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CONSTITUTIONAL ANALYSIS OF THE PUBLICITY OF JUSTICE, IN PARTICULAR ATTENTION TO THE COLLISIONS OF FUNDAMENTAL RIGHTS ARISING FROM THE RELATIONSHIP BETWEEN THE PUBLICITY OF CRIMINAL PROCEEDINGS AND THE MEDIA

Ph.D. dissertation

THESES

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I. Raising problems and research issues

In our globalized world, the rapid technological development and the acquis of this development, the changing media environment, have fundamentally shaped and are shaping the forms of the publicity of the judiciary, posing new challenges for legislators and practitioners alike.

In our accelerated lives, legislative processes cannot keep pace with the new circumstances brought by technological changes, which can ultimately jeopardize the requirement of legal certainty.

Members of the information society are no longer satisfied just with the free flow of information and attendance at trials, but they are demanding greater insight into the workings of the judiciary, the availability of judgments, and demand an active commitment on the part of the state to provide information.

The role of the press in providing information is enhanced, there is a strong focus on judicial proceedings, the press coverage of justice, and the quality and quantity of that press coverage.

It is becoming increasingly common for certain high-profile judicial cases to be used for political purposes, exposing the courts to constant attack. The public at large learns about the judgments handed down by the courts only through the media, often superficially and this has a profound impact on society's faith in the justice system.

The relationship between the press and judiciary in the spread of the news is aptly reflected in Mark Twain's words that *a lie gets halfway around the world while the truth is putting on its shoes.* The public face of justice, as well as the reporting on the commission of certain crimes and the judicial decisions taken to prosecute offenders, should not be for the entertainment of the public. Unfortunately, however, the news coverage in the media tends in that direction. As Elemér Hankiss pointed out: "*the media is not the message. The media is only a tool. The real question is what we do with it, what message we send to each other*."[1]

In recent years there has been a paradigm shift in the field of protection of personal portrayal as well, which the dissertation examines in the context of criminal proceedings.

We hypothesize that the development of technology has transformed the forms of the public sphere, it has broadened, which poses constant challenges to legislators and practitioners alike. Based on our hypothesis, we seek to answer the following questions:

- How can we differentiate the levels of publicity, what could be the basis for the separation?
- What functions does – or optimally, what functions should – the publicity of justice performs?
- To what extent can the public be involved at different stages of criminal proceedings?

[1] Elemér Hankiss: *2001. szeptember 11. Fordulópont?* Magyar Tudomány 2002/6. 782.

Our second hypothesis is that in the past decade we have witnessed a politicization of the judiciary, which has resulted in a constant threat to the public perception of justice. Therefore, after defining the levels of publicity and its enforcement, we seek answers to the problems raised by the public-media-political interface, and examine:

- What is the impact of certain political manifestations on the justice system and the perception of justice in society?

Our third hypothesis is that, due to the fragmented legal environment and the lack of consistent judicial practice, the press coverage of crime does not adequately protect personality rights. To support our hypothesis, we seek to answer the following questions:

- How can the concept of media/press be defined in the context of the publicity of criminal justice?
- Who can be recorded in criminal proceedings and under what conditions?
- How the personality rights are protected in criminal proceedings?

Along the lines of our research issues, the dissertation aims to provide a comprehensive and transparent picture of the publicity of the judiciary as a branch of power, as an organization, and of (criminal) justice as an activity. We believe that the judiciary must respond to changes that are still taking place today in a way that is consistent with a system of judicial independence, transparency, civil control, and the protection of personality rights.

II. The structure of the dissertation and the methodology of the research

Along the lines of the abovementioned research issues, the dissertation can be divided into three main sections. The first main structural section focuses on the mapping and presentation of the publicity and transparency of the justice system in a broader and narrower sense.

For the role of publicity in the justice system, we will primarily examine publicity as an institutionalized social sphere, a legal-political phenomenon, in the light of domestic and foreign academic theories. Although no equivalence can be drawn between the so-called political publicity – which is reflected in the organizational publicity of the judiciary – and the procedural publicity, their common origin, and common purpose may be a good starting point for examining the publicity in the judiciary as a specific field.

