

# **Report on Civic Monitoring of Courts**

**May – July 2005**

**District Court Martin  
District Court Galanta**

## **Report on Civic Monitoring of Courts, May-July 2005**

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# 1 – Introduction

Courts of law have been open to the public since ancient Roman times. People went to courts and reaffirmed their respect for the law and their faith in justice. They felt the law's strength and lived with the knowledge that their acts in this earthly life could be confronted by the law and judged in court. People's ability to directly witness court trials had not only an educational purpose, but also raised the public to the level of thinking citizens who had a healthy respect for the function of the court system. Courts ensured stability of a society, but were also the site of public verification, critique and demands for adjustments in the system.

At present, the public in Slovakia does not habitually participate in court proceedings. The majority of people do not have any direct experience in court, nor do they have any experience with how courts function because the public does not attend trials, but forms their opinions based on information in the media. Under such circumstances, it is difficult to say that public opinion steers courts in one direction or another. It could be said, in fact, that a civic view of justice is lacking in today's society.

The main reasons for this situation have their origins in the past: the previous regime neither established, nor supported any civic control over the courts' power. On the contrary, the repressive character of the regime made the opposite tendency stronger. For this reason, citizens as well as judges are only slowly

coming around to the view that public presence at court proceedings is possible and even welcome. In a democracy, there are no actions or mechanisms that can replace the role of the public in court proceedings in terms of the latter's plurality, independence and authenticity.

The Civic Monitoring of Courts project creates conditions for the public to be able to knowledgeably fulfill its role and, at the same time, exercise its rights.

## 1.1 Civic monitoring of courts in Slovakia

In 2005, the Society for Open Courts<sup>1</sup> undertook the first effort to monitor the court system in Slovakia. The project was financed by the United Nations Development Programme (UNDP) and was implemented in close cooperation with the Anti-Corruption Unit of the Government Office of the Slovak Republic (SR) and the Ministry of Justice of the Slovak Republic.

The long-term goal of this project is to strengthen the principles of a fair legal process in the functioning of the Slovak court system and support independent, unbiased and reliable legal decision making. The project is based on the principle of transparency of court power and uses the potential that conscious and informed public participation can bring to public life. Similar principles form the basis for the report *The current state and future perspectives of the court system from 2000*, which states:

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<sup>1</sup> The civic association Society for Open Courts (SOS), founded in December 2003, is a voluntary, nonprofit nongovernmental organization which brings together individuals and legal entities. The goal of the association is to support positive trends in court reform in Slovakia. The association initiates projects that seek to raise the quality of court function, include the public in controlling the power of the courts, educate judges and raise the legal consciousness of citizens. To achieve these goals, the association contributes by monitoring, publishing, consulting, and carrying out informational and educational activities.

*“Transparency of the court system must be a principle, which enables the public to view its functioning. It must be one of the basic forms of control of the courts by the public and, in the final analysis, a means of raising the trustworthiness and authority of courts among the public.”<sup>2</sup>*

This project takes up the question: to what extent do the courts enable the litigating sides to exercise their rights to a fair legal process? According to the Constitutional Court of the Slovak Republic:

*“The right to appropriate protection under the law is a basic human right, which was established in 1948 under the General Declaration of Human Rights and, subsequently, in the European Convention. The right to a fair trial is a necessary pre-requisite for the enjoyment of all other basic rights and freedoms.”<sup>3</sup>*

At the same time, the project is based on the assumption that some aspects of court proceedings (the appropriateness of the judge's behavior, how professionally and appropriately the proceeding is carried out, how convincing the rationale is for the decision/verdict) have a direct impact on the participants' and the public's trust in the unbiased nature of the proceedings.

The monitoring process does not and cannot evaluate the legal side of the issue. It can, however, evaluate such aspects of the process as, for example, how unbiased and fair the judge's behavior is toward the litigating parties, the clarity and intelligibility of his communication or the quality and accuracy in the application of protocol. It also assesses data on the courtrooms and the entire court building, as well as many other conditions under which the courts exercise their power.

The intention of the report submitted is to open a broad public and higher-level academic discussion on the relationship between the courts and the public and on possible improvements in the exercise of the

courts' power from the point of view of citizens and judges.

## 1.2 International experience

Monitoring of courts has been ongoing in the U.S.A. for several years (in New York it is done by the Fund for Modern Courts, in Washington by the Council for Court Excellence). In Europe, civic monitoring of courts is done, for example, under the auspices of the Helsinki Foundation for Human Rights in Poland, Interrights London in Great Britain and other nongovernmental organizations, such as the Bulgarian Helsinki Committee and the Public Interest Law Initiative.

Through research on the working conditions in district courts, civic organizations in the countries mentioned were able to identify, for example, a lack of material conditions for exercise of the court's power. This shortcoming, especially in comparison to the executive bodies of government, was identified above all at the local level and had an obvious impact on the courts' ability to uphold the people's right to a fair trial. It also had an impact on the effectiveness of the constitutional system of “checks and balances” between individual branches of power. After the presentation of monitoring results to the budget committee in Parliament in Poland, the court system budget was raised by 30%.

Ongoing monitoring of some types of courts (done by the OSCE, for example, in Bosnia and Herzegovina, Croatia, Montenegro and other Balkan countries) provides many kinds of systematic information on the upholding of legal procedures and offers suggestions for improving the situation, including legislative changes.

## 1.3 The monitoring process

Implementation of the first civic court monitoring in Slovakia was undertaken under a pilot program by the association and lasted one year. The monitoring

<sup>2</sup> *The current state and future perspective of the court system, Ministry of Justice of the Slovak Republic, 2000.*

<sup>3</sup> *Decision of the Constitutional Court of the Slovak Republic of June 23, 1999.*

process was carried out by an interdisciplinary team of experts<sup>4</sup> according to the following scheme:

1. identification of monitored items and themes and their significance for an “open court system”;
2. selection and combination of sociological methods according to the thing or process being monitored;
3. first educational workshop for monitors (legal, sociological and psychological aspects of monitoring courts);
4. testing of monitoring methodologies (pilot monitoring of courts/judges);
5. second educational workshop for monitors (legal, sociological and psychological aspects of the test monitoring);
6. implementation of the monitoring process (repeated monitoring of courts/judges);
7. gathering of data in an on-line database;
8. third evaluative meeting for monitors (focus groups<sup>5</sup>, feedback from monitors / project implementers);
9. generation of statistical data, qualitative analysis, sociological and legal interpretation of the data.

Selection and training of monitors was carried out simultaneously with preparation of the monitoring methodology. University students comprised one portion of the monitors (from social science fields or law), another consisted of activists from nongovernmental organizations and a final group was comprised of people of retirement age. Monitor selection criteria were based on a proportional representation of age, gender and education (minimal level was a secondary education). The monitors could not have a criminal record and neither they nor their family could be part of or about to enter into court proceedings at one of the courts being monitored.

Monitor training was focused on learning monitoring methodologies, getting acquainted with court proceedings and processes, developing necessary observational skills and other socio-psychological capabilities. Training was carried out before the test monitoring of the courts while a detailed manual was developed for the monitors.

Two district courts in two regions of Slovakia were selected for monitoring – Martin and Galanta. The goals and methods of monitoring were discussed beforehand with the Chairmen of the courts monitored.

In both courts, all judges working in the chosen court at the time of monitoring were observed.

## 1.4 Methodology used

The instrument for gathering data became the so-called “data sheet”, which included objective facts observed and also provided a chance for subjective evaluation. The data sheet for a civil proceeding included 106 questions, while the counterpart for criminal proceedings contained 110. Questions were opened and closed in each monitoring session. There was an area for notes on each data sheet. Thus, the monitors could fully record objective facts as standardized data as well as make their own personal observations in a “non-standardized” way. (At the level of instruction, this meant that for a specific part of the data sheet, the monitors either marked one/all possible choices, or filled in numerical or written answers, described the situations behind the so-called hard data and produced soft data.)

The data collected was entered into an on-line database. The “transcription” of the data sheets was done either by those monitors who had a good knowledge of computers and the internet, or by members of SOS. The quality of the data sheet “transcription” was monitored. Each data sheet was assigned an identification number. In this report, the acronym “ID” in combination with a number signifies a specific data sheet from which data or commentary has been extracted.

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<sup>4</sup> A smaller team was comprised of four lawyers, a psychologist, a pedagogue, a sociologist and a computer programmer.

<sup>5</sup> Focus groups, or group discussions on a research theme are a qualitative sociological research method.

Special software was used to process the data. The software is a combination of interactive statistical operations at the level of first categorization and functions for searching for archived data. Qualitative analysis was used to process non-standardized data.

## **1.5 Basic data on monitoring**

Monitoring of the District Courts in Galanta and Martin was carried out between the beginning of May and mid-July. Twenty-three monitors observed 28 judges in 211 separate proceedings in 17 courtrooms. The average number of monitoring sessions undergone by one judge was 7.5 (proceedings).

<b>Basic monitoring data</b>	courts monitored		2
	judges monitored	in Martin: 18	28
		in Galanta: 10	
	average number of monitoring sessions for one judge	in Martin: 7,2	7,5
		in Galanta: 8,2	
	legal proceedings monitored	in Martin: 129	211
		in Galanta: 82	
<b>Legal proceedings monitored</b>	courtrooms monitored	in Martin: 9	17
		in Galanta: 8	
	civil	in Martin: 83	145
		in Galanta: 62	
<b>Legal proceedings monitored</b>	criminal	in Martin: 46	66
		in Galanta: 20	
	length of monitoring session	shortest	5 min
		longest	3 hrs 30 min
		average length	43 min
<b>Available socio-demographic information on judges</b>	results of the proceeding	adjournments	112
		verdicts	99
	woman	in Martin: 12	18
		in Galanta: 6	
<b>Available socio-demographic information on monitors</b>	man	in Martin: 6	10
		in Galanta: 4	
	monitors		23
	woman		16
	man		7
	average number of monitoring sessions per person		9,2

Table no. I: Basic data

## 2 – Accessibility and security of courts

### 2.1 Legal framework

The court is a state institution that protects the rights and interests of citizens by resolving disputes and conflicts between citizens if they are not able to resolve them themselves. The court also decides on the guilt or innocence of parties to a crime and determines appropriate punishment. Because of the court's function, the physical space where the court makes its decisions needs to be open to the public. Since court proceedings need to be public, the court itself must be accessible to the public and must be arranged and maintained such that the public feels – to the extent possible – pleasant and safe within its confines. Those who work in a court must also feel secure. For these reasons, the court's accessibility, security and transparency are important criteria by which to evaluate whether any given court is open to the public. A court is open if: the public can find it; the public can enter freely – including those with physical disabilities; there is public transportation nearby; there is available parking; the necessary security controls are performed at the entrance and security is maintained within the building; and one can orient oneself within the building without a problem. Legal ordinances determine the conditions for the accessibility of public buildings<sup>6</sup>, including courts. The following ordinances and rules apply currently to public buildings' accessibility, including courts:

- The building's entrance should be visibly marked; it is appropriate if there is public transportation nearby; there should be adequate parking available for visitors, including the public.
- Entrances and spaces within the building where the public is allowed access should also be accessible to those with physical and other disabilities which may affect their orientation skills.
- The building should provide information and have orientation table(s) (maps) that are also suitable for those with disabilities that affect orientation (for example, for the blind).<sup>7</sup>

When comparing the current actual accessibility of courts with the ordinance requirements, we must take into account that the majority of court buildings were erected much earlier than the adoption of the ordinances.<sup>8</sup> Court buildings are slowly being adapted to meet the new rules through reconstruction and additions, which in some cases can mean large financial outlays. Improving a court's accessibility and transparency, however, does not necessarily have to be expensive, but should be focused on a change to accommodate those with special needs.

The maintenance of order and security in court buildings and their surroundings is the job of the Assembly of Court and Prison Guards.<sup>9</sup>

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<sup>6</sup> *Buildings that are used by the public*

<sup>7</sup> Paragraph 43c, paragraph 43e of Law no. 50/1976 on urban planning and construction programming; paragraph 47, paragraph 56, paragraph 63, paragraph 64a including the attached Directives of the Ministry of Environment of the Slovak Republic no. 532/2002, which lay out details and general technical requirements for buildings and general technical requirements for buildings used by persons with limited movement and orientation capabilities.

<sup>8</sup> *Ibid.*

<sup>9</sup> Paragraph 47, section 6 of the Law no. 4/2001 on the Assembly of Court and Prison Guards.

In terms of accessibility of the courts to the public, court guards are authorized to do the following:<sup>10</sup>

- Maintain overall order and security within court buildings and their surroundings and ensure that legal proceedings are not interrupted;
- Verify the eligibility of persons to enter the court and require them to provide an identification document;
- Use technical means to perform a security check on those entering the court to ensure that they are not carrying any weapons;
- Take action against those who disrupt order in the court building; and
- Based on a judge's decision, confiscate from persons in the courtrooms any audiovisual equipment (e.g. video cameras, cameras) with the exception of audio recording equipment (e.g. a dictaphone).

## 2.2 Findings from monitoring

The accessibility of the courts was evaluated by the monitors mainly in terms of existence of orientational signs in the city, difficulties finding the court and how visibly the court was marked. They also took note of public transportation stops and their distance from the court building, possibilities for parking and how accessible the entrance to the building was.

Monitors evaluated court security according to how members of the Assembly of Court and Prison Guards behaved and fulfilled its duties with a focus on controls at the building's entrance and subsequent orientation within the court building.

### 2.2.1 Visibility of the court, information tables

Objective findings by monitors on both courts' visibility indicated that the courts were properly marked with signs and that there were orientational signs in

both cities where the courts are located. In Martin, 11 out of 18 monitors found an orientational sign bearing the words "District Court" on it, while in Galanta two out of 15 monitors found such a sign. The placement of these orientational signs was problematic. Many monitors did not see them at all, and, those who did stated that they did not significantly help them to orient themselves. Besides those monitors who did not have problems with the courts' visibility, monitors had the following comments on the location and visibility of the District Court in Martin:

*I only found one sign and it took me about 30 minutes to find the court itself.* (ID 230)<sup>11</sup>

*The orientational signs are hard to see, and the court's own entrance marker is hidden in the courtyard.* (ID 29)

*The orientational sign is place directly behind a tree, which means that it is practically invisible. This is true for those who use the bus and get off at the Sidlisko Sever stop.* (ID 28)

*I only found the building because I had a map – the Martin District Court is located behind a larger building, and is therefore "hidden" behind that building.* (ID 117)

Several monitors had the following commentary on the District Court in Galanta:

*There are no signs for the court in the city, but at the train and bus stations there is a map of the city on which the court building is indicated.* (ID 48)

*In Galanta I didn't see any orientational signs for the court, although there were signs for other public institutions.* (ID 102)

*On the road from the railway station I didn't see any orientational signs, but near the court there are some – I only noticed them when I looked around for them.* (ID 115)

*The main entrance is in the housing development and not on the main square, so, I had to go around the whole building to find the right entrance.* (ID 83)

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<sup>10</sup> Paragraph 4 of the Law no. 757/2004 on courts, paragraph 47, paragraph 48 of the Law

<sup>11</sup> „ID 230“ is the identification number assigned to a monitored proceeding.

