

The principle of publicity as a constitutional category with special focus on civil contested procedure

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ABSTRACT

One of the basic principles in civil contested procedure is the principle of publicity. Our aim in this scientific paper is to address this principle from all legal points of view in order to make a concrete review of what the principle of publicity in civil contested procedure implies, and how this principle is guaranteed based on legal acts, since in order to have regular judicial process it is necessary to respect all rights and procedures that are guaranteed by legal acts, and among them the principle of publicity plays a key role. The importance of this scientific paper consists in how it addresses several comparative legal aspects regarding the principle of publicity as a constitutional category under Article 6 (1) of the European Convention on Human Rights, and in the legislations of Kosovo, Albania, and North Macedonia. We also address the principle of publicity as a fundamental principle in civil contested procedure, the violation of legal rules related to publicity, and the exclusion of the public from trial. Therefore, bearing in mind the importance of the right to a fair trial, we address the principle of publicity, with special emphasis on contentious civil proceedings.

KEYWORDS

principle of publicity, first-instance court, court of appeals, parties, civil contested procedure

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1. INTRODUCTION

The principle of publicity is foreseen under Article 6 (1) of the European Convention on Human Rights of 1950 (hereinafter, ECHR). In order to have legal and fair decisions in court proceedings that are conducted in competent courts, in addition to other things, it is necessary to enforce legal provisions that also foresee the principle of publicity within regular judicial process. The principle of publicity is only one of the basic principles in civil contested procedure, and not complying with this principle constitutes an essential violation of the contentious provisions of the procedure.

The first-instance court, in order to resolve fairly a dispute between litigants, has the duty to implement provisions of the contested procedure, to fully ascertain the factual situation, and to fairly apply substantive law. In order to fairly resolve a dispute between litigants it is essential for the first-instance courts to undertake action that is according to the legislation in force. Acting in accordance with legal provisions is not an obligation solely for the first-instance court, but for all courts and judicial systems generally.

The main reason I have decided to handle the principle of publicity in scientific terms has to do with the fact that it is extremely important that this principle be applied by courts in cases when such a thing is allowed by legal acts. However, this scientific paper also focuses on cases when the public should be excluded from trials, and when they could be. This is because the purpose of the legislator, according to the applicable legislation, is to fairly and lawfully resolve disputes between litigants, but also preserve the personal rights of the parties, in certain cases including the preservation of confidential data, etc. It should be kept in mind that allowing and excluding the principle of publicity from a trial is foreseen by legal acts in order to ensure the fair action of courts. Conducting public trials is considered to be a good possibility for interested adult-age persons, in addition to the parties, representatives of the parties, and the intervenors, to participate in court hearings. This implies that holding public trials before the first-instance court results in increasing the transparency of the courts concerning the conduct of court proceedings and in rendering decisions without violation. The competent court, after reviewing the disputed case of the parties, renders a decision, and promulgates the same publicly in accordance with what is foreseen by applicable legislation.

2. SEVERAL COMPARATIVE LEGAL ISSUES CONCERNING THE PRINCIPLE OF PUBLICITY AS A CONSTITUTIONAL CATEGORY

2.1. The principle of publicity under Article 6 (1) of the European Convention on Human Rights

The principle of publicity, due to its importance, is guaranteed by the European Convention on Human Rights¹ (ECHR) Article 6, paragraph 1, which states the following: ‘... Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests

¹The right to a fair trial, Article 6 of the [European Convention on Human Rights, 1950](#). See Hess and Koprivica Harvey (2019).



of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.’ If we carefully analyze all that is foreseen by Article 6 of the ECHR regarding the right to a fair trial, it can be observed that within this article of the Convention many rights are included for the parties in court proceedings, among them also the principle of publicity.

