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Review Paper

THE RELATIONSHIP BETWEEN COURTS AND MEDIA

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Abstract. *Judicial authorities have a difficult task to deal with the undermined public confidence in the judiciary and to reverse this trend in favor of general appreciation of their work by citizens. The announced judicial reform which failed, the internal problems of the judiciary, and the tabloidization by the media which create an unfavorable environment are the causes that have generated doubt about the fair administration of justice by the judicial authorities. Representatives of the judiciary can change such an image only by a pro-active attitude towards this problem. Reticence and passivity of the judiciary are not a good way to change the unfavorable picture of their work to the desired level. Consistent implementation of the principles of publicity, demystification of the work of the judiciary, and openness towards the media is the path that leads to establishing trust in the work of the judiciary. Constant communication between the representatives of the judiciary and journalists, which would eliminate any doubt that the prosecution and the courts "are hiding something", is not only a requirement but also a necessity. In particular, the authors point to the delicate boundary between the justified public interest in obtaining relevant information and the abuse of freedom of expression by crossing the line which implies the violation of the rights of others. In this paper, the authors point out the causes of this unfavorable environment, as well as the obstacles that occur daily in communication between the courts and the media.*

Key words: *courts, media, spokesperson, the confidence of the public*.

(LACK OF) TRUST IN THE JUDICIARY - THE SIGNIFICANCE AND CAUSES

Trust is built patiently, step by step. It is a lengthy and persistent process. But, it may be lost in a second, with a single wrong move or a single careless act.

The publicity of the work of the courts and the general publicity of court proceedings, especially in criminal procedure, is the presumption of public control over the work of the

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judiciary and the consolidation of trust in the legal order (Knežević, 2012: 147). Court proceedings contribute to the prevention of crime and deterrence of potential perpetrators from committing criminal offenses. The general public is encouraged to report crimes and possible perpetrators. The public contributes to the protection of the defendants against the arbitrary treatment of the prosecution and the court, ensures legality, preserves the authority of the judiciary, and reduces corruption which results in an increase in citizens' confidence in the work of the judiciary. Violation of the publicity principle constitutes a significant violation of the court procedure. As the public is particularly interested in the work of the judiciary and judicial proceedings, media reports can contribute to these objectives; quite the reverse, their unprofessional work can distance the entire community from a democratic society and the rule of law principle The rule of law is the *conditio sine qua non* of democratically organized state and the harmonious relations in it, which is a precondition for economic and political development and overall stability.

The basic prerequisite for strengthening the integrity of the courts is greater transparency and better promotion of their work with the aim to increase public confidence in the judiciary and its decisions. However, although public relations have been intensively developing over the last fifteen years, there is a general attitude of the public that the courts are not open enough for the media and the public in general, which we partly agree with.

On the one hand, the courts' caution in providing information to general public is fully justifiable and expected, particularly given the current popular sensationalism and propensity of some media to alter the received information and make it more appealing to citizens. The media may also publish "unofficial" information collected from family members, neighbors (etc.), which is often incorrect or inaccurate, and which generates negative publicity and preconceptions about what the court decision should be. On the other hand, the courts may be limited by legal provisions on procedural rules (e.g. the investigation procedure has not been completed), for which reason they are not able to provide all the requested information in order not to jeopardize the course of the criminal procedure.

Sensationalism, dissemination of false news about an event, and excessive influence of the general public may exert undue pressure on the courts and result in improper adjudication.

The lay general public is not aware or is superficially aware of the competencies of the public prosecutor and the court. From the moment when someone is deprived of liberty or just summoned for a hearing, particularly in cases involving a well-known public figure, there is a growing curiosity of the media and citizens regarding the case. From that moment, the general public perceives the public prosecution and the court as "one and the same thing"; this perception is further enhanced in the circumstances where the prosecution office and the court share the same building. In the focus of the general public is the outcome, guilt, and punishment In addition, before the final conclusion of criminal proceedings, the media reports are often biased in terms of insinuations about the guilt of a person who is still a suspect, the accused or the defendant; they often include terms such as "perpetrator", "killer", "bandit", all of which constitute a violation of the fundamental principle of the presumption of innocence. However, just as the duty of a defense attorney in criminal proceedings is to defend a person rather than a criminal offense, it is the duty of the media to morally condemn the criminal act, without passing judgments on the person who is still a suspect, the accused or the defendant in criminal proceedings (Škulić, 2017: 333).

There is a general belief in the media is that "the black chronicle" raises media ratings or readership. Thus, the media embark on a competition for the purpose of exclusivity and providing a wider and detailed picture with some spicy facts and appealing information. On a daily basis, editors ask journalists to report on the latest developments and case details for the next edition. As noted at a professional meeting on this topic, while the judicial system operates systematically in accordance with statutory deadlines and rules of procedure envisaged in the legislation, the activities of media outlets envelop "at the speed of light". Thus, the media urge prosecution offices and courts to provide immediate information, insisting on "details", while prosecution offices and courts have to be careful not to disclose the facts that would interfere with or in any way harm the ongoing investigation or court proceedings. When the judiciary remains silent on the event that has triggered an increased interest of the public and the media, it enhances suspicion and distrust in the work of the prosecution offices and courts. This is the most common point of misunderstanding between the judiciary and the media. In short, instead of being partners in the quest for truth, they do not understand each other: the media because of the "thirst" for information, and the judiciary because of the fear of the media and possible mistakes. When there is no timely and complete communication between the prosecutors or the courts and the media, the general public begins to speculate and doubt. When the reaction of the judiciary is deferred, the silence of the judiciary becomes the news. At this point, the media embark on a public trial, whose manifest forms are the violation of the presumption of innocence, the anticipation of court decisions, and a parallel quasi-investigation (Simić, *et al*., 2003: 21). The rumors published in the media eradicate the boundary between the truth and lies (Ćirić, *et al.*, 2017: 27).

