Expert Report

on

Access to Court Decisions and Protection of Personal Data

in the former Yugoslav Republic of Macedonia

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The content of this publication does not necesarily represent the view or the position of the OSCE Mission to Skopje.

Preface

This report was commissioned by the OSCE Mission to Skopje. The preparatory activities consisted of the studying of relevant provisions from the country's law and other documents, the sending out of a questionnaire to the country's courts, and a one week visit to Skopje. During that week, I had the opportunity to talk to many stakeholders, which helped me a great deal in assessing the current situation and deepening my understanding of the issues at hand.

I would like to thank all those who assisted me with my assessment by granting interviews, filling out questionnaires or otherwise helping out. Particular thanks are due to my OSCE liaisons Ana Novakova-Zikova and Igor Risteski for their support, to EduSoft for scheduling a demonstration of the ACCMIS system at very short notice, and those who accompanied me to the interviews: Marjana Popovska from the Directorate for Personal Data Protection, translator Ivan Sterev, and, last but not least, knowledgeable and sympathetic technical expert Petar Curciev.

Contents

Introduction

This report was commissioned by the OSCE Mission to Skopje and the Directorate for Personal Data Protection.

The issue of access to court decisions and protection of personal data has already received quite a bit of attention in the country's legal circles over the last couple of years. Roundtables were held in 2008, resulting in guidelines that focus on the aspect of transparency. Meanwhile, new legislation has been enacted and personal data protection considerations were raised. The goal of this report is to describe and assess the current situation as regards access to court decisions and the related data protection questions, and to give recommendations for further improving access while giving due consideration to personal data protection.

The report is structured as follows.

Chapter 1 provides a brief overview of relevant international law.

Chapter 2 takes a brief look at how these issues are dealt with in other jurisdictions, to be more precise: in a number of EU member states and by the European Court of Human Rights.

Chapter 3 presents an overview of the country's relevant legislation.

Chapter 4 takes an in-depth look at the current situation. Three main types of issues are singled out: legal and compliance issues (Section 4.1), the desirability of publishing and anonymizing all court decisions (Section 4.2), and finally the matter of access to unpublished decisions (Section 4.3).

Finally, based on this assessment, in Chapter 5 a number of recommendations are made.

Background information can be found in the appendices.

1 International law

In this chapter, international law on the protection of personal data, access to court decisions and anonymization of such decisions is briefly discussed.

1.1 Protection of personal data

The right to protection of privacy is a well-recognized principle of international law, appearing, among others, in the Universal Declaration of Human Rights (Art. 12), the European Convention on Human Rights (Art. 8) and the International Covenant on Civil and Political Rights (Art. 17).

From the right to protection of privacy, a right to protection of personal data has evolved, as witnessed by, among others, the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data**,** the so-called Strasbourg Convention (CoE Convention 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data[1]) and EU Directive 95/46 on the Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of Such Data.The main principles of this body of law are summarized below:[2]

- Notice – data subjects should be given notice when their data is being collected;
- Purpose – data should only be used for the purpose stated and not for any other purposes;
- Consent – data should not be disclosed without the data subject's consent;
- Security – collected data should be kept secure from any potential abuses;
- Disclosure – data subjects should be informed as to who is collecting their data;
- Access – data subjects should be allowed to access their data and make corrections to any inaccurate data; and
- Accountability – data subjects should have a method available to them to hold data collectors accountable for following the above principles.

It is important to realize that, although it has its roots in privacy protection, the protection of personal data actually serves a number of other important purposes, including the reduction of informational inequality and the prevention of informational harm, informational injustice and encroachment on moral autonomy.[3]

1.2 Access to court decisions

The September 2008 paper "Access to court decisions: A legal analysis of relevant international and national provisions" by the Rule of Law Department of the OSCE Mission to Skopje provides an excellent summary of international law provisions

[1]Including the Additional Protocol to this convention for supervisory bodies and cross-border data transfer of the Council of Europe and Guidelines for the Regulation of Computerized Personal Data Files adopted by General Assembly resolution 45/95 of 14 December 1990.
[2] Source: http://en.wikipedia.org/wiki/Data_Protection_Directive (accessed 4 Aug 2011).
[3] Cf. Helen Nissenbaum, *Privacy in Context: Technology, Policy, and the Integrity of Social Life*, Stanford University Press, 2010, pp. 77-88.

concerning access to court decisions. Its main conclusions regarding this topic are included below.

- As a general rule, judgments and decisions must be made public.
- The minimum requirement to make a judgment public is to deposit the judgment in the court registry in order to make it available to everyone.
- Making full written determinations only available to certain classes of the public, such as academics or interested parties, is not permissible under the European Convention on Human Rights as this does not guarantee access to the judgments to everyone.
- At first instance the judgment must be pronounced orally, and in order not to limit the access to the judgment to a limited class of persons it should also be made available to all members of the public on request.
- The appeal court does not have to orally pronounce the decision as the object of public scrutiny of the courts' decisions is met by the first instance substantive decision being made accessible to all members of the public, however, the appeal decision should be made accessible to the public through the court registry.

Because the right to access often needs to be weighed against the right to privacy, it is important to have a clear picture of the main arguments for having a right of access.The principle aim of the right to a public judgment is to ensure that the administration of justice is accessible and open to public scrutiny. Additionally, free access to jurisprudence strongly enhances foreseeability of future court decisions, thus contributing strongly to the basic right of equality before the courts.

1.3 Anonymization of published court decisions

International law on anonymization of published court decisions is much less developed than that on access to court decisions.

The point of departure is the above conclusion regarding the obligation to, as a rule, make court decisions public. This conclusion does not, however, exclude anonymization. Indeed, since anonymization hardly impedes on the main goals served by publication, it would seem that in most cases it is in fact dictated bythe principles of protection of privacy and personal data. Notwithstanding, as is apparent from the questionnaire results discussed in the following chapter, a less stringent view is held in several jurisdictions, even within the EU.

Gundermann, in his March 2010 "Legal Opinion on the Publication of Non-Anonymised Court Decisions", takes an even more stringent view, effectively stating that *all* court decisions bar none must be anonymized before publication. His analysis hinges on *Z vs. Finland*, theEuropean Court of Human Rights' landmark case on anonymization of published court decisions. In this case Z, the plaintiff before the ECtHr, was a witness in a Finnish criminal case. The fact that she was infected with HIV was used by the public prosecutor in arguing his case and consequently became public knowledge when the verdict was published. The Court ruled that Finland had no right to publish this personal data since such publication did not serve a legitimate aim in the sense of Art. 8 par. 2 ECHR.

Gundermann's conclusion that all court decisions must be fully anonymized before publication must be dismissed as too extreme. The fact that the ECtHR determined that the principle of transparancy is not a sufficient ground for the publication of sensitive data of witnesses cannot be generalized to imply the same for all kinds of personal data in any type of court decision.

A clear example is provided by the names of judges, prosecutors and attorneys, of which it is quite generally held that they should not be removed from published decisions: here, the interest of transparancy is considered to prevail over the right of these officials to the protection of their personal data.

A perhaps even more convincing example is provided by the publication practice of the ECtHR[4] itself. The Court operates on the principle that published decisions are *not* anonymized, except when a motivated request by the data subject (usually the plaintiff`) is granted by the Court. Quite remarkably, the Court's bylaws contain no criteria whatsoever forweighing the two interests at hand in concrete cases.

As was mentioned before, the more nuanced situation in practice is also reflected by the fact that a small number of EU member states operate on the same principle as the ECtHR, as a rule publishing court decisions with the inclusion of the personal data of the parties involved.

[4] And of the European Court of Justice, among others.

2 Other jurisdictions

How do other jurisdictions, particularly within the EU, deal with the publication and anonymization of court decisions? Below, the results of a questionnaire by the Council of the European Union are summarized. In addition, two case studies are presented that look in more depth at the situation in the Netherlands (where anonymization of published decisions is the rule) and in the United Kingdom (where anonymization of published decisions is the exception).

2.1 Right to anonymity in the sphere of Legal Data Processing

The question how other jurisdictions, particularly within the EU, deal with the publication and anonymization of court decisions was the subject of a June 2004 questionnaire by the then Italian presidency of the EU to all member states. The results were published in the Council of the European Union's Note on the "Right to anonymity in the sphere of Legal Data Processing", which provides a good overview of the state of affairs regarding this subject in the EU member states that answered the questionnaire.

A broad range of aspects were addressed in the questionnaire, of which the following ones are most directly relevant in the present context:

- Is anonymity of published court decisions the rule or the exception?
- If anonymity is the rule, are personal data eliminated in every case or only at the request of the data subject?
- Do different levels of protection exist for publication on the internet and in print?
- Is there a procedure for the automatic suppression of personal data?

The questionnaire was answered by fifteen EU member states. The answers provided lead to the following conclusions as regards the aspects mentioned above.

