



European Network of Councils
for the Judiciary (ENCJ)

Reseau européen des Conseils
de la Justice (RECJ)

Public Confidence and the Image of Justice

ENCJ Report 2017-2018



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Introduction

Preamble

In addressing the title of the Project, “Public Confidence and the Image of Justice”, the principal aim of the Project Team has been to focus on the importance of communication by and from the judiciary.

The Project Team is of the view that, for the purposes of this project, public confidence should be analysed more from the perspective of how to improve and build upon the image of the judiciary by way of communication in written and oral form.

From the perspective of measuring public confidence, the Project Teams recommends the use of quantitative and qualitative surveys at least every three years, defining the relevant stakeholders and identifying those persons and bodies to be addressed by the judiciary in order to influence public confidence.

1) Description of the topic

A transparent and accountable judiciary of integrity is one of prerequisites for a proper functioning of the rule of law and the right to a fair, timely, and efficient trial by an independent and impartial court established by law. The ENCJ is aware of that, so in its Strategic plan for 2018-2021 the ENCJ reiterates (among other things) that *Councils for the Judiciary or similar independent bodies, in order to maintain the rule of law, must do all they can to ensure the maintenance of an open and transparent system of justice.*¹ Equally, an open and transparent system of justice is a further precondition for establishing and maintaining the Public trust in justice, which is a cornerstone of legitimacy of judiciary.

The ENCJ observes (according to the last public confidence surveys that were conducted in the light of the 2017 EU Justice Scoreboard) that low public confidence in the judiciary is still an issue, whereas the impact of media on the decisions of judges is increasing and is large in most countries (according to the 2016 Questionnaire among judges regarding their independence).

The ENCJ has therefore set up as one of its strategic goals for the period of 2018-2021 to promote understanding of and respect for judicial independence. The ENCJ believes that proactive (educational) attitude of the judiciary itself is indispensable in this regard and so it will be a priority topic of the ENCJ.

Therefore the ENCJ identified in its Work Plan 2017/2018² the need for a project which would be a continuation of the work carried out by three former Working Project Teams that worked on Public Confidence and the relations of the Judiciary, Media and Society.

The issues of relations between Judiciaries and the Media and the Public Confidence in Justice

¹ENCJ Strategic Plane 2018-2021, page 2:

https://www.encj.eu/images/stories/pdf/GA/Paris/encj_4_year_plan_2018_2021_adopted_ga_2017.pdf

²https://www.encj.eu/images/stories/pdf/GA/Paris/encj_work_plan_2017_2018.pdf

as a necessary prerequisite for the effective rule of law is not new. Judiciaries, legal professionals, and general public/media (practically all over the world) have been discussing it for some time.³

A common theme of most reflections (both international and national) on this issue is that Judiciary must have good, regular, and open relations with the Media and the Public and that this is one of the key pillars of Public Confidence in Justice.

Justice, society, and the media is also a topic of special interest for the ENCJ as all European Judiciaries face similar challenges in this area. The European Judiciary has been criticised for not being transparent, for being outdated and insular. But at the same time the Judiciary lacks a voice in the public debate, having held strong views that the Judiciary should only communicate with publicly through its decisions. Whether this remains the correct approach, *especially if the media misinforms the public*, was the focus of the ENCJ Project Team on Justice, Society and the Media 2011/2012. The Society has a right to be correctly informed about the functioning of the Judiciary and the justice system.⁴

This issue of public confidence and proper relations between Judiciaries, Societies and Media is one of ENCJ's policy priorities, repeatedly stated in past adopted recommendations, declarations, and resolutions⁵.

As it discusses these issues, this final report focuses on some subjects (subtopics), analysed in different chapters.

2) Objectives

The ENCJ wants the present project, named "Public Confidence and the Image of Justice", to look at various aspects of public confidence and the image of justice, and to identify remedies that can be taken by Councils for the Judiciary and other judicial authorities in order to improve

³Some newspaper articles and other websites:

Transparency of Judiciary and Responsibility of Media: <http://birn.eu.com/programmes/transparency-of-judiciary-and-responsibility-of-media/>

The Official Website of the Massachusetts Judicial Branch - Judiciary-Media Committee:

<http://www.mass.gov/courts/court-info/commissions-and-committees/judiciary-media-committee.html>

The judiciary and the media in the Netherlands: <https://www.rechtspraak.nl/SiteCollectionDocuments/The-Judiciary-and-the-Media-in-the-Netherlands.pdf>

Relationship between Judiciary and Media: <http://lawcenter.birzeit.edu/lawcenter/en/2012-10-31-07-50-52/389-Relationship%20between%20Judiciary%20and%20Media%20>

The working relationship between judges and the news media by James McLaughlin:

<https://www.rcfp.org/secret-justice-judicial-speech/working-relationship-between-judges-and-news-media>

The commonwealth judicial education institute chief justices' round-table discussion back ground paper for "the media and the judiciary in the democratic process": <http://cjei.org/publications/kaiser.html>

The Express Tribune, Judiciary and the Media: <https://tribune.com.pk/story/472239/judiciary-and-media/>

Fair Trial, Judiciary and Media: Need for Balance, By A Gowri Nair & Saipooja, School of Legal Studies, CUSAT: <https://www.lawctopus.com/academike/fair-trial-judiciary-media-need-balance/>

Media and judiciary, Dasu Krishnamoorthy: <http://www.thehoot.org/media-watch/law-and-policy/media-and-judiciary-2298>

⁴ENCJ Report on Justice, Society and the Media 2011-2012, page 2:

https://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_justice_society_media_def.pdf

⁵References to the previous activities of ENCJ and other international bodies related to this topic may be found in the annex 1.

the same. The main objective of the project is to identify best practices in communication matters in order to improve public confidence and the image of the judiciary, including communication with the other branches of power. The project does not establish minimum standards and therefore will not evaluate compliance of national judicial systems with the recommendations proposed by the project team.

The Work Plan suggests the following activities of the project:

- Study the ways in which the image of justice can be improved and public confidence can be influenced, and design a general action plan that can be used by national judicial authorities;
- Promote the development of a key message for the Councils based on core values (independence, transparency, accountability, efficiency/professionalism/quality, integrity, respect for court users);
- Map and identify best practices in judicial outreach activities;
- Study the relations with media in general and update the 2012 ENCJ report on Justice, Society and the Media especially as regards the role of Councils for the Judiciary.

The project also aims to check how the main recommendations that can be drawn out of the research of the Project Team Justice, Society and the Media had been implemented. These recommendations are:

1. All countries should develop and use a system of judicial spokesperson in the form of press judges and communication advisors, who should have a deep knowledge about the Judicial system, how to inform the public in an understandable language and who has social and media skills.
2. Audio and video recording may be allowed into the courtrooms as long there are special measures taken to protect non-professionals from being filmed and that there is a control system for the judge to stop filming whenever is necessary.
3. It is recommended to make clear guidelines on when use of smart phones and other communication devices are permitted, when not and what the procedure is in event of a breach.
4. Social media could be useful for the courts or the judicial bodies in their communication. It is recommended to develop a strategy, including target groups and goals for the use of each social media.
5. The Judiciary in each country should have a website under the responsibility of the Council for the Judiciary or the Courts Administration. Every court should have its own site on the website of the Judiciary. These websites should contain information for the professional, the press and the general public and should contain a database of judgments which is freely accessible for the public.
6. There is a need for regulation of the relations between the Judiciary and the media. Introducing a set of press guidelines, whether they are implemented by law or as a (morally or non-legal) binding protocol, is recommended. They can never interfere with existing legal

limitations. The press guidelines should be part of a national strategy plan with a planning and reporting cycle on communication with the media and society. Press guidelines should clarify the different goals and interests of both the Judiciary and the media. It should state what the media may expect of the staff of the courts and how the courts should deal with the needs of the media before, during and after court proceedings.

7. All countries are encouraged to develop a proactive media approach. This approach should be focused on individual court cases as well as the entire judicial system.

