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# Summary Report on the anonymization of court judgements





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Autor: FOL Movement

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Andrea Gropa no.35  
Prishtina 10000, Republic of Kosovo  
info@levizjafol.org  
+386 (0)49 131 542

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# 1. Executive summary

For a long period FOL Movement has been focused on monitoring the publication of court judgments in Kosovo, where many publications in this field have been made on the basis of this monitoring. At the same time, the direct impact of the monitoring of the publication of the judgments has been the amplification of the published judgments to a very large extent. However, during the monitoring of judgments, it was observed that the publication of judgments, apart from some technical issues<sup>1</sup>, has some shortcomings and flaws which will be addressed in this report.

These flaws and shortcomings are precisely related to the (non)anonymization of data in judgments. For this purpose, the FOL Movement has undertaken this activity to document and analyze the issues related to the anonymization of judgments by the courts of Kosovo.

This summary report aims to make a comprehensive analysis of domestic legislation in relation to the practice of anonymizing judgments and to discuss issues related to the protection of personal data, on the one hand, and the obligation of the judiciary to ensure transparency and accountability in the development of judicial processes, on the other hand.

The main objective of this report is to enable an assessment of the existing legal framework regarding the anonymization of judicial decisions and the establishment in a fair report of the three main aspects: transparency, privacy and fair administration of justice in Kosovo. A special emphasis will be placed on assessing the extent to which the current legal framework is in harmony with and intersects with the principles of transparency, confidentiality and data protection.

Finally, the report will propose specific recommendations for improving current policies and practices, in order to ensure a better balance between the protection of individuals' privacy and the need for transparency in the judicial process, especially in relation to legal requirements.

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<sup>1</sup> FOL Movement has documented cases where judgments in the civil field are indexed as criminal, or when the judge's cases after being transferred or promoted to another court, are carried with him to the new court and are not indexed in the Court where the cases were examined, etc.

## 2. Introduction

In the digital age, the protection of personal data represents one of the most important challenges, since both individuals and organizations or companies operate within a delicate field where the use of the benefits brought by the advancement of technology and the protection of privacy are in constant conflict. In this regard, the anonymization of court decisions constitutes a critical aspect of the protection of privacy rights, requiring the careful implementation of policies that place in a fair relationship the requirements about the transparency of judicial procedures and the needs to anonymize or limit access to sensitive personal information, thus ensuring, in the age of rapid technological advancement, a fair and open judicial system.

Anonymization of judgments refers to the process of removing or hiding certain sensitive or private information from the text of a judgment before it is made available to the public. The purpose of anonymization is to protect the privacy and confidentiality of individuals involved in court cases and to respect legal and ethical obligations regarding the protection of personal data. The specific information that is anonymized may vary depending on the nature of the litigation, but typically the data that is anonymized includes personally identifiable information such as: names, addresses, personal identification numbers, financial account numbers, and other sensitive information that may lead to identifying the individuals involved.

The purpose of anonymization is to strike a balance between transparency in the justice system and protection of individuals' privacy rights. By anonymizing some details, judgments can be made public, and thus minimize the risk of damage or misuse of personal information.

Anonymizing judgments is important for several reasons. First, it helps protect the privacy and identity of individuals involved in legal proceedings. Second, anonymization promotes fairness and impartiality in the justice system by preventing bias that may arise from knowing the identities, backgrounds or characteristics of the individuals involved. Moreover, anonymization, although it limits personal data, is nevertheless a function of transparency and contributes to increasing public confidence in the legal system through access to judgments by the public, always preserving privacy. Finally, anonymization strikes a balance between accountability and protection of personal information.

There is no comprehensive list of states where judgments are public with all personal data disclosed, because different countries have different laws and practices regarding the publication and anonymization of judgments.

However, some examples of countries where personal data is included in judgments are the United States of America<sup>2</sup> where court records are generally public, unless they are closed or restricted by special laws or by court order. Judgments in the UK<sup>3</sup> are generally accessible to the public and personal data may be included unless there are specific reasons for closure or restriction.

It is important to note that even in countries where judgments are to a higher degree available to the public, there are often guidelines and procedures in place to protect sensitive personal information and respect privacy rights. These guidelines aim to balance the public's right to access information with the need to protect personal data.

