



Out of the ivory tower-
Challenges to the press work of the judiciary in
Germany

Court reporting is becoming an important part of the media landscape. More and more the press likes to report not only about the criminal but also about the "everyday" trial.

People love to read about these stories, they like to see the so-called "court shows". The judiciary has to deal with that, in particular to ensure that no false public image is created and to give a correct picture of the functioning of the judiciary. So, out of the ivory tower!

Basically the duty of the justice system to give information to the press is based on the National press laws.

Article 4 of the so called “Bayerisches Pressegesetz“ entitles the press to have access to all kind of information concerning public authorities.

Information can only be denied when the right of privacy of individuals is affected or when there is another obligation of secrecy. This right of information can be exercised only against the head of the authority. Each of the federal countries of Germany has a similar regulation. Freedom of the press is also anchored in the constitution.

Functions of the press:

- Control of the police / judiciary
- Satisfaction of the public interest in information
- Promotion of the acceptance of government action
- no secret Justice

This law also applies to the judiciary.

In practice the head of the authority delegates the duty to give the required information to a spokesperson.

There is a very important rule: the judge/public prosecutor dealing with the case should not give information! She/he should not be put in the position of having to defend his judgement in front of the press. During an ongoing trial the impression may be given that she/he is prejudiced.

The spokespersons have a very heavy responsibility. They are considered as a so called „qualified source“.

This means that the press can rely on information given by a spokesperson and that he and not the press is responsible for the truth of the information.

The spokesperson also has to weigh between his duty of giving information and the rights of privacy of the people concerned.

Normally the spokespersons have worked in the authority before they get to this position. So they know the special procedures.

What they have to learn is how the press works.

They must be open to the journalists and be ready to work outside normal working hours. They must be able to speak and write in plain German, forgetting the legal terminology but not the legal content.

It makes therefore sense to contact the journalists in ones area, to go to newspapers and tv channels and press agencies.

Camera training and training with the micro are useful as well as learning to write press releases which will be read.

The spokespersons have to develop a media concept.

It is not sufficient only to respond to the demands of the journalist. It must be made clear what tasks the authority has to deal with, how it works and what innovations are coming.

In this context the spokesperson can talk about sensitive fields of law such as family law and juvenile justice. He can create understanding without giving sensitive data.

Active press work is a chance to improve the own image and to develop understanding of one`s work. Parts of the judiciary, not otherwise interested in, can be brought into focus.

Example: civil law: "Verdict of the Week"

Court reporting is a balancing act and even if there should be no public interest you cannot completely avoid it. Therefore the spokespersons need enough time to do their work.

In some authorities they have to do it beside their normal work. In bigger courts or authorities of the public prosecution this is not possible as experience shows.

If good press work is pursued then you need a spokesperson that is exempted from the greater part of the daily work.

Naturally a great part of the work of a court's spokesperson concerns ongoing court proceedings. Here there are two major challenges:

1. Trials of high public interest

You need to ensure equal access to the process. The principle of the public nature of the process may not be violated.

Example: The so called „NSU-Trial“

For processes of this kind an accreditation process must be performed.

You have two possibilities:

„First come, first serve“ or to form pools for media of a similar kind. You can combine both.

But what possibility you take, the press work must be well prepared. The spokesperson needs time, a lot of consultation with the judge in case.

It is also useful to include the press as early as possible.

The spokesperson must have at hand the most important telephone numbers and email addresses.

The distribution of tasks must be clear. Only he or the head of court will speak to the press.

„Speak with one tongue“.

Patterns for accreditation letters must be made
Every possible problem should be played beforehand.

2. the hearings/trials before the family and the youth court.

At the first glance things seem to be simple. Court proceedings at the family court in Germany are not public, just as the trials before the youth court, if the accused is aged between 14 and 17 are not.

In both cases the press is not allowed to attend the hearings/trials. Here the privacy rights outweigh the right of the press to obtain information. Therefore in principle the spokesperson of the court also is not allowed to report about the on goings in the hearing/trial.

But in reality things are more difficult:

The journalists often have a lot of information about the cases. They get them from many sources:

1. Lawyers:

Sometimes the lawyers, who also have a duty to protect the rights of their clients, want to get some publicity or hope to show their client in a special light talk to the media.

2. People who want publicity:

Neighbours or people who know the accused and want to be shown in newspapers and TV (some of them even get paid) are ready to give information.

3. Inside sources:

Sometimes journalists know personnel inside the police or other authorities.

4. Luck:

Sometimes they are just lucky and are in the right place at the right time. So often there are press releases before the hearing/trial at the court.

Duties of the media

Surely, there are regulations for the press, too. In principle our constitution guarantees in article 5 press freedom. But press freedom is not unlimited. The press, too, has to balance the right of reporting and the privacy rights of the individual.

If someone is accused of an offence the media have firstly to consider that s/he could be innocent. Normally they are not allowed to use the real name of the person or to give data which can cause identification. They are not allowed to publish photos which can lead to identification.

Exceptions are made only for persons of contemporary history.

But although the press normally takes these regulations into account, the result is that the public interest is focused on cases which normally nobody would have noticed.

And the spokesperson of the court has to deal with it.

So normally a short summary about the trial and the result has to be given – naturally in an anonymised form. The accused person or the people standing in front of a family court have to be protected. No information should be given which makes it impossible for them to live in peace afterwards.

Sometimes this means great efforts when the hearings/trials are prepared. That the press is not allowed to go inside the courtroom and watch the hearing/trial does not mean that they don't come to the court. If it is an interesting case they are there and hope to gather information.

So sometimes barrier walls have to be erected and the spokesperson has to watch that nobody goes behind them trying to catch a photo.

This often means that policemen or security persons of the court have to maintain the proper running of the trial.

To protect the data of the juvenile defendant the court has to take care that no list is shown outside the courtroom containing the name of the accused.

Rights of the journalists in the courtroom when the trial is public:

They can take pictures before the trial starts.

Certainly there are regulations for the journalists taking photos. In principle portraits are allowed to be distributed or put on public display only with the consent of the person depicted (§ 22 Kunsturhebergesetz). This regulation protects the right to dispose of one's own image.

Exceptions are made only in particularly severe, salient deeds. (§23 Kunsturhebergesetz).

After the decision/ verdict is pronounced the press can publish it in an anonymised way. After that they have to take into account that the sentenced has the right to rehabilitation. The more time passes the less must be reported about the trial.

Even if the press is responsible for the legality of their recordings, is it the task of the spokesman to keep an eye on it.

Also in this case a good cooperation in the past and mutual understanding facilitates a lot.

Conclusion:

PR is one of the most important things in the management of a public authority.

The Press should not be regarded as an enemy but as a correlative especially for the independence of the courts.

The verdicts are spoken on behalf of the people and should therefore be explained to them.

The judiciary has thought for too many years that it can live in an ivory tower.

This is over and this is a good thing.

PR means no fraternizing with the journalists, but the attempt to develop mutual understanding, the possibility to question yourself.

But it also means a big commitment and should get recognition and support.



Thank you for your attention!