

Telejustice – a phenomenon at the border between the right to information of the public and the right to image of accused persons

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Abstract

In this article we analysed a new fast-growing phenomenon – Telejustice which seems to spread more and more in Romania and we proposed a solution - the open justice system. In our opinion, if the open-justice system would be adopted in Romania, it would be a gain both for Justice, which could provide the evidence of transparency, as well as for journalists, who could provide exact information, not taken from sources.

Keywords: telejustice, mass-media, legislative system, open justice, courts, journalists, legislative framework.

JEL classification: P37, A10, O10

1 Introductory considerations

In the 21st century, when information circulates by an amazing speed, and events occurring at hundreds of kilometres are learnt just in a few seconds, mass media represents one of the main means of communication. It has a role of utmost importance, and this is why many internal and international organisations provided it protection, creating a global legal framework, in order to guarantee freedom of expression of journalists, and among these are the United Nations Organisation, the European Union, the Council of Europe, the International Telecommunication Union, the European Court of Human Rights or UNESCO. International institutions and organizations, listed above, pay great attention to the Mass Media regime because it came to influence almost all the good development of the society. Mass media, through its institutions, controls, supervises the State's actions, carried out by the decision making factors, and in most of the cases elevates itself as their judge. "The media explosion actually radically modified the style of political life, the way in which is gained, exercised, even theorized the power".

This movement at the level of political society seems to accompany a modification of the sense of communication." (Dănişor, 2006). Once the press succeeded in gloriously entering the political life, a new character was created – the journalist who became a really specialist in forming public opinion, who shapes ideas and at the same time sends them to the member of the society, sharing them from his/her experience.

The press is considered the fourth power in the state, the "watchdog of society" or the "guardian" who watches over the society's institutions. The role of the press as the fourth power in the state is defined as supervision and control exercised over the three powers." (Szabo, 1999) Practically, with the occurrence of press, there have been modified the rules for the constitution of public space and public opinion, thus being formed a new system of relations between the political class and the electors, which is generated and exposed through this institution.

In the last 50 years, the media influence exponentially increased with the evolution of technology, first through the telegraph, than the radio, newspapers, magazines, television and now Internet. We live in a society which depends on information and communication influencing our daily activities.

At present, newspapers and radio lost from the role they had 50 years ago,

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and the public is more attracted by Internet and television in the classic or online form.

Thus the influence the televisions have over the economics, society and politics arrived in the last years to make an impression on the justice, too.

2 Telejustice – a fast-growing phenomenon

In Romania, in the last five years, almost all the time we switch on the TV on news stations, we see cases of high-level corruption, controversial characters who arrive behind the bars following excessive exposure to media or even magistrates arrested under the eyes of the press. We notice politicians or business persons walking in handcuffs in front of TV cameras, and then become subject of TV debates. We see how verbatim reports in criminal files are sometimes presented integrally, sometimes truncated or taken out of context, on the TV and are long commented and interpreted. Moreover, in the press arrived even films from flagrante delicto which, normally, are not provided to press. We may say that in the last 5 years we assist at justice on TV and we are in front of a phenomenon called even by media "Telejustice". Moreover, the term was taken and used frequently by magistrates, politicians or people having key positions in the state, as well as by the chiefs of Secrete Services.

This phenomenon seems to spread more and more in Romania. News televisions, in their rush for audience or pursuing the interests of owners behind the media trusts, present each detail of a criminal investigation in the situation of a famous case. From the moment of accusation until the final conviction of a person, the journalists watch step by step the approach of magistrates and most of time that subject is debated in numerous TV programmes. Practically, the information sent through media channels is transformed into merchandise, products which must be sold and thus is increased the risk that the information be deformed by the interpretation of the journalist. Repeatedly, in exercising the function of interpretation of information mass-media has the journalists launch deductions over the end point of some events, to allow the public to understand the information presented, and this happens especially in the moments when the facts presented by authorities are incomplete.

The problem is that in such situation, really can the magistrates make correct decisions without thinking about the media impact may have the solution they will give, in case it is not the situation anticipated by press or that considered

correct?