## 2.2.2 Transportation, parking

For both courts, accessibility in terms of public transportation and parking was evaluated positively. The District Court in Martin is, according to the monitors:

*...about five minutes by foot from the bus stop.* (ID 82)

The District Court in Galanta is

*...about 10 minutes from the stations (railway or bus).* (ID 48)

*The public transport stop is about five minutes from the court.* (ID 102)

positive evaluation, some monitors noted the following:

*The sidewalks are in bad condition and, moreover, there are cars parked on the sidewalk, one has to walk in the street.* (ID 29)

*Outside there is a wheelchair ramp leading into the building, but once inside the building I didn't notice anything to help those with disabilities enter the courtrooms.* (ID 48)

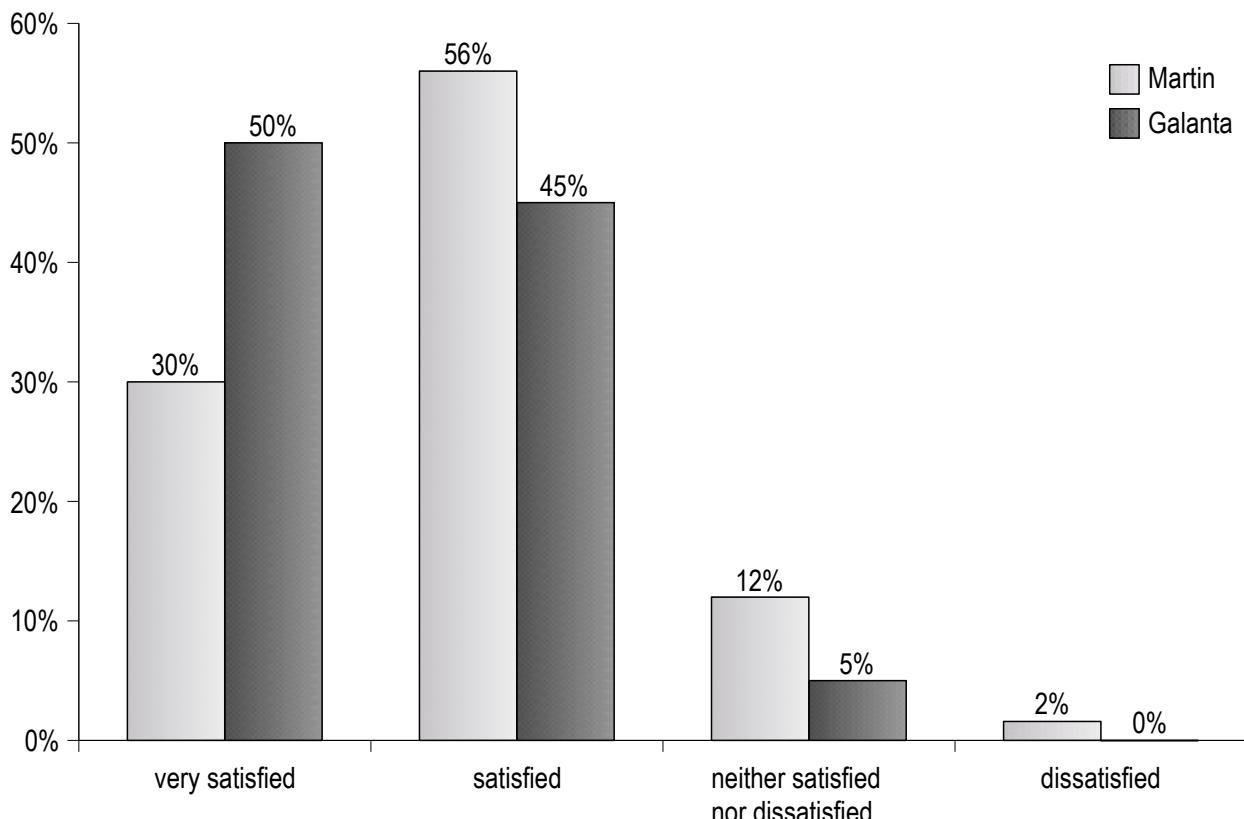
*...there are elevators there, but they don't work yet...* (ID 142)

## 2.2.3 Accessibility for disabled people

Accessibility of the entranceway was also positively evaluated because of reconstruction done on the entranceway. In terms of movement of disabled people inside the court building, the monitors were not very clear in their statements. However, in both courts, they noticed elevators. Despite a generally

## 2.2.4 Court guards

Monitoring of the court guards at the court included their behavior when in contact with the public, their request for the reason of the visit, verification of identity and carrying out security checks. When handling visitors to the court, in the majority of cases the court guards requested the monitors to provide their



Graf no. 1: Satisfaction with the court staff's approach

national identity card and asked about the reason for their visit to the court. Especially in the beginning of the monitoring period, it was not sufficient in many cases for the monitors to say that they were going to watch a proceeding without giving more detailed information. The court guards above all requested their court summons document. From this kind of behavior, it seemed that the court guards were not used to the public showing interest in participating in court proceedings. The following commentary from monitors also documents this:

*The guard asked where I was going, whether I had a summons...* (ID 48)

*The member of the Assembly of Court and Prison Guards (ZVJS) asked for my identity card. It was not sufficient for him when I said that I wanted to go to a proceeding, he wanted to know exactly which one.* (ID 28)

*I had to tell the ZVJS guard the exact name of the judge and the time of the proceeding that I wanted to attend. He compared it to the list – only then did he say: Please, go ahead!* (ID 191)

*The ZVJS guard asked which proceeding I wanted (he didn't have any on his list). He called and found out that there was going to be a proceeding, but quite reluctantly let me inside...* (ID 71)

*After I told him the name of the judge whose trial I was going to observe, the guard let me enter.* (ID 218)

More frequent meetings between court guards and the public who, during this period consisted largely of monitors, could have had a positive effect on their preparedness for public interest. Monitors expressed this in the following way:

*The guards have apparently gotten used to more frequent visits by the public...Their way of "checking" visitors at the entrance has settled into a pattern – an identity card is enough for them and they try to find the trial on the list.* (ID 80)

*He asked for my identity card and the name of the trial. When I produced only a slip of paper with a number, the guard found the name of the trial according to the number and asked if it was the correct one. When I said I didn't know, he asked who I was. So I told him that I am a member of the general public.*

*And he said, "go ahead" and let me into the building.*

(ID 42)

*Just like his colleague from the last monitoring session, the guard showed me the list of trials and told me to choose one. He cautioned me not to disrupt a trial that had already begun.* (ID 23)

*...they (the guard, author's note) showed me the trial schedule, I chose one and they navigated me.* (ID 198)

## 2.2.5 Security checks

The monitors observed various approaches to security checks for weapons by guards at the entrance-way. For example, the following commentary attests to this:

*...their security measures are negligent – not once did they look in my pockets and their metal detector was turned off.* (ID 122)

*I was asked to go through the metal detector and had to take off my belt. At the same time, they looked through my bag.* (ID 102)

According to the monitors' findings, often security measures such as looking through bags and having people pass through the metal detectors did not happen at all. This is documented by the following commentary by monitors:

*The ZVJS guard was not interested in my purse or my larger bag, even though the latter was quite large. From my point of view it was convenient – I think I could have brought anything at all into the building.* (ID 64)

*The ZVJS guard only looked at my identity card. My bags did not interest him. He didn't look through them or ask about their contents.* (ID 39)

The level of security controls by guards at the entrance and in general declined proportionately with further visits by monitors to the court, especially if a monitor came to the court several times in one day:

*They probably know me by now. For this reason, the guard doesn't ask me anything and opens the entrance doors for me.* (ID 210)

*At the entrance the ZVJS guard asked me whether I was going to watch a trial, and which one I wanted to see. He let me "choose", let me look at the trial list,*

*and I didn't have to go through the metal detector.*

(ID 151)

*The guard laughed and said something like: You again? That time I didn't have to go through the metal detector. I asked because it always beeps because of my belt. I showed him my identity card.*

(ID 214)

## **2.2.6 Orientation inside the court building**

The monitors evaluated the approach of guards in relation to orientation inside the court building and finding actual courtrooms. In many cases, the guards provided information and lists of trials for a given day as well as courtroom numbers. They also often explained where the room could be found. The following commentary deals with cases where the guards provided the monitors with needed information:

*I had no problem finding the courtroom since the guard at the reception gave me exact instructions.*

(ID 48)

*The ZVJS guard asked me which specific trial I was going to see (which judge). He was forthcoming, gave me exact instructions as to which courtroom the judge would be in and how to get there.* (ID 56)

*The guard offered me the trial list. When I chose one, he told me exactly where that room could be found.*

(ID 35)

There were also instances where the guard didn't have a list of trials and didn't know how to assist the monitor in finding the courtrooms:

*I had to wait a bit because they didn't have a trial list at 7:50. They got a list in about five minutes, but it wasn't complete. I asked whether Mrs. XY would be in proceedings that day and they couldn't tell me.*

(ID 102)

It also came out of the monitors' comments that there was an information table at the entrance that helped with orientation within the building. At the District Court in Galanta, however, many of the monitors didn't notice it.

## **2.3 Conclusions and recommendations**

### **2.3.1 Accessibility of the court**

The monitors' findings showed that the courts could be considered quite accessible to the public. Monitors noticed many shortcomings, from which the following recommendations resulted:

- The courts should not only have visible signs at the building's entrance, but there should also be orientational signs in key places in the city. For example, there should be signs at main intersections, at public transportation stops in all directions, etc.
- There should be attention paid to the availability of appropriate parking close to the court building so that cars that are parked in front of the building don't constitute a problem for pedestrians.
- The entrances to the building, and – if possible – the entire building, including restrooms and elevators should be adapted for the physically disabled.
- The courts should have information tables in a convenient place by the entrance as well as inside the building to make orientation within the building and access to individual rooms easier (courtrooms and restrooms).
- The public must be informed at the entrance to the building. For this reason, it can only be positively evaluated if the court guards or others in the court can provide information on legal proceedings in the court (the room and time of the trial) to the public. They should also be able to instruct the public to specific courtrooms and to other places in the court that are important for the public, such as the court records office or to the court's secretariat.

### **2.3.2 Court guards and court security**

Findings from the monitoring indicate that frequent visits by the public to the court was a novelty for members of the ZVJS guards. More frequent contact

between the monitors (i.e. the public) and the guards had a positive influence on the guards' behavior towards the public, indicated by their willingness to communicate.

The guards often asked the monitors closed questions: Do you have a summons? From this it can be concluded that guards assume that those coming to the court are participants in court proceedings and that the general public is not expected.

Guards checked the identity cards of monitors who were playing the role of the general public only on a random basis. Security checks were also only carried out in an ad hoc way.

These conclusions of the monitoring process produced the following recommendations:

- The approach of guards in verifying reasons for visits to the court and their legitimacy should take into account the public's right to visit the court. A court guard should never rule out the possibility that any visitor entering a court building represents the general public. For example, instead of asking "Do you have a court summons?" or "Which trial are you going to see?" it would be appropriate for the ZVJS guard to determine the purpose of a person's visit by asking: "What is the purpose of your visit?".
- In the interest of court security, there should be uniform security checks for court staff, the public and participants in court proceedings alike, and guards should have standard, special procedures for cases where there is justifiable suspicion. If, for example, the court has a metal detector, there is no reasonable justification for using it only on some individuals and not others. It is even more serious if the public gets the impression from the security checks that "*you could bring anything into the court building*".

## 3 – Circumstances surrounding the dignity of court proceedings

### 3.1 Legal framework

The appropriateness of court proceedings and their openness are connected not only with the behavior of court staff during trials, but also with everything the litigating parties, witnesses and the public experience before a trial begins, including how the trial is announced. During a trial, it is also important how the courtroom itself affects the participants. Existing legal provisions<sup>12</sup> deal with some of the following circumstances:

- On the doors of the courtrooms, there should be a list posted of all designated proceedings, the main trial or public meeting scheduled for that day. The list should state names and surnames of the judges, reference codes, names and surnames of the participants (defendants), the subject and time of the trial.

<sup>12</sup> Paragraph 10, paragraph 11, section 1, paragraph 13, section 1, paragraph 13, section 9., paragraph 17 section 1 Directive of the Ministry of Justice of the Slovak Republic no. 66/1992 on procedures for district and regional courts.

- If the public is not allowed into a particular proceeding, there should be an announcement of this decision by the judge's panel or individual judge visibly posted on the courtroom doors, as well as a sign prohibiting entry by unauthorized persons.
- Before the trial begins, the court reporter stands in front of the courtroom door and announces aloud and in a comprehensible manner the subject of the proceedings. At the same time, he or she checks whether those who are invited to the proceedings are present and calls for them to enter the room. This announcement procedure can also be performed by an appropriate machine.
- If the meeting rooms are not available, court officials must be in official dress and in their places during the announcement procedure. It is not allowed for those who are not participants to be in the courtroom before the trial is announced.
- Smoking, eating and drinking are prohibited in the courtrooms.

### 3.2 Findings from monitoring

Monitors observed the conditions in the area outside a courtroom where participants, witnesses and the public are required to wait while proceedings begin, i.e. before a trial is announced. The importance of this area increases when more time is spent waiting there, for example, as a result of scheduling changes or longer interruptions in proceedings.<sup>13</sup> Monitors also evaluated the actual courtrooms where proceedings took place.

<sup>13</sup> Here monitors assumed the role of the public in so-called participatory observation (or experiencing it for oneself). They spent as much time in the court building as the participants in a given trial. For this reason, the monitor's length of stay in the court building played a role in his or her evaluation of the environment. Requirements for the court's ability to provide for the needs of participants increased, for example, if a trial was delayed or in recess.

### 3.2.1 Environment outside the courtroom

Monitors' evaluation of how equipped the courts were to deal with the public indicated more satisfaction than dissatisfaction. In Galanta, where most trials were held in a renovated part of the court building, monitors were largely positively impressed, while in Martin monitors were about equally divided amongst those who were satisfied, dissatisfied, and undecided. When trials were held in the old part of the Galanta court, monitors had the following commentary:

*The trial was held in a part of the building that is old and not yet renovated and makes a diametrically opposed impression from the other part.* (ID 55)

The monitors noted what opportunities there were to sit close to the courtrooms.

From their comments, it seems that in Martin, like in the new part of the Galanta court, there are places to sit in a foyer that connects to a hallway leading to the courtrooms. There were only a few courtrooms that had places to sit directly outside the door. Monitors described the hallways as being long, causing them problems in hearing the announcement of trials and, for some, even causing problems getting down the hall fast enough to get into the courtrooms that were far away or at the end of the hall. This is probably why participants sometimes stood in the narrow halls directly outside the courtrooms:

*The places to sit are not directly outside the courtrooms. The courtrooms are on a narrow hall and the benches are in the area before one enters the hall.* (ID 141)

*The space outside the courtrooms is dark and very narrow. It's very depressing there and when there are lots of people, one cannot even get by.* (ID 18)

*There are places to sit in the large waiting area outside the hallway leading to the courtrooms. Participants stood in the hallway.* (ID 221)

This created many difficulties, particularly with hearing trial announcements. This forced participants to stand outside the courtrooms:

*There was no place to sit outside any of the courtrooms, the participants had to stand, which is*

*sometimes tiring. They can also sit in the large foyer at the end of the courtroom hallway.* (ID 51)

*Since the space where the public could sit was far away and the public address system (PA system) speakers weak, the participants apparently couldn't hear who was being called. Moreover, two trials were announced at the same time...* (ID 59)

*The court reporter opened the doors and called the participants for a given trial, but she didn't come out into the hall to call them. For this reason, the witness didn't hear her and came late.* (ID 128)

*There was only one trial going on and in the foyer, where there are places to sit, it was quiet. For this reason, one could hear the PA system well. When there are a lot of people in the foyer and they're talking, it is more problematic.* (ID 218)

Some of the monitors also noted that it was uncomfortably cold in the court while waiting for a trial:

*...in the foyer where one can sit, it is quite cold when the weather's cooler.* (ID 68)

In terms of the Martin court's level of public comfort, monitors noted a need for drink or snack dispensing machines, which they considered necessary especially when one has to wait a long time for a trial:

*There is a real lack of refreshments, especially when there is a longer recess in a trial, or the trial itself is long.* (ID 68)

*While they were waiting for trials to begin, participants had to go to the restroom to drink water. In the building there are no drink dispensers.* (ID 42)

*There could at least be an automatic coffee machine or drink dispenser in the building.* (ID 185)

Monitors remarked on a change to this effect in the court:

*When I was leaving the court building, I noticed that in the large waiting areas they had just installed a new machine for hot drinks.* (ID 222)

At the Galanta court there was a drink dispensing machine available to visitors from the beginning of the monitoring process.

	average	Martin	Galanta
very satisfactory	9%	3%	18%
satisfactory	50%	31%	72%
neither satisfactory, nor unsatisfactory	20%	31%	6%
unsatisfactory	21%	35%	4%
very unsatisfactory	0%	0%	0%

Table no. II: Satisfaction with how well-equipped the court building was

	yes			no		
	total	Martin	Galanta	total	Martin	Galanta
Were there instructions on acceptable conduct during a trial posted on the wall outside the courtroom?	54%	87%	1%	46%	13%	99%

Table no. III: Instructions outside the courtrooms

Monitors also took note of the access to public restrooms in the court building and their level of cleanliness. To this effect, monitors had no real comments with the exception of several cases when all the restrooms in the court were not working on a given day.

Before a trial, monitors noted whether there was a list of trials posted by the courtroom and also noted whether there was a sign posted nearby with rules of appropriate conduct during a trial. They commented that only in a few cases was no trial list posted outside the courtroom. One of the monitors indicated that in that case there was chaos outside the courtroom:

*...there was significant chaos outside the room for two reasons: 1. there was no list of trials and times posted outside the courtroom; 2. trials had been moved and delayed and no one knew which one was which: neither the participants, nor I...*  (ID 63)

From monitors' comments on the rules posted outside courtrooms, it can be concluded that such instructions were absent in about half the cases. The

District Court in Galanta had such rules posted in only 1% of those cases monitored.<sup>14</sup>

### 3.2.2 Announcement of a trial

In terms of announcements of a trial, monitors observed how announcements were made, that is, whether they were made properly, comprehensibly and loudly. According to monitors' observations, two-thirds of trials observed were announced via a PA system. The PA system was used more in Martin (77% of instances monitored). The court reporter announced the trial herself (without using a PA system) more frequently in Galanta (52% of instances monitored).

