

THE COURTS AND THE MEDIA

The way courts work, their judgments and decisions on the merits, the publicity of the trials and judicial proceedings are outstandingly important in every democratic state. Obviously, it is crucial to offer detailed information about the events of public interest. Judicial cases, either criminal or civil, are such events.

However, the publicity of judicial actions generates several problems and difficulties. Jurisdictional action is a complicated process for the public opinion, which is difficult to understand and requires detailed knowledge of the law, while, on the other hand, society often calls for simplified, summarizing press releases. Judges view their work as complicated, thorough, requiring years of experience, while the press often informs the public in simple, short news which are easy to understand, but professionally inaccurate.

The discrepancy of complex professional knowledge and simplified communication results in inevitable problems. It is neither a good solution if the court of justice secludes themselves from the public, nor if the media neglect the technicalities of judicial action.

This results in a double responsibility. The crucial importance of the public secures the control to disallow arbitrary decisions, while the danger of misguidance is that the personal rights of the people concerned can be injured, and the media keeps losing lawsuits because of the mistakes of press releases.

What are we to do? The court has to teach the press, and vice versa, the press has to teach the court. They have to co-operate in order to inform the society understandably and precisely about the judicial action. Essentially every country aims to do this, they face similar problems and find similar solutions. The objective of this lecture is to review the practice and concerning laws of certain countries.

The following fields have to be investigated in relation to the publicity of courts:

- 1./ The publicity of the judgments,

2./ The duties of the spokesperson,

3./ The publicity of the trials, including the sound and picture recordings,

4./ The presentation of the tasks, the structure, and the work of the courts to the public.

1.

The minority of the problems is caused by the publication of the deliverance of the judgments. Obviously, the only medium capable of publishing complete judgments in full available for everybody is the Internet. In every country the organization of jurisdiction has an own website, offering a database containing judgments-at-law, and, occasionally, other decisions, available to those interested. The institution reaches its aims if the detailed search criteria are assigned to the database, especially the exact place of a specific provision under a law, as well as keywords, reference numbers, courts, by which anyone can search certain judgments. Judgments need to be published anonymously, with special attention to the personal rights of the persons involved in the case. Thus not only their names, but any personal data must be omitted that can refer to them. *If, in a certain country, including Hungary, the parties concerned can turn to a legal remedy which is often used, it is proper to publish the judgment-at-law only after completing the extraordinary legal remedy, or else there is the danger of inconvenience caused by the subsequent remedy of the judgment.*

In Austria mostly the courts of appeals and the Supreme Court judgements are published on the internet. All judgements which are published on the internet must be anonymous, but for this process they do not have a special tool. There is only one website for all courts, and one website for the Supreme Court. Everybody can call these sites. Every court makes the decision itself about publishing on the internet.

In Denmark Danish case law is generally published in case law databases provided by private publishers and only available by subscription. This databases publishes all judgement from the Danish Supreme Court, few judgments from the two high courts, and the Maritime and Commercial Court, but no judgments from the district courts. All together in this databases yearly publishes about 8-10 % of all danish

judgments. They publish abstracts written by an editorial body of judges. The Danish Supreme Court furthermore publishes all its judgment on its website and the High Courts and the Maritime and Commercial Courts do it as well.

There are plans for establish a national online case law database that would allow free access for the public, and include case law from the Supreme, and High Courts.

In Norway the Supreme Court and most appeal courts are published their decisions on the internet for the public. Although the Norwegian Court Administration has made a website where courts can publish all decisions, but this is only available for the media. On this site the parties are not anonymous but there are restrictions on what cases can be published there. There is also a website where decisions from higher courts are published for professionals and public, and these are anonymous.

In Portugal a large part of the decisions of the appeal courts are published on the internet. Each Court of Appeal has a committee of judges whose decide which judgments can publish. The publication is independent of the enforcement of the judgment, but if there is further appeal is possible to determine whether the published sentence was confirmed. There is no publication from the district courts.

2.

The public opinion is not only interested in the already adjudicated judgments-at-law, but also the present state and the events of the proceedings of certain widely publicized court cases. The media regularly report about criminal cases of great importance, sometimes also about the proceedings of civil trials. To avoid reporting merely what the media experience, often with professional inaccuracies in the news, the courts themselves need to maintain a system of spokespersons. The spokesperson is the employee of the court who informs the public about the actions of the court, the proceedings of the ongoing cases, and other questions concerning the activity of the court, which the public is interested in. The spokesperson's task is extremely difficult, they have to be familiar with the system of justice, the rules of procedure, the substantive law, and, on the other hand, they also need to be able to translate the complicated language of the courts to the simpler language of the public media without damaging the requirements of professional accuracy. That is

why it is advisable for the spokesperson to have previous experiences in the media and to have continuous retraining courses. Since the judges rarely appear in front of the public, where the spokespersons represent them, the responsibility of the spokesperson requires special and detailed regulation. The further task of the spokesperson is to ensure the continuous communication between the court and the media.

In Austria the Ministry of Justice has one spokesperson and all regional courts and all district courts have their own spokesperson, who is a judge. The spokesperson main task is provide the media with wanted information about cases, most of all about criminal cases. The spokesperson should be able to explain the cases in a comprehensible way. They haven't got communication advisor.