So, in principle hearings are public, but from the definition of this principle in Article 6 (1) of the ECHR it can be said that in certain cases we may encounter the restriction or exclusion of the public from a court session in the cases when this is in the interest of morality, public order, or national security, when we are dealing with the purpose of protecting the interests of minors, or for protecting the private life of the parties in the process, and in cases when publicity would harm the interests of justice. This implies that in cases when the court considers that the personal rights of the parties would be injured if the principle of publicity were applied in the court session, then the court, based on what applicable legislation foresees, shall exclude the public from trial so that the actions undertaken by the competent court are fair. Hence, as emphasized in principle, trials are public; however, in cases foreseen by this Convention which provides for the exclusion of publicity of trial, then the participation of media and public in the hall where the court hearing is held shall be prohibited.²

Also, Article 6 paragraph 1 of the ECHR provides that a decision by the court must be rendered publicly. However, it is understandable that in order to reach this stage of procedure related to the promulgation of decision by the competent court that has decided on the legal matter of the parties, it is extremely important that the entire procedure conducted in court is in full compliance with what is foreseen according to regular process. This implies that the reviewing of a case in the competent court and the public promulgation of a decision should be made in accordance with this Convention and in a cumulative manner, thus entirely. ECtHR jurisprudence has provided a very clear interpretation of this principle, which has been enriched under the ECHR.³

2.2. The principle of publicity under Republic of Kosovo legislation

It is important to emphasize that under Article 22, paragraph 2 of the [Constitution of the Republic of Kosovo 2008](#) (hereinafter: CRK), the ‘direct implementation of International Agreements and Instruments’ is specifically foreseen. Among other things, the latter states that human rights guaranteed by international instruments included under this article are directly applicable in the Republic of Kosovo. Among these instruments is also the European Convention on Human Rights. Hence, the provisions of the ECHR, which guarantee human rights, are directly applicable in the Republic of Kosovo as norms at the constitutional level. Accordingly, referring to Article 53 of the CRK is foreseen, as follows in the ‘Interpretation of the Provisions on Human Rights’, where it is specifically stated that ‘human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted in accordance with the judicial decisions of the European Court of Human Rights.’ Therefore, the human rights

²See more Guidelines on Article 6 of the European Convention on Human Rights - The Right to a Regular Process (Civil Aspects), [Council of Europe/European Court of Human Rights \(2013\)](#) 46–49.

³See Guide on Article 6 of the European Convention on Human Rights, Right to a fair trial (civil limb) (2013).



guaranteed by the ECHR and interpreted in the spirit of the decisions of the European Court of Human Rights have a constitutional character in the Republic of Kosovo.

The principle of publicity is also guaranteed by the Constitution of the Republic of Kosovo⁴ of 2008 as one of the basic principles in judicial proceedings that has as its main goal the full realization of fundamental human rights without any discrimination, but always in accordance with legislation and best legal practice. Thus, Article 31 paragraph 2 of the CRK states the following: 'Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.' It is also important to specify that Article 31 paragraph 3 of the CRK, regarding the publicity of trials, specifically states that trials are public but that in special circumstances that are in the interest of justice, in the interest of juveniles and the protection of the private life of the party in process, etc., the competent court will exclude the public from trial.⁵ Therefore, the right to a fair and impartial trial is guaranteed by the CRK.⁶

Hence, also according to CRK⁷ is foreseen the right to a fair and impartial public hearing. However, within the framework of Article 31 of the CRK, special emphasis is awarded to legal case resolution within a reasonable deadline, as in Article 6 (1) of the ECHR,⁸ among other stipulations. In addition to the reasonable deadline, special importance is also paid to the performance of work by the judiciary impartially and independently. The guarantee of the principle of publicity, therefore, is through the constitution as the highest legal act⁹ – accordingly, the former has specifically been regulated by special laws in relevant court proceedings, but always in accordance with the constitution. Based on what is guaranteed by the CRK, special laws determine the application of public trial and cases when the public should or can be excluded from a trial. Thus, Article 7 paragraph 4 of Law no. 06/L-054 on the Courts¹⁰ (hereinafter: LC) expressly foresees that 'all court hearings will be open to the public unless otherwise provided by law.' Accordingly, contested procedure in Kosovo has been entirely regulated by Law No. 03/L-006 on Contested Procedure¹¹ (hereinafter: LCP), and under Article 4, paragraph 1 of this Law, the application of the principle of publicity, among other things, is foreseen in accordance with legal provisions.