In the great majority of cases (83%), monitors stated that the trial was properly, comprehensibly and loudly

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<sup>14</sup> Courts are not required by law to post rules on conduct during a trial outside a courtroom. This aspect was monitored because such instructions are useful for better orientation of the public, as well as for those participating in the proceedings who may not have any knowledge of these rules.

announced. This is documented, for example, by the following comments:

*The name of the trial, the reference code, the courtroom and time of the trial were announced.* (ID 124)

*The court reporter personally came to the vestibule and called us – the litigating parties into the courtroom.* (ID 204)

*A written code and name of a civil trial, as well as the number of the courtroom were read,* (ID 125)

*The judge called us on the PA system and informed us which trial was taking place.* (ID 196)

*The monitor also noted that the reporter checked whether all those called were present: the reporter asked at the entrance to the courtroom whether all those interested were participants.* (ID 199)

According to the monitors, trials were inappropriately announced in almost one-fifth (17%) of the cases. This was attributed to the following factors:

- The proceeding was not announced comprehensibly or loudly enough:

*The reporter came out of the courtroom door and mumbled something under her breath. If she hadn't said the name of the accused, which I had read about six time before that, I wouldn't have known either that this was the case in question...And I was sitting about 1.5 meters from the door.* (ID 53)

*I couldn't hear the reporter well, it wasn't clear to me which trial she was talking about.* (ID 83)

*After the doors to the courtroom were opened, two participants in the trial who had been waiting in the hallway entered the room and closed the door. I was standing in the vestibule and didn't hear the announcement.* (ID 180)

*The trial announcement was quite soft. Some of the witnesses had to be called twice because they didn't hear the first call.* (ID 173)

- The trial was not announced comprehensibly or loud enough because of a technical problem with the PA system:

*The announcements over the PA system were incomprehensible.* (ID 216)

*The PA system cracked, it was difficult to understand.* (ID 87)

*The PA system was making static noise. People were standing outside the courtroom. A moment before the judge had entered the room, so we knew that they were calling that trial.* (ID 86)

*The announcement over the PA system was very quiet.* (ID 61)

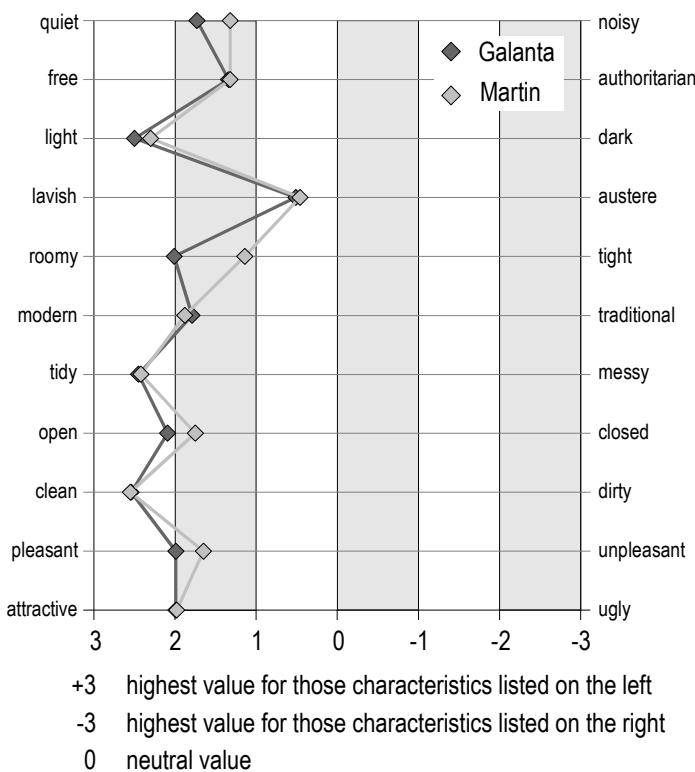
*The announcement was clear, but quiet. If I hadn't been standing close to the doors, I definitely wouldn't have heard it. In my opinion, it's a problem with the PA system – the speakers are small, weak and not very effective.* (ID 66)

	yes		
	total	Martin	Galanta
Was the courtroom spacious?	73%	71%	77%
Was the furniture in the room new?	92%	95%	87%
Was the room clean?	99%	99%	100%
Were there windows in the room?	100%	100%	100%
Was the room well-lit?	99%	99%	99%
Was the room heated to room temperature?	95%	94%	96%

Table no. IV: Courtroom

- When announcing the trials, they didn't take into account the distance between the courtroom and the closest place to sit where participants, witnesses and the public were waiting:

*There was a small, not very effective speaker (PA system) for announcing trials (something like a speaker on a household doorbell), through which the judge was calling people. It was obviously insufficient since the benches for sitting are quite far from the room (at the end of the hallway). (ID 102)*



Graph no. 2: Evaluation of the courtroom<sup>15</sup>

*The speaker at the doors was very small and quiet. If the participants don't stand by the doors, they can't hear the call to come inside. Similarly, when there is noise outside the room – people are talking – it's very difficult to understand. (ID 54)*

<sup>15</sup> Monitorujúci opisovali miestnosti aj prostredníctvom tzv. sémantického diferenciálu. Graf č. 2 je zostavený z priemerných hodnôt. Pri posudzovaní pojednávacej miestnosti na atribútoch „honosná – strohá“ je potrebné zohľadniť skutočnosť, že monitorujúci tu častejšie (takmer v tretine prípadov), ako

- The trial was not properly announced for other reasons:

*The reporter came out and called the accused into the room. She probably already knew her. There was no formal announcement of the trial; at least I didn't catch it. (ID 16)*

*The judge herself called us when she entered the room, but then she spoke only to the plaintiff with the words: Come on then. (ID 72)*

*They didn't say at all who could enter the room.*

*The reporter just opened the doors and nodded her head, as if to say that those of us standing outside could go in. (ID 143)*

*...the trial was supposed to start at 12:00. No one told us anything and people were running around into and out of "trials". I didn't know whether the trial had started or not. They even called the defense lawyer inside, but the trial still hadn't officially begun. (ID 18)*

*The reporter crossed over the threshold of the open doors and said something like "come in" to those waiting. (ID 221)*

*The judge came to the courtroom together with the reporter and the prosecutor and then "took us with them" along the way. (ID 51)*

### 3.2.3 The environment in the courtroom

In addition to the trial process itself, the monitors also noted the environment inside the courtroom – how it was equipped and how it felt. The monitors evaluated whether the courtroom was clean, sufficiently well-lit, sufficiently large, and whether it had new furniture and was comfortable in terms of temperature. Monitors also noted whether the courtrooms were attractive, pleasant, open, tidy and more free than authoritarian in nature.

*pri iných atribútoch, použili neutrálnu hodnotu, resp. dostatočne si nevytvorili názor na daný atribút. Hodnotu „0“ tu označila takmer tretina monitorujúcich, čím je vysvetliteľná celkovo nižšia priemerná hodnota pre „honosnosť“ v kontraste k „strohosti“.*

On the whole, monitors evaluated the courtrooms positively:

*"...as for the court building in Martin: there were nine courtrooms and seven were exactly the same, only two, one larger, one smaller, there was totally new furniture and they didn't feel dark to me... And that one felt fresh, light, really like inside, I don't know if one can say that about a court, that is, about a courtroom, that it was pretty, but it was well furnished" (focus group).*

Despite a generally positive evaluation, there were exceptional cases where the courtrooms were not appropriate for a dignified court proceeding:

*The windows faced the building's entrance – participants were distracted by people coming and going, banging the entrance doors, standing by the entrance and talking, smoking and talking on their telephones in front of the building. The noise from the hallway – ...the sound of the PA systems, the conversations between people waiting (it was disturbing and distracting).* (ID 71)

*Mud tracked in since morning, rickety old furniture.* (ID 33)

Monitors also noted cases where the courtroom was filled with cigarette smoke: *Before calling the participants to get the trial underway, someone had been smoking in the courtroom.* (ID 168)

*Last time, I noticed that you could smell smoke in the courtroom. Today at 10:33, the previous trial ended and the judge came out carrying a pack of cigarettes. As soon as the trial started, the judge asked the litigating parties whether they had attempted to settle out of court. They answered no. The judge called on them to try then and called a recess of 10 minutes... We hadn't even left the courtroom yet and the judge was already walking toward the open window...When we returned in seven minutes, the room was full of smoke again.* (ID 223)

From the monitors' comments above, the suspicion arises that the judge violated the no smoking rule inside the courtroom.

### 3.3 Conclusions and recommendations

A court trial for an individual who is participating in the proceedings as one of the litigating parties is an exceptional event, which is mainly linked with life conflicts and situations of mental stress. For this reason, it is important to create an appropriate and trusting environment in the court that is responsive to the needs of the public and the litigating parties before and during the court proceedings.

The following recommendations resulted from the monitors' findings:

- Posting a list of trials by the courtroom door and proper announcement of trials are requirements for participation by the public in trials. The monitors found that if the list was not posted, or the trial was not properly announced (not comprehensibly enough, loud enough and including all details), the public had a more difficult time orienting themselves as to when the trial began and when they could enter the courtroom. It is helpful to post the rules of conduct in the courtrooms by the door of the courtroom or in another visible place in the court so that the public and those participating in the trial – who have no knowledge of these rules and will be present at the trial – can be better oriented.
- If the places to sit are not close to the actual courtrooms, it is necessary to secure loud and comprehensible trial announcements in these places as well. It would be good to have a digital table with an updated list of trials, the numbers of the corresponding courtrooms and the times of the trials. In larger courts, this table should be placed in the larger common hall where one enters the courtroom hallway. After announcing the trial, there should be sufficient time left for all participants to make their way from the common hall (foyer) or other parts of the building to the courtroom.
- As stipulated in the rules governing appropriateness of the trial environment, smoking, eating and drinking in courtrooms is prohibited. According to

monitors' findings, the no smoking rule is sometimes violated. Smoking in the courtroom should not be tolerated either before the trial begins or during trial recesses. There is reason, however, to consider abolishing the prohibition on drinking non-alcoholic drinks, especially water, in the courtrooms, especially during very long trials. During long trials, it is possible to interrupt the proceedings and call a recess for this reason.

Although judges' work does not consist only of their actions during trials, their behavior during trials is an important indicator of the quality of the court system.

## 4.1 Legal framework

In his or her work, as well as in civilian life, a judge must prevent everything that could violate or threaten the seriousness and dignity of his or her function, and he or she must uphold the principles of judge's ethics.<sup>17</sup> In his or her civilian life and behavior in public, a judge should be an example of positive social behavior and personal dignity. This means that a judge must act according to certain behavioral norms not only in professional life, but also in private life outside the court. A judge should be patient, dignified and polite towards all who are participating in a trial and to others with whom he or she comes into contact because of his or her title. A judge is required to show respect towards the participants in a trial.<sup>18</sup>

During a trial, judges are required to behave so as to preserve the serious nature and dignity of the court proceeding.<sup>19</sup> The verbal presentations by judges and others who have been given the floor to speak must be loud enough and comprehensible. In the courtroom, the polite "vy" form ("you") will be used with all persons with the exception of those under the age of 15.<sup>20</sup> The judge must be present in the

## 4 – Dignity and professional behavior of judges

A key part of the monitoring process was the observation and evaluation of judges as bearers of the court's power. Monitors observed judges in action during public trials. The monitoring process was focused on three basic attributes of judges: his or her dignity and professional behavior, his or her neutrality and unbiased attitude toward the trial's participants; and, finally, how effectively the trial was managed and the judge's level of preparedness for the proceedings. These basic attributes of a judge secure the real application of the law in the fair legal process that is guaranteed by the Constitution of the Slovak Republic.

In addition to the Constitution of the Slovak Republic, the responsibilities of judges in relation to the attributes listed above are stipulated in other legislation.<sup>16</sup>

<sup>16</sup> Law no. 385/2000 on judges and others on the judge's panel

Civil Procedure Code (no. 99/1963)

Criminal procedures Code (no. 141/1961)

Directive of the Ministry of Justice of the Slovak Republic no. 66/1992 on the Administrative code for district and regional courts

Directive of the Ministry of Justice of the SR no. 120/2005, which stipulates the details on use of official dress by judges, prosecutors and advocates during court proceedings (no. 120/2005)

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*Principles of court ethics (an agreement signed by the Board of Judges of the SR and the Minister of Justice of the SR on 4 October 2001 according to provisions in paragraph 26, section 2 of the law no. 385/2000).*

<sup>17</sup> Paragraph 30 of Law no. 385/2000 on judges and other officers of the court

<sup>18</sup> Agreement on the Principles of judges' ethics, signed by the Board of Judges of the SR and the Minister of Justice of the SR on 4 October 2001

<sup>19</sup> Paragraph 203 of the Criminal procedures (law no. 141/1961), paragraph 117 of the Civil court procedures (law no. 99/1963)

<sup>20</sup> Paragraph 13, section 5, paragraph 14, section 1 of Directive of the Ministry of Justice of the SR no. 66/1992 on the Administrative code for district and regional courts as amended

courtroom in court dress when the trial is announced.<sup>21</sup> Court dress for both judges and members of the judge's panel from the ranks of citizens (lay judges) in a trial is considered to be judge's robes, standard for all judges in district and regional courts, as well as in the Highest Court of the SR.<sup>22</sup>

## 4.2 Findings from monitoring

Monitors evaluated judges in the categories of politeness, dignity and professional behavior. They noted judges' seriousness, their manner of communication, ability to manage difficult situations, persuasiveness, etc. In terms of professional behavior, monitors also observed whether judges asked the participants leading or misleading questions.<sup>23</sup>

Monitors also noted how cultivated the judges' oral presentation was, the tempo of their speech, their volume and articulation, as well as their appearance and their use of court dress – the judge's robes.

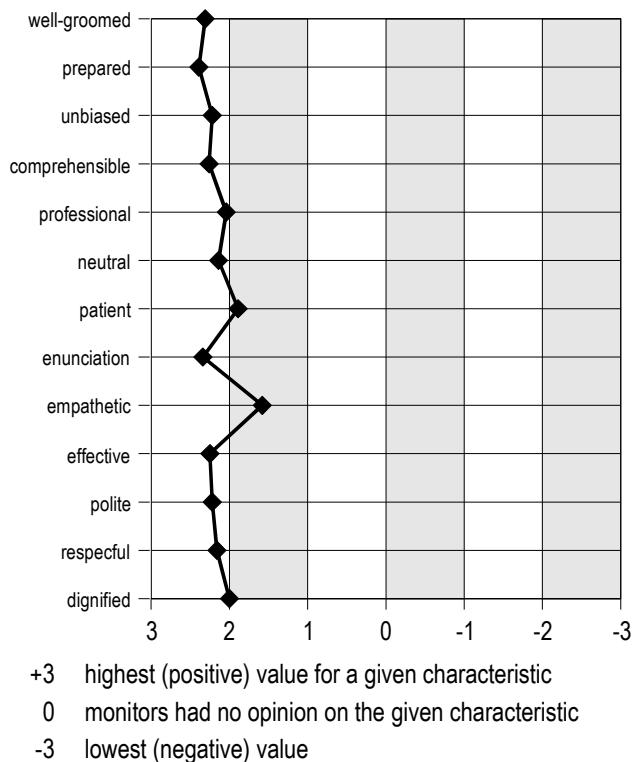
Monitors' findings showed mostly positive evaluations. The following commentary indicates the generally good impressions made:

*I have a pretty positive impression. I thought judges would likely be reserved, closed people. But, it seems that they are quite decent and even charismatic (focus group).*

<sup>21</sup> Paragraph 13, section 1 of Directive of the Ministry of Justice of the SR no. 66/1992 on the Administrative code for district and regional courts

<sup>22</sup> Paragraph 2 of Directive of the Ministry of Justice of the SR no. 120/2005, which stipulates the details of the use of official dress by judges, prosecutors and advocates during court proceedings (no. 120/2005)

<sup>23</sup> Leading and misleading questions are not allowed in a court proceeding. A leading question = a question that leads to a certain answer, usually it can be answered "yes" or "no"; misleading questions = tricky, deceiving questions that assume something that has not yet been confirmed. SVOBODA, J. et al.: Dictionary of Slovak Law. Advisor to the Businessman, Inc. Bratislava 2000



Graph no. 3: Average values for judges' characteristics on the evaluation scale

### 4.2.1 Politeness, dignity and professional behavior

Standardized data show significantly positive values, especially for politeness, verbal presentation and for the general impression made by judges. Judges received lower values for their level of professional behavior (see note no. 24).

The monitors stated that the majority of judges observed in trials behaved appropriately, politely and matter-of-factly. They behaved politely and respectfully toward participants, regardless of the latter's social status. They did not use expressive language, were not arrogant or crude, and were polite. Monitors did not note any inappropriate addressing of any persons in the courtroom.