This and similar treatment by the media has produced some even more drastic effects, leading to judges in charge of criminal proceedings to perceive such media reporting as a form of pressure.[1] In this regard, it is necessary to draw attention to the survey carried out in 2016 by the Judges Association in cooperation with the Center for Free Elections and Democracy (CeSID), within the project "*Strengthening the Independence and Integrity of Judges in Serbia*", supported by the High Judicial Council. The study was conducted on a representative sample of 1,585 judges and the results of the research were rather disturbing. So, only 14% of the examined judges consider media reporting to be mostly objective, while as many as 79% of respondents believe that journalists do not have enough knowledge about the procedures that are being conducted before the courts; moreover, as they do not even try to learn more and understand them, their reporting is often biased, incomplete or insufficiently accurate. In response to the question whether judges consider the way media report about court proceedings as a form of pressure towards the judiciary, only 4% of the examined judges stated that they did not consider media reporting to be a pressure, while as many as 96% of respondents stated that reporting was perceived as a form of pressure. Furthermore, 89% of the judges considered that it is necessary to educate the media in order to comply with European standards and internal regulations in the field of reporting on court proceedings. Only 3% of the examined judges did not agree with this claim. Furthermore, 85% of the examined judges considered that, before the final adjudication of the case at hand, the media should only be allowed to report on the information related to the course of proceedings, and not to comment on any decisions or to report on related commentaries, while only 9% of the examined judges disagreed. The view

[1] *Nin:* Nezavisnost pod pritiskom politike (Independence under political pressure), Nin, 9 Feb. 2017; available at https://www.pressreader.com/serbia/nin/20170209/281565175503523

that it is necessary to change the code of police ethics in the part relating to the responsibility of police officers who communicate with the media without authorization, thus providing information on the course of proceedings, was upheld by 66% of the examined judges. Also, 33% of the examined judges agree with the conclusion that the competent authorities do take measures to effectively prosecute the media that violate the presumption of innocence and jeopardize the independence of the judiciary, while 45% of the respondents think differently (Nin, 2017).

The survey also established that 34% of the examined judges considered that communication between the courts and the public is at a satisfactory level; 39% of them considered that the initial steps had been taken but that communication was still insufficiently developed, while 11% considered that courts do not address the public at all. Furthermore, 49% of the judges believe that the spokespersons, i.e. the persons in charge of communicating with the media and the public are doing their job well; 18% were undecided on this issue, while 12% believed that spokespersons do not perform their duty in a satisfactory manner.

The arising question is how to strike a balance between the need for publicity and the legal standard concerning the right to a fair public trial, recognized both in international documents and in the national legislation. Therefore, we will first consider the content and the importance of the principle of publicity and the freedom of expression, focusing on the freedom of communication and dissemination of information through the media.

THE PRINCIPLE OF PUBLICITY

1. *International and internal sources*

The right to a public trial is guaranteed by international legal instruments and domestic legal sources (the constitution and legislative acts). The UN *Universal Declaration of Human Rights* (1948)[2] proclaims that "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal" (Article 10 UDHR). The UN *International Covenant on Civil and Political Rights* (1966)[3] stipulates that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law", stating that "the press and the public may be excluded from all or part of a trial…" and indicating that "any judgment rendered in a criminal case or in a suit at law shall be made public" except in cases involving the protection of minors, marital disputes and child custody cases (Article 14, par.1 ICCPR). The *European Convention on the Protection of Human Rights and Fundamental Freedoms* (1950)[4] proclaims the right to "a fair and public hearing within a reasonable time by an independent and impartial tribunal", stating that the press and public may be excluded "in the interests of morals, public order or national security in a democratic

[2] In 1968, the UN International Human Rights Conference decided that the Universal Declaration of Human Rights (UDHR) constitutes an obligation for all members of the international community.

[3] International Covenant on Civil and Political Rights (ICCPR), *Official Gazette of the SFRY- International Treaties*, No. 7/1971.

[4] Act on the Ratification of the ECHR with Additional Protocols, *Official Gazette of Serbia and Montenegro - International Treaties*, No. 9/03.5/05 and 7/05–*corr*.,and *Official Gazette of the Republic of Serbia - International Agreements, No.* 12/10.

society", the protection of minors and private life, or it would prejudice the interests of justice (Article 6, par. 1 ECHR).

The Constitution of the Republic of Serbia (2006)[5] guarantees that "a hearing before the court shall be public and may be restricted only in accordance with the Constitution" (Article 142, par. 3 of the Constitution). The principle of publicity is further regulated by special legislative acts on the organization of courts, the judiciary, the High Judicial Council, as well as by the Rules of Court[6]. In court proceedings, this principle may have three forms: general publicity, party-related publicity, and restricted publicity (Đurđić, 2014: 73).

2. *The principle of the publicity in the course of the investigation*

The investigation is the stage of the proceedings where the general public is excluded. The secrecy of the investigation is a necessity because it is more important that the perpetrator be caught, than the public to find out about the details through the media, thus endangering the investigation and possible arrest of the perpetrator. There is only party-related publicity but it is not unrestricted (Grubač, 2014: 35). The public prosecutor is the *dominus littis* of the investigation; thus, it is only the prosecutor or the spokesperson of the Prosecution Office that may inform the public about the course of proceedings, provided that such information does not harm the interests of justice at this stage of the proceedings.

