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A NEW CHAPTER IN ACCOUNTABILITY: TRANSPARENCY AND ANONYMISATION IN THE CROATIAN COURTS[***]

The ongoing digitalisation of judicial systems has intensified the debate over balancing the requirement of transparency and the right to privacy. In Croatia, recent legislative amendments mandate online publication of judgments, which marks a significant step toward ensuring transparency. However, this raises questions about reconciling public access to information with individual privacy protection. This article thus evaluates the implications of these changes, examining their compliance with privacy standards and their impact on judicial practices. It assesses whether current legal provisions adequately balance transparency and privacy, particularly by evaluating the existing anonymisation measures. By situating Croatia's reforms within a comparative legal context, the study also highlights the challenges and opportunities in implementing the obligation of online publication of judgments. The findings aim to assess whether the current solution represents a balanced approach to achieving transparency in the judiciary while safeguarding privacy rights, and offer recommendations for potential improvements.

Key words: *Anonymisation*. – *Croatia*. – *Online publication of judgments*. – *Right to privacy*. – *Transparency*.

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1. INTRODUCTION

In recent years, digital transformation of judicial systems has become a key focus of legal reforms across the globe, especially in the European Union (EU) (see, for example, European Commission 2020; European Commission 2023).[1] One of the most significant advancements in this area is the online publication of judicial decisions, which serves not only as a tool for promoting transparency but also as a catalyst for enhancing public trust in the judiciary. Croatia, as a Member State of the EU, has undertaken substantial steps to modernise its legal infrastructure, with online dissemination of court judgments emerging as an important component of this shift. Thus, the Croatian legal framework has been evolving to ensure that judgments are accessible to both the general public and legal professionals, as especially apparent in the recent amendments to the Croatian Courts Act.[2] This move towards transparency can help foster more informed citizens, streamline legal research, and ensure consistency and accountability within the judiciary.

However, the implementation of online publication of judgments also presents a variety of challenges, one of which is achieving the balance between the requirement of transparency and the right to privacy. These two important aims of the EU – also highlighted in other legal instruments and fundamental EU legal acts such as the Charter of Fundamental Rights of the EU and the European Convention on Human Rights[3] – may actually clash at times. In terms of the issue of publication of judicial decisions particularly, publishing all judgments online would certainly help achieve the abovementioned aims of the requirement of transparency. However, while the online publication of judgments is heralded for promoting transparency, it also brings forth significant concerns related to the right to privacy. The very nature of legal proceedings often involves sensitive personal information, ranging from details about individuals' general personal data to the data on their health, finances or private relationships. In Croatia,

[1] See also Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions '2030 Digital Compass: the European way for the Digital Decade', COM(2021) 118 final of March 9, 2021.

[2] Zakon o sudovima (Courts Act), *Official Gazette of the Republic of Croatia*, 28/2013, 33/2015, 82/2015, 82/2016, 67/2018, 126/2019, 130/2020, 21/2022, 60/2022, 16/2023, 155/2023, 36/2024 (Courts Act).

[3] Charter of Fundamental Rights of the European Union (CFREU), OJ C 202/389 of 7 June 2016, Arts. 7, 8, 42; European Convention on Human Rights (ECHR), as amended by Protocols Nos. 11, 14 and 15, ETS No. 005, 4 November 1950, Arts. 8, 40.

as in all jurisdictions, the tension between the public's right to know and the individual's right to privacy is a contentious issue that requires careful balancing.

This article thus explores the development, current state, and implications of the online publication of judgments in Croatia. By examining legal and technical aspects, it aims to provide a comprehensive overview of the benefits and challenges that come with making court decisions available on the Internet. This will be done through the analysis of the requirement of transparency and the right of privacy, with particular emphasis on their development in the EU. Additionally, this study will assess the impact of this practice on the Croatian judiciary, legal community and public at large, while offering recommendations for enhancing the effectiveness of the online publication system in the future.

The article is structured as follows. Following the introduction, Chapter 2 presents the Croatian legal framework regarding the online publication of judgments, including the steps that preceded the newest amendments to the Croatian Courts Act. Afterwards, Chapter 3 provides a detailed analysis of the requirement of transparency, and also discusses the effects that this produces in terms of the new Croatian system. Chapter 4 focuses on the right to privacy, with an emphasis on the assessment of different possibilities for anonymisation of judgments. Finally, Chapter 5, i.e. the Conclusion, summarises the findings of the analysis and provides suggestions for potential improvements of the Croatian system of online publication (and anonymisation) of judgments. It additionally raises a general question about how the issue of balancing transparency and the right to privacy could be addressed at the EU level in the future.

