



**Joint Programme between the European Union and the Council of Europe**

**“Support to the Kazakh authorities in improving the quality and efficiency of the Kazakh justice system”**

## **Report on the Accessibility to Judicial Decisions through Publication Standards**

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# **1. WHY ACCESSIBILITY AND PUBLICATION STANDARDS FOR JUDICIAL DECISIONS ARE IMPORTANT**

## **1.1. Origins in Article 6 of the European Convention on Human Rights**

The clearest European-wide expression for the importance of accessibility and clear publication standards for the judicial process and judicial decisions is found in one of the key provisions of the European Convention on Human Rights (ECHR). The ECHR is the core human rights document for the 47 States, which comprise the Council of Europe. The principles set out in Article 6 apply as much to the civil and administrative processes as they do to criminal matters and procedures. Article 6 states:

1. 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.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (b) to have adequate time and the facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

## **1.2. Article 6: the development of accessibility and publication of court decisions**

The European Court of Human Rights (the Court) has over the years developed substantive case law concerning the public character of court proceedings and the publication of court decisions.<sup>1</sup>

Already in 1983, the Court declared in *Pretto and Others v. Italy* that the public character of proceedings before the judicial bodies referred to in Article 6 § 1 protects litigants against the administration of justice in secret with no public scrutiny. It is also one of the means whereby confidence in the courts, superior and inferior, can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (*Pretto and Others v. Italy*, 8 December 1983, § 21). This principle of public character of proceedings has been confirmed in the subsequent case-law of the Court (for example *Axen v. Germany*, 8 December 1983, § 25; *Ryakib Biryukov v. Russia*, 17 January 2008, § 30; *Fazliyski v. Bulgaria*, 16 April 2013, § 64).

In *Pretto and Others v. Italy* the Court recognised that whilst the member States of the Council of Europe all subscribe to this principle of publicity, their legislative systems and judicial practice reveal some diversity as to its scope and manner of implementation, as regards both the holding of hearings and the "pronouncement" of judgments (§ 22). The Court pointed out that many member States of the Council of Europe have a long-standing tradition of recourse to other means, besides reading out aloud, for making public the decisions of all or some of their courts, and especially of their courts of cassation, for example deposit in a registry accessible to the public and this is something that the authors of the Convention could not have overlooked (§ 26). The Court therefore has not felt bound to adopt a literal interpretation stating that in each case the form of publicity to be given to the "judgment" under the domestic law of the respondent State must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 § 1 (§ 26). This principle has been confirmed in the subsequent case-law (*Ryakib Biryukov v. Russia*, § 32; *Fazliyski v. Bulgaria*) and has been further elaborated by the Court. The Court has specified that in making this assessment, account must be taken of the entirety of the proceedings conducted and the role of the court therein (*Moser v. Austria*, 21 September 2006, § 101; *Pretto and Others v. Italy*, § 27).

In *Fazliyski v. Bulgaria* the Court emphasised that, although linked to the overall requirement of fairness, the requirement of Article 6 § 1 that judgment be pronounced publicly is free-standing. Therefore, it could not be regarded as decisive that the applicant was able to access the judgments and exercise his rights of appeal. What ultimately matters is whether those judgments were, in some form, made accessible to the public (*Fazliyski v. Bulgaria*, § 65).

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<sup>1</sup> For a more detailed overview of the application of Article 6 § 1 please see "Guide on Article 6. Right to a Fair Trial (civil limb)", available at: [http://www.echr.coe.int/Documents/Guide\\_Art\\_6\\_ENG.pdf](http://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf) ; "Guide on Article 6. Right to a Fair Trial (criminal limb)", available at: [http://www.echr.coe.int/Documents/Guide\\_Art\\_6\\_criminal\\_ENG.pdf](http://www.echr.coe.int/Documents/Guide_Art_6_criminal_ENG.pdf).

For example, the Court has found that the absence of the public pronouncement of the judgment of the Court of Cassation did not contravene the Convention as the Court of Cassation took its decision after holding a public hearing and although the judgment was not pronounced in open court anyone could consult or obtain a copy of it on application to the court registry. In the opinion of the Court the object pursued by Article 6 § 1 was no less achieved by a deposit in the court registry, making the full text of the judgment available to everyone, than by a reading in open court of a decision dismissing an appeal or quashing a previous judgment (*Pretto and Others v. Italy*, § 27). Similarly, the Court was of the opinion that the absence of the public pronouncement of the judgment did not contravene the Convention in a situation where the judgment of the lower instance court had been pronounced in open court (*Axen v. Germany*, § 32). However, the Court has expressed that in cases where dispensing with a public hearing was not justified, the means of rendering a decision public by giving persons who establish a legal interest in the case access to the file and publishing decisions of special interest mostly of the appellate courts or the Supreme Court did not suffice to comply with the requirements of Article 6 § 1 (*Moser v. Austria*, 21 September 2006, § 103)

In case of classified proceedings the Court has expressed that it is not for the Court to determine whether the classification of a proceeding was correct in terms of national law of a respective State. The Court assesses whether convincing justification for classification has been put forward (*Fazliyski v. Bulgaria*, §§ 67–68). Where only the operative part of the judgment has been read out in the open court it is for the Court to examine whether the public had access to the reasoned judgment in the applicant's case by means other than its reading out in open court, and, if so, to consider the modalities of the form of publicity given to the reasoned judgment to ensure its public scrutiny (*Ryakib Biryukov v. Russia* § 39). The Court has recognised the need to sometimes classify some or all the materials used in the proceedings and even the parts of decisions rendered in them. However, the complete concealment from the public of the entirety of a judicial decision in such proceedings cannot be regarded as warranted. Even in indisputable national security cases, such as those relating to terrorist activities, the authorities of countries which have already suffered and are currently at risk of terrorist attacks have chosen to keep secret only those parts of their decisions whose disclosure would compromise national security or the safety of others, thus illustrating that there exist techniques which can accommodate legitimate security concerns without fully negating fundamental procedural guarantees such as the publicity of judicial decisions (*Raza v. Bulgaria*, 11 February 2010, § 53). The Court has further developed this argumentation finding that where courts have been justified in dispensing with a public hearing the oral pronouncement of the reasons for their judgment could also be made *in camera*. The Court went on and stated that having regard to the specific features of the criminal proceedings in question and the reasons which underlay the courts' decisions to conduct the proceedings *in camera*, the Court finds that limiting the public pronouncement to the operative parts of the judgments cannot not be considered to have contravened Article 6 § 1 of the Convention (*Welke and Białek v. Poland*, 1 March 2011, § 84).

### 1.3. Article 8 and the Protection of Personal Data

A right to protection of personal data forms part of the right to respect for private life, home and correspondence regulated in Article 8(1) ECHR.<sup>2</sup> Any interference with the rights protected by Article 8(1) must fulfil all of the criteria listed in 8(2) of this legal provision in order to be consistent with the Convention.<sup>3</sup>

Another legally binding international instrument in the data protection field is the Council of Europe Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data (Convention 108).<sup>4</sup> Taking into consideration the need to deal with the developing challenges for privacy resulting from the use of new information and communication technologies, as well as the need to strengthen the Convention's follow-up mechanism, the Council of Europe Committee of Ministers has encouraged the modernisation of this legal instrument.<sup>5</sup>

In order further to develop the general principles and rules laid down in Convention 108, the Committee of Ministers of the Council of Europe has adopted several recommendations.<sup>6</sup> They are not legally binding.

In EU terms, under the European Union legal framework, the Charter of Fundamental Rights of the European Union not only guarantees the respect for private and family life (Article 7), but also establishes the right to data protection (Article 8),<sup>7</sup> specifically raising the level of this protection to that of a fundamental right of the EU law.<sup>8</sup> Both the European Court of Human Rights and the Court of Justice of European Union have specified that a balancing exercise with other rights is necessary when applying and interpreting Article 8 of ECHR and Article 8 of the Charter.<sup>9</sup>

The 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 is designed to give substance to the principles of the right to privacy already set out in the Convention 108 (Article 5) and

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<sup>2</sup> The text of the Convention is available here:

<http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>

<sup>3</sup> See Council of Europe (2013), Case law of the ECtHR concerning the protection of personal data, DP (2013) Case law, available at: [www.coe.int/t/dghl/standardsetting/dataprotection/Judgments/DP\\_2013\\_Case\\_Law\\_Eng\\_FINAL.pdf](http://www.coe.int/t/dghl/standardsetting/dataprotection/Judgments/DP_2013_Case_Law_Eng_FINAL.pdf)

<sup>4</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/108.htm>

<sup>5</sup> [http://www.coe.int/t/dghl/standardsetting/dataprotection/modernisation\\_en.asp](http://www.coe.int/t/dghl/standardsetting/dataprotection/modernisation_en.asp)

<sup>6</sup> [http://www.coe.int/t/dghl/standardsetting/dataprotection/legal\\_instruments\\_en.asp](http://www.coe.int/t/dghl/standardsetting/dataprotection/legal_instruments_en.asp)

<sup>7</sup> EU Charter of Fundamental Rights [http://ec.europa.eu/justice/fundamental-rights/charter/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm)

<sup>8</sup> See most recently C- 131/12 *Google Spain v Mario Costeja González* and the so-called "right to be forgotten".

<sup>9</sup> In joined cases C-92/09 and C-93/09 *Volker and Markus Schecke GbR and Hartmut Eifert v. Land Hessen*, 9.11.2010, CJEU stated that this right "is not, however, an absolute right, but must be considered in relation to its function in society" (para.48) See also ECtHR, *Von Hannover v. Germany* (No. 2) [GC], Nos. 40660/08 and 60641/08, 7 February 2012; CJEU, Joined cases C-468/10 and C-469/10, *Asociación Nacional de Establecimientos Financieros de Crédito (ASNEF) and Federación de Comercio Electrónico y Marketing Directo (FECEDM) v. Administración del Estado*, 24 November 2011, para. 48; CJEU, C-275/06, *Productores de Música de España (Promusicae) v. Telefónica de España SAU*, 29 January 2008, para.68.

details them. Any exemptions from and restrictions to these principles “may be provided for at national level;<sup>10</sup> they must be provided for by law, pursue a legitimate aim and be necessary in a democratic society”.<sup>11</sup>

Pursuant to the European Data Protection Supervisor (EDPS), “the right to protection of personal data and the right to public access to documents are two fundamental democratic principles which together enforce the position of the individual against the administration and which normally go along together very well. In those cases in which the underlying interests of these principles collide, a reasonable assessment should be made departing from the fact that both are of equal importance”.<sup>12</sup>

In today's new, challenging digital environment, existing rules provide neither the degree of harmonisation required, nor the necessary efficiency to ensure the right to personal data protection. Thus, in 2012 the European Commission has proposed a fundamental reform of the EU's data protection framework. The reform package consists of a proposal for a general Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)<sup>13</sup> meant to replace the Data protection Directive. At the time of the elaboration of this report, discussions on the reform package were on-going.

## **2. METHODOLOGY**

### **2.1. Comparator Council of Europe member States referenced in the Report**

The report refers to the Czech Republic, England and Wales, Estonia, Italy, and the Republic of Moldova.

The object of this sample has been to allow the authorities in Kazakhstan to see a range of legal systems that include both independent and post-USSR models that operate in the member States of the Council of Europe.

### **2.2. The Questionnaire for Comparator Council of Europe member States**

The Questionnaire – regarding access to judicial decisions and the court process - used for this Report asked the following questions in respect of the comparator countries:

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<sup>10</sup> Article 9(2), Convention 108; Article 13(2) Directive 95/46/EC

<sup>11</sup> Handbook on European Data Protection Law, EU FRA (2014)  
[http://www.echr.coe.int/Documents/Handbook\\_data\\_protection\\_ENG.pdf](http://www.echr.coe.int/Documents/Handbook_data_protection_ENG.pdf)

<sup>12</sup> In this sense see European Data Protection Supervisor: Public access to documents containing personal data after the *Bavarian Lager* ruling, at 2, available at [https://secure.edps.europa.eu/EDPSWEB/webdav/shared/Documents/EDPS/Publications/Papers/BacgroundP/11-03-24\\_Bavarian\\_Lager\\_EN.pdf](https://secure.edps.europa.eu/EDPSWEB/webdav/shared/Documents/EDPS/Publications/Papers/BacgroundP/11-03-24_Bavarian_Lager_EN.pdf)

<sup>13</sup> Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)  
[http://ec.europa.eu/justice/data-protection/document/review2012/com\\_2012\\_11\\_en.pdf](http://ec.europa.eu/justice/data-protection/document/review2012/com_2012_11_en.pdf)

### Uploading judicial acts to the database of court decisions

1. Is there a single official database for judicial acts of all criminal courts or are there several depending on the court type/instance?

1.1. If several databases exist, please describe the distinctions between the databases.

2. Does the database/databases include all judicial acts of all criminal proceedings (including final judgments and other orders made during all criminal proceedings)?

2.1. If the answer is "no", please explain which judicial acts are not included (e.g. judicial acts in sensitive cases, closed trials, ordinary court orders (which are not final judgments) etc).

### Access to the database of court decisions

3. Please mark with an X which interest groups have access to the database through a personal and password (or ID-card) protected account

3.1. Judges

3.2. Legal advisors of judges

3.3. Other court clerks

3.4. Barristers/Advocates

3.5. Prosecutors

3.6. Police

3.7. Participants in the trial (the accused, the victims and witnesses etc.)

3.8. General public

3.9. Others (please specify)

4. Is it possible to get access to (some limited) information from the database (e.g. Published final judgments) through a web-portal without a password or other means for personalisation?

5. If the answer to q 4 is "yes", please specify (mark with an X) what is the information made publicly available through a web-portal:

5.1. Final judgment of the case (e.g. The judgment which is not appealable and in force)

5.2. Final judgment in each or several court instance (e.g. Which does not necessarily have to be final and can be appealed)

5.3. Other

Please specify for "other" (5.3.)

6. Please mark with an X to which cases the following interest groups have access through the personal and password protected account (see q 3):

6.1. Court presidents

6.2. Judges

6.3. Legal advisors of judges

6.4. Other court clerks

6.5. Barristers

6.6. Prosecutors

6.7. Police

6.8. Participants in the trial (the accused, the victims and witnesses etc.)

6.9. General public

6.10. Others (please specify):

7. Please mark with an X which data regarding the case the following interest groups have access to (provided they have access to the case, see q 6):

7.1. Court presidents

7.2. Judges

7.3. Legal advisors of judges



- 7.4. Other court clerks
- 7.5. Barristers
- 7.6. Prosecutors
- 7.7. Police
- 7.8. Participants in the trial (the accused, the victims and witnesses etc.)
- 7.9. General public
- 7.10. Others (please specify)

Publication of personal data in judgments

8. What kind of personal data is published through the web-portal (see q 4) regarding the convicted person:

- 8.1. Name
- 8.2. Personal identification code
- 8.3. Place of residency
- 8.4. Place of employment
- 8.5. Marital status
- 8.6. Any previous unspent or unexpunged convictions

9. Do the same rules (as in answers to q 7) apply for under-age convicted persons?

9.1. If not, please specify

10. What kind of personal data is published through the web-portal (see q 4) regarding the other participants of the proceedings?

- 10.1. Name
- 10.2. Personal identification code
- 10.3. Place of residency
- 10.4. Other personal data

11. If personal data of convicted persons (or other participants) is published, is there a time limit for publishing such data?

11.1. If "yes", please specify:

12. Is it possible to request removal of personal data from published judgments?

12.1. If "yes", please specify:

13. Who is responsible for removal of data from published judgments (mark with an X)?

- 13.1. Court clerk
- 13.2. Judge adjudicating the case
- 13.3. Other judicial body (commission etc.)
- 13.4. Other non-judicial body

Security measures/legal validity

14. Does the final judgment published on the web have any legal validity (e.g. Can be used as proof before a third party)?

14.1. If "yes" please specify:

14.2. If "yes" how is the consistency/integrity of the judgment guaranteed?

Document standard of the published final judgment

15. In which format are the final judgments made available to the general public (mark with an X)?

- 15.1. PDF
- 15.2. HTML
- 15.3. Other
- 15.4. If "other" please specify

16. Are final judgments available in XML format (to enable interchange of data over internet by databases)?

#### Legal framework

Please list all the legal acts which specify the rules for access to criminal judicial decisions in your country and add excerpts (to a separate file) which regulate the issues which were inquired about in this questionnaire.

### **2.3. Summary results from the Questionnaire**

- (1) In all the comparator countries there exist several databases containing documents of court proceedings. These databases are either administered by the courts themselves or by the Ministry of Justice. Databases of court documents vary in relation to their purpose: some of the databases contain all the documents to the proceedings and aim to serve as a tool for courts and parties to proceedings while others contain only court decisions and have a purely informative role only.
- (2) In all the comparator countries steps have been taken to provide the general public access to court decisions. The means and the extent of publication of court decisions varies country by country: some have opted for a centralised gateway providing access to court decisions of different courts and court instances while others have taken a more decentralised approach providing access to court decisions on the individual websites of courts.
- (3) It appears that all the comparator countries make attempts to provide the general public access to decisions of courts of the highest instance. In the Czech Republic, Republic of Moldova, Italy and Estonia access is provided to all the decisions of the Court of Cassation (the access to court decisions is free of charge apart from Italy where one is required to pay a fee in order to access court decisions older than five years). In England and Wales access is provided to the most important cases of the Supreme Court. The publication of court decisions of lower instance courts is not as homogenous: in some countries the laws of procedure (e.g. in Estonia) or laws on the organisation of judiciary (e.g. in the Republic of Moldova) require the publication of decisions of courts of every instance whereas in other countries the question whether to publish a court decision has been left for individual courts to decide (e.g. in Italy the President of the relevant Tribunal decides whether court decisions delivered by this court are made available to the public). This results in

differences in the availability of lower instance court decisions to the general public.

- (4) All the comparator countries have set out rules on the publication of personal data in court decisions. The rules vary according to the type of procedure and in some cases according to the court instance. Generally, in the decisions of criminal court procedure available to the public, the name and the identification code/date of birth of the convicted person is not concealed. In some countries also the place of residency, place of employment, marital status and previous convictions of the convicted person are available. Different (stricter) rules concerning the publication of personal data are in place when the convicted person is a minor. For example, in England and Wales unless the court makes an order, there can be no material that will identify anyone under the age of 17 years. In Estonia, when the convicted person is a minor the personal identification code and the name or the date of birth of the accused are replaced by initials or characters, except in the case the disclosed decision is at least the third one in which the minor has been convicted for a criminal offence.
- (5) Rules concerning the publication of personal information differ slightly for civil and administrative court decisions. In some countries the personal details of participants to proceedings are anonymised at the Courts'/Ministry's initiative (e.g. in the Czech Republic). In others, the interested party needs to file a relevant application (e.g. in the Republic of Moldova). In some countries a mixed system is in use – generally the application of the interested party is required but the judge hearing the matter can also decide not to disclose personal information for the protection of privacy (e.g. in England and Wales, Estonia, and Italy).
- (6) The court decisions available on the web do not have legal validity in any of the comparator countries but are of informative purpose only (generally, a court decision available on the web needs to be certified by the court for it to have legal validity). The degree of access, and the ways in which such access may be achieved, which is granted to non-parties in respect of such decisions - such as the media and other interest groups – varies from country to country.

### **3. COUNTRY REPORTS**

#### **3.1. The Czech Republic**

##### **1. Overview of the Judicial system**

###### **1.1. The Court System**

The Czech Republic has a four-tier system of courts and two-instance proceedings. The four tiers of Czech courts are in respect of Criminal, Civil and Administrative law:

1 Supreme Court (nejvyšší soud) , 1 Supreme Administrative Court

2 High Courts (vrchní soud) – one seated in Prague with jurisdiction over Bohemia, the other seated in Olomouc with jurisdiction over Moravia

8 Regional courts (krajské soudy)

86 District courts (okresní soudy)

The Constitutional Court of the Czech Republic (Ústavní soud České republiky) stands outside the general courts structure.

The courts of first instance in criminal matters are generally the district courts. If, however, the criminal offence is punishable under the Criminal Code (law no. 40/2009 Coll.) by at least 5 years' imprisonment, the courts of first instance become the regional courts.

An appeal against a first instance decision of the district court goes to the regional court. A high court reviews the appeals against decisions rendered by regional courts at first instance.

The Supreme Court decides on extraordinary appeals (dovolání) against the final appellate decisions of regional courts and high courts. An extraordinary appeal shall be limited to legal, not factual, reasons set by the Code of Criminal Procedure, and to cases in which the punishment of life imprisonment has been imposed. There is another special remedy in criminal matters before the Supreme Court, the so-called complaint for violation of law (stížnost pro porušení zákona). Only the Minister of Justice is entitled to file this extraordinary remedy before the Supreme Court; its availability is limited to substantial flaws in the procedure, which may have caused the illegality of a (otherwise final) decision.

The courts of first instance in civil matters are generally the district courts, except for the matters provided by the Civil Procedure Code that are reviewed by regional courts.

An appeal against the first instance decision of the district court goes to the regional court. Appeals against decisions rendered at the first instance by regional courts are assessed by a high court on appeal.

The Supreme Court decides on extraordinary appeals (dovolání) against the final appellate decisions of regional courts and high courts.

