

Anonymisation of victims' sufferings¹



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Criminal judgment

In criminal proceedings, the judgment is the most important court decision. As a rule, the judgment decides on the main criminal matter, i.e. on the criminal motion of an authorized prosecutor, after an examination of its grounds. The announcement of the judgment is followed by its delivery or pronouncement. The delivery of the judgment is designed to inform the interested parties about its contents. When announced, the judgment ceases to be an internal matter of the court and becomes a judicial fact, with all its legal effects and legal consequences. The judgment is delivered through announcement and service. The announcement is public, not just for the parties involved, but for the general public as well. After being announced, and before being served, the judgment must also be produced in written form. A written judgment provides a testimony to its existence and its content, and allows for the control of its legality and regularity, because it takes the form of an official act and acquires the power of a public document.² Immediately after its leaving the courtroom, the criminal judgment becomes available to the readers.³ The reader then becomes acquainted with the judgment. How can the reader understand a criminal judgment that is heavily anonymised?

Anonymisation/pseudonymisation

The anonymisation of a judgment represents the complete removal of all personal data on persons mentioned in the judgment: perpetrators, witnesses and victims. In addition to the Law on Personal Data Protection, anonymisation is also based on EU Regulation 2016/679 of the European Parliament and Council of Europe of April 27th 2016, on the protection of

¹ The article was written within the framework of the School of Transitional Justice of the Humanitarian Law Center, held in Belgrade from June 5 until July 11 2017. The views and opinions expressed in this article are those of the author.

² Momčilo Grubač, „Krivično procesno pravo (Criminal Procedure Law)“, Projuris, Belgrade, 2016, pp.135-136.

³ Miodrag Majić, „Veštine pisanja prvostepene krivične presude (Skills of writing a first-instance criminal judgment)“, Official Gazette, Belgrade, 2016, p.15.

natural persons in relation to the processing of personal data and free movement of such data (General Regulation on Data Protection).⁴

Article 4, paragraph 1, item 5 of the EU Regulation 2016/679 defines „pseudonymisation” as the processing of personal data in such a way that personal data can no longer be linked to the specific person that the data is related to without the use of additional information, provided that such additional information is stored separately, and that technical and organisational measures are applied to ensure that the personal data cannot be linked to the natural person whose identity is established or could be established.

Informing the public about war crimes

The public's right to know about war crimes encompasses the right of access to trials and documentation of cases (indictments, judgments, transcripts and audio/video recordings of trials), the right to record the trial, and the right to protection of court files. How can the public be informed of court proceedings for war crimes and the facts established in those proceedings, if the documentation from the case is anonymised to the point of unreadability? In a situation in which „court proceedings are stalled”⁵, timely and full informing on the proceedings and victims becomes even more important. Instead, after a few years of trial, what we have in the end is a judgment that is anonymised in such a way that it becomes unreadable and unusable for legal analysis. One of the consequences of such excessive anonymisation is the invisibility of victims, because „introducing the victim to the public and public mention of the victim's name is a form of redress for the victim, and a precondition for the recognition of the suffering that the victim has endured by virtue of their personal characteristics.”⁶

The work of the competent courts

The courts refer to the Law on Personal Data Protection, which stipulates the conditions, methods and constraints in the collection and processing of personal data. Protection of personal data is done by anonymisation, but considering that the Republic of Serbia does not have any legislation on anonymisation of judicial and prosecutorial decisions, this area is regulated by the internal documents of the courts. Thus, the Ordinance on Anonymisation has so far been adopted by the Supreme Court of Cassation and the Court of Appeal, while no such ordinance has been adopted by the Office of the War Crimes Prosecutor and the High Court in Belgrade. They base anonymisation on their own interpretation of the law, and the names of victims are excessively anonymised⁷, which is why the interested public is often forced to turn to the Commissioner for Information of Public Importance and Personal Data Protection to fill in the missing information.

The work of the Commissioner for Information of Public Importance

The Law on Free Access to Information of Public Importance stipulates that everyone has the right to be informed as to whether a public authority holds specific information of public importance and to make such information of public importance accessible to the public. The law also stipulates that the information may be subjected exceptionally to limitations prescribed by law, if that is necessary to protect against serious violation of an overriding interest based on the Constitution and the law. At the same time, the Law prescribes that no provision of this Law can be construed in a manner that would lead to

⁴ Rules on replacing and omission (pseudonymisation and anonymisation) of data in judicial decisions, General Session of the Supreme Court of Cassation held on December 12th 2016

⁵ Report on war crimes trials in 2016, Humanitarian Law Center, available [here](#), accessed on July 5th 2017.

⁶ Ibidem, p.13.