In constructing the dissertation, we move from the broader level of publicity to the narrower, examining the rules that enable members of the society to obtain sufficient information on the functioning of the justice system. To analyse the public and transparent operation, we have also examined preliminary issues such as judicial independence and accountability, which appear as competing interests among publicity.

In the dissertation, we outline how far the publicity can extend, and what function it plays – or, under optimal conditions, what function it should play – in the field of justice. For this, we define the different layers and levels of publicity, from institutional-organisational publicity to procedural publicity.

Within this framework, we examine the institutional-oraganisational publicity of the judiciary. The most important aspects of the abovementioned institutional-organisational publicity are identified in the economic publicity, the publicity of disciplinary proceedings, and the publicity of judicial administration.

Institutional-organizational publicity is a complex, multifaceted field in itself, so the areas examined in this dissertation were narrowed down through a threefold filter. We specifically looked at areas that are directly related to the publicity-media-policy triad.

The second main section of the dissertation includes the rules of publicity in criminal proceedings and the relationship between the judiciary and the media. We examine the extent to which the publicity requirement can be enforced during each stage of criminal proceedings and the fundamental rights and interests that may arise when publicity is restricted.

We divided the publicity of criminal proceedings into five categories, moving from the broadest to the narrowest. In this context, we define the level of:

I. The Public sphere (social publicity)

II. Courtroom publicity

III. Client publicity

IV. Coercive publicity – slightly open publicity

V. Administrative publicity

Between the levels of publicity, there is a fine line, therefore these levels can overlap in many cases.

We highlight the growing political and media influence in the field of justice, and to support this, we analyse criminal proceedings and press coverage of these proceedings, which explicitly show that one of the greatest challenges to the judiciary is the infiltration of politics and the media into the judicial process.

The third pillar of the dissertation is the relationship between criminal proceedings, the media, and politics, the practice of infringing the right to protection of image and recorded sound arising from the relationship between the public and the press, and the anomalies of fundamental rights in this area. In the course of our research, we analyzed certain high-profile criminal proceedings and the media environment surrounding these criminal proceedings.

Concerning personality rights, we specifically examine litigations related to the protection of personal portrayal from the past ten years, where the starting point was a criminal proceeding and inappropriate press conduct resulted in a personality right violation. In the course of the research, we paid particular attention to the circumstances that influenced the judicial practice, the aspects that may have led to different positions of the different judicial forums, and the common points that may serve as a benchmark for the violation of the right to protection of image in criminal proceedings.

One of the significances of the research is that almost all relevant legislation (Civil Code, Code of Civil Procedure, Code of Criminal Proceedings) was amended in the period under review, but the related provisions were essentially based on the theses developed by previous judicial practice.

Giving the complex and multidisciplinary nature of the dissertation, we also called for multidisciplinary research methods for scientific processing. We have placed great emphasis on the dogmatic analysis, but in addition to the theory of existing legislation, we have also paid special attention to the critical evaluation of the Hungarian judicial and constitutional practice. The complexity of the topic also required a primary source-based analysis of foreign judicial and legal literature.

The strong fundamental rights aspect of the topic makes it essential to take into account the Strasbourg mechanism, given that it is not only the subject of international legal academic discourse but also a central subject of study in constitutional law.

The toolbox of comparative constitutional law helps to identify similarities and differences between cases, which can form the basis for critical thinking. In addition to the abovementioned methods, we have also relied on historical and descriptive methods.

In the course of the dissertation, we also apply the methods of empirical comparative constitutional law. Our empirical research has two strands. On one hand, we focus on certain high-profile criminal cases that have attracted wide press coverage and major public interest.

In this context, we examined:

- The Simek Kitty-case
- The Rezesova-case
- The Cozma-case
- The Bándy Kata-case
- The "Red sludge" catastrophe-case

In the selected cases, we examined the first and second instance judgments, as well as the media environment surrounding the criminal proceedings, press reports, and "political" statements made in connection with the criminal proceedings. The comparison of the abovementioned makes it possible to draw well-founded conclusions about the impact of the press and political statements on the judiciary and the perception of justice.

The other strand of the empirical research is the judgment database created for the dissertation. For the database, we analyzed judgments from the period between 2010 and 2021 in which the violation of personality rights – within that the violation of the right to protection of image and recorded sound – is related to criminal proceedings and the violation of these rights results in the presence of the press in the courtroom and the press coverage of the criminal proceedings.

