

JUDICIAL ETHICS AND PROFESSIONAL CONDUCT

JUDGES AND THE MEDIA: CLASH OR COOPERATION?

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Introduction. Courts and the Media.

Communication between judges and the media, the question of judicial power and the functions of the media and its place in a democratic country is a topic which never loses its urgency, taking into consideration that both of said powers just like legislative and executive power actually exists only to ensure the functions of a democratic and legal state.

Ideally both the judiciary in the capacity of the 3rd power and the media in the capacity of the 4th power fulfil their common task, which does not usually manifest in practical relationships. In view of the fact that communication is a bidirectional information exchange process, relationships between courts and the media and related communication problems can be examined from the viewpoint of courts and media. Meanwhile both parties must assume responsibility for the quality of communication.

Public trust in judicial power forms in accordance with the information which is received by the general public through the media and which pertains to the operation of the courts (judges) as well as potential violations and their investigation, at the same time situations involving the spread of misleading information in public which unfairly damages the prestige of judicial power should be prevented¹.

Since this is the age of communication the topicality and significance of this subject is revealed both at national and international level in ECtHR judgments, which examine the balance between freedom of speech and media obligations, the joint work of the Judicial Ethics Committee, the Ministry of Justice and the Supreme Court with special emphasis on communication with the media and Guidelines for communication with the media, agreed upon by Latvian judges, advocates and prosecutors.

Opinions differ regarding the relationship between courts and the media within the framework of a democratic society and evaluation of such relationships. On the one hand it is believed that a judge must abstain from commentaries and statements. The traditional view in Latvia is that a judge states in their judgment all that they have to say. In addition, a judge has no obligation to explain anything to participants in the proceedings or to the general public.

Is this a proper approach in the modern world when one can increasingly hear calls to talk, explain and tell about one's work?

¹ Decision of the Department of Administrative Cases, case No. SKA-370/2014 Constitutionality of confidentiality of information on disciplinary liability of a judge. 19.12.2014.

1. Ethical framework of judges — does the legal order solve communication problems?

Judges in Latvia just like in other countries regularly face various problems when it comes to relationships with the media, where lack of a proper legal order creates unnecessary tension and disturbs execution of judges' direct tasks.

The principles which rest on the basis of relationships between the judiciary and the media can be found in Article 6 of the European Convention of Human Rights², Articles 6 and 8 of the Basic Principles of the Independence of the Judiciary³, Recommendations CM/Rec(2010)12 of 17 November 2010 on judges: independence, efficiency and responsibility⁴ as well as the Bangalore Principles of Judicial Conduct⁵, but there are no detailed, legally binding international rules of conduct.⁶

Human rights standards applicable to relationships between the state and the individual assign to the judiciary as a whole and judges as individuals certain set of responsibilities. The positive responsibility: to be open and provide information which derives from the right to a fair trial, as reflected in the principle of publicity of proceedings. The negative responsibility: to withhold from providing information and commentaries, which also derives from the right to a fair trial, thus ensuring an unbiased trial.⁷

Behaviour guidelines at national level can be found in Sections 83 and 92 of the Constitution⁸, the Law on Judicial Power⁹ and the Code of Ethics For Latvian Judges (Code)¹⁰.

The Code shows what a judge should not do and say, that is, Paragraph 8 of Canon 3 states that a judge shall avoid words and phrases, gestures or other actions which could be interpreted as a manifestation of bias or prejudice; while Paragraf 12 prescribes that a judge shall not comment publicly on any pending proceedings in any way that could affect the outcome of such proceedings.

² European Convention of Human Rights. http://www.echr.coe.int/Documents/Convention_LAV.pdf

³ Basic Principles of the Independence of the Judiciary. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>

⁴ Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, <https://wcd.coe.int/ViewDoc.jsp?id=1707137>

⁵ The Bangalore Principles of Judicial Conduct (2002) http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf

⁶ Ethics, qualification and compliance of judges in Latvia: how not to stop at already achieved? V.Kalniņš, I.Kažoka, G.Litvins, Social policy center Providus. Riga. 2008. <http://providus.lv/article/tiesnesu-etika-kvalifikacija-un-atbildiba-latvija-ka-neapstaties-pie-sasniegta>

⁷ A.Kovaļevska. Work of judges in the focus of the media and public. Jurista Vārds.07.10.2014.No.39,p.10-13.

⁸ The Constitution of the Republic of Latvia; § 83: “Judges shall be independent and subject only to the law”, § 92: “Everyone has the right to defend his or her rights and lawful interests in a fair court”

⁹ Law on Judicial Power. <http://likumi.lv/doc.php?id=62847>

¹⁰ Ethics Code For Latvian Judges. <http://www.tiesas.lv/normatīvie-akti-3>.

Also the Law on Judicial Power stipulates that a judge has no right to disclose views expressed during deliberations¹¹.

The Code has not been amended since its adoption and no commentaries have been developed. Therefore until the creation of the Judicial Ethics Committee (JEC) in 2008, which explains the application of ethical standards to certain situations by means of its opinions, there was no systematic application of the Code except for disciplinary proceedings in the Disciplinary Board of Judges for gross violations of the Code.

Research conducted in 2008 found that the Code is partially outdated and does not contain an application mechanism, including communication between the judiciary and the media. Besides, the Constitution and procedural regulation sufficiently defines the activities of judges; rules of conduct are not subject to regulation, one either has or does not have an understanding of ethics, regardless of regulation; rules of conduct cannot be regulated as it is a matter of practice and many European countries do not have a code of ethics even though judicial power enjoys a relatively high level of confidence.¹²

The aforesaid proves that it is especially important to find a way to introduce and implement ethical principles and the Code is not merely a piece of a paper which should be observed although it is not obligatory¹³. Therefore the work of the JEC can be evaluated positively which in the light of certain cases — possible violations of rules of conduct by judges in communication with media — while opinions the by ethics commission can be evaluated as additional sources of rules of conduct.