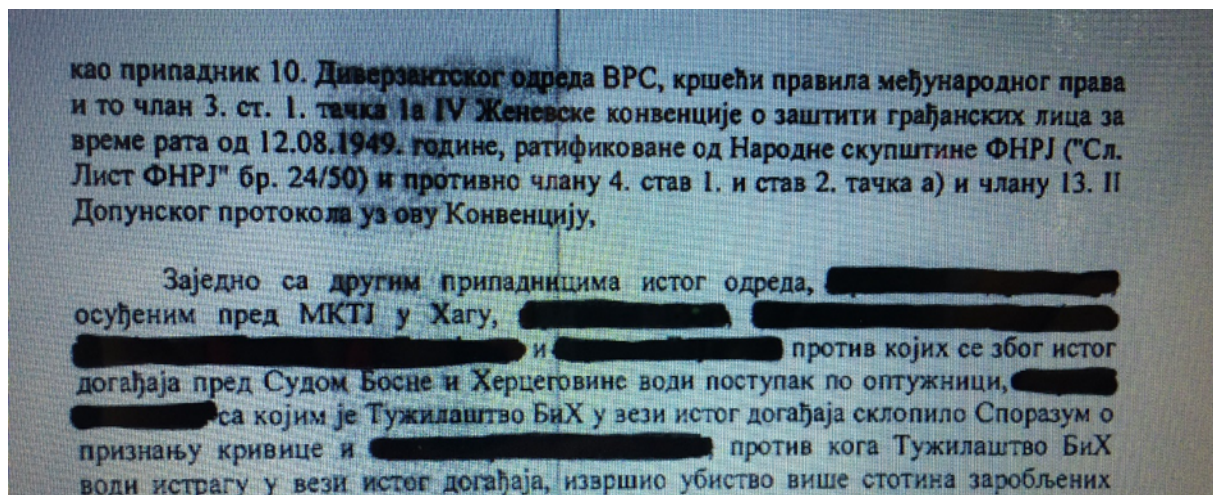
⁷ Report on war crimes trials in 2016, Humanitarian Law Center, available [here](#), accessed on July 5th 2017.

the revocation of any right conferred by this Law or to its limitation to a greater extent than provided for in the Law.”⁸

In terms of the anonymisation of judgments, the Commissioner for Information of Public Importance has taken the view that the names and surnames of persons accused of war crimes are not to be anonymised, because it is in the interest of the public to know such information. However, when it comes to names and surnames of the victims, the Commissioner considers that their disclosure would seriously jeopardize their right to privacy. This position is not in line with the interest of the public which is to know all the facts about war crimes, including those regarding the victims’ identities. Moreover, this position continues to obstruct the victims’ longstanding hope for recognition of what they were forced to suffer.

An example: Srebrenica-Branjevo Case

On January 27th 2016, the War Crimes Department of the Higher Court in Belgrade brought a judgment in which it accepted the plea agreement of January 22nd 2016, for the crime Kto br. 1/16-Sk. br.1/16, concluded between the Office of the War Crimes Prosecutor and the defendant Brano Gojković. Gojković admitted to participating in the shooting of captured people from Srebrenica at the Branjevo farm on July 16th 1995. During the period in question, Gojković was a member of the 10th Sabotage Detachment of the Main Staff of the Army of Republika Srpska. In addition to the anonymisation of personal data of the defendant, the names and surnames of accomplices were also anonymised. However, the names of the accomplices were publicly visible in the indictment, and the accomplices were convicted and their names listed in the judgments of the ICTY and the Court of Bosnia and Herzegovina, therefore the general public was already acquainted with these facts through the media. Also, these judgments can be found on the official websites of these two courts. In this way, the Higher Court in Belgrade has violated the Law on Personal Data Protection, because according to to this Law, „the data that are available to anyone and published in the media are not covered by protection“. Why, then, are their names anonymised in the judgment?⁹



Conclusion

⁸ The Law on Free Access to Information of Public Importance, Official Gazette of the Republic of Serbia, no. 120/2004, 54/2007, 104/2009 and 36/2010.

⁹ See court documents from the Srebrenica - Branjevo Case, available (in Serbian) [here](#), accessed on July 5th 2017.

July 11th is the Day of Commemoration in memory of the victims of the Srebrenica genocide. On that day, the mortal remains of victims who have been identified over the past year are buried, and the public is informed in various ways about the facts established about the perpetrators and the victims. The Srebrenica massacre, which took place over the period from July 11th to August of 1995, still requires answers to questions about why it happened and who is responsible for it. Responsibility, after 22 years, is presented as an excessively anonymised judgment for the crime in Srebrenica, which hides the names of the convicted accomplices in this crime. Can bringing anonymised judgments be „the highest achievement of judicial work“¹⁰? What do the victims of Srebrenica, the public and the media get with excessive anonymisation? They get documents that are unreadable and that prevent learning the facts about war crimes, perpetrators and victims. Excessive anonymisation also violates the UN principles related to combating impunity that stipulate that “all people have the inalienable right to know the truth about the crimes committed and the circumstances that led to them.”¹¹ Let us not forget that Serbia is also a UN member state.

¹⁰ Miodrag Majić, „Veštine pisanja prvostepene krivične presude (Skills of writing first instance criminal judgment)“, Official Gazette, Belgrade, 2016, p.11

¹¹ Report on war crimes trials in 2016, Humanitarian Law Center, available [here](#), accessed on July 5th 2017.