

QUESTIONNAIRE – FIRST STUDY COMMISSION – NOVEMBER 2014

Answers of Austria

(Vereinigung der Österreichischen Richterinnen und Richter)

Media (including social media) in the Courtroom and Effect on Judicial Independence

Broadcast and Print Media

- 1) Are there statutes, rules or orders of the courts (hereinafter referred to collectively as “rules”) that govern persons who are representatives of the media while they are reporting on judicial proceedings?
 - a) If “yes,” do they apply in criminal proceedings,
 - b) civil proceedings, or
 - c) both.

The proceedings before the adjudicating court (court-hearings) are in general open to the public in criminal procedures as well as in civil procedure. However, sound and radio/TV-broadcasting recordings and taking photos and transmitting sound or film or photos are prohibited without any exception.

- 2) Please briefly describe such “rules” governing members of the media, addressing when possible whether they govern:
 - a) taking of photographs
 - b) use of sound/video recording equipment
 - c) use of live, text-based communications.

a) and b) are forbidden without exception.

b) c) is possible; a debate started recently, if this should be forbidden as well. So far the judge (presiding judge of the hearing) can forbid such activity if he/she thinks there may be a concrete negative influence on the proceeding.

- 3) Are the media permitted to televise or otherwise tape and broadcast court proceedings?
- a) If “yes,” what types of proceedings:
 - i) Criminal trials
 - ii) Civil trials
 - iii) Criminal appeals
 - iv) Civil appeals
 - b) If “yes,” are judges or other court officials given the right to control what may be televised?
 - c) If “yes,” how is such control exercised?

No not at all see answer to No. 1.

- 4) Where there is a real risk that disclosure of the matters in court proceedings will cause substantial and demonstrable prejudice in the proceedings, what are the possible actions/measures available to a court to avoid such prejudice?

The court has no possibility to influence the content of the reporting. If the public is excluded, which may happen under certain very limited circumstances, which are enumerated in the law (danger of disclosure of business secrets; danger for morality or certain aspects of private life, protection of witnesses etc..) nobody is allowed to report about this part of the proceeding. If somebody does, this person and the responsible person of the medium (e.g. editor in chief of the newspaper etc.) may be sued for damages.

- 5) Whether or not the media are permitted to televise court proceedings, to what extent are judges in favor of or opposed to televising or otherwise taping and broadcasting court proceedings?

There is no tendency against the existing regulations. Most judges and the judges association prefer that such a direct impact of the media in proceedings is excluded.

This should not harm the information of media on the work of judges and courts by spokespersons and other adequate means.

- 6) What are the general views of the citizen population about whether court proceedings should be televised or otherwise broadcast? For example, do people care about what is happening in the courts such that they want to see televised proceedings; do they support televised proceedings or are they critical of them, and what are the bases of such support or criticism?

There is no public debate on these issues. TV-formats where mock-trials are performed are very popular, and the interest in activities in the work of police and courts if either certain prominent persons are involved or there are special sensational circumstances of a case are as much of interest as everywhere in the world and are fostered especially by media which are classified as "yellow press". Therefore there certainly would be an interest, but so far nobody really claimed it and judges would oppose such tendencies.

Social Media

- 7) In addition to what has been identified in response to questions 1 and 2, above, regarding the media, are there "rules" that govern persons (both members of the media and citizens generally) who are delivering information about judicial proceedings through the use of social media?
- a) If "yes," do they apply in criminal proceedings,
 - b) civil proceedings, or
 - c) both.

As far as social media are used to transmit films, photos or recordings the same rules apply. Also when using social media the content of proceedings, for which the public has been excluded, may not be published, the presumption of innocence has to be uphold and the attempts to influence the decisions of courts may be punished.

- 8) Please briefly describe such “rules” governing persons (media members and citizens generally) who are delivering information about judicial proceedings through the use of social media, addressing when possible whether the rules govern:
- a) taking of photographs
 - b) use of sound/video recording equipment
 - c) use of live, text-based communications.

For a), b) and c) Especially the identity of victims, and also of those offenders, who are no persons of public interest should not be disclosed, nobody should be claimed as offender before he or she is convicted, nobody should comment on the expected outcome of a proceeding by commenting on pieces of evidence etc.

- 9) Where there is a real risk that disclosure of matters in court proceedings will cause substantial and demonstrable prejudice in the proceedings, what are the possible actions/measures available to a court to avoid such prejudice? For example, may the court simply ban the use of all communication devices in the courthouse; may the court ban the public and the media from the courtroom; may the court ban certain persons from attending the court proceedings if they have caused problems in the past?