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<sup>2</sup> Digital access to the judgments, [www.uscourts.gov/statistics-reports/accessing-court-documents-journalists-guide](http://www.uscourts.gov/statistics-reports/accessing-court-documents-journalists-guide)

Documents that are not available to the public are defined in the Act Governing Documents and Closed Hearings. However, even in public court records, some information is not available. Federal rules require that anyone who files a federal court document must redact certain personal information in the interest of privacy, including Social Security or taxpayer identification numbers, dates of birth, names of minor children, financial account information, and in criminal cases, home addresses

<sup>3</sup> <https://www.judiciary.uk/about-the-judiciary/judiciary-and-data-protection-privacy-notice/>

Personal data processed by the judicial system exercising judicial functions may be published in the judicial orders or decisions of courts or tribunals. This is necessary for the public interest for the justice administration. It is necessary to allow individuals to understand their rights and obligations, which is an aspect of the rule of law.

The publication of decisions is also a requirement of the constitutional principles of open justice and is a necessary tool to uphold the rule of law. As such, it is in the public interest.

A court, where it is strictly necessary for the interest of justice administration, restrictions may be imposed on personal data, such as the name of an individual, which is inserted in a court decision. It can also hold legal proceedings closed to the public and impose restrictions on access to court and tribunal files. Such decisions are made by judges within judicial proceedings.



## 3. Anonymisation of court judgments in Kosovo

The Republic of Kosovo has a fairly advanced legal framework regarding the protection of personal data. In this part of the report, the legal framework will be briefly examined, starting from the Constitutions of Kosovo to the laws and other by-laws, which regulate the field of (non)anonymization of judicial decisions in Kosovo.

### The Constitution of the Republic of Kosovo

Similar to other European countries, Kosovo has demonstrated a high level of commitment to the preservation and protection of personal data. This commitment is manifested through the inclusion of protective mechanisms in its Constitution, which guarantees every individual the right to the protection of personal data. The Constitution specifies that the collection, storage, access, correction and use of personal data must be strictly regulated by law.

Article 36 [*Right to Privacy*] of the Constitution<sup>4</sup> is in accordance with the requirements arising from the European Convention for the Protection of Persons Regarding the Automatic Processing of Personal Data, otherwise known as “Convention 108”. This is a treaty adopted by the Council of Europe in 1981 that aims to protect the right to privacy of individuals, taking into account the increasing flow across borders of personal data subject to automatic processing. Recently, this Convention has been supplemented to meet the contemporary challenges arising from the automatic processing of personal data and has published a Guide regarding the automatic processing by Artificial Intelligence.<sup>5</sup>

In this regard, the judicial practice of the European Court of Human Rights, whose decisions are mandatory to be taken into consideration by the courts of Kosovo, have a large number of cases where they have addressed the violation of privacy rights since data processing in terms of health data, data of the individual’s movements, data related to DNA and fingerprints, etc.<sup>6</sup>

In relation to Article 36 of the Constitution of the Republic of Kosovo, it should be emphasized that the last paragraph (paragraph 4) of this article regulates the protection of personal data, which determines that “[e]ach person has the right to the protection of personal data. Their collection,

4 The constitution of the Republic of Kosovo <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

5 Council of Europe, Consultative Commission of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, 2019 <https://rm.coe.int/guidelines-on-artificial-intelligence-and-data-protection/168091f9d8>

6 European Court of Human Rights, List of the most important court cases, Factsheet – Personal Data Protection, February 2024, [https://www.echr.coe.int/documents/d/echr/FS\\_Data\\_ENG](https://www.echr.coe.int/documents/d/echr/FS_Data_ENG)

*storage, access, correction and use is regulated by law.*" So, even though the guarantees for the protection of personal data are established in the Constitution, the Constitution still stipulates that only by law can the collection, storage, access, correction and use of personal data be regulated. For this purpose, Kosovo has issued the Law on the Protection of Personal Data, which will be analyzed below.

## Law on Protection of Personal Data

The Law on Data Protection in Kosovo<sup>7</sup>, adopted in 2019, represents a key legal instrument that deals with the protection of personal data and aims to ensure the processing and protection of individuals' personal data.