3) Outcomes

For the project: a report identifying common issues and possible solutions on the designated topics (set out above), which can be used by Councils for the Judiciary and other national judicial authorities, when assessing their communication methods or planning strategies or reforms.

For the judiciaries:

- Immediate results: to improve knowledge on which actions to undertake to increase public confidence and to improve image of the judiciaries
- Medium term results: improved public image of the judiciaries and better understanding of the role of the judiciary by the journalists and in society in general.
- Long term results: higher level of confidence in the judiciary and in institutions generally.

4) Methodology

- Researching and summarising any relevant information about previous approaches to this issue.
- Collection of relevant information by means of a questionnaire addressed to the Councils for the Judiciary represented in the project team, and to other ENCJ Members and Observers.
- Discussing and analysing the gathered information during several meetings.
- Preparing a report on joint findings, best practices and possible recommendations.
- Presenting the report to the General Assembly.

The countries who responded to the Questionnaire are the following: Albania, Austria, Belgium, Bulgaria, Croatia, Denmark, England and Wales, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Montenegro, Netherlands, Northern Ireland, Norway, Poland, Portugal, Romania, Scotland, Serbia, Slovakia, Slovenia, Spain.

5) The structure of the report

The report has an introductory part and 12 chapters as follows:

- 1. Measuring and analysing public confidence
- 2. Communication strategies
- 3. Communication instruments with media, other state powers and other legal professionals (advocates) and those who are regarded as the most influential actors in terms of promoting public confidence and the image of justice

- 4. The institution of the spokesperson(s) on behalf of the judiciary
- 5. Training in communication skills for everybody who has contact with the public within the judiciary
- 6. Social media, blogs, vlogs, sites
- 7. Brand equity and design
- 8. Crisis communication protocols
- 9. Audio visual recording in courtrooms and judicial councils' meetings
- 10. Procedures for defending the independence of the judiciary
- 11. Reaching out to the general public – examples of best practices
- 12. Future projects, main recommendations, conclusions

The chapters comprise relevant information based on responses to the questionnaire, examples of best practices and recommendations.

The report has 6 annexes.

Annex 1 Overview of ENCJ, European and International sources on Public Confidence

Annex 2 Overview of types of Communication strategies

Annex 3 ENCJ Questionnaire on Public Confidence and the Image of Justice

Annex 4 Overview of core message of national Councils / judiciaries

Annex 5 Profile press judges in the Netherlands

Annex 6 Overview of participating ENCJ Members and Observers

Chapter 1 Measuring and Analysing Public Confidence

1. Public confidence

Public confidence is vital for the independence of a nation's judiciary. Public trust in the European judiciaries varies significantly from country to country⁶. However, the level of trust cannot be viewed as distinct from the general differences between high trust societies, mainly in the north-west of Europe, and low trust societies, mainly in the south and east. Historical, social and economic reasons account for these differences.

There is insufficient data to conclude that public trust in the judiciary has been diminishing right across Europe. In three quarters of the countries the level of public trust in the judiciary is higher than in other branches of state powers.⁷ However, research in a number of countries, as well as anecdotal evidence, suggests that public confidence in the judiciary is eroding. This has provided opportunities for legislation, informal measures and media attacks affecting the independence of the judiciary. In the case of Poland, the European Commission has stated there is a clear risk of a serious breach of the rule of law.⁸ The project team is alarmed by these developments, and considers raising or stabilising public trust a priority for the judiciary.

2. Surveying public confidence

Set against these developments the project team stresses the need for a structured approach to the research and analysis of public confidence in the judiciary. A majority of countries conduct periodic surveys measuring trust in the judiciary among stakeholders.⁹ Nearly everywhere these surveys are complemented by media monitoring and personal conversations.¹⁰

Best Practice: Netherlands

The Netherlands Judicial Council reports every four months about the developments in public trust, sentiments in social and main stream media, web data and frequently asked questions and complaints. The judiciary conducts a questionnaire every three years, measuring all components that contribute to public trust among all relevant stakeholder groups: general public, court users, prosecutors, lawyers, and journalists, members of parliament, scientists and public policy makers, and representatives of public, social and non-governmental organisations. The reports and the survey's results are shared among the members of the Judiciary Council, court presidents, media judges and communications staff.

There are significant differences between countries in the frequency and quality of their questionnaires. Periodic surveys can establish trends and point to events that influence public trust. Given the relationship with the general level of trust in state institutions, to understand the position and to determine a course of action trends are more important than absolute numbers. *Therefore the project team recommends the implementation of surveys of public trust in ENCI member and observer countries at least every three years.*

When conducting these surveys, it should be understood that public trust is unevenly distributed among stakeholders. It is important to determine the main stakeholders that influence trust in the judiciary before carrying out a questionnaire. *If possible surveys should distinguish between all relevant stakeholders, but at least between the general public, court*

users, legal professionals, and judges and judicial staff. This will enable better targeted and therefore more efficient and cost effective action to improve public trust.

It is important that the judiciary *follows up quantitative surveys by qualitative research*, for instance by organising round tables, focus groups or formal consultations with the main stakeholder groups. This will provide feedback to inform some of the results of the survey and provide indications of how to improve trust among these stakeholders.

The project team notes that in almost all countries data on public trust from European, government or independent scientific research are available. Combined with media monitoring, personal conversations and round tables this can provide a quick and low cost starting point for a more structured approach to the analysis of public trust in the judiciary. The project team suggests that judiciaries should *publish surveys on public confidence*. This will both contribute to the debate on the role of the judiciary in society and provide valuable information and opinions from stakeholders.

3. Analysis of trends in public confidence

In the past few years it has gradually become clear that public trust in the judiciary is not simply determined by the way courts operate, but also by the way the judiciary communicates. Improving public trust by a more strategic way of communicating to the public and other stakeholders is the scope of the project team. Although three quarters of ENCJ members and observers have adopted some form of communication strategy, only one in three of these strategies is largely based upon the results of questionnaires, other research or systematic monitoring.¹¹

Best practice: Norway

The Norwegian Court Administration described the reasons for the high level of trust in the judiciary, and analysed media relations and use of social media that contribute to this. The Administration concluded that maintaining trust demands transparency and a continuing dialogue. From this conclusion derived the principles for the communication strategy: as much transparency as possible, good service for media and public, every court and judge needs to contribute, and extra-judicial activities for the public.

The project team recommends that judiciaries discuss data and trends to arrive at conclusions on the most important, concrete factors influencing public trust. The project team also propose use of media monitoring not just as a summary of the relevant information related to the judiciary. *The most relevant aim for media monitoring is to asses and identify trends related to the information published or debated in media, to evaluate and analyse the positive and negative reflections of the judiciary in the press in order to address to recurrent issues.* In this way it is possible to determine some shared principles that can inform a communication strategy and it is in the light of these conclusions that the project team urges judiciaries to either adopt a comprehensive communication strategy or review and broaden existing communication strategies as a matter of priority.

⁶ Questionnaire, q.3

⁷ Questionnaire, q.4

⁸ European Commission press release, December 20, 2017

⁹ Questionnaire, q.2

¹⁰ Questionnaire, q.1

¹¹ Questionnaire, q.7, 8.

Chapter 2 Communication Strategies

More than the sender, communication depends on the receiver. In other words: it is not the message, but what is heard that counts. Even within the European Union, politics, economics and social values differ greatly between each of the European countries, affecting the image of the judiciary. Therefore *the project team feels it would not be helpful to recommend a blueprint for a communication strategy or a core message* but rather will describe the most important requirements, content and form of a communication strategy, provide a model and assess the main risks.

1. Requirements

Following up main recommendation no 7 from the 2012 ENCJ Report on Justice, Society and the Media, which encourages the countries to develop a proactive media approach, covering individual court cases as well as the judicial system itself, the project team asked the participants in the project if they had a communication strategy. Whilst the vast majority of countries answered yes¹², still 60 per cent of the ENCJ members and observers are at present working with an inadequate strategy, as it is stated below¹³.