- Of the fifteen member states that answered the questionnaire, in eleven anonymity is the rule for publishing court decisions, while in four it is the exception.
- Member states in which anonymization is the rule, perform anonymization in all cases, not just at the request of the data subject.
- Most member states have the same level of protection regardless of the medium of publication. However, these same principles may nonetheless have a bigger impact when applied to publication in electronic form, especially on the internet. Some member states have explicitly enacted more stringent data protection provisions for publication on the internet.
- At the time the questionnaire was held, there was hardly any experience with automated anonymization. Two member states mention software under development, one uses macros for marking personal data while yet another claims a working system for automated anonymization. None provides any further details.

Also relevant is the practice of the European Court of Human Rights. As a rule, decisions of the Court are published without anonymization. Parties may file a request for anonymization of the published decision. The Court has no explicit criteria for deciding on such requests.

2.2 Case studies

In this section, two case studies are presented that look in more depth at the situation in two EU countries, one where anonymization of published decisions is the rule (the Netherlands) and one where anonymization of published decisions is the exception (the United Kingdom).

2.2.1 The Netherlands

The Netherlands does not have specific legislation concerning the publication of court decisions and the anonymization of published decisions. The policies regarding this issue have therefore been based on the general rules regarding free accees to government information on the one hand and the protection of personal data on the other hand. They amount to selective publication of decisions, all of which are anonymized.

2.2.1.1 Selective publication of decisions

The Dutch policy regarding the publication of court decisions is based on the principle that a representative selection of decisions should be available to the general public. This principle has been translated into a practice of publication of selected court decisions on a centralized website (www.rechtspraak.nl). To decide which decisions to publish on this siteselection criteria have been drafted consistent with CoE Recommendation 95/11. All decisions of the highest courts are published, unless they are evidently unimportant. Other decisions are published only if they have social or legal relevance.

2.2.1.2 Should all decisions be published?

Over the past few years, there has been quite some discussion in the Netherlands about the best way to make court decisions and related information accessible in general, and about the question whether all court decisions should be published in particular.

Proponents of publishing all decisions argue that full transparency is needed to enable proper scrutiny of the judicial system, to create an “equality of arms” between parties (since currently large companies and legal firms have better access to decisions) and to better facilitate scientific legal research. They generally question the need for across the board anonymization of published decisions.

Those against raise privacy and data protection objections, as well as citing cost considerations, in particular in relation to the need for anonymization. In addition, they point out that besides just publishing decisions, providing access nowadays involves a lot more, such as the use of agreed upon document structure standards, consistent numbering, cross-referencing and the addition of meta-data. Many of these imply a per publication overhead that may become unduly burdensome if all decisions are going to be published.

Although this discussion has not yet died down, by all appearances no major change in the current practice is forthcoming.

2.2.1.3 Anonymization of published decisions

In the Netherlands, anonymization of published court decisions is the rule rather than the exception. This policy is explained in the introduction to the Anonymization Guideline issued by the Netherlands Judicial Council, which reads as follows:

> *Making important court decisions available on the internet can be considered as a way of effectuating the principle, anchored in the European Convention on Human Rights and the Constitution, of publicness of court proceedings and – by extension – of publication of the decision.*
>
> *Although the purpose of publication on the internet is not, then, the creation of a collection of personal data, the fact that the decisions are stored on the website and can be consulted together has as as a consequence that there arises a 'structured set of personal data relating to several persons' as defined in Article 1 of the Data Protection Act. That brings with it a certain necessity to protect the right to privacy. Privacy can be protected by replacing the personal data of individuals in the decision by letters or neutral terms such as «plaintiffs» and «defendant». This does not entail that it will never be possible to identify those involved in a trial. Personal data that are essential to the motivation of the decision need not be removed. The justification for a certain amount of violation of privacy can be found in the importance of the publicness of justice.*

In summary: Anonymization of published court decisions is required for privacy reasons, but only to the extent that doing so does not seriously violate the principle of free access to government information.

2.2.1.4 Anonymization rules

Whose data are to be anonymized?

The Anonymization Guideline requires that all data pertaining to individuals mentioned in court decisions be anonymized. For example, name and address of parties, witnesses and victims, but also named mentions of relatives, neighbours, friends etc.

The names of legal entities are not anonymized in civil and administrative cases, unless the name can be traced back to an individual. The names of government entities are never anonymized, not even when they are a party to the case. Names of legal entities are anonymized in criminal cases, except in the case of monopolists (when identification is inevitable anyway).

Data of employees are anonymized unless they were carrying out a specific function, such as accountant or investigating officer. Data of expert witnesses and advisers are not anonymized, nor are data of those profesionally involved with the case, such as judges and attorneys.

What data are to be anonymized?

The data to be removed are those data that *directly* identify an individual. This is further specified as:

- name, address and place of birth
- date of birth (to be replaced by year of birth)

- social security numbers, passport numbers, identity card numbers and tax assessment numbers
- cadastral designations (except in environmental / town planning cases)
- amounts in tax cases (if they make it easier to identify an interested party)
- weapon numbers, vehicle registration numbers and similar number and/or letter combinations on the basis of which an individual can be identified

How is anonymization to be carried out?

Anonymization is performed by replacing the data to be anonymized by neutral terms.

- Parties are identified with terms indicating their role in the proceedings, such as plaintiff, defendant, suspect etc. There is one exception: in family law cases, the terms "the man" and "the woman" are used, since often these are already present in the decision.
- Other names must be replaced to the extent possible by terms indicating their role, such as "the consultancy agency", "the plaintiff's daughter", "the defendant's accountant", "the suspect's mother" etc.

In all cases, replaments ore omissions are placed between square brackets to indicate that a change has been made.

2.2.1.5 References

The information in this section has largely been based on the following references (all in Dutch).

"Toegang tot rechterlijke uitspraken." Report by the Study Group on Publicness of Justice of the Society for Media and Communication Law. Media*forum* 2006-4.

Laurens Mommers, Gerrit-Jan Zwenne & Bart Schermer. "Het best bewaarde geheim van de raadkamer: Over de ontoegankelijkheid van de rechtspraak." Nederlands Juristenblad, 2010-32.

R. Philippart. "Toegankelijkheid van rechtspraak." Reaction to the article above. Nederlands Juristenblad, 2010-36.

Marc van Opijnen. "Rechtspraak en digitale rechtsbronnen: nieuwe kansen, nieuwe plichten". Rechtstreeks 2010-1. The Netherlands Judicial Council.

2.2.2 United Kingdom

The legislative starting point in the United Kingdom is very similar to that in the Netherlands. The UK does not have specific legislation concerning the publication of court decisions and the anonymization of published decisions. The policies regarding this issue have therefore been based on the general rules regarding free accees to government information on the one hand and the protection of personal data on the other hand. These in turn are based to a large extent on the same EU Directives. Notwithstanding, the resulting policy in the UK is the opposite of that in the Netherlands: as a rule the names of the parties or others involved in legal proceedings

are not restricted, unless there are good grounds for doing so (such as children and national security).

2.2.2.1 Publication of decisions

In general, court decisions in the United Kingdom are accessible to members of the public on the basis of the Freedom of Information Act. There are no obligations in UK law regarding active publication of decisions by courts. Despite the fact that public authorities are actively encouraged to publish information about individual sentencing outcomes[5], in practice this has resulted in very limited and disparate publication of court decisions.

All the substantive judgments of the Civil Division of the Court of Appeal and the Administrative Court are published. They are usually made available within 48 hours of the judgment being handed down. Decisions are published on the website of the British Judiciary (www.judiciary.gov.uk/media/judgments). There is, however, no official policy regarding the first instance cases of the High Courts of England, Wales and Northern Ireland — decisions are made available for publication in case "the Judge giving the judgment indicates that they are of sufficient interest to be made available for publication on the Internet."

The British and Irish Legal Information Institute (BAILII)

Like in most common-law countries, publication of court decisions in the UK is facilitated not directly by the judiciary itself but rather by a legal information institute. The British and Irish Legal Information Institute (BAILII; www.bailii.org) provides access to the most comprehensive set of British and Irish primary legal materials that are available for free and in one place on the internet. In August 2007, BAILII included 76 databases covering 7 jurisdictions. The system contains around 11 gigabytes of legal materials and around 200,000 searchable documents, all derived from a number of sources. Some of the data comes from existing free to air sites. Most of the databases are based on published and unpublished CD-ROMs or rely opon direct and indirect feeds by relevant courts, government departments and other organisations. All of the data has been converted into a consistent format and a generalised set of search and hypertext facilities have been added.[6]

2.2.2.2 Reporting restrictions

Under certain exceptional circumstances, laid down by statute law and/or common law, UK courts are allowed to:

- 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.

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[5] Cf. Criminal Justice System, "Publicising Sentencing Outcomes: Guidance for public authorities on publicising information (including via the internet) about individual sentencing outcomes within the current legal framework." Available at: http://www.justice.gov.uk/downloads/guidance/sentencing-outcomes/publishing-sentencing-outcomes-guidance.pdf.

[6] See: http://www.bailii.org/bailii/summary-cases.html.

- Impose permanent or temporary bans on reporting of the proceedings or any part of them including anything that enables the identification of those appearing or mentioned in the course of proceedings.