Since its establishment back in 2008 the JEC has examined several dozens of cases. Relationships between judges and the media were reviewed in two of said cases.

On 13 December 2013 the JEC examined the answer of a judge to a journalist from Latvian Television in which the judge indicated that he was not going to comment on his transactions with real estate in front of the camera, and recommended learning more about the transactions and private life of other state officials (judges and prosecutors of the Constitutional Court).

In this specific case the JEC concluded that:

1) questions posed by the journalist were directed at the private life of the judge in the capacity of an official, yet in the light of the Code's canons and questions about private life which

¹¹ Section 11 (3.) No one has the right to require from a judge an account or explanations concerning how a particular matter was adjudicated, or also disclosure of views expressed during deliberations; Section 89 (3.) A judge does not have the right to disclose the confidential deliberations of judges and non-disclosable information which has been acquired during closed sittings of a court.

¹² Ibid 6.

¹³ Ethics cannot be confidential. I.Lase, 2003.13.05. Interview with Joel C.Martin, Executive Director of the American Bar Association Central European and Eurasian Law Initiative (CEELI).

is also interesting for the general public, the judge must, if needed, explain the issue in a respectful way without damaging public trust in both him as an official and the judiciary.

2) rules of conduct do not prohibit a judge from refusing to talk in front of the camera, because in communication with the media a judge is obliged to do all in his or her power which may be a reply to the question or a polite refusal to do so.

3) when choosing the type of communication the judge must bear in mind his communication skills and personal traits since the goal of communication is to satisfy the grounded interest of the public as such on the one hand and to protect his private life from exaggerated public interest on the other hand;

4) the judge's refusal to comment on transactions and instead indicating transactions and the private life of other officials does not reach the said goal and does not promote public trust in the judiciary;

5) a judge in the capacity of an official must always undertake responsibility for his own behaviour and actions; therefore when replying to a question of public importance he must simply explain his conduct or reasonably refuse to reply.

On 10 January 2014, examining an interview with a judge published in journal "Ir" where a judge had answered a journalist's questions with vulgar and even rude phrases¹⁴, the JEC indicated that:

1) a judge must behave in a respectful way and observe a high level of behavioural cultural standards, which also means that the judge must talk and write politely and use language which corresponds to the standards of literary language;

2) use of expressions and phrases which do not comply with the standards of literary language when there is no objective necessity to do so is not behaviour suitable for a judge, nor does it correspond to high level behavioural cultural standards. A judge must also not step away from standards of literary language in a tense situation because a judge always has to be prepared to be in the focus of society's attention and must adopt such restrictions of behaviour which might be inconvenient for a regular citizen. If a judge feels that it is very difficult to be self-restrained, it is better to finish the interview immediately.

In both cases the JEC concluded that the judge's behaviour did not comply with Article 4 of Canon 1, Articles 3, 4, 5 and 6 of Canon 2 of the Code.¹⁵

The fact that within eight years after establishment of the JEC only two opinions were provided does not mean that communication between the judiciary and the media is always successful.

¹⁴ Indra Sprance "Strence: Why not?" Ir, 6 December 2013

¹⁵ Opinions of Ethics Committee. <http://www.tiesas.lv/tiesnesu-etikas-komisijas-sedes>.

One cannot derive certain guidelines for communication with the media from the current regulation of ethical standards. If procedural regulation strictly stipulates certain procedural activities which, when and how a judge must take regarding examination of a case then the regulatory framework which the judge should use as a base when looking for the answer to the question whether the way he communicates with the media complies with the canons of ethical principles is formal. It does not provide answers as to how the judge should act, especially in unexpected situations when one must face an unpredictable and even aggressive attitude from the media.

Even though the obligation set forth in the Code to abstain from commentaries does not mean that a judge must not talk to the media at all, which is an individual choice, nevertheless it is hard to keep a balance between something that can be disclosed and something that cannot; sometimes judges are afraid of voicing their point of view since the media are not always objective.

2. Role of the media in forming an image of the judiciary and borders of freedom of speech

A negative image of the judiciary is a far-reaching problem of the Latvian judicial system.

Even though laws and courts ensure equal opportunities to participate in court proceedings and prove one's case, the general public holds a rigid view of an ineffective, unwieldy and slow judicial system.¹⁶

According to data provided by Eurobarometer in April 2008, only 27% of respondents had trust in the Latvian courts¹⁷ while data by Eurobarometer in 2014 show that 33% of respondents trust in the Latvian judicial system¹⁸. It can be concluded that residents' level of confidence in the judicial system is slightly increasing, which can be objectively explained by the fact that court reform launched in Latvia in 2009 aimed at providing legal, efficient, qualitative and socially appropriate operation of the Latvian judicial system.

Even though poor communication between the judiciary and the media is not the only reason for such public opinion, the role of the media in creating a negative image cannot be underestimated. Whilst media representatives indicate that the idea behind the media attitude is

¹⁶ G.Litvins. Power of law and provision of justice. How democratic is Latvia? Democracy audit 2005-2014. University of Latvia. 57.lpp.

¹⁷ Eurobarometer 69. Report on country, Latvia.
http://ec.europa.eu/public_opinion/archives/eb/eb69/eb69_lv_nat.pdf

¹⁸ Eurobarometer 82. National report. Latvia.
http://ec.europa.eu/public_opinion/archives/eb/eb82/eb82_lv_lv_nat.pdf

exaggerated, the influence of the media is not direct and the judgement of people regarding the way certain individuals and events should be evaluated is not directly influenced by publications in the media¹⁹, meanwhile both actual observations and public opinion surveys show exactly the opposite regarding the impact of information on public opinion.

