

THE BELGIAN CENTRAL REGISTER FOR JUDICIAL DECISIONS: THE LONG AND WINDING ROAD TO OPEN JUSTICE?

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ABSTRACT: The article examines the Belgian Central Register for judicial decisions, introduced to modernize the pronouncement and publication of judgments. It explains the Central Register's dual structure (internal non-pseudonymized and public pseudonymized sections), mandatory digital judgments, access rules, and restrictions on data reuse. We critically assess pseudonymization, privacy protection, workload implications, limits on data mining and AI, and delayed implementation. We then analyze the 2025 Constitutional Court ruling, which largely upheld the system while strengthening guarantees of effective publicity. The article concludes that the Central Register marks a paradigm shift in access to case law with far-reaching consequences for legal practice and legal culture.

KEYWORDS: administration of justice; access to justice; open justice; pronouncement of judgments; publication of judgments; digitalization; digital judgments; pseudonymization; case law; access to case law; data mining; profiling; legal tech; scraping; bulk downloading.

SUMMARY: I. INTRODUCTION.— II. THE CENTRAL REGISTER: 1. Structure and management of the Central Register; 2. Digital judgments; 3. Consultation of the data in the Central Register; 4. Public data, but no free use; 5. Entry into force.— III. THE RULING OF THE CONSTITUTIONAL COURT.— IV. STATE OF AFFAIRS V. A PREVIEW OF THE IMPACT

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ON LEGAL PRACTICE: 1. Pseudonymization, an additional workload; 2. A new contentious issue; 3. A new way of dealing with case law.— VI. CONCLUSION

I. INTRODUCTION

The digitalization of the Belgian justice system is a story of good intentions and ambitious plans. With the Act of 16 October 2022 on the Central Register for judicial decisions (hereinafter: the Act on the Central Register or the Act¹, the legislator aimed to bring the pronouncement of judicial decisions and their publication into the 21st century. The Central Register would thus play a crucial role in the daily administration of justice. First we explain how the Central Register was conceived and also consider the objections that were raised to its conceptual design (II). We then discuss the ruling of the Constitutional Court, which ruled on those objections in the context of several appeals for annulment (III), before turning to the current state of affairs (IV) and looking ahead to the future of this attempt to digitalize a crucial part of the Belgian administration of justice and its impact on open justice (V).

II. THE CENTRAL REGISTER

1. Structure and management of the Central Register

The Central Register has a private or internal section and a public or external section. The internal section contains all judicial decisions in their original form. The external section, on the other hand, contains these judicial decisions in a pseudonymized form. Both sections have different purposes. The purpose of the external section of the Central Register is to make pseudonymized judgments² available to the public. The latter constitutes their public disclosure within the meaning of Article 149 of the Constitution and is intended to guarantee transparency and enable the functioning of the judicial system to be monitored (Art. 782, §4, second paragraph, 9° Judicial Code). The external section must also enable public authorities³ to statistically analyze the pseudonymized judgments and the data they contain (Art. 782, §4, second paragraph, 10° Judicial Code). Such analysis may not be carried out on the (metadata of) non-pseudonymized judgments referred to in Article

¹ The Act of 16 October 2022 establishing the Central Register for judicial decisions and concerning the publication of judgments and amending the assize procedure concerning the challenge of jurors, *Belgian Official Gazette*, 24 October 2022, https://www.ejustice.just.fgov.be/mopdf/2022/10/24_2.pdf#Page47. The Department of Justice also uses the catchphrase of JustJudgment for this digitalization project. References to JustJudgment should be understood as such. For earlier analysis of the Act: Hendrickx (2023), Van Der Haegen & Van Doninck (2023), Mont (2023), Mont & Rosic (2023).

² We will use the terminology of 'judgment' instead of the more elaborate 'judicial decision' from now on, for a clarification of the material scope of the provision see section 2.

³ See Art. 782, §8, first paragraph, 6° Judicial Code. The Act does not define exactly what is meant by a public authority, nor do the preparatory works offer any guidance. For example, is a municipality allowed to statistically examine local crime figures using pseudonymized decisions?

782, §5, first paragraph, 1°- 3° Judicial Code. To illustrate this objective, the Explanatory Memorandum refers to the identification of certain trends in case law in order to guide preventive and repressive criminal policy, and to the need to comply with evaluation clauses that are often included in EU regulations⁴. The internal section will serve as an authentic source of the judgments contained therein and should facilitate the exercise of the judicial order's legal tasks by centralizing the storage of all judicial decisions in dematerialized form (Art. 782, §4, second paragraph, 1° and 2° Judicial Code). This digitalization of the authentic source in the Central Register has a significant impact on the manner in which judicial decisions are made (see section 2).

Through the Central Register, members of the judiciary, as well as parties and their lawyers, can consult electronically the decisions which they are entitled to examine by law (Art. 782, §4, second paragraph, 3° Judicial Code). Scientists, historians, and journalists may also access the data contained in the internal section and may also process it (Art. 782, §4, second paragraph, 7° and 8° Judicial Code). The restrictions that apply to this consultation and processing will be discussed further (see section 3). A striking additional objective is the processing of data from the Central Register “to optimize the organization of the judicial system, to enable more efficient management, better policy support, better impact analysis of legislative changes, and better allocation of human and logistical resources within the judicial system” (Art. 782, §4, second paragraph, 5° Judicial Code). In other words, the collection of all judgments should pave the way for data-driven management of the administration of justice in all its facets, both in terms of content—as regards the application of the law—and in terms of (personnel) policy.

The Central Register must also serve to support members of the judiciary in the performance of their legal duties (Art. 782, §4, second paragraph, 6° Judicial Code). This refers to IT applications to support magistrates and their staff by means of AI. The Explanatory Memorandum mentions, among other things, the possibility of *case law enhancement*, whereby data from the Central Register can be linked to data from legislative or legal databases, and the possibility of automatically creating summaries of court decisions⁵.

The Act on the Central Register therefore only allows the development of AI applications using the data contained in the Central Register to support members of the judiciary. The legal profession angrily called on the legislator to remove this restriction⁶. They believed that the legal profession and litigants should also be able to develop and use AI applications applied to the

⁴ Draft law establishing the Central Register for judicial decisions and concerning the publication of judgments and rulings, *Parl.St.* Chamber 2021-22, no. 2754/1, 27, <https://www.dekamer.be/fluwb/pdf/55/2754/55K2754001.pdf>. These evaluation clauses require national authorities to provide certain information on the practical application of the regulation to the European Commission so that it can analyze, among other things, the effectiveness and efficiency of European legislation.

⁵ Draft law establishing the Central Register for Judicial Decisions and concerning the publication of judgments and rulings, *Parl.St.* Chamber 2021-22, no. 2754/1, p. 14-15.

⁶ Callens (2022).

administration of justice. Moreover, there could be an imbalance if public prosecutors are able to use these applications, but lawyers for the defendant are not. According to the legal profession, this restriction was contrary to the recent European Data Governance Regulation⁷. Ultimately, the Constitutional Court had to rule on these objections (see part III).

