



The Right of the Defendant for Public Hearing and the Role of Media in this Publicity

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Abstract: Legal base of publicity of the trial (according to ECHR) is Kosovo Constitution. Opening of court session is aimed at guaranteeing the development of an unmanaged process, avoiding the possibility of misuse, getting people to know more about court rules and at the same time encouraging judges to respect these rules. But if an open public hearing is incompatible with trial justice then priority is given to the latter. Therefore, the court may restrict public participation and media coverage to the extent necessary to protect other legitimate interests, even without revocation of such rights in full, especially in the proceedings against juveniles but also in cases where they are witnesses in procedure. Restricting publicity can also be made if national security is in danger. But, courts have been criticized for lack of publicity. In media reports on functioning of judiciary it is stressed out that they encountered many problems in obtaining information. During the preparation of this article, I have used the legal, comparative, statistical and analytical methods.

Keywords: Defendant; publicity; fair trial; ECHR; media

Introduction

Constitution is the highest legal act of the state which derives from other applicable laws in Kosovo, guides adoption of other legislation always based on its general principles. Fundamental human rights and freedoms are inseparable, inviolable and inalienable. Among them also the rights of the defendant: right to a fair and impartial trial; right to legal remedies; principle of legality and proportionality; right not to be tried twice for the same act, etc. Public hearing serves to protect interests of the defendant; it is a guarantee that judicial proceedings will be developed fairly and

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encourages witnesses to testify in front of the court. In general, trials should be opened for the public but this principle is not absolute.

Cases where a child participates in the proceedings in any capacity, some types of offenses related to personal and bodily integrity as well as cases related to security of the country are overseen by law as grounds for closing the hearing. Also presence of qualified information in case files does not simply mean the need to close the session towards the public without balancing the opening of national security issues. Media and public can be excluded from entire or one part of the trial in interest of ethics, public order and national security in one democratic society where are requested interests of juvenile or protection of private lives of the parties, or to the extent that in the opinion of court is indispensably necessary because of special circumstances where presence of public may harm interests of justice. Verdict is announced in public but if the court sees fit some parts of it may not be public. In offenses related to sexual violence, acts against minors and other cases where human dignity can be violated are not provided full identity data just the initials.

In General about Trial Publicity

The principle of publicity is one of the most important principles of criminal procedure as well as other procedures. This principle is closely related to principle of fair trial. In European Convention on Human Rights and Freedoms (hereafter the ECHR), we find ourselves within the same provisions of Article 6 of the Convention. Public character of procedures for court proceedings protects participants in the trial from any hidden injustice that could slip public control. It is also one of the tools to maintain trust in the court and contributes to achievement of a fair trial, guaranteeing which is one of the fundamental principles of a democratic society. Article 31, paragraph 2 of the Constitution of Kosovo reads: "Everyone has the right to a public hearing, fair and impartial regarding decisions on rights and obligations or any criminal charge filed against him/her within a reasonable period of time by an independent and impartial court established by law."

Based to judicial doctrine principle of publicity implies a general request for participation in judicial process of an undefined number of persons, undetermined preliminary and individually- a request to provide possibility of unimpeded participation in judicial hearings (Dika, 2004, p. 195). Such a definition in the first place gives us the impression that right to a public hearing does not mean everyone's ability to participate in a particular judicial process. In fact, this does not imply an

unlimited mass of people who may be present in the courtroom, because adherence to the principle of publicity depends on several factors. Thus, for a session to be public some criteria should be met regarding characteristics of persons who will be present, physical possibilities of courtroom environment in relation to number of persons interested in being in the hearing and other conditions within the courtroom which will be evaluated by the Court. In absence of necessary criteria for a fair and open process for all concerned court evaluates persons who have priority over other persons. The Court will in the first instance consider that presence of public does not disturb any of subjects in proceedings while attendees who do not respect rule of conduct of hearing may be taken measures.

