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COMPACT: FROM RESEARCH TO POLICY THROUGH RAISING AWARENESS OF THE STATE OF THE ART ON SOCIAL MEDIA AND CONVERGENCE

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Executive Summary

The present report examines judicial approaches to social media and convergence. It identifies the jurisprudence of supreme, constitutional and appellate courts in a selected set of European Union (EU) countries that form part of the Compact project. It discusses key characteristics of related jurisprudence, and it examines judicial reasoning by exploring the interpretative efforts of judges and their contribution to the protection and balancing of distinct fundamental rights and interests in the realm of social media. The report also delves into patterns of judicial interaction between courts.

The report covers case law from the following countries: Bulgaria, Croatia, Greece, Italy, Latvia, Portugal, Slovakia and Slovenia. Data collection was carried out by national research teams. Our sample includes 147 higher court cases (from Bulgaria, Croatia, Greece, Italy, Latvia, Slovakia and Slovenia) for the period 1/1/2012 – 31/05/2018, and 80 second instance court cases (from Bulgaria, Croatia, Greece, Latvia, Portugal, Slovakia and Slovenia) covering 1/1/2012 – 31/12/2017. Descriptive statistics are combined with qualitative analysis of cases.

The higher court cases identified are mainly those from supreme courts, as opposed to cases from constitutional courts; the majority being cases decided by the criminal sections of the supreme courts. The majority of the appeal court cases identified similarly came from criminal courts. Overall, most of the higher and appeal court cases collected dealt with issues related to defamatory content, social media content as evidence in proceedings, privacy and personal data protection, hate speech and other illegal content.

With respect to the legal sources that define the legal background of the cases in our sample, besides national rules, judges at times resort to supranational rules and jurisprudence, with a preference for the European Convention on Human Rights (ECHR). Reference to ECHR provisions usually comes with references to the rulings of the European Court of Human Rights (ECtHR) on the interpretation of the relevant ECHR provisions.

For the study of judicial reasoning in social media cases, the emphasis has been on the interpretation of the legal framework by national courts, and judges' approach to the protection of fundamental rights in a social media environment. Key considerations that have guided our analysis have been the lack of extensive regulation addressing social media directly, and the opportunities and pressures social media create for the exercise of fundamental rights in an online environment.

Our findings show that the judicial treatment of social media cases heavily draws on the existing 'generic' legal framework. Many of the rules that currently apply to social media were adopted before the latter's expansion. Defamation rules in the countries under study have been used, for instance, to capture defamation occurring through social media. Generic rules, ranging from the rules on incitement to hatred and misleading advertising through to the protection of personal data, have been applied in social media cases.

Bringing social media within the scope of the generic legal framework has resulted, on certain occasions, in the adaptation of past rule interpretations by the judiciary. A few cases in our sample indicate for instance changes in judicial reasoning and evolving standards as regards the responsibilities of legacy media. National courts have refrained, however, from bringing social media, blogs, chat rooms and so on, within the scope of existing rules concerning the press.

In a period of reflection and intense debate on social media regulation, it is significant that the judiciary makes use of 'generic' rules to solve disputes involving social media content and behaviour and when necessary, it re-interprets the rules precisely in order to bring social media within their purview. Any attempt at devising rules that specifically target social media, especially as far as public regulation is concerned, should thus rest on a

careful assessment of the regulatory potential of the existing legal framework with respect to social media. This is because any model of public intervention into the functioning of the sector should be congruent with fundamental rights and freedoms and respect the principles of necessity and proportionality. Developing public policies that put social media at the heart of the regulatory model establishing duties of transparency and increased accountability towards their users could work in this direction.

Turning to fundamental rights, our case sample shows that overall, judicial reasoning on fundamental rights is rather limited, especially in higher court cases. In cases with a fundamental rights component, constitutional provisions constitute the backbone of judges' reasoning, although often in mere reference. Given that the European multi-level system of fundamental rights protection opens several questions regarding the interpretation of the applicable norms and the potential overlap among them, the courts may be reluctant to address fundamental rights from a European perspective. When courts do address fundamental rights from such a perspective, judicial reasoning is mostly guided by the ECHR and seminal ECtHR rulings. The use of the Charter of Fundamental Rights (CFR) of the European Union is far less prominent than the use of the ECHR. Litigants could perhaps have a role to play in highlighting the pertinence of European fundamental rights provisions and relevant case law for the adjudication of disputes at the national level. Additional training of legal professionals could help in this regard.

In a world of proliferating legal systems with a judicial branch for the settlement of disputes, the concept of 'judicial dialogue' has been central to debates about judges' interaction and interdependency. Judicial dialogue is generally understood to denote engagement with the case law of other courts. In our study, the occurrence of judicial dialogue has focused on the (social) media dimension of the 'other court rulings' referred to by the deciding court. The assumption has been that in social media cases judges would be inclined to judicial dialogue as a means to cope with complex legal questions in the context of rapid technological change, changing practices of communication, and access to news and information. The rate of judicial dialogue within our sample was low, with a clear trend towards the use of the ECtHR jurisprudence as a point of reference. The ECtHR rulings cited have mostly dealt with the interpretation of Article 10 ECHR on freedom of expression. The ECtHR case law has been mainly used as a supporting argument to strengthen domestic judicial reasoning.

The use of case law from the Court of Justice of the European Union (CJEU) has been almost non-existent. This might be explained by the fact that the volume of the CJEU's social media-related jurisprudence is low. Increased use of the preliminary ruling procedure by national courts could enhance guidance from the CJEU on social media aspects. Use of foreign case law has similarly been limited.

Certainly, judicial dialogue is not an easy path for courts to take without careful consideration as to the implications that referencing other court rulings may have on the case at stake. Rather it requires courts to engage in a thorough analysis of the cases referred to and of their impact on the specific case reviewed. In order to achieve such thorough analysis, judges should not only be aware of sector specific jurisprudence; they should also receive guidance on the use of judicial dialogue techniques and their added value. Judicial training, therefore, may have a relevant role to play in this context.

1. Introduction

The main objective of the COMPACT project is to increase awareness among key stakeholders on the state of the art effecting social media and convergence. Among other issues, the project has been designed to facilitate debate on the development of policies addressing social media, to provide knowledge support and to create a space for experience-exchange, research and collaboration. Work package 2 (WP2) in particular seeks to identify, analyse and inform on the national and European policies addressing social media and convergence.

The *Report on National Courts, Social Media and Convergence* (deliverable D2.2) forms part of the activities carried out under WP2. The aim of this report is to probe judicial approaches to social media and convergence. The report identifies the jurisprudence of supreme, constitutional and appellate courts in a selected set of European Union (EU) countries, it explores judicial reasoning and formulates some recommendations in light of identified trends in judicial decision-making.

The structure of the report is as follows: Section 2 focuses on the main concepts that have defined research on national jurisprudence regarding social media. Section 3 presents the methodology of the report. Sections 4 and 5 are about the jurisprudence of supreme and constitutional courts, and second-instance courts respectively. These sections present the court cases identified, discuss the main legal sources of each national ruling and examine judicial reasoning by exploring the interpretative efforts of judges and their contribution to the protection and balancing of distinct fundamental rights and interests in the realm of social media. They also delve into judicial interaction between national courts; between national and European courts; and between national and foreign courts. The final section offers some concluding remarks on key findings and our recommendations.

2.Theoretical background and key concepts

2.1 Social media

Social media has brought to the fore new practices of communication, generating heated debate among media theorists and communication scholars (Castells, 2009; Fuchs, 2008; Harambam, Helberger and van Hoboken, 2018; Gillespie, 2018; Gillmor, 2004; Obar and Wildman, 2015; Papacharissi, 2007, 2010; Sunstein, 2007, 2017). Social media has been claimed to break down the barriers between traditionally public and private spheres of communication, and to empower citizens by enabling their views and considerations to gain a public dimension. It has been heralded for increasing the number of spaces available for deliberation and debate and for enabling citizens to monitor more easily the exercise of public power. Such positive assessments have been combined with more critical evaluations of the nature of communication on social media. It has been argued for instance that social media enables an ego-centric self-promotion, which inadvertently feeds corporations with data to make profit. It has also been argued that social media reinforces pre-existing beliefs and communities rather than exposure to a wider range of viewpoints. Concerns that social media breed misinformation have also been widely voiced.

Whilst debate and research on the new communicative context generated by social media is very much ongoing, this study is based on the premise that social media has fundamentally transformed our means of communicating with each other. In doing so, social media has brought with it notions of self-expression that are

firmly based on a sense of participation. It allows for acts of self-communication because as pertinently observed by M. Castells, 'the production of the message is self-generated, the definition of the potential receiver(s) is self-directed, and the retrieval of specific messages or content from the World Wide Web and electronic networks is self-selected' (Castells, 2009: 55). At the same time, '[a]s we post our photographs on Flickr, discuss the latest film on Facebook, alert people to a nugget of information on Twitter, we have a sense that we are participating in something that is going on out there; that rather than being told what to do or what to think through the linear provision of information, we can join in the telling through a pulsating network of digital social communication' (Fenton, 2012: 126). Participation in the communicative act can take place for several purposes (personal, public, social, political, cultural, economic, and so on) and it can coincide with informational needs. The need to connect and relate to others appears though to be the primary motivation for the use of social media, creating incentives for participation and interactivity to inform on the self anywhere and at any time.

Connective self-expression on social media goes hand in hand with the creative promotion of self. Social media stimulates forms of self-communication that are profoundly creative (Fenton, 2012). Anyone can upload a video on YouTube, post a comment on Facebook, write a blog or start a chat-forum. Thus, in a social media environment - as opposed to a traditional mass media environment, the user is also a content producer (the so-called 'prosumer' or 'produser', see Bruns, 2009). Social media gives access to, hosts and stores 'user-generated content'. It thus mediates between the users/content producers and the users/audience of the content that is stored and made accessible as part of the social media service (Gillespie, 2018; Brown and Marsden, 2013).

In light of these considerations, creative self-communication and participation should be seen as key characteristics of social media activity. These characteristics have steered our study's understanding of social media and accordingly, of the type of the national rulings selected for review. Our case law sample covers cases on social media platforms such as Facebook, Twitter, YouTube, Instagram, and so on, as well as cases concerning the blogosphere, chat rooms and other messaging applications. Cases on legacy media operating online and news portals form part of the analysis, provided that the court judgment is about services or activities of these media that display the above-mentioned characteristics, namely user-generated content and connective communication. To illustrate, our case sample contains cases on allegedly defamatory comments posted by the users of online newspapers in the newspapers' hosting environment for readers' content in connection to published articles. However, it does not include cases on allegedly defamatory news articles published online by news portals simply because users may be allowed to comment on these.

2.2 Social media governance

More than a decade ago, media governance, a notion that is wider and more inclusive than media policy or regulation, was put forward to capture the variety of stakeholders that play a role in defining the values, norms, processes and tools for media policy and regulation (Braman, 2004; Ginosar, 2013; Hamelink and Nordenstreng, 2007; Freedman, 2008; Latzer, 2007; McQuail, 2005; 2007; Puppis, 2008; 2010; see also COMPACT, D2.1, 2018). Besides recognition of the fact that policies for the media are formulated at different levels and venues – the national and sub-national, the supranational and the international – the concept of governance has been used to convey the fact that the state makes media policy alongside a variety of other public, semi-public, and private actors. It has also been used to denote the plurality of norms that aim to organize media systems, that is, statutory (or public) regulation, co-regulation and self-regulation, as well as collective regulation and individualized rules (i.e. rules developed at the level of single media organisations).

The concept of governance has enjoyed much traction on the web (Napoli, 2015) and can be usefully replicated in the social media environment. The variety of actors, venues and regulatory outputs that it encapsulates

mirrors the variety of actors and the multiplicity of regulatory deliberations and mechanisms that develop within and beyond states in relation to social media policy and regulation. Social media governance denotes all parallel (and often interconnected) levels, processes and collective/individualized rules that seek to govern social media and their conduct, with due recognition of the broad array of actors involved in rule-making and standard-setting. To this, one should also add the ever-increasing role of algorithmically driven content recommendations and filtering systems that impose a technological determination of the choices available to social media users (Lessig 1999; 2007) – an important dimension that needs to be taken into account when researching and analysing social media governance.

Social media has long argued for its openness and impartiality, promoting itself as non-interventionist facilitator of the free flow of content (Gillespie, 2018; Vaidhyanathan, 2012). This should not hide from view a variety of challenges posed by social media, in relation to diverse issues such as free speech, privacy and personal data protection, intellectual property, hate speech and other illegal content, children's protection, consumer protection, and more recently misinformation and disinformation. Alongside the development of public policies to address such challenges, major social networking platforms have also sought to offer some kind of response by developing self-regulatory rules, usually in the form of code of standards or own terms of service on such issues as content removal policies and data processing practices (Erickson and Kretschmer, 2018; Carlson and Rousselle, 2018).

International and regional organizations have had a key role to play in the development of policies addressing social media. The European Union (EU), for example, has developed a keen concern in the field of social media (COMPACT, D2.1, 2018: 18-21). EU legislation on audio-visual media services and intellectual property rights contains provisions that are of relevance and importance to social media,[1] as is also the case with EU legislation on electronic commerce, the overarching legal framework at the EU level on issues of liability for hosting illegal content online.[2] Other EU rules that seek to respond to the challenge of illegal content on the Internet include the *Directive to combat the sexual abuse and sexual exploitation of children and child pornography*,[3] the *Terrorism Directive*[4] and the *Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law*.[5]

Such regulatory instruments have been complemented by a range of other initiatives, such as *the Code of Conduct on Countering Illegal Hate Speech Online*,[6] the work of the *EU Internet Forum* on countering terrorist

[1] See Directive 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, OJ L 303, 28/11/2018, p. 69 and Directive 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, OJ L 130, 17/5/2019, p. 92.

[2] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, OJ L 178, 17/7/2000, p. 1.

[3] Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17/12/2011, p. 1.

[4] Directive 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, OJ L 88, 31/3/2017, p. 6.

[5] Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328, 6/12/2008, p. 55.

[6] See https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combatting-discrimination/racism-and-xenophobia/countering-illegal-hate-speech-online_en#theeucodeofconduct (date accessed 23 May 2019).

propaganda,[7] the *Memorandum of Understanding on the sale of Counterfeit Goods*,[8] and the *Alliance to better protect minors online*.[9] Mention should also be made of the guidelines and principles for online platforms to step up the fight against illegal content online in cooperation with national authorities, Member States and other relevant stakeholders, contained in the European Commission *Communication on tackling illegal content online*,[10] and the report *A multi-dimensional approach to disinformation*.[11] The latter is the output of a high-level group of experts set up in 2018 by the European Commission to advise on policy measures to counter disinformation online. It set the scene for the Communication of the European Commission *Tackling online disinformation: A European approach*, [12] the *EU Code of Practice on Disinformation*, [13] and the joint communication of the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy on an *Action Plan against Disinformation*.[14]

The Council of Europe (CoE), for its part, has been active in standard-setting with a view to ensuring respect for human rights in the digital environment. The ensuing recommendations and declarations are of a non-binding nature and some of these have directly addressed social media.[15] The 2018 recommendation of the Committee of Ministers of the Council of Europe on the roles and responsibilities of internet intermediaries concentrates on 'a wide, diverse and rapidly evolving range of players', which 'facilitate interactions on the internet', encompassing social networking sites.[16] The recommendation calls on party members to respect the protection and promotion of human rights in the digital environment, to ensure that 'internet intermediaries' fulfil their responsibilities to respect human rights and to take steps to support initiatives for promoting media and information literacy skills. This is so that adults, young people and children are able to enjoy the benefits of the online environment whilst minimizing exposure to risks.

2.3 Courts and social media governance

The regulation of social media is a particularly complex task. This is due to the global nature of the Internet, the broad uptake of social media services, rapid developments in technology and innovation and the fact that social

[7] See http://europa.eu/rapid/press-release_IP-15-6243_en.htm (date accessed 23 May 2019).
[8] See https://ec.europa.eu/growth/industry/intellectual-property/enforcement/memorandum-understanding-sale-counterfeit-goods-internet_en (date accessed 23 May 2019).
[9] See https://ec.europa.eu/digital-single-market/en/alliance-better-protect-minors-online (date accessed 23 May 2019).
[10] See https://ec.europa.eu/digital-single-market/en/news/communication-tackling-illegal-content-online-towards-enhanced-responsibility-online-platforms (date accessed 23 May 2019).
[11] See https://ec.europa.eu/digital-single-market/en/news/final-report-high-level-expert-group-fake-news-and-online-disinformation (date accessed 23 May 2019).
[12] See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018DC0236 (date accessed 23 May 2019).
[13] See https://ec.europa.eu/digital-single-market/en/news/code-practice-disinformation (date accessed 23 May 2019).
[14] See https://ec.europa.eu/digital-single-market/en/news/action-plan-against-disinformation (date accessed 23 May 2019).
[15] See for instance Recommendation CM/Rec(2012)4 of the Committee of Ministers to member states on the protection of human rights with regard to social networking services (Adopted by the Committee of Ministers on 4 April 2012 at the 1139th meeting of the Ministers' Deputies).
[16] Recommendation CM/Rec(2018)2 of the Committee of Ministers to member states on the roles and responsibilities of internet intermediaries (Adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers' Deputies), para. 4.

media operate across countries. Whilst lawmakers try to keep pace with the challenges that arise within social media,[17] the role of courts in social media governance should not be neglected.

During the past few years, the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) have ruled on disputes involving or touching upon social media, blogs, web chats, and so on. Following seminal ECtHR cases such as *K.U. v. Finland*,[18] concerning an advertisement of a sexual nature posted about a minor on an Internet dating site, and *Ahmet Yildirim v. Turkey* and *Cengiz and Others v. Turkey*, which were about blocking access to Google Sites and YouTube respectively,[19] relevant ECtHR case law has developed exponentially.[20]

Genuine social media cases adjudicated by the CJEU have been rather limited in number. They include *Sabam v. Netlog*,[21] according to which social networking platforms cannot be required, by means of national court injunctions, to filter users' information stored on their servers in order to prevent copyright infringements. In *Wirtschaftsakademie Schleswig-Holstein*,[22] the CJEU held that the administrator of a fan page hosted by a social network comes within the scope of the concept of data 'controller' and is therefore jointly responsible with the social network for the processing of the fan page users' personal data.[23]

In *Maximilian Schrems v. Facebook Ireland Limited*,[24] the CJEU ruled that the status of a private Facebook account user as a 'consumer' enabled reliance on the EU rules allowing the initiation of proceedings for the defence of consumers' rights, including personal data protection rights, against a foreign contracting party in the place of the consumer's domicile ('consumer forum'). Such status was, however, dependent on a predominantly non-professional use of the services of the social network. In *Maximillian Schrems v. Data Protection Commissioner*,[25] the CJEU examined whether or not the existence of a European Commission decision on the adequacy of the protection granted, by a third country, to the personal data of social media users transferred from Europe, affected the powers of national data protection regulators to examine complaints regarding the processing of the personal data transferred on grounds that the third country concerned did not ensure an adequate level of protection. Disputes related to actions for infringement for the use of protected trademark on social media platforms and relevant jurisdictional aspects have also reached the CJEU.[26]

European case law of relevance and importance to social media has generally received careful consideration from scholars (see indicatively Angelopoulos and Smet, 2016; Barata Mir and Bassini, 2016; Brkan, 2017; Cox, 2014; Frantziou, 2014; Jozwiak, 2016; Ojanen, 2016; Petkova, 2016; Psychogiopoulou, 2017; Van der Sloot,

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[17] On this see indicatively Secretary of State for Digital, Culture, Media & Sport and Secretary of State for the Home Department (2019) and French Republic (2019).

[18] ECtHR, *K.U. v. Finland* (2872/02), 2 December 2008.

[19] ECtHR, *Ahmet Yildirim v. Turkey* (3111/10), 18 December 2012 and *Cengiz and Others v. Turkey* (48226/10; 14027/11), 1 December 2015.

[20] See indicatively ECtHR, *Delfi AS v. Estonia* (64569/09), 16 June 2015; *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary* (22947/13), 2 February 2016; *Pihl v. Sweden* (74742/14), 7 February 2017; *Bărbulescu v. Romania* (61496/08), 5 September 2017; Magyar Jeti Zrt v. Hungary (11257/16), 4 December 2018; *Tamiz v. the United Kingdom* (3877/14), 19 September 2017; *Egill Einarsson v. Iceland* (24703/15), 7 November 2017; *Magyar Jeti Zrt v. Hungary* (11257/16), 4 December 2018.

[21] CJEU, C-360/10, *Sabam v. Netlog*, judgment of 16 February 2012, ECLI:EU:C:2012:85.

[22] CJEU, C-210/16, *Wirtschaftsakademie Schleswig-Holstein*, judgment of 5 June 2018, ECLI:EU:C:2018:388.

[23] In *Wirtschaftsakademie Schleswig-Holstein*, the CJEU also examined what personal data protection regulator has the power to act where a non-EU social media company has multiple EU establishments. This issue was also discussed in CJEU, C-230/14, *Weltimmo*, judgment of 1 October 2015, ECLI:EU:C:2015:639.

[24] CJEU, C-498/16, *Maximilian Schrems v. Facebook Ireland Limited*, judgment of 25 January 2018, ECLI:EU:C:2018:37.

[25] CJEU, C-362/14, *Maximillian Schrems v. Data Protection Commissioner*, judgment of 6 October 2015, ECLI:EU:C:2015:650.

[26] See for instance, CJEU, C-231/16, *Merck*, judgment of 19 October 2017, ECLI:EU:C:2017:771.

2016). Contrariwise, national court rulings on social media, blogs, chat rooms, and so on have not been systematically studied, even less in a comparative perspective. This is an important gap in knowledge that this report seeks to address, with the understanding that national courts amount to pivotal actors of social media governance. They amount to such actors mostly for two reasons: first, because through rule-interpretation, they establish legal standards for social media; and secondly, because through their rulings, they grant remedies to those whose rights have been violated in a social media context.

2.4 Courts, social media and rule-interpretation

As is well known, in order to solve a dispute, judges must first determine the law applicable to the dispute. However, in the course of determining the law, judges do not merely declare what the law says; they also 'create' understandings of it. Unclear or general provisions, legislative amendments, the interplay among different legal sources at different levels, and even social and technological change can enmesh judges in complex deliberations over the meaning of a statute.

Courts may engage in modest or less modest re-interpretations and adjustments of their past interpretations to solve social media disputes. They also enjoy the power to interpret any new rules devised to respond to the regulatory challenges of social media (and technological change more broadly) towards particular directions, which shapes the regulatory potential of the rules enacted and determines their effects. By choosing between different or competing interpretations of both past and new laws, constitutional and supreme courts in particular, can establish authoritative legal standards for social media. Such standards tend to impact the reasoning of lower courts and exert a significant influence on judicial decision-making.

2.5 Courts, social media and fundamental rights

Social media case law may have an important fundamental rights dimension, with courts called upon to guarantee the protection of those that seek redress for the curtailment of their rights in the digital environment (see indicatively Barata Mir and Bassini, 2016; Brkan and Psychogiopoulou, 2017; Cox, 2014; de Hert and Gutwirth, 2009; Leenes *et al.*, 2008). This should not come as a surprise. Social media has raised a number of questions concerning freedom of expression and the right to receive and impart information with respect to online publishing. Although social media has mostly emerged as a way to communicate and connect with family, friends and peers, it has evolved to become a significant means by which individuals are made aware of and access news (see e.g. Rubel, 2012; Weeks & Holbert, 2013; Reuters Institute for the Study of Journalism, 2019). News media outlets have positioned themselves within social media in order to strengthen and enhance the distribution of their content. Concurrently, the 'audience' of legacy news media has adopted, through social media, an active role in the production and dissemination of news content, with social media turning into important mechanisms via which news can be generated (e.g. Newman, 2009).

