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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

OF THE COUNCIL OF EUROPE

(VENICE COMMISSION)

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OPINION

ON CERTAIN PROVISIONS OF ACT XVII OF 2024 CONCERNING THE POWER OF THE MINISTER OF JUSTICE TO HAVE ACCESS TO JUDICIAL AND PROSECUTORIAL DECISIONS AS WELL AS RELATED DOCUMENTS

Adopted by the Venice Commission
at its 143rd Plenary Session
(online, 13-14 June 2025)

On the basis of comments by

Ms Nina BETETTO (Member, Slovenia)
Mr Thomas RØRDAM (Substitute Member, Denmark)
Mr Panayotis VOYATZIS (Substitute Member, Greece)

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I. Introduction

1. By letter of 12 September 2024, Ms Zanda Kalniņa-Lukaševica, Chairperson of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, requested an Opinion of the Venice Commission of Council of Europe on Subsections 53 and 58 of Act XVII of 2024 (the "Omnibus Act") on the amendment of laws related to justice matters (CDL-REF(2025)005).[1]

2. Ms Nina Betetto, Mr Thomas Rørdam, and Mr Panayotis Voyatzis acted as rapporteurs for this Opinion.

3. On 3-4 February 2025, the rapporteurs, together with Mr Domenico Vallario from the Secretariat, travelled to Budapest. The delegation met with the Chair of the Committee of Justice of the Parliament, representatives of the parliamentary opposition, the Ministry of Justice, the National Judicial Council, the National Office for the Judiciary, the Office of the Prosecutor General, the Curia, as well as with representatives of the professional associations of judges and of civil society. The Commission is grateful to the Hungarian authorities for the excellent organisation of this visit.

4. On 11 April 2025, the Venice Commission invited the Hungarian authorities to provide additional information with regard to the provisions under examination. On 27 May 2025 the Venice Commission received a reply to this request.

5. This Opinion was prepared in reliance on the English translation of the law. The translation may not accurately reflect the original version on all points.

6. This Opinion was drafted on the basis of comments by the rapporteurs and the results of the country visit. The draft Opinion was examined at the meeting of the Sub-Commissions on the Judiciary, on the Rule of Law and on Latin America on 12 June 2025. Following an exchange of views with Mr Róbert Répássy, Secretary of State, Ministry of Justice, it was adopted by the Venice Commission at its 143rd Plenary Session (online, 13-14 June 2025).

II. Analysis

A. The scope of the provisions

7. Subsection 53 introduces a new letter (g) to Article 76 § 8 of Act CLXI of 2011 on the Organisation and Administration of Courts ("Act on Courts"), which is devoted to the duties of the President of the National Office of the Judiciary ("NOJ") in his information-related functions. More specifically, the President of the NOJ: "*for the purpose of preparing legislation and examining the effective application of laws shall, at the request of the minister in charge of the judicial system, make available […] the final and binding or definitive court decisions in the subjects indicated in the request, in a depersonalised form, including other court decisions and decisions made by other authorities and bodies which were revised or reviewed by the final and binding or definitive court decision*". The new duty is added to a series of other functions which predate the judicial reform, one of them being providing, at the request of the Minister of Justice ("MoJ"), information on issues related to judicial practice to the extent necessary for legislation purposes, upon obtaining the opinions of the courts where deemed necessary.[2]

8. Subsection 53 also introduces new paragraphs §§ 12 and 13 to Article 76 of the Act on Courts, which further provide for the possibility to request specific statistical data on the duration of proceedings as well as providing the modalities of the collection of the decisions, including the

[1] Act XVII of 2024 is an Omnibus Act amending 29 laws related to justice matters. The Act was published in the Official Journal on 9 May 2024, available here, pages 3053-3077.
[2] Article 76 § 8(f) of the Act on Courts.

possibility for the President of the NOJ to request consultation with the MoJ in order to ensure that complying with the request does not result in a disproportionate caseload for the courts.

9. In a similar vein, Subsection 58 of the Omnibus Act introduces Article 37/A in the Act CLXIII of 2011 on the Prosecution Service of Hungary ("Prosecution Service Act"), providing that: "*[f]or the purpose of preparing legislation and examining the effective application of laws, the Prosecutor General shall, at the request of the minister in charge of the judicial system, make available […], in a depersonalised form, any non-appealable decisions of the prosecution service in the subjects indicated in the request delivered in criminal proceedings terminated by a final and binding court decision, or a definitive non-conclusive court order, or a non-appealable decision by the prosecution service or the investigating authority; the indictment documents; as well as all those decisions of the prosecution service, other authorities and other bodies which were revised or reviewed by the non-appealable decision of the prosecution service*." The Article further provides for the protection of classified data and for the possibility, for the Prosecutor General, to request consultation with the MoJ in order to ensure that complying with the request does not result in a disproportionate caseload for the prosecution service.

10. In short, the new provisions establish a mechanism for making final and conclusive judicial decisions, as well as non-appealable prosecutorial decisions on a specific subject matter, available to the MoJ at his/her request, for the purposes of preparing legislation and examining the effective application of law. These decisions must be provided in a form that prevents the identification of persons involved in the cases. The mechanism further allows the MoJ to have also access to all related decisions - specifically, indictments or any decisions by courts, public authorities, or other bodies that have been revised or reviewed by the final judicial or prosecutorial decision in question.

11. It is the first time that the Venice Commission is called upon to examine provisions of this nature. The Commission notes that these provisions are related to key constitutional principles such as the independence and efficient functioning of the judiciary and the prosecution service, and, in turn, to the separation of powers between the executive and the judiciary. As such, they will ultimately have a bearing on individual rights, including the right to a fair trial and the right to privacy. Bearing this in mind, it is appropriate to assess whether the norms under consideration are proportionate to the aim they seek to achieve.

