



*Directorate-General for Library,
Research and Documentation*

RESEARCH NOTE

Anonymity of the parties on the publication of court decisions

[...]

Subject: [...] [A]nonymity of the parties on the publication of court decisions

[...]

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[...]

SUMMARY

1. The purpose of the present study is to examine the rules applicable to the anonymisation of court decisions in the national law of the Member States of the European Union. [...]
2. Although the practice of anonymising court decisions on publication is adopted to some extent in all Member States, the scope of that anonymisation can vary greatly from one legal order to another.
3. Below, we will examine (I.) the extent of the anonymisation of court decisions on publication in the Member States, then (II.) what form that anonymisation takes, and (III.) the anonymisation rules applicable to the online publication of requests for a preliminary ruling. The scope of this study is limited to the decisions adopted by the higher courts of the Member States. [...]

I. THE EXTENT OF THE ANONYMISATION OF COURT DECISIONS ON PUBLICATION

4. While in a significant number of national legal systems, the anonymisation of court decisions on publication is the rule (A.), in some others, it is the exception (B.). In a third group of national laws, the situation is more nuanced, with anonymisation being a principle which is applicable only to certain courts or in certain circumstances (C.).

A. ANONYMISATION AS A RULE

5. In one group of legal systems, court decisions are, as a rule, anonymised on publication, regardless of the type of court in question. That is the case in the **German, Austrian, Bulgarian, Finnish, Greek, Hungarian, Luxembourg, Netherlands, Portuguese, Slovak and Swedish** legal orders.
6. It should be made clear, however, that in most of those national laws, that principle of anonymisation is limited. Indeed, anonymisation often applies only to natural persons and, therefore, not to legal persons (**Bulgarian, Greek,¹ Luxembourg,² Netherlands,³ Slovak and Swedish law**) or to public bodies (**Austrian, Finnish, Hungarian and Portuguese⁴ law**). Moreover, the anonymisation of certain data cannot affect the proper understanding of the decision concerned (**German, Austrian, Hungarian, Netherlands and Slovak law**). In some instances, the obligation of anonymisation is less strict in so far as it concerns certain specific types of decision, such as decisions in the field of trademark law (**German and Portuguese law**) or competition law (**German law**). It is possible, furthermore, for anonymisation to be excluded when the decisions concerned are published in the *Official Journal* (**Portuguese law**).

B. ANONYMISATION AS THE EXCEPTION

7. In a second group of legal systems, as a general rule, court decisions are not anonymised on publication. In those legal systems, the exceptional circumstances in which court decisions are anonymised may arise either in cases specifically

¹ Nevertheless, under Greek law, unlike the websites of the supreme courts, the legal press responsible for the dissemination of case-law obscures, in practice, certain details relating to legal persons.

² Under Luxembourg law, the exclusion of legal persons from the scope of anonymisation appears to apply only to banks.

³ Under Netherlands law, the practice of anonymising legal persons is adopted in certain fields, in particular, the field of tax law.

⁴ However, that is not the case as regards decisions of the Portuguese Supreme Administrative Court.

provided for by law, or where the court is recognised as having discretion in that regard.

8. That is the case in the **Cypriot, Irish, Italian, Maltese and United Kingdom** legal orders.
9. That general rule whereby court decisions are not anonymised on publication is, however, subject to qualifications. Thus, in certain cases, anonymisation remains the applicable principle where decisions are adopted following proceedings *in camera* (**Cypriot and Irish law**), and contain data which enables the identification of minors (**Italian, Maltese and United Kingdom law**), victims of certain types of crime, in particular sexual offences (**Irish, Italian, Maltese and United Kingdom law**), or asylum seekers (**United Kingdom law**). Anonymisation may, where appropriate, also apply to decisions relating to family law (**Cypriot and Italian law**) or, more generally, to decisions containing sensitive data (**Irish and Italian law**).
10. It should also be noted that, in the **Cypriot, Irish, Maltese and United Kingdom** legal orders, the court has a very broad discretion as to whether or not to anonymise a decision on publication.

