

Section 2: objective criteria regarding contents of case or decision. To be published:

- Any decision in which a referral to the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the United Nations Convention on the Rights of the Child or any International Labour Organisation convention has been rewarded, or dismissed other than by the use of standard formulae;
- Criminal cases in which the indictment relates to crimes against life, whatever the verdict;
- All verdicts in which the accused has been condemned to at least four years imprisonment and/or preventive detention, whatever the crime;
- Any decision on motions to recuse;
- A decision in appeal if the decision in the previous instance has been published in the database.

#### Article 5

Positive subjective criteria for other courts. Decisions should be published:

- If the case attracted media attention before, during or after the hearing;
- The decision is published or discussed in legal or other professional magazine;
- The decision is of particular interest for specific professions or special interest groups;
- The decision affects interests of natural or legal persons not being a party to the case;
- The decision is of jurisprudential relevance, e.g. because preceding case law is being changed, refined, restricted or widened, or because it is the first time a judicial decision is rendered on a specific paragraph of law or factual circumstances.

#### Article 6

Other decisions.

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<sup>271</sup> These are the decisions that also have to be published in the JURE database.

All decisions not falling under positive criteria or under negative criteria (evidently non-admissible, standard formulae) should be published as much as possible.

With regard to the term of publication the Press Guidelines<sup>272</sup> prescribe that decisions in cases in which the press has shown an interest must be published immediately after the decision is pronounced in public.

### 7.22.3 Public Access to Court Decisions

Decisions are published in the on-line database of the judiciary website 'Rechtspraak.nl'.<sup>273</sup> Decisions of the Council of State are also published in its own database.<sup>274</sup>

The database on Rechtspraak.nl went live in 1999 and contains nearly 400.000 full text decisions. It also contains metadata records (including ECLI and commercial identifiers) of an additional two million decisions published in commercial magazines or internal databases. In 2015 32.500 decisions were published, distributed as follows: 39% from the four highest jurisdictions, 22% from the courts of appeal, 37% from district courts, 3% from the Caribbean courts.

### 7.22.4 Data Protection

In 1997 the Data Protection Authority (by then: *Registratiekamer*) issued an opinion on the anonymisation of court decisions in internal databases of the judiciary.<sup>275</sup> With just minor changes these rules have survived till today as the basis for the current Anonymisation guidelines (*Anonimiseringsrichtlijnen*), which are decided upon by mandate of the Council for the Judiciary and are published on the judiciary website.<sup>276</sup>

As a basic rule names and other identifying data of natural persons are anonymised, unless they are acting in a professional capacity. In general, public bodies and (other) legal persons are not anonymised. Some rules are quite detailed, to be anonymised are e.g. names of legal persons only if they contain the name of the owner, website addresses and filenames in child pornography cases; not to be anonymised are cadastral codes in cases on spatial planning as well as region of origin and travel routes in aliens' cases.

Anonymisation has to be done by replacing the original text by a label indicating the type of data removed. To indicate that the original wording of the judge has been changed, this label has to be placed between square brackets, e.g.: [accused], [applicant] or [car registration number].

<sup>272</sup> English version available on: [www.rechtspraak.nl/SiteCollectionDocuments/Press-Guidelines.pdf](http://www.rechtspraak.nl/SiteCollectionDocuments/Press-Guidelines.pdf).

<sup>273</sup> [rechtspraak.nl](http://rechtspraak.nl).

<sup>274</sup> [raadvanstate.nl/uitspraken.html](http://raadvanstate.nl/uitspraken.html).

<sup>275</sup> *Advies inzake jurisprudentiedatabanken*, 95.V.113.03.

[autoriteitpersoonsgegevens.nl/sites/default/files/downloads/uit/z1997-0933.pdf](http://autoriteitpersoonsgegevens.nl/sites/default/files/downloads/uit/z1997-0933.pdf).

<sup>276</sup> [www.rechtspraak.nl/Uitspraken-en-nieuws/Uitspraken/Paginas/Anonimiseringsrichtlijnen.aspx](http://www.rechtspraak.nl/Uitspraken-en-nieuws/Uitspraken/Paginas/Anonimiseringsrichtlijnen.aspx).

### 7.22.5 Open Data

Already in 2004 the judiciary offered an FTP service where all decisions could be downloaded for free in XML format. In 2013 it was replaced by a RESTful web service, offering RDF/XML data. There are no legal restrictions on re-use.

### 7.22.6 ECLI

ECLI has been introduced in the Netherlands in 2013. It is assigned to all decisions published by the judiciary, by commercial publishers or in the internal database of the judiciary. All ECLIs can be looked-up in the search engine of the judiciary website,<sup>277</sup> whether or not the decisions themselves are published on that website. All decisions textually published on this website are indexed by the ECLI Search Engine.

In the Netherlands ECLI is listed on the 'comply-or-explain list' of technical standards adopted by the governmental IT standardization platform (*Forum Standaardisatie*).<sup>278</sup>

### 7.22.7 Citation Guidelines

The most used legal citation guide in the Netherlands is the 'Guide for Legal Authors' (*Leidraad voor juridische auteurs*),<sup>279</sup> published by Wolters Kluwer. Although it has no formal status, it is prescribed for most academic writings and often used in official documents. It prescribes to always use ECLI for case law citations. Other information (like commercial references or case numbers) can be added optionally.

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<sup>277</sup> [uitspraken.rechtspraak.nl](https://uitspraken.rechtspraak.nl).

<sup>278</sup> [www.forumstandaardisatie.nl/standaard/ecli](https://www.forumstandaardisatie.nl/standaard/ecli).

<sup>279</sup> Currently the seventh edition, the first edition was published in 1997. It is available online: [www.wolterskluwer.nl/documents/204355/809745/Leidraad+voor+juridische+auteurs+2013/197c8230-afc9-4452-b74b-ddbc7db854b4?version=1.0](https://www.wolterskluwer.nl/documents/204355/809745/Leidraad+voor+juridische+auteurs+2013/197c8230-afc9-4452-b74b-ddbc7db854b4?version=1.0).

## 7.23 Austria

### 7.23.1 Introduction

Civil and commercial justice in Austria is administered at the federal level. For civil and criminal cases there are four levels of judicial authority: 116 district courts (*Bezirksgerichte*); 20 regional courts (*Landesgerichte*); four higher regional court (*Oberlandesgerichte*); Supreme Court (*Oberster Gerichtshof*).

First instance administrative justice is organised at the state and federal level. The nine administrative courts at state level (*Verwaltungsgerichte*) level with the Federal Administrative Court (*Bundesverwaltungsgericht*) and the Federal Financial Court (*Bundesfinanzgericht*). They all have the High Administrative Court (*Verwaltungsgerichtshof*) as the court of final instance. Austria also has a Constitutional Court (*Verfassungsgerichtshof*), with the review of laws for their constitutionality as its main task.

### 7.23.2 The Legal Framework on Publication

Articles 15 and 15a of the Supreme Court Act<sup>280</sup> stipulate that the full text version as well as abstracts (*Rechtssätzen*) of decisions of the Supreme Court are published, except in cases where an appeal is rejected without substantial reasoning. According to article 48a of the Judicial Organisation Act<sup>281</sup> decisions of other courts are to be published if their significance exceeds the individual case. It is not elaborated when this is considered to be the case, but it is stated that staff and technical conditions should be taken into account.<sup>282</sup>

### 7.23.3 Public Access to Court Decisions

All published decisions are to be found on the Legal Information System of the Republic of Austria (*Rechtsinformationssystem des Bundes*, RIS),<sup>283</sup> coordinated and operated by the Austrian Federal Chancellery (*Bundeskanzleramt*). The *Judikatur Justiz* database<sup>284</sup> contains decisions of the civil and criminal courts as well as from the Supreme Patents and Trademarks Boards (*Obersten Patent- und Markensenats*). Separate databases exist for the Constitutional Court,<sup>285</sup> the state administrative courts,<sup>286</sup> the High Administrative Court,<sup>287</sup> the Federal

<sup>280</sup> OGH-Gesetz [www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40020374/NOR40020374.html](http://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40020374/NOR40020374.html). and [www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40020375/NOR40020375.html](http://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40020375/NOR40020375.html).

<sup>281</sup> *Gerichtsorganisationsgesetz* [www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40152363/NOR40152363.html](http://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40152363/NOR40152363.html).

<sup>282</sup> "Nach Maßgabe der personellen und technischen Voraussetzungen."

<sup>283</sup> [ris.bka.gv.at/Judikatur/](http://ris.bka.gv.at/Judikatur/).

<sup>284</sup> [ris.bka.gv.at/Jus/](http://ris.bka.gv.at/Jus/).

<sup>285</sup> [ris.bka.gv.at/Vfgh/](http://ris.bka.gv.at/Vfgh/).

<sup>286</sup> [ris.bka.gv.at/Lvwg/](http://ris.bka.gv.at/Lvwg/).

<sup>287</sup> [ris.bka.gv.at/Vwgh/](http://ris.bka.gv.at/Vwgh/).

Administrative Court.<sup>288</sup> The database of the Federal Financial Court is hosted on its own website.<sup>289</sup>

Decisions are published in full, with the legal conclusions in a separate file. Decisions have been published since 2000; the oldest decision being from 1905. In most cases decisions are published within a few weeks. The Supreme Court publishes  $\pm$  3.500 decisions yearly, the higher regional courts (together)  $\pm$  50 and the regional courts  $\pm$  15.

#### 7.23.4 Data Protection

All published decisions have to be anonymised. Art. 15 of the Supreme Court Act<sup>290</sup> contains two specific instructions. Section 2 stipulates that in cases without a public hearing in all stages of the proceedings the Court can decide not to publish the decision if the anonymity of the person concerned cannot be guaranteed.<sup>291</sup>

Section 4 prescribes that personal data have to be anonymised in such a way that the transparency of the decision is not lost.<sup>292</sup>

#### 7.23.5 Open Data

All court decisions published on RIS are available for re-use via FTP. There are no restrictions, except for those on data protection that derive from the Federal Act on the Re-use of Public Sector Information.<sup>293</sup>

#### 7.23.6 ECLI

In Austria ECLI has been gradually introduced<sup>294</sup> for all decisions that are published on the RIS-system,<sup>295</sup> which totals up to more than 120.000 decisions. Austria is not connected yet to the ECLI Search Engine.

<sup>288</sup> [ris.bka.gv.at/Bvwg/](http://ris.bka.gv.at/Bvwg/).

<sup>289</sup> [findok.bmf.gv.at/findok/?BFG\\_Suche=1](http://findok.bmf.gv.at/findok/?BFG_Suche=1).

<sup>290</sup> See footnote 280.

<sup>291</sup> *Der erkennende Senat kann bei der Beschlussfassung in Rechtssachen, in denen das Verfahren in allen Instanzen ohne Durchführung einer öffentlichen Verhandlung zu führen war, anordnen, dass die Entscheidung (Volltext) in der Datenbank nicht zu veröffentlichen ist, wenn ansonst die Anonymität der Betroffenen nicht sichergestellt ist.*

<sup>292</sup> *In der Entscheidungsdokumentation Justiz sind Namen, Anschriften und erforderlichenfalls auch sonstige Orts- und Gebietsbezeichnungen, die Rückschlüsse auf die betreffende Rechtssache zulassen, durch Buchstaben, Ziffern oder Abkürzungen so zu anonymisieren, dass die Nachvollziehbarkeit der Entscheidung nicht verloren geht.*

<sup>293</sup> Informationsweiterverwendungsgesetz

[www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004375](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004375).

<sup>294</sup> See on the Austrian introduction of ECLI also: C. Wass and T.J. Lampoltshammer, 'Neue Standards für Gesetze und Entscheidungen: ECLI und ELI', in: *jusIT* 4(2014)

<sup>295</sup> See footnote 283.



### 7.23.7 Citation Guidelines

Since 1970 Austria has non-statutory 'Abbreviation and citing guidelines',<sup>296</sup> which are generally observed in the public domain as well as in non-public area. In Austria court decisions are cited by using case number, court name and judgment date. The use of ECLI is not prescribed.

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<sup>296</sup> Österreichischen Juristentages, *Abkürzungs- und Zitierregeln (AZR)* (Vienna: Manzsche Verlags- und Universitätsbuchhandlung, 2012).

## 7.24 Poland

### 7.24.1 Introduction

Civil and criminal justice in Poland is being administered at four levels: the district courts (*sądy rejonowe*) are the general courts of first instance, 45 regional courts (*sądy okręgowe*) act – depending on the type of case – as appellate court or as court of first instance. There are eleven courts of appeal (*sądy apelacyjne*). The Supreme Court (*Sąd Najwyższy*) is the court of final resort. Administrative jurisdiction rests with the High Administrative Court (*Naczelny Sąd Administracyjny*) and regional administrative courts (*wojewódzkie sądy administracyjne*). Poland also has a constitutional court (*Trybunał Konstytucyjny*).

### 7.24.2 The Legal Framework on Publication

In the legislation of Poland there are several provisions on the publication of court decisions. According to article 190 of the Constitution all decisions of the Constitutional Court have to be published. The choice to effectuate this provision by publishing its decisions on the internet has been made by the Court itself. Publication of all decisions of the High Administrative Court is regulated in article 42 of the Act on the Administrative Courts.<sup>297</sup> With regard to the Supreme Court article 7 of the Supreme Court Act<sup>298</sup> stipulates that a selection of decisions has to be published.

### 7.24.3 Public Access to Court Decisions

According to the abovementioned legal framework three major databases exist. The database of the Supreme Court contains 40.000 decisions.<sup>299</sup> The Constitutional Court<sup>300</sup> offers also translations of a substantial number of decisions in English.<sup>301</sup> The database of the High Administrative Court<sup>302</sup> contains all decisions of the Court as well as of the regional administrative courts since 2004. A selection of older decisions is available (in total nearly 1.4 million decisions).

### 7.24.4 Data Protection

All judgments which are published in Poland are anonymised.

<sup>297</sup> *Prawo o ustroju sądów administracyjnych* [isap.sejm.gov.pl/DetailsServlet?id=WDU20021531269](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20021531269).

<sup>298</sup> *Ustawa z dnia 23 listopada 2002 r. o Sądzie Najwyższym* [isap.sejm.gov.pl/DetailsServlet?id=WDU20022402052](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20022402052).

<sup>299</sup> [www.sn.pl/SitePages/Strona\\_startowa.aspx](http://www.sn.pl/SitePages/Strona_startowa.aspx).

<sup>300</sup> [trybunal.gov.pl/sprawy-w-trybunale/omowienia-wybranych-orzeczen-od-2000-r/](http://trybunal.gov.pl/sprawy-w-trybunale/omowienia-wybranych-orzeczen-od-2000-r/).

<sup>301</sup> [trybunal.gov.pl/en/case-list/judicial-decisions/](http://trybunal.gov.pl/en/case-list/judicial-decisions/).

<sup>302</sup> [orzeczenia.nsa.gov.pl/](http://orzeczenia.nsa.gov.pl/).

#### 7.24.5 Open Data

The Supreme Court published an order on re-use in 2012.<sup>303</sup> Based on the Law 25 February 2016 on the Re-use of Public Sector Information<sup>304</sup> specific decisions have been made recently regarding the availability as Open Data of the decisions of the Constitutional Court<sup>305</sup> and the administrative courts<sup>306</sup> as well.

In general, published decisions can be freely re-used by all, although the source has to be acknowledged and they cannot as such be put on sale. Documents are available as RTF, HTML and PDF.

#### 7.24.6 ECLI

In Poland ECLI has not yet been introduced.

#### 7.24.7 Citation Guidelines

There is no knowledge of the existence of official citation guidelines in Poland. In general court decisions are cited by court name, case number and date.

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<sup>303</sup> Decree No. 4/2012 of the First President of the Supreme Court of 7 February 2012 on the re-use of public information provided by the Supreme Court, the State Court or entities acting on their behalf (*Zarządzenie nr 4/2012 Pierwszego Prezesa Sądu Najwyższego z dnia 7 lutego 2012 r. w sprawie ponownego wykorzystywania informacji publicznej udostępnionej przez Sąd Najwyższy, Trybunał Stanu, lub przez podmioty działające na ich zlecenie*) [www.sn.pl/Informacjepraktyczne/SiteAssets/Lists/Ponowne\\_wykorzystywanie/EditForm/Tre%C5%9B%C4%87%20zarz%C4%85dzenia%20PPSN%20%20nr%204%202012.pdf](http://www.sn.pl/Informacjepraktyczne/SiteAssets/Lists/Ponowne_wykorzystywanie/EditForm/Tre%C5%9B%C4%87%20zarz%C4%85dzenia%20PPSN%20%20nr%204%202012.pdf)

<sup>304</sup> Ustawa z dnia 25 lutego 2016 r. o ponownym wykorzystywaniu informacji sektora publicznego [isap.sejm.gov.pl/DetailsServlet?id=WDU20160000352](http://isap.sejm.gov.pl/DetailsServlet?id=WDU20160000352).