*His facial expressions fully corresponded to what he was saying and doing. He did not forget to address anyone appropriately ever, he looked at the person*

values A.-E.: n = number of trials							
number of judges monitored / average number of monitoring sessions per judge							
		most frequent answer (modus)		attributes with the highest average values		attributes with the lowest average values	
		average		attributes with the highest average values			
all monitoring sessions (n=211)	28 / 7,5	+3	2,14 <sup>24</sup>	<ul style="list-style-type: none"> <li>• prepared for trial</li> <li>• enunciated well</li> <li>• well-groomed</li> </ul>		<ul style="list-style-type: none"> <li>• empathetic<sup>25</sup></li> <li>• patient</li> <li>• dignified</li> </ul>	
Martin (n=129)	18 / 7,2	+3	2,11	<ul style="list-style-type: none"> <li>• prepared for trial</li> <li>• well-groomed</li> <li>• unbiased</li> </ul>		<ul style="list-style-type: none"> <li>• empathetic</li> <li>• patient</li> <li>• dignified</li> </ul>	
Galanta (n=82)	10 / 8,2	+3 +2	2,17	<ul style="list-style-type: none"> <li>• prepared for trial</li> <li>• comprehensible approach and rules</li> <li>• well-groomed</li> </ul>		<ul style="list-style-type: none"> <li>• empathetic</li> <li>• professional</li> <li>• dignified</li> </ul>	
civil trials (n=145)	20 / 7,25	+3 +2	2,06	<ul style="list-style-type: none"> <li>• prepared for trial</li> <li>• enunciated well</li> <li>• well-groomed</li> </ul>		<ul style="list-style-type: none"> <li>• empathetic</li> <li>• patient</li> <li>• dignified</li> </ul>	
criminal trials (n=66)	10 / 6,6	+3	2,31	<ul style="list-style-type: none"> <li>• prepared for trial</li> <li>• comprehensible approach and rules</li> <li>• unbiased and enunciated well</li> </ul>		<ul style="list-style-type: none"> <li>• empathetic</li> <li>• patient</li> <li>• professional</li> </ul>	

Table no. V: Evaluation of judges according to the evaluation scale

*who was speaking and used a polite manner in addressing and thanking people.* (ID 76)

Usually, judges did not demonstrate any emotion and one could not tell from their behavior what opinion they had on the matter in question. They encouraged respect, not fear, acted as authorities and professionals, and were strict, attentive and thorough, while also being human and taking a sensitive approach to participants in the trial.

*The judge always looked at the person to whom she was speaking. She gestured with her hands, for example, when someone asked about something, she called upon him or her to speak also with a hand gesture. She led the trial clearly and smoothly, thanks also to her simple facial expressions and gestures.* (ID 74)

<sup>24</sup> Five percent of monitors gave a judge a neutral value of "0" for a specific attribute when the former had no opinion on the given attribute.

<sup>25</sup> For the attribute "empathetic", which received the lowest average value (1.58 while the standard deviation is 1.41), we must take into account that about one-fifth of monitors said they couldn't easily evaluate the judge's empathy level for shorter trials, or in relation to certain issues of dispute (for example, damage to an automobile).

Monitors referred to some judges as a person with charisma, a real man of the law, a person who was born to the profession of judge, he/she considers his/her work a mission. Usually, judges kept trials fully under control, managed even difficult situations and managed participants who behaved inappropriately. In the majority of cases, it could also be stated that they followed the proceedings with interest, listened carefully to testimony and made sure participants had understood questions. At first glance, it was obvious that they tried to get to the heart of the issues. Monitors appreciated judges' behavior in difficult situations:

*...I ended up at a truly unpleasant trial and from the first my admiration for judges increased. They were patient, especially with simpler people. It was really a problem to communicate with them and get them to answer the questions that they were asked. It made a deep impression on me...I probably wouldn't have the nerves for that (focus group).*

Despite a generally positive evaluation of judges, monitors noted that in about every fifth trial there were elements of inappropriate behavior by them: they exhibited boredom, distaste, acted as if the trial did not interest them at all or behaved aggressively and condescendingly.

*He looked very sleepy, his eyes were half-closed, as if he didn't enjoy his work.* (ID 223)

*The judge looked annoyed and made faces.* (ID 29)

*...she was tired and exasperated.* (ID 73)

In several cases, judges seemed as if they were mentally absent. When they communicated with participants, they had an absent look or looked out the window.

*She cited the law without any feeling, looking off into the distance.* (ID 35)

According to some monitors, judges sometimes used inappropriate exclamations and sighed. There was also a case where the judge complained about her own problems:

*...she was sick, had been terribly busy since morning, had had no break and hadn't even had time to eat lunch. The judge poured out her feelings to those present and the mother took the brunt of it.* (ID 73)

This kind of behavior felt undignified and inappropriate and made the participants in the proceedings feel unsure.

In a few cases, judges were not able to calm arguing participants and solved the situation by shouting:

*Now this is my part of the job, do not interfere! She always got angry when reprimanding the legal representatives in the room.* (ID 30)

Sometimes judges seemed unsure, were disoriented, got "lost" in their note-taking, were evidently confused by the proceedings and audibly sought advice from the clerk. In some cases, monitors noted that the judge talked very freely with one of the disputing parties, giving the impression that they were not at a trial, but at some kind of informal social gathering:

*She talked very jovially with the defense attorney before and during the trial. I had the feeling that I was in some kind of club.* (ID 51)

In one case (paraphrased):

*The judge applied lip balm.* (ID 67)

Monitors noted that some judges chewed gum and others looked as if they were chewing.

*...throughout the entire trial, she chewed gum. It wasn't totally noticeable, but on the other hand, she didn't try to hide it.* (ID 95)

#### 4.2.2 Verbal presentation

Judges' verbal presentation, their articulation and enunciation was evaluated positively by monitors. Judges spoke quite clearly, comprehensibly, used correct language, spoke loudly enough and articulated well. They spoke in a cultivated way, taking into account the person they were addressing. They paid special attention to their communication with youth and older people; with these they spoke more loudly, eliminating technical language and repeating questions. By doing this, they ensured that those addressed would hear them well and understand the questions asked.

*He spoke at a tempo that allowed everyone to understand him. If there was something important to say, he spoke more slowly and articulated more clearly.* (ID 119)

The monitors also appreciated judges' correct pronunciation at the District Court in Martin.

There were problems with only a few judges, who spoke too quickly and incomprehensibly or too quietly (sometimes at the same time as the loud electric typewriter), in a monotone and incomprehensible way. In these cases, participants did not know or understand what the judge was expecting from them. They were confused and unnecessary misunderstandings arose.

It also happened that some verbal presentations were not made with good intonation, for example:

*...she didn't use question marks, I didn't know which were questions, and which were her comments.* (ID 44)  
It was not clear to the participants what the judge expected of them. They did not know whether to answer the judge or not, which increased their uncertainty and, consequently, the judges' annoyance level.

On the other hand, the participants in the trial were actually more likely to speak quietly, with bad articulation and intonation, or quickly so that one could not understand them. Judges sometimes reminded them to speak louder or more slowly, but often the problem was not completely corrected.

It happened in a few rare instances that some judges did not speak correctly – in using the formal, polite form, they did not conjugate the verb correctly in the past tense singular, used colloquial expressions, etc. (ID 91)

#### 4.2.3 Outward appearance

With only a few exceptions, monitors evaluated judges' appearance positively on the whole. Almost all the judges were appropriately and decently dressed, held proceedings in their appropriate judges' robes and wore appropriate other clothing and accessories. A few times, it happened that a judge took off his robes in order to hear testimony from a young person so as not to appear too formal and not to intimidate the young person. After their testimony was over, he put his robes back on.

In only seven cases did monitors express criticism about the way a judge used his or her robes. Either it was too large for the judge, they did not put it on because ...*it's not necessary for such a short moment* (ID 51), or they had it negligently "thrown" over their shoulders. There were rare accounts of inappropriate dress by judges under their robes and messy hair.

### 4.3 Conclusions and recommendations

The dignity and professional behavior of judges are attributes that require not only legal provision, but also a code of ethics. These are necessary for the preservation of the meaning and gravity of a trial. In the end, this helps preserve the trustworthiness of the courts as such and of participants' faith in courts' ability to function fairly and justly and make fair and just decisions. From the monitors' findings, it is obvious that in the majority of cases, judges are conscious of this fact and, therefore, give a fitting amount of thought to the dignity and professional character of their approach.

From the shortcomings observed, the following recommendations can be made:

- Every trial should be unique for a judge, who should, therefore, approach it with all the necessary dignity and seriousness. Judges should approach participants according to the following principle: justice must not only be done, it must also be seen to be done. To this effect, in the interest of preserving the dignity of a trial, judges must be able to manage their emotions and to refrain from appearing uninterested in the case. On the contrary, their behavior should convince participants that they are truly interested in the just settlement of their dispute.
- Judges must control their nonverbal behavior as well. Judges' facial expressions and gestures must be appropriate to the problem being resolved and cannot show the judge's superiority or his/her attitude toward an issue or toward the participants in a trial.

- For participants in a trial, it is very important that the judge be able to suppress any disinterest or nervousness originating from his or her own personal problems (e.g. bad health), as well as from participants' behavior during the trial (e.g. undisciplined participants.).
- Neither very arrogant and aggressive behavior, nor overly free and jovial behavior is appropriate from a judge. A judge should not behave formulaically, "like a machine." On the other hand, behavior that is too friendly can decrease the credibility and dignity of a trial. It is also not acceptable for judges to chew gum or apply cosmetic products during a trial.
- In the interest of avoiding too much fatigue, stress and the subsequent nervousness that judges and participants can experience in a trial, it is appropriate to break up a longer trial with recesses.
- Judges should also take care that their presentations are comprehensible, loud enough and well-articulated. They should use appropriate intonation and correct grammar.
- Although it did not appear as a more significant problem, judges should pay sufficient attention to their outward appearance and to the dignified use of the judge's robes.

## 5 – Objectivity of judges

### 5.1 Legal framework

A basic attribute of judges' objectivity must be their lack of bias and personal interest in a case. These are fundamental and necessary prerequisites for fair decision making. When a judge is biased and favors one side in a dispute, he or she casts doubt on the fairness of the entire proceeding and its subsequent verdict. If too many cases like this occur, it seriously undermines the credibility of the court system as a whole.

The Constitution of the Slovak Republic guarantees citizens the right to due process of law via disinterested and unbiased courts.<sup>26</sup> This means that a judge, in his or her function, is independent from any other power or organ, and is bound only by the Constitution of the SR, by laws and by international agreements. A judge must function independently from the litigating parties or the subject matter of the trial. That is, he or she must be neutral and unbiased, and must decide fairly and in accordance with the law. In addition, a judge must act so as to preserve the belief in the neutral, unbiased and fair decision making process of the courts even after he or she finishes work in the courtroom and in his or her per-

sonal life. A judge must be reserved in the expression of his or her opinions in public so as not to cast suspicion on the neutrality and unbiased nature of his or her decision making.<sup>27</sup> A judge is obligated to approach the participants in any legal proceeding without prejudice of any kind.

There may be no unidirectional receipt or provision of information concerning a trial between a judge and the participants in a trial or their legal representatives.<sup>28</sup>

According to the requirements of the Slovak court system, the judges or the panel of judges should be inside the courtroom already before the trial is announcement. In the interest of a fair trial, it is not acceptable for anyone besides court staff to be in the courtroom before the trial has begun.<sup>29</sup>

According to the relevant procedural rules (Civil Procedures Code, Criminal Procedures Code), a judge may not hear a case if there is any doubt as to his or her neutrality toward the trial participants and the dispute at hand. Trial participants may submit a complaint of bias against such a judge. A judge who does not behave in accordance with rules on neutrality and independence as concerns court decisions, trial participants or his or her efforts to complete a legal proceeding fairly, may be subject to disciplinary action, and, finally may be disbarred and relieved of his or her status as judge.<sup>30</sup>

A judge is obligated not only to be formally neutral and unbiased, but also to create the foundation for the parties' to exercise their constitutional right to equality in the trial. For this reason, it is important for a judge to be sufficiently empathic during the trial, by which, among other things, he or she may succeed in naturally equalizing differences between the litigating parties, or finding out facts that help in the arrival at a

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<sup>27</sup> Article II, point 1 of the Code of Ethics of Judges approved by the Board of Judges on 19 April 2001

<sup>28</sup> Paragraph 2 and paragraph 30 of the Law no. 385/2000 on judges and the judge's panel

<sup>29</sup> Paragraph 11 Directive no. 66/1992 on the Administrative code for district and regional courts

<sup>30</sup> § 116 a § 117 Zákona č. 385/2000 Z. z. o sudcoch a prísediacich

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<sup>26</sup> Article 46 of the Constitution of the Slovak Republic

fair decision. A judge must be patient, dignified and polite to those participating in a trial and to all others with whom he or she comes into contact as a judge. A judge endeavors to make materially correct and lawful decisions grounded in comprehensible and convincing reasoning.<sup>31</sup>

## 5.2 Findings from monitoring

Monitors focused on observing the relations between judges and trial participants in terms of the judge's neutrality and lack of bias, as well as in terms of the judge's patience, empathy and respect for the trial participants. They paid careful attention to whether the judge seemed objective, impartial and unaffected by personal feelings and whether they gave an advantage or disadvantage to one side of the litigating parties or their legal representatives. They also observed whether judges provided equal time to both parties during the trial and whether they respected all trial participants. Monitors followed whether judges took different approaches to people because of their personal qualities, while also preserving their unbiased attitude.

From the data gathered, we see that monitors perceived judges in a very positive light, although they did note some minor shortcomings in empathy, where the values given were the lowest of all values (see graph no. 3).

Findings showed that in 84% of cases judges behaved the same toward all participants. On the other hand, during 11% of cases, according to monitors, judges behaved differently toward some persons participating in the trials. In the majority of these cases, this special behavior of judges was caused by their unfounded advantageous or disadvantageous performance towards some of the participants. In some cases, monitors stated that different behavior on the part of a judge was an indication of empathy by him or her toward a specific person.

### 5.2.1 Neutrality and absence of bias

Monitors found that judges mostly appeared objective and neutral, ...*it was as if the judge had no opinion* (ID 232), and ...*her opinion on the results of the trial was a secret to both sides until the end of the proceedings* (ID 195).

She behaved the same toward both sides and provided them equal time to express themselves.

*He behaved attentively toward both sides.* (ID 165)

Judges tried to help all participants on both sides understand the essence of the dispute and how to move forward in the trial.

On the other hand, diverse behavior toward the litigating parties was recorded by monitors for a few judges. For some, it was an occasional demonstration, but for others it was a "standard" approach, which is a serious finding. It was exhibited above all in their approach and manner of communicating with the parties, how much time they gave them and how their testimony was recorded:

*She was harder on the defendant, smiling ironically and raising her eyebrows at his testimony.* (ID 48)

*She was more patient with the defendant, reacted with annoyance to every error made by the petitioner.* (ID 31)

*She interrupted the petitioner often, raised her voice, rushed him...she was in a hurry and pointed out that the trial should have been over already.* (ID 159)

Biased behavior has a negative and disturbing effect on those it touched:

*The judge spoke more sharply to the defendant, and therefore increased the trauma he experienced from the trial.* (ID 27)

In some cases, varying behavior by the judge was caused by the behavior of one of the litigating parties:

*She was more emphatic with the defendant, who was jumping up and down, laughing, gesticulating and interrupting her as she spoke. She raised her voice, she was probably losing her patience.* (ID 70)

In some cases there were friendly expressions toward participants:

<sup>31</sup> Article II Principles of Judge's Ethics

*She showed too much affection for the defense attorney.* (ID 51)

Monitors found that in certain types of disputes (above all in disputes about alimony for small children, around 2% of the cases monitored), some judges clearly declared during the trial their support for the one who filed a complaint about the alimony for a child:

*The judge actually formulated the petitioner's testimony so that it was stronger and in her favor, she completed it for her and actually helped her. She was very forthcoming to her, told her that she was completely on her side, that she knows that type of people who ignore their own children's needs and say, it will work out, and she hates it.* (ID 65)

*She told the defendant that if she were in the petitioner's shoes, she would ask for more for the alimony because what defendant was proposing was a ridiculous amount.* (ID 94)

In some cases, one could tell from the judge's behavior what their opinion was on the case:

*It sounded as if he had already decided ahead of time, he perceived him as a liar.* (ID 66)

In about 2% of the cases, monitors noted that the rule that no one besides court staff may be in the courtroom before the trial is announced had been violated:

*The judge, the prosecutor, the court reporter and the victim's attorney entered the courtroom earlier, spoke with each other freely for a moment and then called the others to enter. In the meantime there was a very free and easy atmosphere in the room, everyone was laughing...* (ID 80)

There was a similar situation that unfolded after the trial ended. (The monitor noted this situation because the prosecutor called him into the courtroom at the same time as she entered, that is, before the trial was properly announced.)

