Litigants-in-person as intruders in court

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1. THE BUZZ AROUND PRO SE LITIGANTS

The common saying that “the lawyer who represents himself has a fool for a client”1 conveys the view held by many legal professionals. Self-represented litigants experience many difficulties, which range from having to manage various administrative tasks and legal matters to standing before court and interacting with legal professionals and witnesses. Yet many lay people do choose to represent themselves and self-representation is especially common in divorce cases and small claims cases.

Litigants opt for self-representation even in high-profile cases. The list of some of the notorious cases from the USA and UK is very versatile: John Allen Muhammad v. the Commonwealth of Virginia in 2003 (after presenting his opening speech, the defendant agreed to being represented by an attorney); Farhad v. United States in 1998-1999; USA v. Zacarias Moussaoui in 2002-2006 (the defendant was ordered to proceed with a court appointed attorney later in the course of the trial); Colin Ferguson v. USA in 1994; Kolen- der v. Lawson in 1983; David Irving v. Pinguin Books Ltd and Deborah Lipstadt in 2000; McDonald’s Corporation v. Helen Steel and David Morris in 1994-1996. There have also been cases with pro se litigants before International Criminal Tribunals2: a former president of Serbia and Yugoslavia, Slobodan Milošević, represented himself in 2002-2004; the first president of the Republic of Serbia, Radovan Karadžić, represented himself in 2008-2009.

Social, educational and financial background of the above-mentioned self-represented litigants widely varies; their reasons for representing themselves

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2 Ibidem.
also differ greatly. In general, one of the most common reasons for self-representation is the lack of financial means for counsel fees. In civil proceedings, litigants usually have to represent themselves in case they cannot afford a lawyer. In criminal proceedings, however, the court appoints an attorney or a counsel in order to ensure the fairness of the trial. Nonetheless, even in criminal cases litigants who distrust the appointed lawyers sometimes choose to represent themselves rather than deal with biased lawyers. Self-representation is also chosen by litigants who hold strong ideological believes and want to address the jury and witnesses in person in order to elicit sympathy from them.

Self-representation is not always a readily-available option and courts consider, for instance, mental health before granting litigants the right to represent themselves. In the past, there have been occasions when self-representation was misused. During the rape case in 1996 in the UK, the rape victim Julia Mason was subjected to a six-day long cross-examination conducted by Rastan Edwards, who was later convicted of raping her. The defendant kept asking his victim embarrassing and provocative questions about the rape. This particular case contributed to a reform, which has lead to the Youth Justice and Criminal Evidence Act 1999. Under the Act, it is no longer possible for the accused to cross-examine the victim; cross-examination would thus have to be conducted by a court appointed lawyer.

The phenomenon of self-representation has not been fully researched yet. The reasons for conducting a detailed research are manifold: the frequent occurrence of cases with self-represented litigants, the importance of the accessibility to justice, the significant influence the proceedings may have on the individuals’ lives, etc. The pioneering socio-linguistic analysis on lay people representing themselves during small claims cases was performed by O’Barr and Conley. Another strand of research was introduced by the author herself in a single-case study that has dealt with questioning strategies, interaction patterns and turn-taking management during cross-examination conducted by pro se litigants. Nonetheless, linguistic research on self-representa-

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