<sup>305</sup> The decision of the Constitutional Court of 16 June 2016: [trybunal.gov.pl/informacja-publiczna-i-ponowne-wykorzystywanie/ponowne-wykorzystywanie/](http://trybunal.gov.pl/informacja-publiczna-i-ponowne-wykorzystywanie/ponowne-wykorzystywanie/).

<sup>306</sup> Conditions for the Re-use of Public Information (*Warunki ponownego wykorzystywania informacji publicznej*): [www.nsa.gov.pl/warunki-ponownego-wykorzystywania-informacji-publicznej.php](http://www.nsa.gov.pl/warunki-ponownego-wykorzystywania-informacji-publicznej.php).

## 7.25 Portugal

### 7.25.1 Introduction

The Portuguese judiciary system includes the Constitutional Court (*Tribunal Constitucional*), the Supreme Court (*Supremo Tribunal de Justiça*) and the judicial courts of first and second instance (*tribunais judiciais de primeira e de segunda instância*), the Supreme Administrative Court (*Supremo Tribunal Administrativo*) and the other administrative and fiscal courts (*tribunais administrativos e fiscais*) and the Court of Auditors (*Tribunal de Contas*). The judicial courts are the common courts for civil matters and they exercise jurisdiction in all areas that are not attributed to other courts or tribunals.

### 7.25.2 The Legal Framework on Publication

In Portugal there is no legal or policy framework regarding the publication of court decisions.

### 7.25.3 Public Access to Court Decisions

The *Bases Jurídico-Documentais*<sup>307</sup> is a portal that provides (at least since 2000) access to a set of case law databases of the bibliographic reference libraries of the Ministry of Justice. They include case-law of the following courts and entities:

- Supreme Court;
- Courts of appeal (Coimbra, Évora, Lisbon, Porto and Guimarães)
- Constitutional Court
- Supreme Administrative Court
- Central Administrative Courts (North and South)
- Court of Conflicts of Jurisdiction
- Opinions of the Public Prosecutor's Office
- Justices of the peace

Most of the decisions in these databases are available in full-text.

Some of the higher courts also have their own database, such as the Constitutional Court.<sup>308</sup>

### 7.25.4 Data Protection

In Portugal all decisions are anonymised if published. There is no specific legal framework. Anonymisation is done in various ways: by deleting personal data or by replacing them with initials or labels.

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<sup>307</sup> [www.dgsi.pt](http://www.dgsi.pt).

<sup>308</sup> [www.tribunalconstitucional.pt/tc/acordaos/](http://www.tribunalconstitucional.pt/tc/acordaos/).

### 7.25.5 Open Data

All decisions which are published on the aforementioned case law portal can be re-used by anybody. There are no additional facilities for bulk download, documents are (only) available in (X)HTML.

### 7.25.6 ECLI

ECLI has not been introduced yet in Portugal, but a project on the implementation is ongoing.

### 7.25.7 Citation Guidelines

In Portugal no official citation guidelines exist. In general court decisions are cited by court name, case number and date. Sometimes the name of the reporter (the appeal court judge drafting the decision) is added.

## 7.26 Romania

### 7.26.1 Introduction

The 1992 law on reorganisation of the judiciary established a four-tier judicial system, including the re-establishment of appellate courts, which existed prior to Communist rule in 1952. The four tiers consist of:

- 176 district courts (*Judecătoria*);
- 42 intermediate level courts (*Tribunale*) and three special tribunals (*Tribunale Specializate*) and a Tribunal for Children and Family Matters (*Tribunalul pentru Minori și Familie*);
- Fifteen courts of appeal (*Curți de Apel*);
- The Supreme Court (*Înalta Curte de Casație și Justiție*).

The Constitutional Court (*Curtea Constituțională*) bears responsibility for the judicial review of constitutional issues.

### 7.26.2 The Legal Framework on Publication

There is no legal framework on the publication of court decisions, but there is an extensive policy framework.

The publication of court decisions represents an obligation assumed by Romania under the Co-operation and Verification Mechanism, in line with the principles concerning the unification of jurisprudence and ensuring free and unrestricted access to the decisions issued by national courts. The fulfilment of this obligation falls under the responsibility of the Superior Council of Magistracy (*Consiliul Superior al Magistraturii*, SCM) which is an authority having administrative, normative and jurisdictional competences as regards the efficient organisation and functioning of courts and prosecutor's offices. To this end, SCM became co-founder of the 'Romanian Legal Information Institute' Foundation (ROLII) which, among other things, aims to develop the appropriate infrastructure for publishing court decisions on the internet so as to ensure free and unrestricted access to case law for all interested persons. Also, SCM adopted several decisions on this matter, most relevant being Decision no. 884 of 20 August 2013 regarding the terms of publication of courts decisions by ROLII<sup>309</sup> and Decision no. 1431 of 11 December 2014 for endorsing the contract concluded between ROLII and the consultant commissioned for developing the case law extracting and anonymising tool and the website for publishing the anonymised case law.<sup>310</sup>

SCM's Decision no. 884 states the basic rules for publishing courts' decisions on the internet as follows: only motivated judgments rendered by the courts (i.e. the Supreme Court, courts of first instance, tribunals and courts of appeal) may be published; each

<sup>309</sup> Hotărârea nr. 884 [csm1909.ro/csm/linkuri/16\\_09\\_2013\\_60647\\_ro.PDF](http://csm1909.ro/csm/linkuri/16_09_2013_60647_ro.PDF).

<sup>310</sup> Hotărârea nr. 1431 [csm1909.ro/csm/linkuri/07\\_01\\_2015\\_71584\\_ro.PDF](http://csm1909.ro/csm/linkuri/07_01_2015_71584_ro.PDF).

rendered judgment must first be saved in ECRIS (the Romanian electronic case management system for the courts); prior to the publication of any judgement, personal data comprised therein shall be anonymised; the name of the issuing court and court division/section is published, as well as the name of the ruling judge(s), the case and decision number.

Also, SCM's Decision no. 884 authorizes courts to make every judgment rendered available to ROLII with a view to be published on the internet.

SCM's Decision no. 1431 endorses the contract concluded between ROLII and the private partner commissioned for developing the tools for extracting judgments from ECRIS and anonymising them, as well as for developing and maintaining the ROLII website.

### 7.26.3 Public Access to Court Decisions

All decisions of the Romanian courts (i.e. the courts of the four tiers mentioned in § 7.26.1) rendered since 2010 have been published in the aforementioned ROLII,<sup>311</sup> officially launched at the end of 2015. It is expected that in the near future ± 1 to 1,5 million decisions will be published yearly.

Relevant courts' decisions (i.e. those judgments that bring something new or significant to the interpretation of the Romanian law) for all Romanian courts (except for those of the Supreme Court) are available as well on a separate website.<sup>312</sup> The Supreme Court publishes its most important judgments on its own website.<sup>313</sup> Also the Constitutional Court maintains its own database.<sup>314</sup>

### 7.26.4 Data Protection

All decisions published are anonymised, but decisions that are marked as confidential are not published at all (e.g. decisions acknowledging mediation settlements, verdicts on offences as treason, espionage, rape and child pornography as well as decisions on adoption or divorce cases). On the ROLII website also the names of judges, clerks and others professionally involved are anonymised.

### 7.26.5 Open Data

Apart from the general national legislation implementing the PSI Directive, the aforementioned SCM's Decision no. 1431 states that ROLII should publish the judgements and metadata in an open format so that anyone is able to access and re-use that information

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<sup>311</sup> [rolii.ro](http://rolii.ro).

<sup>312</sup> [portal.just.ro](http://portal.just.ro).

<sup>313</sup> [www.scj.ro/1258/Jurisprudenta](http://www.scj.ro/1258/Jurisprudenta).

<sup>314</sup> [www.ccr.ro](http://www.ccr.ro).

freely and unrestrictedly, either by visiting the website or by means of a web service. Documents are downloadable in (X)HTML format.

#### 7.26.6 ECLI

In Romania Work is in progress to assign ECLI to all decisions in the ECRIS database<sup>315</sup> and to display them also in the ROLII website.<sup>316</sup>

#### 7.26.7 Citation Guidelines

In Romania no official citation guidelines exist. In general court decisions are cited by court name (often with the department included), case or decision number and date of decision.

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<sup>315</sup> See Section 7.26.2.

<sup>316</sup> See footnote 311.



## 7.27 Slovenia

### 7.27.1 Introduction

In Slovenia two types of courts of first instance exist: 44 local courts (*okrajna sodišča*) and eleven district courts (*okrožna sodišča*). There are four courts of appeal (*višja sodišča*) and the Supreme Court (*Vrhovno sodišče*) is the highest instance court. Special jurisdiction is attributed to labour courts and the social court of first instance (*Delovna sodišča in socialno sodišče prve stopnje*). There are four labour courts, one of them (in Ljubljana) also acting as the social court for the whole of Slovenia. The appellate court for both is the Higher Labour and Social Court (*Višje delovno in socialno sodišče*). For administrative case the High Administrative Court (*Upravno sodišče Republike Slovenije*) is the court of highest instance. Finally, Slovenia also has a Constitutional Court (*Ustavno sodišče*).

### 7.27.2 The Legal Framework on Publication

Article 108 of the Courts Act<sup>317</sup> stipulates that the Supreme Court shall keep records of the case law of the courts. Article 7 of the Court Rules<sup>318</sup> prescribes the publication of important decisions on the website of the Slovenian judiciary. Decisions of the Constitutional Court have to be published by virtue of article 23 of the Rules of Procedure of the Constitutional Court.<sup>319</sup>

### 7.27.3 Public Access to Court Decisions

A selection of decisions of the Supreme Court, the courts of appeal, the Higher Labour and Social Court and the High Administrative Court are published on the website of the Slovenian judiciary,<sup>320</sup> but are also available in *Sodna Praksa*, a database that contains – next to nearly 100.000 decisions – other legal information.<sup>321</sup> Generally all the decisions that end a proceeding at a certain instance (i.e. not a selection of judgments) are accessible online, except for procedural decisions with little or no significance; in cases which are identical in substance (e.g. bulk cases) only the leading decision is published (together with the list of case files with the same content).

Decisions are available from 1991 onwards. A collection of Supreme Court key decisions is also translated into English.<sup>322</sup>

<sup>317</sup> *Zakon o sodiščih*, [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO332](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO332).

<sup>318</sup> *Sodni red* [www.pisrs.si/Pis.web/pregledPredpisa?id=DRUG419#](http://www.pisrs.si/Pis.web/pregledPredpisa?id=DRUG419#).

<sup>319</sup> *Pravilnik Ustavnega sodišča*, in English:

[www.us-rs.si/media/the.rules.of.procedure.of.the.constitutional.court.of.the.republic.of.slovenia.pdf](http://www.us-rs.si/media/the.rules.of.procedure.of.the.constitutional.court.of.the.republic.of.slovenia.pdf).

<sup>320</sup> [www.sodisce.si/](http://www.sodisce.si/).

<sup>321</sup> [www.sodnapraksa.si/](http://www.sodnapraksa.si/).

<sup>322</sup> [www.sodisce.si/znanje/supreme\\_court\\_key\\_decisions/](http://www.sodisce.si/znanje/supreme_court_key_decisions/).

All decisions of the Constitutional Court, except for rejections on procedural grounds, are published in the database of the Court.<sup>323</sup> 3600 of these 14.000 decisions have also been translated into English.<sup>324</sup>

#### 7.27.4 Data Protection

All decisions in civil, criminal and administrative cases are anonymised before being published. What has to be anonymised is described in the Anonymisation Rules of the Supreme Court.<sup>325</sup> In general everything that might identify a person is anonymised. The only exception are the names of the companies in the disputes relating to these names. In these disputes, the name of a company is the very essence of the dispute and the decision would hardly be understandable without the name itself. Anonymisation is realized by the use of (actual or randomized) initials.

With regard to decisions of the Constitutional Court article 38-a of the Constitutional Court Act reads:

- 1) Constitutional Court decisions and orders state the full names of participants in proceedings, their legal representatives, and persons authorized by the participants, as well as the names of the participating legal entities and authorities and where they reside or are based.
- 2) In order to protect the privacy of participants in proceedings, the Constitutional Court may itself or upon the motion of an applicant or a petitioner decide that the personal data of a participant in proceedings or the personal data of other individuals not be stated in a decision or order. Such motion must be submitted at the same time as the request or petition.
- 3) The motion referred to in the preceding paragraph is decided by the Constitutional Court. If the Constitutional Court dismisses the motion, such order must include a statement of reasons.
- 4) (...)

#### 7.27.5 Open Data

All published court decisions can be re-used on a profit or non-profit basis. The original source has to be indicated in re-used documents.<sup>326</sup> Documents are available as (X)HTML as well as in PDF, in the general database as well as in the database of the Constitutional Court.

<sup>323</sup> [odlocitve.us-rs.si/si?show\\_advanced=1](http://odlocitve.us-rs.si/si?show_advanced=1).

<sup>324</sup> [odlocitve.us-rs.si/en?show\\_advanced=1](http://odlocitve.us-rs.si/en?show_advanced=1).

<sup>325</sup> Unpublished.

<sup>326</sup> According to the notification on: [www.sodnapraksa.si](http://www.sodnapraksa.si).

### 7.27.6 ECLI

In Slovenia ECLI is assigned to decisions of the Supreme Court, Constitutional Court and courts of appeal (in total more than 140.000 decisions). The decisions of the Supreme Court and the courts of appeals are also indexed by the ECLI Search Engine, those of the Constitutional Court not yet.

### 7.27.7 Citation Guidelines

In Slovenia no official citation guidelines exist. In general court decisions are cited by court name, case number and date of decision.

## 7.28 Slovakia

### 7.28.1 Introduction

Slovakia has a three-tier judiciary system. The courts of first instance are the district courts (*okresné súdy*) while the regional courts (*krajské súdy*) act as courts of appeal. The Supreme Court (*Najvyšší súd Slovenskej republiky*) is the court of highest instance. The Special Criminal Court (*Špecializovaný trestný súd*) hears criminal cases and other cases as laid down by the rules governing court procedure. Slovakia also has a Constitutional Court (*Ústavný súd Slovenskej republiky*).

### 7.28.2 The Legal Framework on Publication

§ 82a of Act No 757/2004 on courts and amending certain other acts<sup>327</sup> specifies that all courts are obliged to publish all final decisions, decisions ending the main proceedings and decisions on interim measures when they become final (meaning the term for appeal has expired without an appeal being filed). Publication has to take place within fifteen days and also relates to all decisions taken at earlier stages of the proceedings, whether by the same or other courts. According to section 2 of § 82a of the aforementioned act decisions in proceedings in which the public was excluded from the whole or part of the hearing do not have to be published. Section 4 of § 82a, in conjunction with § 82 of the aforementioned act prescribe that the decisions have to be published on the website of the Ministry of Justice.

Decisions of the Constitutional Court have to be published according to section 31 of the Procedure and Standing Order of the Constitutional Court of the Slovak Republic.<sup>328</sup>

### 7.28.3 Public Access to Court Decisions

All decisions since 2012 are being published in full text in the database of the Ministry of Justice.<sup>329</sup> Decisions are also published in the Slov-Lex portal,<sup>330</sup> which contains also other legal resources and tools. The Constitutional Court has its own database.<sup>331</sup>

### 7.28.4 Data Protection

Section 3 of § 82a of the aforementioned Act No 757/2004 contains a general instruction to anonymise all decisions before they are published. This instruction has been elaborated in

<sup>327</sup> *Zákona č. 757/2004 Z.z. o súdoch a o zmene a doplnení niektorých zákonov*  
[slov-lex.sk/pravne-predpisy/SK/ZZ/2004/757/20160101](http://slov-lex.sk/pravne-predpisy/SK/ZZ/2004/757/20160101).

<sup>328</sup> *Spravovacieho a rokovacieho poriadku Ústavného súdu Slovenskej republiky* (č. 114/1993 Z. z.)

<sup>329</sup> [obcan.justice.sk/infosud/-/infosud/zoznam/rozhodnutie](http://obcan.justice.sk/infosud/-/infosud/zoznam/rozhodnutie).

<sup>330</sup> [www.slov-lex.sk/vseobecne-sudy-Sr](http://www.slov-lex.sk/vseobecne-sudy-Sr).