*The defense attorney was called into the courtroom before the trial was announced and he could be heard laughing with the judge and the reporter.* (ID 18)

More often, however, it was the prosecutor who received such favorable treatment:

*The prosecutor entered the courtroom early, together with the judge.* (ID 23)

In one case the monitor actually noted:

*...the prosecutor remained in the courtroom during the actual deliberation of the verdict.* (ID 231)

## 5.2.2 Respect, empathy and patience

Monitors' findings show that judges at the majority of trials were sufficiently empathic, patient and showed appropriate respect toward the proceeding's participants. In the final analysis, this had a positive effect on the trial process itself. Some judges reacted differently in similar situations, depending on the circumstances of the particular trial and the participants' behavior. Although in most normal situations, they showed sufficient patience and empathy, in some more difficult trials judges became nervous, were impatient and showed less respect and empathy toward participants.

Judges usually posed questions in such a way as to make their content understandable for participants in a trial. Monitors positively evaluated judges' special approach to young people, elderly people, the mentally handicapped and those from lower, socio-economic strata. For these audiences, judges paid special attention to their formulation of questions and made sure that these persons truly understood the questions. They were tolerant towards participants who did not understand the trial process. Many monitors stated that, when needed, judges repeatedly explained a question or the process to participants:

*...the judge very patiently explained it three times to the accused;* (ID 34)

And:

*...he was very patient, he explained one point in various ways so that the mother understood.* (ID 185)

*He patiently listened and guided the defendant in his testimony, which was quite emotional and detailed in places.* (ID 218)

Judges showed great patience not only in relation to the litigating parties, but also toward the witnesses:

*He was very empathic towards the witness, he always told him what was going to happen, what he*

*should say when, what he could comment on something or when he could no longer comment, which calmed an otherwise overly talkative witness.*

(ID 76)

*He tried to explain everything to the witness so that he understood correctly and wasn't afraid.* (ID 120)

*She was admirably patient, and careful not to manipulate the questions, which was a problem, since she had to constantly encourage those testifying.* (ID 85)

On things of a personal and intimate character, according to the monitors, judges asked in a very sensitive way, while also being matter-of-fact.

With young people, the judges were very considerate, empathic and usually less formal. In some cases, the judge took off his or her robes during a child's testimony and instead of making the child stand at the witness stand, he or she had them sit in the seat where the litigating parties sit.

*He asked questions in a very sensitive way, explained it in a simple way.* (ID 75)

Judges usually respected all participants in the trial regardless of their social or ethnic origins and regardless of their past and their particular role in the trial.

*Despite the fact that it was clear that alcoholism had done great damage to the accused, the judge did not act superior, but gently guided her testimony with great consideration and respect, and when she strayed significantly from the point, he pulled her back without interrupting her train of thought. He treated her like a human being, not like another lost soul.* (ID 62)

In some cases, judges were not even influenced by shortcomings on the part of the trial participants:

*He was patient – the accused told him that he didn't know which trial this was, that he had several trials going on and that he was confused. The judge acquainted him with the case at hand.* (ID 188)

*He was patient and respectful, without the slightest hint of disagreement he dictated to the reporter an answer to a question that seemed expedient and untruthful.* (ID 23)

Judges usually also took into account the specific situation of the trial participants:

*She saw that this was a mother who cares for a handicapped son, whom she has to take to and from school every day.* (ID 121)

*When the handicapped person started making incomprehensible noises, the judge reassured his mother that she needn't worry about it...the judge showed sensitivity and compassion and took an appropriate approach. She spoke to the handicapped person clearly, loudly and slowly even though she knew that he didn't understand at least half of what she was saying. She was patient and considerate.* (ID 204)

*At the beginning of the trial the judge asked the mother to what extent she could communicate with the handicapped son and whether he could sign something himself. She then led the trial process according to the mother's answer.* (ID 204)

The judge even allowed one of the participants to drink during the trial (which is otherwise prohibited), when she found out that she was diabetic.

When requiring certain things from the participants, judges did not take a strictly formal approach, but took into account the circumstances surrounding the situation.

*The judge asked the victim whether he could secure his son's testimony as a witness: "Tell your son to come, otherwise I will have him brought in by the police and he will be ashamed."* (ID 122)

Or:

*Tell your husband he'd better give a proper apology so that he doesn't get a fine.* (ID 200)

*The judge called on the petitioner to agree with the defendant that the relationship with the child should not be arranged by his mother-in-law or by his ex-wife's companion. He spoke to him in a nice way, telling him not to traumatize the child with unnecessarily long proceedings.* (ID 226)

An example of contrasting behavior came when a judge showed his or her authority by repeatedly raising his or her voice, often in annoyance and anger or by shouting at a participant.

Reasons for such behavior were diverse, sometimes it was in the judge's character to behave that way,

sometimes it was because of a participant's behavior, other times, the reasons were not obvious.

*She was a little nervous and disgusted because the plaintiff was 79 years old and did not understand some things. She had to repeat and simplify things for him many times.* (ID 201)

In another case, the judge was very nervous, impatient, shouted, was crude and aggressive with the defendant, whose mother tongue was not Slovak. The judge shouted at the defendant:

*...does he have to talk so much when I asked him a simple question?* (ID 66)

*She allowed herself to become upset and turned red in the face...she resolved the matter by raising her voice.* (ID 30)

Monitors noted the following situation:

*The judge did not instruct the defendant properly on bias. She only asked him: Do you have any objections related to bias? He didn't answer, so she asked him whether he understood the question. When he answered no, she just said impatiently: "Do you object to me as a judge?" She seemed exasperated when she had to explain something to him.* (ID 127)

Monitors also noted a situation when the petitioner did not understand the instructions:

*The judge, instead of explaining it to him, impatiently asked: Can I try the case?* (ID 38)

In another case, the judge was impatient with the victim:

*...she interrupted him, didn't let him finish his thought, even though what he was saying was relevant.* (ID 130)

There were also cases when judges did not behave empathically or respectfully towards the trial participants, even though the subject of the trial was particularly sensitive and personal.

*The judge waved her hands at the litigating parties when they were surprised at questions about their sexual life. I had the feeling that she just wanted to speed up the trial, but it seemed inappropriate.* (ID 50)

Monitors also observed a situation where the judge's behavior was insensitive.

*Why do you live with the accused when you've been divorced for five years? Which is more important to you, the apartment or life?* (ID 203)

A lack of respect for trial participants on the judge's part was also shown via ironic and sarcastic remarks to the participants or their legal representatives:

*Please stop crying, or I might feel sorry for you.* (ID 59)

Or:

*...you don't remember their birth? That's great!* (ID 27)

*The judge behaved differently toward the defendant – she did not hide her surprise and amusement, sometimes she smiled a lot at his comments:...so, you always pay your loans with new loans, just like that? You can't be serious! She raised her voice, probably it seemed absurd to her and she made it clear that she felt the defendant was clumsy.* (ID 74)

## 5.3 Conclusions and recommendations

Monitors basically stated that judges on the whole behaved in an unbiased, neutral, empathetic and respectful way toward trial participants. During those trials observed, there were no clear demonstrations of bias or favor paid to participants by judges. To a lesser extent, there were some instances where the behavior or approach of judges called into question their neutrality or lack of bias. This happened when judges acted very impatient or showed insufficient empathy and respect toward trial participants. Those shortcomings in the trials described were serious and should not occur in judges' behavior. Based on those problems found, the following recommendations can be made:

- Judges should refrain from expressing impatient and nervous reactions or shouting at participants. Judge should not show sympathy or antipathy toward any participant in a trial regardless of his or her personal attributes or role in the trial (e.g. the mother in the trial about raising the sum of alimony for children). The opposite behavior by judges may be clearly considered as being biased toward participants.

- Judges must be able to control their behavior and not let themselves be influenced or provoked by participants into disproportionate or undignified reactions. Judges have at their disposal accepted mechanisms and procedures for dealing with undisciplined trial participants (e.g. fine for disorderly behavior or eviction from the courtroom). In addition, judges should avoid any behavior that indicates their personal feeling about those present in the courtroom. Those instances of behavior that raise doubts about the judge's neutrality are keenly felt by the public and the trial participants.
  - Training to support skills in routine courtroom communication, as well as special skills for dealing with difficult communication situations should become an integral part of judges' education. This sort of education should also be provided to senior court officers.
  - Judges should avoid openly expressing their opinion on the case being tried, except in the actual deliberation of the verdict. They must avoid making comments that reveal their thinking on the case being tried. It is unacceptable to make comments which obviously indicate their views or way of thinking on the case.
  - The judge is responsible for ensuring that no one other than court staff is present in the courtroom before the trial is announced. Failure to uphold this rule is simply a violation of the principle of equal access and is not permissible within a judge's work. If judges allow some participants or their legal representatives to enter the courtroom before the trial has formally been announced, it indicates that they have specific relations with those individuals and evokes doubts about their neutrality.
  - Although judges are obligated to be unbiased and neutral toward trial participants, it does not mean that they cannot take into account certain factors or specific aspects of participants (e.g. advanced age, the specific needs of children or the psychological, intellectual and social maturity of the participants). In some cases, a more informal approach by a judge may lead to better understanding by participants of what is important for an effective tri-
- al. Furthermore, insufficient respect and empathy by a judge toward trial participants can appear as biased behavior or at least generate doubts on the part of some trial participants.

## 6 – Effectiveness of legal proceedings

### 6.1 Legal framework

The Constitution of the Slovak Republic guarantees every person due process of law without unnecessary delays.<sup>32</sup> A judge should act continually, properly and in a timely manner.<sup>33</sup> Judges' obligation to make decisions quickly and without delays is covered in the relevant procedural rules (in the Civil Procedures Code and the Criminal Procedures Code). This means that a judge should behave such that the trial outcome is decided in a reasonable amount of time, ensuring that the rights and interests of trial participants are protected and meaningful. In other words, the judge should take the most effective approach possible to a trial.

As soon as a trial begins, even if no motions have been made by the parties concerns, the court should proceed to resolve the case without delay. A trial should proceed in a dignified and serious manner, such that a fair verdict is reached and the educational goal achieved. In civil proceedings, the courts provide

instruction to the trial participants about their rights in the legal process. However, they are only required to do this when the participant has no legal representation. In a criminal trial, the courts must instruct the accused on his or her rights, which enables him or her to take full advantage of the opportunity to defend him- or herself, including the right to choose a defense attorney.

The court prepares a trial such that a verdict can be reached in the case during one proceeding (this applies above all to civil proceedings). If, during a civil proceeding, the court cannot announce a decision immediately after the trial is finished, above all, if the court has not been able to sufficiently evaluate the evidence yet, it may postpone announcement of the decision for up to five days.<sup>34</sup> If the subject matter allows, the court will strive to facilitate a settlement out of court between the litigating parties.

Individual cases that are scheduled for trial on a certain day will be taken up during the period stipulated in the summons, and these are simultaneously listed in the list of trials posted on the doors of the courtroom.

A trial is led by a judge or the Chairman of the Judge's Panel. After the trial is announced, the court calls the plaintiff or the prosecutor to submit the proposed charges and the defendant or, in a criminal trial the accused, to react to the charges. Then, the proof of evidence follows—witness testimony is given, documents are read, the scene of the crime is examined, etc. When witnesses are giving testimony, it is very important that they be appropriately instructed in a way that is understandable to them. Witnesses must be instructed as to their legal responsibilities to give testimony, their obligation to tell the truth and keep nothing from the court. They may refuse to testify only if they risk incriminating themselves or their loved ones, or if it violates the rules of the confessional or similar situations of confidentiality. Witnesses must also be informed that a deceitful testimony (perjury) is a punishable offense. The court will take appropriate measures to ensure

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<sup>32</sup> Article 48 of the Constitution of the Slovak Republic

<sup>33</sup> Paragraph 30 of law no. 385/2000 on judges and the judge's panel

<sup>34</sup> Paragraphs 100, 114 and 115 of the Civil Court Procedures

that witnesses who have not yet been heard are not present during the trial.

Trial participants must stand while testifying to the court. A judge, however, may allow those of advanced or very young age or those with health problems to sit when giving statements or testimony.<sup>35</sup>

To ensure that court proceedings are conducted in a dignified and serious manner, persons disrupting order within the courtroom can be penalized or banished from the court (also applicable to an accused in a criminal proceeding).

Not even officers of the court may disturb court proceedings. It is not permitted for anyone to address the judge, court reporter, prosecutor, defense attorney or counsels of the litigating parties with issues irrelevant to the case, even if they concern official matters.<sup>36</sup>

Currently, the ringing of mobile phones has become a very disturbing factor. The existing legislation does not explicitly deal with this form of disturbance of trials, however, when entering the court building, visitors (both participants and public) are asked to turn off their mobile phones (there is either a written notice or people are reminded to do so by members of the Assembly of Court and Prison Guards).

## 6.2 Findings from monitoring

Monitors could not thoroughly record all the issues concerning the function and efficiency of court proceedings because they did not follow the cases from the beginning; they only observed individual court sessions. Therefore, the monitors focused their attention on the following areas:

- General feeling about the judges' level of preparedness for the proceeding,

- Whether the court fulfilled its obligation to instruct the witnesses and whether the explanation of the instructions and court rules to other participants was comprehensible enough,
- Whether disturbances occurred during the court proceedings and how well the judge was able to handle them,
- Delays and changes in individual court sessions, reasons for such changes, and how the participants and public were informed of them.

### 6.2.1 Preparedness for proceedings

Monitors' findings suggest that in general, judges seemed to be prepared and court proceedings were conducted efficiently and professionally.

*...the tempo was very good.* (ID 207)

*The judge's pace was flexible.* (ID 205)

*The judge was accurate, reserved, understanding, efficient, quick. She did not delay the proceeding with irrelevant questions, quickly established the necessary facts. She also led both parties so that the hearing would be efficient and would reach a verdict without any unnecessary delay.* (ID 14)

*She acted very professionally, was decisive and obviously prepared for the proceeding.* (ID 164)

*...she knew the file very well and worked with it.* (ID 74)

*She had old records with the testimonies of witnesses, was able to quickly browse through them and promptly quote.* (ID 102)

The judges were skilled also in use of non-legal technical terminology:

*...the case concerned poorly performed construction work and the judge was familiar with construction terms and technological processes relevant to the case being tried.* (ID 165)

However, there were also several cases when it seemed that the judges had not studied the files properly or they were familiar with only some of the evidence. The judges were not able to browse through the files promptly enough. There were pauses in the proceeding and thus the whole session was prolonged.

<sup>35</sup> Paragraph 13 of the Administrative Code for District and Regional courts

<sup>36</sup> Paragraph 13, section 6, of the Directive No. 66/1992 On administrative code for district and regional courts

*He studied many test papers directly at the hearing, often reading them very thoroughly, his head propped on one arm; it seemed as if he were contemplating the contents – mainly while asking the questions – the pauses between individual blocks were long.* (ID 212)

*...he seemed to be poorly prepared, there were long pauses when he was reading the file and before he asked questions.* (ID 68)

In one case, the judge even apologized, because:

*...she did not have time to study the file and – in order to establish whether additional evidence was needed – she interrupted the hearing for 20 minutes.* (ID 129)

There was also a case when the judge consulted further actions not only with the parties concerned but also with the court reporter:

*...we are going to do it this way, aren't we? She even tried to include the public in the discussion: What do the public think about it?* (ID 78)

### **6.2.2 Explanation of rules and processes, obligation of court to provide instructions**

Judges were routinely good in handling the behavior of the parties concerned and their explanation of the rules and procedures was usually understandable, clear and thorough.

Judges were also skilled in directing persons who did not stick to the given topic and talked about facts irrelevant to the proceedings while giving their statements. When necessary, judges reminded the participants to respect the seating order. However, there was also a case when the judges did not insist that this formal requirement be observed.

Judges also made sure that the parties concerned knew how to continue:

*...he thoroughly explained to the plaintiff the legal consequences of the statements she was about to make.* (ID 180)

*He really wanted the parties to understand what the lawsuit was about.* (ID 200)

However, there was a case when the judge did not help the participants, even though they obviously did not know what they were supposed to testify about:

*...he did not even try to ask additional questions and help the petitioner to express herself.* (ID 99)

Concerning the instructions on rights and obligations of the parties (witnesses, defendants and aggrieved parties), monitors concluded that the instructions were usually explained thoroughly and in depth and, when necessary, judges read the instructions themselves and made sure the interrogated party understood them. The witnesses had been advised individually or as a group and, before their respective testimony, the judges once again made sure the witness understood the instructions. When fulfilling the obligation to instruct, judges were emphatic and patient and respected the capacity of witnesses and accused to understand the instructions:

*...the witness was instructed thoroughly and patiently, even though it was difficult as he was a prisoner and had no idea what he was going to testify about.* (ID 76)

*...while reading the instructions, the judge explained each section in his own, simple words to make sure the witness understood everything. The instructions were divided into several blocks so that the witness could understand each of them.* (ID 120)

There were only a few cases when monitors reported negligence of the court's obligation to instruct. The proceeding usually had a certain pace but, whenever the judge instructed a party (witness, accused), his or her otherwise varied and well-modulated speech suddenly became monotonous and dull. The significance of instructions was thus weakened.