2 LEGISLATIVE FRAMEWORK IN CROATIA

The adoption of the new amendments to the Courts Act introduced an obligation in the Croatian legal system to publish all court decisions by which proceedings are concluded.[4] According to this Act, 'the public disclosure of court decisions is carried out to ensure the transparency of court operations, enable continuous access to information about court activities, and

[4] The relevant provisions of the Act on Amendments to the Courts Act, *Official Gazette of the Republic of Croatia*, 36/2024, which regulate the publication of court decisions, came into force on 1 January 2025.

strengthen public trust in the judiciary'.[5] The obligation to publish court judgments can also be derived from the European Convention on Human Rights, which in its Article 6(1) mandates public hearings and, specifically, the public pronouncement of judgments.[6] Additionally, the Constitution of the Republic of Croatia, in its Article 117, stipulates that court hearings are public and that judgments are pronounced publicly in the name of the Republic of Croatia.[7]

This amendment to the Courts Act introduces significant changes regarding the publication and anonymisation of court decisions. Previously, only select decisions were published, primarily through the Supreme Court's information system known as *SupraNova*. However, this database was limited in scope, and the anonymisation process was conducted manually by court staff, without automated tools. The new Article 6 of the Courts Act explicitly states that 'all court decisions concluding proceedings shall be publicly disclosed on a dedicated website, following prior anonymisation and compliance with data protection regulations'.[8] In other words, all court decisions must undergo anonymisation and be made publicly available online.[9]

The procedures for anonymising, publishing, and searching court decisions are detailed in the Ordinance on the Method of Anonymisation, Publication, and Searching of Anonymised Court Decisions (Ordinance on

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5 Courts Act, Art. 6(6), translated by author.

6 '[T]he press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.' ECHR, Art. 6(1).

7 'The public may be excluded from proceedings or part thereof for reasons necessary in a democratic society in the interest of morals, public order or national security, in particular if minors are tried, or in order to protect the private lives of the parties, or in marital disputes and proceedings connected with custody and adoption, or for the purpose of the protection of military, official or trade secrets and for the protection of the security and defence of the Republic of Croatia, but only to the extent which is, in the opinion of the court, absolutely necessary in the specific circumstances where publicity may harm the interests of justice.' Constitution of the Republic of Croatia, *Official Gazette of the Republic of Croatia*, 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14, Art. 117(2).

8 Courts Act, Art. 6(5), translated by author.

9 See Tražilica odluka sudova Republike Hrvatske (Search engine for decisions of the courts of the Republic of Croatia), *https://odluke.sudovi.hr/*, last visited March 5, 2025.

Anonymisation).[10] With the adoption of this Ordinance, the 2018 Decision of the Supreme Court on the Publication and Anonymisation of Court Decisions and the 2003 Guidelines of the Supreme Court on the Method of Anonymising Court Decisions, which previously governed this matter, are no longer in effect.[11] The new Ordinance on Anonymisation introduces updated rules on anonymisation methods for personal data, with a particularly notable change being the automation of anonymisation through the use of specialised software, which will be further discussed in Chapter 4.

3. THE REQUIREMENT OF TRANSPARENCY

When discussing possibilities of online publication of judgments, it is necessary to first analyse the goal behind it – which is primarily the achievement of transparency. This requirement of transparency holds significant importance in EU law. As such, the requirement is enshrined in the Treaties,[12] as well as in the Charter of Fundamental Rights of the EU.[13] It is also reflected in other EU instruments, e.g. the establishment of a European Ombudsman, which functions as an independent mechanism of public scrutiny (van Bijsterveld 2004, 4). Additionally, this requirement may also be derived from other EU principles, e.g. the principle of equal treatment or the principle of effective judicial protection, or relevant provisions of EU law (Buijze 2013, 3).

Although its roots may be found in the core EU instruments and legislative principles, the notion of transparency has started to become more prominent in recent years, as apparent from multiple EU instruments in different fields,[14] particularly in private law (see Mišćenić 2024, 81–118; Josipović

[10] Ordinance on the Manner of Anonymisation, Publication, and Search of Anonymised Judgements, *Official Gazette of the Republic of Croatia*, 134/2024.

[11] Supreme Court of the Republic of Croatia, Odluka o objavi i anonimizaciji sudskih odluka, Su-IV-140/2018–1, 12 March 2018; Supreme Court of the Republic of Croatia, Upute o načinu anonimizacije sudskih odluka, Su-748-IV/03–3, 31 December 2003.

[12] Treaty on the Functioning of the European Union, OJ C 202/47 of 7 June 2016, Art. 15; Treaty on the European Union, OJ C 202/13 of 7 June 2016, Art. 1.

[13] CFREU, Arts. 41, 42.

[14] See, e.g. Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), OJ L 265/1 of 12 October 2022; Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital

2020, 118–129). The relevant obligations that are prescribed based on the requirement of transparency may differ depending on the case in question, but generally relate to providing access to select documents and providing the public or the relevant shareholders with the necessary information and data (Buijze 2013, 3). In other words, all transparency obligations concern 'availability, accessibility, and comprehensibility of information' (Buijze 2013, 4). Understandably, the requirement of transparency in general thus aims to promote social engagement, secure proper handling in all areas and avoid any improper activities such as corruption.

Although the requirement of transparency is becoming more prevalent in various fields, it is necessary to focus specifically on the transparency of justice in order to come to the necessary findings on the topic of this paper. In that vein, two aspects of the transparency of justice may be differentiated – these include the transparency of judicial bodies and the transparency of the substantial functioning of the courts (Musa 2017, 5). While the former points to public availability of information about the work of these bodies, the latter deals with the matter relevant to the analysis in this paper – publication and availability of court decisions, including the openness of the decision-making process. It is thus visible that (online) publication of judgments represents an important facet of the transparency of justice itself. This also stems from the modern doctrine of civil procedure laws, which highlights the need for the publicity of judicial proceedings as an element of ensuring accountability and access to the elements of decision making of the judges (Uzelac 2021, 136).