<sup>331</sup> [www.ustavnysud.sk/vyhľadavanie-rozhodnuti#!DmsSearchView](http://www.ustavnysud.sk/vyhľadavanie-rozhodnuti#!DmsSearchView).

Decree 482/2011 Z. z. of the Ministry of Justice,<sup>332</sup> prescribing which (personal) data have to be obscured:

- a. Birth number (specific number issued to every person upon birth);
- b. Date of birth;
- c. Number of ID, passport or any other document identifying a person;
- d. Residence;
- e. Communication details: telephone, fax, e-mail address, IP address, URL address;
- f. Name/code of bank, number and name of bank account, IBAN, client number;
- g. Cadastral code;
- h. Property identifier;
- i. Classified information and trade secrets;
- j. Name and surname of natural persons (apart from those mentioned hereunder);
- k. Name and surname of legal guardians.

The Ministerial Decree also enumerates which data are not to be obscured:

- a. The court that issued the decision, names of other courts, names and details of judge or court clerks;
- b. Name of arbitration court;
- c. Names of public authorities, their statutory representatives, including notaries, executors, mediators, insolvency trustees and arbitrators;
- d. Information on legal persons, names and surnames of their statutory bodies and their members;
- e. Names of entrepreneurs if the case is about the object of the business conducted;
- f. Names of legal representatives;
- g. Tax and other identification numbers of companies;
- h. Amounts of money, including the way of their determination;
- i. Numbers of invoices, contracts, insurances or similar documents;
- j. Indications of specific times, including date when the decision was issued;
- k. Case and file numbers, including those of other courts or public bodies (unless they cannot data that have to be anonymised);
- l. Names of persons indicated in a citation of an international court, if the decision of a court refers to such a decision.

Anonymisation has to be realized by replacing names and other words by initials and numbers by 'X'.<sup>333</sup>

<sup>332</sup> Vyhláška z 9. decembra 2011 o zverejňovaní súdnych rozhodnutí <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2011/482/20120101>.

<sup>333</sup> In practice also names are replaced by a series of Xs.

#### 7.28.5 Open Data

Documents are published in PDF and are reusable for all. Some data are also available in RDF/XML and JSON.

#### 7.28.6 ECLI

In Slovakia ECLI has been implemented for the district courts, the regional courts and the Special Criminal Court. All decisions since July 2011 have been assigned an ECLI, with a total of nearly two million. ECLI is also printed on the decision itself. Slovakia is not yet connected to the ECLI Search Engine.

#### 7.28.7 Citation Guidelines

In Slovakia no official citation guidelines exist. In general court decisions are cited by court name, case number and date of decision.

## 7.29 Finland

### 7.29.1 Introduction

In Finland general jurisdiction for civil and criminal cases is exercised by 27 district courts (*käräjäoikeus*), six courts of appeal (*hovioikeus*) and the Supreme Court (*Korkein oikeus*). Administrative justice is served by six administrative courts (*hallinto-oikeus*) and the High Administrative Court (*Korkein hallinto-oikeus*).

Three specialized courts have specific jurisdiction: the Labour Court, the Market Court and the Insurance Court. Finland has no Constitutional Court. If needed, a High Court of Impeachment is convened to hear cases regarding unlawful conduct of members of the government and other designated people.

### 7.29.2 The Legal Framework on Publication

According to the law,<sup>334</sup> decisions of the Supreme court and the special tribunals all have to be published. Of other courts only a selection has to be published.

### 7.29.3 Public Access to Court Decisions

All published court decisions can be found in Finlex, the Finnish legal information website of the Ministry of Justice.<sup>335</sup> Summary information is also published on the website of the Finnish judiciary.<sup>336</sup> The Supreme Court decides which decisions are to be considered as precedent. These decisions are published in a separate database.<sup>337</sup> The Supreme court also publishes a list of pending cases.<sup>338</sup> The High Administrative Court also has separate collections for landmark rulings,<sup>339</sup> short rulings<sup>340</sup> and other rulings.<sup>341</sup> Finlex also contains the databases of the specialized courts,<sup>342</sup> as well as (small) selections of decisions from the administrative courts<sup>343</sup> and courts of appeal.<sup>344</sup> Decisions of district courts are not published.

<sup>334</sup> Source: [e-justice.europa.eu/content\\_member\\_state\\_case\\_law-13-fi-en.do?init=true&member=1](http://e-justice.europa.eu/content_member_state_case_law-13-fi-en.do?init=true&member=1). Details unknown.

<sup>335</sup> [finlex.fi](http://finlex.fi).

<sup>336</sup> [oikeus.fi](http://oikeus.fi).

<sup>337</sup> [www.finlex.fi/fi/oikeus/kko/kko/](http://www.finlex.fi/fi/oikeus/kko/kko/).

Other decisions can be found in [www.finlex.fi/fi/oikeus/kko/muut/](http://www.finlex.fi/fi/oikeus/kko/muut/).

<sup>338</sup> [www.finlex.fi/fi/oikeus/kko/vl/](http://www.finlex.fi/fi/oikeus/kko/vl/).

<sup>339</sup> [www.finlex.fi/fi/oikeus/kho/](http://www.finlex.fi/fi/oikeus/kho/).

<sup>340</sup> [www.finlex.fi/fi/oikeus/kho/#lyhyet](http://www.finlex.fi/fi/oikeus/kho/#lyhyet).

<sup>341</sup> [www.finlex.fi/fi/oikeus/kho/#muut](http://www.finlex.fi/fi/oikeus/kho/#muut).

<sup>342</sup> Market Court: [www.finlex.fi/fi/oikeus/mao/](http://www.finlex.fi/fi/oikeus/mao/); Labour Court: [www.finlex.fi/fi/oikeus/tt/](http://www.finlex.fi/fi/oikeus/tt/) and Insurance Court: [www.finlex.fi/fi/oikeus/vako/](http://www.finlex.fi/fi/oikeus/vako/).

<sup>343</sup> [www.finlex.fi/fi/oikeus/hao/](http://www.finlex.fi/fi/oikeus/hao/).

<sup>344</sup> [www.finlex.fi/fi/oikeus/ho/](http://www.finlex.fi/fi/oikeus/ho/).

#### 7.29.4 Data Protection

All decisions are anonymised before publication. Names and other identifying elements are replaced by random initials.

#### 7.29.5 Open Data

Most of Finlex is free of copyright.<sup>345</sup> Although not explicitly stated, the databases with court decisions can be assumed to be freely reusable. On the website documents are available in HTML format; on the open data website<sup>346</sup> decisions of the Supreme Court and the High Administrative Court are also available as RDF/XML. This portal also provides a SPARQL endpoint.

#### 7.29.6 ECLI

Finland made a start with the implementation of ECLI by introducing it on the Open Data portal.<sup>347</sup> ECLI is not yet visible on Finlex and Finland is not yet connected to the ECLI Search Engine, although some Finnish decisions are available in the ECLI Search Engine.

#### 7.29.7 Citation Guidelines

In Finland no official citation guidelines exist. Important court decisions are cited by the judgment number, which have the pattern: [court code]:[year]:[serial number], e.g. KKO:2016:57 for a judgment of the Supreme Court. For other decisions the case number is used.

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<sup>345</sup> [www.finlex.fi/fi/kayttoehdot/](http://www.finlex.fi/fi/kayttoehdot/).

<sup>346</sup> [data.finlex.fi/#/](http://data.finlex.fi/#/).

<sup>347</sup> See footnote 346.



## 7.30 Sweden

### 7.30.1 Introduction

Swedish courts for civil and criminal justice are organised in a three-tier system. The first tier is formed by the 48 district courts (*tingsrätt*), the second tier is formed by six courts of appeal (*hovrätt*). Seven maritime courts (*Sjörättsdomstolar*) are part of the district courts, five land and environment courts (*Mark- och miljödomstolar*) also reside at the district courts, with appeal at the Land and Environment Court of Appeal (*Mark- och miljööverdomstolen*), residing at one the courts of appeal. The Supreme Court (*Högsta domstolen*) is the third tier for all of these courts.

As of 1 September 2016 the Court of Patent Appeals (*Patentbesvärsrätten*) and the Market Court (*Marknadsdomstolen*) will be replaced by a Patent and Market Court (Patent- och marknadsdomstolen) (at the Stockholm District Court) and a Patent and Market Court of Appeal (*Patent- och marknadsöverdomstolen*)

For labour disputes there is a labour court (*Arbetsdomstolen*), sometimes acting as court of appeal (and final resort) from district court decisions, in other cases acting as court of first and last instance.

Also administrative jurisdiction is organised in three tiers: twelve administrative courts (*förvaltningsrätt*), four administrative courts of appeal and the High Administrative Court (*Högsta förvaltningsdomstolen*). Four migration courts (*Migrationsdomstolarna*), part of the administrative courts, review decisions in alien cases. Appeals may be lodged at the Migration Court of Appeal (*Migrationsöverdomstolen*), part of one of the administrative courts of appeal.

Sweden does not have a Constitutional Court.

### 7.30.2 The Legal Framework on Publication

The legal basis for the publication of court decisions in Sweden can be found in Regulation 1999:175 on legal information.<sup>348</sup> The relevant provisions (articles 6, 6a and 7) stipulate (summarized):

#### § 6

The Legal Information System shall contain information about significant judgments from the Supreme Court, the High Administrative Court, the courts of appeal, the administrative courts, the land and environmental courts, the Patent and Market Court, the Patent and Market Court of Appeal, the Migration Court and the Labour Court. The courts themselves decide which decisions are considered to be 'significant'.

<sup>348</sup> *Rättsinformationsförordning (1999:175)*

[www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/rattsinformationsforordning-1999175\\_sfs-1999-175](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/rattsinformationsforordning-1999175_sfs-1999-175).

The version discussed entered into force on 1 September 2016.

To be included on the publication is information on the legal issue of the case, court case or comparable number and the date of the decision. The information may be supplemented by summaries and decisions in full text.

#### § 6 a

The Legal Information System shall contain a compilation of court decisions under Act (2009:1058) on priority statement in courts.<sup>349</sup> The courts themselves decide whether decisions should be included in this compilation.

To be included is information on the type of case and the reason for priority. The information may be supplemented by summaries and decisions in full text. In addition, court, registration number and date of the decisions are to be added.

#### § 7

The Legal Information System shall contain information on significant decisions in administrative matters from central state government agencies that are importance to the public and which cannot be appealed. Authorities themselves decide whether decisions meet this criterion.

Data on the subject matter, the authority, the registration number and date of decision should be included.

### 7.30.3 Public Access to Court Decisions

Court decisions can be found in the 'Lagrummet' database,<sup>350</sup> maintained by the Swedish National Court Administration. It cannot be searched full-text, and contains just a limited number of decisions.<sup>351</sup>

The number of search criteria is quite limited as is the number of decisions, also from the highest jurisdictions. Most decisions do not contain the text of the decision.

The Supreme Court publishes a small collection of important decisions in PDF on its own website. There are no search options.<sup>352</sup> The High Administrative Court publishes the decisions in full on its own website,<sup>353</sup> also without search options.

<sup>349</sup> *Lag (2009:1058) om förtursförklaring i domstol*  
[www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-20091058-om-fortursforklaring-i-domstol\\_sfs-2009-1058](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-20091058-om-fortursforklaring-i-domstol_sfs-2009-1058).

<sup>350</sup> [www.rattsinfosok.dom.se/lagrummet/index.jsp](http://www.rattsinfosok.dom.se/lagrummet/index.jsp).

<sup>351</sup> E.g. 418 decisions for all courts over the year 2014.

<sup>352</sup> [www.hogstodomstolen.se/Avgoranden/Vagledande-domar-och-beslut-prejudikat/](http://www.hogstodomstolen.se/Avgoranden/Vagledande-domar-och-beslut-prejudikat/).

<sup>353</sup> [www.hogstaforvaltningsdomstolen.se/Avgoranden/](http://www.hogstaforvaltningsdomstolen.se/Avgoranden/).

The Market Court has a collection of all its decisions (from 2000 onwards) on its own website,<sup>354</sup> in PDF and without many search options. Also the Court of Patent Appeals has a searchable collection of its decisions (in HTML).<sup>355</sup>

The labour court has an explicit policy of not publishing online, but only in commercial publications.<sup>356</sup>

#### 7.30.4 Data Protection

Anonymisation of published decisions is regulated in § 22 of the Regulation on legal information.<sup>357</sup> It stipulates that personal data have to be anonymised except when it regards dead people, data that are necessary to understand the decision, and names of judges, court staff, court experts and those used for citing legal literature or foreign decisions. There is an explicit prohibition on the use of personal identification numbers anywhere in the legal information system.

#### 7.30.5 Open Data

Decisions are published in HTML; and they can be harvested for re-use.

#### 7.30.6 ECLI

In Sweden ECLI has not yet been introduced.

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<sup>354</sup> [www.marknadsdomstolen.se/avgoranden/domar](http://www.marknadsdomstolen.se/avgoranden/domar). This URL might be altered because of the changes in the court system mentioned in section 7.30.1.

<sup>355</sup> [www.pbr.se/malregister](http://www.pbr.se/malregister). This URL might be altered because of the changes in the court system mentioned in section 7.30.1.

<sup>356</sup> [www.arbetsdomstolen.se/pages/page.asp?lngID=7&lngLangID=1](http://www.arbetsdomstolen.se/pages/page.asp?lngID=7&lngLangID=1):

“(…) All judgements of general interest also appear in the publication *Arbetsdomstolens Domar* (Judgements of the Swedish Labour Court). This is published both in loose-leaf format once per month and as a final yearbook. The yearbook is published in May of the following year. In this way a judgement is generally available in published form a month or so after it is announced. *Arbetsdomstolens Domar* is available from the customer service section of the Fritze publishing company. (...) Summaries of the labour court judgements are published regularly in the magazine *Lag & Avtal* (Law and Agreements), published by Stiftelsen Arbetsrättslig Tidskrift, in which SAF, LO, TCO and SACO are represented.”

<sup>357</sup> See footnote 348.

### 7.30.7 Citation Guidelines

There are no official citation guidelines in Sweden. In practice commercial references are being used, consisting of e.g. [abbreviation] [year] (s.) [number].<sup>358</sup> For citing decisions of the CJEU also ECLI is now being used.<sup>359</sup>

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<sup>358</sup> E.g. 'NJA 2015 s. 668', where NJA stands for *Nytt Juridiskt Arkiv* (New Juridical Archive).

<sup>359</sup> See e.g.:

<[www.hogstadamstolen.se/Domstolar/hogstadamstolen/Avgoranden/2016/2016-07-15%20%c3%96%20357-15%20Beslut.pdf](http://www.hogstadamstolen.se/Domstolar/hogstadamstolen/Avgoranden/2016/2016-07-15%20%c3%96%20357-15%20Beslut.pdf)>.

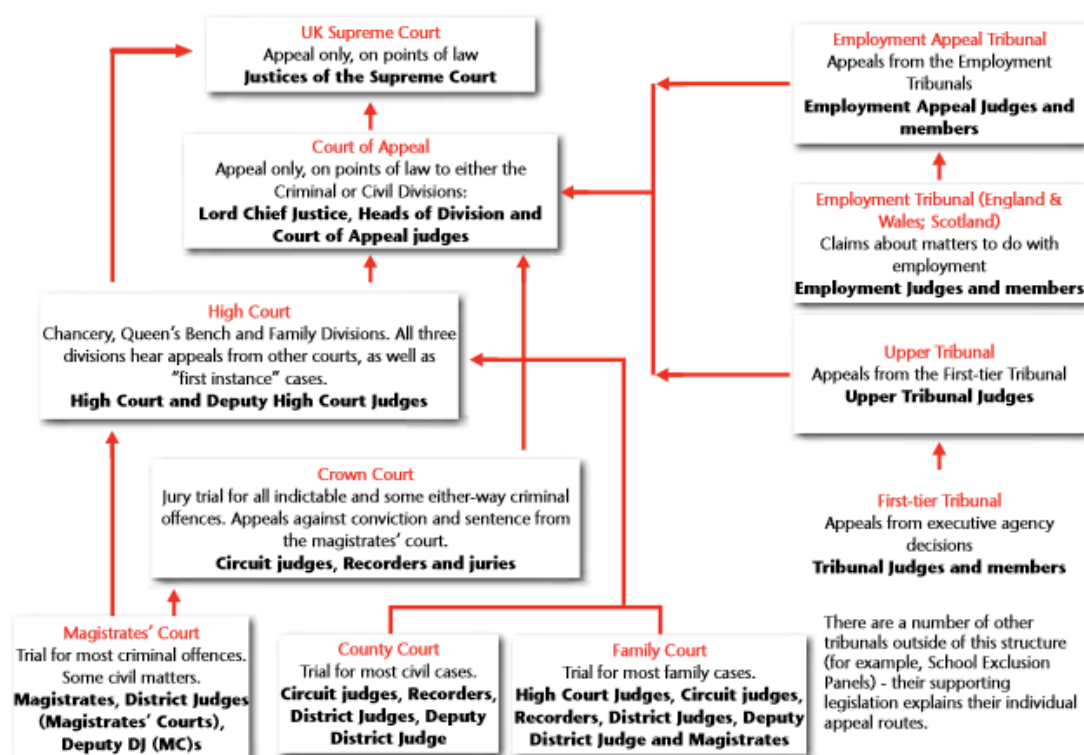
## 7.31 United Kingdom

### 7.31.1 Introduction

Without any doubt, the courts system of the UK is the most complicated and – in their own words<sup>360</sup> – confusing courts system of all EU Member States. First of all, three separate jurisdictions exist – England and Wales, Scotland, Northern Ireland – sharing only the Supreme Court of the United Kingdom (with an exception for criminal cases from Scotland) as well as, in the area of immigration law, the Asylum and Immigration Tribunal and the Special Immigration Appeals Commission. In the area of employment law, the Employment tribunals and the Employment Appeal Tribunal have jurisdiction in all of the UK except for Northern Ireland which has its own employment tribunals (Industrial Tribunal and the Fair Employment Tribunal).