Such exceptional circumstances include:

- national security interests
- protection of the identity of witnesses
- protection of the identity of victims of sexual offences
- youth court proceedings

2.2.2.3 References

The information in this section has largely been based on the following references, as well as those referred to in the footnotes.

"Reporting Restrictions in the Criminal Courts." A joint publication by the Judicial Studies Board, the Newspaper Society, the Society of Editors and Times Newspapers Ltd. October 2009.

"Selectie en publicatie van rechterlijke uitspraken in rechtsvergelijkend perspectief." (In Dutch.) Marc van Opijnen. Trema 2011-5. Sdu Publishers.

3 Domestic law

This chapter presents an overview of the country's legislation pertinent to both the broad subjects of the protection of personal data and access to public documents as well as the more specific subject of publication and anonymization of court decisions. The focus is on laying out the relevant provisions in an orderly way. A discussion of the issues that were encountered when studying this material and conducting the interviews is deferred to the next chapter.

An important caveat has to be made: the overview is based on a selection of legal provisions (without background information) made by, and non-authorised translations provided by, the host organization; also, the author has no legal qualifications. As a consequence, the contents of this and the relevant parts of following chapter should not be regarded as a definite legal analysis on the subject. That said, a fairly clear picture seems to emerge from the available material.

3.1 Overview

The following legislation was taken into consideration.

- Constitution
- Law on Free Access to Information of Public Character
  Official Gazette No. 13/2006, 86/2008 and 6/2010
- Law on Personal Data Protection
  Official Gazette No. 7/2005, 103/2008 and 124/2010
- Directorate for Personal Data Protection Rulebook on technical and organizational measures for providing secrecy and protection of personal data processing
  Official Gazette No. 38/2009 and 158/2010
- Law on Management of the Case Flow in the Courts
  Official Gazette No. 171/2010
- Ministry of Justice Guideline on the manner of publishing and searching the court decisions on the official web pages of the courts
  Official Gazette No.44/2011
- Law on Courts, art. 75
  Official Gazette No.58/2006, 35/2008 and 150/2010
- Court Rulebook, art. 65
  Official Gazette No. 71/2007
- Code of Judicial Ethics
- Law on Criminal Procedure (current), artt. 370, 373
  Official Gazette No. 15/2005
- Law on Criminal Procedure (new), artt. 125-126, 139-143
  Official Gazette No. 150/2010
- Law on Civil Procedure, artt. 324-326
  Official Gazette No. 7/2011

At the time of writing of this report, a new Law on Criminal Procedure had been enacted, but it has a prolonged application of two years after it was entered into force. The focus below is on the new law, but occasionally the current law needs to be addressed as well.

3.2 Personal Data Protection

Article 18 of the country's Constitution from 1991 stipulates: «The security and confidentiality of personal information are guaranteed. Citizens are guaranteed protection from any violation of their personal integrity deriving from the registration of personal information through data processing.»

This basic tenet has been elaborated in the *Law on Personal Data Protection (LPDP)*, which implements all provisions from international law mentioned in the second paragraph of Section 1.1, including the OECD guidelines and EU Directive 95/46.The Law on Personal Data Protection is subsidiary law in cases where certain aspects of data protection are not regulated in material law.

The law contains two provisions relating specifically to judicial data.

Article 7-a LPDP stipulates that «The processing of the personal data contained in judicial decisions shall be conducted under the conditions determined by law and in the manner prescribed by the regulations adopted on the basis of that Law.»

The regime for criminal data is even stricter, with Article 7 LPDP reading: «Personal data processing that refers to criminal acts, pronounced sentences and security measures for committed criminal acts may be performed by competent body pursuant to law.»

The new *Law on Criminal Procedure (CrimProc)* has a number of general data protection provisions (art. 140-143), that are however not directly relevant to the present discussion.

Finally, Art. 75 par. 1 of the *Law on Courts* lists «Public presentation of information and data on court cases on which no final court decision has been taken» as a form of exercising the judicial function unprofessionally and in bad faith.

3.3 Access to court proceedings and decisions

3.3.1 Publicness of court proceedings

Article 102 of the country's Constitution stipulates: «Court hearings and the passing of verdicts are public. The public can be excluded in cases determined by law.»This provision is mirrored in the *Law on Courts* (art. 6), as well as in the*Law on Civil Procedure* (artt. 292-296,324-325) and in the *Law on Criminal Procedure* (old: artt. 303-306, 370, 373; new: artt. 353-356, 405, 232). Quite remarkably, in administrative law non-publicness appears to be the rule, and publicness the exception (artt. 30 and 30-a, *Law on Administrative Dispute*[7]).

[7] Official Gazette No. 150/2010.

3.3.2 Publication of court decisions

3.3.2.1 General provisions

Mirroring the situation in international law, the country's Constitution contains no explicit principle of publicness of, or access to, court decisions, nor indeed of access to information of public character in general.[8] There is, however, a *Law on Free Access to Information of Public Character (LFAIPC)*that embodies the general principle of transparency of public information in general, and hence also of court decisions.

Of necessity the Law tries to strike a balance between the principles of transparency and privacy. According to Art. 6 par. 1 sub 2 LFAIPC, «Information holders may reject a request to access information in accordance with the law, should the information in question relate to personal data the disclosure of which would mean violation of personal data protection». However, «Information holders shall allow access to information after mandatory conducted test on damage by which it will be determined that with publishing of such information the consequences to the interest being protected be smaller than the public interest to be maintained with the publishing of such information." (Art. 6 par. 3 LFAIPC).

The above general provisions have lost much of their significance to the issue at hand with the recent entry into force of the *Law on Management of the Case Flow in the Courts (LMCFC)*. This law contains detailed provisions about access to and publication of court decisions. The full text of the relevant articles 10-15 can be found in the appendix to this report. A number of the rules in Art.10 LMCFC have been further elaborated in *Ministry of Justice Guideline on the manner of publishing and searching the court decisions on the official web pages of the courts*. ThisGuideline has its legal basis in Art. 10 par. 6 LMCFC.

Finally, Art. 65 of the Court Rulebook contains several provisions concerning the issuance of official documents, including court decisions.

3.3.2.1.1 Law on the Management of Case Flow in the Courts

The publication of court decisions on the courts' web pages is regulated in art. 10 LMCFC.

All court decisions must be published on the court's web page within two days.[9]

The law has different rules for final and non-final decisions. A decision is final when no regular means of appealing it are available (any longer).

Final decisions are published *with* the names of the parties, but with their addresses and unique identification numbers concealed. Witness personal data are also concealed from final court decisions.

Non-final decisions are published with full concealment of the personal data of the participants in the procedure, except for the names of the judges, public prosecutors, state attorneys and parties' legal representatives.

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[8] Article 16 of the Constitution concerns freedom of expression.

[9] To be precise: within two days after the authorized official has received the decision. However, thanks to the ubiquitous use of the ACCMIS system, very little time will usually elapse between finalizing the drafting of the verdict and sending it through to the official in charge of publication.

Court decisions are not published in cases where the public has been excluded from the proceedings (so-called *in camera* treatment).

Criminal court decisions are removed from the court's web page upon the expiry of the time frame for expunging of the criminal record according to the criminal code. Other decisions are removed five years after first being published.

3.3.2.1.2 Ministry of Justice Guideline

The rules of art. 10 LMCFC have been worked out in further detail in Ministry of Justice Guideline –, *Guideline on the manner of publishing and searching the court decisions on the official web pages of the courts*.

As was mentioned in the previous section, the LMCFC stipulates that final court decisions are published with the full names of the parties , but with their addresses and unique identification numbers concealed. Article 2 of the Guideline mirrors this, and then specifies precisely which personal data are to be concealed when final court decisions are being published. The list includes several data items not (explicitly) mentioned in the corresponding art. 10 par. 1 LMCFC, such as date and place of birth, passport and driving license numbers, insurance policy number and vehicle registration number.

Similarly, the LMCFC stipulation that non-final decisions are published with full concealment of the personal data of the participants in the procedure is mirrored in Article 3 of the Guideline.

Article 4 of the Guideline then gives the procedure for concealing personal data. This procedure applies to both final and non-final decisions, to the extent that personal data are to be concealed in each. In essence, names, surnames and places of birth are replaced by the corresponding initials, while numbers and dates are each replaced by three full stops ("…").

Finally, articles 5 and 6 of the Guideline specify that published court decisions can be searched by type, case number, keyword, the basis of the case, the month the verdict was announced, and, in the case of final decisions, by the name and surname of the plaintiff, defendant or convicted.[10]

3.3.2.1.3 Court Rulebook

Art. 65 Court Rulebook concerns such issues as the issuance of receipts, certificates and copies from public books and official register that may serve as proof of legal facts. It also mentions the issuance of copies and rewrites of, among others, court decisions.