C. ANONYMISATION AS A PRINCIPLE APPLICABLE ONLY TO
CERTAIN COURTS OR IN CERTAIN SPECIFIC CASES

11. In a third group of legal systems, the answer to the question of whether court decisions are to be anonymised is more nuanced, in the sense that the principle of anonymisation exists, but is applicable only before certain courts, in relation to particular matters or depending on the form of publication.
12. That group comprises, first of all, the **Belgian, Croatian, Spanish, French, Latvian, Lithuanian, Polish, Romanian, Slovenian and Czech** legal orders, in which the principle of anonymisation of court decisions applies only to certain

types of courts. In some cases, the scope of that principle is quite broad, since it covers all supreme courts other than the constitutional court (**Croatian, Spanish, French, Latvian,** ⁵ **Lithuanian, Polish, Romanian, Slovenian and Czech law**). In other cases, it is more restricted and covers only the Cour de cassation (Court of Cassation) and, exclusively as regards the law on foreign nationals, the Conseil d'État (Council of State) (**Belgian law**).

13. Where the principle of anonymisation is applicable, its application appears to be limited in the same way as it is in the legal orders included in the first group. The limitations to which it is subject relate principally to the exclusion of legal persons (**Belgian, Spanish, Latvian, Lithuanian** ⁶ **and Czech law**) or public authorities (**Romanian and Czech law**), to the comprehensibility of the decision (**Latvian, Slovenian and Czech law**) or to the exclusion of decisions in particular fields, such as trade-mark law (**Slovenian law**).
14. As regards courts before which the general rule is that court decisions are not anonymised, that rule is again subject to qualifications. Those qualifications may relate either to the need to ensure the protection of minors or victims of certain types of crime or offences (see, in particular, **Spanish law**), or to the possibility of anonymising decisions on request (**Belgian, Spanish and Czech law**), or to the specific nature of certain constitutional actions (**Croatian, French,** ⁷ **Polish** ⁸ **and Slovenian** ⁹ **law**).
15. The third group also comprises legal systems in which the principle of

⁵ In Latvian law, in so far as, in proceedings *in camera*, only the introduction and operative part of decisions are published, anonymisation applies only to those parts of the decision.

⁶ In Lithuanian law, company names may, nonetheless, be anonymised where they constitute a secret protected by law.

⁷ Under French law, the names of natural persons who are parties to proceedings on a priority question of constitutionality ('PQC') are anonymised.

⁸ Under Polish law, anonymisation applies only to decisions on the admissibility of constitutional complaints.

⁹ Under Slovenian law, anonymisation is guaranteed, in particular, in disputes concerning the examination of constitutional complaints where it is provided that the case is to be heard *in camera*.

anonymisation of court decisions applies only in certain specific cases.

16. That situation arises, first, in the **Danish and Estonian** legal orders, where that principle ordinarily applies only in the field of criminal law. However, in **Estonian law**, that principle does not cover data relating to persons accused of a crime, unless minors are involved. Moreover, in those two legal orders, there are different anonymisation options in the fields of civil law and administrative law.
17. That situation also arises, secondly, in the **French** legal system, where the principle of anonymisation applies only to the electronic publication of court decisions. However, it applies only to natural persons and not to legal persons. Although a principle of freedom of publication applies to hard-copy decisions, the Cour de cassation (Court of Cassation) nevertheless adopts a relatively systematic practice which tends towards anonymisation.

II. FORMS OF ANONYMISATION

18. Where anonymisation is applicable, almost all national laws provide that, as a general rule, the names of the parties and, usually, the names of other natural persons mentioned in the decision, are to be replaced with their initials (**German, Austrian, Belgian,¹⁰ Bulgarian, Cypriot, Croatian, Spanish,¹¹ Greek,¹² Hungarian, Irish, Italian, Lithuanian, Polish, Slovak, Swedish and Czech law**), or with fictitious initials (**Croatian, Danish, Estonian, Finnish, French, Italian, Latvian, Maltese, Portuguese, Romanian and Slovenian law**) or a fictitious first name (**Spanish law¹³**). Where appropriate, neutral terms such as ‘applicant’ are used (**German, Austrian, Hungarian, Netherlands and Slovenian law**).

¹⁰ In Belgium, that practice is adopted by the Constitutional Court and the Court of Cassation.