2.3. The principle of publicity according to legislation of the Republic of Albania

Also, the principle of publicity is guaranteed based on the Constitution of the Republic of Albania,¹² in relation to which Article 42 paragraph 2 states the following: 'Everyone, for the

⁴The Constitution of the Republic of Kosovo (2008).

⁵See Article 31, paragraph 3 of the [Constitution of the Republic of Kosovo, 2008](#); also, we have handled these cases in detail in this scientific paper in the part that has to do with the exclusion of the public from the trial.

⁶See more [Hasani and Ivan \(2013\)](#) 105–11.

⁷See [Judicial Practice Bulletin 2020](#) of the Constitutional Court of the Republic of Kosovo, 2020.

⁸Pursuant to the [Constitution of the Republic of Kosovo, 2008](#), Article 22 point 2, the European Convention on Human Rights, is directly applicable in the Republic of Kosovo.

⁹Article 16 paragraph 1 of the [Constitution of the Republic of Kosovo, 2008](#).

¹⁰Law No. 06/L - 054 on Courts, 2018.

¹¹Law no. 03/L-006 on Contested Procedure, 2008.

¹²Constitution of the Republic of Albania, 1998.



protection of his constitutional and legal rights, freedoms and interests, or in the case of accusations submitted against him, is entitled to a fair and public trial within a reasonable time by an independent and impartial tribunal established by law.’ Accordingly, concerning the promulgation of court decisions, in Article 146 paragraph 2 of the Albanian Constitution it is foreseen that ‘court decisions are promulgated publicly in each case.’ Hence also based on this constitution the right to a fair and public trial is guaranteed by emphasizing the resolution of a legal case within a reasonable deadline and the promulgation of court decisions. In order to have a fair trial it is important that all the rights mentioned in these articles of the constitution are fully enforced.¹³

The Constitution of Albania guarantees the principle of publicity, while regulating this principle in detail in civil procedure is foreseen by the Civil Procedure Code of the Republic of Albania¹⁴ (hereinafter: CPCRA), where Article 26 states the following: ‘Court hearings are open unless otherwise provided by this Code. The court may not allow the participation of the media when it comes to conclusion that it is not in the interest of the trial. In any case the final decision of court shall be publicly promulgated.’¹⁵ However, as may also be seen according to CPCRA, in principle court hearings are open, but in cases foreseen by this Code there may be exclusions if they are in the interest of the trial, whereas the final decision of the court shall be publicly promulgated by the competent court which renders the decision concerning the civil legal issue of the parties.

With regard to Article 26 of CPCRA, the right and court discretion to exclude the media in cases when it is concluded that it is in the interest of the trial may also be noted. In cases when – based on what is foreseen by applicable legislation, and after an assessment is made – there are circumstances for excluding the public from trial, then the competent court renders a decision to exclude the public from the court hearing. It is also important to emphasize that the cases in which the participation of media and public at a trial are not allowed have been expressly defined by Article 173 of CPCRA.¹⁶

2.4. The principle of publicity according to legislation of the Republic of North Macedonia

The Republic of North Macedonia also provides according to the Constitution¹⁷ the principle of publicity, in relation to which Article 102 states the following: ‘The examination before the courts and the imposition of judgment are public. The public may be excluded in cases stipulated by law.’ Hence, North Macedonia provides by constitution that the principle of publicity is a basic principle that should have adequate application in court proceedings, bearing in mind that we are dealing with a principle that is of a constitutional category. As can be noted, the Constitution of the Republic of North Macedonia foresees public trial in the competent courts,

¹³See the Constitutional Court of the Republic of Albania, Decisions according to the articles of the ECHR at [link 1](#).

¹⁴Law No. 8116, dated 29. 3. 1996, Civil Procedure Code of the Republic of Albania, 1996.

¹⁵Article 26 of the Civil Procedure Code of the Republic of Albania, 1996 (Amended the second paragraph of Law No. 8812, dated 17. 5. 2001). Also, see *Kola Tafaj and Vokshi (2013)* 84–86.

¹⁶See more Article 173 of the Civil Procedure Code of the Republic of Albania, 1996; *Vasili (2010)* 118–19.