## 1.2. Functioning of the Courts

- The Supreme Court of the Czech Republic - Criminal and Civil Division
  - 3-Judge panels - extraordinary remedies; complaints against breach of law; recognition of foreign judgments
  - 9-Judge Grand Panel - cases referred by a 3-Judge Panel of the Criminal Division or Civil Division
- The Supreme Administrative Court of the Czech Republic
  - 3-Judge panels or Enlarged panel consisting of 7-9 judges for unification of case law
- The High Court
  - Other cases (civil, criminal) panels of 3 Judges
  - Second instance proceedings - panels of 3 Judges handle an appeal of a case heard in the first instance by a Regional Court
- Regional Courts
  - Second instance proceedings – panel of 3 Judges
  - First instance proceedings – panel of one Judge and two Lay Judges
- District Courts
  - First instance proceedings - panel of one Judge and two Lay Judges or a single Judge

## 2. The Legislative Framework

- Rules of criminal procedure are contained in the law no. 141/1961 Coll., the Code of Criminal Justice.<sup>14</sup>
- A special procedural regime has been introduced for criminal liability of persons under 15 years of age in the law no. 218/2003 Coll., Juvenile Criminal Justice Act.<sup>15</sup>
- Data protection is established in the law no. 101/2000 Coll., on the Protection of Personal Data.<sup>16</sup>
- Law on Free Access to Information in the law no. 106/1999 Coll.<sup>17</sup>
- The Constitution of the Czech Republic.<sup>18</sup>
- The Charter of the fundamental rights and freedoms.<sup>19</sup>

<sup>14</sup> English version: <http://www.legislationline.org/documents/id/3850>

<sup>15</sup> <http://www.zakonyprolidi.cz/cs/2003-218>

<sup>16</sup> English version:

[https://www.uoou.cz/en/vismo/zobraz\\_dok.asp?id\\_org=200156&id\\_ktg=1107&archiv=0&p1=1105](https://www.uoou.cz/en/vismo/zobraz_dok.asp?id_org=200156&id_ktg=1107&archiv=0&p1=1105)

<sup>17</sup> <http://www.mkcr.cz/scripts/detail.php?id=325>

<sup>18</sup> English version: <http://www.usoud.cz/en/constitution-of-the-czech-republic/>

- Act regulating the Constitutional Court law no. 182/1993 Coll.<sup>20</sup>
- Act No. 6/2002 Coll. on Court and Judges<sup>21</sup>
- Act No. 150/2002 Coll. on the Administrative Procedure Code<sup>22</sup>

### **3. Access to Judicial Information**

#### **3.1. The Decisions of the Constitutional Court**

Decisions are published in the official (printed) Collection of decisions of the Constitutional Court (Sbírka nálezů a usnesení Ústavního soudu ). The Court's jurisprudence is also available online at no cost (in Czech only)<sup>23</sup>. There is also a representative selection of Court's judgments translated into English.<sup>24</sup>

#### **3.2. The Decisions of the Supreme Court**

There is the official printed selection of the Court's case law, published in its Collection of the decisions of the Supreme Court (Sbírka rozhodnutí Nejvyššího soudu). All decisions of the Supreme Court (from 2000 onwards) are also accessible online.<sup>25</sup>

#### **3.3. The Decisions of the Supreme Administrative Court**

All decisions of the Supreme Administrative Court are accessible online.<sup>26</sup>

#### **3.4. The Decisions of the Lower Courts (District, Regional and High Courts)**

The selection of judgements is within the discretion of each court and is accessible online via the Ministry of Justice website.<sup>27</sup>

### **4. Judicial Information Databases not available to the public**

Two systems operate only for the justice system – the information system of administrative courts (ISAS) and the information system of the high and regional courts (ISVKS). ISAS includes all the documents that are held in the paper file for each case that is decided at each court. The database is accessible under the user name and password generated by the Ministry of Justice. Only judges and the supreme administrative officers are allowed to get the permission. It contains issued decision, expert opinion, court hearing protocols, data about parties – name, address, date of birth, and all the documents that relate to the proceedings. ISAS is based on the Oracle system. There is no possibility for the public to access the file of the case. It is possible to access the information about the status of the case through the court online website. The number of the case allows a free user to see whether

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<sup>19</sup> English version: <http://www.usoud.cz/en/charter-of-fundamental-rights-and-freedoms/>

<sup>20</sup> English version: <http://www.constitutionnet.org/vl/item/act-16-june-1993-no-1821993-sb-constitutional-court>

<sup>21</sup> [http://www.nssoud.cz/zakony/6\\_2002.pdf](http://www.nssoud.cz/zakony/6_2002.pdf)

<sup>22</sup> <http://www.zakonyprolidi.cz/cs/2002-150>

<sup>23</sup> <http://nalus.usoud.cz/Search/Search.aspx>

<sup>24</sup> <http://nalus.usoud.cz/Search/Search.aspx>

<sup>25</sup> <http://www.nsoud.cz>

<sup>26</sup> <http://nssoud.cz/main0Col.aspx?cls=JudikaturaSimpleSearch&pageSource=0&menu=188>

<sup>27</sup> [http://www.nsoud.cz/Judikaturans\\_new/judikatura\\_vks.nsf/webSpreadSearch](http://www.nsoud.cz/Judikaturans_new/judikatura_vks.nsf/webSpreadSearch)

the case was decided or not. There are no other data except the court file number available.

## 5. Protection of Personal Data and Privacy

According to the Bureau Order of the Supreme Court, the decisions (lower courts and the Supreme Court) are anonymised according to the rule stated in § 115 of the Regulation.<sup>28</sup>

All decisions need to be anonymised before being made public on the website of the court. The data to be anonymised are as follows:

- a) Name, surname, address, date of birth, birth number, sensitive data according to the data protection act (national, racial or ethnic origin, political attitudes, membership of trade unions, religious or philosophical belief, criminal convictions, health, sex life, unique biological features (biometric data – fingerprint, retina image etc., genetic characteristics)

and all other information according to which one might be identified.

- b) According to the Criminal Juvenile Act, the name and surname of the juvenile is hidden under the pseudonym with note that this name is a pseudonym
- c) Secret information and trade secrets
- d) Other information that is according to the presiding judge relevant to be anonymised

The data that are not anonymised include:

- a) All information about public office and name and surnames of the people acting on behalf of the state
- b) Data about companies, names and surnames of the CEO, representatives
- c) Names and surnames of the legal representatives, judges, state prosecutors and people engaged in the proceedings (interpreters, experts), except family representatives
- d) Names and surnames of the people mentioned in international judgements.

The anonymisation is done by replacing the name with the first capital letter. The other data such as the address or date of birth is left out.

Since 2012 the Constitutional Court has been allowed to decide (each Judge – Panel of Judges) whether the publicly available judgement will be anonymised or not and at what level of detail.

The amendment of the Act on Constitutional Court No. 182/1993 Coll. was made by an amendment Act No. 404/2012 Coll. The § 59/3 is as follows:

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<sup>28</sup>[http://www.nsoud.cz/JudikaturaNS\\_new/ns\\_web.nsf/68fdca6a7e1ccc41c12576ac004593f4/b3f4a3b376ec3f0ac1257712004325b8/\\$FILE/RS\\_kr2010.pdf](http://www.nsoud.cz/JudikaturaNS_new/ns_web.nsf/68fdca6a7e1ccc41c12576ac004593f4/b3f4a3b376ec3f0ac1257712004325b8/$FILE/RS_kr2010.pdf)

The data about the participant and their representatives are not public only under the condition that the special act or special interest of those people and state or morality requires. The decision rests upon those who decide about the publication.

The Supreme Administrative Court makes publically available all its judgements in all cases with the full name, date of birth, and permanent address.

The Office for Personal Data Protection performs the supervision of compliance with the legally defined duties when processing personal data. This power extends to include the justice system. The Office has issued Statement on Anonymisation of personal data.<sup>29</sup>

## **6. Legal Validity of Court Decisions Available on the Web**

In order for a decision to have legal validity, it needs to be officially validated as correct (by electronic means or by the Court stamp).

## **7. Other Issues**

### **7.1 Document Standards of the Decisions**

The court decisions that have entered into force are made available to the public in HTML and Word. At the Supreme Administrative Court level, this also occurs in PDF.

The Constitutional Court, the Supreme Court and the Supreme Administrative Court have a duty to publish all their decisions. According to the E-justice programme since 2011 the Ministry of Justice established the database for lower courts. However, it is up to the courts to decide which judgements are going to be made public. The Ministry of Justice Instruction regarding the importance of the judgements from 2002 has been amended.<sup>30</sup> According to this Instruction, judgements are categorised into six classes according to the importance and value for the public and unification of lower court decisions. The first three classes of the decisions are added to the public database.

### **7.2 Statistics of Cases**

The database<sup>31</sup> provided by the Ministry of Justice is merely statistical; nevertheless, it allows requiring data about the activities of each court in the Czech Republic. In the criminal law area, the statistics provides summaries for each crime, how the proceedings ended, what was the gender proportion and details of the sanction.

### **7.3 Victims of Crime**

Criminal Procedure Act, law no. 141/1961 Coll. In § 8b/4<sup>32</sup> states that the final judgements cannot be made public in the mass media with the name, surname and address of the victim of crimes of murder, other killings, sexual crimes, kidnap of a child and harassment. The Presiding Judge may decide on other restrictive measures to protect the victim.

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<sup>29</sup> <https://www.uoou.cz/anonymizace-osobnich-udaju/d-1764>

<sup>30</sup> [http://ftp.aspi.cz/aspi/vestniky/MS2002\\_4.pdf](http://ftp.aspi.cz/aspi/vestniky/MS2002_4.pdf)

<sup>31</sup> <http://cslav.justice.cz/InfoData/statisticke-rocenky.html>

<sup>32</sup> <http://zakony.centrum.cz/trestni-rad/cast-1-hlava-1>



## 8. Concluding Observations

The Czech Republic's general public access to the courts' decisions follows the arrangements prepared by the Government in respect to the open justice programme. There are currently four portals providing access to civil, criminal and administrative court decisions: the website of the Supreme Court, the website of the Administrative Supreme Court, the website of the Constitutional Court and of the Lower Courts respectively.

The publication of court decisions is regulated by the acts and internal measures of particular courts. These provide rules regarding the information which is disclosed and which is omitted from the court decisions made available to the public. The Data Protection Act provides the relevant background for the procedure. Each court however, follows a different pattern, it is up to each court, and each judge to decide what is to be made available.

The weakness of the system lies in the Lower Courts' database, as it does not contain all the court decisions. The Czech Republic is trying to follow the model existent in the Republic of Slovakia where all judgements are fully available on the server of the Slovakian Ministry of Justice.

Access to court databases is free of charge. There is no public access to the internal database, which is available only for judges.

### 3.2. England and Wales

#### 1. Overview of the Judicial System<sup>33</sup>

In England, the importance of the over-arching principle of Open Justice in Court Proceedings, a common law principle<sup>34</sup> was emphasised recently in a media-related case in the Court of Appeal in 2012:

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<sup>33</sup> In terms of scale, England and Wales has a population of 56 million people. This Report does not deal with the Judicial Systems, Rules and Procedure in Scotland or Northern Ireland. For Scotland see: <http://www.gov.scot/Topics/archive/law-order/legal/Civil> and <http://www.gov.scot/Topics/archive/law-order/legal/criminalprocedure>. Scotland has its own Roman Law heritage preserved – when creating Great Britain as a union between the two formerly sovereign countries - in the Acts of Union of 1707 between both Parliaments: <http://www.parliament.uk/about/living-heritage/evolutionofparliament/legislativescrutiny/act-of-union-1707/>. In Northern Ireland there is a system that reflects many elements found in England and Wales but with significant variations to reflect the partition of Ireland, establishing Northern Ireland as a separate jurisdiction within the United Kingdom, in 1921: <http://www.nidirect.gov.uk/index/information-and-services/crime-justice-and-the-law/the-justice-system/introduction-to-the-justice-system.htm>. The highest court in both Scotland and Northern Ireland is – however – the United Kingdom's Supreme Court which sits in London: <https://www.supremecourt.uk/>. The provisions of the Human Rights Act 1998 – incorporating in statutory form the European Convention of Human Rights (of which the UK was a primary drafter and signatory in 1953 having been a founder member of the Council of Europe in 1949) apply to all four countries: <http://www.legislation.gov.uk/ukpga/1998/42/contents>

<sup>34</sup> In *Scott v Scott* [1913] AC 417,463 per Lord Atkinson (where a shorthand note of the evidence heard *in camera* in matrimonial nullity proceedings had been circulated by the Petitioner to third parties): "The hearing of a case in public may be, and often is, no doubt, painful, humiliating, or

“Open justice. The words express a principle at the heart of our system of justice and vital to the rule of law. The rule of law is a fine concept but fine words butter no parsnips. How is the rule of law itself to be policed? It is an age old question. *Quis custodiet ipsos custodes* - who will guard the guards themselves? In a democracy, where power depends on the consent of the people governed, the answer must lie in the transparency of the legal process. Open justice lets in the light and allows the public to scrutinise the workings of the law, for better or for worse. Jeremy Bentham said....“Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial.” There are exceptions to the principle of Open Justice but...they have to be justified by some even more important principle. The most common example occurs where the circumstances are such that openness would put at risk the achievement of justice which is the very purpose of the proceedings”.<sup>35</sup>

As will be seen in the information that follows, while the general Open Court Rule allows the public and the press access to proceedings in court, the exceptions are significant.<sup>36</sup> There is no established constitutional or statutory right to receive information if a party is not present in court.<sup>37</sup>

The existing IT systems that allow the progress of cases to be accessed, monitored and tracked externally in England and Wales are old and outdated.<sup>38</sup> Where new

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deterrent both to parties and witnesses, and in many cases, especially those of a criminal nature, the details may be so indecent as to tend to injure public morals, but all this is tolerated and endured, because it is felt that in public trial is to found, on the whole, the best security for the pure, impartial, and efficient administration of justice, the best means for winning for it public confidence and respect.”<sup>35</sup> *R (Guardian News and Media) v City of Westminster Magistrates’ Court* [2012] EWCA Civ 420 per Toulson LJ at [1] and [4]: <http://www.bailii.org/ew/cases/EWCA/Civ/2012/420.html> . The question was whether a District Judge, who made two extradition orders to the USA, had power to allow the *Guardian Newspaper* to inspect and take copies of witness statements, written arguments and correspondence - supplied to the Judge for the purposes of the hearings - which were not read out in open court but they were referred in the proceedings. The Court of Appeal held they should be open to inspection and copying.

<sup>36</sup> In particular, note *Guardian News and Media v AB and CD* [2014] EWCA Crim (B1) <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Crim/2014/B1.html&query=Guardian+and+News+and+Media+and+Ltd+and+v+and+AB+and+CD&method=boolean> and *R v Incedal* [2014] EWCA Crim 1861 <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Crim/2014/1861.html&query=R+and+v+and+Incedal&method=boolean>

<sup>37</sup> *Kennedy v Charity Commission* [2014] UKSC 20. This decision is an important ruling for those who wish to seek documents from public bodies and Courts. FOIA is not a complete and self-contained system. Individuals seeking documents who either believe that an exemption under the FOIA may apply, or are faced with a refusal based on an exemption, should consider other statutory and/or common law routes to access, if available. This Supreme Court decision is being appealed to the European Court of Human Rights on Article 10 grounds, is the subject of an approved intervention by the Media Legal Defence Initiative, the Campaign for Freedom of Information and ARTICLE 19 <http://www.mediadefence.org/sites/default/files/files/20150612%20Kennedy%20v%20UK%20-%20Intervention.pdf> and on which judgment is likely early in 2016.

<sup>38</sup> <https://intranet.judiciary.gov.uk/wp-content/uploads/2015/07/cjs-digital-reform-newsletter-issue-7.pdf> July 2015.

systems do exist they are still in pilot or development stages, restricting their current practicality, utility and accuracy for the courts themselves, the media and the public and the lawyers and parties who might want to rely on them.<sup>39</sup>

The complexity of the Courts' system in England and Wales results from the fact that the court system has developed over 1,000 years rather than being designed from scratch and – in its criminal process and procedures – involves the significant participation of non-lawyer members of the public either as Magistrates (who deal with 95 per cent of lower-level criminal offences) or as members of the 12-person jury for criminal trials in the Crown Court. Juries are now almost unknown in Civil Courts.<sup>40</sup>

There is no written Constitution for the UK and – as a result – there is no Constitutional Court. The UK's Supreme Court, however, deals with appeals on points of law of general public importance, which – to an external observer – do involve the most serious of constitutional issues between the State and the individual. This has been particularly evident since the introduction of the provisions of the Human Rights Act 1998.

The Courts' structure here covers England and Wales.<sup>41</sup> The Tribunals system covers England, Wales, and in some cases Northern Ireland and Scotland.<sup>42</sup>

Criminal cases: all criminal cases start in the Magistrates' Court,<sup>43</sup> but the more serious criminal matters are committed (or sent) to the Crown Court (to be dealt with, if the offence is denied, by a jury of 12 who are the judges of fact directed – on the appropriate law – by a Circuit Judge). Appeals from the Crown Court go to the Judge-only jurisdictions of the High Court, and potentially to the Court of Appeal or even the Supreme Court.

Civil cases: will sometimes also be dealt with by Magistrates' Court, but may well go to the higher level of the County Court or – if they are defamation claims – start in the High Court. Again, appeals will go to the High Court and then to the Court of Appeal or even the Supreme Court.

Tribunals: the Tribunals system – which deals with specialist Administrative and Public Law areas - has its own structure for dealing with cases and appeals. Decisions from different Chambers of the Upper Tribunal, and the Employment Appeals Tribunal, may also go to the Court of Appeal and – on a point of law of general public importance – to the UK Supreme Court.

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<sup>39</sup> <https://www.justice.gov.uk/about/criminal-justice-system-efficiency-programme>

<sup>40</sup> They remain, however, as an important feature in Coroners' Courts where a legal inquiry into the medical cause and circumstances of a death may be held where the death was violent or unnatural, took place in prison or police custody or when the cause of death is still uncertain after a post-mortem: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/363879/guide-to-coroner-service.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/363879/guide-to-coroner-service.pdf)

<sup>41</sup> <https://www.judiciary.gov.uk/wp-content/uploads/2012/08/courts-structure-0715.pdf>

<sup>42</sup> [https://www.judiciary.gov.uk/wp-content/uploads/2012/05/tribunals\\_chart-01072015.pdf](https://www.judiciary.gov.uk/wp-content/uploads/2012/05/tribunals_chart-01072015.pdf)

<sup>43</sup> Save for the exceptional procedure of presenting a Voluntary Bill of Indictment at the Crown Court: [http://www.cps.gov.uk/legal/v\\_to\\_z/voluntary\\_bills\\_of\\_indictment/](http://www.cps.gov.uk/legal/v_to_z/voluntary_bills_of_indictment/)

## 1.1 The Criminal Court System<sup>44</sup>

Virtually all criminal court cases start in a Magistrates' Court. More than 90 per cent of the cases will be completed there. Cases are either heard by two or three Magistrates (Justices of the Peace)<sup>45</sup> or by one legally-qualified and judicially-appointed District Judge. There are approximately 23,000 Magistrates, 140 District Judges and 170 Deputy District Judges operating in 240 Magistrates' Courts throughout England and Wales.

Justices of the Peace (JPs) are members of the public who volunteer their services. They do not require formal legal qualifications, but will have undertaken a dedicated training programme, including court and prison visits, to develop the necessary skills.<sup>46</sup> District Judges are legally qualified, paid, full-time professionals and are usually based in the larger cities. They normally hear the more complex or sensitive cases.

The more serious offences are passed on to the Crown Court, either for sentencing after the Defendant has been found guilty in a Magistrates' court, or for full trial before a Circuit Judge and Jury. Most of the cases are brought to Court on behalf of the State by the Crown Prosecution Service (CPS).

Youth cases in the Magistrates' Youth Courts: Magistrates are specially trained to sit in Youth Courts for Defendants who are under 18 years' of age. Procedures are slightly more informal than in Adult criminal courts. Youth Courts can deal with all offences committed by under-18s except homicide, which has to be dealt with at the Crown Court. Sentences are quite different in that they specifically address the needs of young offenders.

Crown Courts: Criminal trials at the 77 Crown Court locations in England and Wales are presided over by High Court Judges<sup>47</sup> or one of the 600 Circuit Judges. These Judges cannot be appointed until they have at least ten years' court and advocacy experience.<sup>48</sup> It is an important feature of the English judicial system that significant prior practical experience as a lawyer is a mandatory requirement before appointment.<sup>49</sup> Crown Courts – where there are High Court Judges for the most

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<sup>44</sup> The most up-to-date criminal justice statistics for Magistrates' Courts and Crown Courts are: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/437672/ccsq-bulletin-january-march-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437672/ccsq-bulletin-january-march-2015.pdf) As a broad average, 350,000 cases were dealt with in the Magistrates' Courts within 22 weeks and 24,000 cases were dealt with at the Crown Courts within 47 weeks according to statistics presented by the Ministry of Justice in December 2014.

<sup>45</sup> Because Magistrates do not need to have legal qualifications, they are advised in court on matters of law, practice and procedure by legally-trained Justices' Clerks and Assistant Justices' Clerks.

<sup>46</sup> All Magistrates (JPs) sit in adult criminal courts as panels of three, mixed in gender, age, ethnicity etc whenever possible to bring a broad experience of life to the Court. All three JPs have equal decision-making powers but only one, the Chairman, will speak in court and preside over the proceedings.

<sup>47</sup> These Judges are among the 73 appointed to the Queen's Bench Division of the High Court in London. They may also work in any of the other six regions of England and Wales.

