

Strasbourg, 11 April 2005

CONF/JUGES (2005) Croatia

2nd EUROPEAN CONFERENCE OF JUDGES

“JUSTICE AND THE MEDIA”

National report

**prepared by
the delegation of Croatia**

The rule of openness of court proceedings to the public is incorporated in the criminal procedural law of the Republic of Croatia in a way that it is set as a rule in the provisions of the Law on Criminal Procedure as one of the elementary postulates of criminal procedure, in accordance with Article 119 of the Constitution of the Republic of Croatia, Article 14 of the International Covenant on Civil and Political Rights, and Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms. Exceptions to this rule are provided in special legal provisions, and although they depend on the decision of the court council conducting the procedure, they are conditional upon specific circumstances relating to the participants in the procedure, relating to the circumstances regarding the criminal act or the nature of specific evidence which has to be demonstrated in the procedure in order to establish decisive facts.

The Law on Criminal Procedure (hereinafter the "LCP") in Article 292 provides for the general rule of openness to the public by allowing the presence of all interested parties in the procedure, provided that they are of age. An exception to this rule can be found in Article 293 of the LCP, which enumerates the bases for excluding the public from an entire hearing or its part. An exception to the rule of openness is connected to the need of protecting the security and defence of the Republic of Croatia, keeping a secret that could be endangered by a public hearing, maintaining public law and order, protecting the personal or family life of the defendant, the injured party or some other party participating in the procedure and protecting minors. The above legal provision has to be particularly pointed out, because in the mentioned cases the court decision definitely entails the impossibility of any kind of presence of the media, in such a way that they are not anticipated in the exceptions either, when the council may permit the presence of specific official persons, scientists or public workers at the main hearing under Article 294 of the LCP, although the hearing might be closed to the public. It is necessary to point out that as opposed to the former law on criminal procedure, the Law on Criminal Procedure presently in force anticipates the possibility of filing an appeal against the ruling of the council about the exclusion of the public, therefore, it anticipates review of such a decision by the second-instance court, although naturally a submitted appeal does not prevent the enforcement of such a decision, and for the purpose of protecting the rule of efficiency and speed of conducting a criminal procedure.

As opposed to the possibility of excluding the public from a main hearing, the pronouncement of a judgement is always public, but in view of the reasons, because of which the public has not been enabled to be present at the main hearing, a logical consequence is the provision of Article 356, paragraph 4 of the LCP under which the council may decide whether and to what extent the public will be excluded at the pronouncement of the judgment. However, it is necessary to point out that the Act does not anticipate any kind of secrecy relating to the reasons for the judgement either fully or partially at the moment of delivering its written communication, so by being delivered the judgement acquires the right of openness, irrespective of the fact that it is delivered to the legally regulated interested parties in the procedure.

Therefore, it may be concluded that the legislator intended the public to be always informed about the outcome of court procedures and reasons behind court decisions, regardless of the reasons why the public was excluded from a particular procedure. However, there are many questions regarding this issue, including the problem of setting boundaries between the need to keep the public informed about the outcome of the procedure and the protection of privacy of the participants in the procedure or the victims of criminal acts.

This postulate of the criminal procedure is also protected in a way that any decision rendered contrary to the Law on Criminal Procedure on the exclusion of the public from the main hearing represents a material violation of the criminal procedure provisions in accordance with the provision of Article 367 of the LCP. In view of the fact that the most frequent reason for excluding the public from procedures is the protection of the personal or family life of the defendant, the injured party or some other participant in the procedure and the protection of a minor, following a review of the court practice of the Supreme Court it has been established that almost all appeals on the grounds of this material violation were submitted for the two mentioned reasons.

It can be presumed that the rule of openness of the main hearing includes the presence of the media, but the Law on Criminal Procedure, by giving tacit general permission to the representatives of the written media to be present at the main hearing, if they are present in the court-room with other interested parties, orders them, just like all other attending persons, in accordance with the provision of Article 299 of the LCP, to behave in a good manner and not to disturb the work of the court by their behaviour.

However, next to the prohibition of taking photographs and making film, television and other kinds of recordings using technical devices, in the same provision the LCP allows exceptions, such as that the permit for the presence of the media may be given by the president of the county court before whom the hearing is conducted, who may permit the taking of photographs, while the permit for television and other kinds of recordings may be given only by the President of the Supreme Court of the Republic of Croatia. However, in the case such recording is permitted, the council may decide at the main hearing, provided that it has justified reasons to do so, to prohibit the recording of specific parts of the main hearing.

The extent to which the electronic media are interested in informing the public about the progress of main hearings pending before the county courts of the Republic of Croatia and in what number of cases that was permitted based on the permit of the President of the Supreme Court of the Republic of Croatia can be determined by reviewing the relevant practice in the past three years.

In 2002, the President of the Supreme Court received 39 requests for the recording of main hearings conducted before the County Courts, of which 25 were accepted and 14 rejected. In 2003, he received 31 requests, of which 14 were accepted, and 15 such requests were rejected. In 2004, a total of 31 requests were submitted, of which 15 were accepted, and 16 rejected. It seems significant that most requests for the recording of main hearings were submitted in procedures relating to war crimes, and that such requests were accepted, with the exception of two cases when it was not permitted to record the main hearing, but it was permitted to record the pronouncement of the judgement. Requests for the recording of main hearings using technical devices were also submitted in procedures involving criminal acts of murder, serious forms of the criminal acts of abuse of narcotic substances, criminal activity organisation for committing specific criminal acts, while economic transgressions and criminal acts of robbery were least represented, although procedures for such criminal acts are very numerous and in view of the frequency of such acts, the public is greatly aware of the dangers of this sort of crimes. It has been noticed that regarding the mentioned types of criminal acts it was mostly the President of

the Supreme Court who did not give permission to the recording of main hearings, but in eleven procedures he gave permission for the recording of the pronouncement of the judgement.

