**JUDICIAL MEDIA COUNCIL OF THE
ASSOCIATION OF JUDGES OF THE REPUBLIC OF NORTH MACEDONIA**

TRANSPARENT JUDICIARY:

GUIDEBOOK
FOR JUDGES AND JOURNALISTS

Skopje, 2020

Authors:

Doc. Dr. Djemali Saiti, *Justice at the Supreme Court, President of the Association of Judges of the Republic of North Macedonia.*

Rachelle Cohen, *Assistant editor – Boston Globe.*

Andrej Bozhinovski M.A. *Legal advisor, Association of Judges of the Republic of North Macedonia*

Vasko Magleshov M.A. *Journalist at Prizma, publication of the Balkan Investigative Reporting Network*

Judge Gjorgji Andonov *President of the Basic Court in Shtip*

Gordana Duvnjak, *President of the Judicial Media Council*

Editor:

Andrej Bozhinovski M.A. *Legal advisor, Association of Judges of the Republic of North Macedonia*

Project: *Strengthening the Role and Functionality of the Judicial Media Council*

ЗДРУЖЕНИЕ НА СУДИИ НА
РЕПУБЛИКА СЕВЕРНА МАКЕДОНИЈА

ENG

Publication of this book was funded by the U.S. Embassy Skopje. The opinions, finding and conclusions or recommendations expressed herein are those of the author(s) and do not necessarily reflect those of the U.S. Department of State or the United States Government.

MK

Овој проект е поддржан од страна на Амбасадата на САД во Скопје. Мислењата, откритијата и заклучоците или препораките изнесени овде се на авторот(ите) и не мора да значи дека тие се одраз на ставовите на Стејт Департментот на САД или Владата на САД.

INTRODUCTION

Freedom of expression and free and plural media are the unassailable postulates of democracy. The media are the most important tool of freedom of expression in the public sphere, enabling the people to be informed, which is a constitutionally safeguarded right.

In a democratic society, the citizens have to be able to understand, contribute to and participate in the decision making process which concerns personal and collective interests. In this context, the media have a main role in maintaining this right by virtue of their work on ensuring universal access to information of diverse nature and relating to public interest, and have the role of a watchdog in the processes taking place in the country, as an informal fourth estate.

The primary mission of the media is to support the social progress, judiciary, public awareness of the democratic processes, economy, health, intercultural understanding and social integration, but also to provide for critical review thereof. As an important public source of unbiased reporting and diverse political opinions, the media have to keep away from political interference so as to reach and maintain the high editorial standards on impartiality, objectivity and fairness in reporting. On the other hand, the courts should be subjected to continued public scrutiny and they should be accountable and transparent in the performance of their functions since they have an obligation to serve the public on whose behalf they are adjudicating.

Judiciary is one of the three branches of power, the function of which extends beyond the traditional role of an "impartial third party" in resolving the societal issues. Judicial intervention in the political system could be deep, influential and sophisticated, which further represents an inseverable link between the state and the citizens, as well as the relations among the various societal actors. The transparency of the judiciary has a major significance and impact on the development of the public policy, as well as on the recognition and protection of the rights and the control over other branches of power. Within this context, in the light of the importance of the reforms of the Macedonian judiciary in the institutional framework, transparency and reforms of the access to justice and information are relevant due to their potential impact on the functioning and performance of the judicial bodies themselves. In other words, the adoption of the reforms on the transparency of judges and other legal practitioners

could have a positive effect on their institutional capacity, as well as improve their legitimacy and authority vis-à-vis other branches of power and their relations with the citizens.

The Association of Judges of the Republic of North Macedonia and the U.S. Embassy to the Republic of North Macedonia, within the framework of the project *"Strengthening the Role and Functionality of the Judicial Media Council",* have organized workshops for judges, journalists and transparency policy makers, where they have discussed topics such as the access to justice and transparency of the judiciary as a prerequisite to strengthen judicial independence.

The aim of these educational workshops was to facilitate a discussion among the judges, legal practitioners, experts and the media in view of coming up with commonly acceptable conclusions and recommendations on reforms of the transparency mechanisms of the courts, strengthening the cooperation between the media and the courts, as well as drafting a special Guidebook for judges and journalists. In accordance with the Project's plan, upon the completion of the educational workshop, the team of authors has drafted a specific and comprehensive Guidebook on judicial transparency for judges and journalists. It provides a comparative overview of the applicable legislations in the U.S., EU and the region and the national legislation, so as enable us define what is public, what is not, and why. The second part of the Guidebook describes the rules and criteria on the access and presence of judges on social media, as well as the applicable policies on the communications of the courts with the general public via the social networks. The results of the present publication should serve as guidelines for further reforms of the relevant legal solutions.

Based on such solutions, and by virtue of the present publication, the Judicial Media Council offers a set of basic practical guidelines for judges and journalists, which may be followed when using the mechanisms on judicial transparency and access to cases. The Guidebook reviews the American and European practices, the jurisprudence of the European Court of Human Rights and the applicable solutions from the region, and ultimately it contributes to the proper use of the social media by the judges and instructs how we can recognize misinformation. The publication relates mostly to the policies on transparency and use of social media by the judges and judicial institutions via their public relations departments, in view of an easier and more understandable communications with the public and the media. The publication is relevant both for individual judges and journalists, in their day-to-day work, and for persons tasked with the development of national standards on judicial transparency -

the Judicial Council, Supreme Court of the Republic of North Macedonia, court presidents and the Ministry of Justice, in terms of the adoption of the Judicial Rules of Procedure, as well as other stakeholders.

Nevertheless, our aim is, by virtue of the present Guidebook, so satisfy the educational needs of the expert and general public, as well as to raise the public awareness on the use of the tools for access to information and case files, access to public information and general information under the competence of the court, thus providing for improved public trust and perception about the judiciary.

By the authors

Objectives of the Guidebook

This Guidebook is an essential tool for easy navigation through the complex procedures of judicial transparency and it is a product of the joint efforts of U.S. and national experts. The terms, findings and conclusions therein paint a picture about the current state of play relating to the transparency of the courts in the Republic of North Macedonia, the federal and state courts in the U.S.A., European and regional positive normative practices, complemented by the jurisprudence of the ECtHR. Taking into account the conclusions and recommendations arising from the two workshops for judges and journalists, *"Law School for Journalists"* and *"Journalism School for Judges"*, which were organized within the frames of the project, the team of authors had an opportunity to map and explain the day-to-day problems that judges and journalists are encountering in informing the public, the availability of data, legal solutions that need to be amended, as well as the importance on the Judicial Media Council in addressing such issues. In this sense, the publication is a baseline that could serve both judges and journalists in all aspects of the judicial transparency policy.

During the development of the present document, the team of authors, through the network of partners of the Association of Judges of the Republic of North Macedonia and the U.S. Embassy to the Republic of North Macedonia, has carried out a detailed selection of U.S., European, regional and domestic documents on the transparency of the judiciary and its relations with the media, including policies on the use of social media by judges and journalists, which may be found at the end of the document. However, the recommendations issued in the present analysis cannot be deemed final. Taking into account the fact that judicial transparency and the use of social networks are constantly changing and developing, the findings in the present publication can be seen more as basic principles and guidelines for developing transparency by building partner relations between judges and journalists, rather than as absolutes.

Judicial Media Council

The recent years have seen a trend of negative perception about the work and openness of the judiciary in North Macedonia among the general public. Such situation is a result of a number of factors, such as the insufficient openness of the courts, lack of briefings for the press, lack of appropriate training on public relations for the court staff or "public relations judges", and lack of uniform judicial reporting standards, with the intent to avoid sensationalism and misinformation, as well as other identified problems. On September 21st, 2018, in Skopje, the Association of Judges promoted the Judicial Media Council, as a sustainable measure to promote and strengthen the judicial transparency and a final objective of the project *"Strengthening the Independence and Transparency of the Judiciary - Enhancing the Capacity of the Judiciary"*, implemented in cooperation with the U.S. Embassy to the Republic of North Macedonia. The level of perception of the transparency in the judiciary has been improved following the establishment of the Judicial Media Council[1], composed of 10 judges and 11 journalists, whose primary objective is to tackle negative external influence and the phenomenon of misinformation in the reporting on court cases and to establish, through its decisions, a sort of a "soft law" of unified standards on reporting on court cases of major public interest. The work of the Council was noted as a positive step forward for judicial transparency in North Macedonia in the Report of the European Commission on the progress made by the country[2] and the State Department's report[3], as a positive example for promotion of transparency of the courts and, hence, the rule of law.[4] The Council initially drafted and proposed amendments to the provisions on transparency in the Criminal Procedure Code and the Rules of Procedure of the courts, allowing the journalists to attend and report from the main hearing in specific criminal cases.

In the Council's reports, the participants, inter alia, have found that there is a need to strengthen judicial transparency in accordance with Chapter 23 on the independence of the

[1] Hereinafter "the Council"
[2] 2019 Country Progress Report, *European Commission,* available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-north-macedonia-report.pdf
[3] 2018 State Department Human Rights Report, available at https://mk.usembassy.gov/wp-content/uploads/sites/249/NORTH-MACEDONIA-2018-HUMAN-RIGHTS-REPORT.pdf. For further details see https://www.state.gov/bureau-of-international-narcotics-and-law-enforcement-affairs-work-by-country/north-macedonia-summary/
[4] Report of the Sector for European Affairs of the Republic of North Macedonia, http://www.sep.gov.mk/data/file/Dokumenti/Izveshtaj%202019-F.pdf

judiciary and to enhance its role in the access to justice and delivery of educational activities for judges and journalists. The decisions of the Council follow the principles and standards contained in the advisory opinions of the Consultative Council of European Judges, as well as the European Network of Councils for the Judiciary, under which it elaborates in detail the issues of transparency and access to justice[5], and defines the role of the court in the public information. In particular, the Council is acting in accordance with the Strategy of the Judicial Media Council in terms of the performance of its functions and public information. The Council has taken several steps in a number of areas within its scope of operation and in accordance with the Strategy. In particular, after identifying the deficiencies in the criminal procedure core and the rules of procedure of the courts, the Council has submitted to the working group amending the criminal procedure code amendments concerning article 360 and article 374 of the CPC, so as to allow media recording in the courtroom under authorization by the court president, as well as proposals to the Ministry of Justice of the Republic of North Macedonia to amend Chapter 5 of the Rules of Procedure of the courts. In 2019 the Council had reactions about two events in view of proactive review of all issues concerning the relations between the judges and the press. The first reaction concerned the Supreme Court's treatment of the media and the deterioration of the policy for adoption of decisions on the presence of media in the courtrooms, where, in addition to a public condemnation, the Council established a working group to meet the acting President of the Supreme Court of the Republic of North Macedonia.[6] The second reaction of the Council concerned the forced deletion of the recordings by the judicial police, by order of the public prosecutor, despite the permits of the media duly issued by the Supreme Court.[7]

In terms of providing trainings for judges and journalists, the Council has not failed to bridge the gap between the two professions. In particular, under the project it organized a total of 4 (four) workshops for judges, journalists, public prosecutors and other legal practitioners

[5] European Network of Council of the Judiciary (ENJC), *Resolution on Transparency and Access to Justice* (2009), https://encj.eu/images/stories/pdf/opinions/resolutionbucharest29may_final.pdf (Last accessed on 01/05.2020)

[6] Reaction of the Judicial Media Council to the Supreme Court of RNM on the policy for decision making on the presence of journalists in the courtrooms, http://www.mja.org.mk/Default.aspx?news=429aefaf-b519-438f-994e-f2c2ae5b930d&ln=3&type=17ad81e0-4f67-4746-8b0a-575d73e699b6

[7] Reaction of the Judicial Media Council on the forced deletion of recordings, https://telma.com.mk/sudsko-mediumski-sovet-da-ne-se-povtori-brishene-na-snimki-od-mediumi/

on the topic of *"Law School for Journalists"* and *"Journalism School for Judges"*[8], which addressed the neuralgic points of the applicable legislation in terms of judicial transparency in the country; provided for exchange of the best practices and positive experiences of the federal and state practice in the United States; as well as practical exercises.

Soon after the completion of the trainings the Council adopted its first opinion on the initiative to examine the possibility for exclusion of the public from the main hearing during the examination of witnesses. The Council has adopted its first decision indicating that the public can be excluded from the main hearing only in the cases stipulated in the Criminal Procedure Code and Article 6 of the ECHR, and that any other exclusion contrary to these provisions would be unlawful. At its last, 14th session, prior to the beginning of the COVID-19 pandemic, the Council adopted an opinion, upon request of the editorial board of "Sakam da kazham" relating to a violation of the presumption of innocence and protection of privacy when publishing an article.

The work of the Council is aiming at affirmation of the judicial transparency and public access to justice, where the guidelines how to improve the system of transparency and overcome the existing deficiencies of normative and institutional character identified in that system constitute a roadmap of sorts that the courts and media should follow to provide for all prerequisites for the creation of an independent, impartial and transparent judiciary competent to protect the individual rights and freedoms of the citizens and, above all, to protect the right of the individual, simultaneously protecting the public interest.

Although it is a relatively new body, the Council, in its work thus far, has manifested serious commitment to implement reforms of the judiciary with the primary objective of affirming judicial transparency, restoring the commitment in the judiciary, ensuring that the public has unobstructed access to justice, thus providing for legal certainty, impartiality and quality of justice for the citizens.

[8] Judicial Media Council, ""Law School for Journalists" and "Journalism School for Judges" http://www.mja.org.mk/Default.aspx?news=a613fa6f-9d66-49fb-b662-a93e9b3fb58c&ln=3&type=17ad81e0-4f67-4746-8b0a-575d73e699b6

I

JUDICIAL TRANSPARENCY AND MEDIA RELATIONS STANDARDS AND PRACTICES

Judges in the online space – International standards of conduct

There are no unified rules about the conduct of judges in the online space. However, the 2002 UN Bangalore Principles of Judicial Conduct, just as for many other issues, are taken as a reference point. Besides the Principles, the most quoted references are the Non-binding Guidelines on the Use of Social Media by Judges issued by the United Nations Office on Drugs and Crime and the Practical Guidelines on Use of Social Media by Judges: Central and Eastern European Context[9] of the CEELI – Institute advancing the rule of law from Prague, developed by judges from these European regions.

It is important to distinguish between institutional use of these new media by the courts and the individual, i.e. personal use of social media by the judges.

In the first case, as provided in the UNODC Guidelines on the Use of Social Media by Judges, the courts may use social media as a tool for promoting access to justice; administration of justice, in particular judicial efficiency and expedition of case processing; accountability; transparency; and public confidence in, understanding of, and respect for, the courts and the judiciary.

The documents indicated above point out unambiguously that judges can use social platforms for communications, since they are social beings and thus they demonstrate social inclusion in important issues in the society.

According to the Bangalore Principles, in particular under the principle of correctness (4.6), judges are not prohibited to use social media, since it is important for them, both as citizens and in their judicial capacity, to be actively involved in the community that they are serving. However, such conduct is still not without constraints, due to the specifics of their office.

[9] CEELI Institute Report, Practical Guidelines on use of social media by judges: Central and Eastern European context, November, 2019

"In an era where such involvement increasingly includes online activities, judges should not be prohibited from appropriate participation in social media. The public benefit of such judicial involvement and participation must, however, be balanced with the need to maintain public confidence in the judiciary and the integrity of the judicial system as a whole", as stated in the guidelines.

In the commentary under paragraph 31 of the Principles it is noted that while a judge is required to maintain a form of life and conduct more severe and restricted than that of other people, it would be unreasonable to expect him or her to retreat from public life altogether. "The complete isolation of a judge from the community in which the judge lives is neither possible nor beneficial"[10].

On the other hand, the Venice Commission within the Council of Europe, in the review of the UNODC Guidelines on the use of social media, notes that there are no specific rules on the use of social media but that the general deontological rules on judges' restraint in public expression apply also to social media[11].

The conduct of judges in the online space, according to the analysis of the Venice Commission, is governed differently in different countries. Nevertheless, in most of the countries, such as Austria, Belgium, Croatia, Greece and others, there are no clearly defined regulations on the use of social media by judges other than the general deontological rules.

"The Non-binding Guidelines on the Use of Social Media by Judges"[12] of the United Nations Office on Drugs and Crime prescribe that the way individual judges use the social

"Even though judges, like other citizens, have the right to freedom of expression, belief, association and assembly, they should always behave in a manner that preserves the dignity of their office and the impartiality and independence of the judiciary," as noted in the Guidelines.

[10] Commentary on the Bangalore Principles of Judicial Conduct
Available at:
https://www.unodc.org/res/ji/import/international_standards/commentary_on_the_bangalore_principles_of_judicial_conduct/bangalore_principles_english.pdf

[11] Use of social media by judges deontological rules or instructions/relevant case-law
Available at: https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2019)003-e

[12] Non-binding Guidelines on the Use of Social Media by Judges
Available at:
https://www.unodc.org/res/ji/import/international_standards/social_media_guidelines/social_media_guidelines_final.pdf

media may have an impact on the public perception of all judges and on the confidence in the judicial systems generally.

The document notes that particular instances of judges using social media have led to situations where those judges have been perceived to be biased or subject to inappropriate outside influences. What is clear is that it would be unacceptable for judges to discuss on the social networks specific cases which have come before them for decision.

The Council of Europe, in its Guide on Communication with the Media and the Public for Courts and Prosecution Authorities, notes that communications via the social media exposes courts and prosecutors to certain risks. The Guide of the Council of Europe[13] states that *"Inadequate use of social media also carries the danger of a certain banality of justice"*. The fact that discussions of justice at fan pages could be joined by anyone maintains the dilemma whether this could be counterproductive.

On the other hand, social media can be useful when judges use them to communicate. They create opportunities to spread the reach of judges' expertise, increase the public's understanding of the law, and foster an environment of open justice and closeness to the communities that judges serve.

Within this context, the Guidelines contains provisions stipulating that, irrespective of whether they use social media or not, judges should have a general knowledge of social media, including how it may generate evidence in cases that judges may decide.

"Irrespective of whether they use social media or not, judges should have a general knowledge of social media, including how it may generate evidence in cases that judges may decide" the Guidelines state. It recommends that judges should, inter alia, have an understanding of existing online communication tools and technology, including artificial-intelligence-powered technology.

[13] Guide on communication with the media and the public for courts and prosecution authorities, 2018, European Commission for the Efficiency of Justice (CEPEJ), available at: https://rm.coe.int/09000016809025fe#_Toc524690274

In this regard, judges should receive specific training on the risks and pitfalls of their personal use of these media, as well as on its use by their family members, close friends, etc. However, there have been instances where social media has served as a platform for online abuse or harassment of judges.

The Guidelines provide that judges may use their real names on social media and disclose their judicial status, provided that doing so is not against applicable ethical standards.

There have been contrasting views with regard to the use of pseudonyms of judges on social media: ***"The present guidelines neither recommend nor forbid the use of pseudonyms*** "the Guidelines state. Nevertheless, it lays down explicitly that pseudonyms should never be used to enable unethical behavior on social media. Furthermore, the use of a pseudonym offers no guarantee that the real name or judicial status will not become known.

Judges, according to the Non-binding Guidelines, should avoid expressing views or sharing personal information online that can potentially undermine judicial independence, integrity, propriety, and impartiality, the right to fair trial or public confidence in the judiciary. They shall not discriminate on any grounds.

Additionally, it is recommended that judges should be circumspect in tone and language and be professional and prudent in respect of all interactions on the social media. Such caution

Judges should be circumspect in tone and language and be professional and prudent in respect of all interactions on the social media"; this caution addressing the judges is identical to the one applying to other citizens/they should not discriminate on any ground.

applicable for judges is identical to the one applying to all citizens.

If a judge has been insulted or abused online, he or she should seek advice from senior judicial colleagues or other mechanisms in place, but should refrain from responding directly.

According to the Guidelines, a judge may use social media platforms to follow topics of interest, but he or she should use caution not to create their own "echo chambers". In any case, a judge should be wary of following or liking particular advocacy groups, campaigns or commentators and influencers where association with them could damage public confidence in the judge's impartiality or the impartiality of judiciary in general.

The guidelines in this area provide for exercising due care and diligence when accepting online friend requests. Hence, the Guidelines recommend that judges should avoid accepting or sending friend requests from or to parties or their legal representatives, and engaging into any other social media interactions with them. The same applies to witnesses or any other known interested persons.

"Judges are advised to acquaint themselves with the security and privacy policies, rules, and settings of the social media platforms they use…" the Guidelines note. They should exercise caution with a view to ensuring personal, professional, and institutional integrity and protection.

Judges should be aware of the risks of sharing personal information on social media. They should be particularly aware of the privacy and security risks of revealing their location or any similar information through posts on social media.

On the other hand, the courts have a legal obligation to be transparent by regularly updating their web platforms. No major steps have been taken to improve the condition of the judicial web page (sud.mk). The scarcity if relevant information on courts and judges on the web portal has a detrimental effect on judicial transparency. In particular, the web page contains only the following information: names and surnames of judges, the subject matter decided upon them and the year of election. In terms of biographies of the judges, sometimes they are present, other times they are not. It will be necessary to update the information on the judges since they are elected and appointed persons. A further obligation of the courts is to consider extending their visibility and the public information by setting up social media profiles.

American standards on judicial transparency and the media

"It is desirable that the trial of causes should take place under the public eye. . . because it is of the highest moment that those who administer justice should always act under the sense of public responsibility and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed." **- Oliver Wendell Holmes, a Justice on the Massachusetts Supreme Court, 1884**

Long before Justice Holmes wrote these words, since the very establishment of the U.S.A., and even before it had matured in a nation - leader, the ideal of a judicial system operating "under the vigilant public eye" had been and remained in the core of the legal system and in the heart of what its citizens hold precious.

“Under the vigilant eye of the public" is a principle which has been developed in the course of time, but in essence it has always meant that courtrooms, with rare exclusions, should be open for the public and the media, that court records are matters of public character, and that court decisions and judgments should be made publicly available. The technology used to bring the judicial procedures from the courtroom to the public, via the media, is constantly changing. Thus, we have moved from the press to recording and live streaming of the procedures and to blogging. However, it is all done with the purpose, and based on the presumption of transparency of a fair and independent judiciary, scrutinized by the free and independent press.

Both principles are contained in the First Amendment to the Constitution of the U.S.A. and provide that ***“Congress shall make no law. . . abridging the freedom of speech, or of the press. . . “.*** However, nearly a decade earlier, in 1780, the Massachusetts Constitution would provide its own guarantee of the freedom of the press. Written by John Adams, who would later serve as the second president of the United States, Article 16 of the Massachusetts Constitution stipulates that: “*The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this Commonwealth".*

In fact, until the time of the drafting of the Constitution of the United States, and the First Amendment that was added in 1791, nine of the 13 initial states had already guaranteed the freedom of the press. Naturally, today all 50 states have their own judicial systems that operated under their own rules and regulations - where some systems appoint the judges, while other elect them, and third use hybrid appointment system, and then hold elections. Some of those judges were eager to “move” to the digital era, while others maintain the traditional restrictive public access, i.e. are fighting with the web portals on the issues who should be granted access to the case files. All together, they represent the rather traditional American mix of practices, inspired by the nearly 250-year old history of openness.

If that was not confusing enough, there is a completely separate federal judicial system in charge of enforcement of federal laws and deciding directly on matters relating to the Constitution of the United States in the second and third instance before the U.S. Supreme

Court. As in the case of the state system, the federal system is operating under its own set of rules and procedures developed in the course of time, but it had always followed the main concept zealously supported by judge Holmes, who would later on serve as a Justice on the U.S. Supreme Court for nearly three decades, that adjudication by courts "under the public eye" is essential in the free society.

Etymology of transparency

In many ways, looking for the origin of transparency of U.S. courts is similar to looking for the springs of a mighty river - it is simply something that has always been a part of the nation's image and has been gradually developing. Nevertheless, the principle stating that the court procedure should be carried out in open and public hearings traces its roots in the British common law, which may be traced back to XIII century and Magna Carta Libertatum, which, in its turn, ensured the jury system used in Great Britain and the United States, whereby the judgment is passed by the people.

However, the progress was not straightforward, but by 1676 the neighboring American colonies: Pennsylvania and West New Jersey already had charters containing provisions on open courts. The Charter of the colony of West New Jersey additionally provides that "*any person or persons ... may freely come into and attend the said courts ... all or any such trials as shall be there had or passed ... that justice may not be done in a corner, nor in any covert manner."* More than three quarters of the constitutions of the U.S. national states today contain explicit provisions on the transparency of courts.