*I think the court's obligation to instruct is rather underestimated. During the proceedings judges speak and act with a normal rhythm but when it is time to instruct the witnesses or accused, suddenly, as if there were a blockage or something, they push a button of a tape recorder and you hear: "I hereby instruct you ... (very monotonously)..." Frankly, if I had no idea about the contents of the instructions (the monitor is a law student – the author's note), I wouldn't understand much and I would not be able to conduct myself according to the instructions... If, for*

*example, I wanted to abstain from testimony in order not to damage my own interests, I would want the instructions to be explained properly and to have time to absorb them and think about them..." (Focus Group)*

Monitors identified the following drawbacks in the judges' instruction: the instructions were read too quickly, the speech was unintelligible (*the judge was "rattling on"*), instructions were provided in a dull and monotonous way:

*The instructions were read so quickly that even I did not understand it.* (ID 231)

Judges did not make sure the witnesses understood the instructions or they did not ask about it immediately after the parties were instructed:

*The judge said for the record that the witness was instructed and understood everything and only after that, she instructed him. Nevertheless, she never asked whether he understood the instructions.* (ID 52)

*The witness was properly advised about his rights and subsequently asked to leave the courtroom together with the aggrieved. Only after the witness was called back to the courtroom did the judge ask him whether he had understood the instructions.* (ID 80)

Though some of the judges did not instruct witnesses at all, for the record they said otherwise:

*The judge said for the record that both the parties and the witness had been instructed according to Civil Procedures Code, however, she never instructed them.* (ID 50)

*The judge never instructed the petitioner on her rights. Nevertheless, for the record she dictated the following words: The petitioner, being instructed, says...* (ID 81)

### **6.2.3 Disruptions in proceedings**

Monitors observed that the flow of proceedings was being disturbed by several factors (other than noise caused by an electric typewriter and noise from the street): lack of discipline/inadequate behavior by the parties concerned and other people present, aggressive interruptions to someone else's speech, quarreling, shouting, emotional reactions and comments, hints for witnesses, negligence of the estab-

lished seating order, inattentiveness of the court reporter, etc.

It was also very disturbing when someone knocked at the door and entered the courtroom while court was in session. (happened at about 2% of the monitored proceedings).

Disruptions usually slowed down the pace of the trials, diverted attention away from the subject of the proceedings, disrupted the flow of the trial or made the situation more complicated for the litigating parties.

*When one of the members of the judge's panel questioned the victim, the prosecutor suddenly interrupted him... It influenced the victim's testimony. I noticed he did not know whom he should address his answer to, several persons were talking to him simultaneously ...The judge also joined them and the whole situation became rather chaotic.* (ID 18)

Nevertheless, monitors concluded that these moments did not substantially disturb the overall course of proceedings.

Judges were usually able to handle such moments. They instructed the parties concerned on appropriate behavior, admonished them or gave notice to the court reporter:

*The proceeding was clear and flowed smoothly, the judge also handled the restless and absent-minded court reporter well, he looked at her and pointed out that she should concentrate and stop disrupting the proceedings.* (ID 76)

In some cases, judges threatened to use sanctions (e.g. penalty for disturbing order, banishment from the court):

*The defendant was making comments, interrupting the testimonies. The judge reprimanded him and threatened to penalize him for his behavior, she advised both parties on how they should behave in court.* (ID 130)

*The plaintiff's attorney was yelling and interrupting the judge's speech, so she warned him that he can be fined.* (ID 49)

There was a case when a person was penalized for disrupting order (the defendant was arrogant and, in the end, left the courtroom).

Judges generally handled situations well. They used available means to reestablish order (or warned that they would use them) and the proceedings continued smoothly.

There were rare occurrences when the judges were not able to handle the tension and animosity between the litigating parties and the proceedings were disrupted.

*The parties did not know how to address the judge and had to be admonished several times, the defendant was making comments and interrupting the testimonies of the witnesses – he slowed down and confused the proceeding and the situation became rather chaotic. The judge had to start a sentence several times.* (ID 130)

Sometimes judges raised their voices and, without any obvious success, tried to calm down the arguing parties:

*I am going to throw you out. Be quiet now!* (ID 59)

Persons entering the courtroom also disturbed the proceedings. Usually, they were officers of the court. Monitors observed that these persons mostly brought some documents for the judge who accepted them without a single word. Usually, there was no indication that the documents might concern the current proceeding. In some cases, the court reporter handled the situation:

*...somebody knocked twice. The court reporter left the room and took care of it.* (ID 64)

Ringing of a mobile phone is another disruptive factor. It was observed in four of the cases monitored. Usually it was the judge's phone that rang.

*The judge's mobile phone rang twice. She turned it off and said it was her work phone;* (ID 82)

*...the judge's phone rang; she cancelled the call but did not turn the phone off. When it started ringing again, she handed it over to the court reporter who left the room to accept the call.* (ID 129)

In one case, the judge accepted an obviously private call during the hearing:

*The judge's mobile phone rang during the proceeding. He took it and said: "I'll call you later, I am in the middle of a session right now." Then he immediately shouted at the petitioner and the interpreter and*

*asked them to stop disrupting the proceeding and calm down.* (ID 66)

In another instance, the prosecutor's mobile phone rang. The monitor reported that the judge smiled and the prosecutor left the room to accept the call. (ID 231)

## 6.2.4 Observance of time schedules for court proceedings

Observance of the schedule planned for individual court sessions is one of the factors indicating court efficiency. Results from the monitoring indicate that almost two-thirds of the proceedings observed were delayed. Of a total of 211 proceedings, 129 were opened with delay. The average delay was 19 minutes. About one-third of the court sessions were delayed by 5 minutes. One-third of the court sessions were delayed by 10 – 15 minutes. 18 hearings were delayed by more than 30 minutes (i.e. one in seven proceedings) and six of them were delayed by more than one hour. The total delay in 128 court proceedings was 40 hours.

On the other hand, five sessions started earlier than planned in the docket. (four hearings started five minutes early and one started 12 minutes early.)

In 12% of the delayed proceedings, the reason was announced by the officers of the court. The parties received the information about the reasons for delay mostly from the judges; sometimes from the court reporters and in one case from a court guard. The reasons given to the participants were as follows:

- Extension of the previous hearing,
- Late arrival of litigating parties (including prosecutors) or legal counsels,
- A judge announced that he had made a mistake and planned two hearings for the same time,
- Consultation of judges,

However, in most cases, nobody informed the public about the delay of proceedings. Monitors therefore only guessed what might have been the reason for the delays:

- Previous proceeding extended (most frequent reason),
- Late arrival of judges (or members of the judge's panel),
- Late arrival of participants or their counsels,
- A judge had been supposedly sick before and therefore had a work back-up
- The judge was waiting for some mail that had just been delivered to the court registry and was essential for the proceeding.

Sometimes the situation was further complicated because there was no information about the schedule of court sessions outside the court room. When some of the planned hearings were cancelled, the delay was eliminated. However, the delays made the waiting participants and public very nervous and restless. This is how one of the monitors described the situation:

*I don't understand how she could have tried the case for four hours and two minutes when the next session should have been going on already for one and a half hours. She was running the sessions from 8:00 to 12:02. The parties summoned for 9:30 were dis-*

session started:	total	Martin	Galanta
on time	77	55	22
	37%	43%	27%
with delay	129	74	55
	61%	57%	67%
early	5	0	5
	2%	0%	6%
<b>total</b>	<b>n = 211</b>	<b>n = 129</b>	<b>n = 82</b>

Table no. VI: Time change in court proceedings

	late	early
within 5 minutes	40	4
	31%	80%
within 15 minutes	45	1
	35%	20%
within 30 minutes	26	0
	20%	0%
within 60 minutes	12	0
	9%	0%
over 60 minutes	6	0
	5%	0%
<b>total</b>	<b>n = 129</b>	<b>n = 5</b>

Table no. VII: Delayed and early beginning of proceedings

*gusted and left. They had waited with a child for about an hour. The whole docket had to be changed.*

(ID 50)

## 6.3 Conclusions and recommendations

Monitors' findings indicate that those judges observed had conducted the court proceedings efficiently and thoroughly for the most part. They had instructed the parties about their rights and obligations. Only minor problems were reported.

The smooth flow of sessions was sometimes disrupted and the judges were able to handle these situations more or less successfully. Persons entering the courtrooms and mobile phones ringing also turned out to be disruptive factors.

However, the major problem with efficiency was caused by delays in the planned proceedings.

Based on monitors' findings, the following recommendations can be made:

- In order to improve the efficiency of proceedings, judges have to be persuasive and effectively handle the timeframe set for individual court sessions. It is important that judges be sufficiently familiar with the case so that they can browse through it easily. They should not be surprised by unexpected developments. Needless to say, a judge who is poorly prepared for a trial can cause excessive and unnecessary delays in proceedings.
- Judges should never ask for the advice of the trial participants or a court reporter, not even with involuntary questions.
- Judges are obliged to ensure thorough instruction of witnesses and/or trial participants so that the parties concerned in each phase of the proceedings know what they should testify about, and how and when they can abstain from testimony. Therefore, it is necessary for judges to read the instructions clearly and make sure the persons instructed understand what has been said to them. The instructed persons should have the chance to

request a detailed explanation if there is something they do not understand.

- A judge has both the right and the obligation to maintain order and discipline in the courtroom so that the sessions are not needlessly disturbed. It is therefore a judge's task to consistently and firmly direct absent-minded and restless participants (litigating parties, their counsels, and prosecutors). If necessary, existing administrative regulations provide judges with a range of measures that can be used to restore order. If these situations are handled without excessive emotions or a raised voice, it proves the judge's self-confidence and professionalism and underlines the dignity of court proceedings.
- In order to maintain a smooth flow of the court proceedings within the framework of current legal provisions, it is inadmissible for strangers to enter the courtroom while the court is in session. This is also applicable to officers of the court. The judges, together with other relevant officials, should ensure that nobody interrupts the proceedings and/or directives regulating this matter should be issued to officers of the court.
- Judges should strictly require that court sessions are not disturbed by mobile phones. Calls by judges during a court sessions cannot be tolerated. The only exception is an urgent official call (e.g. expiration of term).
- Late start of court sessions is a serious problem. Minor delays (up to 15 minutes) can be tolerated, but the judges should do everything they can to prevent excessive waiting by trial participants and the public. Of course, this effort may not influence the quality of individual hearings. There are several ways to achieve the goal: judges could prepare for hearings more thoroughly, and conduct trials more consistently. It is also important to maintain order in a courtroom so that undisciplined participants may not disrupt hearings, etc. Delays longer than 30 minutes could also indicate that judges cannot realistically estimate and plan the time and capacity needed for individual sessions. This may be perceived as a lack of respect for other participants of court proceedings.

- If, despite all measures taken, the opening of a session is substantially delayed, a judge (or another court officer) should inform the litigating parties and the public of the reasons for the delay. Whenever possible, people waiting for a hearing in front of a courtroom should be informed about the estimated delay beforehand. It is important to remember that when a trial is delayed, the participants spend much more time in court than the judges originally estimated.

## 7 – Accuracy and effectiveness of court records

### 7.1 Legal framework

A record of any legal proceedings is important for the final decision on the case. It is very important for the appellate procedure because it is the only official source of the testimonies and statements provided by the trial participants, counsels, witnesses and court experts. An inaccurate record of parties' testimonies can result in substantial misinterpretation of the key facts in a case. Misinterpreted records of testimonies can result in an erroneous verdict whose rectification in an appellate procedure can be difficult.

Technically, the court proceedings are either recorded on a dictaphone or taken down in the form of minutes. When a dictaphone is used, the judge dictates into it the contents of individual statements and everything that happens at the hearing. Minutes are worked out after the hearing is over and they become a part of the case file. When the record is taken by a court reporter, the judge dictates the minutes and the court reporter continuously enters it into a computer or records it on an electric typewriter.

Regardless of the technology used, it is important that the court record (the minutes from a court ses-

sion) is an accurate and authentic record of the hearing and testimonies of those questioned.

Legal provisions<sup>37</sup> on court records include the following rules:

- Minutes have to be dictated aloud so that those present hear the wording.
- Minutes dictated aloud can be taken down in shorthand or recorded by use of recording technology. When the latter form is used, the presence of a court reporter at the court proceedings is not necessarily required. A court reporter must always be present at key proceedings in criminal trials.
- At main criminal proceedings, the testimonies of persons who have already been interrogated are recorded only if there are differences compared to their previous statements or when the testimony reveals additional, new facts. When the minutes are taken, the record of the accused's statements and witnesses' testimony is usually dictated by the person conducting the questioning. Direct speech as well as literal wording are both desirable in this case.
- In civil proceedings, the minutes must contain mainly the case being tried, a list of the participants present, a description of how the evidence was gathered, the contents of individual statements and verdicts.
- The Chairman of the judges' panel (or a single judge) can allow the person being examined, usually a court expert, to dictate his or her statement for the record personally.
- Minutes are taken down in Slovak language. When literal wording of a person testifying in a foreign language is necessary, a court reporter or an inter-

<sup>37</sup> Paragraph 21 of Directive No. 66/1992 on the Administrative code for district and regional courts, paragraph 55 of the Law 141/1961 (Criminal Procedure Code) and paragraph 40 of the Law 99/1963 (Civil Procedure Code). The new legal provisions on criminal court proceedings that entered into force on January 1, 2006, fundamentally change the way main proceedings are recorded. "Literal protocol" was introduced where full versions of the statements by individual participants have to be recorded.

preter – when possible – takes down the relevant part in the language of the person being questioned.

## 7.2 Findings from monitoring

Observation of the methods used for recording court proceedings and evaluation of their effectiveness was a separate part of the monitoring. Monitors evaluated the level of accuracy/authenticity of the records and compared them to the actual course of events at the hearings. According to the results of monitoring, in 71% of the cases, the judges dictated the minutes to court reporters. In Galanta, the court reporter was always present and took down the dictated statements. In Martin, this was true in most of the cases; in some cases (only in civil proceedings), judges dictated minutes into the dictaphone (44% of cases). The court reporter in Galanta entered the minutes into a computer. In Martin, an electric typewriter was used more often than a computer. Monitors concluded that the method used to create the court record not only influenced the sound in the courtroom, but also the accuracy of the recorded statements.

Monitors found that in five cases, the judges did not take minutes at all. (2.4%)

According to monitors, the noise caused by electric typewriters turned out to be one of the most disruptive factors at the hearings. This conclusion is documented by the following statements:

*...the electric typewriter was very noisy and disturbing.* (ID 113)

*When the statements were typed down simultaneously, the noise of the typewriter was very disturbing.* (ID 64)

The noise of the typewriters made it difficult for judges to check on the recorded version, and worsened the coordination between a judge and a court reporter:

*...the problem with the judge was that he talked while the typewriter was being used. What he said was then absolutely unintelligible. Of course, it also influenced both parties and their replies were no longer given in an orderly way. Sometimes their statements were not audible.* (ID 223)

In one case, the monitor reported that there was a conflict during the session, which was exacerbated by the noise of the typewriter:

*The judge was constantly complaining she could not hear anything... The noise caused a lot of misunderstandings.* (ID 73)

When the minutes were taken down by court reporters, sometimes the coordination with judges was poor. Disturbing situations occurred, when the court reporter was not able to type fast enough:

*The court reporter did not write fast enough even though the judge did not dictate quickly at all; she made mistakes, had to erase them and re-write the report.* (ID 142)

The results of the monitoring indicate that in most cases, the judges dictated the minutes aloud and intelligibly, so that the parties and the public could

method used for taking records	total	Martin		Galanta	
Dictaphone	57	57	CiP: 57	82	
			CrP: 0		
court reporter	149	67	CiP: 21	CiP: 62	
			CrP: 46		CrP: 20
no record was taken by the judge during the session	5	5	CiP: 5		

Table no. VIII: Record of court proceedings  
(CiP = civil proceedings; CrP = criminal proceedings)

hear the wording. This conclusion is documented by the following observations.

*When the judge dictated the minutes, the wording was thoughtful, accurate, clear and intelligible.* (ID 191)

*At the beginning of the trial (it was probably the first session), the judge announced which method of recording she would use – mechanical dictation into the Dictaphone.* (ID 229)

*The statements were dictated accurately, clearly and intelligibly, though the pace was quite fast.* (ID 225)

In two cases, the monitors did not hear the dictated wording because the judges spoke too softly.