The courts system of England and Wales is best explained by the scheme of Figure 27 instead of by using a textual description.

Figure 27. The Courts System of England and Wales.<sup>361</sup>



<sup>360</sup> [www.judiciary.gov.uk/about-the-judiciary/the-justice-system/court-structure/](http://www.judiciary.gov.uk/about-the-judiciary/the-justice-system/court-structure/).

<sup>361</sup> Source: [www.judiciary.gov.uk/wp-content/uploads/2012/08/courts-structure-0715.pdf](http://www.judiciary.gov.uk/wp-content/uploads/2012/08/courts-structure-0715.pdf).

The courts system of Scotland is a little less complicated. In civil jurisdiction the sheriff court is the court of first instance, the Sheriff Appeal Court being the appellate court and the Court of Session acts as the supreme court, though it can also hear cases in first instance (depending on the complexity and value of the case). The Supreme Court of the United Kingdom is the court of final resort.

In criminal jurisdiction the 34 justice of peace courts are the courts of first instance, dealing with minor offences, the 39 sheriff courts are first instance courts for other offences, with sheriffs sitting alone or with a jury. The Sheriff Appeal Court acts as court of appeal for decisions of the justice of peace courts as well as decisions from the sheriff courts not involving cases on indictment. The High Court of Justiciary is also a court of first instance, with a judge and jury hearing cases involving the most serious offences. It also sits as an appeal court and is the supreme criminal court in Scotland, without appeal to the Supreme Court of the United Kingdom, other than in appeals involving human rights ‘compatibility issues’.

A number of tribunals also operate in Scotland. In addition to those dealing with UK reserved law such as immigration, tax, employment and social security, there are tribunals dealing with responsibilities devolved to the Scottish parliament including the Mental Health Tribunal for Scotland, the Lands Tribunal for Scotland and the Additional Support Needs Tribunal for Scotland.

In Northern Ireland criminal justice is administered by the magistrate courts (for less-serious cases) and the Crown Court. Magistrate courts also deal with some civil cases, while the County Court is the main civil court. The High Court is a court of first instance and also acts as appellate court. It is split into three divisions: Queen’s Bench, Family Division and Chancery Division. The Court of Appeal, an appellant court, is the highest court in Northern Ireland (from which appeal to the Supreme Court of the United Kingdom is possible).

Apart from those tribunals that operate on a UK wide basis such as that mentioned for immigration law, there are a number of specialized tribunals such as the Mental Health Tribunal, the Appeals Tribunals (which deals with appeals relating to social security benefits) and Special Educational Needs Tribunal.

The UK does not have a constitutional court.

### 7.31.2 The Legal Framework on Publication

In the UK there is no legal framework or (published) framework regarding the publication of court decisions.

### 7.31.3 Public Access to Court Decisions

The Supreme Court of the United Kingdom publishes all its decisions on its own website,<sup>362</sup> all decisions from its predecessor – the House of Lords – are also published.<sup>363</sup>

On the website of the Judiciary<sup>364</sup> a limited selection of decisions from other courts of England and Wales is published (e.g. 220 from the Crown Court, 170 from the Court of Appeal, 300 from the High Court, 30 from magistrates courts. A comparable service is available on the website of the Scottish Courts and Tribunals Service,<sup>365</sup> publishing opinions: *“(O)nly where there is a significant point of law or particular public interest”*.<sup>366</sup> Some Scottish tribunals have their own database, e.g. the Lands Tribunal for Scotland.<sup>367</sup> Also the Northern Ireland Courts and Tribunals Service publishes a small selection of courts decisions.<sup>368</sup>

The most important public database with court decisions though is BAILII,<sup>369</sup> the British and Irish Legal Information Institute, an independent organisation that aims to offer legal information to the public for free.<sup>370</sup> Many courts, as well as other organisations and legal professionals, send decisions for publication to BAILII.

### 7.31.4 Data Protection

Within the UK, there is no specific legal framework on the anonymisation of court decisions, and neither a policy framework, apart from some practice notes.<sup>371</sup> Within the UK, decisions are only anonymised in exceptional cases, mostly on initiative of the judge, e.g. where minors are involved.

### 7.31.5 Open Data

In the UK, governmental information is protected by Crown Copyright.<sup>372</sup> To meet the needs of modern information society, the UK Government created the Open Government Licence

<sup>362</sup> [www.supremecourt.uk/decided-cases/index.html](http://www.supremecourt.uk/decided-cases/index.html).

<sup>363</sup> For cases from 1996 till 2009: [www.publications.parliament.uk/pa/ld/ldjudgmt.htm](http://www.publications.parliament.uk/pa/ld/ldjudgmt.htm), for older cases: the Parliamentary Archives on [www.parliament.uk/business/publications/parliamentary-archives/](http://www.parliament.uk/business/publications/parliamentary-archives/).

<sup>364</sup> [www.judiciary.gov.uk/judgments/](http://www.judiciary.gov.uk/judgments/).

<sup>365</sup> [www.scotcourts.gov.uk/search-judgments/about-judgments](http://www.scotcourts.gov.uk/search-judgments/about-judgments).

<sup>366</sup> [www.scotcourts.gov.uk/search-judgments/about-judgments](http://www.scotcourts.gov.uk/search-judgments/about-judgments).

<sup>367</sup> [www.lands-tribunal-scotland.org.uk/decisions/previous-decisions](http://www.lands-tribunal-scotland.org.uk/decisions/previous-decisions).

<sup>368</sup> [www.courtsni.gov.uk/en-GB/Judicial%20Decisions/Pages/default.aspx](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/Pages/default.aspx).

<sup>369</sup> [www.bailii.org/](http://www.bailii.org/).

<sup>370</sup> [www.bailii.org/bailii/](http://www.bailii.org/bailii/).

<sup>371</sup> E.g. Practice Note No. 2 of 2007 ‘Anonymising Opinions Published on the Internet’ of the Lord President of Edinburgh ([www.scotcourts.gov.uk/docs/default-source/rules-and-practice/practice-notes/court-of-session/pn\\_2\\_of\\_2007.pdf](http://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/practice-notes/court-of-session/pn_2_of_2007.pdf).)

<sup>372</sup> [en.wikipedia.org/wiki/Crown\\_copyright#United\\_Kingdom](http://en.wikipedia.org/wiki/Crown_copyright#United_Kingdom).

(OGL),<sup>373</sup> and public bodies can now opt to publish their Crown Copyright material under this licence. Material marked in this way is available under a free, perpetual licence without restrictions beyond attribution.

For court decisions the situation is hybrid. Decisions from Northern Ireland are still under Crown Copyright,<sup>374</sup> while information from the courts in Scotland,<sup>375</sup> England and Wales<sup>376</sup> and the Supreme Court<sup>377</sup> is under the Open Government Licence.

The situation is complicated by the fact that many courts publish decisions on BAILII only. Since BAILII itself is not a public institution, it is not bound by the OGL but has stated its own copyright rules, prohibiting bulk download of content. Although BAILII itself is free of charge, the situation described might infringe the rights of competitors.

The decisions offered on the judiciary websites mentioned in Section 7.31.3 are offered in Word, PDF and HTML. No special services for re-users are offered, nor are the documents made available via the UK Open Data portal.<sup>378</sup>

### 7.31.6 ECLI

In the United Kingdom ECLI has not yet been introduced.

### 7.31.7 Citation Guidelines

The most used citation guide in the UK is the Oxford University Standard for Citation of Legal Authorities (OSCOLA).<sup>379</sup> For foreigners the citation style is quite complex. If the neutral citation is used, the style is:<sup>380</sup>

*case name* | [year] | court | number, | [year] OR (year) | volume | report abbreviation | first page

E.g.

Corr v IBC Vehicles Ltd [2008] UKHL 13, [2008] 1 AC 884

<sup>373</sup> [www.nationalarchives.gov.uk/doc/open-government-licence/version/3/](http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/).

<sup>374</sup> [www.courtsni.gov.uk/en-GB/Footer/Copyright/Pages/copyright.aspx](http://www.courtsni.gov.uk/en-GB/Footer/Copyright/Pages/copyright.aspx).

<sup>375</sup> [www.scotcourts.gov.uk/meta/crown-copyright](http://www.scotcourts.gov.uk/meta/crown-copyright).

<sup>376</sup> [www.judiciary.gov.uk/copyright/](http://www.judiciary.gov.uk/copyright/).

<sup>377</sup> [www.supremecourt.uk/terms-and-conditions.html](http://www.supremecourt.uk/terms-and-conditions.html).

<sup>378</sup> [data.gov.uk/](http://data.gov.uk/).

<sup>379</sup> [www.law.ox.ac.uk/sites/files/oxlaw/oscola\\_4th\\_edn\\_hart\\_2012.pdf](http://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf).

<sup>380</sup> Examples taken from OSCOLA.



## 8 Conclusions and Recommendations

Sections 2 till 6 contain a condensed overview of the actual state of play regarding the on-line publication of court decisions within the European Union, while Section 7 contains more detailed information per Member State / jurisdiction.

Up until now we have refrained from qualifying the described practices, which would result in a comparative ranking of how the jurisdictions are performing vis-à-vis each other. Also in this paragraph we will refrain from making such rankings, for the following reasons. First of all, we do not have all the information needed, and/or we do not know whether it is fully reliable. Not all information is available on the internet, not all questionnaires were returned, or not always answered for all courts.

A second problem is the subjectivity in the choice of indicators and their qualification. As an illustration, in general one might state that publishing more decisions is better, but a smaller collection of properly annotated, well-searchable and reusable documents might be preferred over a voluminous collection of untagged, scanned documents only accessible by typing in a CAPTCHA for every document. How the actual publication practice is assessed also depends on the audience in mind. An interested citizen, a judge, a journalist, a student, a lawyer, an academic, a commercial re-user: they all value different (and sometimes opposite) features.

A final reason for not making rankings is the risk that the ranking becomes more important than the actual facts behind it. Low-scoring courts might be tempted to work on those issues that significantly improve their score and ignore others, while high-scoring courts might lose their ambition for improvement since they are already on top of the list.

Instead of ranking courts and Member States, we discuss the most important topics of our research. We will draw some conclusions on the state of play, refer to good practices and give some recommendations to improve the accessibility of court decisions.

### 1) Legal framework

As practice in many Member States shows, court decisions can be published in substantial numbers without a legal framework obliging the judiciary or another public body to do so. Nevertheless and notwithstanding exceptions, if a legal framework – or a detailed policy guideline – exists, decisions are published in higher numbers, with more consistency and with more elaborated selection criteria. Roughly speaking, a distinction can be made between Eastern-European countries, where the publication is often prescribed by a very detailed legal framework, and Western-European countries, where a legal framework is absent or only exists in policy guidelines.

### 2) Transparency of selection rules

In those Member States without a detailed legal framework, most often a selection is made. The selection is mostly left to the judge or a judiciary department, but clear rules

on what should be selected are often absent or too vague. Clear selection rules can guide judges and court staff in their selection process and offer transparency towards the public. Making a clear distinction between negative and positive, objective and subjective and procedural and substantive criteria can be very helpful.

For reasons of transparency, selection rules should be published, preferably on the website where the decisions are published themselves. We noted that in general such selection rules are not published, and that as a result the selection process is not transparent to the public.

**Recommendation 1: Whether or not a legal framework exists, criteria on which decisions have to be published should be as precise and elaborate as possible, while at the same time leaving enough room for discretion in individual cases.**

**Recommendation 2: Selection criteria should always be published.**

3) Positive or negative selection

In absence of a national legal framework, Recommendation R(95)11 of the Committee of Ministers of the Council of Europe offers guidance on what should be published. It recommends a negative selection should be used for the highest jurisdictions. It can be observed from our research that in most of those countries without a legal publication obligation, the highest jurisdictions generally do follow Recommendation R(95)11 in this respect: most supreme courts, high administrative courts and constitutional courts publish all their decisions, apart from cases which are non-admissible for procedural reasons a.s.o. But from the courts of appeal only in a limited number of countries a substantial selection is being published. For the first instance courts only a few countries publish a notable selection. Most countries do not publish first instance court decisions at all.

**Recommendation 3: The negative selection should be applied to the courts of the highest jurisdiction as well as to specialized courts. A positive selection should be applied to other courts. From first instance courts and courts of appeal at least those decisions should be published that have attracted interest from mass-media and/or that can be expected to be important for the development of law.**

4) Historical decisions

In not one Member State we witnessed any legal norm or general practice to delete decisions from the public database after a certain period. On the contrary, in some countries there is an active policy to publish (a selection) of important historic decisions.

**Recommendation 4: Old decisions that have played a major role in legal history or are still relevant for current doctrine should be published as much as possible.**

5) Importance indicators

The more decisions are published, the bigger the risk that users are not able to distinguish the important decisions from the regular ones or those that have lost their legal or societal relevance. Since this might run counter to the objectives to be achieved with the publication, some kind of 'importance tagging' could offer a solution. Although most databases do not offer any such indicator, some interesting practices can be observed: separate databases, manual importance-tagging, a list with important decisions.<sup>381</sup> In whatever way the importance is established (e.g. manually or by some computer algorithm) full integration of such ranking indicators in the databases have to be preferred, otherwise user searches might be complicated.

**Recommendation 5: With the growing volumes of online case law databases it is recommended to supply for some kind of importance tagging, be it manually or automated. Although separate publication of important decisions can offer a usable solution, preferably such importance tagging is (also) visible in the main repository.**

6) Translations

Especially in the constitutional domain full or summarized translations are quite common, while also within some other high jurisdictions translations can be witnessed occasionally as well. Those translations deserve praise and support: they offer an important contribution to mutual legal understanding and a harmonized appliance of European law. Nevertheless, to reach the intended audience they should be findable from abroad. The ECLI Search Engine has such cross-border accessibility as its *raison d'être*, and hence it is of the utmost importance that if courts are being connected to the ECLI Search Engine, that their translated versions are findable there as well. We noted that not in all countries that are now connected with the ECLI Search Engine, translated versions are findable there as well. In general, this is unintended and caused by the fact that such translations are not included in the repository that is indexed by the ECLI Search Engine, but are published on a different location.

**Recommendation 6: Decisions that might be of specific relevance for the legal community abroad should be translated in full or at least abridged.**

**Recommendation 7: If a case law repository is indexed by the ECLI Search Engine, translated versions of the decisions contained therein should be indexed as well, to**

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<sup>381</sup> M. van Opijnen, 'Towards a Global Importance Indicator for Court Decisions'. See footnote 18.

**make them as findable as possible for the international audience these translations are made for.**

7) Ease of access

Huge information repositories, as most databases with court decisions are, need tooling to describe, classify and search the documents contained therein. Metadata are very useful for describing and classifying content. Metadata can be objective (directly derived from the content), e.g. the name of the court, the date of the decision, the names of the judges or parties to the case, or subjective (added information, not part of the judgment), like keywords, relevant legal references or summaries. In most Member States metadata are added, but on many websites this is limited to the objective metadata, a limitation which makes both searching as well as filtering and assessing documents a tedious task, especially if one doesn't search for a specific document, but e.g. for decisions on a specific topic or question of law. Subjective metadata are time-consuming to create, but are indispensable for sufficient accessibility.

In most – but not all – Member States search engines are offered. Many of them only offer a structured search, i.e. a user is confronted with a set of input fields which require knowledge of the way the data are structured. A 'google like' input box is absent on most websites, probably because it requires a substantial effort to build such functionalities in a way that suit the needs of the lawyer and the layman alike.