In that sense, publication of judicial decisions allows for social control of the judiciary, with the subsequent aim of reversing the general trend of declining trust in the judiciary by the citizens, as well as ensuring the legitimacy of the judiciary itself. Moreover, transparency is meant to ensure and encourage excellence and independence of the judiciary, as well as reduce any corruption or potential abuses. Finally, publication of judicial decisions also enables the public to become familiar with the work of the courts and the correct application and development of the law itself, including the

Services and amending Directive 2000/31/EC (Digital Services Act), OJ L 277/1 of 27 October 2022; Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services, OJ L 186/57 of 11 July 2019; Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, OJ L 186/105 of 11 July 2019; Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376/36 of December 27, 2006.

potential prediction of litigation outcomes, which is particularly important for other legal practitioners and academics (Uzelac 2021, 136; Musa 2017; LoPucki 2009). This can subsequently improve the quality of judicial decisions and enhance legal certainty (Council of Europe 2023, 13–14). It thus comes as no surprise that, at the international and the EU level, judicial decisions of the relevant courts are easily available online. This includes the decisions of the European Court of Human Rights (ECtHR), whose rulings are available through the HUDOC database,[15] as well as the Court of Justice of the EU (CJEU), whose rulings are available both through CURIA[16] and the EUR-Lex websites.[17]

It is evident that transparency holds significant importance in the area of justice. However, it can be noted here that, although the notion of transparency is being increasingly heralded as a positive one, some negative connotations may also be found. To start with, the term 'transparency' may be viewed as a floating signifier, which signifies terms that may also apply to numerous other notions and are thus continuously subject to contestations over their true meaning (Sivajothy 2019, 58; Mehlman 1972, 23). In other words, 'transparency' as such does not hold much essential meaning in itself. Despite this, in the recent years it has certainly been one of the leitmotivs used in the legal sphere of the EU and its Member States to the point that it may be said that it became the new norm (Koivisto 2022, 3, 7). Some even refer to such practice as a 'transparency fetishism' (Pozen 2020, 328; Zalnieriute 2021). This led to the potential overuse of the term itself, given that some authors now criticise transparency, defining it as 'a term that is becoming increasingly warped to sustain exploitative power relations and ideologies – as it creates the illusion that something that is seen, can be trusted' (Sivajothy 2019, 58), as well as a 'palatable buzzword alluring us to believe that it tempers power' (Zalnieriute 2021, 153). Despite the fact that these negative connotations of transparency must definitely be taken into account, the current EU legal system focuses strongly on the positive elements of the notion and thus requires a certain amount of transparency in all legal areas to be present. Moreover, in the field of justice, it seems that the benefits of transparency outweigh the negative connotations mentioned above. In that vein, transparency in justice is not only a buzzword used in particular legal instruments, but instead, it actually allows the citizens to have the ability to be better acquainted with the functioning of the courts and the developments of the law itself.

15 HUDOC, *https://hudoc.echr.coe.int/*, last visited March 5, 2025.

16 CURIA, *https://curia.europa.eu/*, last visited March 5, 2025.

17 EUR-Lex, *https://eur-lex.europa.eu/homepage.html*, last visited March 5, 2025.

Based on all that was mentioned above, and given the evolvement of the requirement of transparency in view of the online publication of court decisions, which is visible at the international/EU level, the relevant amendments to the Croatian Courts Act seem like a natural progression of legal rules, which is especially necessary in this day and age. Looking at the abovementioned positive aspects of publishing judgments, some aspects stick out as particularly important in a country such as Croatia. In that vein, one of the major issues in Croatia is the lack of trust in the judiciary. This is particularly apparent from the EU Justice Scoreboard, which is published every year and consistently highlights Croatia as the Member State where the public perception of judicial independence is the lowest.[18] Such public opinion seems unsurprising given that in other international reports Croatia has also been ranked as having an inefficient legal framework for settling disputes (Schwab 2019, 175). Thus, ensuring the publication of judicial decisions online and providing access to all citizens can represent a small, but important step towards strengthening the trust of the Croatian citizens in the courts (see Mišćenić 2024a). Similarly, Croatian citizens also recognise the widespread problem of corruption (Budak, Škrinjarić 2024; Transparency International 2023). As mentioned above, transparency is often used as a means of deterring corruption, which makes it a perfect tool for minimising this issue in Croatia. Ultimately, the obligation to publish judicial decisions online will undoubtedly help strengthen legal certainty, which is why the new amendments to Croatian law should be primarily viewed in a positive light.

Despite such conclusion, some space for improvements still remains. On that note, it could be questioned whether all judicial decisions should be published, or whether it would be more beneficial to implement a process of selecting which decisions are published. If one were to opt for the former, this choice would benefit the goal of providing access to all court judgments, and enabling the correct and equitable application of law (van Opijnen 2016, 33). However, this aim (and its fulfilment) is mostly theoretical – with the number of decisions that are being issued by courts, it is practically impossible to substantially assess and analyse all of them in order to secure correct application of the law. While limited assessment can usually be performed by legal practitioners or academics, it is highly unlikely that an in-depth assessment will be conducted by laypersons.