To compile the database, we first examined the material facts, the reasons for the judgments, and the operative part of the judgments – in particular, whether the infringement was determined, whether damages were awarded, and if so, what damages were awarded. After the examination of the decisions, we have highlighted the most important part of the reasoning, from which the ratio decidendi of the decision is presented in the tables forming part of the dissertation.

As a result of the research, we divided the decisions into three categories:

I. Individuals right to protection of image

II. Serving Prison officer's right to protection of image

III. Public figures' right to protection of image

After compiling the judgment database, we examined whether there has been a change in judicial practice, what was the direction of this change, and what was the reasons for the change in the judicial practice.

III. Summary of the scientific results of the dissertation

Publicity and transparency are essential for the functioning of a democratic, constitutional state based on the rule of law. The judiciary as a branch of power, as an institution, is of paramount importance in the everyday life of society. Members of society expect the judiciary to ultimately settle their disputes and to enforce the state's power to punish those who violated the social and legal norms by committing crimes. Therefore, the trust of society in the judiciary must be given high priority. In order to achieve this public trust, members of the society must receive an adequate quantity and quality of data and information on the functioning of the justice system and on the judicial procedures. However, with the development of info-communication technologies and the spread of the internet, the possibility of disclosing and accessing this information has expanded and become simpler. At the same time, the possibility of manipulating data and "distorting" the reality has been simplified.

The political community has realized that publicity can be an excellent means in the battlefield of politics and power struggles, and the views of the receptive public on certain social issues can be easily influenced by using the media. The issue of publicity of the judiciary must play an important role in the various public debates.

That is why it is important to examine the publicity of the judiciary because we see the key to the separation of powers and system of checks and balances in it. While it ensures the right to a fair trial, the transparency of the justice system is also a way of strengthening the legitimacy of law as a social regulatory system.

Publicity must be an important requirement both for the judiciary as an establishment and for the judiciary as a judicial activity. Hence the need for ongoing scientific research that can shed light on long-standing problems from a different perspective. But theoretical research is worth nothing without strengthening society's faith and trust in the judiciary, which requires the courts to accept publicity and to make use all of the advantages of it, minimizing its negative consequences.

It is a utopian ideal, but we believe that with the public trust and the sufficient quantity and quality of the information provided by publicity, members of the society can be expected to take responsible civic activity with an interest in public affairs.

In our opinion, some of the problems that arise among the publicity can be resolved without any legislative changes. Issues related to the restriction or exclusion of publicity and the protection of personal data could be addressed by adapting the application of the current legislation to practical problems. However, in other cases, we believe there is an urgent need to change the legislative framework.

a) Proposals for disciplinary procedures

The examination of the ECtHR practice has clearly shown that the right to a fair trial - and its partial rights - are fundamental requirements that are also relevant in disciplinary procedures.

There are two interests in the Hungarian regulation of the publicity of disciplinary proceedings that are in a collision, and this collision must be resolved properly. These two interests are, on the one hand, the preservation of the prestige of the judiciary, on the other hand, the judge's right to a fair trial.

In our opinion, the appropriate regulation of the publicity of disciplinary proceedings would be to maintain the exclusion of the publicity as a general rule, with the provision that if the judge requests the publicity, then the proceedings must be held in public.

We do not believe that the fact that a disciplinary procedure is conducted in public – especially if it is initiated by the judge who is under trial – should undermine the prestige of the judiciary. If there is a valid and legitimate reason for initiating a disciplinary proceeding, there should be no negative consequences for ensuring publicity. In our opinion, it is the exclusion of publicity and undisclosed information that can tarnish the perception of the judiciary.

In addition, the possibility of ensuring publicity can be a useful means to control the Disciplinary Court and, in the current political sphere, it can be capable to protect judges from disciplinary proceedings being used as a means of exerting pressure.

We would also consider it as an essential change if the decisions made by the disciplinary courts were published not only on the "intranet" but also on the official website of the judiciary, the so-called Judicial Decisions Collection. The abovementioned practice would allow members of the society to be informed properly about disciplinary proceedings and would also facilitate academic research on the subject.

b) Proposals for the publicity of proceedings

The basic rules of criminal procedure, the general and special provisions of the Code of Criminal Proceedings must be respected by the court through the entire trial. Such fundamental rules include the publicity of the proceedings and the public delivery of judgements.