Even before the founding of the United States, two important trials would set the grounds for the American Revolution that would give rise to the new nation. The first was the trial of John Peter Zegner, the publisher of the "New York Weekly Journal", who was accused of printing libelous articles on the royal governor, William Cosby. Zenger was arrested, detained and tried in 1735 by a grand jury. The jury, contrary to the judge's orders, found Zenger not guilty, because he did say the truth in his articles, notwithstanding how unpleasant it may be for the governor. It was a principle that directly opposed the British law at the time, but would later on become an integral part of the future American legislation and jurisprudence.

Gouverneur Morris, one of the authors of the U.S. Constitution, noted: *"The trial of Zenger in 1735 was the germ of American freedom, the morning star of that liberty which subsequently revolutionized America".*

As the tensions and the revolutionary zest grew, what had become known as the Boston Massacre would remain remembered as the trial of the century. British soldiers shot at an angry mob of civilians, killing five and wounding six of them. The British captain and the eight soldiers who fired the shots were tried in 1770. The revolutionary leader John Adams – yes, the future author of the Massachusetts Constitution and the future U.S. President – defended the British soldiers, of whom two were convicted of manslaughter and six were acquitted. During the trial, reporters of the "Boston Gazette" and the "Boston Evening Post" were present in the courtroom every day and shared with their readers detailed reports on the judicial process. Today the court records of the case and the case files of the trial have a character of a public document and, together with the list of jury members, could be accessed by any citizen.

Two decades later, the First Amendment to the U.S. Constitution would guarantee the right to free press, which would continue to report on the work of the courts, the government, Congress and all other institutions that are essential for the free society. At those times, nine of the initial 13 colonies already had such provisions in their national constitutions. However, in 1798 the Congress adopted an act punishing any negative comments on the U.S. Government - the same charges that Zenger had faced. Under this act, indictments were made against editors of journals in Philadelphia, Boston, New York and Baltimore. Thomas Jefferson, upon assuming the presidency in 1801, pardoned those still serving sentences under this act and led the campaign to repeal it.

It was a lesson that both American press and their readerships took to heart - even the rights guaranteed by the law are worth less than the paper they had been printed on if they are not supported by the courts, the political establishment and, most importantly, by the public. As the former New York Times journalist, Anthony Lewis, wrote in his book "Freedom for the Thought That We Hate", *"But in truth, the freedoms of speech and of the press have never been absolute. The courts and society have repeatedly struggled to accommodate other interests along with those. The long winded example is the attempt to make the freedom of the press equivalent to the right to a fair trial".*

The conflict between those rights was the core of the 1954 trial in Cleveland, Ohio, where Dr. Samuel Sheppard was charged with murder of his wife. Long time before the jury heard the case and decided upon his guilt, the newspaper columnists have pronounced him guilty, which resulted in demands by the media editorial boards for his conviction. The U.S. Supreme Court reversed his conviction in 1966 with on the grounds that the publicity generated by the media prior to the trial prejudiced Sheppard's right to a fair trial.

However, instead of silencing the free press, the legal system decided to take a radical step to protect the right of the indicted by providing for the adoption of codes of ethics for judges, attorneys and prosecutors. These codes restrict the type of comments that legal practitioners can provide to the press. State and federal prosecutors in today's climate speak to the media mostly through the indictments, while the details of the cases are provided by virtue of special media briefings or press releases.

Nowadays most of the media are observing clear codes of ethics. Nevertheless, the gold standard in American journalism is the Code of Ethics developed by the U.S. Society of Professional Journalists. There is no mechanism for its enforcement and adherence to the Code is exclusively voluntary. In principle, these are the sole ethical guidelines for American journalists on impartial and professional reporting and public information. Several of its principles are dedicated to the judiciary:

1. "Use heightened sensitivity when dealing with juveniles, victims of sex crimes, and sources or subjects who are inexperienced or unable to give consent."
2. "Recognize that legal access to information differs from an ethical justification to publish or broadcast".
3. Balance a suspect's right to a fair trial with the public's right to know. Consider the implications of identifying criminal suspects before they face legal charges".

Media in the United States are voluntarily concealing the names of indicted juveniles and of victims of sexual crimes, unless they give their consent to be publicly identified. However, in terms of identification, at the initial hearing where they are identified before the court and the charges against them are read are open to the public and available to the public and all media.

The American tradition of the free media is protected by the First Amendment to the Constitution of the United States, and they have always seen themselves free of legal constraints. On the other hand, the laws on defamation both on state and federal levels, naturally, could be used by those who claim to have been slandered or falsely accused through media reporting. However, there were several cases where the federal Government was able to prevent the media from publishing the information that they had obtained.

In particular, such government's restrictions would be put to the test in June 1971, when New York Times started to publish the Pentagon Papers, a secret official history of the of the U.S. involvement in the Vietnam war, which reflected poorly on the administration of President Richard M. Nixon. At the time the war was still raging and the government insisted that the papers were a threat to national security.

After the courts issued an injunction forcing the New York Times to cease the publication, the documents were handed over to Washington Post, and later on to Boston Globe. The U.S. Supreme Court decided with a 6-3 majority to allow further publication of the papers. In his decision, Justice Hugo Black noted the following: "The press was protected [under the First Amendment] so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government…In revealing the workings of government that led to the Vietnam War, the newspapers nobly did precisely that which the Founders hoped and trusted they would do".

Transparency of courts today: Massachusetts v. Federal Courts

Massachusetts, one of the oldest judicial systems in the U.S. led in many ways the path of innovation to accommodate new technologies - designed to make the judicial system even more accessible to the media and the general public. Massachusetts was the first state to allow cameras in its courts and courtrooms in 1986. It is strictly regulated by a set of rules adopted by the Supreme Court of Massachusetts. The rules provide that there shall be only one stationary camera in each courtroom, which shall record the trial and its signal shall be dispersed to all media (TV, radio and printed media). However, under the rules, it is prohibited to record (video and audio) the jurors or the private consultations between the judge and the parties to the procedure. Additionally, the rules provide that "A judge may limit or temporarily suspend such

access by the news media if it appears that such coverage will create a substantial likelihood of harm to any person or other serious harmful consequence". However, this applies only to video recording; otherwise the courtroom shall remain open to the public and the journalists who report in writing or at the social media using their smart phones. In Massachusetts the public is fully excluded from cases involving minors.

Since electronic devices – mobile phones, tablets and computers – are increasingly becoming a part of the toolset of any journalist, the judges in Massachusetts are facing on daily bases various requests by journalists and bloggers to bring such devices into the courtroom. It has resulted in a mix of decisions of the court on which devices would be allowed, and which would not. One judge allowed the journalists to "blog" live from the courtroom, but not to "tweet" live, finding the shorter form of reporting somehow more problematic. Nevertheless, the common denominator of the requests is the review of the rules on the use of movable cameras in the courtroom and slackening the initial restrictions.

The task of drafting the new rules – and finding a new definition of who can be deemed a journalist, including the digital media – was assigned to the Judicial Media Council within the Massachusetts Supreme Court, composed of 25 judges, journalists and attorneys, most of them specialized in media law. The drafting of such rules took around 18 months and the revised rules were discussed and adopted by the Massachusetts Supreme Court in 2012.

The redefined rules have revolutionized the judicial transparency in Massachusetts. The hearings in each courtroom, including all interaction among the judge, parties, witnesses and expert witnesses, are recorded fully and digitally and become an official record of the file, part of the case file, and are later on made publicly available. Such recordings are available to the parties to the procedure, but also to the media through the public relations office of the court. Access to the recordings is also granted to disciplinary bodies for judges, journalists and parties to the procedure, in case the conduct of the judge, journalist or a party is brought into question. We have had such case in 2019, where the recording of the trial has become grounds for the charges against a judge who has allowed an undocumented immigrant to leave the courthouse through a back door, having been aware that immigration agents are waiting at the front door to detain the defendant. The case against the judge is pending.

The Supreme Court of Massachusetts has been live streaming its sessions since 2005, allowing the public full insight into the general session of the court in "real" time, accessible

through the court's web page. All files of the cases are digitized and made available to the public several weeks prior to the hearing. Once the court passes its decision, it is also published on the web page of the court and on the social media. The media are known to check the web page at 10:00 A.M. every day, when the most recent decisions are published, and no media is getting any preferential treatment.

The court decisions themselves, including the separate opinions of the justices, set the example for transparency. They are clear, concise and could be read and understood by citizens who do not have a law degree. In fact, most of the opinions related to obtaining the right to enter into same-sex marriage in the state of Massachusetts, and the opinion on the licenses for same-sex marriages, written by Justice Margaret Marshall was so touching and poetic that couples often used parts of it in their wedding ceremonies.

* * *

On the other hand, the Federal judicial system is far more advanced in the use of web-based technology than the local judicial system in Massachusetts or many other judicial systems at state level. Yet, despite being more advanced, it does not allow the use of cameras before the federal court in Boston, nor in the courtroom, although there is a separate place for reporters in the courtroom. Due to this reason it is not unusual to see a media camp of TV cameras on the street across the federal court building in Boston, waiting for a defender, prosecutor or witness in the current trial to show and make a statement for the media.

Nevertheless, the superior resources of the federal judicial system allowed for major improvements in the way of collecting and making the information available electronically. All court files, opinions, briefings, verdicts made by each court in the United States are available through the PACER system (https://www.pacer.gov) for everybody (lawyers, public, media, researchers, etc.). The system requires filling in a short registration form and submitting credit card details to charge modest court fees for greater downloads, such as trial records, etc.

The Federal Court in Boston also provides a number of web services, especially for the media, which require registration with the Court's public relations department. Such services include the Virtual Press Box, which provides electronic case filing reports on cases of interest for each individual medium. There is also a separate page for the media for any types of public announcements, as well as access to the daily court docket.

The Federal Court in Boston allows the journalists who are accredited by the Court's public relations department to enter electronic devices (tables, portable computers and smartphones) in the courtroom. In fact, the Federal Court has been doing that routinely, even before the adoption of the new transparency rules of the courts by the Supreme Court in Massachusetts. However, the highest instance court in the country, the U.S. Supreme Court, still does not allow journalists to bring in electronic equipment to hearings held there. They remain open only to journalists carrying pens and notebooks.

Trials of high public interest: Massachusetts

The high-profile hearings or hearings of high public interest, which the court anticipates to attract high interest of the public, are prepared several weeks in advance. The planning process is led by the judge deciding upon the case in cooperation with the court staff, parties to the procedure and the editors of the media to report live from the courtroom. The judge defines the rules, which shall not deviate from the rules of the Judicial Media Council of the Massachusetts Supreme Court. This paper shall look at the example of the trial of Aaron Hernandez. The 2015 indictment of Aaron Hernandez, who was a USD 40 million worth football player for the New England Patriots, was a great challenge for the judicial system in Massachusetts. It was expected that the trial would attract media crews from throughout the country. The public information services worked non-stop to serve all journalists accredited to report from the courtroom. At the end of each day, the service published the trial records online and made them available to all media and the public. In the courtroom there were designated seating places for the media crews, and the judicial police placed wrist bands, similar to those used at rock concerts, on each journalist. When the capacity of the main courtroom was filled, the court freed the adjacent courtroom, where the remaining journalists were able to follow the trial completely, in accordance with the rule, and the judge deciding on the case allowed the use of several cameras in the courtroom, all linked to a single video signal that was later on distributed to all media stations throughout the USA. Furthermore, the rules provided that it is prohibited to take any still photographs of the members of the jury and of the defendant Hernandez at the times when his hands were cuffed. After the handcuffs were removed, taking photographs and recording video was allowed so as not to violate the principle of presumption

of innocence. Only after the jury reached its guilty verdict at the end of the 1--week trial, the media were allowed to photograph and record the convicted Hernandez while he was handcuffed.

Trials of high public interest: Federal system

The federal court in Boston has tried a great number of cases of federal crimes: organized crime, extortion, terrorism and corruption of high public officials. Federal judges and prosecutors have superior resources and the Federal Bureau of Investigation at their disposal, which, if necessary, may invite agents from the entire country to assist in the investigative phase of the case. Let us take the example of the terrorist bombings at the 2013 Boston Marathon, where four were killed, and more than 260 people were wounded. A great part of that investigation was carried out in full view of the public, although FBI closed the crime scene looking for evidence, it was still visible for the passers-by, TV helicopters which recorded and reported from the sky, so that the media were in a sense active participants in the investigation and the search for evidence. Shops and restaurants equipped with video surveillance cameras in the vicinity of the location of the bombings were invited to cooperate, while the media voluntarily handed over copies of all materials recorded by their reporters at the time of the bombing. The public, i.e. the viewers who were following the marathon standing on the sidewalks and recorded video using their smartphones also handed over their recordings to the FBI, and those recordings assisted in identifying the two brothers who became suspects, and were later on charged in the case.

The trial of the person charged for the massacre, Dzhokhar Tsarnaev, has attracted media from throughout the world, who needed to be accommodated in the federal courtroom. The courtrooms in the relatively new courthouse (commissioned in 1999) were, in fact, designed to be "suitable for media crews", although cameras in the federal courtrooms were not allowed. The protocol for public information and recording at the trial of Tsarnaev was similar to the one for the trial of Aaron Hernandez. The journalists were accommodated in the adjacent courtroom, where the signal from the stationary camera in the courthouse was displayed and shared with other media. However, the camera in the courtroom did not show Tsarnaev or the parties, but only the judge. Additionally, the public relations department of the federal court

organized the logistics for the availability of records, evidence and other materials requested by the reporters. There was a scandal during the trial when a reporter of a local Russian TV station in the U.S. used a smartphone to take a photograph of Tsarnaev while he was handcuffed, and was sanctioned by the court by revoking his accreditation to follow the trial. The only images from the trial available to the public were the courtroom sketches, made by professional artists who were allowed to be in the courtroom. In any case, the public relations department of the federal court provided access to the recording of the evidence about the explosion, records of the court hearings and the entire evidentiary material.

The trial of Tsarnaev was concluded with his conviction and sentencing a death penalty. In addition to the trial of Tsarnaev, the Federal Court in Boston can boast with a rich history of high-profile trials of cases of racketeering, tax frauds and political crimes.

In fact, nearly always the evidence collected by the federal prosecutors and made available to the media during the main hearing are so convincing that the public officials charged with abuse of power are pleading guilty.

Such was the case of the State Senator Dianne Wilkerson, charged with 8 counts of attempted extortion in the amount of USD 23,500. She was charged with abuse of official position to enable her close friend to obtain a liquor license; extortion over councilors of the Boston City Council to adopt a new act that would enable transferring public land to private developers without administrative fees. The prosecutors used special investigative measures in her cases and shared with the media a photograph where the defendant is seen stuffing cash bribe into her bra. This photograph ended on the cover pages of all Boston newspapers and was broadcast on all TV channels. Wilkerson, who was faced with 20 years in prison, pleaded guilty and was sentenced to 3 1/2 years in prison. The prosecutor at the time (2010) was John T. McNeil, who would later on serve as a Resident Legal Advisor at the U.S. Embassy to North Macedonia.

The details contained in the indictments, in terms of the presentation of evidence, of the federal prosecutors make them the best friends of media and reporters. Taking into account the fact that they are documents of public character and are published on the web page of the Court's public register, writing and citing evidence by the media in the course of the procedure shall not be deemed libelous or defamatory provided they are cited correctly.

The indictment against the Mayor of Fall River, Massachusetts, dated September 2019, was 40 pages long and elaborated in detail the allegations that he extorted medicinal marihuana vendors for a bribe in the amount of USD 600,000 in a form of campaign donation, as well as Rolex watches and quantities of marihuana for personal consumption and resale. “Several months after he became Mayor in January 2016, Jassiel F. Correia started to "capitalize” his official position to finance his lavish lifestyle at public expense”, the indictment by the federal prosecutor stated. Correia is facing up to 20 years of imprisonment, but this trial, which was supposed to start this spring, was postponed due to the COVID-19 pandemic.

Epilogue: Judicial transparency in the age of COVID-19

There is nothing like a global pandemic to test the commitment of the states for transparency and accountability to the public. In the United States, the federal and state courts are dealing only with urgent cases, and are adapting in parallel to the new technologies as the best way to maintain the transparency of the courts and ensure fair trial. Around 40,000 people come to the 99 courts in Massachusetts every day. In the interest of the public security, this flow of people has been stopped completely. When the Governor of Massachusetts declared a state of emergency on 18 March 2020, the Supreme Court of Massachusetts issued an order limiting in-person appearances in state courthouses to emergency matters that cannot be resolved through a videoconference hearing. All ongoing trials, including the two trials of murder cases of high public interest that were nearing their end, were continued to a date after the lifting of the state of emergency.

The administrative court services remain open for the public for access to documents of public character. Evictions and foreclosures on citizens were suspended with a court order due to the pandemics. In terms of the problems that may appear due to the home isolation of the citizens: domestic violence, sexual harassment and mental health issues, the courts in Massachusetts opened a special hotline for the victims. However, within two weeks after the declaration of the state of emergency in Massachusetts, the Supreme Judicial Court faced additional problems relating to the civil petition to protect the health of detained persons.

The civil petition called for an urgent substitution of the detention with a more lenient measure to secure the presence of persons charged with less serious offences. The rationale of

the petition indicated the inability to observe the healthcare protocols for protection against the spreading of COVID-19 in the jails and prisons, in particular maintaining adequate physical distance. The full seven-member council of the Supreme Judicial Court of Massachusetts held a teleconference session and deliberated on the petition. While most of the general sessions of the Supreme Judicial Court last approximately 40 minutes, this session lasted 4 hours and 23 minutes. The complete audio materials of the teleconferenced general session of the court were made available to the public within 2 hours upon its end. Within a period of 48 hours, all persons incarcerated for minor criminal offences were sent to home detention or the measure of detention was substituted with a more lenient measure. The courts' adaptation to new technologies took a step beyond. The Supreme Judicial Court of Massachusetts traditionally organizes a conference in April, each year, to discuss matters of interest for the improvement of the court's transparency. This year the court decided to use its technological capacities to organize videoconference sessions. “It was not a question of “whether” we should hold a conference in April, but rather a question of “how” we should do it”, Jennifer Donague, head of the public information office, stated. In cooperation with the Suffolk University, the Supreme Judicial Court held the annual conference and, through its academic partner, made it available to all law students who wanted to join the discussion with the justice and provide their contributions. Chief Justice Ralph Ganz even appeared in the media and stated that "better to have a delayed signal in our teleconference than a setback in the court's operation".

The Court of Appeal of Massachusetts recently experimented with holding a videoconference session using the ZOOM platform, and such videoconference was later on published on the web page so as to make it available to the media and the general public.

According to the statistical data published by the National Center for State Courts, by mid-April nearly twenty supreme courts throughout the United States either held or were planning to hold hearings online. Almost in all cases they allowed the media or interested citizens for follow the online trial and, in any case, two hours after the end of the hearing, the video materials were made publicly available at the court’s web page. The Federal Court in Boston continues to decide on emergency matters and maintains a portal to sign up for online access to such hearings via: https://public.mad.uscourts.gov/seating-signup.html.

Since the federal judicial system is technologically more advanced compared to other judicial systems, the entire paperwork is still delivered via electronic means, usually on a tablet,

and is also available through the PACER system. The only federal court lagging behind is the U.S. Supreme Court, which announced that it would postpone all of its sessions in March and April, where the court was supposed to decide upon several important political cases, including a case relating to the publication of the financial data about President Trump.

However, on April 13th, the Supreme Court announced that it would hold a teleconference hearing for the first time in its history. Yes, in these hard times, history is truly being made - in the Supreme Court of the United States and in state courts throughout the country.

Chief Justice Natan Hecht of the Supreme Court of Texas, President of the National Conference of Chief Justices, sent a message to his colleagues at the first videoconference in his court, stating that: *"The Covid-19 pandemic necessitates many adjustments in the judicial system, changing the way the courts operate. I cannot imagine a scenario where we would overcome the pandemic without a well-developed judicial transparency and without changing in general the way we operate".*

European standards on the relations between the court and the media

The Council of Europe plays an important role in the development of European standards on the freedom of expression and information. The main document of the EU acquis are: the European Convention on Human Rights, European Convention on Access to Official Documents, and the Recommendation of the Committee of Ministers on the provision of information through the media in relation to criminal proceedings.[14]s However, as we have already noted, transparency of the courts and their relations with the media are governed by a number of European documents coming from various institutions of EU and the Council of Europe, as well as by non-binding rules, or the so-called "*soft law*" of UN, which, in principle, constitute the matrix of normative regulation.

[14] Recommendation Rec (2003)13 of the Committee of Ministers on the provision of information through the media in relation to criminal proceedings, Available at: https://wcd.coe.int/ViewDoc.jsp?id=51365 .

The case law of the European Court of Human Rights is also fundamental for the establishment of practical experiences on the regulation of the relations among the media, public and the interests of justice, but it shall be elaborated in detail in the next chapter. In this section we will present the key documents in regard to the access to court proceedings by the media and public.[15] The documents of the Council of Europe state the clear direction of development of the European practice to strengthen the concept of "open courts" and the right to receive information of public interest. Indeed, such pan-European principles support the ability of the media to fully inform the public on the court proceedings, including on practical issues such as: courtroom access, access to information, publication of judicial decisions, right to report on criminal investigations and court searches, etc. Furthermore, the ECtHR, in its consistent jurisprudence, underlines the concept of "public scrutiny" of the trials, indicating that "*the public character of proceedings before the judicial bodies, as provided under article 6 (1) protects litigants against the administration of justice in secret with no public scrutiny"*.[16]

This points out to the fact that transparency of the courts and the judicial proceedings, as well as the presence of the public, are closely related to the application of article 6 in practice. It indicates further that the national authorities are obligated to develop transparent policies on the courts that would enable the public to witness full administration of justice. There is a general trend of increased media attention to the judiciary, especially in the sphere of criminal matters, and in high-profile trials of the cases of the former Special Prosecutor's Office and the Public Prosecutor's Office prosecuting organized crime and corruption. The international documents on the independence, efficiency, transparency and accountability of judges, in particular the opinions of the Consultative Council of European Judges[17], point out that the freedom of the press is an important principle where judicial proceedings have to be protected against undue external influence, and, consequently, the judges should exercise caution in the relations with the media and should be able to maintain their independence and impartiality, being careful not to be misused in their relations with the journalists and refraining from making any unsubstantiated comments about the cases they are adjudicating.[18]

---

[15] Voermans Wim, Judicial transparency furthering public accountability for new judiciaries, in: Utrecht Law Review, Vol.3, Issues 1 (June) 2007, available at: https://www.utrechtlawreview.org/articles/abstract/10.18352/ulr.42/

[16] Valero - Torrijos Julià and Pardo – López María Magnolia, Open – Government, transparency, access and re-use in the Administration of Justice: another turn of the screw needed from the perspective of the Spanish legal framework, Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2748788

[17] Hereinafter "the Council".

[18] Opinion no. 1, Consultative Council of European Judges, available at: https://www.coe.int/en/web/ccje

For the purposes of the present publication, we shall review the advisory opinions of CCEJ (Consultative Council of European Judges), i.e. Opinions no. 3 and 7, Recommendation (2003)13 and the Bordeaux Declaration[19] on the relations between judges and prosecutors in a democratic society, which, in terms of promotion of the relations between judges and the media, unambiguously refer to the establishment of independent bodies to formalize the cooperation among the stakeholders and avoid sensationalism in reporting, media pressure and judicial nontransparency.[20]

The provisions of the **Opinion no. 3** of CCEJ, paragraph b, item 29 entitled ***"Impartiality and extra-judicial conduct of judges"*** refers to establishment within the judiciary, i.e. Supreme Judicial Courts or Associations of Judges, one or more bodies or persons having a consultative and advisory role, available to the judges whenever they have some uncertainty as to whether a given activity in the private sphere is compatible with their status of judge.[21] The opinion states that judges are encouraged to discuss within those bodies the problems that they are encountering in the practice. The explanation to this item indicates that such bodies should be used by the judges for consultations how should the judge present the information to the public, i.e. which specific details of the case should be presented by the judge without harming the interests of justice.

The provisions of **Opinion no. 7** of CCEJ on "Justice and Society" are more detailed that those of the previous opinion, where section C provides that judges express themselves above all through their decisions, but, taking into account the principle of transparency, article 10 of ECHR on the public's right to information, as well as the development of the social media, the judges should improve their relations with the representatives of the media and act upon the requests for public information without damaging the interests of administration of justice in the specific case. This opinion provides further that the improvement of the relations with the media should be made in a commonly acceptable manner. The proper way would be to adopt a

[19] Bordeaux Declaration, known as Opinion no. 4 of the Consultative Council of European Judges on the relations between judges and prosecutors in a democratic society, chapter 3. Available at https://rm.coe.int/1680747391

[20] Conclusions of the 5th meeting of the Chief Justices of Supreme Courts in EU, Ljubljana, 6-8 October 1999, paragraph 1.