Explicit links to other legal sources are available in some databases, always as metadata, not yet in the texts themselves. If available, most of such links are legislative references, indicating the point of law the case is about. Such links can be of great help for finding the relevant material or to have a quick idea on what the case is about. References to other court decisions are much more rare. Outgoing or incoming citations to/from court decision that have a substantive relation improve the accessibility of repositories, but even more important are links between decisions that have a 'formal relationship': a relationship that is based on the law, e.g. between a first instance decision and the decision in appeal, or between a preliminary ruling and a final decision on the merits. From the viewpoint of legal certainty such relationships have to be visible, but currently in most jurisdictions they are not. The same goes for information on whether appeals are pending or a decision is already irrevocable. As a solution, some courts offer a list of cases under appeal, and others do not publish a decision before the whole proceedings have come to an ending, i.e. the decision became irrevocable.

**Recommendation 8: A search engine should be offered; just publishing a list of decisions is insufficient to satisfy information needs in the current digital age.**

**Recommendation 9: Not only objective metadata should be supplied, but as far as possible also subjective metadata, like keywords, summaries and (standardized) links**

to legal sources that are cited within or covered by the decision, or which are referring to it.

**Recommendation 10: All metadata should be searchable, while more intelligent search options are advisable, not requiring knowledge from the user about the structure of the data, and enabling him to drill down on the result page.**

**Recommendation 11: Information should be supplied about the finality of a decision. This implies that information should be supplied about subsequent decisions by the same or another court in the same proceedings, pending appeals and/or its irrevocability.**

8) Data protection

One of the most difficult issues to tackle within the realm of case law publication is data protection. Court decisions contain many personal data which are collected for another purpose than the publication and hence data protection law applies. Apart from the – in our view obvious – applicability of EU data protection law, one has to keep in mind that the reasons for going to court are generally of such a nature that full disclosure of the details can seriously harm people for life. Hence, one would expect published court decisions to be anonymised always and everywhere, but this is not the case.

**Recommendation 12: In principle, all court decisions published on the internet should be anonymised.**

9) Personal data defined

The EU legal framework is based on the concept of ‘personal data’, and it does not specify which those personal data are. In some countries this is left to the discretion of the anonymising person or entity, while in other legal or policy frameworks enumerate meticulously which data have to be anonymised (e.g. name, address, personal identification number, a.s.o.). The latter method gives clear guidance to people or computer software in their daily anonymisation routine, and minimize the risk of identifiable data being left non-anonymised.

**Recommendation 13: For reasons of consistency and legal certainty, personal data that have to be anonymised should be enumerated. Such enumerations though should leave room for the additional anonymisation of other data, which are normally not-identifying, but might be in specific cases.**

**Recommendation 14: Anonymisation rules should be published.**

#### 10) Methods of anonymisation

Different methods are used to anonymise a text: obscuring, replacement by initials, fake data or roles. In some Member States the legal or policy framework prescribe which method has to be used, in some others only the goal is described (e.g. not making the text illegible). Obscuring has as an important disadvantage that the decision becomes harder to read and understand, and the same goes for the use of initials, especially if there are many actors in the case. Replacement by roles or fake data both have the advantage that the text remains readable. From a scrutiny point of view replacement by roles is to be preferred, since it is clear which elements have been anonymised and which not. On the other hand, the use of fake data might have as an advantage that decisions are harder to de-anonymise, since it might not be obvious what has been anonymised in the first place.

**Recommendation 15: Obscuring personal data (e.g. by fully deleting them or replacing them by dots or 'xxxx') should be avoided since this method hampers the comprehensibility of a text. When initials are used, they should be randomized, since the use of true initials enlarges the risk of de-anonymisation. The preferable ways of anonymisation are replacing data by recognizable labels or by fake data.**

#### 11) Balancing private and public interests

Legal and policy frameworks in most Member States offer an escape in case disclosure of even an anonymised decision would identify a person a cause him/her unreasonable harm: the decision will not be published at all. Also in many Member States specific types of decisions (e.g. regarding minors or in very sensitive cases, like family cases or vice crimes) are not published at all or only after consent of the judge or the parties involved. On the other hand many Member States have a regime that allows for exceptions to the anonymisation provisions if public figures are involved.

**Recommendation 16: For individual cases there should always be the possibility to deviate from established anonymisation rules. This could be the decision not to publish a decision at all since normal anonymisation wouldn't suffice, but also the decision to disclose full personal data if the case so requires.**

#### 12) Complaint procedures

Many Member States do not have an easy procedure for complaints about the way anonymisation is performed, e.g. in case the address of a person is left non-anonymized accidentally or if a person wants to substantiate his right to be forgotten. Data subjects can use the procedures of general data protection law, contact the court or the organisation

responsible for the database, but we haven't seen citizen-friendly complain-buttons on any website.

**Recommendation 17: Since anonymisation errors are easily made but can have grave consequences, data subjects should have a user-friendly option to request for corrections. It should be described which options there are in case such a request is denied.**

13) Anonymisation in the reference for a preliminary ruling

In most Member States it is left to discretion of the court whether or not to anonymise the referral and/or the decision itself. Only in a limited number of Member States both are anonymised. Given the asynchronicity between the practice when publishing a decision on the national website and when referring the case to the CJEU, both referral and decision should be anonymised.

**Recommendation 18: When a case is referred to the CJEU within the framework of Article 267 TFEU, both the referral as well as the decision itself should be anonymised.**

14) Open Data by default

According to the current legal framework, especially the PSI Directive, published decisions should be available for re-use. Most, although not all, Member States have now removed any disclaimers limiting such re-use.

**Recommendation 19: Published decisions should be reusable according to a CC-BY or CC-0 licence or a comparable regime.**

15) Computer readability

Article 5-1 of the PSI Directive prescribes: *Public sector bodies shall make their documents available in any pre-existing format or language, and, where possible and appropriate, in open and machine-readable format together with their metadata. (...) Although in a growing number of Member States important improvements have been achieved, effective re-use is still too often hampered by the data formats offered. Scanned PDF-files are not usable at all, but also indexable PDF, Word and HTML documents are hard to re-use. Although it is a claim hard to substantiate, we have the impression that in various Member States data are available internally in a more machine-readable format than the formats made available to the public.*

**Recommendation 20: For re-use purposes court decisions should be made available in the most optimal computer-readable format possible, given the capabilities of the drafting process. JSON or RDF/XML are preferred; PDF's should be avoided, especially**

**if scanned. All available metadata should be supplied in a well-structured format, as far as possible according to open standards.**

16) Data services

In most Member States re-users have to discover themselves how the data can be obtained. They have to write scripts to 'screen scrape' the documents and their metadata from the website. Economically this is a very expensive solution: every re-user has to invent the wheel and there will be a lot of server traffic. Offering a (RESTful) web service or FTP-site is not too complex to build and a joy for every re-user. Only in a few Member States such services are offered though.

**Recommendation 21: For re-use purposes a web service should be provided for, preferably as REST.**

17) The European Case Law Identifier

ECLI is being assigned to court decisions in at least twelve Member States and by the courts of three European organisations. At least eight Member States and two European courts have made the decisions with ECLIs assigned accessible via the ECLI Search Engine. ECLI is being printed on a growing number of decisions, searchable via national web portals and available via structured deep links.

**Recommendation 22: ECLI should be assigned to as many court decisions as possible. The specific recommendations within the ECLI Council Conclusions should be followed.**

**Recommendation 23: At the national level the ECLI should be constructed with a good balance between shortness and legibility; elements that are not essential for rendering an ECLI unique should be avoided.**

**Recommendation 24: To reap the full benefits of the ECLI framework all decisions that have an ECLI assigned should be made available via the ECLI Search Engine as well, together with translated versions, if available. Full use should also be made of the ECLI Search Engine by web sites that republish court decisions, e.g. in domain specific collections, with additional metadata or in translated/summarized versions.**

18) Citation styles

Most countries do not seem to have citation guides. National citation habits are country specific, although for referring to court decisions often the case number is used. Although this might suffice for citing national case law, when international or foreign decisions are cited, confusion can easily arise. This becomes especially manifest if users are looking for documents citing such a case. In growing number of jurisdictions using (only) ECLI or at



least adding it to a citation gains popularity, especially because its univocality and recognizability. Not to jeopardize its recognizability and univocality, no elements of ECLI should be left out when used in citations.

**Recommendation 25: ECLI should be used for citing court decisions, or at least added to any form of citation. To guarantee its recognizability for humans and computers ECLI should always be cited in full; no elements should be left out.**

## Annex I – Questionnaire

Dear madam/sir,

In many EU Member States court decisions are published on the internet. Practices and legal frameworks differ substantially though, and developments regarding legislation on Open Data and data protection as well as the introduction of the European Case Law Identifier pose new questions.

With the goal to improve the accessibility of court decisions on the internet, on October 1<sup>st</sup> 2015 the project Building on the European Case Law Identifier (BO-ECLI) has kicked-off. BO-ECLI is co-funded by the Justice Programme of the European Union; sixteen partners from ten EU Member States are involved.

One of the objectives of BO-ECLI is to make a comparative study on the publication of court decisions within the EU Member States. Based on this study policy recommendations on various aspects relating to public case law databases should be drafted. Another goal of BO-ECLI is to evaluate the current ECLI standard.

For this work to be completed, your input is indispensable. This questionnaire serves to gather the relevant information on various aspects relating to the publication of court decisions within your country.

We are aware that different people may be knowledgeable on the various topics which are covered, and hence we divided the questionnaire into five sections:

1. On the publication of court decisions on the internet;
2. Issues regarding data protection;
3. Open Data aspects;
4. On citing court decisions;
5. European Case Law Identifier.

By creating a separate document for each section, they can be filled out by different knowledgeable persons. We also realize that the regulation and publication of court decisions is very diverse. Since substantial differences may even exist within one Member State (e.g. between Supreme Court, Constitutional Court and other courts) this questionnaire – or sections thereof – may be submitted multiple times, i.e. for each (type of) court or for any combination.

In such case, you do not have to answer questions that have the same answer for different courts twice. To give an example: if you two different regimes regarding the publication policy, but not on data protection issues, section 1 (on publication) has to be filled out twice, but section 2 (data protection) only once.

The same goes for specific questions within a section: if they are already answered for other courts you can state so.

If the differences between various (types of) courts are just of a minor nature, you can also just fill-out one questionnaire and indicate these differences on specific questions.

The answers to the first four sections will be aggregated into a report that will be presented to the relevant European institutions and will also be made publicly available. The answers on the section 5 (regarding ECLI) will be used for the technical work of BO-ECLI but will not be published as such.

This questionnaire has been sent to those institutions/persons that to our knowledge are the most knowledgeable on the subject. If necessary, please forward this questionnaire to the person / organisation responsible.

Only the sections that have been indicated to provide answers, are editable. They will expand as soon as you start typing. The checkboxes only function in the latest versions of Word. If they cannot be checked as they should, please ask us for a version that is compatible with older Word versions.

We would very much appreciate your answers by April 1<sup>st</sup> 2016.

You can send your answers to [marc.opijnen@koop.overheid.nl](mailto:marc.opijnen@koop.overheid.nl). If you have any questions on this questionnaire, please feel free to ask.

We thank you in advance for your indispensable co-operation.

### Terminology

Some terms used in this questionnaire have a specific meaning. To avoid any misunderstandings, terms which are underlined in the questionnaire, are defined in the table below.

Term	Explanation
Legal framework	Any (body of) law(s) issued by a competent (state) authority, e.g. a law, by-law or a ministerial decree.
Policy framework	Soft law policy instructions by a (state) authority. Can be formulated by a minister, Council for the Judiciary, Supreme Court a.s.o.
Additional guidelines	Work instructions / manuals a.s.o. that translate vague notions formulated in <u>legal frameworks</u> or <u>policy frameworks</u> into operative instructions.
Metadata	Structured data about other data, in this questionnaire about court decisions. Metadata are stored and displayed separately from the main text.
Reference format (of citations)	a) the technical type: plain text or hyperlinks; b) the citation format. In case of plain text: is a specific citation guide used? In case of hyperlinks: are they in accordance with a specific technical standard?

Court decisions	Court decisions include judgments, court orders, conclusions, opinions, a.s.o.
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**Scope**

0-a	Which Member State are you answering this section of the questionnaire for? Type your answer here.	
0-b	Which (type or group of) court(s) do your answers in this section relate to?	
	<input type="checkbox"/>	All courts
	<input type="checkbox"/>	One specific court, namely:
	<input type="checkbox"/>	Group of courts, namely:
		Additional remarks (optional). Type your answer here.  Number of courts within this group: Type your answer here.
0-c	Please supply name and contact information in case we need any clarification. Type your answer here.	

## Section 1 - Publication

Every country has its own regulation and organisation regarding the publication of court decisions. This complicates any comparative study. Nevertheless, we have indicated a number of relevant variables on making court decisions accessible through the internet.

1-a	Is there a <u>legal framework</u> that imposes publication of <u>court decisions</u> ? If yes, please state: – Issuing body and/or type of legal framework – Name of document and relevant articles – URL (or, in case it is not a published document, please attach electronic copy). Type your answer here.
1-b	Summary of the basic rules of this <u>legal framework</u> , with specific attention to the question whether court decisions should be made available through the internet. Type your answer here.
1-c	Is there a <u>policy framework</u> (instead of or besides a legal framework)? If yes, please state: – issuing body; – URL or (in case it is not a published document: please attach electronic copy). Type your answer here.
1-d	Summary of the basic rules of this policy framework, with specific attention to the question whether court decisions should be made available through the internet. Type your answer here.
1-e	Are there any <u>additional guidelines</u> on selection criteria? If yes, are they published on the internet? (please provide URL). If not: please enclose a copy. Type your answer here.
1-f	If decisions are published in an internet database, what is the URL of the database? Is this database shared with other courts, or dedicated to this (type of) court only? Are the decisions also published in other public databases? Type your answer here.
1-g	Are the published decisions available: <input type="checkbox"/> to all <input type="checkbox"/> to registered or subscribed users only Additional remarks (optional).
1-h	How many decisions of this (type of) court are published yearly? (in rounded numbers) Type your answer here.
1-i	What is the number of decisions published as a percentage of the decisions rendered by this/these court(s)? Select...
1-j	Are the decisions which are published made available in full, or only summarized?

