





# Background

Art. 127 of Romanian Constitution – general rule - court hearings are public

Art. 12 (2) of Law no. 304/2004 – general rule- the decisions are pronounced in an open session

# Digitalisation of Justice in Romania

PHARE 97 - development of ECRIS (electronic case-tracking and management system) covering from 2010 all the judicial system

August, 15, 2005 – a website for all the courts which gathers also information regarding the relevant jurisprudence, the schedule of the panels, the stage of solving the case, as well as statistical data and general information about each court (<http://portal.just.ro/>)

Development of a website for judges where they can access important information about cases from other courts (EMAP)

Electronic FILE - a tool for parties to access documents from their judicial file



# + • The access to national jurisprudence ○

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The annual Journal of the Jurisprudence of the Supreme Court

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Cassation Journal, official journal of the Supreme Court, including jurisprudence, doctrine

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Publishing on the website of the Supreme Court the relevant, selected court decisions (<https://www.scj.ro>) – 167. 851 – anonymised (open access)

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Elaboration at the level of each Court of Appeal of a jurisprudence journal

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Courts of Appeal create periodically a leaflet with their relevant decisions which is disseminated electronically (by e-mail) to all the other courts

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The website ([just.ro](http://just.ro)) on which courts publish information of public interest, including relevant case law of courts of appeal and tribunals (open access)

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Private publishing houses which offer a wide range of judicial decisions throughout their electronic data bases (subscription needed)



# Anonymisation. Legal framework

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## Law 554/2001 on open access to public information

- **Rule:** open access to public information shall be denied for personal data - Article 12 (1) d
  - Balance between the right of open access to public information vs. right to the protection of personal data and privacy
- **Exception:** Personal information about citizen may become public information as long as it refers to exercising a public position

# Anonymisation. The interpretation of the legal provisions

Decision 37/7.12.2015 of the Supreme Court regarding a preliminary ruling (*erga omnes* effect)

- 46. [...] the law does not expressly regulate the situation when information of public interest and personal data are present in the same document, regardless of the manner of expression of information [...].
- 47. Given that the aforementioned legal text establishes an exception and given that the exceptions must be strictly interpreted, it follows that, [...] the law must be interpreted as meaning that each type of information has its legal regime which cannot be extended to the other type, which means that when the information is contained in the same document, **it will be made accessible in a censored form, by removing all information about an identified or identifiable person.**

# Anonymisation. The interpretation of the legal provisions

48. The way in which information is protected is given by anonymisation techniques, a word which does not appear in DEX (Romanian Official Dictionary), representing a loan translation after the English word "anonymisation", its meaning being accepted by lawyers and used in official documents.

49. The national legislation does not regulate these techniques, which means that the operator, [...] or the court, [...] has the possibility to choose between the possible variants, the only condition being the achievement of the objective: **the effective anonymization**. The variant of the abbreviation in the form of the acronym does not fulfil this objective because the acronym may lead [...] to identification of the concerned person, which represents personal data.

50. Thus, in the case of the requests for free access to information of public interest, when the information of public interest and the information regarding the personal data are present in the same document, [...] the access to the information of public interest is realized by anonymizing of the personal data; the refusal of access to information of public interest, given that the personal data is anonymized, is unjustified.



# Anonymisation. The application of the legal provisions

- **Guide on the relationship between the Romanian judicial system and the media of the Superior Council of Magistracy (482/June 1, 2012)**
- Art. 40 - Upon request, copies of the file documents or of the decisions pronounced or extracted from them may be transmitted to the media representatives, under the condition of the protection of the personal data and the elimination of paragraphs related to the content of some evidence whose disclosure violates the right to privacy or is endangers the outcome of the judicial investigation. The request shall be approved by the spokesperson of the court, in consultation with the president of the panel or, in his absence, the president of the court.

# Anonymisation. The application of the legal provisions

- **Guide on the relationship between the Romanian judicial system and the media of the Superior Council of Magistracy (482/June 1, 2012)**
- Art. 42 - similar provisions for custodial sentences
- Art. 45 - In civil proceedings, since the dispute concerns only the relations between the parties, the public nature of the information resulting from the judicial activity is less pronounced and as thus the interest of the public is lower. Therefore, the right to respect for private and family life may cause significant limitations on the access of media representatives to this information.  
[....] The request shall be approved by the spokesperson of the court, in consultation with the president of the panel or, in his absence, the president of the court.

# Overall perspective

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protection of personal data in court decisions published on the internet or transmitted by other means to public - the operators and the courts take into consideration GDPR, ECHR



pseudo-anonymisation NOT acceptable



greater concern protecting personal data in civil decisions



preliminary ruling requests based on article 267 TFEU must respect Article 95 of the Rules of Procedure of the Court of Justice



Manual process (search and replace) – clerks





• THANK YOU!