Given interest to closely follow a court case, court will have in mind first of all the opportunity to be present media representatives, representatives of various organizations dealing with court monitoring and human rights, scientific workers and relatives of the defendant, of the damaged party. The positive effects of public participation in the court process can be numerous. The main positive effect is achieved especially with participation of media which affects work and conduct of court as well as of other subjects in proceedings, parties and their representatives, as public prosecutor and defence lawyer.

In work practice of Courts in Kosovo, it has been seen that number and selection of persons who will be present in courtroom are usually determined by security members (police) who are responsible for progress of the process. The legal interest for a system in which publicity has a high priority is triple:

- a) From the point of view of democracy development it is important for public to see that justice has been put in place;
- b) Information is a "raison d'être" and it has a general preventing effect;
- c) Independent function of penal court can only be exercised in public thus guaranteeing social peace. During the process court sheds light on personality of defendant and circumstances of offense commission and at the same time controls the work of prosecution body.

If there is a need to limit certain elements of Article 6 of ECHR, the motivation to do so and the process for its performance is different from other rights that can naturally be limited. Nowadays it is less clear that: is the restriction of the right to a fair trial in national security cases appropriate and in particular war against terrorism? A state for example may have good reasons not to disclose all the evidence that has in relation to the accusation. On the other hand, the failure to do so could

significantly prejudice defendant who is therefore unable to challenge these allegations and therefore potentially prove his/her innocence (Training Manual on International Human Right, 2016). Fair trial warranties can never be subject to avoidance measures that may override the protection of inviolable rights. Avoiding basic principles of fair trial including the presumption of innocence are forbidden at all times.

Open Court Session

The public nature of court sessions is an important guarantee for both individual as well as interests of the society in general. Except in exceptional circumstances and cases provided by law, sessions should be open to all concerned and not just to certain categories of persons. They should be accessible especially to media and various organizations that monitor justice institutions. In certain cases the development of court proceedings can also be filmed. Third parties, secular and non-professional citizens who have no direct interest in the form of development or results of the trial, can also participate in open public hearings other than parties to proceedings. Such opening of court sessions is aimed at guaranteeing the development of an unmanaged process, avoiding the possibility of misuse, getting people to know more about court rules and at the same time encouraging judges to respect these rules. Depending on case and circumstances sessions may take place with closed doors. Such cases mainly relate to preservation of state secrecy, protection of morality and protection of interests for juvenile. As far as court decisions are concerned they should be public even in cases where due to circumstances provided by law public is excluded. The published decision can also have some strictly defined exemptions such as, for example, publication only of initials and not full name when it comes to acts of sexual violence, juvenile cases or any other reason where lawmaker has foreseen this in order to protect dignity and integrity of the person. Publicity of penal session may be: general publicity; limited publicity and publicity of parties.

General Publicity

General publicity means the right of citizens to be present at the main trial in case of revealing and solving a specific criminal case of course within the spatial possibility of the courtroom in which the trial is conducted (Sahiti, 2013, p. 111). The publicity

of the trial in broad terms includes the possibility that other persons who may not be present at the hearings receive different insights into the process either through persons who, based on close publicity are participants in the proceedings, whether by checking documents received from the courts or by discussing with others about it, to publish their views and criticisms (Dika, 2008, p. 4).

The necessity of allowing interested parties to pursue judicial examination requires at the same time a better preparation of all participants, better organization of work, more dignified presentation, good cooperation and content from certain behaviours. The media and civil society representatives that monitor courts with an interest in all details of the process, prevent arbitrary behaviour of judges. They report outwardly what is happening within court hearings, create opinions, open debates, make criticism and comment on development of court process. Thus, the presence of public in the room makes Court more attentive as the judicial process is more objective. Due to the disruption of law and order the presiding judge or single judge (as the case may be) may order extracting of the public outside.