In Denmark the Courts of Denmark have spokesperson who is a judge. The press judge is appointed by the relevant presiding judge and is an ordinary judge who works at the court she/he represents. This press judge concept was introduced in 2008. Their main task is to respond to the journalist interest on judicial matters. The press judges meet in a formal network twice a year to exchange experiences and discuss current challenges. The network is running by the Danish Court Administration. In addition, media training courses for press judges are conducted twice a year. The Danish Court Administration employs communications advisors, who are responsible for the general and joint communications activities of the Court of Denmark. Besides the courts do not have their own communications advisors.

In Norway on a national level they have a group of Media Judges, which group has 9 members at the moment. The group are available for media who wants to have a comment or some explanation according to courts and court decisions. The members are selected by the Judges Association.

In Portugal they do not have spokesperson for judiciary.

3.

One of the most complicated problems is the sound and picture recordings of the trials. As a general rule, apart from well-defined exceptions such as the protection of

youth, business secrets, protection of personal rights or public morals, court proceedings are open for the public. However, this can only mean that those interested can appear personally at the proceedings, but not obviously that they can take photos, or make sound or video recordings. Making recordings not only concerns the participants' rights to their portrait and voice recordings, but also slows down the proceedings of the trial and makes it difficult. In a rather great percentage of the cases, the parties of the trials and the witnesses want to avoid publicity, they are eager to prevent the people surrounding them from getting knowledge of their being involved in a court proceeding. However, full briefing is often only viable if the media makes sound and video recordings of the trials. All this require complicated regulation. The most prevalent answer to this problem is that the permission of the members of the court of law, the officials involved in the case such as the attorneys, the advocates is not needed for sound and picture recordings about them, while no recording can be made without the permission of the parties, the witnesses and other participants. However, the practice of certain countries shows significant differences.

In Austria broadcasting of court sessions is not allowed. When the trial starts the judge who governs the court session has to be sure that all film cameras are switched off. Even broadcasting outside the court session is forbidden, only the director of the court can allow broadcasting inside the building. There is no general rules about the abuse of cell phone, but every judges has the possibility to command special measures, for instance a judge can ban to bring cell phones into the court room.

In Denmark the Administration of Justice Act makes only very limited provision for the television recording of court cases. In the beginning in the Adminsitration of Justice Act it is not permitted to make tv or radio broadcasting from court cases, however be permitted in a exceptional circumstances in connection with high-profil cases that have particular public interest. It is not prohibited to bring mobile phones into the courtroom, however nobody can make any record with them.

In Norway broadcasting is basically allowed in civil cases, and can be allowed by the court in criminal cases. The judge can decide which parts of the proceedings that can

be broadcasted, without a few exceptions it is only allowed to register professional participants such as prosecutor, lawyers and the judge.

In Portugal the broadcasting of sound or image from court session is not prohibited by the law but it is also not allow. The presiding judge can decide from broadcasting. The most common practice is to not allow any broadcasting. In Portugal is not allow to use mobile phone in courtrooms.

It is also important to speak about the protection of personal rights. The publicity of a trial does not mean that the personal details of the persons present can be used without permission. The people at a trial are not fictitious persons, they have their names, colors of hair, dates of birth, they act in a certain way in a court room, and the media can report from there only using these personal data somehow, they cannot encrypt these details. Freedom of the press and the protection of personal data are two constitutional rights which often confront each other, and the legal systems of several countries have not been able to solve this problem reassuringly. If, say, at a public event, the speaker performed his speech drunk, swearing, and unpreparedly, and the media presents this, it only makes sense to report about "Mr. X.Y. who performed his speech drunk, swearing, and unpreparedly", while it is meaningless, or rather offensive to the other people present to use the expression "one of the speakers". This can also be true for the events in a court room.

4.

It is also effective if the court not only appears in front of the public in connection to the concrete judiciary action, but also in order to present their role, tasks, and work. The public opinion tends to have the misconception that the courts seclude themselves from the public, they do their tasks according to a set of rules that are difficult to understand and that only they can see through. It is an important challenge to resolve these misunderstandings. Apart from this, most of the society do not know much about the structure of the jurisdictional system, about the people who work at a court, about the tasks of the courts, about the actual proceedings of either criminal or civil trials, about the entitlements of the parties, or about the consequences of the court's decisions. To maintain a society properly, it is also crucially necessary to inform the society about these. In the past few years, most

countries pay attention to inform their society well about the structure and the action of the courts. There are several ways to do this, such as the frequent statements of court leaders to the media, open courts, where people can learn about the work of the courts in the form of persimulation, especially model trials, criminal or civil, for high school or university students, or frequent briefings about important information of the court. However, these tasks must not violate the rules of the jurisdictional action of the court.

In Austria the Judiciary should be more active in the press or in the media, because it's one way of how to improve the image of the Judiciary. For instance the regional court of Linz organizes a „breakfast for reporters“ once a year. In the event the reporters are informed about the achievements and work of the court in the last year, and they were invited to have look behind the scene, so they were able to get a feeling about how the court works. In addition, they send every week a schedule of criminal sessions to the media. They organize educational programs for school, where the pupils can come to the court and watch different trials, they also have program with driver-schools in which the students can face to the consequences of an accident with a drunken driver.

In Norway the Norwegian Court Administration has started using Facebook and Twitter. With Twitter they used to share information about news, press releases, practical information in mediafocused cases. In the summer of 2011 one of the media judges has started his own blog in which he describes his work, what reflections he makes during cases.