*Dictation for the court reporter was really quiet, I could not understand much.* (ID 104)

*The statements were recorded into the dictaphone but the judge spoke too softly, I could not hear properly and had to concentrate quite hard to understand at least something.* (ID 74)

In some cases, the intelligibility of statements was decreased by the noise coming from the street through the open windows, or from construction work in the vicinity of the courtroom. One of the monitors wrote:

*Noisy repairs were being performed close to the courtroom... I cannot evaluate the accuracy of the records because I did not hear the statements.* (ID 55)

The authenticity or accuracy of the session records compared to what actually happened during the hearing was, in general, positively perceived by monitors. Their reports indicate that the judges used the following methods to ensure accuracy of the records:

- The judges dictated simultaneously during the testifying party's statement;
- They took notes on the statements and formulated mostly shorter, condensed versions for the record;
- While dictating, they kept non-verbal communication (eye contact, nodding) or directly asked whether the recorded version was accurate.

Accuracy of the records is documented by the following statements by monitors:

*The judge was very precise, almost perfectionist. He was constantly making sure that his wording was*

*accurate and that the person being questioned agreed with his version; he asked whether there was something to be added. He tried to be as accurate as possible.* (ID 76)

*The judge's wording was very accurate, he used direct speech in every sentence.* (ID 153)

*I think that the method used by Dr ... was the most efficient so far. He dictated in a way similar to simultaneous interpreting – he talked simultaneously with the testifying person and precisely repeated her statement.* (ID 136)

*The judge dictated the record very accurately, almost after every reply to his questions (he even dictated periods, commas and paragraphs...).* (ID 151)

*The judge agreed that the statements would be directly recorded into the dictaphone, as both the witness and the petitioner used terminology and professional slang from the lumber industry.* (ID 43)

During long court sessions, dictating for the record was obviously very tiring. The monitor reported:

*At the beginning, the proceeding was recorded very precisely but after some time, close to the end, the quality of the record was not as good.* (ID 130)

Monitors also reported that at several hearings major problems with records occurred, due to improper actions by a judge. Monitors listed the following problems and their possible causes:

- Shift of meaning in the record of the statements:

*The judges literally formulated the statements for the petitioner so that they would be in her favor, added meanings and was obviously helping her.* (ID 65)

According to monitors, the "inaccuracy" of the dictated versions was influenced by the judges' desire to condense the original statements of participants or to use language that was grammatically or professionally correct. Monitors reported that some of the participants stated facts that the judge "did not find important", they often used metaphors and their vocabulary was limited. According to monitors, there could have been a shift in meaning between what was said, what the participant meant to say and what the judge put into record;

- Things that never happened were recorded:

*The judge reported for the record that the parties and the witness were instructed according to the proceedings code but such instructions had never been provided.*

(ID 50)

*The judge said for the record that the witness had been advised and understood the instructions and subsequently instructed him without asking whether he had understood;*

(ID 52)

- In five cases, no minutes were taken, even though the parties being questioned gave statements during the proceedings:

*I cannot tell how accurate the record of the proceeding was because, after both the petitioner and the defendant testified, the judge let them go; as both of them left, I did the same. Only then did the judge start to dictate for the record.*

(ID 103)

*The judge was taking down written notes. When the court session was over, she said she would dictate them into the dictaphone.*

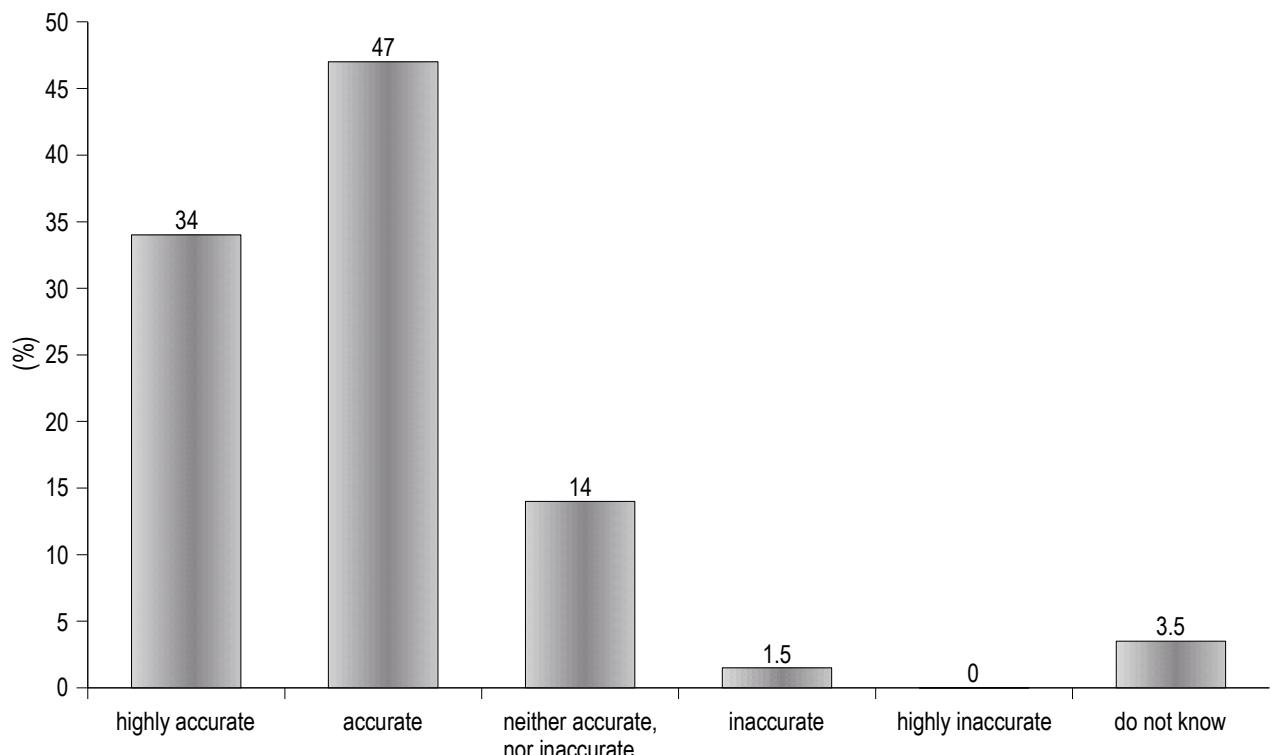
(ID 228)

Monitors concluded that in four-fifths of the cases, the process was recorded accurately by the judges. Inaccuracies were reported in 1.5% of cases.

## 7.3 Conclusions and recommendations

The findings of the monitoring show that the commonly used methods of recording into a dictaphone and dictating to court reporters are not sufficient. Even with the judges who tried to record the proceedings accurately, authenticity worsened over time. The following recommendations can be made based on the findings of monitors:

- At oral proceedings, a judge is always obligated to dictate the wording for the record aloud. Failure to record the process is a serious breach of the procedural rights of participants as well as of current legal provisions.

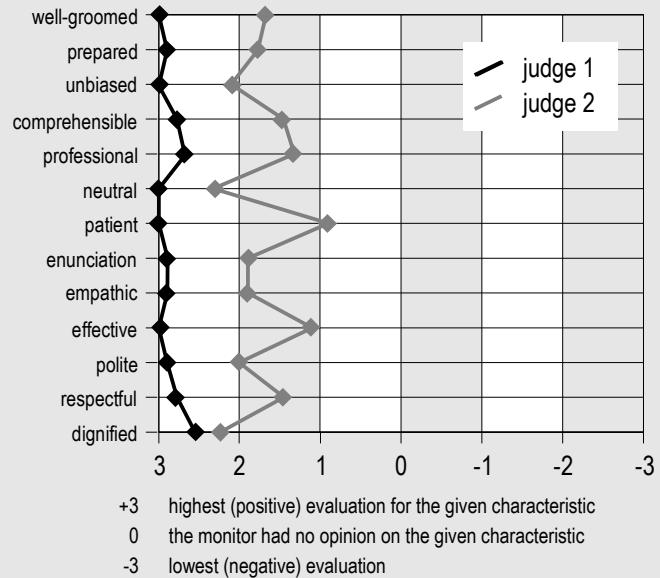


Graph no. 4: Level of accuracy in records from court proceedings

- In order to ensure the accuracy and improve the efficiency of proceedings, direct recording of the process on recording machinery is desirable. Dictating of records into the dictaphone or to a court reporter substantially prolongs the length of individual court sessions (almost doubling the time), and interruptions caused by dictating damage the continuity of the proceedings. Use of sound equipment to record the proceedings would enable a judge to concentrate more on the contents of statements and the conduct of proceedings. If everything were recorded on tape, judges would not have to repeatedly dictate the statements of witnesses, court experts, and litigating parties. Currently, this form of recording is used by the Constitutional Court of the Slovak Republic and the Special Court.
- Recording equipment in a courtroom would also solve the problem of statements that are too unintelligible due to poor acoustics in some of the courtrooms.
- Street noise is a disruptive factor during legal proceedings and worsens the intelligibility of statements. The monitoring was performed in spring and summer season when the windows in courtrooms were often open. Air-conditioning in courtrooms could ensure that the trials are not disturbed by excessive noise in summer.

## Comparing one pair of judges

The graph at right and the text below it constitute results from the comparison of two judges who were observed by nine different monitors. The first judge was very positively evaluated ("a model judge"), while the second was, on the contrary, quite negatively perceived ("unprofessional judge").



Graph no. 5: Evaluation of two judges, monitored nine times

### Positively evaluated judge 1:

- Out of nine trials, the judge was late twice (15 minutes and 1 hour and 10 minutes respectively). He explained his more excessive tardiness personally: *The judge called the accused inside and informed him that they were late because the previous trial had been extended. He asked the accused to wait in the hall because there would not be another trial and asked him to please inform the other participants.* (ID 188)
- The judge dictated all the background, the accused's testimony and the prosecutor's questions very exactly and clearly...He gave the impression of being a true man of the law! He seemed open to young people with his opinion, his appearance, he listened carefully! He obtained information with open questions, which also helped the accused think about the information presented and about the absurdity of his own acts!...The judge was so attentive during the entire trial that there were no needless breaks or other speeches...he was patient but decisive and deliberate and, above all, flexible in terms of timing and the unfolding situation during the proceedings.* (ID 205)
- One cannot have any reservations about this judge. During the trial he looked and behaved in an absolutely unbiased manner. (ID 23)
- His decision was clear and comprehensible, the justification was appropriately explained to the defendant. The instructions were comprehensible, not just quickly "rattled off"...I watched him carefully, but I didn't find anything negative, I noticed how he used his voice well, which also helped him lead the trial, he raised his volume when speaking to someone farther away in the courtroom, he also used different intonation when speaking with the accused because she was often looking around and not paying attention, so he very sensitively brought her back to the trial proceedings with his voice and pointed out things which were important for her to hear. This way the trial was more effective. A model judge, dignified and natural, calm, rational, dealt well with difficult situations (testimony by an alcoholic and her behavior). He reacted in a confident way while also being empathetic and sensitive, not emotional.* (ID 62)

### Negatively evaluated judge 2 (female judge):

- Of nine trials, two started late due to the previous trials going over their time limit. Once she was 20 minutes late coming to the trial without any obvious reason;
- Monitors noted that the judge did not keep a record of the trial (ID 72 – 16 minute trial, ID 131 – 30 minutes, ID 228 – 20 minutes), she took notes and once said that (paraphrased) *she would dictate it into the dictaphone after the trial was over.* (ID 228)
- She seemed to have chaos in her papers and notes on the table...when she concentrated on something, she bit her finger...she said things that, in my opinion, she should have kept to herself:...so, what other issues are there, what else do we have to do, now we should... – she seemed quite unsure.* (ID 72)
- In the beginning, the judge seemed confident and dignified and was patient. Later, however, she started raising her voice, telling the defendant to be quiet and speaking more adamantly. She could barely manage him. When the defendant spoke she rolled her eyes...She was probably losing her patience...Poorly prepared for the trial, but – in the name of objectivity – she was given new facts, looking through her papers.* (ID 70)
- She dictated the petitioner's testimony very deliberately and with long pauses. She was not flexible and lacked accuracy...I was a little confused by the judge's approach – after the opening of the trial she said that a trial could not take place without a court-assigned expert (and she called him on the PA system). But he did not come. Then she said: the trial will proceed without the court expert since I have testimony and a valid judgment! – This was confusing for me! She didn't seem professional to me.* (ID 224)
- The judge was very prudent, she seemed pleasant. Sometimes she posed suggestive and leading questions. (ID 228)

## 8– The public in the courtroom

### 8.1 Legal framework

Court trials are fundamentally public proceedings and according to the Constitution of the Slovak Republic everyone has the right to a public legal hearing of his or her case.

In addition to ensuring legal protection of the rights and interests of trial participants, a court trial should educate citizens about thoroughly upholding the law, honestly fulfilling one's responsibilities and respect for the rights of others. In a criminal trial, the public should be provided with maximum opportunity to follow court proceedings. This ensures that criminal trials can have the greatest possible educational impact on the broader public and the public can be actively engaged in stopping and preventing criminal acts.<sup>38</sup>

The public may be barred from part of a trial or an entire trial only in exceptional cases where public discussion of the trial would threaten:

- The secrecy of certain facts,

<sup>38</sup> Paragraph 199 of the Law no. 141/1961 (Criminal Procedure Code). A similar formulation is also in the new Criminal Procedure code effective as of 1 January 2006, paragraph 249 of the Law no. 301/2005

- Commercial confidentiality,
- The best interest of the trial participants (during a criminal proceeding this refers to witnesses, or victims, or their family members),
- Proceedings without disturbance, or
- Moral decency.

Even in cases where the public is barred, the court may allow individual persons (for example trustees of the defendant) to be present at the trial or part of the trial.

On the other hand, in public trials, the court can refuse access to young people or citizens who may disrupt the trial proceedings. The verdict, however, must always be announced publicly.

To ensure uninterrupted trial proceedings, the court can take necessary measures to direct the behavior of those present. The court may also take appropriate measures to avoid the overfilling of the courtroom.<sup>39</sup> Above all, when there is great public interest in the trial expected, the judge can order the trial to be held in a larger courtroom, or can regulate access by the public through the distribution of entrance passes. The public must be appropriately informed of this.<sup>40</sup>

The court decides on barring of the public via a publicly declared resolution. If the public is barred from the trial, this decision is visibly posted on the doors of the courtroom together with a sign indicating that entrance by unauthorized persons is prohibited.<sup>41</sup>

In all other cases, the public may be present at a trial without the need to give advance notice and without the litigating parties agreeing ahead of time.

Judges usually do not identify members of the public personally. On the other hand, it sometimes happens that they ask members of the public to show their identity documents and verify their identification data, including entering it into the record. This approach is

<sup>39</sup> Paragraphs 199-201 of the Law no. 141/1961 (Criminal Procedure Code) and paragraph 116 of the Law no. 99/1963 (Civil Procedure Code)

<sup>40</sup> Paragraph 17 Directive no. 66/1992 on the Administrative code for district and regional courts

<sup>41</sup> Ibid.

justified by the fact that witnesses who have not yet given testimony are not allowed to be in the courtroom<sup>42</sup> and are not permitted to be present during testimony by the accused or other witnesses.<sup>43</sup> This right of judges to verify the identity of the public in the courtroom is not otherwise regulated.

## 8.2 Findings from monitoring

Monitors found that the public exercises its right to participation in court proceedings only rarely. Those who do are mostly close relatives of the trial participants (husband / wife or parents). In one monitored case, ninth grade students participated with their teacher.

According to the monitors, courtrooms provide sufficient space for the public to participate in a trial.

number of seats	number of proceedings n = 211
up to 10	22
11 – 20	102
21 – 30	71
31 or more	16

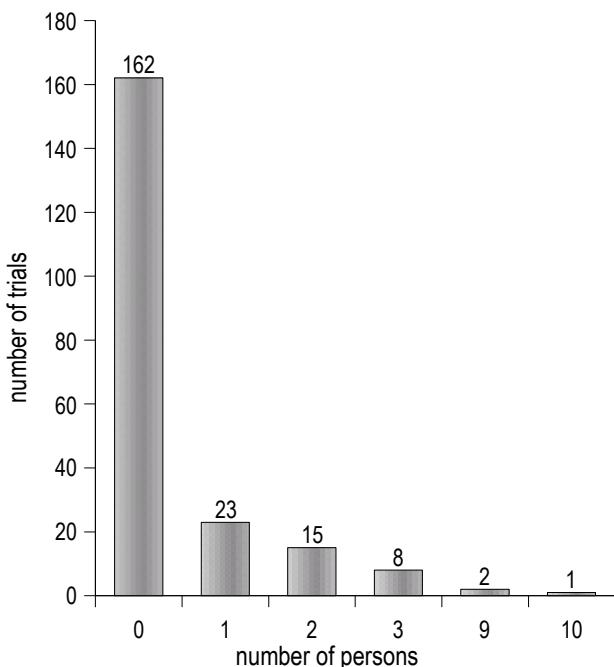
Table no. IX: Seats allotted to the public in courtrooms

According to estimates by monitors on the number of seats allotted for the public, more than 80% of trials were held in courtrooms where there were 11-30 seats available to the public.