Within the Department of Justice, a management committee is responsible for the organization and management of the Central Register (Art. 782, §6, ninth paragraph Judicial Code). The composition of the management committee was quite a challenge, which is not surprising given its important role. The management committee is composed of four representatives of the College of Courts and Tribunals, and two representatives each from the College of the Public Prosecutor's Office, the Court of Cassation, and the Department of Justice (Art. 782, §6, second paragraph Judicial Code). A representative of the Institute for Judicial Training and of the policy unit of the Minister of Justice sit as observers. The representatives of the judiciary have full voting rights; the representatives of the Department of Justice, on the other hand, only have partial voting rights: they sit as observers with regard to decisions relating to "the internal functioning of the judicial system," but do have voting rights in matters relating to the use of resources, technical aspects, and the parts of the Central Register that are accessible to the public, insofar as the latter do not affect the content or comprehensibility of the pseudonymized judgments and decisions (Art. 782, §6, third paragraph Judicial Code). The chair and vice-chair of the management committee are members of the sitting judiciary. The draft law initially did not allow representatives of the bar to sit on the management committee. Following criticism from the Council of State, which opined that lawyers, as judicial actors, make a significant contribution to the formation of judicial decisions⁸, the draft law was amended⁹. The Act stipulates that one representative from each of the bar associations shall be part of the management committee, albeit in an advisory capacity. The management committee is established within the Department of Justice (Art. 782, §6, first paragraph Judicial Code). This choice was justified by the fact that the data contained in the Central Register will be generated by the judicial order¹⁰. Nevertheless, the choice was met with criticism¹¹.

⁷ Regulation (EU) 2022/868 of the European Parliament and of the Council of May 30, 2022 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Regulation [2022] OJ L 152).

⁸ Draft law establishing the Central Register for Judicial Decisions and concerning the publication of judgments and rulings, *Parl.St.* Chamber 2021-22, no. 2754/1, p. 85.

⁹ Amendment (V. MATZ) to the draft law establishing the Central Register for Judicial Decisions and concerning the publication of judgments and rulings, *Parl.St.* Chamber 2021-22, no. 2754/2.

¹⁰ Draft law establishing the Central Register for Judicial Decisions and concerning the publication of judgments and rulings, *Parl.St.* Chamber 2021-22, no. 2754/1, p. 13.

¹¹ See the opinion piece by court of appeals judge Pierre Thiriar, who finds the fact that the Central Register will serve as an authentic source of judicial decisions incompatible with the placement of the management committee within the Department of Justice: Thiriar (2022), p. 11.

2. Digital judgments

The Act on the Central Register makes digital judgments the norm: Article 782, §1 Judicial Code stipulates that every judicial decision must be drawn up in dematerialized form, except in the event of technical problems. Digital judgments are signed electronically by means of a qualified electronic signature (Art. 782, §2, third paragraph Judicial Code). After signing, these digital judgments are automatically entered into the Central Register via a direct link to the case management application. The original of these digital judgments is therefore digital. When technical problems prevent a digital decision, a dematerialized copy of the paper judgments, certified as true by the clerk, is entered in the Central Register (Art. 782, §5, first paragraph, 2° Judicial Code)¹².

The Act on the Central Register also changes the manner in which judgments are handed down. In 2019, Article 149 of the Constitution was revised¹³. Whereas this constitutional provision previously stipulated that judicial decisions were to be pronounced in public, it now requires that judicial decisions be made public in the manner prescribed by law; in criminal cases, however, the operative part is always pronounced orally. Article 782bis of the Judicial Code reflects this delegation to the legislature and stipulates that judicial decisions shall be pronounced in writing or orally by the president of the chamber that rendered the decision. In the case of an oral pronouncement, at least the operative part shall be read out. However, *ex officio* or at the request of one of the parties, the judge may decide not to limit the oral pronouncement to the operative part. In view of Article 149 of the Constitution, a written judgment is therefore only possible in civil cases. At the time of signing, the decision is entered in the Central Register and the parties can consult the (non-pseudonymized) decision in the internal section of the Central Register. The new law therefore achieves and guarantees the openness of the administration of justice by recording the decision in pseudonymized

¹² This makes it possible to include historical judgments, i.e., those dating from before the Central Register came into effect. The public tender that has already been issued to develop the Central Register also provides for this.

¹³ Revision of Article 149 of the Constitution concerning the publicity of judgments and rulings, *Belgian Official Gazette*, 2 May 2019. For a discussion of this constitutional amendment and what preceded it, see Behrendt & Jousten (2020). This constitutional amendment was intended to put an end to the anachronistic obligation to deliver every judicial decision in full, an obligation that was rarely followed in practice and had already been mitigated by a cassation judgment in 2011 (Cass. 29 November 2011, AR P.10.1766.N, *Arr.Cass.* 2011, p. 2444, concl. M. Timperman: the obligation to deliver the judgment in open court serves to enable public scrutiny of judicial decisions. That objective generally requires the reading out in open court of both the grounds and the operative part of the judicial decision. However, it can also be achieved by a partial reading of the judicial decision, including in any case the operative part, together with the simultaneous or immediate subsequent publication of the judicial decision through other forms of publication such as the internet. No such obligation existed for the Constitutional Court: publication of its case law on the website was equated with a public ruling (see Article 110 of the Special Act of 6 January 1989 on the Constitutional Court).

form in the Central Register. According to the Act, this must be done within a reasonable period of time (Article 782bis, second paragraph, of the Judicial Code). If public disclosure via the Central Register is impossible, e.g. due to technical problems, the presiding judge must pronounce the judgment in full orally, or make the judgment available to the public in the courtroom until the end of the hearing¹⁴.

Article 6 of the ECHR stipulates that the pronouncement of a judicial decision must be public. According to the ECtHR, the manner in which that public pronouncement is given effect may be determined by national law, taking into account the objectives of Article 6 of the ECHR, whereby the legal process must be considered as a whole¹⁵. According to the Court, the inclusion of the decision in a publicly accessible (offline) register meets the requirements of Article 6 of the ECHR¹⁶. The Court has not yet *expressly* stated whether publication via the internet also meets these requirements, although there are indications that the Court assumes this to be the case¹⁷.

Not every court decision will be published in the public section of the Central Register. Final judgments, both in civil and criminal cases, and judgments of the Court of Assizes and the Court of Cassation¹⁸ will be available to the public in pseudonymized form¹⁹. However, the judge may always order that his interim judgment be published in pseudonymised form via the Central Register (Art. 782, §5, first paragraph, 4° Judicial Code). The reverse is also possible: the court may prohibit the publication of a decision or omit

¹⁴ Not making the decision available to the public, nor reading it out in full at the hearing, is contrary to Article 6 of the ECHR: ECHR 17 January 2008, no. 14810/02, Biryukov v. Russia, and ECHR 15 January 2015, no. 23045/05, Malmberg and Others v. Russia.

¹⁵ ECHR 8 December 1983, no. 7984/77, Pretto v. Italy, paras 25-26; ECHR 8 December 1983, no. 8273/78, Axen v. Germany, paras 30-32; ECHR 22 February 1984, no. 8209/78, Sutter v. Switzerland, paras 32-33.