Most rejected requests for the recording of main hearings in the mentioned three-year period related to procedures conducted before municipal courts, so of the 16 requests submitted in 2002, 11 were rejected, and in 2003 of the three requests submitted, two were rejected. In 2004, of the eight submitted requests, six were rejected. It can be observed that the recording was permitted in the case of procedures involving the criminal acts of fraud, criminal activity organisation for criminal acts within the competence of municipal courts, abuse of authority, serious offences of jeopardising safety by a generally dangerous act or means and illegal crossing of persons across the state border (trafficking), so the intention to grant permission to make the recording, and consequently the availability of the procedure to the public, in view of the severity of the criminal acts and the danger they represent to the society, was for the purpose of general prevention.

The least number of requests for electronic recording was submitted for public sessions of the Supreme Court of the Republic of Croatia, which is understandable, in view of the pictorial unattractiveness of this part of the criminal procedure and the fact that decisions are rendered in a secret procedure, and become available to the public by written communication. However, it is precisely the requests for recording public sessions of the Supreme Court that are accepted to the greatest extent, so in 2002 both submitted requests were accepted, and in 2003 of the twelve submitted requests, ten were accepted. In 2004, eleven requests for the recording of a public session were submitted, and nine were accepted.

It follows from the Law on Criminal Procedure that the electronic media may not be present at hearings in the investigative procedure, although there is no general and express legal prohibition, but the Act anticipates cases where the investigative judge may oblige the present parties to keep information learnt in the procedure secret. Article 207 of the LCP anticipates that if that would be beneficial for the criminal procedure, for the keeping of the secret, public order or morality, the investigative judge or an official entrusted to take specific investigative actions are to order to the persons being questioned or present at the taking of investigative actions or reviewing investigation files, to keep secret certain facts or data learnt during the process and caution them that revealing the secret would be a criminal act. Therefore, it is obvious that in view of the nature of the investigative procedure itself, and the fact that procedural law does not expressly anticipate the possibility of granting permission to take photographs and to record by electronic devices and other technical means in this part of the procedure, all three requests for the recording of this phase of the criminal procedure, submitted in 2002 and 2003, were rejected.

The basic rule of informing the public about court procedures is communication through court decisions, which acquire the right of openness in written form with an explanation. With the aim of enabling full access of all interested persons to court decisions, the Supreme Court of the Republic of Croatia is participating in the project of the European Union on the computerisation of the system for publishing court decisions. At the end of 2003, the delegation of the European Commission in the Republic of Croatia as the representative of the EU and its contractor, the Asser Institute from The Netherlands, completed all phases of the project, which consisted of supplying the courts with the necessary equipment, and especially the Supreme Court of the Republic of Croatia, which was designated for the accommodation of the

information system, and as the central data base. In November 2003, the data base containing court decisions and the original texts of court decisions of the Supreme Court issued in the period from 1993 to 2003 was established. As of 1 January 2004 onwards all decisions adopted by the Supreme Court will be put in the data base called "Court Practice" and prepared for publication on the Internet by having indexes, and a legal and terminological table of contents added to them. The application "Court Practice" can be found on the web pages of the Supreme Court and is therefore available to all Internet users. Full decisions are published on a daily basis, and until now 42 400 court decisions have been published on the web pages of the Supreme Court. The final aim of the project is to connect into a system of publishing decisions of other major courts in the Republic of Croatia by establishing an Internet communications network. This system has already been installed at four largest county courts: the County Courts in Split, Rijeka, Osijek and Zagreb.

The principal aim of the system of publishing court decisions is to make decisions in their integral original form available to the public, where the names of the judges are visible, but the personal information about the parties, their attorneys and representatives, about the injured parties and witnesses is not available in order to protect their identity.

Finally, in an endeavour to implement the rule of openness of court procedures to the public as thoroughly as possible, where it is necessary to insist on as complete and precise informing about the progress of the procedure pending before the court as possible, the institution of spokesperson was established. The Law on Courts states that this position may be taken by a judge or by a court advisor designated as such in the annual schedule of work. It is anticipated that the spokesperson and the president of the court provide notifications about the work of the court in accordance with law. In the period leading to the adoption of the law, educational seminars for spokespersons are held, and so for example in April 2005 an educational seminar will be organised by the Croatian Helsinki Committee for Human Rights and the Dutch Helsinki Committee based on the financial support of the MATRA programme of the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

In such a way, there will be a continuing link between courts and the media, who transmit information to the widest interested public, where it is possible to achieve to a greater extent the endeavour to realise the right of the public to be informed, with simultaneous protection of human rights, especially those relating to the protection of privacy of all participants in the procedure, when this is not a legal reason for keeping a part or the entire procedure secret. By introducing this institution, a part of the responsibility in relation to information, in the evaluation of the boundary between the right to be informed and the protection of human rights, has been taken over by the court, thus giving to the media a basis for determining their own parameters in communication with the public.