B. The provision on judicial decisions

1. The aim of the provision

12. Article 76 § 8(g) states that decisions of ordinary courts shall be made available to the MoJ "*for the purposes of preparing legislation and examining the effective application of laws*." The explanatory memorandum[3] briefly states that it is essential for the Government to familiarise itself with the decisions of the legal authorities and to examine such decisions in order to assess the effectiveness of legislation. The explanatory memorandum further refers to the duty, for the Government, to continuously review the legal system.[4] In their letter of 27 May 2025 and in their comments of 12 June 2025, the Ministry of Justice clarify that the examination of individual cases and judgments is fundamental to, for example, assess the exact scope of criminal provisions; assess the effectiveness of a criminal procedure instrument, the extent to which it meets the expectations of the legislator and the elements that need to be amended; the quality and standard nature of the reasoning of court decisions on coercive measures restricting personal freedom.

[3] Available here, p. 37.
[4] Pursuant to Chapter VI of Act CXXX of 2010 on Legislation.

13. The Venice Commission notes that "*ex post* evaluation is an essential step of the policy and regulatory process".[5] In this framework, courts "have a constitutional duty to interpret and apply the law according to the rule of law and the principles of interpretation. Judgments of the Courts play a role in highlighting the meaning and effect of legislation. The findings of Court judgments will highlight the extent to which there have been problems or complaints about the Act in question and involves a judgment that the government must amend the law to rectify the defect".[6] The Venice Commission accordingly finds that having access to courts' decisions for the purpose of preparing legislation and examining the effective application of laws pursues a legitimate aim, insofar as the Government, notably the MoJ, is responsible for planning, preparing and proposing new legislation and can therefore use courts decisions, among other tools, to assess whether there have been issues in the effective application of the law, particularly in identifying any legal ambiguities or lacunae in the existing legislation. However, the means employed to pursue such a legitimate aim should be proportionate to this aim.

2. Proportionality

a. The scope of the requests by the Minister of Justice

14. The new provision allows the MoJ to request and obtain from the President of the NOJ final and binding decisions issued by courts, definitive (or "conclusive") decisions,[7] as well as other court decisions and decisions made by other authorities and bodies which were revised or reviewed by the final and binding or definitive court decision. The provision does not allow the President of the NOJ to refuse the MoJ's request, but only to enter in "consultations" with the MoJ in case the request would cause a disproportionate workload on the courts (see below section b.).

15. The MoJ's request should pertain to a defined "subject" and cannot concern individual cases. Moreover, the Ministry of Justice informed the Venice Commission's delegation that the norm would be interpreted in the sense that the MoJ would only indicate to the NOJ the subject and the desired number of decisions. The decisions themselves would then be randomly selected by the NOJ.

16. This notwithstanding, the Venice Commission notes that the scope of a request can be very wide, and include underlying decisions made by other courts, authorities and bodies, insofar as those decisions have been revised or reviewed by the final or conclusive decisions requested.

17. While it is not entirely clear from the text of the law whether the "conclusive" decisions within a set of civil or criminal proceedings can only be made available to the MoJ after the main set of proceedings (on the merits) is concluded or whether they could be requested while the main set of proceedings on the merit is still ongoing, in their letter of 27 May 2025 and their comments of 12 June 2025, the Ministry of Justice noted that the regulation excludes the possibility of accessing decisions in ongoing proceedings.

18. Having said this, the Venice Commission is not convinced of the appropriateness of systematically providing all upheld or overturned decisions as well as all underlying decisions made by other authorities and bodies along with final ones. While it could be in principle legitimate for the MoJ to have access also to decisions from lower instances to pursue the above-mentioned

[5] OECD, *Evaluating laws and regulations*, 2012, p. 10; See also Venice Commission, CDL-AD(2016)007, *Rule of Law Checklist* § 54.
[6] *Evaluating laws and regulations*, cited above, p. 38.
[7] All those decisions of the court which do not relate to the merits of the case but which settle a certain matter in a conclusive way. *See*, *for example*, Articles 449 § 3 and 460 of the Code of Criminal Procedure of Hungary (Act XC of 2017).

legitimate aim, the systematic collection of previous upheld or overturned decisions,[8] does not appear to be proportionate and may give rise to the impression that the MoJ carries out a sort of judicial performance monitoring rather than legislative research.

19. The Venice Commission believes that there must be access to the case law in a way that guarantees the transparency of court decisions. However, this fundamental principle of the rule of law[9] should not be interpreted in such a way that the executive power can have a direct and unhindered access to almost any court decision, potentially blurring the separation of powers between the executive and the judiciary.[10]

b. Increased burden on the courts

20. The width of the MoJ's power also raises some practical and resource-related considerations.

21. During the meetings in Budapest, the delegation was informed that, as of 4 February 2025, only two requests concerning a number of civil and criminal cases on a given subject matter had been submitted to the President of the NOJ. Neither the scope of the requests nor the number of decisions requested are public.

22. In light of this, the real impact of such a mechanism on the workload of courts remains to be seen and cannot be anticipated at the moment. Nevertheless, the Venice Commission recalls that requests by the MoJ could potentially encompass any judicial decision and entail comprehensive analysis of case law across multiple areas of jurisdiction. This power, combined with the requirement to provide both final decisions and their upheld or overturned precedents, including decisions of other public bodies, could potentially create an administrative burden on the courts.

23. In particular, each request would necessitate identifying and collecting relevant decisions across potentially multiple courts and time periods. Moreover, the unpredictable nature of these requests - both in terms of frequency and scope - could lead to either significant delays in responding to MoJ's requests or, more concerningly, the diversion of resources from core judicial activities.

24. The Venice Commission finds that the possibility, for the President of the NOJ, to request consultation with the MoJ to ensure that complying with the request does not result in a disproportionate caseload for the courts (Article 76 § 13) is to be welcomed. Moreover, as noted by the Ministry of Justice in their comments of 12 June 2025, the legislation does not lay down a time limit or a penalty for requesting data, which largely builds on the (good faith) cooperation of public bodies. It is nonetheless to be noted that no mechanism is provided in case the MoJ and the NOJ do not reach an agreement.

c. The existence of alternative solution to pursue the legitimate aim

25. One of the fundamental elements of the proportionality test is to verify whether there are other less intrusive means to pursue the legitimate aim.