¹⁶ ECHR 8 December 1983, no. 7984/77, Pretto v. Italy, para 27.

¹⁷ In its judgment in the Nikolova case, the ECHR placed publication on the internet on an equal footing with a public judgment and inclusion in a register accessible to the public (ECHR 17 December 2013, no. 20688/04, Nikolova & Vandova v. Bulgaria, para 84; see also *Guide on Article 6 of the European Convention on Human Rights. Right to a fair trial (civil limb)* (2022), p. 104, no. 472 and Commission européenne pour la démocratie par le droit du Conseil de l'Europe (Commission de Venise), *Mise à jour de la liste des critères de l'état de droit adoptée par la Commission de Venise à sa 145e session plénière* (Venise, 12-13 décembre 2025), p. 21, no. 54: "Elles [judgments] devraient également être communiquées de manière à être facilement compréhensibles par le public, par des moyens facilement accessibles au public et reflétant les pratiques modernes en matière de communication."

¹⁸ Currently, not all judgments of the Court of Cassation are published. Article 28 of the Act of 15 June 1935 on the use of languages in court proceedings stipulates that judgments of the Court of Cassation must be translated. In practice, only published judgments are translated (this is between one-third and one-half of all judgments). The Act on the Central Register takes into account a possible overload of the Court's translation service and amends Article 28 of the Act on the use of languages in court proceedings: now that all cassation judgments will be published, translations need only be made for those judgments which the Court, in accordance with the criteria laid down by the King after consultation with the Court, considers sufficiently relevant to the unity of case law or the development of the law.

¹⁹ Article 782, §5, first paragraph, 4° of the Judicial Code refers to Articles 782bis (judgments and rulings) and 1109 (Court of Cassation) of the Judicial Code and to Articles 163 (police court), 176 (appeal judgments of the police court), 190 (criminal judgments), 209 (criminal rulings) and 337 and 346 (court of assizes) of the Code of Criminal Procedure.

certain parts of the reasoning from the publicly accessible version. The judge may do so *ex officio* or at the request of a party, and after hearing the parties, if the publication of the pseudonymized judgment or certain parts thereof disproportionately affects the right to privacy of the parties or other persons involved in the case. This decision must be reasoned and is included in the judgment (Art. 782bis, fifth paragraph Judicial Code). A mere agreement between the parties not to publish the decision (or a specific part thereof) cannot therefore prevent publication.

Decisions that are available for public consultation must be pseudonymized (Art. 782, §5, third paragraph Judicial Code)²⁰. This pseudonymization must be carried out in accordance with Article 4, 5) GDPR²¹, which means that the personal data contained in the decision cannot be linked to a specific individual without the need for additional data. Pseudonymization means that the personal data is encrypted so that it no longer leads to the identification of the person concerned. Only those who have the key can find out which person is behind the encrypted data. In court decisions, encryption can be achieved by converting names into procedural roles (“plaintiff,” “builder,” “defendant,” etc.), or by simply removing address details, for example. In the case of pseudonymized court decisions, the key to re-identification is the original decision with the unaltered personal data. Pseudonymization must be distinguished from anonymization. In anonymization, the personal data is also encrypted, but there is no key that can lead to re-identification. The link between the publicly available, anonymized decision and the original decision, which is shielded from the public, is then severed so that—assuming someone has full access to the Central Register—the one can no longer be linked to the other. In practice, this is impossible for court decisions, because every specific detail of the case would have to be removed from the publicly available decision, which would render it meaningless. However, while the GDPR does not apply to anonymous data, it does apply to pseudonymized data²². The provisions of the GDPR therefore apply in full to the Central Register, both to the internal and external parts. This has important legal implications.

What does pseudonymization look like in practice? The Act on the Central Register stipulates that the identity details of natural persons mentioned in the judgment must be pseudonymized. The same applies to any element in the decision that allows natural persons to be identified directly or indirectly, but within the limits of the legibility and comprehensibility of the decision. The possibility to properly understand a decision therefore takes precedence

²⁰ The Act takes as its starting point the pseudonymization of the names of parties, thereby fully committing to the protection of privacy. In doing so, it follows recommendation no. 3/2021 of 8 February 2012 of the Data Protection Authority.

²¹ 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, hereafter referred to as GDPR, [2016] OJ L 119).

²² See recital 26 of the GDPR.

over the privacy protection of the parties, at least as far as the possibility of identification via elements other than identity data is concerned. The question arises as to whether anyone other than the judge is better placed to assess whether the readability and comprehensibility of his decision is compromised by excessive pseudonymisation²³. This pseudonymization requirement does not apply to legal actors such as magistrates, clerks, and lawyers: their identity data is included in full in the decisions. However, the President of the court may make an exception to this, after consulting the public prosecutor, if the dissemination of such data could jeopardize their safety or that of their environment. However, the pseudonymization of the identity data of legal actors is carried out by operation of law if the case concerns criminal proceedings relating to terrorist offenses or organized crime (Art. 782, §5, third paragraph, 3° and 4° Judicial Code).

It is evident that the mandatory pseudonymisation of personal data contained in all decisions published in the public database is a particularly time-consuming task that is therefore only feasible if it is (to a large extent) automated. The Act makes this possible, but stipulates that in the case of automated pseudonymization, the result must be subject to human control (Art. 782, §5, fourth paragraph Judicial Code). The use of AI applications such as *machine learning*, in which *feedback loops*²⁴ will make automatic pseudonymization increasingly efficient, will make human intervention less and less necessary over time. The question is how far the legal requirement of human control extends: is it sufficient to review the automatic adjustments, or is it necessary to review the decision in its entirety? This human control of pseudonymisation must be carried out by a body that is directly dependent on or controlled by the judiciary²⁵. It is to this same body that any interested party may submit a written request if they believe that certain non-pseudonymized personal data in a published decision should be pseudonymized (Art. 782, §5, fifth paragraph Judicial Code). The minister's representative stated that if this human control were to be entrusted to the registries of the courts and tribunals rather than to a newly established body, the impact on the workload would be monitored²⁶.

The pseudonymization of the identity data of natural persons, such as names, national registration numbers, and addresses, can be done relatively easily by automated means. This is much more difficult for those elements of a judgment that allow indirect identification. It is therefore striking that

²³ de Codt (2021), p. 23-24.

²⁴ A *feedback loop* is a mechanism whereby the output data from a particular process is used, in whole or in part, as future input data, enabling the process to perform its task better over time.

²⁵ The Council of State emphasized the importance of this control or supervision by the judiciary, because decisions on pseudonymization may compromise the comprehensibility and thus the meaning of judicial decisions, which affects the separation of powers. (Draft law establishing the Central Register for Judicial Decisions and concerning the publication of judgments and rulings, *Parl.St.* Chamber 2021-22, no. 2754/1, p. 78).