The exact scope, nature and intention of this provision are not entirely clear. Presumably, this is due to the fact that it has not been adapted to reflect changed legislation, in particular the enactment of the *Law on Management of the Case Flow in the Courts.*

[10] Interestingly, it is not possible to search for cases involving a certain judge, public prosecutor or state attorney. In the interest of facilitating public control of judicial officials it is worth considering the addition of such a search option.

3.3.2.2 Specific provisions

In addition to the general rules of the *Law on Management of the Case Flow in the Courts*, the laws on criminal and civil procedure have specific provisions on access to and publication of court decisions. Apparently no such provisions are present in administrative law.

3.3.2.2.1 Criminal procedure

Art. 7 of the *Law on Personal Data Protection* says that the processing of criminal personal data[11]may only be performed pursuant to law. Art. 10 LMCFC discussed above is the prime example of such a legal provision. In addition, however, a number of specific rules governing access to court decisions (and other documents) relating to criminal cases are contained in both the current[12] and the new[13]*Law on Criminal Procedure*.

According to the current *Law on Criminal Procedure*[14], a verdict must be put into writing and be delivered to the accused. Several kinds of damaged parties receive a certified copy, and in some cases a certified copy must also be sent to other courts who have treated related cases.[15]

The arrangements in the new *Law on Criminal Procedure*[16] are different. A certified copy of the decision is delivered to the parties, unless they indicate they have no intention of appealing the decision.[17] Verdicts are publicly available and accessible in electronic or printed form.[18] Other judicial decisions in criminal cases are available for inspection and transcription to any interested person.[19] In both cases, cases treated *in camera* are excluded. Access to court decisions in criminal cases is effectuated through publication on the internet[20], without the possibility of performing searches according tocategories of personal data, categories of persons or according to individual personal data.[21] Other electronic means of publication of criminal court decisions are explicitly forbidden.[22] This does not, however, preclude regular access to decisions through the courts' archive office.[23]

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[11] Defined as «personal data processing that refers to criminal acts, pronounced sentences and security measures for committed criminal acts [...]».
[12]Official Gazette No. 15/2005.
[13]Official Gazette No. 150/2010.
[14]Official Gazette No. 15/2005.
[15] Art. 373 CrimProc current (Official Gazette No. 15/2005).
[16]Official Gazette No. 150/2010.
[17] Art. 125 par. 1 CrimProc new (Official Gazette No. 150/2010).
[18] Art. 126 par. 1 CrimProc new (Official Gazette No. 150/2010).
[19] Art. 126 par. 2 CrimProc new (Official Gazette No. 150/2010).
[20] Art. 125 par. 3 CrimProc new (Official Gazette No. 150/2010).
[21] Art. 139 par. 3 CrimProc new (Official Gazette No. 150/2010).
[22]Art. 125 par. 3 CrimProc new (Official Gazette No. 150/2010).
[23] Art. 126 CrimProc new (Official Gazette No. 150/2010).

3.3.2.2.2 Civil procedure

Verdicts in civil cases must be prepared in writing within eight days of announcement of the verdict.[24] A certified copy of the verdict must be served to the parties within another eight days.[25]

3.3.3 Database of court decisions

The database of court decisions is regulated in art. 11 LMCFC.

The Supreme Court maintains a database of all court decisions, both final and non-final ones. The database contains the full text of the decisions, including all personal data.

The database is accessible to the judiciary, but also to others able to prove and justify a legitimate goal for access. Access requests are decided upon by the president of the Supreme Court, who is to issue rules on the different types and levels of access.

Those granted access to the database are explicitly bound to all relevant personal data regulations.

3.4 Analysis

Some of the basic laws relevant to the topic of access to court decisions and the protection of personal data have only been in force for a couple of years. Other, more specific laws, have only very recently entered into force (the *Law on Management of the Case Flow in the Courts*) or are yet to do so (the new *Law on Criminal Procedure*). Relevant provisions are dispersed over quite a few laws and other pieces of legislation. As a result of this, the past few years have seen an ever changing patchwork of (not always entirely consistent) provisions. It is no wonder, then, that many of those dealing with the subject are confused about the exact nature of the current and upcoming rules.

Still, a pretty clear picture emerges from this and the preceding chapter. The internationally recognized principles of publicness of court proceedings and protection of personal data have been anchored in the Constitution and elaborated on in the *Law on Personal Data Protection* and the laws in the field of justice. The rules on access to and publication of court decisions have recently become a lot clearer with the enactment and entry into force of the *Law on Management of the Case Flow in the Courts* and its partial elaboration in the *Ministry of Justice Guideline*. The laws on criminal and civil procedure contain supplementary procedural rules that, however, do not really conflict with the provisions from the LMCFC.

Notwithstanding the above conclusion, a number of issues were still identified when studying the above provisions and conducting the interviews. These are the subject of the next two chapters.

[24] Art. 326 par. 1 CivProc. (Official Gazette No. 07/2011)
[25] Art. 326 par. 3 CivProc. (Official Gazette No. 07/2011)

4 Current situation

When studying the relevant provisions from the country's legislation and conducting the interviews, a number of issues were identified. These can be roughly divided into the following three categories:

1. Legal and compliance issues.
2. The desirability of publishing and anonymizing all court decisions.
3. Access to unpublished court decisions.

The issues encountered are laid out and analyzed in the three paragraphs below. Recommendations based on the conclusions drawn can be found in the next chapter.

4.1 Legal and compliance issues

From the interviews that were conducted it has become apparent that there has been, and still is, quite a bit of discussion about the correct interpretation of the legislation on the topic of access to court decisions and the protection of personal data. At the end of the previous chapter, the conlusion was drawn that this is very understandable in view of the patchwork of (not always entirely consistent) provisions that existed until recently and the large number of recent changes and additions. At the same time it was concluded that with the entry into force of the *Law on Management of the Case Flow in the Courts* many of the legal issues have been cleared up. It is evident, however, that this law has not really sunk in yet with all parties concerned. This implies that it is important that awareness building and education and training initiatives are developed.

In addition, a number of other legal and compliance issues and questions emerged that warrant further discussion here. These include the following:

1. Does concealment of names, unique identification numbers and the like constitute sufficient protection of personal data?
2. Courts often simply ignore unwelcome rulings by supervisory bodies.
3. Can the names of judges and other officials also be concealed from published decisions?
4. Is it desirable that court decisions must be removed from the internet after a certain period of time?
5. Is it desirable that final decisions are published with inclusion of the names of parties?
6. What are the rules govering further use of court decisions published on the internet?
7. Is replacing names by initials a proper way of anonymizing court decisions?
8. Are court cases not being held*in camera* too often?

These issues and questions are discussed below.

4.1.1 Does concealment of names, unique identification numbers and the like constitute sufficient protection of personal data?

It has been suggested that the concealment of personally identifying information such as names, unique identification numbers and the like might not constitute sufficient anonymization in view of the risk of indirect identification. This is a valid point from a general data protection perspective. Yet, as evidenced by the practices of a number of EU member states and the ECtHR[26], this method is generally considered a sufficient safeguard of personal data.

No doubt, this state of affairs is related to the difficulties presented by concealment of data that present a risk of indirect identification. Not only does it easily get very difficult to precisely identify such data in a court decision; the purging of such information may also greatly diminish the readibility of the decisions and its relevance as a piece of jurisprudence.

Although further anonymization is not, then, required as a general rule, it may still be dictated by the circumstances surrounding a specific case, and may be desirable for certain types of cases, for instance those involving family law.

Note: Compare the discussions elsewhere in this section on the use of initials and on cases treated *in camera*.

4.1.2 Courts often simply ignore unwelcome rulings by supervisory bodies.

The last couple of years have seen a number of instances where courts have simply ignored unwelcome rulings by supervisory bodies such as the Directorate for the Protection of Personal Data, the Commission for Free Access to Information and the Ombudsman. This practice is very damaging to the reputation of the courts, and the judiciary in general, all the more so since in appealing these rulings to an administrative court they avail of a perfectly reasonable alternative. This simply has to change. Courts, if anybody, have to walk the royal road of justice and abide by the outcome.

4.1.3 Can the names of judges and other officials also be concealed from published decisions?

Apparently, the opinion is held by some court officials that the names of judges, public prosecutors, state attorneys, lawyers and the like may or must also be anonymized. Reading the first two paragraphs of Art. 10 LMCFC in conjunction, it is evident, however, that this is not the intention. The second paragraph states this explicitly for non-final cases, and clearly the first paragraph must then be interpreted as implying the same for final court cases. In addition, it is clearly stated in the *Ministry of Justice Guideline*, but that is a piece of lower legislation about which an argument might arise.

4.1.4 Is it desirable that court decisions must be removed from the internet after a certain period of time?

According to Art. 10 par. 4 LMCFC, criminal court decisions are removed from the court's web page upon the expiry of the time frame for expunging of the criminal record

[26] See Chapter 2.

according to the criminal code, while other decisions are removed five years after first being published. This makes sense for final decisions, which are published with inclusion of the names of parties. However, it is difficult to understand why it would be desirable, let alone necessary, to erase anonymized decisions from common knowledge. It is therefore well worth reconsidering this provision where anonymized decisions are concerned; also, it is possible to continue the publication of decisions published with inclusion of the names of parties by anonymizing them after the determined period of time has elapsed.

