Gulf Between Civil-Common Law Countries on Openness of Court Decisions

There is a huge gulf between civil and common law countries on openness around court decisions, according to research conducted recently by the Centre for Law and Democracy (CLD). Working with its partner, the Institute for Development of Freedom of Information (IDFI), based in the country of Georgia, CLD has noted that while civil law jurisdictions often refuse to provide the names of parties to cases, on the grounds that this is a breach of their privacy, in common law countries the practice is normally the reverse.

"*The European Court of Human Rights has never tackled this issue properly*", said Toby Mendel, Executive Director of CLD. "*It thus remains an area of lack of clarity for many countries, especially those which are trying to bring themselves into line with European standards.*"

CLD has prepared a paper on this issue, highlighting the contradictions and analysing the issue from a human rights perspective. The paper, which is cast as an initial foray into this complex issue, notes the overriding need to resolve the conflict between privacy and freedom of expression (and the included right to information) in this area. It also highlights the apparent contradiction between the strongly established principle of open justice and the idea of excluding names from cases, although it recognises that special considerations may be needed to take into account online distribution of cases. At a minimum, some sort of public interest balancing should be used to determine whether names remain on cases as they are distributed publicly.

The paper is available at:
https://www.law-democracy.org/live/wp-content/uploads/2017/03/Paper-on-Access-to-Court-Decisions.rev_.pdf CLD welcomes comments and feedback on its paper.

For further information, please contact:

Toby Mendel
Executive Director
Centre for Law and Democracy
Email: toby@law-democracy.org
+1 902 431-3688
www.law-democracy.org
twitter: @law_democracy