Despite willingness and availability to respect the principle of publicity and despite the existence or not of circumstances which impose a closed session, parties may agree on the absence of public in the hall. The ECtHR in the case of *Le Compte, Van Leuver and De Meyere v. Belgium* stated that the right to public prosecution may not be violated necessarily if both parties consent to the trial being conducted indoors. But in preliminary proceedings publicity of the trial may violate expectations and hopes of the defendant for a fair trial, so its publicity may be limited without prejudice to freedom of expression protected by Article 10 of the ECHR. There must be a balance between the right to a fair trial and that of a free press, the ECtHR said in *Uorm* against Austria.

Limited Publicity

Having the court session on proper manner requires courtroom calmness, normal work, respect for court dignity and security for all procedural participants (Sahiti, Murati & Elshani, 2014, p. 764) Therefore judge leading the session warns the public at the opening. The lawmaker has drafted provisions of Article 301 of Code of Criminal Procedure which must be respected by each participant either party to the proceedings, media representatives or the rest of the public. On the contrary, he has the power to request their removal from the room and in case of non-execution of his orders he may also take disciplinary measures (Article 302 of CCPK). No

disciplinary or fines can be imposed on the prosecutor, but if the state prosecutor breaks the order, the single trial judge or presiding judge informs the state prosecutor's supervisor about this and may also suspend the judicial examination and request by the state prosecutor's supervisor to appoint another state prosecutor (Article 302, paragraph 4 of the CCPK). For the failure of law and order the accused cannot be fined but the latter may be dismissed (Article 302, paragraph 1 of CCPK). Extracting out of an unruly defendant may be: temporary until a victim is questioned and taken out during the entire trial of the evidence with condition that he has been questioned at the main trial. The impossibility of the court to impose a fine on defendant is sometimes misused by the latter. He may behave arrogantly which adversely affects court authority especially if the hearing is being recorded and broadcasted in media. Similarly, it is the case of the prosecutor if he does insult the dignity of the accused, arrogantly and prejudices the guilty plea. Removal from the main trial of the defendant, defence counsel, damaged party, legal representative or authorized representative, witness, expert, interpreter or other person participating in the main trial because of disrupting the order or not obeying the judge's orders could not identify with exclusion of public from the main trial (Sahiti, Murati & Elshani, 2014, p. 758). Exceptions to the rule of publicity can also be made in cases of giving testimony by an anonymous witness or protected witness. In order to preserve confidentiality, press and public are not allowed to be present at the hearing. Hence proceedings wholly or partially under surveillance of cameras should be strictly required by circumstances of the case, said ECtHR in the Uelke and Bialek v Poland case. While in the ECtHR case, Riepan v. Austria, the ECtHR has said that security problems are a common feature of many criminal proceedings but cases where security justifies the exclusion of the public from a hearing are still rare.

If there are grounds for applying one or more of these exceptions, authorities are not obliged but are entitled to order camera sessions if they consider that such restrictions are warranted, evaluated ECtHR also in case of Toeva v. Bulgaria. The decision to hold a closed court hearing is taken by the single trial judge or presiding judge by a ruling which must be reasoned and publicly announced (Article 296, paragraph 1 of the CCPK). The decision for having a closed session can be challenged only by appealing the judgment (Article 296, paragraph 2 of the CCPK). So the unsatisfied party has the possibility of such opposition only after the process has been terminated and the court has decided by a judgment on the merits issue. Through this provision lawmaker has avoided lengthening of judicial process, pending time, limit for appealing to a closed session ruling. The party has the right to appeal judgment claiming that essential provisions of law have been violated. Likewise, parties may

complain in appeal for judgment even if they do not close the hearing if they consider that the reasons existed and if this was proposed during the main trial.

The court may decide to hold the court hearing closed even when the reason is not directly related to parties in process. Before exempting the public from criminal proceedings, court must take appropriate measures to ensure that closure is necessary to protect a national and governmental interest and should limit the secret to a degree that is necessary to ensure such interest, the ECtHR said in *Belashev v. Russia*. By secrecy, as a cause for the exclusion of publicity it is necessary to understand state secrecy, military or commercial, scientific and professional secrecy. Because of the mutual importance they have in social relations the elaboration of essence for official secrecy requires its inclusion in cohesion with publicity. Undoubtedly, harmony of their subordinates, harmony of defining the boundaries of their range without eliminating secrecy by hyperbolizing publicity is imposed as a social need (Sahiti, 2016, p. 97).