This law describes in detail the entities that are subject to it, which extend to both the public and private sectors, as well as the categories of data that enjoy legal protection. At the core of this law are the fundamental principles of data protection that serve as guidelines for data processing actions. These principles include legality, transparency and integrity, and emphasize the importance of ethical and responsible data handling practices. At the same time, the law imposes substantial obligations on data controllers and processors, obliging the implementation of strong security measures, obtaining the necessary approval for data processing actions, and immediate notification of data breaches when necessary. These provisions emphasize the importance of proactive measures to reduce risk and protect the confidentiality and integrity of personal data.

According to this law, personal data is defined as any information that belongs to an identified or identifiable natural person. An identifiable natural person is characterized as an individual who can be identified directly or indirectly, with special emphasis through data such as the name, identification number, residence data, physical, mental characteristics, economic, cultural or social status of the natural person in question.

Furthermore, this law refers to "nickname - pseudonymization" which includes the processing of personal data in a way that is no longer attributable to a specific data entity without the use of additional information. This additional information must be kept distinct and subject to technical and organizational measures to ensure that personal data are not attributed to any identified or identifiable natural person.

The Law on Data Protection in Kosovo establishes a dedicated supervisory authority which is obliged to monitor and enforce compliance with data protection rules. Equipped with investigative and enforcement powers, this oversight structure plays a key role in maintaining the integrity of data protection practices and ensuring compliance with legal obligations.

In the event of a data breach, the law establishes strict requirements for notification of relevant authorities and affected individuals, establishing clear protocols and duration for breach notification and minimizing potential damages.

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<sup>7</sup> Law on Data Protection in Kosovo <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18616>

Considering all this, it follows that the main objective of the Law on Data Protection in Kosovo is to establish a balance between the protection of the privacy rights of individuals and the legal processing of personal data for various legal purposes.

## Law on Courts

The Law on Courts<sup>8</sup> constitutes one of the most important laws in terms of the legal requirement that this Law imposes on the courts for the publication of court decisions.

Article 6, paragraph 3 of this law determines that the courts must publish all judgments on their official website, within sixty (60) days from the date of issuance of the judgment in accordance with the legislation in force and that the Judicial Council must issue by-laws for the implementation of this article.

Although this Law does not contain any concrete requirements regarding the protection of personal data, the very reference to the positive legislation, in accordance with which the judgments must be published, means that the Law on the Protection of Personal Data must be respected during the compilation of the by-law by Kosovo Judicial Council. So, in addition to the protection of personal data, this article also implies the commitment to transparency within the judicial system. The intention behind this legal requirement is to ensure transparency in the administration of justice, allowing citizens, legal professionals and the general public to access and review the results of legal proceedings.

## Criminal Procedure Code (2022)

The Criminal Procedure Code<sup>9</sup>, approved in 2022, constitutes the essential part of this Report and as a result, more special attention will be paid to it. In fact, the regulation defined by this Code constitutes the very reason for the compilation of this report because it contains several legal requirements regarding the publication of court decisions in criminal cases that are inversely related to the legal requirements stipulated by the Law on the Protection of Personal Data.

The concrete articles that require special attention are article 369 and 370 of the Criminal Procedure Code, which define, as follows:

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8 Law on Courts <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18302>

9 Criminal Procedure Code <https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759>

## Article 369

### Content and Form of Written Judgment

[...]

2. The introduction includes: an indication that the judgment is rendered in the name of the people; the name of the court; the first name and surname of the single trial judge or presiding trial judge, members of the trial panel and the recording clerk; the first name and surname of the accused; the criminal offense of which the accused was convicted and an indication as to whether he was present at the main trial; the day of the main trial; whether the main trial was public; the first name and surname of the state prosecutor, defense counsel, victim advocate or victim's representative present at the main trial; the day of the announcement of the judgment that has been rendered; and the date when the judgment was drawn up.
3. The enacting clause of the judgment includes the personal data of the accused and the decision by which the accused is pronounced guilty of the criminal offense of which he is accused or by which he is acquitted of the charge for that offense or by which the charge is rejected.

[...]

12. For purposes of this Article, the term "personal data" includes following personal information: First Name, Last Name, Name of the Hometown or Town of Residence, Public Function of the defendant if any, and Personal Number. When the Personal Number is not available, date of birth, name of one parent and place of birth can be used instead. Additional personal data, as this term is understood by other laws, may be added only if necessary to explain contextual circumstances of the offenses.
13. Save for the Personal Number, date of birth and names of parents and place of birth, publication of other personal data from paragraph 12 of this Article is not deemed a breach of privacy due to the interest of the public in an open and public judiciary.