²⁶ Draft law establishing the Central Register for Judicial Decisions and concerning the publication of judgments and rulings, *Parl.St.* Chamber 2021-22, no. 2754/1, p. 73.

the Act on the Central Register prescribes the pseudonymization of both direct and indirect identification possibilities for every judgment. It is obvious that the consequences of possible re-identification in terms of privacy are more harmful in sexual offenses than in, for example, (most) traffic offenses. A more flexible pseudonymization requirement with a layered approach depending on the nature of the case would have made the pseudonymization process a lot easier in general. The pseudonymization of elements from a decision that indirectly allow identification should then only take place when the infringement of privacy after possible identification in the case in question outweighs the effort required to pseudonymize those elements and the infringement of the openness of the administration of justice. This is the case in France. There, the names of parties or third parties are always omitted from published decisions, but those elements of a decision that allow indirect identification are only omitted after a decision to that effect by the judge who handed down the judgment²⁷.

The identity details of legal persons are not pseudonymized.

3. Consultation of the data in the Central Register

It goes without saying that the Central Register contains sensitive data. Access to this data is therefore regulated. No one has unrestricted access, and some require prior authorization from the management committee. Violation of the confidentiality of these consultations is punishable under Article 458 of the Criminal Code on professional secrecy (Art. 782, §8, fifth paragraph Judicial Code). The consultation and processing of data contained in the internal section of the Central Register are more strictly regulated than those of the external section.

The non-pseudonymized decisions in the Central Register may only be consulted and/or processed by specific categories of persons. Members of the judiciary²⁸ may consult their own decisions in the Central Register, within the limits of their legal duties. Upon reasoned request, they may also consult other specific judgments for the purposes of necessary research in the context of an investigation conducted by the applicant or in the context of a case pending before the applicant or in which the applicant is acting in a professional capacity, and in which the proceedings have not yet been closed. The parties, like their lawyers, may also consult the decisions rendered in their case. This

²⁷ See Articles L111-13, second paragraph, and R111-12 of the *Code de l'organisation judiciaire*.

²⁸ The Act on the Central Register refers to persons exercising a judicial office as referred to in Part II, Book II, Title I of the Judicial Code and magistrates in training, as included in the electronic list referred to in Article 315ter, §1, first paragraph Judicial Code. This therefore includes not only actual magistrates (whether acting or not) and magistrates in training, but also referendaries, public prosecutors, criminologists, registrars and level A staff members, public prosecutors' secretaries, assessors in the criminal enforcement court, judges in social affairs, judges and assessors in the disciplinary courts.

also applies to experts or others who, in accordance with the law, must have access to a decision (Art. 782, §8, first paragraph, 2°, e) Judicial Code).

The legal profession warned against the practice of magistrates consulting previous decisions concerning their clients without being able to contest them²⁹. This would undermine the equality of arms between the public prosecutor and the defense and the adversarial nature of all evidence presented to the court. These comments were echoed in parliamentary amendments³⁰. The Act provides for an obligation to notify the parties when a person exercising a judicial function or a magistrate in training consulted the (internal section of the) Central Register in the context of an investigation or a pending case and that consultation yielded a positive result (Art. 782, §8, third paragraph, in conjunction with Art. 315ter Judicial Code). When the magistrate consults previous judgments concerning a party in a case, that party is notified. This notification must enable the parties to contest the matter. It is unclear how this notification should take shape in practice. Such notification is not required when the magistrate has searched the external section of the database containing pseudonymized decisions.

Third parties may also be granted access to the Central Register, provided they have been authorized by the management committee and comply with the conditions laid down by the committee (Art. 782, §8, first paragraph, 5° Judicial Code). This allows scientists and historians to access and process individual or a set of decisions (Art. 782, §4, second paragraph, 7° Judicial Code)³¹. Journalists can access individual, non-pseudonymized decisions (Art. 782, §4, second paragraph, 8° Judicial Code). *Legal techs* can process data from the Central Register for the development of IT applications at the request of the judiciary (Art. 782, §4, second paragraph, 7° Judicial Code).

The external section of the Central Register will contain all pseudonymized judgments. This serves to ensure the transparency of and control over the judiciary as part of the constitutionally enshrined principle of open justice (Art. 782, §4, second paragraph, 9° Judicial Code). Access to the public section containing pseudonymized decisions is therefore logically free. However, the use of these decisions is not (see section 4). Article 782, §8, first paragraph, 7° of the Judicial Code stipulates that individual pseudonymized decisions are public. Otherwise, the Central Register would not enable transparency or control of the administration of justice.

According to the Act on the Central Register, the external section of the Central Register is intended to enable public access to the administration of

²⁹ Callens (2022).

³⁰ Amendment (V. MATZ) to the draft law establishing the Central Register for Judicial Decisions and concerning the publication of judgments and rulings, *Parl.St.* Chamber 2021-22, no. 2754/2.

³¹ If scientists or historians wish to carry out analyses on a set of pseudonymized decisions, they require authorization from the management committee. This applies even more so if they wish to carry out analyses on non-pseudonymized decisions. Without this authorization, they are subject to the criminalization provided for in Article 782, §8, second paragraph of the Judicial Code (see section 4).

justice. In reality, however, citizens will not consult this external section in order to monitor the judiciary on a decision-by-decision basis. Instead, they will use this database to find answers to specific legal questions in order to determine their legal position. This purpose—*access to justice*—would have been better included in the Act on the Central Register as a secondary objective of the external section³². The fact that this is not the case may have important implications in terms of personal data protection. Personal data, including pseudonymized judgments, may only be retained for as long as necessary for the purpose of processing (Art. 5.1, e) GDPR). If the processing purpose for the public section is merely the disclosure of court decisions, the question arises as to when that disclosure has been achieved and the pseudonymized decision must therefore be removed from the public section. It goes without saying that a public case law database from which all decisions disappear after a certain period of time does not increase access to justice.

If however all pseudonymized decisions remain available for consultation in the case law database, measures must be taken to ensure effective access to justice. A high-performance and user-friendly search engine is a *conditio sine qua non* in this regard³³. With the general publication of case law, which amounts to approximately 1.3 million decisions per year³⁴, the risk of *information overload* is all too real: the information sought is simply lost in the mass of available information. In addition, there is also the risk of incorrect information: the user may encounter old case law that is no longer accepted or minority case law that is misleading. In such a mass of case law, legal searches will in any case produce a lot of noise³⁵, which will increase the cost of finding relevant case law.

Targeted measures can alleviate the problem of *information overload*³⁶, but they cannot eliminate it. High-performance and intuitive search engines and comprehensive metadata³⁷ can make the Central Register functional and user-friendly, but lawyers and litigants will need to learn how to use the search tools. Users can be guided by using importance indicators for domain rele-

³² On these two objectives of case law publication, see van Opijnen (2016), p. 34, Cadiet (2024), p. 49.

³³ See recitals 15 and 16 of the Conclusions of the Council and the representatives of the governments of the Member States, meeting within the Council, on best practices for the online publication of court decisions (2018/C 362/02), 8 October 2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018XG1008> por cien2801 por cien29. According to authoritative voices, the objective of increasing access to justice is better served by a broad but targeted publication of case law rather than by a complete publication. See van Opijnen (2016), p. 34 and Recommendation no. R(95)11 of the Committee of Ministers of the Council of Europe on “The Selection, Processing, Presentation, and Archiving of Court Decisions in Legal Information Retrieval Systems.”

