

## INTERVIEW

BRINGING THE WAR CRIME TRIALS CLOSER TO THE PUBLIC: AUDIO AND VIDEO RECORDING AND PUBLIC BROADCASTING OF TRIALS



### TRANSPARENT PUBLIC JUSTICE

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Priority should be given to unlimited and complete filming and broadcasting of public trials for war crimes, with reasonable security measures and an additional measure by which the broadcast would be delayed, for instance, for 30 minutes.

In the legislation in force in the Republic of Serbia the audio and visual recording of the trials is regulated by Article 179, paragraph 2 of the Criminal Procedure Act (ZKP) which says that there can be no video recording at the main hearing, except if the President of the Supreme Court of Serbia gives permission in specific cases. If this permission was given, the trial chamber can upon justified reasons decide that certain parts of the main hearing are not to be recorded. Paragraph 9 of the same Article says that in case that the recording is permitted, there must be written consent of the parties and those who were filmed.

The provisions of the Rules of the Court say as well that the video and audio recordings of cases beyond those envisaged by ZKP can also be made upon permission of the President of the Supreme Court of Serbia, but prior to that the statement of the President of the chamber and the judge and the consent of the parties must be acquired.

In civil proceedings the recording and broadcasting is permitted by the president of the court before which the trial is conducted, with prior statement of the judges and the consent of the parties.

Making photos and their publishing is permitted by the presiding judge in the given case, but on the basis of formerly acquired consent of the defendants and the public prosecutor, as well as other participants in the proceedings.

As regards access to court documentation, ZKP envisages that everybody who has a justified interest can permit studying, copying, multiplying or recording of certain documents.

#### Important and delicate

The proposed Draft law on amendments to the Act on the Organization and Jurisdiction of State Bodies in Suppressing Organized Crime in regard to war crimes proceedings envisages a new Article 16-a, which reads:

“The president of the War Crimes Chamber can permit filming of the main hearing with the aim to broadcast it in public after acquiring the opinion of the parties. If the filming of the main hearing was permitted, the trial chamber can upon justified reasons decide that certain parts of the main hearing are not to be recorded.”

This proposition is fully in accordance with the Recommendation of the Council of Ministers of the Council of Europe which speaks of the need to undertake necessary measures for the implementation of the principles such as informing the public through the media, the need to have live and video reports from courtrooms, support to media reporting, taking into account the protection of the witnesses and those damaged.

There is no dilemma that the need to inform the public by recording and broadcasting war crime trials is an important and delicate issue. The legislator, and also the court, should find the “golden mean” between, on the one hand, the undisputable and very important need to inform the public on the course of the war crime trial and the contents of what is presented as evidence in the course of the trials, and

thus inform the public on the events which are subject to criminal proceedings, and on the other hand, the interests of the criminal proceedings themselves, first of all taking into account the principles of legality and efficiency of criminal proceedings, the protection of persons who appear in front of the court, as well as of those who are mentioned in the proceedings, primarily having in mind the protection of witnesses, the victims, as well as the defendants themselves.

I think that the proposal given in the Draft Law is a step in the right direction, because such a solution simplifies the procedure for acquiring the permission for recording and broadcasting of the trial, the procedure is accelerated and omits unnecessary involvement of judicial institutions at different levels.

One of the biggest "dangers" that can endanger the legality and even the efficiency of the criminal proceedings is that uncritical and unlimited following of the trial – and thus also the broadcasting of statements given by persons who were interrogated in the courtroom, as well as presenting other evidence to a certain extent – influences and even jeopardizes the statement of other persons who are to be interrogated. Namely, by following the trials, these persons can be to a certain extent "wrongly informed" about what they are to be talking in the court. And, I have in mind first of all those situations where there is a need for instance for the witness to state something on some concrete and important circumstances crucial for the proceedings, where the future witness by following the broadcast is directly informed about the questions, the way in which they are being asked, so that he can "prepare the testimony" in advance, even unconsciously and without intention to speak untrue things in front of the court. The same situation exists also in regard to the relation with the defendant. Such public shooting and broadcasting would to a certain extent be contrary to Article 320, paragraph 4 of ZKP, which says that "co-defendants who were not yet interrogated cannot be present at the interrogation of the defendant", as well as the Article 328, paragraph 2 of ZKP, which says that the "witness who has not been interrogated will not, as a rule, be present at the presentation of evidence".

However, here too one should be realistic and have in mind that the present legal solutions allow for the presence of the public at the trial, so to a certain extent there is now also the possibility to "influence" the future witnesses and co-defendants.