Undoubtedly, social media currently constitutes a key instrument by which professional journalists and citizens exercise their right to freedom of expression and its corollary, the right to information, alongside political parties and politicians, advocacy groups, opinion leaders and civil society organisations, which have also established themselves within social media. Social media thus contributes to the exercise and enjoyment of free speech and at the same time supports the realisation of a broader set of human rights. This is because freedom of expression is as much a fundamental right on its own accord, as it is a 'facilitator' of other rights (La Rue, 2011: para. 22). Such other rights include civil and political rights such as the right to freedom of assembly and association or the right to freedom of thought, conscience and religion, and economic, social and cultural rights.

The capacity of social media to disseminate information, coupled with its potential to enhance individuals' exercise of a broader set of rights, should not conceal possible challenges for the maintenance of public order

and national security and for the prevention of disorder or crime. Social media activity has spurred the spread of harassment, hatred and incitement to violence, on such grounds as gender, race and religion, and it has fed illegal content, such as pornographic and sexual abuse material. Tensions between freedom of expression and the protection of the rights of others, including the protection of one's reputation, privacy, data protection rights, and intellectual property rights, have also come into far greater prominence within a social media context. Inadequate protection of children and vulnerable groups against harmful content or behaviour has posed threats to the right to free speech, the right to private life and the right to human dignity.

National constitutions tend to provide the primary normative framework for legal action aimed at guaranteeing respect for fundamental rights and this may also be the case for social media disputes with a fundamental rights dimension. Importantly, the European Convention on Human Rights and Fundamental Freedoms (ECHR) and the Charter of Fundamental Rights (CFR) of the EU have enriched the arsenal of rights sources available to litigants. Domestic courts in Europe, and in particular supreme and constitutional courts which frequently rule on and balance distinct rights and interests, may thus be targeted for the adjudication of social media disputes also on the basis of the ECHR and CFR provisions. This is due to the European multi-level system for the protection of fundamental rights, that is, the co-existence of three systems of rights protection in Europe: protection at the national level, protection at the EU level and protection at the level of the CoE.

2.6 Social media and the European multi-level system of fundamental rights protection

National norms on the protection of fundamental rights can be found in national constitutions and bills of rights, and they are applied, interpreted and enforced by domestic courts. They are complemented by the provisions of the ECHR and the CFR. The ECtHR rules on both individual and state applications alleging breach of the ECHR. The CFR, adopted in 2000, became binding on the EU institutions and the Member States - when these act within the scope of EU law - in 2009 with the entry into force of the Treaty of Lisbon. The CJEU is entrusted with the task of enforcing the rights enshrined in the CFR.

The EU has not yet become a party to the ECHR, although Article 6(2) of the Treaty on European Union (TEU) requires the EU to accede to the ECHR. In response to national allegations that constitutionally protected human rights at Member State level should act as limitation on the powers of the EU (de Búrca, 2011; Douglas-Scott, 2006, 2013), the CJEU has ruled: '… fundamental rights form an integral part of the general principles of law the observance of which the Court ensures, and … for that purpose, the Court draws inspiration … from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or to which they are signatories. The ECHR has special significance in this respect'.[27]

By means of the domestication of the ECHR (Keller and Stone Sweet, 2008), national courts in the CoE members enforce the rights and freedoms set out in the ECHR. Taking into account that the authorities of the EU Member States – legislative, executive *and* judicial – are bound to comply with the CFR when they act within the scope of EU law, courts in the EU Member States must also ensure respect for the CFR provisions. According to Article 52(3) CFR, the CFR rights which correspond to rights guaranteed by the ECHR shall have the same meaning and scope as the corresponding ECHR rights. The *Explanations to the CFR* add that this also means that they should be interpreted in accordance with the case law of the ECtHR.[28]

[27] See CJEU, C-479/04, *Laserdisken ApS v. Kulturministeriet*, judgment of 12 September 2006, ECLI:EU:C:2006:549, para. 61.
[28] Explanations relating to the Charter of Fundamental Rights, OJ C 303, 14/12/2007, p. 17.

2.7 Judicial dialogue and interaction

In a world of proliferating legal systems with a judicial branch for the settlement of disputes, the concept of 'dialogue' between courts has been central to debates about interaction and interdependency. In social media cases, given the pace of technological evolution and fast evolving practices for communicating and gaining access to information, judges may be particularly inclined to engage in judicial dialogue and seek guidance from peers and the European courts.

Judicial dialogue is generally understood to denote engagement with the case law of other courts (Jacobs, 2003; Kassoti, 2015; Lorenzetti, 2010; Markesinis and Fedtke, 2009; McCrudden, 2000; Slaughter, 2000). It can take many forms, formal and informal. From the different taxonomies to be found in the literature (Rosas, 2007; Slaughter, 1994), for the purposes of this study, attention is drawn to vertical and horizontal judicial dialogue. Vertical judicial dialogue refers to the jurisprudential interaction between courts within the context of a formal, hierarchical system. Horizontal judicial dialogue takes place between courts that operate at the same level.

Existing studies have not paid significant attention to the interaction of national courts in Europe (Bobek, 2013; Mak, 2013). At the same time, the study of the relationship of the CJEU with national courts has mainly focused on the preliminary reference procedure (Rosas, 2007; Jacobs, 2003; B. de Witte, 2016; Claes and de Visser, 2012; Tridimas, 2011; Cartabia, 2009; Claes, 2016). According to Article 267 TFEU, any court or tribunal in the EU Member States may, and a final court must, refer a question on the interpretation of EU law or on the validity of EU legislation that is raised in a case pending before it, to the CJEU for a preliminary ruling. Once the CJEU has given its response, the referring court must apply the CJEU ruling and decide definitely the case before it.

The recent entry into force of Protocol 16 to the ECHR (the 'Dialogue' Protocol)[29] has created a channel for judicial dialogue between national courts and the ECtHR, which resembles to a certain extent the preliminary ruling procedure. The protocol confers jurisdiction on the ECtHR to give advisory opinions on questions of principle concerning the interpretation or application of the rights and freedoms safeguarded by the ECHR or the Protocols thereto in response to requests submitted by Member States' highest courts or tribunals, in connection with pending cases before them.

Besides these 'formal' mechanisms of judicial dialogue with the CJEU and the ECtHR, national judges can engage with the jurisprudence of the CJEU and ECtHR through references to CJEU and ECtHR decisions. References to European case law can be used to acknowledge the rulings of the CJEU and the ECtHR, to indicate compliance or even disapprove the jurisprudence of the European courts. The same applies to judicial dialogue and interaction between and among national courts. Case law references can be used to corroborate the reasoning of the deciding judge or criticize judicial stance and approaches to specific legal issues elsewhere. This study is interested in patterns of judicial dialogue in social media cases.

3. Methodology

3.1 Countries covered

The report covers the jurisprudence of supreme and constitutional courts in Bulgaria, Croatia, Greece, Italy, Latvia, Slovakia and Slovenia; and the jurisprudence of appeal courts in Bulgaria, Croatia, Greece, Latvia, Portugal, Slovakia and Slovenia. Country selection reflects the availability of national research teams under the project with resources to collect case law in their countries, which naturally requires knowledge of the national

[29] See https://www.echr.coe.int/Documents/Protocol_16_ENG.pdf (date accessed 23 May 2019).

language. Given the significant number of supreme and constitutional court cases identified in Italy (on which see para. 4.2), Italy was not included in the group of countries under study with respect to the social media jurisprudence of appeal courts. Portugal lacked supreme and constitutional court cases on social media, blogs, chat rooms, and so on.[30] It was therefore included in the group of countries examined in relation to second instance court judgments.

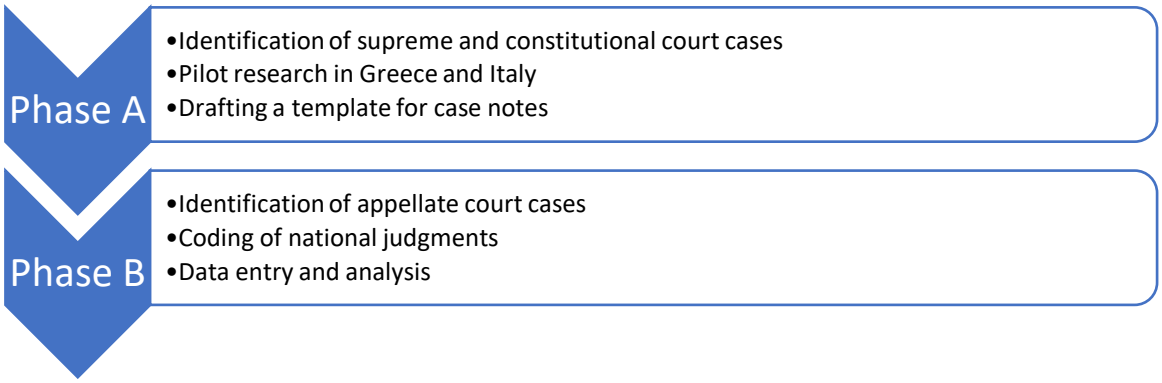
In all selected countries, the judicial system follows a three-tier structure. Parties are allowed to appeal a first instance court decision when unsatisfied with the verdict. Supreme courts generally hear appeals against decisions of the first instance courts, which cannot be appealed in accordance with domestic procedural rules, and appeals against decisions of the appellate courts. They ensure the uniform application of the law and they are commonly entrusted with responsibilities for interpretative clarity in cases of conflicting case law.

The Supreme Court [also (Supreme) Court of Cassation; Supreme Court of Justice] and the Supreme Administrative Court (also Council of State) feature prominently among the highest judicial authorities in Bulgaria, Greece, Italy, Portugal and Slovenia. They have jurisdiction in civil and criminal cases, and administrative cases respectively. The Supreme Court of the Slovak Republic, the Supreme Court of the Republic of Croatia and the Supreme Court of the Republic of Latvia rule on civil, criminal and administrative matters.

Bulgaria, Croatia, Italy, Latvia, Portugal, Slovakia and Slovenia benefit from a constitutional court. Constitutional courts are institutions of judicial power that engage in constitutional review. They normally rule on the conformity of laws, government regulations etc. with the constitution. Other responsibilities may include ensuring respect for international conventions and treaties, adjudicating crimes committed by heads of state and assessing the admissibility of requests for referenda. An important dimension of the jurisprudence of constitutional courts is about ensuring respect for fundamental rights and freedoms, safeguarded by the constitution, domestic bills of rights and international human rights instruments.

3.2 Data gathering and analysis process

Data gathering followed a two-phase process, devised by the Hellenic Foundation for European and Foreign Policy (ELIAMEP), which has been responsible for this study:



[30] According to available data, the Portuguese Constitutional Court did not accept any complaints dealing with social media, and the Portuguese supreme courts did not adjudicate cases that were focused on social media during the period under study. Certain Supreme Court rulings, mainly in criminal cases, have referred to social media but such references occurred in the context of proceedings for crimes committed offline (e.g. sexual abuse, homicide, etc.). Social media were mentioned in these cases for being used by the defendants to connect to the alleged victims. This led the local research team to exclude such cases from the study.

Phase A was dedicated to the identification of the social media-related case law and pilot testing. During this phase, project partners were asked to identify case law in their countries by focusing on constitutional and supreme courts. They were invited in particular, to provide ELIAMEP with information concerning:

a) the number of cases on social media per court under study;

b) the number of social media cases in which fundamental rights are addressed;

c) the nature of the fundamental rights addressed in relevant cases;

d) brief summaries of the case law.

To facilitate the identification of national case law, ELIAMEP provided local teams with guidelines for data collection. These included working definitions of social media, an indicative list of keywords for the collection of national case law and an indicative list of the fundamental rights and freedoms that could be addressed by relevant cases. An online meeting allowed project partners to discuss in detail the envisaged tasks and refine the guidelines for data collection.

The identification of social media case law in Phase A determined the research design for Phase B of the data gathering process. The number of cases collected informed the nature and depth of the case law analysis to be carried out during Phase B. It also informed the scope of the case law to be covered by the study in more detail. As findings from Phase A showed that the case law of the constitutional and supreme courts, in most of the countries covered, was limited in terms of volume and in terms of its fundamental rights dimension, the study team decided to: a) examine social media cases with and without a fundamental rights component; and b) widen the scope of the research to include social media cases adjudicated by appellate courts.

During Phase A, ELIAMEP also carried out a pilot study of the social media case law specifically in Greece and Italy. This informed the case notes template that ELIAMEP produced for project partners to apply in order to provide information on the judgments collected.

Phase B was dedicated to data entry and analysis of national case law. Project partners received a new set of guidelines. They were asked in particular, to: a) cross check the cases identified regarding constitutional and supreme courts; b) identify any social media cases issued by second instance courts in their country; and c) apply the case notes template to all judgments identified. The case notes template can be found in ANNEX I.

During Phase B, the information provided by the country teams was compiled by ELIAMEP into a collective dataset. The data was analysed using STATA.

The local teams were also invited to carry out interviews with legal experts in their countries in order to test, if necessary, their findings on domestic social media jurisprudence. When carried out, interviews should be tailored to national specificities and be conducted, using the collected case law as a point of reference, with individuals that possess expertise and knowledge of the case law (such as lawyers, judges, academics, etc.). Interviews were carried out in Bulgaria, Latvia, Portugal and Slovenia.

The local teams were also asked to produce short background notes (of approx. 2-3 pages). The background notes described briefly the court system in the country under study, gave an overview of the sources used for data collection, provided a succinct summary of the information collected through interviews and highlighted any particularities in judicial practice.

Considering the above, the case law that informs our study includes two sets of national judgments:

a) the social media-related case law of the constitutional and supreme courts in 7 EU Member States (Bulgaria, Croatia, Greece, Italy, Latvia, Slovakia and Slovenia) with litigated cases in the period 1/1/2012 – 31/05/2018, and

b) the social media-related case law of second instance courts in 7 EU Member States (Bulgaria, Croatia, Greece, Latvia, Portugal, Slovakia and Slovenia) with litigated cases in the period 1/1/2012 – 31/12/2017.

The list of cases can be found in ANNEX II. Their identification has been based on the availability of sources at the national level and different levels of accessibility of court decisions (see paras. 4.1 and 5.1).

4. The social media case law of constitutional and supreme courts

4.1 Sources consulted for the collection of case law

The identification of the social media cases of the constitutional and the supreme courts reviewed has drawn on online databases available in the countries that participated in the study. Local research teams in Greece, Italy, Latvia, Portugal and Slovenia consulted the online databases of the courts under study. Some of these databases provide access to all cases delivered (such as in the case of Italy); others enable access to the text of those rulings that are considered to be of particular legal interest (as is the case in Latvia and Greece for the rulings of the Supreme Court before 2014; and the Council of State respectively). Research teams in Latvia and Greece also consulted local databases that offer a selection of anonymised rulings (i.e. *Latvijas Tiesas* and *Nomos* – the latter upon subscription). In the case of Croatia, the online *e-Case* law database operated by the Supreme Court was used, whereas in the case of Slovakia, use was made of the case law database operated by the Slovak Ministry of Justice and the database of the Slovak Constitutional Court. In the case of Greece, legal journals specializing in the fields of communication and media law have also been consulted, since they report, on a regular basis, domestic case law on the subjects of interest. APIS and Lakorda, two software solutions offering access to legal databases upon payment, were used for data collection in the case of Bulgaria.[31] Their use was due to the fact that searching case law with selected keywords is not possible through the database operated by the Bulgarian courts. Use of the relevant database (http://legalacts.justice.bg) was made possible only after the local team had obtained the identification number of the rulings concerned.

4.2 Case law overview

We identified 147 higher court cases in total for the period 2012 to 2018 (see Table 1). For countries such as Bulgaria, Greece, Latvia, Slovakia and Slovenia the number of supreme court cases dealing with social media is relatively small, ranging from 3 to 5. A higher number of cases were identified in Italy (95) and Croatia (34).

Cases disclosing the use of social media to threaten third persons, connect to or harass victims and commit offline crimes have been noted in some countries. In the case of Italy, for instance, the Supreme Court has ruled on a number of cases involving social media for the purposes of harassment, stalking, blackmail, and the committing of crimes against sexual freedom, amongst other crimes. Since relevant rulings tend to refrain from engaging in legal reasoning that specifically addresses social media and its services, they have been excluded from the study's case sample. They remain part of it only in those instances where social media content and communication have been used as evidence in proceedings or where illegal content has been published online.

[31] These enable the collection of cases on the basis of criteria, such as the number and date of ruling, the chamber concerned, etc.

Table 1: Higher court cases by country

Country	Number of cases
Slovakia	3
Slovenia	3
Bulgaria	4
Greece	3
Latvia	5
Croatia	34
Italy	95
Total	147

The high number of Italian cases in our sample is in line with recent statistical data published by the CoE European Commission for the Efficiency of Justice (CEPEJ), which show a far greater volume of incoming cases in Italy in 2016 (see Table 2).[32]

Table 2: CEPEJ data

Country	Total criminal cases (Supreme courts, Incoming cases) Year 2016	Total criminal cases (Supreme courts, Resolved cases) Year 2016	Civil and commercial litigious cases (Supreme courts, Incoming cases) Year 2016	Civil and commercial cases (Supreme courts, Resolved cases) Year 2016
Bulgaria	1369	1352	8605	8388
Croatia	1987	2005	NA	NA
Greece	1337	1049	NA	NA
Italy	52384	58015	29270	26938
Latvia	754	730	1568	2282
Portugal	937	924	2748	2728
Slovakia	1461	1456	NA	NA
Slovenia	736	673	1808	1847

Data extracted from the Dynamic database of European judicial systems, 18 March 2019

As to the date of the decisions, the number of cases identified tends to grow progressively from 2011 onwards. The increase is substantive in terms of numbers only after 2013 (see Table 3). This is understandable given the relative novelty of the topic and the time that it takes for higher court case law to develop.

Table 3: Higher court cases by year

Year	Number of cases
2011	1
2012	3
2013	22
2014	21
2015	29
2016	21
2017	35
2018	15
Total	147

[32] Full data available at: https://www.coe.int/en/web/cepej/dynamic-database-of-european-judicial-systems (date accessed 23 May 2019).

The vast majority of cases identified come from supreme courts (97%, see Figure 1). Constitutional court cases make up only 3% of our sample (i.e. 5 out of 147 cases). In countries such as Bulgaria and Croatia, though constitutional courts do exist, no cases related to social media seem to have been dealt with during the period under study.

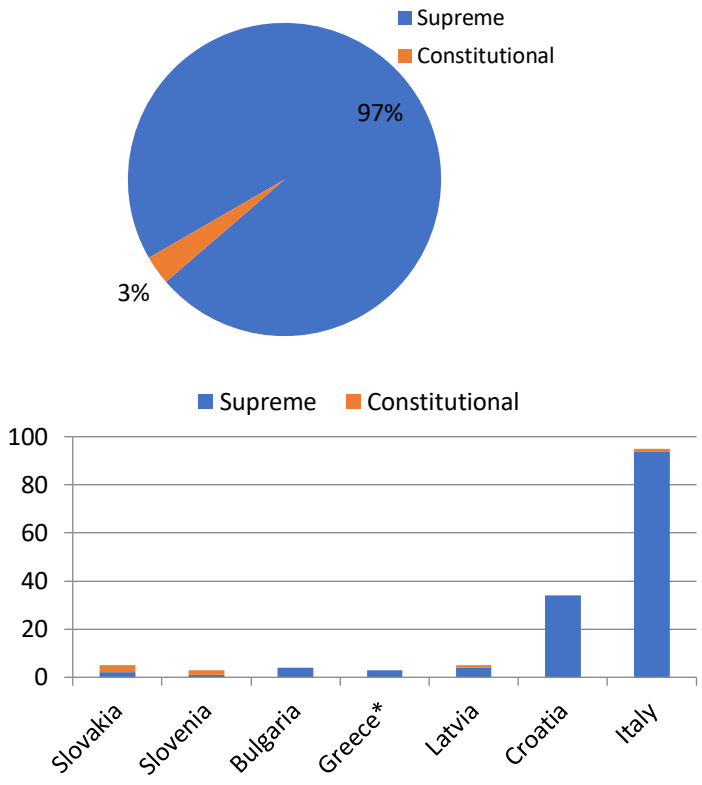


Figure 1: Higher court type overall & by country

** No constitutional court exists in Greece*

As far as supreme court cases are concerned, as Figure 2 shows, the majority of cases identified come from supreme criminal courts (89%, i.e. 125 out of 147 cases). This is related to the subject matter of the identified case law, discussed further below. 5% of the case law comes from supreme civil courts (i.e. 6 cases). 2% of the case law emanates from supreme administrative courts (i.e. 3 cases) and concerns Bulgaria and Slovakia. 4% comes from the labour chamber of the supreme courts and concerns Italy only (i.e. 5 cases).

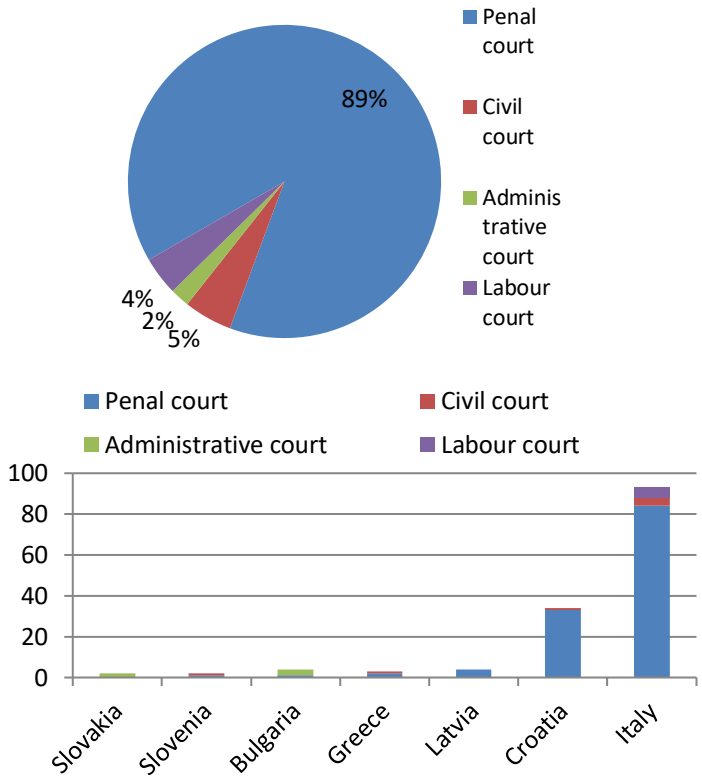


Figure 2: Supreme court type overall & by country

The cases collected have been divided into cases of direct and indirect relevance to social media, blogs, chat rooms, and so on (see Figure 3). Cases of direct relevance are considered to be those cases in which social media, blogs, chat rooms etc. are either parties to the case or constitute the actual subject matter of the case. All other cases have been treated as cases of indirect relevance to social media. Cases with factual circumstances in a social media environment have been treated as cases of indirect relevance, unless the social media dimension of the facts of the case had a bearing on judicial reasoning. Determining cases as cases of direct or indirect relevance to social media, blogs, etc. took place on a case-by-case basis by the local research teams.

