



Case Law Matters, and So Should Access: A Call for Greater Public Availability of Case Law



ACADEMIC ARTICLES

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ABSTRACT

This article exposes a structural incoherence in the treatment of national jurisprudence by the European supranational courts. Although they treat domestic judicial decisions as “law” in a substantive sense and as an important part of national legal systems, their rules on the public availability of case law remain significantly underdeveloped. Drawing on the case law of the European Court of Human Rights and the Court of Justice of the European Union, and using the Czech Republic as a national case study, this article illustrates how the jurisprudence of apex courts complements legislation and, at times, fills or overrides statutory gaps. It then distinguishes between the individual dimension of the publication of judgments (transparency and control) and the general dimension (precedential authority and legal certainty), and argues that both presuppose free, durable online access to case law, not only of apex courts but also of lower courts. However, current legal standards centred on public pronouncement and occasional reporting articulated by these supranational courts are no longer sufficient in the digital age. Insufficient publication and access, which remain common in practice, harm (mainly) individuals, as unstructured mass publication produces information overload and “unknown unknowns.” This article ultimately argues for a positive obligation to publish and organise judgments, advocating for state-maintained, free online repositories with authoritative, court-authored metadata. It also demonstrates how privacy concerns can be managed through targeted redaction rather than limits on access.

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During the communist era in Romania, the military conscripted young men into forced labour construction battalions instead of regular service. To atone for this injustice, compensation was offered to victims of such forced labour. However, from the statute's text, it was unclear whether the compensation covered only those who had served under the specific department or anyone who had performed the same kind of work. National case law did not resolve this ambiguity, as it produced opposing judgments. This ultimately led to a violation of the right to a fair trial under Art. 6 of the European Convention on Human Rights (ECHR).¹

This article takes that cautionary tale as its point of departure. Part I shows, through the case law of the European Court of Human Rights (ECtHR), the Court of Justice of the European Union (CJEU), and the Czech apex courts, that judicial decisions are treated as “law” in a material sense and therefore form an indispensable layer of every national legal order.

To emphasise the broader significance of judicial decisions, this article refers to them as “precedents”, “jurisprudence”, or “case law”. While I am aware that the notion of “jurisprudence” differs from the Anglo-American concept of “precedent” (with its doctrines of *stare decisis* and *obiter dicta*), in that the former has more persuasive rather than authoritative value, I treat these terms as synonymous. As I demonstrate using the example of the Czech Republic in Part I.2, even countries following continental legal traditions that formally recognise “jurisprudence” as nonbinding can develop a strong binding force of higher court decisions, closer to the binding nature of precedent than to mere persuasive value. Therefore, these terms are used to highlight that judicial decisions have a more general normative impact, extending beyond the resolution of a particular dispute. While this article focuses mainly on the apex court decisions of national courts, Part II.4 examines decisions of lower courts and the specifics of their importance.

The rules governing the availability and navigability of these judgments, however, remain insufficient. Part II tests whether current publication standards meet the needs flowing from the nature of case law. It distinguishes an individual perspective (open justice for the parties and the public) from a systemic one (precedential authority) and finds both wanting and outdated. Part III then turns from making decisions accessible to organising them, surveying soft-law instruments such as the European Case Law Identifier (ECLI), and demonstrating their insufficient implementation.

The core claim is simple: European legal systems place great value on domestic case law in theory but undermine it in practice by failing to publish and label it comprehensively.

I THE SIGNIFICANCE OF NATIONAL CASE LAW

Judicial decisions primarily resolve disputes between individuals, yet their influence extends far beyond the parties involved. As Richard Susskind notes:

[e]ven on the most restricted conception of judicial discretion, however, most judges, lawyers, and commentators would agree that the courts have played

1 *Beian v. Romania*, App. No. 30658/05 (European Court of Human Rights (ECtHR), December 6, 2007).

a central role in developing legal doctrine—in broad terms, when judges come to decisions in particular cases, they sometimes (depending on the level of court) also set precedents that bind or persuade later courts. And in a remarkable, often haphazard, evolutionary manner, a body of authoritative law extends at the hands of judges alongside that created by legislators.²

Several examples illustrate this judicial push of the written law's boundaries. In EU law, the CJEU has held Member States financially responsible for breaching Union obligations³ and has empowered tax authorities to deny input-VAT deductions in tax fraud cases.⁴ The ECtHR found that states have a positive duty to pursue effective climate change mitigation measures.⁵ Domestic courts show a similar dynamic. To mention two examples, Germany's Constitutional Court (*Bundesverfassungsgericht*) conditioned the primacy of Union law on robust fundamental-rights protection,⁶ while French administrative jurisprudence has forged distinctive procedural principles for administrative procedure.⁷

This chapter, therefore, explains why case law is an indispensable part of the legal landscape. It first reviews how the ECtHR and CJEU treat national jurisprudence and then outlines the status of judicial decisions in the Czech Republic.

I.1 THE EUROPEAN PERSPECTIVE

Domestic jurisprudence serves as an important reference point within both the ECHR and the EU legal orders. For the ECtHR, the fundamental twin principles of legality and legal certainty⁸ are also central to domestic case law, as it considers the domestic norm as interpreted and applied by the national authorities.⁹ Generally speaking, “[i]n a sphere covered by statutory law, the ‘law’ is the enactment in force as the competent courts have interpreted it”.¹⁰ Accordingly, the legislature can employ vague terms that require interpretation, thereby preserving the system's capacity to adapt to changing circumstances.¹¹ The authority carried by national courts is thus considerable and, in civil-

2 Richard Susskind, *Online Courts and the Future of Justice* (Oxford: Oxford University Press, 2019), 23, <https://doi.org/10.1093/oso/9780198838364.001.0001>.