3. *The principle of publicity at the main hearing*

The principle of publicity is most completely exercised at the main hearing (in trial). The Criminal Procedure Code of the Republic of Serbia (hereinafter: the CPC)[7] envisages that every person over the age of 16 may attend trial proceedings (Article 362 CPC). The party-related publicity is unrestricted, without any exceptions. The general public may be excluded in cases prescribed by the law: for the protection of national security, public order and morality; for the protection of interests of minors; for the protection of privacy of participants in the proceedings, and other justifiable interests in the democratic society (Article 363 CPC). The public can be excluded in cases involving a child under the age of 14 as a witness (Art 400 para.3 CPC), a protected witness (Art. 106, para. 3 CPC) or when the defendant or the convicted person is examined as a witness (Art. 366 CPC). The exclusion of the (general) public may be sought throughout the trial proceedings, either upon a motion filed by the parties or *ex officio*, and the general public may be excluded from the entire or a part of the trial proceedings (Art. 363 CPC). The court decision on excluding the general public must be reasoned and made public (Article 365 CPC). In case the judicial panel decides to exclude the general public, the court may permit restricted publicity; thus, apart from the parties, their legal representatives and the court personnel, at the request of the defendant, the court may allow for the attendance of a spouse, close relatives or relevant experts or officials (Article 364 CPC), unless such public has to be excluded for the protection of witnesses (Article 108 CPC). All public is excluded from the process of rendering the court decision (deliberation and voting), but the judgment has to be pronounced and made public (Art. 418 CPC) by reading the

[5] The Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia, No.* 98/2006.
[6] Rules of Court, *Official Gazette of the Republic of Serbia*, No. 110/2009, 70/2011, 19/2012, 89/2013, 96/2015, 104/2015, 113/2015 - corr., 39/2016, 56/2016 and 77/2016.
[7] The Criminal Procedure Code (*Official Gazette, No.* 72/11; 10,172,011.121/ 2012; 32/2013; 45/2013; 55/2014).

holding in a public session, whereas the reasons for the judgment do not have to be made public. Thus, if the general public has been excluded from trial, the judgment shall be delivered in a public session but the court shall decide whether to exclude the general public from the elaboration on the reasoning (Article 425 para.5 CPC). Journalists cannot ask questions during the process of proclaiming the judgment. When reporting on the matter, they also have to take into account the fact that the judgment is still not final.

The principle of publicity is present in the second instance courts as well, and the public may be excluded from these proceedings under the same rules applicable in the first instance courts. In either case, any unlawful exclusion of the public constitutes a substantial violation of the criminal procedure rules (Art. 438 para.1, item 6 CPC).

In civil proceedings, the main hearing is public. The principle of publicity entails general publicity, party-related publicity, and restricted publicity. Judges decide on the exclusion of general public. Publicity is regulated in Articles 321-325 of the Civil Procedure Act (hereinafter: the CPA)[8], while Article 374 par.2, item 11 CPA stipulates that unlawful exclusion of the public constitutes a substantial breach of civil procedure rules.

The exclusion of the public from the main hearing does not discourage the media from reporting on the case. Journalist teams may wait for the attorneys, relatives, witnesses and others outside the court, and try to get a statement of the court`s spokesperson or a promise that such a statement will be issued as soon as possible.[9] They may also try to record the moment when the defendant or convicted offender is taken out of the court, particularly if he/she has been issued a detention order which is still in force.

FREEDOM OF EXPRESSION AND COMMUNICATION OF INFORMATION IN THE MEDIA

In general, freedom of expression is defined as the freedom to express thought, including ideas, knowledge, values, beliefs, either in the form of words, symbols or images, or by using other modern means for the reproduction and diffusion of thoughts and words, including printed material (either books or newspapers) or audio-visual material provided by modern technological devices, which is much more common nowadays (Nikolić, 2005: 18).[10] Freedom of expression makes allowances for individual beliefs and ideas, even when they are rude and shocking (Nikolić, 2005: 23).

Freedom of expression is regulated and guaranteed under Article 10 of the European Convention, and the European Court of Human Rights in Strasbourg has developed a rich and significant case-law on this matter. As stated in Article 4 of the Serbian Public Information and Media Act, public information is free and it shall not be subject to censorship.[11]

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[8] The Civil Procedure Act (*Official Gazette RS, No.* 72/2011, 49/2013-CC decision, 74/2013 – CC decision, and 55/2014)

[9] Press releases can be justified in emergencies. When obtaining a press release, media editors have two options: to publish the release in its integral forml, or to use the release as a background for their story. On the other hand, press conferences (either regular or extraordinary ones) are a better solution for establishing partnerships with the media. They give journalist a chance to ask questions and to clarify dillemas. A press conference is a good opportunity to educate journalists as well as an opportunity for the court to "feel the pulse" of the general public.

[10] Cited after: Remon Polen, *Istine i sloboda: ogled o slobodi izražavanja,* Agora, Beograd, 2001, p. 5-6 (translated from French: Raymond Polin, *Vérités et liberté: essai sur la liberté d' expression*, 1re éd. Imprint, Paris: Presses universitaires de France, 2000)

[11] The Public Information and Media Act (*Official Gazette RS,* No.83/2014, 58/2015 and 12/2016-authentic interpretation).

The Public Information and Media Act regulates the issues of protection of media pluralism and the prohibition of monopolies in the field of public information, the right to inform particularly vulnerable groups, and define the public interest in public information. As stated in Article 15, paragraph 1, point 1 of this Act, the public interest in public information is to obtain true, impartial, timely and complete information to all citizens of the Republic of Serbia. Pursuant to the provisions of the Public Information and Media Act, a journalist has the right to publish statements and opinions and, for doing so, he cannot be punished by a reduction in earnings or termination of employment. However, in practice, there were cases of pressure, threats, physical attacks and liquidation of journalists, which increased the fear of journalists, who resort to self-censorship as a specific way of limiting the freedom of thought and expression. Legal provisions guarantee that a journalist may reject the editor's order if it consitutes a violation of the journalists' professional ethics or the right not to publish the part that has been changed under his name.

The Public Media Services Act[12] defines the basic principles on which the operation of public media services is based: truthful, impartial, complete and up-to-date information; independence of editorial policy; independence from the sources of funding; prohibition of any form of censorship and unlawful influence on the work of the public media service, editorial offices and journalists; the application of internationally recognized norms and principles; and in particular respect for human rights and freedoms and democratic values, and respect for professional standards and codes. The n Electronic Media Act,[13] in Article 51, defines the role of the regulatory body, which is particularly concerned that the media content provider's content does not contain information that encourages, in an open or covert way, discrimination, hatred or violence due to race, color, ancestry, citizenship, nationality, language, religious or political beliefs, gender, gender identity, sexual orientation, wealth, birth, genetic features, health status, disability, marital and family status, convictions, age, appearance, membership in a political organisation, trade union and other organizations, and other real or supposed personal qualities.[14]

But, what are the boundaries of the freedom of expression? Freedom of expression, as well as freedom of information, is the ability to do everything as long as it does not harm others; thus, the freedom of an individual is limited by the freedom of another individual (Nikolić, 2005: 19).