¹⁷Constitution of the Republic of North Macedonia, 1991.



the promulgation of judgment, and the potential exclusion of public from trial. Because all three of these issues are extremely important for a regular process, they are therefore foreseen within Article 102 of the Constitution of North Macedonia. Even in the case of the Constitution of Northern Macedonia, referring to Articles 8 and 118, the observance of the international legal acts which have been ratified in accordance with the constitution can clearly be seen.¹⁸ Article 118 of the Constitution of Northern Macedonia states the following: 'International agreements which have been ratified in accordance with the Constitution are part of the domestic legal order and cannot be amended by law.'

Accordingly, in a concrete way, the issue of publicity in examination before the courts in the case of contentious civil procedures is determined by the Law. Thus, Article 4 of the Law on Contested Procedure of North Macedonia¹⁹ in relation to the principle of publicity states the following: 'The court decides on the lawsuit, duly, on the basis of oral, direct and public discussion.' Thus, even according to this Law of North Macedonia, the review of disputed cases between litigants is verbal, direct, and public, but always in accordance with the legal provisions, because in the cases provided by legal acts there are exceptions from the principle of publicity.²⁰ Within this Law on Contested Procedure of North Macedonia, special emphasis is placed on the verbal principle, so that the parties or their representatives are given the opportunity to declare themselves before the competent court regarding the legal issue.

Thus, North Macedonia through the constitution also guarantees the publicity of trials, while the manner of application of this principle in contentious civil procedures is determined by the Law on Contested Procedure. Based on this Law, it is foreseen that, in principle, court sessions are public.²¹ However, Article 293 of the Law on Contested Procedure of North Macedonia also defines cases when the court may exclude the public from a trial.²²

3. THE PRINCIPLE OF PUBLICITY AS A FUNDAMENTAL PRINCIPLE IN CIVIL CONTESTED PROCEDURE

In civil contested procedure, the principle of publicity²³ is of special importance in the case of conducting a court hearing that involves contentious issues between the litigants. The practical implementation of this principle is associated with having public observation of the work of the court in relation to conducting the procedure and resolution of disputed cases between litigants. I think that the importance of the principle of publicity should be seen in the application of all that is provided by the constitution and law by the competent court, bearing in mind the fact that the right to a public trial is foreseen by the CRP. In cases when legal provisions decisively provide for the exclusion of the public from a trial, then publicity in the court hearing is prohibited. If this principle is not applied based on what is determined by the constitution and

¹⁸See Imeri (2006) 242.

¹⁹Law on Contested Procedure of Macedonia, 2005.

²⁰See Nuhiu and Qato (2016) 23.

²¹See Article 292, paragraph 1 of the Law on Contested Procedure of North Macedonia, 2005.

²²See Janevski and Zoroska-Kamilovska (2009) 91-92.

²³See Brestovci, Morina and Qehaja (2017) 46.



law, then the court violates the procedural provisions. Hence, failure to comply with respect of this principle by the first-instance court involves as a consequence decision-making associated with essential violations of the provisions of the contentious procedure.²⁴

The principle of publicity does not imply the fact that the participation of interested adults in court hearings is mandatory, meaning that it is the right of the interested persons under conditions stipulated by law to participate in court hearings, but not an obligation. However, in order to ensure transparency for the general public it is foreseen through legal acts to have application of this principle in cases when it is allowed by legislation. Accordingly, regarding the presence of the parties, it is understandable that without the parties and the court there is no contentious process because these three subjects are fundamental in civil contentious procedure.²⁵ And the fundamental purpose of any judicial procedure and judicial system is entirely to create legal and fair judicial decisions. This is because the first-instance court,²⁶ in addition to the full ascertainment of the factual situation and fair application of substantive law, is obliged to act in accordance with the legal provisions of the contentious procedure. We say this because the violation of the principle of publicity by the court is a violation of procedural provisions.