During the hearing it is the jurisdiction of the judge to decide about the necessary means, which may be to exclude the public, if one of the reasons provided by the law occurs, or to ban certain means like cameras etc. Outside the hearings it is up to the president of the court to establish the necessary rules to keep order and security in the court house.

A person who is not a party of a proceeding can be excluded from entering the court if previously a ban had been issued by the president of the court due to his/her previous behaviour which may cause a risk to the security (threats or previous violence against the court, the judge the parties etc.). Basis is an official ban-order issued by the president of the court, against which remedies are possible.

- 10) With respect to use of social media, such as twitter, that may create an actual risk in a particular case adversely affecting fair and proper administration of justice, apart

from imposing a ban on such social media are there alternative procedures available to prevent or limit that risk?

There are no such instruments see No.2, 7 and 8

- 11) When social media is used to publicize court proceedings, should the conditions limiting or prohibiting use of social media such as twitter be determined by:
- a) system-wide statutory or procedural rules,
 - b) left to the discretion of presiding judge on a case-by-case assessment,
 - c) some combination of general rules and case-by-case assessment?

There is an ongoing debate, which was recently started (see above)

- 12) Accepting *arguendo* that there should be a balance between the goal of achieving fair and proper administration of justice and the goal of delivering accurate detailed reports of judicial proceedings to the public, can this be achieved if the use of live, text-based communications in court houses is permitted and all bans on and control over the use of social media are eliminated?

Such a change of system would not be accepted, whether in the practicing justice nor the legal policy.

Publicity and the Courts

- 13) Who on behalf of the courts should respond to inquiries from the media and other members of the citizen population to share information about the court proceedings with the public: judges, executives of the courts, some other designated person? Who and why?

The larger first instance courts (courts with at least 10 judges) and all higher courts have spokespersons, who are judges of this respective court, who have had undergone a special training. They answer all questions from the media, give information on ongoing proceedings as far as they are not secret and give explanations to questions on the law and the court organization. In proceedings of special interest information will be made public by written press releases, in exceptional cases even press conferences may take place.

All decisions of the Supreme Court and important decisions (decisions of general interest) of other courts publicized by putting them in a data base available for everybody after they had been made anonymous.

14) What sort of information should be shared:

- a) Explanation of the facts and law applicable to a case
- b) Explanation of the court procedures applicable to a case
- c) Explanation of a judge's ruling in a case
- d) Other kinds of information, and if "yes," please describe briefly.

All of these content depending on the interest of the public.

15) Where there are serious criticisms of a court proceeding, particularly criticisms that are factually inaccurate or are based on a misunderstanding of the law, what, if anything, should that court do to correct the inaccuracies or otherwise to respond to the criticisms?

The content of a decision of the court will not be commented, whether by the administration of the court nor by spokespersons. However, they may give additional explanations if they are useful for the better understanding of judgments. The judges that have given a judgment should not comment on their judgment.

16) If the particular court involved should not do anything to respond, should the central governing body of the judiciary take any action to respond in order to correct inaccuracies? Why or why not?

An assessment of a judgment is only possible through a substantive examination by appellate courts. A comment on a judgment beyond by other judges or within the judiciary is in conflict with the independency of the judges, also in cases of incorrectness of the judgment. As far as additional explanation is concerned see No 16

17) If the criticism of the court is well-founded, what, if any, should be the response of the court or the court's central governing body?

See answer to No. 16.

18) If not already covered in the preceding responses to the questions 15, 16 and 17, how are such matters handled in your country?

Not applicable.

19) If all prohibitions and restrictions on the use of all forms of media (print, television, social media) in the courthouse were abolished, what in your view would be the consequences for judicial independence?

The attempts to influence court decisions through public opinion making would increase considerably. Already now you can observe tendencies for strategies of litigation-PR that try to create a perceptual field for media influenced public opinions outside the court rooms that shall influence the perception and decision process of the court.

INSTRUCTIONS: Please be sure to identify your Judges Association on your answers and return the answers on or before 15 September 2014 to the IAJ-UIM Secretariat: secretariat@iaj-uim.org

with copies to the officers of the First Study Commission:

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The officers will prepare a summary of the answers for use at the meetings of the First Study Commission in November in Brazil, and we will also circulate in advance of those meetings a separate short series of questions that will further guide our discussions at the meetings in November.