3 *Francovich v. Italy*, Joined Cases C-6/90 and C-9/90 (Court of Justice of the European Union (CJEU), November 19, 1991).

4 *Axel Kittel and Recolta Recycling SPRL*, Joined Cases C-439/04 and C-440/04 (CJEU, July 6, 2006).

5 *Verein Klimasenioren Schweiz and Others v. Switzerland*, App. No. 53600/20 (Grand Chamber, ECtHR, April 9, 2024).

6 Wojciech Sadurski, “‘Solange, Chapter 3’: Constitutional Courts in Central Europe—Democracy—European Union,” *European Law Journal* 14, no. 1 (January 2008): 2, <https://doi.org/10.1111/j.1468-0386.2007.00400.x>.

7 Sébastien Platon, “Dr. ‘Law-Discoverer’ and Mr. ‘Law-Maker’ The Strange Case of Case-Law in France,” *Verfassungsblog*, April 2015, <https://verfassungsblog.de/dr-law-discoverer-and-mr-law-maker-the-strange-case-of-case-law-in-france/>.

8 Liesbeth Todts, “Legality Requirement Under the ECHR: General Principles and Concrete Consequences,” in *Les droits humains en temps de pandémie: perspectives internationales, européennes et comparées*, ed. Frédéric Bouhon et al. (Brussels: Larcier, 2023), 128–29, <https://doi.org/10.3917/lar.bouho.2023.01.0128>.

9 Todts, 131.

10 See, for example, *Klaus Müller v. Germany*, App. No. 24173/18 (ECtHR, November 19, 2020), para. 48.

11 *Lindon, Otchakovsky-Laurens and July v. France*, Apps. Nos. 21279/02 and 36448/02 (Grand Chamber, ECtHR, October 22, 2007), para. 41.

law systems, settled case law counts as “law” no less than legislation – a position the ECtHR (subsequently followed by the CJEU¹²) adopted more than thirty-five years ago:

Settled case-law of this kind cannot be disregarded. In relation to paragraph 2 of Article 8 (art. 8-2) of the Convention and other similar clauses, the Court has always understood the term ‘law’ in its ‘substantive’ sense, not its ‘formal’ one [...] [C]ase-law has traditionally played a major role in Continental countries, to such an extent that whole branches of positive law are largely the outcome of decisions by the courts.¹³

Where domestic courts arrive at conflicting conclusions, legal certainty¹⁴ and the prohibition of arbitrariness¹⁵ are jeopardised. Persistent, profound and long-standing divergences may amount to a breach of the right to a fair trial,¹⁶ just as the story in the introduction has shown.¹⁷

The CJEU pushes the role of courts and their decisions a step further. Under the principle of primacy, EU law has full effect before national courts, which must, if necessary, even on their own motion, refuse to apply conflicting provisions of national law. They need not wait for the national law to be set aside by legislative or other constitutional means.¹⁸ Where this creates a legal vacuum, the court should bridge the gap.¹⁹ All these considerations are made during the decision-making process and are embodied in the final judicial decision.

Moreover, with courts of 27 Member states interpreting EU law, the risk of divergences is acute. National courts of last instance should also consult the case law of other courts when deciding whether to submit a preliminary reference, because if:

the national court or tribunal of last instance is made aware of the existence of diverging lines of case-law—among the courts of a Member State or between the courts of different Member States—[...] that court or tribunal must be particularly vigilant in its assessment of whether or not there is any reasonable doubt as to the correct interpretation of the provision of EU law at issue.²⁰

12 *Roos and Others v. Parliament*, Case C-458/22 P (CJEU, November 16, 2023), para. 61; *Policejni prezidium (a génétiques)*, Case C-57/23 (CJEU, November 20, 2025), paras. 54–60.

13 *Kruslin v. France*, App. No. 11801/85 (ECtHR, April 24, 1990), para. 29.

14 *Lupeni Greek Catholic Parish and others v. Romania*, App. No. 76943/11 (Grand Chamber, ECtHR, November 29, 2016), para. 116; *Beian v Romania*, paras. 34–39.

15 *Žaja v. Croatia*, App. No. 37462/09 (ECtHR, October 4, 2016), para. 103.

16 *Nejdet Şahin and Perihan Şahin v. Turkey*, App. No. 13279/05 (Grand Chamber, ECtHR, October 20, 2011), para. 53.

17 See overview of ECtHR case law on this topic in Dragoljub Popović, “Inconsistent Adjudication – A Violation of the Right to Fair Trial Under the European Convention on Human Rights,” *Anali Pravnog Fakulteta u Beogradu* 69, no. 2 (June 18, 2021): 315–38, https://doi.org/10.51204/Anali_PFB_U_21201A.

18 *Commission v. Poland (Indépendance et vie privée des juges)*, Case C-204/21 (Grand Chamber, CJEU, June 5, 2023), para. 271.

19 See in greater detail Mathieu Leloup and Luke Dimitrios Spieker, “Rethinking Primacy’s Effects: On Creating, Avoiding and Filling Legal Vacuums in the National Legal System,” *Common Market Law Review* 61, no. 4 (August 1, 2024): 936–40, <https://doi.org/10.54648/COLA2024064>.

20 *Consorzio Italian Management e Catania Multiservizi and Catania Multiservizi*, Case C-561/19 (Grand Chamber, CJEU, October 6, 2021), para. 49.

Failure to submit a preliminary reference triggers the state's liability.²¹

In short, both European supranational courts treat settled domestic case law as an indispensable source of "law". The CJEU additionally entrusts national judges with safeguarding the uniform application of EU law across all Member States through the primacy principle and the burden of consulting other courts. This expands the role of national jurisprudence well beyond resolving individual cases, generating effects which extend across the EU.