For example, very often in cases of high-level corruption, such as of arrested members of the Parliament, the journalists have no direct access to the file, but they receive very much information from sources from different interested persons. Then, they form an opinion about the degree of guilty of an accused person and implicitly, in turn, disseminate the news even from sources, automatically influencing the viewer. But not always the data provided from sources coincides with that in the files in prosecutor's offices or courts. Even so, some magistrates feel the media pressure, and some of them arrive at making decisions depending on the mass media. Such situation was found in the case of a mayor, arrested in a corruption file, together with other businessmen. The lawyers of the mayor asked the High Court of Cassation and Justice to transfer the trial because of the media pressure. The High Court of Cassation and Justice (ICCJ) admitted the request for transfer formulated by the mayor's lawyers. The transfer request was grounded on the fact that "the file of the two was intensely exposed to media both in the national press, but especially in the local press, so that it was created a media pressure over the judges, who could give an erroneous or biased solution" (High Court of Cassation and Justice, 879/1/2011)

This is not the only case of this kind, and the magistrates arrived at mentioning in the motivation of some decisions the media impact created in certain cases and argued making such decision based on this fundament. Moreover, in cases intensely exposed to media, the lawyers built their defence especially on the influence of mass media and on the pressure created by journalists around these cases. (Olt County Court, 4691/104/2011)

On the other hand, if we take into consideration the influence of media on the political class, we will see that telejustice left its mark also on the legislative system. And this happened because of the desire to be in the attention of the press, and many politicians bring legislative proposals in the Parliament to be promoted their activity, under the conditions where many of their initiatives lack any substance. And this is how it was reached, at the present moment, a real legislative inflation in Romania. There are thousands of legal acts of all categories, and many of these contradict themselves and repeatedly it was needed the intervention of the Constitutional Court to clarify the divergences.

A concrete example in this sense is the case of a senator who, following the frequent press debates about corruption, proposed that politicians be exempted from the humiliation of handcuffs and preventive arrest. The initiator of the

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project mentioned that behind the bars must appear only those who committed offences with violence. (www.senat.ro) The proposal was passed by the Legal Commission of the Senate after its members tacitly voted it. At this point in time the law was not promulgated.

These aspects are not at all neglected, especially under the conditions in which in every democratic state the justice must be independent. In all states, the independence of justice is guaranteed by the Constitution and must be ensured by the State. “Independence of justice is necessary just to guarantee to each person the fundamental right to be examined his/her case equitably, based only on the application of law and without any inappropriate influence. And also for the same reasons, individual independence of judges is guaranteed by the independence of the legal system as a whole, the independence of judges being a fundamental aspect of the rule of law.” (Spănu, 2012)

Under these circumstances, how could the state intervene to guarantee this independence, because if it would be taken measures in this respect, it would limit another fundamental right, that to freedom of expression of journalists?

3 Open-justice instead of Telejustice

One of the members of the Superior Council of Magistracy, Cristi Danileț, recently asserted in an article that he would prefer “open-justice” instead of telejustice. It means that he proposes that “*all trials carried out in public session be transmitted online, and the content of all files in the courts be published on Internet*”(Danileț 2015). Starting from the idea that the public loves sensational things, stolen images and news from sources, C. Danileț considers that once the trials are made public, there would not be information from sources on TV, but official information which could make the public understand exactly how the things happen and not to jump at a conclusion before the magistrates based on information appeared on TV.

This open justice type system works in several states. “Thus, in the USA, UK and Australia the trials held at the Supreme Court are transmitted online. Even in South Africa last year was integrally transmitted on TV, by an inferior court, the trial of the sportsman who shot his girlfriend”. (Danileț, 2015)

Basically, open justice is a fundamental law principle guaranteeing freedom and promoting transparency in justice.(Jaconelli, 2002) In particular, it allows the public to have access to information in the courtrooms during the trials, by facilitating the access of journalists within the legal institutions. Also, are

allowed films made in the courtroom, and reporters have full access to the files, in order to report, as correct as possible, the information of public interest. But this extended freedom of journalists may have negative effects on the society, on the whole, because, once they have this information, they may interpret it as they like, it may be used for other purposes than those to inform, as well as for the interest of the owners of media trusts, for political revenge or just may be exaggerated some matters for the sake to attract audience. It would be serious if this information is presented as being certain, while at present, being taken from sources, the viewer has the variant to think if the data could be false or taken from uninformed persons.

In Romania, this is allowed in the guide of good practice for magistrates and other specialists in communication who activate, in capacity of spokesmen and spokeswomen, in courts and prosecutor's offices. Pursuant to art.10, paragraph 1 "The president of the formation of the court has the obligation to allow journalistic photographers to film inside the courtroom, for an interval from 1 to 3 minutes". But, in fact, this thing happens extremely rare. Being afraid of excessive exposure to media, the presidents of the formation of the court categorically refuse to allow the journalists to make audio or video recordings in the courtroom.

