

Alfonso Oñate Laborde

Legal Administrative Executive Secretary of the Mexican Supreme Court

August 14, 2009

Extract

Address: Access to Judicial Transparency

It is important to take into account that unlike other activities that the government engages in the jurisdictional role has a specific characteristic which is the fact that it does not have the democratic legitimacy that the other government agencies have, such as the legislative and executive bodies.

In the case of the judicial branch, it acquires legitimacy through the daily work of those who impart justice, which in the majority of our countries is at a regional level, unlike what happens in our northern neighbor. This legitimacy, which must be earned through its work, rulings and decisions, is absolutely essential and society's awareness must not be delayed of its role in conflict resolution not only peacefully and through third parties but in a way that is acceptable and convincing for society in whose midst these kinds of rulings are adopted.

This makes it imperative that society is aware not only what the judgment is in a concrete case but what are the reasons for such a decision rather than another being made, and what are the arguments, the bases, the reasoning that those who are responsible for imparting justice have for reaching that decision instead of another.

Transparency in the justice system, unlike other government agencies, needs, requires, openness and, where allowed, that citizens in general see how decisions and rulings are arrived at.

But it not only requires transparency. One of the legal problems that countries in our hemisphere or sub-continent suffer from is that these are not only predominantly in writing but, what is even more complicated, extremely formal and in a language only understood by those in the know which makes it extremely difficult to understand the sense behind or significance of the decisions, even for the legal community itself,

Thus the job that the news media are called upon to perform of transmitting judicial decisions --often a truly Titanic effort -- having to translate technical and unsynchronized language that legal groups tend to employ into clear language that is understandable by the rest of society.

From here arises the need for news media that are not only know how to relay information that is to the point and pertinent, factual and accurate, what happens in the forum and what happens in the courts, but they must do so in a way that at least makes what the judges say more comprehensible.

This raises a number of problems for those who are dedicated to the mission of reporting or acting as go-betweens between the work of the justice system and the public, who at times are eager and at times apathetic to learn of the resolutions because they do not perceive them as being in their own interests,..a job that is often difficult to do, if not impossible.

The matters that usually attract the attention of the news media, and, that when all is said and done attract the attention of newspaper readers, television viewers or radio listeners, are those that have to do with crime, what

in Mexico has come to be known as the “red note.” Nonetheless, the red note and these criminal matters that attract attention, whether because of the victim’s personal profile or that of the those who commit a crime, must transcend the aspects that attract attention and dig deeper into a far more serious phenomenon. And that is no small thing...rather the peaceful resolution of controversies by an impartial third party.

News media often transform what are already commonly called parallel trials, cases in which even before trials taking place and the law taking its course they draw conclusions, often establishing guilt based on the premises behind the prosecutions arguments. This makes people take sides and removes from the proceedings from the opportunity to challenge the facts and demonstrate that the supporting elements are not sufficient to apply beyond any reasonable doubt the guilt of an alleged implicated or accused person. The people at large are anxious to participate and see how the judges rule.

The work of the judiciary, and in particular its role, is beginning to occupy a place that it was previously denied; often being simply ignored. Nevertheless, the very work of our democratic institutions has gained relevance and has provided a role that the judiciary did not have before.

Judicial groups frequently complain that the media distort rulings. It is also frequently said that the media complain that the language used by those who impart justice is incomprehensible. What this brings as a consequence is that a society anxious for accurate and timely information does not get what it wants, or what corresponds to the courts’ rulings, or distorts it, or in the worst case gets biased versions depending on what role is played by the parties involved in the reporting and dissemination of news, or on occasion distorting the very ruling or questioning it.

This raises the need for a dialogue between the jurisdictional entities and the news media, as two parties or two functions that need each other and that should be constructing a common language.

One point that becomes fundamental is that jurisdictional entities understand the media’s need for news, that media understand the language the judiciary uses, and that between them they construct a language that is accessible and understandable by the people. Only this way will the role of the judiciary be understood and only thus will it be possible to achieve something that democratic societies require, which is healthy criticism of the government. This is one of the requirements of transparency and one of the building blocks for the rendering of accounts by government agencies.

One cannot aspire to unanimity, or even to a majority of society approving rulings or not; but we must demand that the reasons and the arguments by which rulings are reached are understood.

It is imperative that the judiciary understand the role of the media and secondly that the media understand the judiciary. And that for this it is essential to have a common language and one that is increasingly understood by society at large, by the world in general that is interested in the work of the justice system as one of the means for peaceful coexistence within democratic society.