Misleading information about the work of the judiciary, the image of the judiciary created in the media, to mention a few²⁰ — these are the reasons for public mistrust in the judiciary according to the findings of research "Reliability of Courts and Perception of Corruption in Court Activities in Latvia".

The scientific evidence is overwhelming, that pre-trial publicity casts remaining influence both to the general public and audience in proceedings as well as legal professionals, involved in the proceedings in their professional capacity so that the impact on their decision does not disappear even after several months and years.²¹

The work of judges is constantly in the focus of public and media attention and increased interest. The media gain ever-larger significance in ensuring the publicity of their work as their messages are conveyed to the wider public through communication channels.

The work of the media is based on guidelines derived from international principles pertaining to freedom of speech, namely, the right to receive information as an integral part of human rights and freedom of speech stipulated under Section 100 of the Constitution and international treaties to which Latvia is a party - Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 19 of the UN Universal Declaration of Human Rights of 10 December 1948²².

The work of the media in Latvia is regulated by the Law On the Press and Other Mass Media²³.

An effort to influence the media through the judicial system, namely to adopt amendments to the Law On the Press and Other Mass Media by prohibiting media from publishing the materials of a criminal case before trial in three instances and from publishing information obtained during pre-trial proceedings only with the written permission of the prosecutor or investigator in

¹⁹ Litvins G., Gailīte D. Conference on relationships between courts and politicians, media and public. Jurista Vārds, 22.04.2014., No. 16 (818), p 6-9.

²⁰ Reliability of Courts and Perception of Corruption in Court Activities in Latvia. A.Šņitņikovs, I.Kārklīņa. Rīga.2013.

²¹ Impact of pre-trial publicity on court rulings. V.Leja.

<https://prezi.com/gqljnpmshouu/pirmstiesas-publicitates-ietekme-uz-tiesas-nolemumiem/>

²² Universal Declaration of the Human Rights

²³ Law On the Press and Other Mass Media. <http://likumi.lv/doc.php?id=64879>

compliance with the European Union directive on the protection of victims of crime,²⁴ was bound to fail.

Nevertheless, the Ministry of Justice claims that such amendments were technical in their nature and actually they neither widen nor limit currently regulated rights. In the opinion of the media said amendments contradict international standards pertaining to freedom of speech and considerably restrict the rights of journalists to obtain information and also society's rights to receive such information. Media representatives evaluate the amendments as an "exaggerated effort to restrict invasion of personal privacy".²⁵

The freedom to criticize judges and other public officials is necessary to a vibrant democracy. The problem comes when healthy criticism is replaced with more destructive intimidation and sanctions.²⁶

However, the right to freedom of speech is not absolute and may be restricted when a person's right to freedom of speech is directly restricted by the rights of other persons and creates a potential and direct threat to society which is also contained in the restrictions on freedom of speech stipulated in Part 2 of Article 10 of ECHR and Section 116 of the Constitution²⁷ and in Section 7 of the Law On the Press and Other Mass Media.²⁸

It is therefore important to evaluate the necessity for restricting freedom of speech to ensure the authority and impartiality of the judiciary, taking into consideration the context, tone, and goal of a specific publication and other factors which may be crucial for a specific case.

The ECtHR has repeatedly emphasized the special "watchdog" role of the media in a democratic society in providing the public with information about issues which are important and topical for society.

Cases on defamation action against judges examined by the ECtHR are mainly related to protection of judicial authority and impartiality.

In the case of *Worm v. Austria* the ECtHR concluded that the notion "authority of the judiciary" includes the idea that courts are recognised as the most suitable place for settling judicial

²⁴ Directive 2011/36/EU of 25 October 2012 of the European Parliament and Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:LV:PDF>

²⁵ Sprinġe: failure to involve media representatives in developing Press Law amendments is called bad conduct. <http://www.tvnet.lv/zinas/viedokli/543938-springe-mediju-parstavju-neiesaistisanu-preses-likuma-grozijumu-izstrade-sauc-par-cucibu> (10.04.2015.)

²⁶ Sandra Day O'Connor

²⁷ § 116: The rights of persons set out in Articles [...] one hundred, [...] of the Constitution may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals.

²⁸ It is prohibited to publish information that injures the honour and dignity of natural persons and legal persons or slanders them.

disputes and finding guilt in criminal cases as well as the fact that society generally respects and trusts in the capacity of courts to carry out this task.²⁹

In the case of *Prager and Oberschlick v. Austria* it was established that activities of the judicial system are definitely related to the public interest and, taking into consideration the special role of the judiciary in ensuring fairness in a democratic society, judges must enjoy public trust to successfully complete their tasks. Therefore it might be necessary to protect that trust and confidence from destructive and ungrounded attacks.³⁰

The status of a judge is always associated with higher expectations from society regarding individual moral and professional traits. Therefore any accusation of unethical or illegal action may considerably damage the reputation of the specific individual concerned³¹.

The opposite is true in cases where it was established that, while politicians and representatives of authority must face more criticism than the average resident³², the ECtHR concluded that a judge, taking into consideration his position, has limited possibilities to refute accusations directed towards him or her.

The ECtHR admitted that the authority of the judiciary requires special protection against excessive criticism at the same time indicating that such protection is not absolute. In trying to evaluate whether criticism of the judiciary is acceptable, one must consider the actual basis and what is said and criticised, the importance of the issue in the eyes of society and whether the criticism does not exceed the borders of politeness; in addition, the right to criticise must be separated from³³calling someone names.³⁴

Quoting the pro-rector of Riga Graduate School of Law, Dr. iur. Mārtiņš Mīts, “*in cases of criticism of the judiciary, the media must in particular: carefully establish the actual information and understand the respective issue; rather than strengthening stereotypes about the courts (for example, that all courts are bad and slow), to comply with standards of professional ethics.*”³⁵

²⁹ ECHR *Worm v. Austria* (1997)

³⁰ ECHR *Prager and Oberschlick v. Austria* (1995).