Note: Compare the discussion below concerning the publication of final decisions with inclusion of the names of parties.

4.1.5 Is it desirable that final decisions are published with inclusion of the names of parties?

According to Art. 10 par. 1 LMCFC, final decisions are published with inclusion of the names of parties. As has been noticed in Chapter 2, although a similar approach is followed in a few EU member states the prevalent opinion is that court decisions – whether they be final or not – should be published without inclusion of the names of parties. It is therefore worth reconsidering the current approach. This is all the more so the case if the recommendations in the next chapter on selecting court decisions for publicationare going to be adopted. After all, named publication would then, to a certain extent randomly, only affect those who happen to have beena party in a case that is interesting from a legal or other point of view.

4.1.6 What are the rules govering further use of court decisions published on the internet?

The *Law on Management of the Case Flow in the Courts*, in conjunction with Articles 7 and 7-a of the *Law on Personal Data Protection*, present a bit of a conundrum where final court decisions are concerned. The latter two articles require a basis in law for processing of such decisions. Clearly, the intention is that the general legitimate grounds for processing of personal data contained in Art. 6 LPDP do not in and of themselves constitute such a basis. But then it may be argued that by the same token they do not form a basis for any further processing of published decisions. Since, however, the *Law on Management of the Case Flow in the Courts*[27] has no rules governing the further processing of court decisions once they have been published, this would imply, for instance, that any data controller (and hence any of its employees) would be forbidden from opening the web page containing the decision, let alone reading it.

Evidently, this is not how these provisions are intended. Also, at first glance, the solution seems quite straightforward. Articles 7 and 7-a LPDP are to be read as saying that the *primary* processing of court decisions – in particular their publication on the official web page of the court – requires an explicit basis in law. Any *secondary* use of the decisions, once published, does not require an explicit basis in law and is governed by the general data protection principles incorporated in the *Law on Personal Data Protection*. However, how these principles are to be interpreted in a particular instance

[27] Or, indeed, any other law besides the *Law on Personal Data Protection*.

of secondary use is often strongly influenced by the nature and content of the specific legislation that was the basis for its primary use. Therefore, it would be very useful to further clarify this matter.

4.1.7 Is replacing names by initials a proper way of anonymizing court decisions?

The *Ministry of Justice Guideline* prescribes the use of initials in anonymization of court decisions. It has been noted, however, that due to the relatively small size of the country's population many court districts also have a fairly small number of people living in them.[28] As a result of this, there is a high risk of indirect identification.Several perfectly reasonable alternatives to the use of initials exist, such as the use of subsequent letters from the alphabet (the practice used by the ECtHR) or the use of fake names or initials. In view of the high risk of indirect identification in combination with the availability of viable alternatives, data protection principles dictate that the current method of anonymization be adapted.

4.1.8 Are court cases not being held *in camera* too often?

It was suggested in several of the interviews that too many court cases are being held *in camera*. As a result, the verdicts in these cases are not published. This gives rise to two different considerations.

First of all, if it were indeed the case that the possibility of *in camera* treatment of cases is being overused by the judiciary, this would be an important detriment to transparency.

Secondly, one may ask why there is a rule that decisions from cases held *in camera* are not being published. They may, after all, be anonymized.

4.2 The desirability of publishing and anonymizing all court decisions

In its essence, the *Law on Management of the Case Flow in the Courts* contains a fine set of rules regarding publication of court decisions: all decisions are published on the internet[29], and all published decisions are anonymized[30].

The picture as regards the actual implementation of these rules is less clear. The answers received in reply to the questionnaire that was sent out to all the country's courts seem to indicate that most court decisions are indeed being anonymized and published. This is not always confirmed, however, when one checks the actual official court web pages. More importantly, whatever the exact percentage of decision being published, it is clear from both the answers to the questionnaire and the interviews that were conducted that the labour-intensive process of anonymization puts a tremendous strain on most courts' resources. Even if courts would eventually manage to free enough personnel on a structural basis to ensure anonymization and publication of all their decisions, one should ask oneself whether there are no better ways of spending these significant resources.

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[28] The 27 basic courts serve a population of just over two million souls, averaging less than 75,000 per court.
[29] With some exceptions, cf. the above discussion of cases held *in camera*.
[30] With the exception of the names of court officials, and of the names of parties in final decisions, cf. the above discussion on these issues.

Methods need to be found, then, to decrease the amount of effort that is involved in anonymizing court decisions for publication. In essence, there are three possible approaches, which, by the way, are not mutually exclusive:

1. Keep publishing the same number of decisions, but anonymize fewer of them.
2. Keep anonymizing decisions, but publish fewer of them.
3. Keep publishing the same number of decisions, keep anonymizing them as well, but make sure that anonymization becomes less burdensome.

Option 1 is problematic from the point of view of protection of privacy and personal data, especially in view of the questions that were raised in the previous section as to the sufficiency of the current level of anonymization. Still, this approach cannot be ruled out entirely a priori in view of the fact established in Chapter 2 that it has in fact been adopted by an, albeit small, number of EU member states.

Option 3 is perhaps ultimately the preferrable solution, but it is unlikely to be viable option in the short and medium term. For that, the automatic anonymization of free text – which will always be present in all but the most trivial of court decisions – is still too hard a nut to crack.[31] Notwithstanding, thanks to the general availability and use of the ACCMIS system it may be possible to make some progress in this respect by not going for *automated* anonymization, but rather for *computer-aided* anonymization. For instance, officials drawing up court decisions could be given the opportunity in ACCMIS to select names as system attributes rather than typing them in as free text. If they were then trained to consistently use this feature, subsequent automated anonymization would become a well-nigh trivial task.

Note that a different approach to Option 3 would be partial publication of decisions, where in particular part or all of the court's deliberations are removed from the published verdict. Although this solution might to a certain extent be suitable for the general public, it would be of little use to legal professionals and legal scholars, whose access to full decisions is an essential element of transparency of the judicial system.

Option 2 seems to be the most viable one for now. No matter how laudable the intention of publishing each and every court decision, the added value of this approach for transparency is in fact questionable. This is all the more so the case because, as became clear during the interviews, the country's courts decide a very high number of trivial cases, with very similarly drafted decisions that are of little interest for transparency. Publishing just a selection of decisions is therefore a very promising way forward. It is very helpful in this respect that a number of years back, the Council of Europe published an excellent Recommendation concerning the selection, processing, presentation and archiving of court decisions in legal information retrieval systems.[32] Although the context here is somewhat different, the CoE's guidelines are still a very suitable basis for drawing up good selection criteria. In order to ensure proper application of the

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[31] See Farzaneh Kazemi's 2008 Master's Thesis *An Anonymizable Entity Finder in Judicial Decisions* for a relatively recent description of the state of the art.

[32] Council of Europe. "Recommendation No. R (95) 11 concerning the selection, processing, presentation and archiving of court decisions in legal information retrieval systems". Recommendation of the Committee of Ministers to member states. September 1995. http://www.raadvst-consetat.be/?action=doc&doc=751

selection criteria, the selection of court decisions for publication should be carried out by an independent body that has broad support in society.

An additional benefit of weeding out trivial, repetitive or otherwise uninteresting court decision from the set to be published is that the usefulness of the resulting public collection of decisions automatically increases, as interesting decisions run a much smaller risk of becoming a needle that is hard to find in the haystack of less interesting decisions. It might even be feasible to enrich (part of) the relatively small number of decisions that will then be published, for instance by adding a summary, keywords or article numbers.[33]

The disadvantages for transparency of the above proposal are limited to begin with, and are further mitigated by the fact that access can be requested to the database[34] containing all court decisions by interested parties, such as lawyers, legal scholars and ngo's. If across-the-board application of the principle of selection is still considered a step too far, it may be limited (at least initially) to decisions pronounced by basic courts.

Finally, in the interest of further transparency, it might be considered to also select a number of important past cases for publication.[35] Partly, this has already been done by e.g. the Supreme Court and the country's Lawyers' Association.

4.3 Access to unpublished decisions

A final issue meriting attention is access to unpublished court decisions. This is relevant for at least three reasons. First of all, many past decisions have not been published (on the internet or elsewhere). Secondly, as was discussed at the beginning of the previous section, the publication obligation is currently not being fully complied with by all courts. And, last but not least, adoption of the selection proposal above would mean that a large number of future decisions will also go unpublished.

Access to unpublished court decisions appears to be hinderd by differences in interpretation of several bits of legislation. A related matter is the extent to which access should also be granted to documents pertaining to ongoing and non-final court cases.

4.3.1 Differences in interpretation

There seems to be a lot of discussion about Art. 65 Court Rulebook, Art. 144 CivProc and Art. 373 CrimProc old[36]. Apparently, these provisions are sometimes interpreted as implying that the provision of other documents than those mentioned there is prohibited. While this may or may not actually have been the case in the past, it is clear from the *Law on Management of the Case Flow in Court Cases*[37] that this stance is no longer valid.