## Article 370

### Publication of Court decisions

1. In accordance with Law on Courts, courts are obliged to publish all judgments online within a period of sixty (60) days from the date of their issuance.
2. Exceptionally, judgments are not published in cases involving juveniles as parties, or in matters where alleged crimes are within a domestic relationship or cases of criminal offences against sexual integrity. If a special law grants confidentiality in a respective procedure, provisions of that law govern the publication of judgments rendered therein.
3. In cases where one or more hearings have been closed to the public for reason of sub-paragraphs 1.1, 1.4, 3.1 or 3.1 of Article 289 of this Code, references to testimony and other evidence adduced in such hearings will be redacted from the judgment prior to publication.

References to juveniles and their testimony will be anonymized or redacted, regardless of whether their testimony was taken at a closed hearing.

To facilitate such anonymization/redaction, judgments incorporating references to a juvenile, the testimony of a juvenile, or information that was developed in such closed hearings, will clearly identify, in their pre-publication form, which material in the judgment falls in one or more of these categories.

4. The published version of the judgment is, prior to publication, redacted to remove any reference to personal identity numbers. All other data described in paragraph 12 of Article 369 of this Code remain unredacted.
5. The judge who is authorized to sign the judgment under Article 368 of this Code is obliged to take all necessary measures to ensure that the legal obligation to publish judgments is fulfilled.
6. The court also publishes the rulings which conclude a criminal matter.
7. The Kosovo Judicial Council has the authority to issue bylaws to implement this Article.

This part of the Report analyzes article 369 and 370 of the Criminal Procedure Code of Kosovo. These two articles establish a comprehensive framework that regulates the publication of court decisions and that, according to one interpretation, it follows that, as a rule, judgments are published, but there are two moments of deviation from this rule, which means that one has to do with the exception of publication (so when judgments are not published) and the other case concerns the case when judgments are published but must be redacted / anonymized.

These three elements will be elaborated in the following:

## Publication of judgments

Courts are obliged, in accordance with the Law on Courts, to publish all judgments on online platforms within a certain period of sixty days from the date of their issuance. The publication of these decisions requires the inclusion of some personal information, especially: a) name, b) surname, c) birthplace or city of residence, and d) public function of the defendant, if known.

It is important to note that the Criminal Procedure Code (Article 369, paragraphs 12 and 13) does not consider the publication of these data as a breach of privacy, given the public's interest in an open and transparent judiciary, with the exception of additional personal data, including the personal number, or in the absence of the number, the date of birth, parents' names and place of birth, which must not be published in judgments.

## Non-publication of judgments

While the rule established in this Criminal Procedure Code is the publication of judgments, with some personal data, the exception to this rule related to the publication of court decisions concerns cases involving juvenile parties, cases involving crimes within a family relationship or violation of sexual integrity.

According to the Criminal Procedure Code, (Article 370.2), exceptionally, judgments are not published in cases where:

- 1) juveniles are involved as parties,
- 2) in matters where alleged crimes are within a domestic relationship or
- 3) cases of criminal offences against sexual integrity.

Also, if a special law grants confidentiality in a respective procedure, provisions of that law govern the publication of judgments rendered therein.

Consequently, it follows that the Criminal Procedure Code exempts from publication, so not all matters / cases handled by should be published:

1. Department for Juveniles;
2. Cases where it is claimed that criminal offenses were committed within family relations, precisely the articles of the Criminal Code that deal with family relations: 163 (3), 173 (1.3), 182 (2), 227 (4.9), 229 (3.9), 230 (3.9), 236, 237 to 248 (*Chapter - Criminal Offenses Against Marriage and Family*), group of articles 313, 314, 315 (1.1), 320, 321 (1), 330 (1) and 332 related to article 335, 377 (3)<sup>10</sup>, 378 (3)<sup>11</sup>, 379 (2)<sup>12</sup>, 380 (5)<sup>13</sup> 14, ; and
3. All criminal offenses falling under Chapter XX - Criminal Offenses Against Sexual Integrity.

For these judgments that are excluded from publication, it is recommended to the Kosovo Judicial Council (KJC) to request the issuance of public announcements, in those cases where there is public interest, through which the public is notified about i) the convicted person, ii) the offense which he was sentenced to, iii) the relevant sentence that was imposed on him.