I.2 THE NATIONAL PERSPECTIVE

National conceptions of the binding force of previous decisions in future cases may reflect logic similar to the European approach. Although the Czech Republic forms part of the Germanic civil-law family,²² decisions of its apex courts—the Constitutional Court, Supreme Court and Supreme Administrative Court (SAC)—have a strong precedential nature. Prior rulings bind their chambers in subsequent cases.

A chamber wishing to depart from a prior legal opinion, or confronted with inconsistent case law, must refer the matter to an enlarged formation tasked with unifying or overruling previous judgments. This is part of the constitutional right to a lawful judge. Among the elements of this right *"is the obligation of a chamber of the supreme court to refer the matter to another decision-making body prescribed by law, if it arrives at a legal opinion differing from that previously held by the court"*; failure to do so results in a *"defect of an improperly composed court"*.²³

The SAC pushed this referring obligation the furthest, as it has stated that "[a]n implicitly expressed opinion therefore ordinarily gives rise to a referral to an extended chamber if another chamber wishes to take a different view".²⁴ Moreover, the duty *"is given even if the legal opinion already expressed in the decision [...] disputed by the referring chamber was not the main reason for the decision in the case."*²⁵ Accordingly, referral is required even where the earlier view is merely implicit or expressed *obiter dictum*. Therefore, even if a legal opinion has been expressed in only one decision, any departure from it must follow the formal process and cannot simply be rejected as unpersuasive. To this end, the SAC has repeatedly reiterated that the administrative bodies must follow its judgments in similar cases.²⁶

To conclude, the Czech example illustrates a potentially stricter national approach than the European one. Nevertheless, it generally confirms the indispensability of judicial decisions in Europe's plural legal order.

21 Köbler, Case C-224/01 (CJEU, September 30, 2003), para. 50.

22 Olga Pouperová, "An Introduction to the Czech Legal System and Legal Resources Online," *GlobalLex* (2024), https://www.nyulawglobal.org/globalex/czech_republic1.html.

23 IV. ÚS 2618/23 (Constitutional Court of the Czech Republic, May 7, 2024), paras. 14 and 16.

24 4 As 65/2018–85, No. 4329/2022 Coll. (Enlarged Senate, Supreme Administrative Court of the Czech Republic (SAC), February 23, 2022), paras. 45–48.

25 7 Afs 54/2007–62, No. 1742/2009 Coll. (Enlarged Senate, SAC, August 26, 2008).

26 1 Azs 111/2025–34, (SAC, July 17, 2025), paras. 11–22. For completeness, I would like to add that at the time of this decision, I was an assistant to a judge sitting in this case.

II THE OBLIGATION TO PUBLISH CASE LAW?

The previous section demonstrated that domestic judicial decisions do more than settle individual disputes, regardless of whether they are formally binding on lower courts or other bodies. They complement written law, may override national law, and fill the resulting gaps. This section builds on that notion and looks at the publicity standards for case law.

Publication duties are examined from two perspectives corresponding to the two roles of judgments identified above. The first is the individual dimension, which contains the right to a public hearing and public pronouncement of judgments. I argue that current rules on publicity in this regard are insufficient, as they fall short of fulfilling even the goals identified by the ECtHR itself. The second is a general dimension covering the precedential nature of case law. This dimension is ignored by the European supranational courts altogether, which is in sharp contradiction with the role they have attributed to domestic judicature. The section concludes with a short overview of current publication practice and addresses privacy issues in mass publication.

II.1 INSUFFICIENT INDIVIDUAL PERSPECTIVE

Under the ECHR, similar to EU law,²⁷ publicity requirements primarily serve the parties of the dispute. Everyone has the right to a “public hearing” and their “[j]udgment shall be pronounced publicly”.²⁸ According to the ECtHR, this safeguards individuals against secret trials and preserves public confidence in courts.²⁹ The public pronouncement requirement might be fulfilled by various means,³⁰ including publication in a register. Yet the ECtHR currently does not oblige states to maintain such a register.³¹

These minimal publicity requirements, however, fall short of the goals they are intended to guarantee. It is unrealistic to assume that public pronouncements of judgments at court hearings, or by their brief display on an official notice board, can ensure adequate transparency in the administration of justice and maintain the public’s confidence. In this sense, “one can easily argue that the (long-term) availability of decisions in an internet repository enhances the possibilities for public scrutiny”.³² Otherwise, the public would be forced to attend numerous hearings a day to properly ascertain the accountability of the judiciary. Therefore, the current notions of “publicity” neither guarantee proper and effective transparency nor provide for meaningful public oversight. This requires information on what decisions are being made and by whom, as well as extensive access to government information.³³

27 Øystein Flø Baste et al., “Open Justice Data in Europe: A Patchwork” (SSRN, April 28, 2025): 5–6, <https://dx.doi.org/10.2139/ssrn.5207840>.

28 Art. 6(1) of the European Convention on Human Rights (ECHR).

29 *Straume v. Latvia*, App. No. 59402/14 (ECtHR, June 2, 2022), para. 124, and cited case law.

30 Baste et al., “Open Justice Data in Europe: A Patchwork,” 3–4.

31 Marc van Opijnen, “Court Decisions on the Internet: Development of a Legal Framework in Europe,” *Journal of Law, Information and Science* 24, no. 2 (2016): 29.