	Type your answer here.																																
1-k	<p>Are the decisions created in a digital form (by judge / court staff)? If not, please indicate who is in charge of the digitalization process.</p> <p>Type your answer here.</p>																																
1-l	<p>In what format are the documents presented to the user of the database on the web? (This does not regard the formats available for reuse, see question 4-d).</p> <table border="1"> <tr> <td><input type="checkbox"/></td><td>PDF (scanned image)</td></tr> <tr> <td><input type="checkbox"/></td><td>PDF (text)</td></tr> <tr> <td><input type="checkbox"/></td><td>HTML / XHTML</td></tr> <tr> <td><input type="checkbox"/></td><td>Word</td></tr> <tr> <td><input type="checkbox"/></td><td>Plain text</td></tr> <tr> <td><input type="checkbox"/></td><td>Other: Please describe.</td></tr> <tr> <td colspan="2">Additional remarks (optional).</td></tr> </table>	<input type="checkbox"/>	PDF (scanned image)	<input type="checkbox"/>	PDF (text)	<input type="checkbox"/>	HTML / XHTML	<input type="checkbox"/>	Word	<input type="checkbox"/>	Plain text	<input type="checkbox"/>	Other: Please describe.	Additional remarks (optional).																			
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Other metadata.	<input type="checkbox"/>	<input type="checkbox"/>	Please describe.																																		
1-n	<p>Are there any provisions on the term within which a decision has to be published after having been rendered? What is the usual practice regarding this term?</p> <p>Type your answer here.</p>																																				
1-o	<p>Is there any legal requirement or established practice concerning the removal of court decisions from the database after a specific time interval or event? If yes, please describe.</p> <p>Type your answer here.</p>																																				
1-p	<p>Are any decisions published in a translation or a translated summary, other than the official language(s) of your country? If yes, what is the general policy, which languages does it concern and how many decisions are translated?</p>																																				

	Type your answer here.															
1-q	<p>Are there any specific requirements regarding the accessibility or searchability of your case law database, or do you have specific functionalities which are worth mentioning?</p> <p>Type your answer here.</p>															
1-r	<p>In many countries private legal publishers have subscription based services, offering selected and annotated court decisions.</p> <p>Apart from such activities, do private publishers play an active role in the <b>public</b> dissemination of court decisions? Please describe the situation, and take e.g. the following possibilities into account:</p> <table border="1"> <tr> <td><input type="checkbox"/></td><td>A publisher is responsible for the digitalization of paper document of scanned images.</td><td>Additional remarks (optional).</td></tr> <tr> <td><input type="checkbox"/></td><td>A publisher is responsible for selecting, adding metadata, anonymisation or publishing decisions.</td><td>Additional remarks (optional).</td></tr> <tr> <td><input type="checkbox"/></td><td>A publisher is responsible for technically maintaining the public case law database.</td><td>Additional remarks (optional).</td></tr> <tr> <td><input type="checkbox"/></td><td>The public case law database is a public/private partnership.</td><td>Additional remarks (optional).</td></tr> <tr> <td><input type="checkbox"/></td><td>Other, please explain:</td><td>Type your answer here.</td></tr> </table>	<input type="checkbox"/>	A publisher is responsible for the digitalization of paper document of scanned images.	Additional remarks (optional).	<input type="checkbox"/>	A publisher is responsible for selecting, adding metadata, anonymisation or publishing decisions.	Additional remarks (optional).	<input type="checkbox"/>	A publisher is responsible for technically maintaining the public case law database.	Additional remarks (optional).	<input type="checkbox"/>	The public case law database is a public/private partnership.	Additional remarks (optional).	<input type="checkbox"/>	Other, please explain:	Type your answer here.
<input type="checkbox"/>	A publisher is responsible for the digitalization of paper document of scanned images.	Additional remarks (optional).														
<input type="checkbox"/>	A publisher is responsible for selecting, adding metadata, anonymisation or publishing decisions.	Additional remarks (optional).														
<input type="checkbox"/>	A publisher is responsible for technically maintaining the public case law database.	Additional remarks (optional).														
<input type="checkbox"/>	The public case law database is a public/private partnership.	Additional remarks (optional).														
<input type="checkbox"/>	Other, please explain:	Type your answer here.														
1-s	<p>Is there any policy / legal provision about the publication of court decisions by publishers vis-à-vis the publication in a public database? Possibilities might be:</p> <table border="1"> <tr> <td><input type="checkbox"/></td><td>Publishers are only allowed to (re)publish decisions that already have been published in the public database</td><td>Additional remarks (optional).</td></tr> <tr> <td><input type="checkbox"/></td><td>Publishers are free to publish decisions that have not been published in a public database</td><td>Additional remarks (optional).</td></tr> <tr> <td><input type="checkbox"/></td><td>Public databases should publish – at least – every decision that</td><td>Additional remarks (optional).</td></tr> </table>	<input type="checkbox"/>	Publishers are only allowed to (re)publish decisions that already have been published in the public database	Additional remarks (optional).	<input type="checkbox"/>	Publishers are free to publish decisions that have not been published in a public database	Additional remarks (optional).	<input type="checkbox"/>	Public databases should publish – at least – every decision that	Additional remarks (optional).						
<input type="checkbox"/>	Publishers are only allowed to (re)publish decisions that already have been published in the public database	Additional remarks (optional).														
<input type="checkbox"/>	Publishers are free to publish decisions that have not been published in a public database	Additional remarks (optional).														
<input type="checkbox"/>	Public databases should publish – at least – every decision that	Additional remarks (optional).														



	<table border="1"> <tr> <td><input type="checkbox"/></td><td>has been publish in private database</td><td></td></tr> <tr> <td><input type="checkbox"/></td><td>Other, please explain:</td><td>Type your answer here.</td></tr> </table>	<input type="checkbox"/>	has been publish in private database		<input type="checkbox"/>	Other, please explain:	Type your answer here.
<input type="checkbox"/>	has been publish in private database						
<input type="checkbox"/>	Other, please explain:	Type your answer here.					
1-t	Has Recommendation No. R (95)11 of the Committee of Ministers of the Council of Europe, Concerning the selection, processing, presentation and archiving of court decisions in legal information retrieval systems <sup>382</sup> been of inspiration to your national policy on the publication of court decisions? Or any other European or international instrument? Type your answer here.						
1-u	Are court decisions published on the internet considered to be authentic? If yes, are there any measures to guarantee this (e.g. electronic signature)? Type your answer here.						
1-v	From what date on have decisions been published in internet databases? Type your answer here.						
1-w	Is there a legal/policy framework or practice on making old(er) court decisions available via the internet. If so, how is this organised? Type your answer here.						
1-x	Are there any developments on-going which might in the short term alter the way in which court decisions are published within your country? Type your answer here.						

<sup>382</sup> <https://wcd.coe.int/ViewDoc.jsp?id=538429&Site=COE>

## Section 2 – Data Protection

In general, court decisions contain personal data like names, car registration numbers, health information and so on. Removing these data is called ‘anonymisation’.

2-a	<p>Please indicate which of these possibilities describes your situation best:</p> <table border="1"> <tr> <td data-bbox="491 483 619 546"><input type="checkbox"/></td><td data-bbox="627 483 1469 546">In general all decisions are anonymised before being published</td></tr> <tr> <td data-bbox="491 557 619 1055"><input type="checkbox"/></td><td data-bbox="627 557 1469 1055">           In general decisions are only anonymised in exceptional cases           <table border="1"> <tr> <td data-bbox="683 640 786 734"><input type="checkbox"/></td><td data-bbox="794 640 1453 734">On request of the data subject before the decision is published</td></tr> <tr> <td data-bbox="683 745 786 840"><input type="checkbox"/></td><td data-bbox="794 745 1453 840">On request of the data subject after the decision has been published.</td></tr> <tr> <td data-bbox="683 851 786 976"><input type="checkbox"/></td><td data-bbox="794 851 1453 976">On initiative of the judge. Please describe when this is the case: Type your answer here.</td></tr> <tr> <td data-bbox="683 987 786 1050"><input type="checkbox"/></td><td data-bbox="794 987 1453 1050">Other: Please describe.</td></tr> </table> </td></tr> </table> <p>If you have any additional information, please provide here.</p>	<input type="checkbox"/>	In general all decisions are anonymised before being published	<input type="checkbox"/>	In general decisions are only anonymised in exceptional cases <table border="1"> <tr> <td data-bbox="683 640 786 734"><input type="checkbox"/></td><td data-bbox="794 640 1453 734">On request of the data subject before the decision is published</td></tr> <tr> <td data-bbox="683 745 786 840"><input type="checkbox"/></td><td data-bbox="794 745 1453 840">On request of the data subject after the decision has been published.</td></tr> <tr> <td data-bbox="683 851 786 976"><input type="checkbox"/></td><td data-bbox="794 851 1453 976">On initiative of the judge. Please describe when this is the case: Type your answer here.</td></tr> <tr> <td data-bbox="683 987 786 1050"><input type="checkbox"/></td><td data-bbox="794 987 1453 1050">Other: Please describe.</td></tr> </table>	<input type="checkbox"/>	On request of the data subject before the decision is published	<input type="checkbox"/>	On request of the data subject after the decision has been published.	<input type="checkbox"/>	On initiative of the judge. Please describe when this is the case: Type your answer here.	<input type="checkbox"/>	Other: Please describe.
<input type="checkbox"/>	In general all decisions are anonymised before being published												
<input type="checkbox"/>	In general decisions are only anonymised in exceptional cases <table border="1"> <tr> <td data-bbox="683 640 786 734"><input type="checkbox"/></td><td data-bbox="794 640 1453 734">On request of the data subject before the decision is published</td></tr> <tr> <td data-bbox="683 745 786 840"><input type="checkbox"/></td><td data-bbox="794 745 1453 840">On request of the data subject after the decision has been published.</td></tr> <tr> <td data-bbox="683 851 786 976"><input type="checkbox"/></td><td data-bbox="794 851 1453 976">On initiative of the judge. Please describe when this is the case: Type your answer here.</td></tr> <tr> <td data-bbox="683 987 786 1050"><input type="checkbox"/></td><td data-bbox="794 987 1453 1050">Other: Please describe.</td></tr> </table>	<input type="checkbox"/>	On request of the data subject before the decision is published	<input type="checkbox"/>	On request of the data subject after the decision has been published.	<input type="checkbox"/>	On initiative of the judge. Please describe when this is the case: Type your answer here.	<input type="checkbox"/>	Other: Please describe.				
<input type="checkbox"/>	On request of the data subject before the decision is published												
<input type="checkbox"/>	On request of the data subject after the decision has been published.												
<input type="checkbox"/>	On initiative of the judge. Please describe when this is the case: Type your answer here.												
<input type="checkbox"/>	Other: Please describe.												
2-b	<p>Is there a specific legal or policy framework for the anonymisation of court decisions? With ‘specific’ we mean it is drafted for court decisions only, and not the general data protection legislation. If yes: what is the name of the framework, who issued it? Can you provide the URL if it is published on the internet, or else please attach an electronic copy? Please also provide any information on <u>additional guidelines</u>. Type your answer here.</p>												
2-c	<p>If there are, in the aforementioned legal or policy framework, specific provisions on the anonymisation of court decisions, are these very specific on which data have to be anonymised exactly? E.g. just stating that ‘personal data’ have to be anonymised is rather vague, as opposed to defining very precisely the personal data of which persons, acting in which specific capacity in which type of court cases, have to be anonymised. If yes, please indicate which data have to be anonymised. Type your answer here.</p>												
2-d	<p>If there is no specific legal or policy framework, to what extent is the general data protection framework considered to be applicable to the publication of court decisions? Type your answer here.</p>												

2-e	<p>Are there any specific provisions on when <b>not</b> to anonymise? E.g. if public figures are involved, or when it is relevant for fully understanding the text of the judgment?</p> <p>Type your answer here.</p>														
2-f	<p>To what extent has the rise of the internet had an impact on the legal and policy framework and/or practice regarding anonymisation of court decisions?</p> <p>Type your answer here.</p>														
2-g	<p>In a functional sense, anonymisation can be achieved in a variety of ways. Please check the option that best matches your practice. If different methods are used for different courts, please explain in the additional text box.</p> <table border="1"> <tr> <td><input type="checkbox"/></td> <td>Completely deleting all personal data in a text file</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Completely blackening all personal data in a PDF-file</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Replacing personal data by fake data (e.g. replacing a male name by 'John Smith')</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Replacing personal data (as far as they concern names) by their initials ('Alan Thompson' becomes 'A.T.')</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Replacing personal data (as far as they concern names) by random initials ('Alan Thompson' becomes 'Y.Z.')</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Replacing all personal data by words indicating their role in the decision document ('Alan Thompson' is replaced by '[the defendant]' and '12-ME-63' is replaced by '[car registration number]')</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Other: Please describe.</td> </tr> </table> <p>If you have any additional information, please provide here.</p>	<input type="checkbox"/>	Completely deleting all personal data in a text file	<input type="checkbox"/>	Completely blackening all personal data in a PDF-file	<input type="checkbox"/>	Replacing personal data by fake data (e.g. replacing a male name by 'John Smith')	<input type="checkbox"/>	Replacing personal data (as far as they concern names) by their initials ('Alan Thompson' becomes 'A.T.')	<input type="checkbox"/>	Replacing personal data (as far as they concern names) by random initials ('Alan Thompson' becomes 'Y.Z.')	<input type="checkbox"/>	Replacing all personal data by words indicating their role in the decision document ('Alan Thompson' is replaced by '[the defendant]' and '12-ME-63' is replaced by '[car registration number]')	<input type="checkbox"/>	Other: Please describe.
<input type="checkbox"/>	Completely deleting all personal data in a text file														
<input type="checkbox"/>	Completely blackening all personal data in a PDF-file														
<input type="checkbox"/>	Replacing personal data by fake data (e.g. replacing a male name by 'John Smith')														
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<input type="checkbox"/>	Replacing all personal data by words indicating their role in the decision document ('Alan Thompson' is replaced by '[the defendant]' and '12-ME-63' is replaced by '[car registration number]')														
<input type="checkbox"/>	Other: Please describe.														
2-h	<p>How is the process of anonymisation actually organised? If different methods are used please explain in the additional text box.</p> <table border="1"> <tr> <td><input type="checkbox"/></td> <td>Completely manual after the decision has been rendered.</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Manual with some software support (e.g. a sophisticated find-and-replace function)</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Mainly automated with sophisticated natural language processing technologies, with manual monitoring and correction.</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Mainly automated with sophisticated natural language processing technologies, without manual monitoring and correction.</td> </tr> </table>	<input type="checkbox"/>	Completely manual after the decision has been rendered.	<input type="checkbox"/>	Manual with some software support (e.g. a sophisticated find-and-replace function)	<input type="checkbox"/>	Mainly automated with sophisticated natural language processing technologies, with manual monitoring and correction.	<input type="checkbox"/>	Mainly automated with sophisticated natural language processing technologies, without manual monitoring and correction.						
<input type="checkbox"/>	Completely manual after the decision has been rendered.														
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<input type="checkbox"/>	Mainly automated with sophisticated natural language processing technologies, with manual monitoring and correction.														
<input type="checkbox"/>	Mainly automated with sophisticated natural language processing technologies, without manual monitoring and correction.														

	<table border="1"> <tr> <td><input type="checkbox"/></td><td>While drafting the decision all personal data are tagged by judge or clerk, so they can be automatically replaced if and when the decision is published.</td></tr> <tr> <td><input type="checkbox"/></td><td>Other: Please describe.</td></tr> <tr> <td colspan="2">If you have any additional information, please provide here.</td></tr> </table>	<input type="checkbox"/>	While drafting the decision all personal data are tagged by judge or clerk, so they can be automatically replaced if and when the decision is published.	<input type="checkbox"/>	Other: Please describe.	If you have any additional information, please provide here.													
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<input type="checkbox"/>	Other: Please describe.																		
If you have any additional information, please provide here.																			
2-i	<p>Who is responsible for carrying out the anonymisation?</p> <table border="1"> <tr> <td><input type="checkbox"/></td><td>Judge</td></tr> <tr> <td><input type="checkbox"/></td><td>Administrative court staff</td></tr> <tr> <td><input type="checkbox"/></td><td>IT-staff</td></tr> <tr> <td><input type="checkbox"/></td><td>Contractor (legal publisher)</td></tr> <tr> <td><input type="checkbox"/></td><td>Contractor (not being a legal publisher)</td></tr> <tr> <td><input type="checkbox"/></td><td>N/A because decisions are not anonymised.</td></tr> <tr> <td><input type="checkbox"/></td><td>N/A because anonymisation is completely automated.</td></tr> <tr> <td><input type="checkbox"/></td><td>Other: Please describe.</td></tr> <tr> <td colspan="2">If you have any additional information, please provide here.</td></tr> </table>	<input type="checkbox"/>	Judge	<input type="checkbox"/>	Administrative court staff	<input type="checkbox"/>	IT-staff	<input type="checkbox"/>	Contractor (legal publisher)	<input type="checkbox"/>	Contractor (not being a legal publisher)	<input type="checkbox"/>	N/A because decisions are not anonymised.	<input type="checkbox"/>	N/A because anonymisation is completely automated.	<input type="checkbox"/>	Other: Please describe.	If you have any additional information, please provide here.	
<input type="checkbox"/>	Judge																		
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<input type="checkbox"/>	Contractor (legal publisher)																		
<input type="checkbox"/>	Contractor (not being a legal publisher)																		
<input type="checkbox"/>	N/A because decisions are not anonymised.																		
<input type="checkbox"/>	N/A because anonymisation is completely automated.																		
<input type="checkbox"/>	Other: Please describe.																		
If you have any additional information, please provide here.																			
2-j	<p>Even if decisions are anonymised, they can still contain personal data, e.g. if the anonymisation was not done perfectly or if individuals involved can still be identified by the unique circumstances of the case.</p> <p>Is there a complaints procedure for data subjects that consider their personal data in the published judgments not being anonymised properly? If yes, please describe the following aspects:</p> <ul style="list-style-type: none"> <li>– Legal basis for the procedure</li> <li>– How to complain (on line?)</li> <li>– Who decides on the complaint?</li> <li>– Any appeal possible?</li> <li>– Is the procedure described on line (please provide URL)?</li> </ul> <p>Type your answer here.</p>																		
2-k	<p>In cases which are referred to the Court of Justice of the EU within the framework of the preliminary reference procedure (Article 267 of the Treaty on the Functioning of the European Union), personal data can be anonymised.</p> <p>Article 95 of the Rules of Procedure of the Court of Justice<sup>383</sup> reads:</p>																		

<sup>383</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012Q0929\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012Q0929(01))

1. *Where anonymity has been granted by the referring court or tribunal, the Court shall respect that anonymity in the proceedings pending before it.*
2. *At the request of the referring court or tribunal, at the duly reasoned request of a party to the main proceedings or of its own motion, the Court may also, if it considers it necessary, render anonymous one or more persons or entities concerned by the case.*

In addition, paragraphs 27 and 28 of the ‘Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings’<sup>384</sup> read:

*(27) Under the preliminary ruling procedure, the Court will, as a rule, use the information contained in the order for reference, including nominative or personal data. It is therefore for the referring court or tribunal itself, if it considers it necessary, to delete certain details in its request for a preliminary ruling or to render anonymous one or more persons or entities concerned by the dispute in the main proceedings.*

*(28) After the request for a preliminary ruling has been lodged, the Court may also render such persons or entities anonymous of its own motion, or at the request of the referring court or tribunal or of a party to the main proceedings. In order to maintain its effectiveness, such a request for anonymity must, however, be made at the earliest possible stage of the proceedings, and in any event prior to publication in the Official Journal of the European Union of the notice relating to the case concerned, and to service of the request for a preliminary ruling on the interested persons referred to in Article 23 of the Statute.*

Which of the following options describes best your practice on the referral of preliminary proceedings to the Court of Justice?