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10 Anyone who, despite being in a family relationship with the perpetrator of the criminal offense as a parent, child, spouse, brother or sister, adoptive parent or adopted child or person with whom the perpetrator lives in an extramarital union, if he does not report the criminal offense such as child abuse and domestic violence, can be accused of "Failure to notify the preparation of criminal offenses", but that the potential conviction remains excluded from publication since we are dealing with a criminal offense committed within family relations, if the whistleblower with the accused are from the same family, but also the victim - that if the victim is not from the same family, is it considered that the criminal offense was committed within the family relationship?

11 Ibid. (Note: Same clarification logic.)

12 Ibid.

13 Ibid.

14 In the Criminal Code, the criminal offense (417 – Conflict of Interest) refers to family members. The reason why this article has not been established - even though someone can say that the criminal offense of Conflict of Interest, where family members are involved, falls in the domain of family relations - it is strongly recommended that this article not be included in this exception, since that the criminal offense is committed for the benefit of the leader/public official and the family member and in no case is the family member a victim, as is believed to be the intention of the legislator for which he made the exclusion of these criminal offenses from publication.

## Anonymization of judgments

While paragraph 2 of article 370 of the Criminal Procedure Code talks about judgments that are completely excluded from publication, paragraph 3 of article 370 defines the rules regarding the anonymization of the judgment.

This paragraph stipulates that any judgment relating to closed sessions, as defined by Article 280 of the Criminal Procedure Code, must be redacted (anonymized).

As a result, in cases where the hearings are closed and when they are related to: i) the preservation of national security and official secrecy protected by law, ii) the protection of the injured, cooperating witnesses or witnesses, the protection of the injured, cooperating witnesses or witnesses, as provided in Chapter XIII of the Criminal Procedure Code, or when the hearings are closed to iii) preserve the confidentiality of information that would be endangered by the public or iv) protect the personal or family life of the accused, the victim or other participants in procedure, in these judgments references to testimonies and other evidence mentioned in such review will be redacted<sup>15</sup> from the judgment before publication.

Also, in judgments, any reference to juveniles and their testimonies will be redacted, regardless of whether their testimony was taken in closed or open examination. To facilitate this anonymization/redaction, judgments containing references to a juvenile, the testimony of a juvenile, or information obtained in such closed hearings shall clearly identify, prior to publication, which part of the judgment enters into the one or more of these categories.

Furthermore, before the publication of the judgment, the personal identity number is redacted/anonymized, as defined in Article 370(4) of the Criminal Procedure Code. So in these cases, as provided in Article 369 (paragraphs 12 and 13), in addition to the deletion of information related to personal data, the part of testimony or other confidential information is also deleted from the judgment.

With the Criminal Procedure Code, precisely with Article 370, paragraph 6, even the decisions to drop the indictments and the suspension of the procedure are published with the same logic as the judgments, that is, all of them are published, except if the indictments are related to criminal offenses not defined by Article 370 (2), those decisions to drop indictments are not published.

And finally, the Criminal Procedure Code ensures that the publication of court decisions complies with the principles of transparency and privacy protection. Moreover, the Code foresees the obligation for the KJC to issue the by-law for the effective implementation of these provisions, as provided for in Article 370, paragraph 7.

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<sup>15</sup> In the English language, the term "redaction" means the deletion of sensitive or confidential information in court decisions. Redaction can be done through manual redaction using black marker or digital redaction using software tools. The purpose of both options is to make information invisible to the public.

## Criminal Code (2019)

The Criminal Code of the Republic of Kosovo, as far as the publication of judgments is concerned, does not cover any important part, as the Criminal Procedure Code does. However, even the Criminal Code, specifically article 59 (2.7) and article 66 has foreseen some additional measures regarding additional punishments, which include the order for the publication of the judgment.

Although the Criminal Procedure Code as well as the Law on Courts establish the legal obligation for all judgments to be published, the Criminal Code goes one step further by foreseeing as a complementary penalty the order to publish the judgment. The purpose of this supplementary punishment is to make the judgment public in the media/portals through publication in the newspaper or to be broadcast on radio or television, so that the judicial decision-making receives the public echo it deserves.