While strong publicity for the suspects for sexual offenses has another potential negative consequence. It is a world-wide experience that accused of sexual violence is often threatened. Cases of sexual abuse may be the most direct example. This may be necessary to ensure that alleged victims are not obliged to face directly with defendant. Hence methods and content of questions during examination by parties can be limited to guarantee victim's rights. If this happens, it must be balanced to ensure that defending party has been afforded a fair trial (Training Manual on International Human Right, 2016).

The judge may decide to allow scientific or research workers to attend a hearing. The court's decision whether or not to allow such persons to participate in procedure depends on assessment that will make that level of interest and probability between reason for exclusion of participants in proceedings and possibility that presence of these people has a negative effect on interest of justice in concrete case (Dika, 2008, p. 22). It is worth emphasizing that proximity of accused as a basis for assistance in main trial is a factual matter that court decides in every concrete case. Otherwise, all persons who assist in a court hearing from which public is excluded are obliged to preserve it as confidentiality, what they have learned in the session (Sahiti, 2016, p. 97). The possibility that persons who are not party to the proceedings have access to court records is usually conditioned by the fulfilment of some additional criteria that we have to make public in the narrow sense, or limited publicity.

In literature it is thought that according to the principle *de lege feranda*, law students should also be allowed to participate in non-public hearings. This should be done in

analogy with the participation of medical students at the undergraduate clinics, as it contributes to raising their level of education. But if we talk specifically about the conditions and circumstances that exist in Kosovo, maybe this should only be allowed for people who are at the superior level of studies. The large number of students for justice and moreover great recognition of people because the country is small would cause the spread of all information as blink of an eye that may come out of a closed session to the public, according to the reasons provided by law. All persons who in any way make known that their request for participation in the hearing is legal and not only those who do, hence in the service of their scientific or public interest should in principle be considered, as well as the possibility to obtain a copy of any case file or a copy of the file in its entirety (Dika, 2008, p. 21). Full hiding by the public of all judicial decisions cannot be justified. ECtHR in *Raza v Bulgaria* argued that legitimate security cannot be accommodated through certain techniques, such as classifying those parts of legal remedies, opening of which would pose a risk to national security or security of others.

Publicity of the Parties

Parties to the criminal procedure under the CCPK in force are state prosecutor, defendant and damaged party. To be considered as a party, the claimant and the defendant (as well as the damaged party) must possess the so-called *legitimacio at cauzom* - ability to appear as a procedural-penal party. While to act as a party to the proceedings, personally and competently in addition to *legitimacio ad cauzom* the party must also possess *legitimacio ad procesum*, the ability to undertake procedural processes pertaining to it. According to CCPK which is in force (2013), state prosecutor and defendant are equal parties in proceedings. While state prosecutor protects general interest and interests of injured party, CCPK in power does not recognize private plaintiff. The defendant defends his/her rights in person and through a defence lawyer. Therefore defendant and state prosecutor should certainly have *legitimacio in procesum*, while the damaged party is enough to have *legitimacio in causom*. In absence of *legitimacio in procesum*, damaged party acts through his legal representative or authorized representative.

Publicity of the parties implies a restriction of publicity and participation in proceedings of only procedural-penal parties. This kind of publicity comes to expression in the preliminary procedure and every time during the main hearing, even when for reasons foreseen by the law could exclude the public. With regard to

the right of the defendant to be present in proceedings and in connection with this transfer of consequences when he will be absent for his fault, the European Court on Human Rights and Freedoms, in case *Shkalla Against Albania*, among other things estimates that: "The right to direct to the court" from which the right of access is one aspect, is not absolute; it is subject to inherent limitations in silence, in particular with regard to admissibility of an appeal, since it requires by its very nature, regulation by the State which has a certain margin of appreciation in that regard.