³¹ *Ibid* 1.

³² ECHR *Lingens v. Austria* (1986).

³³ ECHR *Kobenter and Standard Verlag v. Austria* (2006).

³⁴ ECHR *Skalk v. Poland* (2003).

³⁵ *Ibid* 19.

3. Media and media ethics

In line with Latvian regulations and case law the concept of the media must be understood as newspapers, magazines, bulletins and other periodical issues (issued not less than once in a three-month period, single circulation exceeds 100 copies), electronic mass media, newsreels, announcements by information agencies, audiovisual materials for dissemination and mass media operating by way of the internet and engaging in gathering, preparing and spreading information, namely aimed at economic operators of electronic communications — internet portals.³⁶

Besides, the European Court of Human Rights in its judgment of 10 October 2013 in the case of *Delfi v. Estonia*³⁷ found that the economic operator of electronic communications is perceived as the co-author of published commentaries if it yields a profit from placing commentaries and other activities of users. The Grand Chamber of the European Court of Human Rights will soon provide its evaluation on this significant issue, most probably expanding the concepts of media content and responsibility with contributions by authors of commentaries.

According to a statement by EU judge Prof., Dr.h.c., Assessor.iur., dipl. pol. Egils Levits, it is the public media that should ensure the public's right to be informed — to know its rights, provide residents with free access to laws and other normative acts, to receive comprehensible legal information³⁸.

Besides the public media, which are funded from government funds or funds which belong to the state and which are necessary, independent from profit, number of users or audience (e.g., Latvian Television, Latvian Radio, newspaper and internet portal Latvian Herald, including Lawyer's Word), there are the private media — television, radio, press. Recently there has been a growing trend — appearance of new private portals (pietiek.com, kompromat.lv, puaro.lv), which also considerably influence public opinion, while its content is more like tabloids and in terms of quality cannot compete with the offer of public media.

Characteristic traits of the Latvian private media are a small, fragmented market, many players which offer similar information, a fight for a limited audience.

³⁶ 17.10.2012. Judgment No.SKC-637/2012 of Senate, Civil Case Department Internet portal concept for the purpose of Law On the Press and Other Mass Media. http://at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/senata-civillietu-departaments/hronologiska-seciba_1/2012-hronologiska-seciba/

³⁷ ECHR, *Delfi v. Estonia* (2013).

³⁸ Z.Kalniņa. Strength and quality of public media — vital resource for development of the State of Latvia. 26.08.2010., www.lvportals.lv (24.04.2015)

The media has a special place in freedom of speech, they fulfil watchdog functions and inform about activities of judiciary. There is a belief that the media have the right to exaggerate and inform about issues which many do not like.³⁹

The special status of the media requires special liabilities, balancing other important interests, for instance, the authority of the judiciary, media must treat information with utmost care, yet "currently the structure of Latvian information and culture space is such that 1) there is almost no qualitative offers which help understanding our environment and solve our problems; 2) it is easy manipulated which also means that society can be easily manipulated".⁴⁰

One of the most important types of media responsibility is direct ethical responsibility because the degree of compliance with this standard defines the level of authority of the medium. "A good journalist would never present something as a true fact before it is confirmed by at least two impartial and mutually unaffiliated sources."⁴¹

Modern ethics codes are adopted from the code of ethics of the Society of Professional Journalists (1996). The four initial milestones of media ethics are: 1. Seek the truth and report it. 2. Minimize harm. 3. Act independently. 4. Be accountable and transparent.⁴²

Latvian media representatives, both the Union of Journalists and the Association of Journalists and separate representatives of the media have repeatedly tried to elaborate a single, unified ethics code for journalists yet failed — Latvian journalists do not find any common code of ethics binding⁴³.

The said fact shows that there are no criteria set forth in Latvia for the media to incorporate the principles of the Code of Ethics in routine work; there is no single institution which would examine the information responsibility of and ethical violations by the mass media⁴⁴.

Unlike the commissions of the legal profession — the Ethics Committee of Judiciary and the Ethics Committee of Advocates — media professionals have no institution which would apply and interpret ethical principles and which would have comprehensive and respectable impact on the work of journalists.

³⁹ M.Mits. Borders for criticism of court – European Convention for the Protection of Human Rights and Fundamental Freedoms standards and practice in Latvia. Conference “Courts in legal culture space”. Bulletin No.9/2014 of the Supreme Court of LR. pp. 31-34.

⁴⁰ Ibid.

⁴¹ Ibid 14.

⁴² Plaisance, L., P. (2009) MEDIA ETHICS Key Principles for Responsible Practice. [online] pp.29-30. Retrieved: November 26, 2013, Available: SAGE Publication database.

⁴³ Judgment in case No 2003-05-01, §13 of 29 October 2003 by the Constitutional Court.

⁴⁴ Commission of Journalists' Ethics accepts and examines complaints only about violations of the ethics code made by the members of Association of Journalists. <http://www.latvijaszurnalisti.lv/etikas-komisijs/ka-iesniegt-sudzibu/> (10.05.2015.)

4. Problems in the judiciary's external communication with the media

The media play a significant role in formation of perceptions of the judiciary, particularly bearing in mind that a relatively small number of residents face court proceedings directly.

Surveys show that residents generally trust the media more than the majority of state bodies⁴⁵, including the court, which is why information spread by the first is perceived as reliable.