<input type="checkbox"/>	There is a policy that both the order for reference and the decision itself are always anonymised.
<input type="checkbox"/>	There is a policy that only the order for reference but not the decision itself is anonymised.
<input type="checkbox"/>	There is a policy that the decision itself but not the order for reference is anonymised.
<input type="checkbox"/>	We only anonymise if parties ask us to do so; the initiative is with the parties to the case.
<input type="checkbox"/>	We only anonymise if parties ask us to do so, but we inform the parties about this option.
<input type="checkbox"/>	In principle, we never anonymise order for reference or judgments when referring a case to the Court of Justice.
<input type="checkbox"/>	We do not have a common policy, it is left to the discretion of the courts.

<sup>384</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012H1106\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012H1106(01))

	<input type="checkbox"/>	Other: Please describe.
	If you have any additional information, please provide here.	

## Section 3 – Open Data

‘Open Data’ refers to the principle that public data should be available for re-use by public and private bodies. The legal framework is defined in Directive 2003/98/EC on the re-use of public sector information, as amended by Directive 2013/37/EU.

This Directive is based on the principle that data have to be made available for re-use upon request, but in many Member States as well as within the EU itself there is tendency to make available pro-actively those datasets that can be considered to be of public interest. The Directive also applies to information that is already available on the internet.

3-a	Are there any legal restrictions on the re-use of court decisions which are stored in public databases, e.g. because of intellectual property rights. If yes, please describe these restrictions with a reference to the relevant legal provisions. If possible, please also describe the type of licence. Type your answer here.												
3-b	Apart from the general national legislation implementing the abovementioned European Directive, is there a specific <u>legal framework</u> , a <u>policy framework</u> and/or <u>additional guidelines</u> regarding the re-use of court decisions? If yes, please summarize and if possible provide a URL or – if not published – an electronic copy. Type your answer here.												
3-c	<p>In which technical way are the court decisions published on the internet, available for re-use? If the situation differs from court to court, please indicate so in the text field.</p> <table border="1"> <tr> <td><input type="checkbox"/></td><td>There are no specific technical facilities. Documents can be downloaded/collected from the website.</td></tr> <tr> <td><input type="checkbox"/></td><td>We offer a download via FTP.</td></tr> <tr> <td><input type="checkbox"/></td><td>We maintain a web service.</td></tr> <tr> <td><input type="checkbox"/></td><td>Decisions cannot be downloaded. We use a robot exclusion protocol.</td></tr> <tr> <td><input type="checkbox"/></td><td>Other: Please describe.</td></tr> <tr> <td colspan="2">If you have any additional information, please provide here.</td></tr> </table>	<input type="checkbox"/>	There are no specific technical facilities. Documents can be downloaded/collected from the website.	<input type="checkbox"/>	We offer a download via FTP.	<input type="checkbox"/>	We maintain a web service.	<input type="checkbox"/>	Decisions cannot be downloaded. We use a robot exclusion protocol.	<input type="checkbox"/>	Other: Please describe.	If you have any additional information, please provide here.	
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<input type="checkbox"/>	Decisions cannot be downloaded. We use a robot exclusion protocol.												
<input type="checkbox"/>	Other: Please describe.												
If you have any additional information, please provide here.													
3-d	<p>In which technical formats are the court decisions available for re-use? If the situation differs from court to court, please indicate so in the text field.</p> <table border="1"> <tr> <td><input type="checkbox"/></td><td>PDF (scanned image)</td></tr> <tr> <td><input type="checkbox"/></td><td>PDF (indexable text)</td></tr> <tr> <td><input type="checkbox"/></td><td>HTML / XHTML</td></tr> </table>	<input type="checkbox"/>	PDF (scanned image)	<input type="checkbox"/>	PDF (indexable text)	<input type="checkbox"/>	HTML / XHTML						
<input type="checkbox"/>	PDF (scanned image)												
<input type="checkbox"/>	PDF (indexable text)												
<input type="checkbox"/>	HTML / XHTML												

	<table border="1"> <tr> <td data-bbox="491 235 614 291"><input type="checkbox"/></td> <td data-bbox="614 235 1476 291">RDF/XML</td> </tr> <tr> <td data-bbox="491 291 614 347"><input type="checkbox"/></td> <td data-bbox="614 291 1476 347">Word</td> </tr> <tr> <td data-bbox="491 347 614 403"><input type="checkbox"/></td> <td data-bbox="614 347 1476 403">Text (ASCII)</td> </tr> <tr> <td data-bbox="491 403 614 481"><input type="checkbox"/></td> <td data-bbox="614 403 1476 481">Other: Please describe.</td> </tr> <tr> <td colspan="2" data-bbox="491 481 1476 548">If you have any additional information, please provide here.</td> </tr> </table>	<input type="checkbox"/>	RDF/XML	<input type="checkbox"/>	Word	<input type="checkbox"/>	Text (ASCII)	<input type="checkbox"/>	Other: Please describe.	If you have any additional information, please provide here.	
<input type="checkbox"/>	RDF/XML										
<input type="checkbox"/>	Word										
<input type="checkbox"/>	Text (ASCII)										
<input type="checkbox"/>	Other: Please describe.										
If you have any additional information, please provide here.											
3-e	<p>Are all metadata also available for re-use, in the same technical way as the decisions themselves? If not, please describe the differences and the reasons for those differences.</p> <p>Type your answer here.</p>										
3-f	<p>Are court decisions which are not published in the public database, available for re-use (e.g. upon request)? If yes, please describe how this is organised.</p> <p>Type your answer here.</p>										



## Section 4 – Citation

In the context the ‘citation of court decisions’ means: making a reference to a court decision within a text.

4-a	<p>Does your country have citation guidelines concerning the way in which court decisions have to be cited, e.g. in other court decisions, in academic writings or in Parliamentary documents?</p> <table border="1"> <tr> <td data-bbox="499 584 566 629"><input type="checkbox"/></td><td data-bbox="582 584 1469 629">We do not have citation guidelines.</td></tr> <tr> <td data-bbox="499 640 566 685"><input type="checkbox"/></td><td data-bbox="582 640 1469 763">We do have citation guidelines, they are issued by a public body. Please also provide a URL to these guidelines or attach a copy. Please describe.</td></tr> <tr> <td data-bbox="499 775 566 819"><input type="checkbox"/></td><td data-bbox="582 775 1469 931">We do have citation guidelines, they are issued by a legal publisher or other private body. Please also provide a URL to these guidelines or attach a copy. Please describe.</td></tr> <tr> <td data-bbox="499 943 566 987"><input type="checkbox"/></td><td data-bbox="582 943 1469 987">Other: Please describe.</td></tr> <tr> <td colspan="2" data-bbox="499 999 1469 1055">If you have any additional information, please provide here.</td></tr> </table>	<input type="checkbox"/>	We do not have citation guidelines.	<input type="checkbox"/>	We do have citation guidelines, they are issued by a public body. Please also provide a URL to these guidelines or attach a copy. Please describe.	<input type="checkbox"/>	We do have citation guidelines, they are issued by a legal publisher or other private body. Please also provide a URL to these guidelines or attach a copy. Please describe.	<input type="checkbox"/>	Other: Please describe.	If you have any additional information, please provide here.					
<input type="checkbox"/>	We do not have citation guidelines.														
<input type="checkbox"/>	We do have citation guidelines, they are issued by a public body. Please also provide a URL to these guidelines or attach a copy. Please describe.														
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<input type="checkbox"/>	Other: Please describe.														
If you have any additional information, please provide here.															
4-b	<p>If you do have citation guidelines, would you say they are generally observed? Please elaborate your answer. Type your answer here.</p>														
4-c	<p>What is the preferred way of citing case law; as described in the guidelines or in practice?</p> <table border="1"> <tr> <td data-bbox="499 1290 566 1335"><input type="checkbox"/></td><td data-bbox="582 1290 1469 1335">Name of court + Date of Judgment + Case number</td></tr> <tr> <td data-bbox="499 1346 566 1391"><input type="checkbox"/></td><td data-bbox="582 1346 1469 1435">As above, but with addition of the name of the parties or an ‘alias’ (nickname)</td></tr> <tr> <td data-bbox="499 1447 566 1491"><input type="checkbox"/></td><td data-bbox="582 1447 1469 1491">European Case Law Identifier</td></tr> <tr> <td data-bbox="499 1503 566 1547"><input type="checkbox"/></td><td data-bbox="582 1503 1469 1592">A national court decision identifier (which is to be distinguished from the case number)</td></tr> <tr> <td data-bbox="499 1603 566 1648"><input type="checkbox"/></td><td data-bbox="582 1603 1469 1693">The number or code under which the judgment is published in a commercial periodical.</td></tr> <tr> <td data-bbox="499 1704 566 1749"><input type="checkbox"/></td><td data-bbox="582 1704 1469 1749">Other: Please describe.</td></tr> <tr> <td colspan="2" data-bbox="499 1760 1469 1816">If you have any additional information, please provide here.</td></tr> </table>	<input type="checkbox"/>	Name of court + Date of Judgment + Case number	<input type="checkbox"/>	As above, but with addition of the name of the parties or an ‘alias’ (nickname)	<input type="checkbox"/>	European Case Law Identifier	<input type="checkbox"/>	A national court decision identifier (which is to be distinguished from the case number)	<input type="checkbox"/>	The number or code under which the judgment is published in a commercial periodical.	<input type="checkbox"/>	Other: Please describe.	If you have any additional information, please provide here.	
<input type="checkbox"/>	Name of court + Date of Judgment + Case number														
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<input type="checkbox"/>	The number or code under which the judgment is published in a commercial periodical.														
<input type="checkbox"/>	Other: Please describe.														
If you have any additional information, please provide here.															

## Section 5 – ECLI

The European Case Law Identifier is a unique identifier that can be used to identify and to cite court decisions throughout the European Union. Apart from the identifier itself the ECLI ecosystem also covers a set of metadata, an organisational structural and the ECLI Search Engine on the European e-Justice Portal.

5-a	<p>Have you implemented the European Case Law Identifier?</p> <table border="1"> <tr> <td data-bbox="488 674 568 987"><input type="checkbox"/></td><td data-bbox="568 674 1477 987"> <p>Yes For which courts? Type your answer here.</p> <p>Are you preparing an extension of the implementation (e.g. more courts or more historic records)?</p> <p>Type your answer here.</p> </td></tr> <tr> <td data-bbox="488 987 568 1223"><input type="checkbox"/></td><td data-bbox="568 987 1477 1223"> <p>No, but we are preparing the implementation. For which courts? Type your answer here.</p> <p>Please also answer the remainder of this section (as if you finished implementation).</p> </td></tr> <tr> <td data-bbox="488 1223 568 1424"><input type="checkbox"/></td><td data-bbox="568 1223 1477 1424"> <p>No. Can you state the reasons? Type your answer here.</p> <p>You can skip the remainder of this section of the questionnaire.</p> </td></tr> </table>	<input type="checkbox"/>	<p>Yes For which courts? Type your answer here.</p> <p>Are you preparing an extension of the implementation (e.g. more courts or more historic records)?</p> <p>Type your answer here.</p>	<input type="checkbox"/>	<p>No, but we are preparing the implementation. For which courts? Type your answer here.</p> <p>Please also answer the remainder of this section (as if you finished implementation).</p>	<input type="checkbox"/>	<p>No. Can you state the reasons? Type your answer here.</p> <p>You can skip the remainder of this section of the questionnaire.</p>
<input type="checkbox"/>	<p>Yes For which courts? Type your answer here.</p> <p>Are you preparing an extension of the implementation (e.g. more courts or more historic records)?</p> <p>Type your answer here.</p>						
<input type="checkbox"/>	<p>No, but we are preparing the implementation. For which courts? Type your answer here.</p> <p>Please also answer the remainder of this section (as if you finished implementation).</p>						
<input type="checkbox"/>	<p>No. Can you state the reasons? Type your answer here.</p> <p>You can skip the remainder of this section of the questionnaire.</p>						
5-b	<p>What is the temporal range of court decisions covered by ECLI?</p> <p>Type your answer here.</p>						
5-c	<p>What is the approximate number of court decisions having an ECLI assigned today?</p> <p>Type your answer here.</p>						
5-d	<p>Are the ECLIs assigned also used in public databases or websites?</p> <table border="1"> <tr> <td data-bbox="488 1783 584 1854"><input type="checkbox"/></td><td data-bbox="584 1783 1477 1854">No.</td></tr> </table>	<input type="checkbox"/>	No.				
<input type="checkbox"/>	No.						

	<input type="checkbox"/> Yes. Please state names / URLs of these databases Type your answer here.																
5-e	<p>Did you encounter problems in defining the ECLI standard for your country?</p> <table border="1"> <tr> <td><input type="checkbox"/></td><td>No.</td></tr> <tr> <td><input type="checkbox"/></td><td>           Yes. In which part?           <table border="1"> <tr> <td><input type="checkbox"/></td><td>Country code Additional remarks (optional).</td></tr> <tr> <td><input type="checkbox"/></td><td>Court code Additional remarks (optional).</td></tr> <tr> <td><input type="checkbox"/></td><td>Year Additional remarks (optional).</td></tr> <tr> <td><input type="checkbox"/></td><td>Ordinal number Additional remarks (optional).</td></tr> <tr> <td colspan="2">If you have any additional information, please provide here.</td></tr> </table> </td></tr> </table>	<input type="checkbox"/>	No.	<input type="checkbox"/>	Yes. In which part? <table border="1"> <tr> <td><input type="checkbox"/></td><td>Country code Additional remarks (optional).</td></tr> <tr> <td><input type="checkbox"/></td><td>Court code Additional remarks (optional).</td></tr> <tr> <td><input type="checkbox"/></td><td>Year Additional remarks (optional).</td></tr> <tr> <td><input type="checkbox"/></td><td>Ordinal number Additional remarks (optional).</td></tr> <tr> <td colspan="2">If you have any additional information, please provide here.</td></tr> </table>	<input type="checkbox"/>	Country code Additional remarks (optional).	<input type="checkbox"/>	Court code Additional remarks (optional).	<input type="checkbox"/>	Year Additional remarks (optional).	<input type="checkbox"/>	Ordinal number Additional remarks (optional).	If you have any additional information, please provide here.			
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<input type="checkbox"/>	Ordinal number Additional remarks (optional).																
If you have any additional information, please provide here.																	
5-f	<p>How do you construct the 'ordinal number', the fifth part of the ECLI code?</p> <table border="1"> <tr> <td><input type="checkbox"/></td><td>           We generate a 'judgment number' (different from the 'case number'), generated only to construct ECLI (or a comparable national identifier). Additional remarks (optional).         </td></tr> <tr> <td><input type="checkbox"/></td><td>           We use various elements to 'construct' this part. Which elements?           <table border="1"> <tr> <td><input type="checkbox"/></td><td>Date of the decision Additional remarks (optional).</td></tr> <tr> <td><input type="checkbox"/></td><td>Case number Additional remarks (optional).</td></tr> <tr> <td><input type="checkbox"/></td><td>Code for chamber or type of case Additional remarks (optional).</td></tr> <tr> <td><input type="checkbox"/></td><td>Serial number for disambiguation Additional remarks (optional).</td></tr> <tr> <td><input type="checkbox"/></td><td>Other Please describe.</td></tr> <tr> <td colspan="2">If you have any additional information, please provide here.</td></tr> </table> </td></tr> </table>	<input type="checkbox"/>	We generate a 'judgment number' (different from the 'case number'), generated only to construct ECLI (or a comparable national identifier). Additional remarks (optional).	<input type="checkbox"/>	We use various elements to 'construct' this part. Which elements? <table border="1"> <tr> <td><input type="checkbox"/></td><td>Date of the decision Additional remarks (optional).</td></tr> <tr> <td><input type="checkbox"/></td><td>Case number Additional remarks (optional).</td></tr> <tr> <td><input type="checkbox"/></td><td>Code for chamber or type of case Additional remarks (optional).</td></tr> <tr> <td><input type="checkbox"/></td><td>Serial number for disambiguation Additional remarks (optional).</td></tr> <tr> <td><input type="checkbox"/></td><td>Other Please describe.</td></tr> <tr> <td colspan="2">If you have any additional information, please provide here.</td></tr> </table>	<input type="checkbox"/>	Date of the decision Additional remarks (optional).	<input type="checkbox"/>	Case number Additional remarks (optional).	<input type="checkbox"/>	Code for chamber or type of case Additional remarks (optional).	<input type="checkbox"/>	Serial number for disambiguation Additional remarks (optional).	<input type="checkbox"/>	Other Please describe.	If you have any additional information, please provide here.	
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<input type="checkbox"/>	Other Please describe.																
If you have any additional information, please provide here.																	