#### **Technical conditions exist**

The shooting and broadcasting service is already no problem for the District Court in Belgrade, since in the building of the District Court in Ustanicka Street there are already all conditions for shooting and broadcasting, and within a short time these conditions will also be available in one of the courtrooms (the Big Courtroom) in the Palace of Justice.

#### **The eye of the camera**

A further problem is also the possible reaction of either the public or the individuals to some of the statements of either the defendants or the interrogated witnesses, who particularly in war crime trials can result in the "loss" of future witnesses, hence those persons who would like to testify and say in court what they saw and whose testimonies would be of extraordinary importance for the course of the proceedings and for the "truthful and complete establishment of facts which are important for reaching a legal decision", as envisaged by the principle of material truth in Article 17, paragraph 1 of the ZKP.

I think that with other provisions of ZKP related to the conduct and course of the main hearing in these cases should be implemented particularly Article 109 of the ZKP, which speaks of the duty of the court to protect the witnesses and the injured from insult, threat and any other offense. A strong, clear and consistent attitude of the court in such situations can to a big extent not only preserve the legality of the proceedings, but also secure and strengthen the conviction of the public and of all those interested that the court and the state organs should protect and want to protect those endangered in such cases. In this way the position of the court would be strengthened, particularly in war crime proceedings, and future witnesses, as well as the broad public, would be convinced that those who are to testify, i.e. speak in court, can do this without any fear of consequences.

Here I would point also at the possibility to implement Article 15-m of the Law on the Organization of Jurisdiction of State Organs in Suppressing Organized Crime, which says that the court can decide upon an elaborate motion of the interested person on the protection of personal data related to the witness or the injured. On the basis of Article 13 of the Law on the Organization of the Jurisdiction of State Organs in Suppressing Organized Crime this provision is implemented in practice also in these proceedings.

One other possibility to help the witnesses and injured is the implementation of Article 11 of the Law on "war crimes proceedings", which envisages the establishment in the District Court in Belgrade of a special department for administrative and technical jobs for the protection of witnesses and those injured and the securing of conditions for the implementation of the Law's procedural provisions. The

implementation of this provision is in process and is developing also with assistance from foreign institutions – in this case, from the US justice department through its legal advisor in the US Embassy in Belgrade, as well as from OSCE.

Besides, the OSCE Mission in Belgrade has been and will be contributing very much to explain the need to broadcast publicly the war crime trials, as well as the war crime trials themselves, particularly through the so-called "outreach" program, as well as other projects in which they are helping us openhandedly.

Of course, the injured and the witnesses in a criminal proceedings can anyway be protected also through the implementation of the newly passed Law on the Protection of Participants in Criminal Proceedings.

The technical realization and the details related to the organization of the shooting is something that has to be left to experts, including those working in the media; in my view the judges, prosecutors, attorneys, and even psychologists should also be included to a certain extent. I have in mind first of all the ways in which, for instance, are to be filmed persons giving their statements –the question of the distance of the camera from the filmed person, reactions of those present, the reaction of the public in the courtroom, whether and how to film the faces of the trial chamber, the prosecutor, etc. In the realization of this problem I recognize the need for a prior education of both those working in the judiciary, and those in the media which treat this issues, and I think that it would be good to prepare the public to a certain extent and inform it about the specificities of shooting and broadcasting these trials.

Education is necessary also for persons who will participate in the trials on behalf of the judiciary, because it is not unknown that people behave differently not only when they speak in public and in front of a bigger number of people; this change becomes particularly important when the cameras are included and shoot for public broadcast. This fact can possibly influence not only those interrogated, but also professionals who appear during the proceedings – the trial chamber, prosecutors, attorneys and authorized persons – and can range from confusion and closeness up to a relaxed attitude and behavior which is close to "show business". It is exactly for this reason that it would be useful to have some kind of education and training on how to behave in front of cameras.

### **Regional broadcast**

One of the possible dilemmas could be whether the entire war crimes trials should be filmed and broadcasted, from the opening of the main hearing up to the pronouncement of the verdict, even under the presumption that during the trial there will be situations when the trials will "not be interesting" for the public; this can present a problem particularly in the case of long-term trials which go on every day because the public loses interest. The alternative is the possibility to shoot the entire trial and broadcast shortened versions, i.e. surveys of the trials. The advantage of such an approach is the fact that the attention of the public will focus on the most important and essential elements of the trial, namely the statements of the interrogated persons, which could get "lost", namely not be recognized in the long-lasting and sometimes possibly also monotonous trials. This would also to a certain extent avoid the possibility that some of the interrogated persons, first of all the defendant, make use of public broadcast (when they are shot and broadcasted all the time), for reasons of personal promotion, promoting their own standpoints and turning the trial into a public presentation.