Whilst the judiciary can use strategies and practices that have been developed in public relations and marketing, and have been in use by companies, politicians and activists, we are essentially different from them – we do not strive to maximize power, sell products or affect change. Therefore, first and foremost a judicial communication strategy should at all times reflect the core values of the judiciary: independence, impartiality and professionalism. In the view of the project team this means *any communication by the judiciary should be fact-based, transparent and non-argumentative*.

Secondly, *as much of the judicial organisation as appropriate should endorse an integrated communications strategy* and take part in its implementation. In a majority of ENCJ members and observers this is not yet the case.¹⁴ Where the nature of the judicial system does not allow a fully integrated strategy, for instance because some organizations are not represented in the judicial council, communication actions and messages can be shared on an informal basis.

Thirdly, *a communication strategy has to apply not only to members of the judicial council, presidents and their spokespersons as official representatives of the judiciary, but to each and every judge and judicial staff member*. There is a strong relation between transparency in case management and decisions and public trust in the judiciary. A communication strategy needs to address service provided to court users and the attitude of judges in court sessions. Trust in institutions is built by trust in persons. It follows therefore, that incidents and rumours of corruption are one of the main reasons for lack of public trust in the judiciary.

¹² Questionnaire, q. 8.

¹³ Questionnaire, q. 12.

¹⁴ Questionnaire, q.10, 11.

2. Content

The project team distinguished four types of communication strategy:

- 1) slow: spontaneous image - legal communications, as yet unnoticed (re-active);
- 2) medium: build image - everybody should be able to watch activities of the judiciary (re-active / pro-active)
- 3) intensive: push type image - everyone should know how we operate and what we decide (pro-active);
- 4) intensive: pull type image - let us introduce themes and educate public opinion (pro-active).

The project team concludes that *in present-day circumstances the first and second types of strategy, which are essentially limited to opening up to the outside world, are inadequate* and over time risk a further serious decline in public trust. 60 per cent of the ENCJ members and observers are, it is noted, currently work with an inadequate strategy¹⁵.

Best practice: Bulgaria

Bulgaria adopted an extensive, well documented and integrated communication strategy for the judicial bodies in 2014. The strategy includes the methods used to develop the strategy, the key principles and key approaches for each of the judicial bodies. It also includes specific actions, by which the progress of the implementation of the strategy can be measured.

Which of the intensive types of communication strategies are preferable depends on the circumstances of the judiciary in a specific country. In general it can be said, that a more intensive strategy is needed if public trust in the judiciary is below average, declining or unstable. Should the judicial position change, generally or in relation to specific issues, there can be a need to change strategy as a consequence.

3. Model strategy

Any communication strategy must be well founded, clear, accepted and realistic. What does this mean in practice?

As the project team noted above a communication strategy must be founded on the results of quantitative and qualitative research on public trust, and on an analysis of present communication policies. The first section of a strategy should provide this analysis.

The second section of strategy should set out the communication principles and strategic objectives. It is crucial that these objectives set *clear* priorities and are phrased in comprehensible language. A communication strategy cannot be prescribed by the judicial council or court presidents, but must be broadly *accepted* by judges and other judicial staff. Because each and every individual judge has a responsibility for communication they must be involved in preparing and implementing a communication strategy. Successful external communication starts internally.

The third section of the strategy can describe a communication plan with core messages, tools, protocols and possible activities. Communication objectives and activities need to be *realistic*. Therefore this section must detail the financial and personal resources necessary for the

¹⁵ Questionnaire, q. 11, 12.

implementation of the strategy. At present over 60 per cent of ENCJ members and observers have no budget and very few dedicated staff for communication.¹⁶ The project team will provide examples and best practices of communication tools and the organisation of a communication team later in this report.

The fourth and final section should contain the monitoring and evaluation mechanism for the communication strategy. The judiciary can select a number of key performance indicators that can be measured at regular intervals. If possible, these indicators should show the effect of communications; however, communication output is easier to quantify and measure, and would be a reasonable alternative. The establishment of an evaluation mechanism on the basis of these indicators will enable the judiciary to vary the strategy if situations change or if results are falling short of stated objectives.

In summary, the project team recommends drafting a communication strategy in four sections:

- 1. Analysis of the image and communications of the judiciary*
- 2. Communication principles and objectives*
- 3. Communication planning and resources*
- 4. Monitoring and evaluation*

Sometimes a communication strategy is a detailed document of many pages. In the view of the project team the main points of a communication strategy should be summarized in a brief presentation of perhaps no more than 10 slides.

4. Strategic risks

Intensive type communication strategies, are not without risks for the judiciary. When the independence of the judiciary is under threat, and judicial institutions or individual judges are under attack, there is an understandable wish to rush to their defence. Judicial councils do and should play an important role in this defence. Often, it consists of communicating the principles of the rule of law, and the necessity of independence of the judiciary and judges that follows from these principles. This is one of the main risks, because it precisely fits the narrative of elitist, well connected, aloof or downright corrupt judges, who under no circumstances wish to give up their privileged position. It can appear self-serving or protectionist. In other words, such communication can reinforce the attacks on the judiciary.

This risk can be mitigated by *using the perspective of the general public instead of the judiciary as the basis for communication; communicating from the standpoint that what is being attacked are in fact the rights of citizens rather than the rights of judges. The benefit of judicial independence is a societal benefit rather than for individual judges.* In the view of the project team, *judicial communication should not be an explanation of legal principle, but a call on shared values as a start of a continuous dialogue.* In its communications the judiciary should show empathy with the emotions and opinions of the general public, and explain why it is in their own interest to be able to appear in front of an independent and impartial judge.

¹⁶ Questionnaire, q.18, 20.

5. Core messages

The Work Plan suggests as one of the activities of the project to promote the development of a key message for the Councils based on core values (independence, transparency, accountability, efficiency/professionalism/quality, integrity, respect for court users) and, as stated before, first and foremost a communication strategy that should reflect the core values of the judiciary¹⁷.

Most of the countries questioned¹⁸ have core messages related to the fundamental values of the judiciary. Analysing the answers, the conclusion is that it is difficult to recommend one key message which is suitable for all of the judiciaries in European Union. Instead, the project team recommends *the development of a core message taking into account the background of each country and building the communication strategy around it*.

Some *criteria* should be understood. One is to see the judiciary through the eyes of society, because the message is not for the judiciary itself, but for society as a whole. Another criterion is the need to respond to issues, including why there is a need for independent courts, rule of law, bearing in mind the interests of the general public, and addressing different issues for certain period of times.

However, one must mind the difference between the core message, “translated” in the language of “the consumer”, and some topics/themes/ideas/messages for building trust (such as why a judge cannot be fired in a country where the unemployment rate is very high), which can be used by different countries depending on their needs. The core message is an umbrella for other topics related to the judiciary. It can be found in the oath of office taken by judges or, at least, the oath could be considered a starting point in developing a core message. Other criteria are the length, concision and understandability of the message. A core message should be short and written in plain language, because abstract concepts are not understood by the general public. It shall be developed using quality research and quality groups.

Annex 5 contains a list of examples extracted from the answers to the Questionnaire to help Councils find and adopt relevant messages, according to their principles, the specificity of the judicial system etc.

¹⁷ See section 1 of this chapter, on requirements.

¹⁸ Questionnaire, q. 38.

Chapter 3 Communication with Media, Other State Powers, Legal Professionals and Influential Actors

1. Follow up

As a follow up to the 2012 ENCJ report on Justice, Society and the Media¹⁹, 80 percent of the countries which filled up the questionnaire answered that they have press guidelines/protocols/other instruments of communication with the Media, when drafting them, the Media being consulted. ²⁰The project team maintains the recommendation of the former project on developing such guidelines for those countries who still do not have one.