In more than three fourths of the trials, the public was not present. The average number of members of the general public present at the trials observed was 0.5 persons.<sup>44</sup>

<sup>42</sup> Paragraph 117 of the Law no. 99/1963 (Civil Procedure Code)

<sup>43</sup> Paragraph 209 of the Law no. 141/1961 (Criminal Procedure Code)



Graph no. 6: Number of persons from the general public present at the trials observed

The experience of monitors who played the role of the general public at the trials was varied:

- The judge noticed their presence in silence:

*The judge did not ask me for my identity card or ask me who I was.* (ID 204)

*The judge took no interest in who I was.* (ID 221)

*No one asked why I was at the trial, whether I was a witness or a member of the general public;* (ID 168)

- The judges determined whether they were participants in the trial or members of the general public and "which" public:

*Mostly they just asked whether I had any connection to the case.* (ID 153)

<sup>44</sup> Monitors are not included in this figure. In order to complete the picture presented by these data, we must add that the span of variation is 10 (0-10 members of the general public were present at the trials monitored). The standard deviation (taking into account extreme values in the range), that is, the rate of variability of the number of persons from the general public for 211 trials, is 1.3 (persons).

*However I count, there is one extra person present, who are you?...The general public – which public? Please explain;* (ID 191)

- The judges identified members of the public (or part of the public) on the basis of their identity documents and noted their presence in the court record:

*He asked two members of the general public for their identity cards, dictated one of their names to the court reporter. It was enough for me to say my name without providing my identity card.* (ID 113)

*He asked the members of the public for their identity cards and dictated their names for the record... Then he said to me that he didn't want to go overboard, but that it was his responsibility.* (ID 148)

*She asked me who I was and for my name, which she then recorded;* (ID 162)

- The trial participants did not agree that the public should be present, so the judge consulted it with the litigating parties:

*The parties objected to my presence, they didn't want me there, the judge explained to them that it is my right by law.* (ID 48)

*The prosecutor and the defense lawyer had to agree to my presence and I was entered into the record.* (ID 153)

trial participants who are not prepared for it and do not expect it.

Several recommendations come out of the monitors' findings:

- Courts should support participation by the general public in trials, including using appropriate measures (for example, sufficiently large courtrooms).
- The law does not stipulate how judges can avoid letting witnesses who have not yet given testimony into the courtroom. It is questionable whether judges are authorized to determine the identity of members of the public via their identity cards. Members of the general public are not, after all, participants in the trial and therefore, there is no reason to record their personal information in the trial record. To this effect, it would be helpful to standardize judges' practice in the interest of upholding citizens' rights while also not compromising rules governing witnesses' testimony (those who are required to testify in the court are not allowed to be present in the courtroom before they've been heard).
- Greater and more frequent participation in legal proceedings by the general public would support the relevant state institutions by spreading information about the role of courts and the rights of citizens in relation to the courts' power.

## 8.3 Conclusions and recommendations

Participation by the public at court proceedings is an indication of the maturity of citizens and their interest in what is going on around them. Their participation not only fulfills the educational goal of criminal procedures, but in the final analysis, it can also lead to heightened credibility of the court system in public.

On the basis of monitors' findings, we can state that the courts are sufficiently equipped to handle public participation in legal proceedings if the public shows an interest. The public, however, usually does not exercise this right. Therefore, their sporadic participation usually evokes questions, particularly from the

## 9 – Prosecutors and legal representatives during proceedings

### 9.1 Legal framework

The position of prosecutors at a trial is fundamentally different from that of legal representatives. The prosecutor defends the interests of the state and in a criminal trial acts as the state's plaintiff against a person accused of criminal acts. The prosecutor is, according to the law on prosecution, obligated to work actively, fairly, in an unbiased manner and without unnecessary delays.<sup>45</sup>

A legal counsel in a criminal trial represents the accused or the victim. In a civil proceeding, he or she acts in the name of the plaintiff or the petitioner, or in the name of the accused or the defendant. Usually, those who act as legal representatives for citizens before a court are advocates or junior advocates, or corporate lawyers. In a criminal trial, defense counsel can only be provided by an advocate. Free lance lawyers are bound to work in the interest of their clients – employers – by an employment contract. For advocates and junior advocates, the legal framework for

their relationship with the client is a contract for representation as well as the law on advocacy<sup>46</sup> and advocacy procedures.<sup>47</sup> According to the law on advocacy, it is the responsibility of advocates and, thus, also for junior advocates to proceed honorably and consciously and to thoroughly use all legal means available and take all actions that are in the interest of the client, that they, by their conviction deem to be of benefit. At the same time, advocates must be conscious of the purposefulness and efficiency of the legal services provided.<sup>48</sup> According to advocacy procedures<sup>49</sup>, an advocate may not accept an assignment that would compromise the dignity of the profession of legal advocacy. He or she may use only those means which are in accordance with generally binding legal regulations, with moral principles and with the principles of decent, polite behavior.

### 9.2 Findings from monitoring

Although the court monitoring was not primarily focused on the behavior of prosecutors and defense counsel during trials, these people have an important position during legal proceedings and their behavior fundamentally influences how trials go. Monitors noted certain characteristics of prosecutors' and defense counsel's behavior without linking it to specific individuals. It is possible that the same individuals were observed several times, but monitors did not specifically note this. The following findings describe prosecutors' and defense counsel's performance and behavior at trials monitored only in a general way without pointing out personal characteristics of specific prosecutors or defense lawyers.

Of a total of 211 trials monitored, legal representatives participated in 60%. Prosecutors participated in all criminal proceedings, but in no civil trials. Representatives of victims participated in 8% of trials.

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<sup>46</sup> Law no. 586/2003 on advocacy

<sup>47</sup> Advocacy procedures approved by the conference of advocates 19 June 2004

<sup>48</sup> Paragraph 18, section 2,3 of the Law no. 586/2003 on advocacy

<sup>49</sup> Paragraph 2, section 4 of Advocacy procedures

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<sup>45</sup> Paragraph 5 of the Law no. 153/2001 on prosecution

	representation of the petitioner by a legal representative n = 145	representation of the defendant by a legal representative n = 145	representation of the accused by a defense lawyer n = 66
yes	45%	28%	71%
no	55%	72%	29%

Table no. X: Participation by legal representatives and defense lawyers at court proceedings

### 9.2.1 Prosecutors

According to monitors, about half of the prosecutors observed made a very positive impression:

- They were professional and clear in their relationship to the relevant persons:

*Clear, understandable opening statement, behaved with confidence, asked exact questions of the accused as well as of his father. She explained the basic reasons for the complaint in a straightforward manner. She had thoroughly studied the evidence.* (ID 199)

*The prosecutor behaved appropriately, her questions were to the point.* (ID 69)

*High level behavior! During the announcement of the charges, the prosecutor correctly conveyed the essence of the criminal offense... She presented herself professionally, with a thorough description of the entire case;* (ID 202)

- They were prepared and active, attentively followed the proceedings, behaved convincingly:

*Evidently prepared for the trial, she had with her records from another of the defendant's criminal proceedings, which the judge asked her to provide during the trial.* (ID 67)

*I like the prosecutor very much. She always listened with interest, asked good questions, asked the judge for additional evidence.* (ID 102)

*Very polite, observant, pointed out to the judge a couple of details which still needed to be addressed. He was active, communicated very well with the judge, attentively followed the entire trial;* (ID 105)

- They gave a pleasant presentation, were well-groomed and made a good impression:

*She was well-groomed, gave a polished presentation and a pleasant voice.* (ID 102)

*He did not make any inappropriate facial expressions, followed the entire proceeding attentively, had everything neatly arranged on the table, took notes, was active, seemed pleasant and dignified, communicated without arrogance.* (ID 76)

About one-fourth of prosecutors at the trials observed spoke rarely or not at all, or were passive. For these reasons monitors could not evaluate their work (attitude and behavior). A fourth of the prosecutors were evaluated negatively:

- They were not prepared for the trial:

*...it seems that he was not at all prepared for the trial, he didn't even know that the decision about alimony had been overturned by the regional court;* (ID 111)

- They were unconvincing, passive and inarticulate:

*The prosecutor was not very noticeable – except for some short concluding remarks, she said almost nothing.* (ID 58)

*Aside from questions to the witness, the prosecutor gave a concluding speech that was quite difficult to follow, I couldn't understand it even though I listened carefully.* (ID 138)

*The prosecutor seemed unsure, she presented the case with only a brief listing of the damage;* (ID 205)

- They seemed inappropriately dressed and undignified:

*The prosecutor was...in a sweater and sandals, his robes were thrown over a chair nearby.* (ID 111)

*She seemed very bored, was not appropriately dressed and played with her hair the whole time.* (ID 18)

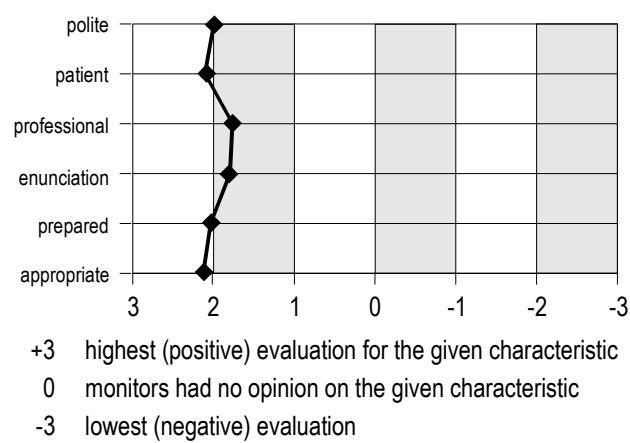
*...she chewed gum the whole time.* (ID 152)

In a few specific cases, monitors noted that some prosecutors had closer contact with the judges: they spoke privately with the judges before and after the trial, the judge allowed the prosecutor to take a telephone call during the trial, in one case the prosecutor even remained in the courtroom during deliberation of the verdict.

It also happened that a prosecutor was late or absent during the entire trial:

*The prosecutor left the courtroom for about half an hour.* (ID 110)

The evaluation of prosecutors, using the attributes "polite", "patient", "professional", "articulate", "prepared for the trial", "appropriate" on a scale of +3 to -3 (+3, +2, +1, 0, -1, -2, -3) revealed an average evaluation score of 1.95.<sup>50</sup>



Graph no. 7: Average values for prosecutor characteristics on the evaluation scale

## 9.2.2 Legal representatives

Monitors evaluated legal representatives both positively and negatively. The evaluation indicates that a

<sup>50</sup> On the average evaluation of prosecutors, we must take into account the fact that monitors gave prosecutors a value of "0" for a specific attribute when they had no opinion on the given attribute. This happened in 11% of cases.

smaller portion of the legal representatives were prepared for the trial, were convincing, patient and dignified. In general they appeared to be very professional.

*The defense lawyer seemed well-educated and knew what she wanted to achieve and could achieve from the beginning. She asked questions in a purposeful way.* (ID 67)

*The petitioner's lawyer was very well prepared for the trial. He had all the necessary documents (and photographs) and knew exactly how to challenge the accused.* (ID 229)

*The plaintiff's lawyer in the first row asked questions of the defendant's lawyer in the second row. The questions thoroughly laid out the case being tried.* (ID 210)

*The defense lawyers spoke when instructed by the judge and were patient. After announcement of the verdict they discussed with the accused whether to appeal or not.* (ID 209)

*The defendant's counsel spoke very calmly and made a very professional impression.* (ID 89)

*As an older person, he was less dynamic than the judge; he read and spoke more slowly. He was precise, thorough and inspired trust.* (ID 125)

Monitors noted negative features of legal representatives and defense counsel's performance. In these negative cases, monitors stated:

- They were unprepared for the proceeding, unconvincing, spoke very little or not at all:

*The legal representative for the petitioner seems to me a little confused, he was not sufficiently prepared for the proceeding, he didn't know what to submit when (or how to submit it) – the judge had to direct him several times to submit what he was required to submit.* (ID 116)

*The legal representative was not at all prepared for the trial, he needed time, which the judge gave him and he left the courtroom to speak with the defendant and his lawyer.* (ID 147)

*The lawyer for the petitioner was almost invisible during the trial;* (ID 172)

- They made incomprehensible remarks, communicated in an inappropriate way, both verbally and non-verbally, and behaved unprofessionally:

*"I am ashamed, I'm blushing," – this is how he reacted when the judge asked him why he had not attached a revised (more exact) proposal to the document. He simply did not write the revised document.* (ID 139)

*The defense counsel was chewing gum during the entire session.* (ID 60)

*After her closing statement, the lawyer for the petitioner was sending short text messages by her mobile-phone and banged her pen on the table when the defendant did not agree with the charges (all of this took place during the closing statement by the defendant);* (ID 145)

- They appeared messy (not well-groomed) and undignified:

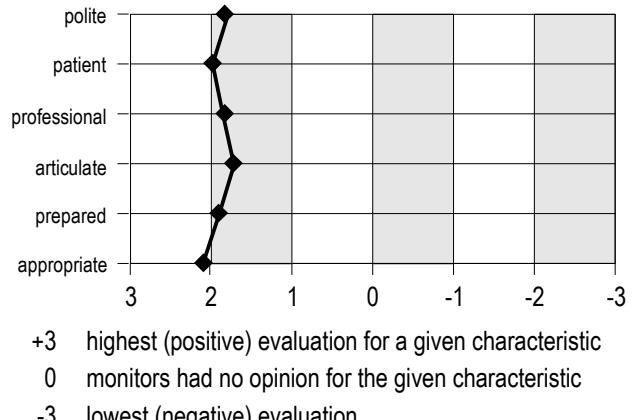
*The lawyers were not appropriately dressed (a thickly woven pullover; bright red, see-through dress with lace);* (ID 30)

- They took an inappropriate approach:

*While they were agreed on a time for a subsequent hearing, the defense counsel kept interrupting the judge.* (ID 52)

*One of the defense lawyers was passive. During the trial he left the courtroom for five minutes. After the proceeding he told an acquaintance a very cynical joke about the victim in the hallway.* (ID 102)  
*Before the proceeding began, they invited him into the courtroom and one could hear him laughing with the judge and reporter, his behavior toward the judge was quite friendly.* (ID 18)

Evaluation of legal representatives/lawyers for the attributes: "polite", "patient", "professional", "articulate", "prepared for the proceeding", "appropriate" were measured on the following scale: +3, +2, +1, 0, -1, -2, -3. The average score was 1.85.<sup>51</sup>



Graph no. 8: Average values for characteristics of legal representatives / lawyers

## 9.3 Conclusions

Monitors did not concentrate primarily on prosecutors' and attorney behavior. They only gave comments on attorney and prosecutors when they noticed something particular about their behavior.

The monitors' findings show that, in many cases, attorney was not properly prepared for the proceedings. This lack of preparedness on the part of attorney negatively influenced the effectiveness of the court proceedings and could also have been a reason for delays in the proceedings. In many cases, monitors noted inappropriate behavior by lawyers in the court. This kind of behavior during a trial directly influences the dignity of the entire court proceeding.

In general, monitors gave higher evaluation scores to prosecutors than attorneys. Almost half of the prosecutors monitored received a very positive evaluation. The rest of the prosecutors were faulted, for example, for their passivity, lack of preparedness at the trial and undignified behavior.

<sup>51</sup> Monitors gave legal representatives a neutral value of "0" for a specific attribute when the monitor had no opinion for the given attribute. This occurred 7% of the time.

It is Society for Open Court's intention to initiate a broad public and expert discussion on the findings and conclusions presented in this report. It would be optimal if these conclusions and findings were included not only in the regulation of the court system, but also in life.

## 10 -Conclusion

This report presents the findings of civic monitoring of courts. It is written for the media, relevant state and nongovernmental institutions (for example, for the courts monitored, the Board of Courts, the Ministry of Justice of the SR, judges' associations, members of the Parliament of the SR, public protectors of rights, and civic organizations). It is also meant for the expert and lay public. The conclusions and recommendations in this report can contribute to the improvement of the function and effectiveness of the court system in terms of domestic and international standards. In the final analysis, it can also contribute to the strengthening of the Slovak court system's credibility among the general public.

One of the main conclusions of this report on the monitoring of courts is that citizens acting as monitors gave judges a predominantly positive evaluation. This conclusion is absolutely different from reports given by the media till now on citizens' perception of the courts.<sup>52</sup> On the other hand, the report proposes specific areas where positive changes could be made in the exercise of the courts' power. For this reason, we consider continuation of civic monitoring beneficial for citizens, courts and judges alike.

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<sup>52</sup> Along with the Government of the SR and the Parliament of the SR, courts are among the three least trusted institutions in the Slovak Republic, see for example a survey of the Statistical Office of the SR at <http://www.statistics.sk/webdata/slov/infor/uvvm/uvvm0204.htm>