³⁴ Taelman & Van Der Haegen (2018), p. 273.

³⁵ Kahneman, Sibony & Sunstein (2022), p. 17.

³⁶ van Opijnen (2021), p. 131-135.

³⁷ *Metadata* is data about other data. In judicial decisions, metadata therefore includes information about the court, the branch of law in which the decision is situated, the articles of law on which the decision is based, etc.

vance³⁸, which can be used to filter search results. *Linked data* should also be used as much as possible: for example, different decisions in the same legal proceedings should be clearly linked to each other in order to show whether or not a legal remedy has been used (successfully)³⁹. References to legislation and case law should also be mapped in order to identify similar decisions. Only with these and other tools will the public case law database be truly accessible to magistrates, citizens, and practicing lawyers⁴⁰.

The public tender that was issued for the establishment and management of the Central Register lists a number of requirements for a high-performance search engine, including automatic keyword extraction, automatic highlighting of the most important passages in a judgment, and an indexing mechanism⁴¹. This tagging and indexing are useful tools for creating a user-friendly search engine. It therefore seems that the government realized that without a good search engine and accompanying measures, this case law database would prove to be an empty box.

4. Public data, but no free use

The Central Register collects a massive amount of data that was previously scattered and stored disparately at the various courts and tribunals throughout the country. In addition, the Central Register makes a significant portion of that data (albeit considered individually) public. In this way, a wealth of information is gathered, which, through *data mining* techniques⁴², can provide a great deal of insight into legal practice. This data is therefore also financially very interesting. The Act on the Central Register chooses to impose restrictions on the use that may be made of this data. First, the Act on the Central Register prohibits the mass downloading and processing of data from the Central Register. Second, it prohibits the analysis of legal actors (and their behavior). These restrictions apply to both non-pseudonymized and pseudonymized decisions.

The Act prohibits the mass downloading and processing of all data contained in the Central Register (Art. 782, §8, second paragraph Judicial Code).

³⁸ The ECHR uses importance indicators to distinguish between landmark decisions and bulk judgments. These are, in descending order of importance for the Court's case law: *key cases*, *high importance*, *medium importance*, and *low importance*. See also van Opijnen (2014), p. 395-457.

³⁹ Preferably, the *European Case Law Identifier* (ECLI) should be used for this purpose, although its implementation in Belgium has been very difficult so far. See https://e-justice.europa.eu/content_european_case_law_identifier_ecli-175-en.do

⁴⁰ Practicing lawyers will probably have to rely on legal doctrine more often than is currently the case in order to ascertain the state of case law with regard to a legal problem. Insofar as this legal doctrine is behind a *paywall*, the publication of all case law may undermine access to the law and strengthen the revenue model of legal publishers.

⁴¹ See <https://ted.europa.eu/udl?uri=TED:NOTICE:76310-2022:TEXT:FR:HTML&tabId=1&tabLang=nl>.

⁴² *Data mining* techniques reveal patterns and correlations in large amounts of data, providing insights that are impossible or much more difficult to obtain by other means.

The prohibition does not apply to those who, by virtue of the law and under the conditions specified therein, are authorized to process data from the Central Register (see section 3). This prohibition was introduced at the request of the data protection authority⁴³. Violators are punishable by a fine of between €250 and €15,000⁴⁴. However, the legislator has little confidence in the deterrent effect of this criminalization: the Explanatory Memorandum makes it clear that advanced means will be used to prevent mass downloading or *scraping* as much as possible, including through technical means⁴⁵. *Scraping* is the bulk downloading or other copying of data from a website. Through *scraping*, the contents of the Central Register, or at least the parts to which the user has access, can be copied relatively quickly to a personal data carrier or to online storage capacity. The precise boundaries of this new offense are not clearly defined. First, it is unclear what the legislator means exactly by “all data included in the Central Register.” How many downloaded or processed decisions trigger criminal liability? Secondly, the criminal conduct is also unclear. While the term ‘downloading’ can be understood in its usual meaning, the precise definition of the term ‘processing’ is less clear. The definition contained in Article 3(2) of European Regulation 2018/1807 of November 14, 2018, on a framework for the free movement of non-personal data in the European Union provides clarification. There, the concept of processing is defined as “any operation or set of operations which is performed on data or on sets of data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction of data.” Processing is therefore a very broad concept, which could include mere consultation. Whereas the processing of an individual judgment is permitted, the processing of a set of judgments is punishable, although it is unclear how many judgments constitute a set and what exactly falls under the concept of processing⁴⁶.

In addition to its definition, this criminal provision also raises other questions. This prohibition is perhaps primarily aimed at legal publishers⁴⁷ and

⁴³ See Recommendation no. 98/2022 of May 13, 2022, recitals 19 and 23.

⁴⁴ The Act on the Central Register refers to the penalties set out in Article 222 of the Act of 30 July 2018 on the protection of natural persons with regard to the processing of personal data, *Belgian Official Gazette*, 5 September 2018.

⁴⁵ Draft law establishing the Central Register for Judicial Decisions and concerning the publication of judgments and rulings, *Parl.St.* Chamber 2021-22, no. 2754/1, p. 21.

⁴⁶ See, inter alia, Cass. 27 May 2014, AR AR P.13.1420.N, *Arr.Cass.* 2014, p. 1334: The principle of legality in criminal cases requires that the legislator determine in sufficiently precise, clear, and legally certain terms which acts are punishable, so that those who engage in such conduct can adequately assess in advance what the criminal law consequences of that conduct will be.

⁴⁷ The Minister of Justice expressly stated that the prohibition applies to legal publishers. See Draft law establishing the Central Register for Judicial Decisions and concerning the publication of judgments and rulings, report on the second reading, *Parl.St.* 2021-22, no. 2754/7, p. 13. However, nothing prevents publishers from continuing their current practice of obtaining court decisions through various channels.

legal tech companies that would like to use the new Central Register to create large databases of case law, which they could then analyze and exploit commercially. From that perspective, this prohibition is understandable, because the Minister of Justice intended to allow the development of, for example, AI applications by the private market only at a later stage⁴⁸. However, the description of the prohibited conduct is so broad that it could also extend to lawyers or magistrates who consult a (large?) number of (pseudonymized or non-pseudonymized) judgments, store them on their local PC, and mark and copy the relevant considerations of these decisions to another document to supplement their personal documentation. Surely this cannot be the intention?

Furthermore, the question arises as to whether publishers and *legal tech companies* cannot simply circumvent this penalty provision. All they need to do is download the Central Register decision by decision (if *scraping* is technically difficult) from a third country that is not subject to the GDPR in order to make a complete copy of it. Who will make the link with a Belgian or European client? With VPN connections, there is no need to turn to a foreign accomplice. The data obtained in this way can be processed, and as long as this is done secretly, the offender has little to fear. If and when the criminal prohibition is lifted, the applications based on it will be ready to conquer the market. It therefore seems that this criminalization is intended to be a deterrent, but without any teeth.