Therefore, there can be no media freedom without responsibility for others. It is a well-know fact that the media are now dependent on the government or media owners; hence, journalists are often burdened with self-censorship. There can be no freedom of the media and freedom of information if there is pressure and violence. The media today are subject to market competition, and their survival depends on circulation or ratings. Many media (the so-called "yellow press") ignore their responsibility and disrespect the code of professional ethics, whereas very few media outlets have special editorial codes of conduct and practices.[15] Serbian journalism is prone to sensationalism, and some media even resort to the fabrication of facts and constructing untrue news in their "editorial workshops". In such circumstances, spokespersons have at their disposal the

[12] The Public Media Services Act (*Official Gazette RS*, No. 83/2014, 103/2015 and 108/2016)
[13] The Electronic Media Act (*Official Gazette RS*, No. 83/2014 and 6/2016).
[14] The Public Information and Media Act, the Public Media Services Act, and the Electronic Media Act are often called "a set of media laws".
[15] The Code of Conduct for the media would help readers or viewers to establish on their own whether the journalists respect the professional code rules and whether they really act as real professionals.

right to reply and the right to correct published information, both of which should be used, without turning a blind eye on the untruths which are detrimental for the judiciary.

In the contemporary reality, we consider that it is always better for the courts to give some information, however limited it may be, rather than remain silent and not give any information at all. If the public is deprived of information, it is not a guarantee that nobody will write or speak about it. Quite the reverse, it will be written and spoken about but the source of information will be "unofficial", often insufficiently verified and/or completely false. Particular attention should be paid to new technologies (media portals, social networks, etc.) which largely contribute to rapid dissemination of such information. It often causes substantial damage to parties in legal disputes. In such cases, the silence of the courts is more detrimental than giving the media the required information (even the restricted one).

On the other hand, the media must understand that they also bear responsibility for creating a public opinion about the judiciary. In that context, journalists have to act professionally and with due diligence, to provide objective and reliable information, to avoid publishing unverified information and to resist different forms of pressure. The Journalists' Code of Ethics[16] should be "the constitution" for journalists and reporters. In the Preamble, this professional code sets ethical standards of professional conduct of journalists. It proclaims the obligation of a journalist to accurately, objectively, fully and timely report about events of public interest, respecting the right of the public to know the truth and adhering to the basic standards of the journalist profession (Part 1, item 1). The Code sets forth the journalists' obligation to respect the presumption of innocence, without declaring anybody guilty before the rendition of the court judgment (Part 4, item 3), and even if the defendant pleads guilty. A journalist should not abuse the ignorance of their interviewees, who may be unaware of the power of media. A journalist is obliged to protect the privacy and identity of the suspect by stating the initials, unless the disclosure of one's name is of interest to the public. In case of the most serious crimes, the right of the public to information prevails over an individual's right to privacy. A journalist must be aware of the possibility of being exposed to abuse and manipulation by the alleged victim of crime. Journalists are accountable to their readers, listeners and viewers, and this responsibility must not be subordinated to the interests of others (Part 4, item 1), even to the judiciary bodies. Judges should not expect a journalist to speak on their behalf or write using their legal jargon.

We have already pointed out that the situation in the media sphere is burdened with many difficulties which are the result of a market competition and a struggle for survival in the market. Most of the media outlets and editorial offices today do not have special court reporters and the journalists who inform the public about cases usually do not have legal education; many of them are young journalist at the beginning of their careers. Therefore, errors are inevitable. The way of reporting on court events is important for strengthening the citizens' confidence in the court and court proceedings. It is also important what kind of impact the court reports will have on the citizens. Reports can be malicious, filled with "anger" and aimed at manipulating the public, for the purpose of increasing the media ratings, circulation and profits. In order to protect ourselves and others from the malicious reporting practices of the media, it is important to differentiate manipulation from socialization.

[16] The Code of Professional Ethics of Serbian Journalists was adopted in 2006 by two journalists' associations ; available at http://www.nuns.rs/sw4i/download/files/article/Kodeks%20novinara%20Srbije%202010.pdf?id=2 ; in English: http://www.savetzastampu.rs/english/serbian-journalists-code-of-ethics

The manipulator or the architect of modern consciousness is inclined to telling others that they should think like him; in an attempt to eliminate alternatives, he advises others not to doubt, abused verified data, easily passes personal judgment and condemns others, misleads others into believing what he wants them to believe, imposes ideology, consciously spreads half-truths or lies, creates power relations, offers his message as truth, uses and abuses the needs and tastes of the audience. On the other hand, the one who wishes to socialize and educate other provides opportunity for individual thought, offers different standpoints based on general consent, indicates alternatives, encourages doubt, uses verified data, passes reasonable judgment and builds rational authority, refrains from imposing his beliefs on others, does not spread misleading information, transfers knowledge to others, creates a relationship of mutual trust and learning, offers the truth as a message, and gradually develops the needs and the tastes of the audience (Šušnjić, 1984: 18-20).

Yet, these negative practices should not be the reason for judges and prosecutors to refuse to cooperate with journalists. Communication must be permanent, and the education of journalists is highly desirable. One solution may be the establishment of information services in courts and prosecution offices, which would monitor the journalists' reports on the work of judicial authorities and periodically analyze them; the results could be further used as the subject matter for joint discussions with the media.

COURTS` OPENNESS AND COMMUNICATION STRATEGY

In the last few years, the courts and prosecutors have made significant progress in cooperation with the media, which indicates that they have the awareness that this is the best way to build on their image and to restore the citizens' lost confidence in the judiciary.[17] We can say that these institutions are no longer completely closed to the media.

The persons in charge of public relations or spokespersons of courts and prosecution offices should have a special role in improving the image of the courts in the public eye. In addition, each court should develop a communication strategy, where it would define its goals and activities for improving communication with the media and the general public.