In the dissertation, we have examined the possibilities of limitation and exclusion of publicity. Based on that examination we have shown that publicity is an essential part of the right to a fair trial, therefore it can only be restricted in a narrow range of cases against other competing interests.

For those reasons, we are concerned that failure to state reasons in decisions of publicity, and the exclusion of the public without legitimate reason no longer constitute absolute grounds for annulment.

As an example, the provisions of the German Code of Criminal Proceedings on procedural errors[2] establishes an irrebuttable presumption for particularly serious procedural errors[3]. Based on this irrebuttable presumption, there is a causal link between the procedural error and the decision delivered by the court, which makes the judgment not comply with the requirements of a fair trial, therefore it must be annulated by the court of appeal. Such serious procedural errors include the breaches of the provisions on publicity.

In our opinion, a serious procedural error that affects the rights of the parties – or those who involved - must in itself result in the annulment of the decision, irrespective of the extent to which the procedural error affected the criminal liability, the classification of the crime or the imposed penalty. A decision made in violation of the rights of the parties cannot be considered right and fair, even if the court would have reached a similar conclusion without the procedural error.

The principle of publicity is a fundamental guarantee of the right to a fair trial, a constitutional requirement, whose enforcement affects the interests of both the defense and the prosecution. The exclusion of publicity without a legitimate reason made as a relative procedural error makes it impossible to enforce a fundamental constitutional right, thus creating a hiatus in the arsenal of rights available to the accused in criminal proceedings.

c) Proposals for the freedom of the press

"*If the court had a courtroom big enough to seat the whole population of the country, then the public sphere and the publicity of the courtroom would coincide and there would be no problem."*[4] The words of Zoltán Varga pointed out that through publicity the courts and the media are in an interdependent relationship. This interdependence requires an obligation of cooperation on both sides.

The relationship between the courts and the press has been the subject of examinations for a long time. In 2014, at the so-called Courts and Communication annual Conference the majority of the Member State expressed the view that the relationship between the press and the courts was unsatisfactory.[5] In several cases, open attacks and hostilities were reported, some of which were directed not against the courts or the judicial system, but against the judge who was presiding over a case.

It is now undisputed that the press has grown into an independent branch of power. If we take the press as an independent branch of power, then the thesis - often invoked by the Constitutional Court – that there can be no unlimited and unrestricted power in a democratic state, must be true. The system of checks and balances must also apply to the relationship between the judiciary and the press. Obviously, the justice system can be – and must be – the subject of public debates that can ultimately help the development of justice, but the press must be restricted in such a way that it can exercise civil control without damaging the perception of the judiciary or the interest of justice. The courts have to accept that members of the society will express their opinion on cases of public interest, but the attacks on the individual judges

[2] StPO 338. §
[3] Csongor Herke: *A német és az angol büntetőeljárás alapintézményei*, Egyetemi Jegyzet, Pécs, 2011. 100.
[4] Zoltán Varga quoted by István Kónya, Vice-president of the Curia at the XX. Vasi Jogász Napon, Szombathely, 22th of january 2016 The speech is available here:
https://kuria-birosag.hu/sites/default/files/sajto/vasi_jogasz_napok_dr._konya_istvan_beszede_0.pdf
[5] See further: European Conference on Courts and Communication 2014.
http://courtsandcommunication.hu/archive/2014

going beyond the acceptable critiques. On the other hand, the media and society must accept that the court does not have to respond to public sentiment when passing a judgment. As former president of the Curia, Péter Darák explained "*the judge's decision cannot be influenced by emotions. The judge must deliver the decision with full sense of responsibility, on the basis of the proven facts revealed in the course of a constitutional procedure and within the framework of the legal accusation."*[6]

The fundamental task and obligation of the media are to provide credible, rapid, and accurate information. In our opinion, the requirement of credibility and accuracy also includes – and should include – the requirement of impartiality and freedom from political influence. Every member of the society shall have the right to be properly informed about the judiciary and the judicial proceedings. However, this information must be objective and understandable, i.e. clear and accessible to "ordinary" people without any legal knowledge.