<sup>48</sup> Before this they should generally also have served either part-time as a Recorder (Deputy Circuit Judge) on criminal cases or full-time as District Judges before appointment.

<sup>49</sup> The Judicial Appointments Commission (JAC) is the independent body which assesses candidates for judicial appointment. It recommends successful candidates to the Lord Chancellor – who is also

serious cases as well as Circuit Judges - deal with serious criminal cases which include:

- Cases sent for trial by Magistrates' Courts because the offences are 'indictable only' like murder and rape.
- 'Either way' offences (which can be heard in a magistrates' court, but can also be sent to the Crown Court if the defendant chooses a jury trial)
- Defendants convicted in Magistrates' Courts, but sent to the Crown Court for sentencing due to the seriousness of the offence.
- Appeals against decisions of Magistrates' Courts.

## 1.2 The Civil Court System

**Magistrates in Civil Courts:** Although most Magistrates deal with criminal work they also decide many civil matters, particularly in relation to family issues. Magistrates' civil roles include dealing with cases such as non-payment of local taxes.

**Family Proceedings Courts:** Magistrates and Circuit Judges can deal with who should have custody of children of the family and are assisted with extra information provided by a Children's Guardian, usually a specialised social worker.

**County Court:** The County Court deals with civil (non-criminal) matters such as businesses trying to recover money they are owed, Individuals seeking compensation for injuries and Landowners seeking orders that will prevent trespass. The Judges in the County Court are Circuit Judges, Deputy Circuit and District Judges. All County Court centres can deal with contract and tort (civil wrong) cases and recovery of land actions. Some hearing centres can also deal with bankruptcy and insolvency matters, as well as cases relating to wills and trusts. Most County Court centres are assigned at least one Circuit Judge and one District Judge. Although County Court judgments – for which there is a public record - usually call for the repayment or return of money or property, anyone who does not comply with the judgment can be arrested and prosecuted. The court has a range of procedures to deal with enforcement of judgments.

**The High Court:** The High Court is divided into three Divisions: Queen's Bench (73 Judges), Chancery (18 Judges) and Family (19 Judges). More detail is available via the diagram accessible in the footnote together with links within that diagram to the range of the work done in all three Divisions.<sup>50</sup> The Courts in the High Court are Superior Courts of Record. Their decisions are binding as precedents on lower courts. Within the Queen's Bench, contract and tort cases are dealt with and there are specialist sub-divisions for Administrative, Planning, Commercial, Technology and Construction, Admiralty and Mercantile cases. Within Chancery, there are specialist sub-divisions dealing with Probate, Wills and Trusts, Bankruptcy and

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the Minister of Justice and who acts of behalf of the Queen – to be considered for appointment:

<https://jac.judiciary.gov.uk/>

<sup>50</sup> <https://www.judiciary.gov.uk/wp-content/uploads/2010/05/high-court-chart-with-links2.pdf>

Companies, Patents and the Intellectual Property and Enterprise Court. Within Family, the Court deals with matrimonial, Ward-ship and all cases relating to children. It also hears appeals from the Family Proceedings Court.

The Courts of Appeal: There are two Courts of Appeal – a Civil Division and a Criminal Division – staffed by a total of 38 Lords Justices of Appeal whose numbers (and expertise) can be supplemented on particular appeals by High Court Judges.

The Supreme Court: The Supreme Court is the final court of appeal in the UK for civil cases, and for criminal cases from England, Wales and Northern Ireland.<sup>51</sup> It hears cases of the greatest public or constitutional importance affecting the whole population. There are 12 Supreme Court Justices. It is the only Court in England and Wales whose proceedings – including some of the hearings and all of the final judgments - are streamed on television and so made easily available to the public, the media and the legal profession.

Tribunals: There are a variety of Tribunals - 23 in total - dealing with a range of public law appeals from administrative decisions.<sup>52</sup> Tribunals decide a wide range of cases ranging from workplace disputes between employers and employees; appeals against decisions of Government departments (including social security benefits; immigration and asylum; and tax credits). These Tribunals hear about 1 million cases each year, more than any other part of the justice system. Most Tribunal Judges - who have to be legally-qualified and practising for at least 7 years - work part-time but there are also about 500 full-time Judges. Appeals, via the Upper Tribunal, are to the Court of Appeal and ultimately to the Supreme Court.

## 2. Access to Judicial Information

Under the Civil Procedure Rules, a non-party may obtain from the court copies of “a statement of case, but not any documents filed with or attached to the statement of case, or intended by the party whose statement it is to be served with it; [or] a judgment or order given or made in public (whether made at a hearing or without a hearing),” as long as certain conditions are met.<sup>53</sup> In addition, a non-party, after receiving the permission of the court, may obtain a copy of any “document filed by a party or communication between the court and a party or another person.”<sup>54</sup> A party may apply to the court asking the court to bar non-parties from obtaining statements

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<sup>51</sup> <https://www.supremecourt.uk/>

<sup>52</sup> Most Tribunal jurisdictions are part of a structure created by the Courts and Enforcement Act 2007. The detail and complexity of their structure can be seen at this link: [https://www.judiciary.gov.uk/wp-content/uploads/2012/05/tribunals\\_chart-01072015.pdf](https://www.judiciary.gov.uk/wp-content/uploads/2012/05/tribunals_chart-01072015.pdf)

<sup>53</sup> Civil Procedure Rules, 5.4C, [http://www.justice.gov.uk/civil/procrules\\_fin/menus/rules.htm](http://www.justice.gov.uk/civil/procrules_fin/menus/rules.htm). The conditions include: “(a) where there is one defendant, the defendant has filed an acknowledgment of service or a defence; (b) where there is more than one defendant, either – (i) all the defendants have filed an acknowledgment of service or a defence; (ii) at least one defendant has filed an acknowledgment of service or a defence, and the court gives permission; (c) the claim has been listed for a hearing; or (d) judgment has been entered in the claim.” If the conditions are met, the non-party may obtain a copy of a statement of case or judgment or order.

<sup>54</sup> CPR 5.4C.

of the case or to restrict the “persons or classes of persons who may obtain a copy.”<sup>55</sup>

A separate set of Rules apply to Criminal Proceedings.<sup>56</sup> The Contempt of Court Act 1981<sup>57</sup> prohibits the use of a tape recorder in court without the leave of the court.<sup>58</sup> The judge’s discretion to make the determination is unlimited.<sup>59</sup> The Contempt of Court Act also allows a court, “where it appears necessary for avoiding a substantial risk of prejudice to the administration of justice in the proceedings before it or in any others pending or imminent, [to] order that any publication of any report of the proceedings . . . be postponed for such time as the court thinks necessary for that purpose.”<sup>60</sup>

The Magistrates’ Courts are “encouraged to meet reasonable requests of the media for copies of court lists and the register of decisions,” each of which provides details about the offender and the offense and judgment.<sup>61</sup>

Important judgments from the Supreme Court, the Civil and Criminal Divisions of the Court of Appeal and from all the other High Court divisions are available for free on the BAILII (British and Irish Legal Information Institute) database or from the court for a fee.<sup>62</sup> In addition, information about minimum terms of imprisonment and some details of specific cases is available online.<sup>63</sup>

The Freedom of Information Act 2000 (FOIA) provides a public right of access to documents held by more than 150,000 public agencies and departments in the United Kingdom, both at the central government and local levels, including the English Parliament, the police, and publicly owned companies.<sup>64</sup> FOIA provides a

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<sup>55</sup> CPR 5.4C; Practice Direction 5, para. 4A [https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part05/pd\\_part05a](https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part05/pd_part05a)

<sup>56</sup> <https://www.justice.gov.uk/courts/procedure-rules/criminal>

<sup>57</sup> <http://www.legislation.gov.uk/ukpga/1981/49>

<sup>58</sup> For reasons of space the nine pages of these detailed 16 Rules and sub-Rules are not repeated in the text above but are available at <https://www.justice.gov.uk/courts/procedure-rules/criminal/docs/crim-proc-rules-2014-part-16.pdf>

<sup>59</sup> <https://www.justice.gov.uk/courts/procedure-rules/criminal/docs/crim-proc-rules-2014-part-16.pdf>

<sup>60</sup> Discussed further below at 5.1. <https://www.justice.gov.uk/courts/procedure-rules/criminal/docs/crim-proc-rules-2014-part-16.pdf>

<sup>61</sup> The latest 38-page version of *Reporting Restrictions in the Criminal Courts* – issued by the Judicial College but which does not appear to have involved consultation with all the potential interested parties other than legal and editorial interests in the Media - was issued in April 2015, approved by the Lord Chief Justice: <https://www.judiciary.gov.uk/wp-content/uploads/2015/05/reporting-restrictions-guide-2015-final.pdf>

<sup>62</sup> BAILII is a UK charity that provides access to the most comprehensive set of British and Irish primary legal materials that are available online without cost and in one place. In August 2012, BAILII included 90 databases covering 7 jurisdictions. The system contains around 36 gigabytes of legal materials and around 297,513 searchable documents. BAILII is hosted in the UK and Ireland by the Institute of Advanced Legal Studies, London and the Law Faculty, University College Cork: <http://www.bailii.org/databases.html>

<sup>63</sup> There is a private – non-Ministry of Justice site - <http://www.thelawpages.com/index.php> which provides a variety of (sometimes incomplete out-of-date) detail about Criminal and Civil court lists, results and sentences in England and Wales. A partnership between the Ministry of Justice and a private sector operator – Courtserve – provides paid-for access to court lists, court registers and reporting restriction orders: <http://www.courtserve.net/homepage.htm>

<sup>64</sup> Freedom of Information Act (2000) <http://www.legislation.gov.uk/ukpga/2000/36/contents>

public right of access for any reason to recorded information held by the covered departments. Importantly, however, Courts are not subject to the Act. This means that documents filed with a court or created by a court for the purposes of court proceedings are specifically and completely exempt from the Act.<sup>65</sup> That creates significant public misperceptions about the openness and transparency of the court record.<sup>66</sup>

The Data Protection Act 1998, which incorporated the EU's Directive 95/46/EU, requires everyone responsible for using data to comply with the strict 'data protection principles'.<sup>67</sup> These principles require that data is used fairly and lawfully; for limited, specifically stated purposes; in a way that is adequate, relevant and not excessive; is accurate, kept for no longer than is absolutely necessary, is handled according to people's data protection rights, kept safe and secure and is not transferred outside the UK without adequate protection. There is stronger legal protection for more sensitive information, such as individuals' ethnic background, political opinions, religious beliefs, health, sexual health and criminal records. The Information Commissioner oversees the operation of the Data Protection Act 1998.<sup>68</sup>

### 3. Judicial Information that may not be made public

Automatic reporting and publication restrictions operate in respect of information which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced, even if there is no intent to cause such prejudice. In practice this means that ignorance of the law or of the existence of a reporting restriction or its terms is no defence if contempt is committed.<sup>69</sup> These apply equally to media *and* social media publications on the internet and elsewhere. Similar restrictions also apply to identification of victims of sexual offences, victims of female genital mutilation, rulings made at pre-trial hearings, preparatory hearings, dismissal proceedings, allocation and sending proceedings in Magistrates' Courts, prosecution appeals against court rulings, *all* Youth Court proceedings, alleged

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<sup>65</sup> FOIA Section 3, Schedule 1, Section 32 (1) Information held by a public authority is exempt information if it is held only by virtue of being contained in (a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter, (b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or (c) any document created by (i) a court, or (ii) a member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter....(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of this section. (4) In this section (a) "court" includes any tribunal or body exercising the judicial power of the State, (b) "proceedings in a particular cause or matter" includes any inquest or post-mortem examination, (c) "inquiry" means any inquiry or hearing held under any provision contained in, or made under, an enactment, and (d) except in relation to Scotland, "arbitration" means any arbitration to which Part I of the Arbitration Act 1996 applies.

<sup>66</sup> Highlighted recently by the well-respected Freedom of Information campaigner Heather Brooke <http://www.theguardian.com/commentisfree/2015/jul/04/gove-two-nation-justice-legal-aid-court-records-technology-america>

<sup>67</sup> <http://www.legislation.gov.uk/ukpga/1998/29/contents> . This was the first-ever piece of domestic privacy legislation in England and Wales and came into force on 1 March 2000.

<sup>68</sup> <https://ico.org.uk/> His decisions can be appealed to the Information Rights Tribunal and though the judicial system to the Supreme Court.

<sup>69</sup> The "strict liability" Rules in Sections 1 and 2 of the Contempt of Court Act 1981. See also the 2014 Law Commission report on contempt of court and court reporting: [http://www.lawcom.gov.uk/wp-content/uploads/2015/06/lc344\\_contempt\\_of\\_court\\_court\\_reporting.pdf](http://www.lawcom.gov.uk/wp-content/uploads/2015/06/lc344_contempt_of_court_court_reporting.pdf)



offences by teachers against pupils and indecent material calculated to injure public morals.<sup>70</sup>

Discretionary reporting and publication restrictions – which can be imposed by the court with or without applications by interested parties - are relate to the protection of under-18s, the protection of adults victims and witnesses, names and other matters withheld in court, postponement of fair and accurate reports of court proceedings (so that linked trials are not prejudiced), postponement of derogatory remarks made in mitigation and identification details and photographs in cases involving anti-social behaviour orders.

Media access to prosecution materials is governed by a CPS Protocol.<sup>71</sup> Its stated purpose is “to ensure greater openness in the reporting of criminal proceedings” and to “provide an open and accountable prosecution process, by ensuring the media have access to all relevant material wherever possible, and at the earliest appropriate opportunity.” It sets out the categories of material relied upon by the Prosecution in court which should normally be released to the media including maps and photographs (including custody photos of defendants), diagrams and other documents produced in court; videos showing scenes of crimes as recorded by police after the event; videos of property seized; sections of transcripts of interviews or statements as read out in court and videos or photographs showing reconstructions of the crime and CCTV footage of the defendant. It sets out further categories of Prosecution material which may be released after consideration by the CPS in consultation with the police and relevant victims, witnesses and family members. These categories are CCTV footage or photographs showing the defendant and victim, or the victim alone, that has been viewed by the public and jury in open court; video and audio tapes of police interviews with defendants, victims or witnesses and victim and witness statements. The Protocol applies even if the accused pleads guilty and the case does not proceed to trial, providing the material released to the media reflects the prosecution case and has been read out, or shown in open court, or placed before the sentencing judge. The Protocol also provides for a review mechanism enabling the media to make further representations to the CPS if an initial request for media access is refused.

Although unauthorised recording of court proceedings is prohibited, journalists and media commentators can “tweet” the proceedings without seeking further approval. Members of the public have to ask for permission to do this.<sup>72</sup>

The legal validity of those court decisions which are available on the web is accepted among practitioners and judges for the practical purposes of legal argument and litigation. The fact that a judgment has appeared on the web, however, does not make is legally valid to the parties. Only the original judgment can do this. The Supreme Court is the only court to publish a completely comprehensive, on-line list of its decisions. These are accepted as legally valid for the purposes argument and litigation. The Courts of Appeal and High Court decisions are not comprehensively

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<sup>70</sup> <https://www.judiciary.gov.uk/wp-content/uploads/2015/05/reporting-restrictions-guide-2015-final.pdf>

<sup>71</sup> *Publicity and the Criminal Justice System* (October 2005):

<https://www.cps.gov.uk/publications/agencies/mediaprotocol.html>

<sup>72</sup> Criminal Practice Direction 2015 Amendment No 3 [2015] EWCA Crim 430 at Part 16C:

<https://www.judiciary.gov.uk/wp-content/uploads/2015/03/crim-pd-amendment-3-edited.pdf>

available on-line but those which are accepted as legally valid for the purposes of argument and litigation (subject to any further appeal taking place). There is a duty (owed to the court and professionally) on all advocates not to mislead courts before which they appear about the status of such judgments.

#### **4. Concluding Observations**

In recognition of the Open Justice principle, the general rule in English law is that justice should be administered in public. This means that Civil and Criminal proceedings must be held in public, evidence must be communicated publicly and fair, accurate and contemporaneous media reporting of proceedings should not be prevented by any action of the court unless strictly necessary.

Unless there are exceptional circumstances laid down by statute law and/or common law the Court must not order or allow the exclusion of the press or public from court for any part of the proceedings, permit the withholding of information from the open court proceedings, impose permanent or temporary bans on reporting of the proceedings or any part of them including anything that prevents the proper identification, by name and address, of those appearing or mentioned in the course of proceedings.

This system only works to provide some kind of public record only when the media attend court proceedings. Even then, save for the most important or high-profile cases, media attendance is now the exception rather than the rule. The position of “citizen” journalists or Non-Governmental Agencies (NGAs) reporting on court proceedings – and putting them into the public domain - is not completely clear but is likely to be protected within the terms of journalism, literature and art exceptions of Section 32 of the Data Protection Act 1998.<sup>73</sup>

In terms of the IT associated with both Criminal and Civil proceedings, the current systems do not reflect contemporary expectations and practical requirements. Transferring the results from the individual Court Registers at the Magistrates’ Court to the Court database – where over 90% of criminal convictions are recorded – is done administratively and involves very little input (or auditing) from the Magistrates or District Judges. The Criminal Procedure Rules 2014 Part 5 set out the detail.<sup>74</sup>

There is an apparent conflict - to a non-lawyer or observer from abroad highlighting something that appears to be a deep schism that discourages further enquiry - between s.32 FOIA’s absolute exemption from the requirement of “public authorities” to provide court records and the clear requirements of the Criminal Procedure Rules 5.8 for the court to supply information to the public – including reporters – of information about cases.

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<sup>73</sup> See *Steinmetz v Global Witness* [2014] EWHC 1186 (Ch) and the Information Commissioner’s decision favouring Global Witness’ submissions:  
<https://www.globalwitness.org/sites/default/files/141215%20letter%20from%20ICO%20to%20GW%20%282%29%20%281%29.pdf>

<sup>74</sup> <http://www.justice.gov.uk/courts/procedure-rules/criminal/docs/2012/crim-proc-rules-2013-part-05.pdf>

That conflict – and its positive resolution in terms of the Open Justice provisions – is explained in *Mitchell v Information Commissioner 2005* (2005: “courts” are not public authorities for the purposes of FOIA)<sup>75</sup> and *Guardian v Westminster Magistrates* (2012: the statutory effect of s.32 FOIA cannot override the general common law principle of Open Justice).<sup>76</sup>

Lord Justice Leveson in June 2015 set out the judicial and courts’ IT prospects for the future. That future is subject to approval for the £700m of Government investment required to bring the courts’ system into the 21<sup>st</sup> century.<sup>77</sup> He stated:

“At the heart of the changes, the idea is to design a system for each jurisdiction – a way of working – which enables every case to be initiated, progressed and case-managed on line, with all the papers being served or made available in electronic format. It is so easy to deliver that neat little sentence and it is in danger of slipping by unnoticed, but in truth it reveals a profound revolution. Cases will all be managed on computer. Information will only be keyed in once, whether by a police officer in a criminal case or by a legal executive or a litigant in person in other jurisdictions. It will then be passed down the line in digital format, being bundled and stored electronically. In crime, the Criminal Justice Efficiency Board and the Common Platform Board will soon provide the facility whereby the papers in the case are made available to all those involved in the case in digital format, having been stored in a central place which can be accessed by any authorised person from any location”.

### **3.3. The Republic of Estonia**

#### **1. Overview of the Judicial System**

##### **1.1. The Court System**

Estonia has a three level court system. The First Instance is comprised of four county courts (courts of general jurisdiction) and two administrative courts. The Second Instance is comprised of two circuit courts (circuit courts hear civil, criminal and administrative cases). The Third Instance is the Supreme Court. The Supreme Court fulfils three functions: it is the highest court of general jurisdiction, the highest administrative court and the constitutional court of Estonia.

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[http://www.informationtribunal.gov.uk/DBFiles/Decision/i47/mitchell\\_v\\_information\\_commissioner.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i47/mitchell_v_information_commissioner.pdf)

<sup>76</sup> <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/guardian-city-of-westminster-mags-03042012.pdf> Per Toulson LJ [74 – 75]: “It would be quite wrong....to infer from the exclusion of court documents from the Freedom of Information Act that Parliament thereby intended to preclude the court from permitting a non-party to have access to such documents if the court considered such access to be proper under the open justice principle....The fact that the rules now lay down a procedure by which a person wanting access to documents of the kind sought by the *Guardian* should make his application is entirely consistent with the court having an underlying power to allow such an application. The power exists at common law; the rules set out a process.”

<sup>77</sup> <https://www.judiciary.gov.uk/wp-content/uploads/2015/06/pqbd-technology-keynote-240615.pdf>

## 1.2. Functioning of the Courts

Courts of First Instance: Civil and administrative cases are generally adjudicated by a judge sitting alone. Criminal matters concerning criminal offences in the first degree (the maximum term of imprisonment more than five years) shall be heard by a court panel consisting of the presiding judge and two lay judges. Lay judges have all the rights of a judge in a court hearing. Matters concerning criminal offences in the second degree (the maximum term of imprisonment up to five years) and criminal matters in which simplified proceedings are applied shall be heard by a judge sitting alone.

County courts are the courts of First Instance for all the civil and criminal matters. Administrative courts are the courts of First Instance for all administrative matters.

Courts of Second Instance: Appeals are generally reviewed by a panel of three judges. Circuit courts are the Second Instance courts for all civil, criminal and administrative cases.