When analysing communication between the court and the media one should note the following:

1) different types of communication, depending on whether a written or oral interview takes place, and also whether the interview is planned and coordinated in advance or it is a matter of the sudden and unexpected arrival of a news reporter in the court;

2) the specifics of news information require a quick reaction from the media, hence a judge often has to face sudden and unexpected interest from the media about a particular case, a journalist's requests for an interview about progress in a case or simply a judgement announced in front of the television cameras, media try to get an interview as soon as possible, trying to catch a judge in the most unpredictable situations, while the average judge is not prepared to be interviewed in front of the camera;

3) a more positive example of cooperation between the judiciary and the media is public discussions where several individuals express their views, interviews planned in advance and for which one can prepare as the questions are sent before the interview;

4) development of modern technologies and technical potential — if 20 years ago the printed media, television and radio were dominant, information was received with a certain time lapse, then today the public wants to receive information immediately in the most convenient way — internet, therefore term "journalist" has acquired another, much wider meaning;

5) development of procedural rights — a written procedure is used more often, thus ensuring a more efficient and faster examination of cases, reducing the possibility to attend hearings.

In order to give an insight into the way the media reflect information about the courts and proceedings, we will take a closer look at separate cases which sketch common trends in media communication with the courts, providing an understanding of the most beloved and popular topics in media when reflecting courts and judges.

⁴⁵ Ibid 18.

1) **Inefficiency of the judicial system.** Long court proceedings are often presented as a well-known common fact. *“Proceedings in Latvia last too long”*⁴⁶; *“Proceedings have not ended yet. One instance, the second and third. How come? Three years. I feel so deprived of rights, so helpless”*⁴⁷, *“Patient has been fighting for five years to receive compensation due to mistake permitted by doctors”*⁴⁸. The reasons behind long proceedings are being analysed, including the overload of courts due to insignificant cases: *“The most imbecilic court proceedings in Latvia: a year-long litigation for theft of a bouillon cube. One of the main reasons is that courts are loaded with many unnecessary cases. The ones which are not worth a dime”*⁴⁹.

There are also positive cases in the background of a huge amount of negative ones; the judge replaced the advocate for the offender, who happened to be ill several times, with a state paid advocate which was evaluated as a positive change in affecting the terms of proceedings: *“this proves that the court, if it wants, can solve difficult situations, courts found a way to fight against unfair advocates who delay proceedings by means of sick notes”*.⁵⁰

2) **Latvia and the ECtHR** The media focus on proceedings directed against Latvia in the ECtHR on a regular basis by attracting attention with clear-cut headlines: *“Million euro mistakes empty the state purse”*⁵¹, *“Judges make mistakes, state pays”*⁵², *“Every fifth lat on account of judges' mistakes”*⁵³, in which the media write about the numbers of cases Latvia has lost in ECtHR, mainly indicating that all of them are related to mistakes made by judges. Even though publications do not exclusively criticise the work of judges, commentaries to publications show that public opinion about the information covered in the article is mainly influenced by the loud headline and most probably the majority of readers do not even read the whole article.

The judiciary relatively seldom takes the opportunity reply to tactless media statements. Therefore the response by Supreme Court judges K.Torgāns and P.Gruziņš *“Impartiality and proportionality in crying down the work of the judiciary”*, can be evaluated positively as they explained the situation about the number of cases examined at the ECtHR and volume of

⁴⁶B.Rubesa: Court proceedings in Latvia are too long. <http://www.lsm.lv/lv/raksts/ekonomika/zinas/rubesa-latvija-var-investet-it-un-radoshajas-industrijas.a60336/>

⁴⁷ Plot in LTV Three years have passed since the murder of a youngster. <http://www.lsm.lv/lv/raksts/cilvekstasti/dzive/aprit-triis-gadi-kopsh-jauniesha-slepkaviibas-tiesas-process-aiz.a110960/>

⁴⁸ Latvian radio reportage: <http://www.lsm.lv/lv/raksts/cilvekstasti/zinas/paciete-piecus-gadus-ciinas-par-kompensaciju-pec-arstu-kljudas.a67544/>

⁴⁹ A. Zandere *“The most imbecile court proceedings in Latvia: year-long litigation for theft of bouillon cube.”* Interview with A. Vaznis Diena, 06.04.2014.

⁵⁰ TV3, Nekā personīga. Advocate of Munkevics who has fallen ill repeatedly is replaced by state paid advocate. [http://www.tvnet.lv/zinas/latvija/544053-munkevica_saslimuso_advokati_aizstaj_valsts_apmaksats_aizstavis;2015.gada_18.janvaris_\(25.04.2015.\)](http://www.tvnet.lv/zinas/latvija/544053-munkevica_saslimuso_advokati_aizstaj_valsts_apmaksats_aizstavis;2015.gada_18.janvaris_(25.04.2015.))

⁵¹ Ģ.Zvirbulis. Million euro worth mistakes. Latvijas avīze.

⁵² <http://www.ekonomika.lv/tiesnesi-kludas-valsts-%E2%80%93-maksa/> (20.04.2015.)

⁵³ A.Lazdiņš. Every fifth lat on the account of judges. 18.04.2012. Diena.

compensations, comparing Latvia to other countries and emphasizing that criticism towards the judiciary is biased and exaggerated⁵⁴.

3) **Descriptions of court rulings and proceedings important for society.** The media turn to analysis of rulings and description of proceedings, journalists regularly express their opinion about court rulings, especially about compliance of a ruling with a certain situation: *“The Judge had surpassed himself. The decision is not only legally controversial, but clearly shows that the judge has not even tried to understand the merits of the application filed by the applicant”*⁵⁵.