In the penal legislation of European countries (EU and beyond), regarding presence of defendant in procedure, there are two alternatives depending on gravity of the offense. In the trial according to indictment the presence of defendant is almost always necessary whereas in cases of a short procedure court often decides without presence of defendant (Delmas-Marty, 2005, p. 178). CCPK does not recognize trial in absentia. Likewise, the single trial judge or presiding trial judge may allow a court hearing in which the public is excluded to attend certain officials, academics, public figures and at the request of the accused may allow participation of spouse or spouse extra-terrestrial and his relatives (Article 295 paragraph 2 of the CCPK). The single trial judge or presiding judge shall warn persons attending closed judicial proceeding that they are obliged to preserve confidentiality of information they have learned at main trial and that disclosure of such information constitutes a criminal offense (Article 295 parag (3) of CCPK). Regarding the participants in a general public hearing Kosovo Criminal Procedure Code makes a difference with regard to their age. Participation of juveniles in a judicial process is not in their interest; even this would have a negative impact. Article 293 of the CCPK specifies that the main hearing may be assisted by senior persons.

Session in Procedure towards Juveniles

In Kosovo, fair trial provisions apply to juvenile proceedings, as well as to adults with the exception of publicity. According to the Juvenile Justice Code (hereinafter JJC), a minor is called a person between the ages of fourteen and eighteen (18) years. The juvenile's participation in a judicial process either in capacity of defendant or as a witness or victim of the case must be considered with special care. Delicate age, intellectual immaturity and emotional state are important factors that in relation to circumstances of the case can produce consequences for his future, while justice does not have that purpose. In practice, there is a wide range of ways in which member states organize their criminal justice systems to protect the child's interests as well

as the wider social interest. Every child deprived of freedom should have the right to be granted immediate legal aid or any other appropriate assistance as well as the right to challenge the decision for depriving of his freedom before a court or other competent, independent and impartial authority, as well as for a quick decision for any such case.

According to Convention on Rights of the Child (Article 3 of the Convention), states parties seek to promote establishment of laws, procedures, bodies and institutions for children suspected, accused or deemed to have committed violations of criminal law and in particular: (a) Determine a minimum age under which children are considered incapable of violating criminal law; (b) Take measures, wherever necessary and desirable, to address these children without addressing the court proceedings, provided that human rights and legal protection are fully respected. The lawmaker has provided situations on how to act when a child should be present in the courtroom, especially regarding the publicity of hearings. Thus Article 339 of the CCPK (2013) lists the child as a witness in special protection. The word is for a child under the age of 16 who is a victim of a criminal offense related to sexual integrity. Paragraph 1 states: "At the main trial is not allowed questioning ...". The prohibitive effect of this provision comes to light after cumulative fulfilment of following two conditions: a) victim's testimony was taken under Article 132 (receipt of statement in preliminary proceedings) or under Article 149 (special investigative possibility) and (b) the trial panel (or single trial judge) deems that no more frequent questioning is necessary (CCPK 2013). If it is considered that a frequent questioning is necessary during the questioning of the victim, public may be excluded.

But a more complicated situation is when the child is a perpetrator of a criminal offense, especially when the offense is severe. In cases where a child, a perpetrator of a criminal offense is deprived of his or her liberty or towards whom is being developed court hearing, in addition to respect for human dignity, the needs of his/her age must also be taken into account. Until the case of *V. Contra United Kingdom* (No. 24888/94, Strasbourg, 16th December 1999), it was not taken into account how the procedures relating to guarantees provided by Article 6.1 in penal proceedings against juveniles will be applied, in particular if a procedure which is designed primarily to protect adult rights during the trial, such as right to public procedures needs to be changed in relation to children, to improve their understanding and participation. Pursuant to Article 71 para. 1 of JJC public is always excluded when a minor is tried. However, the juvenile panel at court may

allow participation of experts and persons professionally dealing with juvenile welfare and education or combating delinquent behaviour for juveniles.