So this article aims to make known to the public, the perpetrators of these criminal acts, and that at the same time is in function of the protection of society. On the other hand, it may also serve to repair the image if an accused person is found not guilty. The media is obliged to publish this judgment so that the public can get the proper knowledge about it.

It would be right for the judges to start imposing this additional punishment to a greater extent, especially for crimes that are more sensitive, in order to have a preventive and informative effect on the public opinion. Moreover, it would be advisable for judges to impose the order for the publication of the judgment as a supplementary punishment for more sensitive and serious cases such as cases of pedophilia or serial offenders. Although it remains at the discretion of the judge of the case to decide the imposition of the supplementary punishment and to order the publication of the judgment, a document that would be issued by the KJC and which would contain guiding principles about the imposition of this supplementary punishment, would constitute an additional means of assistance for the judges who judge such cases

## Administrative Instruction 04/2019 for the Publication of Processed Judgments

KJC has issued Administrative Instruction 04/2019 regarding the publication of processed judgments. This instruction replaces the previous Administrative Instruction (2016) on the anonymization and publication of final court judgments. The Instruction regulates data processing procedures, specifying that personal data in judgments shall be anonymized prior to publication in order to prevent the identification of individuals mentioned in the judgment.

The specific personal data subject to processing within the judgment includes, but is not limited to: first and last name, address, date and place of birth, identity card or passport number, driver's license details, vehicle number plates, number of other personal documents, business number, tax number of commercial companies, email address and website or social network address/site.



In the field of criminal cases, the processing of the judgment includes the processing of data regarding various parties such as: the accused, convicted individuals, persons closely related to the accused, the injured party, witnesses, court experts, court interpreters, social workers, psychologists and other participants acting in their official capacity during the trial.

In civil and economic cases, the processing of decisions includes litigants (natural and legal persons), parties recognized according to the laws in force, authorized representatives, legal representatives, shareholders, members of the steering board, employee representatives, heirs, witnesses, court experts, court interpreters, social workers, psychologists and other individuals participating in the trial in their official capacity.

Similarly, in administrative cases, the processing of decisions belongs to the complainant, the defendant, legal representatives, experts, court interpreters, social workers and other individuals who participate in administrative legal proceedings in their official capacity.

Although the Criminal Procedure Code entered into force in February 2023, the KJC has not yet made the necessary amendments in the Administrative Instruction to establish a full compliance between the new legal requirements provided for in the Criminal Procedure Code with the obligations of the courts as of it concerns the publication, precisely not the anonymization of judgments.

## Law on Central Criminal Records System

Law No. 08/L-194 on the Central Criminal Records System of Kosovo<sup>16</sup> establishes the legal framework for the establishment, management and operation of the Central Criminal Records System in Kosovo. The main purpose of the law is to create a centralized system for keeping accurate and updated criminal records in Kosovo. This law establishes the Central Criminal Records System, which means a central registry for the storage and management of information and criminal data.

In addition, this law defines the procedures for the collection, registration and maintenance of criminal records information, specifying the types of data that must be included in the central criminal records system, such as personal details of perpetrators of crimes, details of criminal offenses, decisions judicial and other important information. Access to this information is usually limited to authorized individuals and institutions, such as law enforcement agencies, judicial authorities, government institutions and other authorized users and may be granted for specific purposes, such as criminal investigations, verification for employment purposes, or other legal procedures.

Finally, the law includes provisions to protect the privacy rights and data protection of individuals where their information is stored. It defines measures to guarantee the confidentiality, integrity and security of criminal data, including limitations on unauthorized access, use and disclosure of this information and establishes enforcement mechanisms and sanctions for violations of its

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<sup>16</sup> Law on the Central Criminal Records System, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=84234>

provisions. This may include sanctions for unauthorized access to criminal records, misuse of information, failure to comply with data protection requirements, or other violations of the law.