[21] Ibid, paragraph 4, which found that the spokespersons of the courts are not allowed to give to the media their reviews of the outcome of the case.

common code of practices where the judges would define the rules in which cases, in accordance with the law, statements may be made to the media concerning court cases, while the journalists would produce rules and principles for further clarification and detailed reporting of cases to the public without jeopardizing the interests of justice.

Item 40 of **Opinion no. 7** unambiguously indicates that it is necessary to set up an efficient mechanism which could take the form of an independent body where journalists and judges would discuss common problems and practical challenges.[22] This is complemented by item 42 which points out to the necessity of organizing schools for journalists and judges for the purposes of strengthening their mutual understanding of their respective professions.

Opinion no. 12 of CCEJ and the Bordeaux Declaration, section 5, paragraph 11, point out to the development of a set of rules and principles within the independent body that would govern the relations between the judges and the media. They emphasize the fact that judges express themselves above all through their decisions, but there is a need for judges to maintain contacts with the journalists and provide clarifications for each individual case without damaging the interest of criminal justice, in view of informing the general public on the specific case of public interest.

On the other hand, the right of the public to be informed is a basic principle arising from Article 10 of the European Convention on Human Rights, which, applied to our case, means that the judge should be accountable for the legitimate expectations of the citizens for transparency of the proceedings where it is allowed in accordance with the law.

Based on this rule, the judges are free to prepare a summary or a report that would explain to the public the legitimate contents and meaning of the decision made. The practice of appointment of a judge responsible to communicate with the public, i.e. the media, in accordance with the recommendations under opinions no. 1, 3, 7 and 12 of the Consultative Council of European Judges should be **continued and enhanced** for the purposes of adequate information of the professional and general public on topics of public interest without any fear of media pressure. With regard to this rule, the advisory opinions refer to drawing up joint

[22] Conclusion of the meeting of presidents of associations of judges "Justice and Society", Vilnius, 13-14 December 1999.

codes of ethics of judges and journalists or a joint strategy of the associations of judges and journalists as a means of promotion of their cooperation.

In the Opinion no. 12 of the Consultative Council of European Judges this matter is regulated in greater detail with provisions that the principle of transparency of the judiciary has to be complemented by adequate forms of cooperation and continued education of judges and journalists on better understanding of their respective professions and the legal language. Furthermore, in section 5 the Opinion points out that media play an essential role in a democratic society in general and more specifically in relation to the judicial system.[23] The perception in society of the quality of justice is heavily influenced by media accounts of how the justice system works. Publicity also contributes to the achievement of a fair trial, as it protects litigants and defendants against a non-transparent administration of justice, i.e. the phenomenon of shady trials.[24] The Opinion, further on, reflects on the expanding public and media attention to criminal proceedings, which has led to an increasing need for objective information to be provided to the media, availability of information and permanent relations between the courts and the journalists with regard to the impartial reporting of all aspects of the case.

In general, the opinions of the Consultative Council of European Judges are affirming the principle of the rule of law and confirm that in a democratic society it is essential for the courts to inspire public confidence and that the public character of the proceedings is one of the essential means to maintain the public confidence in the courts; hence, within the key documents of the Council of Europe, we shall focus on the two most important documents in this regard" **a) Recommendation (2003) 13[25]** on the provision of information through the media in relation to criminal proceedings and **b) CCEJ Opinion no. 7 on justice and society (2005)[26].** These documents are generally reflecting on the right of the public to receive

[23] ECtHR, Sunday Times vs. United Kingdom, where the Court reflects that the articles in the press should not undermine the authority of the court with regard to article 10 of the ECHR.

[24] A phenomenon present in the American legal practice. For more details see: Howthorn, E. Ilijah, Transparency of the Judiciary as a corner stone for a democratic society and rule of law, Oxford University Press (2012).

[25] Recommendation (2003)13, available at https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset_publisher/aDXmrol0vvsU/content/recommendation-rec-2003-13-of-the-committee-of-ministers-to-member-states-on-the-provision-of-information-through-the-media-in-relation-to-criminal-pr?inheritRedirect=false

[26] Opinion no. 7 of the Consultative Council of European Judges. Available at https://www.coe.int/en/web/ccje/opinion-n-7-on-justice-and-society

information of common interest, as well as the journalists' need to access necessary information so as to be able to report and comment on the functioning of the judicial system, in accordance with the obligations for independence, impartiality and discretion of the courts for cases of high public interest, as well as the restrictions laid down in national laws and in accordance with the case law of the Court.

Furthermore, the Opinion no. 12 of the Consultative Council of European Judges, in item 73, points out to the standards that obligate the media, as well as the judges, to observe fundamental principles such as the presumption of innocence and the right to a fair trial, the right to private life of the persons concerned, the need to avoid an infringement of the principle and of the appearance of impartiality of judges and public prosecutors involved in a case, i.e. that media coverage has to be impartial and do not create any sensationalism. [27] In particular, the Opinion states in item 73 that media coverage of cases under investigation or on trial can become invasive interference and produce improper influence and pressure on judges, jurors and public prosecutors in charge of particular cases. Good professional skills, high ethical standards and strong self-restraint against premature comments on pending cases are needed for judges and public prosecutors to meet this challenge. This points out to the need for continued education of judges and journalists, i.e. enabling them to get a better understanding of their respective professions and exchange practices and experiences. This implies proper education for journalists on what is publicly available, what is not, and why it is so. The protocol to Opinion no. 12 makes further references to provisions in the Court's rules of procedure relating to the public. In the light of the fact that North Macedonia is a transition society, the Court's rules of procedure should be free of the previous solutions providing for limited presence of the public in the proceedings. With regard to the adoption of the Court's rules of procedure, the Protocol states that it has to be adopted by a Council for the Judiciary (provided such body exists in the signatory country) or the Supreme Judicial Court of the signatories of the protocol.[28]

In item 74, the Opinion governs in general terms the obligations of the media liaison personnel, i.e. the public relations office, pointing out in particular that public information officers or a pool of judges and prosecutors trained to have contact with the media, could help

[27] Opinion no. 12 of the Consultative Council of European Judges. https://www.coe.int/en/web/ccje
[28] Protocol to the Opinion no. 12 of the Consultative Council of European Judges. Available at https://rm.coe.int/compilation-of-opinions-of-the-consultative-council-of-european-judges/168074fabc

the media to give accurate information on the courts' work and decisions, and also assist judges and prosecutors.

In view of ensuring the compatibility between the EU acquis and the practical application, the following chapter of the Guidebook shall present cases before the European Court of Human Rights selected intentionally to cover the problems that media are facing when reporting of judicial proceedings. Firstly we shall review the general principles in the ECHR and link them practically to the relevant case-law of ECtHR.

The public in the case-law of the European Court of Human Rights

Informing the public about judicial proceedings is a journalistic activity that is strictly regulated by the fundamental rights, initially laid down in ECHR, and then transposed in the national constitutions of the Council of Europe and EU Member States, and elaborated further in laws. Its underlying postulates are the righto the freedom of expression, including the right to receive and impart information and ideas stipulated in Article 10 of ECHR, the positive obligations of the state under article 6 of ECHR to ensure fair trial and administration of justice, as well as the need to protect the privacy of the parties to judicial proceedings under Article 8 of ECHR.

Principle of publicity

In accordance with Article 6, paragraph 1 of the ECHR, the contracting parties ensure that everyone is entitled to a fair and public hearing and a publicly pronounced judgment. Therefore, this article of the Convention is interpreted in such a way that it directly establishes two key notions of fair trial in full presence of the public. The first is the notion of **full transparency**, while the second is the notion of **regulated transparency.** On the importance of ensuring fair and public hearing, the ECtHR states that all trials have to be public with a possibility for the general public and the media to attend the main hearing. As an example, the Court indicates the case of **Diennet v. France**[29], where it states that "holding of court hearings in public constitutes a fundamental principle enshrined in paragraph 1 of Article 6. However,

[29] *Diennet v. France* (violation of article 6.1 (publicity of the court proceeding)), 26 September 1995 година, §33. Also see *Axen v. Germany*, no. 8273/78, 8 December 1983, §28.

this principle is not absolute, and the Convention provides for certain derogations relating to the specifics of the proceedings in its entirety and the circumstances of the case. Thus, for instance, in the case of **Martinie v. France**[30], the Court has found a violation of Article 6 of the Convention because the applicant was not able to get a public hearing before the French Administrative Court, and, in accordance with the applicable legislation of France, the sessions of the court a not public and the law does not provide an opportunity for public hearing on an appeal against the decision of the administrative court. In this case, the Court reminds that there are certain exclusions from the principle of publicity, however, they have to be in line with the principles laid down in Article 6, and with the nature of the criminal proceeding, i.e. indicates that the courts should gradually start to abandon the concept of *"deciding on hearings behind closed doors".*[31]

The public character of hearings is subject to exclusions laid down in detail, as explicitly provided under Article 6, paragraph 1 of ECHR. In particular, the article provides that "*the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require"* or to the extent strictly necessary in the opinion of the court in special circumstances where publicity and reporting on the case would prejudice the interests of justice.

The notion of "*interests in justice"* in this case is interpreted by the Court as protection of the presumption of innocence of the defendants and the principle of fair trial, due to the public influence on the decision of the national court. In several cases the Court has made an assessment of the situation to determine whether it falls within the scope of the limitations laid down in the Convention.

In the case of **P and B v. United Kingdom**[32]**,** concerning granting custody of a child, the Court did not find a violation of Article 6 in the exclusion of the public from the hearing for the purposes of protection of the interest of justice. The Court found that excluding the public was

[30] *Martinie v. France*, §41 and 44.

[31] Council for the Judiciary of Netherlands, The judiciary and the media in Netherlands, available at: https://www.rechtspraak.nl/SiteCollectionDocuments/The-Judiciary-and-the-Media-inthe-Netherlands.pdf, accessed on 20.3.2017.

[32] *P and B v. United Kingdom,* Application no. 36337/97 and 35974/97, 24 April 2001, §38. For more details see, Voorhoof D., *"Cases of B. and P. v. the United Kingdom"*, IRIS 2001-6/1, European Audiovisual Observatory, 2001, available at: http://merlin.obs.coe.int/iris/2001/6/article1.en.html (last accessed on 01.05.2020)

necessary to protect the privacy of the child and the parties to the proceedings, and to avoid prejudice to the interests of justice in terms of the manner of deciding by the court. Furthermore, in the same case, the Court reminded that: "*even in a criminal-law context where there is a high expectation of publicity, it may on occasion be necessary to protect the safety or privacy of witnesses or to promote the free exchange of information and opinion in the pursuit of justice*".[33]

Judgment of the European Court of Human Rights:

P and B v. United Kingdom, App. No. 36337/91 and 35974/97
(Article 6 and Article 10 of ECHR)

In the case of P and B v. United Kingdom, the applicants lodged an application to the court in Strasbourg due to the prohibition imposed by the national court to disclose information about the course of the hearings relating to the custody of their children. The presiding judges of the national court ordered that no documents of the proceedings or statements to the media should be disclosed to the public. Applicant B was also warned by the judge that any publication of the information obtained in the course of the proceedings would constitute a contempt of court. Since the public was excluded from the hearings and the judgments were not pronounced publicly, B. and P. lodged applications to the ECtHR relating to the legality of the restricting measures and the examination of the compatibility of the decision of the court with article 6 § 1 (right to fair trial) and article 10 (freedom of expression) of the European Convention on Human Rights. In its 2001 judgment, ECtHR noted that the proceedings concerned related to the period of residence of the child during a specific period of time with each of the parents after their divorce.

Having regard to the fact that the proceedings concerned referred to a divorce of the parents and the age of the children, the ECtHR found that the exclusion of the public from the hearing was justified in order to protect the privacy of the children and avoid prejudicing the outcome of the hearing, that is, the public influence on the court's judgment. With regard to the public pronouncement of the judgment by the national court, the Court noted that any citizen and interested party (journalists, researchers, etc.) who could establish a public and legal interest before the court could obtain a copy of the full text of the judgment. Under such circumstances, the Court decided that in the relevant case there was no violation of article 6 § 1 in terms of both the allegations of the applicants about the publicity of the hearing or the public pronouncement of the judgments. With regard to article 10 of ECHR, the Court found that the application under this article has no merits.

[33] Ibid

With regard to the principle of public pronouncement of judgments, the essence of Article 6, paragraph 1 of the ECHR is that the judgment has to be read publicly, before an open court. However, in its practice the Court refers to exclusions from the rule, in order to determine which forms of publicity are compatible with these principles and affirms that they will be interpreted taking into account the circumstances of each individual case. Despite the fact that Article 6.1 does not include any explicit references to exclusions of this principle, the case of P and B v. United Kingdom shows that ECtHR will make exclusions to the public pronouncement of judgments that fall within the scope of limitations applying to other principles laid down in the Convention, such as the protection of privacy of juveniles. However, the Court points out that in terms of the notification for holding of court hearings, adoption of the judgment and additional details on the case the national court should provide for public visibility, i.e. such information should be made available to the public. Therefore, we can see that the principle of publicity of the judgments is a practical issue not only for the Court, but also for the public and the media.[34] In this context, although the ECHR is not governing this matter in detail, the judgments still have to be made publicly available and should be published in the Court's official bulletin, the judicial online platform or via the social media. The purpose of the publication of the judgments, as in the case of P and B v. United Kingdom is to enable the public to examine the way the courts generally approach such cases and the principles that are applied adjudicating them; in this context we should mention the provisions of the Recommendation (2003) 13[35] of the Council of Europe, paragraph 15, which provides that journalists and media who have public or legal interest in a specific criminal proceedings should be provided with copies of pronounced judgments and case files for the purposes of correct public information.

[34] See *Sutter v. Switzerland,* § p. 34.

[35] Recommendation (2003) 13, Committee of Ministers of the Council of Europe, available at https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset_publisher/aDXmrol0vvsU/content/recommendation-rec-2003-13-of-the-committee-of-ministers-to-member-states-on-the-provision-of-information-through-the-media-in-relation-to-criminal-pr?inheritRedirect=false

Access to public information

The next issue that was identified as a problem at the educational workshops for judges and journalists within the framework of the project "Strengthening the Role and Functionality of the Judicial Media Council" was the issue of access to information by the journalists and supporting the interest to obtain such information. The current normative solution provides that each interested party, when accessing the files, should prove its legal, rather than public, interest in the case in order to be granted access. This solution from the Court's Rules of Procedure (Chapter 5)[36] was assessed as being retrograde terms of the relations between the courts and the media for the purposes of information of the public. In comparison, in its case law, the ECtHR has adopted a wider definition of the notion of "freedom to receive information" (Article 10.1 of ECHR) and, accordingly, has moved toward the recognition of the right of access to information of public interest, including data within the scope of competence of a state body or a court. We shall make a proper observation in the case of Társaság a Szabadságjogokért v. Hungary[37]. The applicant, a human rights non-governmental organization, claimed that the decisions of the Hungarian courts denying it access to the details of a parliamentarian's complaint pending before the Constitutional Court had amounted to a breach of its right to have access to information of public interest. The case deals concretely with amendments of the Criminal Code of Hungary relating to the definitions and sanctions for the criminal offence of "production and use of narcotic drugs and psychotropic substances". The Court found that the national authorities have intentionally created an administrative obstacle for the legitimate collection of information on matters of public interest, requested by the applicant, and thus breached Article 10 of the Convention. In particular, the Court stated that "*the monopoly of information and interfering in their public dissemination amount to a form of censorship"*. Furthermore, ECtHR notes that the intention of the applicant was to impart to the public information of high public interest in order to contribute to the public debate on the lawsuit concerned. The administrative obstacles created by the Hungarian authorities on the

[36] Court's Rules of Procedure, Offcial Gazette of the Republic of Macedonia no.66/2013, available at http://www.vsrm.mk/wps/wcm/connect/central/022a5a53-8449-45dd-8953-b2fb44561d58/Sudski-delovnik-09-05-2013.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE.Z18_L8CC1J41L088F0A1K8MT8K00U4-022a5a53-8449-45dd-8953-b2fb44561d58-mAmG2Gf

[37] See Tbrsasbg a Szabadybgjogokirt v. Hungary, App. no. 37374/05 of 14 April 2009,

gathering of the requested information are clearly in breach with the principle of access to information of high public interest.

Judgment of the European Court of Human Rights:

Társaság a Szabadságjogokért v. Hungary, App. No. 37374/05
(article 10 of ECHR)

In 2009 the ECtHR adopted a judgment noting the right to access to information in the competence of state authorities and courts. The Court noted clearly that, when the state institutions and courts are withholding information of high public interest, denying the citizens or the organizations access to such data is an infringement of the right to freedom of expression and information guaranteed under article 10 of the Convention. The case refers to the petition lodged by the applicant Társaság a Szabadságjogokért (Hungarian Civil Liberties Union – TASZ) to the Constitutional Court of Hungary concerning the parliamentarians' complaint for establishment of the legality of the provisions of the Criminal Code on offences related to the production and use narcotic drugs and psychotropic substances. The Constitutional Court refused to publish the information about the parlamentarian's initiative. The Court found that the applicant was involved in legitimate gathering of information on a matter of high public importance, in order to enable a wider public debate on this issue. The Court found that the actions taken by the Constitutional Court we not constitutional and that they amounted to a form of censorship due to the court's monopoly of information. By such actions the Constitutional Court of Hungary violated article 10 of ECHR. The Court's judgment refers to "censorial power of an information monopoly" of state and judicial authorities which refuse to publish information that the media or the civil society organizations need so as to exercise their function of a watchdog of the legal operation of the institutions. The Court relies upon its case-law, which indicates that the public is entitled to receive information of general interest and that the state authorities and courts shall in no case discourage the participation of the media and the civil society organizations, which are performing the role of a "watchdog of the society", in particular not on matters of legitimate high public interest. Furthermore, this judgment refers to the prevention of indirect censorship, i.e. that the law shall not allow for arbitrary restrictions, since they may take the form of direct censorship. For this purpose, the laws have to contain provisions that are in the spirit of the journalists' freedom of reporting. The Court reiterated that the function of the media is not limited to traditional media or professional journalists. Indeed, in the case concerned, the preparation of a public forum to discuss the provisions of the new Criminal Code was organized by a civil society organization. By this step ECtHR recognizes the important contribution of the civil society to the discussion of public matters of relevance and has categorized the applicant as a special social "watchdog".

With regard to the protection under Article 6, paragraph 2, relating to the access to public information, it is necessary to review the case before the ECtHR of the non-governmental organization from Serbia - Youth initiative for Human Rights v. Serbia[38], where the applicant lodged an application against the state due to the refusal of the Intelligence Agency of Serbia to provide it with factual information and data on the use of electronic surveillance of Serbian citizens. The Court found that the denial of access to public information, despite the duly made request by the applicant, constitutes a violation of the right under Article 10 of the ECHR. Furthermore, the Court noted that the notion of "freedom to receive information" embraces the "right of access to information" under Article 10.

Judgment of the European Court of Human Rights:

Youth initiative for Human Rights v. Serbia, App. No. 48135/06

(article 10 of ECHR)

In 2013, the European Court of Human Rights recognized more explicitly the right to access to data and information within the competence of state authorities and courts, based on Article 10 of the Convention. The judgment also emphasized the importance of civil society organization acting in the public interest. The case is concerning a non-governmental organization - Youth Initiative for Human Rights, which monitors the implementation of transitional laws with a view to ensuring respect for human rights, democracy and the rule of law. The non-governmental organization – applicant requested the intelligence agency of Serbia to inform it how many people have been subjected to electronic surveillance by that agency in 2005. The Agency initially refused the request, relying upon a legal provision applicable to the disclosure of confidential information. Upon an order issued by the Information Commissioner, who noted that the information concerned should be disclosed in accordance with the Serbian Freedom of Information Act of 2004, the intelligence agency notified the applicant that it did not hold the information requested. The applicant lodged an application with the ECtHR and the judgment of the European Court in favour of the applicant referred to the censoral power of the monopoly of information, i.e. the creation of a space where the state authorities refuse or selectively refuse to disclose information within their scope of competence which are required by the media or civil society organizations in order to exercise their function of social "watchdogs".

[38] *Youth initiative for Human Rights v. Serbia*, no. 48135/06, 25 June 2013.

Another interesting case of the Court's jurisprudence relating to the public interest in the publication of information is the case of **Guja v. Moldova,** where the Court has developed and established a criterion to assess whether the protection of whistleblowers falls within the scope of Article 10 of ECHR.[39]

Judgment of the European Court of Human Rights:

Guja v. Moldova, App. No. 14277/04
(article 10 of ECHR)

In the case of Guja v. Moldova, one of the most significant cases in this area, the Court developed and established a criterion to assess whether the protection of whistleblowers falls within the scope of Article 10 of ECHR. In particular, for that purpose, the Court establishes whether the whistleblower had other, alternative channels to disclose the information prior to publishing it, whether there is public interest in the disclosure of the information, which includes a check of its authenticity, the detriment to the employer, and whether the whistleblower acted in good faith, as well as the ratio between the disclosed offence and the severity of the sanction imposed. When deciding upon all of these criteria, the ECtHR evaluates them as a whole and tries to strike a balance in the protection of the rights, and not to restrict itself to individual assessment of each separate criterion when deciding upon a specific case.

In this specific case ECtHR found that Moldova is responsible for a violation of Article 10 of the Convention, where the official who disclosed information of public interest concerning attempts made by high-profile politicians to influence the judicial authorities was dismissed.

Restrictions of the freedom of expression in judicial proceedings

Above we have noted that Article 10, paragraph 2 of the ECHR explicitly provides that the exercise of the freedom of expression may be subject to restrictions solely for the purpose of protection of the reputation or rights of others, or to maintain the authority and impartiality of the court. In this context, the Court, so as to establish whether the restrictions in a specific case were legitimately justified, carries out a **test of proportionality,** i.e. compares the specific case with the necessity in a democratic society, so as to determine whether the "interference"

[39] *Guja v. Moldova* no.14277/04 of 2008.

or the prohibition by the national authorities is adequate to the needs of the society and proportionate to the legitimate purpose that the court imposes concerning the restriction of the freedom of expression in judicial proceedings.

For instance, the Court, in the case **Worm v. Austria**[40]**,** the Court notes that "restrictions on freedom of expression permitted by the second paragraph of Article 10 "for maintaining the authority and impartiality of the judiciary" do not entitle States to restrict all forms of public discussion on matters pending before the courts. There is general recognition of the fact that the courts cannot operate in a vacuum, since it is contrary to the spirit of ECHR. The Court explicitly notes that the courts are the forum for the determination of a person's guilt or innocence on a criminal charge, and that this does not mean that there can be no prior or contemporaneous discussion of the subject matter of criminal trials of high public interest amongst the public at large, and as reported by the media.

Media reporting in criminal proceedings

Criminal trials of high public interest before the national courts always raise the interest in the media. Applying the general principles noted in the first section and relating to the European practices with transparency, the journalists, when reporting, should take into account a number of procedural and legal issues:

1) Protection of the secrecy of investigations;

2) Protection of the presumption of innocence;

3) Records of court hearings;

4) Protection of the interests of justice;

5) Protection of witnesses and collaborators of justice;

6) Protection of victims.

In accordance with the case law of the ECtHR and Recommendation (2003) 13, we shall focus here on several aspects relating to the possibility for the media to report on criminal proceedings and on striking a balance between the freedom of expression and other due process

[40] *Worm v. Austria*, no. 22714/93 of 29 August 1997.

rights in the criminal proceedings.[41] In accordance with the principles of the ECHR, in the case of Riepan v. Austria[42], ECtHR noted that "a trial complies with the requirement of publicity only if the public is able to obtain information about its date and place and if this place is easily accessible to the public".[43]

Judgment of the European Court of Human Rights:

Riepan v. Austria, App. No. 35115/97
(Article 6 and Article 10 of ECHR)

In accordance with the principles of the ECHR, in the case of Riepan v. Austria, ECtHR noted that "a trial complies with the requirement of publicity only if the public is able to obtain information about its date and place and if this place is easily accessible to the public". In this case, when the applicant lodged an application due to a non-public hearing, since the hearing was held in a prison, the Court noted that holding a hearing out of the regular courtroom, in particular in prison, where the public in principle has no access, is a serious breach of the principle of publicity and the public character of the hearings. Furthermore, the states are obliged to undertake measures for effective information of the public and the media about the hearing.