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[8] According to Article 76 § 8(g), the President of the NOJ shall make available to the MoJ […] *court decisions and decisions made by other authorities and bodies which were revised or reviewed by the final and binding or definitive court decision*".

[9] CDL-AD(2016)007, cited above, II.B.2.

[10] The fundamental principle of separation of powers has been emphasised, in the Hungarian context, among others in Venice Commission, CDL-AD(2021)036, *Opinion on the amendments to the Act on the organisation and administration of the courts and the Act on the legal status and remuneration of judges adopted by the Hungarian Parliament in December 2020*, § 41.

26. The Venice Commission has carried out a limited research on mechanisms allowing Ministries of Justice to have access to judicial (and prosecutorial) decisions.[11] Given the time and thematic constraints of this Opinion, it has not been possible to carry out a thorough comparative study, and only some selected pertinent examples will be cited. The Venice Commission wishes to underline in this context that evidence from different legal systems cannot be definitively compared in isolation from the whole legal framework and without taking into due account the specific broader social, political and historical background.

27. The research showed that, while mechanisms for accessing court decisions exist in various jurisdictions, they typically involve either public databases of anonymised decisions or statistical data/aggregated reports on judicial practice rather than ministerial powers of directly collecting decisions from the judiciary.

28. Public access to databases containing judicial decisions is a common tool in Council of Europe member states.[12] The European Commission for the Efficiency of Justice (CEPEJ), has developed an IT tool to monitor the development and implementation of systems of publication of court decisions (at first, second, and third instance in civil, criminal, and administrative cases) in Council of Europe member states (plus Israel and Morocco).[13] Among other things, from a preliminary assessment of the CEPEJ data, it results that Hungary has among the most developed systems of publication of court decisions in Council of Europe member states.[14] Indeed, the Venice Commission notes that Article 163 of the Act on Courts, provides for a general duty of publication of final judicial decisions on the National Register of Court Decisions,[15] subject to certain exceptions.[16]

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[11] The research covered Denmark, France, Greece, Ireland, Italy, North Macedonia, Poland, and Slovenia and was complemented by some desk research.

[12] For example, in **Italy,** the Supreme Court of Cassation publishes its judgments on its institutional site, duly depersonalised; online services for consulting legislation and case law are available on the same institutional site. In particular, the Web Sentences service allows any user to consult the rulings of the Supreme Court of Cassation with a free search. Case-law databases on the merits, open both to magistrates and lawyers and, to a lesser extent, to all citizens, are being finalised by the Ministry of Justice in order to achieve the National Recovery and Resilience Plan targets; in **North Macedonia**, Article 99 § 5 of the Law on Courts provides for the publication of judgments on the web pages of the courts: only final judgments are published or those judgments and rulings that are not final but relate to matters of public interest. A constitutional review procedure was initiated before the Constitutional Court of the Republic of North Macedonia with the aim of creating an obligation to publish all judgments and decisions regardless of whether they are final. However, the Constitutional Court did not accept the initiative and did not find the provision to be unconstitutional; in the **Republic of Moldova**, according to Article 10, paragraphs (4) and (5) of Law No. 514 of 6 July 1995 on the organization of the judiciary, decisions of courts of law, courts of appeal, and the Supreme Court of Justice are published on the Internet. The method of publication is established by a regulation approved by the Superior Council of Magistracy. Access to judgments on the courts' websites is free of charge, anonymous, and does not require any form of registration. The court decisions are anonymized and do not contain other personal data, as specified in points 11 and 15 of the Regulation on the publication of court decisions. Furthermore, Law No. 514 of 6 July 1995 grants any person the right to request and receive information concerning the work of the court or a particular case. Such information can be provided in various forms (telephone, fax, post, electronic mail, or other means), while respecting rules on personal data protection and confidentiality of proceedings (Article 562 of the Law).

[13] See CEPEJ ICT Question Explorer – Question "Database of court decisions" (1st, 2nd, or 3rd instance) in civil, administrative and criminal matters.

[14] According to the available data, Hungary has a 95-100% score of publication of civil, criminal and administrative cases, among the highest in Council of Europe member states.

[15] Available at: https://birosag.hu/ugyfeleknek/birosagi-hatarozatok-gyujtemenye.

[16] Article 163 reads: "(1) *The Kúria (Curia) shall publish uniformity decisions, decisions delivered in uniformity complaint procedures and in appeal proceedings to ensure legality, its decisions adopted on the substance of a matter and annulment decisions, the court of appeal shall publish its decisions adopted on the substance of a matter, the general court shall publish its decisions adopted in administrative actions on the substance of a matter, if the reviewed administrative decision was adopted in a single instance proceeding and no ordinary appeal may be lodged against the court decision, in the Bírósági Határozatok Gyűjteménye (Register of Court Decisions) in digital form.*
(1a) The Kúria (Curia) shall also publish its decisions not mentioned in Subsection (1), adopted on the merits of an application for review in the Bírósági Határozatok Gyűjteménye.
(1b) The decisions published by the Kúria shall be accompanied by the decisions' content in principle, or in the absence thereof a brief overview and the legislation applied.

