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13

Burkhard Hess | Ana Koprivica Harvey (eds.)

# Open Justice

The Role of Courts in a Democratic Society



**Nomos**



Max Planck Institute  
**LUXEMBOURG**  
for Procedural Law

Studies of the Max Planck Institute Luxembourg for  
International, European and Regulatory Procedural Law

edited by  
Prof. Dr. Dres. h.c. Burkhard Hess  
Prof. Dr. H el ene Ruiz Fabri

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## Foreword

This edited collection contains papers presented at the *Open Justice* conference, organised by the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law in cooperation with Saarland University, on 1<sup>st</sup> and 2<sup>nd</sup> February 2018 in Luxembourg.

The objective of the Conference was to bring together leading experts in the field in order to stimulate a discussion about the principle of open justice in democratic societies. By re-examining the traditional ideas associated with the principle of public hearings in light of modern-day challenges, a particular emphasis was placed on the growing use of information technologies. The Conference served as a platform for judges of European and national courts, academics, legal practitioners and legal journalists to express their understanding of the principle of open justice today. It soon became apparent that how the open justice principle is understood today varies considerably in different legal cultures and contexts.

Over the two days of the Conference, a multiplicity of issues pertaining to open justice were examined, including: the scope and content of the right to a public hearing as enshrined in various constitutional and international instruments; the organisation of public oral hearings in civil and criminal proceedings and the relevant challenges of the information society (such as the broadcasting or televising of hearings and the use of social media in the courtroom); the level of transparency in the processes of appointing and selecting judges, as well as the phenomenon of vanishing trials and the privatisation of justice in the form of arbitration and other ADR mechanisms. These matters are taken up and discussed throughout this volume by a number of distinguished commentators.

The variety of issues explored in this volume, and the approaches adopted by authors from diverse backgrounds, add a valuable comparative dimension to the contemporary discussions of the open justice principle. At the same time, this project provides an insight into one of the core research fields of the Max Planck Institute in Luxembourg; namely comparative procedural law. The topic at hand not only concerns the principle of open justice as an overarching and constitutional principle of procedural law, it also demonstrates the ways in which technical and societal changes impact law and courts more generally. For some, these developments require that existing legal texts and traditions be interpreted as ‘living instruments’ in order to adapt them to the needs and challenges of

*Foreword*

present times. If public awareness of what happens in courts serves to reinforce public confidence in the administration of justice, the question posed today is how best to achieve such increased awareness whilst, at the same time, paying heed to the values of integrity and fairness of the modern judicial process.

Ultimately, the issue is one of redefining the role of courts in securing open justice in democratic societies functioning under the rule of law amidst constant societal, technological, political and cultural changes. One should not forget that courts increasingly face challenges to their legitimacy from populist and neo-fascist movements. In the present crises, a transparent and understandable justice system that is embedded within the democratic society as a whole seems to be more important than ever.

This publication is the work of its authors. The editors would like to express their gratitude to each of them for their efforts in contributing to this volume. Special thanks are due to Alex McCafferty for language editing of the manuscripts, and to Martin Buttermann, Lisa Monique Moersdorf and Laura-Renée Schmidt, for their proof-reading assistance. Finally, the editors would like to thank the Nomos Verlag for their support and guidance in the publishing process of this book.

In Luxembourg,

30 December 2018

Burkhard Hess and Ana Koprivica Harvey

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