The Supreme Court: Appeals are generally reviewed by a panel of three justices. If a panel of the Supreme Court hearing a matter has fundamentally differing opinions concerning the interpretation and application of the law, the matter is referred for adjudication to the full panel of the chamber (composed of all the justices of the chamber). If a panel of the Supreme Court adjudicating a matter deems it necessary to derogate, in the interpretation of law, from the most recent position of another Chamber or the Special Panel of the Supreme Court or if this is necessary for ensuring uniform application of law, the matter is referred for adjudication to the Special Panel (composed of justices of different chambers). A matter is referred to the Supreme Court *en banc* (i.e. all the 19 justices of the Supreme Court) when this is essential for the uniform application of the law or when it is considered necessary to alter an opinion or a legal position adopted by the Supreme Court *en banc*.

The Supreme Court is the Third Instance court for all civil, criminal and administrative cases. A matter is accepted for proceedings at the Supreme Court due to incorrect application of substantive law or material violation of procedural law by the circuit court.

## 2. The Legislative Framework

- Code of Criminal Procedure<sup>78</sup>
- Code of Civil Procedure<sup>79</sup>
- Code of Administrative Court Procedure<sup>80</sup>
- Criminal Records Database Act<sup>81</sup>

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<sup>78</sup> Available in English here: <https://www.riigiteataja.ee/en/eli/501042015002/consolide> and available in Russian here: <https://www.juristaitab.ee/ru/zakonodatelstvo/ugolovno-processualnyy-kodeks>

<sup>79</sup> Available in English here: <https://www.riigiteataja.ee/en/eli/516062015009/consolide> and available in Russian here: <https://www.juristaitab.ee/ru/zakonodatelstvo/grazhdanskiy-processualnyy-kodeks>

<sup>80</sup> Available in English here: <https://www.riigiteataja.ee/en/eli/530032015001/consolide> and available in Russian here: <https://www.juristaitab.ee/ru/zakonodatelstvo/administrativno-processualnyy-kodeks>

<sup>81</sup> Available in English here: <https://www.riigiteataja.ee/en/eli/520022015001/consolide>

- Regulation on Courts Information System<sup>82</sup>

### **3. Access to Judicial Information**

#### **3.1. The Open Court Rule**

The general rule is that court hearings are open to the public. There are exceptions to this rule that are based on the facts of the case.

According to § 37 of the Code of Civil Procedure (CCP) the court hearing of a matter is public unless otherwise prescribed by law. § 38 of the CCP lays out the grounds for declaring closed proceedings (e.g. protection of state secret, protection of the life, health, freedom, private life of a participant in a proceeding, witness or other person). The rules laid down in CCP are also applied for administrative court procedure (§ 77 of the Code of Administrative Court Procedure makes reference to the Code of Civil Procedure). According to § 452 of the CCP a court decision is made public by pronouncement or through the court office). For the administrative court procedure, it is stated in § 173(1) of the Code of Administrative Court Procedure that a 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.

According to § 11 of the Code of Criminal Procedure (CCRP) every person has the opportunity to observe and record court sessions pursuant to the procedure provided for in § 13 of this Code (written notes, other types of recording only with the permission of the court). § 12 of the CCRP lays down the rules and grounds for restricting access to court hearings (e.g. the protection of state or business secrets, morals, the private and family life, minors, etc.). According to § 315 of the CCRP the court decision is pronounced publicly.

#### **3.2. Databases of Judicial Information**

In Estonia there exist two official databases for the documents of court proceedings: 1) a database for the court documents of first and second instance courts in civil, criminal and administrative cases (Court Information System) and 2) a database for the court documents of the Supreme Court in civil, criminal and administrative cases. Both of the databases are password protected. Below, the functionality of the Court Information System is described in more detail, as this is the information system that also the Supreme Court will start using at the beginning of 2016 (the two databases are administrated following similar access-rules).

Access to the Court Information System is provided to judges, court officials (advisors, clerks), prosecutors, barristers, other participants to a proceeding (the accused, the victim, the witnesses etc.) and some other state agencies that, due to their functions, need to have access to the proceedings and the court decisions (e.g. probation officers, Alternative Dispute Resolution bodies and the Ombudsman). The police and the general public do not have access to the Court Information System. The scope of privileges of different user-groups varies. Court presidents and judges have the most extensive rights – they have access to all the court cases and to all the data related to these cases (including confidential/sensitive cases). Other court officials (advisers, clerks) have access to all the court cases that are not

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<sup>82</sup> Available in Estonian here: <https://www.riigiteataja.ee/akt/126062014009>

confidential/sensitive cases. Court officials can access all the data related to the cases they have access to. Barristers, prosecutors and other participants of the trial have access to all the court-cases that they are involved in. They have access only to the general data and to data made specifically available to them or that has been submitted by them. Databases can either be accessed by entering a username and a password or by using the ID card.

The means of access vary by user-groups:

1) Accounts and passwords for judges, court officials, prosecutors and other agencies are provided by the Centre of Registers and Information Systems that falls in the jurisdiction of the Ministry of Justice;

2) Barristers and other participants of the trial have access to their cases via public E-file system (a special application for barristers and other participants of the trial) that requires access by ID-card.

### 3.3. Access to Court Decisions

The rules regulating the publishing of court decisions can be found in procedural laws (Code of Civil Procedure, Code of Criminal Procedure, and the Code of Administrative Court Procedure). Civil, criminal and administrative court decisions of first and second instance courts that have entered into force since 2001 are made available to the public on the website of the State Gazette<sup>83</sup> ([https://www.riigiteataja.ee/kohtuteave/maa\\_ringkonna\\_kohtulahendid/main.html](https://www.riigiteataja.ee/kohtuteave/maa_ringkonna_kohtulahendid/main.html)).

The court decisions are only available in the Estonian language. All the decisions of the Civil, Criminal, Administrative and the Constitutional Review Chamber of the Supreme Court are available on the website of the Supreme Court<sup>84</sup> (<http://www.riigikohus.ee/?id=11>) and via the website of the Supreme Court also on the website of the State Gazette (<https://www.riigiteataja.ee/kohtuteave/riigikohtulahendid.html>). Most of the decisions of the Supreme Court are only available in the Estonian language (the most important decisions of constitutional review are translated into English and published on the website of the Supreme Court). Access to all court decisions on the website of the State Gazette and on the website of the Supreme Court is free of charge.

## 4. Protection of Personal Data and Privacy

Codes of procedural law also set out the rules for publishing of personal data in court decisions. The rules of anonymity vary according to the type of procedure.

### 4.1. Civil Procedure

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<sup>83</sup> **Code of Civil Procedure** § 462(1) „A court judgment which has entered into force is published in the computer network at a place prescribed for such purpose.“; **Code of Criminal Procedure** § 408-1 (1) „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 /.../“; **Code of Administrative Court Procedure** § 175(1) „A judgment which has become final is published in the designated location of the computer network.“

<sup>84</sup> **Code of Civil Procedure** § 694 (1) „A judgment of the Supreme Court is sent to the participants in the proceeding and published on the website of the Supreme Court.“; **Code of Criminal Procedure** § 360 (4) „/.../The judgment of the Supreme Court shall be published on the website of the Supreme Court.“; **Code of Administrative Court Procedure** § 175(1) „A judgment which has become final is published in the designated location of the computer network.“

§ 462 (1) of the Code of Civil Procedure (CCP) states the general rule that court decisions that have entered into force are to be published on the computer network. CCP § 462 also sets out some limits:

According to CCP § 462 (2) at the request of a data subject or on the initiative of the court the name of the data subject is replaced in a court judgment which has entered into force with initials or a character. The personal identification code, date of birth, registry code and address of the data subject are not published. However, the data of the state or local government agency, a legal person in public law or other public authority are not concealed in a court decision.

CCP § 462 (3) states that 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 CCP § 462(2) are applied. The court adjudicates the request by a ruling. In addition, according to CCP § 462 (4) a court publishes on its own initiative or at the request of an interested party only the conclusion of a judgment which has entered into force if the judgment contains information regarding which another restriction on access is prescribed by law.

A person who submitted a request may file an appeal against a ruling of a county court or circuit court on the refusal to satisfy a request specified in CCP § 462 (2)–(4). A ruling of a circuit court concerning an appeal against a ruling of a county court is not subject to appeal to the Supreme Court.

## **4.2. Criminal Procedure**

§ 408-1(1) of the Code of Criminal Procedure (CCRP) states the general rule according to which 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 therefore, except in the case pre-trial proceedings continue in the criminal matter in which the court ruling was made.

According to CCRP § 408-1(2) a published decision shall disclose the name and personal identification code or, in the absence of the personal identification code, date of birth of the accused. The personal identification code and name or date of birth of an accused who is a minor are replaced by initials or characters, except in the case the disclosed decision is at least the third one in which the minor is convicted in a criminal offence. A court shall replace the names and other personal data of other persons with initials or characters. A decision shall not disclose the residence of a person.

There exists a time limit for making available data concerning the punishment of a convicted person. Once the data concerning punishments has been deleted from the Criminal Records Database the name of the convicted person is replaced by initials in a court decision made available to the general public (The Criminal Records Database Act provides the terms for deletion of information concerning punishments). The convicted person has to make a request to the court that organises the replacement of name by initials (permission of a judge is not required). The Criminal Records Database Act also lists the offences for which the name of the convicted person cannot be replaced by initials.

CCRP § 408-1(3) states that if the main part or statement of reasons of a decision contains sensitive personal data or personal data regarding which another restriction on access prescribed by law applies and the decision allows identification of a person although the names and other personal data have been replaced with initials or characters, the court shall publish, on its own initiative or at the request of the data subject, only the conclusion or final part of a decision. In addition, if the main part or statement of reasons of a decision contains information regarding which another restriction on access prescribed by law applies, the court shall disclose, on its own initiative or at the request of the interested person, only the conclusion or final part of a decision (CCRP § 408-1(4)).

The requests concerning the disclosure of personal information shall be submitted to a court before a decision is made. The court shall adjudicate the request by a ruling. A person who submitted the request may file an appeal against a court ruling by which the request was dismissed.

### **4.3. Administrative Court Procedure**

§ 175(1) of the Code of Administrative Court Procedure (CACP) states the general rule that court decisions that have become final are published in a designated location on a computer network. CACP § 175 also prescribes some limits:

CACP § 175(3) states that on the basis of an application of the data subject, or on the court's initiative, the name of the data subject in the judgment to be published is replaced by initials or a sequence of letters, and his or her personal identification code, date of birth, registration number, address or other particulars which would permit specific identification of the data subject are not published. The particulars of an agency of the government or of a local authority, of a legal person in public law or other person vested with public authority are not concealed in a court decision.

According to CACP § 175(4) where a judgment contains sensitive personal data or other data whose publication may significantly harm the right to privacy of the person concerned, and where it is impossible to avoid the harm to the person's right to privacy by observing, amongst other things § 175(3), the court, on the basis of an application of the data subject, or on its own initiative, publishes the judgment without the particulars which risk harm to the right to privacy, publishes solely the operative part of the judgment, or does not publish the judgment. In addition, if a judgment contains information which is subject to a other limitation of access provided in the law, the court, on the basis of an application of the interested person, or on its own initiative, only publishes the operative part of the judgment, or does not publish the judgment (CACP §175(5)).

A court ruling is made in respect of any partial publication or non-publication of a judgment. The person who made the application may lodge an appeal against the ruling of the administrative court or of the circuit court which dismissed his or her application, and the ruling entered by the circuit court in respect of the appeal may be further appealed to the Supreme Court.

### **5. Legal Validity of Court Decisions Available on the Web**

Court decisions made available to the general public on the web do not have legal validity. For the decision to have legal validity a notation certifying the entry into force



needs to be issued (provided by the court office that adjudicated the matter). The notation is entered on a transcript or printout of the court judgment. The notation is signed and certified by the seal of the court. In addition, a notation on entry into force may be issued electronically by the person prescribed in the internal rules of the court who signs it with the digital signature. An electronic notation on entry into force is not certified by the seal of the court.

## **6. Document Standards of the Decisions**

Court decisions that have entered into force are made available to the general public in the PDF format. Court decisions are uploaded in the password-protected database in DOCX format.

## **7. Concluding Observations**

In order to comply with the rule of open court, steps have been taken in Estonia to guarantee the general public access to case law of courts. Presently, there are two portals providing access to civil, criminal and administrative court decisions: the website of the Supreme Court (decisions of the Supreme Court) and the website of the State Gazette (decisions of courts of first and second instance as well as the decisions of the Supreme Court via the website of the Supreme Court).

The publication of court decisions on computer networks is regulated in laws of procedure (e.g. the Code of Civil Procedure). The laws of procedure also establish which information is disclosed and what is omitted from court decisions made available to the public.

The general rule is that court decisions are made available to the public in full length. However, the facts of the case may require the judgment to be published only partially or not at all. Courts have the final say in deciding on the publication/non-publication of a court decision and the disclosure of personal details.

Access to court decisions on the website of the Supreme Court and the State Gazette is free of charge.

### **3.4. Republic of Italy**

#### **1. Overview of the Judicial System**

Pursuant to Article 104 of the Italian Constitution, "*the judiciary constitutes an autonomous and independent organ and is not subject to any other power of the State*". The judiciary is an autonomous body independent from the legislative and the executive powers. Ordinary judges are subject to the authority of their self-governing body: the *Consiglio Superiore della Magistratura* (CSM). This supervisory organ is presided over by the President of the Republic and is composed of two members, that is, the Prosecutor General and the President of the Court of Cassation. According to Article 105 of the Constitution, the *Consiglio Superiore della Magistratura* also participates in the recruitment processes, assignments, transfers, promotions and disciplinary actions of judges.

Judicial power in Italy is divided into two distinct categories, namely the ordinary jurisdiction and the special jurisdiction.

### 1.1 Ordinary Jurisdictions

The ordinary jurisdiction includes civil and criminal law matters that have not been otherwise deemed as coming within the scope of the special jurisdiction. Career judges administer justice, in the ordinary jurisdiction.

The ordinary jurisdiction is exercised by courts, which are set up as follows:

#### First Instance

- Justice of the peace (*giudici di pace*) – who are honorary (not professional) judges. They hear minor civil and criminal matters. These courts replaced the old Preture (*Praetor Courts*) and the *Giudice Conciliatore* (Judge of conciliation) in 1999.
- Tribunals (*tribunali*) – hear the more serious cases. Litigants are statutorily required to be represented by an Italian barrister, or *avvocato*. It can be composed of one judge (*Tribunale monocratico*) or of three judges (*Tribunal collegiale*), according to the importance of the case.
- The Court of Assize (*Corte d'Assise*) – hears on all crimes carrying a maximum penalty of 24 years in prison or more. These are the most serious crimes, such as terrorism and murder.
- Juvenile court (*tribunale per i minorenni*) - hears all cases concerning minors, such as adoptions or emancipations; it is presided over by two professional judges and two lay judges.

#### Second Instance

To claim against the first decision on factual grounds and the interpretation of the law:

- Courts of appeal (*Corte d'appello*) has jurisdiction to retry the cases heard by the *Tribunale* as a Court of first instance and is divided into three or more divisions: labor, civil, and criminal.
- Tribunal acting as appellate Court for the Justice of the Peace
- The Appeal Court of Assize (*Corte d'Assise d'Appello*) has jurisdiction over the sentences rendered by the Court of Assize. This appeal includes a complete review of the evidence – in effect a retrial.

#### Third Instance

To obtain recourse for infringement of the law at the highest level:

- Supreme Court (*Corte di Cassazione*) – with overall competence and final instance. Among its major functions there is the task to ensure the correct application of the law and its uniform interpretation, together with the unity of the national legal system. The Italian *Corte di Cassazione* is also entrusted with the charge of defining the jurisdiction (i.e., of indicating, in case of

controversy, the court, either ordinary or administrative or fiscal, which is empowered to judge upon the case) and the "competence" (i.e., of settling a conflict between two courts dealing with the merits of a case). According to Article 111 of the Italian Constitution any citizen can file an appeal to the Supreme Court based on infringement of the law by a decision of lower courts, both in civil and criminal matters or against any limitation to individual freedom. The appeals (petitions) are based on violation of law and lack of grounds against the decisions of the ordinary and tax courts dealing with civil, criminal, tax and labour cases. The Italian Supreme Court does not undertake fact-finding of its own but confines itself to reviewing the legal assessment of a case by the lower courts. The facts established by these courts are binding on the *Corte di Cassazione*, unless such findings are affected by a procedural error pointed out in the statement of grounds for appeal.

## 1.2 Special Jurisdictions

There are four areas of law considered special jurisdictions.

The first is the administrative jurisdiction exercised by the Regional Administrative Courts (*Tribunali Amministrativi Regionali*), which review administrative decisions taken by public authorities.

The second is the State Auditors' Department (*Corte dei Conti*), which reviews matters concerning public accountancy.

The third is the military jurisdiction exercised by the Military Courts (*Tribunali Militari*), by the Military Appeals Courts (*Corti Militari di Appello*) in cases concerning military offences committed by members of the Armed Forces.

Finally, fiscal jurisdiction is exercised by the Provincial Fiscal Commissions (*Commissioni Tributarie Provinciali*) and the District Fiscal Commissions (*Commissioni Tributarie Regionali*) in matters concerning taxation.

Additionally, the Regional Courts (*Tribunali Regionali delle Acque Pubbliche*) and the High Court of Waters (*Tribunale Superiore delle Acque Pubbliche*) have jurisdiction over all matters of dispute regarding water belonging to the Italian State.

## 1.3 Constitutional Court

The Constitutional Italian justice system is based on a centralised model, in which the control on the compatibility of laws in respect of the Constitution relies on the Constitutional Court. It is composed of fifteen judges, who remain in office for nine years. Five judges are elected by Parliament in joint session, five from each of the three judges of higher courts (three by the Supreme Court, one by the State Council, one from the Court of Auditors), five are chosen by the President of the Republic (art. 135 Const., first paragraph).

The Court has the authority to decide on matters concerning the constitutional legitimacy of law and acts having the force of law, adopted by the State and the

autonomous Regions. It also decides upon any disputes arising over the allocation of powers between branches of Government within the State and the Regions as well as, between the Regions. The Constitutional Court is responsible for hearing accusations raised against the President of the Republic on the basis of the Constitution (Article 105 of the Constitution) and for the eligibility of requests for referendum to repeal the law (L.Cost. 1/1953, Art. 2).

## 2. The Legislative Framework

Constitution, arts. 90, 101-113, 134-137<sup>85</sup>  
Constitutional law n. 2 of 23rd November 2000<sup>86</sup>  
Royal Decree no. 12 of 30th January 1941<sup>87</sup>  
Law no. 374 of 21st November 1991<sup>88</sup>  
Leg. Decree no. 51 of 19th February 1998, arts. 1-48<sup>89</sup>  
Law no. 186 of 27th April 1982, art. 7<sup>90</sup>  
Law no. 205 of 21st July 2000, art. 18<sup>91</sup>  
Law no. 89 of 24th March 2001<sup>92</sup>  
Decree-law n. 132 12th September 2014<sup>93</sup>

## 3. Access to Justice

The right of access to justice recognised by Article 24 of Constitution is an inviolable and non-disposable right and a fundamental principle of Constitution. No relevant restriction can limit the right to access to justice in discrimination cases, as a matter of law.

### 3.1 Openness of Decisions

- **Transparency:** Legislative decree n. 33/2013: it re-ordered obligations of disclosure, transparency and dissemination of information by public administrations.
- **Publication and communication of judgments:** Art. 56, paragraph 2a, Legislative decree n. 82/2005 (Code for a Digital Administration - *Codice dell'Amministrazione Digitale*); Art. 133 Code of Civil Procedure
- **Privacy issues:** art. 51 and 52, Legislative Decree no. 196/2003 (Privacy Code)
- **Anonymisation:** The Italian Data Protection Authority Guidelines concerning the processing of personal data in the reproduction of judicial decisions for the purposes of legal information (2 December 2010): “The spread of judicial decisions is a valuable source for the study and enhancement of legal culture and

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<sup>85</sup> <http://www.governo.it/Governo/Costituzione/principi.html>

<sup>86</sup> <http://www.csm.it/documenti%20pdf/sistema%20giudiziario%20italiano/inglese.pdf>

<sup>87</sup> <https://wcd.coe.int/ViewDoc.jsp?id=1054817&Site=COE>

<sup>88</sup> <https://wcd.coe.int/ViewDoc.jsp?id=365397&Site=COE>

<sup>89</sup> <http://www.csm.it/documenti%20pdf/sistema%20giudiziario%20italiano/inglese.pdf>

<sup>90</sup> <http://www.csm.it/documenti%20pdf/sistema%20giudiziario%20italiano/inglese.pdf>

<sup>91</sup> <http://www.csm.it/documenti%20pdf/sistema%20giudiziario%20italiano/inglese.pdf>

<sup>92</sup> <http://www.csm.it/documenti%20pdf/sistema%20giudiziario%20italiano/inglese.pdf>

<sup>93</sup> <http://www.libralex.com/publications/report-on-the-law-decree-pub>

an indispensable instrument of control of the exercise of judicial power by citizens. The Privacy Code encourages the widest possible dissemination of judgments and other measures of judicial authorities for which it has been fulfilled, by depositing in the chancelleries and judicial secretaries, the burden of the publication required by the provisions of the codes of civil and criminal procedure".

- **Publication in whole or in part of the judgment as supplementary penalty:** art. 186 and 36 Criminal Code; art 729 Civil Procedure Code.