29. Other existing mechanisms include the possibility of obtaining statistical data and aggregated reports on judicial practice. In **Denmark**, the Minister of Justice can ask the General Prosecutor[17] for a report on whether the courts are complying with the legislature's intentions in specific areas. Such a report will be based on a review of case law in the focused area. In **Greece**, the Ministry of Justice can only collect statistical data on courts; for these purposes, a dedicated bureau was established within the Ministry of Justice in 2022, pursuant to Presidential Decree no. 47/2022. In **Ireland**, the Courts Service is the body is responsible for the administration and management of the courts.[18] It is obliged to collect statistics and publishes an elaborate Annual Report; in that regard, it cooperates with the Ministry of Justice. In **Italy** the powers of the Minister of Justice are regulated by Article 14 of Law no. 195/1958. According to such provision, the Minister of Justice has the power to "*ask the heads of the Courts for information about the functioning of justice and may in this regard make such communications as he deems appropriate*". The provision expressly refers to the "functioning of justice". The practice is for this power of the Minister of Justice to be exercised in compliance with the principles of loyal cooperation with the other constitutional bodies but is not interpreted to include the possibility of directly requesting texts of court decisions from the judiciary. Generally, evaluations of the information acquired by the offices - e.g. data on the disposition time of legal proceedings - are discussed in joint committees, in which the High Council of the Judiciary and the Ministry of Justice participate. In **North Macedonia**, the courts publish on their websites monthly, quarterly, and annual reports containing statistical data on types of cases, the number of resolved cases, and cases in progress. The Ministry of Justice has also adopted a Methodology for Court Statistics. In **Poland**, a key role is played by the Institute of Justice, established by an order of the Minister of Justice of Poland of 10 March 2009. The Institute conducts research, develops analyses and expert reports, cooperates with other institutions at home and abroad, and carries out publishing activities. It develops and analyses expert reports on various aspects of the administration of justice and can prepare opinions on the direction of future legislation, also based on analysis of the files of court rulings. This gives the Minister of Justice the possibility to obtain thematic reports on judicial/prosecutorial practice, to make decisions concerning future legislation, based on solid data and research prepared by the research Institute. In addition to that, the Minister of Justice has the power for requesting *specific court files*, but such power is statutory limited and must comply with the constitutional principle of judicial independence.[19] In **France**, the Minister of

(2) In the Bírósági Határozatok Gyűjteménye:
a) court decisions delivered in order for payment, judicial enforcement, company registry, bankruptcy and liquidation procedures, and in procedures related to any register maintained by the court need not be published;
b) court decisions adopted in matrimonial actions, in paternity actions and actions for the establishment of descent, in actions for the termination of parental custody, or in actions for placement under guardianship or conservatorship may not be published if so requested by either of the parties; and
c) court decisions adopted in criminal proceedings opened in connection with a criminal offense against sexual freedom and sexual offenses may not be published, if the victim did not authorise it upon being requested to do so by the court.
(3) A digital copy of court decisions and other rulings adopted by the authorities and other organs shall also be published, if rendered anonymous, attached to and published together with the relevant court decision in proceedings specified by the President of OBH, that were overruled or reviewed by the published court decision.
(4) The publication of decisions adopted upon the judicial review of public procurement procedures shall be governed by the relevant provisions of the Act on Public Procurement.
(5) The president of the court may order the publication of other rulings the court has adopted, beyond the ones referred to in Subsections (1)-(4)."

[17] In Denmark, the Prosecution Service is governed by the Minister of Justice who supervises the public prosecutors.

[18] Its primary functions are to: manage the courts, support the judges, provide information on the courts system to the public and provide court buildings and facilities for court users.

[19] According to Article 53 (c) of the Law on the Common Courts, he/she can only do so (i) for a case in which the court has requested a text of foreign law, an explanation of foreign judicial practice, or information as to the existence of reciprocity with a foreign state; (ii) in case he/she needs to perform tasks related to the representation of the Republic of Poland before international courts, treaty committees, international organizations or international arbitration courts; (iii) in order to perform tasks related to representing the Republic of Poland before the European Court of Human Rights or another international body, It is worth noting that the Constitutional Tribunal of Poland, while not excluding the possibility that there is a need to access court files as part of external supervision, stressed

Justice can have exceptionally access to the National Automated Registry for legal proceedings,[20] but exclusively to gather non-personal data used for statistical purposes or personal data used for statistical purposes by the public statistics services under the authority of the Ministry of Justice.[21] In addition, he/she could gather information covered by Article 11-1,[22] but a specific authorisation of the public prosecutor or the investigating judge, taken where necessary after consultation with the minister or ministers concerned, is required.

30. The Ministry of Justice, in their letter of 27 May 2025, referred to some other examples in other CoE member States. In particular, the Ministry of Justice reported that in **Bulgaria**, heads of judicial bodies provide the Minister of Justice with information, reports and statistical data in electronic form; in **Czechia**, the Ministry of Justice organises, directs and controls the (non-exhaustive) publication of court decisions, so the Minister has direct access to the decisions. The ministerial control also covers court files and the quality of proceedings in the context of the assessment and control of court proceedings and decision-making; lastly, in **Estonia**, the judicial information system is also accessible to public bodies.

31. It appears that the quoted systems foresee either access to judicial decisions databases or to aggregated reports and statistical data, similar to other systems that have been illustrated in the limited comparative research. While this cannot be excluded in light of the limited scope of the research done, it does not seem that the power of the Minister of Justice to request judicial decisions directly from the judiciary, similarly to what is foreseen in Hungary, is a common practice among Council of Europe member states.

32. Insofar as public access to databases containing judicial decisions is concerned, the Commission cannot but reiterate its favour for the publicity of court decisions. Indeed, accessibility of court decisions is first and foremost part of legal certainty, as court decisions can establish, elaborate upon and clarify law.[23]

33. Publicity of judgments is also linked to the accountability of the judiciary. Court decisions help building public trust in the judiciary. When citizens can see and understand how justice is administered in practice, their confidence in legal institutions is strengthened. The Venice Commission has previously found that an independent judiciary must necessarily be an accountable one.[24] The Consultative Council of European Judges (CCJE) in turn has found that "accountability" is as vital for the judiciary as for the other powers of the state because it, like them, is there to serve the public.[25]

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that encroachment on the non-judicial competencies of courts - within the framework of the separation of powers - by other state bodies is permitted exceptionally, only on the basis of precisely formulated and properly substantively justified provisions of law (see judgments U 9-13 and Kp 1-15). The Constitutional Tribunal found that providing access to court files to the executive authorities may affect the effectiveness of judicial protection of constitutional freedoms and rights of individuals (Articles 45(1), 77(2) of the Constitution). In this case, the mere awareness of the possibility of handing over to the executive branch the files of a court case, especially if it concerns a dispute between an individual and the state, may cast doubt on the resolution of the case by an independent, independent and impartial court.