32 Van Opijnen, “Court Decisions on the Internet,” 29.

33 Marios Costa, “Accountability Through Transparency and the Role of the Court of Justice of the European Union,” in *European Yearbook of Constitutional Law 2019*, ed. Ernst Hirsch Ballin, Gerhard van der Schyff, and Maarten Stremler (The Hague: T.M.C. Asser Press, 2020), 224, https://doi.org/10.1007/978-94-6265-359-7_10.

As judicial decisions actively shape the legal landscape, access to them by the interested public grows in importance. The “access to European and national legislation and case law [is] seen as being of paramount importance for economic activities and for upholding the rule of law.”³⁴ Yet, the publication standards fail to reflect this systemic role.

For statutes, the publication rules are simple: unpublished norms cannot be binding. Fuller’s parable of King Rex, who codified rules but kept them secret, illustrates that citizens resented being unable to know the rules and orient their conduct accordingly, finding the obscurity of the applicable law unpleasant.³⁵ Fuller notes that such failure “does not simply result in a bad system of law; it results in something that is not properly called a legal system at all.”³⁶ To live with dignity, exercising reason and conscience, people must have effective access to the law that both controls and facilitates their life. Without knowledge and understanding of the law, they are left vulnerable and deprived of the law’s guidance.³⁷

In this sense, the CJEU recently emphasised the principle of legal certainty by which “legislative acts can enter into force and accordingly have legal effects only after they have been published” so that persons may know the scope of their rights and obligations.³⁸ Likewise, the ECtHR held that unpublished law cannot be considered law within the meaning of the ECHR.³⁹

The European supranational courts, however, diverge on the standards of publicity. The ECtHR, without further consideration, maintained that “the Convention does not contain any specific requirements as to the degree of publicity to be given to a particular legal provision”. Distributing legal text through subscription was therefore found to comply with the ECHR.⁴⁰ The CJEU, by contrast, held that access must be free, a requirement derived from the principle of the rule of law.⁴¹

Turning to judicial decisions, their publication predictably differs from that of statutes. From a Czech perspective, legislative acts must be promulgated to be valid.⁴² Judicial decisions bind the deciding court as soon as they are pronounced and become

34 Elena Alina Ontanu and Marco Velicogna, “EU Judicial Procedures and Case Law Databases: What’s Going on and What May Lay Ahead?,” in *Knowledge of the Law in the Big Data Age*, ed. Ginevra Peruginelli and Sebastiano Faro (Amsterdam: IOS Press, 2019), 251, <https://ebooks.iospress.nl/volume/knowledge-of-the-law-in-the-big-data-age>.

35 Lon L. Fuller, *The Morality of Law*, rev. ed. (New Haven: Yale University Press, 1969), 33–35.

36 Fuller, 39.

37 Simon Rice, “Bentham Redux: Examining a Right of Access to Law,” in *The Cambridge Handbook of New Human Rights*, ed. Andreas von Arnould, Kerstin von der Decken, and Mart Susi (Cambridge: Cambridge University Press, 2020), 554, <https://doi.org/10.1017/9781108676106.043>.

38 *Stichting Rookpreventie Jeugd and Others v. Staatssecretaris van Volksgezondheid, Welzijn en Sport*, Case C-160/20 (Grand Chamber, CJEU, February 22, 2022), paras. 39–41.

39 See, for example, *Nuh Uzun and others v. Turkey*, App. No. 49341/18 and others (ECtHR, March 29, 2022), para. 97.

40 *Špaček, s.r.o. v. the Czech Republic*, App. No. 26449/95 (ECtHR, November 9, 1999), paras. 57–58. These findings were recently reaffirmed in *NIT S.R.L. v. the Republic of Moldova*, App. No. 28470/12 (Grand Chamber, ECtHR, April 5, 2022), para. 163.

41 *Public.Resource.Org and Right to Know v. Commission*, Case C-588/21 (Grand Chamber, CJEU, February 5, 2024), para. 81.

42 Art. 52(1) of the Constitution of the Czech Republic.

effective once served on the parties.⁴³ Yet the need for publicity remains—after all, “the unknown precedent does not exist”.⁴⁴ Interested organisations and individuals must have access to judicial decisions in order to know and follow them.⁴⁵ Under both EU law and the ECHR, only accessible case law can have the quality of law.⁴⁶

Nevertheless, the threshold for case law publicity remains low. The ECtHR was satisfied “while the case-law concerning [national law] interpretation was published in domestic law reports”⁴⁷ and even relied on such reports itself on several occasions.⁴⁸

In 2026, I consider these findings unacceptable.

First and foremost, the low threshold for publication does not correspond with the recognised role of judicial decisions. From both the individual and general perspective, the current publication standard does not guarantee their fulfilment. Both perspectives are linked to wide public access. Only then is one protected against secret trials, is public confidence in courts maintained, and are judicial decisions followed in similar cases.

In other words, as judicial decisions are an essential part of the law, they must be published.

Second, hindering access to jurisprudence harms individuals. Unpublished statutes cannot be enforced by the state against an individual.⁴⁹ In turn, unpublished case law cannot be invoked⁵⁰ by individuals to claim equal treatment against others, as these parties lack information on how the law is applied in similar cases. If one is unable to invoke a previous ruling in a similar case to demand a similar outcome (X), the deciding chamber may rule Y or Z. Such opacity undermines the principle of legal certainty and encourages court-shopping.

Moreover, limited publication undermines scholarship. Comprehensive access makes systematic and in-depth research of the court’s practice possible.⁵¹

Third, accepting subscription-based access to legal texts may have been defensible 25 years ago, but it is untenable in 2026 given technological advances.

43 § 156(3) and § 159 of Act No. 99/1968 Coll., Civil Procedure Code (*občanský soudní řád*); § 49(10) and § 54(5)–(6) of Act No. 150/2002 Coll., Code of Administrative Justice (*soudní řád správní*).