According to the Guide for Effective and Professional Communication between the Courts and the Public (2017),[18] a communication and PR strategy is a document that contains a detailed plan of all communication goals, means and activities aimed at providing the best possible information to the general public about the operation of courts and promoting their work. All activities are divided into three large groups: information activities, consultation activities, and promotional activities. The scope of activities should be determined by each court, in line with the institutional capacities and circumstances in the local community. For example, in 2016, the High Court in Nis made the Plan for increasing the general public confidence in the court activities, which

[17] In a survey conducted within the DFID project titled "*Justice with a focus on citizens' trust*", when asked how much confidence they have in the judiciary, 31% of respondents answered that there is none, 30% responded that they mostly do not have, 28% mostly have, and only 5% of the respondents have trust in the judiciary.

[18] See: Vodič za profesionalnu i uspešnu komunikaciju sudova sa javnošću, projekat; unapređenje efikasnosti pravosuđa, Pravosudna Akademija i British Council, Beograd, 2017, available at https://www.pars.rs/images/biblioteka/PR%20guide%20for%20courts.pdf (p.8-9). Guide was made as part of the project "*Enhancing the Efficiency of the Judiciary in the Republic of Serbia"*, financed by the European Union.

specifies the information, consultation and promotional activities, their goals and due dates for their implementation.[19]

Information activities aim to provide information to citizens about the court activities, procedures, required documents needed to initiate a court proceeding, court fees to be paid, etc. For example, the website of the High Court of Niš[20] includes information on access to information of public interest, guidelines for journalists, information on filing an objection or motion on the initiated proceeding, information on legal assistance and mediation process; the website of the High Court of Novi Sad[21] enables citizens to download the legal forms they need to submit in order to gain access to case files, to file an objection or motion on the initiated complaint, to have a file issued from the court archives, etc.

Consultation activities serve to gather feedback from relevant target groups, in order to obtain information about the issues citizens are dissatisfied with and their feedback on what needs to be improved in the future. Accordingly, it would be useful to conduct an annual survey on the parties and citizens satisfaction with the court services, including suggestions on what needs to be improved in the work of the court personnel as well as feedback on the court services in view of general access to information of public importance and providing case-specific information, etc. In addition, suggestion and complaint boxes may be placed in courthouse, which would enable citizens to submit complaints about the court services and suggestions on improving the operation of the court.

Promotional activities should contribute to a better image of the court. In our view, they can contribute most to improving the current public opinion about the judiciary. These activities include organizing the Open Court Day, press conferences to present the results of the court activities, the promotion of new or current laws, etc. As an example of good practice, we have to mention the Open Door Day which has been organized at the High Court of Nis for several years. The events include a mock trial conducted by the court trainees and students of the Law Faculty in Niš, as well as thematic presentations given by eminent experts in specific areas of law. Thus, in 2017, the topic of the Open Door Day was alternative sanctions. In 2018, the topic was the publicity of court work as a condition for building citizens' confidence in the judiciary. The guests of the Open Door Day 2018 were a judge from Spain and a public prosecutor from the United States who spoke about the relationship between the judiciary and the general public in their respective states.

The aforementioned Guide for Effective and Professional Communication between the Courts and the Public (2017) contains recommendations on all the elements that should be considered in developing a well-designed communication strategy. Here, we list the suggested elements, with specific comments.

- ***The target group****:* it is necessary to define who the promotional or other activities of the court are aimed at: the general public (citizens), parties in court proceedings, and others; for example, if a press conference is organized on a specific topic, it is necessary to determine whether it is intended only for the media or whether it should also include the general public in order to get the citizens acquainted with the results of court activities, the application of a new regulation, etc.;
- ***Defining communication strategies****:* it implies defining the planned activities for the purpose of promoting the court activities; the examples of good practice

[19] See: High Court in Niš, Plan for informative, consultative and promotional activities prepared by the High Court Spokesperson, available in Serbian at: www.ni.vi.sud.rs/images/poverenje-javnosti.pdf
[20] High Court of Niš, www.ni.vi.sud.rs
[21] High Court of Novi Sad, www.ns.vi.sud.rs

include organizing the Open Door Day, updating the court website regularly, holding regular press conferences, etc.;

- ***Defining the purpose of each planned activity:*** the goals of the planned activities must be clearly defined and the expected benefits thereof should be anticipated in advance;
- ***Designating the person in charge***: it is necessary to determine who will be entrusted to handle the activity, irrespective of whether it is an individual or an entire team; for example, the persons in charge of creating the court website and its regular updating are the court spokesperson, the president of the court and the court's IT department;
- ***Determining the time frame or frequency of each activity****:* it is necessary to define in advance the application/implementation period for each activity, as well as how many times a year or a month it will be undertaken; for example, it should be specified that the Open Door Day shall be organized once a year during the celebration of the European Civil Justice Day;
- ***Defining Costs*****:** for example, in view of conducting a survey on court services, it is necessary to specify the printing costs for the questionnaires. Notably, many activities do not incur any costs whatsoever but are only a matter of good organization and good will.

A well-designed communication strategy is the basic tool of the court to make its work transparent, to be proactive, to obtain feedback from the public and thus gain the necessary confidence of citizens. A good example is the communication strategy of the High Judicial Council, which is available at its website.[22]

In addition to a well-designed communication strategy, courts should designate a PR agent or a spokesperson who will be in charge of public relations and provide information about court activities. Apart from being useful, this is also prescribed in legal provisions as a duty of the courts. Namely, the Free Access to Information of Public Importance Act[23] prescribes that the state bodies, and therefore courts, are obliged to provide information to the public about their work. Furthermore, the same Act stipulates that the person in charge of a state body (in courts, it would be the president of the court) shall appoint one or more persons to act upon requests for free access to information of public importance. In courts, this person is the spokesperson of the court, who receives these requests, informs the petitioner about the possession of information requested, and provides access to the document containing the requested information, or provides such information in an appropriate manner, rejects the stated request, provides the necessary assistance to the petitioners for exercising their rights prescribed by the Act, takes measures to improve the practice of dealing with information databases, practices for maintaining information databases, as well as practices of storing and securing information (Art.38).