[20] Which contains: (i) the date, place and legal classification of the facts; (ii) where known, the surnames, first names, dates and places of birth or company names of the persons involved and the victims; (iii) information relating to decisions on public prosecution, the conduct of the investigation, the trial proceedings and the enforcement of sentences; (iv) information relating to the legal situation of the person accused, prosecuted or convicted during the proceedings.

[21] Cfr. Article 48-1 of the Code of Criminal Procedure.

[22] Information relating to ongoing legal proceedings that may be used for scientific or technical research or investigations, in particular to prevent accidents or to facilitate compensation for victims or the payment of damages.

[23] CDL-AD(2016)007, cited above, § 57.

[24] Venice Commission, CDL-AD(2023)027, *Joint Follow-Up Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe to the Joint Opinion on the Draft Amendments to the Law "On the Judiciary and the Status of Judges" and Certain Laws on the Activities of the Supreme Court and Judicial Authorities of Ukraine (CDL-AD(2020)022)*, § 32.

[25] CCJE, *Opinion no. 18 (2015) – "The position of the judiciary and its relation with the other powers of a State in a modern democracy"*, § 20.

34. Lastly, published decisions also play a crucial role in legal development and education. They serve as precedents that guide future cases, helping legal practitioners understand how laws are interpreted and applied in practice. This body of accessible case law becomes an invaluable resource for lawyers, scholars, and the broader legal community.[26]

35. The explanatory memorandum, cited above, states that in many cases examining the decisions of the judiciary is the only way to consider how the legislation is enforced and to understand the legal reasons for any changes that may be necessary in order to achieve the right result.

36. However, as noted above (see paragraph 7 above), under the pre-existing legal framework (Article 76 § 8(f)), the MoJ can obtain information on issues related to judicial practice to the extent necessary for legislation purposes, upon obtaining the opinions of the courts where deemed necessary. This runs in parallel to the possibility, for the MoJ, to obtain statistical data for the purposes of preparing legislation and monitoring the enforcement of laws (Article 76 § 8 (e)).[27] The Commission notes that the effectiveness of these two mechanisms has been confirmed during the fact-finding mission in Budapest.

37. In their letter of 27 May 2025 and in their comments of 12 June 2025, the Ministry of Justice maintain that one of the reasons for introducing the new mechanism was that in the framework of some working groups that had been established to analyse the effectiveness of legislation, it was highlighted that not all final court decisions were published in the court's database. The Venice Commission takes note of the explanation of the Ministry of Justice. However, it recalls that the number of non-published decisions in Hungary is very minor (see paragraph 28 above).

38. In the view of the Venice Commission, the pre-existing mechanisms, coupled with the very comprehensive public access to courts' decisions already in place in Hungary appear to be the most effective method for the MoJ to successfully analyse judicial decisions for the purposes of preparing legislation and examining the effective application of laws, while at the same time serving democratic transparency and maintaining judicial independence.

d. Depersonalisation of courts' decisions

39. The Venice Commission notes that the new mechanism provides for the "depersonalisation" of the decisions that are sent to the MoJ. The Act on Courts, at its Article 166, details the procedure to follow when depersonalising judicial decisions for the purposes of publishing them on the National Register of Court Decisions.[28]

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[26] CCJE, *Opinion No. 20 on the role of courts with respect to uniform application of the law*, § 40: "*An adequate system of reporting case law is essential for ensuring uniform application of law. At least judgments of the supreme courts and appellate courts should be published in order to make them known not just to the parties to the individual case but, so as to enable them to rely on these judgments in future cases, to other courts, lawyers, prosecutors, academics and general public*".

[27] The new provision contained in Article 76 § 12, mandating the President of the NOJ to provide the MoJ with specific statistical data on the overall length of the proceedings, complements the said provision.

[28] *(1) Where any reference is made to a person in a decision published in the Bírósági Határozatok Gyűjteménye (Register of Court Decisions), it shall be consistent with his role in the proceedings, however, the identification data of a person shall be erased in a manner so as not to prejudice the relevant facts of the case.*
(2) Unless otherwise provided for by law, in the published decision it is not necessary to erase the following:
a) the surname and forename or forenames (hereinafter referred to collectively as "name") and title of any person, unless otherwise provided for by law, performing any State or municipal government function, or performing other public duties, acting as such, if this person is involved in the proceedings in connection with discharging his public function;
b) name of the attorney or bar association legal counsel acting as an agent, and the name of the defense counsel;
c) name of the respondent being a natural person, who loses the lawsuit, and the name and registered office of legal person or unincorporated organization if the decision was adopted in a case where there is legal recourse in the public interest in accordance with the relevant legislation;

40. During meetings with the Venice Commission delegation, some interlocutors were concerned that the provision could enable profiling of certain judges, particularly in sensitive legal areas such as migration cases. They noted that the MoJ would gain access to decisions not published on the National Register of Court Decisions. These interlocutors feared this could create a chilling effect on independent judicial reasoning.

41. The Venice Commission's delegation was informed by the President of the NOJ that in the framework of the two requests made by the MoJ (see paragraph 21 above), the name of the judges had been redacted from the cases sent to the MoJ. While the provision explicitly requires depersonalisation of parties' personal data, it is notably silent regarding the identification of judges who issued the decisions.