However, the question of these "shortened broadcasts" includes additional problems in the form of determining the time which is given to certain interrogated persons during the shooting; it is possible that some of the parties have justified complaints that the witness proposed for instance by the prosecution or the defense got undeserved longer time in this report than the witness of the other side. Also, a possible complaint could relate to a possibly wrong accentuating and uncritical reporting of parts of the statements which change the essence of the statement of the interrogated person. This, possibly, leads also to a "tabloidization" of these shots and broadcasts, because these shots could instead of informing the public actually misinform it and confuse it. Therefore I think that regardless of certain advantages that these so-called "shortened reports" have, priority should be given to unlimited and complete filming and broadcasting of public trials for war crimes, with reasonable security measures mentioned above, and an additional measure by which the broadcast would be delayed, for instance, for 30 minutes. This time would be sufficient to undertake certain security measures exactly because for the reasons mentioned above and to omit from the broadcast some parts of the statements of the interrogated persons.

Because of these reasons I think that some kind of an "editorial council" should be established in order to take care of only the technical aspects of the filming and would in no way interfere with the contents and course of the shooting, or broadcasting, taking care only of the orders of the trial chamber.

The judge of the Australian Federal Court Robert French, speaking of the necessity to shoot and broadcast the trials, reminds that transparent public justice is of vital importance, insisting upon the importance of electronic media, and speaks of the here already mentioned justified fear that the persons

which give their statements in the presence of cameras could possibly change when they are aware that this "goes public", as well as efforts which are needed in order to avoid the "tabloidization" of such trials.

One of the problems which we can face if there is shooting, i.e. broadcasting of war crime trials, is also the possible indifference of the domestic public for domestic war crimes trials. Namely, opinion polls show that the domestic public is more interested in war crime trials in the neighboring countries, i.e. for trials related to cases in which the victims were our citizens, and less for trials where our citizens are accused of committing war crimes over members of other nationalities and in other states. This problem can be solved by gradual and intensive activity aimed at informing our citizens to a much greater extent with war crimes for which our citizens are accused, after which domestic broadcasts of war crime trials should be started.

The second way in which this situation can be overcome, having in mind the already established and good cooperation on the regional level between the states of the former SFRY in regard to war crime trials, is to overtake broadcasts made in other states and related to trials in their courts and to present these trials to our public. I am sure that such "mixed" broadcasts, which would include both our domestic trials and trials in the neighboring countries, can raise not only the interest of the public for the trials, but can also contribute to raising the general quality of the trials, their competitiveness in comparison with other judicial systems, and what is maybe most significant, strengthen and fortify the public awareness on the need of war crime trials, the awareness that a war crime is always and only a crime. On the other hand this can contribute and strengthen also the general level of confidence in the domestic judiciary, as well as that of neighboring countries, and thus inevitably generally strengthen the rule of law.

I will remind of a part of the "conclusions" in the report on monitoring court conduct in trials for crimes in Serbia in 2004, from the angle of respect of human rights; when speaking on the work of the courts the report notes, among others, that the consequences of the derogated authority of the court power and a not yet established full independence of the court are still felt, and in view of the insufficient material resources and a reduced professional potential this makes an efficient work of the courts more difficult. I am certain that war crime trials, as well as their public broadcasts, will not change history nor is this their task as the matter of fact; but these trials, too, will certainly be a part of some contemporary history and of some future history, and an important element which will influence that such history will never repeat on us. I believe that public broadcasts of the war crime trials will make their contribution in this regard.

### **Support and moderators**

If we would opt for unlimited shooting and broadcasting of the entire war crime trials (limited only by the already mentioned legal norms and decisions of the trial chamber) - with a general consensus that the public alone will decide whether it will watch something, what it will watch and when, which is my view, too - I think that these trials should be accompanied with some kind of "support" in the form of certain information regarding the basic facts on the course of the proceedings, on the entitlement of the parties in the case, with a careful selection of interlocutors, taking into account their expertise and professionalism. In case that a media group which would broadcast these trials would decide to have commentators or moderators for them, it would be necessary to make sure to have individuals with a high level of expertise, with a demonstrated high level of responsibility and conscious of the fact that with their comments they can to a certain extent create the public opinion.