56% of the court cases identified were found to be directly relevant to social media, blogs, and so on (i.e. 83 cases out of 147), and 44% (i.e. 64 cases) were indirectly related. From Figure 3 we can see that in some countries most court cases were indirectly related to social media, such as in Bulgaria, Croatia and Greece. In Slovakia all cases were indirectly related to social media. In Italy, Latvia and Slovenia, the majority of cases identified were directly related to social media, blogs, etc.

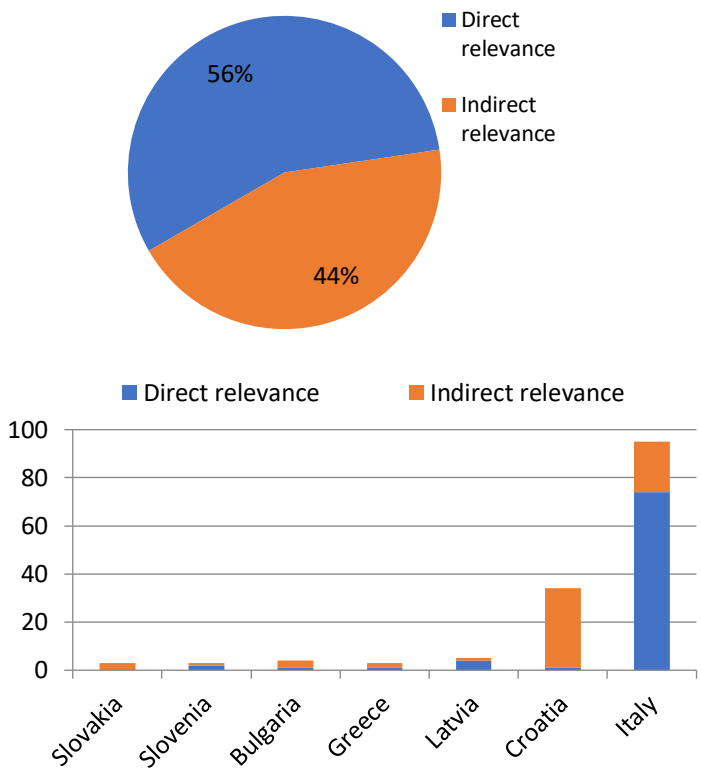


Figure 3: Relevance to social media, blogs etc. overall & by country

In terms of subject matter, the court cases identified were grouped into eight main categories:

1. Defamatory, degrading and insulting content
2. Hate speech and other illegal content
3. Privacy and personal data protection
4. Free speech and the freedom of the press
5. Publication in social media, blogs, etc. of news media content
6. Social media and its impact on legacy media regulation
7. Social media and employment
8. Social media accounts and content as evidence in proceedings.

Cases under the category of 'defamatory, degrading and insulting content' have dealt with the publication of contentious content in social media, blogs and the online press (e.g. comments on news items). Offenders and offended persons have varied, ranging from politicians, parliamentarians and public figures (e.g. university professors, judges, etc.) to journalists and the individual citizen. The category of cases on 'hate speech and other illegal content' is internally quite heterogeneous. Besides hate speech, it includes cases where proselytism or incitement to terrorism was the subject-matter, incitement to commit a crime, child pornography, and others. Cases on privacy and personal data protection reflect the challenges posed by social media on the individuals' private life and their identification data. Cases on 'free speech and the freedom of the press' juxtapose social media to constitutional safeguards and legal rules (e.g. on political campaigning) targeting the press. The fifth category covers cases in which disputes arose out of the publication in social media of content previously published in the news media. The sixth category involves cases that reflect on the impact of social media on the interpretation of legacy media rules. The last two categories concern cases on the use of social media by employees and cases in which social media was put forward as evidence in proceedings, mostly criminal.

As Figure 4 shows, 'Defamatory, degrading and insulting content' was the subject-matter most frequently encountered (35%, i.e. 53 cases out of 147) among higher courts. 'Social media accounts and content as evidence

in proceedings' follows closely as the main subject matter of the cases (31%, i.e. 46 cases). The category 'hate speech and other illegal content' appears also quite frequently, in 19% (i.e. 29 cases) of the higher court cases examined. The rest of the categories have a rather minimal presence that goes up to a maximum of 4% for cases concerning 'privacy and personal data protection' (i.e. 6 cases out of 147).

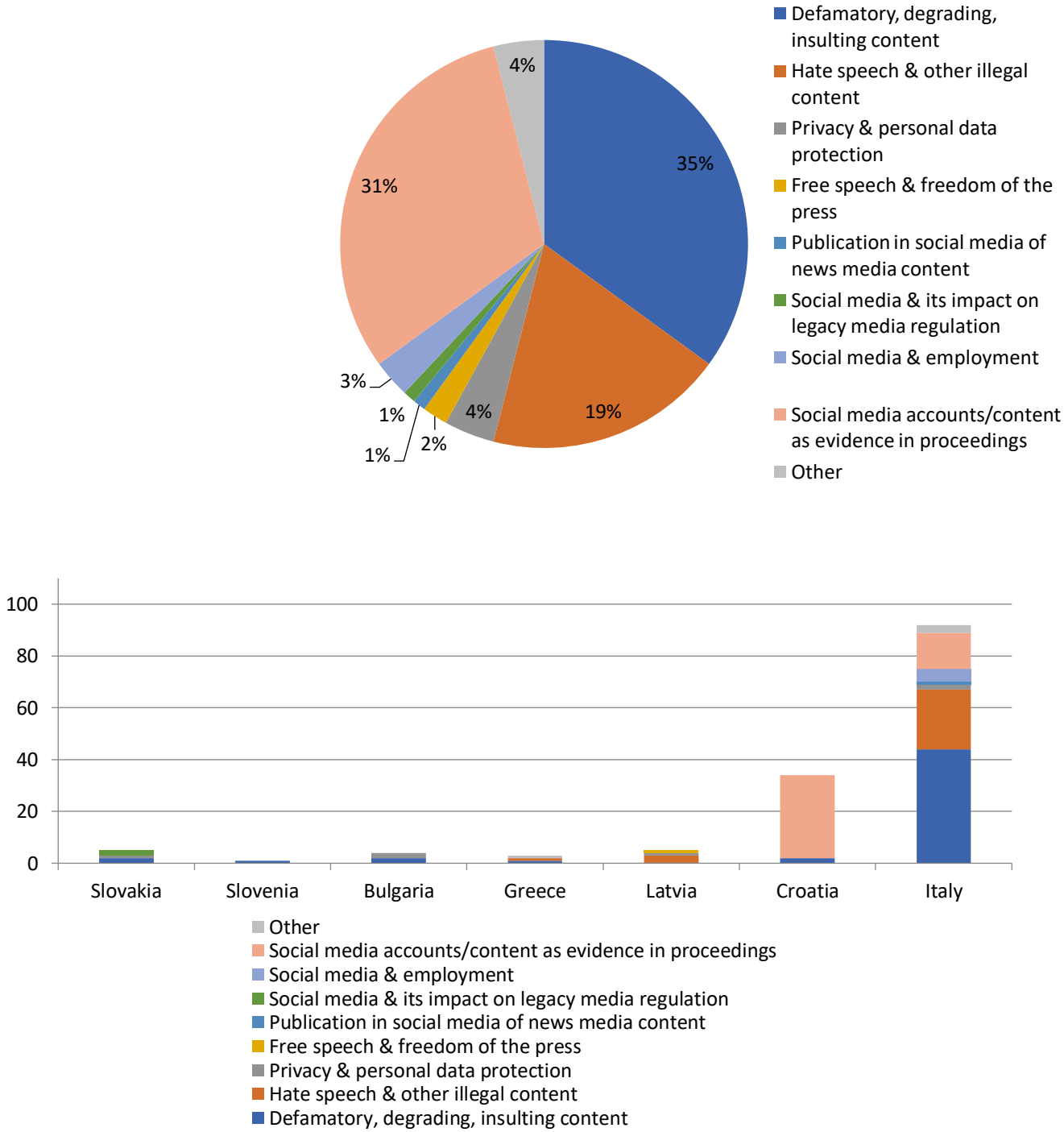


Figure 4: Subject-matter overall and by country

Cases regarding 'defamatory, degrading and insulting content' have been dealt with by higher courts in all countries covered but Latvia. Concerning the rest of the categories, there are several cross-country differences.

For instance, cases on the use of 'social media accounts and content as evidence in proceedings' were encountered in Croatia and Italy. Italy is the only country where higher courts have adjudicated on cases related to 'social media and employment'. Slovakia is the only country where cases about 'social media and its impact on legacy media regulation' reached the higher courts.

4.3 Legal context

The cases notes template developed for gathering information on national jurisprudence included a specific section on legal sources, dinstinguishing between national and supranational provisions, between CoE provisions (including the ECHR) and EU law provisions (including the CFR), and between the jurisprudence of the ECtHR and of the CJEU. Reviewing the main legal sources of the rulings collected is useful, for these define the broader legal background of the adjudicated cases. In paras 4.5 and 4.6 on judicial reasoning and judicial dialogue respectively, a narrower approach is followed, with reference to the legal provisions and the rulings of the ECtHR and the CJEU that concretely played a role in judicial reasoning.

As shown by Table 4, most of the higher court cases on social media, blogs, chat rooms, and so on exclude any reference to legal sources other than the national ones. National legal sources involve a variety of sources of law (civil, criminal, administrative, constitutional, etc.), depending on the type of the dispute at hand and its subject matter. In some of the cases reviewed, national legal sources have been combined with supranational sources of law. Reasons for combining national with supranational sources of law vary. Besides references to supranational norms by the litigants themselves (in the context of submitting claims and arguments), the use of supranational norms may stem for the willigness of judges to support their reasoning or, in some cases, to clarify the interpretations they adopt. This is more common where the national provisions used and applied originate in supranational, i.e. European, provisions, as with the implementation of EU directives. Here, the national court may profit from the comparison of national rules with the European norms in their original formulation.[33] The jurisprudence of the CJEU may also offer guidelines for the interpretation of EU norms.

Table 4: Mentions of European law and jurisprudence

	EU directives, CFR and CJEU jurisprudence	**ECHR and ECtHR jurisprudence**
Mentioned	9 6%	12 8%
Not mentioned	138 94%	135 92%
Total	147	147

Table 4 informs on the frequency of mentions of different sources of European law and jurispudence. Overall, mentions of different sources of European law and jurispudence are not that frequent among the higher court cases we identifed. Mentions of the ECHR and the jurispudence of the ECtHR are relatively more frequent (8%, i.e. 12 cases out of 147), followed by mentions of EU law sources, mostly transposed EU directives, such as the *E-Commerce Directive*, the *Audiovisual Media Services Directive (AVMSD)*, *Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*, *Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council*

[33] Or, when needed, with the latter's translation in different national languages.

Framework Decision 2004/68/JHA, *Directive 2013/40/EU on attacks against information systems and replacing Council Framework Decision 2005/222/JHA* and *Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data.*[34] The most frequently mentioned directive is the E-Commerce Directive, followed by the AVMSD.

Turning more specifically to sources of EU law (transposed EU law and the CFR) and jurispudence (see Table 5), we observe that just 3% of the cases reviewed (i.e. 4 cases) make reference to one or more transposed EU directives (plus 1% (i.e. 2 cases) that combines reference to transposed directives and CJEU case law). Only 1% of our cases makes reference to the CFR or the jurispudence of the CJEU respectively (i.e. two cases and one case respectively). In none of the cases reviewed, has a combined mention of the CFR and CJEU case law been made.

Table 5: Mentions of EU law and jurisprudence

	N	%
Transposed EU law	4	3%
CFR	2	1%
CJEU jurisprudence	1	1%
Transposed EU law and CJEU jurisprudence	2	1%
CFR and CJEU jurisprudence	0	0%
No EU sources	138	94%
Total	147	100%

National judges may refer to EU law, as mentioned above, to indicate the origins of the applicable national legislation when this is the transposition of EU rules and draw on EU directives to identify or clarify the objective of the national provisions at stake. In decision 1425/2017 of 29 August 2017, for instance, the Greek Court of Cassation had to assess the legal framework applicable in case of defamation online, balancing the national rules on the 'objective liability' of the owner of a press outlet (Law 1178/1981) with the ones implementing the E-Commerce Directive (Presidential Decree 131/2003). The latter provided an exemption of liability for providers of information society services. The Supreme Court read the provisions of Law 1178/1981, in conjunction with the provisions of Presidential Decree 131/2003, affirming that the owner of a news website has 'objective liability' for the news items posted online. However, he cannot be held objectively liable (similarly to the owner of a press outlet) for any users' posts.

EU directives have been part of the legal context of cases concerned mainly with 'defamatory, degrading and insulting content', 'hate speech and other illegal content' and 'free speech and the freedom of the press'. Reference to the CFR, especially Article 11 on freedom of expression, has been made in cases about 'defamatory,

[34] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), OJ L 178, 17/7/2000, p. 1, Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), OJ L 95, 15/4/2010, p. 1, Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19/7/2000, p. 22, Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17/12/2011, p. 1, Directive 2013/40/EU on attacks against information systems and replacing Council Framework Decision 2005/222/JHA, OJ L 218, 14/8/2013, p. 8, Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23/11/1995, p. 31.

degrading and insulting content'. CJEU case law has been mentioned in cases dealing with 'defamatory, degrading and insulting content', 'privacy and personal data protection' and 'free speech and the freedom of the press'.

As to the frequency of references to the ECHR and the ECtHR jurispudence, according to Table 6, references to both the ECHR and ECtHR case law are more frequent (5%, i.e. 8 out of 147 cases) than mentions of the ECHR only (3%, i.e. 4 cases). Admittedly, references to the ECHR provisions can usefully be combined with references to ECtHR case law that offers clarification on the intepretation of the ECHR. The cases which make reference to the ECHR have been cases dealing either with 'defamatory, degrading and insulting content' or 'privacy and personal data protection'. Cases that mention both the ECHR and the ECtHR jurisprudence cover a wider range of subject-matter, including cases on 'social media and its impact on legacy media regulation' and 'free speech and the freedom of the press'.

Table 6: Mentions of the ECHR and ECtHR jurisprudence

	N	%
ECHR	4	3%
ECHR & ECtHR	8	5%
No European sources mentioned	135	92%
Total	147	100%

Almost all the cases where reference is made to the ECHR refer to Article 10 ECHR on freedom of expression. With regard to the mentions of ECtHR case law, each case identified has its own specific selection of ECtHR jurisprudence, depending mainly on the specific legal standard defined by the ECtHR that a particular national court is interested in highlighting.

Instances in which the courts refer to the ECtHR rulings without singling out any specific cases are not missing. For instance, in decision 159/2015 of 19 June 2015 of the Supreme Court of Bulgaria (see paras. 4.4.1, 4.4.2 and 4.5), reference to Article 10 ECHR has been coupled with a general reference to the jurisprudence of the ECtHR on the restrictions on freedom of speech as well as on the standards applicable when journalists express their political opinion, without mention of specific ECtHR decisions.

Generally speaking, we can see from Table 7 that one in five cases (18%) makes reference to provisions of fundamental rights as part of the overall legal context of the case. The volume of such cases is not to be underestimated: it shows that social media do trigger questions from a fundamental rights perspective. Freedom of expression, freedom of information, data protection and privacy rights, as well as the right to an effective remedy have received attention in this context.

Table 7: Mentions of fundamental rights provisions

	N	%
FR mentioned	27	18%
FR not mentioned	120	82%
Total	147	100%

The Constitution tends to be the main source of the fundamental rights provisions mentioned, followed by joint mention of the Constitution and the ECHR (see Table 8). Admittedly, national courts still have a path dependency towards the use of the national constitution and the ECHR, vis-à-vis the CFR. The fact that the ECHR is an older legal instrument compared with the CFR that provides for shared values across Europe certainly has a role to

play. For sure, there is a longer history of comparison and fruitful interaction between domestic constitutional provisions and the ECHR. Domestic courts' 'preference' for the ECHR may also stem from the fact that according to Article 53 CFR, the CFR shall not 'be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognized, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions'.[35] The fact that the CFR rights may overlap with the fundamental rights covered by the constitutions of the EU Member States implies that reference to the CFR provisions might be perceived by national courts as a mere repetition rather than enriching or strengthening the fundamental rights reasoning of the national court. Moreover, after the decisions in *Melloni*[36] and *Akerberg Fransson*,[37] national courts may encounter difficulties in case of differences in the level of protection of the same fundamental rights at European and national level: due to the principles of primacy, effectiveness and uniformity, EU law will also have to be applied in those cases where the national constitution provides for a higher level of protection.[38]

Table 8: Sources of fundamental rights provisions

	N
Constitution	12
ECHR	2
CFR	0
Constitution & ECHR	11
Constitution & CFR	0
ECHR & CFR	0
Constitution & ECHR & CFR	1
No source cited	1
Total	27

4.4 Judicial reasoning

4.4.1 Social media cases and rule-interpretation by national courts

Besides procedural rules and rules on matters such as the admissibility and evaluation of evidence, national jurisprudence on social media, blogs, chat rooms, and so on involves the application of a broad range of national rules which may consider the specificities of social media and the Internet or refrain from doing so. National rules may be generic, they may enjoy a technological neutrality dimension or address specific media, including social media.

In some of the cases examined, national courts have brought social media, blogs, chat rooms, etc. within the existing 'generic' legal framework. In decision I.IPS.9345/2012-73 of 1 September 2016, for instance, the Supreme Court of the Republic of Slovenia dealt with the responsibility of the actual author of defamatory

[35] In this respect see also the *Explanations to the CFR*, according to which Article 53 CFR 'is intended to maintain the level of protection afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the ECHR.' (OJ C 303, 14/12/2007, p. 35).

[36] CJEU, C-399/11, *Stefano Melloni v. Ministerio Fiscal*, judgment of 26 February 2013, ECLI:EU:C:2013:107.

[37] CJEU, Case C-617/10, *Åkerberg Fransson*, judgment of 26 February 2013, ECLI:EU:C:2013:105.

[38] See ACTIONES, MODULE 3 – RIGHT TO AN EFFECTIVE REMEDY, pp. 12-13, available at https://www.eui.eu/Projects/CentreForJudicialCooperation/Documents/D1.1.c-Module-3.pdf (date accessed 23 May 2019).

comments in reaction to published news items. The case was about defamatory content posted on the website of a regional newsletter under a news article by one of its readers. Drawing on its past jurisprudence, the Supreme Court held that the publication of offensive comments within an online news item satisfied the essential elements of the offence of defamation. The existing defamation rules, formulated without consideration to the online environment, easily captured defamation in the online context.

In a similar vein, existing rules in Latvia for incitement to national, ethnic and racial hatred were applied to instances of online hate speech,[39] whereas rules prohibiting the desecration of state symbols were applied to instances of social media content that allegedly showed disrespect against the national flag.[40] Decision 13289 of 8 December 2015 of the Supreme Administrative Court of Bulgaria dealt with an appeal against a decision of the Bulgarian Commission for the Protection of Competition according to which the publication, as part of an advertising campaign, of the pictures of two famous tennis players, branded with the advertised company's logo, without their permission, amounted to misleading advertising. Here too, rules enacted without seeking to specifically address social media activity, that is, domestic rules on misleading advertising, were applied in a social media context, encapsulating misleading advertising through social media.

The Italian Supreme Court has further dealt in several instances with the issue of whether or not making offensive statements against one's employer in a social media context could justify dismissal in accordance with domestic labour law. In decision 10280/2018 of 27 April 2018, the Italian Supreme Court held that the impugned statements made on the employee's social media profile were defamatory, breached the trust relationship between the employee and the employer and therefore constituted 'justified grounds' for dismissal. By contrast, in decision 2499/2017 of 31 January 2017, the Italian Supreme Court found that the image published by the employee during a chat over social media did not amount to defamatory speech but to satire and therefore did not justify dismissal. In both cases, labour law provisions requiring dismissal to take place on 'justified grounds' were applied with a view to examining whether social media activity could constitute such grounds.

Bringing social media, blogs, chat rooms, and so on within the scope of 'generic' rules may require, on certain occasions, their adaptation to the case reviewed, which may lead to an evolving interpretation of the legal framework. The jurisprudence of the Italian Supreme Court is telling in this respect. In case of harassement, Article 660 of the Italian Criminal Code states that '[a]nyone who, in a public place or a place open to the public, or by telephone, for petulance or other blameworthy reason, harasses or disturbs someone, is punished with imprisonment for up to six months or a fine of up to 516 euros'. The Italian Supreme Court had to evaluate whether Facebook - through which repeated vulgar and sexually explicit statements had been sent by the editor of a newspaper to a colleague - could qualify as 'public space', as provided by Article 660 of the Criminal Code. The Supreme Court affirmed that Facebook was to be considered a place open to the public, as a 'virtual' place that was open to access by anyone using the network. In particular, the Supreme Court found 'undeniable that … Facebook (available in over 70 languages, which already in 2008 had more than 100 million users) represents a sort of virtual forum that allows an indeterminate number of accesses, made possible by a technological development that was not envisaged by the legislator'.[41] Evidently, this is an extensive interpretation of the law, which, according to the Italian Supreme Court, 'the letter of the law does not exclude from the notion of place and which, facing the revolution brought about by forms of aggregation and traditional notions of social community, its ratio requires, indeed, to consider'.[42]

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[39] See for instance Decision of 3 May 2018 of the Supreme Court of Latvia (ECLI:LV:AT:2018:0503.11840000313.2.L) on hate speech through comments posted on a news portal.

[40] See Decision SKK-472/2016 (11840006213) of 22 December 2016 of the Supreme Court of Latvia.

[41] Decision 37596/2014 of 11 July 2014 of the Italian Supreme Court, at para. 4.1.

[42] Ibid. The same reasoning was followed in case of aggravated defamation in decisions 50/2016 of 2 December 2016; and 24431/2015 of 28 April 2015 of the Italian Supreme Court.

Decision 159/2015 of 19 June 2015 of the Bulgarian Supreme Court focused on the qualification of the crime of 'insult' in an online context. The question was whether or not a journalist had committed the crime of insult by making statements that humuliated the honour and dignity of an individual, through social media. The second instance court had taken the view that such a crime had occurred. The Supreme Court adopted the same stance. According to domestic criminal law provisions, for the crime of insult to occur, the impugned action had to be 'heard' by the concerned individual. In this case, the impugned action had taken place via the Internet. Literally speaking, it had not been 'heard' by the offended. Still, it had taken the form of online posts in social media, which, according to the Supreme Court, made the impugned action 'public'.

Interestingly, our sample also contains cases that demostrate an evolving interpretation of the legal framework, specifically with respect to well-established standards governing the activities of traditional media. Decision II. ÚS 307/2014-45 of 18 December 2014 of the Constitutional Court of the Republic of Slovakia merits attention. Here the dispute arose out of a decision of the Slovak media regulator. The Council for Broadcasting and Retransmission found a TV broadcaster to have violated the requirements for objective and impartial news reporting set out in the Slovak Broadcasting Act. The broadcaster contested the decision of the regulator, eventually reaching the Supreme Court, to no avail.

Being called upon to rule on the case, the Slovak Constitutional Court disagreed with the media regulator and the position of the Slovak courts, putting forward a rather liberal interpretation of the legal standards concerning the impartiality of news broadcasts. According to the Constitutional Court, requirements for impartial reporting in news and current affairs programmes had been legitimately imposed in the past in order to sustain democracy and prevent the manipulation of the information provided through a limited number of media to the public. Such requirements could not be easily justified any more. What undermined their pertinence was not only Slovakia's respect for democratic rule, testified by its membership to the EU, but also the range of domestic and foreign private media outlets operating on the Slovak media market, coupled with an unlimited number of information sources, including social media. The main argument of the Constitutional Court was thus that changes brought to the media landscape, including the advent of social media, no longer justified the strict regulation of impartiality, as it had been the case back in the '90s.