The media follow litigation in cases which have gained wide media coverage on a regular basis. For example, the attention of the public and the media is focused on all issues examined related to the "Maxima tragedy"⁵⁶. One news report entitled *“Court turns down request by partners of firemen who died during the Zolitūde rescue operation”*⁵⁷, stated that *“cohabitation of a couple was confirmed both by documents and witnesses, yet judges supported the view of the Fire and Rescue Service that cohabitation is not marriage”*. Unfortunately the plot does not explain that Latvian laws do not equate actual cohabitation with marriage, therefore actual cohabitation of two individuals does not have the same legal consequences as in the case of a properly concluded marriage.⁵⁸

4) **Doubts about neutral attitude of the judiciary against all participants of court proceedings.** When reflecting the progress of several court proceedings, journalists sometimes express the opinion that the court is more favourable towards certain participants of proceedings which manifests as turning down requests regarding examination of evidence: *“Court turns down all 37 requests of Pupiņš family in the murder case of Elīna Pupiņa”*⁵⁹, *“relatives of murdered student Pupiņa might turn against Latvia in the ECtHR”*⁶⁰.

5) **Actions of individual judges and general description of the judicial system.** The media regularly inform society about ethical or disciplinary violations committed by judges, and

⁵⁴ K. Torgāns, P. Gruziņš “Impartiality and proportionality in crying down the work of the judiciary.” Ir, 22.05.2012.

⁵⁵ http://www.pietiek.com/raksti/par_tiesnesa_jura_freimana_lemumu. About decision by judge J. Freimanis. 23.09.2012.

⁵⁶ <http://www.leta.lv/eng/home/important/854145B2-41F3-4D57-B461-B2ADE302FF3C/>; Prosecutor's office brings charges against eight persons in Zolitūde tragedy case. LETA (17.04.2015.)

⁵⁷ LNT news; http://www.tvnet.lv/online_tv/43587-tiesa_noraida_zolitudes_tragedija_bojagajusa_glabeja_draudzenes_prasibu_par_civillaulibas_fakta_konstatesanu (06.05.2015)

⁵⁸ 01.02.2012. Judgement of the Department of Civil Cases of the Senate, case No SKC-4/2012, Legal status of actual cohabitation of two persons, <http://at.gov.lv/en/court-proceedings-in-the-supreme-court/archive-of-case-law-decisions/senate/chronological-order/2012/>

⁵⁹ BNS: <http://m.la.lv/tiesa-elinas-pupinas-slepkavibas-lieta-noraida-visus-pupinu-pieteiktos-37-lugumus/>; 23.03.2015. (24.04.2015)

⁶⁰ LETA: http://www.tvnet.lv/zinas/latvija/557664-noslepkavotas_students_pupinas_tuvinieki_varetu_versties_pret_latviju_ect; (27.04.2015.)

internet portal TVNET published information from LETA on 3 December 2014 "*One more disciplinary case brought against judge Buls*"⁶¹.

Considering the current situation of increasing mistrust of the public in both state power and judicial power, society is especially interested in receiving information about illegal or unethical actions by judges. Therefore the question about compliance with the restriction of information provision regarding examination of disciplinary cases of judges with freedom of speech stipulated under Section 11(6) of the Judicial Disciplinary Liability Law and Section 100 of the Constitution⁶² has become topical.

Relatively often headlines in media publications about judges or court proceedings feature the words "shocking" or "scandal".

Latvian case law does not have many cases when a judge has brought a claim against the media for information that injures reputation and dignity and the media had to undertake responsibility for their mistakes. After publication of "*Wealthy. Scandalous. Judge.*", a judge filed a claim in court. By judgement on 13 May 2013 by Riga Regional Court the claim for recovery of damages for moral prejudice and illegal defamation action was partially upheld to the advantage of the judge from LLC "Lattelecom" because in the portal which it maintains, apollo.lv, an article by L. Lapsa and K. Jančevska was published in 2007 which led to 5000 lats compensation for non-material damage.⁶³

Conclusions and generalizations of the entire judicial system and all judges are very common: "*Judges are like a united, closed family which do not criticise their black sheep in public and they hate anyone else to do that,*"⁶⁴ "*Court system needs a miracle cure*"⁶⁵.

6) General descriptions of court work. Articles about general descriptions of court work with emphasis on such factors as intensive load can be evaluated positively, while a negative attitude from the public creates additional psychological tension, information about functions and salary of court employees. Public media mainly publish informative and educative articles revealing amendments to laws regulating court work, interviews with advocates and lawyers, which help the public to understand the basics of court proceedings, procedure on appeal etc.

Even though self-initiative of judges in writing scientific publications and expressing their opinion mainly in public media — internet portal *Latvian Herald*, including *Lawyer's Word*,

⁶¹ http://www.tvnet.lv/zinas/latvija/537972-pret_tiesnesi_bulu_ierosinata_vel_viena_disciplinarlieta.28.11.2014.

⁶² Ibid 1

⁶³ "Judge Buls wins case on publication: Wealthy. Scandalous. Judge"

<http://www.delfi.lv/news/national/politics/tiesnesis-buls-uzvar-strida-par-publicaciju-turigs-skandalozs-tiesnesis.d?id=43638645#ixzz3XI0WMeFB> (24.04.2015.)

⁶⁴ I.Kuzmina. "Judges: without self-criticism". Latvijas avīze. 08.09.2014.

⁶⁵ I.Bērziņa. "Court system needs a miracle cure". Ir. 19.03.2015.

Politika.lv, Providus — can be evaluated positively, such publications generally involve difficult legal language and are actually aimed at those individuals who have an academic degree in law⁶⁶.

A good example of communication between the judiciary and the public in Latvia is the practice of Constitutional Court⁶⁷ and the Supreme Court⁶⁸, namely an internet site which is updated on a regular basis with press releases on actual issues.

There is no doubt that the work of the media when pointing out shortcomings in the judicial system and possible bad faith of judges can be evaluated positively since the public has a right to receive comprehensive information about the judiciary and its decisions.