2. Building trust in institutions generally, communication instruments with other branches of power

Resulting from the answers related to measuring public trust²¹, in the countries with a lower level of trust in the judiciary (even though it is usually higher than in other branches of power), there is also a low level of trust in institutions generally, whereas in the countries with a high level of trust in the judiciary, the institutions are generally regarded very reliable. It is difficult, if not impossible to significantly increase confidence in the judiciary without raising public trust in institutions generally.

Five countries answered that they have some formal communication instruments with the other branches of power, whereas most of the countries had a negative answer²². In both categories of respondent states are countries with a high and low level of public confidence. Anyway, considering the experience of some post-communist countries, in which the level of trust in institutions is generally low and the objective independence of the judiciary has been recently challenged by the other branches of power (and maybe as a preventive measure in other countries), *the project team recommend the introduction of a set of guidelines*. In addition, as another argument in favour of such guidelines, politicians can influence negatively public confidence and the image of justice, as can be concluded by the answers related to the most influential actors in these terms²³.

How to draft such guidelines will constitute the topic of another project, as is set out in the last chapter.

3. Guides of best practices with other legal professionals

Five countries responded positively to this question including guides with the other branches of power²⁴. Considering the importance of communication with other legal professionals, especially with advocates and the influence they can exercise on the public confidence and the image of justice, the project team recommend the drafting such guidelines. Use should be made of quality groups, comprising judges/prosecutors and advocates. How to develop and implement such a guideline may be the topic of another project, as is also set out in the last chapter.

4. Protocols with those who are regarded as most influential actors in terms of promoting public confidence and the image of Justice

The most influential actors are those who are willing to reply even in very tough or sensitive situations. As is clear from the questionnaire²⁵, they can be politicians, reporters, some

judges/prosecutor well known in social media, law professors etc. The judiciary should identify mechanisms that may influence the general public and especially those who may influence the general public. Incorrect information can flow fast and may become a news item which seriously affects the public trust in the judiciary. In such cases, the impact of such negative influence should be quantified and analysed. Correct information given rapidly and correctly to those interested protects the information and the general message transmitted to the public. The concept of “branding justice” should be taken into account, as transmitting to the public in the right manner is a way of gaining trust.

The project team recommends to the councils that they develop such protocols. The way they should be drafted should be considered in a future project.

Chapter 4 The Institution of Spokepersons

1. Follow up

The 2012 ENCJ report on Justice, Society and the Media, especially as regards the role of Councils for the Judiciary, recommended that all countries should develop and use a system of judicial spokesperson in the form of press judges and communication advisors. They should have a deep knowledge about the Judicial system, how to inform the public in an understandable language and have social and media skills.

Following up this recommendation, the project team asked the respondents about the implementation of recommendation 15 - having spokespersons at the level of the council, 18 - at the level of the courts, 11 - at the level of the prosecutor offices, 4 - at the level of the schools for training judges, prosecutors and clerks and 3 - at the level of the judicial inspectorate. There are countries where the Judicial Council’s communication is ensured by the Supreme Court’s communication department, some in which the communication is handled by the chairman of the council, others where the information is transmitted by press communication cabinets through the presidency cabinet or where the spokesperson could be the president or chief prosecutor or a press judge assigned by those leaders²⁶.

According to the answers, in 11 countries the spokesperson is a professional in communication, whereas in 15, he or she is a judge/prosecutor trained in communication (in some countries, the spokesperson could be a professional in communication or a judge/prosecutor). In just 2 countries the judge or prosecutor is solely allocated to the task. In the rest both roles are combined.

¹⁹ Main recommendation no. 6 – “There is a need for regulation of the relations between the Judiciary and the media. Introducing a set of press guidelines, whether they are implemented by law or as a (morally or non-legal) binding protocol, is recommended. They can never interfere with existing legal limitations. The press guidelines should be part of a national strategy plan with a planning and reporting cycle on the communication with the media and society. Press guidelines should clarify the different goals and interests of both the Judiciary and the media. It should state what the media may expect of the staff of the courts and how the courts should deal with the needs of the media before, during and after court proceedings. “

²⁰ Questionnaire, q. 13 and 14.

²¹ Questionnaire, q. 3 and 4.

²² Questionnaire, q.14.

²³ Questionnaire, q. 36.

²⁴ Questionnaire, q. 14.

²⁵ Questionnaire, q. 36.

²⁶ Questionnaire, q.15.

Thirteen Members have specialized communication departments for Councils, 14 for courts, 5 for prosecutor offices, 4 for schools for training, 3 for inspectorates, 5 for other authorities (Ministry of Justice, National Courts Administration). In the case of the Ministry of Justice, there are two such departments, because the issues to be communicated are different. There are aspects that the Ministry as representative of the Executive wants to communicate and there are aspects that may have a political touch and there are also aspects to be communicated to the judicial system. Sometimes the border line is very sensitive and very thin and becomes difficult to distinguish between them in order to make a proper communication and in such situations and therefore the department for the judiciary is entitled to deal with this issues (Germany).

2. Who should be a spokesperson

There is a difference between a press judge/prosecutor and a spokesperson. It appears from the questionnaire that a spokesperson can be a professional in communication matters or a judge, respectively a prosecutor or the president of the court or the chief prosecutor²⁷. *The project team recommend to ENCJ members and observers to appoint judges or prosecutors trained in communication skills for such positions*, because, even though, for simple aspects that should be communicated to the general public, such as statistics, the communication through a communication professional is enough, when the spokesperson is a magistrate that better serves public's expectations.

Additionally, the project team recommends a specialised department using professionals in communication, under the leadership of the press judge/prosecutor.

3. The profile of the press judge/prosecutor

The project team *recommends* to the Councils to develop a profile of the press judge/prosecutor.

*A best practice can be found in Annex 6 the **Profile of the press judge from Netherland**.*

It should be noted that *whoever would be a spokesperson on behalf of the judiciary should follow the same criteria*, because the obligation of discretion applies to anybody who speaks on behalf of the judiciary.

4. Is the press judge/prosecutor independent?

In the majority of the countries, when communicating externally, the press judge/prosecutor consults the presiding judge/chief prosecutor when he or she speaks about certain court cases. In the case of the Councils, the institutions are those who decide about core and other types of message(s). In the event of disagreement between the leadership of the Council/court/prosecutor office and the press judge/prosecutor, it is recommended a common solution is found. There is a certain reluctance in case of the members of the councils and even the presidents/chairmen in having direct contact with the public or the media, the leadership of the Judicial Councils having in some cases a short term of office. Therefore a media judge/prosecutor with certain specific skills, set out in the profile of the press judge/prosecutor would be preferable to be responsible in such cases. The press judge/prosecutor is independent because he or she is the one trained in communication

²⁷ Questionnaire, q. 16.

matters, but the project team do not recommend this, because in some countries tensions can arise and *it is preferable to have some protocols in place when such questions arise*.

5. Protocols/regulations/agreements about who will be responsible if an issue crosses different responsibilities (for example between courts and the Judicial Councils)

Usually, the courts/prosecutor offices should answer local questions and when it relates to the judiciary as a whole that would be a task for councils. In the event of disagreement, it is difficult to say generally that the council is the one who decides in such cases, and *this should be addressed by a protocol before the problem arise*. In the Netherland, research has been carried out and among the findings of the study was an important observation indicating that when regulations had been in place the communication went better and proceeded in a very smooth and rapid way. In Belgium, there is a protocol according to which journalists know whom they should address for relevant information when there is interest in certain cases that are before courts or prosecution offices. As a conclusion, having such protocols is very useful but the protocols do not necessarily have to be in a written form. There could be a practice in place.

Chapter 5 Training in Communication Skills

1. Follow up

Being asked about continuous training in communication skills, 13 countries answered that they have such training for spokespersons, 12 for judges, 5 for prosecutors and 3 for members of the judicial councils²⁸.