In another cluster of social media-related cases, judicial reasoning focused on the interpretation of technology neutrality elements incorporated in national legislation. The decisions of the Italian Supreme Court on Article 600-ter of the Italian Criminal Code on child pornography are enlightening. Article 600-ter of the Italian Criminal Code includes 'electronic means' among the forms of dissemination of child pornography, without distinguishing on the basis of the electronic means used (whether audiovisual media, social media, peer-to-peer networks and so on). It reads: '[…] Anyone who […], *by any means, including electronic ones***,** distributes, discloses, disseminates or advertises the pornographic material […], or distributes or discloses news or information aimed at soliciting or sexually exploiting children under the age of eighteen years, is liable to imprisonment for a period of between one and five years and a fine of between 2,582 and 51,645 euros. […]' [*emphasis added*]. In some of the cases reviewed, the Italian Supreme Court has evaluated the conduct of the offender, considering not only whether pornographic material involving minors had been produced but also whether there was intention to distribute such material online. For instance, in decision 19112/2016 of 10 March 2016, the Supreme Court affirmed that the threat of distribution of pornographic material through *social media* could qualify as the crime defined by Article 600-ter of the Italian Criminal Code.

In another set of cases, national courts have refrained from bringing social media, blogs, chat rooms, and so on within the scope of existing rules pertaining to the press. To illustrate, in decision 192/2017 of 6 February 2017, the Greek Court of Cassation had to verify whether or not domestic provisions concerning so-called 'crimes committed through the press', including malicious defamation through the press, applied in the case of online publications, including blog posts. Central to solving the dispute at hand was the definition of the concept of 'the press' laid down in national legislation.

The case originated in criminal proceedings against a journalist working in an online news outlet who had been found guilty of malicious defamation (calumny) at first instance. The second instance court had requalified the crime as 'calumny committed through the press' and had ceased the journalist's prosecution for limitation by statute (due to a difference in the time-period prescribed by national legislation within which proceedings should be instituted in case of 'common crimes' and 'crimes committed through the press'). In examining whether the concept of 'the press', as set out in national legislation, encompassed online publications, the second instance court had replied in the affirmative. The Court of Cassation took the opposite view. The press, it was stressed, should be understood as 'anything produced by typography or any other mechanical or chemical means, in identical copies, and serving to multiply or disseminate manuscripts, images, pictures' and so on, in accordance with national legislation.[43] Clearly then, the Internet was not 'typography' or 'a mechanical means for the multiplication of manuscripts'.[44] The second instance court had therefore been wrong to hold that blog posts could fall within the scope of the provisions concerning the press. On this basis, the Greek Court of Cassation concluded that in the case at hand, there was no 'crime committed through the press'.

In a set of cases concerning whether or not social media and blogs could benefit from the prohibition of seizure laid down in the Italian Constitution (see also para. 4.4.2), [45] the Italian Supreme Court held that the constitutional 'privileges' of the press could be extended to online publications, only if these fell within the concept of the press. The 'online press' could escape seizure, provided that it had the structure and characteristics of the printed press. Social media, blogs, etc. did not have the structure and characteristics of the printed press and therefore did not fall within the concept of the online press.

Decision 1425/2017 of 29 August 2017 of the Greek Court of Cassation similarly forms part of the group of cases where national judges have renounced the application of existing rules addressing the press. In this case, the Greek Court of Cassation did not expand the scope of domestic provisions for the liability of the owner of a press outlet for publications of defamatory content to cover defamatory user-generated content. Whilst the Court of Cassation accepted that existing liability provisions enacted for the printed press back in the '80s could be construed as covering news websites and portals, relevant provisions could not be interpreted in such a way as to expand liability for defamatory users' comments posted on the news websites. Thus, whilst the owner of an online press outlet could, as the owner of a press outlet, be held 'objectively liable' for an online news publication with defamatory content, 'objective liability' for defamatory third party comments was excluded.

Mention should finally be made of a certain cases that bring to light the absence of rules regulating social media. Decision 10836 of 16 October 2015 of the Supreme Administrative Court of the Republic of Bulgaria illustrates the gaps in the legal framework concerning political campaigning through social media. The case stemmed from the rejection, by the Central Electoral Commission (CEC), of a complaint filed by a political coalition with the Regional Prosecutor's Office and subsequently forwarded to the CEC, alleging the publication of defamatory content against one of its candidates for local elections by a political opponent on his Facebook profile. The political coalition claimed in particular, the suspension of the impugned publication and the removal of all materials considered to violate the honour, the right to reputation and the dignity of their candidate.

The Supreme Administrative Court did not reflect on the social media dimension of the case, as it found the CEC's decision that had rejected the complaint to suffer, inter alia, from serious procedural flaws. It is worthwhile stressing, however, that in (unlawfully) rejecting the complaint, the CEC took the view that the Bulgarian Electoral Code and particularly, its provisions on 'pre-election campaigning in the media' did not apply to Facebook. According to the CEC, Facebook was not a media service but a social and personal network. It did not

[43] See Art. 1 of Mandatory Law 1092/1938.
[44] See decision 192/2017 of 6 February 2017 of the Greek Court of Cassation.
[45] See decisions 7155/2011 of 10 January 2011; 11895/2013 of 30 October 2013; 10594/2013 of 3 November 2013; 31022/2015 of 29 January 2015; and 12536/2016 of 25 February 2016 of the Italian Supreme Court.

fall within the scope of the Bulgarian Radio and Television Act, which defined what constitutes a media service,[46] and therefore was not bound by the requirements imposed on the media in relation to political campaigning.

4.4.2 Social media cases and fundamental rights reasoning

Our case sample shows that judicial reasoning on fundamental rights is not predominant in higher court cases dealing with social media, blogs, chat rooms, and so on. The cases that engage in fundamental rights reasoning are rather limited in number. They have been clustered according to the information provided by the local research teams through the case summaries prepared on judicial reasoning. Cases in which reference was made to constitutional rights and/or to supranational bills of rights without the relevant rights being taken up in judicial reasoning are not included in the analysis.

The percentage of cases involving fundamental rights reasoning, as shown in Table 9, is at 15%. Out of 147 cases, only 22 cases engage in fundamental rights reasoning. Nonetheless, considerable variations are noted among the countries covered. In Bulgaria, Slovakia and Slovenia, although the total number of cases is limited, half or more than half of the cases involve fundamental rights reasoning (the percentage ranges from 50% to 66%). On the other hand, reasoning on fundamental rights was present in just one case out of the 33 cases identified in Croatia (3%) and in 13 out of 95 in Italy (14%). In Greece, none of the social media cases identified addresses fundamental rights.

Table 9: Presence of fundamental rights reasoning overall and *by* country

	Slovenia	Slovakia	Bulgaria	Greece	Latvia	Croatia	Italy	**Total**
No	1	1	2	3	3	33	82	125
%	33%	33%	50%	100%	60%	97%	86%	85%
Yes	2	2	2	0	2	1	13	22
%	66%	66%	50%	0%	40%	3%	14%	15%
Total	3	3	4	3	5	34	95	147
%	100%	100%	100%	100%	100%	100%	100%	100%

As shown in Table 10, the percentage of constitutional court cases with a fundamental rights dimension is much higher than that of the Supreme Court cases. This should not come as a surprise: the role of constitutional courts as guardians of fundamental rights has long been acknowledged and it is confirmed here.

Table 10: Presence of fundamental rights reasoning per court level

	Constitutional court	**Supreme court**	**Total**
No	1	124	125
%	20%	88%	85%
Yes	4	18	22
%	80%	13%	15%
Total	5	142	147
	100%	100%	100%

[46] The media services within the meaning of the act were audiovisual media services and radio services.

It should be noted, however, that the number of constitutional court judgments is overall pretty limited and that the constitutional court cases with fundamental rights reasoning available (4 cases out of 5) are matched by 18 cases decided by the supreme courts that have a fundamental rights component. This illustrates that supreme courts do not refrain from engaging in the interpretation of fundamental rights.

In three out of the four constitutional court cases with fundamental rights reasoning, the issue at stake was related to freedom of political speech: the Latvian, Italian and Slovakian cases reviewed address different angles of it.

In case 2016-09-01 of 18 January 2017, decided by the Latvian Constitutional Court, the dispute was about whether or not the national law on pre-election campaigns was compatible with the constitutional provision on freedom of expression. Article 32 of the pre-election campaigning law prohibited the publication and the dissemination of political speech related to the electoral campaign during a two-day period: the day of election and the day before. Such prohibition was applicable to any means of communication (radio, television, the written press, etc.), including the Internet. The reference to the Internet, it was argued, was too broad; it extended the scope of the prohibition to private emailing and social media and therefore imposed a disproportionate limitation on freedom of expression, in particular politicians' free speech. The legislation was eventually amended and the scope of application of the prohibition as regards Internet communication was defined more strictly.

In decision II. ÚS 307/2014-45 of 18 December 2014 of the Slovak Constitutional Court, discussed under para. 4.4.1, freedom of expression was approached from the perspective of the role of media organisations in ensuring media pluralism when presenting political opinions. Here, a broadcaster was found, by decision of the national communication authority, to be guilty of a breach of duty pursuant to the provisions of the Broadcasting Act, which laid down an obligation for objective and impartial reporting in news and current affairs programs. Appeal proceedings reached the Constitutional Court with a question regarding the role and powers of the Slovak communication authority particularly regarding impartiality and objectivity of news reporting. The Court analysed Article 26(2) of the Slovak Constitution and Article 10 ECHR, declaring that freedom of expression and its corollary, the freedom of information and in particular, the freedom to receive information did not entail an obligation for the media to provide objective and impartial information. The Constitutional Court thus held that the interference with the broadcaster's free speech was unlawful: it was not covered by any of the grounds provided by Article 26(4) of the Slovak Constitution and Article 10(2) ECHR, namely the protection of the rights and freedoms of others, state security, public order and the protection of public health and morals.

Decision 313/2013 of 17 December 2013 by the Italian Constitutional Court focused on a conflict of competences between the judiciary and parliament as regards parliamentarians' exemption from liability for defamatory speech in case of political speech. In particular, the case revolved around the allegedly defamatory speech of a member of the Italian Senate against the President of the Italian Republic, which is punished under Article 278 of the Italian Criminal Code.

According to Italian Constitution, parliamentarians' free speech is subject to wider protection than the freedom of speech of other individuals under certain criteria. In particular, Article 68(1) of the Italian Constitution provides that, before initiating any criminal proceedings against a member of parliament, parliament decides whether the impugned statements were functional to present (even in an aggressive manner) the political views of the parliamentarian. If such a *functional nexus* between the statements and political activity exists, the parliamentarian is immune from liability.

According to the Board for the Election and Immunities of the Parliament – the body in charge for giving the authorisation to start criminal proceedings against a member of parliament – the statements in the case at issue should be interpreted as being related to the political activity of the parliamentarian concerned. They were accordingly covered by Article 68(1) of the Italian Constitution and liability for them was excluded. The Tribunal of Rome contested this decision. It held that the Board had overcome the limits of its competence because any

analysis concerning the substance of the statements, and thus whether they could qualify as political statements or not, could only be made by the judiciary. According to the tribunal, the board was in charge of verifying the existence of a clear and direct connection between political activity and the statements made, whereas the courts were competent to assess the content of the statements. As a result of the conflicting interpretation of the court, the Tribunal of Rome presented a pleading to the Constitutional Court for solving the conflict of competence. The Constitutional Court interpreted the constitutional provision of Article 68(1) in the light of the evolution of communication and its technological context. The Constitutional Court acknowledged in particular, that new means of communication such as blogs and social networks allowed for the immediate contact of politicians with the public. However, it would be unreasonable to confirm the existence of a 'functional nexus' between parliamentarians' statements and their political activity in all instances they reached citizens, given the trend towards continuous communication on any subject via social media by politicians.

In the three constitutional cases discussed the trigger, if not the main subject of the dispute, was the interplay between freedom of political speech and the online context. This demonstrates the sensitivity of the matter: in case of doubts, or conflicts in connection to a potential limitation on political speech, the issue reaches the constitutional courts. The three cases further show that the constitutional courts are generally eager to engage in an *evolutionary* interpretation of the constitutional provisions, in line with technological developments. This is exemplified by the Italian Constitutional Court, which openly opted for an 'up to date' interpretation of the criterion of *functional nexus*, taking into account the new forms of political communication through social media.

Moving to the distribution of cases with a fundamental rights component in the countries reviewed according to their subject matter, Table 11 shows that most of these fall under the category of 'defamatory, degrading and insulting content'. Such cases naturally raise issues pertaining to free speech.

The decisions of the Bulgarian Supreme Court and of the Italian Supreme Court within the category of 'defamatory, degrading and insulting content' devote significant attention to the balancing between freedom of expression and other rights and interests.

Decision 159/2015 of 19 June 2015 of the Bulgarian Supreme Court (see also para. 4.4.1) was about a journalist who was convicted for his statements published on two social media platforms. The appeal before the Supreme Court contested the qualification of the crime as insult instead of defamation. Along with the analysis of the differences between insult and defamation according to the national criminal code, the Supreme Court considered the issue of limitations on freedom of expression vis-à-vis public figures and politicians, in particular. The Supreme Court referred to the judicial practice of the ECtHR, stating that in principle, it was not legitimate to limit freedom of expression in the case of criticism of public figures. In this specific case, however, the journalist had crossed 'the boundaries of ethically acceptable wording'.

In a similar case, the Italian Supreme Court discussed the limits to journalistic free speech in cases of strongly aggressive statements against a deceased person. Decision 50187/2017 of 10 June 2017 stemmed from a claim for defamation by the daughter and wife of a deceased person. The latter was knowingly a mafia boss and after his death a journalist had published a post on his personal blog using negative and aggressive expressions against him. The lower court had acquitted the defendant as relevant statements, provocative as they may be, had been considered to fall within the scope of the right to criticism. The Supreme Court upheld the appeal court's conclusion, affirming that the statements did not fall within the scope of the right to criticism. The Supreme Court referred to the criteria generally applicable to the legitimate exercise of freedom of expression, namely that the expression should be in the public interest, be (subjectively) true, and comply with formal correctness, without including rude or offensive statements. The expressions of the journalist were found to 'dehumanize' the victim and were therefore offensive for personal dignity and honour, safeguarded by the Italian constitutional order.

The Italian higher courts have further dealt with defamatory speech by politicians and public figures, in decision 313/2013 of the Constitutional Court, mentioned above, and decision 6965/17 of 17 March 2017 of the Supreme

Court. The latter originated in a dispute over the statements made by a judge when participating in heated debate on the discussion forum of a blog. The intervention of the judge was aimed at defending the work of the judiciary with strongly negative statements made against the lawyers' bar association. The Disciplinary Section of the Judicial Council had subsequently found the judge responsible for damage to the reputation of magistracy, and for seriously incorrect conduct in the exercise of judicial functions, pursuant to Article 2(1)(d) and Article 4(1)(d) of Legislative Decree 109/2006. The judge appealed against the decision before the Supreme Court. The Supreme Court held that the exercise of free speech by the judiciary did not qualify as the exercise of judicial activity, even in relation to matters concerning the administration of justice. The Supreme Court took the position that the role of judges in the administration of justice should not imply an excessive limitation on their ability to participate in public debate; this would amount to a disproportionate limitation on their freedom of expression. Only when exercising judicial functions, a judge's free speech could be limited.

Table 11: Subject matter of cases involving fundamental rights reasoning

Subject-matter	
Defamatory, degrading, insulting content through social media, blogs, etc.	10 45%
Hate speech and other illegal content in social media, blogs, etc.	0 0%
Privacy and personal data protection	3 15%
Free speech and the freedom of the press	3 15%
Publication in social media, blogs, etc. of news media content	1 5%
Social media and its impact on legacy media regulation	2 10%
Social media and employment	2 10%
Social media accounts and content as evidence in proceedings	0 0%
Other	0 0%
Total number of cases involving fundamental rights reasoning	22 100%

Three cases under the category 'defamatory, degrading and insulting content', namely decision 7155/2011 of 10 January 2011, decision 11895/2013 of 30 October 2013 and decision 12536/2016 of 25 February 2016 of the Italian Supreme Court, can be discussed as a cluster of cases with decision 10594/2013 of 3 November 2013 and decision 31022/2015 of 29 January 2015 of the Italian Supreme Court, which fall under the category 'free speech and the freedom of the press'. All these cases examine whether or not social media qualifies as 'the press', according to the definition of the press provided by the Italian Constitution, and consequently, whether or not the constitutional guarantees for the press in case of potential seizure also apply in the case of social media. The factual circumstances are similar: a blogger or journalist publishes online allegedly defamatory content, and as a result of the claim of the offended person, the judge for preliminary investigations issues an injunction for the blackout of the webpage (or of the entire website). The blogger or journalist then reaches the Supreme Court and argues for a violation of Article 21 of the Italian Constitution, which prohibits the seizure of the press.

In all five cases, the Italian Supreme Court reached similar conclusions, differentiating between the application of the constitutional guarantees to the traditional press and social media. Whilst until 2015 such differentiation

was approached to on a case-by-case basis, decision 31022/2015 by the Plenary Chamber of the Supreme Court set guidelines for the interpretation of Article 21(3) of the Italian Constitution on the prohibition of the seizure of the press vis-à-vis the online press and social media. In this decision, the Supreme Court held that the principles and guarantees that are applicable to the printed press can be extended to the 'online press', if this has the structure and characteristics of the printed press. Relevant constitutional guarantees cannot apply to online forums, and to blogs, mailing lists, chats, newsletters, e-mails, newsgroups, etc., as these do not fall within the concept of the press.[47]

The cases under the category of 'privacy and data protection' include decision 190/2016 of 29 September 2016, by the Latvian Supreme Court. This case was about a well-known whistle-blower who had obtained information on the remuneration of public and private sector employees through a loophole on the website of the Internal Revenue Service, and had subsequently published parts of it on social media. Having been charged, inter alia, with the crime of illegal collection and processing of personal data, the case was brought before the Supreme Court. In seeking to solve the dispute, the Supreme Court briefly dealt with aspects pertaining to Article 96 of the Latvian Constitution on the right to private life. In particular, after having affirmed that the protection of personal data derives from the right to private life, the Supreme Court clarified that the violation of a fundamental right does not suffice for criminal liability to be incurred. According to domestic criminal law, for criminal liability to be incurred, 'substantial harm' should be caused, which in this instance was not the case.

According to Table 12, when incorporating a fundamental rights dimension in judicial reasoning, higher courts in the countries reviewed tend to make use of domestic constitutional provisions more than other sources of fundamental rights protection. Such use does not necessarily involve substantive and detailed analysis of the relevant constitutional articles. Resort to constitutional provisions can be only formal without a thorough presentation of their effects on the adjudication of the dispute. Decision Gž 38/11-2 of 7 March 2012 of the Supreme Court of Croatia provides a useful example in this respect. The case concerned an individual's blog post that contained discriminatory and offensive statements against homosexuals. The first instance court found the defendant guilty of the criminal offence of discrimination on grounds of sexual orientation and ordered the removal of all discriminatory content. The case was eventually filed with the Supreme Court, which briefly referred in its reasoning to Article 38 of the Croatian Constitution on freedom of thought and expression. The Supreme Court simply stated that freedom of thought and expression was restricted by the need to respect the rights and freedoms of others, as prescribed by a series of sources of international law, without engaging in a comprehensive analysis of the provisions concerned.

Table 12: Sources of fundamental rights provisions employed in legal reasoning (N=number of cases)

	N	%
Constitution	11	50%
ECHR	1	5%
CFR	0	0%
Constitution+ ECHR	9	40%
Constitution+ CFR	0	0%
ECHR+ CFR	0	0%
Constitution+ ECHR+ CFR	0	0%
No source cited	1	5%
Total N	22	100%

[47] See decision 31022/2015 of 29 January 2015 of the Italian Supreme Court.

In other cases, judicial reasoning has been more detailed. An example of this is decision 21965/2018 of 10 September 2018 by the Labour Chamber of the Italian Supreme Court. This case concerned an employee who was dismissed by his employer for 'justified reasons' on the basis of the information gathered, through anonymous sources, about the offensive statements he had made against the company where he worked in a Facebook group chat. The employee contested the decision of his dismissal and in appeal proceedings, the appeal court took the view that the expressions used were vernacular expressions that had entered the common language, they sought to strengthen the arguments of the speaker, and enjoyed protection under free speech. The Supreme Court confirmed the decision of the lower court. However, the analysis of the Supreme Court did not focus on freedom of expression but on the protection of private communication, enshrined in Article 15 of the Italian Constitution.

The Supreme Court noted that communication via Facebook groups was aimed at a closed group of people (the members of a trade union) and was not intended to be open to the general public. This point was relevant for determining the defamatory nature of the offensive statements. In particular, the Supreme Court stated that 'the violation of reputation, as it is linked to the social context of reference, presupposes and requires communication with more than one person, i.e. the contact of the author with subjects other than the victim in order to make them aware of and participate in facts that damage the victim's reputation'.[48] The Supreme Court also observed that communication within a closed circle of people was safeguarded by Article 15 of the Italian Constitution on the freedom and secrecy of correspondence and any other form of communication. The application of the constitutional guarantee regarding the secrecy of communication precluded participants' implicit acceptance of the dissemination of the content of the conversation to third parties.

The use of supranational fundamental rights sources alone, such as the ECHR and the CFR is limited. Nonetheless, reference to the provisions of the ECHR is quite frequently made in combination with national constitutional provisions. Arguably, this demonstrates the willingness of the judiciary to solidify the protection of fundamental rights through the European multilevel system of fundamental rights sources.

4.5 Judicial dialogue

Interactions between judges through case law references may occur along different dimensions. This study takes into account both the vertical and the horizontal dimension, depending on whether courts operate at the same level or within the context of a formal system with hierarchical features.

Internal horizontal judicial interaction refers to the interaction between judges within the same Member State (a supreme court interacts with another supreme court or the constitutional court in the same Member State). *External horizontal judicial interaction* stands for the interaction between courts operating at the same level in different Member States (a supreme court in Member State A interacts with a supreme court in Member State B). *Internal vertical judicial interaction* is about the interaction that takes place between a lower court and a supreme or constitutional court in the same Member State. This dimension is addressed in para. 5.5 below. *External vertical judicial interaction* is finally understood as the interaction between national judges and the CJEU or the ECtHR.

Judicial dialogue can also be genuinely internal, taking place within the same court. This will be the case when a supreme court refers to its own jurisprudence, citing for instance previous decisions or decisions of different chambers of its own. Such a dimension is not covered in the analysis; the emphasis is on judicial dialogue and interaction between distinct courts.

[48] Translation by the Italian rapporteur.

References to national case law, to European case law (the case law of the ECtHR and the CJEU) and to foreign case law are given consideration when the cases referred to have a media or a social media dimension. Judicial dialogue in the cases identified concerning matters that do not touch upon the (social) media dimension of the case does not receive consideration. This is also the situation with judicial dialogue on admissibility and procedural issues. References to rulings that deal with fundamental rights and other issues that may inform the social media dimension of the case are taken into account.