According to Article 70 paragraph 1 of the JJC the minor, defence counsel and prosecutor are present at the main trial. This means that the juvenile cannot be tried in absentia and that besides his defence, he must be personally in the hearing. In addition to persons foreseen by provisions of CCPK, the parent, adoptive parent or guardian, the representative of the guardianship authority and the proxy service representative shall be summoned to the main trial. Non-appearance of such persons does not prevent the court from holding the main trial. So, while the presence of juvenile defendant is compulsory, presence of the parent, guardian or probation officer is optional. Even the sole judge or presiding judge, if he considers it to be in the best interest of the minor, may request removal from the hearing of the latter.

Provisions of the JJC in Kosovo are quite advanced because during their drafting the lawmaker is based on most recent legislation and certainly in ECHR practice. Article 6 of ECHR in itself allows exclusion of public from all or part of judgment where interests of juveniles seek to overlook general principle that judicial proceedings must be conducted in public and recognizing the fact that child's interest in the trial is relevant and important factor. The court must take into account age, level of intellectual and emotional maturity and ability of each individual child. In a procedure for minors, publicity and the public undermine interests of judiciary.

4. Media as a Monitor in Court Sessions

Media and judiciary share common responsibility for administration of an open and fair judicial system (Gashi, 2014, p. 236). Media report on the work of judiciary and forms of publication for court cases differ from one country to another and not every media has increased care to be reserved to prejudge outcome of cases while judiciary does its job. On the other hand judiciary unlike other branches of power tends to be relatively silent in relation to media. Not only rarely such a thing was used also by defence attorneys (lawyers) who in the absence of transparency of judicial system and its spokespersons, have used media reporters but also negligence of editors or publishers. Through the media pronouncement, they have served public with its own version of case and have made it credible, although such a thing is forbidden by the Code of Ethics to legal representatives.

The right to information and access to official documents and transparency of the work of state bodies must not prejudice the right of citizens' privacy. Sensitive data

of parties (including the accused) cannot be made public. Public order considerations and security problems can justify exclusion of public (including media) from disciplinary proceedings in prison against prisoners.

In recent years, the Court's practices in Kosovo have changed a lot. Unlike some years ago, media teams are often allowed to record part of the court sessions, while journalists can easily handle their phones, normally without the right to voice communication, as this would disrupt the quietness in the courtroom. There are also rare cases when the presiding judge or sole judge without any particular reason does not allow recording and photographing. We would like to understand this as avoiding the danger that journalists can publish those recordings that can then be heard by other witnesses who have to testify later. Reporting journalists about a witness's testimony enables another witness (who is not allowed in this case) to prepare his testimony, depending on what he sees with interest. There are also cases where journalist reveals identity of protected witness or any other information that court has warned that it should not be made public.

If we look at this from a different point of view, reporting a little later (more or less in real time) does not mean that it negatively affects the general interest. The news of a delay in a judicial process does not harm the defendant and does not violate his rights. It is important that the right to publicity be respected without prejudice to its rights and not to process itself. It is another matter that journalists are extremely interested in reporting the news as soon as possible, especially in cases where one or more of the persons known to the public are sitting in the bench of the defendant or when the procedure is conducted in connection with any serious offense that has made public glimpse.

There is a principled rule that court cannot act under the influence of external information, opinion attitudes or any other person. Court decisions should only be based on presented and well-reviewed evidence during the main hearing. The judge should act in accordance with rules of the Code of Judicial Ethics according to which judge must always act in order to increase public confidence in independence and impartiality of judicial power. A judge should not make public comments that may influence outcome of a trial of a case he or she is considering, disseminate information, make known views that have arisen during trial sessions and have not yet taken form of a decision.

From the statistical data provided by Kosovo Judicial Council and courts, all courts together with Kosovo Judicial Council have issued 279 communiqués, much smaller number than the one from the police of the 1,041 communiqué. Moreover, the communications issued by the courts are incomplete data therefore not contributing to transparency. Reporting with initials of convicts, court information offices are based on Administrative Instruction 02/2016 for the anonymity and the publication of final judgments. The report considers that this administrative instruction issued by the Kosovo Judicial Council undermines transparency and furthermore is in contradiction with the Criminal Procedure Code of the Republic of Kosovo, which apart from attending sessions open to the public and other than audio recording and official video recording, also allows shooting, filming and TV recording for the media (BIRN, 2017).