The parties have the right to submit a claim to the competent court for resolution of a disputed legal issue; however, concerning the principle of publicity according to Article 4 paragraph 1 of the LCP, court hearings are public. Accordingly, according to Article 4 paragraph 3 of the LCP, the court shall consider cases in a non-public hearing only as provided by law. The exemption from the principle of publicity is intended to protect the private life of the parties in the proceedings and in relation to other issues specified by law, such as cases related to family matters, etc.

3.1. Violation of legal rules concerning publicity

First, it is important to emphasize that the courts adjudicate based on what is foreseen by the constitution and law,²⁷ and that non-compliance with the legal rules on publicity are among the absolute and essential violations of contested civil procedure provisions.²⁸ We have emphasized that the principle of publicity is a constitutional category in Kosovo according to Article 22 and 31 of the Constitution of Kosovo, and that the publicity of trial is also provided by Article 42 of the Constitution of Albania and by Article 102 of the Constitution of Northern Macedonia.

This is because it is guaranteed by international legal acts and by the constitution as the highest legal act, and then more specifically is determined by specific laws, depending on by what kind of procedure the trial is conducted. Violations of the contentious procedure provisions are distinguished in terms of the intensity that is associated with their impact on the issuance of an unfair decision by the first-instance court. Therefore, violations of the contentious procedure provisions are divided into absolute essential violations and relative essential violations.²⁹

²⁴See Article 182, paragraph 2, point *m* of Law no. 03/L-006 on Contested Procedure, 2008.

²⁵Brestovci (2006) 39.

²⁶Article 9, paragraph 1 of the Law No. 06/L - 054 on Courts, 2018, provides: 'The Basic Courts are courts of first instance in the territory of the Republic of Kosovo.'

²⁷Article 102, paragraph 3 of the Constitution of the Republic of Kosovo, 2008.

²⁸See Article 182, par. 2, point *m* of Law no. 03/L-006 on Contested Procedure, 2008; Article 343, paragraph 2, point 12 of the Law on Contested Procedure of North Macedonia, 2005; Qehaja and Ajeti (2018) 156-58.

²⁹See Article 182 of Law no. 03/L-006 on Contested Procedure, 2008. For more see Pozniq (1981) 361-63.



The relative essential violations of the contested procedure provisions are foreseen by Article 182 paragraph 1 of the LCP of Kosovo.³⁰ Based on what is determined by this article of the Law and based on the treatment of these violations in the legal doctrine, it is considered that in principle essential relative violations have an impact or may have an impact on the rendering of an unfair judgment by the first-instance court. However, for these violations, the issue to be assessed is whether the decision rendered by the court is included in these violations and how much these violations have affected the decision rendered by the first-instance court as unfair.³¹ In cases when the appellant alleges that the judgment rendered by the first-instance court contains relative essential violations, it is the appellant's duty to mention it in their appeal, because for these violations the court of appeals does not take account *ex officio* under Article 194 of the LCP.

Accordingly, concerning several absolute essential violations of contested procedure and for the application of substantive law, according to Article 194 of the LCP, the appellate court takes account *ex officio* in cases when the party has submitted an appeal against the first-instance court judgment. And among the absolute essential elements of contested procedure violations is also the infringement of the principle of publicity.³² Hence, if the first-instance court has acted contrary to what is determined by law regarding the holding of a public hearing, then it is considered that it has committed essential violations of the contentious procedure provisions.³³ In relation to violations of the contentious procedure provisions, the party may submit an appeal against the first-instance court judgment within the legal deadline for appeal.³⁴ The appellate court decides on the appeal of the appellant against the first-instance court judgment.³⁵ It is important to mention that the condition for the second-instance court to examine the first-instance court judgment is that the party has submitted the appeal within legal deadlines. It is the duty of the second-instance court to take care of this violation *ex officio*.³⁶

However, without an appeal there is no examination of the first-instance court judgment, while the appeal submitted by the appellant must contain the elements as provided by law³⁷ in order for the appeal submitted by the appellant to be considered complete. Hence, non-compliance with the legal rules on publicity are among the essential violations of the contested procedure provisions.³⁸

3.2. Exemption of public from the trial

Judicial publicity, as we have pointed out, is of particular importance in civil proceedings, but this principle is not unlimited, which implies that publicity of judgment is not absolute because

³⁰See Morina and Nikçi (2012) 357–59.