### 3.2 Publication of Personal Data in Decisions

The general principles of data protection are expressed in the legislative decree no. 196 of 30 June 2003. In particular art. 20 introduces the Principles Applying to the Processing of Sensitive Data, according to which processing of sensitive data by public bodies is allowed when it is expressly authorised by a law specifying the categories of data that may be processed and the categories of operation that may be performed as well as the substantial public interest pursued.

If the processing is not provided for expressly by a law, public bodies may request the "Garante della Privacy" (the authority for data protection) to determine the activities that pursue a substantial public interest among those they are required to discharge under the law.

In art. 21 the specific principles applying to the processing of judicial data are addressed. Also in this case data can be processed by public bodies if expressly authorized by a law or an order of the Garante specifying the purposes in the substantial public interest underlying such processing and the categories of data to be processed and the operations that may be performed, or in pursuance of memoranda of understanding for preventing and countering organised crime that are entered into with the Ministry for Home Affairs and/or peripheral offices thereof under section 15(2) of legislative decree no. 300/1999.

Moreover art. 22 addresses the *Principles Applying to the Processing of Sensitive Data as well as to Judicial Data* and it is here below reported

**Art. 22** (*Principles Applying to the Processing of Sensitive Data as well as to Judicial Data*)

1. Public bodies shall process sensitive and judicial data in accordance with arrangements aimed at preventing breaches of data subjects' rights, fundamental freedoms and dignity.
2. When informing data subjects as per Section 13, public bodies shall expressly refer to the provisions setting out the relevant obligations or tasks, on which the processing of sensitive and judicial data is grounded.
3. Public bodies may process exclusively such sensitive and judicial data as are indispensable for them to discharge institutional tasks that cannot be performed, on a case by case basis, by processing anonymous data or else

personal data of a different nature

4. Sensitive and judicial data shall be collected, as a rule, from the data subject.

5. In pursuance of Section 11(1), letters c), d) and e), public bodies shall regularly check that sensitive and judicial data are accurate and updated, and that they are relevant, complete, not excessive and indispensable with regard to the purposes sought in the individual cases - including the data provided on the data subject's initiative. With a view to ensuring that sensitive and judicial data are indispensable in respect of their obligations and tasks, public bodies shall specifically consider the relationship between data and tasks to be fulfilled. No data that is found to be excessive, irrelevant or unnecessary, also as a result of the above checks, may be used, except for the purpose of keeping - pursuant to law - the record or document containing said data. Special care shall be taken in checking that sensitive and judicial data relating to entities other than those which are directly concerned by the service provided or the tasks to be fulfilled are indispensable.

6. Sensitive or judicial data that are contained in lists, registers or data banks kept with electronic means shall be processed by using encryption techniques, identification codes or any other system such as to make the data temporarily unintelligible also to the entities authorised to access them and allow identification of the data subject only in case of necessity, by having regard to amount and nature of the processed data.

7. Data disclosing health and sex life shall be kept separate from any other personal data that is processed for purposes for which they are not required. Said data shall be processed in accordance with the provisions laid down in paragraph 6 also if they are contained in lists, registers or data banks that are kept without the help of electronic means.

8. Data disclosing health may not be disseminated.

9. As for the sensitive and judicial data that are necessary pursuant to paragraph 3, public bodies shall be authorized to carry out exclusively such processing operations as are indispensable to achieve the purposes for which the processing is authorized, also if the data are collected in connection with discharging supervisory, control or inspection tasks.

10. Sensitive and judicial data may not be processed within the framework of psychological and behavioural tests aimed at defining the data subject's profile or personality. Sensitive and judicial data may only be matched as well as processed in pursuance of Section 14 if the grounds therefor are preliminarily reported in writing.

11. In any case, the operations and processing referred to in paragraph 10, if performed by using data banks from different data controllers, as well as the dissemination of judicial and sensitive data shall only be allowed if they are expressly provided for by law.

12. This Section shall set out principles that are applicable to the processing operations provided for by the Office of the President of the Republic, the Chamber of Deputies, the Senate of the Republic and the Constitutional Court, in pursuance of their respective regulations.

Finally art. 52 of the same privacy code entitled, "Data identifying the interested parties" provides a right of the individual, through appropriate and specific instance, for legitimate reasons and before the definition of the level of judgment to ask the Court for an anonymisation of personal data on the original judgment.

The anonymisation of personal data on the original judgment may be by the Court, in the absence of express agreement of the parties.

The anonymisation is always necessary for judgment relating to:

- The identity of the child;
- The parties in proceedings relating to family relations;
- The identity of the people involved in proceedings concerning the status of persons (Interdictions...etc.);
- Sexual offenses and prostitution.

The Supreme Court, the Courts of Appeal, Tribunals may release full copies of judgments to journalists without obscuring the names of the accused, given that judgments are public acts. On the contrary if a judgment is published in a journal of legal information is necessary to obscure the personal data. This obligation, however, should not apply in any way for the judicial reporting, since the latter is called upon to ensure the right to information of citizens

#### **4. Access to Judicial Information**

The general rule is that court hearings are open to the public. The main archive of judicial decisions managed by the "Centro Elettronico di Documentazione" (Electronic Centre of Documentation) (CED) of the Court of Cassation.

The CED is an independent unit within the Court of Cassation reporting directly to the First Presidency, whose task it is:

- a) To provide to all Italian magistrates (in particularly those of the Supreme Court), the European judges and the audience of subscribers (lawyers, public and private institutions, such as ministries, universities, etc.) IT services relating to the implementation, management and the provision for consulting the archives of jurisprudence and legislation;
- b) To provide administrative facilities and services to the judges of the Court concerning the IT management processes (both civil and criminal).

In particular the CED has the following competences:

- Judicial informatics: coordination of activities and initiatives; application studies; verifying the functionality and efficiency of the programs; control of scientific development.

- Legal informatics: management, research and dissemination of the legal data at national and international level, through the formation and development of the Italgire database (Presidential Decree n. 322/1981 and D.M. 7.2.2006);
- Development of applications for Court offices automation; relationships with the judges; supplies hardware and software, market researches; implementation and maintenance of programs for the administrative services of the Court of Cassation; organization of training courses for judges and staff.
- Coordination of the IT services for judgments in civil and criminal matters;
- Services of format conversion of the Court documents, creation of the archives of legal documentation and technological upgrading of the search system, called Italgire Web.
- Managing the civil and criminal proceedings, allowing access to the lawyers via smartcard.

#### 4.1. ItalgireWeb

Case law provides decisions by the Constitutional Court, the Court of Cassation, the Council of State, the Regional Administrative Tribunals, the State's Auditors Department and a selection of decisions given by the lower Courts.

All case law (from 70' onwards) is published by Italgireweb a public Information legal system which belongs to the Court of Cassation (Ministry of Justice). Administrative case law given by the Council of State and by the Regional Administrative Tribunals is also published (from 2000 onwards) by the *Servizio Massimario e ruolo del Consiglio di Stato* (<http://www.giustizia-amministrativa.it/> ) which belongs to the Council of State.

The Constitutional Court as well publishes its decisions on its own web site. (<http://www.cortecostituzionale.it/> )

Case law published by Italgireweb is enriched by summaries, cataloguing, normative references, relations with other decisions, etc. Case law published by Giustizia amministrativa and the Constitutional Court has very little added value.

ItalgireWeb is free of charge for the judiciary and other bodies with institutional interests (ministries, research centres, etc.).

In addition the ItalgireWeb site offers free of charge access to a new archive, "SentenzeWeb"<sup>94</sup>, containing all of the civil and criminal rulings of the Court published from 2010, in their unabridged versions. It is an archive with over 425,000 rulings to date, made available to the public and freely searchable.

##### 4.1.1. Judiciary Content Acquisition and Processing

Italgireweb receives both full text and summaries of the Courts of Cassation decisions, in word format. The content is received in batches per court and per decision.

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<sup>94</sup> <http://www.italgiure.giustizia.it/sncass/>



The Massimario department of the Court of Cassation selects the decisions to be summarised, summarises them and sends them to the legal information system. The acquisition frequency of new case law is variable, sometimes ad horas.

Decisions are split between the various Courts.

The content holder stores directly decisions (in blocks - XML format) in the file system. It is created a highly sophisticate index to access documents rapidly.

Responsible for the processing of the case law are judges (about 50) and clerks of the Court, who are also in charge for cataloguing, key words, normative references, meta data, etc.

*La Giustizia amministrativa* receives weekly the full text of the decisions (and sometimes also summaries) on paper. Decisions are selected on the base of the novelty of the precedent.

Decisions are split between Counsel of State decisions and Regional Administrative Tribunals decisions. The content holder uses an SQL database (XML tagged).

Clerks of the Courts are responsible for the processing of the case law.

The content holders have not established a quality control of case law and have adopted their own system of decision numbering.

The processing of the case law is funded by the State's budget.

#### **4.1.2. Accessibility of the Case Law**

As regards Italgireweb case law can be accessed by web site (HTLM, XML format) and CD-rom. The web site is being visited about 15.000 times in a year while, once a year, a CD-rom containing the Supreme Court of Cassation case law is delivered to judges only.

The content holder publishes both full text and summaries of the decisions.

The content holder started the publication of case law in the early '70.

Decisions can be accessed either on a free basis or paying a subscription, depending on the content and users' categories (for judges all case law is free; constitutional case law and law is free for all users). Access is subject to the creation of a user name and password.

As regards *Giustizia amministrativa* the full text of the decisions can be accessed by web site (XML). The service started in 2002, is free of charge and access is not subject to the creation of a user name or password.

The Constitutional Courts decisions can be accessed as well by web site, free of charge, and access is not subject to the creation of a user name or password.

All case law is available only in Italian language and the dissemination is not subject to binding deadlines. The content holders publishes case law for public service and the publication is funded by the State's budget.

The Italian legal system is looking at and contributing to the development of a process of standardization for legal documents, following the standardization initiatives for document identification and structuring, addressed in the related section of the present report at the detailed **Section 5** of this Report.

## 5. Concluding Observations

The market for legal databases in Italy is an oligopoly of about three or four large publishers and other smaller players who offer more vertical and limited access to legal information. There are several databases that actually contain not only texts of judgments, but also comments produced by the lawyers, the connection with the current regulations and with law reviews. Although there is no copyright on the texts of the judgments (art. 5 of the Law 633/1941), there is a copyright on everything else, and there is still a sui generis database right that exists to recognise the investment that is made in compiling a database. The publishers have therefore, legitimately, their rights on these works.

On the other hand, the web is full of partial or full texts of judgments (in fact there are several sites of legal information), and nowadays the high courts have put texts online on their official websites. In Italy you can have free access to the judgments of the Court of Cassation (last 5 years), of the Constitutional Court, of the Council of State. The Constitutional Court, following the open data approach, makes available all the decisions and their official abstracts (since 1956 to date) with a Creative Commons license and with availability of the full XML file. Since 2014 the Supreme Court of Cassation permits the retrieval of judgments, decrees, orders, interlocutory orders, both in civil and criminal matters, through different parameters (keywords, number and year of the judgment, legal references). The opening of the archives of civil and criminal judgments of the Supreme Court of Cassation is in line with the goal of implementing a more transparent and accessible service of justice.

Furthermore in April 2015 the JurisWiki initiative has been implemented, inspired by open access data policies. The JurisWiki<sup>95</sup> service which provides free access to all the decisions made available by the main Italian courts (Court of Cassation, State Council, Constitutional Court). It represents the first open collaborative platform to legal information. It brings together, in one place, all the judgments made available freely from the main Italian high courts and makes them easily available and accessible. Since there is no consensus on how to manage the personal data contained in these documents the site has temporarily obscured all the documents coming from the Court of Cassation. It is important to note that the original source (the Supreme Court of Cassation) is now deciding on the assessment on which parts of the decision or data should be anonymised or obscured. In particular, now the issue on data anonymisation is quite a delicate one and there is a vigorous debate between the Supreme Court of Cassation and the Data Protection Authority. The relationship between open data and privacy protection is quite crucial in Italy: there are conflicting interpretations on this issue. On the one hand there are those who push for providing free access to law and for the reuse of information, especially when it comes from public authorities; on the other hand there are those who raise

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<sup>95</sup> <http://juriswiki.it>

barriers to protect the privacy of individuals mentioned (even indirectly) in the various public documents.

The publication of court decisions on the Internet is not regulated by laws. Italian court decisions available on the Web do not have legal validity, just for the purpose of publicity.

### **3.5. The Republic of Moldova**

#### **1. Overview of the Judicial System**

Pursuant to Article 115 of the Constitution of the Republic of Moldova (R.M.), justice is administered by the Supreme Court of Justice, courts of appeal and courts of law. The structure of the courts of law, their scope of competence and judicial procedures are laid down by organic law.<sup>96</sup>

The Constitutional Court of the R.M. guarantees the supremacy of the Constitution, ascertains the enforcement of the principle of separation of the State powers into the legislative, executive and judiciary, etc.<sup>97</sup> In particular, it exercises its powers in accordance with to Article 135 of the Constitution of the R.M., Article 4 of the Law no.317 of 13.12.1994 on the Constitutional Court<sup>98</sup> and Article 4 of the Law no.502 of 16.06.1995 on adoption of the Code of Constitutional Jurisdiction<sup>99</sup>.

#### **2. Access to Judicial Information**

##### **2.1 Public Character of Legal Proceedings**

The obligation to “make public” court decisions, which includes the obligation to pronounce the judgement in open court as well as making it accessible, is found within the national legal provisions on “the right to a fair trial”. This right has been elaborated on and set down in binding form, in particular, following ratification by the R.M. of a number of international legal instruments<sup>100</sup>.

Moreover, openness of legal proceedings is a constitutional rule. Article 117 of the Constitution provides that legal hearings in all courts of law are held in public. The conduct of lawsuits in a closed hearing is allowed in cases as provided for by law and in compliance with the rules of procedure.

Public character principle is further enshrined in the Criminal Procedure Code of the R.M.<sup>101</sup> Article 18 stipulates that hearings are public in all courts except in cases

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<sup>96</sup> The text of the Constitution of the Republic of Moldova is available here:

[http://www.constcourt.md/public/files/file/Actele%20Curtii/acte\\_en/MDA\\_Constitution\\_EN.pdf](http://www.constcourt.md/public/files/file/Actele%20Curtii/acte_en/MDA_Constitution_EN.pdf)

<sup>97</sup> <http://www.constcourt.md>

<sup>98</sup> <http://lex.justice.md/md/311650/>

<sup>99</sup> <http://lex.justice.md/md/311677/>

<sup>100</sup> Article 14(1) of the International Covenant on Civil and Political Rights, Article 6§1 of the European Convention on Human Rights and Fundamental Freedoms, etc.

<sup>101</sup> The Russian version of this act is available here: <http://lex.justice.md/md/326970/> An English (unofficial) translation of this act is available here:

provided by this article. Access to the courtroom may be prohibited to the press or public for the entire duration of the proceeding or for a part thereof in order to ensure the protection of morality, public order or national security; when the interests of minors or the protection of the private lives of the parties in the proceeding so require or to the extent the court considers this measure strictly necessary due to special circumstances when publicity could damage the interests of justice. In proceedings involving a minor victim or witness, the court shall hear his/her testimony in a closed hearing.

Article 23(4) of the Civil Procedure Code of the R.M. stipulates that the court may declare the hearing secret through the entire process or only for certain procedural acts. Furthermore, paragraph 7 of the same legal provision, provides that courts shall take adequate measures to preserve state secrets, commercial secrets, information about the private life of a person. All parties are informed about their responsibility in case of disclosure of information acquired during secret hearings.

Judges, pursuant to Article 15(1)(f) of the Law no.544 of 20.07.1995 of the Statute of the Judge<sup>102</sup>, will not disclose information acquired during closed hearings, the secret of deliberation and prosecution data.

## **2.2. Obligation to Publish Court Decisions on a Webpage**

Judgments of courts, courts of appeal and the Supreme Court of Justice, pursuant to Article 10(4) of the Law on the Organisation of the Judiciary<sup>103</sup>, shall be published on webpage. The same legal provision mandates the Superior Council of Magistracy to elaborate and adopt the Regulation on the procedure for the publication of court judgments<sup>104</sup>.

In practice, decisions of courts, courts of appeal are published on <http://instante.justice.md/cms/>, which is a new portal designed for becoming the unique official portal of courts, whereas decisions of the Supreme Court of Justice are published on <http://jurisprudenta.csj.md>. Decisions of the Constitutional Court are published on <http://www.constcourt.md/?l=ru>.

When the case is heard in secret, pursuant to Article 23(10) of the Civil Procedure Code, the presiding judge shall decide whether to permit disclosure of copies of conclusions, expert reports and witness statements to other parties than those involved.

Article 445(3) of the Civil Procedure Code provides that, after examining the appeal, the last instance court shall issue a decision, which remains irrevocable from the

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[http://www.unodc.org/res/cld/document/mda/criminal-procedure-code\\_html/Criminal\\_Procedural\\_Code\\_ENG.pdf](http://www.unodc.org/res/cld/document/mda/criminal-procedure-code_html/Criminal_Procedural_Code_ENG.pdf)

<sup>102</sup> <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=312845&lang=2>

<sup>103</sup> Law no.514 06 July 1995 on the Organization of the Judiciary

<http://lex.justice.md/index.php?action=view&view=doc&id=312839>

<sup>104</sup> On 18.12.2008 the Superior Council of Magistracy adopted the Decision no.472/21 on adoption of the Regulation for the procedure on the publication of court judgments. A new draft legal act, which will regulate publication of court judgments, has been elaborated and made public for consultation before it is adopted by the Superior Council of Magistracy.

time of issue and it is considered to be issued from the moment it is published on the portal of the Supreme Court of Justice.

Publication of court decisions is regulated by the Decision No.472/21 of 18 December 2008 of the Superior Council of Magistracy on approval of the Regulation on publication of judgments on the website. It provides that all decisions, except those provided in this act, are made public. A new draft to regulate publication of court decisions has been elaborated. According to this document, court decisions shall be transferred on the unique portal in real time through the electronic module for statistical reporting, which is part of ICMS, except the following:

- regarding cases involving minors;
- includes information, which constitute state secret, commercial secret, other information when disclosure is prohibited by law;
- regarding cases of adoption;
- regarding cases of sexual crimes, etc.

Moreover, in cases when the public is barred from a court, decisions are published in the ICMS, but they are not published on the unique portal.

Courts, based on the nature of the information of the decision on patrimony of the parties, successional right, private life and other information that needs to be protected, can edit the decisions, by:

- replacing full names of parties and other participants in the process with initials of first and last name;
- excluding of information about parties and other participants - date, month and year of birth, place of employment and positions, home address, legal address, data about patrimony, registration number of transport means, etc.

Access to court decisions is free of charge.

The format shall be the one, which ensures protection of information. Other document in force provides that the format is PDF.

### **2.3. Court Decisions shall be pronounced publicly**

Pursuant to Article 18 of the Criminal Procedure Code<sup>105</sup>, in all cases, court judgments shall be pronounced publicly. The same provision is reiterated in Article 10(2) of the Law no.514 of 06 July 1995 on the Organisation of the Judiciary.

Decisions shall be pronounced in public in cases when the public is barred from a court pursuant to Article 23(9) Civil Procedure Code of the R.M.

Article 440(1<sup>1</sup>) of the Civil Procedure Code provides that conclusion regarding admissibility of an appeal is published on the portal of the Supreme Court of Justice on the date it is issued.

### **2.4. The Integrated Case Management System**

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<sup>105</sup> The Russian version of the act is available here: <http://lex.justice.md/md/326970/>

The Integrated Case Management System (ICMS) is the unique multifunctional information system, which is installed in every court of the R.M. The ICMS is designed to improve the court administrative efficiency, transparency and public access through automation and tracking of all aspects of a case lifecycle. It facilitates collection, organization, distribution, and retrieval of case specific data. It includes a module, which permits anonymisation of certain categories of information protected by the law.

Access to this information system is password protected and is granted to presidents and deputy presidents, judges and a number of actors working in courts - heads of secretariats, judicial assistants, court clerks, specialists who work in chancelleries, archivists, carriers, IT specialists.

Access to information included in the ICMS is granted depending on the role and duties of each user, which result from the legal and regulatory framework. Passwords are administered by an external contracted party in accordance with the Act on "The Profile of the User of the ICMS", which is approved by the Minister of Justice.

Other participants to proceedings, for e.g. attorneys, prosecutors, police officers, do not have access to this information system at the moment.

Acts are included in the ICMS within 24 hours from the moment they have been submitted to courts.

The ICMS shall be modernised. It will accommodate new business functionalities based on stakeholders' requirements, allow exchange of data among courts, cross check information exchange and interoperability<sup>106</sup> with other information systems.

Moreover, pursuant to the Parliament Decision no.6 of 16.02.2012 on adoption of the Action Plan for implementation of the Justice Sector Reform Strategy (2011 – 2016)<sup>107</sup>, the Government plans to implement the e-justice by 2016. In this context, a number of information systems, including those designed for courts, shall be developed and implemented.

### **3. Protection of Personal Data and Privacy**

The right to protection of personal data forms part of the rights protected under two European legal instrument ratified by R.M., namely the ECHR (Article 8) and the Council of Europe Convention for the protection of individuals with regard to the

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<sup>106</sup> At present, the Government of the R.M. is implementing the MConnect government interoperability platform in accordance with the principles and rules include in the Government Decision no.656 of 5.9.2012 on adoption of the Program on Interoperability Framework <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=344700&lang=1> and the Government Decision No. 710 of 20.09.2011 <http://lex.justice.md/index.php?action=view&view=doc&id=340301> Although indirectly, these policy papers are relevant in the context of elaboration of IT instruments for courts.