However, press coverages are often superficial, and in some cases not even objective, which can undermine the public trust in the judiciary.

In the dissertation, we pointed out that due to the political influences on the media and the judiciary, there is a need for stronger and stricter regulation of reporting on court proceedings. Such regulation that does not infringe the freedom of the press, but at the same time is capable of requiring the press to respect the rules of fair press ethics. One of the biggest problems – as we see – is that even the slightest regulatory effort breaks on the shield of the freedom of the press, while no adequate solution has yet been found to the violations of personality rights resulting from unethical or unprofessional behavior of the press. By this statement, we do not mean that we would find even the slightest restriction of freedom of the press acceptable, we merely emphasizing that the exercise of such freedom entails serious responsibility.

When the press reporting on crime or criminal proceedings, it is absolutely expected to strive for factuality, accuracy, credibility, and the correct use of legal terms. The judiciary needs to take a more active role in providing information on court proceedings. With more frequent media coverage the judiciary could counteract the often misleading information provided by the press.

d) Broadcasting and online streaming of court proceedings

Due to modern technology, it is now possible without any particular difficulty to record a court proceeding either synchronously or asynchronously. It is undeniable that the judiciary has also embarked on the path of digitalization.[7] This process brings such problems and opportunities to the surface that in our opinion the Hungarian justice system is not yet prepared for.

As an example, in the United Kingdom, high-profile cases will be broadcast online through the media. The Ministry of Justice already put forward the proposal[8] to broadcasting the trials in

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[6] Statement of the president of the Curia: http://lb.hu/hu/sajto/kuria-elnokenek-kozlemenye?utm_source=mandiner&utm_medium=link&utm_campaign=mandiner_jog_201602 (2016. február 20.)

[7] See further: András Osztovits: *Online bíróságok és az igazságszolgáltatáshoz való jog – esély vagy veszély?* https://hvgorac.hu/Osztovits_Andras_Online_birosagok_es_az_igazsagszolgaltatashoz_valo_jog_esely_vagy_veszely

[8] Proposals to allow the broadcasting, filming, and recording of selected court proceedings, Ministry of Justice, 2012.:

2012. According to the legislation,[9] the proceedings will be broadcast live with a ten-second delay, and also will be published on the court's official website.

There is no doubt that the broadcasting and recording of procedures can bring numerous benefits, but the focus should be on the primary problem of live streaming / online streaming, which is the protection of personality rights of the parties, the high risk of violation of fundamental rights and the effectiveness of criminal proceedings.

Regarding the effectiveness of the criminal proceedings, we note that according to the provisions of the Code of Criminal Proceedings, witnesses must be questioned apart, i.e. efforts must be made to prevent witnesses from hearing each other's testimony, thus avoiding possible influence. Through broadcasting, witnesses can gain access to relevant information that can influence the witness to give a proper testimony and the information provided by the media can lead to confusion between the original and a secondary memory of the witness who has not yet been heard.[10] Psychology refers to this phenomenon as reconstructive memory, which means that people tend to fill in memories of a particular event, or missing parts of those memories with existing knowledge, beliefs, assumptions, or information they have heard or seen in the media.

e) Proposals for the right to protection of the image

With regard to the protection of personality rights and the high risk of fundamental rights violations, the dissertation pointed out that there is currently no adequate guarantee of the protection of these rights, especially the right to protection of the image. In our opinion, as long as the current legal framework cannot ensure the protection of personality rights, it is not feasible to think about a regulatory framework for the broadcast of proceedings.

The importance of the right to protection of the image and recorded voice is shown by the fact that the legislator highlighted these rights among the personality rights regulated in the Civil Code, and in April of 2015 introduced a new type of action that can be brought when these rights have been infringed.[11] With this new type of action, the legislator broadened the general means of protection of personality.

According to the explanatory memorandum of the Code, the gradual development of communication and information technology has led to a rise in the abuse of image and recorded sound, which in the digital age requires the development of a procedural system that ensures the possibility of rapid, effective, and transparent action.[12]

The lack of public agreement on the legal protection of personality, the need for such protection, and the various means of protection make it difficult to develop adequate legislation.[13] 13

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/217307/broadcasting-filming-recording-courts.pdf

[9] https://www.legislation.gov.uk/ukdsi/2020/9780111192054

[10] Imre Kertész: *A közvélemény igazságszolgáltatása*, Belügyi Szemle, 1998/1, 18.