If the open-justice system would be adopted in Romania, it would be a gain both for Justice, which could provide the evidence of transparency, as well as for journalists, who could provide exact information, not taken from sources from different characters involved in investigations.

4 The risks of "Open justice" system

A study carried out in the United States by the Department of Sociology of the University of California, reveals that most of the population has knowledge about the cases in justice from the TV and forms the opinion based on the commentaries and debates on TV. [www. Albany.edu](http://www.Albany.edu) Thus, sometimes they come at having wrong opinion formed before a person be definitively convicted, following a fair trial. This is the major risk in Romania, too, where, as we specified above, debates are on the agenda, and some televisions do not respect the presumption of innocence. For example, if there would be access to important evidence in the files during the progress of the trial, the discussions could be brought to a certain area, showing pregnantly only the evidence against a defendant and not the evidence in his favour so that the viewer make a correct

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opinion about the respective case. This is why I consider important to be adopted the open justice system, but, at the same time, there should be regulated a series of measures to ensure the observance of the presumption of innocence, the respect of the right to own image of accused and suspected. This approach could be realised by ensuring penalties in case of unbalanced presentation of the evidence in the file.

The veracity of information is absolutely compulsory so that the above mentioned rights be observed. In order to support citizens, for a report as fair as possible of true and correct information, mass media shapes not just as an instrument of transfer of this information, but especially as a great supporter of the right of citizen to truth. Regardless if it is called the objective or the relative truth, the veracity of information crossing the media channels to the final recipient, the citizen, must be respected. Of course, any information, as real, sure and objective may be related by the journalist, the individual who is to receive it may perceived it subjectively. Each individual, in part, shapes the reality through the media channels, depending on the different social conditions where he/she finds himself/herself. This is way any reality transmitted by the journalist must reflect a high dose of veracity so that the public opinion may build its perception as close as possible to the initial conditions in which took place. An information with gaps of veracity or, on the contrary, with a subjective persuasion of the journalist, can create not only false perceptions, but also confusions, contradictions and, therefore, real dangers for the life and social rules. Finally, the public interest is dictated depending on the realities present at a certain moment in a society. The contribution of public is imperative to recreate a truth perceived through mass media and which is compared to the existent conditions. For example, a news which is true at the present moment may be perceived as an information less truthful in another period, when the society at that date did not put great emphasis on the respective social signals.

5 The necessity to adopt a law of the press

At present, the legal regime of the press is very complicated under the conditions in which it is absent completely a legal act dedicated to journalists, to regulate in a unitary manner all the freedoms of journalists, but also their limits of expression. Even if at present there are several legislative acts internal and international or deontological codes according to which are guided the journalists and which, at the same time, guarantee them the freedom of expression, it is a

huge need for a law of the press, as it is in most of the states of the European Union and not only. It is notorious the fact that at present, in Romania, there is a major risk for this theme. At this very moment, we have the Constitution which guarantees the right to freedom of expression, we have a law which guarantees the free access to public information, a code of the audiovisual, as well as two new codes (criminal and civil) which impose certain restrictions to the representatives of mass-media, but I consider that it is not enough. In Romania, as well as in many of the countries of the European Union, it is needed a unitary law, which shall contain all these aspects related to the organisation and functioning of the mass-media system. The *de lege ferenda* proposals regarding Mass media deserved to be analysed at the scientific level, in order to improve and continuously retrain the legislative system in Romania, in line with the norms within the European Union.

6 Conclusions

In the current legislative ambience, telejustice became a phenomenon difficult to control, a phenomenon which affects the right to image in case of certain persons, if it is not respected their presumption of innocence, which influences the perception of public about certain concrete cases and which grows from one day to another, depending on the importance of presented cases. (Bucharest Court of Appeal, 22674/3/2014) The Supreme Council of Magistracy tries to fight against the phenomenon, at least in case of accused of corruption who are moved in handcuffs on TV, being affected their right to image, but did not find the modality to make this approach. This decision it desired to be made in order to avoid the conviction of Romania at CEDO because of this reason, as there are already three cases of this kind. A variant to diminish the impact of this phenomenon over the society is the open justice, but which in many states where was adopted has several minuses. But, many of these minuses may be corrected by adopting a legislative framework perfectly adapted to current social conditions, respecting simultaneously the presumption of innocence of accused persons, the right to information of citizens, the right to free expression of journalists.

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