[18] See every EU Justice Scoreboard from 2018 onwards, *https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en*, last visited March 5, 2025.

As highlighted by Opijnen, it 'is illusory to propound that the judiciary can be effectively monitored by just putting hundreds of thousands of anonymised, untagged and unstructured decisions online' (van Opijnen 2016, 38). Thus, the possibility of choosing the second option, i.e. establishing a process of selection, should be considered carefully. This option would be a better choice for achieving the aim of informing the public on the developments of law (van Opijnen 2016, 33), given that it would avoid surplus judgment, and instead focus on publishing only the most 'important' ones, i.e. the ones that are best suited for providing a clear illustration of how the law is ought to be applied in a certain area and are 'generally representative' of the development of law (Council of Europe 2023, 56).

This option was also highlighted in Council of Europe Recommendation No. R 95 (11) from 1995, where it was noted that 'selection should ensure, on the one hand, broad and comprehensive access to information on court decisions and, on the other hand, that the accumulation of useless information is avoided'.[19] Opting for selection also seems reasonable given the fact that Croatia is not a common law state; even in such states, not all judicial decisions amount to case law, in the sense that they establish new legal principles (Magrath 2015, 189). Additionally, for a country such as Croatia, opting for publishing only selected judgments could be beneficial, as it is a country with a very high number of judges, court proceedings, and, consequently, judicial decisions,[20] which makes it easy for one to 'become lost' in the abundance of (sometimes unnecessary) information if absolutely all judicial decisions are published.

The obstacle that would need to be overcome, if opting selecting the judgments for publication, is the existence or lack of specific rules for such selection. In order to decide on the right path for Croatia, solutions from other EU Member States may be taken into account. In that vein, the criteria-based selection for publication may be found in different Member States. While some states, such as Latvia and Lithuania, offer detailed criteria for negative selection, meaning all judgments are generally published unless any of the specified grounds applies, other Member States impose rules for positive selection, meaning judgments are generally not published unless they meet the selected criteria (van Opijnen *et al.* 2017, 11–12). In many

[19] Recommendation No. R. (95) 11 Concerning the selection, processing, presentation and archiving of court decisions in legal information retrieval systems of 11 September 1995 by the Committee of Ministers of the Council of Europe.

[20] See the Supreme Court of the Republic of Croatia, *Izvješća o stanju sudbene vlasti*, *https://www.vsrh.hr/izvjesca-o-stanju-sudbene-vlasti.aspx*, last visited March 5, 2025.

states, a hybrid of both positive and negative selection criteria is used, usually with the negative criteria being used for judgments of higher courts, and the positive criteria being used for judgments of lower courts (van Opijnen 2016, 33). One example of a detailed positive and negative selection criteria can be found in the Netherlands, which offers elaborate guidelines outlining which judgments are to be published (e.g. all judgments of the Supreme Court, judgments in which a preliminary ruling has been requested, judgments concerning selected criminal cases, etc.).[21] On the other hand, some states leave the decision on selection up to individual judges, offering only vague requirements for publication, such as the judgment having 'relevance' or being of 'academic interest' (van Opijnen 2016, 34).

Given that the lack of specific guidelines may result in a limited number of judgments being published, and given that judges in Croatia frequently face a surplus of unresolved cases and high workload in general, it may be advisable to avoid leaving the decision for selection to the judiciary – instead, the formulation of relevant guidelines seems more appropriate for Croatia, if the legislator opts for introducing the selection of published judgments. The Dutch guidelines may serve as a source of inspiration here, as they offer the most comprehensive and detailed approach.

4. THE RIGHT TO PRIVACY – ANONYMISATION OF COURT DECISIONS

As stipulated above, publication of court decisions ensures the transparency and accountability of the judicial system, thereby strengthening public trust in the courts. However, such publication of judgments may also come into conflict with the right to privacy, particularly when the content of such judgments discloses sensitive information about the parties involved in the dispute or other individuals associated with the proceedings (Council of Europe 2023, 9).

The right to privacy encompasses an individual's ability to conduct their personal, family, and home life independently and separately from others, free from unauthorised interference, while respecting the rights of others and adhering to legal restrictions (Toth 2023). This right is guaranteed under Article 8 of the European Convention of Human Rights, as well as by

[21] See Decision on the selection criteria for the case law database Rechtspraak.nl (Besluit selectiecriteria uitsprakendatabank Rechtspraak.nl), *https://www.rechtspraak.nl/Uitspraken/Paginas/Selectiecriteria.aspx*, last visited March 5, 2025.

the Constitution of the Republic of Croatia, which in its Article 35 guarantees every individual respect for and legal protection of 'their personal and family life'. When publishing court decisions, it is therefore essential to prioritise the protection of the privacy rights of the parties involved and any other individuals connected to the dispute. To balance the right to privacy with the need for transparency and openness of the judiciary, anonymisation is often employed as an effective measure. This practice ensures public access to court decisions while simultaneously protecting the identities and sensitive information of the individuals involved, thus harmonising these two important principles (Terzidou 2023).