44 Quote from a former president of the Honorary Chamber of the French *Cour de Cassation*, cited in Carl Baudenbacher, “Some Remarks on the Method of Civil Law,” *Texas International Law Journal* 34, no. 3 (1999): 352–353.

45 Michal Bobek, “Publikace judikatury,” in *Judikatura a právní argumentace*, ed. Michal Bobek and Zdeněk Kühn (Praha: Auditorium, 2013), 219–220.

46 In relation to EU law, see *Policejní prezidium (a génétiques)* judgement of the ECJ, para. 60; similarly for ECHR see *G. v. France*, App. No. 15312/89 (ECtHR, May 25, 1993), para. 25; or *Kokkinakis v. Greece*, App. No. 14307/88 (ECtHR, May 25, 1993), para. 40.

47 *Oliveira v. the Netherlands*, App. No. 33129/96 (ECtHR, June 4, 2002), para. 51.

48 See, for example, *S.W. v. the United Kingdom*, App. No. 20166/92 (ECtHR, November 22, 1995), paras. 42–43; *Abdulla Ali v. the United Kingdom*, App. No. 30971/12 (ECtHR, July 30, 2015), para. 92; or *Armani Da Silva v. the United Kingdom*, App. No. 5878/08 (ECtHR, March 30, 2016), paras. 148–154 and 252.

49 *Shimovolos v. Russia*, App. No. 30194/09 (ECtHR, June 21, 2011), paras. 69–70.

50 *Dragotoni et Militaru-Pidhorni v. Romania*, Apps. Nos. 77193/01 and 77196/01 (ECtHR, May 24, 2007), para. 43.

51 Björn Ahl and Daniel Sprick, “Towards Judicial Transparency in China: The New Public Access Database for Court Decisions,” *China Information* 32, no. 1 (March 2018): 12, <https://doi.org/10.1177/0920203X17744544>; Stein Arne Brekke et al., “The CJEU Database Platform: Decisions and Decision-Makers,” *Journal of Law and Courts* 11, no. 2 (October 2023): 2, <https://doi.org/10.1017/jlc.2022.3>.

It was argued that a positive obligation to publish case law entails such barriers that it would require explicit mention in the ECHR.⁵² This argument, however, overlooks the nature of the ECHR as a living instrument, which must consider technical development.⁵³ In this sense, if Art. 8 ECHR can include a positive obligation to tackle climate change,⁵⁴ then basic principles of the rule of law – such as legal certainty, equality before the law, and access to justice – can equally ground a duty to publish jurisprudence.

II.3 CURRENT STATE OF PUBLICATION

The preceding section criticised lax international publication standards. Practice in many states, fortunately, exceeds these standards.

A 2017 European study found that nearly all constitutional and most supreme administrative courts disclose their rulings, although only about 60 % of supreme civil/criminal courts publish every decision. Notably, this is accomplished without significant involvement of the commercial sector.⁵⁵ Moreover, transparency continues to rise. New data from 2023 shows that all decisions of the highest courts are generally published online, while the practice for appellate and first instance courts varies. Several countries, including Estonia, Lithuania, Hungary, and Slovakia, have published all decisions, regardless of instance. These shifts indicate that publishing a large number of decisions online does not constitute a significant challenge.⁵⁶ At the other end of the spectrum is Sweden, with half of appellate decisions and none of first-instance decisions available online.⁵⁷

The Czech SAC, as my detailed study revealed, publishes all final decisions free of charge in its search engine, despite the absence of an explicit legal obligation to do so. There were minor exceptions for procedural decisions, such as decisions on interim measures, suspensive effect or court fee waivers. In the latter case, the situation has improved recently, with decisions now also being published retrospectively.⁵⁸

Nonetheless, some case law remains behind a paywall. A 2022 study in the UK revealed that only 55% of administrative court judgments could be freely accessed; the remainder were presumed to be available only on subscription-based commercial platforms.⁵⁹ However, reforms are underway to address the situation, with a newly established Find Case Law service intended to serve as comprehensive storage.⁶⁰

52 Van Opijnen, “Court Decisions on the Internet,” 30.

53 Baste et al., “Open Justice Data in Europe: A Patchwork,” 4.

54 *Verein Klimaseniorinnen Schweiz and others v. Switzerland* (Grand Chamber, ECtHR), para. 545.

55 Marc van Opijnen et al., “Online Publication of Court Decisions in Europe,” *Legal Information Management* 17, no. 3 (September 2017): 139, <https://doi.org/10.1017/S1472669617000299>.

56 Baste et al., “Open Justice Data in Europe: A Patchwork,” 3.

57 *The 2024 EU Justice Scoreboard* (Luxembourg: Publications Office of the European Union, 2024), <https://doi.org/10.2838/184615>.

58 Šimon Chvojka, “Publikací to nekončí: analýza přístupnosti judikatury Nejvyššího správního soudu,” *Právník* 163, no. 4 (2024): 355–356.

59 Daniel Hoadley et al., “How Public Is Public Law? Approximately 55%,” *UK Constitutional Law Association* (blog), February 25, 2022, <https://ukconstitutionallaw.org/2022/02/25/daniel-hoadley-joe-tomlinson-editha-nemsic-and-cassandra-somers-joe-how-public-is-public-law-approximately-55/>.

60 It still falls short, however, as for example decisions of the Supreme Court are available only from 2012 onwards – see “About This Service,” Find Case Law, 23 May 2023, <https://caselaw.nationalarchives.gov.uk/about-this-service>.