42. In any event, the Venice Commission acknowledges that publishing judges' names serves legitimate purposes of transparency and public accountability, which is standard practice in many Council of Europe member states. In public court databases and official publications, identifying judges enhances transparency and democratic accountability. There is certainly a distinction between a general duty of publication of judgments with judges' names for public access (which promotes judicial accountability) and the systematic collection of not necessarily publicly available decisions by the executive (which could affect perceptions of judicial independence)[29]. However, the Venice Commission believes that the substantially high number of publicly available decisions (between 95 and 100% at all instances and in all fields of law) neutralises this potential concern.

e. Impact assessment

43. Lastly, the Venice Commission regrets that, at the time of its presentation, the draft law was not accompanied by a substantive impact assessment[30] of the amendments, as recommended in the Rule of Law Checklist.[31] For the Organisation for Economic Co-operation and Development (OECD), it is incumbent on the executive that it places a high priority and makes resources available to ensure that regulatory impact analysis (RIAs) and *ex ante* assessments are as

d) name and address of the association or foundation, and the name of its representative;
e) information of public interest.
(3) If the hearing was held in part or in whole in closed session, and there is no other way to ensure the protection of the interest defined by law, underlying the demand that the public be not admitted, certain parts of the decision or the whole of the decision shall not be published in the register, or certain parts of the published decision or the whole of the published decision shall be removed from the register.
(4) Withdrawal of a decision adopted in a hearing that was held in part or in whole in closed session from the Bírósági Határozatok Gyűjteménye, or non-disclosure may be requested in civil actions by the party, in administrative court proceedings by the party and any interest party, or by the injured party in criminal proceedings. The relevant person may submit the request within one year from the date of publication of the decision to the President of OBH, who shall comply with the request without delay, at the latest within five working days following the date of receipt thereof.
(5) Protection of classified information shall be provided for in the publication of court decisions as well.
(6) Apart from what is contained in this Section, the decision may not be edited.

[29] The risks of judges' profiling have been recognised for example, in France where the law prohibits use of identify data of judges and court staff aimed at evaluating, analysing, comparing or predicting their actual or presumed professional practices. Violation of the ban on profiling is punishable under the Penal Code. Article L. 111-13 Code of Judicial Organisation states: "*The identity data of magistrates and members of the clerk's office may not be reused for the purpose or with the effect of evaluating, analysing, comparing or predicting their actual or supposed professional practices*." Available at: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000038311162/.

[30] The RIA prepared by the Government for the whole Omnibus Act (available here) is extremely brief and only focuses on the budgetary effects of the proposed legislation.

[31] CDL-AD(2016)007, cited above, § 54.

comprehensive and useful as possible.[32] This would have been particularly important in the context of a reform that affects the judiciary.[33]

3. Conclusion

44. The Venice Commission finds that the aim pursued by the new mechanism allowing the Minister of Justice to have access to final and conclusive judicial decisions, is a legitimate one. However, in addition to the broad scope of possible requests and the associated risk of unduly burdening the judiciary, it has not been convincingly demonstrated why the existing possibilities for the MoJ to request information on statistical data and judicial practice, along with access to an extensive public database of judicial decisions, would not be sufficient in itself to achieve the legitimate aim pursued.

45. The Venice Commission concludes that the issues raised in this Opinion warrant a reassessment of the mechanism in due time, including by providing further justification of its necessity and proportionality. In this context, the authorities are encouraged to carry out a comprehensive (involving all relevant stakeholders) *a posteriori* evaluation of these provisions to see whether the new provision has been effectively applied and whether there have been any unintended consequences.

C. The provision on prosecutorial decisions

1. The aim of the provision

46. Article 37/A of the Prosecution Service Act, similarly to the provision on the judicial decisions, refers to "*the purpose of preparing legislation and examining the effective application of laws*" as the aim justifying the creation of the new mechanism. The Venice Commission considers that the purpose as such is legitimate in view of the Government's duty for planning, preparing and proposing new legislation. In particular, issues of legal ambiguity or lacunae may become apparent during the enforcement of laws by investigating authorities.

47. However, the Venice Commission notes that the explanatory memorandum does not expand on why prosecutorial decisions could be useful for the preparation and the review of legislation, and simply refers to the amendment to the Act on Courts.[34] Similarly, in their letter of 27 May 2025, the Ministry of Justice do not explain why prosecutorial decisions are necessary to assess existing and prepare new legislation. Moreover, the Venice Commission notes that, differently from courts, the OECD report on Evaluating laws and regulations (see paragraph 13 above), does not quote public prosecution among the stakeholders involved in the *ex post* evaluation.

2. Proportionality

a. The scope of the requests by the Minister of Justice

48. The considerations made above as to the broad scope of the requests by the MoJ are applicable *mutatis mutandis* here, insofar as new Article 37/A of the Prosecution Service Act

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[32] *Evaluating laws and regulations*, cited above, p. 24.

[33] *See* Venice Commission, CDL-AD(2022)010, *Georgia – Opinion on the December 2021 amendments to the Organic Law on Common Courts*, § 17.

[34] The explanatory memorandum indeed refers to the amendment of the Act on Courts: *"The amendment to the Statute, in line with the amendment to the Bszi.* (ed. the Act on Courts) *also for this purpose, creates the framework within which the Minister of Justice can obtain access to prosecution decisions in addition to judicial decisions, in order to effectively perform his or her duties under the Legislation Act to review the validity of legislation. As in the case of the amendment of the Statute, the essential element of the regulation is that only final prosecution decisions that cannot be appealed against, i.e. final prosecution decisions, may be inspected. On the other hand, it stipulates that the prosecution service must make the necessary decisions available in an anonymised form.*"

provides that the MoJ can have access to non-appealable decisions of the prosecution service in the subjects indicated in the request delivered in criminal proceedings terminated by: (i) a final and binding court decision; (ii) a definitive non-conclusive court order; or (iii) a non-appealable decision by the prosecution service or the investigating authority. Moreover, the MoJ can have access to the indictment documents, as well as all those decisions of the prosecution service, other authorities and other bodies which were revised or reviewed by the non-appealable decision of the prosecution service. The scope of the provision is wide and encompasses any final decision issued by the prosecution service. Similarly to the provision on judicial decisions, Article 37/A § 3 of the Act does not allow the Prosecutor General to refuse the MoJ's request but only to request consultations with the MoJ should the request cause a disproportionate workload on the prosecution service (the remarks made at paragraph 24 above apply *mutatis mutandis* here).

49. The Venice Commission draws particular attention to the possibility, for the MoJ, to get access to prosecutorial decisions that, although final and non-appealable, concern the closing of a case, such as the decision not to continue an investigation against an individual. While it is true that requests by the MoJ are limited to categories of cases and cannot concern individual cases, and that the requirements of depersonalisation as well as the need to protect classified data are in place, the Venice Commission recalls that the secrecy and confidentiality of investigations should be afforded special protection in view of what is at stake in criminal proceedings.[35] A major difference with judicial decisions is that prosecutorial decisions, while accessible to the parties concerned, are usually not published, precisely for the need to guarantee the integrity of criminal proceedings, the interests of the accused, victims, witnesses and third parties, as well as to uphold the efficiency of the prosecution service.