[11] Previous Code of Civil Procedure XXI/A.

[12] The explanatory memorandum of the Act XI of 2015.

[13] Veronika Szeghalmi: *A képmás polgári jogi védelme és a hazai szabályozás alapvonalainak áttekintése európai példákon át.* Médiakutató, 2014/1. 54.

However, it is the constant development of technology that encourages legislators and practitioners to constantly reflect on the protection of personality rights.

In our opinion – which is supported by the judicial decisions we have examined – the introduction of the new action brought for enforcing the right to protection of the image still does not provide adequate and prompt legal protection and it is not suitable to compensate for the infringement.

The new action brought for enforcing the right to protection of the image is modelled on the action brought for press correction. The action is preceded by a compulsory preliminary procedure for the redress of grievances, in which the aggrieved party may seek a cease the violation of law, to get appropriate satisfaction, and to get provided appropriate publicity for doing so on its own expense. The aggrieved party may also seek that the other party end the injurious situation, restore the situation existing prior to the violation, and destroy the thing produced through the violation of law or deprive it of its unlawful character. [14]

In principle, the action brought for enforcing the right to protection of the image "is intended to enforce objective sanctions, and thus allows the use of legal protections with a primarily preventive function by means of a special action." [15]

Although the rules of the abovementioned action do not preclude the aggrieved party from bringing an action for the application of additional sanctions, either outside as or at the same time as the action brought for enforcing the right to protection of the image, [16] this still does not provide a sufficient basis for the action to be effective legal protection.

It is precisely the gradual development of communication and information technology – as explained in the explanatory memorandum – which makes it unsuitable to apply the sanctions of the action brought for enforcing the right to protection of the image. This trend may ultimately lead to more proactive use of subjective sanctions by marginalizing the objective sanctions. [17]

The proper use of compensatory sanctions has the potential to reduce and prevent the infringement of personality rights. Our examination of judicial practice has led us to conclude that the average amount of damages awarded in cases of personality right infringements have no deterrent effect.

Attila Menyhárd also pointed out the legitimate critique that the financial sanction for determining liability remains at the level of calculable costs, [18] thus cannot serve a preventive function. This is especially true for economic actors, and for larger media companies for whom

[14] Code of Civil Procedure 502. § (1)

[15] Zita Pákozdi – Imre Varga: *A képmáshoz és a hangfelvételhez való jog érvényesítése iránti per – a hatékony jogvédelem elsődleges eszköze?* In.: Márta Görög –Attila Menyhárd –András Koltay: A személyiség és védelme. Az Alaptörvény VI. cikkelyének érvényesülése a magyar jogrendszeren belül. Eötvös Lóránd Tudományegyetem, Állam- és Jogtudományi Kar, Budapest, 2017. 271.

[16] Lilla Rainer: *A képmás-per, avagy gondolatok egy Pp. módosítás margójára*. Miskolci Jogi Szemle 10/2015. 1. szám, 122.

[17] Márta Görög: *A személyiség védelme a becsület és a jóhírnév vonatkozásában*. In: Zoltán Csehi –András Koltay –Zoltán Navratyil (eds.): A személyiség és a média a polgári és büntetőjogban. Complex, Budapest, 2014. 166.

[18] Attila Menyhárd: *A magánélethez való jog a szólás- és médiaszabadság tükrében*. In: Zoltán Csehi –András Koltay –Zoltán Navratyil (eds.): A személyiség és a média a polgári és büntetőjogban. Complex, Budapest, 2014. 177-178.

the financial disadvantage caused by the infringement fee is negligible compared to the financial advantage of showing a report that has been produced with an infringing act to increase the ratings.

If the amount of damages awarded in proceedings for unlawfully taken and published images were to be significantly increased, or if the courts use subjective sanctions (compensation) instead of objective sanctions, it could have a deterrent effect, that could be used to reduce the unlawful practice of the press in taking photos.