<sup>107</sup> The act can be consulted here:

<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=343439&lang=2>

automatic processing of personal data (Convention 108)<sup>108</sup>. The R.M. committed to observe the treaties to which it is a party<sup>109</sup>.

Article 28 of the Constitution stipulates that the State “shall respect and protect the private and family life”.

The national Law no.133 of 8.7.2011 on Protection of Personal Data<sup>110</sup> establishes the legal framework necessary for the enforcement of 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.

Pursuant to Article 47(3)(e) of the Law no.514 of 06 July 1995 on the Organisation of the Judiciary, judicial assistants are assigned with the duty to depersonalise decisions and ensure their publication on the website.

The term “depersonalisation”<sup>111</sup> is defined<sup>112</sup> in the Law no.133 of 8.07.2011 on Protection of Personal Data.

Parties and other participants to the process shall submit requests to depersonalise decisions or court conclusions. However, the court will decide to approve the request.

The issue of infringement of personal data protection principles while publishing personalised judgments in the filing system established on the official web-page [www.csj.md](http://www.csj.md), has occurred in 2010, being described and made public as well as in the progress Report of the Center for Personal Data Protection for 2013 (pp. 21- 22). Therefore, despite the efforts of the Center during 2013, the Supreme Court of Justice has not complied with the requirements of suspension of activities carried out contrary to the principles of personal data protection and, after contesting the Center’s decision in administrative contentious procedure at the 1<sup>st</sup> instance court, based on the judgement of 24 January 2014 it won the case in the first instance. The Center challenged the judgement of the first instance, considering it illegal, but, on 17 of April 2014, the civil and administrative contentious College of the Chisinau Court of Appeal rejected the appeal, and upheld the judgment of first instance. Considering the findings of the Court of Appeal as erroneous, the Center filed an appeal, which was rejected by the civil, commercial and administrative contentious

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<sup>108</sup> The Convention 108 was signed by the R.M. on 04 mai 1998 and was ratified by the Law no.483-XIV from 02 July 1999 and entered into force in 2008 on 1 June 2008 following the adoption of the *Law no.17-XVI of 15 February 2007*

<sup>109</sup> Article 8 of the Constitution of the Republic of Moldova

<sup>110</sup> The Russian version of this legislative act can be consulted here:

<http://lex.justice.md/viewdoc.php?action=view&view=doc&id=340495&lang=2> The English version is available here: <http://www.datepersonale.md/file/Data%20Protection%20Law%20133.pdf>

<sup>111</sup> “For statistical purposes, historical, scientific, sociological, health research, legal documentation, the controller shall depersonalize the data by withdrawing those which permit the identification of natural person, rendering it in anonymous data, which cannot be associated with an identified or identifiable person. Where the personal data are rendered anonymous, the confidentiality treatment established for this data shall be cancelled.”

<sup>112</sup> “Is such alteration of personal data so that details of personal or material circumstances can no longer be linked to an identified or identifiable natural person or so link can only be made within an investigation with disproportionate efforts, expense and use of time” (Article 3).

College of the Supreme Court of Justice, qualifying it as inadmissible one. Thus, the court did not take into account the position of the national supervisory authority of personal data processing regarding the unfounded interference in the private lives of litigants following the publication of personalised judgments<sup>113</sup>.

#### 4. The Legislative Framework

The main legislative acts, which regulate accessibility of court documents, are:

- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108)<sup>114</sup> ratified by the R.M.<sup>115</sup>;
- European Convention on Human Rights<sup>116</sup> ratified by the R.M.;
- Constitution of the Republic of Moldova of 29.07.1994<sup>117</sup>
- Criminal Procedure Code no.122 of 14.03.2003<sup>118</sup>
- Civil Procedure Code no.225 of 30.05.2003<sup>119</sup>
- Contravention Code no.218 of 24.10.2008<sup>120</sup> (see, in particular, Chapter VI<sup>121</sup>)
- Law no.514 of 6.07.1995 on Organisation of the Judiciary<sup>122</sup>
- Law no.133 of 7.8.2011 on Personal Data Protection<sup>123</sup>
- Law no.544 of 20.07.1995 of the Statute of the Judge<sup>124</sup>
- Law no.71 of 22.3.2007 on Registries<sup>125</sup>
- Law no.317 of 13.12.1994 on the Constitutional Court<sup>126</sup>
- Law no.982 of 11.05.2000 of Access to Information<sup>127</sup>, etc.

#### 5. Legal Validity of Court Decisions Available on the Web

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<sup>113</sup> The Annual Report (2013) of the National Center for Personal Data Protection is available here: <http://datepersonale.md/file/Raport/raport13eng.pdf>

<sup>114</sup> The text of the Convention 108 and the Explanatory Report to this legal instrument is available here: <http://conventions.coe.int/Treaty/en/Treaties/Html/108.htm>

<sup>115</sup> <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=309121>

<sup>116</sup> The text of the ECHR Convention is available here: [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>117</sup> The act can be consulted here: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=311496&lang=2>

<sup>118</sup> The act can be consulted here: <http://lex.justice.md/md/326970/>

<sup>119</sup> The act can be consulted here: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=286229&lang=2>

<sup>120</sup> The act can be consulted here: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=330333&lang=2>

<sup>121</sup> Amended by Law no.208 of 21.10.2011 <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=341360&lang=2>

<sup>122</sup> The act can be consulted here: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=312839&lang=2>

<sup>123</sup> The act can be consulted here: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=340495&lang=2>

<sup>124</sup> The act can be consulted here: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=312845&lang=2>

<sup>125</sup> The act can be consulted here: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=325732&lang=2>

<sup>126</sup> The Act can be consulted here: [http://www.constcourt.md/public/files/file/Actele%20Curtii/acte\\_en/Law\\_on\\_CC\\_EN.pdf](http://www.constcourt.md/public/files/file/Actele%20Curtii/acte_en/Law_on_CC_EN.pdf)

<sup>127</sup> The act can be consulted here: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=311759&lang=2>



In order to have legal validity the decision needs to be officially validated as correct (by the Court stamp).

## **6. Concluding Observations**

5.1 The regime on accessibility is not applicable to all documents issued by the national courts. There is a clear tendency towards submitting the judiciary to transparency requirements. Nevertheless, the National Authority for Protection of Personal Data has addressed to the Supreme Court of Justice and the Superior Council of Magistrates with the request to align the legal framework on publication of court decisions to the legal framework on personal data protection and has raised public awareness regarding the danger of automated processing of sensitive personal data that concern a certain people and aspects of their private life.

5.2 The national portal of the court instances has been launched and the legal framework on publication of court documents has been revised.

5.3 In the context the national Justice Sector Reform Strategy, a new concept of the Integrated Case Management System is being elaborated.

## **4. REFERENCE AND FILING SYSTEMS FOR JUDICIAL DECISIONS**

### **Standardisation of case law**

#### **1. Introduction**

In recent years, the provision of legal information has changed greatly, in connection with the evolution of ICT and in particular thanks to the development of legal informatics. Legislation, regulations, case law, administrative decisions, contracts, tax information, judicial proceedings are often available in electronic format: the Internet already includes many legal sources and in many areas of law has become the main source of information for lawyers and citizens. But the Internet is not just the information source of data on relevant legal facts of the real world (decrees, judicial decisions, contracts, etc.), it is a virtual place where legally relevant events find their specific and unique location<sup>128</sup>.

Furthermore, the accessibility of law, case law and doctrine in the European Union Member States is essential for international business and harmonization of EU law<sup>129</sup>. The EU aims to improve access to information placed online and, in general, ensures better communication of and access to law. In this direction the European Commission has issued a Report on Access to Law<sup>130</sup>. This report discusses major advances in terms of access to European law and national law, as well as the

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<sup>128</sup> G. Sartor, M. Palmirani, E. Francesconi, M. Biasiotti (Eds.), "Legislative XML in the Semantic Web. Principles, Models, Standards for Document Management", Springer, 2011

<sup>129</sup> A priority promoted, among others, by European Commission Communication, A More Coherent European Contract Law (COM(2003) 68 final).

<sup>130</sup> Report on Access to Law (2015/C 97/03 of 24.3.2015) [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2015.097.01.0002.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2015.097.01.0002.01.ENG)

possibility of making the law of third countries accessible, where it is in the interest of the European Union itself or its Member States. It provides an extensive description of tools and platforms that have been developed to facilitate and extend access to law for citizens, at Member State and EU level.

In Section 2 the state-of-the-art about standards for legal documents is briefly discussed, in Sections 3 and 4 the specific aspects of standard for legal documents and case law documents identification are respectively addressed; Section 4 in particular presents two main initiatives (URN:LEX and ECLI) for providing persistent identifiers to case law documents. Section 5 illustrates the benefits of metadata for document indexing and goes in details about the set of metadata for case law proposed by the ECLI initiative. Section 6 describes the protocol for ECLI metadata harvesting and indexing. Finally Section 7 introduces the benefit of describing the formal structure of judicial decisions using XML standards.

## **2. State of the Art**

At operative level, a number of initiatives have been launched to ensure cross-border access to national legislation and case law on the application of EU law. In April 2006, the EU Publications Office launched the N-Lex portal as a common gateway to official legal databases of the Member States. Another initiative on case law is the creation of the Common Portal of National Case Law of the Network of the Presidents of the Supreme Judicial Courts of the European Union<sup>131</sup>. It offers a metasearch engine, which permits simultaneous searches of almost all the case law databases of the Supreme Courts of the EU. Released in April 2007 it is available to the public in its “lite” version (no translation of the judgments available) at the moment.

Moreover, the open data movement is radically changing the management, delivery and access to legal information. Most Member States offer free access to the consolidated national legislation through their institutional portals. Judgments, that were previously prerogative of the judges, parties, their lawyers and were occasionally available to major suppliers of legal information, are now freely available on the courts sites. For example, France and Bulgaria have provided centralized interfaces for access to national case law. In line with the Public Sector Information Directive<sup>132</sup>, the data are reusable for free or at affordable prices.

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<sup>131</sup> Using the Eurovoc-thesaurus the user-query of the Portal can be translated into the languages of each of the chosen databases. In the public access version the records found can only be accessed in the original language; users having a login code are also offered machine translations in various language pairs. No metadata search is possible, and there no search filters to limit the time range. The Common Portal uses just the identifiers supplied by the connected systems, which makes it hard to cite. <http://www.reseau-presidents.eu/rpcsju>

<sup>132</sup> Directive 2003/98/EC Council of 17/11/2003 on the re-use of public sector information, OJ L 345, 31.12.2003, p. 90-96.

Despite the increased availability of electronic documents, the difference between national legal systems as well as the variety of storage and legal information retrieval systems are a strong limit to their interoperability<sup>133</sup>.

The publication of legal documents is often in plain text and in different formats, no standardized metadata are provided and very few hyperlinks to cited legal resources are added. Many countries are still behind in the adoption of presentation formats such as XML<sup>134</sup> and RDF<sup>135</sup> for Linked Open Data. Furthermore, the national European web sites offering case law are not interconnected with each other and they use different identification systems.

In such a context the process of standardization at different levels is of paramount importance and can concern different aspects of legal information management. Below some levels of interest<sup>136</sup>:

- the communication protocols that are required for information to be made accessible over the web;
- the ways of specifying the typographical appearance of the documents;
- the identification of the resource and the links to other documents;
- the structure of the documents (their partitioning in component units, like sections and subsections);
- the description of their content, at different levels.

In particular, the adoption of identification standards is a crucial pillar for the information architecture. A unique identifier for each type of legal information allows the identification of a legal resource at abstract level, regardless of its location and format.

The adoption of shared appropriate open standards promotes technological progress, cooperation and competition in the context of the knowledge society. To achieve such goals, these standards, as well as having a high technical quality, must be non-proprietary, generally accessible, run by impartial bodies<sup>137</sup>.

### 3. Legal Documents Identification

Cross-references among acts, laws and case law are very frequent and extremely important in legal documents. They may represent correlated information or particular relationships, as amendments (by or to), dependences (from or to), annexes (of or to), and so on. The ability to immediately having access to a referred document represents a key feature to reach a full understanding of a given legal text. The purpose of an identifier is, therefore, to assign to every legal document a unequivocal label, which depends only on the document itself and is, therefore,

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<sup>133</sup> Guido Boella, Hristo Kostantinov (Eds), Report on the state-of-the-art and user needs, in Deliverable of the Project EUCASES -European and National Legislation and Case Law Linked in Open Data Stack Report on the state-of-the-art and user needs, 2014

<sup>134</sup> <http://www.w3.org/XML/>

<sup>135</sup> <http://www.w3.org/RDF/>

<sup>136</sup> G. Sartor, *Legislative information and the web* in: G. Sartor, M. Palmirani, E. Francesconi, M. Biasiotti (Eds.), "Legislative XML in the Semantic Web. Principles, Models, Standards for Document Management", Springer, 2011

<sup>137</sup> G. Sartor, *Legislative information and the web*, cit. p. 13

independent from its on-line availability, its physical location, and access mode (e.g. on a database).

This identifier will be used as a way to organize references (and more generally, any type of relation) among various legal acts. In an on-line environment, characterized by resources distributed among different Web publishers, the use of an ID makes it easier the creation of a global hypertext of legal documents and of knowledge bases, storing the interconnecting relations.

The adoption of an ID for a legal act simplifies the representation of relationships among legal documents. Any relationship can be, in fact, easily represented by a triple subject-predicate-object, where subject and object are expressed by the ID of the involved acts and the predicate is the existent relation between them. Such formalization is then in line with the semantic Web and permits the description of the resource also with these properties. Moreover it is possible to deduce automatically other relationships, as inverse, inherited, transitive, and so on, on the base of the primary property.

### **Requirements and features of a legal identifier**

A legal document identification system based on unequivocal IDs must foresee:

- a scheme for assigning IDs capable of representing unambiguously any legal measure, issued by any authority at any time (past, present and future) included in the specific chosen domain;
- a resolution mechanism - centralized or distributed - that goes from an ID to the on-line location of the corresponding resources.

Several aspects may influence the choice of a specific ID scheme in a particular domain or environment, as:

- value: opaque or transparent, uni- or bi-directional, codified or explicit;
- coverage: limited within a specific application or site, valid in a whole country or recognized at international level, as well as the enacting authority (with respect of the jurisdiction – national, federal or local) or the nature of the act (legislative, jurisprudential or administrative);
- openness: in particular the neutrality as regards media, providers and countries.

In particular an ID value type has to be chosen considering the following set of alternative features:

- opaque or transparent: an ID is opaque when its value is independent from the characteristics of the identified document, that is it is not possible to obtain the ID from the document details.
- uni- or bi-directional: a transparent ID is uni-directional when, applying the scheme rules to a given act, it is possible to obtain unambiguously its identifier, but the inverse operation is not unequivocal. For example, the Italian fiscal code is a combination of 3 letters of the surname and the name, a code for sex, the date of birth and the birth municipality code

- codified or explicit: a transparent ID is codified when some of its components are not directly represented, but are transformed through a conversion table. In this case is not sufficient to know the construction rules of an ID, but also a specific code associated to a piece of information is needed.

#### **4. Case Law identification**

Access to legal information has mainly focused, at least in civil law countries, on legislative materials, such as legal gazettes and consolidated legislation. Today a considerable concern is addressed to access to case law, even in legal traditions which have its origin in Roman law.

Within the EU, a strong need is felt to access national case-law from other Member States; this is due to the deepening of the internal market, the growing number of cross-border procedures and the developing of the common legal order<sup>138</sup>.

In particular, a strong need is felt to meet the following requirements for the publication of judicial decisions<sup>139</sup>.

##### **1) Identification**

A case should be cited in such a way that both a judge from abroad, and an automated system can find the same case easily in different databases;

##### **2) Metadata**

A judgment is to be indexed with metadata in a way that cross-border search is facilitated;

##### **3) Document structure**

The provision of judgments' structures in machine readable form is of paramount importance to allow enhanced search and appropriate display features;

##### **4) Multilinguality**

Lawyers and in general citizens from various Member States need to read and fully understand the judgements produced at international level. Therefore, translations services and automatic translation techniques should be made available;

##### **5) Techniques to cope with overabundance**

To help users to find the desired information in a world of ever increasing production of case law, techniques such as taxonomies and rating systems must be adopted.

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<sup>138</sup> European Parliament resolution of 9 July 2008 on the role of the national judge in the European judicial system (2007/2027(INI))

<sup>139</sup> M. Opijnen van, Identifiers, Metadata and Document Structures: Essential Ingredients for Inter-European Case Law Search, cit.

The first and second requirements are of particular relevance to this document. The case law identifiers differ as to their composition from country to country. In some countries they are completely opaque, in other countries they are composed of meaningful elements. In most cases judicial decisions are identified/cited using their 'attributes' (name of the court, date, case number), which do not have a fixed notation, not being suited to an electronic environment<sup>140</sup>. But above all, these attributes do not allow to locate the resource.

There are numerous specialized databases for cross-border access to national case law<sup>141</sup>. However, these systems use their own identification methodology and apply their own metadata and search criteria.

In such a context a neutral standard is necessary to identify and cite case law in a unique, medium-neutral way. The use of unique identifiers, structured metadata and ontology in referencing national case law would make seeking and exchanging information more effective, more user-friendly and faster, while providing efficient search mechanisms for judges, legal professionals and citizens.

## URN:LEX

URN:LEX is a standard for the identification of sources of law, submitted to the IETF as Internet Draft<sup>142</sup> and about to be approved as official standard for the Internet protocol infrastructure: it is based on a URN technique capable of scaling beyond national boundaries as well as on the definition of a namespace convention (LEX) and a structure that will create and manage identifiers for sources of law at international level. Here the urn-based approach is illustrated, even if the current release provides also an http-based implementation (see details at <http://datatracker.ietf.org/doc/draft-spinosa-urn-lex/> ).

As usual, the problem is to provide the right amount guidance at the core of the standard while providing sufficient flexibility to cover a wide variety of needs.

The proposed URN-LEX identifier standard does this by splitting the identifier into a hierarchy of components. Its main structure is (Bradner, 1997), (Daigle et al., 2002), (R. Moats, 1997), (Berners-Lee et al., 2005), (Mealling, 2002), (Narten and Alvestrand, 1998):

"urn:lex:"<NSS>

where "urn:lex" is the Namespace, which represents the domain in which the name has validity, as well as NSS is the Namespace Specific String composed as follows:

<NSS>::=<country>:"<local-name>

where: <country> is the part providing the identification of the country, or the multi-national or international organisation, issuing the source of law ; <local-name> is the

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<sup>140</sup> M. Opijnen van, Identifiers, Metadata and Document Structures: Essential Ingredients for Inter-European Case Law Search (November 14, 2008). European Legal Access Conference, December 2008. Available at SSRN: <http://ssrn.com/abstract=2046294>

<sup>141</sup> For an overview of these initiatives: M. van Opijnen, "Identifiers , Metadata and Document Structures. Essential Ingredients for Inter-European Case Law Search"

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2046294](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2046294)

<sup>142</sup> <http://datatracker.ietf.org/doc/draft-spinosa-urn-lex/>

uniform name of the source of law itself. It is able to represent all the aspects of an intellectual production, as it is a legal document, from its initial idea, through its evolution during the time, to its realisation by different means (paper, digital, etc.).

The <country> element is composed of two specific fields:

<country>::=<country-code>[";"<country-unit>]\*

where: <country-code> is the identification code of the country where the source of law is issued. This code follows the standard ISO 3166 (ISO, 1997) Alpha-2 (it=Italy, fr=France, dk=Denmark, etc.). In case of multi-national (e.g., European Union) or international (e.g., United Nations) organizations the Top Level Domain Name (e.g., "eu") or the Domain Name (e.g., un.org, wto.int) is used instead of ISO 3166 code; <country-unit> are the possible administrative hierarchical sub-structures defined by each country, or organization, according to its own structure. This additional information can be used where two or more levels of legislative or judicial production exist (e.g., federal, state and municipality level) and the same bodies may be present in each jurisdiction. Then acts of the same type issued by similar authorities in different areas differ for the country-unit specification.

The <local-name> encodes all the aspects of an intellectual production, from its initial idea, through its evolution during the time, to its realisation by different means (paper, digital, etc.). For these purposes it is based on the FRBR<sup>143</sup> model developed by IFLA<sup>144</sup>. Following the FRBR model, in a source of law, as in any intellectual production, 4 fundamental entities (or aspects) can be specified.

The first 2 entities reflect its contents:

- Work: identifies a distinct intellectual creation; in our case, it identifies a source of law both in its being (as it has been issued) and in its becoming (as it is modified over time);
- Expression: identifies a specific intellectual realisation of a work; in our case it identifies every different (original or up-to-date) version of the act over time and/or language in which the text is expressed; while the other 2 entities relate to its form:
- Manifestation: identifies a concrete realisation of an expression; in our case it identifies realizations in different media (printing, digital, etc.), encoding formats (XML, PDF, etc.), or other publishing characteristics;
- Item: identifies a specific copy of a manifestation; in our case it identifies individual physical copies as they are found in particular physical locations.