	<input type="checkbox"/> Other Please describe.																								
5-g	<p>Can you describe in a few words the compelling reasons for the method chosen to construct the fifth part of the ECLI code?</p> <p>Please describe.</p>																								
5-h	<p>Did you also implement (part of) the ECLI metadata model?</p> <table border="1"> <tr> <td><input type="checkbox"/></td><td> <p>No (you cannot answer 'no' if you have connected to the ECLI search engine, since you need the mandatory metadata to connect).</p> <p>Additional remarks (optional).</p> </td></tr> <tr> <td><input type="checkbox"/></td><td> <p>Yes, only the mandatory metadata.</p> <p>Additional remarks (optional).</p> </td></tr> <tr> <td><input type="checkbox"/></td><td> <p>Yes, the mandatory and some of optional metadata. Please tick which of the optional metadata.</p> <table border="1"> <tr> <td><input type="checkbox"/></td><td> <p>Title, if yes, what type of date do you use to populate this field?</p> <p>Please describe.</p> </td></tr> <tr> <td><input type="checkbox"/></td><td> <p>Subject (field of law)</p> <p>Additional remarks (optional).</p> </td></tr> <tr> <td><input type="checkbox"/></td><td> <p>Abstract</p> <p>Additional remarks (optional).</p> </td></tr> <tr> <td><input type="checkbox"/></td><td> <p>Description</p> <p>Additional remarks (optional).</p> </td></tr> <tr> <td><input type="checkbox"/></td><td> <p>Contributor</p> <p>Please describe.</p> </td></tr> <tr> <td><input type="checkbox"/></td><td> <p>Issued</p> <p>Additional remarks (optional).</p> </td></tr> <tr> <td><input type="checkbox"/></td><td> <p>References</p> <p>Additional remarks (optional).</p> </td></tr> <tr> <td><input type="checkbox"/></td><td> <p>isReplacedBy</p> <p>Additional remarks (optional).</p> </td></tr> <tr> <td colspan="2"> <p>If you have any additional information, please provide here.</p> </td></tr> </table> </td></tr> </table>	<input type="checkbox"/>	<p>No (you cannot answer 'no' if you have connected to the ECLI search engine, since you need the mandatory metadata to connect).</p> <p>Additional remarks (optional).</p>	<input type="checkbox"/>	<p>Yes, only the mandatory metadata.</p> <p>Additional remarks (optional).</p>	<input type="checkbox"/>	<p>Yes, the mandatory and some of optional metadata. Please tick which of the optional metadata.</p> <table border="1"> <tr> <td><input type="checkbox"/></td><td> <p>Title, if yes, what type of date do you use to populate this field?</p> <p>Please describe.</p> </td></tr> <tr> <td><input type="checkbox"/></td><td> <p>Subject (field of law)</p> <p>Additional remarks (optional).</p> </td></tr> <tr> <td><input type="checkbox"/></td><td> <p>Abstract</p> <p>Additional remarks (optional).</p> </td></tr> <tr> <td><input type="checkbox"/></td><td> <p>Description</p> <p>Additional remarks (optional).</p> </td></tr> <tr> <td><input type="checkbox"/></td><td> <p>Contributor</p> <p>Please describe.</p> </td></tr> <tr> <td><input type="checkbox"/></td><td> <p>Issued</p> <p>Additional remarks (optional).</p> </td></tr> <tr> <td><input type="checkbox"/></td><td> <p>References</p> <p>Additional remarks (optional).</p> </td></tr> <tr> <td><input type="checkbox"/></td><td> <p>isReplacedBy</p> <p>Additional remarks (optional).</p> </td></tr> <tr> <td colspan="2"> <p>If you have any additional information, please provide here.</p> </td></tr> </table>	<input type="checkbox"/>	<p>Title, if yes, what type of date do you use to populate this field?</p> <p>Please describe.</p>	<input type="checkbox"/>	<p>Subject (field of law)</p> <p>Additional remarks (optional).</p>	<input type="checkbox"/>	<p>Abstract</p> <p>Additional remarks (optional).</p>	<input type="checkbox"/>	<p>Description</p> <p>Additional remarks (optional).</p>	<input type="checkbox"/>	<p>Contributor</p> <p>Please describe.</p>	<input type="checkbox"/>	<p>Issued</p> <p>Additional remarks (optional).</p>	<input type="checkbox"/>	<p>References</p> <p>Additional remarks (optional).</p>	<input type="checkbox"/>	<p>isReplacedBy</p> <p>Additional remarks (optional).</p>	<p>If you have any additional information, please provide here.</p>	
<input type="checkbox"/>	<p>No (you cannot answer 'no' if you have connected to the ECLI search engine, since you need the mandatory metadata to connect).</p> <p>Additional remarks (optional).</p>																								
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<input type="checkbox"/>	<p>Title, if yes, what type of date do you use to populate this field?</p> <p>Please describe.</p>																								
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<input type="checkbox"/>	<p>References</p> <p>Additional remarks (optional).</p>																								
<input type="checkbox"/>	<p>isReplacedBy</p> <p>Additional remarks (optional).</p>																								
<p>If you have any additional information, please provide here.</p>																									

5-i	Do you have metadata available in your national data that cannot be represented in the ECLI metadata model, but you consider useful?				
<input type="checkbox"/>	No.				
<input type="checkbox"/>	Yes. Please describe these metadata. Please describe.				
5-j	When/where is the ECLI code assigned, technically?				
<input type="checkbox"/>	In the court management system. Additional remarks (optional).				
<input type="checkbox"/>	In the publication database Additional remarks (optional).				
<input type="checkbox"/>	As a separate service Additional remarks (optional).				
<input type="checkbox"/>	Other method Please describe.				
5-k	Did you encounter substantial technical or organisation problems implementing ECLI?				
<input type="checkbox"/>	No.				
<input type="checkbox"/>	Yes. Please describe.				
5-l	Have you made a connection to the ECLI search engine of the European E-Justice portal?				
<input type="checkbox"/>	No. Please explain why not. Please describe.				
<input type="checkbox"/>	Yes. What software did you use? <table border="1" data-bbox="647 1547 1461 1794"> <tr> <td data-bbox="663 1570 692 1603"><input type="checkbox"/></td><td data-bbox="735 1570 1453 1648">Only your own software solution. Additional remarks (optional).</td></tr> <tr> <td data-bbox="663 1671 692 1704"><input type="checkbox"/></td><td data-bbox="735 1671 1453 1771">The software supplied by the Commission (in combination with own solutions). Additional remarks (optional).</td></tr> </table>	<input type="checkbox"/>	Only your own software solution. Additional remarks (optional).	<input type="checkbox"/>	The software supplied by the Commission (in combination with own solutions). Additional remarks (optional).
<input type="checkbox"/>	Only your own software solution. Additional remarks (optional).				
<input type="checkbox"/>	The software supplied by the Commission (in combination with own solutions). Additional remarks (optional).				

5-m	Can you describe visible benefits of the implementation of ECLI in your country? E.g. for court administration, legal research or case law publishing? Please describe.						
5-n	<p>The <u>ECLI Council Conclusions</u> advise to use ECLI not only for published decisions, but on all decisions rendered. Have you implemented this?</p> <table border="1"> <tr> <td><input type="checkbox"/></td> <td>Yes Additional remarks (optional).</td> </tr> <tr> <td><input type="checkbox"/></td> <td>No, and for the moment we do not consider it.</td> </tr> <tr> <td><input type="checkbox"/></td> <td>No, but we are considering it. Additional remarks (optional).</td> </tr> </table>	<input type="checkbox"/>	Yes Additional remarks (optional).	<input type="checkbox"/>	No, and for the moment we do not consider it.	<input type="checkbox"/>	No, but we are considering it. Additional remarks (optional).
<input type="checkbox"/>	Yes Additional remarks (optional).						
<input type="checkbox"/>	No, and for the moment we do not consider it.						
<input type="checkbox"/>	No, but we are considering it. Additional remarks (optional).						
5-o	<p>The <u>ECLI Council Conclusions</u> advise to print/display the ECLI code also on the judgment itself. Have you implemented this?</p> <table border="1"> <tr> <td><input type="checkbox"/></td> <td>Yes Additional remarks (optional).</td> </tr> <tr> <td><input type="checkbox"/></td> <td>No, and for the moment we do not consider it.</td> </tr> <tr> <td><input type="checkbox"/></td> <td>No, but we are considering it. Additional remarks (optional).</td> </tr> </table>	<input type="checkbox"/>	Yes Additional remarks (optional).	<input type="checkbox"/>	No, and for the moment we do not consider it.	<input type="checkbox"/>	No, but we are considering it. Additional remarks (optional).
<input type="checkbox"/>	Yes Additional remarks (optional).						
<input type="checkbox"/>	No, and for the moment we do not consider it.						
<input type="checkbox"/>	No, but we are considering it. Additional remarks (optional).						
5-p	<p>Would you like to have any changes in the current ECLI standard?</p> <table border="1"> <tr> <td><input type="checkbox"/></td> <td>No.</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Yes. Please describe.</td> </tr> </table>	<input type="checkbox"/>	No.	<input type="checkbox"/>	Yes. Please describe.		
<input type="checkbox"/>	No.						
<input type="checkbox"/>	Yes. Please describe.						

## Annex II – Received Answers to the Questionnaire

Figure 28 displays an overview for which courts each Member State / organisation has answered the questionnaire. In the right-hand column an indication is given of courts that are discussed in this reports well, but for which the questionnaire was not answered.

Figure 28. Received answers on the questionnaire.

Member State / Organisation	Courts covered by questionnaire	Courts not covered by questionnaire
European Union	All courts	–
Council of Europe	–	European Court of Human Rights
European Patent Organisation	–	Boards of Appeal
Belgium	All 255 courts with civil and criminal jurisdiction.	Council of State and other administrative courts, Constitutional Court.
Bulgaria	All courts with civil, criminal and administrative jurisdiction	Constitutional Court
Czech republic	Supreme Court, Constitutional Court	Other courts
Denmark	All courts	–
Germany	All federal courts (seven)	State courts
Estonia	All courts	–
Ireland	–	All courts
Greece	Council of State	All other courts
Spain	Supreme Court, National Criminal and Administrative Court, the 17 High Courts of the Autonomous Communities, the 50 Provincial Courts.	Lower courts, Constitutional Court
France	All courts	–
Croatia	All courts with civil and criminal jurisdiction	High Administrative Court and Constitutional Courts
Italy	Constitutional Court and Court of Auditors	All other courts
Cyprus	All courts	–
Latvia	All courts except for the Constitutional Court	Constitutional Court
Lithuania	All courts except for the Constitutional Court	Constitutional Court

Luxembourg	–	All courts
Hungary	All courts except for the Constitutional Court	Constitutional Court
Malta	All courts	–
Netherlands	All courts	–
Austria	All courts with civil and criminal jurisdiction	Administrative courts and the Constitutional Court
Poland	–	All courts
Portugal	All courts	–
Romania	All courts except for the Constitutional Court	Constitutional Court
Slovenia	Constitutional Court, Supreme Court, High Administrative Court, Courts of Appeal	Local courts, district courts, labour courts
Slovakia	All courts except for the Constitutional Court	Constitutional Court
Finland	–	All courts
Sweden	–	All courts
UK – England & Wales	–	All courts
UK – Scotland	All courts	–
UK – Northern Ireland	–	All courts



## Annex III – About the Authors

### Marc van Opijnen

Marc van Opijnen studied administrative, international and European Law at the Universities of Groningen and Leiden. Enthusiastic about the opportunities of the internet, he mastered the necessary computer skills and in 1997 he developed the first public case law database on the Dutch internet. From 2000 till 2013 he worked at the Dutch Council for the Judiciary; he held various positions, but always as an intermediary between the law, the administration of justice and IT. He has a special interest for all aspects relating to the on-line access to case law, also the subject of his PhD thesis at the University of Amsterdam (2014). Currently he is affiliated to the Publications Office of the Netherlands (UBR|KOOP) and he is actively involved in various national and European projects for improving the access to legal information. He is a long-standing member of the EU Council working party on e-justice and e-law and played an active role in the development of the European Case Law Identifier. He (co-)authored more than 40 publications on his fields of interest.

### Ginevra Peruginelli

Ginevra Peruginelli is researcher at the Institute of Theory and Techniques of Legal Information (ITTIG-CNR). She has a degree in Law and a Ph.D in Telematics and Information Society at the University of Florence. She has received her Master's degree in Computer Science at the University of Northumbria, Newcastle. Since 2003 she is entitled to practice as a lawyer. She won two research fellowships as visiting fellow at the Institute of Advanced Legal Studies of the University of London and at the *Centre de recherche en droit public* at the Faculty of Law of the University of Montréal. For ten years (starting in 2004) she has been adjunct professor of legal informatics at the Law Faculty of University of Perugia. In 2012 she was adjunct professor of legal informatics at the University of Florence, Faculty of Law. Since October 2013 she is member of the Steering Committee of the Free access to Law Association. She is one of the editors in chief of the Journal of Open Access to Law published by Cornell University, School of Law. Her main research areas involve: open access to law; assessment of legal research outputs; techniques and methods for legal documentation; multilingual access to law.

### Eleni Kefali

Eleni Kefali is the director of the Justice Reform and Growth Directorate at the Institute for Justice and Growth, which has been established by the European Public Law Organization aiming to provide consulting and educational / training services of expert and innovative character in the field of modernization and reform of the judicial systems including e-government and e-justice. She holds a Law Degree from the National and Kapodistrian University of Athens and a Master's Degree on International Studies from the same University. She has been the Head of the Cabinet of the Secretary General of the Hellenic Ministry of Justice, Transparency and Human Rights (MoJ) (2011-2015). Her tasks included:

legal counselling and drafting of policy papers, strategy planning, coordination and monitoring of the funding, management and implementation of MoJ projects, funded mainly by EU Funds (including large IT projects), monitoring of the relevant procurement procedures, strategy planning, coordination and monitoring of the technical assistance by the European Commission's Task Force for Greece. She has participated in a large number of Committees/Working Groups on the above fields and has been a member and the representative of the MoJ in several EU Committees/Working Groups, i.e. the FREMP Working Group of the Council of Europe (EU Justice Scoreboard), national representative and member of the "Justice Programme Committee", deputy national contact point for the EU Justice Scoreboard Working Group, etc.

### **Monica Palmirani**

Monica Palmirani is Associate professor of Computer Science and Law at Bologna University, School of Law, Italy. Passed the national evaluation for becoming full professor. Graduated in Mathematic, Ph.D. in Legal Informatics and IT Law, teacher of several courses since 2001 on Legal Informatics, eGovernment, Legal drafting techniques, and Legal XML. She is member of CIRSIFID, one of the leading centers at the international level for the area of computer science and law. She was project manager and coordinator of several European projects from 1999 since today. She is the Director of Ph.D. International Program Erasmus Mundus Law, Science and Technology, coordinator of the eGov module in the Master in the Law of New technologies, Director of the Summer School Legislative XML organised by the University of Bologna, Ravenna, with the goal of disseminating the usage of Legal XML in the public agencies, respecting and guaranteeing the legal principles embedded in the legal document form. She is co-chair of LegalRuleML and LegalDocML OASIS TCs. In 2009 she was visiting professor at NICTA – Brisbane, Australia and in 2010 she was visiting professor in Stanford University into the CodeX Center. In 2015 she received the valuable award 'OASIS distinguished contributor' for the exceptional contribution in the Legal Standardization models. In 2016 she was elected Director of OASIS Board. She is author of more of 50 works among papers, books, chapters, technical reports.