**When two worlds collide and days are dark: Does digitalization of public hearings prejudice the administration of justice?**

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Open justice principle accompanies the functioning of court system and contributes to the development and maintenance of judicial branch as living institution. Today’s sustainable development goals unveils many latent qualities of that principle. Most importantly, the principle of open justice does not only exist for the explanatory accountability of judges, but it also extends to activation of society to engage in the functioning of state authority’s work. It covers the legal awareness of citizens, public discussion on the efficacy of enacted laws and identification of the tangible political and social gaps within society. While there are myriad ways in ensuring “justice is not only done, but also seen to be done”, broadcasting of court proceedings is the powerful mode by which the open justice principle extends the level of public scrutiny and at the same time, avail to increase the legal awareness on the people. Meanwhile, the presumption of broadcasting is not absolute per se and there are many arguments against it in primary and secondary sources of literature.

Primary source highlight the first gap in the placement of right to public hearing in European Convention on Human Rights. While the Court affirms the “public hearing” term under Artcile 6, being applicable to both trial participants and ordinary citizens, German Constitutional Court interpreted the right to public hearing under Article 6 as primarily belonging to defendant in its ruling back in 2001. Furthermore, FCC assessed public’s right to obtain information about court proceedings deriving from Article 10. With being done so, the German Court contradicted to the main requirement of European Court regarding margin of appreciation, that definition of fundamental rights is always the job of European Court and member states are restricted from ascertaining the boundaries of human rights.

Article 10, in turn, is basically intended for media and ordinary citizens can not derive information right from freedom of expression. It states the right “to receive and impart information from generally accessible sources”, while public hearings and courtroom could not be defined as a source unless the dialogues inferred by the hearing are at least able to be record and then transmitted. Media representatives are responsible to attend the court hearing and prepare a reportage of criminal or civil proceedings with the consent of presiding judge (which actually bestows judicial activism, despite civil law system shadows the publcity’s importance due to the technical character of judiciary unlike common law countries). Practically, German courts prioritize the human dignity feature in court proceedings above open court principle, explanatory accountability or public confidence. Nevertheless, it shouldn’t be perceived as parliament and judiciary do not make attempt to keep up with digitalization of public hearings.

Germany is particularly appropriate jurisdiction for my research because it has adopted laws on videoconferencing and regulatory framework on live transmission of judge’s final remarks in Supreme Courts. The language of those legal instruments are highly stringent and restrictive, as every inch of detail has been written down in the texts. However, these limitations are due to the challenging conceptual structure of constitution. Article 1 which encapsulates human dignity was deeply integrated into all fundamental human rights and freedoms. Relevant rights that regulate the live transmission of court proceedings, such as access to fair trial and freedom of information are intertwined with morality element.

Given the historical background of Germany, human dignity element has been assigned an absolute character to maintain stability in the functioning of authorities. Nevertheless, question may arise as how reasonable is to extend the wide implementation of human dignity in digitalization of public hearings? Or to put it otherwise, why is there resistance to expanding the physical courtroom audience to include a virtual one? European Court also views the very size of physical audience as a risk in administration of justice. While managing physical audience might present challenge because of the real time distribution, alternatively, livestreaming might happen with delay after the hearing is over. Many international, regional and domestic courts, such as International Criminal Court, European Court on Human Rights and United States Supreme Court, or higher instance courts in Australia upload the audiovisual record following the proceedings.

At present, European countries allow partial transmission of court proceedings in higher instances of court. However, how does it contribute to open justice perspective seems doubtful. Would such saturation coverage suffice for enhancing legal awareness? If the answer is transmission should be full, how could the potential leakage of witness testimony be regulated? Also, criminal coverage or civil proceeding coverage? Or both? What about ethical sides? Does excessive coverage lead sensationalism in criminal cases? Does it turn the courtroom to media circus in civil cases? For that reason, should media be entitled to broadcast? If the answer is only courts are competent to transmit, how it will be reported to the public, since they might have difficulties in understanding complex legal terms? If the answer is media, to what extent are we assured that media will not misuse it for commercial purpose? Not to mention bloggers, who blatantly misuse high profile/celebrity cases to boost their followers and also manipulate the public by standing by one of the sides.

To answer those questions, comparative analysis of two different worlds will be conducted to showcase how American model integrates to the rest of the globe, while European legal system strictly adheres to the traditional views in their legal-procedural system. SWOT analysis will foster to math the internal and external impacts of livestreaming over due process principle, along with human digity perspective, cyber-security concerns and economical efficiency of broadcasting. The research findings and outcome will shed light on how extrajudicial capacity might linger the further progress of justice system and the importance of setting up robust and comprehensive procedural regulation to ensure the open justice principle as a cultural value for the next generations.