

Media & Crime

MEDIA REPORTING ABOUT COURT PROCEEDINGS

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The freedom of expression is one of the basic rights of the people and a necessary requirement for educating and forming public opinion. The freedom of the press is a fundamental defense of the freedom of expression without which it would be impossible to secure protection of other fundamental human rights. In the international legal framework the freedom of expression is defined by the European Convention for the Protection of Human Rights and Fundamental Freedoms from 1950. Article 10 of the Convention stipulates for the freedom of expression. This right includes the right to have an opinion, to receive and disseminate information and ideas without the interference by the government. The Convention also stipulates that said freedom of expression and information is not absolute and that the state can legally interfere but only under certain conditions as set forth by the law. The highest legal acts in our legal system also guarantee the freedom of opinion, expression and information. The Constitution of the Republic of Serbia dedicates Article 46 to the freedom of the press and “guarantees freedom of press and public expression of opinion”. The same article acknowledges the rights of citizens to express and publish their opinion in the media and the right to correction and to compensation for damages, while at the same time it prohibits the censorship of the press and of other media. The limitation of the freedom of the press is possible “only if the decision of a competent court has established that it was an invitation for a violent uprising against the constitutional order, endangering the territorial integrity and the independence of the Republic of Serbia, violation of the freedoms guaranteed to the people and the citizens or provoking and eliciting national, racial or religious intolerance and hatred. Article 97 of the Constitution of the Republic of Serbia stipulated that court hearings are open to the public unless in circumstances prescribed by the law when the public can be excluded from the hearing for the purpose of protection of secret, morality, interest of the minors or other general interests.

When one talks about court reporting or about the relationship between the court (i.e. judges) on one side and the media (i.e. journalists) on the other side, we must have in mind that we are talking about socially responsible professions with strong ethical standards. The courts are independent government agencies that protect freedom and rights of the citizens, rights and interests of legal subjects set forth by the law and provide for constitutionality and legality. The judge is independent in declaring justice; he adjudicates based on the Constitution, the laws and other legal acts and by his conscience. The independent, responsible and efficient judiciary is one of the pillars of every society and state. On the other side, journalists in every democratic society, following the highest professional and ethical standards, bear special responsibility for the freedom of the media through their duty to publish true and timely information.

Starting from the social role of the courts as government agencies and of the media as service of information and education of the citizens, the need to further the communication between these two social actors becomes inevitable. The openness of the courts (as well as of other government agencies) towards the media is a necessity in every modern and democratic society. The public has the right to be informed! Therefore it is necessary to find adequate means to make the work of the court accessible to the public, within the limitations that enable implementation of justice.

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The Public Information Act prescribes that public information is "free and within the interest of the public"; it cannot be limited and cannot be censored. The Court will make a decision about the violations of the freedom of information in an expedited proceeding.

The law on the Free Access to Information of Public Importance passed in 2004 "regulates the right to access information of public importance owned by public authorities and for the purpose of fulfillment and protection of interest of the public to be informed, and fulfillment of the free democratic order and open society." Pursuant to the aforementioned law, the information of public importance is information owned by the public authority that emerged during the course of work or related to the course of work of public authorities, and of which the public has the justified right to be informed of. The rights set forth in the law are intended for everyone under the same conditions (Article 6) while the discrimination of journalists and the media is forbidden, and therefore it is envisaged that the public authority must not place in favorable position any journalist or media (Article 7). However, Article 9 of the Law stipulates that the Court, i.e. government authority will not grant the requesting party the right to access information if such access would endanger life, health, security or other important interest of an individual, or if it would endanger, disturb or impede the prevention or discovery of a criminal offense, raising an indictment, or the course of pre-criminal proceeding, court proceeding, execution of judgment or sentencing, or any other legal proceeding or fair treatment and fair trial; or if it would endanger the defense, state security, international relations, capability of the authorities to administrate economic processes in the country; or if such access would make available the information or a document that was, by law or other official act, declared state, official, business or other secret.

Procedural law also envisages the transparency of the work of the Court and thus the Criminal Procedural Code and the Code on Civil Procedure stipulated that the main hearing is public. However, besides the general rule that the trials are open for public and that anyone can attend, the aforementioned laws also set forth some limitations to said rule in regards to the court reporting of the procedure and to the transparency of the trials which must exist in order to conduct the judicial proceedings without disturbance and to protect the rights of individuals. Consequently, criminal investigations, as well as criminal trials against minors and family disputes are closed for public. Pursuant to the Criminal Procedural Code, from the opening of the session to the conclusion of the trial the panel may at any time, ex officio or on the motion of the parties but always after hearing their statements, exclude the public from the whole or part of the trial, if this is necessary for keeping the confidentiality of information, keeping public order, for moral considerations, for the protection of the interests of a minor or for the protection of the personal or family life of the defendant or the injured person. The panel shall decide on the exclusion of the public in a form of a decision that must be justified and publicly pronounced (Article 292 and 294 of the CPC). In addition, in civil proceedings, the court panel may exclude the public during the course of the whole main hearing or part of it, if this is necessary for official, business or personal secret, keeping of public order or for moral considerations, as well as in situations when regular measures for maintaining order in the courtroom prescribed by the law should fail to secure undisturbed hearing (Article 307 of the Civil Procedural Code). In family proceeding the public is excluded (Article 206 of the Family Law). The data from the court records is considered an official secret and all the participants in the proceeding that have access to such data are obligated to keep it confidential. The public is also excluded in the tutorships proceedings (Article 331, id).

