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“JUSTICE AND THE MEDIA”

National report

**prepared by
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THE PUBLICITY OF THE JUSTICE

The Justice and the media. Journalists at the court: the image of the justice in the society.

As indirect relation of the law-courts with the public, the relation justice – media must respond to the necessity of an accord between the protection of the freedom of expression and the right to information, with the right to a fair trial, to the protection of the private life, the human dignity and the presumption of innocence.

The media is an image vector and may contribute – both in a bad or wrong way – to the construction of the image.

The media is not therefore responsible for the correct image of the persons or institutions involved in its comments, but only for the correctness of the news.

Its task is to elaborate its own opinion on the basis of the gathered information – in a balanced, complete and equidistant manner. Only this way is reduced the possibility to handle the press release consumer, tributary to the need to be in front of an idea, in order to fight it or to agree.

Hearings publicity and the access of the media; The right to a fair trial.

The character of public hearing and public pronouncement of a judgment is respected, depending on the capacity of the courtroom, and there is one of the existing exceptions (ex.: minors).

The admission of the journalists is done without discrimination, but only on basis of accreditation.

The direct transmissions or the image and voice recording are allowed before or after the hearing, with the acceptance of the persons involved. The visual recordings are avoided during the séance of trial, because that could create difficulties to the parts, witnesses and their families.

But the audio recording is compulsory done by the court during the first instance judgment.

All mentioned activities proceed only with the express permission of the direction of the court and of the panel of judgment.

The discussions about cases with the media representatives are lead by the spokesman, a judge indicated especially for this task.

It is important to retain that media profits from publicity in same measure the public does.

The right to information and the duty of the judges to discretion.

In order to inform their readers, the journalists – the media representatives generally speaking – need more information than they obtain by personal assistance to the hearings.

His turn, the judge is obliged to keep discretion in order not to give information that could be equivalent to the ante-pronunciation.

If the character of the criminal investigation stage is the secrecy, so that the prosecutors and policemen are allowed to make public only the data which do not put in danger the enquiry, in this case the judge must pay an extreme attention to the information he offer, so that his answers do not reveal his opinions.

The used proceeding is to realize this relation through the spokesman, a qualified person, both neutral and foreign of the judgment on which the opinion is asked.

Convergences and divergences in the relation between justice and media.

The Constitution of Romania guaranties for the citizens' right to information, and the legislation created the mechanisms for this right to be exercised.

The stage ruling the secrecy is overcame – the Romanian society having a true “culture” of this one, intensively cultivated during the communist regime – and the rule of the right to information, not only to secrecy, has been regulated.

Often the Romanian society is an informational paradox: nobody tells something, but everybody knows.

The information should exist at first hand, official, correct and complete, and not obtained by journalists from people they know in different sectors of activity.

Given the specific language, the journalists should have judicial studies or to document themselves in order not to use wrong terms, with a different sense then the necessary one.

Also, the journalists should not attribute culpabilities which are not certainly established, should not use terms as “perpetrator”, “guilty”, “would been condemned to” and they should limit themselves to correct expressions, as “x is investigated concerning a crime” and not “x is investigated for the crime of...” or

he is judged for “an accusation of crime” and not “for a crime”.

The journalists should respect their right and obligation to publish fairly the information they detain, opposing themselves to a certain pressure exerted and denying material temptations.

The judges are interested for their activity to be presented by media, but in a fair way.

The freedom of journalists and the protection of the individual.
The respect of human dignity and the protection of the private and family life.

We cannot be followed and harassed in our intimate universe without a precise motivation of a competent institution.

The legislation concerning the protection of the private life is referring not to false facts – entered under the incidence of this law, concerning the defamation -, but exclusively to real facts which must not be published.

The protection degree diminishes going from the public person to the private person, because, in a democratic state, no public person was obliged to do this choice, therefore a restriction of the intimate universe was accepted, meaning a transparent way to live.

But for all categories of person exist restrictions concerning the access in the private life, the reveling of awkward facts without to demonstrate the opportunity and the public interest.

A special protection aim young people, victims, and also the large public, being avoided formula amplifying uselessly the drama of an event that creates panic, terms referring to the social statute, race, etc. (or so should be, it is recommended!).

Freedom of thinking and expression

It is generally recognized that the development, maintain and protection of the democracy is dependent of the endless exercise of the right of expression and information.

The freedom of expression is the fundamental right of man to express publicly his thoughts, opinions, faiths, and it may manifest itself under any form: orally, written, through images, sounds and any way of public communication: media, public reunions, associations, informational networks.

Constitution and the laws of Romania devote the freedom of expression, the

freedom of the media.

Through media, transmitting information in an accessible form, the public may know facts and data of the society. After the confrontation process, the public opinion is formatted and this one, not the media, exerts pressure on the factors of decision, in order to harmonize the actions of the power with the citizens' interests.

The protection of the personal rights and the journalists' responsibility concerning false information or their violation.

The limits to the right to information concerning the judicial proceedings are determined by the necessity that the assurance of a fair trial or the legitimate interest of any of the involved part in the trial not to be violated.

A special protection is dedicated to the young perpetrators, both due to the fact that they are easy to influence, and to avoid their stigmatization in the future.

The respect of the right to a private life, to dignity, to the presumption of innocence could be sometimes violated through not real information or revealed without a major interest in order to justify it. This attitude attracts the journalist's criminal or civil responsibility.

In Romania, the problem of the journalists' responsibility was one of the most discussed; from 1990 it suffers many modifications, following both the line of hardening and that of the total des-incrimination.

At that time, the hardening of the criminal responsibility or the encouragement in according some heavy damage was considered tries of disguised censure.

The nowadays legislation eliminated the difference between the subjects of crimes of insult and defamation.

Also, the new criminal code coming into force in June 2005 does not foresee insult as a criminal fact (for this one only the civil responsibility is concerned), and for defamation the punishment consists only in "zi amenda" – "days of fine" ("the total amount that should be paid is the result of the number of days established by the instance, according to the gravity of the action and the perpetrator, multiplied by the amount representing the evaluation in money of each day of conviction" - Criminal Code).

Concerning the proof of truth, when about a public person, there is no need for a legitimate interest, this one being presumed.

The responsibility is the same not only concerning the active subject, but also the passive one, the quality of the injured part being without importance.

What is really important is the journalist's good faith, the public interest being over all kind of private interests.

An example of all these is the ECHR decision of 28th of September 1999 in the case *Dalban vs. Romania*.

The journalist had been convicted to prison and morale damages, although his source of information was the criminal dossier, closed afterwards, because the facts were not confirmed. But, at the date of publication, the journalist truly believed that his affirmations correspond to the truth, so they didn't represent a calumnious intention. Due the violation of article 10 of EHR Convention on the freedom of expression, the possibility of a re-trial has been given.

Other aspect is the possibility of informational errors, due to the speed of the news process.

The journalistic ethics allows in this kind of situation the possibility of rectification or the right to reply.

These are spread as soon as possible, in the same form, without to overpass the space of the original material.

As a metaphorical conclusion, as the blood irrigating the whole body, a sane circulation of the information could "nourish" and stimulate many sectors of the society, which could this way influence and balance themselves in a mutual manner.