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[33] The assistance of the country's Lawyers' Association might be conducive to achieving this.
[34] See Section 3.3.3
[35] Cf. the discussion in the next session.
[36] Official Gazette No. 15/2005.
[37] As well as, of course, the international and domestic body of law on acces to public information on which it is largely based.

As regards Art. 373 CrimProc old[38] the problem will be solved automatically once the new *Law on Criminal Procedure* enters into force at the end of 2012.

As regards Art. 65 Court Rulebook, it was already noted in the previous chapter that this article is in dire need of adaptation to reflect the changes in legislation of the last few years. If this were not done, there is a significant risk that this article will remain an obstacle to full compliance with the new access regime.

In the interviews, it was suggested that part of the "differences in interpretation" can be traced back to a feeling among court officials that access provisions are being "abused" by lawyers and parties to proceedings to evade paying fees charged by courts for issuing certified copies and similar official proof of legal facts. It is not entirely clear how this could be the case, as there would seem to be a clear difference between access to the *contents* of court decisions and other documents on the one hand and the issuance of receipts, certified copies and the like on the other hand. Still, in view of the courts' sentiments, it is advisable to clear up this matter.

4.3.1.1 Access to documents pertaining to ongoing and non-finalized proceedings

It appears that courts frequently refuse to grant access to documents pertaining to ongoing and non-finalized proceedings. This refusal is based on Art. 75 par. 1 *Law on Courts* discussed above. It can be argued that this reading of Art. 75 is incorrect. Indeed, it is evident that disclosure of information should not be regarded as unprofessional or unethical if it has a basis in law, and such a basis is provided by the *Law on Free Access to Information of Public Character*. After all, the other laws in the field of justice contain no specific bans on sharing information that could be viewed as a *lex specialis* overruling the LFAIPC. That said, Art. 6 par. 3 LFAIPC still requires that the interests of transparency and privacy be weighed against each other; since it must be assumed that it is known who the parties in the case are, anonymization is not useful, and therefore such requests are likely to often be rejected. Still, this is an important aspect of freedom of access to public information that needs to be cleared up.

[38]Official Gazette No. 15/2005.

5 Recommendations

Based on the assessment of the current situation presented in the previous chapter, the following recommendations are made.

5.1 General

- Resolve the remaining legal and compliance issues and then focus on holding all parties involved – the courts in particular – accountable for compliance with the new rules on access to and anonymization and publication of court decisions.

5.2 Domestic law

- Redraft article 65 of the Court Rulebook to reflect the current legal situation.
- Make courts accountable for complying with (or appealing) rulings by supervisory bodies.
- Clarify to which court documents the Law on Free Access to Information of Public Character applies, and provide instructions for courts handling freedom of information requests on how to achieve a balance between transparancy and personal data protection.
- Evaluate whether the possibility of *in camera* treatment is not being overused by the courts.

5.3 Publication and anonymization of decisions

5.3.1 Selection of decisions for publication

- Modify the rules for publication of court decisions so as to require the publication not of all decisions, but rather of a selection of the most relevant decisions.
- Base the criteria for selecting decisions for publication on Council of Europe Recommendation R (95) 11, modified as necessary in view of the somewhat different application context.
- Appoint an independent body to make the selections.
- Consider (initially) limiting the use of selection to basic courts.
- Giving due consideration to personal data protection, reconsider the conditions for access to the database of court decisions to mitigate the spurious effects of publishing only a selection of decisions on the internet.
- Explore the possibilities of enriching the selected and published decisions, for instance by adding summaries, keywords or article numbers.

5.3.2 Other aspects

- Draft concise guidelines specifying the circumstances or types of cases that require further anonymization and the additional anonymization required.
- Clarify the fact that names of judges, state prosecutors, attorneys etc. are as a rule not to be removed from published court decisions.

- Reconsider the specific rules[39] on how to anonymize court decisions, in particular as regards the use of initials.
- Investigate the medium to long term possibilities for automated or computer-aided anonymization of court decisions.
- Consider selecting a limited number of (duly anonymized) decisions from cases treated *in camera* for publication.
- Reconsider the provision in the Law on the Management of Case Flow in the Courts that court decisions published on the internet are to be removed again after a specified period of time.
- Reconsider the publication of final decisions with inclusion of the names of parties, especially if the proposal to select decisions for publication is adopted.
- Clarify the rules for further processing of (the personal data contained in) court decisions published on the internet (or elsewhere).

5.4 Access to unpublished decisions

- Clarify the distinction between providing access to (anonymized) decisions on the one hand and providing certified documents or copies thereof on the other hand.

Note: compare the earlier recommendation on freedom of information requests.

[39] In article 4 of the *Ministry of Justice Guideline*.

Epilogue

During my assessment visit, several of the interviewees either implicitly or explicitly took a rather apologetic stance to the effect that, well, this is the former Yugoslav Republic of Macedonia, we are overcoming a historic burden and still have a long way to go. In actual fact, despite a number of remaining issues, with the *Law on Management of the Case Flow in the Courts*, the Ministry of Justice Guideline and the developoment of the ACCMIS system, a solid foundation has been laid for providing easy access to court decisions while duly protection personal data. If all stakeholders involved are able to manage a fruitful co-operation regarding this subject, there is no reason why in a couple of years from now the country could not have an effective and efficient system of access to court decisions that easily withstands comparison with EU benchmarks.

Appendix A Counterparts

During my assessment visit, I conducted interviews with the individuals and representatives from the organization below.

1. The Directorate for Personal Data Protection.
2. Data Protection Officers from Basic Court Skopje I, Appelate Court Skopje, the Administrative Court and the Supreme Court.
3. The Commission for Freedom of Information.
4. Judge Margarita Caca-Nikolovska.
5. Basic Court Skopje II.
6. EduSoft.
7. The Young Lawyers' Association.
8. The Lawyers' Associaton.
9. The Ombudsman.

Appendix B Questionnaire results

A questionnaire on publicaton and anonymization of court decisions was sent out to all Macedonian courts, about two-thirds of whom replied.

The main conclusions that can be drawn from the replies received are as follows:

- Courts recognize the importance of both publication of decisions and anonymization of published decisions.
- The rules on publication and anonymization are generally considered sufficiently clear and to the point.
- Most courts publish about half to two-thirds of all decisions on their official web page.
- Anonymization of a decision before publication tends to take between ten and thirty minutes.
- The anonymization of decisions is felt to be unduly burdensome.

Appendix C Anonymization of Court Decisions via Automated Court Case Management System (ACCMIS)

This Appendix was prepared by Petar Kjurchiev

Purpose of the document

Currently in all Courts in the country, an automated system for managing court cases is used. This document provides a non technical, concise description of this system. In addition, comments and recommendations regarding the creation of an anonymised Court decision are given. Comments and recommendations are purely conceptual. Eventual means of the practical implementation may vary considerably, depending upon the level of automation while creating the Court decision (one for the Court archive, one to be published).

Foreword

Publishing of the Court decisions is one of the indicators of the openness of the National Judiciary to the public. In the same time the legal obligation is respected, to protect the personal data of the individuals involved in Court case proceedings.

In the week starting June 27th, 2011 a five days activity was carried out, an assessment of the national legislation and internationalstandards and best practices in access to court decisions and manner of anonymisation of the personaldata in those decisions. It has been conducted by a national and international expert. Special attention has been given to issues of practical implementation and any concerns stemming from it,along with recommendations for improvement. This assessment was initiated and organized by the OSCE Mission to Skopje and the Directorate for Personal Data Protection. During the week numerous meetings took place. Participants were various relevant stakeholders, such as: court's data protection officers, judges, NGO representatives working in the field of access to public information. This section of the Report regarding the assessment mentioned above, deals with the possibilities of reasonable anonymisation of the Court decision (its preparation for publication), with the automated system used (ACCMIS).

Chronological overview

The automation of the court proceedings in the country have begun at year 1995. The system named 'First Instant Court Proceedings' was implemented and installed at the Basic Court Veles (Pilot Court for the project). Elementary functions and reports were implemented. All types of cases were dealt with, except the misdemeanor cases. At that time, a separate Court for misdemeanor cases was in place. The scenarios were discussed and formalized on well organized meetings, headed by the Undersecretary with the Ministry of Justice. Judges from various courts have participated at the meetings, optimal solutions agreed upon.

Technology used:

The system was of local area network nature. The server was IBM AS/400 on which the Operating System OS/400 was running. Cathode Ray Tube (CRT) work stations were connected to the server, programming language used was RPG II. Over time the system was upgraded and modified, based on the user remarks, ideas and requirements. It continued to be used for the next ten or more than ten years.

Next edition of the system, based on Microsoft environment, started with the design effort at year 2001. It encompasses more functions and facilities than the previous version. Particularly the system allowed for creation of session minutes, as well as the creation of Court decisions. It has been named 'Integrated Court Information System' (ICIS). The Pilot Court selected was the Basic Court Skopje I, large Court, as opposed to Veles, considered a mid range Court.