With the enactment of the latest amendments to the Courts Act, anonymisation in Croatia has become mandatory for all publicly disclosed court decisions. The Ordinance on Anonymisation introduces significant reforms to the process of anonymising court decisions. Prior to its adoption, anonymisation was conducted in accordance with the abovementioned Decision of the Supreme Court on the Publication and Anonymisation of Court Decisions from 2018, which replaced the names and surnames of parties with initials. However, this practice did not achieve true anonymisation but rather implemented a form of pseudonymisation (Novak, Jurić 2023, 66). While anonymisation and pseudonymisation are frequently conflated, these concepts have distinct implications. Pseudonymisation does not provide complete anonymity of information, as it may still be possible – albeit with greater difficulty – to determine the identity of the individual to whom the data relates (Novak, Jurić 2023, 56).[22] In contrast, anonymisation refers to the process of fully de-identifying data, ensuring that the data can no longer be used to identify the individual (Novak, Jurić 2023, 56; Sciolla, Paseri 2023, 108–109).[23] To achieve a higher standard of anonymisation in published

[22] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119/1 of 4 May 2016 defines pseudonymisation in Article 4(5), as 'the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person'.

[23] According to the Ordinance on Anonymisation, Art. 2, anonymisation is defined as a process in which 'parts of the original text of a court decision are replaced or omitted to comply with rules on personal data protection' (translated by author). While anonymisation involves the complete de-identification of data, it is important

court decisions, the new Ordinance on Anonymisation prescribes the replacement of names, surnames, and nicknames with randomly assigned capital letters.[24]

The Ordinance on Anonymisation mandates the implementation of such anonymisation to ensure compliance with personal data protection rules. However, it is important to emphasise that the General Data Protection Regulation (GDPR)[25] does not impose a general obligation to anonymise court decisions, as it applies to judicial authorities, but with certain exceptions. As stated in the preamble to the GDPR, the Regulation applies, among other things, to 'the activities of courts and other judicial authorities'. Nonetheless, Member States are granted the discretion to establish their own procedures for processing personal data within the judiciary. Moreover, supervisory authorities lack jurisdiction over the courts when they act in their judicial capacity, a limitation derived from the principle of judicial independence (Gruodyte, Milčiuviene 2018, 61). Furthermore, every data processing activity (including publication) must have a lawful purpose and a relevant legal basis. Article 6(1)(e) of the GDPR stipulates that processing is lawful only if and to the extent that, it 'is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller'. The same applies to the processing of special categories of personal data, which may be processed 'whenever courts are acting in their judicial capacity', as specified in Article 9(2)(f) of the GDPR.

Since the GDPR does not explicitly mandate the anonymisation of court decisions, there are significant differences among the EU Member States regarding the anonymisation regimes. Croatia, under its new legal framework, along with countries such as Austria, France, Germany, Hungary, Lithuania,

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to note that truly irreversible anonymisation may be considered impossible, given the broad scope of personal data that can be used to identify an individual, on the one hand, and the capabilities of technology, on the other.

[24] When replacing names, surnames, and nicknames of individuals with randomly selected capital letters, the algorithm generates random initials and always assigns a new combination for each new person. See Ordinance on Anonymisation, Art. 4(1).

[25] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation – GDPR), OJ L 119/1 of 4 May 2016.

and Spain, is part of the group where anonymisation of court decisions is a standard practice that requires no separate initiatives or requests (van Opijnen *et al.* 2017).[26]

Conversely, in some Member States, anonymisation is an exception rather than the rule: it is carried out only upon request by an interested party, ex officio, or when specific regulations define which types of decisions and data should be anonymised (van Opijnen *et al.* 2017, 77).[27] This group of Member States includes Cyprus, Estonia, Ireland, Italy, and Malta. For instance, in Italy, anonymisation of court decisions can be approved at the request of an interested party, who does not necessarily need to be a party to the proceedings, provided the request is based on legitimate reasons. The practice of the Italian Constitutional Court reveals that 'legitimate reasons' encompass any situation where individual interests in confidentiality outweigh the public interest in publishing the decision in full (Tormen 2022).[28] Furthermore, even without a submitted request, Italian judges may decide to anonymise a decision ex officio to protect the rights or dignity of the interested parties. Finally, in specific cases, such as those involving minors, parties in family law or personal status proceedings, or victims of sexual violence, anonymisation is mandated by law (Tormen 2022).

Beyond national jurisdictions, the practices of the ECtHR and the CJEU concerning the anonymisation of decisions are especially noteworthy. According to its Rules of Court, the ECtHR publishes its decisions in a non-anonymised format; anonymisation is permitted only at the initiative of the Court's President or upon a substantiated and justified request by a party

[26] Anonymisation is also the standard practice, for example, in the Czech Republic, Latvia, and Slovenia, except for decisions of the Constitutional Court.

[27] It is interesting to note that in Estonia, the name of a convicted person must not be anonymised in relation to certain criminal offenses.