Furthermore, paragraph 15 of the Recommendation (2003) 13 of the Committee of Ministers of the Council of Europe recommends that announcements of scheduled hearings, indictments or charges should be posted on visible locations or made publicly available by electronic means. With regard to the access of the media to courtrooms, the Recommendation, in paragraphs 12 and 13, states that the principle of publicity provides for the presence of media and citizens at court hearings and public pronouncements of judgments without discrimination and without prior accreditation requirements. In principle, provided the public is not excluded in accordance with the second paragraph of Article 6 of the Convention, the media and the citizens should be granted access to all court hearings.[44] When it comes to cases of high public interest, and in terms of the number of media and citizens, the recommendation prescribes that the judicial authorities should provide larger courtroom with more seats for journalists, in accordance with the demand, but without excluding the participation of individual members of

[41] Detailed report on the Council of Europe Convention on Access to Official Documents, chapter 2, paragraph 1, Available at: http://conventions.coe.int/Treaty/EN/Reports/Html/205.htm
[42] *Riepan v. Austria*, no. 35115/97, 14 February 2001, p. 29.
[43] *Sunday Times v. the United Kingdom no. 6538/74 (no. 1)*, 26 April 1979, §62.
[44] Supra, note 5, p. 4

the public. If the capacity of the courtroom is too small, the recommendations states that the judicial establishment is obligated to find a bigger indoors facility and to move the hearing to those premises.[45]

Live reporting and recordings in courtrooms

Recommendation (2003) 13 provides that live reporting or recording in the courtroom during the main hearing should not be allowed, except where they are expressly permitted by the president of the court or the judicial authorities. However, the presence of journalists who would report from the courtroom via a blog, twitter or other platform is encouraged. Nevertheless, this is laid down as a general rule to which the Recommendation provides certain exclusions. In particular, paragraph 14 points out that live reporting and recording is allowed when: 1) It is expressly permitted by law or the competent judicial authorities and where it does not bear a serious risk of undue influence on victims, witnesses, parties to criminal proceedings, juries or judges.

The particular example of the inadmissibility of live recording is the case of **Radio Hele Norge ASA v. Norway**[46]**.** The applicant made an application to the ECtHR for alleged violation of article 10 of ECHR due to restriction of the live media coverage of a criminal case in Norway. The Court ruled in favor of the state and noted that "depending on the circumstances, live broadcasting of sound and pictures from a courtroom hearing may generate additional pressure on those involved in the trial and, even, unduly influence the manner in which they behave and hence prejudice the fair administration of justice". However, the Court issues a legal lesson to the national courts to strike the just balance between the protection of the interests of justice and the publicity, i.e. media coverage in a specific case prior to allowing live recording at the hearing. The Court makes further references to Opinions no. 7 and 12 of the Consultative Council of European Judges and notes that associations of judges and journalists can act as mediators in the redefining of the transparency policy of courts.

Presumption of innocence and protection of privacy

[45] Ibid, See Court's Rules of Procedure of the Republic of Macedonia, Official Gazette no.
[46] *Radio Hele Norge ASA v. Norway*, no. 76682/01, 6 May 2003

According to the ECHR, the presumption of innocence is the main prerequisite for a fair trial; therefore, reporting on pending criminal proceedings should not prejudice this right of the persons charged with a criminal offence. Paragraph 2 of the Recommendation also includes such a requirement, and, in accordance with the decision of the Court in the case of **Du Roy and Malaurie v. France**[47]**,** the Court reminded that *"Journalists reporting on criminal proceedings currently taking place must, admittedly, ensure that they do not overstep the bounds imposed in the interests of the proper administration of justice and that they respect the accused's right to be presumed innocent".* This is further supported by the judgment in the case of **Tourancheau and July v. France**[48]**,** where the applicants (journalists) were convicted by the national court for a publication of an article reproduced from individual statements given in the context of a criminal investigation prior to the court hearing. The national courts claimed that the publication of the article would have a negative effect on the public image of the persons charged in the proceedings, and the Court found no violation of the second paragraph of Article 10 of ECHR. A brief description of the judgment is provided below.

[47] *Du Roy and Malaurie v. France,* no. 34000/96, 3 January 2001.
[48] *Tourancheau and July v. France,* но. 53886/00, 24 November 2005.

Judgment of the European Court of Human Rights:
Tourancheau and July v. France, App. No. 53886/00
(article 10 of ECHR)

In 1996, the French daily newspaper "Libération" published an article about a murder case involving defendants – adolescents. The criminal investigation was still pending at the time of publishing of the article, and the two suspects, B. and his girlfriend A., had been placed under investigation. The published article, written by Patricia Tourancheau, contained statements from the person A., provided in the course of the investigation by the police and the investigative judge, as well as comments by B. On the basis of section 38 of the Freedom of the Press Act of 1881, criminal proceedings were brought against Tourancheau, and the editor of Libération, Serge July. Section 38 of the Act prohibits the publication of any document relating to criminal proceedings until the day of the hearing. The journalist and the editor were found guilty as charged at first instance and were each ordered to pay a fine of 10,000 French francs (approximately 1,524.49 euros). Their conviction was upheld on appeal by the French Court of Appeal, and, later on, by the Supreme Court in the third instance of appeal. In the meantime, A. had been sentenced to eight years' imprisonment for murder and B. had received a five-year prison sentence for failure to assist a person in danger. In its judgment of 2005, the Court found that he conviction of the applicants by the national courts could not be considered a violation of article 10 of the ECHR. The Court noted that section 38 of the Act defined the scope of the legal prohibition clearly in terms of both content and duration. Taking into account the fact that the applicants were experienced journalists, they should have been aware that their article would constitute a violation of section 28 of the Freedom of the Press Act of 1881. In the rationale the Court noted that the article was published during the criminal proceedings and contained elements prejudicing the outcome of the hearing. Having regard to the fact that the judge is the one who passes the judgment and establishes the guilt, the Court noted that the publication of the article prejudiced the interests of criminal prosecution. With regard to the public interest in the case, the Court found that, due to the fact that the law provided for publicity in the course of the main hearing, and not during the investigative procedure, the principle of publicity had not been violated in the case concerned.

The case law of the Court relating to protection of privacy is comprehensive. A prominent example of the treatment of this issue is the case of **Egeland and Hanseid v. Norway[49],** where the Court assessed the publication of photographs taken by the applicants. The point of dispute concerning the photographs was the fact that they had been taken without consent and after the end of the court hearing, outside the courthouse. In its decision, the Court found that, in accordance with the provisions of the ECHR and taking into account the margin of appreciation, the national authorities acted properly in assessing the need for the protection of her privacy in the interest of administration of justice. The Court noted that the restriction of the freedom of expression of the applicants, as a result of the judgment of the Supreme Court, was legitimate, due to reasons that were relevant and proportionate to the legitimate aim of protection of the privacy of a person who was accused, but was not convicted in the criminal proceedings. Protection of privacy in the context of ongoing criminal proceedings is also covered by Recommendation (2003)13, which provides that "The provision of information about suspects, accused or convicted persons or other parties to criminal proceedings should respect their right to protection of privacy in accordance with Article 8 of the Convention". Paragraph 8 of the Recommendation also prescribes that particular consideration should be given to the protection of privacy of parties in the proceedings who are minors or other vulnerable persons, as well as to victims and families thereof.

The case law of ECHR provides us insight in the importance of the principle of publicity in judicial proceedings, as well as the importance of provision of information within the scope of competence of national authorities and courts. The case law of the Court produces the recommendations for the national courts on ensuring fair administration of justice through the strengthened position of the media so as to ensure correct information of the public and protection against tendentious and fake news. The European court plays a major role in striking a balance between the interests of justice, on one hand, and the circumstances of the case and the nature of the proceedings, on the other.

[49] *Egeland and Hanseid v. Norway, Апп. No. 34438/04 §65.*

II

JUDICIAL TRANSPARENCY IN MACEDONIAN LEGISLATION

Constitutional guarantees for public court hearings and judicial transparency in North Macedonia

The openness of the courts in the Republic of North Macedonia, demonstrated through the public court hearings and the public pronouncement of decisions is an important part of the right to a fair trial. As noted above in the chapter relating to the cases of the European Court of Human Rights, the transparency of the proceedings is, inter alia, a way for scrutiny over the judiciary by the media and the civil society.[50] Its specific importance has been noted by the Council of Europe, the recommendations of which have been ratified by the Macedonian legislation, but are not fully applicable yet and a still a subject matter of discussion. The proceedings before the courts in North Macedonia are public and their publicity is a principle that is guaranteed under ECHR and Article 102 of the Constitution, which may be restricted only in cases determined by law.[51] The Constitution also provides for public pronouncement of judgments, and publicity is further ensures by the participation of lay judges as representatives of the general public at the hearings. With regard to the jury system in the country, there are still ongoing scientific debates as to its modification and effectiveness in the administration of justice. The reports by Reinhard Priebe[52] noted insufficient training for lay judges, as well as lack of legal knowledge of the case details. However, the Association of Judges, within the scope of its activities relating to the transparency, is working on ensuring equitable representation of lay judges, in particular by including them in the new Code of Ethics of Judges and Law Judges, and thus improving the quality of the administration of justice.[53] This is complemented by the activities of the Judicial Media Council to redefine the provisions in the

[50] Supra, note 8, Op. cit

[51] Constitution of the Republic of North Macedonia, available at https://www.sobranie.mk/ustav-na-rm.nspx

[52] Head of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception. Both reports on the urgent reform priorities of the country from 2015 and 2017 are available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf

[53] Association of Judges of the Republic of North Macedonia, Code of Ethics of Judges and Lay Judges, available at http://www.vsrm.mk/wps/wcm/connect/vsrm/10ae444c-09fd-4cbd-9fa6-ed45ae4ad13b/%D0%9A%D0%BE%D0%B4%D0%B5%D0%BA%D1%81+%D0%B7%D0%B0+%D0%B5%D1%82%D0%B8%D0%BA%D0%B0+%D0%BD%D0%B0+%D1%81%D1%83%D0%B4%D0%B8%D0%B8%D1%82%D0%B5+%D0%B8+%D1%81%D1%83%D0%B4%D0%B8%D0%B8%D1%82%D0%B5+%D0%BF%D0%BE%D1%80%D0%BE%D1%82%D0%BD%D0%B8%D1%86%D0%B8.pdf?MOD=AJPERES&CVID=mSBbAAH

Macedonian legislation, mostly relating to reforms of the modalities to ensure transparency of the courts and accountability of the media.[54]

The constitutional guarantees for a public hearing are complemented by the provisions of the European Convention on Human Rights and Fundamental Freedoms, which, in the first paragraph of Article 6, provides that the public hearing constitute a part of the overall right to a fair trial. Thus, in our country, too, the right to a fair trial is safeguarded by the highest legal norms. The public character and the transparency of the court proceedings is guaranteed by the Law on Courts as one of the fundamental principles (Article 6, paragraph 2 and Article 10), and is elaborated in greater detail in the relevant laws. Although the publicity of court proceedings is guaranteed, in practice there are many obstacles to its realization: lack of access to courts, lack of information, lack of interest, etc., and the lack of adequate premises for the hearings is also one of the major problems. Furthermore, cases were noted that the judicial police did not allow close family members of parties to proceedings to attend public hearings or requested special permits from the journalists, as well as a case of forced deletion of recordings made by the journalists by the judicial policy upon an order issued by the competent public prosecutor, to which the Judicial Media Council issued its reactions.[55] The practice shows that the statutory publicity of the hearings remains words on paper if certain technical requirements are not met. Practical steps need to be taken in this regard because the experience points out to the conclusion that the public has a high degree of confidence when the cases are observed by the media or the civil society.

The Constitution provides for exclusions from the right to a public hearing, but only in cases laid down in the law. As we have noted above, ECHR also provides for exclusions from the right to a public hearing in clearly defined cases under the second paragraph of Article 6, i.e. in the cases when it is in the interests of morals, public order or national security, where the interests of juveniles or the protection of the private life so require, or when the publicity would prejudice the interests of justice. In this section we shall provide an overview of the principles and statutory guarantees in the Macedonian legislation.

[54] Workshop of the Judicial Media Council, "Transparency in the judiciary and responsibility of the media" http://www.mja.org.mk/Default.aspx?news=0d8235b7-981c-4609-a61a-dd71ef6e9cb7&ln=3&type=17ad81e0-4f67-4746-8b0a-575d73e699b6

[55] Judicial Media Council, Reaction on the deletion of recordings made by journalists by the judicial police on an order issued by a public prosecutor. http://www.mja.org.mk/Default.aspx?news=56df5972-72e3-4ccd-a0cf-70068ef7b621&ln=3&type=17ad81e0-4f67-4746-8b0a-575d73e699b6

Prior to proceeding with the elaboration of the Macedonian statutory solutions relating to transparency of the courts and the publicity of the proceedings, it is necessary to reflect on the Council's initiatives to the Ministry of Justice of the Republic of North Macedonia with regard to amending the sections of the Criminal Procedure Code dealing with judicial transparency and the Court's Rules of Procedure. The Council's initiatives have been delivered and are still (at the time of writing of the present publication) discussed by the working groups within the Ministry of Justice.

Criminal Procedure Code

The Criminal Procedure Code dedicates several provisions on the exclusion of the public from parts or the entire main hearing and stipulates, in article 354, more grounds for exclusion of the public than those laid down in the ECHR, e.g., it provides that the public may be excluded when it is necessary to protect official or business secrets.[56]

Nevertheless, one must take into account the fact that justice is a matter of public interest, and that the exclusions of the public from the hearings have to be reduced to the minimum necessary to protect the values of a democratic society governed by the rule of law. The existence of a business secret is already a ground for exclusion of the public in the civil proceedings, which is understandable. However, in criminal proceedings, where the interest of the public and the importance of the criminal law protection are far greater, it should be considered whether it should remain as ground for exclusion of the public. It should be noted that, albeit the Criminal Procedure Code, in its article 355, paragraph 2, allows the presence of officials, scientific or public workers at a hearing where the public has been excluded due to a protected witness, in practice the judges do not allow that. It undoubtedly cast a shadow of a doubt on the principle of fair trial become the fact that the law does not exclude the public absolutely is not incidental. Steps need to be taken to change the jurisprudence and align it to the law.[57] The Criminal Procedure Core provides that "The judgment shall be pronounced and declared publicly on behalf of the citizens of the Republic of North Macedonia"[58], and further defines how the judgment shall be pronounced. Even when the public has been excluded from

[56] Criminal Procedure Code, Official Gazette of the Republic of Macedonia no. 150/2010. Available at http://jorm.gov.mk/wp-content/uploads/2016/03/Zakon_za_Krivicna_postapka_150_18112010-2.pdf
[57] Ibid
[58] Ibid article 397, p. 2.

the main hearing, the pronouncement of the judgment is always public, whereas the public may be excluded during the elaboration of the rationale of the judgment.[59] The Criminal Procedure Code provides an obligation of the court to publish the decisions, within two days upon their preparation, on the web page of the court, in a manner prescribed by law, in accordance with article 125, paragraph 3. It provides that all judicial judgments should be made available in printed or electronic format, except in cases where the public has been excluded pursuant to the grounds for exclusion provided for in article 126 of the Code.

The public may also be excluded upon request of the victim, in the case when the victim feels that the presence of the public may affect the quality of the statement he or she would give before the court. Such right of the victim arises from article 354 of the CPC, under which, at any time from the opening of the session until the end of the main hearing the Trial Chamber, ex officio or upon a motion by the parties or the injured party, may exclude the public from a part of the main hearing or from the entire hearing if that is necessary, inter alia, to protect the privacy of the injured party or protect his or her safety and/or to protect the interest of a victim who is a minor.

As a summary regarding the principle of publicity in the legal framework of the CPC, it is one of the fundamental principles underlying any democratic criminal procedure in a state governed by the rule of law, where the operation of all state authorities, including the judicial ones, should be subjected to public scrutiny. Article 5 of the CPC provides: "Any person charged with a criminal offence shall have the right to a fair and public trial before an independent and impartial tribunal, in an adversarial procedure, with a possibility to challenge the accusations and tender and present evidence in his or her defense".

In the narrow sense, it means right to attend the actions of the procedure and the main hearing for the parties and their representatives and assistants (party public) or the right to non-parties, who are not interested in the outcome of the proceedings (general public). In the wider sense, publicity, in addition to the right to attend the procedural actions, also includes the possibility to find out the date and time of the main hearing; possibility for publication of a report on the procedural actions taken and the decisions made and possibility to publish the records of the proceedings.

[59] Ibid article 407, p. 2.

The principle of publicity of the main hearing and the pronouncement of the judgment was raised at the level of a constitutional principle. Thus, the Constitution follows this trend and stipulates that the proceedings before the courts and the pronouncement of the judgment are public and that the public may be excluded only in cases determined by law.[60]

This rule has been confirmed in the international human rights law (article 14, paragraph 1 of the International Covenant on Civil and Political Rights and Article 6, paragraph 1 of the ECHR). The European Court of Human Rights believes that, in principle, all evidence have to be produced in a public hearing, in the presence of the accused and before an impartial court, with a view to adversarial argument.[61]Public hearing is an essential feature of the right to a fair trial. As the Court noted: The public character of proceedings, as laid down in article 6(1) protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts, both lower and higher instance, can be maintained.

> *"By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 (1), namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention."*

Our Law on Courts lists publicity among the principles of the procedure (article 10). CPC prescribes that the main hearing shall be public and that it may be attended by persons of age (article 353, paragraphs 1 and 2). This implies that the court hearing against perpetrators of criminal offenses who are of age may be attended by persons of age who have not been designated in advance, depending on the available space in the courtroom. In the event that the facilities at the court building are not suitable for the main hearing, the President of the Court may specify for the main hearing to be held in another building.[62] The term "suitable" facilities does not imply that in criminal cases that raise a particularly high public interest the hearing

[60] Supra, note 4.
[61] Barbera a.o., 6.12.10988, Series A No. 146, para.78; Kostovski, 20.11.1989, Series A, No. 166, para.41
[62] Supra, note 4, article 346, p. 2

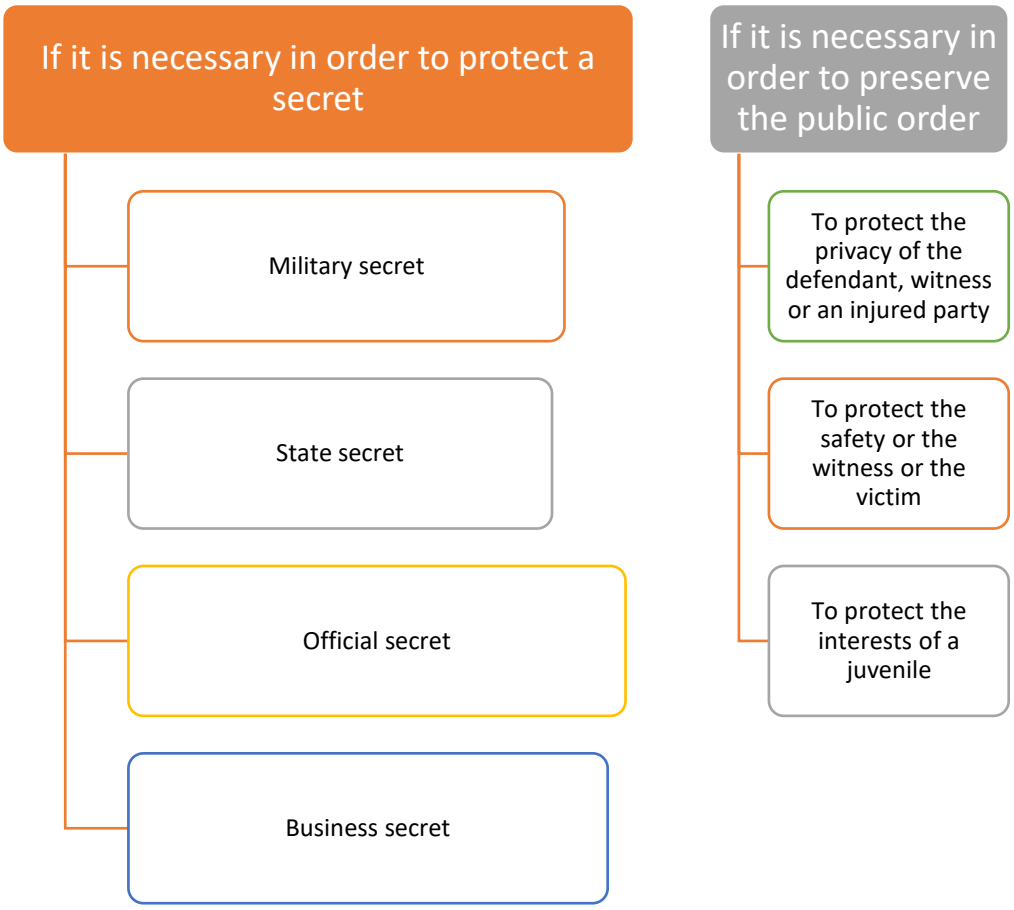
should be moved to a football stadium or a city fair hall, but that the president of the court has to base his/her decision on a reasonable assessment of all circumstances of the case.[63]

The principle of publicity provides an opportunity for general public scrutiny over the operation of the courts and other participants in the proceedings, which affects the quality of the judiciary in general, and the quality of the judicial decisions in particular, since the court and the litigants, being aware that the trial is followed by the citizens, media or civil society organizations, ensure that they are performing their tasks diligently, as laid down in the CPC. On the other hand, following publicly the operation of the courts strengthens the citizens' confidence in the judiciary and creates a feeling of legal certainty. In particular, the fairness and the transparency of the proceedings have an effect on the litigants' acceptance of the court decisions, even when they lose the case. In this way the citizens also accept the legal system in general. In terms of the present of journalists during the main hearing, the Court's Rules of Procedure[64] stipulate that

> *"The reporters-journalists can attend the public hearings without an obligation to obtain a prior consent of the court. The Court, in accordance with the Rules of Procedure, is obligated to provide for the conditions for their attendance and work. The trial chamber may, at any time, ex officio or upon a motion by the parties, exclude the public, including the journalists. The exclusion of the public may apply to the entire main hearing or parts thereof."*

The importance and significance of the principle of publicity is reflected in the fact that the exclusion of the public from the main hearing contrary to the law constitutes an absolute breach of the criminal proceedings. Due to the importance of this principle, the cases when the public may be excluded from the main hearing are strictly defined in article 354 of the CPC, based on the restrictions laid down in article 6 of the ECHR:

[63] Ibid
[64] Court's Rules of Procedure, Official Gazette no. 66/2013 and 114/2014



1. If it is necessary in order to *protect a secret.* The secret can have a different nature - military, official or business, i.e. those are data of confidential character and the very fact that they have to be presented at the main hearing poses a risk of their public disclosure, hence the exclusion of the public is justified so as on to prejudice the general interests.

CPC stipulates that the public may be excluded *"(...) if that is necessary in order to protect a state, military, official or an important business secret (...)".* It appears that the protection of security implies the protection of state secrets. Albeit it is justified to a certain extent to take into account a state or military secret, at least as found by the European Court of Human Rights, under the ground of "protection of national security", there is still some opposing views with regard to the justification of using the official or business secretes as grounds to exclude the public from the hearing.

The exclusion of the public on the grounds of "protection of an official or business secret" could be interpreted as having a too wide scope, since it makes it possible to carry out closed court hearings in order to protect an "official or important business secret".[65]

The CPC does not follow the legal terminology adopted by the Law on Classified Information[66], which, in article 7, paragraph 3, classifies information as – state secret; - strictly confidential; - confidential; and - restricted.[67]

Notwithstanding the type of the secret, the court has an obligation and discretionary power to determine whether there is a legitimate interest to exclude the public, since this ground has an optional nature and to be justified there has to be a threat of prejudicing the general interests, and the decision should include a relevant rationale in this regard.

2. If it is necessary in order to *preserve the public order.* In certain cases the perpetration of a single criminal offense could raise a great revolt among the citizens and there is a potential, if the public is attending, for disruptions within the courtroom or outside it, and for these reasons the public is excluded. 1) If it is necessary in order to protect *the privacy* of the defendant, witness or an injured party. 2. If it is necessary in order to protect the safety or the witness or the victim. To *protect the interests of a juvenile* - when a juvenile is on trial, the public shall always be excluded (article 91, Law on Justice for Children, Official Gazette 148/2013), but there is also an obligation for the court to exclude the public from the part of the hearing when a juvenile as a victim of a criminal offenses is being heard, or in case of procedural actions which may harm the juvenile's personality and development.