In addition to the already mentioned limitations to the right to information, one of the basic principles that have to be respected is the principle of the presumption of innocence. Article 3 of the CPC prescribes that state authorities, media, associations of citizens, persons with public status and other persons are obliged to respect the principle that no one shall be held guilty of a criminal offence until his/her culpability is established by a final decision of the competent court, and are also obligated not to violate other procedural rules, the rights of the defendant and the injured person, as well as the principle of the independence of judiciary by their public statements regarding criminal proceedings which are pending. The next principle mentioned is that court reporting should be objective and impartial, and should serve for the purpose of informing the public about criminal offenses, stipulated sentences and judgments, but also be without prejudice, not be one-sided and not prejudicate the conclusions and court decisions. Any

reporting to the contrary would represent certain pressure on the court, and that is inadmissible by all means.

And finally, the Rules of Court also envisages that the president, judges and other court personnel are obligated to provide the basic conditions that are necessary for the court operations to be public, for the adequate access of the media to current information and court proceedings, all of it within the limitations and the procedure that are prescribed by the law, and bearing in mind the interests of the proceeding and the privacy and security of the participants of the proceeding. If there is more interest of the public in a specific trial, the court administration shall enable a room that can hold a large number of people. The information about the work of the court is provided by the President or the judge that he authorizes, by the information service or by the spokesperson. The information on specific cases can also be given, with the prior consent of the President of the court, by the judge presiding in that case. The data contained in the information must be exact. Information considered an official secret should not be presented. Belgrade District Court allows photographing and recording on the premises only with the prior written consent of the President of the District Court. The video and audio recording during the trial, outside the scope of Article 179 of the CPC, is performed pursuant to the consent of the President of the Supreme Court of Serbia with previously obtained opinion of the President of the Panel and consent of the parties. Video and audio recording during the main hearing in the civil proceeding cases is approved by the President of the Court with the previously obtained opinion of the president of the court panel, judge and consent of the parties.

After everything mentioned above we can conclude that the transparency of the work of the court is achieved by publishing schedules of hearings, composition of Court, i.e. by announcing the acting judges, providing notification about the phase in which the proceeding is at and its course of action, notification of the public of the work of the court by means of public media, and by publishing court decisions and legal opinions.

Media representatives and court reporters, during reporting on the work of the court, as well as on the actions taken in specific cases, must ensure that their reporting is objective and unbiased. The newspaper reports must always explain the phase of the proceeding where the case is at that moment (investigation, indictment, trial) and specifically note the names and characteristics of the parties in the proceeding (prosecutor-state (public), private, injured party as prosecutor, suspect, accused, indictee, convicted person) as well as the criminal offense he had been charged with. In addition, they must be careful in naming the government authority, i.e. judicial authority (they can't mix or put an equality sign between the court and the prosecutor's office, which are two completely separate and mutually independent bodies). In the proceedings against minors the publication of their names is prohibited. Also, media representatives during their stay in the court must respect the honor of the court, of the judges, court personnel and other participants of the court proceedings. Prejudicating a court decision, especially in the criminal proceeding, is strictly prohibited.

Lately the interest of the domestic public in the events in the courtroom significantly increased, and the responsibility of the court reporter is hence bigger. The establishment in 2003 of the two divisions of the Belgrade District Court certainly contributed to it (Special Department for Suppression of Organized Crime and War Crimes Chamber). The procedural and legal complexity of the trials for the gravest criminal offenses requires the journalist to know not only the legislation and the regulations, but also the specific journalist techniques of court reporting and the organization of work in the journalist monitoring of the trials. The reporting on these proceedings requires strong concentration during the long period of time, during the course of the main hearing and good and quality work under constant pressure.

After everything stated above, we can conclude that reporting about court proceedings is an exceptionally complex and very responsible sphere of the journalist's profession. The whole concept of the court reporter integrates both the qualities of a good journalist, as well as knowledge of laws, work and functioning of the justice system as a whole. This means that a good court reporter should come to terms with the requirements of the journalist profession (which requires updated information, as well as the exclusiveness of the information published, as well as honoring journalists' deadlines), with the requirement to enforce justice and respect the rules of non-disclosure of the information that would jeopardize the court proceedings. Difficulties are often presented by the translation of complicated legal language to understandable newspaper article, as well as the simplification of the cases (which could result in big mistakes with consequences that could affect the final outcome of the proceeding)

Therefore, it is not strange that in many countries special attention is dedicated to the education and improvement of journalists who specialize in this type of reporting. Because it takes years to create a court reporter.

In the aim of securing the right of expression and informing the public, the permanent cooperation between the courts and the media is necessary, and a better understanding between journalists and the judges as well as the improvement of their mutual communication. The court and the judges do have an

obligation on their side to assist the journalists in overcoming obstacles which are an integral part of the court reporting, and which could be achieved by transparent and open treatment towards the media. On the other hand, the journalists must respect the limitation that is the integral part of the court proceedings. Only with a joint effort can we achieve one of the fundamental requirements of the democratic society – the informed public, as the basis for the good functioning of modern society and for the successful work of the democratic system.