### **Structure of the URN:LEX <local-name>**

The <local-name> component of the urn:lex identifier contains all the necessary pieces of information enabling the unequivocal identification of a legal document, within a specific legal system. In the urn:lex specification, a legal resource at "work" level is identified by four elements: the enacting authority; the type of measure;

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<sup>143</sup> Functional Requirements for Bibliographic Record

<sup>144</sup> International Federation of Library Associations and Institutions

details (or terms) (like date of issue, number of the act, etc.) possibly, any annex.

It is often necessary to differentiate various expressions, that is: the original version and all the amended versions of the same document; the versions of the text expressed in the different official languages of the state or organization.

Finally the uniform name allows a distinction among diverse manifestations, which may be produced in multiple locations using different means and formats. In every case, the basic identifier of the source of law (work) remains the same, but information is added regarding the specific version under consideration (expression); similarly a suffix is added to the expression for representing the characteristics of the publication (manifestation). All this set of information is expressed in the jurisdiction official language; in case of more official languages, more names (aliases) are created for each language.

Therefore, the more general structure of the national name appears as follows:

<local-name>::=<work>["@"<expression>]?["\$"<manifestation>]?

However, consistent with the legislative practice, the uniform name of the original provision becomes the identifier of an entire class of documents which includes: the original document, the annexes, and all its versions, languages and formats subsequently generated.

### **Structure of the URN:LEX identifier at Work Level**

The structure of the document identifier at work level is made of the four fundamental elements according to the CEN Metalex specifications, chosen from those used in citations, clearly distinguished one from the other in accordance with an order identifying increasingly narrow domains and competences. The use of citation elements at work level allows to construct the URN of the cited act manually or by software tools implementing automatic hyperlinking of legal sources on the basis of the textual citations of the acts. The general structure of the identifier at work level is:

<work>::=<authority>":"<measure>":"<details>[":"<annex>"]\*

where:

<authority> is the issuing authority of the measure (e.g., State, Ministry, Municipality, Court, etc.);

<measure> is the type of the measure (e.g., act, decree, decision, etc.);

<details> are the terms associated to the measure, typically the date and the number;

<annex> is the identifier of the annex, if any (e.g., Annex 1).

In case of annexes, both the main document and its annexes have their own uniform name so that they can individually be referenced; the identifier of the annex adds a suffix to that of the main document. In similar way the identifier of an annex of an annex adds an ending to that of the annex which it is attached to. The main elements



of the national name are generally divided into several elementary components, and, for each, specific rules of representation are established (criteria, modalities, syntax and order). Examples of <work> identifiers are:

urn:lex:it:stato:legge:2006-05-14;22

urn:lex:uk:ministry.justice:decree:1999-10-07;45

urn:lex:ch:glarus:regiere:erlass:2007-10-15;963

urn:lex:es:tribunal.supremo:decision:2001-09-28;68

urn:lex:be:conseil.etat:2008-07-09;185.273

In the states or organisations having more than one official language, a document has more identifiers, each of them expressed in a different official language, basically a set of equivalent aliases. This system allows manual or automated construction of the uniform name of the referred source of law in the same language used in the document itself (e.g., urn:lex:eu:council:directive: 2004-12-07;31, urn:lex:eu:consiglio:direttiva:2004-12-07;31, etc.). Moreover, a document can be assigned with more than one uniform name in order to facilitate its linking to other documents. This option can be used for documents that, although unique, are commonly referenced from different perspectives: for example, a document promulgation or its specific content (e.g., a Regulation about privacy, promulgated through a Decree of the President of the Republic: it can be cited as Regulation about privacy, or as the Decree itself).

### **Structure of the URN:LEX identifier at Expression Level**

There may be several expressions of a legal text, connected to specific versions or languages. Each version is characterized by the period of time during which that text is to be considered as the valid text (in force or effective). The lifetime of a version ends with the issuing of the subsequent version. New versions of a text may be brought into existence by:

- changes as regards text or time (amendments) due to the issuing of other legal acts and to the subsequent production of updated or consolidated texts;
- correction of publication errors (rectification or errata corrige);
- entry into or departure from a particular time span, depending on the specific date in which different partitions of a text come into force.

Each such version may be expressed in more than one language, with each language-version having its own specific identifier. The identifier of a source of law expression adds such information to the work identifier, using the following main structure:

<expression>::="@<version>["<language>"]?

where:

<version> is the identifier of the version of the (original or amended) source of law. In general it is expressed by the promulgation date of the amending act; anyway other specific information can be used for particular cases. If necessary, the original version is specified by the string “original”;

<language> is the identification code of the language in which the document is expressed, according to ISO 639-1 (ISO, 1998, 2002) (it=Italian, fr=French, de=German, etc.); in case the code of a language is not included in this standard, the ISO 639-2 (3 letters) is used. This information is not necessary when the text is expressed in the unique official language of the country.

Examples of document identifiers for expressions are:

urn:lex:ch:etat:lois:2006-05-14;22@original:fr (original version in French)  
urn:lex:ch:staat:gesetz:2006-05-14;22@original:de (original version in German)  
urn:lex:ch:etat:lois:2006-05-14;22@2008-03-12:fr (amended version in French)  
urn:lex:ch:staat:gesetz:2006-05-14;22@2008-03-12:de (amended version in German)

### **Structure of the URN:LEX identifier at Manifestation Level**

To identify a specific manifestation, the uniform name of the expression is followed by a suitable suffix describing the:

- digital format (e.g., XML, HTML, PDF, etc.) expressed according to the MIME Content-Type standard [RFC 2045], where the ‘/’ character is to be substituted by the ‘-’ sign;
- publisher or editorial staff who produced it;
- possible components of the expressions contained in the manifestation. Such components are expressed by “body” (the default value), representing the whole or the main part of the document, or by the caption of the component itself (e.g. Table 1, Figure 2, etc.);
- other features of the document (e.g., anonymized decision text). The <manifestation> suffix will thus read:

<manifestation>.:=<format>":"<editor>[":"<component>]?"[":"<feature>]?

To indicate possible features or peculiarities, each main element of the manifestation may be followed by a further specification. For example, the original version the Italian act 3 April 2000, n. 56 might have the following manifestations with their relative uniform names:

PDF format (vers. 1.7) of the whole act edited by the Parliament:

urn:lex:it:stato:legge:2000-04-03;56\$application-pdf;1.7:parliament

Furthermore, it is useful to assign a uniform name to a component of a manifestation in case non-textual objects are involved. These may be multimedia objects that are non-textual in their own right (e.g. geographic maps, photographs, etc.), mixed with textual parts. This way a “lex” name allows:

- exploitation of all the advantages of an unequivocal identifier that is

- independent of physical location;
- a means to provide choice among different existing manifestations (e.g. XML or PDF formats, resolution degree of an image etc.) of the same expression.

## **Principles of the URN:LEX resolution service**

In this section the principles for a URN:LEX identifier resolution service are briefly described.

The task of the resolution service is that of associating an identifier with a specific document address on the network. Contrary to the systems that can be constructed around rigorous and enforceable engineering premises, such as DNS, the URN:LEX resolver will be expected to cope with a wide variety of “dirty” inputs, particularly those created by the automated extraction of references from incomplete or inaccurate texts. Then, a particular emphasis should be placed on a flexible and robust resolver design.

In an international as well as in national environments, a resolution service delegates the resolution and management of hierarchically-dependent portions of the URN:LEX. To prevent the diffusion of large tables of delegations among all the resolvers, it is necessary to have a hierarchical structure in which each node knows only the subordinate levels. A root zone of the ID scheme must be provided (maintained by a designated body), able to route the resolution towards the first level of delegations, from these levels to the narrow ones, and so on, according to a DNS-like architecture. It is sufficient that any new resolver is known by a broader node.

The resolution service is made up of two elements: a knowledge base (consisting in a catalogue or a set of transformation rules) and a software to query the knowledge base itself.

The architecture of the catalogue of resolution has to take into account that incompleteness and inaccuracy are rather frequent in legal citations, and incomplete or inaccurate ID of the referred document are thus likely to be built from textual references (this is even more frequent if they are created automatically through a specific parser). For these reasons, the implementation of a catalogue, based on a relational-database, is suggested, as it will lead to a higher flexibility in the resolution process of partial matches. In addition the catalogue must manage the aliases, the various versions and languages of the same source of law as well as the related manifestations. It is recommended that each enacting authority implements its own resolution process and catalogue, assigning a corresponding unambiguous ID to each resource and routes towards other federated resolvers the resolution of IDs out of its competence.

## **ECLI**

To guarantee a common system for the identification, citation, metadata annotation and publication of national case law at European institutional level, the Council of

Ministers has invited the EU Member States to introduce unique standards for case law on a voluntary basis.<sup>145</sup>

Based on an initial report of a task group on the access to national case-law<sup>146</sup> in December 2009 the Council agreed “that a common identification system based on the standardised European Case-Law Identifier (ECLI) should be examined further and that a Dublin core implementation for case law should be defined<sup>147</sup>”. After extended preparatory work by the task group, in close cooperation with the Court of Justice, European judiciary networks and standardization initiatives, a technical standard was set up in December 2010 with the “Council conclusions inviting the introduction of the European Case Law Identifier (ECLI) and a minimum set of uniform metadata for case law”<sup>148</sup>.

ECLI is targeted to identify jurisprudential resources at European level by using 5 components in the following order:

- the abbreviation ‘ECLI’;
- the country code for the country under whose competence the judicial decision is rendered;
  - for Member States and candidate countries the codes in the Inter-institutional style guide<sup>149</sup> are used;
  - for other countries ISO 3166 alpha-2 is used;
  - for the European Union the code ‘EU’ is used;
  - for international organizations a code is decided upon by the European Commission, taking into account the codes starting with ‘X’ as already being used by European institutions;
- the abbreviation for the court or tribunal;
- the year of the decision, which must be written in four digits;
- an ordinal number, which must be unique in the sense that there must not be more than one judgment of the same court within the same year with the same ordinal number. The maximum length of the ordinal number is 25 characters. The ordinal number may contain dots (‘.’), but no other punctuation marks.

The ECLI syntax is therefore:

ECLI:<country-code>:<court-code>:<year>:<ordinal-number>

All components are separated by a colon (‘:’) and must not contain any interspacing or punctuation marks, neither within the constituent components, nor between them (except for the ordinal number). Letters in all of the components must be Latin alphanumerical uppercase characters only.

As regards the definition of ECLI identifiers case law, 3 of the 5 elements needed have a straightforward implementation at national level, in particular the abbreviation

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<sup>145</sup> Council conclusions inviting the introduction of the European Case Law Identifier (ECLI) and a minimum set of uniform metadata for case law (2011/C 127/01)

<sup>146</sup> Council of the European Union, *Final report of the task group on the access to national case-law* (12907/1/09), 2009.

<sup>147</sup> Conclusions of the Council on European Case-Law Identifier (ECLI), 17377/09, JURINFO 158

<sup>148</sup> 16871/10 <http://register.consilium.europa.eu/pdf/en/10/st16/st16871.en10.pdf>

<sup>149</sup> <http://publications.europa.eu/code/en/en-000100.htm>

ECLI, the country code (KZ for Kazakhstan) and the year of the decision (typically the year of publication for civil matters or the year of reading for criminal matters).

Therefore, the analysis about ECLI specifications for case law can be focused on the other 2 components, namely the court code and the ordinal number.

Examples of ECLI can be the following:

|   |                          |
|---|--------------------------|
| Dutch Hoge Raad decision LJN BC8581 of 01-04-2008             | ECLI:NL:HR:2008:BC8581   |
| Belgium Raad van State/Conseil d'État, 185.273 of 9 july 2008 | ECLI:BE:RSCE:2008:185273 |
| Judgement n. 12/2008 of the Court of Milan, on labour law     | ECLI:IT:TRBMI:2008:S12LA |

As an example of construction of a code for the 5<sup>th</sup> field, in the last ECLI the value of the 5<sup>th</sup> field (S12LA) is composed by a code for the type of act (judgement ("sentenza" = S)), the number of the act (n. 12) and the subject (labour law ("lavoro" = LA)).

As said each state adhering to this standard has to provide the composition rules for the 5<sup>th</sup> ECLI field.

## 5. Metadata

Metadata are used for describing content, thereby enabling enhanced search and providing a better and faster access to information. Because searching by using plain text often doesn't lead to useful results, case law search interfaces have specific filters – based on metadata – enabling searches not offered by Google.

To facilitate cross-border access to national case law, metadata should be standardized as much as possible. Following, some of the advantages of this process<sup>150</sup>:

- By labeling the summary field in a unified way, search interfaces with a translation module (like the Common Portal of National Case Law) could search summary and full text of the judgment separately, as to improve ranking of the results (words found in summaries are more important than words only found in full text).
- By standardizing the legal subject of a case by using Celex-codes, searching for decisions that interpret a specific regulation or directive could be facilitated. E.g. with one search action all national cases on the European Arrest Warrant could be retrieved<sup>151</sup>.
- By standardizing metadata fields for decisions taken in appeal or first instance, the course of the case can easily be traced and displayed

<sup>150</sup> M. Opijnen van, Identifiers, Metadata and Document Structures: Essential Ingredients for Inter-European Case Law Search, cit.

<sup>151</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0584:EN:NOT>

Metadata standardisation automatically helps ensure more efficient distribution of information online. To that end, the European institutions set up an Interinstitutional Metadata Maintenance Committee (IMMC), the role of which is to define shared metadata, exchange rules and protocols, and a minimum metadata set. By working on metadata standardisation in this way, the EU aims to improve access to information placed online and, in general, ensure better communication of and access to law<sup>152</sup>.

## Metadata Standards

There are different methods for describing metadata. For reasons of interoperability it might be advisable to make use of the most commonly used standard: Dublin Core<sup>153</sup>, which is also web 3.0-ready. This standard contains a basic set of fifteen descriptors, extendable with a more comprehensive set.

Once there is agreement on which metadata to use, there are various possibilities to implement metadata searches:

- 1) Keep the metadata in the databases where the judgments are stored, and define an interface between a search portal and the connected databases. When a query is entered, a simultaneous search is performed on all connected databases. This might be a rather time-consuming action, because the number of connected databases might be quite substantial<sup>154</sup>.
- 2) Pre-index the metadata by a search-engine on a central location. This solution is less dependent on the availability and performance of the connected databases.
- 3) Store the metadata in central repository. This solution will also perform quite fast, but has as a second advantage that no local storage of these metadata is needed. On the other hand one could wonder whether connected systems would supply metadata to a central repository without storing them in their own collection.

## ECLI metadata

According to the ECLI standard and infrastructure, each ECLI decision is described in its own XML declaration block with the metadata delimited by <metadata>...</metadata>

```
<ecli:document>
  <ecli:metadata>...</ecli:metadata>
</ecli:document>
```

It is necessary to cater for the needs of ECLI providers, which provide links to instance documents and/or metadata in several languages, while minimising redundant declarations. Furthermore there is a need to support multiple declarations for some of the same metadata elements. This gives implementers the opportunity to

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<sup>152</sup> Report on Access to Law (2015/C 97/03 of 24.3.2015) [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2015.097.01.0002.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2015.097.01.0002.01.ENG)

<sup>153</sup> <http://dublincore.org/>

<sup>154</sup> M. Opijnen van, Identifiers, Metadata and Document Structures: Essential Ingredients for Inter-European Case Law Search, cit.

provide links to single or multiple declarations of instance documents in the same or in different language(s).

ECLI metadata elements are inspired to the Dublin Core metadata set, even if have their own “ecli” namespace.

ECLI metadata which are horizontal to an ECLI as a whole and must be defined only once and are hereby defined as **common**:

- isVersionOf
- date
- accessRights
- type
- isReplacedBy
- issued

While elements which provide the possibility for the declaration of multiple values and/or different languages are hereby defined as **specific**:

- identifier
- creator
- coverage
- language
- publisher
- title
- abstract
- subject
- description
- contributor
- reference

Specific implementation instructions on each of the elements, as well as examples, are provided below.

For the specific meaning and usage of them the ECLI Providers Developer guide can be followed.

## 6. ECLI metadata indexing

The ECLI indexing infrastructure is based on the Sitemap protocol<sup>155</sup>. In this section the ECLI metadata indexing infrastructure is briefly illustrated according to the ECLI Providers Developer Guide.

In order to have ECLI metadata properly indexed by an ECLI service provider, the ECLI data providers have to expose document identifiers and metadata according to such protocol.

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<sup>155</sup> <http://www.sitemaps.org/protocol.html>

The Sitemap protocol consists of a set of XML files that inform a search engine, or a crawler, about pages on the site. In our case, the XML Sitemap files will inform about the location of ECLI documents, not pages. In its simplest form, a Sitemap is an XML file that lists URLs for a site along with additional metadata about each URL (when it was last updated, how often it usually changes, and how important it is, relative to other URLs in the site) so that search engines can crawl the site in a more intelligent way (1 on the schema of Fig. 1).

The protocol specifies the format of the XML so crawlers know how to parse such a file. It is also possible to have multiple Sitemap files per site. A Sitemap index (2 on the schema of Fig. 1) is created when several Sitemap files are to be exposed to search engines. The Sitemap index is also a UTF-8 encoded XML file.

The location of the Sitemap index file is registered in a file called “robots.txt” (3 on the schema of Fig. 1), which is the standard entry point for any crawler. Multiple Sitemap index files can be registered in this file. Actually, each produced Sitemap index file must appear in the “robots.txt” file: new entries should be appended (not generate a new one every time new Sitemaps are published).

The ECLI providers must ensure the availability of all these Sitemap indexes. In order to avoid the file size of the “robots.txt” file from growing too much, the list of available Sitemap indexes should be limited to the ones for which the processing date is not older than one year.

The content of XML Sitemap Index and XML Sitemap are both validated by external XSDs.

The following diagram shows the Sitemap protocol file hierarchy that ECLI providers will host:

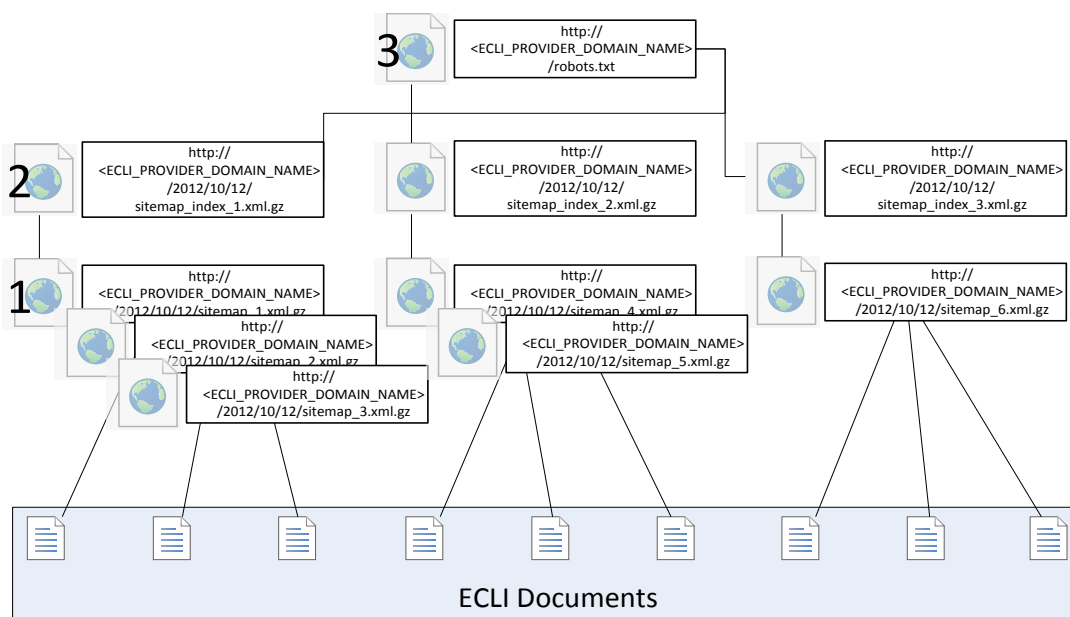


Figure 1: Sitemap Protocol File Hierarchy



## Data Protection

In order to prevent possible malicious attacks, the XML Sitemap file will be exposed by ECLI providers using the HTTPS protocol. One<sup>156</sup> way SSL should be foreseen: this implies that each ECLI provider must create a certificate that will be used during the communication with the Service provider crawler. Thanks to this certificate, a unique and secret transformation key is created, and is shared between the ECLI provider and Service provider only. This ensures the data is not modified by someone else before it is decrypted by Service provider. Providers have to supply the Commission with the public certificate in a secure fashion for configuration into the system.

Source IP filtering should also be foreseen to prevent from external users to collect ECLI provider's data, which can be private.

## Workflow

When the service provider crawler starts, here is the sequence of actions which are triggered, for each ECLI service provider:

1. An HTTPS call is made to retrieve the content of the robots.txt file hosted by the ECLI provider Web server;
2. Each Sitemap directive has the following format:

Sitemap:

[https://ECLI\\_PROVIDER\\_DOMAIN\\_NAME/YEAR/MONTH/DAY/sitemap\\_index.xml](https://ECLI_PROVIDER_DOMAIN_NAME/YEAR/MONTH/DAY/sitemap_index.xml)

Where the date specified by YEAR, MONTH and DAY is the publication date of the data. The service provider crawler will fetch this data on the next calendar date. So basically, when a provider generates new data, all new, updated or deleted ECLI decisions are produced in Sitemaps and Sitemap indexes. Then, the "robots.txt" file is updated with all the Sitemap indexes. Please note that the service provider crawler will only process the Sitemap indexes that are more recent than the last successful processing date;

3. For each Sitemap directive listed in the robots.txt, the crawler first parses the date in the URL and compares it to the last processing date for this ECLI provider and the current date: only sitemaps having a processing date between both dates are processed (the current date is **not included** in the interval);
4. The crawler makes a HTTP HEAD request to ensure the file is compliant with the Sitemap protocol: the content-length header is checked at this time, and files heavier than 10MB are not retrieved as this is not conform to the Sitemap protocol specification, this helps to limit the traffic and bandwidth usage;

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<sup>156</sup> Optionally 2 ways SSL: the providers can validate the DG Justice certificate as well.