It is important to note that this law excludes the possibility of access to criminal evidence data for the general public, due to the high sensitivity of these data, while as mentioned above the Criminal Procedure Code provides that the publication of judgments of include some personal data. Given that the goals of these two by-laws are in conflict, that is, as long as one has the goal that the criminal history data of individuals remain closed to the general public and are available only to a number of institutions, on the other hand the Criminal Procedure Code requires that judgments not only be made public, but also contain some personal data, which is contrary to legal requirements and the spirit of the Law on the Central Criminal Records System. What can be concluded, from a superficial analysis, is that while these two legal acts have contradictory purposes, *then the recommendation that emerges from this report is that the judgments that are published by the judiciary, based on the Criminal Procedure Code, are available to the public only until the rehabilitation, whether judicial or legal, of the convicted person is achieved, and after this deadline, the Judicial Council, respectively the court, delete it from the official website or deeply redact the judgment, in order to have a harmonization of the goals that both laws have as their final objective.*

# Recommendations

Since the Law on Courts and the Criminal Procedure Code obliges the KJC to issue a by-law for the publication of judgments, precisely obliges the courts to publish all judgments on their official website, within sixty (60) days from the date of issuing the judgment in accordance with the legislation in force. The following recommendations are addressed to the KJC with the aim or with the main recommendation that the next Instruction for the publication of judgments be structured in four (4) parts, and which would deal separately with the characteristics of the relevant judgments for each field separately, in that: criminal, civil, administrative and economic (commercial) law.

In the following, FOL Movement will present recommendations regarding the publication of judgments for each area separately.

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## Recommendations in the criminal field

FOL Movement recommends to KJC to take into consideration these recommendations regarding criminal judgments, which derive from the positive criminal legislation of Kosovo, in the new Administrative Instruction for the publication of decisions.

- 1** Publication/Redacting of judgments: All criminal judgments should be published according to Article 369(12 and 13) and Article 370. The issues related to the publication, respectively the exemption from the publication or redacting of judgments are elaborated to a greater extent in this report, in the part where the legal requirements of the Criminal Procedure Code are analyzed and it is recommended that they be taken as a basis during the compilation of New Administrative Instruction.
- 2** Duration of publication: We recommend the KJC to establish strict rules in the Administrative Instruction regarding the keeping of judgments on the website, more precisely we recommend that the judgments remain published on the website of the KJC until the convictions of the persons sentenced to be hidden from criminal records. After judicial/legal rehabilitation, judgments must be completely redacted or removed from the official website and not be available to the public with complete data.

- 3 In order to maintain transparency in decision-making and to record the performance of judges, we recommend to the KJC that in cases where the convicted person is hidden from the criminal record, the relevant judgment should be subject to deep redaction, i.e. all personal data should be deleted and other circumstances through which the distinction or direct or indirect identification of the individual / convict can be made.

FOL movement recommends to KJC to examine and decide on the following issues during the compilation of the new instruction:

- How to deal with judgments that are punishable by fines and that are not recorded in the criminal record, so how long should they remain published on the official website of the courts?
- How to deal with decision that have more than one convict, one of whom has had his conviction erased from the Criminal Record and the others still not? Should the full decision remain on the website until the last convicted person is deleted from the Criminal Records? FOL Movement considers that the most ideal option is that every time one of the convicted entities is deleted from the Criminal Records, the same decision is redacted so that the data of that convicted person is completely deleted.

Finally, FOL Movement recommends that the new Administrative Instruction fully respects the legal requirements of the Criminal Procedure Code, as regards the cases where judgments are not published or cases where judgments are anonymized, as well as cases where decisions taken in criminal proceedings must be published, as observed in this report in the section where the Criminal Procedure Code is analyzed.

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## Recommendations in the civil field

FOL Movement recommends that:

- 1 Civil judgments should be published, but the data of litigants, witnesses, experts, etc. should be anonymized.
- 2 Not to publish decisions from closed sessions to the public, such as status issues (i.e. divorce) and those involving children (alimony, recognition of paternity, etc.).

FOL Movement recommends to the KJC that, during the compilation of the guidelines, it should also be discussed regarding the duration of keeping these judgments on the website.

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## Recommendations in the administrative field

FOL Movement recommends that all administrative judgments be published with information on the parties, witnesses, experts, etc.

FOL Movement recommends to the KJC that during the compilation of the guidelines, discuss and decide on the duration of the stay of these decisions on the website.

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## Recommendations in the economic (commercial) field

FOL Movement recommends that all commercial judgments be published with information on the parties, witnesses, experts, etc.

FOL Movement recommends that in the court proceedings where commercial disputes take place, the Court should determine what the business secrets of the economic entity are. If these secrets must be an integral part of the court decision, then for the purpose of publication, those business secrets are anonymized by giving the description "Sec af." and the first initial.





# FOL