[28] For example, courts have considered 'the sensitivity of the subject matter of the proceedings' or 'the specific nature of the data contained in the decision (e.g. sensitive data)' as legitimate reasons. (See Sciolla, Paseri, p. 111.) Additionally, in 2021 the Court of Cassation clarified that there is no obligation to assess the legitimacy of a request for anonymisation unless such a request is substantiated. In other words, if someone requests anonymisation, they must provide justification as to why it is necessary. The Court explained that the legitimacy of an anonymisation request must be interpreted in accordance with fundamental legal principles. A balance must be struck between the individual interest in confidentiality (protection of personal privacy) and the public interest in access to court decisions (transparency of the judicial system), as the publication of the full content of judgments is essential for democracy and legal awareness. See: Cass. Civ., Sez. V, ordinanza del 10 agosto 2021, n. 22561. *https://www.gazzettanotarile.com/news-e-sentenze/corte-di-cassazione/cass-civ-sez-v-ordinanza-del-10-agosto-2021-n-22561/*, last visited March 5, 2025.

or any interested individual.[29] Similarly, the CJEU, according to its Rules of Procedure, respects the anonymity ensured by national courts in preliminary ruling proceedings and may also anonymise a decision upon a substantiated request by a party or on its own initiative.[30]

Regarding the types of personal data anonymised in court decisions, there are also differences among the EU Member States.[31] However, the general rule is that the principle of anonymisation applies only to natural persons and, exceptionally, to legal entities and public authorities. Furthermore, in most countries, the names of professionals involved in the proceedings (e.g. judges, lawyers) are not anonymised (Sciolla, Paseri 2023, 114). Although the GDPR provides no specific guidelines on the anonymisation of court decisions, it establishes a uniform definition of personal data applicable across the EU. According to Article 4(1), 'personal data' refers to 'any information relating to an identified or identifiable natural person ("data subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person'. This definition does not provide an exhaustive or definitive list of all potential personal data but instead offers a framework and examples to clarify what qualifies as personal data.

Gruodyte and Milčiuviene analysed this definition and divided it into three components: a general rule and two categories of data considered personal under the definition. The GDPR's general rule states that personal data encompasses any information that enables the identification of an individual, either directly or indirectly. The second component identifies common types of personal data, including names, identification numbers, location data, and online identifiers. The third component highlights that personal data also includes any specific factor or combination of factors

[29] See Rules of Court, March 28, 2024, Registry of Court, Strasbourg, Arts. 33 and 47. *https://www.echr.coe.int/documents/d/echr/rules_court_eng*, last visited March 5, 2025.

[30] Rules of procedure of the General Court, OJ L 105/1 of 23 April 2015, Art. 66; Amendments to the Rules of Procedure of the General Court, OJ L 2024/2095 of August 12, 2024.

[31] Due to the limited scope of this paper, differences among Member States in the types of personal data anonymised will not be considered.

related to an individual's physical, physiological, genetic, mental, economic, cultural, or social identity that facilitates their identification (Gruodyte, Milčiuviene 2018, 64–65).

Unlike the definition of personal data under the GDPR, the Croatian Ordinance on Anonymisation provides an exhaustive list of personal data that must be anonymised.[32] Additionally, the Ordinance specifies exceptions to anonymisation, such as the names and surnames of judges, presiding judges, members of judicial panels, and court clerks.[33] Beyond the explicitly listed personal data subject to anonymisation, the Ordinance on Anonymisation grants judges the authority to determine whether specific parts of the text in a court decision require additional anonymisation. This

[32] According to the Ordinance on Anonymisation, Art. 3(1), the following personal data must be anonymised in court decisions: names, surnames, and nicknames of natural persons; names of sole proprietorships; addresses of natural persons (street name, house number, postal code, floor number, building number, apartment number, city, municipality, settlement, county, region, state, post office box number, and other data identifying a physical address); email addresses of natural persons; personal identification numbers, registration numbers, unique identification numbers of entities, tax identification numbers, registry numbers, numbers of personal documents and permits, bank account numbers, insurance policy numbers, securities numbers, cadastral parcel numbers, land registry entry numbers, sub-entry numbers in deposit contract books, communication numbers (telephone, mobile phone, IP addresses, IMEI numbers, SIM card numbers), chassis and engine numbers, serial and factory numbers of weapons, meter numbers, and subscription numbers; names of cadastral municipalities; letters and numbers in license plates; as well as days and months in dates of birth and death.

[33] Exceptions to anonymisation also include the names, surnames, and addresses of participants in court proceedings acting in an official capacity (e.g. public prosecutors, deputy prosecutors, attorneys, notaries, bankruptcy trustees, consumer bankruptcy commissioners, permanent court experts, permanent court interpreters, ad hoc appointed experts and interpreters, etc.); names and surnames of individuals mentioned in the title or text of court cases published in a non-anonymised format; names and surnames of individuals in the names of public authorities and legal entities; names and surnames of authors of literature cited in the decision; and historical figures, fictional, mythological, or religious characters (Ordinance on Anonymisation, Art. 3(2)). The list of specific data subject to anonymisation, as well as the exceptions to anonymisation, applies to all types of proceedings (civil, commercial, administrative, criminal, and misdemeanour). Prior to the Ordinance on Anonymisation came into force, according to the 2023 Instruction of the President of the Supreme Court, the decisions of commercial courts were exempt from the anonymisation process, except in cases where the public was excluded from the proceedings (such as when required by interests of morality, public order, or state security, for the preservation of military, official, or trade secrets, or for the protection of a party's private life or public health). Novak and Jurić expressed their disagreement with this Instruction, asserting that a natural person acting as a trader should, in principle, be entitled to the right to personal data protection (Novak, Jurić 2023, 49–50).

is applicable if, without such measures, individuals whose identities are protected by anonymisation could still be identified, or if it is necessary to prevent the disclosure of confidential information.[34] Therefore, it is the judge's responsibility to assess whether the decision contains specific information that could enable the identification of a person, in line with the GDPR definition, and to issue an order for its anonymisation.