II.4 DECISIONS OF LOWER COURTS

The preceding discussion focused primarily on why the publication of apex court decisions is indispensable. Given the position of these courts at the top of the judicial hierarchy, such disclosure is easily justified. Rationale for publishing lower-level decisions requires separate elaboration.

The considerations regarding the individual perspective (Part II.1) apply equally here. Meaningful transparency – which ensures the right to a public hearing, prevents secret trials, and strengthens public confidence in courts – requires publication rather than mere announcement of judgments within the courthouse.

A few considerations concerning the general perspective and lower courts decisions are worth mentioning.

First, many disputes, especially low-value claims,⁶¹ never qualify for further appeal. If judgments in these cases remain unpublished, analogous disputes may be resolved differently, simply because they arise in a different region or before a different judge. Second, where leave to appeal is required, prospective appellants may need to demonstrate conflicting rulings of lower courts,⁶² an impossible task without reliable access to these decisions.

Third, publication also facilitates comprehension of appellate decisions. Reviewing courts usually summarise first-instance reasoning in a few lines, and only the full text of the lower-court judgment may enable readers to understand exactly what has been affirmed, modified, or rejected. Fourth, publication of the decision can enhance both the consistency and the quality of reasoning.⁶³

II.5 PUBLICATION AND PRIVACY

Judicial decisions arising from individual disputes inevitably reflect the parties' particular circumstances and contain personal data. Given this article's call for broader disclosure, the following section briefly addresses privacy concerns.

Personal data can be assessed using either an absolute or a relative test. Under the former, judicial decisions would necessarily be pseudonymous, since a means of re-identifying the person exists. Regarding the latter test, it is necessary to establish the existence of means reasonably likely to be used by someone for direct or indirect

61 There is a known case on bank fees in the Czech Republic. More than 300,000 people wanted previously paid fees repaid, and the decisions of the lower courts were diverging. As no appeal was permissible (for the low value of each dispute – under circa 400 EUR), the Constitutional Court must have acted as a unifying court. See “Ústavní soud chystá první nález o bankovních poplatcích za úvěry,” Česká justice, April 11, 2014, <https://www.ceska-justice.cz/2014/04/ustavni-soud-chysta-prvni-nalez-o-bankovnich-poplaticich-za-uvery/>. Limitation of appeal in such cases has a long-standing history in comparative law – see Leandro J. Giannini, “Access ‘Filters’ and Institutional Performance of the Supreme Courts,” *International Journal of Procedural Law* 12, no. 2 (2022): 202.

62 As it is in Austria (see Wojciech Piątek, “Access to the Highest Administrative Courts: Between the Right of an Individual to Have a Case Heard and the Right of a Court to Hear Selected Cases,” *Central European Public Administration Review* 18, no. 1 (April 23, 2020): 15, <https://doi.org/10.17573/cepar.2020.1.01>.) or in the Czech Republic (see Lukáš Potěšil, “Restriction of Access to the Supreme Administrative Court to Reduce Its Burden (via Expanding the Institution of Inadmissibility of a Cassation Complaint in the Czech Republic),” *Institutiones Administrationis* 1, no. 1 (June 30, 2021): 78, <https://doi.org/10.54201/iajas.v1i1.9>).

63 Andrew J. Martineau, “Reinforcing the Infrastructure of Legal Research through Court-Authored Metadata,” *Law Library Journal* 112, no. 1 (2020): 9.

identification of the person.⁶⁴ Empirical studies report re-identification rates of 84% and 25%, respectively.⁶⁵ So-called partially preserving omissions (such as keeping the initials of real names) are most vulnerable to deanonymisation.⁶⁶

However, from the precedential perspective, personal identifiers are generally superfluous. Names and addresses delineate the concrete dispute (individual perspective) but are unnecessary for extracting the court's legal opinion for similar cases. Simply put, whether the claimant was Caroline or Paul, or when they were born, is irrelevant. What matters are the reasons the courts decided as they did and the implications for similar proceedings. Accordingly, online versions need not reveal the parties' identities in any way.⁶⁷

Similarly, the ECtHR held that publication of a name and medical condition in a judgment violates the right to privacy.⁶⁸ However, when omitted or replaced, the violation does not occur.

Therefore, most personal data can be fully redacted or replaced prior to publication without affecting further use of the judgments. Residual information, such as asset values or salary figures, generally carries less privacy weight; where included, it was likely crucial to the dispute and is informative for later cases.

Regarding the names of the people acting in a professional capacity (judges, representatives, clerks, etc.), there is a strong normative argument for not redacting them.⁶⁹ With respect to the publication of representatives' names online by courts, the Czech courts held that “[a]ll of the information whose disclosure the [representative] viewed as an interference with his rights related to [...] his legal practice vis-à-vis the outside world. Publishing the court decisions containing that information in the database of administrative-court rulings maintained by the [SAC] does not constitute an interference with the [representative's] right”.⁷⁰

Accordingly, mass publication of decisions is not inherently a privacy problem. It simply necessitates appropriate organisational and technical safeguards, such as sufficient redaction of personal information or licensing conditions for subsequent use,⁷¹ which lie outside the scope of this article. When properly implemented, broad publication does not unduly interfere with privacy.

III THE OBLIGATION TO SORT PUBLISHED CASE LAW?

National courts dispose of thousands of cases per year. The internet has made the dissemination of this vast corpus possible, bridging the physical gap between users

64 Marc Van Opijnen, “The GDPR and the Reuse of Published Court Decisions; Some Pressing Questions, Illustrated by Developments in The Netherlands,” (SSRN, 2025), 3, <https://doi.org/10.2139/ssrn.5073149>.