¹¹ This is the practice of the Spanish Constitutional Court.

¹² In Greek law, such a practice is not systematic.

¹³ That practice is adopted by courts other than the Spanish Constitutional Court.

19. In certain legal orders, the names of minors are replaced with a pseudonym (**Czech law**) or with an initial followed by the word ‘Child’ (**United Kingdom law**). Moreover, the names of asylum seekers are, sometimes, replaced with their initials followed by an indication of their country of origin (**United Kingdom and Slovenian law**).
20. Furthermore, in a significant number of national laws, the scope of anonymisation goes beyond the names of the parties and, where appropriate, the names of other natural persons, and extends to a range of other data enabling a person to be identified, such as addresses or dates (**German, Austrian, Belgian,¹⁴ Bulgarian, Croatian, Danish, Spanish, Estonian, French, Greek, Hungarian, Italian, Latvian, Lithuanian, Luxembourg, Netherlands, Polish, Portuguese, Romanian, Slovak, Slovenian, Swedish and Czech law**). In some instances, it also extends to the parties’ representatives and to witnesses (**German and Croatian law**), or only to the latter (**Spanish, French, Greek, Luxembourg and Slovenian law**).
21. It should be noted, nonetheless, that in almost all legal systems, as a rule, where anonymisation is provided for, it does not apply to the original version of the decision notified to the parties. Only some legal orders (**Belgian, Italian and United Kingdom law**) derogate from that principle in some instances.

III. ANONYMISATION RULES APPLICABLE TO THE ONLINE PUBLICATION OF REQUESTS FOR A PRELIMINARY RULING¹⁵

22. The practice of anonymisation described above is reflected in the rules applicable

¹⁴ In Belgian law, that form of anonymisation is used only when necessary.

¹⁵ [...] It has not been possible to confirm the data relating to Luxembourg and Malta presented in this third section.

to requests for a preliminary ruling upon their publication. The anonymisation rules in Member States in which requests for a preliminary ruling are published online (A.) and in those in which such publication is restricted or excluded (B.) are outlined below.

A. ANONYMISATION RULES IN MEMBER STATES IN WHICH REQUESTS FOR A PRELIMINARY RULING ARE PUBLISHED ONLINE

23. In the vast majority of the national legal systems studied (21), requests for a preliminary ruling made by supreme courts are published online (**German, Austrian, Belgian, Bulgarian, Cypriot, Croatian, Danish, Spanish, Estonian, Finnish, French, Greek, Italian, Lithuanian, Luxembourg, Netherlands, Polish,** ¹⁶ **United Kingdom, Slovenian, Swedish and Czech law**).
24. However, in some instances, online publication has certain specific characteristics or is subject to certain restrictions. Accordingly, in the **United Kingdom**, only judgments containing a request for a preliminary ruling are published, and not orders. Conversely, in **Estonia**, all orders containing requests for a preliminary ruling are published, on account of their importance and by way of derogation from the principle of non-publication of procedural orders. It should also be noted that in **Czech** law, although publication is at the discretion of the court, it is the general rule as far as the Supreme Administrative Court is concerned. Lastly, in **Swedish** law, only the questions referred for a preliminary ruling, sometimes preceded by a summary, are published by the supreme courts.
25. It appears that, in those 21 legal systems, the general rules governing the anonymisation of court decisions on publication are applicable to requests for a preliminary ruling. Accordingly, in nine Member States, the principle of anonymisation applies, as a rule, to all published requests for a preliminary ruling, regardless of the supreme court which made the reference (**Germany, Austria,**

¹⁶ In principle, as regards requests for a preliminary ruling made by the Supreme Court.