This training is provided by institutes for training magistrates in 10 states, judicial councils in 6, ministries of justice in 5, external experts in 8, courts' communication departments in 6, prosecutor office's department in one state, meanwhile in some countries associations of judges or national HR agencies are in charge²⁹.

2. Recommendations

The project team recommends *training in communication matters for all judges and prosecutors* (it is necessary for communication in the court, within a panel etc.), *including presidents of the court and chief prosecutors and members and staff of the councils as well*. *Clerks* should be also trained in communication. Judges and prosecutors have to be aware about how communication works, about what to expect, what to know, about how to react, how to identify and communicate basic information, about how to react in media and respond to media's reaction, about how to speak to broadcasting cameras, how to express and present himself/herself in a press conference etc.

There are several possibilities and means for providing specific training in this field. The following would be recommendable: training through experts, through national Institutes for magistrates and schools for clerks, courts/prosecutor offices, Councils. *Institutes for training judges and prosecutors and schools for clerks should have in their curricula training in communication matters*.

²⁸ Questionnaire, q. 21.

²⁹ Questionnaire, q. 22.

Chapter 6 Social Media, Blogs, Vlogs and Sites

1. Follow up

The 2012 ENCJ report on Justice, Society and the Media established that social media could be useful for the courts or the judicial bodies in their communication and recommended to develop a strategy, including target groups and goals for the use of each social media.

It appears, from the Questionnaire that social media is currently in use in 8 countries by Councils, in 10 countries by courts, in 5 by prosecutor offices, in 3 by schools for training judges, prosecutors and clerks, in one by the judicial inspectorate, in 12 countries by individual judges and in 4 by individual prosecutors. The conclusion is that there is a large use of social media within the judiciary³⁰.

2. The most frequently used social media, blogs, vlogs by the judiciary

The most frequently used social media, blogs, vlogs by the judiciary are Facebook, Twitter and LinkedIn, but there are also others, such as Podcast, Instagram, YouTube, Flickr, ISSUU³¹.

3. The purpose for using social media, blogs, vlogs³²

There is a distinction between the use of social media by the councils, courts/prosecutor offices and other judicial bodies and the use of social media by individual judges and prosecutors.

3.1. In case of institutions, there are various purposes for using social media, such as;

- monitoring opinions and obtaining feedback from the stakeholders (BE).
- Providing a fast and highly effective communication to provide legal information on the structure, functions, powers and activities of the Council and the judicial authorities (BG), about the courts (NO),
- seeking to change people's attitudes and perceptions of the importance of the judiciary through the improvement of legal literacy in young people (BG, HU, LT),
- creating public opinion on topics related to the judiciary, popularizing educational initiatives and socially responsible programs, creating the pre-condition for developing citizens' higher legal culture (BG, ES),
- initiating live sessions/interventions on issues of public interest (BG),
- providing general information (FI, D, UK England, RO) ,
- providing specific information on current cases, judgements and summaries of judgements, in parallel with any press releases (D, LT, NL, UK –Scotland, UK North Ireland), to foster transparency and accountability in the judicial system (LT, RO)
- to stimulate direct and continuous conversation and discussion with decision makers and the general public (NL, NO).
- using feedback to improve the communications and policy (NL).

In NL, it is very important that the judiciary has its own corporate channels at their disposal for informing the general public. Therefore the judiciary has at its disposal a news service and

³⁰ Questionnaire, q. 23.

³¹ Questionnaire, q. 24.

³² Questionnaire, q. 25.

thematic background dossiers on its website, an email newsletter to 35.000 subscribers with a weekly digest of the most important decisions and verdicts, and a paper magazine available for free in the public areas in the courts. Twitter and Facebook are also at their disposal.

3.2. In case of individual judges and prosecutors, social media is used for various purposes, personal and professional as well, including campaigns for being elected in the Council (RO), to present their opinions and themselves, based on their willingness (SK), to point out some press articles relating to the judiciary or to give some comments on what is happening in the judiciary, but restraining themselves from intervention in political discussions (BE).

An interesting *reason behind the use of vlogs* is that it is preferable not only for reasons of speed but also for the fact that it addresses those who might find it difficult to access or understand the written word .

4. Recommendations for using social media

As a conclusion arising from discussions, it is recommended that the Judiciary benefits from the communication in social media, social media being actually media nowadays, and being more suitable for public's expectations and preferences as well. Actually, the difference between social media and media rapidly disappears and brings lots of communication challenges such as the direct communication with general public skipping media and avoiding any potential gaps of communication. In this way *we (the judiciaries) become media* ourselves. Therefore it is recommended to have communication teams, even news rooms or an adequate working environment, but also communication schemes etc. As a conclusion, the judiciary should be proactive and prepared for such a direct and dynamic communication at an institutional level, but paying attention to the messages delivered to public in this *very dynamic and interactive manner of dialogue*.

Among the strengths of this method of communication the following should be mentioned *the message sent to public is direct and cannot be "manipulated" by media, the communicator selects the public to whom the message will be addressed, messages may be supported, sponsored* etc.

Additionally, communication through social media may also be used in police activity/investigations to keep people safe.

The widespread use of social media communication even among judges and prosecutors cannot be ignored and therefore *it would be recommended to provide guidelines for using social media not envisaging a limitation in accessing social media and therefore freedom of speech. This would be likely to increase predictability and prevention attitude in relation to the media that risks leading to disciplinary liability of magistrates*. For now, the working group recommends that information should be wisely shared and used, as sensitive information can easily be delivered and may sometimes create vulnerabilities for both judges/prosecutors and for the judicial system. Judges and prosecutors use social media platforms, a fact that cannot be ignored anymore, but they should be advised to use it prudently, with no potential political influence and remaining impartial and objective. We cannot move back but going forward in terms of communicating through social media platforms and therefore *guidelines and/or media adviser may be recommended* to be taken into consideration for better responding to such challenges, respectively for providing guidelines for judges, prosecutors and other representatives of the judiciary in terms of better managing and delivering information to

media and to the general public in order not to become vulnerable both professionally and personally.

Another interesting topic is “the corporate use of social media” and it can be developed on the occasion of the next Project.

5. Are the official websites translated in English and/or other languages

Information, restricted to relevant aspects, on the official websites of the Judicial Councils should be translated in English/other languages in order to be available internationally.

The discussions in the working group were focused on identifying criteria to describe relevant information, considering as most relevant data the following categories: most important decisions, laws on the judiciary, role, functions and attributions of the Councils. Definitively, each Council can settle its own criteria for identifying the most significant information to be translated in English/other languages.

A sensitive issue is the need to entirely translate the information on the Councils’ websites in the minorities’ languages.

Chapter 7 Brand Equity and Design

1. The concept of “branding justice”

The brand assets (values, core messages, design) should be seen as symbols of the independence of the institutions within the judiciary. The concept of “branding justice” should be taken into account as sending the right message to public in the right manner and emphasizing the right values is a way of gaining trust.

The importance of this concept is reflected in the sense of the message coming from a certain direction. Therefore, the importance of a corporate identity (logo, colours, fonts, etc.), for example, is that it allows for the institution to be easily identified and to be also identified with the message. Thus, the idea is to have a single logo for courts, for instance, one for the Council etc. However, it is possible for different institutions within the judicial system to have distinct logos, depending on the specificity of each system.

2. Best practices

Most of the countries who responded to the questionnaire have mentioned having a corporate design of the judiciary with respect to procedural documents (such as subpoenas, bills of indictment and judgements), internal documents (such as reports, statistics) and with respect to brochures and information material about the judiciary³³.

Each institution within the judicial system has its own logo, which gives it identity and make it recognizable.