65 Van Opijnen, “The GDPR and the Reuse of Published Court Decisions,” 4.

66 Van Opijnen, “The GDPR and the Reuse of Published Court Decisions,” 4.

67 Similar practice is employed by the CJEU, see Court of Justice of the European Union, “Fictitious Names in Anonymised Cases,” accessed May 27, 2025, https://curia.europa.eu/jcms/jcms/p1_3869098/en/.

68 *Z. v. Finland*, App. No. 22009/93 (ECtHR, February 25, 1997); or more recently *Cracò v. Italy*, App. No. 30782/18 (ECtHR, June 13, 2024), paras. 17–22.

69 Baste et al., “Open Justice Data in Europe: A Patchwork,” 23.

70 31 A 68/2018–177 (Regional Court in Brno, November 7, 2018), para 56.

71 Baste et al., “Open Justice Data in Europe: A Patchwork,” 24.

and legal information. Yet mere publication does not close the informational gap;⁷² it merely shifts the burden of finding relevant material to the reader. Such a flood of published case law can lead to overload, hamper research, raise costs, and invite errors.⁷³ This overload threatens coherence, predictability, and equality before the law just as surely as non-publication.

The Supreme Court of Italy (*Corte di Cassazione*) has been infamously dubbed a “supermarket” where anyone can find a decision to support their legal argument.⁷⁴ This image is telling. Publication fulfils the duty of delivering goods to the store, but without an order, it is the equivalent of unloading crates in the middle of the aisle. If one is not “shopping” for EU law, one may even be charged by the security guard at the entrance.

No consumer would tolerate such chaos. Fortunately, supermarkets shelve goods by category so that lettuce is not mixed with laundry detergent. Likewise, meaningful access to case law requires that decisions be catalogued and sorted. Without such labelling, mass publication is scarcely better than non-publication.

III.1 CURRENT STANDARDS ON DECISION SORTING

The biggest obstacle to legal research is the presence of “unknown unknowns”—decisions we do not even realise exist.⁷⁵ Unless one is a narrow specialist, there is a real risk of overlooking relevant rulings, a problem exacerbated in Europe’s multi-layered system, where ECHR, EU and national norms overlap.

Usually, such unknowns surface when a concrete task (drafting a judgment, submission or article) forces us to search. The inquiry typically begins with known information, such as an applicable statute or judgment.⁷⁶ If the starting point is appropriately referenced in the searched dataset, related decisions can be retrieved (more easily). Hence, there is an obligation to label and sort judgments systematically.

Metadata is ideal for this purpose because it resides in a separate layer that can be edited at any point in a judgment’s life cycle. It is therefore possible to append metadata over time to complete today’s neglected entries or to capture future developments, such as overruling decisions. In other words, yesterday’s plain PDF can become tomorrow’s richly indexed precedent by supplementing its metadata envelope.

Currently, there are several soft law instruments on how to categorise case law. Within the Council of Europe, the Commission for the Efficiency of Justice recently published guidelines calling for structured data, including applicable legislation, keywords, labels

72 Martineau, “Reinforcing the Infrastructure of Legal Research through Court-Authored Metadata,” 11.

73 David M. Levy, “Information Overload,” in *The Handbook of Information and Computer Ethics*, 1st ed., ed. Kenneth Einar Himma and Herman T. Tavani (New Jersey: Wiley, 2008), 510, <https://doi.org/10.1002/9780470281819.ch20>; Mohamed Amine Belabbes et al., “Information Overload: A Concept Analysis,” *Journal of Documentation* 79, no. 1 (January 10, 2023): 152–153, <https://doi.org/10.1108/JD-06-2021-0118>.

74 Federico Ferraris, “Finding a Cure or Simply Relieving Symptoms? The Case of the Italian Supreme Court,” in *Supreme Courts under Pressure*, ed. Pablo Bravo-Hurtado and C. H. van Rhee, 2021, 36, https://doi.org/10.1007/978-3-030-63731-6_3.

75 Paul Magrath, “The Genie and the Lamp: How Can Artificial Intelligence Help Us Find New Case Law?” *Legal Information Management* 22, no. 3 (September 2022): 117, <https://doi.org/10.1017/S1472669622000342>.

76 Magrath, “The Genie and the Lamp”.

and the use of ECLI citations, together with supplementary information on the finality of decisions or their overturning.⁷⁷

At the EU level, the Conclusions on the Online Publication of Court Decisions encourages the use of search engines and metadata.⁷⁸ Moreover, the 2010 European Case Law Identifier (ECLI) offers a unique identifier for every judgment and a harmonised set of mandatory and optional metadata.⁷⁹ This metadata should contain a variety of information, including references.⁸⁰ The Best Practice Guide for Managing Supreme Courts echoes this, calling for “user-friendly” publication with fields such as date, keywords, and applicable law.⁸¹

Metadata should be annotated “authoritatively”, with methods and criteria publicly disclosed.⁸² Therefore, the state should play an active role in labelling.⁸³ Like supermarket staff, it should organise the shelves rather than leave the task to customers. Because the state alone has complete access to the full text and information (such as later reversals), it should play the primary role.

This role, however, must be strictly defined. The institutions responsible for metadata should have minimal discretion regarding what is recorded. They should be obliged to include every statute and precedent they cite. Appearance in the judgment is proof of relevance. Allowing selective tagging would invite inconsistency or even concealment.

Once this mandatory baseline is secured, private actors can add value (analytics, richer interfaces,⁸⁴ commentary) without hiding basic access behind a paywall. Innovation should complement, rather than replace, universally accessible, state-provided metadata.

III.2 INSUFFICIENT PRACTICE

International soft-law standards recognise the need to publish and sort decisions, as the previous section has indicated, but practice in this area remains patchy.