[65] Kalajdjiev, G. et al, Commentary to the Criminal Procedure Code, 2018
[66] Law on Classified Information, Official Gazette of R. Macedonia no. 9/04
[67] Ibid

Proposals by the Judicial Media Council for amendments of the CPC

1. Amendment of article 360 of the CPC

In particular, in accordance with the applicable legislation, i.e. article 360, paragraph 3 of the CPC, film and television recording shall not be allowed inside the courtroom. As an exception, the President of the Supreme Court of the Republic of North Macedonia may allow such recording at a specific main hearing, and if the recording has been approved, due to justified reasons, the Trial Chamber can still decide for specific parts of the main hearing not to be recorded.

The Judicial Media Council hold the opinion that it would be necessary to amend these provisions, primarily to facilitate media reporting, and thus enable the citizens to follow the court processes more closely, above all those that raise a high public interest.

Thus, it proposes that the approval for recording should be issued by the trial judge or the presiding judge of the chamber in the given court proceeding. This is also owing to the fact the each judge in the course of the proceedings makes a number of procedural decisions of different types that decide on the rights of the participants in the proceedings, and in a case when the public is excluded from following the hearing, there is no legitimate reason why the judge should not also decide on whether a given main hearing should be recorded or not.

This would replace the current obsolete solution under which the permit to record is issued by the Supreme Court of the Republic of North Macedonia. In particular, in an era of modern technology and mobile media tools it is necessary to adjust the legal solutions to the development of the technology for the purposes of expedient and efficient monitoring of the court proceedings by the public.

For this purpose the Council also proposes the establishment of a ***list of interested/accredited media*** *to follow a particular case, which, within a reasonable period of time, would obtain approval to follow and record the process. Such solution would be in line with professional standards of the media and the ethics of journalism as a profession, and would also reduce voluntarism and sensationalism.*

It is proposed that each judge/presiding judge should be granted discretionary rights to accept the requests for following and recording main hearings by the media that have not been accredited if the judge assesses that it would not prejudice the proceedings and there are sufficient reasonable grounds to do so. The Judicial Media Council also finds the need for further detailing of the provisions of this article, so that it would be defined precisely in which cases the recording of parts of the main hearing could not be allowed, so as to avoid arbitrary interpretation of the provisions to the detriment of the public interest.

Proposals by the Judicial Media Council for amendments of the CPC

Amendments to article 360 of the CPC

Prescribing the permissibility of use of the recorded audio and video materials by the media in the public interest

The Judicial Media Council proposes prescribing the permissibility of the use of recorded audio and video materials by the media for the purposes of the public, naturally with the relevant restrictions to observe the principle of presumption of innocence, as well as to protect personal data, intimate life and personality of the victims, in particular of juveniles, as well as other restrictions in line with international standards and conventions.

The Council proposes that provisions should be made whom of the participants are prohibited to be recorded (e.g. lay judges, accused, victims, minors, etc.) as well as the actions taken at the main hearing (for instance, consultations between the accused and the defense counsel) and to provide for the possibility to ask the accused and the victim for their consent to be recorded.

It is more than evident that the CPC does not include among the grounds for exclusion of the public, which are listed expressly and cannot be expanded by some sort of extensive interpretation, mandatory exclusion of the public only of the grounds of obtaining some of the evidence by applying special investigative measures. Within this context, the court is using a bad practice of excluding the public whenever evidence resulting from the application of SIM is produced at the main hearing. It is a different case if some information are genuinely confidential and are classified as such in line with their nature. Within this context it is clear that some of the information that could have been obtaining using SIM measures would lead anyway to exclusion of the public on the grounds of assigning these information the relevant classification under the law on classified information. It is another issue whether, in addition to the exclusion of the general public, the litigants and other participants in the proceedings would be required to present security certificates.[68] That would imply that, as opposed to the current

[68] Kalajdjiev G., Saiti Xh., Andonova S., Bozinovski A., Petrovic S., Karovska B., Saramandova N., Gogov B., Gjurcilova P., Dimovska D., Jovcevski J., Handbook on the implementation of measures for interception of communications, DCAF - Geneve Center for Security Sector Governance.

(old) practice, the data would be produced as evidence at the hearing without being declassified.[69]

1, 2 and 3. The exclusion of the public does not mean that nobody could attend the main hearing. On the contrary, the exclusion of the public does not apply to litigants, the injured party, their representatives and defense counsel, as laid down in article 355, paragraph 1.On the other hand, at a main hearing where the public has been excluded, the Trial Chamber may allow for the presence of certain officials, scientific and public workers, and, upon a motion by the defendant, his/her spouse or civil law partner and his/her close relatives.[70] Similar procedure applies to juveniles, where the Trial Chamber may allow the presence at the main hearing of persons engaging in protection and education of juveniles, as well as scientific workers.[71] The presence of these persons shall ensure that the relevant legal provisions are applied at the hearing. Furthermore, if the public is excluded from the main hearing, the pronouncement of the judgment shall always be carried out at a public session. The Trial Chamber shall decide whether and to which extent it shall exclude the public when pronouncing the reasons for the judgment.

It should be noted that the trial chamber, which manages the main hearing, is authorized to order the removal of the defendant, defense counsel, witness, expert witness, interpreter or other person violating the order from the courtroom. However, it cannot be considered equal to exclusion of the public, because those are disciplinary measures taken in order to ensure smooth operation of the court and maintain the order in the courtroom.

The presiding judge of the trial chamber is obliged to warn the persons who are present at the hearing about their obligation to keep confidential anything they have learned during the hearing, noting that disclosing such information constitutes a criminal offense.

The presiding judge shall first issue a warning to any persons who attend as observers and obstruct the main hearing. If the persons shall continue to obstruct the order in the courtroom notwithstanding the warning, the trial chamber may order their removal, initially by requesting the persons to leave the courtroom voluntarily, and if they fail to comply with the order of the chamber, it may call upon the judicial police, which may remove the persons by force if they continue refusing to leave the room voluntarily. The removal shall not prevent the

[69] Ibid, p. 85
[70] Article 411, p. 2
[71] Article 92 of the Law on Justice for Children, Official Gazette of the Republic of Macedonia no. 148/2013

fining of the person, in accordance with article 361, paragraph 1 of the law, or the further prosecution of this person if the action taken constituted a criminal offense. Other consequences for the persons attending the main hearing in the capacity of observers and to certain participants in the proceedings for a conduct disturbing the order in the courtroom are laid down in article 361 of the CPC.

The removal of persons who attend the main hearing in the capacity of public is an act to maintain the order in the courtroom and shall not amount to exclusion of the public under article 354 of this law, as a procedural decision that needs to meet legal requirements and is adopted with rationale and can contested by the parties with an appeal, and the participants in the procedure are not warned in the meaning of article 355, paragraph 3 of the CPC.

By rule, film and television recording are not allowed in the courtroom, either before the start or for the duration of the hearing.
As an exception, with approval by the President of the Supreme Court, specific main hearing may be recorded, most often in the case of proceeding on an event of considerable public interest.

Nevertheless, even when there is an approval by the Supreme Court, the trial chamber can still decide, for justified reasons, not to allow the recording of specific parts of the main hearing. Justified reasons may include, e.g., refusal of a witness to make a statement when the hearing is recorded, the content of the statement is such that it may disturb the public considerably, during the examination of a protected witness, etc. The chamber shall make a decision containing a brief elaboration of the reasons.

"In accordance with article 104, paragraphs 2, 3 and 4 of the Court's Rules of Procedure, visual and audio recording, reporting and taking still photographs in the court proceedings may be carried out by journalists with the approval of the presiding judge, and upon a previous opinion of the judge and the prosecutor in the criminal proceedings. Recording and taking photographs should be carried out under the supervision of the judge, i.e. presiding judge of the chamber."

However, when it comes to the practical application of these provisions, the jurisprudence is not harmonized and there are cases where the presiding judge, despite the approval for recording issued by the Supreme Court, does not allow the media to record. It is worth noting that, according to the current practice; in particular at the Criminal Court in Skopje, the cameramen are not recording the hearings, but are just shooting b-roll before the start of the main hearing, which is very different. On the other hand, in some courts in the interior of the country the judges allow recording for the entire duration of the hearing. This is an indicator for the lack of harmonization of the jurisprudence. It is further evidenced by the decision of the Constitutional Court of the Republic of North Macedonia to dismiss such an initiative.[72]

Law on Civil Procedure

The Law on Civil Procedure, similar to the CPC, provides that trial chamber shall decide on the exclusion of the public by decision that has to be elaborated and made publicly available, and no appeal shall be allowed against the decision to exclude the public, in accordance with article 295 of the LCP.[73] The exclusion of the public contrary to the law constitutes a material violation of the provisions of the litigation procedure, and this is why an extraordinary legal remedy, i.e. review is allowed under article 375, paragraph 1, item 1. In particular, the legal solutions in the provisions of the LCP are similar to those of the CPP, where, in terms of the exclusion of the public, they provided that the public may be excluded for the entire main hearing or parts thereof if it is required in order to protect an official, business or personal secret, the interests of the public order or morals.[74] What is a point of concern is the possibility under article 293, paragraph 2 to exclude the public if the order in the courtroom cannot be maintained, which opens the door for misuse and denying the public the information about the case. **The permissibility of such option should be reconsidered taking into account the fact that it is impermissible for a court not to be able to maintain the order in the courtroom**, i.e. in such event the hearing should be adjourned and held when the requirements for holding a public

[72] Constitutional Court of the Republic of North Macedonia, Decision U. no. 60/2018, available at http://ustavensud.mk/?p=17089
[73] Law on Civil Procedure, Official Gazette of the Republic of Macedonia no. 116/2010, available at https://www.pravdiko.mk/wp-content/uploads/2013/11/Zakon-za-parnichnata-postapka-20-01-2011-prechisten-tekst.pdf
[74] Ibid, article 203, p. 1.

hearing will be met.[75] At the same time, the practical experience indicates that the decisions on the exclusion of the public state only the grounds for the exclusion, and do not elaborate sufficiently on the reasons for the exclusion. This is an area where the Judicial Media Council of the Republic of North Macedonia could intervene.

Even if the public is excluded from the court hearing, the LCP provides that the pronouncement of the judgment is always public[76]. Furthermore, it introduces an obligation that the judgment, within two days of its preparation and signing, should be published at the court's web page.[77]

Law on the management of case flows in courts

For the purposes of objective and impartial handling of court cases, and taking into account the procedure and the software solution embodied in the ACCMIS system provided for such purpose, it was necessary to govern the entire procedure relating to the case flow by a law, and in 2010 the Law on the management of case flows in courts, or the so-called Law on the ACCMIS system, was adopted.[78]

This law governs the matter relating to the management of the case flow in the courts and is fully aligned with the Law on Court and the 2019 Law amending the Law on Courts[79], under which the cases arriving to the court for adjudication are distributed electronically among the judges according to the time of receipt of the case by the court, excluding any influence on the manner of distribution by the president of the court, the judge or the judicial administration through the Automated Court Case Management Information System, in accordance with the law.[80] For better understanding of the importance of the law and its role in ensuring the judicial transparency, the objectives of the law are:

- to manage the case flow in the courts of the Republic of North Macedonia through the use of automated court case management information system (ACCMIS).

[75] Transparency and openness – modernization of the judicial system in the Republic of Macedonia, Institute for European Policy and the Helsinki Huan Rights Committee of the Republic of Macedonia, 2005
[76] Article 325, p. 1, LCP
[77] Article 326, p. 3, LCP
[78] Law on the management of case flows in courts, Official Gazette of RM no. 171 of 30.12.2010
[79] Law on Courts ("Official Gazette of the Republic of Macedonia" no. 58/2006, 35/2008, 150/10, 83/18 and 198/18)
[80] Article 7 of the Law on the management of case flows in courts, Official Gazette of RM no. 171 of 30.12.2010

- to respect the legal deadlines for undertaking procedural actions, legal deadlines for adoption, preparation and announcement of the court judgments and the deadlines determined with this law,

- to prevent deadlocks in the court case flow, and

- to prevent of creation of a backlog of courts cases.

The law provides that the management of the case flow shall be carried out by several actors - the president of the court, court administrator, judges and court clerks, and the use of the ACCMIS for that purpose shall be mandatory.

The Law also prescribes the mandatory publication of non-effective and effective judgments at the court's web page, under specific conditions.

"the competent court official of the first instance court shall be obliged to publish the enforceable court judgment within two days from the day of its enforceability, that is, its adoption by a higher instance court, on the website of the court with the name and surname of the parties, i.e. the title of the legal entity, in the course of which the address of residence is anonymized, i.e. the residence or the seat of the parties, as well as the single identification number of the citizen or the single identification number of the entity of entry and personal data of the witnesses and victims in the proceeding".

It also provides that the competent court official shall be obliged to publish the non-effective judgment within two days upon its receipt on the web page, where the personal data of the participants in the proceedings shall be full anonymized, with the exception of the names and surnames of judges, public prosecutors, public attorneys and legal representatives of the parties.

In cases when the public is excluded in accordance with the Constitution of the Republic of North Macedonia, laws and ratified international agreements, it provides that the court decisions shall not be published on the web page of the court. Additionally, the Law stipulates that the judgments in criminal cases published on the web page of the court shall be deleted upon expiry of the period of time for deletion of the conviction, in accordance with the provisions of the Criminal Code, while other court decisions shall be deleted upon the expiry of five years after their publishing.

The Law provides that the court decisions published at the web page of the court could be printed out, without the possibility to modify, copy or edit the text of the published document, which is particularly important in view of preserving the authenticity and legitimacy of the copies.

The manner of publishing and searching the court decisions at the web page of the court is regulated by an enactment of the Minister of justice - Guidelines for the manner of publication and searching of court decisions[81].

It defines in detail the manner of proceeding with non-effective and effective judgments of the courts, in terms of which data should be anonymized, deleted and published at the web pages of the courts, including examples how it should look like, and it also prescribes the manner of searching for those decisions on the courts' web pages.

The Law also prescribes the establishment of public relations offices of the courts, as well as a solution relating to media relations. Thus, article 13 of the law provides that interested parties may apply to the public relations office of the court for copies of court decisions published at the court's web page, and the office, within a period of 24 hours upon the application by the interested party, shall furnish them with a copy of the requested decision published at the court's web page, upon due settlement of the court fee in accordance with the Law on Court Taxes. *Nevertheless, this solution has been noted as an ineffective and inefficient one at the educational workshops of the Judicial Media Council*[82] *because it fails to ensure regular and expedient communications with the public and the journalists.*

The law provides that the public relations office, within a period of 24 hours from the submission of the application, shall deliver the court decision published at the web page of the court to the person by electronic means, free of charge, at the electronic address referred to in the application.

The law also provides for a disciplinary liability for the persons who are obliged to act ex oficio in accordance with the, and fail to do so.

[81] Guidelines on the manner of publication and searching of judicial decisions, Official Gazette of RM no. 44 of 05.04.2011

[82] ""Journalism School for Judges", workshop organized by the Association of Judges of the Republic of North Macedonia and the U.S. Embassy to North Macedonia within the project "Strengthening the role and functionality of the Judicial Media Council", available at: http://www.mja.org.mk/Default.aspx?news=863e7d39-cbbc-4279-b23f-7504d812e3b7&ln=3&type=17ad81e0-4f67-4746-8b0a-575d73e699b6

Taking into account the above, it could be said that the legal and secondary legislation frameworks are mostly aligned to the standards and needs of the day-to-day practice. However, in the course of time after the adoption of the law, the inevitable change of the circumstances in terms of the procedures relating to the case flow in courts and the increased interest of the public for this procedure and for judicial proceedings in general, have necessitated the redesign of this legal solution so as to fully meet the objectives underlying its adoption.

Hence, on 16.02.2020 the Assembly of the Republic of North Macedonia adopted a new Law on the management of case flows in courts.[83] The transitional and final provisions of the law stipulated a vacation legis of three months upon the date of its publication in the Official Gazette of RNM. The new law aims to:

- ensure the right to impartially elected judge when distributing cases in courts,
- manage the case flow in the courts of the Republic of North Macedonia through the use of automated court case management information system (hereinafter: automated system),
- prevent deadlocks in the court case flow,
- prevent of creation of a backlog of cases, and
- respect the legal deadlines for undertaking procedural actions, legal deadlines for adoption, preparation and announcement of the court judgments and the deadlines determined with this law.

Article 9 of the present Law provides for publishing of effective court decision at the web page, which is significantly different compared to the former solution which provided for publication of non-effective decisions too. It also provides that the publication should include: names and surnames of the parties, the title of the legal entity, anonymized address of residence, single identification numbers of the citizens or the entities, within a period of 7 days.

The same provision stipulates that the automated system should generate data on the enforceable court decisions published at the court's web page. As opposed to the previous legal solution, presently article 9 of the law prescribes that in cases when the public is excluded in

[83] Decree on the promulgation of the Law on the management of case flows in courts, available at https://www.pravdiko.mk/wp-content/uploads/2020/03/Zakon-za-upravuvane-so-dvizheneto-na-predmetite-vo-sudovite-16-02-2020.pdf

accordance with the Constitution of the Republic of North Macedonia, laws and ratified international agreements, the court decisions shall be published on the website of the court without a rationale.

Court decisions in criminal cases published on the website of the court shall be delete based on a decision to delete all legal consequences from the verdict, and other court decisions shall be deleted after the expiry of five years after their publishing. This ensures a consistent application of the provisions of the Criminal Code on striking the consequences of conviction, thus respecting the citizens' rights relating to the nonexistence of consequences of the conviction once the legal requirements have been met. The law also provides that the software solution for publication of the court decisions on the court's website shall contain a possibility for printing them, without being able to modify, copy or process the text of the published document.

This amendment of the previous legal solution is of relevance because it eliminates the need for the existence of the public relations office. **It could be said that it was a rational decision, taking into account the competences of the office, as well as the fact that it has never operated in full capacity and has failed to justify its existence and impose itself as an institute that will further elaborate and extend its competencies in the future, and the citizens themselves, who failed to utilize the potential of the office, are equally at fault for the termination of the office.**

The possibility to download the effective decision from the web page of the court has fulfilled the objectives underlying the establishment of the office, and the current solution is more cost effective and efficient.

Court's Rules of Procedure

The Court's Rules of Procedure dedicates its fifth chapter to the communication with the parties, other persons and bodies, and the establishment of the public relations office.[84] The Judicial Media Council, at the workshops organized under the auspices of the project "Strengthening the role and functionality of the Judicial Media Council", noted the

[84] Court's Rules of Procedure, Official Gazette no. 66/2013 and 114/2014

ineffectiveness of the public relations offices, and pointed out that the potential solution could be to recruit journalists as PR staff of the court instead of court clerks. More details about the conclusions of the workshops are provided at the end of the present publication.

The Rules of Procedure provide for mandatory publication of the time, place and the subject of the case on the announcement video board and in front of each courtroom. Unfortunately, this obligation is not complied with fully, which is concerning because the lack of information

The recommendation of the Judicial Media Council that the public relations staff should monitor the media and react through the web pages and other social media for the purposes of correct public information is particularly important.

is one of the reasons preventing the public from following the proceedings.

Furthermore, the Court's Rules of Procedure *"obligates the president of the court/the person in charge of public relations assigned by the president to disclose information to the public on the operation of the court, i.e. on the course of the proceedings in specific cases for the purposes of open and objective public information"*.[85] It should be noted that the Rules of Procedure leaves a possibility for the person in charge of public relations to be a person employed at the court other than a judge. This is the case in some countries, although in the majority of European counties those competences are delegated to the so-called press judges. Furthermore, it is recommended that the PR officers should have regular annual meetings to exchange their experiences, and to put into place certain rules relating to the tasks and roles of the PR officers, to provide them with specific media relations training, or that such staff should be recruited from the ranks of journalists. The recommendation that the public relations staff should monitor the media and react through the web pages and other social media is particularly important.[86] Such recommendations certainly arises from the need for proper public information, and following the recommendations there is an absolute need to take specific action following the example of the Criminal Court in Skopje.[87]

[85] Article 102 of the Rules of Procedure

[86] Press judges in the four appellate jurisdictions of the Kingdom of the Netherlands. Available at https://www.rechtspraak.nl/SiteCollectionDocuments/The-Judiciary-and-the-Media-in-the-Netherlands.pdf

[87] Invitation for a briefing with the journalists by the Criminal Court in Skopje. http://sud.mk/wps/portal/osskopje1/sud/vesti/fee29d5c-1ae4-4e0b-bc63-22b74080a67b/!ut/p/z0/jcy9DoIwGIXha3Ho2HyfWPkZ0RATlUUdsItpS8EKFpCCevfiDRjHk7znAQ4ZcCtGUwpnGivqaZ-

Interestingly, article 93 of the Court's Rules of Procedure recognizes the right to review the case files only to litigants and other parties with **legal interest, and not those with public interest**, which is contrary to the principles enshrined in the Recommendation (2003)13 of the Council of Europe on the provision of information through the media in relation to criminal proceedings, which has been discussed above. The Judicial Media Council, at the workshop entitled "What is public, what is not, and why?", held in Skopje, adopted a conclusion that judicial transparency implies opening the courts for the cameras and other types of electronic devices, so as to enable the reporters to "tweet" and write from the courtroom. With regard to the access to the case files, it should be facilitated and balanced with the requirement for protection of data as well as the redefinition of the legal into public interest. The files of a specific case may be of public interest, particularly from a scientific point of view, especially due to the fact that the jurisprudence is already treated as a source of law. Proving the legal interest might be an obstacle, i.e. it might be used as a pretext to restrict the access. The stated solution should be considered and the circle of persons who would be granted certain access to court files should be extended adequately, in particular for the archived cases.

With regard to the manner of reporting, it should be noted that the Court's Rules of Procedure provides for a possibility for audio and video recording and taking still photographs, which are allowed in the criminal, civil and administrative procedures, upon obtaining the relevant approvals. In the case of criminal proceedings, public broadcast (reproduction) approval is also required. Furthermore, what is striking is the solution providing for written consent of the parties for recording in the civil procedure, which is particularly difficult to obtain.

Maybe it should be considered not to ask for consent in writing in specific civil law procedures of particular public interest, e.g. procedures relating to defamation of politicians and journalists. Furthermore, the Court's Rules of Procedure contains provisions on the procedure to obtain the consent referred to above (article 105). It is interesting the Rules of Procedure, in article 106, paragraph 1, in fact provides several grounds for denial of the request to record in

5f_E3jGG4w314PKwwTjAIT1GMmASwBf47mATvka7TEngr3JUaWzSQFVp7Ub5UdC40o0yjpFL5C-p5MpgkFH4gv1dz6zoeA1eNdfrlIGsHWRt1uVcE-yEn2DZKOysIjrp3huBfcFtx-X7Gsw_SRtqt/

the courtroom (public interest and confidence, nature of the case, interest of the proceeding, privacy and safety of the participants in the proceedings).[88]

This normative solution should be reviewed in the light of the fact that the Rules of Procedure provide sufficient reasons for restriction of the recording, and the grounds for denial of the request should be reduced only to the safety of the participants in the proceedings, rather than providing margin of appreciation for subjective assessment. It's worth noting that the Court's Rules of Procedure also stipulates the provision of adequate conditions for the media crews, and, what is particularly striking, it also makes references to the equipment. In particular, in addition to a video or TV camera, audio system and photographic cameras, which the Rules expressly provides that should be entered by the media that obtained the consent, the Rules of Procedure also makes references to telephones and computers as "recording and other equipment" which "should not produce any distracting effects".