However it can generally be concluded that the media has a tendency to emphasize mistakes and negative information within the judicial system while positive news is not stressed often, so that there is a lack of balance between the positive and negative content resulting in society's evaluation of the judiciary and its decisions less favourably than would be the case if done objectively. Information presented by the media creates an impression that courts work ineffectively, the public should doubt the existence of a fair judiciary or the inevitability of punishment which, possibly, is related to the fact that for media good news is bad news.

5. Why are judges unwilling to communicate?

Society expects the judiciary to lead fair and open court proceedings, immediately to inform the public about important proceedings and to provide an explanation of a court ruling in language that is understandable for everyone.

Meanwhile "the average" judge is aware of the fact that society really has a low degree of trust, he has had a bad experience in communication with the mass media and is afraid of a possible disciplinary case, is unwilling to participate in official public discussions, but is eager to share his views and opinions in informal talks.⁶⁹

Opinions of representatives of the judiciary have no single opinion about the relationship between courts, judges and the media.

Judge G.Višņakova points out: *"I do not agree that after reading a judgment the judge should give any interviews. All his thoughts and considerations should be included in the judgment.*

⁶⁶ Ibid 37

⁶⁷ <http://www.satv.tiesa.gov.lv/?lang=2>

⁶⁸ <http://at.gov.lv/en/>

⁶⁹ I. Kažoka. Trial of judges. 28.10.2008. [http://providus.lv/article/tiesnesu-tiesa\(08.05.2015.\)](http://providus.lv/article/tiesnesu-tiesa(08.05.2015.))

If any specifications are required during the interview it means that the judgment was incomplete".⁷⁰

Meanwhile in a conference of judges which took place in 2013 the Minister for Justice J.Bordāns stated: *"A judge must talk to the public in both a literal and a metaphorical sense. If a journalist poses a question, the opportunity should not be missed"*⁷¹, adds the Chairman of Latgale District Court K.Valdemiers *"I believe that the judge's commentary about motives behind the judgment do not cause any harm, even the contrary — it creates a better attitude towards the court"*.⁷²

So the opinions of representatives of the judiciary are completely opposite, there is no single position among judges, no joint understanding of the issues, including whether communication should be proactive (prepared and spread by themselves), reactive (responding to media questions or as a reaction to publications) or should not take place at all.

Unwillingness of judges to communicate with the public and the mass media can be explained by negative examples in expressing their opinion.

The "Individual" experience of Latvia — the ECtHR established the right to impartial trial in violation case *"Lavents v. Latvia"* in which the judge, before announcing the judgment, criticised in the mass media the behaviour of the defendant in court and expressed assumptions on the outcome of the case pointing out that *"has the judge really perceived so or it is the way a journalist has reflected it - this fact does not change the outcome of the case"*⁷³.

Unwillingness of judges to communicate with the public and mass media is also not encouraged by the quality of media work — 1) erroneous and superficial reflection of court work in the media; 2) ungrounded criticism of the court; 3) mistakes related to facts and wrong interpretation when reflecting some situation in court; 4) strategy — to use loud headlines and slogans which draw attention and is more characteristic of the tabloids.

Media expert A.Rožukalne admits: *"a qualitative media is possible if they are powerful and only in such cases they can fulfil the functions of the fourth power in society, but unfortunately the media in Latvia are not like that any more: the influence of newspapers decreases as the role of internet portals increases, besides the necessity to instantly post a large amount of information which would be simple and understandable for a very wide audience predominates."*⁷⁴

⁷⁰ Ibid 8.

⁷¹ Ibid.

⁷² R.Zvejniece. Judge must be able to separate personal from professional. LV portal, on law and state. 21.12.2009. [http://m.lvportals.lv/visi/viedokli/202368-tiesnesim-japrot-nodalit-personisko-no-profesionala/?show=coment&size=1&size=1\(04.05.2015.\)](http://m.lvportals.lv/visi/viedokli/202368-tiesnesim-japrot-nodalit-personisko-no-profesionala/?show=coment&size=1&size=1(04.05.2015.))

⁷³ ECHR *Lavents v. Latvia* (2002).

⁷⁴ Ibid 19.

Media experts admit that the main problems of the media are related to a lack of understanding of the objectives and tasks of media work, media owners are often people without special knowledge and education in the media field, which focus on profit for a possibly small investment, politicisation of the media, lack of government funds for the public media, investigative journalism, weakness and insufficient information on media owners⁷⁵.

In addition, political scientist of the Advanced Social and Political Research Institute of the Latvian University Dr. sc. pol. J. Ikstens in analysis of causes of society's critical attitude towards courts indicates: "81% of residents of Latvia are poorly informed about court cases and only 29% have participated in court proceedings." ⁷⁶

Therefore on the one hand in compliance with the canons judges have restrictions in expressing opinions to avoid violations, unwillingness to communicate is also brought about by negative examples from the practice of other judges, on the other hand unwillingness of judges to give interviews is related to the attitude of the media against the judiciary and the quality of their work.

6. Communication strategy of the judiciary with the media

Analysing the diverse communication with media one must conclude that a proper behaviour and competent provision of information in any of the media types is expected from a judge. Depending on each specific situation, the peculiarity of certain media, the type of interview and target audience it is necessary to select an appropriate communication strategy.

Reproaches from the media towards the judicial system include distancing from the media, failure to provide information or delayed provision of information, complicatedness of information, oversaturated with legal terminology and not understandable for the general public.

Lack of a joint communication strategy results in ignorance of judges on how to react to erroneous or critical media announcements, how extensive commentaries on the situation should be in addition to substantiation in the court ruling. Judges are not specially trained in communication with the media, which is especially true in the case of new judges.