5. For each XML sitemap, the crawler makes a HTTP Header request and the same header as in step 4 is checked;
6. Each XML sitemap that fulfils the checks of step 5 is transferred and copied to the service provider document repository.

## 7. Document Structures

Judicial decisions have a comparable structure everywhere: they comprise the parties and their respective roles, the date of the decision, the facts of the case, the considerations, the final decision, names of the judge(s) and clerk, citations of cases and paragraphs of law, etc.

Every lawyer is able to recognize these elements, although they are often not indicated explicitly. Unlike the lawyer, a computer is not capable of parsing a judgment that was drafted without a structured template into its constituting parts. Whether conceived by clerk, judge or computer, explicitly structured judgments offer several advantages:

- the numbering of paragraphs facilitates referencing specific paragraphs of the judgment (both in writing and by deep linking);
- search results can be improved if searches can be performed on specific parts of the judgment;
- for a computer, understanding the syntax of a judgment is an indispensable first step for understanding the semantics, and subsequently the legal reasoning of the judgment. This enables sophisticated tools for legal reasoning, quality control and knowledge tools.

Although the structure of judicial decisions from different countries is comparable, national peculiarities and traditions will prevent the development of a unique decision template attaining this at the national level is already problematic enough.

An agreement on a lowest common denominator might suffice. This lowest common denominator might serve as an interchange format, without restricting national expressivity. The most important pan-European initiative at the moment is Metalex/CEN<sup>157</sup>, which is developing a CEN Workshop Agreement (CWA)<sup>158</sup> on an Open XML interchange format for legal and legislative resources. Metalex/CEN is not restricted to document structures, but also comprises a sound architecture for metadata and identifiers for the various documentary levels.

## 5. RECOMMENDATIONS

- 5.1. The recommendations of this Council of Europe Expert Group Report reflect both the national systems of its authors and the requirements of the present and challenges for the future for their own states and for the Republic of Kazakhstan.

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<sup>157</sup> <http://www.metalex.eu>

<sup>158</sup> <ftp://ftp.cen.eu/CEN/Sectors/List/ICT/CWAs/CWA15710-2010-Metalex2.pdf>

- 5.2. In that context the Estonian model, described below, is considered as the one that demonstrates most effectively the relevant Open Justice, ECHR and EU Charter principles for access to the judicial process and judicial decisions in the most practical, public, privacy and data protection-compliant fashion both now and for the immediate future.
- 5.3. That is not to say that additional elements of principles and procedures that exist in other Council of Europe member States – described or referenced in this Report - cannot be added or adapted as appropriate for the judicial system in the Republic of Kazakhstan.
- 5.4. However, the Estonian model provides a contemporary, forward-looking, operative and practical high standard of compliance with the key factors considered as vital to the principles explored in this Report.
- 5.5. In terms of the systems used for the referencing and filing systems to be used for judicial decisions and the standardization of case law this Report sets out in detail, at Section 5, those that should be considered for adoption within the judicial system of the Republic of Kazakhstan (insofar as they do not already exist). This will ensure that – in this area – the developing EU standards will be reflected in Kazakhstan.
- 5.6. The recommended Estonian Model is the Estonian web-portal for communication with the court: Public E-File ([www.e-toimik.ee](http://www.e-toimik.ee))

The main use-cases of the Public E-File:

- It is possible to submit new claims or complaints to courts to start new proceedings;
- It is possible to submit documents to ongoing cases and have an online overview of the case where the person is a participant;
- The court can make documents available to participants of proceedings online;
- The court can deliver documents to participants through the web-portal;
- The participants can access all relevant data about their cases online, including documents, hearings, deadlines associated with court proceedings (deadlines for submission of documents in ongoing cases, deadlines for appeals etc.).
- It is possible to access the Penal Registry through the Public E-File;
- It is possible to get an overview of all monetary obligations from court cases the particular person has and initiate their payment through internet bank;

- For barristers the Public E-File contains additional functionalities, which make it usable as a tool for communicating with the court for the entire Law Firm.

### Screenshot. Dashboard of the Public E-File

The screenshot shows the dashboard of the Public E-File. At the top, there is a navigation bar with 'Töölaud', 'Büroo', 'Esita uus asi', 'Kartistusregister', 'Seaded', 'Kalender', and 'Abi'. A search bar is on the right with the text 'Sisesta asja nr'. Below the navigation bar, the main content area is titled 'Töölaud'. It contains a 'Tähelepanu!' (Attention!) message, a green notification bar, and a 'Menetlusedokumentid' (Litigation Documents) section. The 'Menetlusedokumentid' section has tabs for 'Avamata dokumendid', 'Kõik dokumendid', 'Hiljutised tegevused', and 'Kohustised'. Below the tabs is a search bar with 'Alates: 04.08.2015' and 'kuni:'. A table of documents is displayed below the search bar.

| Dokument                       | Kuupäev    | Asja nr  | Menetluse pealkiri / Menetlev asutus                       | Koostaja      | Tegevused    |
|--------------------------------|------------|----------|--|---------------|--------------|
| TsM: Kohtumäärus<br>Ava failid | 26.08.2015 | 2-15-923 | Asja number: 2-15-923 / Harju Maakohus Kentmanni kohtumaja | Virge Kõosalu | Vali tegevus |

The Public E-File can be accessed only with an ID-card, which is the main identification document for all residents of Estonia and it is mandatory to own it, or with a Mobile ID.

In order to log in, the person has to go to [www.e-toimik.ee](http://www.e-toimik.ee), enter the ID-card to the card-reader connected to the computer and enter the 4-digit PIN (which is necessary for electronic identification and is used whenever the person has to electronically identify himself/herself for communicating digitally with the state, the banks or any other party). With Mobile ID the person has to enter the code sent to the mobile number of the person, in order to log in.

## 1. Initiation of proceedings

The main steps for submitting new claim or complaint include:

- Identifying the court whereto the case is filed;
- Adding the participants to the case;
- Uploading the file and signing it digitally;
- Payment of the court fee through the internet bank (it is not mandatory to pay the fee, as it is also possible to apply for state legal aid).

Upon submission the person who filed the documents receives an e-mail notices regarding the initiation of the case (identifying also the number of the case). The data about the case is automatically also displayed in the information system used by the courts and the court can start to manage the case – confirm the registration of the

case, appoint a judge, decide on the initiation of the proceedings, if necessary, and appoint a hearing, if necessary.

For barristers, notary, bailiff, trustee in bankruptcy, public bodies it is mandatory to use the Public E-File for communicating with the court (e.g. submission of documents, initiation of new cases etc.). They may use other means if they have a good reason for that (for example, if the system is down for some reason).

## 2. Submission of documents to ongoing cases

The Public E-File provides an overview of all ongoing cases where the person is a participant and it is possible to submit new documents to these cases. All such submissions appear automatically in the court information system where the court clerk can confirm their arrival in court.

It is also possible to submit documents to cases where the person is not yet a participant, e.g. when a barrister is submitting the first document to a case on behalf of a participant. After the court clerk has confirmed arrival of such a document in court, the person can become a participant in the case and access all other case data as well.

## 3. Making documents available to participants of proceedings

For each document in the case, the court clerk can decide which participants can get access to the document through Public E-File and which cannot get access. The clerk grants and removes access rights through the court information system, which is connected to the Public E-File.

This kind of flexibility is important because not all documents should always be available to all participants. If a claimant asks the court to secure a claim against the defendant (e.g. by arresting some property belonging to the defendant), then it is vital for the measure to be effective that the defendant is not aware of such a request or the court order before the arrest has been implemented. Flexibility may be necessary also because documents contain information, which should not be made available to all participants.

*Screenshot. The view of the court information system from where the clerk can mark documents as available or deliverable to participants of proceedings*

| AET-is nähtavus ja kättetoimetamine |  |             |                        |   |   |                  |            |
|-------------------------------------|--|-------------|------------------------|---|---|------------------|------------|
| Nimi                                | Esindatav                                  | Isikukood   | Seisund menetluses     | <input type="checkbox"/> Nähtav alates        | <input type="checkbox"/> Kättetoimetamine     | Kätte toimetatud | Vastuvõtja |
| <a href="#">Virge Kõosalu</a>       |  | 47406230212 | Võlgnik                | <input checked="" type="checkbox"/> 3.09.2015 | <input type="checkbox"/>                      |                  |            |
|                                     | ↳ Rauno Ligi                               | 38409160276 | Esindaja               |   |   |                  |            |
| <a href="#">Margit Lauri</a>        |  | 48106265211 | Asjast puudutatud isik | <input checked="" type="checkbox"/> 3.09.2015 | <input type="checkbox"/>                      |                  |            |
|                                     | ↳ Rauno Ligi                               | 38409160276 | Esindaja               |   |   |                  |            |
| <a href="#">Timo Ligi</a>           |  | 37901050345 | Avaldaja               | <input checked="" type="checkbox"/> 3.09.2015 | <input checked="" type="checkbox"/> 3.09.2015 |                  |            |
|                                     | ↳ Rauno Ligi                               | 38409160276 | Esindaja               |   |   |                  |            |
| <a href="#">Rauno Ligi</a>          | Margit Lauri<br>Timo Ligi<br>Virge Kõosalu | 38409160276 | Esindaja               | <input checked="" type="checkbox"/> 3.09.2015 | <input type="checkbox"/>                      |                  |            |

[Printimise vaade](#)  
[Kinnita AET muudatused](#)

Whenever a document has been made available to a participant, an e-mail is sent to the participant notifying him or her about the document.

#### 4 Delivery of documents to participants through the web-portal

In addition to making documents available to participants, it is also possible to make them deliverable to participants. This means that all such documents which have been made deliverable to a person and which the person has not opened yet, are displayed in the opening page of the public e-file and the person can open them immediately or proceed to using other functionalities of the Public E-File and open them later.

*Screenshot. The opening page of the Public E-File when a person has undelivered documents*

The screenshot shows the opening page of the Public E-File. At the top, there is an information banner with a blue 'i' icon and text explaining that undelivered documents are listed and that users can click 'Võtan vastu' to open them. Below this is a section titled 'Dokumentide vastuvõtmine' with a dropdown menu for 'Valitud vaade' set to 'Minu vaade'. A table lists documents with columns for 'Dokument', 'Nr', 'Kuupäev', 'Asja nr', 'Menetluse pealkiri / Menetlev asutus', 'Büroo liige / Koostaja', and 'Tegevused'. One document is listed: 'TsM: Kohtumaärrus' with number '2-15-813/1', date '03.09.2015', case number '2-15-813', and court 'Asja number: 2-15-813 / Harju Maakohus-Kentmanni kohtumaja'. The case manager is 'Timo Ligi / Raido Oras'. Below the table, there is a message: 'Olete tellinud teavituse "Vastuvõetud menetlusedokumentide saatmine e-postile", heheki edastatakse Teile 1 e-irja koos failidega. Kas olete kindel, et soovite kõiki teavitusi e-postile?' and a 'Võtan vastu' button. At the bottom, there is a green button labeled 'Liigu edasi dokumente vastuvõtmata'.

| Dokument          | Nr         | Kuupäev    | Asja nr  | Menetluse pealkiri / Menetlev asutus                       | Büroo liige / Koostaja | Tegevused    |
|-------------------|------------|------------|----------|--|------------------------|--------------|
| TsM: Kohtumaärrus | 2-15-813/1 | 03.09.2015 | 2-15-813 | Asja number: 2-15-813 / Harju Maakohus-Kentmanni kohtumaja | Timo Ligi / Raido Oras | Vali tegevus |

The system registers the time when the documents are opened and this information is available to the court through the court information system as well (in Estonian law certain procedural deadlines depend on the time of delivery to participants, therefore registering the exact time is very important). If the user of the Public E-File does not open the documents which have been made deliverable to them in 30 days, then the access to Public E-file's other functionalities is locked until the person opens these documents. This way the system does not allow standing off from delivery of court documents.

Whenever a document has been made deliverable to a participant, an e-mail is sent to the participant notifying him or her about the document.

#### 5. Access for participants to all relevant data about their cases online

*Screenshot. Case detail view through Public E-File*

Leitud asjad: 1

| Avatav õigustes | Asja number | Asja liik  | Alguskuupäev | Pealkiri |
|-----------------|-------------|------------|--------------|----------|
| Timo Ligi       | 2-15-923    | Tsiviilasi | 28.08.2015   |          |

Menetlus: Kohtu I astme menetlus, 28.08.2015 (Harju Maakohus Kentmanni kohtumaja)

Dokumendid    Detailid    Esitamisei    Lemmikud    Istungid    [Esita dokument menetlusse](#)

| Dokument                         | Dokumendi nr | Dokumendi kuupäev | Koostaja      | Tegevused                    |
|----------------------------------|--------------|-------------------|---------------|------------------------------|
| TSM Kohtumäärus                  | 2-15-923/1   | 28.08.2015        | Kadri Alekšs  | <a href="#">Vali tegevus</a> |
| TSM Kohtumäärus<br>n: Ava failid | 2-15-923/2   | 28.08.2015        | Virge Kõosalu | <a href="#">Vali tegevus</a> |

Näitan: 1-2 | Kokku: 2

All documents, hearings and deadlines associated with court proceedings (deadlines for submission of documents in ongoing cases, deadlines for appeals etc) are displayed online through Public E-File. This way the Public E-File provides the online view of the case file and there is no need to access the paper-based file in the court. The data has been uploaded by the court to the court information system or submitted by participants through the Public E-File to the court information system and then made available to other participants. The deadlines can be automatically generated, for example, when the deadline is associated with a delivery of a document (e.g. 30 days for appeal after the delivery of a judgment).

It also possible to export the dates of upcoming hearings and deadlines into the calendar of the participant.

## 6. Enquiries from the Penal Registry through the Public E-File

All users of the Public E-File can make enquiries to the Penal registry regarding themselves and all people/companies who have an personal identification code or company registration code and have been convicted in Estonian courts. The enquiry regarding other people costs 4 EUR, enquiry regarding oneself is free of charge.

*Screenshot. The page for enquiries to Public E-File*

**Karusregister**

Päringud

Teostatatud päringud (1)

Päringu subjekt:  Alates:  kuni:  Staatuse:  Filtri

| Päringu kuupäev | Vastuse kuupäev | Päringu tüüp      | Päringu link               | Päringu subjekt        | Staatuse  | Tegevused                                   |
|-----------------|-----------------|-------------------|----------------------------|------------------------|-----------|---|
| 5.03.2015       | 5.03.2015       | Päring enda kohta | Isikupäring (sh amilivist) | Timo Ligi, 37901050345 | lõpetatud | <input type="button" value="Vali tegevus"/> |

Näitan: 1-1 | Kokku: 1

## 7 Overview of all monetary obligations from court cases

The list of obligations contains the type of the obligation (e.g. fee, fine, compensation of court costs etc), the amount, the deadline for payment and the amount still left to be paid. The person can choose the obligation and proceed to payment via internet bank.

*Screenshot. Overview of monetary obligations*

Menetlusedokumentid

Avamata dokumentid  Hiljutised tegevused

Täitmata  Täidetud  Kõik

| Kohustise liik              | Kohustise summa  | Kohustise maksetähtaeg | Kohustise jääk | Kohustise seisund       | Tegevused                                   |
|-----------------------------|--|------------------------|----------------|-------------------------|---|
| Kindel summa riigituludesse | 100.00 €   | 11.08.2014             | 100.00 €       | Mõistmisel/Kohaldamisel | <input type="button" value="Vali tegevus"/> |
| Menetluskulud               | 50.00 €<br><input type="button" value="Ava graafik"/>  | 30.09.2014             | 50.00 €        | Jõustunud               | <input type="button" value="Vali tegevus"/> |
| Menetluskulud               | 100.00 €<br><input type="button" value="Ava graafik"/> | 30.11.2014             | 100.00 €       | Jõustunud               | <input type="button" value="Vali tegevus"/> |
| Riigitliv                   | 100.00 €<br><input type="button" value="Ava graafik"/> | 31.01.2015             | 100.00 €       | Kehitv                  | <input type="button" value="Vali tegevus"/> |
| Riigitliv                   | 100.00 €   | 27.04.2015             | 100.00 €       | Kehitv                  | <input type="button" value="Vali tegevus"/> |
| Riigitliv                   | 20.00 €  | 28.07.2015             | 20.00 €        | Kehitv                  | <input type="button" value="Vali tegevus"/> |

## 8 Functionalities for barristers

The barristers can set up a virtual firm within the Public E-File and add other barristers as members of the firm. This way they can get access to the documents in each other's cases, they can submit and receive documents from the court. At the



same time it is also possible to limit the access rights of other firm members to the personal cases of the barrister.

## **6. DISCUSSION OF THE “RULES ON THE WORK OF AND SUPPORT FOR THE INTERNET RESOURCE OF THE SUPREME COURT, LOCAL AND OTHER COURTS OF THE REPUBLIC OF KAZAKHSTAN”**

6.1. The Rules on the work of and support for the Internet resource of the Supreme Court, local and other courts of the Republic of Kazakhstan (Rules) establish the structure and content of information published on the websites of the Supreme Court of the Republic of Kazakhstan, local and other courts.

6.2. The aim of the following comments is:

1. To identify issues which could be included in the regulation on publication of court judgments on the web;
2. Based on the topics already covered in the Rules, to suggest additional areas which could be included in the regulation and data and/or which could be published on the court websites based on foreign practices.

### **1. The regulation on publication of court judgments**

An in-depth analysis of the practices of European countries on publication of court judgments is provided in the main part of the Report. The following remarks are not meant as a summary of the content of the Report, rather their aim is to provide specific feedback on the regulations of the Kazakh Rules.

The detail of the Report itself should be absorbed and considered carefully before any changes to the existing regulations are undertaken (whether these changes are based on the following comments or anything else):

1. Article 17 prescribes that as a rule all judicial acts should be published on the web in full. Articles 18 and 6 provide an exhaustive list of exceptions to the rule (like cases held in camera, cases involving minors, cases involving official secrets). By virtue of Article 19 it is possible to restrict access to case documents through the web on the basis of an application by a case participant or “by decision of the Chairman and chairmen of the boards of the Supreme Court, chairmen of regional and equivalent courts in individual cases for the purpose of protecting the personal rights and legitimate interests of case participants and ensuring state security”. If the Chairmen are to undertake this task with full commitment, this Article – if applied strictly - means that they must read all judicial acts made in the cases heard at their respective court before these documents are published on the web. Otherwise they may not be aware of the risk of a violation against personal rights, the interests of case participants or state security. This is a significantly onerous task for any chairman or any other member of court staff and may not ensure efficient use of court’s resources. A more proportionate and practical approach might be if this responsibility is left to the judge dealing with the case. That judge would know the details of the case in any event and therefore would, in most situations, be able to make the decision on whether

to publish or not to publish without the need to get acquainted with additional documents.

2. The Regulation foresees only two alternatives for publication of documents or data related to the case: publication in full or no publication. This “all-or-nothing” approach could lead to a situation where relevant and important case-law is not available online simply because the information contained elements of the exceptions described in Articles 6, 18 and 19. However, by judicious editing, if the names of participants or other relevant sensitive data could be removed then there might not be grounds for prohibiting the publication completely. This would allow more case-law to be available for lawyers, scholars, students and members of the general public. Thought should be given to allowing the Rules to reflect a third option: publication in limited format, e.g. without names or other personal data, or without some parts of the judgment etc.
3. According to Articles 15 and 16 all minutes of hearings and rulings in a case should usually be published. This means that not only that the final judgment is published, but all other court documents are as well. At the same time, all these documents must be checked against the criteria laid down in articles 6, 18 and 19 about the grounds for not publishing a document. This may become a very costly and onerous task for the courts. Usually the general public is interested in the content of the final judgment of the case. Therefore, it could be considerably less expensive to publish only the final judgments without undermining the transparency of court proceedings and the principles about openness of trial. It is notable, in the European countries covered in the main part of the report, that all case documents are available only in password protected areas of the website, and not as a matter of course for general public.

## **2. Suggestions for additional data and topics, which could be published on the court’s website**

1. Article 15 provides an exhaustive list of data, which should be published about a court case, including the dates for court hearings. However, the list does not include the publication of the date and time when the final judgment in the case is to be announced. The publication of this data could provide additional transparency about court proceedings and would enable the general public, including the press to be aware of the announcements in cases which are relevant for the general public;
2. If the meta data entered to EAIAS enables this, then the search criteria for judicial acts described in Article 26 could also include the results of the case:
  - 2.1. whether the civil claim was upheld or rejected;
  - 2.2. whether the person on trial was acquitted or convicted etc;
  - 2.3. if the person was convicted then the type of punishment;
  - 2.4. any other reasons or categories.

3. Article 38 describes information published on the website for increasing the accessibility of courts (“Work with the Population” section), including claim templates, contact data etc. This section could also include information on how to apply for state legal aid and what the court fees are for submitting different levels of claims. This information would also be of assistance to potential claimants.