The Rules of Procedure are not prohibiting expressly their use, so it seems they can be used freely, and there are also no provisions on the use of social media, although in practice they have been used by certain judicial authorities, such as the former SPO. However, the Rules of Procedure of the Criminal Court in Skopje contains special rules on conduct in the courthouse, which is understandable taking into account its jurisdiction and the nature of the judicial processes. **Despite stating that it is an unofficial document for information purposes only, it prohibits bringing in mobile phones, computers and other recording equipment in the courtroom. This is contrary to the Court's Rules of Procedure, and if any special rules on publicity are required for the Criminal Court in Skopje, then the Court's Rules of Procedure should be amended accordingly.** The Court's Rules of Procedure provides for operation and reporting using a closed circuit television system (article 109 of the Rules of Procedure), taking still photographs, recording in the courthouse and public broadcast with the consent of the president of the court (article 110), as well managing the taking of photos/recording in case of recording in the courtroom under the guidance of the presiding judge/trial chamber (article 111). The comparative experiences with audio and video recording are different, but the general rule is that the restrictions are stricter in criminal proceedings, even in those cases where the recording is allowed.[89]

[88] Ibid

[89] Court's Rules of Procedure, Official Gazette no. 66/2013 and 2013 и 114/2014, articles 109, 110 and 111

Proposals by the Judicial Media Council for amendments of the Court's Rules of Procedure

It is necessary to amend ***article 104, p. 3 of the CRP****, in the part prescribing that the written consent of the parties in a civil proceeding is required for visual and audio recording, reporting and taking photographs, due to the fact that there are civil proceedings with public interest (e.g. bankruptcy).*

It is necessary to amend ***article 106, p. 3, indent 1 of the CRP****, since, notwithstanding the provisions of the LCP and CPC, any judge may rely upon the CRP and stop or restrict the recording or taking of photographs upon request of the parties, and with a decision of the court, at any time, which implies that notwithstanding the public interest, in any procedure without exception, the party may request that the recording is stopped, and such request would suspend any decision to allow the recording.*

It is necessary to amend ***article 104, p. 2 and 3 of the CRP****, which stipulated that the visual and audio recording, reporting and taking photographs of a criminal proceeding and the public broadcast (reproduction) of the recordings shall be carried out upon approval by the President of the Supreme Court of the Republic of North Macedonia, upon a previous opinion issued by the presiding judge and the judges, in a manner determined by law. These amendments are in the context of the proposed amendments of the CPC, and the text of the CRP should be aligned with those amendments.*

In the light of the above, it is also necessary to amend ***article 105 of the CRP****, which provides that the President of the Supreme Court of the Republic of North Macedonia, i.e. the president of the court, based on the submitted request in writing, shall issue an approval for recording or taking photographs in the specific case.*

With regard to the remaining provisions under this article, which relate to the manner of submission of the request for recording and the content thereof, as well as the other provisions of the Court's Rules of Procedure, we believe that they should be further elaborated in line with the proposed amendments of the CPC in a separate by-law - rulebook or through elaboration of the provisions in the Court's Rules of Procedure.

Proposals by the Judicial Media Council for amendments of the Court's Rules of Procedure

Within this context we propose to review the comparative experience of the USA, where the courts are adopting rules on electronic access to the courts (example - the Rules of the Supreme Judicial Court of Massachusetts).

The rules, inter alia, provide that the equipment and the devices should have specific features and should be positioned and handled in a manner that would not disrupt the dignified course of the proceeding, unless the judge approves a derogation for justified reasons, in a given moment only one (or two) stationary and mechanically silent TV broadcast camera can be used, a second mechanically silent video camera for other media and additionally one (or two) silent photo camera. Unless the judge grants a concession, the photographic equipment and the operator shall be placed at a fixed position in the area designated by the judge and shall remain there while the court is in session, and the movement shall be restricted to a minimum, especially in the case of jury trials. The operator is not allowed to interrupt the court's proceedings due to technical problems. Video recording, streaming, taking photographs, audio recording and broadcasting of judicial proceedings shall be carried out only under collective agreement with broadcast and printed media.

During the trial, the request by the media to access the evidence or receive copies thereof shall be made in the format and manner prescribed by the court administrator. All reasonable efforts shall be made to meet such requests in due time, depending on the volume of work of the court. The original evidence shall remain with the court.

The judge may restrict or temporarily suspend the access of the media if it appears that the reporting would be significantly likely to prejudice and person or have other detrimental consequences.

The judge shall not allow:

– *taking photographs or electronic recording or broadcasting of hearings of jury members or potential jury members*

– *electronic recording and broadcasting of the consultations between the judge and the legal counsel, between the legal counsel and the clients, or*

– *frontal photographs of jury members*

Minors and victims of sexual assault cannot be recorded without the consent of the judge. The judge shall not grant exclusive approval for media reporting from judicial proceedings to any person or organization. If there are several requests to take photographs or record the same proceeding, the persons who submitted the requests have to reach an agreement on the shared use of the materials and such agreement should be reached outside of the courtroom, without any intervention by the court.

The Judicial Media Council recommends that in those cases where video recording is allowed the court should take action not to allow recording of non-professionals (witnesses, suspects, lay judges), not to allow live broadcast and to prescribe clear and concise rules for audio and video recording. However, what are particularly interesting are the comparative solutions with regard to the use of mobile phones and computers. The use of mobile phones is prohibited in most of the countries. It is recommended to set the rules for the permissibility to bring in and use mobile phones, as well as the consequences in case of infringement of such rules. In general, the journalists are allowed to bring in and use computers. Furthermore, we have noted the use of social networks such as Facebook, Twitter, Flickr by the judiciaries in certain countries (Denmark, Norway, Spain and Lithuania), which is assessed as a good way to bring the judicial system closer to the citizens, and, in this context, we recommend the development of a strategy, target groups and objectives with regard to use of social media for information, education and engagement of the citizens. It has been emphasized that the judges should restrict their personal life content on the social networks in order to preserve the dignity of the judiciary, and any violation of the ethical rules should give rise to disciplinary action.

Law on Courts

The Law on Courts is a systemic law laying down the organization of the judicial system in the RNM, the mode of operation of the courts, their competencies and any other matters relating to the proceedings of the courts.[90] It stipulates that the judicial office shall be exercises by courts, and that the courts shall be autonomous and independent state bodies. Article 2 of the Law stipulates that the courts rule and establish their decision on the basis of the Constitution, the laws and international treaties ratified in accordance with the Constitution, and that the judges, in the application of the law, shall protect human rights and freedoms. This, as prescribed in article 3, sets the grounds for the goals and functions of the judiciary, which include:

- impartial application of law, regardless of the position and capacity of the parties,
- protection, respect and promotion of human rights and fundamental freedoms,
- provision of equity, equality, non-discrimination on any ground, and

[90] Law on Courts ("Official Gazette of the Republic of Macedonia" no. 58/2006, 35/2008, 150/10, 83/18 and 198/18)

- provision of legal certainty based on the rule of law.[91]

Furthermore, the law provides that the courts shall adjudicate in a procedure prescribed by law:
- on human and citizens' rights and legal interests,
- on disputes between citizens and other legal entities,
- on crimes and misdemeanors, and
on other matters that, under law, fall within the competence of the court,
as laid down in article 4 of the law.
Article 5 of this Law provides that the courts shall protect the human and citizens' freedoms and rights and the rights of the other legal entities, while, in accordance with article 6, everyone shall be entitled to equal access to the courts with regard to protection of their rights and legal interests. The above implies that the courts, as autonomous and independent state bodies, in their operation rely upon both the domestic legislation and the ratified international treaties, and that the purpose of their actions is to protect human rights and freedoms.

Taking into account its role and purpose in the society, the court is also obligated to operate transparently, as one of the prerequisites to win the citizens' trust in the judiciary and build the judiciary's authority in the administration of justice.

Furthermore, the law prescribes an obligation to establish a public relations office (a legal solution that needs to be amended taking into account the new law on automated case flow management). Additionally, the president of the court and the judge (i.e. the person responsible for public relations) shall provide information to the public, taking into account not to prejudice the reputation, honor and dignity of the personality and provided it is not detrimental to the autonomy and independence of the court.

[91] Ibid

Thus, the Law on Courts, in its article 97, prescribes the manner of communications of the courts with the public, i.e. the public media. It provides that the president of the court, a person responsible for public relations, shall give information to the public via the mass media about the work of the court, as well as information about the course of the procedure in a particular case.

In the light of the practice thus far and the traditional inertness of the judiciary when it comes to transparency and openness of its operation, there is a *need to develop a long-term strategy in this area*, which shall include continued training of all stakeholders. The training should cover judges and judicial clerks, as well as the public, and in particular the media.

The development of the digital technology and its availability to nearly everyone, as well as the possibility for express presentation of events via the social networks require establishment of rules of procedure and conduct, in order to prevent abuses, as well as to protect the procedure and the participants from any damages caused by partially or fully untrue news. The so-called fake news are a phenomenon of the 21st century and a mighty tool for misleading the public; therefore, the courts have to act proactively and take initiatives to prevent the sometimes irreparable damage caused by the disclosure of untrue information.

This is also the reasoning behind the provision under paragraph 5 of the same article, which stipulates that every court, at least once a year, shall inform the public about the results of the work of the court and the judges, and it would be advisable to do that in shorter intervals, so as to allow the public to get better acquainted with the problems that the courts are facing, as well as the successes in their work.[92]

In addition to such information activities, it is advisable to establish a practice of informal meetings with representatives of the media for the purpose of clarification of certain details and circumstances of specific cases of public interest, but also to discuss the operation of the courts in general. It is also recommended to maintain communications in the form of

[92] See supra, note 34

written notifications and releases for the purposes of factual accuracy and chronological synchronization and the use of unified terminology and the use of proper legal terms. This necessarily entails raising the awareness of the public and the media on the general principles and institutes of the procedural laws and in general the legislation governing particular subject matter of public interest. Naturally, the courts, on their part, should show understanding for the need of the public to know about the essential matters of a legal process, and the public releases and information should reach a compromise between the necessity to maintain the professional standards and vocabulary and the need to explain the matters in such manner that would allow proliferation of the information to as many public recipients as possible.

The judiciary has also recognized the need to use the modern digital technologies in order to improve its efficiency and the Law on Courts regulates and establishes a Judicial Information System. Thus, in accordance with article 99 of the law, the Supreme Court of the Republic of North Macedonia shall establish an Information Technology Centre with competencies for the technical management of the automated computer system for the management of court cases, the judicial portal and the databases that originate from the work of the court, while the President of the Supreme Court shall be responsible for the functioning of the automated computed system for management of cases in the courts.

Paragraph 3 of article 99 provides that the Supreme Court shall establish a working group on standardization of the procedure for the use of the automated computer system for case management in the courts, composed of one judge of the Supreme Court, one judge from each Court of Appeal, one judge from the Constitutional Court, one judge of the Higher Administrative Court, one judge from a basic court, the administrator of the Supreme Court of the Republic of North Macedonia and three IT staff from the courts.

This body, according to its competencies, is of great importance, taking into account that it acts upon requests by the courts and adopts conclusions establishing the rules of procedure for the case flow in the ACCMIS system.

Furthermore, it provides that each court should have an IT department, as a separate organizational unit, and that the courts shall mandatorily publish the effective judgments at the web page of the court within seven days upon the effective date, in a manner laid down in the law.

Law on Free Access to Public Information

The Law on Free Access to Public Information of 2019 is a de facto implementation of the obligations of the Council of Europe Recommendation on the access to public data under the competence of state bodies, which we talked about in the European experience.[93] The adoption of the Law was a result of the need for legal regulation of this issue, taking into account the increased interest and needs of the public, natural persons and legal entities for the use of public information, for various purposes and needs. This Law regulates the conditions, the manner and the procedure for exercising the right to free access to public information available to the state authorities and other bodies and organizations as determined by law, the bodies of the municipalities, the City of Skopje and the municipalities in the City of Skopje, institutions and public services, public enterprises, legal entities and natural persons exercising public powers determined by law and activities of public interest, and political parties in the area of revenues and expenditures.

Its purpose is to ensure publicity and transparency in the operation of holders of information and to enable natural persons and legal entities to exercise the right to free access to public information by submitting a special request for access to public information.[94] Holders of information are obligated to provide information to the public concerning their operation. The Law provides for the right to free access to public information to all natural persons and legal entities, including foreign entities.

The Law defines the competence of the Agency for Protection of the Right to Free Access to Public Information, as a guarantor of the protection of the right provided by Law. The Agency shall be obligated to publish on its website a list of holders of information and officials of holders of information, which facilitates the access thereof. The competence of the Agency includes:

[93] Law on Free Access to Public Information, Official Gazette of the Republic of North Macedonia no. 101/2019. Available at http://komspi.mk/wp-content/uploads/2017/09/%D0%97%D0%90%D0%9A%D0%9E%D0%9D-%D0%97%D0%90-%D0%A1%D0%9F%D0%98-%D0%9F%D0%94%D0%A4.pdf

[94] Form and content of the form of the Request for access to public information, available at http://komspi.mk/wp-content/uploads/2014/01/%D0%9F%D0%A0%D0%90%D0%92%D0%98%D0%9B%D0%9D%D0%98%D0%9A-%D0%91%D0%90%D0%A0%D0%90%D0%8A%D0%95.pdf

- conducting an administrative procedure and deciding on complaints against the decision by which the holder of information has rejected or dismissed the applicants' request for access to information,
- taking charge of the implementation of the provisions of this Law,
- preparing and publishing a list of holders of information,
- giving opinions on draft laws regulating the free access to information,
- developing policies and providing guidance regarding the exercise of the right to free access to information,
- conducting a misdemeanor procedure through a Misdemeanor Commission which decides on a misdemeanor in accordance with the Law,
- undertaking activities in the field of education of the holders of information on the right to free access to the information at their disposal,
- cooperating with the holders of information regarding the exercise of the right to access to information,
- preparing an annual report on its work and submiting it to the Assembly of the Republic of North Macedonia,
- performing international cooperation activities related to the fulfillment of the international obligations of the Republic of North Macedonia, participating in the implementation of projects of international organizations and cooperating with the bodies of other countries and institutions in the field of free access to public information,
- promoting the right to free access to public information and
- conducting other activities determined by law.[95]

Article 6 of the Law provides for exceptions to the right to free access to public information and these provisions provide for the right of holders of information to refuse to provide access to the requested information. The so-called **harmfulness test has also been provided for and it has been welcomed as a positive solution**. The test determines the proportionality of publishing the information and whether the consequences on the interest being protected are less than the public interest determined by law that would be achieved by publishing the information, and in that case, the requested information, despite the right not to be provided, may be provided to the applicant.

[95] See Supra note 37

The Law additionally defines the public interest of exercising the right to access to information, which means, but is not limited to, the interest in information, the publication of which, i.e. obtaining access thereof will:

1) detect abuse of official position and corrupt behavior;

2) detect illegal acquisition or spending of budget funds;

3) detect a potential conflict of interest;

4) prevent and detect serious threats to human health and life;

5) prevent and detect adverse impact on the environment;

6) help to understand the issue concerning which public policy is created or parliamentary debate is conducted and

7) enable equal treatment of every citizen before the laws.

According to the above, the applicant may explain, and then, if necessary, challenge the decision of the holder of information regarding the request for free access to information, having in mind the exhaustively stated cases based on which the consequences on the protected interest are checked, that is, the public interest that would be achieved by publishing the information.[96]

Such a complaint shall be provided for with the decision rejecting the request for access, and it shall be submitted to the Agency for Protection of the Right to Free Access to Public Information. If the Agency within 15 days from the receipt of the complaint does not adopt a decision on the applicant's complaint against the first instance decision, and does not adopt it within seven days following the repeated request, the applicant may initiate an administrative dispute.[97]

Article 8 of the Law stipulates that each holder of information shall appoint one or more officials responsible for mediation in exercising the right to free access to information, and holders of information are obligated to provide information to the public about the official responsible for information mediation. Therefore, courts are also obligated to act and to have such persons designated, as well as to provide information thereof.

[96] Complaint form of the Agency for Protection of the Right to Public Information. Available at http://komspi.mk/wp-content/uploads/2015/12/%D0%9E%D0%91%D0%A0%D0%90%D0%97%D0%95%D0%A6-%D0%97%D0%90-%D0%96%D0%90%D0%9B%D0%91%D0%90-2020.pdf

[97] Ibid

Pursuant to Article 9 of the Law, holders of information are obligated to regularly maintain and update the list of information at their disposal and publish it in a manner accessible to the public (website, bulletin board, etc.).

It is important to note that the Law stipulates that the request for access to information does not have to be reasoned concerning the reasons for which it is requested.

The holder of information shall be obligated to respond immediately to the request of the applicant, and no later than 20 days from the day of receipt of the request. The stated deadline may be considered long and in the future it is necessary to revise this legal provision by analysing what the optimal deadline is indeed to successfully act on the request, providing a reasonable, but shorter, deadline.

Epilogue of domestic regulations

One of the most important benefits for the democratization of society and increased transparency in the operation of the executive at all levels is that Article 37 of the Law provides for the exemption from liability of an employee of the holder of information who will provide protected information, if it is relevant for the detection of abuse of official position and corrupt behavior, as well as for the prevention of serious threats to human health and life and adverse impact on the environment.

Here we point out the similarities between this Law and the Law on the Protection of Whistleblowers[98]. This provides protection to those who share legally protected information with the public, in order to detect abuse or corrupt conduct of an official, or to prevent a serious threat to human health and life and adverse impact on the environment, on a larger scale.
More recently in our country, there have been cases of abuses detected by responsible officials, whereby the so-called whistleblowers, exactly as described in the cited article, pointed out and revealed such incriminating cases. A striking example is the one of Zvonko Kostovski and Gjorgi Lazarevski in the case of "Putsch"[99], who, by submitting audio recordings to persons outside the institution in which they work (MOI), revealed abuses of enormous proportions in terms of human rights violations, whereby responsible persons, outside the legal procedure,

[98] Law on the Protection of Whistleblowers, Official Gazette of the Republic of North Macedonia no.196 / 2015 and 35/2018, available at: http://www.ukim.edu.mk/dokumenti_m/653_Zakon_za_zastita_na_ukazuvaci-precisten_tekst.pdf
[99] https://akademik.mk/osudeniot-vo-puch-zvonko-kostovski-treba-da-se-vrati-na-doizdrzhuvane-na-kaznata-zatvor/

ordered mass wiretapping of a large number of citizens of RNM, including a large number of politicians, journalists, businessmen, judges, prosecutors and the like. This case subsequently caused shifts in the political and social life and caused a chain of events and processes that continue to date and shape the social environment. That case, because of its importance, has been noted in the Report of the EC expert group, led by Reinhard Priebe, which states that "the wiretapping scandal revealed a massive violation of fundamental rights, including the right to participate in public affairs and the right to vote, the right to equal access to public services, the right to privacy and the protection of personal data, as well as the right to an independent and impartial trial".[100]

Undoubtedly, the Council of Europe Convention on Access to Official Documents, which introduces positive obligations for the signatory states to provide all kinds of information to the public and the media, has a large share in the transparency of state bodies and courts; the Protocol of the Recommendation (2003) 13[101] stipulates that if the media have legally received information about ongoing criminal proceedings from judicial authorities or law enforcement authorities, these bodies and authorities should make such information available, without discrimination, to all journalists. The European Court of Human Rights has established the practice that the protection of the freedom of expression, in accordance with Article 10 of the European Convention on Human Rights, also applies to officials and other employees when they report any incriminating behavior they notice or become aware of while doing their job.

The Council, as an advisory body established to promote cooperation and dialogue between judges and journalists on issues of common interest, as well as to strengthen and affirm judicial transparency and public access to justice, in order to achieve its goals, has identified the need to improve legislation in the area referring to the availability of court processes and proceedings to the public. Therefore, having in mind that one of the prescribed activities of the Council is to initiate legislative amendments regarding the transparency of the judiciary, the Council has proposed necessary amendments to the provisions of the ***Law on Criminal Procedure*** and the ***Court Rules of Procedure***, initially, aimed at achieving improvement.

[100] First Report of the Senior Expert Group on Systemic Issues Concerning the Rule of Law in the Interception of Communications - Priebe Reports. Available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf

[101] Supra note 5 p. 3

Furthermore, there are plans to elaborate the general provisions proposed by a separate bylaw which will regulate and prescribe in more detail the manner in which the main hearing will be monitored by the media.

The need for the proposed amendments indisputably arises from the shortcomings and weaknesses established in this area in the past, when the access of the public, and thus the media, to court proceedings was significantly hampered. These weaknesses have been identified in several reports of foreign international organizations, but also by society itself, as a perception of the judiciary that negatively affects the administration of justice. More often than not, non-transparency arose from the inertia of the judicial system, as well as from the unprofessionalism and opportunistic behavior of individual judicial professionals. Now that improvement has been noted due to the application of good practice and compliance with standards in this area, we believe that it is time to improve the legislation in a manner that it will prescribe strengthening of the transparency of the judiciary and minimize the possibility of different interpretations and abuse of power. The identified need for change also stems from the need to adapt the judiciary and court proceedings to the modern age of advanced technology.

III

JUDGES IN THE ONLINE SPACE

Social Media and Judges

There is no single comprehensive definition of what social media are. The definition always depends on whether the approach is software, sociological, psychological, ethical and so on. However, one broad definition defines social media as "an online platform that allows users to create an account, connect with other users, and share and exchange content."[102]

Social networks and platforms as tools for social interaction between people date back to the 1990s. In recent decades, they have not only become an inevitable part of citizens' lives, but they also influence them, for which there are a number of renowned studies.

A huge frequency of information related to socio-political, economic, cultural and other developments in the country is transmitted to people in different ways every day. A fact attesting to this is that globally the number of social media users is growing, but also the number of shared information, photos, videos and other content. There are different social networks and platforms that allow different forms of electronic communication and interaction. Today, the most popular and most used social networking channels include: Facebook, Twitter, LinkedIn, Instagram, Snapchat, Tumblr, Viber, WhatsApp and others.

Judges, as active actors in social life, are faced with the challenge of whether to join social networks and how to behave, taking into consideration integrity and trust, but above all the open ethical dilemmas related to their function. The question remains unresolved, and there are only few documents that provide guidance on conduct.

[102] boyd, d., & Ellison, N.B. (2007). Social network sites: Definition, history, and scholarship. Journal of Computer-Mediated Communication, 13, 210–230.

Social media and judges – open questions and challenges

1) *Judges are faced with the question of whether to join social networks, but even more so how to behave, given the open dilemmas that arise from the specificity of their function.*

2) *The dilemmas about whether and how judges should use and behave on social networks are mostly ethical. The recommendations of the professional public generally indicate that the use of social networks is not prohibited, even in some cases it is recommended, but with certain restrictions, taking into consideration the function.*

3) *Analyzing the international regulations, it can be concluded that so far a relatively small number of documents have been published giving specific directions and regulating this issue. This is particularly the case because it is a matter of online appearance where communication is public, which cannot be legally restricted.*

Practical Advice

Having in mind the findings in the previous two chapters, several specific recommendations for judges arise, which refer to different presumed situations which they would face using social networks.

The following paragraph outlines the most important recommendations that judges should consider when it comes to using social networks.

PROTECT PERSONAL DATA

Privacy on social networks is "shared privacy". Social media presuppose rules for the information needed to open a user account. This is usually information about first and last name, sex, age, date of birth, email and other basic personal identifiers.

Think twice before sharing any personal information on social media, including your home address, family photos, or information about your partner's, children's, or close relatives' activities. It is advisable to keep this information to a minimum.

AVOID COMMON LOGIN PASSWORDS

Username and password are very important for maintaining the privacy of your account. In particular, the quality of the chosen password is crucial to the preservation and security of communication. When choosing a password, avoid common words from everyday vocabulary, numbers taken from the date of birth, zip code or telephone number. Never use the same passwords to access different online services.

When you use the same password for multiple accounts, if the password has been hacked, it may help attackers to misuse other accounts too. Avoid writing down passwords, especially on notes that may end up with others as a result of some carelessness.

DO NOT USE PSEUDONYMS

Consider whether to use your real name on social media or write under a pseudonym. But keep in mind that some networks such as Facebook do not allow you to use pseudonyms; instead, you should use your first and last name. There have been cases with an open account, when Facebook administration asks users for a personal identification document to verify their identity. However, if you do decide to use a different name instead of your real one, be mindful that it can be discovered later, which can damage your personal and professional reputation.

EASIER IDENTIFICATION WITH PERSONAL PHOTOGRAPHS

It is important to decide whether to use your personal photo, or a photo of a flower, animal, object, etc. as the so-called "Profile photo". A personal photograph, unlike others, would make you subject to easier identification in public.

CONSIDER WHO YOU BECOME FRIENDS WITH

Pay attention to who you become friends with on social media. Maybe, by adding you as a friend, one of the parties in the proceeding is looking for a way to get closer to you, or perhaps, discredit you.

PAY ATTENTION TO THE TONE OF YOUR DISCOURSE

Be careful with the tone of your discourse on social media. Judges should avoid inappropriate words or obscene language, vulgarities, satirical expressions, sarcasm, or irony, which could easily damage their integrity. If you put a "judge" under your name, then the posts could be considered official opinions of the institution in which you work.

AVOID POSTING DURING WORKING HOURS

Avoid using social media during working hours, especially sharing posts or comments, as each post includes posting time, which is visible to your friends, friends of friends and the like.

NEVER COMMENT ON ONGOING CASES

Be especially careful when sharing your opinions on social media. It is not permissible to comment on ongoing court proceedings led by you or your colleagues. Comments on judgments or ongoing cases may cast doubt on the impartiality and objectivity of judges and the judicial system.

BE CAUTIOUS WITH PHOTOGRAPHS

If you post photos or videos on social media, keep in mind that modern cameras can "capture" more detail than it is visible to the naked eye. Most networks allow you to download any attached photos. Furthermore, zooming in can reveal details, including desktop documents, private folders in your office, and more that you may not be aware of. Even if you do not intend to reveal confidential information about the case, there is a possibility that it will be revealed through a published photo. Photographs and comments on social media should be decent.