From Table 13 we can see that the majority of higher court cases on social media, blogs, chat rooms, and so on in the countries under study (94%, i.e. 138 cases out of 147) makes no reference to the case law of other higher national courts, foreign courts or European courts. Judicial dialogue in social media cases ruled by higher courts is overall rather limited. This general trend should not obfuscate the fact that there are several differences in terms of the frequency of judicial dialogue across the countries reviewed. Judicial interaction is wholly absent from the case law of the Greek, Croatian and Latvian higher courts and infrequent in Italy. In Bulgaria an even number of cases *with v. without* judicial dialogue was identified. In Slovenia and Slovakia judicial dialogue in cases dealing with social media and blogs is not uncommon, present in two out of the three cases identified for each of these countries.

Table 13: Presence of judicial dialogue overall and by country

	Slovenia	Slovakia	Bulgaria	Greece	Latvia	Croatia	Italy	**Total**
No	1	1	2	3	5	34	92	138
%	33%	33%	50%	100%	100%	100%	97%	94%
Yes	2	2	2	0	0	0	3	9
%	66%	66%	50%	0%	0%	0%	3%	6%
Total	3	3	4	3	5	34	95	147
%	100%	100%	100%	100%	100%	100%	100%	100%

It is true that judicial dialogue cannot occur in every single case. It rather depends on a set of important pre-conditions that relate first and foremost to the factual circumstances of a case and whether or not similar cases have been dealt with in the past. Domestic judicial culture also plays a role (courts in some countries may be more inclined than courts in other counties to engage in judicial dialogue). Other important factors that can encourage or conversely thwart judicial dialogue are judges' knowledge of other legal systems, litigants' claims, and the degree of similarities and differences between legal systems. Cases on potential conflicts between national and EU provisions and cases disclosing conflicts in the interpretation of national (and European) provisions may be more likely to trigger judicial dialogue, precisely because resorting to other case law may help illuminate the conflict or contribute to solving it.

Cases that raise fundamental rights issues might enjoy more opportunities for judicial dialogue. In such cases, courts may be invited to indicate or examine of their own volition whether or not supranational sources of fundamental rights protection apply to the dispute that is pending before them. If so, the courts will naturally need to determine the precise scope, meaning and level of protection of the relevant supranational fundamental right(s), and the use of supranational jurisprudence (in a European context, the jurisrudence of the CJEU and the ECtHR) can be particularly helpful. As a result of the application of supranational rules on fundamental rights, national courts may also be required to ensure their effective application. This may, inter alia, involve addressing conflicts between national law and the supranational rule(s) concerned.[49] If the case falls under the scope of

[49] On this, see CJEU, C-106/89 *Marleasing,* judgment of 13 November 1990, ECLI:EU:C:1990:395, where the CJEU formulated an obligation for courts to interpret and apply national law, insofar as possible, so as to avoid a conflict with an EU rule.

both EU law and the ECHR, national judges may address the relationship between the two European legal systems (and their courts).

The limited occurrence of judicial dialogue in social media cases ruled by higher courts in the countries reviewed should not downgrade its importance for the adjudicative function of courts when judges do engage with the case law of others. Decision II. ÚS 307/2014-45 of 18 December 2014 of the Slovak Constitutional Court (see also paras 4.4.1 and 4.4.2) is a case in point. The case arose from the sanction imposed by the Slovak Communication Authority on a broadcaster for lack of impartiality shown by a brief news report broadcasted on a television programme. The appeal of the broadcaster was in all instances dismissed. Before the Constitutional Court, the claim was instead upheld. The Constitutional Court argued about the need to adapt the interpretation of freedom of expression in the new media context, characterised by the emergence of new media and social networks. In this context, particular attention was given to the ECtHR ruling in *Çetin and Others v. Turkey*.[50] The ECtHR judgment was about a ban on the distribution of a Turkish daily newspaper in a specific region of Turkey. The Turkish government had argued that this did not constitute an interference with the freedom of expression of the applicants as journalists, as these were involved in the publication of many other newspapers and periodicals in the country and were thus able to impart their ideas and information through them. The ECtHR dismissed such argumentation, underlying that the press plays a key role in a democratic society, and that citizens, as passive recipients of information, must be allowed to receive a variety of information and views, so that they can choose between them and form their own opinions'. The Slovak Constitutional Court referred to this ECtHR judgment in order to strengthen its reasoning on the positive obligation of states to ensure pluralist sources of information in society.

Findings on the recurrence of judicial dialogue by constitutional courts vis-à-vis supreme courts show that constitutional courts are more supportive of judicial dialogue in the countries under study. As Table 14 shows, judicial dialogue is more frequent in constitutional court cases dealing with social media, blogs, chat rooms, etc. than in supreme court cases. Overall 60% of the constitutional court cases identified (3 cases out of a total of 5 cases) mention or cite judgments of other courts (either domestic, foreign or European courts). The percentage of supreme court cases referring to the case law of other courts is just 4% (6 cases out of 142 cases in total).

Table 14: Judicial dialogue by higher court type

	Constitutional courts	Supreme courts
Judicial dialogue	3	6
	60%	4%
No judicial dialogue	2	136
	40%	96%
Total	5	142
	100%	100%

Turning more specifically to the type of courts whose case law is referred to by higher court cases on social media, blogs, chat rooms, and so on, references to European case law (the case law of the ECtHR and the CJEU) are more frequent (6%, i.e. 9 cases out of 147) than references to the case law of other domestic higher courts (2%, i.e. 3 cases) or the case law of foreign courts (1%, i.e. 2 cases).

[50] ECtHR, *Çetin and Others v. Turkey* (40153/98; 40160/98), 13 February 2003.

Table 15: Types of judicial dialogue

	N	% of total
Other domestic higher courts	3	2%
Foreign courts	2	1%
European courts (ECtHR & CJEU)	9	6%

Drawing upon the case law of the ECtHR may be a common path for national courts, in light of the domestication of the ECHR. Reference to CJEU rulings, in turn, may be closely connected to the primacy of EU law[51] and could be explained by a de facto ultra partes effect of the preliminary rulings of the CJEU.[52] Overall, judicial dialogue with the ECtHR has been more frequent than judicial dialogue with the CJEU. Our sample of court rulings contains 2 cases in which reference to a specific CJEU ruling has been made, whereas mention of ECtHR rulings or overall ECtHR judicial practice has been made in 7 cases.

The CJEU decisions that have been referred to in the countries studied attest to the fact that national courts select the CJEU rulings according to the arguments to be supported. In decision 51143/2014 of 12 May 2014 by the Italian Supreme Court, reference was made to the CJEU cases *Marra* and *Patriciello*,[53] which had provided useful guidelines concerning the interpretation of immunity and exemptions applicable in the event that the conduct of members of the European Parliament triggers criminal liability. The case presented to the Supreme Court involved a member of the European Parliament who had published on his blog a set of posts offending the reputation of an Italian judge and her husband, a lawyer, whereas such offending comments had also been made by the same parliamentarian in a TV interview.

The ECtHR rulings mentioned by higher courts have mostly involved rulings on Article 10 ECHR on freedom of expression and the right to information. A judgment of the Supreme Court of the Republic of Slovenia of 17 September 2015, for instance, which dealt with the issue of whether or not an offensive blog post against a writer had interferened with the latter's privacy rights, referred to *Lingens v. Austria, Thorgeir Thorgeirson v. Iceland, The Observer and Guardian v. the UK* and *Jacubowski v. Germany*.[54] The Slovenian court used these cases to corroborate its reasoning, according to which the protection of free speech is not confined to facts but extends to opinions, criticism and speculation; and that exceptions to free speech must be interpreted narrowly.

Decision 313/2013 of the Italian Constitutional Court on the immunity of members of parliament (see para. 4.4.2) similarly drew on ECtHR jurisprudence as a supporting argument. In particular, reference was made to the ECtHR rulings in cases *Cordova v. Italy* and *CGIL and Cofferati v. Italy* to confirm that parliamentary immunity cannot be extended to activities which are not connected to parliamentarian functions.[55] In both rulings, the ECtHR had accepted that states can afford immunity to members of parliament - a long-standing practice to ensure freedom of expression among representatives of the people and prevent politically-motivated prosecutions, which can interfere with the performance of parliamentary duties. However, parliamentary

[51] The primacy of EU law is a principle developed by the CJEU according to which whenever a conflict between EU law and national law emerges, the former should prevail whereas the rules of the national law should be set aside. See CJEU, C-106/77, *Simmenthal*, judgment of 9 March 1978, ECLI:EU:C:1978:49.

[52] Although a preliminary ruling of the CJEU is only binding on the referring court, a deviation from the CJEU's pronouncements by other courts than the referring one could be, as far as national courts of last resort are concerned, a violation of the duty to make a reference for a preliminary ruling, according to Article 267(3) TFEU. Last instance courts are under no obligation to make a preliminary reference: a) when the correct interpretation of EU law is obvious ('acte clair'), b) when the CJEU has already ruled on the matter ('act éclairé), and c) when EU law is irrelevant to solve the dispute.

[53] CJEU, C-200/07 and 201/07, *Marra,* judgment of 21 October 2008, ECLI:EU:C:2008:579; and C-163/10, *Patriciello*, judgment of 6 September 2011, ECLI:EU:C:2011:543.

[54] ECtHR, *Lingens v. Austria* (9815/82), 8 July 1976; *Thorgeir Thorgeirson v. Iceland* (13778/88), 25 June 1992; *The Observer and Guardian v. the UK* (13585/88), 26 November 1991.

[55] ECtHR, *Cordova v. Italy* (40877/98), 30 January 2003; and *CGIL and Cofferati v. Italy* (46967/07), 24 February 2009.

immunity should not be granted for statements that were not related to the performance of parliamentary duties but appeared to have been made in the context of personal disputes.

In a ruling of 13 February 2014 focused on the secrecy of communications online, the Constitutional Court of the Republic of Slovenia referred to *K.U. v. Finland* on the right to respect for private life,[56] protected under Article 8 ECHR.[57] *K.U. v. Finland* concerned the publication of an advertisement of a sexual nature on an Internet dating site in the name of a minor. National legislation had made provision for the disclosure of telecommunications identification data only in relation to certain offences. On this basis, the Finnish courts had refused to oblige the Internet service provider to divulge the Internet protocol address and hence the identity of the individual who had placed the advertisement in order to bring charges. The Constitutional Court recalled that for the ECtHR, by prioritizing the confidentiality of communications against the minor's physical and mental integrity, the Finnish authorities had violated Article 8 ECHR. According to the Constitutional Court, domestic constitutional provisions, namely Article 37(2) of the Slovenian Constitution, ensured a high level of protection: for any interference with the right to secrecy of communications, a court order was required. In addition, reference to *Malone v. the United Kingdom* and *P.G. and J.H v. the United Kingdom*[58] was made to stress that pursuant to ECtHR case law, Article 8 ECHR protects not only the content of communication but also the circumstances and facts associated with communication.

On several occasions, the Italian Supreme Court has had the opportunity to address the qualification of social media vis-à-vis the definition of legacy media in the context of considering the legitimacy of an injunction for seizure of the online press, given the constitutional prohibition of seizure that applies for the printed press. Decision 31022/2015 of 21 January 2015 of the Italian Supreme court is a landmark decision, which has provided guidelines in this area. In particular, through reference to the ECtHR jurisprudence, the Supreme Court affirmed that the principles and guarantees applicable to the printed press can be extended to the 'online press' only if the latter has the structure and characteristics of the printed press. The jurisprudence of the ECtHR included the following cases: *Fressoz and Roire v. France*; *Vogt v. Germany*; *Observer and Guardian v. the UK;* and *Wegrzynowski and Smolczewsky v. Poland*.[59] All these cases were mentioned to reinforce the reasoning of the Italian Supreme Court on the role of the press as a watchdog for democracy.

The cases reviewed reveal that when national judges refer to European jurisprudence, they commonly do so without analyzing in detail the European cases referred to. Rather they simply point to landmark decisions – one or many. In some instances, they even refer to settled judicial practice, without identifying specific cases. This is exemplied by decision 159/2015 of 19 June 2015 of the Supreme Court of Bulgaria. This case was about the qualification of the crime of 'insult' in an online environment, in relation to the conviction of a journalist for having made statements, humiliating for the honour and dignity of an individual, through social media (see para. 4.4.1). The Bulgarian court acknowledged the fundamental rights dimension of the case, referring to 'the established Europeans standards' on freedom of speech pursuant to Article 10 ECHR and the ECtHR jurisprudence, without singling out any specific cases.

Resort to foreign jurisprudence requires thoughtful consideration of the comparability of foreign decisions vis-à-vis the national legal context. In this sense, it is more likely that national courts will look at the jurisprudence of foreign courts which belong to a legal system that is similar to the national one. This is so despite the fact that the national judge may also wish to highlight possible differences, indicating for example how the solution

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[56] *K.U. v. Finland* (2872/02), 2 December 2008.

[57] See Constitutional Court of Slovenia, 13 February 2014, ECLI:SI:USRS:2014:Up.540.11.

[58] ECtHR, *Malone v. the UK* (8691/79), 2 August 1884; and *P.G. and J.H v. the UK* (44787/98), 25 September 2001.

[59] ECtHR, *Fressoz and Roire v. France* (29183/95), judgment of 21 January 1999; *Vogt v. Germany* (17851/91), judgment of 26 September 1995; *Observer and Guardian v. the UK* (13585/88), judgment of 26 November 1991; *Węgrzynowski and Smolczewsky v. Poland* (33846/07), judgment of 16 July 2013.

provided by a foreign court may be adapted in another national context. Generally speaking, comparative reasoning on the basis of the jurisprudence of foreign courts can be used to achieve a number of purposes, inter alia: to sustain the reasoning of the national court; to highlight the specificities of the case at issue as opposed to those dealt with elsewhere; and to get inspiration for finding a solution to the dispute at hand.

Decision II. ÚS 307/2014-45 of the Slovak Constitutional Court mentioned above constitutes an optimum example of the limited number of cases within our sample with reference to the case law of foreign courts. In particular, mention of decisions of the German Federal Constitutional Court were complemented by references to rulings issued by the Czech Constitutional Court and the Slovenian Constitutional Court.[60] The Slovak Constitutional Court drew on the jurisprudence of different foreign courts of equal level to stress the importance of freedom of expression for democratic society, and the role of the media in terms of informing the public on matters of public interest. In holding that free speech is not absolute and that restrictions can be allowed, the Slovak Constitutional Court also made reference to the seminal decision of the Supreme Court of the United States of America in *Schenck v. United States*.[61] In this case, it had been established that restrictions to free speech can be allowed when the expression creates a 'clear and present' danger to a legitimate public interest. All these foreign court cases referred to by the Slovak Constitutional Court were not presented or discussed in detail. In fact, our findings show that when courts engage with the jurisprudence of foreign courts, they do so mostly by means of mere reference.

Table 16 shows that higher court cases on social media, blogs, chat rooms, and so on that engage in fundamental rights reasoning frequently engage in judicial dialogue as well. 8 out of the 9 cases where reference was mentioned to the jurisprudence of other courts, involved reasoning on fundamental rights (81%). This is related to the fact that in cases that involve fundamental rights, courts in Europe are confronted with a multi-level system of provisions, where national constitutional rules can be combined with the potential application of European bills of rights, namely the ECHR and the CFR.

Table 16: Engagement with fundamental rights reasoning in cases involving judicial dialogue

	Judicial dialogue present
FR reasoning	8 89%
No FR reasoning	1 11%
Total	9 100%

[60] Federal Constitutional Court of Germany, No. 1 BvR 400/51, 15/1/1958, para. 31; ref.1, BvR 131/96, 24/3/1998, para. 27; 2 BvR 2219/01, 15/12/2004, para. 15; 1 BvR 2020/04, 10/12/ 2010, para. 23; Czech Constitutional Court, I. ÚS 823/11, 6/3/2012, paras 19 and 21; IV. ÚS 23/05, para 30; Constitutional Court of Slovenia, Up-2940/07, 5/2/2009, para. 7.
[61] Supreme Court of the United States of America, 249 U.S. 47 (1919), 3 March 1919, para. 50.

5. The social media case law of second instance courts

5.1 Sources consulted for the collection of case law

The identification of the social media cases of the appellate courts in the countries under examination was based on online sources. Research teams in Croatia, Latvia, Slovenia and Slovakia consulted online databases operated by ministries of justice or the supreme courts. In Portugal, the collection of case law drew on the online databases of appeal courts. The research team in Greece consulted the local database *Nomos*, which provides, upon subscription, access to a selection of rulings. In Bulgaria, the same software solutions used for the collection of higher court cases were used (APIS and Lakorda), in addition to a database operated by domestic courts. In most countries, the databases consulted may not provide exhaustive coverage of the cases decided.

5.2 Case law overview

We identified 80 second instance court cases in total for the period 2012 to 2017 (see Table 17). Overall, in most of the countries under study, the number of second instance court cases identified is rather limited, falling below ten. Slightly higher was the number of cases identified in Croatia (13) and comparatively high in Portugal (38).

Table 17: Second instance court cases by country

Country	Number of cases
Slovakia	7
Slovenia	6
Bulgaria	3
Greece	8
Latvia	13
Croatia	5
Portugal	38
Total	80

As to the date of the decision, an increase in the number of cases identified per year is noted (see Table 18). It is in 2016 and 2017 when most of the identified second instance courts cases were examined.

Table 18: Second instance court cases by year

Year	Number of cases
2012	5
2013	7
2014	11
2015	9
2016	23
2017	35
Total	80

With respect to the court formation, as Figure 5 shows, the majority of cases identified come from penal courts (61%, 49 out of 80 cases), followed by civil courts (34%, i.e. 27 cases). 5% of the identified case law (4 cases) was examined by administrative second instance courts, all of which were in Latvia.

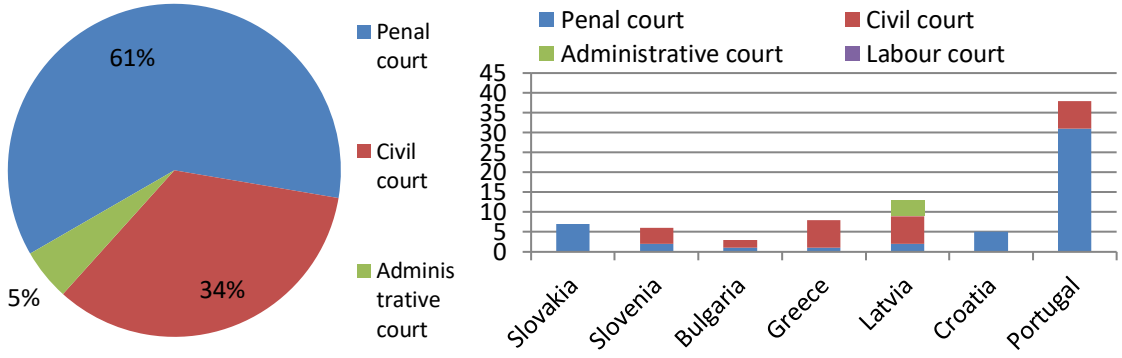


Figure 5: Second instance court type overall & by country

As with the supreme and constitutional court judgments, the second instance court cases identified have been grouped in cases of direct and indirect relevance to social media, blogs, chat rooms, and so on (see para. 4.2 above). According to Figure 6, the vast majority of the cases turned out as directly relevant (79%, i.e. 63 out of 80 cases). This pattern applies to all the countries covered with the exception of Latvia. There, the number of cases that were indirectly relevant to social media, blogs, etc. was slightly higher (7 versus 6 cases). In countries such as Slovakia, Bulgaria and Croatia, all cases identified were of direct relevance to social media, blogs, etc.

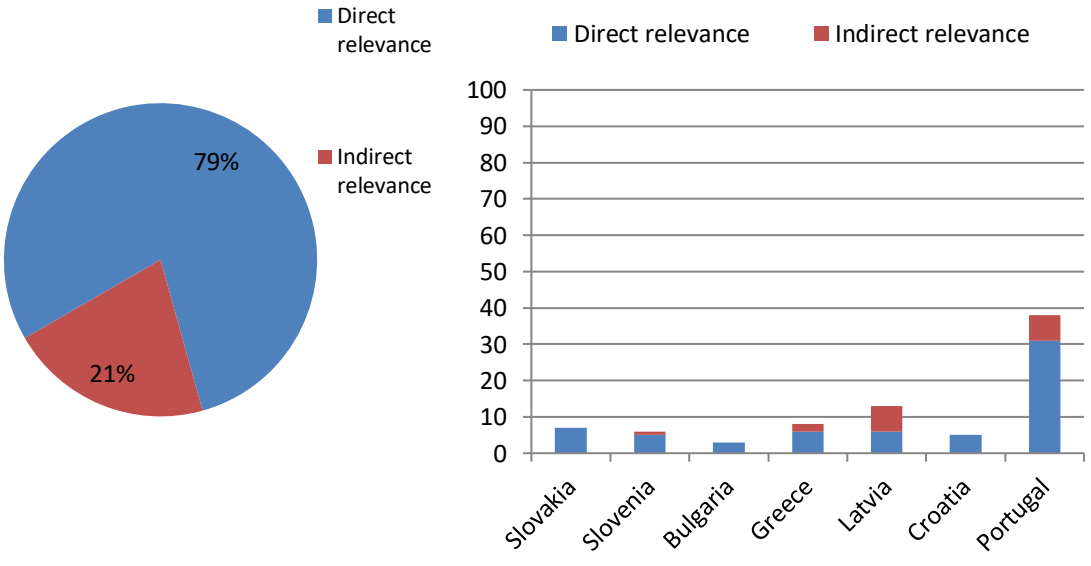
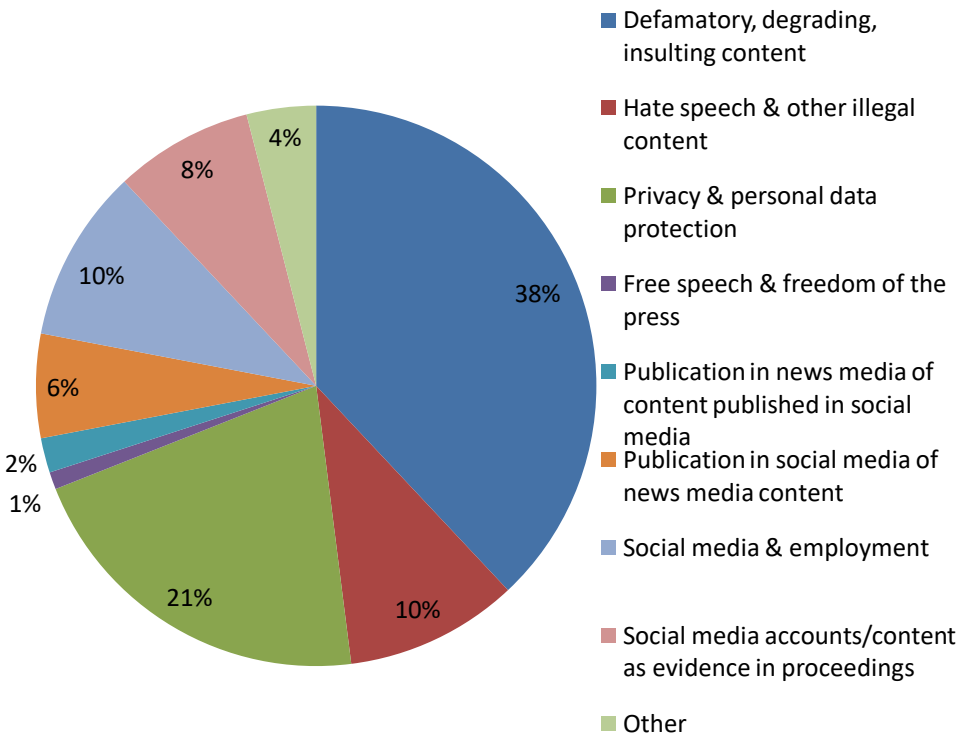


Figure 6: Relevance to social media, blogs etc. overall & by country

Most of the cases identified were related to 'defamatory, degrading and insulting content' (38%, i.e. 30 out of 80 cases) (see Figure 7). Relevant cases display variety in terms of offenders and offended persons, involving politicians, persons holding office (e.g. mayors), public figures (such as university professors and writers), civil servants, journalists, news media, the individual citizen, and even legal persons and providers of hosting services. They mostly concern contentious posts on social media, online forums and blogs. 'Privacy and personal data protection' follows as the main subject matter in 21% of the cases (7 cases). The emphasis here is on the publication of personal data and information (e.g. photos, videos, etc.) on social media and blogs, without having obtained consent and the publication, by news media, of personal data and information that has been disclosed on social media, online forums, etc. The other subject-matter categories have a less prominent presence, the maximum being at 10% and concerning cases dealing with 'hate speech and other illegal content' and cases related to 'social media and employment' (i.e. 8 cases). The latter include cases concerning, for instance, the posting on social media, by (former) employees, of statements against their employer and/or colleagues or cases challenging dismissal for just cause with the argument that the employee's social media activity had a role to play in this regard.