The Netherlands has given an interesting example that was meant to stress the importance of the brand design for institutions as follows: private courts, namely in arbitration matters,

³³ Questionnaire, q. 28.

became popular in Netherlands. Among other elements, public courts' logos have contributed to make the difference and properly be identified by parties/courts' users. The Dutch expert explained the research activity behind the logos settled for the judicial institutions. There was a market research, people were asked to associate different logos with different institutions and, using people's feedback, a competition was launched for identifying the best logos and to personalize them in accordance with the specificity of the institutions within the judicial system. There are style guidelines for written texts for court users and the general public that are safeguarded by the editors of the communications department of the council. These guidelines are not yet generally implemented. They will be expanded with image and video guidelines in the near future.

Bulgaria mentioned that by a decision of the SJC Judicial College on Protocol No 21/25.10.2016, Rules for Institutional Identity of Documents in the Courts of the Republic of Bulgaria were adopted. The rules are intended to serve for the proper preparation and drafting of organizational and administrative documents, including official correspondence created in the courts of the Republic of Bulgaria. Compliance with them should lead to unifying the overall vision of the documents created in the Public Interaction Council, making them easily recognizable and meeting the requirements of institutional identity.

3. Recommendations

The judiciary should have a unified corporate branding approach.

It is recommended that institutions develop their own brand equity, not only in terms of message, but also in terms of design, colour etc., for an easy identification.

Logos, branding items should be put not only on documents, but also on different other objects, even on the cars representing an institution etc.

Reflecting the specificity of the institutions, logos are in a continuous evolution and should be adjusted accordingly, which involves allocating the proper budget for this activity.

Chapter 8 Crisis Communication Protocols

1. Definition of the crisis situation

The concept of a Crisis Situation in an Institutional System should be settled by identifying some criteria that may lead us to the definition of this concept.

The crisis situation can be defined as a complex phenomenon, consisting in an unforeseen situation, which might question the responsibility of an institution (organisation, system etc.) before public opinion, which might threaten the capacity of the institution to normally carry out its activity and which might damage the public image of the institution by negative effects on a symbolic plan.

We should note that a crisis might also be caused by the faulty organisation of the exchange of information, through the media, between an institution (organisation, system, etc.) and public opinion.

The judiciary system, as any other system in the structure of society, is liable to be confronted with crisis situations and the more so since it is an open system where the relation with the public opinion is defining and is subject to a permanent „conflict” between the objective rigour of the law and the inherent subjectivism specific to the litigants (Romanian *Handbook for spokespersons, public information and media relations structures*).

2. Examples of crisis situations

It is very difficult to imagine and to anticipate a crisis situation but we do have the duty to overcome such situations with a certain procedure previously settled and agreed.

Another best practice example is the list of crisis situations drafted for the Austrian judicial system during a Workshop on “Crisis Communication”, where 20-40 such situations have been identified and may be further identified as follows:

- Somebody has been detained too long by error
- (Flippant) ill-considered remark made by a member of the judicial staff
- Negative headlines due to a judgment which is not understood
- Failed emergency drill
- Somebody is running amok
- Employees are being threatened
- An inmate has died in prison
- A terrorist attack
- A released prisoner commits a crime or a prisoner preliminarily out of detention (such as interrupted detention, day release) commits a crime
- Politically relevant occurrences
- Prison break
- Bomb threat
- House squatting/demonstrations
- Escalation during negotiations
- Occurrences causing international interest
- Information about procedural measures are revealed to the public by a third person (such as by a lawyer) before the judiciary has made a statement
- Large-scale proceedings
- Severe occurrences in the judiciary
- Severe occurrences in which the judiciary is involved
- Decisions being criticised

3. Crisis communication protocols in place

According to the findings of the questionnaire³⁴, such crises protocols/guidelines are regulated in 13 of the states who participated in answering the questionnaire and in most of them such crises books/protocols are provided for the courts and Councils and few for the prosecution offices.

As the Netherlands described, the Dutch judicial system provides such crisis mechanism with core messages, with tasks and responsibilities for crises situations (such as for security attacks etc.), although such a situation occurred only once. Moreover, this crisis mechanism is not secret being very technical and specific.

Since in a crisis situation there are several crucial aspects to be settled, a guideline should provide aspects such as who shall take the decisions in crisis situations, what is the mechanism of reaction, what is the crisis team (that should always be the same), who communicates/who is entitled to communicate (inside/outside communication) and what are the elements to be communicated when such situations occur etc.

The Bulgarian SJC crisis PR plan, which regulates the creation of conditions and the implementation of adequate measures to overcome the crisis of public confidence in the SJC as a permanent body representing the judiciary, securing and asserting its independence and may also be an example of best practice in this matter.

The SJC Crisis PR Plan, updated in 2016, is harmonized with the crisis communication activities and measures set out in the Communication Strategy of the Judiciary 2014-2020. It provides basic guidelines and algorithms for action when a situation defined as a crisis emerges. It proposes a reaction matrix toward the SJC's internal and external audiences and, if necessary, in interaction with other judicial authorities or magistrate community members as well as other legislative, executive and public sector partners.

There is also a unified crisis plan for communication of the judicial authorities. It integrates the communication actions of all concerned bodies and aims to prevent crises, improve communication planning and coordination between the judicial authorities by building mechanisms for successful communication in emergency and crisis situations in the judicial authorities.

4. Recommendations

An important dimension that should be borne in mind is that *communication in crisis situations is just a small chapter of the crisis management procedure but, given its importance a strategy for communication in such a specific situation should be provided for any institution within any system.*

Moreover, a crisis protocol/procedure *should involve both internal and external communication strategy*, namely one within the system – an internal security communication protocol and one with the general public.

³⁴ Questionnaire, q. 29.

Chapter 9 Audio Visual Recording in Court Rooms and Judicial Council meetings

1. Mapping

1.1. Courts' hearings recordings

In most of the states that participated in answering to the questionnaire the court's hearings are recorded. Broadcasting is a different issue and occurs very rarely.

1.2. Council's meetings broadcasts

According to the answers to the Questionnaire, it is only in a few of the countries, such as Bulgaria, Italy, Latvia, Slovakia, Romania, Council's sessions are being broadcasted live, although, Councils' decisions are available on the official web sites.

2. Positive outcomes and possible drawbacks

In both cases, two aspects should be distinguished, online broadcasted sessions (hearings) and recordings. Both aspects may represent a guarantee of transparency and independence. It is very important to be authentic and transparent even if contradictory debates may appear, as the public will get the opportunity to observe and understand beyond proceedings, especially in questions related to sensitive issues/cases. Moreover, in the case of the councils, when the majority is thin the arguments of the minority may count a lot.

But even the online broadcasting may represent a guarantee of transparency, as Italy mentioned, there should also exist a good balance between the public plenary sessions and the non-public sessions of the working commissions.

When having an ongoing online broadcasted session participants tend to be more vocal more active, aspects that may not be very productive all the time.

Moreover, the courts' sessions may not be entirely public, since the specific technical procedure is not accessible enough to the general public, but the sessions can be registered and therefore available on the registrations.

3. Examples of best practices

Bulgaria

From April 2016, direct broadcasting of the sessions of the SJC through its Internet site is ensured. Direct broadcasting responds to the requirements laid down in the Law on Amendment and Supplement to the Judicial System Act. The [SJC website](#) - has created a "SJC Online" column, whereby Internet users can directly watch the meetings of the Plenum, the Judges' and the Prosecutors' Colleges of the Council.

In 2017, the SJC's website, including the e-portal of the judiciary, broadcast directly the procedure for electing the President of the Supreme Administrative Court (11.09.2017), the General Assembly for the election of a member of the SJC Prosecutor's College in the month of January, as well as the three general meetings for election of members of the 8th SJC, held in May and June. Archive records of part of these meetings are posted on the YouTube Internet platform.

Through the SJC's website online, in real time, as well as directly on Channel 1 of the Bulgarian National Television in 2014 and 2015, the meetings of the Council for the election of the

chairperson of the Supreme Cassation Court were broadcast, and, at the end of 2013 – the election of the director of the National Investigation Service.

Romania

The court's audio recording of the proceedings are regulated by the civil/criminal procedure Codes and are carried out by the court staff. Superior Council of Magistracy sessions – in Plenum and Sections - are recorded by the Council and broadcasted on-line.