Current regulation is too formal, is not effective and does not fulfil expectations. Opinions by the JEC acting as additional sources for rules of conduct are provided as a reaction to certain communication problems, yet they do not solve those lying ahead.

⁷⁵ A.Rožūkalne, G.Laganovskis. to LV portal: Poor quality content age in media is over. 26.03.2015. www.lvportals.lv (01.05.2015.)

⁷⁶ Ibid 19.

Therefore it is clear that judges need their own concept of public relations to specify good practice principles for judges derived from rules of conduct for communication with the media, taking into consideration existing practice and problems spotted in it.

Problems discussed in this paper — an insufficient level of confidence in the judiciary on the part of society, deficient reflection of court work in the media, ungrounded criticism of courts and judges are forced to quickly look for the most appropriate way to communicate with the media and the general public.

Even though indicators of relationships between the judiciary and the media in Latvia according to the 2015 EU Justice Scoreboard⁷⁷ do not differ significantly from indicators in other EU countries, there is a huge potential for improvement of communications between the courts (judges) and the media.

The question of elaborating joint guidelines for communication between the judiciary and the media has been on the agenda for a long time. There was previously an attempt to solve this issue — in 2003 the Ministry of Justice developed the project "Strengthening Communication in the Judicial System" within the framework of the UN Development Programme, the guidelines of which were not put into practice; hence the problems in communication were not averted.

Eventually only in 2014 the work group, which was established upon initiative of the Council for the Judiciary, includes representatives of the Judicial Ethics Committee, the Ministry of Justice and the Supreme Court and communication experts started a unique task — developing joint strategy and guidelines for communication with the media.

Since this is an attempt to agree upon communication which is a bilateral process, it would be advisable for media representatives to participate in developing guidelines. Unfortunately, the Association of Journalists has not responded to repeated invitations from the JEC and only individual journalists have taken the opportunity to discuss problems in communication between the judiciary and the media, about possible ways of communicating and solving problems.⁷⁸

The following was taken into consideration during elaboration of guidelines:

1) it is necessary to provide society with information about the functions of the judicial system, whilst journalists are not capable of sufficiently carrying out this task since they do not always understand or present events properly.

⁷⁷ Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions COM(2015) 116 final, diagram 27. Relations between courts and the press/ media.

⁷⁸ V.Sprudzāns. Overview of activities of Ethics Committee of Judges. BULLETIN No.7/2013. of the Supreme Court of LR. http://at.gov.lv/files/uploads/files/2_Par_Augstako_tiesu/Informativie_materiali/ATBiletens7_web.pdf (25.04.2015.)

2) growing interest of society in topicalities of the judicial system and wish to receive information about court activities do not allow courts to limit themselves to a minimum level of activities to ensure publicity and opportunity to attend public hearings and find out about court rulings.

3) instead of passive silence and waiting for individuals to show an interest in court work the courts should be more active and take the first step with directly provided information.

4) it is important to choose the most appropriate communication model for each court, that is to define whether information is provided by a press secretary, a specially trained judge or the chairman of the court;

5) it is necessary to separate cases when prompt and proper reaction is required on the part of judge in situations which must be solved but do not demand an immediate reaction.

The situation in Latvia is special because the idea of joint guidelines for communication of judges, prosecutors and advocates with media has already been introduced⁷⁹. This is a unique and innovative interdisciplinary solution. The idea of the necessity for such guidelines for communication with the media in Latvia was born during a conference within the framework of Lawyer's Day in which the impact of the media on court proceedings and cooperation by judiciary representatives with the media were discussed.

Conclusions

An important prerequisite for court development is productive cooperation with the public, which cannot be imagined without the active participation of the media and successful communication with the judiciary.

The image of the courts is significantly influenced by media information about the work of courts and judges. In order to ensure society's right to information and public trust in the judiciary, judges must definitely communicate with the media. The court's task is to provide the media with an operative possibility to obtain sufficient information that is understandable for the public.

Even though a positive evaluation of courts' image in the media is not the judiciary's end in itself, the courts could be more active in promoting public confidence and trust in the courts by providing technically suitable communication with the media and the public.

1. Since judges are not specially trained to communicate with the mass media but communication in a way is an art, a responsible official, i.e. press secretary, assistant to the

⁷⁹ Guidelines for communication with mass media. Jurista vārds. 10.03.2015.Nr.10(862)

chairman of the court or a specially trained judge should be appointed to communicate information pertaining to the work of the court and judges and court rulings to the media. Meanwhile talking about issues pertaining to the court and work of judges to the media is a right not an obligation of judges to avoid potential mistakes in delivering information.

2. The authors believe that regarding communication by the judge with the media over issues pertaining to private life and activities outside the work of the judge, each judge, depending on the particular situation, questions posed by journalists and behaviour, should choose whether to give an interview and answer the questions or turn it down.

3. Statistics of joint judiciary portal www.tiesas.lv show that by May 2015 it has been visited by more than 80,000 times a month which shows a huge interest of society in court work. The authors think that much better distant communication with the media and the public would be possible if each court could set up its homepage for news and information in the form of press releases reflecting cases interesting for the media and the public and keeping up a dialogue and providing answers to matters of interest.

4. Communication between judiciary and the media is a mutual relationship of both powers, therefore the next step would be to involve credible media representatives in implementation of guidelines.

5. In order to promote mutual communication between judges and the media it would be advisable to organise joint discussions with the participation of journalists and judges which would increase the understanding of people from other professions about court proceedings and standards of ethics.

Elaboration of certain strategy and guidelines with possible versions of action in certain situations would alleviate the work of judges and court staff. From the authors point of view the problem does not lie in the elaboration of guidelines as such; it is rather a matter of bringing them into everyday communication so that guidelines for communication between the judiciary and the media would not become another piece of paper without an implementation mechanism.