³¹Morina and Nikçi (2012) 363.

³²Article 182, paragraph 2, point *m* of Law no. 03/L-006 on Contested Procedure, 2008.

³³See Janevski and Zoroska-Kamilovska (2009) 92.

³⁴See Article 176, paragraph 1 of Law no. 03/L-006 on Contested Procedure, 2008.

³⁵Article 176 paragraph 3 of Law no. 03/L-006 on Contested Procedure, 2008, Article 22 paragraph 1, subparagraph 1.1. of Law No. 06/L - 054 on Courts, 2018.

³⁶See Article 194 of Law no. 03/L-006 on Contested Procedure, 2008.

³⁷See Article 178 of Law no. 03/L-006 on Contested Procedure, 2008.

³⁸See Article 343 paragraph 2, point 12 of the Law on Contested Procedure of North Macedonia, 2005.



in accordance with what is provided by applicable legislation, it is possible to have restrictions or exceptions to the publicity of the trial. Exceptions to the principle of publicity are also provided within the ECHR³⁹ because in several cases the presence of the public at court hearings may violate the personal interests of the parties in court proceedings.⁴⁰ In Article 31, paragraph 3 of the CRK are foreseen cases when there may be exemptions from the principle of publicity. It is stated that: 'Trials shall be open to the public except in limited circumstances in which the court determines that in the interest of justice the public or the media should be excluded because their presence would endanger public order, national security, the interests of minors or the privacy of parties in the process in accordance with law.' Hence, according to the constitution it may be foreseen in general terms in which cases exemptions from the principle of publicity may occur, because the failure to respect this provision of the CRK implies that the actions of the court have been undertaken in contrast to what is foreseen by the constitution as the highest legal act. Accordingly, also through Article 4, paragraph 3 of the LCP it is foreseen that: 'The court examines the case in a non-public session only in the cases determined by law' – which implies that there may be an exception to this principle in cases provided by law.

Pursuant to Article 444, paragraph 1 of the LCP of Kosovo, the main examination of cases is made public, so that in addition to the parties, their representatives, and intervenors, interested adult-age persons⁴¹ may also participate, under the conditions provided by law. Also, according to Article 445 of the LCP of Kosovo, 'the court allows, with a reasoned decision, that the adjudication of the case entirely or partially, is conducted in closed session/not public, only when: a) it is necessary to maintain an official secret and public order; b) when [...] trade secrets, or inventions are mentioned, due to which the publication of which interests protected by law would be violated; c) when circumstances from the private intimate life of the parties and other participants in the process are mentioned.' Therefore, through this law are determined some of the conditions and circumstances when the court can exclude the public from the court session. However, the cases for which the restriction or exemption from the principle of publicity are made must be grounded in accordance with applicable legislation, and based on the reasons which the court has deemed necessary to protect the personal interests of the parties such decision must be rendered. Who can take part in a closed-door trial is foreseen by law.⁴² The first-instance court in cases when it decides to hold a closed-door trial renders a ruling with reasoning and promulgates it publicly.⁴³ However, in contrast to this ruling, the competent court is not allowed special appeal.⁴⁴

The principle of publicity, in principle, applies to non-contentious procedure, but 'in the procedure where it is decided in relation to personal or family matters, publicity is excluded, except when the procedure is conducted for the declaration of death or due to death of a natural person.'⁴⁵ Hence, even in non-contentious procedure, there is an exception to the principle of

³⁹See Article 6 (1) of the [European Convention on Human Rights, 1950](#).

⁴⁰See [Zagorodnikov vs. Russia, § 26; B. and P. vs. the United Kingdom, § 39](#).

⁴¹See Article 444 paragraph 2 of [Law no. 03/L-006 on Contested Procedure, 2008](#).

⁴²See Article 446 of [Law no. 03/L-006 on Contested Procedure, 2008](#).

⁴³Article 447, paragraph 1 of [Law no. 03/L-006 on Contested Procedure, 2008](#). See Article 295 of the [Law on Contested Procedure of North Macedonia, 2005](#).