DO NOT USE NETWORKS TO CHECK ON THE PARTIES

Judges must consider only the evidence presented by the parties. This means that they should refrain from the role of "investigators" for an additional check of the parties in the proceeding on social networks. This is especially so because some social media platforms allow users to see who has seen their profile.

AVOID POLITICAL AND COMMERCIAL COMMENTS

As prescribed in both domestic and international norms, the performance of the judicial office is incompatible with any kind of political activity. On social networks, this would be interpreted as bias. Judges should not enter into political debates.

THINK TWICE BEFORE YOU POST ANYTHING

In general, control over social networks is very difficult, because the posts are shared, commented on and so on. Every digital communication is easily monitored and documented. It is possible to see who viewed your profile, so think carefully before sharing anything, as it leaves a digital footprint.

CAUTION YOUR FRIENDS AND FAMILY ABOUT WHAT THEY SHARE

Your family and friends should respect boundaries and avoid consciously or unconsciously undermining judicial impartiality, integrity or dignity through personal social media profiles and online presence.

Talk to them to make sure they understand the sensitivity of the work in the justice sector. Ask them not to disclose any personal information such as addresses, photos, or other information that may be misused.

MANAGE ONLINE VISIBILITY

Whenever you post something on social media, it is advisable to assume that everyone can see it, because you cannot know if your other friends or friends of friends have already shared it with their friends and acquaintances.

A Facebook post may be public, visible only to your friends, visible only to friends with restrictions, invisible to only one person. If your Facebook posts have originally been “public” or, available to all members of the network, and you decide to change the status of your posts to “private”, the change will take effect from that moment on. Previous posts and comments will be available to everyone on the network. Additionally, Facebook's privacy settings may change at any time.

On Twitter, messages are also public to those who are not members of that network, and the tweet can be copied and shared via email or other networks without the knowledge of the person who posted the tweet. You can delete a tweet, but there is no guarantee that nobody has potentially saved or taken a screenshot of the post.

PRESENT THE JUDICIARY IN A GOOD LIGHT

Decide who you will represent on social media, yourself privately or you will write in your professional role as a judge. It is difficult to make a strict division, but when you comment on a matter of justice, it implies that you express your position as a judge. When commenting, indicate that your opinions do not reflect the views of the court, nor are they in any way related to the cases in which you are involved.

If the posts you write address specific legal issues, decide whether to use the account for private posts as well. Combining the professional and personal can often confuse your friends and followers. However, on the other hand, it can help shape your image as a "real person" and not as a distant official of the justice system, seemingly untouchable to other members of the society in which you live.

EDUCATE THE PUBLIC

Social networks can be very useful for judges' comments, especially when it comes to clarifications in terms of legal terms, laws, case law, which the general public does not always fully understand. Furthermore, care should be taken to ensure that such posts are general, or arise from the professional knowledge and experience of judges.

IMPROVE YOUR KNOWLEDGE OF SOCIAL NETWORKS

Options and policies for using social networks are being constantly changed, updated and supplemented. If we compare the options that were available at the beginning of the development of social networks and today, we can see obvious changes.

Therefore, it is crucial that judges expand their knowledge of social media use in a way that is as up-to-date as possible with the latest usage policies and updates.

In our country, there are no explicit provisions for the conduct of judges on social networks. Macedonian laws and bylaws, identical to those in other countries worldwide, do not prescribe explicit provisions for the conduct of judges on the Internet. The regulation of these relations, whether due to the relatively recent dispersion of these media, or intentionally, is left to be regulated by ethical rules for judges.

In any case, truth be told, especially in recent years, social networks are becoming a lively and vibrant fluid between the public (general and professional) and judges. In fact, there are a number of examples of communication on social networks that have even resulted in lawsuits, warnings and the like.

There is no explicit provision in the Code of Ethics for Judges and Lay Judges[103] of 2019 that prescribes standards for the conduct of judges on social networks. However, in the spirit of the Code, it is prescribed that judges and lay judges should pay attention to their conduct not only in court but also outside the court building.

"The judge's conduct, both in and out of court, contributes to maintaining or enhancing public confidence, the legal profession and improving the confidence of the parties in the impartiality of the judge and the judiciary", reads the Code.

Additionally, the Code notes that the conduct of a judge/lay judge in both professional and private life establishes people's confidence in the integrity of the judiciary.

In this sense, the Code also stipulates that "The judge/lay judge may not allow family, social or other relations to inappropriately affect the conduct in the exercise of the judicial office."

[103] Code of Ethics for Judges and Lay Judges
Available at:
http://www.vsrm.mk/wps/wcm/connect/vsrm/10ae444c-09fd-4cbd-9fa6-ed45ae4ad13b/%D0%9A%D0%BE%D0%B4%D0%B5%D0%BA%D1%81+%D0%B7%D0%B0+%D0%B5%D1%82%D0%B8%D0%BA%D0%B0+%D0%BD%D0%B0+%D1%81%D1%83%D0%B4%D0%B8%D0%B8%D1%82%D0%B5+%D0%B8+%D1%81%D1%83%D0%B4%D0%B8%D0%B8%D1%82%D0%B5+%D0%BF%D0%BE%D1%80%D0%BE%D1%82%D0%BD%D0%B8%D1%86%D0%B8.pdf?MOD=AJPERES&CVID=mSBbAAH

Macedonian Judges and Social Networks

In the Republic of North Macedonia, there are judges who use social networks and share comments, content, etc. This includes Facebook, Instagram, Linkdin and others. There have also been negative examples when judges shared posts giving negative attributes on their social network accounts with the names and surnames of their colleagues and journalists, as well as political content.

On the other hand, there have also been examples when judges shared their opinions on their Facebook accounts, with considerations on improving the legal provisions in the Criminal Procedure Code. The media have cited these views in their reports, hence the impression that the use of social media by judges can have a positive effect in public discourse.

In another case, the media have reported that a judge liked a post concerning the deprivation of liberty of a person, whose indictment she was later supposed to assess.

A judge on his Facebook account stated that his briefcase containing documents had been stolen. A judge fined a lawyer for giving insulting comments about her on this social network, and a civil defamation and insult procedure was initiated for the case.

A well-known politician, in another case, demanded on Facebook the exemption of a judge in a specific case, and a photo of a judge's vehicle parked at a pedestrian crossing blocking the sidewalk was published on this network. Court identification was also placed on the windshield of the vehicle, probably as a way to avoid traffic ticket.

Macedonian laws and bylaws, identical to those in other countries worldwide, do not prescribe explicit provisions for the conduct of judges on the Internet. The regulation of these relations, whether due to the relatively recent media, or intentionally, is left to be regulated by ethical rules for judges.

In the Republic of North Macedonia, there are also negative examples when judges shared posts giving negative political attributes on their social network accounts, as well as names and surnames of their colleagues. On the other hand, there have also been examples when judges shared their opinions on their Facebook accounts, with considerations on improving the legal provisions in the Criminal Procedure Code. The media have cited these

views in their reports, hence the impression that the use of social media by judges can have a positive effect in public discourse.

The Role of the Media in the Fight against Disinformation

Indisputably, unlike in the past, information sharing takes place at a much higher speed now, especially if online media and social networks are taken into account. In the influx of news, it often happens that some of the information has inaccurate content, and some has malicious intent. Information with inaccurate content created with the intention of harming someone is called disinformation or popularly "fake news", and its goal is to mislead citizens i.e. the audience.

This term "fake news" is used in a conversational context and means inaccurate information that is presented as true in order to attract more public attention for a certain hidden agenda. According to some of the modern communication theories, fake news is a subtype of the so-called yellow press or propaganda.

In accordance with the recommendations of the expert group of the European Commission[104], the term "disinformation" is more appropriate than "fake news", as the word "fake" misleads that it implies information that is completely inaccurate, and in everyday life, there is frequent combination of falsehood with facts to create the impression that it is a convincing piece of information.

In addition, the very term "news" erroneously implies that it is news transmitted by traditional media, while in practice, it may be information broadcast through other, alternative and unconventional sources of information. In false information sharing, various techniques are used to manipulate information such as: speculation, spin, etc.

Since disinformation contains erroneous (inaccurate, untrue) information and often has a hidden and manipulative agenda (from a commercial, political or corporate center), people are misled if it is not recognized. This contributes to mutual misunderstandings and is a problem for democracy in a society.

[104] Report of the independent High level group on fake news and online disinformation. (2018). A multi dimensional approach to disinformation

The consequences of sharing fake news in the long run can be seen in the growing distrust on the part of citizens, i.e. the audience of the online media, and the distrust is then spilled over to credible sources and established news outlets.

The most appropriate response to the influx of disinformation is to promote responsible media that respect the concept of self-regulation as well as to strengthen digital and media literacy, by creating routine skills for recognizing and deconstructing disinformation. The media and education are the two key weapons in the fight against disinformation in the modern world.

Types of Disinformation

In accordance with the recommendations of the Council of Europe, manipulation of information can be classified according to its content and intent, hence, there are: misinformation, disinformation and malinformation.[105]

Misinformation

It is information with false (untrue, inaccurate) content, yet without the intent to harm (has no purpose to manipulate).

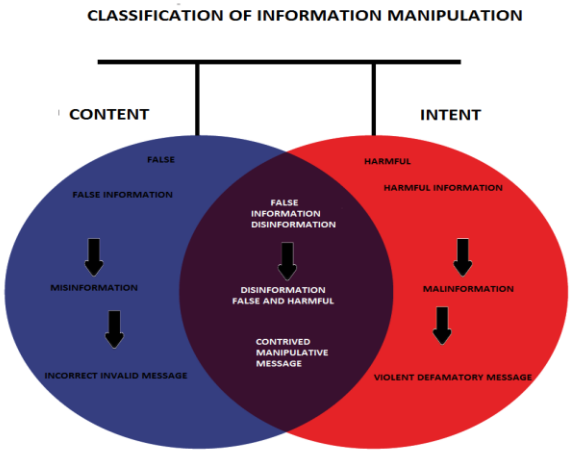
Disinformation i.e. false information

This is information with incorrect content (partially incorrect when combined with truthful content or completely incorrect) and harmful intent.

Malinformation

This is information that may be accurate, yet it is broadcast in order to harm someone.

[105] Wardle, C., & Derakhshan, H. (2017). Information Disorder: Toward an interdisciplinary framework for research and policy making. Council of Europe report, DGI (2017)



Not every post on social media is a journalistic product

Having regard to the belief that freedom of speech and freedom of expression are universal human rights, in recent decades there has been a tendency for the so-called "Citizen Journalism", a concept that proclaims that anyone who shares information can be a journalist.

"A few years ago, only professional journalists could publish information; today, anyone can create content and distribute it to a global audience at a very low cost."[106]

However, this interpretation, which is in line with the opinions of most of those who believe that there should be no definition of who may be a journalist, contradicts the Council of Europe definition of a journalist, according to which a journalist is "any natural person or a legal entity that is regularly or professionally engaged in collecting and disseminating information for the public through the mass media".[107]

There is an ongoing discussion on whether the protection of journalistic sources should be extended to the people involved in disseminating information. In a world where individuals communicate on public platforms, professional journalism cannot be clearly distinguished from other forms of news production.

In addition to the inalienable right to freedom of speech, and hence to information, modern societies increasingly face disinformation, which is sometimes cunningly created and shared with the public, especially in the online space. This is becoming a serious problem for the countries, but primarily for democracy.

[106] GUIDE to self-regulation on the online media / [Jeffrey Dvorkin ... et al.]. - Skopje: OSCE, 2016
[107] Recommendation no. R (2000) 7 on the right of journalists not to disclose the source of information

Regulation of online content is one of the most important questions for which there is no definitive answer. It is a fact that countries are adopting laws regulating the Internet. This, in turn, is a threat to media pluralism. However, in order to avoid interference with the right to freedom of expression, especially online, illegal content or copyright issues online are dealt with through self-regulation.

One of the key roles of the media in the fight against disinformation is their timely identification, stopping and refutation. The media have a leading role in that fight, because of their power to reach the audience quickly, although they are not the only actors who have that responsibility.

Macedonian Media and Disinformation

It is a well-known fact that in 2016 during the US presidential election campaign, North Macedonia became relevant worldwide due to alleged involvement in creating public opinion and influencing the final election result.

The attention of the world media was drawn to Veles because of the case of the mass disinformation shared by several teenagers, whose posts were then taken by dozens of unreliable sources on social networks by supporters of the then Republican presidential candidate, Donald Trump. His opponent, the Democratic candidate for US President, Hillary Clinton, publicly stated that this disinformation affected the election result in the USA.

The teenagers from Veles started to take the news from the global media outlets, to process it by adding more attractive headlines and to publish it on disinformation spreading web portals. In their analysis, they concluded that the news about Donald Trump had the most shares, so they started compiling fake news, which was then downloaded from leading web portals in the United States.

There was investigation into this case conducted through the cooperation of journalists of the Internet portal BuzzFeed and the Investigative Reporting Lab Macedonia, according to which, this case is not the result of spontaneous activity of Veles teenagers, but two US conservatives were involved for several months in a scheme to spread fake news on social networks prior to the 2016 US presidential election. The portal also investigated the possible involvement of people from Russia who allegedly stayed in North Macedonia before the US elections.

The Media Literacy Index in Europe[108] showed that in 2019 the Balkan countries continue to be characterized by the least resistance to the post-truth phenomenon, i.e. that our region is most receptive to fake news. Of the 35 European countries listed in the report, the Nordic countries are at the top, and North Macedonia is at the very bottom of the list, i.e. it is a country with the highest "vulnerability" to fake news due to the lowest level of quality education and media freedom. Higher than North Macedonia are Turkey, Albania, Bosnia and Herzegovina, Montenegro and Serbia. The countries of Northwest Europe are most resistant to the influence of fake news precisely because of the quality of education and media freedom.

Having in mind these data, it is evident that the level of media literacy in RN Macedonia is low. Furthermore, it has one of the key roles in exposing disinformation. It involves abilities (technical, cognitive and participatory) and environmental factors (such as laws and media education). Following the media literacy indexes, it is evident that many people in RN Macedonia have not acquired the skills they need to be able to evaluate the news, to understand what propaganda is and so on.

This concept is incorporated in the Law on Audio and Audiovisual Media Services of 2013, and the Agency for Audio and Audiovisual Media Services (AAVMS), the independent media regulatory body, is working to promote media literacy.

To deal with disinformation, the Government has prepared an Action Plan, which is a summary of the recommendations in the fight against disinformation following the example of the measures of the EC, the Council of Europe, NATO communications sector.

It envisages a process of creating a national strategy for media literacy, which will include activities of institutions, media and civil society, as well as the inclusion of media literacy in the educational process.

An important step in the media fight against disinformation is the Promedia media register[109], which was created in cooperation between the Association of Journalists, the Council for Media Ethics, the Chamber of Commerce and On-Limited Media. It is a register that

[108] Findings of the Media Literacy Index 2019, Available at: https://osis.bg/wp-content/uploads/2019/11/MediaLiteracyIndex2019_-ENG.pdf
[109] Promedia.mk Available at: https://promedia.mk/main

contains all online media that comply with the Code of Ethics for Journalists and professional reporting standards.

To become a member of the register, it is necessary to comply with the mandatory membership rules: To have a credible impressum (editor, editorial office), contact details and address

To respect the Journalists' Code, the Charter for Ethical Election Reporting and the CEMM Statute

Members need to be online media that regularly publish informative content of public interest

To have a registered legal entity in the Republic of North Macedonia and to declare the ownership transparently

Members need to have transparent funding, in accordance with the law

To publish the decisions of CEMM and to be involved in the mediation process

To place a banner on their page with which they undertake to respect the principles of the Code (and self-regulation)

The published texts need to be signed by the author, and if they are taken from other media, it should be stated, in accordance with the Law on Copyright Protection

In addition to the mandatory, additional recommendations have been published:

Members need to have published advertising price lists or a link to a published price list in a marketing agency

Members need to have a MK domain

Paid commercial content needs to be visibly indicated

It is desirable that the professional editorial offices have at least one editor and at least two employees and spatial and technical conditions for professional operation

The Role of the Courts in the Fight against Disinformation

In order to prevent the spread of disinformation, in addition to the media, it is necessary for the courts to be as transparent, accountable and open to the public as possible. Disinformation cannot be completely eliminated, but the space for its amplification and dispersion can be narrowed, by strengthening the communication channels between the public, i.e. the citizens and courts.

The provisions of Opinion no. 7 of the Consultative Council of European Judges[110] in "Justice and Society" indicate that judges express themselves above all through their decisions, but, taking into account the principle of transparency, article 10 of ECHR on the public's right to information, as well as the development of the social media, the judges should improve their relations with journalists and act upon the requests for public information without damaging the interests of the proceeding in the specific case.

The courts, like the media, have not only a social role, but also a legal obligation to share information that interests the public, to respond to the requests of journalists, to the requests for free access and so on.

It is not uncommon for courts to send denials of published disinformation to the public. There have been many examples of this kind so far: some of them have referred to the lifting of precautionary measures, alleged pressure for union organizing, allegedly suspected civil judges, consent to return passports, allegedly imposed measures to ensure attendance and so on.

[110] Consultative Council of European Judges (CCJE) Opinion no. 7 (2005) of the Consultative Council of European Judges to the attention of the Committee of Ministers of the Council of Europe on "justice and society"; Достапно: https://rm.coe.int/1680747698

Tips on how to Recognize Disinformation

BE SKEPTICAL OF THE TITLES

Online media that present disinformation often use sensational headlines or words along with punctuation to make it easier to draw the readers' attention.

TAKE NOTE OF WHETHER THE WEBSITE HAS IMPRESSUM

Almost without exception, portals which share disinformation do not cite sources and do not have impressum containing data on the journalists engaged and the editorial office. Check the “About Us” or “Impressum” section, which is usually located at the top or bottom of the page.

CHECK IF THE NEWS HAS A SIGNED AUTHOR

Portals that share disinformation usually do not sign the texts, or only write initials.

CHECK THE PHOTOGRAPHS

Manipulation is often done with the photos that illustrate the text. They also use photos in different contexts without explaining that the photo is from another event.

CHECK THE ADDRESS / WEB ADDRESS BOOK OF THE MEDIUM

Disinformation is often posted on websites with provocative names. Other portals, on the other hand, have identical names to popular companies and media, but with a different domain, which is usually not a medium (“org.”, “com”, etc.).

CHECK PUBLICATION DATES

Portals which spread disinformation often do not show the date of publication of the materials. Others simply use the wrong dates. It can often happen that older already published texts are republished, which results in misleading the readers.

PAY ATTENTION IF THERE ARE SOURCES IN THE NEWS

Online media which share disinformation often use false or manipulative quotes from anonymous sources. It may happen that they have sources, but they are usually anonymous, unofficial, etc. Sometimes, indeed, it that can be justified, but there should be an explanation, and if not, do not believe it. The text is according to professional standards if the other side of the story is present, and if there are at least two unrelated sources.

USE FACT-CHECKING WEBSITES

The media are responsible of thoroughly checking everything that arrives in their inboxes. However, readers can also take this role in the modern world. It is advisable to use fact-checking websites. In our country, such services are Vistinometar"[1] and "Kritink"[1]

DON'T FORGET THAT IT MAY BE SATIRE

Not everything that is false means that it is malicious. It can also be fun and can come from a reputable source of journalism. In these cases, it is a satire or parody.

IV

CONCLUSIONS AND RECOMMENDATIONS

From all three chapters of the Guidebook, we come to the general conclusion that the promotion of court-media relations, judicial transparency and public access to courts are a key precondition for the development of the judicial system of North Macedonia, as a state governed by the rule of law. The international documents on the independence, efficiency, transparency and accountability of judges, in particular the opinions of the Consultative Council of European Judges, point out that the freedom of the press is an important principle where judicial proceedings have to be protected against undue external influence, and, consequently, the judges should show respect in their relations with the media and should be able to maintain their independence and impartiality, being careful not to be misused in their relations with the journalists and refraining from making any unsubstantiated comments about the cases they are adjudicating.

The transparency of the judiciary has a major significance and impact on the development of public policy, as well as on the recognition and protection of the rights and the control over other branches of power. Within this context, in the light of the importance of the reforms of the Macedonian judiciary in the institutional framework, transparency and reforms of the access to justice and information are relevant due to their potential impact on the functioning and performance of the judicial bodies themselves.

The assessments of the state of affairs in the judiciary that explain the adoption of the Strategy for Court-Media Relations correspond to the assessment of the reports from the European Commission, the report of Reinhard Priebe, as well as other international organizations regarding the progress of the Republic of Macedonia and its judicial system in recent years, in terms of its insufficient transparency. Despite the efforts made with new legislative amendments, the incorporation of international standards and norms in the legal system regarding the transparency of the judiciary in North Macedonia, **unfortunately, the problem of insufficient non-transparency and the problem of having a disparate and ununified public access to justice through inconsistent implementation and application of international standards and rights still remain.**

The achieved results in the field of efficiency of the judiciary go unnoticed due to the lack of transparency and accountability, which results in a low degree of trust of the citizens in

the institutions of the justice system. The adoption of the reforms on the transparency of courts, judges and other legal practitioners could have a positive effect on their institutional capacity, and could improve their legitimacy, authority, as well as the trust of the other branches of power and their relations with the citizens.

The media, civil society organizations, as well as international organizations have played an important role in recent years, as a factor that has contributed to identifying the state of affairs in the justice sector, and promoting new values and standards for its promotion and development. A general trend is the increased media influence on the judiciary, especially in the field of criminal law, in high-profile cases of trials of former public officials for serious crimes.

The Association of Judges, in continuous cooperation with the Embassy of the United States of America in North Macedonia, remained committed to the reform of the justice sector and managed to impose itself as a relevant factor that seeks to maintain the professional integrity and expertise of judges. The cooperation of the Association of Judges with the INL Department at the US Embassy in North Macedonia, especially through the latest project to strengthen the functionality of the Judicial-Media Council is a continuous affirmation and strengthening of judicial transparency in the country.