The contrast with the Netherlands could hardly be greater. Our northern neighbors do not have general but selective publication of case law, which, however, goes much further in scope than the current situation in Belgium. In 2024, 63.700 Dutch court decisions were published online. For higher court rulings, 9.650 judgments were published out of a total of 45.930 rendered, or 21 per cent⁴⁹. However, the Dutch judiciary intends to publish at least 75 per cent of its decisions within ten years⁵⁰. Dutch court decisions are published on the Rechtspraak.nl website. The Council for the Judiciary applies the principles of *open data*, which means that anyone can consult, use, and share this data. Until recently, Rechtspraak.nl also made it possible to download all decisions contained in this database in a single zip file⁵¹. In the Netherlands, therefore, there are no technical obstacles to *scraping*, let alone a criminal ban. On the contrary, downloading and using this data is facilitated⁵².

⁴⁸ This prohibition contrasts with the statement in the regulatory impact analysis of the draft law that *legal tech* companies could benefit from the publication in pseudonymized form of a significant proportion of court decisions and that they could make use of the public data included in the Central Register. See Draft law establishing the Central Register for Judicial Decisions and concerning the publication of judgments and rulings, *Parl.St.* Chamber 2021-22, no. 2754/1, p. 64.

⁴⁹ Raad voor de Rechtspraak (2024), p. 62 and 67.

⁵⁰ Naves, Sicking & van der wees (2021).

⁵¹ See <https://www.rechtspraak.nl/Uitspraken/Paginas/Open-Data.aspx>. Since 10 January 2023 this option has been abolished because it was rarely used and because it was considered technically undesirable. However, it is still possible to obtain all decisions.

⁵² The question arises, however, whether this policy will be continued when many more court decisions are published.

In France, too, the processing of data from court decisions is permitted. The general publication of case law was prescribed by the *loi pour une République numérique*⁵³. Our southern neighbors have a project underway entitled “open data des décisions judiciaires.” Led by the *Cour de cassation*, the project aims to publish all court decisions online in a phased rollout⁵⁴. There are only two restrictions on the processing of the decisions published in this way. Firstly, the processing must not be aimed at identifying the persons involved in the decision⁵⁵. Secondly, it is prohibited to analyze the work of magistrates and court clerks. Otherwise, the processing of decisions is unrestricted.

This penal provision in the Act on the Central Register also contravenes the relevant European recommendations. A *best practices* guide from the Council of Ministers on the publication of case law on the internet recommends that published decisions be made available for reuse in machine-readable formats as much as possible and that adequate download options be provided for re-users⁵⁶. The European Open Data Directive also appears to oppose this criminal provision, depending on how it is interpreted⁵⁷. This directive, which makes the reuse of public data for commercial and non-commercial purposes the norm, appears to apply to judicial decisions on the basis of recitals 8 and 43. The reuse of pseudonymized judicial decisions may, however, be subject to conditions⁵⁸. Documents containing personal data whose reuse would be contrary to the GDPR or whose reuse is legally considered to undermine the protection of privacy and the integrity of the individual are excluded from the scope of the directive⁵⁹. It could be argued that the reuse of judgments, even if pseudonymized, would undermine the protection of privacy given the risk of re-identification. In that case, the directive does not apply to judicial decisions.

In decisions published via the Central Register, the names of legal actors are not pseudonymized, except in specific cases (see above). Judgments by anonymous judges are difficult to reconcile with the principle of openness of the judiciary and undermine public confidence in the administration of justice. However, the mass publication of judgments makes it possible to use AI to subject legal actors to in-depth analysis⁶⁰. This allows the writing style,

⁵³ Act no. 2016-1321 of 7 October 2016, *pour une République numérique*, JORF no. 235 of 8 October 2016. For the history of case law publication in France, see Serverin (2018).

⁵⁴ For an overview of the project, its achievements, and the roadmap for the future, see www.courdecassation.fr/la-cour-de-cassation/demain/open-data-des-decisions-judiciaires.

⁵⁵ See Article 44 of Act no. 78-17 of 6 January 1978, *relative à l'informatique, aux fichiers et aux libertés*.

⁵⁶ Conclusions of the Council and the representatives of the governments of the Member States, meeting within the Council, on best practices for the online publication of judicial decisions (2018/C 362/02), 8 October 2018, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018XG1008por+cien2801por+cien29](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018XG1008por+2801por+cien29).

⁵⁷ Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019, on open data and the reuse of public sector information (recast), OJEU 2918, L 271.

⁵⁸ See Article 8 and recital 44.

⁵⁹ Article 1, 2, h).

⁶⁰ See, for example, Surden (2014), Van Der Haegen (2023).

referencing practices, expertise, and decision-making patterns of individual judges to be mapped out⁶¹, as well as the extent to which their decisions are reformed or overturned on appeal. It is difficult to deny that such analysis can encourage *forum shopping* or the drafting of conclusions tailored to a particular judge. However, profiling can also provide insight into one's own decision-making practice and encourage reflection.

The Act on the Central Register prohibits the reuse of the identity data of magistrates, members of the court registry, and lawyers to evaluate, analyze, or compare their actual or presumed professional practices. Violation of this provision is punishable by a fine of 100 to 20,000 euros⁶². The use of AI techniques to dig deeper into judgments to find out how a particular judge rules is thus prohibited. The question arises as to what extent this criminalization was necessary: performing such analyses requires the massive downloading or at least the processing of a large number of decisions from the Central Register, which is already prohibited by law. However, the ban only targets the use of identity data. It therefore seems to be permitted to carry out such analysis using other data from the decisions that indirectly allow judicial decisions to be attributed to one or more magistrates, e.g. by carrying out the analysis on the case law of a magistrate's court of a specific canton or a chamber within a court or tribunal. Incidentally, this criminal provision does not provide for any exceptions: it is therefore not permitted for the Department of Justice or the judiciary itself to analyze judges on the basis of their decisions, e.g., in the context of a workload assessment.

The Belgian legislator took its cue from France, where a similar prohibition exists, the violation of which is punishable by a prison sentence of up to five years⁶³. This criminal provision was preceded by a long discussion in legal circles regarding the pseudonymization of the names of magistrates in published decisions⁶⁴. The reason for this was an article from 2016 in which the decisions of administrative courts on appeals against orders to leave French territory were compared from court to court and significant differences were found between the various courts⁶⁵. The publication of these (unnuanced) findings caused quite a stir among our southern neighbors at the time.

⁶¹ In the United States, *LexMachina* allows users to analyze all available decisions of a specific court to find out how long a case is typically handled by a judge, the size of damages awarded, etc. See <https://lexmachina.com/legal-analytics/>.

⁶² The Act refers to Article 227 of the Act of 30 July 2018, on the protection of natural persons with regard to the processing of personal data, *Belgian Official Gazette*, September 5, 2018.

⁶³ In France, however, an analysis of lawyers is permitted. See Article L111-13, paragraph 3, of the *Code de l'organisation judiciaire*, as introduced by Act no. 2019-222 of 23 March 2019 *de programmation 2018-2022 et de réforme pour la justice*, *JORF* No. 0071 of 24 March 2019. This stance may be shifting however. In its *Rapport sur l'évolution de l'open data des décisions de justice*, the working group presided by Daniel Ludet pleaded in favour of a systematic 'occultation' of the names of magistrates, court registrars, parties' lawyers and company names (Ministère de la Justice (2025), synthesis on p. 13ff). This would imply changes to Article L111-13 (Ministère de la Justice (2025), p. 11-12).