Technology used:

The system was of Client-Server nature. The database used was MS SQL Server 2000, the development tool Delphi.

The current version of the system is a contemporary 3 tiers system. It is named 'Automated Court Case Management Information System' (ACCMIS).The design effort has begun at the end of year 2008. The three tiers are:

- Database is MS SQL Server 2008, Release 2
- Web services are implemented via asp.net
- The client for application, which communicates with the Web services is developed with Delphi

Obviously it is Web oriented system

This short history is presented to clarify that:

- A lot of knowledge and experience is built into the current version of the system
- Each piece of logic within the system is compliant with the Law on Courts[40] and the Book of Rules[41]
- Set of functions are adopted to various Court employee profiles:
  - Technical secretaries (typists)
  - Judges
  - Judge's assistants
  - Registry clerks
  - Delivery clerks
  - Court clerks

[40]Official Gazette No. 58/2006
[41]Official Gazette No. 157/2009

- Etc.

- Court employees are aware of the advantages and the potential offered by the technology (problems and issues as well)
- The National Judiciary and the Ministry of Justice officials look at the system as a mean for:
  - Improving the Judiciary service to the citizens
  - Level up the satisfaction and confidence of the Court employees
  - Larger throughput (more cases resolved)
  - Improving the quality of the Court products:
    - Session minutes
    - Various Court decisions, including verdicts and session summons

Therefore, greater attention is paid to the system, upgrades and modifications are foreseen. Normally, this system is related to other systems in the Country. As its database holds personal information (personal data about the case parties), procedures have to be envisioned to comply with the requirements of the Law on Personal Data Protection[42].

ACCMIS users[43]

The system has been designed to satisfy the needs of the following entities:

- **Basic Court**. Within the Basic Court there are various Departments and Offices:
  - Intake Offices
  - Civil Department, dealing with civil cases
  - Criminal Department, dealing with criminal cases
  - Inheritance Department, dealing with inheritance cases
  - Delivery Office
  - Etc.

  Each case type is entered into a specific Register (with specific attributes, required for that type of case). Throughout its life cycle, the case is maintained in its Register, the entire history of the case is there (case file or case dossier). From the initial registration of the case, to its archiving, many Court employee profiles work on it. A

[42] Official Gazette No. 7/03, 103/08, 124/10.
[43] The competence of the national courts is simplified due to the technical IT aspect of the Report.

suitable set of functions is dedicated to each profile. This way, each Court employee profile works independently and yet contributes to the Court mission. Within the Basic Court there is a Misdemeanor Department, dealing with this type of cases. There is a substantial difference between misdemeanor cases and other type of cases (Civil, Criminal):

- Case life cycle is much shorter
- The verdicts are much simpler, in many instances a suitable template is applicable
- Very seldom this type of case goes to the Appellate Court, or become Civil or Criminal Case

- **Appellate Court**. Internal Court organization (Departments and Offices) is similar to that of the Basic Court. There are Registers, specific for this type of Court. This is a second instance court that decides upon appeals from the parties that are not satisfied with the Basic Court verdict.
- **Supreme Court**. Internal Court organization (Departments and Offices) is similar to that of the Basic and Appellate Courts. There are Registers specific for this Court.
- **Administrative and High Administrative Court**. This Court deals with cases where the citizens are not satisfied with some behavior applied by the Government and its Agencies.
- **State Judicial Council**. ACCMIS automatically prepares the statistics for each Court and each Judge (the number of cases worked on, and the outcome of that work). This information is an additional asset for the State Judicial Council during the process of:
  - Appointment of new judges
  - Promotion of judges to higher level courts
  - Dismissal of judges

The database

With each function (each data entry – entry screen used), a record into the database is created:

- Attributes (dates, names, entries from various nomenclatures)
- Minutes from Court hearings
- Court decisions:
  - Judge orders
  - Resolutions
  - Verdicts

Views/reports

A large variety of selection criteria is available which allows the users of the system to create views and reports (available on the screen, and printed out if need be).

Creation of documents

An internal text processor is built into the system. It is simpler than the standard text processors, suited to the needs of the Courts.

It is important to describe in some more detail the structure of the verdict, a court product which might be interesting to the public. There are **three** sections[44] in this document:

- **The introduction**. In this section, among other things, are the personal data of the case parties (Compliant, Defendant)

- **The disposition (the essence of the verdict)**. This part contains the will of the court and the decision upon concrete legal matter. Personal data usually do not appear in this section, but it is up to the Judge's personal style

- **The explanation**. Long, free text, which explains the disposition. In many cases, especially when there are more participants involved in the procedure, names are found here. The mistakes are pretty common, such as: there is no blank between Name and Surname; the name in the Introduction part is not the same with the name in the Explanation part (not everyone is using Copy/Paste tool); etc.

This section, is the most important to be dealt with, since with this tool the Court decision is created. In the **Recommendations** Section of this document, ideas for additional functionality will be presented. Ideally, we would like to employ a mechanism which would automatically 'elaborate' the verdict, and prepare it for public presentation, respecting the requirements and guidelines of the Law on Personal Data Protection[45], and the Guideline of the Ministry of Justice on the Manner of Publishing and Searching the Court Decision on the Court's Web sites[46]. How feasible it is, will be discussed within the **Recommendations** Section**.**

Website

There is a Web site available (not a portal!). From time to time some information is uploaded to the site. As far as ACCMIS is concerned, it occasionally sends the court hearings schedule to the site. Currently each Court has its own Web site. The general layout has been designed by the ICT personnel within the Supreme Court, locally implemented by different services providers. Since this segment is a policy of the Judiciary, will not be discussed in detail.

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[44] The content and the meaning of these segments are simplified due to the technical IT aspect of the Report.
[45] Official Gazette No. 7/03, 103/08, 124/10
[46] Official Gazette No. 44.2011

Court information desk

Each Court is provided with one or more screens (television set size), installed in the Court halls. Some useful information to the public is displayed:

- The case number
- The parties involved
- The court room identification where the hearing is to happen
- The time the hearing is supposed to begin

As pointed out within the *Foreword*, ACCMIS is considered to be natural scenario for creation of an anonymised Court decision, available to the public. As the system encompasses:

1) Recording of each detail about the Court case (building of the case file – dossier)
2) Sessions scheduling
3) Creation and distribution of summons
4) Creation of Court documents:
    a) Session minutes
    b) Judge orders
    c) Various resolutions
    d) Verdicts

It is logical to assume that any additional requirement, including this one, to create an anonymised Court decision for the public, could be add-on to the current system functionality. Before going any further, some starting points are laid out.

Basic assumptions for creating an anonymized court decision

1) There are no changes to the ACCMIS database
2) The Court Cases (their files – dossiers) are created within ACCMIS
3) The Court Decision (verdict – candidate to be published) is complete, consists of:
    a) An Introduction – among other things, personal data of the individuals involved with the case (various roles), representatives (lawyers), Judge or Panel of Judges, the lay judges – some of these data should be kept anonymous (According to the Ministry of Justice Guideline on the Manner of Publishing and Searching the Court Decisions on the Courts' Web sites [47])
    b) A Disposition – the decision upon concrete legal matter
    c) An Explanation – in there currently are personal data which should be kept anonymous
    d) A closing part
    e) A verdict delivery guidance
    f) Taxes – fees which are to be paid
    g) Instructions regarding legal remedies

[47] Official Gazette No.44/2011

and is created with ACCMIS text processor.
4) In the process of the preparation of the Court Decision for publishing, there is minimum engagement of the Court personnel
5) Legal restrictions for publishing court decisions for certain case types, are known and available (legal document)

Note:
The above mentioned Guideline of the Ministry of Justice encompasses:
1. Attributes which should be kept anonymous with final Court decisions.
2. Attributes which should be kept anonymous with non-final Court decisions
3. The method used to keep those attributes anonymous is given
4. The criteria for searching the published Court decisions are given

Recommendations

In here two aspects, two approaches, are tackled:

5. Technical
6. Organizational

The efficiency of the technical solution depends very much on the organizational issues, they will be shortly elaborated.

As far as the technical recommendation is concerned, it is something like this:

1) The existing text processor within ACCMIS, is revised and upgraded to allow for preparation of the Court decision for publishing. Possible scenario:

    a) For the needs of the Court archive, the decision is created with the ACCMIS text processor, regardless who does this: a) the Judge; b) the pair Judge (dictating), and the typist (typing); c) the Judge assistant. During this process, parts of the text typed (sensitive data regarding the anonymised Court decision), are 'marked' (decision creator's task) and some rule applied (as explained within the Guideline of the Ministry of Justice) in a latter phase, if this decision is to be published

    b) This product is either sent directly to the (current situation) Court Web site, or to some intermediate storage. This intermediate storage contains Court decisions available to the public only.

    c) Additional functionality of the ACCMIS text processor is created:

        i) To be user friendly. The user (the typist, the Judge, the Judge assistant), feels he / she is in a familiar environment. There is no need for extensive training, guidance

        ii) To be efficient. The time spent on preparing the decision for publishing is as short as possible

d) Parts of this scenario (bullets 'a' and 'b') actually represent a 'computer-aided' method. This could be considered as an initial step towards higher level of automated anonymisation:

2) ACCMIS modules which exist and allow for entering various attributes, parts of the case file – dossier, are upgraded:

   a) Attribute entered - candidate for anonymisation are automatically recognized
   b) As such it is 'marked':

      i) For anonymisation
      ii) The rule for anonymisation to be applied

3) The way the 'free text' of the decision is created, is changed:

   a) Attribute – candidate for anonymisation is not **typed**
   b) Instead, it is **copy/pasted** (case file – dossier is always available)
   c) Along with the attribute, the 'mark' is copied as well
      The 'search' algorithm works perfectly, the anonymisation logic applied. The anonymised decision is available.