Furthermore, it is important to highlight that anonymisation can sometimes affect the clarity of court decisions, potentially diminishing transparency. While a Croatian judge may choose to further anonymise certain parts of a court decision, they do not have the authority to independently determine the level of anonymisation, as the Ordinance on Anonymisation explicitly prescribes which data must be anonymised. Nevertheless, ensuring the clarity of court decisions is crucial, as it is a prerequisite for judicial transparency. This approach is also noted in other countries where anonymisation is the general rule. For instance, in Germany, if a text cannot be fully understood without certain names, a lower level of anonymisation is applied (e.g. place names may be written out). Similarly, the Austrian Supreme Court Act prescribes that personal data has to be anonymised in such a way that the transparency of the decisions is not lost (van Opijnen *et al.* 2017, 73, 119).[35]

Additionally, the general obligation to anonymise all court decisions in Croatia raises the question of whether an optimal balance between privacy protection and transparency has been achieved. Bobek, for example, holds the view that judicial openness and transparency should remain fundamental principles, with exceptions permitted only in special, clearly defined cases. When specific interests so require, the anonymity of private parties can and should be granted. However, except in situations where judicial openness entails something substantially different, there cannot be a general right to conduct court proceedings anonymously. By filing a lawsuit, the plaintiff enters the public sphere, effectively seeking the administration of justice in a manner that must not be concealed from public scrutiny and oversight (Bobek 2019, 187). Pađen expresses a similar viewpoint, stating that a party seeking the protection of their rights before a court can hardly claim an absolute right to anonymity, except in specific situations (e.g. family disputes, proceedings involving children) (Pađen 2022). Although this view is not common in countries where anonymisation is the general rule, some countries, such as Germany and Hungary, do allow exceptions when it comes to public figures and information of public interest (see van

[34] Ordinance on Anonymisation, Art. 3(3).

[35] See also Art. 15(4) Bundesgesetz vom 19. Juni 1968 über den Obersten Gerichtshof (OGHG), BGBl. Nr. 328/1968 idF BGBl. I Nr. 112/2007.

Opijnen *et al.* 2017, 73, 110). It would be beneficial if the Croatian Ordinance on Anonymisation stipulated that court decisions involving individuals of public interest be published with fewer anonymised details, provided that this serves the public interest and enhances judicial transparency. We can agree that in cases of significant public interest (e.g. corruption, abuse of power), the legitimate public interest in transparency outweighs the involved parties' right to anonymity.

Since there is no universal approach to the anonymisation of court decisions, balancing privacy and personal data protection with the need for transparency and public access to court decisions remains a crucial topic of theoretical discussion. To achieve consistency in anonymisation approaches among EU Member States, some authors advocate for the development of a common framework which would harmonise the diverse national practices. For instance, Sciolla and Paseri highlight that traditionally, matters related to the operation of courts in their judicial function (e.g. trials and decision-making) fall under the sovereignty of the Member States, limiting the EU's authority in this area. However, the publication and accessibility of court decisions for legal information purposes do not strictly pertain to the 'judicial function', thereby allowing the EU to take action in this domain (Sciolla, Paseri 2023, 114). Thus, the drafting of common EU rules on anonymisation and publication of court decisions can be expected in the future.

Finally, court decision anonymisation models vary widely, ranging from fully automated systems, which rely on predefined textual templates, to semi-automated models, which use text recognition technologies and flag data for review for final decision by a human, and systems where anonymisation is carried out entirely manually by court staff. However, it can be observed that an increasing number of countries are adopting automated anonymisation tools for court decisions.

Croatia started using the ANON software in early 2025, aligning the country with countries like Austria, Finland and Luxembourg, where anonymisation is already an automated process (see Terzidou 2023).[36] The

[36] Since artificial intelligence systems designed for the anonymisation of court decisions do not impact legal analysis, interpretation of the law or decision making, but are limited to the technical management of data, they are not classified as high-risk under the European Artificial Intelligence Act. See Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), OJ L 2024/1689 of 12 July 2024, Preamble 61.

anonymisation systems operate by identifying entities, such as parties to the proceedings and their personal data throughout the text of a court decision, to replace them with generic, non-identifiable terms (Terzidou 2023). Prior to the adoption of the new Ordinance on Anonymisation, the anonymisation of court decisions in Croatia was conducted exclusively manually by court staff. This process often took several months or even years, delaying the publication of court decisions (Uzelac 2021, 141).