⁶⁴ For a discussion of arguments for and against the pseudonymization of legal actors, see Cadet (2017), p. 43-52.

⁶⁵ See <https://www.village-justice.com/articles/impartialite-certains-juges-mise,21760.html>

5. Entry into force

The Act on the Central Register provided for the entry into force of the internal section of the Central Register on 30 September 2023. From that date judgments had to be included in full in that internal section. The pseudonymized decisions had to be available for consultation in the external section on December 31, 2023. The obligations arising from the European Recovery Fund, an important source of funding for the digitalization of the justice system, dictated this tight schedule. These deadlines were not met. The entry into force of the Act was postponed by a few months to 1 April 2024 with regard to the public section⁶⁶, but even on that date the Central Register was not operational.

The fact that the Act came into force despite the absence of a Central Register caused some unrest within the judiciary and beyond. Questions arose about the legal validity of traditional paper judgments, the possibility of obtaining legally valid copies now that the Central Register serves as the authentic source, and the manner in which the openness of the judiciary should be implemented, given that publication via the Central Register was not (yet) possible⁶⁷.

A letter from the minister of Justice was intended to reassure members of the judiciary. The minister pointed out that the Act already provided a solution in the event that technical problems prevented the creation of a digital judgment or made publication via the Central Register impossible. In such cases, a paper judgment is legally valid, and its public access is guaranteed by reading it out in full at the hearing or by making it available to the public during the hearing. Moreover, the Central Register served only as an authentic source for the digital judgments included in it, and therefore not for the paper judgments that could not yet be included. Business as usual, therefore, according to the minister, pending the full *go-live* of the Central Register.

III. THE RULING OF THE CONSTITUTIONAL COURT

However, this *go-live* was uncertain for a long time due to pending proceedings before the Constitutional Court. A group of magistrates and the Order of Flemish Bar Associations and *Ordres des barreaux francophones et germanophones* lodged appeals for annulment with the Constitutional Court against the Act on the Central Register. The aforementioned magistrates argued, among other things, that the Act created secret justice and that the management of the Central Register by the executive branch violated Article

⁶⁶ Amendment to Article 22 of the Act on the Central Register by Article 28 of the Act of December 19, 2023, containing provisions on the digitization of justice and various provisions, *Belgian Official Gazette*, 29 December 2023.

⁶⁷ Thiriar (2022), p. 11.

40 of the Constitution, the constitutional provision that stipulates that judicial power is exercised by the courts and tribunals. For their part, the bar associations criticized the lack of effective voting rights for their representatives on the management committee, the difference in access rights to the internal section between lawyers and magistrates, and the criminalization of profiling and the bulk downloading or processing of all data contained in the Central Register.

Some of the criticism expressed in the appeals for annulment was valid and prompted the legislator to introduce a repair law. The Act on the Central Register did not provide for an alternative form of publicity if the court decided not to publish a judgment or to omit certain parts of the reasoning for privacy reasons (Art. 782bis, fifth paragraph Judicial Code). The result would be secret justice if, in application of Article 149 of the Constitution, only the operative part were to be read out or only a written judgment were to be issued. The appeal for annulment lodged by a group of magistrates rightly pointed this out. The aforementioned legal provision was therefore amended so that if the court makes use of the possibility of a total or partial publication ban, publicity is guaranteed by the full reading of the decision at the hearing or by making it available to the public during the hearing⁶⁸. The same amendment to the Act provided that no legal remedy is available against the court's decision to omit (part of) the reasoning from the published judgment, in order to avoid a trial within a trial.

In a long-awaited ruling on 30 January 2025, the Constitutional Court ruled that the Act on the Central Register passed the test of fundamental rights⁶⁹. The Court ruled that a crucial principle of the Central Register, namely the public access to the administration of justice through the publication of pseudonymized decisions on the external section, did not violate fundamental rights. According to the Court, the legislator had struck a fair balance between, on the one hand, the requirement of public access to the administration of justice and, on the other hand, the right to respect for the private life of the persons concerned, not least because pseudonymization must not render a decision unreadable or incomprehensible⁷⁰.

The Act was only annulled in one respect, precisely where the legislator had already responded to the criticism expressed in one of the appeals for annulment with a repair law. The Constitutional Court ruled that, in the event of a total or partial publication ban within the meaning of Article 782bis, paragraph 5, of the Judicial Code, making the full decision available to the public during the hearing did not allow for effective publicity. According to

⁶⁸ Art. 782bis, fifth paragraph Judicial Code, as amended by the Act of December 19, 2023, containing provisions on the digitalization of justice and various provisions, *Belgian Official Gazette*, 29 December 2023, <https://www.ejustice.just.fgov.be/eli/wet/2023/12/19/2023048419/justel>.

⁶⁹ Constitutional Court 30 January 2025, no. 9/2025, ECLI:BE:GHCC:2025:ARR.009, < <https://nl.const-court.be/ARR/9/2025> > and < <https://fr.const-court.be/ARR/9/2025> >. For further analysis of the ruling Mont (2025), Van Der Haegen & Van Doninck (2024) en Van Der Haegen (2025).

⁷⁰ Constitutional Court 30 January 2025, no. 9-2025, para B.22.3.

the Court, this method of disclosure does not allow for effective public scrutiny in all circumstances, as this depends, for example, on the length and complexity of the decision and the time a citizen may need to take note of it⁷¹. If the judge imposes a publication ban, he must read out the entire decision in open court.

However, the Constitutional Court saw no problem with the other alleged violations of fundamental rights that were raised in the various appeals for annulment, including those relating to the composition and functioning of the management committee. The fact that only magistrates have a decisive vote in the deliberations of the management committee is justified by the fact that the Central Register is primarily intended to serve as a working tool for the judiciary⁷². According to the Court, the placement of the management committee under the Department of Justice (Art. 782, § 6 Judicial Code) does not, in the Court's view, pose any problem with regard to the separation of powers, as it does not affect the functional independence of judges: the authenticity of the decisions recorded in the Central Register is guaranteed by the signature of the judge(s) and the registrar. The composition of and distribution of voting rights within the management committee also offers this guarantee of independence⁷³.

According to the Court, the different access to the internal section for lawyers and magistrates, in particular those of the public prosecutor's office, does not violate the principle of equality of arms, because this limited access to the internal section is important for the protection of privacy⁷⁴. With regard to the criminal provisions contained in the Act, the Constitutional Court ruled that they do not violate fundamental rights, including the principle of legality in criminal matters⁷⁵.

IV. STATE OF AFFAIRS

The decision of the Constitutional Court cleared the way for the further development of the Central Register. However, this positive news cannot hide the fact that the work is far from complete and that a fully operational Central Register will not be ready for some time. Several factors explain this delay.