In the summary of 2015 “Justice still unattainable,” the Humanitarian Law Centre in Kosovo finds:

- a) Sessions are often closed;
- b) There is a lack of access to official documents (judgments) even to HLC activists;
- c) Not informing the attendees of the case and the charge.

Improper Reporting

Despite their skills in the profession, journalists may sometimes be laic in terms of interpretation of legal norms. In the absence of a spokesman media served developments in sessions, in most cases unprofessionally. Due to the lack of knowledge about procedures and lack of knowledge of legal terminology, numerous publications, often reporters were unable to understand role of participants in procedure and reports were noted as “District Prosecutor of Peja” (Kosovo there was only one District Court in Pristina that time), “The Supreme Court pronounces detention measure” (Supreme Court is a second and third instance court), etc., then it was not possible to distinguish between ruling and verdict “or it was not possible to distinguish between suspension of detention and release from accusation.”

For this reason it is very important for each court to have a well-trained judge who will be responsible for public relations. The most commonly encountered things in the media about alleged criminal offenses or even the suspects are: labels: articles with false allegations due to group and political interests and guilty prejudices. As

in many parts of the world also in Kosovo, the media attitude has shifted from the initial attitude of providing information to public processes, to that of perpetual sensational publicity. From the first moment (moment of arrest) accused is guilty and against “him” should follow the most severe punishment.

Conclusion

Similar to criticisms made to judiciary regarding influence of power in decision making, courts have also been criticized for lack of publicity. In media reports on functioning of judiciary it is stressed out that they encountered many problems in obtaining information. Proceedings for serious criminal offenses should be conducted in presence of public for reasons of legitimate public interest in what has taken place and to preserve confidence in work of judicial bodies. Citizens need to be informed about work of courts, to be involved in processes and to establish trust in the court. Public co-operation with judiciary helps to reduce criminality. For the sake of this information, some courts have begun with publication of newsagents about their work from time to time. Every court should have a well-prepared lawyer for the spokesman who would professionally inform the public and media about matters that public has an interest in knowing.

The unfavourable publication is a legitimization of terror in penal law, something that should be logical if the accused is found guilty, but this cannot be thought until he is still under theory of presumption of innocence. The public proclamation of the guilty plea of the defendant according to what is suspected and while court proceedings are on-going, disclosure of the evidence whether or not based on it is similar to finding if the accused's conviction is determined. Such publication should not be allowed by the court although in practice journalists would call this contempt by the court as a harsh form of censorship. Even publicity of decisions plays an essential role in increasing the level of transparency. Online publication of decisions and access to official documents by the general public enhances efficiency of work of judicial bodies and respect of human rights in conformity with laws in force and ECHR. Impartiality implies a lack of prejudice or sympathy with regard to subject in court operates. So, despite good intentions publicity can sometimes be a double-edged knife and hurt the process.

In Kosovar media it is almost common for accused to be called criminals. Such labels have often been heard in Parliament together with allegations of evidence possession, but no one has yet given any responsibility for this. In this context we

think that judiciary has the right and obligation to demand accountability for such charges. Also, many journalists do not have the clue that they may be criminally responsible for their writings. Undoubtedly, the approval of the Civil Defamation Law (No. 02/L-65) has given them more opportunities in exercise of the profession and in addition the right to freedom of expression. However, this does not mean that journalists and the media in general are intangible. The right of the defendant to a public hearing and the right to freedom of expression must not interfere with one another. Therefore judiciary and media can be more effective and protect general interest only by respecting transparency and ethics. Each of them can have a constructive role in terms of protecting human rights, considering where a right ends, another right starts. Justice needs to be looked at and this is done only with transparency.

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