Having this in mind, the Judicial-Media Council of North Macedonia defines and proposes the following conclusions and recommendations, as future reform directions:

1. **Revising the regulations of**

    a. **Criminal Procedure Code,**

        i. Electronic receipt of case files and trial records on the court website or through the Public Relations Office. The case files should be available to persons who have either a public or legal interest and there must not be any discrimination as to which media outlet will receive them and which will not.

ii. Urgent amendment of Article 360 paragraph 3 of the CPC. The competent court, where the case is being tried, should be authorized to issue recording permissions, and not the Supreme Court of RNM. Furthermore, the provision that the recording permissions are an exception that the President of the Supreme Court of RNM decides upon should be revised. It should be regulated as a rule, not as an exception. Consider introducing the US model, where the recording in the courtroom is done with one camera, while the footage can be obtained by all media outlets.

iii. Revision of Article 374 paragraph 6 of the CPC, where it is noted that the audio or visual-audio recording may not be published, broadcast and used for aims and purposes outside the criminal procedure. This is especially due to the fact that if the recording of inserts or the sentencing is already allowed, it is already in conflict with Article 374 paragraph 6 of the CPC.

iv. Recording permissions should be fully complied with. This means that as soon as the president of the court makes a decision, the judges should abide by it, and not decide on it anew. Furthermore, it should be provided for, once a decision is made, not to be printed for each hearing separately, but to be in the name of a media outlet for the entire procedure.

v. Unification of the courts' practice in terms of the decisions of the detention hearings which are not public with a pre-trial judge. We point out that in accordance with the provisions of Recommendation (2003) 13 of the Council of Europe in the publicity in criminal proceedings, detention hearings must be open to the public.

vi. Publicity of the sessions of the Indictment Evaluation Council. In accordance with Recommendation (2003) 13 of the Council of Europe

and the case law of the European Court of Human Rights in the case of the Youth Initiative for Human Rights against Serbia, publicity here means the media and civil society organizations. Given the fact of disparate and ununified understanding of the concept of publicity in the evaluation of indictments, regional and European experiences should be reviewed and a unified guideline should be adopted on whether the public (media and civil society organizations) may attend indictment evaluation hearings.

b. Law on Civil Procedure,

i. Revision of Article 293 paragraph 2 on the exclusion of the public if the order in the courtroom cannot be maintained. The Judicial-Media Council points out that the applicable provision opens the door for abuse and deprivation of the public from informing about the case. ***The permissibility of such a possibility should be considered, taking into account that it is impermissible for a court not to be able to maintain order in a courtroom***, i.e. in such a case the hearing should be adjourned and held when the conditions for a public trial are met.

c. Law on the Management of Case Flow in Courts

i. Amendment of Article 13 of the LMCFC - the right to receive a judgment to be linked to the publicly pronounced judgment, and not to its publication on the website.

ii. Amendment of the Instruction on the manner of publishing and searching court decisions on the court's website in order for the state administration bodies and public institutions not to be anonymized, i.e. to be anonymized only in cases when it is a state secret.

d. Court Rules of Procedure

i. To amend the regulation of the Court Rules of Procedure on the reasons for refusing to grant a recording permission, i.e. to reduce them to a minimum and not to give space for subjective assessment (for example, the defendant's wish in cases of public interest).

ii. To supplement the Court Rules of Procedure in a way that will more broadly and more precisely determine the work of the public relations office.

iii. It is necessary to amend Article 104 paragraph 3 of the CRP, in the section where it is prescribed that the written consent of the parties is required for visual and audio recording, reporting and photographing in the civil procedure, because there are litigation procedures in which there is a public interest (e.g. bankruptcy).

iv. To supplement the Court Rules of Procedure by determining the obligation of judges to continuously and timely submit data to the court spokesperson and the public relations office. So far it came down to personal will and contacts with judges.

v. It is necessary to amend Article 106 paragraph 3 indent 1 of the CRP because, regardless of what the LCP and the CPC provide, any judge can invoke the CRP and stop or restrict the recording or photographing at the request of the parties, and by a court decision, at any time, which means that regardless of the existence of the public interest in all proceedings without exception, the party may request that the recording be stopped, thereby suspending all decisions on recording permission.

vi. It is necessary to amend Article 104 paragraph 2 and 3 of the CRP, which stipulates that the video and audio recording, reporting and

photographing in the criminal procedure and public display (reproduction) of the recording shall be performed with the approval of the President of the Supreme Court of the Republic of North Macedonia, after previously obtained opinion from the president of the council, the judges, in a manner provided by law. The amendments are in the context of the proposed amendments to the CPC, hence it is necessary to adapt the text of the CRP in accordance with them.

vii. In the context of the above, it is necessary to amend and adapt Article 105 of the CRP, which stipulates that the President of the Supreme Court of the Republic of North Macedonia, i.e. the President of the Court on the basis of a written request shall give permission for recording or photographing in the specific case.

viii. Regarding the remaining provisions of this Article, which refer to the manner of submitting the request for recording and its content, as well as the other provisions of the Court Rules of Procedure, we believe that it should be further elaborated and provided for in accordance with the proposed amendments to the CPC with a separate bylaw – a rulebook or by elaborating the provisions of the Court Rules of Procedure.

ix. In this context, we propose to evaluate the experience of the courts in the United States, where courts adopt rules for electronic access to courts (Example – Massachusetts Supreme Judicial Court Rules) as a comparative experience. Among other things, it is stipulated that the equipment and devices must have certain features and be positioned and handled in a manner that will not disturb the dignified course of the proceeding, unless the judge permits otherwise for a justified reason, only one (or two) stationary mechanically silent video camera for broadcast television shall be used in the courtroom at one time, a second mechanically silent video camera for other media, and, in addition, one (or two) silent still camera. Unless the judge otherwise permits,

photographic equipment and its operator shall be in place in a fixed position within the area designated by the judge and remain there so long as the court is in session and movement shall be kept to a minimum, particularly in jury trials. The operator must not interrupt the court proceeding with technical problems. Video recording, streaming, photographing, audio recording, transmission or broadcasting of court proceedings shall be carried out only by collective agreements with broadcasting and print media.

x. Appointment of spokespersons in key basic and appellate courts.

2. Revision of the system of publishing anonymized judgments on the internet platform of the courts and detailed updating of the existing data;

3. Adoption of special protocols for communication with the public – prepared by JMC teams with the support of international experts and judges;

4. Abandoning the concept of Judges responsible for public relations and introducing the principle of public relations professionals in the courts for effective communication and efficient public reporting;

5. Organizing briefings for journalists, as well as establishing fast and constant communication with journalists and other interested persons who request data from the court.

6. Enabling continuing education of judges and journalists on issues of common interest.

7. Court spokespersons and representatives of judicial institutions should strengthen their communication with the media and provide accurate, timely and publicly relevant information aimed at increasing public confidence in the judiciary.

8. The public should be informed about the court proceedings that are in its interest. The publicity of court proceedings means maintaining the balance between privacy and the public interest while respecting the presumption of innocence of those involved in the process.

9. Journalists should at all times contact court spokespersons in all cases where information is required, and spokespersons should provide appropriate and accurate information in order to properly convey the facts and circumstances to the public.

10. Continuous crisis management education for public relations staff in the courts, especially dealing with negative criticism.

11. It is necessary to regularly update the internet platforms and websites of the courts in terms of information on cases that are in the public interest, and to find other forms of communication in order to convey the information to all target groups.

V.

ANNEXES

Annex No. 1: Strategic Plan of the Judicial-Media Council 2018-2023

STRATEGIC PLAN of the Judicial-Media Council 2018-2023

07.12.2018

Skopje

1. Introduction

1.1. Reasons for adopting a Strategy for court-media relations

The assessments of the state of affairs in the judiciary that explain the adoption of the Strategy for Court-Media Relations correspond to the assessment of the reports from the European Commission, the report of Reinhard Priebe, as well as other international organizations regarding the progress of the Republic of Macedonia and its judicial system in recent years, regarding its insufficient transparency. Despite the efforts made with new legislative amendments, the incorporation of international standards and norms in the legal system regarding the transparency of the judiciary in R. Macedonia, unfortunately**,** the problem of insufficient non-transparency and the problem of public access to justice through inconsistent implementation and application of international standards and rights still remain.

Particularly important in this regard are opinions of CCEJ, i.e. Opinions no. 3, 7, Recommendation no. 12 and the Bordeaux Declaration on the relations of judges in a democratic society, which, in terms of promotion of the relations between judges and journalists, unambiguously refer to the establishment of independent bodies to formalize the cooperation among the stakeholders in order to avoid sensationalism in reporting, media pressure and judicial intransparency.

The provisions of Opinion no. 7 of CCEJ on "Justice and Society" indicate that, undoubtedly, judges express themselves in public through their decisions, but, taking into account the principle of transparency, Article 10 of ECHR on the public's right to information, as well as the development of the social media, judges should improve their relations with the representatives of the media and act upon the requests for public information without damaging the interests of administration of justice in the specific case.

This opinion further indicates that the improvement of the relations with the media should be made in two ways: first, by adopting a common code of ethics where the judges would define the rules in which cases, in accordance with the law, statements may be made to the media concerning a specific case, while journalists would provide for rules and principles for further clarification and detailed reporting on cases to the public without jeopardizing the interests of justice.

Item 40 of Opinion no. 7 unambiguously indicates that it is necessary to set up an efficient mechanism in the form of an independent body where journalists and judges would discuss common problems and practical challenges.

Furthermore, item 42 of Opinion no. 7 points out to the necessity of organizing schools for journalists and judges for the purposes of strenghtening their mutual understanding of their respective professions. Opinion no. 12 of CCEJ and the Bordeaux Declaration, section 5, paragraph 11, point out to the development of a set of rules and principles within the independent body that would govern the relations between the judges and the media. They point out the fact that judges always express themselves through their decisions; however, there is a need for judges to maintain regular contacts with journalists and provide clarifications for each individual case without damaging the interest of criminal justice, in view of informing the general public on the specific case of public interest. On the other hand, the right of the public to be informed is a basic principle arising from Article 10 of the European Convention on Human Rights, which, applied to this case, means that the judge should be accountable for the legitimate expectations of the citizens for transparency of the proceedings where it is allowed in accordance with the law. Based on this rule, judges are free to prepare a summary or a report that would explain to the public the legitimate contents and meaning of the decision made.

The practice of appointment of a judge responsible to communicate with the public, i.e. the media, in accordance with the recommendations under Opinions no. 1, 3, 7, and 12 of the Consultative Council of European Judges should be continued and enhanced for the purposes of adequate informing of the professional and general public on topics of public interest without any fear of media pressure.

The positive trend of the strengthened communication between the Association of Judges of RM and the media is noticeable, for the purposes of their participation and cooperation in the field of establishing judicial and media relations of judicial transparency and public access to courts.

The Association of Judges as a professional association has proven to be a very important civil society organization in the justice sector that has managed to exist in the past and to impose itself as a relevant factor attempting to maintain the professional integrity and expertise of judges, which has not gone unnoticed by the international community, recognizing its activity as positive.

The opinions of the Consultative Council of European Judges are affirming the principle of the rule of law and confirm that in a democratic society it is essential for the courts to inspire public confidence and that the public character of the proceedings is one of the essential means to maintain public confidence in the courts.

Furthermore, the Consultative Council of European Judges, in item 73, points out to the standards that obligate the media, as well as the judges, to observe fundamental principles such as the presumption of innocence and the right to a fair trial, the right to private life of the persons concerned, the need to avoid an infringement of the principle and of the appearance of impartiality of judges involved in a case, i.e. that media coverage has to be impartial without any sensationalism in reporting.

In particular, the opinions expressed in item 73 point out that media coverage of cases under investigation or on trial may become invasive interference and produce improper influence and pressure on judges in charge of a particular case. Therefore, good professional skills, high ethical standards and strong self-restraint against premature comments on pending cases are needed for judges to meet this challenge.

This points out to the need for continuing education of judges and journalists, i.e. enabling them to get a better understanding of their respective professions and exchange practices and experiences.

The Strategy for Court-Media Relations for the affirmation of judicial transparency and public access to justice provides directions for improving the justice system and its transparency by overcoming the existing shortcomings of statutory and institutional character that permeate it, as well as the long-standing distrust that meant regression and dysfunction of the judicial system. It should be a roadmap for the courts and the media in their providing of all the prerequisites for creating an independent, impartial, efficient and transparent judiciary responsible for protecting the individual rights and freedoms of citizens, and above all protecting the individual rights of the individual, while protecting the public interest.

Furthermore, the Strategy sets out guidelines for the promotion and development of new modern legal requirements, but also of a new transparent environment for the actual realization of the principle of responsibility by the key actors of the Strategy, judges and journalists.

It is indisputable that in recent years there has been an absence of such responsibility on both sides.

With the adoption and implementation of the Strategy for Court-Media Relations, the judiciary and the media have manifested a serious commitment to implement reforms in the justice sector whose main goal is to affirm judicial transparency, restore confidence in the judiciary, ensure unhindered public access to justice, and thus ensuring legal certainty, impartiality and quality of justice for citizens.

On the Judicial-Media Council

The Judicial-Media Council was established on September 11, 2018, by a decision of the Steering Committee of the Association of Judges of the Republic of Macedonia, formalizing the cooperation between judges and journalists, with the status of an advisory body to promote cooperation and dialogue between judges and journalists on issues of common interest, as well as to strengthen and affirm judicial transparency and public access to justice.

Background

The strategic plan is adopted amid serious challenges for the functioning of transparency and public access to courts in order to ensure transparency of the judiciary.

The need for a clear vision for the transparency and Europeanization of the judiciary has been emphasized through the introduction of European standards in the cooperation between judges and the media, as well as in the manner, form and content of reports, and for consistent application of the European Convention on Human Rights, the opinions of CCEJ, and other international conventions, standards and rules relating to the cooperation between judges and the media, which will be shared by key stakeholders and widely supported by the public.

Transparency and access to courts, after long-term reforms, are faced with a serious institutional defect and insufficient trust by the citizens. There is a need to review the legal acts in the Republic of Macedonia, which refer to the transparency and public access to courts in order to ensure transparency of the judiciary.

The public faces a lack of public data on high-profile criminal trials, which indicates the need to create public policies for further development and improvement of the access to courts.

Mission, vision, values

Mission

Creating a transparent judiciary as a supreme principle in regulating the relations between the courts and the media, and for the purpose of proper and objective information on court proceedings in high-profile criminal matters and of public interest.

Vision

Transparent judiciary, Europeanization and public trust in the judiciary through the introduction of European standards and best practices in the manner, form and content of reporting.

Values

Practicing	Promoting
Independence and impartiality	Inclusiveness
Motivation	Accountability
Transparency	Transparency
Legality in operation	Equality
Mutuality and solidarity	Perseverance
Sexual and gender equality	Self-initiative
Ethnic balance	Creativity
Respect and tolerance	Fairness
Equity	Activism
Cooperation	

1.2. STRATEGY OBJECTIVES

The Strategy for Court-Media Relations has several main objectives which are to gradually overcome the identified weaknesses in the relations between the courts and the media by establishing and applying European and international standards that will affirm judicial transparency and public access to justice, and uplift transparency as the main pillar in the promotion of justice and restoring the trust of the citizens in the judiciary in the Republic of Macedonia.

1. Establishment of the Principle of transparency of the courts as a supreme principle in regulating the relations between the courts and the media with consistent respect for the independence, independence and integrity of the judiciary, removal of legal obstacles in the legal order, in the laws that hinder cooperation and building relations for cooperation between judges and the media.
2. Reviewing the legal acts in the Republic of Macedonia, which refer to the transparency and public access to courts in order to ensure transparency of the judiciary.
3. Promoting access to courts, proper and objective information on court proceedings of public interest and maintaining a balance between privacy and public interest while respecting the presumption of innocence.
4. Promoting the criteria and procedure for media reporting in criminal cases.
5. Promoting the system of continuing education of judges and the media through the establishment of a school for judges and the media.
6. Europeanization of the judiciary through the introduction of European standards in the cooperation between judges and the media, as well as in the manner, form and content of reports, and for consistent application of the European Convention on Human Rights, the opinions of CCEJ, and other international conventions, standards and rules relating to the cooperation between judges and the media, the transparency of the judiciary and promoting the work of public relations offices in the courts.

1. Strategic Goal

1.2. Establishment of the Principle of transparency of the courts as a supreme principle in regulating the relations between the courts and the media with consistent respect for the independence, independence and integrity of the judiciary, removal of legal obstacles in the legal order, in the laws that hinder cooperation and building relations for cooperation between judges and the media.

Current state of affairs:

Strategic directions:

- strengthening public relations capacities

Action:

- conducting training,

- establishment of a working group with representatives of the media and the courts for the preparation of a methodology to equalize the access to courts and uniform application of the court rules of procedure and the criminal procedure code,

- preparation of a manual with a practicum for uniform application of the Court Rules of Procedure and the CPC with the application of international standards and best practices.

Deadline: high / medium priority

2. Strategic goal

2.1. Reviewing the legal acts in the Republic of North Macedonia, which refer to the transparency and public access to courts in order to ensure transparency of the judiciary.
Current state of affairs:

Strategic directions:

- strengthening court transparency

Action:

- amendment of the Court Rules of Procedure

- amendment of the Criminal Procedure Code

- amendment of the Law on the Management of Case Flow in Courts

Deadline: high priority

3. Strategic goal

3.1. Promoting access to the courts, proper and objective information on court proceedings of public interest and maintaining a balance between privacy and public interest while respecting the presumption of innocence.

Current state of affairs:

Strategic directions:

- cooperation between the judiciary and the media,
- increasing the level of information,
- restarting media relations offices,
- analysis of the barriers to the access to courts,
- strengthening the professional capacity of judges and journalists for the purpose of promoting the access to courts,
- continuous monitoring of the application of the provisions of the court rules of procedure and the CPC which refer to the access to courts and reporting about court proceedings as well as the quality of objective reporting.

Action:

- establishment of a judicial-media council,
- PR activities,
- analysis of the state of affairs with the public and media relations offices in the courts,
- establishment of public and media relations offices in the courts,
- implementation of educational programs for judges and journalists,
- conducting an analysis of the application of the Court Rules of Procedure and the CPC, summarizing the results and creating public policies for further development and promotion of the access to courts

Deadline: high priority

4. Strategic goal

4.1. Improving the criteria and procedure for media reporting in criminal cases.

Current state of affairs:

Strategic directions:

- harmonization of court practice for media reporting in criminal cases,
- redefining the criteria,
- establishment of a system of mandatory and uniform media reporting in criminal cases,
- development of a quality and functional information system in criminal cases.

Action:

- publishing court practice on media reporting in criminal cases,
- using comparative analyses,
- introducing the public to the models in the developed legal systems,
- promotion of good practices,
- meetings with judges responsible for media relations and court presidents,
- preparation for amendments to the legislation and bylaws,
- analysis of the situation with the participation of domestic and international professional public.

Deadline: high priority

5. Strategic goal

5.1. Promoting the system of continuing education of judges and the media through the establishment of a school for judges and the media.

Current state of affairs:

Strategic directions:

- compulsory continuing education,
- establishment of a school for judges and the media

Action:

- development of a module-syllabus for continuing education,
- establishment of a school for judges and media.

Deadline: medium priority

6. Strategic goal

6.1. Europeanization of the judiciary through the introduction of European standards in the cooperation between judges and the media, as well as in the manner, form and content of reports, and for consistent application of the European Convention on Human Rights, the opinions of CCEJ, and other international conventions, standards and rules relating to the cooperation between judges and the media, the transparency of the judiciary and promoting the work of public relations offices in the courts.

Current state of affairs:

Strategic directions:

- mandatory application of the European Convention on Human Rights, the opinions of the CCEJ, and other international conventions, standards and rules,
- development of a media culture for the conduct of judges and the media.

Action:

- monitoring and analysis of the application of the CCEJ and the ECHR,
- preparation of a manual with a practicum for uniform application of the Court Rules of Procedure and the CPC with the application of international standards and best practices.

Deadline: medium priority

Implementation of the Strategic Plan

For the implementation of this Strategic Plan, it is necessary to strengthen the capacities of the Judicial-Media Council, in the following areas:

- **advancing the functionality of the Judicial-Media Council,**
- advancing the process of building common ground,
- mutual strengthening of trust and capacities,
- increasing the use of mutual resources,
- transfer of knowledge and experience from the monitoring of court practice.

Monitoring and Evaluation

The implementation of this strategic plan will be monitored at the level of social impact and at the level of achieved results.

A separate monitoring and evaluation plan will be prepared.

Indicators:

Social impact

1. the public and institutions assess the activities of the JMC as positive and useful,
2. more than half of the surveyed users positively commented on the activities of the JMC,
3. the courts take into account the findings and recommendations of the JMC,
4. advanced legislation,
5. good information practices are applied in the courts,
6. shared comparative experiences,
7. published analyses, findings and recommendations/at least five per year ?

Expected result:

Strengthening and affirming judicial transparency and public access to justice.

SWOT analysis

STRENGTHS	WEAKNESSES
• Motivation of members • Original work focus • Different range of missions but the same target groups • Strong capacities • Number • Territorial coverage • Well-established organizational structure • History and proven experience • Uniqueness • Organized system of operation • Established cooperation and gained trust • Developed system for consultation with members • Expertise of members • Ethnic and gender balance	• Insufficient impact in society • Failure to use the capacities of the courts • Insufficient communication and exchange of information-reports • Insufficient trust and undefined mutual expectations • Quantity vs. quality • Passivity • Dependence on others • Demotivation • Lack of cooperation
OPPORTUNITIES • Public interest in particularly sensitive court cases • Need to strengthen citizens' trust in the judiciary • Judges need objective and complete information on monitoring and obtaining analysis results and feedback • Increased interest of the international community in informing the public • Need for education • Openness for cooperation with the media	**THREATS** • Prolonged state of political crisis • Resistance of the judiciary to cooperation due to high public pressure • Non-cooperation with the media • Insufficient availability of public information • Insufficient availability of resources (especially for strategic purposes) • Decreased interest of judges in activism

Annex No. 2: Rules of Procedure of the Judicial-Media Council

RULES OF PROCEDURE OF THE

JUDICIAL-MEDIA COUNCIL

For consistent application of the provisions of the Decision on the Establishment of the Judicial-Media Council, the Association of Judges of the Republic of North Macedonia adopts the following:

RULES OF PROCEDURE

1. GENERAL PROVISIONS

Article 1

(1) This Rules of Procedure shall more closely regulate the organization, activities and manner of operation of the Judicial-Media Council.

(2) The Judicial-Media Council shall perform the activities envisaged in the Decision on the Establishment of the Judicial-Media Council.

-

2. COMPOSITION AND ORGANIZATION OF THE JUDICIAL-MEDIA COUNCIL

Article 2

(1) The Judicial-Media Council shall be composed of a total of 21 (twenty-one members), i.e. President, Vice-President and 19 members from the ranks of judges and journalists, elected by the Steering Committee of the Association of Judges of the Republic of Macedonia.

(2) **The members** from the ranks of the journalists of the electronic, print and television media, a total of 11 (eleven) members, shall be elected on the proposal of the media outlets from among the journalists reporting in the field of justice.

(3) **The members** from the ranks of judges, a total of 10 (ten) members, shall be elected on proposal of the President of the Association and the members of the Steering Committee, **from all courts in the Republic of Macedonia**.

(4) Experts from certain fields may also participate in the work of the Council for the purpose of providing expert opinions on issues that are on the agenda of the session.

Article 3

(1) The Council shall **elect** a President and a Vice-President from among the members referred to in paragraphs (2) and (3) of this Article, for a term of 2 (two) years with the right of re-election.

(2) The members of the Council shall be appointed for a period of 2 (two) years with the right of re-election.

(3) The President and the Vice-President shall be elected by a majority vote of the total number of Council members.

Article 4

(1) The President of the Council shall manage the Council sessions, participate in the adoption of the decisions of the Council, the decisions on the establishment of working groups of judges and journalists on current issues in the field of justice and shall sign them.

(2) The President of the Council shall chair the sessions of the Judicial-Media Council.

(3) The Vice President of the Council shall be a person replacing the President of the Council in their absence and shall have the same powers.

3. MANNER OF OPERATION OF THE JUDICIAL-MEDIA COUNCIL

Article 5

(1) The Council shall decide on issues of common interest, and the decisions of the Council shall be expressed in the form of **"Initiatives", "Opinions", "Recommendations"** and **"Conclusions"**.

(2) The Judicial-Media Council shall meet depending on the received requests for decision-making, and at least 4 (four) times a year.

(3) The sessions of the Council shall be convened by the President, Vice-President or at the initiative of at least 2 (two) members.

Article 6

(1) A session of the Council shall be held if more than half of the members of the Judicial-Media Council are present.

(2) The Judicial-Media Council shall make decisions within the scope of work by a majority vote of the total number of members of the Council, by public vote.

(3) The Judicial-Media Council shall make decisions on the establishment of working groups of judges and journalists to monitor and investigate current issues in the field of transparency of the judiciary, by a majority vote of the members present at the session, by public vote.

(4) The decisions of the Council shall be published on the internet platform of the Council and the Association of Judges of the Republic of Macedonia and shall be submitted to all relevant institutions and media.

(5) Each member of the Council shall have the right to 1 (one) vote.

Article 7

(1) The decisions of the Council expressed in initiatives, opinions, recommendations and conclusions shall be provided in cases when the elements (conditions) related to the activities of the Council are met, in order to overcome the established problems of interest of the media and the courts referring to the access to court proceedings and reporting on court cases to the public.

(2) The Council shall adopt decisions by public vote "for" or "against". The opinion shall be deemed adopted by a majority of the total number of Council members.

(3) Minutes shall be kept for the course of the work of the advisory body. The minutes shall contain basic data on the course of the session, list of attendees, discussions on items on the agenda, adopted conclusions and decisions, as well as the voting results.

(4) The minutes shall be adopted at the beginning of the next session. When adopting the minutes, each member shall have the right to make remarks on the minutes. The minutes shall undergo corrections reflecting the remarks which shall be adopted. The minutes which are adopted shall be signed by the President of the Council.

Article 8

(1) The request from a judge or journalist for deciding on and adopting an initiative, opinion, recommendation or conclusion shall be composed in electronic form and in writing.

(2) The Council shall act upon the request within a period not longer than 30 days from the day of receipt of the request.

Article 9

(3) The requests to the Council, the decisions as well as the facts and the circumstances on which they are based, shall be kept in a separate archive in the premises of the Association of Judges of the Republic of Macedonia.

Article 10

(1) The members of the Judicial-Media Council shall work without compensation.

Article 11

(2) The Association of Judges of the Republic of Macedonia shall perform the administrative and technical duties of the Council:

- Prepare the sessions of the Council;
- Prepare an annual report on the work of the Council for the previous year;
- Maintains an electronic database with data on the work and decisions of the Council;

(3) Perform other duties determined by the decision on the establishment and the rules of procedure of the Council.

4. FINAL PROVISIONS

Article 12

(1) Amendments to these Rules of Procedure shall be made in a procedure corresponding to an adoption procedure.

Article 13

(2) The present Rules of Procedure shall enter into force on the day of its adoption.