In addition, the Rules of Court[24] strictly prescribe that media reports on the work of the court and on individual cases are provided by the president of the court or the person in charge of informing the public (spokesperson) or a special information service (Art. 58).

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[22] The High Judicial Council, www.vss.sud.rs

[23] Free Access to Information of Public Importance Act, *Official Gazette RS* no. 120/2004, 54/2007, 104/2009 and 36/2010

[24] Rules of Court, *Official Gazette RS* no.110/2009, 70/2011, 19/2012, 89/2013, 96/2015, 104/2015, 113/2015–corr., 39/2016, 56/2016 and 77/2016.

The aforementioned provisions actually oblige the courts to appoint a person to deal with public relations. However, the problem that arises in practice is that this duty is entrusted to the spokesperson as a secondary duty. A common practice in most courts is to appoint one of the judges or judicial assistants to act as a spokesperson, but such person is concurrently responsible for handling the assigned caseload and performing other duties on a daily basis. Thus, the duty of the spokesperson is not such person's primary duty, and the appointed individual cannot exclusively and fully commit to performing the requisite tasks. Regardless of this disadvantage, the courts should make maximum use of their spokespersons to ensure a permanent relationship with the media, which have the power to improve the courts' image and general public opinion about the judiciary.

However, in order to perform this duty in a professional manner, a spokesperson has to be well-trained and to learn the rules of cooperation with the media. For that purpose, within the framework of the European Union-funded project "Improving the Efficiency of the Judiciary", the Judicial Academy held a training for court spokespersons in 2017[25], consisting of four modules, including both theoretical background (on spokespersons' duties and communication skills) and practical training (writing press releases, presenting media briefs in press conference, providing general public information, etc.).

In addition to promoting their own knowledge and skills, spokespersons should also work on media education, which would be highly useful considering the complexity of the subject matter handled by the courts, the complicated legal jargon, and frequent changes in regulations. As there are very few journalists who report exclusively on court case and the judiciary, it cannot be expected from journalists (who have not graduated from the Faculty of Law and do not primarily specialize in legal matters) to have sufficient knowledge of the legal subject matter, to fully understand legal concepts and procedures, and distinguish among subject-specific legal terms. In order to promote their education, it would be useful to issue media-friendly publications which would clarify the complex court procedures, the basic legal concepts and proceedings, the meaning of complicated legal terminology (e.g., the difference between the concepts of filing an indictment to raise criminal charges and the indictment becoming final and entering into legal force; the difference between holding the suspect in temporary police custody and ordering detention), etc. For example, in the United States, there is "*A Journalist's Guide to the Federal Courts*"[26], which explains the court procedures, the role of the judiciary and legal professionals, the legal terms used in proceedings, as well as the common practices that facilitate reporting on court proceedings.

We believe that a good spokesperson must be both reactive and proactive. Reactive action means that it is necessary to respond to the media in a timely manner. Another issue is whether spokespersons should be available to the media 24 hours a day. We believe that they are not obliged to give the requested information at all times, after their working hours or at night, especially if it involves information that was previously made available to the media but the journalists failed to obtain it due to their inactivity. However, in the event of an incident that occurred outside the working hours (for example, in case a detention order was issued to a person after the working hours), when the media could not seek and obtain the requested information of general public interest, we believe that court spokespersons are obliged to be available to the media even beyond their working hours.

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[25] Judical Academy Report on activities completed in 2017, Judicial Academy, published 19.4. 2018, available in Serbian at: https://www.pars.rs/images/dokumenta/godisnji-izvestaj-pa-2017-19-04-18-3.pdf

[26] A Journalist's Guide to the Federal Courts, Administrative Office of the United States Courts, Washington D.C. (undated); https://www.uscourts.gov/sites/default/files/journalists_guide_to_the_federal_courts.pdf

In addition to their reactive action, we consider that it is even more important for court spokespersons to be proactive. The proactive action implies that they should sometimes impart information on an event of general public interest even before the media address the issue. This means that they are obliged to keep an eye on events in court and have relevant information at all times, so that they could respond timely. This proactive approach implies, for example, regular publication of official statements on the court website about ongoing events. In that context, we point to the good practice of the Belgrade High Court, which regularly publishes information on its website information about the dates of issuing and publishing the court judgments, the time schedule of pending trials, the dates of confirming the current indictments, etc. In this respect, the Niš High Court is equally proactive as it regularly updates the announcements on trials of general public interest on a monthly basis.

There are rules that spokespersons should comply with in cooperation with the media:

- Spokespersons should provide short and concise information, which is not burdened by quoting legal provisions and without the complicated legal terminology; if it is absolutely necessary to use a complicated legal term for the purpose of precision and accuracy, it should be briefly explained in plain language;
- Spokespersons or PR agents should not favor a particular media; they should treat all media equally and provide information in the order in which they are requested;
- If a spokesperson currently does not have the requested information, he/she should be honest about it, and inform the media that the requested information will be obtained from the trial judge and that further information will be provided to the media within a reasonable time; quite reasonably, journalists do not expect from spokespersons to have all the information about a case and know what is happening in a courthouse at all times;
- If a spokesperson is barred by the law from imparting some information (e.g. for reasons of excluded publicity in proceedings against the minors), it is essential to explain to the media the legal limitation(s) and the reasons for being unable to impart the information;
- Facilitating access to information in advance: for example, if journalists are aware that trial announcements are regularly updated on court website, they will not be calling to inquire when the next trial is scheduled in the proceedings, but will only enter the court website to check the posted information; this makes the professional work easier for spokespersons and journalists alike;
- In responding to media questions, the phrase "no comment" should be avoided whenever possible because it leaves plenty of room for assumptions and speculation;
- Journalists should be addressed with due respect, without intemperance and frustration, and without entering into any discussion with the media representatives.