50. The Venice Commission recalls that, pursuant to Article 29 of the Hungarian Constitution, the Prosecutor General as well as the prosecution service are independent constitutional bodies subject exclusively to law. As recently highlighted by the Consultative Council of European Prosecutors (CCPE), this means that, differently from other countries where Ministries of Justice are involved in or exercise power in relation to the administration or operation of the prosecution services, with varying degrees of involvement or powers, in Hungary the Ministry of Justice does not play any such role.[36] In this regard, the Venice Commission considers that the systematic collection of prosecutorial decisions on whether to pursue or drop certain categories of criminal cases, as well as on investigative techniques, could compromise the effectiveness of the prosecution service as well as impinge upon its perceived independence from the executive.[37]

51. In this respect, the Venice Commission has consistently held that sufficient autonomy must be ensured to shield prosecutorial authorities from undue political influence.[38] Any bias on the part of the public prosecution services could lead to improper or selective prosecution: public perception is essential in identifying such a bias.[39] The ECtHR has also noted that it is in the public interest to maintain confidence in the independence and political neutrality of the prosecuting authorities of a State.[40] GRECO has recently emphasised that, "*[i]rrespective of the system chosen by one State on the organisation of the prosecution office, whether the prosecutors are functionally independent or hierarchically subordinated to the executive power,*

[35] ECtHR, *Brisc v. Romania*, no. 26238/10, 11 December 2018, § 109.
[36] CCPE, CCPE(2024)3, *Thematic study of the CCPE on management practices of prosecution services in member states in connection with prosecutorial independence and impartiality*, 29 October 2024, §§ 49-63.
[37] The Venice Commission notes that the European Commission's Rule of Law Report Chapter on Hungary 2024 has found that "*Political influence on the prosecution service remains, with the risk of undue interference with individual cases*", see p. 1.
[38] CDL-AD(2016)007, cited above, § 91. *See also* Venice Commission, CDL-AD(2010)040, *Report on European standards as regards the independence of the judicial system: Part II – the prosecution service*, § 32.
[39] CDL-AD(2016)007, cited above, § 95.
[40] ECtHR, *Guja v. Moldova,* no. 14277/04, 12 February 2008, § 90.

[…] safeguards should be taken for […] investigations to be carried out without any political or other undue influence."[41]

52. When it comes to the figure of the Prosecutor General, the recipient of the MoJ's requests, the CCPE has recently emphasised that the Prosecutor General must not only be fully independent and impartial; he/she must also be seen as such, to ensure the independence as well as the autonomy of the services they manage and for which they are accountable.[42]

b. Data protection issues

53. While the provision under consideration explicitly requires depersonalisation and protection of classified data, prosecutorial decisions contain uniquely sensitive information that calls for a much closer scrutiny in the depersonalisation/redaction exercise: these decisions can include, *inter alia*, detailed descriptions of investigative techniques and methodologies that, if compiled systematically, could reveal law enforcement tactics and compromise future investigations; sensitive information about witnesses and informants, including those who may have received confidentiality assurances; personal details about individuals who were investigated but ultimately not charged with any crime, whose privacy interests are particularly strong; information about ongoing investigations into organised crime or corruption networks where knowledge of prosecutorial decisions could enable criminal organizations to identify patterns in prosecution strategies; details about vulnerable victims, especially in cases involving domestic violence, sexual offenses, or human trafficking. Even with thorough depersonalisation, the specificity of information contained in prosecutorial decisions creates a significantly higher risk of re-identification than with judicial decisions.

54. Moreover, the Venice Commission notes that the depersonalization requirements for prosecutorial decisions in Article 37/A are less detailed than those for judicial decisions in Article 166 of the Act on Courts (see paragraph 39 above), creating additional uncertainty about the adequacy of privacy protection.

c. Increased burden on the prosecution service

55. The Venice Commission delegation was informed that, as of 4 February 2025, the MoJ has not yet exercised its power to request decisions to the prosecution service. Accordingly, the real impact of such a mechanism on the workload of the prosecution service remain to be seen and cannot be anticipated at the moment. This notwithstanding, the Venice Commission believes that the practical and resource-related concerns described with relation to courts are relevant, *a fortiori*, for the provision on the prosecutorial decisions. Such concerns are amplified by the fact that prosecutorial decisions are in principle not published, therefore: (i) the requirement for depersonalisation would be considerably more burdensome than for judicial decisions (the overwhelming majority of which are already published in an anonymised form on the National Register of Court Decisions); and (ii) there is the additional need to proceed to the redaction of classified data.

d. The existence of alternative solutions to pursue the legitimate aim

56. As indicated at paragraph 26 above, the Venice Commission has carried out (with the *caveat* indicated at the same paragraph) a limited research on mechanisms allowing Ministries of Justice to have access to judicial and prosecutorial decisions. The Venice Commission cannot exclude that similar comprehensive information mechanisms directed to the prosecution service exist elsewhere. However, the limited research did not reveal any similar mechanism. Moreover, in

[41] GRECO, *Austria – Fifth evaluation round – Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies*, 1 March 2023.
[42] CCPE, *Opinion no. 19 (2024) on managing prosecution services to ensure their independence and impartiality*.

their letter of 27 May 2025, the Ministry of Justice did not refer to any other similar legislation or practice in other countries.

57. Several alternative mechanisms, involving the prosecution service, appear to be, in principle, more proportionate to obtaining the necessary information to prepare and review legislation. For example: (i) annual statistical reports from the Prosecutor General, structured by crime categories and procedural outcomes;[43] (ii) thematic reports on specific areas of criminal law prepared by the prosecution service to identify systemic issues affecting law enforcement;[44] (iii) a specialised legal research unit within the prosecution service could be tasked with analysing prosecutorial decisions specifically for legislative improvement purposes, providing the MoJ with carefully prepared findings rather than raw decisions. These mechanisms would provide the MoJ with the substantive insights needed to achieve the declared aim while maintaining appropriate institutional boundaries.[45] They would also ensure that sensitive information is properly filtered and contextualized by the prosecution service itself, rather than being subject to direct ministerial collection. The Prosecutor General's existing annual parliamentary reports[46] provide a foundation upon which these more specialized information-sharing mechanisms could be built.