On the issue of the prison guard's right to protection of image, we are convinced that the unauthorized taking and publishing photographs of prison guards in criminal proceedings violate the right to protection of image.

Undoubtedly, when they are in the line of duty, officers are performing a public function and exercising public authority, so as a general rule they would be subject to a higher level of tolerance.

However, as the Constitutional Court has pointed out, the standards of freedom of the press in the scope of taking photographs and videos differ in the context of the courtroom and the criminal proceedings. Criminal proceedings are a special area, that can override the general rules. In our opinion, the problem of the prison guard's right to protection of the image can be approached from the perspective of the purpose and primary function of the media and the purpose of the publicity of criminal proceedings.

The primary task of the press is to provide rapid, credible, and accurate information, which can be achieved without the need for a recognizable portrayal of the serving prison officers. By using a proper "blurring" technique, members of society could be informed that the person under trial is in custody and accompanied to the trial by prison officers. This can be done without causing any infringement.

At the same time, the primary purpose and reason for the publicity of criminal proceedings is not the informational interest of public debates, but the right of the accused and other participants in the proceedings to have their case decided impartially by the court, within the framework of a fair trial, under civil control. Therefore, based on the original purpose of publicity in criminal proceedings, when considering concurring fundamental rights the freedom of the press must yield more broadly to other fundamental rights.

Concerning to recordings of public figures in a criminal proceeding, we see two options under the current legislation.

In the first approach, we look at the problem from the perspective of the criminal procedure as a specific area. The Code of Criminal Proceedings specifies in an exhaustive list who can be recorded without consent in criminal proceedings. This includes the members of the court, the court reporter, the prosecutor and, the attorney. Therefore, the relevant sectoral legislation does not distinguish between public figures in the context of admissibility, so it is an incorrect standpoint that a recording of a public figure can be made without the consent of the accused.

In the second approach, we look at the problem from the perspective of the role of public debate. In this case, one possibility is that, as a general rule and without any further conditions or circumstances, it is possible to record public figures without their consent. The other possibility allows the recording without the consent of the defendant in criminal proceedings for offences committed in his or her capacity as a public figure or in connection with such capacity.

We must point out, that for a regulation like the abovementioned, a precise definition of the concept of a public figure would be essential. In the light of previous judicial practice, it is unpredictable who qualifies as a public figure, thus who should be subject to a higher level of tolerance. This case-by-case determination leads to a degree of legal uncertainty which, in our opinion, is not permissible in a democratic state governed by the rule of law.

The fact that the defendant appears in the criminal proceedings as a public figure concerns the fundamental rights aspect of the issue. But in determining the infringing nature of the photographs made of the defendant, the court must base its decision primarily on civil law considerations. Following the same logic, in criminal proceedings, the court must apply the rules of criminal procedure. Thus, the provisions relating to publicity – including the decision on whether to grant permission to make a visual or audio recording – must be applied primarily in accordance with the specific nature of the criminal proceeding.

To conclude, in the words of Lord Chief Justice Hewart: "*It is not merely of some importance, but is of fundamental importance, that justice should not only be done, but should manifestly and undoubtedly be seen to be done.*"[19]

The judiciary must bear in mind that publicity is not an end, but a means. A means to make the judiciary more accessible and transparent, as more comprehensive knowledge allows for a more informed opinion.

[19] Lord Chief Justice Hewart, R v. Sussex Justice, [1924] 1 KB 256. In James Jacob Spigelman: Seen to be Done: The principle of Open Justice (2007), 74 Australian Law Journal 290.

IV. Publications on the subject of the dissertation

1. A büntető igazságszolgáltatás a nyilvánosság, a média és a politika kereszttüzében Ügyvédek Lapja 2021. pp 16-21.
2. A tárgyalótermi nyilvánosság problémái In: Fejes Zsuzsanna (ed..) Jog és kultúra, Szegedi Tudományegyetem Állam- és Jogtudományi Doktori Iskola, Szegedi Jogász Doktorandusz konferenciák, Szeged, 2018. pp 217-226.
3. A nyilvánosság, mint a tisztességes eljáráshoz való jog részeleme a büntetőeljárásban, ArsBoni online legal journal, Volume VI., Issue 3-4. 2018. pp 170-181.
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