A 2017 study of 26 European jurisdictions found that only half used keywords, six implemented ECLI, five linked related cases, and three linked statutes⁸⁵—a dismal record.

77 European Commission for the Efficiency of Justice (CEPEJ), *Guidelines on the Online Publication of Judicial Decisions Aiming at Furthering Legal Knowledge* CEPEJ(2024)9, 7–8. Available from: <https://rm.coe.int/cepej-2024-9-guidelines-on-the-online-publication-of-judicial-decision/1680b2d0de> (accessed June 1, 2025).

78 Marc van Opijnen, “The EU Council Conclusions on the Online Publication of Court Decisions,” in *Knowledge of the Law in the Big Data Age*, ed. Ginevra Peruginelli and Sebastiano Faro, 317 (Amsterdam: IOS Press, 2019), 87, <https://ebooks.iospress.nl/volumearticle/51776>.

79 Van Opijnen, “Court Decisions on the Internet: Development of a Legal Framework in Europe,” 45–46.

80 Council of the European Union, *Council Conclusions Inviting the Introduction of the European Case Law Identifier (ECLI) and a Minimum Set of Uniform Metadata for Case Law*, Annex, pt. 2.3(g).

81 Lauranne Claus et al., *Best Practice Guide for Managing Supreme Courts*, (Antwerp: University of Antwerp, 2017), 29, https://www.at.gov.lv/files/uploads/files/2_Par_Augstako_tiesu/Starptautiska_sadarbiba/BEST%20PRACTICE%20GUIDE.pdf.

82 CEPEJ’s Guidelines on the Online Publication of Judicial Decisions, 6.

83 Martineau, “Reinforcing the Infrastructure of Legal Research through Court-Authored Metadata,” 9.

84 Baste et al., “Open Justice Data in Europe: A Patchwork,” 15.

85 Claus et al., *Best Practice Guide for Managing Supreme Courts*, 31–32.

Looking again at the Czech SAC, I discovered that only a fraction of the references to ECtHR and Constitutional Court decisions made in the text of the judgment were embedded in its metadata.⁸⁶ Moreover, the citation standard in the text of the decision and in the metadata diverges,⁸⁷ turning any full-text search into a challenge. These findings appear to be present in other jurisdictions as well.⁸⁸

Why the court still ignores implemented standards like ECLI is unclear, but former president Josef Baxa offers a clue in recalling how the numbering of paragraphs in decisions was introduced:

*we had to fight that battle all over again! Some judges pushed back, saying that numbering couldn't be imposed on them because it would infringe on their independence. [...] In the end, I made use of the fact that I was chairing the enlarged senate responsible for issuing unifying rulings, and I introduced the practice there as a model. Under that gentle influence, even the toughest oaks eventually yielded.*⁸⁹

Soft law instruments have failed in this regard. If jurisprudence and its role in the legal landscape are to be taken seriously, there is a pressing need to impose obligations to publish judicial decisions as well as to sort them adequately.

IV CONCLUSION

This paper has demonstrated a striking tension in the approach of the European supranational courts to national case law. On the one hand, the ECtHR and the CJEU proclaim domestic jurisprudence to be legally indispensable: it complements written law, fills gaps, and ensures that the principles of legality and legal certainty – deciding like cases alike – are honoured. After all, divergent case law infringes the right to a fair trial. These observations confirm that the effects of judicial decisions extend far beyond a single dispute.

On the other hand, this normative role presupposes genuine public availability, which is not sufficiently addressed by these courts. While strict publication rules exist for written statutes, legal obligations to publish judgments lag behind, ultimately undermining the role attributed to case law.

The contemporary publicity framework is incomplete from two perspectives. Individually, the requirement of open justice cannot be meaningfully fulfilled by the public pronouncement of a decision or a noticeboard posting alone; proper scrutiny of courts requires durable availability. Systemically, an unknown precedent cannot be followed – the general effects of judgments are thereby weakened where access is fragmented, paywalled, or serendipity-based. Both deficits hinder the very goals the European courts articulate for judicial transparency: the protection of individuals against secret justice and the assurance that legal rules are public, foreseeable, and uniformly applied.

⁸⁶ It was one tenth and one third respectively – see Chvojka, “Publikaci to nekončí: analýza přístupnosti judikatury Nejvyššího správního soudu,” 362.

⁸⁷ Some citations of CJEU and ECtHR cases use only case number, some only popular name, and some both – see Chvojka, 362.

⁸⁸ Ontanu and Velicogna, “EU Judicial Procedures and Case Law Databases: What's Going on and What May Lay Ahead?,” 251.

⁸⁹ Tomáš Němeček, *Hledání Rovnováhy, Aneb Život Soudce* (Praha: Vyšehrad, 2023), 145.

Crucially, “just publish” is not enough. Without structure, mass publication becomes its own barrier. Readers face “unknown unknowns,” higher costs, and avoidable errors. Structuring the data with consistently maintained information, such as ECLI identifiers, fields for cited statutes and cases, keywords, and status flags (such as finality and overruling), offers a possible solution. International soft-law standards already outline such requirements, yet their non-binding character limits compliance. This shortfall again undermines the elevated position of case law within the European legal landscape.

These considerations apply regardless of whether the decision in question is formally binding or merely persuasive, and irrespective of whether it is considered a landmark ruling or a straightforward application of statute. Sufficient publication is of paramount importance. Without it, the aforementioned goals are undermined to the same extent. This is also why the arguments apply similarly to decisions of lower courts.

If European legal systems are serious about the value of jurisprudence, they must value access to it no less. Publishing promptly, for free, and within a robust structure is not a luxury; it is a necessary condition for case law to function as law in everyday practice rather than merely in theory.

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