Italy

The preparation part, in commissions, is not public. It is similar in Romania, even though these meetings are also recorded.

Latvia

In Latvia, all the sessions of the Judicial Council (they are held approximately, once per month) are fully broadcast on the internet, available only to judges. Access to this internet site is sent via e-mail some hours before the session to all the judges in Latvia. This procedure is not regulated in laws, but adopted as a good practice. According to law, the Judicial Council can decide to hold a meeting in a closed session. In such cases broadcasting is not provided. It occurs very rarely, for example, when voting for candidates for the highest positions (judge of the Constitutional Court etc.).

Slovakia

The recording is made by the Council and it is published on the website. If the media want to hear the Council's meetings, they are allowed to sit in a chamber where the Council discusses. Council meetings are public except for the sessions when the council decides on the capability of the candidate for a judge and over the findings that were made by the National security agency during the security check of the candidate-judge.

4. Recommendations

Regarding the online broadcast of the councils' sessions, there are both positive and negative arguments, benefits and drawbacks, and therefore the publicity and possibility to online broadcasting sessions should always be in accordance with the judicial system's particularities.

Chapter 10 Procedures for defending the independence of the judiciary and judges and prosecutors

1. Procedures in place³⁵

In 11 of the countries participating in this research there are procedures for defending the independence of the judiciary and the individual judge (in some cases prosecutors).

There are also judicial systems which do not have in place specific procedures to defend the independence or the professional reputation of magistrates, although some press magistrates, court presidents or chief prosecutors intervene in the media when necessary (BE).

Even in cases of no separate procedures in place, attacks against judicial independence are treated as a part of larger issue (e.g. a certain court decision, accusations of breaches of integrity). The judiciary is usually reserved in its communications on these occasions. Judges, as public servants, have to put up with a certain amount of criticism (even when it can be regrettably blunt or even rude). When defending the independence or reputation of the courts, the focus is not on the court or on the judge, but on the question why independence is necessary for ordinary court users and citizens (NL).

In England and Wales the Lord Chancellor, a member of the Government, has a statutory duty to defend the independence of the Judiciary, which will sometimes be exercised to this end. Limited by resources available, but the JCO from time to time agrees and prepares a piece of communication to seek to correct misreporting or damage to the reputation of the judiciary individually or collectively.

In Bulgaria, there is a document dealing with the SJC public response procedure in case of impairment of the independence of the judiciary. The document was prepared in line with the recommendations of the European Commission's Report to the European Parliament and the Council on the Progress of Bulgaria under the Cooperation and Verification Mechanism of 21.01.2014. It stated that the SJC should make the defence of the independence of the judiciary its top priority – "to establish a clear procedure for the way the SJC should react in case of political interference in the judiciary and prosecution".

The procedure regulates the establishment of cases of impairment of the independence of the judiciary, the possible reactions and follow-up actions related to the announcement of the SJC's position.

In other countries, such in Romania, there is a complex procedure. Thus, according to article 133 of the Romanian Constitution the Superior Council of Magistracy is the guarantor of the independence of justice. In this regard the Council defends the independence, impartiality and professional reputation of judges and prosecutors. According to article 30 of Law 317/2004 on the Superior Council of Magistracy the Council has the right and obligation to notify ex officio when the independence and professional reputation of judges and prosecutors are affected and the judges/prosecutors may also notify the Council on these matters.

The Council notifies the Judicial Inspection in order to verify all aspects and, depending on the conclusion of the Judicial Inspection report, issues a press release or may inform any other authority on the findings in order to take the necessary measures.

As a general conclusion, in every respondent country there are instruments for defending the independence, even though they are not comprised in a formal procedural act.

2. Making public aware of defending the independence

But since in most of the countries the result of this procedure becomes a formal public declaration on judicial independence issued by the Council for the Judiciary and since the differences between consolidated democracies and new ones and between judicial systems may lead to very different approaches, it is recommended that such a procedure be put in place if it suits the specificity of the particular judicial system in each country. However, the most interesting challenge is to find the best way to implement such a procedure to get best benefits.

The above mentioned differences between judicial systems/democracies may also generate different approaches in terms of how the reaction to such attacks may be issued and conducted, namely in a non-argumentative manner or in a more proactive way. Such a non-argumentative approach may arise in situations when press releases are issued for communicating facts regarding courts' decisions while a response regarding a systemic attack needs an entry into the debate and a more proactive reaction.

Therefore it is recommended to have procedures mostly for defending the judiciary as a whole not just the independence of an individual judge/prosecutor

The main issue is to deal with requests submitted by judges and prosecutors for the Council to defend their independence/reputation.

In order to prevent such comprehensive procedures Ireland has once again emphasised the importance of the institution of media judge entitled to immediately reply to attacks coming from media for instance to offset the negative impact that may affect justice's image. Moreover, for better defending individual judges and even the entire judicial system a non-argumentative approach and a broader one is preferable to an individual approach.

An important distinction should be made between two sensitive concepts: integrity and independency. Integrity issues should previously be investigated only then should independence/integrity/reputation be defended. Any different approach may cause vulnerabilities and negatively affect public trust.

The independency of the judiciary should be put in relation to the general public and as a privilege of the judicial system. Therefore a previously initiated and more efficient collaboration with the other stakeholders is preferable.

An example of the opposite, is the Polish approach when referring to attacks to independence. Unfortunately this was not a positive example since the importance of the judges' independence was put in relation not to the general public interest but with the judicial system.

³⁵Questionnaire, q. 33.

In Poland, cases of magistrates' non-integrity accusations have become subject of publicity by being transformed into billboard campaigns and promoted countrywide. The Judiciary members themselves weren't so transparent and due to a lack of communication from the judiciary who did not know how to react and how to communicate, the wrong message has dramatically affected confidence in the Judiciary.

3. Recommendations

As a conclusion, there is a difference between defending the independence of the judicial system and individual judges' (prosecutors) independence.

The above mentioned differences may generate different approach in terms of how the reaction to such attacks may be issued and conducted, namely in a non-argumentative and factual manner or in a more proactive way.

A non-argumentative way may characterise situations when press releases are issued to communicate facts regarding courts' decisions.

A response/information regarding/ a systemic attack needs an entry into the debate and a more proactive reaction.

Regarding individual judges (prosecutors), when integrity is challenged, the Councils should inform the general public on such aspects and on the investigations carried out in such situations.

It is advisable to have a procedure in place in such cases and communicate externally the result on handling such requests for defending independence both of the Judiciary as a whole, when it is the case, and the independence of an individual judge/prosecutor as well, at least by means of a press releases (with references to the principles and then to the statements that affected the independence, in order to inform general public and to ensure that the confidence of the public in the Judiciary stays unaffected)³⁶.

When allegations of corruption regarding members of the Judiciary occur (corruption being major risk of the independence of the Judiciary), such allegations must be investigated and actions must be taken and communicated externally to the general public, to ensure the confidence in the judiciary.

Chapter 11 Reaching out to the General Public

REACHING OUT TO THE GENERAL PUBLIC – EXAMPLES OF BEST PRACTICES

As for identifying best practices³⁷, the countries participating in the Questionnaire have in place a proactive communication in order to strengthen confidence in the judiciary, the respondents had the possibility to fill in an open question related to indicating best practices in the field of outreach activities.

³⁶ For how the result of such procedures are communicated externally, see Questionnaire, q. 34.

³⁷ Questionnaire, q. 32.