Cases about 'defamatory, degrading and insulting content' have been examined by second instance courts in all countries covered but Croatia. For the rest of the categories, there are cross-country differences. For example, cases which were about 'privacy and personal data protection' were encountered in Greece, Latvia, Croatia and Portugal but not in Slovakia, Slovenia or Bulgaria. Portugal and Croatia are the only countries where cases about 'publication in social media of news media content' have been dealt with by second instance courts.



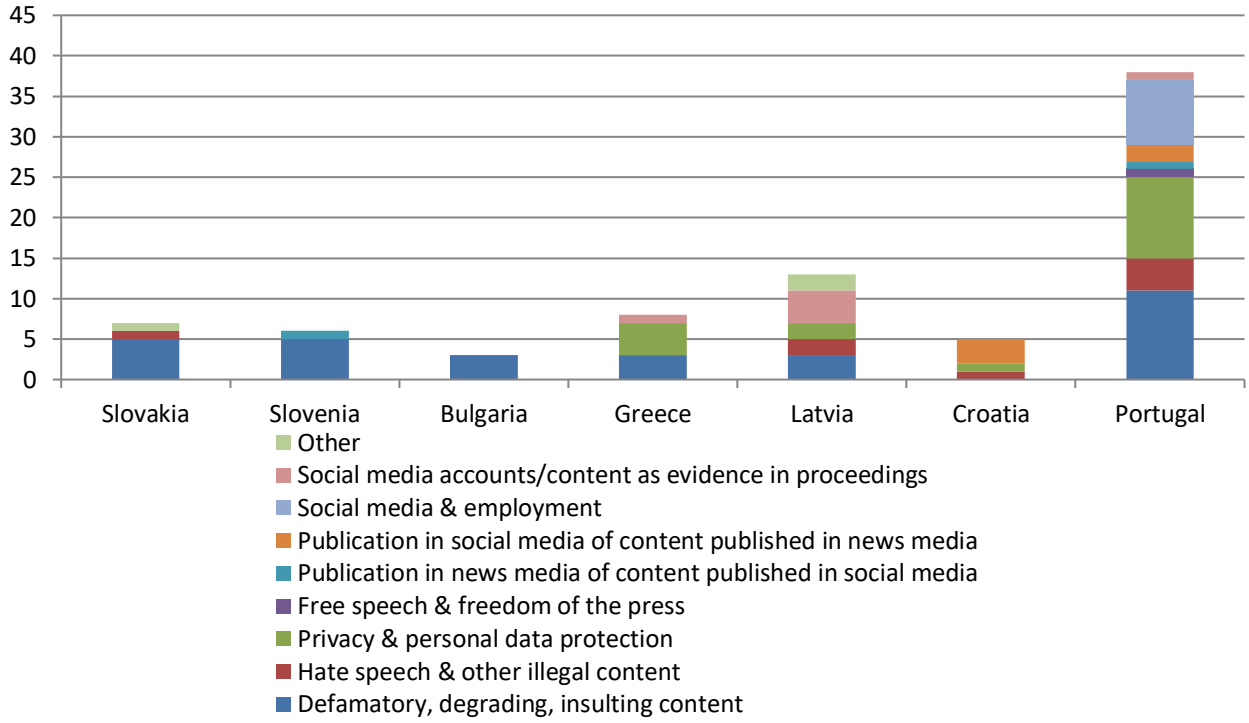


Figure 7: Subject-matter overall and by country

5.3 Legal context

When it comes to the legal sources and jurisprudence that define the broader legal background of the cases reviewed, most of the second instance court cases within our sample do not make reference to supranational sources of law and jurisprudence. In 68% of the cases reviewed (i.e 54 out of 80 cases), reference is only made to national legal sources, with appeals being commonly based on grounds of fact and law. National legal sources may be sources of criminal law, civil law, media law, labour law, administrative law, constitutional law, electoral law, and so on, in line with the nature of the dispute at hand. References to European law sources (transposed EU directives and the CFR) and to the juriprudence of the CJEU feature in 16% of the cases (i.e. 13 out of 80 cases, see Table 19). Mentions of the ECHR and the jurispudence of the ECtHR are relatively more frequent, identified in 23% of the cases (18 cases).

Table 19: Mentions of European law and jurisprudence

	EU directives, CFR and CJEU jurisprudence	**ECHR and ECtHR jurisprudence**
Mentioned	13	18
	16%	23%
Not mentioned	67	62
	84%	77%
Total	80	80

As shown in Table 20, transposed directives are the most frequently referred to EU sources by second instance courts. 11% of the cases identified (9 cases out of 80) make reference to one or more transposed EU directives. The E-Commerce Directive (Directive 2000/31/EC) and *Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data* feature prominently among these.[62] Other directives that have been mentioned are *Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography*, *Directive 2008/95/EC to approximate the laws of the Member States relating to trade marks*, *Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market*, *Directive 2006/114/EC concerning misleading and comparative advertising*, and *Directive 2009/22/EC on injunctions for the protection of consumers' interests*.[63] Whereas the E-Commerce Directive has been raised in cases under the rubric 'defamatory, degrading and insulting content', Directives 95/46/EC and 2011/93/EC were connected to cases on 'privacy and personal data protection'. Directive 2008/95/EC was mentioned in cases dealing with 'hate speech and other illegal content'. As to Directives 2005/29/EC, 2006/114/EC and 2009/22/EC, these were all associated with jurisprudence dealing with social media content embedded in advertising.

Table 20: Mentions of EU law and jurisprudence

	N	%
Transposed EU law	9	11%
CFR	2	3%
CJEU	1	1%
Transposed EU law and CJEU jurisprudence	1	1%
Transposed EU law and CFR	1	1%
No EU sources mentioned	65	81%
Total	80	100%[64]

Combined reference to transposed directives and CJEU case law, or combined reference to transposed directives and the CFR is rare. The CFR alone is cited in 3% of our cases (2 cases out of 80). CJEU case law has been part of the legal context of cases coming under the category of 'privacy and personal rights protection' and 'hate speech and other illegal content'. CFR provisions, namely Articles 7, 8, 11 and 47 CFR (on respect for private and family life, protection of personal data, freedom of expression and information, and the right to an effective remedy

[62] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), OJ L 178, 17/7/2000, p. 1 and Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23/11/1995, p. 31.

[63] Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17/12/2011, p. 1; Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (codified version), OJ L 299, 8/11/2008, p. 25; Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive), OJ L 149, 11/6/2005, p. 22; Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (codified version), OJ L 376, 27/12/2006, p. 21; and Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (codified version), OJ L 110, 1/5/2009, p. 30.

[64] Total equals less than 100 because of decimal rounding.

and to a fair trial) have been brought up in cases under the subject matter 'social media and employment', 'defamatory, degrading and insulting content' and 'publication in news media of social media content'.

As to the frequency of references to the ECHR and the ECtHR jurispudence, Table 21 shows that references to both the ECHR and ECtHR case law are somewhat more frequent (12%, 9 out of 80 cases) than mentions to the ECHR or the ECtHR alone (9%, i.e. 7 cases out of 80, and 4%, i.e. 3 cases respectively). Articles 8 and 10 ECHR on the right to respect for private and family life and freedom of expression respectively have formed part of the legal background of cases on 'defamatory, degrading and insulting content', 'privacy and personal data protection' and cases dealing with the 'publication in social media, blogs, etc. of news media content'. Article 6 ECHR has been invoked in cases on 'social media accounts and content as evidence in proceedings'. A broad range of ECtHR rulings as well as general references to ECtHR jurisprudential practice have enriched the legal context of cases on 'defamatory, degrading and insulting content' and 'privacy and personal data protection'.

Table 21: Mentions of the ECHR and ECtHR jurisprudence

	N	%
ECHR	7	9%
ECtHR	3	4%
ECHR & ECtHR	9	12%
No European sources mentioned	62	75%
Total	80	100%

Overall, we can see from Table 22 that 45% of the cases reviewed (36 cases out of 80) do include reference to provisions of fundamental rights as part of the overall legal context of the cases.

Table 22: Mentions of fundamental rights provisions

	N	%
FR mentioned	36	45%
FR not mentioned	44	55%
Total	80	100%

Unsurprisingly, when reference is made to fundamental rights provisions, the Constitution tends to be the main source of fundamental rights mentioned (20 out of 36 cases), followed by joint mention of the Constitution and the ECHR (9 out of 36 cases) (see Table 23).

Table 23: Sources of fundamental rights provisions

	N
Constitution	20
ECHR	2
CFR	0
Constitution & ECHR	9
Constitution & CFR	1
ECHR & CFR	1
Constitution & ECHR & CFR	2
No source cited	1
Total	36

5.4 Judicial reasoning

5.4.1 Social media cases and rule-interpretation by national courts

Judicial reasoning by appelate courts confirms that the legal treatment of cases with a social media component often rests on the 'generic' legal framework. This is clearly seen for cases under the rubric of 'defamatory, degrading and insulting content'. Some of these cases provide useful insight into the courts' understanding of the characteristics of social media, blogs, chat rooms and so on. In decision 3Co/175/2016 of 28 November 2017 of the Regional court of Prešov (ECLI:SK:KSPO:2017:8415200924.1), for instance, the emphasis was put on the wide accessibility that social media offer in terms of content dissemination. The case was about the publication on a Facebook profile of allegedly defamatory comments, alongside the publication of a photograph of an individual trying to damage an election board. The court ruled that the photograph posted on Facebook could be seen by a large number of people – in effect, by every registered user of Facebook. This had a crucial bearing on the court's conclusion that the publication at hand amounted to an illegal intervention into the personal rights of the plaintiff (i.e. the individual depicted in the photograph), related to civic honour and human dignity. Similar reasoning was followed by the Regional Court of Prešov in decision 6Co/217/2013 of 13 May 2014 (ECLI:SK:KSPO:2014:8410200645.1) concerning the publication of a defamatory video on YouTube.

Decision 9Co/154/2014 of 9 March of 2017 of the Regional Court of Bratislava (ECLI:SK:KSBA:2017:1312213343.1) concerned a blog post that had allegedly violated the right to the protection of good reputation of a legal entity (i.e. a private health insurance company). Here, the court held that blogs should not be considered as mainstream media given the limited number of their readers. The blog in question was a personal blog with limited readership. In light of such considerations, the appeal court confirmed the ruling of the first instance court in favour of the blog owner. In a decision of 30 October 2014 (ECLI:SI:VSLJ:2014:II.KP.13079.2012), the Higher Court in Ljubljana took the opposite view. The case was about a blog publication of an offensive comment. In examining whether or not the offence of defamation had occurred, the court noted that the blog post was in principle accessible to a global audience. According to the court, blogs were part of the sphere of mass communication: they were intended for every interested user, and their potential consequences were comparable to the impact of traditional media. The fact that the content on blogs remained archived online and thus accessible to Internet users should also be taken into account.

Other cases that have addressed social media under the 'generic' legal framework are cases that examined whether or not social media content against one's employer should qualify as a violation of the right to good name of the employer and/or justify dismissal.[65] The courts also examined whether or not social media content (such as chat conversations and Facebook posts) were acceptable evidence in court.[66] Another group of cases has focused on the illegal nature of social media content.[67]

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[65] See Lisbon Appeal Court, decision 431/13.6TTFUN.L1-4 of 29 September 2014; Porto Appeal Court, decision 5803/11.8TDPRT.P1 - RP201311205803/11.8TDPRT.P1 of 20 November 2013; Évora Appeal Court, decision 8/13.6TTFAR.E1 of 30 January 2014.

[66] See Larissa Appeal Court, decision 346/2015 of 30 April 2015; and Latgale Regional Court (College of Civil Cases), decision CA-0234-17 (C29633316) of 25 July 2017.

[67] See for instance Porto Appeal Court, decision 481/14.5JABRG.P1-JTRP000- RP20170607481/14.5JABRG.P1 of 7 June 2017 (on aggravated child pornography); decision 498/15.2GBPNF.P1-JTRP000-RP20170913498/15.2GBPNF.P1 of 13 September 2017 (on the crime of illicit photography and recording); Évora Appeal Court, decision 1212/12.0GBABF.E1 of 3 March 2015 (on the crime of aggravated threat through messages on social media); County court of Bjelovar, decision Kž-212/2012-3 of 19 September 2012 (on breach of the secrecy of court proceedings); County court of Zagreb, decision 1 Kž-735/16-2 of 30 August 2016 (on shaming); County court of Varaždin, decision 6 Kž-76/16-4 of 13 December 2016 (on public incitement to violence and hatred); Riga Regional Court, decision 133063714, 28 October 2015 (on illegal advertising); and decision CA-1972-16/18 (C30353215), 23 November 2016 (on the unlawful use of trade marks).

In another set of cases, the focus has been on whether or not social media content violated domestic legislation on the protection of personal data.[68] In decision 1960/2014 of 30 April 2015, the Thessaloniki Appeal Court dealt with the publication of personal data on an open Facebook group without consent. According to domestic legislation on the protection of personal data, relevant rules applied to wholly or partly automated processing of personal data as well as to the non-automated processing of personal data, which were part of or would be included in a structured file of personal data. Taking relevant CJEU case law into account (on which see para. 5.5), the court affirmed that posting personal data online constituted processing of personal data and that the act of placing personal data on a webpage was performed at least in part automatically because it presupposed, under technical and computer procedures, the operation of loading that page onto a server and the operations necessary to make that page accessible to Internet users. The court found that the posting of the plaintiff's name, her picture and other information that enabled her identification, together with a range of documents supporting her application for a university position, constituted processing of personal data, which had taken place without her consent, and therefore amounted to illegal processing of personal data.

In a cluster of blog-related cases, judicial reasoning concentrated on the interpretation of domestic provisions as to the liability of providers of hosting services for unlawful content on their servers. To give an example, in a case concerning the publication of allegedly defamatory articles on a blog,[69] the Higher Court in Ljubljana ruled that pursuant to national legislation, a provider of hosting services was not responsible for the information stored at the request of a recipient of its services who did not operate under the provider's authority or supervision, until the provider became aware of the unlawful nature of the content. In case of content removal or of blocking access to content, the provider could not be found liable for the unlawfulness of the content. Should a notification of unlawfulness be disregarded, however, the service provider assumed the risk of being found liable for the content at issue in subsequent proceedings.

Interestingly, some of the social media cases that have been treated under the 'generic' rules show an evolving interpretation of the legal framework. Decision 3To/133/2016 of 1 December 2017 of the Regional Court of Banská Bystrica (ECLI:SK:KSBB:2017:6816010080.1) is an example in this respect. The case arose out of certain Facebook posts published by a member of an extreme right political party against minorities in Slovakia. The posts had also been shared widely. In appeal proceedings brought by the defendant who had been found guilty for encouraging national, race and ethnic hatred at first instance, the court examined whether the Facebook posts were 'public'. Pursuant to Section 122(2) of the Slovak Criminal Code, for the offence of encouraging national, race and ethnic hatred to occur, it should be committed publicly: a) by means of a printed publication, the dissemination of a file or video, by radio, TV or the use of a computer network or other similar means; and b) by more than two persons present at the same time. According to the appeal court, the requirements of the Criminal Code were fulfilled: the Facebook posts were 'public' and they had been shared extensively.

In decision 101/13.5TTMTS.P1 of 8 September 2014 of the Porto Appeal Court, the issue revolved around whether or not an employer could enjoy access to employees' social media content and base on such content just cause of dismissal. The court differentiated social media content from written messages sent via e-mails, mobile phones or messenger services. The latter were 'messages of a personal nature', subject to the principle of confidentiality enshrined in Portuguese labour law, so that the employer was denied access to such private communication. For social media publications, according to the court, it was necessary to assess concretely whether these should be considered public or private, with due account taken of various factors, including expectations of privacy. The court observed that in accordance with the decision-making practice of the National Commission for Data Protection, an employer could not access employees' 'personal profile' on social media, precisely because such profiles were spaces to express one's individuality and contained as a rule information

[68] See for instance County court of Zagreb, decision 13 Kž-1228/12-4 of 9 October 2012.

[69] See Higher Court in Ljubljana, decision VSL Sodba I Cp 289/2017 of 12 July 2017, ECLI:SI:VSLJ:2017:I.CP.289.2017. See also Higher Court in Ljubljana, decision VSL sodba in sklep I Cp 252/2014 of 19 March 2014, ECLI:SI:VSLJ:2014:I.CP.252.2014.

of a personal and even intimate character. However, social media groups had different characteristics: they represented a place of discussion about a certain subject among people with common interests. As the disputed posts had been made in a closed Facebook group that had been created for communication between employees, the court concluded that the dismissal was legal.

Finally, a few cases in our sample reflect evolving standards especially as regards the responsibilities of traditional media. Decision 963/2016 of 8 March 2016 of the Athens Appeal Court is enlightening in this regard. The dispute concerned the publication of an article by a news outlet, together with the pictures of a police officer that had been previously published on her social media account, without the police officer having given her consent. The appellate court confirmed that the photographs had been made freely accessible online by the police officer herself. However, their posting on social media had taken place with the use of a pseudonym; the identity of the police officer had not been disclosed. As a result, the police officer reserved the right to choose whether or not to publish her photographs and in any case, she had not given her consent to their publication in the press. For the court, besides having breached domestic legislation on the protection of personal data, the respondents - the publisher of the newspaper and the journalists who had written the article - had also violated the police officer's right to her image, anonymity and self-identification, which enjoy protection under the provisions on the free development of one's personality of the Greek Civil Code.

In a similar case,[70] the Court of Appeal of Athens held that it is forbidden to obtain photographic material from the Internet and republish it through other websites, the printed press or television media. The unlawfulness can only be lifted with the consent of the person concerned. Against this background, the court took the view that the fact that the applicant had been photographed with her consent and had herself posted the photographs on the Internet did not constitute consent for the use of her photographs by the defendant's television channel. This was because the applicant had posted the photographs on her personal social media account to which the specific individuals that she had chosen had access.

In decision 1562 of 8 March 2017, the Sofia City Court approached the issue of whether or not compensation for non-pecuniary damages should be granted on account of a defamatory article published by an online news media, the source of which were posts from Facebook groups and users. The appeal court considered Facebook groups' posts and comments to be unreliable and concluded that the news operator had failed in the obligation to provide accurate and reliable information, as well as to carry out an independent investigation in order to verify the accuracy of the published content.

In other cases, judicial reasoning attended to technological neutrality considerations accommodated in national legislation. In decision 132051114 of 2 April 2015 of the Riga Regional Court, pre-election campaign limitations covering inter alia the press, TV and radio broadcasts, and the Internet were applied to social media. Appeal proceedings were brought by the mayor of the capital of Latvia for having been found in breach of domestic legislation due to the fact that he had invited readers, through his Twitter account, to vote for his party one day prior to elections. The appeal court rejected the argument that the pre-election restrictions should not apply to posts in 'private' Twitter accounts. The mayor had argued that his Twitter account was indeed a private one, accessible only to persons who shared his ideas. The court observed that the mayor had not restricted access to his Twitter account. It also noted that because of engagement in political life, the mayor should have been aware of the fact that the statements through his Twitter account would raise public interest.

5.4.2 Social media cases and fundamental rights reasoning

[70] See Court of Appeal of Athens, Decision 5336/2015.

Fundamental rights reasoning should not be particularly common in the jurisprudence of appeal courts; these are usually concerned with the interpretation of the factual circumstances surrounding a case, according to the applicable legal provisions. However, our sample shows that judicial reasoning on fundamental rights is quite diffuse in second instance court rulings. One in every three cases concerning social media, blogs, chat rooms, and so on engages in fundamental rights reasoning (even if the depth of analysis obviously differs).[71]

Table 24 indicates that the percentage of cases involving fundamental rights reasoning is 32%. Out of 80 second instance court cases related to social media, blogs, etc., 26 cases have a fundamental rights reasoning dimension.

Table 24: Reasoning on fundamental rights

	N	%
No	54	68
Yes	26	32
Total	80	100

Looking at the distribution of the cases involving fundamental rights reasoning according to their subject matter, Table 25 shows that most of these fall under the category of 'defamatory, degrading and insulting content' (42%, i.e. 11 out of 26 cases), followed by 'privacy and personal data protection' (27%, i.e. 7 cases).

Table 25: Subject matter of cases involving fundamental rights reasoning

Subject-matter	
Defamatory, degrading, insulting content through social media, blogs, etc	11 42%
Hate speech and other illegal content in social media, blogs, etc	2 8%
Privacy and personal data protection	7 27%
Free speech and the freedom of the press	1 4%
Publication in news media of content published in social media, blogs, etc.	2 8%
Publication in social media, blogs, etc of news media content	0 0%
Social media and employment	0 0%
Social media accounts and content as evidence in proceedings	1 4%
Other	1 4%
Total number of cases involving fundamental rights reasoning	26 100%

The cases regarding defamation and other violations of one's personality vary, though they all involve a balancing exercise between freedom of expression and the rights of others. Decision 95/15.2PEPDL.L1-3 of 17

[71] The cases in which reference was made to constitutional rights and to supranational bills of rights without the relevant rights being taken up in judicial reasoning are excluded from the analysis, as was with the study of the supreme and constitutional courts above.

May 2017 of the Lisbon Appeal Court was about a pilot who published on his Facebook account an excerpt of a daily newspaper with comments about an airline company. The airline company considered the comments offensive, and presented a claim for defamation. The appeal court dismissed the claim: the statements made were value judgments, which contrary to facts, are not susceptible of proof.

The distinction between value judgments and facts applicable on traditional media was extended to social media also with decision C35053314 of 19 June 2015 by the Riga Regional Court. This case concerned a public official who had been suspended from service, due to suspicion of involvement in illegal activities. A member of Parliament published an allegedly defamatory post on his Twitter account against the public official, and the content was later commented upon on TV. The official presented a claim for defamation which was dismissed by the Riga Regional court. The appeal court underlined the distinction between facts and opinions, pointing to a set of useful criteria in this regard: the context of expressions, how they would have been perceived by a neutral reader and the intent of the author. Having affirmed that the right to freedom of expression and the right to protection of one's reputation were both protected under the Constitution of Latvia, the court noted that freedom of expression could in principle be limited to protect one's reputation. However, according to the criteria identified for the differentiation of facts from opinions, the Twitter post and the TV comments were not factual statements but value judgments, which moreover had a sufficient factual basis.