MEANS OF IMPARTING INFORMATION AND EXAMPLES OF GOOD PRACTICE

There are ample ways of making information available to the public. In this paper, we will present the most important and effective ones and review some examples of good practice. In order to impart any kind of information (in any form) to the media, we underscore that a good spokesperson needs specific knowledge and skills, as well as adequate training.

Press releases: This is the most common, the fastest and the most effective way of communicating with the media. A press release should not exceed one A4 page, and it should include three sections: the *lead*, the *background*, and the *conclusion*. ***The lead*** is the initial and most important part of the announcement which should grab and keep the reader's attention. It should answer five key questions: *who, what, where, when and why*, and it often gives an answer to the question *how*. It should be written in one to two sentences. The body of a press release is ***the background,*** which provides more information (in one or more paragraphs). It includes reference to relevant persons and their statements, and the spokesperson's explanation why the news is important to the public. Spokesperson are advised not to include all the details in the press release, in order to trigger the journalists' interest and prompt them to contact the court for more information. *The* ***conclusion*** includes closing remarks, information on upcoming events or prospective action, and availability for any additional information. The final part of the press release contains data on the spokesperson or PR agent available for further contact (Golubović, Trifunović, Jakšić, 2007: 54-55). In press releases, professional jargon and complex legal terminology should be avoided, as well as quoting legal provisions. The announcement should not be too long and the sentences should be clear and concise, not exceeding 20 words. In order to grab the journalist's attention, the *headline* should be interesting and catchy, including key words targeted in the press release. The announcement should be released in a timely manner, allowing enough time for journalists to publish the provided information. If the news is to be published on the same day, the announcement should be released as soon as possible, before the editorial staff complete the issue. It certainly does not apply to electronic media, where the news can be published at any time. As a follow-up activity, we think that spokespersons should check on how the news is presented in the media. Journalists often make unintentional mistakes, either by using inadequate legal terms or due to misunderstanding the essence of legal concepts and/or proceedings. Therefore, a spokesperson or a PR agent has to react in a timely manner, call the journalist and ask him/her to correct the error. As an example of a good press release, we enclose a press release of the Belgrade High Court, published on its website.

Sample 1*:* A Press Release published by the Belgrade High Court (2017)

The High Court in Belgrade overturned the judgment of the First Basic Court in the criminal proceedings against the defendant Љ.В.

Following the session held on 23 August 2017, the High Court in Belgrade issued a decision upholding the appeals of the defense counsel of the defendant Љ В., reversed the decision of the First Basic Court in Belgrade, and returned the case to the first instance court for a retrial.

In the reasoning of the ruling, the Court stated that the first instance judgment was rendered in substantial violation of the criminal procedure provisions because the reasoning contains insufficient reference to decisive facts, whereas the enclosed factual grounds are vague, ambiguous and mutually contradictory, for which reason the judgment had to be overturned.

In the retrial, the first-instance court will remedy the indicated omissions in accordance with the remarks from the decision of this Court and, if necessary, present other evidence. After a conscientious and careful assessment of evidence, both individually and jointly, the first-instance court will render a lawful and correct decision, by providing clear, non-contradictory and well-argued reasoning on all decisive facts.

Source: the Belgrade High Court website (2017)

Press conferences: They enable the transfer of information through various media: newspapers, TV, radio channels, the Internet, etc. A press conference should be convened only when there is some important news, when it is certain that most media will be interested and when all the questions cannot be answered through a press release. If the court does not have such news, it should not convene a press conference. Apart from the fact that a press conference has to be well prepared, a lot of time is invested in its organization. First of all, it is necessary to provide a location (preferably in the conference room or a courtroom at the courthouse), to determine the exact date and time, taking into account the journalists' *modus operandi.* Thus, it is best to avoid holding conferences on Mondays or Fridays, and they should not be held early in the morning or at the end of working hours; the ideal time is from 11 am to 1 pm. Second, it is necessary to prepare a good letter of invitation, which should be brief and concise, indicating the reason for convening the conference so that the editor knows which journalists to dispatch, as well as the exact date and time of the conference. The invitation should be sent 3 to 4 days prior the beginning of the conference by e-mail, but it is also useful to call the invited media representatives by phone later in order to check if they have received the invitation, confirm their participation and determine the total number of journalist who will attend the conference. The conference should be managed and hosted by a person in charge of public relations. This person opens a conference, states the topic of the conference, introduces the conference speakers, and states how long it is planned to take. After the speakers (president of the court, judges, etc.) give their statements, the media representatives may ask questions. However, it should be borne in mind that journalists often take this opportunity to ask questions which are unrelated to the press conference topic, focusing on questions they are interested in. In such a case, we consider it useful to respond to such questions, but with extra caution, so as not to deviate entirely from the press conference topic. At the end of the conference, the host should thank the media for their attendance and leave some time for an informal conversation, which is highly appreciated by journalists. After the conference, it is useful to prepare a short conference summary and post it on the court website after the conference has been held. Here is an example of a press conference summary published on the website of the Serbian Supreme Court of Cassation.

Sample 2: A press conference summary published by the Supreme Court of Cassation (2014)

BRIEF INFORMATION - Notice on the press conference

On April 4, 2014, a press conference was held at the Supreme Court of Cassation.

The topic was a summary analysis of the work of the courts of general and special jurisdiction in the year 2013, based on the statistical and analytical data contained in the Annual Report on the work of the Supreme Court of Cassation and all other courts of general and special jurisdiction in the Republic of Serbia.

Source: The Supreme Court of Cassation website (published 4.4. 2014), https://www.vk.sud.rs/sr/конференција-за-медије

There are different types of conferences: regular conferences (held on a regular basis, for example, once a month on a specific day and at the specific time, so that journalists know about it in advance); subject-specific conferences (scheduled for a specific event or an extraordinary occasion); improvised conferences (held spontaneously, after some event, but they require extra caution and diligence as there is little time for the necessary

preparation), and video conferences (enabled by means of high-quality electronic video/ audio technology).