In practice, the need to produce an anonymised Court decision can be observed as a burden to the Court personnel. At this point, it is hard to foresee a completely automated scenario. The next section of the *Recommendations* deals with organizational issues. Off course, this is author's opinion only, without any pretension to influence the current situation.

Public Court decision

What 'kind of public' may access this resource?

1. **Casual user**. He / she sits in front of his / her PC or Lap Top, or is holding a sophisticated mobile phone. As some Court decision is displayed (pure curiosity), the possible comment could be: 'Even such information is available', no use of this information. For this type of **Casual user** it is irrelevant whether the Court decision is final or non-final. The **Casual user** could be a lawyer, looking for an outcome of a Court case, similar to his/her. Obviously, final Court decisions are of much greater help then non-final, useful information

2. **Student of a Law School**. He / she might be interested to see the structure / lay out of such a document. To prepare for the next exam for instance, useful information. Only if this case is not trivial. Again, much better to look into final Court decision then into non-final.

3. **A novice Judge**, prior to writing his / her first decision. Very useful information. Only if this case is not trivial. Again, much better to look into final Court decision then into non-final.

4. **A litigant**, hoping to see an outcome of a similar case. Useful information. Again, if not trivial and better to look into final Court decision then into non-final.

Court cases to be published

This section is a logical consequence of the previous one. During the Assessment week, opposite opinions were present:

1. To publish each Court decision.
2. To publish only selected Court decisions, the number of trivial cases is huge, makes no sense to publish them.

Regarding this issue, a useful practice could be to learn the experience from other Court systems:

1. Neighbor countries
2. EU countries

According to what has been said in the previous section, a selection of Court cases to be published can be considered as better option[48]:

1. Less burden to the Court employees
2. Reasonable usefulness to the public interested

The selection itself, the method, will not be discussed here. It is up to the Judiciary to propose the optimal method.

Note: Anonymised Court decisions, using the help of upgraded ACCMIS, will be available after the upgrade is completed and installed in all the Courts. If there is an ambition to publish anonymised Court decisions prior to that, with the current ACCMIS capacity, than:

1. Court decisions produced with some kind of a computer text processor could be anonymised only manually. The issue may arise regarding the availability and licensing of the particular text processor.
2. Court decisions produced on a classic typewriter, are practically impossible to be anonymised.

Web site

Again, no pretension to influence or comment the policy of people/organizations, responsible for the matter, a pure observation.

During the Assessment week there were comments that some cases meant to be available to the public, actually were not. As each Court has a contract with different services provider, under different conditions, it is possible that there is no space enough.

A few things may avoid such a situation:

[48] Personal view of the author of this text

1) Instead of having Web site at a Court level, to have one only, 'Macedonia Judiciary Web site' for instance. This is actually a **Portal**. That means, there is an intelligence behind, which allows for:

    a) Access to the public Court cases, stored into a storage mentioned on page 40 (1.b). There is no need to 'upload' the anonymised decisions, the storage is automatically updated
    b) Filtering capabilities ('Search engine') are available, as described into the Guideline of the Ministry of Justice

2) Other useful applications could be added in the future, for instance:

    a) Electronic delivery
    b) Electronic filing
    c) Case files – dossiers available to the professional public (lawyers for instance), on a fee basis
    d) Etc.

Conclusion

As stated at the beginning of this document, a lot of effort, knowledge and experience have been built into ACCMIS. Court employees have accepted it (with more or less enthusiasm), and are using it performing everyday activities. As the users become more familiarized with it, they require more functions, more user friendliness, simplification.

So, ACCMIS should be the only place where new functionalities are added. Any other approach, for instance development of additional software would certainly create:

1. User discomfort (jumping from one software to another)
2. Complicated maintenance (upgrade into one piece of software may require adaptation into the other piece of software)

A few words at the very end of this document:

1) The one week Assessment gave the initiation into the matter

2) A lot of thinking and analysis will be required, from the mutual team of ICT professionals and legal professionals, to create a suitable ACCMIS upgrade

3) Once this upgrade is used in practice, lessons are being learned, things changed in the future:

    a) Computer programs (relatively easy)
    b) Laws and Rules (not so easy)
    the final goal being:

        1. Higher quality
        2. Greater efficiency
        3. Reasonable usefulness to the public

Appendix D Full text of relevant provisions from LMCFC

Below an (unauthorized) translation of the full text of articles 10-15 of the *Law on the Management of the Case Flow in the Courts* is included.

Publishing of court decisions on the official web page of the court

Article 10

(1) The authorized court official in the time period of two days from the day of receiving the final court decision is obligated to publish the decision on the official web page of the court with the names and surnames of the parties, respectively the title of the legal entity, where the address of the residence respectively the dwelling or the headquarters of the parties, the unique identification number of the citizen or the unique identification number of register of the subject and the personal data of the witnesses in the procedure shall be concealed.

(2) The authorized court official in the time period of two days from the day of receiving the court decision which is not final is obligated to publish the decision on the official web page of the court with a full concealment of the personal data of the participants in the procedure, except the names and the surnames of the judges, the public prosecutors, the state attorneys and the legal representatives of the parties.

(3) In those cases where the public is excluded in accordance with the Constitution of the Republic of Macedonia, the law and the ratified international agreements, the court decisions are not published on the official web page of the court.

(4) The criminal court decisions which are published on the official web page of the court are deleted upon the expiry of the time period for deleting the verdict in accordance with the provisions of the Criminal Code, while the other court decisions are being deleted after the expiry of the time period of five years from the day they were published.

(5) The software program which is used for publishing the court decisions on the official web page of the court contains the option for printing the publish decisions without the possibility for altering, copying and editing the text of the published document.

(6) The manner of publishing and searching the court decisions on the official web page of the court is determined and regulated with an Act that is issued by the Minister of Justice.

Article 11

(1) The IT centre in the Supreme Court of the Republic of Macedonia maintains a database of final and non-final court decisions with integral/not edited texts without any concealment of the data of the parties and the other participants in the procedure.

(2) The judges, the public prosecutors, the Judicial Council of the Republic of Macedonia, the Council of Public Prosecutors of the Republic of Macedonia, as well as other state institutions, bodies and individuals which shall be able to prove and justify the legitimate goal to access the database of court decisions, by submitting a request to the president of the Supreme court of the Republic of Macedonia, shall have access to

the database of court decisions from paragraph (1) of this article which is maintained within the automated IT system for management of court cases with a specific password and a username.

(3) The president of the Supreme Court of the Republic of Macedonia is obligated to make a decision upon the request from paragraph (2) of this article in the time period of seven days from the day of receiving the request.

(4) The manner of determining the levels and the access to the court decisions from this article is regulated with an act which is issued by the president of the Supreme Court of the Republic of Macedonia.

(5) The subject from paragraph (2) of this article, to whom the request for access to the database of court decisions shall be granted, is obligated to act in accordance with the regulations for protection of personal data.

Article 12

Court decisions in the sense of articles 10 and 11 of this law are the court verdicts and the decisions with which a judgment was made for certain court case in accordance with the law.

Public relations office

Article 13

(1) The interested parties/individuals can submit a request for obtaining a copy of a court decision which was published on the official web page of the court, to the office for public relations.

(2) After the submitted request from paragraph (1) of this article, the public relations office in the time period of 24 hours from the moment the request was submitted by the interested party/individual shall provide a photocopy of the requested decision which was published on the official web page of court, upon receiving prove of previously paid court fees in accordance with the law on court fees.

(3) Upon a request from the interested party/individual the public relations office in the time period of 24 hours from the moment the request was submitted, shall provide the requested court decision which was published on the official webpage of the court in an electronic format to the email address which is listed in the request which was submitted by the interested party /individual without charging any fees or taxes.

Article 14

If the president of the court, respectively the judge is not acting in accordance with the deadlines which are determined with this law, the provisions from the law on courts which regulate the disciplinary liability and the unprofessional conduct and bad faith in the exercise of the judicial function, shall be applied accordingly.

Article 15

If the court officials are not acting in accordance with the deadlines which are determined with this law, the provisions from the law on court service which regulate the disciplinary liability shall be applied accordingly.

Appendix E References

Note: all URL's included below were accessed on 10 October 2011.

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