Decision VSL sodba I Cp 3097/2016 of 12 April 2017 of the Higher Court in Ljubljana focused on allegedly defamatory content in the form of a comment in an online forum. In determining the alleged unlawful conduct, the court weighed the right of the defendant to freedom of expression (Article 39 of the Constitution of the Republic of Slovenia) against the protection of the personality rights of the plaintiff (Article 35 of the Constitution). The court stressed that in online forums objectivity standards were generally low, so that the plaintiff's claim of damage to reputation was not justified. In addition, according to the domestic law on e-commerce, the webmaster of the online forum was not obliged to check the truthfulness of posts, but to react to the received notice and remove illegal messages.

Moving to the second group of cases on 'privacy and personal data protection', half of the cases in this category originate in Greece, addressing mostly the publication of images or content, which are publicly available on social media, in traditional media (the printed press or TV programs). For instance, decision 5336/2015 of the Court of Appeal of Athens was about the images obtained from the personal social media account of a police officer (see para. 5.4.1). The images had been published by a TV news report without the consent of the police officer. The appeal court affirmed that the collection of the images from the plaintiff's social media account amounted to processing of personal data. Given that a violation to the honour and reputation of the plaintiff had occurred, inter alia, by such processing, the police officer should be compensated for damages. In particular, the appeal court declared that the honour and reputation of the human being are dimensions of the protection of one's personality and by extension of the protection of the value of the human being enshrined in Article 1(2) of the Greek Constitution, which in case of violation can trigger compensation for non-material damage. The court highlighted in particular that any person can control how his/her photograph is used and has the right to refuse publication. Taking and disseminating photographs without the consent of the person that is portrayed therein is in itself[72] a violation of personality, in particular, of the right to one's image.

Mention should also be made of decision 16/15.2GEVCT.G1 of 21 November 2016 of the Guimarães Appeal Court. This case addressed the publication of naked images on an open Facebook profile as retaliation for the conclusion of a love relationship. The court dismissed the appeal and confirmed the sanction of the lower court. In particular, the appeal court referred to Article 26 of the Constitution protecting the right to image and pointed

[72] Without there being a need for another dimension of one's personality, for instance, privacy, honour and reputation, to be violated.

to the lack of consent of the victim; an individual could authorize or consent to the taking of a photograph but refrain from authorize the use (i.e. publication) of the photograph taken.

From the cases under the other subject matter categories, decision 3To/133/2016 of 1 December 2017 of the Regional Court of Banská Bystrica merits attention. This case was about a member of an extreme right political party who argued, through Facebook, for the ban of Hungarian minority political parties and for taking away the right to vote and any social rights enjoyed by members of the Roma minority. As the relevant posts had been shared, the first instance court had sentenced the defendant to jail for the crime of encouraging national, race and ethnic hatred. The regional court applied a milder sanction. In doing so, the court mentioned Article 12(1) of the Constitution of the Slovak Republic, according to which all human beings are free and equal in dignity and rights, as well as Article 12(2) of the Constitution, according to which no one can be aggrieved, discriminated against or favoured on grounds of sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent or any other status. The content published by the defendant was deemed contrary to the constitutional provisions. Moreover, political rights in the sense of Article 29(3) of the Constitution could be limited only in cases laid down by law, if it was necessary in a democratic society for national security, the protection of public order, the prevention of crime or for the protection of the rights and freedoms of others.

When it comes to the legal sources of fundamental rights provisions employed in judicial reasoning, second instance courts have mostly made use of domestic constitutional provisions, either alone or jointly with the ECHR (see Table 26).

Table 26: Sources of fundamental rights provisions employed in legal reasoning (N=number of cases)

	N	%
Constitution	15	58%
ECHR	1	3%%
CFR	0	0%
Constitution+ ECHR	9	35%
Constitution+ CFR	0	0%
ECHR+ CFR	0	0%
Constitution+ ECHR+ CFR	0	0%
No source cited	1	3%
Total N	26	100%

In most of the cases reviewed, the constitutional articles referred to concern freedom of expression and its potential limitations, the right to honour, dignity and reputation, the right to privacy, and as a distinctive case, the right to image. Usually, judges refer to constitutional provisions in order to frame the wider context of fundamental rights involved in the case under examination but in some instances, constitutional provisions are analysed in detail.

When constitutional provisions on fundamental rights have been mentioned alongside the ECHR, their interplay has rarely been considered. An exception in this regard is decision 1562 of 8 March 2017 of the Sofia City Court (see para. 5.4.1). Here, judicial reasoning built on the balance between Article 8 ECHR (the right to respect for private and family life) and Article 10 ECHR (freedom of expression), along with the corresponding right to protection of the honour and reputation of the claimant and the freedom of the press under Article 32(1) and Article 40(1) of the Bulgarian Constitution respectively. The court drew attention to the privileges enjoyed by the press, noting that according to the ECtHR, free journalistic speech under Article 10 ECHR may involve some

degree of exaggeration or even provocation.[73] The court also observed that in accordance with the jurisprudence of the ECtHR, the press must not misuse its freedom of speech in order to make unjustified personal attacks. A journalist's opinion expressed in good faith (*bona fides*) should not lose its privilege, unless there was a missing element of truth in the words considered to be insulting or degrading. The ECHR and the ECtHR's jurisprudence had thus a clear bearing on the assessment of the domestic court.

5.5 Judicial dialogue

Turning to judicial dialogue, Table 27 shows the presence of interaction between second instance court cases on social media, blogs, chat rooms, and so on and the case law of other courts - either national courts, foreign courts or European courts. In general, judicial dialogue is not uncommon in our sample, encountered in 35% of the cases (28 out of 80 cases in total). Several cross-country differences in terms of the frequency of judicial dialogue emerge. Judicial interaction is absent from the case law of the Croatian second instance courts and rather infrequent in Portugal, if we take into account the total number of cases identified in the country. Judicial dialogue is, on the other hand, not uncommon in Latvia, Slovenia and Slovakia, while in both Greece and Bulgaria, all second instance court cases in the sample made reference to the case law of other courts.

Table 27: Presence of judicial dialogue

	Slovenia	Slovakia	Bulgaria	Greece	Latvia	Croatia	Portugal	**Total**
No	4	4	0	0	9	5	30	52
%	67%	57%	0%	0%	69%	100%	79%	65%
Yes	2	3	3	8	4	0	8	28
%	33%	43%	100%	100%	31%	0%	21%	35%
Total	6	7	3	8	13	5	38	80
%	100%	100%	100%	100%	100%	100%	100%	100%

Table 28 shows that, in engaging with the case law of other courts, references to domestic higher courts' jurisprudence are more frequent (23%, i.e. 19 out of 81 cases), followed by references to the case law of European courts (the case law of the ECtHR and the CJEU) (15%, i.e. 12 cases out of 81 cases in our sample). References to the case law of other domestic second instance courts are encountered in 6% of the cases, while references to the case law of foreign courts are quite rare (1%).

Table 28: Types of judicial dialogue

	N	**% of total**
Other domestic second instance courts	7	6%
Domestic higher courts	19	23%
Foreign courts	2	1%
European courts (ECtHR & CJEU)	12	15%

Reference to the case law of domestic higher courts generally shows the willingness of lower courts to ensure consistency in judicial interpretation, with note taken of the interpretation given by higher courts. Although none of the legal systems addressed is based on the *stare decisis* doctrine, according to which courts are bound by precedent set by previous decisions when deciding subsequent cases with similar issues or facts, our findings

[73] The Sofia City Court mentioned the ECtHR ruling, *Prager and Oberschlick v. Austria* (15974/90), 26 April 1995.

demonstrate that the appeal courts refer to and make use of higher court decisions in order to illustrate a shared interpretation of the applicable rules.

For instance, in decision 234/2016 of 9 November 2016, the District Court of Burgas took note of the case law of the Bulgarian Supreme Court, when ruling on a defamation case involving the publication of offensive statements on social networks, subsequently republished on a newspaper website. The claim focused specifically on the right of defence of the person charged with defamation and the potential unlawful change in the qualification of the crime depending on the type of publication at stake – the social media publication as opposed to the newspaper publication. To inform its reasoning, the appeal court made detailed reference to decision 593/2014 of 4 March 2014 of the Bulgarian Supreme Court, where the high court had interpreted the right of defence of an individual pre-trial and during trial. The appeal court also referred to decision 136/2014 of 7 April 2014 of the Bulgarian Supreme Court, where the high court had explained the conditions under which a lawful modification of the accusation could take place without breaching the right of defence of the accused.

Turning to CJEU case law references, these can be particularly helpful when CJEU case law provides guidelines for the interpretation of the rules, which are applied by the domestic court in the case before it. Decision 1960/2014 of 30 April 2015 of the Thessaloniki Appeal Court (see para. 5.4.1) provides a useful example in this respect. This case was about an individual, who had been accused of having illicitly published personal information of the plaintiff in an open Facebook group. The appeal court qualified the published documents as documents containing personal data of the plaintiff and applied the data protection legislation on data processing. In approaching the concept of processing of personal data, the appeal court built on the CJEU *Lindqvist* ruling,[74] affirming that the posting of personal data on a website should be considered to be processing of personal data.

Decision CA-1972-16/18 (C30353215) of 23 November 2016 of the Civil Case Court Board of the Riga Regional Court shows a similar approach to CJEU jurisprudence. The case was about unlawful use of a registered trademark inter alia as a twitter profile in the context of commercial activity. The appeal court upheld the judgment of the first instance court that had ordered a change of the twitter profile. In doing so, it referred to CJEU cases C-251/95 and C-342/97,[75] which both had been mentioned in the first instance judgment. The two CJEU rulings had provided guidelines concerning the criterion of 'likelihood of confusion', which justifies the refusal or invalidity of registration of a trademark due to conflicts with 'earlier' trademark rights.[76]

The second instance court decisions engaging in judicial dialogue with the ECtHR confirm the importance of the Strasbourg jurisprudence for national judicial decision-making on fundamental rights issues in social media cases. To illustrate, decision 54/11.4TASVC.L1-3 of 16 November 2012 of the Lisbon Appeal Court, which concerned a politician's social media publication calling into question the good name of one of his political opponents, made reference to the ECtHR decision of *Karako v. Hungary*. This ECtHR case was about a member of Parliament and candidate in the 2002 Hungarian parliamentary elections who had alleged a violation of his right to private life under Article 8 ECHR, given that national courts in Hungary had dismissed his claim for defamation due to the statements made by a representative of the opposition party. According to the ECtHR, in case of legitimate criticism (as is criticism expressed in the context of political 'confrontation'), the person that is criticised cannot appeal to the protection of reputation as an integral part of the protection enjoyed under the right to private life. As a result, the appeal court acquitted the accused of the crime of defamation.

[74] CJEU, Case C-101/01, *Lindqvist*, judgment of 6 November 2003, ECLI:EU:C:2003:596.
[75] CJEU, Case C-251/95, *SABEL/Puma, Rudolf Dassler Sport*, judgment of 11 November 1997, ECLI:EU:C:1997:528; and Case C-342/97, *Lloyd Schuhfabrik Meyer*, judgment of 22 June 1999, ECLI:EU:C:1999:323.
[76] See Art. 4(1)(b) of First Directive 89/104 of 21 December 1988 to approximate the laws of the Member States relating to trademarks, OJ L 40, 11/2/1989, p. 1.

Reference to foreign case law has mostly been made by regional courts in Slovakia. Slovakian appeal courts have referred to the decisions of the Supreme Court of the Czech Republic.[77] It seems that the fact that Slovakia and the Czech Republic were previously a single country and that many features of the common legal system are still present allows for an easier exchange and comparison between the jurisprudence of the two countries.

Table 29 indicates the presence of fundamental rights reasoning in cases that have a dimension of judicial dialogue. Interestingly, the majority of cases involving judicial dialogue (71%, i.e. 20 out of 28 cases) have also a fundamental rights dimension.

Table 29: Engagement with fundamental rights reasoning in cases involving judicial dialogue

	Judicial dialogue present
FR reasoning	20 71%
No FR reasoning	8 29%
Total	28

In our sample, judicial dialogue developed alongside fundamental rights reasoning can be distinguished in two broad categories: a) judicial dialogue with supreme courts in order to show consistency with the interpretation of constitutional provisions on fundamental rights by the supreme courts; and b) judicial dialogue with European courts reflecting the interplay between constitutional provisions and supranational norms (i.e. the ECHR).

Under the first perspective, mention should be made of decision 8Co/171/2015 of 27 June 2016 of the Regional Court of Prešov. This was a case about alleged defamation by means of a video published on YouTube by a student of journalism. The video contained several interviews that criticized the claimant, a company producing paper pulp, for violation of waste management regulations. The regional court dismissed the appeal, declaring that the reputation of a legal person could not be prioritized over the right of people to information about their environment and the protection of the environment. The regional court supported its reasoning through reference to the jurisprudence of the Slovak Constitutional Court, namely decision II ÚS 211/2008 on the right to the protection of reputation of a legal entity.

Decision 963/2016 of 8 March 2016 of the Athens Appeal Court (see para. 5.4.1) stands among the cases that engage in judicial dialogue and fundamental rights reasoning with reference to the jurisprudence of European courts. The case was about a defamatory article published on a newspaper concerning a police officer who had been the subject of an administrative investigation for her social media activity, namely maintaining an open social media account (with use of a pseudonym) where photos depicting allegedly indecent behaviour had been posted. The defamatory article included some of these photos. The court confirmed the ruling of the first instance court about breach of the right of personality of the police officer, pointing in particular to the legislation of the Council of Europe, namely Resolution 1165 (1998) of the Parliamentary Assembly of the Council of Europe[78] and the ECtHR decision in *MGN Limited v. the UK*.[79] For the court, even assuming that the police

[77] See Regional Court of Prešov, decision 3Co/175/2016 of 28 November 2017; and Regional Court of Bratislava, decision 9Co/154/2014 of 9 March 2017.

[78] See Resolution 1165 (1998) of the Parliamentary Assembly of the Council of Europe, 26 June 1998, http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16641&lang%20=en (date accessed 23 May 2019).

[79] *MGN Limited v. the UK* (39401/2004), 18 January 2011.

officer was a public figure, within the meaning of the above mentioned resolution,[80] interventions by the press into the privacy of public figures should be allowed only as an exception to the protection that is afforded to them, namely when there were grounds for the press to contribute to a debate of public interest on a more general issue. In line with the jurisprudence of the ECtHR, the right of a public figure to effective protection of private life entailed that for the purposes of assessing the legality of interference, attention should be given to any 'reasonable' interest of the public about knowledge of aspects of the individual's private life.

In addition, the appeal court mentioned decision 2748/2014 of the Council of State and the reference therein to the ECtHR ruling in *Von Hannover v. Germany* (No 2) in relation to the weighting between the protection of one's private life and freedom of expression.[81] The court concluded that in the case at stake, the protection of the police officer's privacy was prominent and that freedom of expression should be restricted. The publication of the photographs did not constitute a contribution of the press to a debate on a general issue of public interest.

6. CONCLUSIONS AND RECOMMENDATIONS

This report has examined national jurisprudence on social media, blogs, chat rooms and so on, in Bulgaria, Croatia, Greece, Italy, Latvia, Portugal, Slovakia and Slovenia. The principal aim has been to inform on the social media cases brought before domestic courts and to investigate judicial decision-making. By focusing on *national courts*, the report addresses an important gap in the existing literature and adopts a comparative perspective in order to identify trends and developments in judicial reasoning. Such an approach is ideally suited for providing input to current, complex discussions about social media regulation.

Data collection for the purposes of this study has been carried out by the national research teams put in place by the institutional partners of the COMPACT project. Our sample included 147 higher court cases (from Bulgaria, Croatia, Greece, Italy, Latvia, Slovakia and Slovenia) and 80 second instance court cases (from Bulgaria, Croatia, Greece, Latvia, Portugal, Slovakia and Slovenia). Italy and Croatia, and Portugal and Croatia were the countries with most cases from supreme and constitutional courts, and from appeal courts respectively. The higher court cases identified mostly involved cases from supreme courts, as opposed to cases from constitutional courts; the majority were cases decided by the criminal sections of the supreme courts. The majority of the appeal court cases detected similarly came from criminal courts.

The cases identified were grouped into main categories in terms of subject matter. Most of the higher and appeal court cases collected were related to 'defamatory, degrading and insulting content'. 'Social media accounts and content as evidence in proceedings' and 'hate speech and other illegal content' followed as the main subject matter of the cases adjudicated by the supreme and constitutional courts. 'Privacy and personal data protection', 'hate speech and other illegal content' and 'social media and employment' followed as the main topic of the cases decided by the appellate courts.

The legal sources that have defined the legal background of the social media cases identified reflect the multilevel system of regulation that is applicable in this area. The reference to national legislation is obviously an unavoidable step for both the supreme/constitutional and the appeal courts under study. Supranational provisions are used less frequently. Specifically as regards references to sources of fundamental rights protection, the Constitution comes first, followed by joint mention of the Constitution and the ECHR. The

[80] According to Resolution 1165 (1998) of the Parliamentary Assembly of the Council of Europe, public figures are persons holding public office and/or using public resources and, broadly speaking, all those who play a role in public life, whether in politics, the economy, the arts, the social sphere, sports or in any other domain.
[81] ECtHR, *Von Hannover v. Germany (No 2)* (40660/08; 60641/08), 7 February 2012.

reference to the ECHR usually comes with references to the ECtHR jurisprudence on the interpretation of the relevant ECHR provisions. Unsurprisingly, each national ruling has its own specific selection of the ECtHR jurisprudence, depending on the legal issues underlying the case under examination and the specific legal standard defined by the ECtHR that the national court wishes to highlight.

For the study of judicial reasoning in social media cases, the emphasis has been on the interpretation of the legal framework by national courts, and the nature and level of the contribution of the judiciary to the protection of fundamental rights in a social media environment.

Our findings show that the judicial treatment of social media cases heavily draws on the existing 'generic' legal framework. Many of the rules that currently apply to social media were adopted before their expansion, to address issues which were not specific to social media. Defamation rules in the countries under study have been used for instance to capture defamation occurring through social media. Rules on issues such as incitement to hatred, misleading advertising, the protection of personal data, employees' dismissal, the protection of state symbols and even acceptable evidence in court were applied in social media cases. At the same time, our analysis shows that national courts have generally refrained from bringing social media, blogs, chat rooms and so on, within the scope of existing rules concerning the press. Relevant cases have mostly dealt with whether or not social media and blogs should benefit from the constitutionally recognized privileges the press enjoys, such as the prohibition of seizure.

Bringing social media, blogs, chat rooms and so on within the scope of the generic legal framework has resulted, on certain occasions, in the adaptation of past rule interpretations by the judiciary. This is the case of certain rulings concerned with the qualification of a certain type of behaviour in a social media context as a certain crime. Some cases in our sample reflect evolving standards especially as regards the responsibilities of traditional media. Other cases shed light on the interpretation of technology neutrality aspects incorporated in national legislation.

In a period of reflection and intense debate on social media regulation, with efforts being channelled to finding the right mix between different forms of regulation and regulatory approaches at different levels (the national, regional and the international), it is significant that national courts have brought social media and the challenges that these raise within the scope of the existing 'generic' legal framework. Our findings indicate that the judiciary does make use of 'generic' rules to solve a broad range of disputes involving social media content and behaviour and when necessary, it re-interprets the rules precisely in order to bring social media within their purview. Any attempt at devising rules that specifically target social media, especially as far as public regulation is concerned, should rest on a careful assessment of the regulatory potential of the existing legal framework with respect to social media. Any model of public intervention into the functioning of the sector should be congruent with fundamental rights and freedoms and respect the principles of necessity and proportionality. Developing public policies that put social media at the heart of the regulatory model establishing duties of transparency and increased accountability towards their users could work in this direction.

Turning to judges' reasoning on fundamental rights, although higher courts (and constitutional courts in particular) have a crucial role to play in terms of applying and enforcing fundamental rights at the national level, our case sample shows that overall, judicial reasoning on fundamental rights is rather limited in higher court cases dealing with social media.

In cases with a fundamental rights component, constitutional provisions naturally constitute the backbone of judges' reasoning. However, courts do not always fully 'exploit' them; they rather tend to refer to constitutional provisions in an ornamental manner. Our case sample also shows that the use of the CFR is far less prominent than the use of the ECHR. Given that the European multi-level system of fundamental rights protection opens several questions regarding the interpretation of the applicable norms and the potential overlap among them, the judiciary may be reluctant to address fundamental rights from a European perspective. When courts do address fundamental rights from such a perspective, judicial reasoning is mostly guided by seminal ECtHR rulings.

The role played by litigants could prove crucial: if courts are self-restrained in the use of fundamental rights reasoning, the systematic inclusion of fundamental rights arguments in the parties' pleadings could encourage subsequent analysis of fundamental rights aspects by the courts. Judicial training for legal practitioners, aimed at increasing their knowledge and expertise on the protection of fundamental rights in a social media context and the European jurisprudence could be particularly fruitful.

Judicial dialogue between courts can enhance coordination and coherence among different legal and judicial systems. In the sample of cases analysed, the occurrence of judicial dialogue has been approached specifically from the perspective of the (social) media dimension of 'other courts' case law' referred to by the deciding court. The assumption has been that in social media cases, judges would be disposed to judicial dialogue as a means to cope with complex legal questions in a context of rapid technological change and changing practices of communication, and access to news and information. The rate of judicial dialogue within our sample was yet quite low, with a clear preference towards the use of the ECtHR jurisprudence as a point of reference.

The ECtHR rulings cited have mostly dealt with the interpretation of Article 10 ECHR, which does not come as a surprise given the type of cases reviewed. The ECtHR case law has been mainly used as a supporting argument, strengthening domestic judicial reasoning by showing its consistency with the interpretations of the ECtHR. It should be underlined, however, that only in limited instances has the national judge addressed the ECtHR jurisprudence in detail, presenting the ECtHR's rulings and explaining how they feed domestic judicial reasoning. On most occasions, the national courts have simply pointed to landmark decisions of the ECtHR without further analysis.

Resort to the case law of the Court of Justice of the European Union (CJEU) has been quite limited. It is important to note that the two European courts have different roles and that there are significant differences in the volume of their jurisprudence on social media. The ECtHR case law is well developed and addresses social media from different angles, with due attention to the dimension of free speech and freedom of information. National courts can thus identify from the existing pool of ECtHR cases those which are most relevant (and instrumental) for solving the dispute before them. This is not the case for the CJEU, whose case law remains less developed and includes few cases that may provide guidelines to national courts on social media regulation, even less so on its fundamental rights implications. In this sense, it is crucial that national courts do not refrain from posing questions to the CJEU through the preliminary ruling procedure. Receiving guidance from the CJEU could help solve the dispute at issue and also promote wider understanding among the Member States (and their judiciaries) on legal aspects pertaining to social media.

As to foreign case law, this has been the least used in judicial dialogue. Our findings indicate a preference towards jurisprudence belonging to legal systems that are similar to the national one.

Certainly, judicial dialogue is not an easy path for courts to take without careful consideration of the implications that reference to other courts' case law may have on the case at stake. Rather it requires courts to engage in a thorough analysis of the cases referred to and of their impact on the specific case reviewed. In order to achieve such thorough analysis, judges should not only be aware of sector specific jurisprudence; they should also receive guidance on the use of judicial dialogue techniques and their added value. Judicial training, therefore, may have a relevant role to play also in this context.

