

# How can media influence a fair trial

## Interventions on Responsible Press Reporting

The Media and the Legal Professions: Trust in the Judiciary Requires Trust in the Media Enhancing Cooperation between Two Pillars of Democratic States

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## Definitions

- FAIR TRIAL
- OPEN TRIAL
- PUBLIC HEARING
- MEDIA

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## Is open trial a friend or an enemy to fair process?

### Fair trial

- Who is protected
  - Litigant
- What is protected
  - Rules of procedure
  - Privacy
  - vs.
  - Freedom of access to information

### Open trial

- what **was/is** the **aim** of open trial
- Open with limits or unlimited openness?
- Whom it serves to
  - **quality of proceeding**
  - **protection of rights of the parties**
- OR
- **public in satisfying its need to „know“ /sensationalism/**

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## OPEN TRIAL

- monitoring against arbitrary decision making by the judiciary through the citizen-observers
  - way to illicit further evidence
- BUT**
- “trial by media” causes danger of pre-empting unbiased and rational decision making by the finder of facts

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## STRIKING BALANCE?

- Laws of procedure mitigate the balance between the two ideals (OT vs. FT)– using the instruments e.g.:
  - **Isolating /sequestering the witnesses** – not possible from the media/social media coverage
  - **Reporting restrictions** - backed up by the threat of criminal sanctions for contempt of court – nowadays unenforceable
  - **ISOLATING OF JUDGES/PROSECUTORS/BAILIFFS.....?**

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Impartial  
Unbiased  
Independent

A legitimate judge is a prerequisite for a fair trial.

- Such a judge is supposed to be a **guarantee** of a fair trial.
- Judges use tools to eliminate the influence of the media, e. g. "gag orders", sanctions...
- Despite attacks must **feel** unbiased, while at the same time the public must **perceive** them as unbiased.
- Above all, they must be perceived as such by the litigants or the defendants.
- Moreover - media and its role cannot be simplified to reporting on trials or ongoing litigation. It is about reporting in relation to the quality of justice as such, e. g. **ranking** of judges.

# EXPECTATIONS

of Stakeholders

## PUBLIC

Monitoring of judges/quality of process

Monitoring of fairness

Satisfaction of curiosity

## DEFENDANT/LITIGANT

- Privacy
- Protection of fairness (more than openness)
- Unbiased judge
- Fair decision

## MEDIA

- Access to everything, including the files
- Full information about parties, witnesses, judge/jurors
- Having immediate information and detailed explaining of not simple legal matters

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## How to strike the balance between open trial and fairness

### Role of **administration** of the court

- **Regulation of broadcasting** from the hearing rooms – streaming as solution?
- **Regulation through technology** – digital commitment reminder („nudge“ theory)
- **Training of judges and administrative staff**
- **Regulation of communication strategies** – spokesperson of courts
- **High level of communication with **standard** media** creating the picture of judiciary

### Role of **judges**

- Should follow **ethical rules** to keep their reputation
- The only arm as for trial itself is relevant law of procedure: judge can **exclude** public from the process or hearing; **limit** recording, streaming or broadcasting, use **sanctions**
- **Personal skills** and abilities of judge to communicate with media directly are welcome

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# THANK YOU

Andrea Moravčíková,  
Vice President of the Supreme Court of the Slovak Republic