Media statements: A statement is usually given by the court spokesperson when journalists urgently need some information, for example, when a judgment was published on the same day. Typically, spokespersons have little time to prepare their statements. For these reasons, it is important for the spokespersons to be well informed about all court events and important pending cases, when a certain trial is over and when the judgment will be proclaimed, because it gives them some time to prepare their statements. Such statements are commonly given at the request of journalists, and seldom are they issued on the spokespersons' own initiative. Oral statements are subject to the same rules that apply to press releases. An oral statement would be short and succinct, including clear and concise sentences; complicated legal terms and citation of legal provisions should be avoided. In practice, no matter how short the statement is, journalists typically quote only a part of the original statement, while the rest is rephrased and reported in their own words. Regardless of whether or not the decision corresponds to the public expectations (e.g. the defendant has been acquitted), a spokesperson must be prepared to issue a statement and explain the court reasoning. This practice helps reduce negative comments in public.

Interview: An interview is one-on-one communication with a journalist, which requires the best possible preparation by the spokesperson, who has to be well-prepared for the topic at hand, to anticipate questions that may be asked and prepare possible answers, to find out how long the interview will take, who will be conducting the interview and how much he/she knows about the subject, to learn more about the journalist's attitude towards the court, and to find out where the interview will be published. If the person giving an interview does not know the answer to a particular question, he/she should say so and to explain why he/she cannot provide an answer to the question; most importantly, he/she should be honest and truthful (for example, if the journalist's question regards the ongoing investigation, it is essential to explain that it is not possible to provide answers on this matter because, under the applicable Criminal Procedure Code, the investigation procedure is conducted by the Public Prosecution Service, and not by the court. The interviewee (court representative) should remain calm and composed during the interview, and avoid feeling frustrated or being provoked by the journalist's questions If the interviewee is well prepared for the interview, he/she is highly unlikely to get provoked in the first place. At the end, it is highly useful to wrap up the interview by making a conclusion. Bearing in mind that the audience mainly includes ordinary citizens, the interviewee should also avoid citing legal provisions and using the legal jargon, which is complex and largely unclear to most ordinary citizens. It is also necessary to pay attention to non-verbal communication and body language which, if inadequate, may make the audience draw unwanted conclusions. If a journalist makes a false or inaccurate statement, the interviewee should not hesitate to correct it (for example, by saying: "On the contrary, the suspect has only been kept in police custody and the court has not issued a detention order yet. The suspect will be taken to court for an pre-trial hearing only after being investigated by the prosecution; only then will the pre-trial judge decide whether to issue a detention order or not"). There are different kinds of interviews: a television interview, a radio interview, and a newspapers interview. Each of them requires a different kind of preparation. In case of a television interview, the interviewee should pay attention to physical appearance and professional dress code, and avoid sparkling colors, tacky jewelry and strong make-up. A good rule of thumb is moderation in everything.

CONCLUSION

Considering all the developments in the last fifteen years, we consider that the courts are still insufficiently open to the general public and the media. Strengthening the integrity of courts is conditioned by their greater transparency and openness, which leads to increasing public confidence in the judiciary and its decisions, and improving its image in general.

In court proceedings, judgments are made "On behalf of the People", and "the people" are interested in the outcome of the proceedings. Therefore, both the courts and the media should invest in their mutual cooperation, in order to provide reliable, precise, accurate and timely information to "the people". However, just as courts are obliged by the principle of publicity to open their doors to the media, the media are equally obliged to take their part of responsibility and to fight for the truth rather than pursue sensationalism. This desire for sensational news leads to spreading fake news and creating a distorted picture of a certain event. As a result, the public exerts pressure on the court, which may lead to improper adjudication. Despite the undue influences, only an impartial and independent judge can make a proper and legally-grounded judicial decision, and the courts are the ones that must take advantage of the available resources to promote such judgments. It is the only right way to improve the court's image and gain citizens' trust.

An old journalistic rule says that facts are inviolable while comment is free. It means that the judiciary is subject to a reasoned critique and that final judgments may be commented on. The judicial power belongs to courts and judges, who are bound to adhere to the principles of independence and impartiality. Journalists cannot be judges. The media should report on judicial proceedings, but should not exert pressure on the judiciary by discussing the matters of law. When a judgment becomes final, it can be criticized and commented on, in which case it is not perceived as pressure. The judge is not and cannot be a journalist or an editor. Each shall act professionally within the "sovereign domain" of the respective profession.

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ODNOS SUDOVA I MEDIJA

Pravosudna vlast ima težak zadatak da poljuljano poverenje javnosti u rad pravosuđa zaustavi i da takav trend preokrene u korist opšteg uvažavanja svog rada od strane građana. Najavljivane i neuspele reforme pravosuđa, unutrašnji problemi pravosuđa, kao i tabloidizacija medija koji kreiraju nepovoljno okruženje su uzroci koji su doveli da građani sa sumnjom gledaju na ostvarivanje pravde i pravičnosti koje sprovode pravosudni organi. Predstavnici pravosudne vlasti takvu sliku mogu da menjaju samo aktivnim, a ne pasivnim odnosom prema ovom problemu.Zatvorenost pravosuđa nije dobar način da se nepovoljna slika o njihovom radu menja do poželjnog nivoa. Doslednim sprovođenjem načela javnosti, demistifikacijom rada pravosuđa, otvorenošću prema medijima, put je ka uspostavljanju poverenja u rad pravosudnih organa. Stalna komunikacija predstavnika pravosuđa i novinara, u kojoj se otklanja svaka dilema da tužilaštva i sudovi „nešto kriju“ je nužnost, a ne samo potreba. Autori posebno ukazuju na osetljivu granicu između opravdanog interesa javnosti da zna i zloupotrebe slobode izražavanja „do linije“ preko koje bi bilo ugrženo pravo drugog. U radu ukazujemo na uzroke nepovoljnog okruženja o kome je reč, kao i o preprekama u komunikaciji sudova i medija koje se javljaju u svakodnevnom radu jednih i drugih.

Ključne reči: *sudovi, mediji, portparol, poverenje javnosti*