With the introduction of the ANON system, the availability of court decisions to the public is to be expected significantly faster. According to the new rules, an anonymised court decision must be published within 15 days, and no later than 60 days, from the dispatch of the court decision. The ANON system is integrated with the eSpis information system, which provides it with the metadata about court cases and decisions, as well as documents containing court rulings.[37] This integration enhances system acceptance among court staff and ensures its consistent application in daily operations.

Although the digitalisation of court decision anonymisation is a necessary step towards improving public access to case law while respecting the right to anonymity, it is important to highlight potential risks. For example, the system may recognise the same individual as multiple different entities due to variations in how their name appears in the document. Another issue may arise if the system incorrectly identifies the role of an entity in the court proceedings, leading to, for example, the anonymisation of a judge's name, which, according to applicable rules, should not be anonymised (see Terzidou 2023). To avoid such errors, particularly in the initial stages of implementing anonymisation software when it is still evolving and learning, human oversight is crucial. The Ordinance on Anonymisation defines different anonymisation methods for first-instance court decisions compared to those used for higher courts and the Supreme Court. For first-instance court decisions, automated anonymisation is applied with manual supervision and corrections. In contrast, decisions of higher courts and the

[37] Ordinance on Anonymisation, Art. 5. 'The *eSpis* system is a unified information system for managing and working on court cases. It consists of a standard application, computer and telecommunication equipment and infrastructure, system software and tools, as well as all the data entered, stored, and transmitted through this system from all types of registries at municipal, county, and commercial courts, the High Commercial Court of the Republic of Croatia, the High Misdemeanour Court of the Republic of Croatia, the High Criminal Court of the Republic of Croatia, and the Supreme Court of the Republic of Croatia'. Pravilnik o radu u sustavu eSpis [Ordinance on Working within the eSpis System], *Official Gazette of the Republic of Croatia*, 35/2015, 123/2015, 45/2016, 29/2017, 112/2017, 119/2018, 39/2020, 138/2020, 147/2020, 70/2021, 99/2021, 145/2021, 23/2022, 12/2023, 9/2024, 136/2024, Art. 2(1), translated by author.

Supreme Court are anonymised manually with software support, i.e. based on automated anonymisation suggestions.[38] This distinction in the approach to anonymisation serves as a mechanism for quality control and oversight, to ensure that anonymisation remains effective and legally compliant, balancing the efficiency of processing a large volume of decisions with the precision of privacy protection, particularly in more complex cases handled by higher courts.

5. CONCLUSION

The recent amendments to the Croatian Courts Act have substantially enhanced judicial transparency, a principle that is of significant importance within the EU law. The mandatory online publication of all court decisions that conclude proceedings represents a progressive step towards fostering more informed citizens, streamlining legal research, and ensuring consistency and accountability within the judiciary. By formalising this obligation through legislation, Croatia is making meaningful progress in addressing the persistent challenge of restoring public trust in its judicial institutions.

However, publishing all judicial decisions risks overwhelming users with excessive and often irrelevant information, undermining the practicality of fostering public understanding of legal developments. Implementing a selective publication strategy could provide a more effective approach by enhancing clarity, prioritising judgments that exemplify key legal principles, and aligning with the Council of Europe's recommendations for broad yet manageable access to judicial information. In the Croatian context, where the volume of judicial decisions is notably high and the legal system follows the civil law tradition, such an approach could significantly reduce information overload and better serve both legal professionals and the general public. Thus, the authors suggest that criteria-based selection for publication be considered for a next step, followed by the development of clear guidelines for selecting judgments for publication.

Furthermore, to balance the right to privacy with the need for transparency, Croatia has adopted anonymisation as a standard practice for court decisions. However, the authors argue that anonymisation must not compromise the clarity of decisions and they emphasise the need for greater attention to this issue when publishing court decisions in Croatia, in order

[38] Ordinance on Anonymisation, Art. 7(1) and (2).

to ensure true transparency. Additionally, the authors are of the opinion that exceptions to anonymisation should be made in cases of significant public interest. Issues such as corruption, which remains a serious concern among Croatian citizens, and other matters with profound societal implications require full transparency. In these scenarios, the public's right to be informed about judicial proceedings and outcomes takes precedence over individual privacy concerns. Therefore, ensuring full transparency in such cases is essential for building trust in the judiciary and promoting accountability. Finally, the authors agree that the introduction of automated anonymisation in Croatia represents a significant step forward, facilitating timely public access to judicial information while protecting personal privacy. However, it also introduces the risk of potential errors, underscoring the need for rigorous quality control and oversight of the automatic anonymisation process, particularly during the initial stages of implementing the ANON system.

To conclude, Croatia's new legal framework for online publication of judicial decisions represents a significant step towards the digital transformation of its judicial system. However, critical questions remain about how best to balance transparency and privacy in the context of online judicial publications. These challenges extend beyond Croatia and resonate across the EU, underscoring the need for a unified framework to ensure transparency and effective anonymisation of judicial decisions. This raises an important question: could the development of a coordinated European approach deliver the much-needed clarity, consistency, and guidance to reconcile these competing priorities and promote more uniform and effective practices across Member States? A definitive answer to this question cannot be given at this point; thus, it remains to be the aim for future research.

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