Bulgaria, Finland, Greece, Luxembourg, Netherlands, Poland and Sweden). In the remaining 12 Member States, published requests for a preliminary ruling are not systematically anonymised, either because the practice of anonymisation is adopted only by certain supreme courts other than the constitutional court (**Belgium,**¹⁷ **Croatia, Spain, France,**¹⁸ **Lithuania, Slovenia**¹⁹ **and Czech Republic**) or only in certain fields (**Denmark and Estonia**), or because it is, in principle, excluded (**Cyprus, Italy and the United Kingdom**). However, in those three Member States, guarantees are provided to ensure, in exceptional circumstances, the anonymity of certain persons, in particular in cases concerning the status of a person or involving minors, with that anonymity being granted either at the sole discretion of the court (**Cyprus**) or being based both on the discretion of the court and on protective legislation (**Italy and the United Kingdom**).²⁰

B. ANONYMISATION RULES IN MEMBER STATES IN WHICH THE ONLINE PUBLICATION OF REQUESTS FOR A PRELIMINARY RULING IS RESTRICTED OR EXCLUDED

26. In certain legal systems (seven in total), the online publication of requests for a preliminary ruling is restricted or excluded. Accordingly, such publication is completely excluded in five Member States (**Hungary, Ireland, Malta, Portugal**²¹ **and Romania**), and appears to be very uncommon in the two

¹⁷ Under Belgian law, the systematic exclusion of anonymisation also concerns decisions given by the Conseil d'État (Council of State), except decisions under the law on foreign nationals.

¹⁸ Under French law, anonymisation of the names of natural persons who are parties to proceedings on a priority question of constitutionality ('PQC') is, however, guaranteed.

¹⁹ Under Slovenian law, however, anonymisation is guaranteed, in particular, for decisions given in disputes concerning the examination of constitutional complaints where it is provided that the case is to be heard *in camera*.

²⁰ In the United Kingdom, that specific legislation providing for anonymisation in exceptional circumstances concerns not only minors, but also, and in particular, persons of unsound mind and asylum seekers.

²¹ In Portugal, the exclusion of the online publication of requests for a preliminary ruling appears, however, to be limited to supreme courts.

remaining Member States (**Latvia and Slovakia**).

27. In the first five Member States, where such publication is completely excluded, the question regarding anonymisation becomes devoid of purpose. It should be noted that in **Ireland** and **Portugal**,²² the non-publication of requests for a preliminary ruling is explained by the fact that only final court decisions are published, which therefore excludes requests for a preliminary ruling.
28. In the two remaining Member States, the context of, and basis for, the restriction of publication, or the non-publication, of such requests are different. Accordingly, in **Latvia**, publication is at the discretion of the court, since it concerns a decision adopted during the proceedings, and not a final judgment subject to the obligation of publication. In **Slovakia**, the non-publication of requests for a preliminary ruling stems from procedural provisions under which those requests do not fall within the category of decisions which must be published. Here, again, publication appears to be at the discretion of the court. On the rare occasions that requests for a preliminary ruling are still published in those two Member States, their general rules on anonymisation are applicable to that publication. Thus, under **Slovakian law**, anonymisation of those requests is guaranteed, while under **Latvian law**, only requests made by the Supreme Court, other than those made by the Constitutional Court, are anonymised.

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IV. ADDENDUM TO THE SUMMARY (JANUARY 2019)

29. The purpose of [the present addendum] is to examine the rules applicable to the anonymisation of the decisions of the higher courts in the national laws of five Member States, namely Cyprus, Ireland, Italy, Malta and the United Kingdom, in consequence of the entry into force of Regulation (EU) 2016/679. [...] It should be recalled that those legal systems were part of a group of legal systems in which the practice of anonymising court decisions on publication is adopted not as general a

²² In Portugal, that explanation applies only to supreme courts.

rule, but only in exceptional circumstances.

30. It should be noted that the practice of publishing names remains unchanged in four of those Member States. In **Ireland**, recent case-law has reinforced the exceptional nature of the anonymisation of court decisions (see the attached contribution on Irish law). According to the practice in **Malta**, requests for a preliminary ruling are published online without being anonymised. In **Italy**, the option for the person concerned to request that a note be affixed to the original version of a court decision to the effect that his or her identity be protected now also applies to all copies of that decision (see the attached contribution on Italian law). There have been no noteworthy changes in the **United Kingdom**.
31. Conversely, in **Cyprus**, the practice has changed radically in accordance with a circular issued in July 2018 by the Supreme Court. It is now the default practice of all Cypriot courts, except the Supreme Court in its capacity as Constitutional Court, to anonymise the forenames of the parties. The scope of that change and the forms of anonymisation are detailed in the contribution on Cypriot law below.

[...]