Our findings finally suggest that the social media cases under review had no influence on the formulation of the legal framework addressing social media. Policy reform and changes brought to legislation as a result of the court rulings under study has been non-existent. Importantly, changes in jurisprudential attitudes, particularly the attitudes of higher courts, can also denote impact. Construing legal rules in novel ways can have a significant bearing on social media regulation by creating paradigm shifts in interpretative directions. This is an issue that deserves future research and could meaningfully inform discussion on social media regulation and policies.

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Annex I

Template for case notes on national judgments concerning social media and blogs

1) IDENTIFICATION OF THE CASE	
Deciding court	
Member State	
Date of the decision	
National reference number/ECLI *(if available)*	
Relevance to social media/blogs	
Subject matter	1. Defamatory, degrading and insulting content through social media, blogs, chat rooms and user-generated content 2. Hate speech and other illegal content in social media, blogs, chat rooms and through user-generated content 3. Privacy and personal data protection 4. Free speech and the freedom of the press 5. Publication in news media of content published in social media, blogs, etc 6. Publication in social media, blogs, etc of news media content 7. Social media and its impact on legacy media regulation 8. Social media and employment 9. Social media accounts and content as evidence in proceedings 10. Use of social media to threaten third persons, connect or harass victims and commit (offline) crimes 11. Other
Schematic description	
Legal issue(s)	
2) LEGAL CONTEXT	
National law sources	
EU law sources, the CFR and CJEU jurisprudence	
ECHR and ECtHR	
Fundamental right(s) and their legal source(s)	
3) FACTS AND REASONING	
Facts of the case	
Reasoning	
Reasoning on fundamental rights	

Relation between the Constitution, the CFR and the ECHR	
4) JUDICIAL DIALOGUE WITH OTHER COURTS	
Use of Judicial Interaction technique(s)	
Horizontal Judicial Interaction (Internal – with other domestic courts)	
Horizontal Judicial Interaction (External – with foreign courts)	
Vertical Judicial Interaction (Internal – second instance courts with domestic supreme/constitutional courts)	
Vertical Judicial Interaction (External – with the ECtHR/CJEU)	
5) MISCELLANEOUS	
Impact	
National specificities	
Text of the decision	

Annex II

Table 1. Cases included in the study: Higher courts

country	Court	Year	Case reference
Bulgaria	Върховен административен съд на Република България/Supreme Administrative Court of the Republic of Bulgaria	2015	10836
Bulgaria	Върховен касационен съд (ВКС)/ Supreme Cassation Court (SCC)	2015	159
Bulgaria	Върховен административен съд на Република България/Supreme Administrative Court of the Republic of Bulgaria	2015	13289
Bulgaria	Върховен административен съд на Република България/Supreme Administrative Court of the Republic of Bulgaria	2016	6483
Croatia	Vrhovni sud Republike Hrvatske/ Supreme Court of the Republic of Croatia	2012	Gž 38/11-2
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2013	II Kž 148/16-4
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2013	I Kž 169/11-6
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2013	II Kž 136/13-4
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2013	Kžm 31/12-6
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2013	I Kž 685/12-7
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2013	Kžm 49/12-5
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2013	II Kž 442/13-4
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2013	I Kž 526/12-6
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2013	I Kž-Us 82/11-6
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2014	Kžm 31/13-4
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2014	I Kž 307/13-6

Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2014	I Kž 112/13-4
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2014	I Kž 329/14-7
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2014	I Kž 25/14-6
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2015	Kžm 56/14-7
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2015	I Kž 31/15-6
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2015	I Kž 68/15-6
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2015	I Kž 601/14-6
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2015	I Kž 262/15-8
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2015	II Kž 313/15-4
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2015	I Kž 366/15-6
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2015	I Kž 628/13-6
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2015	II Kž 30/16-4
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2016	I Kž 741/14-4
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2016	II Kž 148/16-4
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2016	I Kž 385/16-4
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2016	I Kž 759/13-6
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2016	Kžm 18/16-8
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2016	I Kž-Us 120/16-6
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2016	Kžm 29/16-4
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2017	Kžm 6/17-5
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2017	Kžm 23/16-7
Croatia	Vrhovni sud Republike Hrvatske/ The Supreme Court of the Republic of Croatia	2017	I Kž 182/2015-4
Greece	Άρειος Πάγος (Areios Pagos, AP), Court of Cassation (A2, Civil Section)	2017	1425/2017
Greece	Άρειος Πάγος (Areios Pagos, AP), Court of Cassation (A Holiday Penal Section, in Council formation)	2017	1338/2017

Greece	Άρειος Πάγος (Areios Pagos, AP), Court of Cassation (6th Penal Section)	2017	192/2017
Italy	Corte di Cassazione, sez. V/Supreme court, Chamber V	2011	7155/2011
Italy	Corte di Cassazione, sez. I/Supreme court, Chamber I	2012	49892/2012
Italy	Corte di Cassazione, sez. V/Supreme court, Chamber V	2012	13878/2012
Italy	Corte Costituzionale/ Constitutional court	2013	313/2013
Italy	Corte di Cassazione	2013	11895/2013
Italy	Corte di Cassazione, sez. I Supreme court, Chamber I	2013	23010/2013
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2013	32444/2013
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2013	49474/2013
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2013	51439/2013
Italy	Corte di Cassazione, sez. I Supreme court, Chamber I	2013	22719/2013
Italy	Corte di Cassazione, sez. III Supreme court, Chamber III	2013	33179/2013
Italy	Corte di Cassazione, sez. III Supreme court, Chamber III	2013	5107/2013
Italy	Corte di Cassazione	2013	10594/2013
Italy	Corte di Cassazione, sez. III/Supreme court, Chamber III	2013	1793/2013
Italy	Corte di Cassazione, sez. V/ Supreme court, Chamber V	2013	3552/2013
Italy	Corte di Cassazione, sez. I Supreme court, Chamber I	2013	4433/2013
Italy	Corte di Cassazione, sez. III Supreme court, Chamber III	2013	24535/2013
Italy	Corte di Cassazione, sez. III Supreme court, Chamber III	2013	39799/2013
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2014	12695/2014
Italy	Corte di Cassazione, sez. I Supreme court, Chamber I	2014	16721/2014
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2014	18887/2014
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2014	38762/2014

Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2014	51143/2014
Italy	Corte di Cassazione, Sez. III Supreme court, Chamber III	2014	21759/2014
Italy	Corte di Cassazione, Sez. III Supreme court, Chamber III	2014	31184/2014
Italy	Corte di Cassazione, sez. I Supreme court, Chamber I	2014	37954/2014
Italy	Corte di Cassazione, sez. I Supreme court, Chamber I	2014	42285/2014
Italy	Corte di Cassazione, sez. III Supreme court, Chamber III	2014	47268/2014
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2014	18793/2014
Italy	Corte di Cassazione, sez. III Supreme court, Chamber III	2014	39462/2014
Italy	Corte di Cassazione, sez. VI Supreme court, Chamber VI	2014	43536/2014
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2015	2674/2015
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2015	3981/2015
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2015	8275/2015
Italy	Corte di Cassazione, sez. III Supreme court, Chamber III	2015	8328/2015
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2015	20366/2015
Italy	Corte di Cassazione, sez. III Supreme court, Chamber III	2015	24431/2015
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2015	31677/2015
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2015	31709/2015
Italy	Corte di Cassazione, sez. I Supreme court, Chamber I	2015	49066/2015
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2015	12203/2015
Italy	Corte di Cassazione, sez. III Supreme court, Chamber III	2015	16340/2015
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2015	46178/2015
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2015	40356/2015

Italy	Corte di Cassazione, sez. Un. Supreme court, Plenary	2015	31022/2015
Italy	Corte di Cassazione, sez. Lav Supreme court, Labour Chamber	2015	10955/2015
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2015	24339/2015
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2015	32429/2015
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2015	38736/2015
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2015	38763/2015
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2015	21407/2015
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2016	1335/2016
Italy	Corte di Cassazione, sez. I Supreme court, Chamber I	2016	50/2016
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2016	2723/2016
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2016	4873/2016
Italy	Corte di Cassazione, sez. I Supreme court, Chamber I	2016	33274/2016
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2016	54946/2016
Italy	Corte di Cassazione, sez. III Supreme court, Chamber III	2016	19112/2016
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2016	55418/2016
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2016	12536/2016
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2016	38306/2016
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2016	54948/2016
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2016	16145/2016
Italy	Corte di Cassazione, sez. II Supreme court, Chamber II	2016	46874/2016
Italy	Corte di Cassazione, sez. I Supreme court, Chamber I	2017	13604/2014
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2017	101/2017

Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2017	322/2017
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2017	5352/2017
Italy	Corte di Cassazione, sez. Un. Supreme court, Joint Chambers	2017	6965/2017
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2017	7859/2017
Italy	Corte di Cassazione, sez. Un Supreme court, Plenary Chamber	2017	18987/2017
Italy	Corte di Cassazione, sez. I Supreme court, Chamber I	2017	28739/2017
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2017	34160/2017
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2017	49506/2017
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2017	50187/2017
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2017	8482/2017
Italy	Corte di Cassazione, sez. III Supreme court, Chamber III	2017	234/2017
Italy	Corte di Cassazione, sez. IV Supreme court, Chamber IV	2017	14503/2017
Italy	Corte di Cassazione, sez. I Supreme court, Chamber I	2017	24103/2017
Italy	Corte di Cassazione, sez. III Supreme court, Chamber III	2017	43164/2017
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2017	50189/2017
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2017	57764/2017
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2017	21521/2017
Italy	Corte di Cassazione, sez. Lav. Supreme court, Labour Chamber	2017	2499 /2017
Italy	Corte di Cassazione, sez. Lav. Supreme court, Labour Chamber	2017	13799/2017
Italy	Corte di Cassazione, sez. I Supreme court, Chamber I	2017	977/2017
Italy	Corte di Cassazione, sez. IV Supreme court, Chamber IV	2017	11428/2017
Italy	Corte di Cassazione, sez. II Supreme court, Chamber II	2017	45090/2017

Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2017	1447/2017
Italy	Corte di Cassazione, sez. III Supreme court, Chamber III	2017	20891/2017
Italy	Corte di Cassazione, sez. III Supreme court, Chamber III	2017	7006/2017
Italy	Corte di Cassazione, sez. I Supreme court, Chamber I	2017	54109/2017
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2018	16751/2018
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2018	19353/2018
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2018	33879/2018
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2018	40083/2018
Italy	Corte di Cassazione, sez. III Supreme court, Chamber III	2018	39210/2018
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2018	33862/2018
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2018	38911/2018
Italy	Corte di Cassazione, sez. III Supreme court, Chamber III	2018	39039/2018
Italy	Corte di Cassazione, sez. Lav. Supreme court, Labour Chamber	2018	21965/2018
Italy	Corte di Cassazione, sez. Lav. Supreme court, Labour Chamber	2018	10280/2018
Italy	Corte di Cassazione, sez. IV Supreme court, Chamber IV	2018	6539/2018
Italy	Corte di Cassazione, sez. IV Supreme court, Chamber IV	2018	20198/2018
Italy	Corte di Cassazione, sez. I Supreme court, Chamber I	2018	39787/2018
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2018	17936/2018
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2018	20485/2018
Italy	Corte di Cassazione, sez. I Supreme court, Chamber I	2018	31311/2018
Italy	Corte di Cassazione, sez. V Supreme court, Chamber V	2018	41973/2018
Latvia	Latvijas Republikas Augstākā tiesa / The Supreme Court of the Republic of Latvia	2016	SKK-472/2016 (11840006213)

Latvia	Latvijas Republikas Satversmes tiesa / Constitutional Court of the Republic of Latvia	2016	2016-09-01
Latvia	Latvijas Republikas Augstākā tiesa / Supreme Court of the Republic of Latvia	2016	SKK-190/2016 (11816003310)
Latvia	Latvijas Republikas Augstākā tiesa / The Supreme Court of the Republic of Latvia	2017	SKK-55/2017 (11840002413)
Latvia	Latvijas Republikas Augstākā tiesa / Supreme Court of the Republic of Latvia	2018	ECLI:LV:AT:2018:0503.11840000313.2.L
Slovakia	Ústavný súd SR/ The Constitutional Court of the Slovak Republic	2014	II. ÚS 307/2014-45
Slovakia	The Supreme Court of the Slovak Republic (Administrative Law Senate)	2015	5Sž/11/2015
Slovakia	Ústavný súd SR/The Constitutional Court of the Slovak Republic	2016	II. ÚS 356/2016-45
Slovenia	Vrhovno sodišče Republike Slovenije/Supreme Court of the Republic of Slovenia	2012	ECLI:SI:VSRS:2016:I.IPS.9345.2012.73
Slovenia	Vrhovno sodišče Republike Slovenije/Supreme Court of the Republic of Slovenia	2014	ECLI:SI:VSRS:2015:II.IPS.307.2014
Slovenia	Ustavno sodišče Republike Slovenije/Constitutional Court of the Republic of Slovenia	2014	ECLI:SI:USRS:2014:Up.540.11

Table 2. Cases included in the study: Second instance courts

Country	Court	Year	Case reference
Bulgaria	Окръжен съд - Бургас District Court of Burgas	2016	234
Bulgaria	Софийски градски съд (СГС) Sofia City Court	2017	1925
Bulgaria	Софийски градски съд (СГС) Sofia City Court	2017	1562
Croatia	Županijski sud u Bjelovaru/ County court of Bjelovar	2012	Kž-212/2012-3
Croatia	Županijski sud u Zagrebu/ County court of Zagreb	2012	13 Kž-1228/12-4
Croatia	Županijski sud u Zagrebu/ County court of Zagreb	2016	1 Kž-735/16-2
Croatia	Županijski sud u Varaždinu/ County court of Varaždin	2016	6 Kž-76/16-4
Croatia	Županijski sud u Bjelovaru/ County court of Bjelovar	2017	Kž-288/2016-4

Greece	Τριμελές Εφετείο Αθηνών/Athens Appeal Court	2014	175/2014
Greece	(Τριμελές) Εφετείο Θράκης/ (Three-Member) Court of Appeal of Thrace	2014	91/2012
Greece	Εφετείο Θεσσαλονίκης/ Thessaloniki Appeal Court	2015	1960/2014
Greece	Εφετείο Αθηνών/Athens Appeal Court	2015	5336/2015
Greece	Εφετείο Αθηνών/Athens Appeal Court	2016	1143/2016
Greece	Εφετείο Αθηνών/Athens Appeal Court	2016	1065/2016
Greece	Εφετείο Αθηνών/Athens Appeal Court	2016	963/2016
Greece	Εφετείο Λάρισας/Larisa Appeal Court	2016	346/2015
Latvia	Latvijas Republikas Augstākās tiesas Civillietu tiesu palāta / Chamber of Civil Cases (ruling at second instance) of the Supreme Court of Latvia	2013	PAC-0316/2013 (C04474610)
Latvia	Riga Regional Court	2014	C27158413
Latvia	Riga Regional Court	2014	C27169612
Latvia	Riga Regional Court	2015	132051114
Latvia	Rīgas apgabaltiesa / Riga Regional Court	2015	133063714
Latvia	Administratīvā apgabaltiesa / Administrative regional court /	2015	A420357113
Latvia	Riga Regional Court	2015	C35053314
Latvia	Kurzeme Regional Court	2016	120030315
Latvia	Kurzeme Regional Court	2016	11380032208
Latvia	Rīgas apgabaltiesas Civillietu tiesas kolēģija / Riga Regional Court (College of civil cases)	2016	CA-1972-16/18 (C30353215)
Latvia	Rīgas apgabaltiesas Civillietu tiesas kolēģija / Riga Regional Court (College of civil cases)	2016	CA-1075/20 (C27113314)
Latvia	Latgales apgabaltiesas Civillietu tiesas kolēģija / Latgale Regional Court (College of civil cases)	2017	CA-0234-17 (C29633316)
Latvia	Rīgas apgabaltiesas Civillietu tiesas kolēģija / Riga Regional Court (College of civil cases)	2017	CA-1885-17/22 (C17150712) / ECLI:LV:RAT:2017:0914.C17150712.2.S
Portugal	Tribunal da Relação do Porto Porto Appeal Court	2012	12905/09.9TDPRT.P1 - JTRP000 - RP2012101012905/09.9TDPRT.P1
Portugal	Tribunal da Relação de Lisboa Lisbon Appeal Court	2012	1515/12.3TVLSB-A.L1-7 – RL
Portugal	Tribunal da Relação de Lisboa Lisbon Appeal Court	2012	54/11.4TASVC.L1 – 3.
Portugal	Tribunal da Relação do Porto Porto Appeal Court	2013	585/11.6PAOVR.P1 - JTRP000 - RP20130424585/11.6PAOVR.P1

Portugal	Tribunal da Relação do Porto Porto Appeal Court	2013	1087/12.9TAMTS.P1 - JTRP000 - RP201310301087/12.9TAMTS.P1
Portugal	Tribunal da Relação do Porto Porto Appeal Court	2013	5803/11.8TDPRT.P1 - RP201311205803/11.8TDPRT.P1
Portugal	Tribunal da Relação de Lisboa Lisbon Appeal Court	2013	581/12.6PLSNT-A.L1-5 - RL
Portugal	Tribunal da Relação do Porto Porto Appeal Court	2014	101/13.5TTMTS.P1 - JTRP000 - RP20140908101/13.5TTMTS.P1
Portugal	Tribunal da Relação de Lisboa Lisbon Appeal Court	2014	431/13.6TTFUN.L1-4
Portugal	Tribunal da Relação de Évora Évora Appeal Court	2014	8/13.6TTFAR.E1
Portugal	Tribunal da Relação do Porto Porto Appeal Court	2015	101/13.5TAMCN.P1 - JTRP000 - RP20150605101/13.5TAMCN.P1
Portugal	Tribunal da Relação de Lisboa Lisbon Appeal Court	2015	755/13.2TVLSB.L1-7
Portugal	Tribunal da Relação de Évora Évora Appeal Court	2015	1212/12.0GBABF.E1
Portugal	Tribunal da Relação do Porto Porto Appeal Court	2016	471/15.0T9AGD-A.P1 - JTRP000 - RP20160413471/15.0T9AGD-A.P1
Portugal	Tribunal da Relação do Porto Porto Appeal Court	2016	9786/13.1TDPRT.P1 - JTRP000 - RP201605259786/13.1TDPRT.P1
Portugal	Tribunal da Relação do Porto Porto Appeal Court	2016	1630/12.3JAPRT.P1 – JTRP000 - RP201602101630/12.3JAPRT.P1
Portugal	Tribunal da Relação de Lisboa Lisbon Appeal Court	2016	12515/14.9T8LSB.L1-2
Portugal	Tribunal da Relação de Coimbra Coimbra Appeal Court	2016	267/14.7PAMGR.C1
Portugal	Tribunal da Relação de Guimarães Guimarães Appeal Court	2016	18/14.6T9MNC.G1
Portugal	Tribunal da Relação de Guimarães Guimarães Appeal Court	2016	16/15.2GEVCT.G1
Portugal	Tribunal da Relação de Évora Évora Appeal Court	2016	445/10.8JAFAR.E1
Portugal	Tribunal da Relação de Évora Évora Appeal Court	2016	87/10.8GGODM.E1
Portugal	Tribunal da Relação de Évora Évora Appeal Court	2016	65/13.OGDLLE.E1
Portugal	Tribunal da Relação do Porto Porto Appeal Court	2017	671/14.0GAMCN.P1 - RP20170405671/14.0GAMCN.P1
Portugal	Tribunal da Relação do Porto Porto Appeal Court	2017	2585/13.2TAGDM.P1 - RP201704052585/13.2TAGDM.P1 - JTRP000
Portugal	Tribunal da Relação do Porto Porto Appeal Court	2017	932/14.9PIPRT.P1 - JTRP000 - RP20170419932/14.9PIPRT.P1
Portugal	Tribunal da Relação do Porto Porto Appeal Court	2017	481/14.5JABRG.P1 - JTRP000 - RP20170607481/14.5JABRG.P1

Portugal	Tribunal da Relação do Porto Porto Appeal Court	2017	47/15.2T9AGD.P1 – JTRP000 - RP2017071247/15.2T9AGD.P1
Portugal	Tribunal da Relação do Porto Porto Appeal Court	2017	498/15.2GBPNF.P1 - JTRP000 - RP20170913498/15.2GBPNF.P1
Portugal	Tribunal da Relação do Porto Porto Appeal Court	2017	1199/15.7T9VLG.P1 - JTRP000 - RP201709131199/15.7T9VLG.P1
Portugal	Tribunal da Relação do Porto Porto Appeal Court	2017	14204/16.0T8PRT-A.P1 – JTRP000 - 14204/16.0T8PRT-A.P1
Portugal	Tribunal da Relação de Lisboa Lisbon Appeal Court	2017	95/15.2PEPDL.L1-3
Portugal	Tribunal da Relação de Lisboa Lisbon Appeal Court	2017	1777/14.1.T8LSB.L1-1
Portugal	Tribunal da Relação de Coimbra Coimbra Appeal Court	2017	269/16.9PCCBR.C1
Portugal	Tribunal da Relação de Guimarães Guimarães Appeal Court	2017	68/14.2TAAVV.G1
Portugal	Tribunal da Relação de Lisboa Lisbon Appeal Court	2017	1297/14.4PBSTB.E1
Portugal	Tribunal da Relação de Évora Évora Appeal Court	2017	373/14.8T9STR.E1
Portugal	Tribunal da Relação de Évora Évora Appeal Court	2017	1731/12.8PBSTB-A.E1
Slovakia	Krajský súd Bratislava Regional court Bratislava	2013	9Co/322/2013– final decision ECLI:SK:KSBA:2013:1513206648.1
Slovakia	Krajský súd Košice Regional court Košice	2014	1Co/527/2014 ECLI:SK:KSKE:2014:7112217364.3
Slovakia	Krajský súd Prešov Regional court Prešov	2014	6Co/217/2013 ECLI:SK:KSPO:2014:8410200645.1
Slovakia	Krajský súd Prešov Regional court Prešov	2016	8Co/171/2015 ECLI:SK:KSPO:2016:8812212121.1
Slovakia	Regional court Banská Bystrica	2017	3To/133/2016 - final decision ECLI:SK:KSBB:2017:6816010080.1
Slovakia	Regional court Prešov	2017	3Co/175/2016 – final decision ECLI:SK:KSPO:2017:8415200924.1
Slovakia	Krajský súd Bratislava Regional court Bratislava	2017	9Co/154/2014– final decision ECLI:SK:KSBA:2017:1312213343.1
Slovenia	Higher Court in Ljubljana; Civil Department	2013	VSL sodba II Cp 341/2013 ECLI:SI:VSLJ:2013:II.CP.341.2013
Slovenia	Višje sodišče v Ljubljani Higher Court in Ljubljana	2014	ECLI:SI:VSLJ:2014:II.KP.13079.2012
Slovenia	Višje sodišče v Ljubljana Higher Court in Ljubljana	2014	VSL sodba in sklep I Cp 252/2014 ECLI:SI:VSLJ:2014:I.CP.252.2014
Slovenia	Višje sodišče v Ljubljani; Gospodarski oddelek/Higher Court in Ljubljana; Commercial Department	2016	VSL sodba I Cpg 1419/2015 ECLI:SI:VSLJ:2016:I.CPG.1419.2015

Slovenia	Višje sodišče v Ljubljana Higher Court in Ljubljana; Civil Department	2017	VSL sodba I Cp 3097/2016 ECLI:SI:VSLJ:2017:I.CP.3097.2016
Slovenia	Višje sodišče v Ljubljana Higher Court in Ljubljana; Civil Department	2017	VSL Sodba I Cp 289/2017 ECLI:SI:VSLJ:2017:I.CP.289.2017