⁴⁴Article 447, paragraph 2 of [Law no. 03/L-006 on Contested Procedure, 2008](#). See [Morina and Nikçi \(2012\) 763](#).

⁴⁵Article 10, paragraph 2 of [Law no. 03/L-007 on non-contentious procedure, 2009](#).



publicity in the procedure when it comes to decisions concerning personal or family matters.⁴⁶ Article 10 of Law No. 03/L-007 on non-contentious proceedings (hereinafter: LNCP) is the central provision in this procedure regarding the exclusion of the public from the trial and in the case when publicity is not excluded, as is the case when the procedure is conducted in the case of the declaration of death or the death of the natural person.

Based on the analysis of court jurisprudence conducted with the purpose of understanding in which cases strict rules under the applicable laws apply to the exemption of the public from court hearings, it can be concluded that in proceedings related to marital disputes⁴⁷ there are exceptions because under Article 75 of Law No. 2004/32 Family Law of Kosovo⁴⁸ (hereinafter: FLK), the public is excluded from cases involving marital disputes. Due to the specifics of marital disputes,⁴⁹ the legislature has decisively determined that in these disputes the exception of the principle of publicity is permissible. Bearing in mind the sensitivity and personal nature of these disputes, we should in these cases make exceptions to the principle of publicity.⁵⁰ This implies that a contrary action of the court – not excluding the public from a court hearing in these cases – means that the court acted contrary to the applicable laws⁵¹ (in such cases, contrary to FLK).

Also, in adoption procedures we witness the exclusion of the public from the trial,⁵² which implies that it is required to protect in this case the personal rights of the adopted persons. According to the FLK, in the case of procedures associated with financial maintenance and alimony, there should be an exclusion of the public from the entire judicial process.⁵³ Even in disputes aimed at proving or contradicting paternity and in disputes related to custody of a minor, the exclusion of the public from the judicial process must be implemented.⁵⁴ Thus it is important that in cases when it is expressly provided by law and when the court considers it in the best interest of justice that the public should be excluded from trial, but always in accordance with applicable law.

4. CONCLUSION

Based on the material we have handled in this scientific paper, it can be clearly ascertained that the principle of publicity falls under the right to a fair trial. We have also emphasized that the principle of publicity is guaranteed by international legal acts and domestic legislation as one of the basic principles in contentious civil procedure. The application of the principle of publicity increases the transparency of the judiciary in front of the public, which implies that the public has the opportunity to attend court hearings in competent courts in cases foreseen by law. But the principle of publicity does not apply in all cases in court proceedings.

⁴⁶See Article 84 paragraph 1 of Law no. 03/L-007 on non-contentious procedure, 2009.

⁴⁷See Aliu and Gashi (2007) 168.

⁴⁸Law no. 2004/32 Law on Family of Kosovo, 2006.

⁴⁹See Podvorica (2011) 126–27.

⁵⁰See Gashi, Aliu and Vokshi (2012) 206.

⁵¹See Article 8 (1) European Convention on Human Rights, 1950, The Right to Respect for Private and Family Life.

⁵²See Article 181, paragraph 2 of Law no. 2004/32 Law on Family of Kosovo, 2006.

⁵³See Article 335 of Law no. 2004/32 Law on Family of Kosovo, 2006.

⁵⁴See Article 345 of Law no. 2004/32 Law on Family of Kosovo, 2006.



The principle of publicity, in several cases, is excluded by legal provisions that define when the public should be excluded from trial. Such cases where there shall be an exception to this principle are inevitably marital and family disputes, where due to the need for sensitivity to parties in the procedure there should be an exception to publicity and in other cases foreseen by law. Therefore, in these disputes open-door sessions do not take place. Exceptions to this principle in the judicial process also include those related to the protection of the interests of minors, adoption, and alimony.

The court may also exclude the public in cases related to the protection of official secrets and public order, when trade secrets or inventions or circumstances from the private lives of parties are mentioned, etc. However, this does not mean that there cannot be other cases when restrictions or exceptions to the principle of publicity are provided, but these are regulated by the constitution and the law.

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