Firstly, legal proceedings, including those before the Constitutional Court, caused delays and uncertainty. At the legislative level, the implementing decrees on access, the structure, and operation of the Central Register, and on pseudonymization are still being devised. Privacy legislation is also a stumbling block. Almost ten years after GDPR, it appears that the Department of

⁷¹ Constitutional Court 30 January 2025, no. 9-2025, para B.22.12

⁷² Constitutional Court 30 January 2025, no. 9-2025, paras B.39-B41.

⁷³ Constitutional Court 30 January 2025, no. 9-2025, para B.48.4.

⁷⁴ Constitutional Court 30 January 2025, no. 9-2025, paras B.55-B.58.

⁷⁵ Constitutional Court 30 January 2025, no. 9-2025, paras B.76.1-B.76.4.

Justice has not always given sufficient consideration to the applicability of this Regulation on the storage and processing of data within its own organization. For example, there is still no body within the Department of Justice to supervise this, as the Data Protection Authority does not have this power with regard to the processing of personal data in judicial functions⁷⁶. The centralization and digitalization in the Central Register of the various, extensive, and sensitive personal data available to the Department of Justice brought matters to a head.

The delay factors mentioned above do not mean that technical work on the Central Register has been halted altogether. That technical work is however arduous. The Central Register must function as an application for the central storage, access to, and pseudonymized publication of digital judgments, but it is not a case management application in which metadata from pending cases are initially entered and judgments are created. Existing systems must therefore be linked to new systems.

This raises the issue of judgments handed down since 30 September 2023. According to the Act on the Central Register, a dematerialized certified copy of those ‘paper’ judgments must be included in the Central Register, and a pseudonymized version of all judgments handed down after 1 April 2024 must be published. It goes without saying that the longer the actual entry into force of the Central Register is delayed, the larger the stock of paper judgments that will theoretically have to be uploaded and published. However, the Act does not provide for a strict deadline within which the paper judgments must be included, so it is not impossible that the implementation of this obligation will be postponed indefinitely and thus remain a dead letter in practice.

V. A PREVIEW OF THE IMPACT ON LEGAL PRACTICE

1. Pseudonymization, an additional workload

In principle, every judgment handed down in public will be published online in the Central Register. The Act on the Central Register stipulates that these decisions must be pseudonymized. This pseudonymization will require a significant effort on the part of the courts. According to the Act, pseudonymization may be automated, but only if it is done under human supervision by an authority that is directly dependent on or controlled by the judiciary (Art. 782, § 5, fourth paragraph Judicial Code). Because pseudonymization affects the content of the judgment, it must be carried out under the responsibility of the magistrate or magistrates who issued the decision (see above, part II, section 2). The implementation may however be delegated to a clerk.

⁷⁶ See Art. 55, 3 of the GDPR and ECJ 24 March 2022, no. C-245/20, ECLI:EU:C:2022:216. The entity Cassation, the College of Courts and Tribunals, the College of the Public Prosecutor's Office, and the Department of Justice act as joint controllers within the meaning of the GDPR (Art. 782, § 7 Judicial Code).

The *JustMask* application is intended to facilitate this work by automatically pseudonymizing personal data and flagging data that could potentially lead to re-identification, so that manual pseudonymization can be guided. A considerable amount of work can be saved by omitting as much personal data as possible when drafting judgments, where this is not necessary. Nevertheless, the requirement for human control of automated pseudonymization will undoubtedly increase the workload, as pointed out by the *Association syndicale des magistrats* in a critical letter to the Minister of Justice⁷⁷.

2. A new contentious issue

In addition to an increased workload, the obligation to pseudonymize will also give rise to a new and special contentious issue. The mandatory pseudonymization of personal data is a good thing, but, unfortunately, the risk of re-identification can never be ruled out⁷⁸. The Act on the Central Register therefore allows the judge, either *ex officio* or at the request of a party, and after hearing the parties, to decide to prohibit the publication of the judgment or to omit certain parts of the reasoning if their publication is disproportionate to the protection of the privacy of the persons concerned (Art. 782bis, fifth paragraph Judicial Code). This creates a new potential point of dispute in the handling of a case, namely which elements of the file may or may not be included in (the publication of) a judgment and to what degree of detail.

3. A new way of dealing with case law

The Central Register represents a paradigm shift in the field of case law publication. Whereas until now only a relatively small number of decisions have been published and, with the exception of the decisions of the highest courts, these have been hidden behind a paywall, the Central Register promises the publication of all case law in its entirety and accessible to those seeking justice.

We are therefore evolving from a publication of case law that is anything but a representative sample of Belgian case law to a publication in which the question of representativeness is no longer an issue and there is no longer even a sample. The impact of this on legal practice goes beyond an increased workload for magistrates and new points of attention for lawyers. This radical change in case law publication may have more fundamental consequences. It promises a new way of dealing with case law. The current approach to case law publication is an expression of our general legal culture, where attention is generally focused on the relatively limited number of decisions

⁷⁷ Letter from the ASM to the Minister of Justice dated 15 December 2023, <https://asm-be.be/wp-content/uploads/2023/12/lettre-au-ministre.pdf>.

⁷⁸ Vokinger & Mühlematter (2019), Allard (2018), p. 183-188.

of the highest courts as benchmarks in the legal landscape⁷⁹. The availability of all factual case law may shift the focus from quality to quantity, whereby the authority associated with the traditional hierarchy within the judicial pyramid loses its significance and a mass of judgments takes on a certain precedential effect. A number of decisions in one sense or another may then manifest themselves as a supposed source of law. The impact on our legal culture is difficult to discern, but seems potentially far-reaching⁸⁰. However, in order for published case law to be effectively used, the accessibility of the database must first and foremost be ensured. To this end, it is not enough to simply publish all case law online. Without measures to guarantee the practical accessibility and comprehensibility of this mass of information, insight into legal developments is in danger of being irretrievably lost. This is all the more pressing because the Central Register is likely to be consulted primarily for this purpose by those seeking justice, rather than to exercise control over the administration of justice *in abstracto*. It is striking that the Act on the Central Register remains silent on this point. Ideally, the database should be developed in such a way that the relevant data is easy to find for every user, whether that user is a specialist lawyer or a legal layman⁸¹. This is no easy task, but it is nonetheless essential.

VI. CONCLUSION

The Act on the Central Register has not been able to meet its strict timing, but to many that will come as no surprise. Although many steps have already been taken, we are still waiting for a fully operational Central Register. The Act has caused quite a stir in legal circles, which is unlikely to subside any time soon, even with the ruling of the Constitutional Court. This is because there are various fundamental interests and concerns that come together in the publication of case law on such a massive scale: the openness of the administration of justice, the protection of privacy, the accessibility of the law, the digitalization of the judiciary, working conditions within the judiciary, and so on. These interests and concerns deserve careful consideration. The impact of all this on legal practice, and more broadly on our legal culture, will have to become apparent in time.

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⁷⁹ Serverin (2018), p. 23-25.

⁸⁰ Deumier (2018), Cadet, Chainais & Sommer (2022), Cadet (2024), p. 56ff.

⁸¹ van Opijnen (2014).

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