3. Conclusion

58. Having regard to the considerations made above, the Venice Commission finds that the wide scope of the requests by the MoJ, which can include decisions that, although final and non-appealable, concern the closing of a case, such as the decision not to continue an investigation against an individual, could potentially compromise the effectiveness of the prosecution service as well as impinge upon its perceived independence from the executive. The fact that in Hungary the Ministry of Justice does not play any role in the administration or operation of the prosecution service is a factor to be taken into account. Moreover, the collection of unpublished decisions could impinge upon the interests of the accused and other parties involved, such as victims, witnesses and third parties. Lastly, the existence of alternative mechanisms that would provide the MoJ with the substantive insights needed for preparing legislation and examining the effective application of laws while maintaining appropriate institutional boundaries is something that has to be taken into account in the overall assessment of the proportionality of this provision.

59. For these reasons, the Venice Commission finds that obtaining decisions of the prosecution service raises significant proportionality concerns which warrant a reassessment of the mechanism, including by providing further justification of its necessity and proportionality. In this context, the authorities are encouraged carry out a comprehensive (involving all relevant stakeholders) *a posteriori* evaluation of this provision to see whether the law has been effectively applied or whether there have been any unintended consequences. In carrying out this exercise, it is necessary to take into due consideration the distinctive features of prosecutorial decisions

[43] In **Ireland**, the Office of the Director of Public Prosecutions cooperates with the Minister of Justice and shares statistics on the work of the prosecution service. In **North Macedonia**, Articles 54 and 55 of the Law on Public Prosecution regulate the reporting responsibilities of public prosecutor's offices. Article 54 requires each public prosecutor's office to prepare an annual report on its work. Lower prosecutor's offices submit their reports to the immediately higher prosecutor's office, while the Basic Public Prosecutor's Office for Organized Crime and Corruption submits its report to the Public Prosecutor's Office of the Republic of North Macedonia. The Public Prosecutor's Office of the Republic of North Macedonia prepares a consolidated annual report for all public prosecutor's offices. Article 55 in turn requires that the Public Prosecutor of the Republic of North Macedonia submit the annual report on all prosecutor's offices and the state of crime to the Assembly. The report is also reviewed by the Council of Public Prosecutors and shared with the Government, the Supreme Court, and the Ministry of Justice. Additionally, the Public Prosecutor submits a separate annual report on special investigative measures to the Assembly. In **Poland**, see the role of the Institute of Justice at paragraph 29 above.

[44] For example, if the legislature is considering reforms to anti-corruption laws, the Prosecutor General could prepare an anonymised analysis of challenges encountered in prosecuting such cases, without revealing specific case details.

[45] As stated by the CCPE, similar mechanisms are indeed designed to maintain accountability while respecting the independence of the prosecution services. *See* CCPE(2024)3, cited above, §§ 116 and ff.

[46] Available here.

vis-à-vis judicial decisions: among others the fact that the former, and particularly those that although final and non-appealable, concern the closing of a case, are in principle not public. This calls for a stricter assessment of the necessity and proportionality of the proposed mechanism.

III. Conclusions

60. The Monitoring Committee of the Parliamentary Assembly of the Council of Europe requested the Venice Commission of the Council of Europe to provide an Opinion on Subsections 53 and 58 of Act XVII of 2024, an Omnibus Act related to justice matters. For the declared purpose of preparing legislation and examining the effective application of laws, these provisions establish mechanisms for making final and conclusive judicial decisions, as well as non-appealable prosecutorial decisions on a specific subject matter, available to the Minister of Justice ("MoJ") at his/her request, with the requirement that these must be provided in a form that prevents the identification of persons involved in the cases. The system further allows the MoJ to have also access to all related decisions - specifically, indictments or any decisions by courts, public authorities, or other bodies that have been revised or reviewed by the final judicial or prosecutorial decision in question.

61. These norms are related to key constitutional principles such as the independence and efficient functioning of the judiciary and the prosecution service, and, in turn, to the separation of powers between the executive and the judiciary. As such, they will ultimately have a bearing on individual rights, including the right to a fair trial and the right to privacy. Bearing this in mind, the Venice Commission assessed whether the norms under consideration are proportionate to the aim stated by the legislator, i.e. preparing legislation and examining the effective application of laws.

62. As regards the collection of court decisions, the Venice Commission finds that it has not been convincingly demonstrated why the existing possibility for the MoJ to request information on statistical data and judicial practice, along with access to an extensive public database of judicial decisions, would not be sufficient in itself to achieve the legitimate aim pursued.

63. Insofar as the norm on the collection of prosecutorial decisions is concerned, the Venice Commission finds that obtaining decisions these decisions, in particular those that, although final and non-appealable, concern the closing of a case, raises significant proportionality issues. Such a mechanism could potentially compromise the effectiveness of the prosecution service as well as impinge upon its perceived independence from the executive. The existence of less intrusive alternative mechanisms is an important factor to consider when making such findings.

64. Accordingly, the Venice Commission recommends:

- When evaluating and preparing legislation, considering in priority alternative mechanisms that would provide the MoJ with the substantive insights needed while serving democratic transparency and maintaining judicial and prosecutorial independence;
- Reassessing in due time the new mechanisms in place for having access to judicial and prosecutorial decisions, by carrying out a comprehensive *a posteriori* evaluation of the provisions and by providing further justifications of their necessity and proportionality; in carrying out such exercise, authorities should bear in mind the fact that access to prosecutorial decisions calls for a stricter scrutiny.

65. The Venice Commission remains at the disposal of the Hungarian authorities and the Parliamentary Assembly for further assistance in this matter.