The main aspects envisaged as examples of best practices are the following:

- *information brochures on various topics and info sheets for court users, in that the relevant and important information are simply explained with infographics and figures (information about the Justice System; information about parties to proceedings, such as criminal proceedings or guardianship proceedings etc.) (Austria, Hungary, Romania)*
- *students'/pupils' visits in the courts for attending court proceedings with subsequent discussions with the judge or public prosecutor, offers of lectures in schools held by judges or public prosecutors, organise guided tours to courts and mock trials; guided court tours for school classes, the courts have an outreach tool kit at their disposal for different and entertaining tour formats with the goal to teach the core values of the judiciary, organisation of a "Judicial week" in September targeted to youngsters, during which judges actively visit schools, answer questions through Facebook live twice a day and courts are encouraged to organize an Open Door Day or other outreach activities (Netherlands)*
- *manual for legal education written by judges (Romania)*
- *organising "open court days" for the public; judiciary being regularly represented at various job fairs, for that matter (Austria, Finland, Hungary, Netherlands, Romania, Spain)*
- *promoting documentaries on the Judiciary (Belgium)*
- *promoting an unified e-Justice Portal located on the Council's web site (including for investigators and electronic distance voting, magistrates can share comments and opinions on published topics etc.) (Bulgaria)*
- *educational publication to be distributed in schools on different topics (Romania, Spain)*
- *trained media judges always available to explain procedure and decisions in high profile cases (Netherlands)*
- *back ground briefings by media judges on procedure in the run up to very high profile cases or about judicial themes that are often discussed in the media (Netherlands)*
- *annual judicial 'Clear language trophy', awarded to a judge for the most clearly worded decision, in order to improve the accessibility and understanding of decisions to citizens (Netherlands)*
- *immediate news articles on decisions of judges on the website of the judiciary, links to these articles are actively tweeted (Netherlands)*
- *online back ground dossiers on high profile court cases or current judicial topics and that are easily found through Google, with all information on the case or theme in one webpage (Netherlands)*
- *pro-active participation in TV-formats that showcase the functioning of the judiciary (e.g. series of in-depth interviews with judges called "Soul searching with... judges") (Netherlands)*
- *pro-active participation of media judges in current affairs or debating programs when subjects touch court cases, the judiciary, or the rule of law (Netherlands)*
- *pro-active public affairs policy to inform members of parliament and representatives of public and commercial organisations of the position of the judiciary in political debates that touch upon the judiciary or the rule of law (Netherlands)*
- *organisation of annual working visits for members of parliament to one or more courts during parliamentary summer recess (Netherlands)*
- *organisation of annual masterclass for parliament staff to inform about budgeting system and budgetary needs of the judiciary (Netherlands)*

- *free paper magazine “The Judiciary” for court users and citizens, available for free in the courts and public offices for free legal advice published 4 times a year (Netherlands, Romania)*
- *youngsters (12-24 years) are appointed outreach “court reporters”, receive full access and are encouraged to post articles on Facebook and their own private social media channels for their peers once a week (Netherlands)*
- *“Readers jury’s” are set up in cooperation with regional newspaper or broadcaster that actively follow selected court cases and report their observations and opinions in the paper or program (Netherlands)*
- *organisation of Public Academies in cooperation with university or colleges, where judges and scientists discuss current affairs topics with the audience (Netherlands)*
- *judges to preside at mock trial competitions. These competitions enable young people to learn about the criminal justice system (Northern Ireland, Romania)*

Chapter 12 Main Recommendations and Conclusions

1. Main recommendations

The main recommendations that can be drawn from all the research carried out by the project team are the follows:

1. Surveys of public trust should be implemented in ENCJ member and observer countries at least every three years, identifying the relevant stakeholders (at least the general public, court users, legal professionals, and judges and judicial staff). The judiciary in each country should follow up quantitative surveys by qualitative research, for instance by organising round tables, focus groups or formal consultations with the main stakeholder groups. The results from these surveys should be used when developing communication strategies. The judiciaries should publish surveys on public confidence.
2. The judiciaries should use media monitoring not just to provide a summary of the relevant information related to the judiciary, but also to assess and identify trends related to the information published or debated in the media, to evaluate and analyse the positive and negative reflections of the judiciary in the press in order to address recurrent issues.
3. The judiciaries should adopt a comprehensive communication strategy, or review and broaden existing communication strategies, as a matter of priority, developed around a core message. The communication strategy should be an integrated one, applying not only to members of the judicial council, presidents and their spokespersons as official representatives of the judiciary (and to other institutions within the judiciary, where it is the case), but to each and every judge and judicial staff member. A more intensive strategy is needed if public trust in the judiciary is below average, declining or unstable.
4. The judiciaries should develop communication instruments, guides of best practices with the other branches of power, other legal professionals and protocols for dealing with those who are regarded as the most influential actors in terms of promoting public confidence and the image of Justice.

5. The project team recommend that ENCJ members and observers appoint judges or prosecutors trained in communication skills as spokespersons and to have a specialised department using professionals in communication, under the leadership of the press judge/prosecutor. There should be protocols in place in case of disagreement between the press judge/prosecutor and the leadership of the Council/court/prosecutor office.

6. The project team recommends training in communication matters for all of the judges and prosecutors (it is necessary for communication in the court, within a panel etc.), including presidents of the court and chief prosecutors and members and staff of the councils as well. Clerks should be also trained in communication.

7. Judiciaries would benefit from communicating via social media, which today is one of the most widely available and used media, and so meets the public's expectations and preferences. The strengths of this method of communication include particularly; *the message sent to public is direct and cannot be "manipulated" by media, the communicator selects the public to whom the message will be addressed to, messages may be supported, sponsored etc.* It is recommended countries have communication teams, even news rooms or an adequate working environment, but also communication policies.

8. The judiciary should have a unified corporate branding approach. Institutions should develop their own brand, not only in terms of message, but also in terms of design, colour etc., to allow easy identification. Logos, branding items should be put not only on documents, but also on other objects, even on the cars representing an institution. Understanding the specific position and needs of the various institutions, logos are in a continuous evolution and should be adjusted accordingly, and for which a proper budget should be allocated.

9. Regarding the online broadcast of the councils' sessions, there are both positive and negative arguments, benefits and drawbacks, and therefore the publicity and possibility for online broadcasting sessions should always be in accordance with the judicial system's particularities.

10. There is a difference between defending the independence of the judicial system and individual judges' (prosecutors) independence. The differences noted above may require different approaches in terms of how the reaction to such attacks may be dealt with and managed whether in a non-argumentative manner or in a more proactive way. A non-argumentative way may characterise situations when press releases are issued for communicating facts regarding courts' decisions. A response/information regarding a systemic attack requires entry into the debate and a more proactive reaction.

11. The judiciaries should stay in contact with the general public, in order to strengthen confidence in the judiciary, organising judicial outreach activities, a list of examples being provided in Chapter 11.

2. Future projects

2.1. Building trust in institutions generally, communication instruments with other branches of power

As was concluded in Chapter 3, it is difficult, if not impossible to increase significantly confidence in the judiciary without raising trust in institutions generally. Considering the experience of some post-communist countries, in which the level of trust in institutions is generally low and where the objective independence of the judiciary has been recently challenged by other branches of powers, as a preventive measure for other countries, the project team recommend the introduction of a set of guidelines.

The project team proposes the draft of such guidelines should constitute the topic of another project or a continuation of the present project next year.

2.2. Guides of best practices with other legal professionals

Noting the importance of communication with other legal professionals, especially with advocates and the influence they can exercise on the public confidence and the image of justice, the project team recommend the drafting of such guidelines, using quality groups, comprising judges/prosecutors and advocates. How to develop and implement such a guideline may be the topic of another project or a continuation of the present one next year.

2.3. Protocols with those who are regarded as most influential actors in terms of promoting public confidence and the image of Justice

The most influential actors are those who are willing to reply even in very tough or sensitive situations. They can be politicians, reporters, some judges/prosecutor well known in social media, law professors etc. The judiciary should identify those personalities who themselves may influence the general public.

The project team recommend to the councils to develop protocols with these actors, and the way they should be drafted should be considered in a future project or in the continuation of the present one next year.

2.4. “The corporate use of social media”

The Project team proposes a continuation of the present project with developing guidelines for using social media for the various institutions within the judiciary, in order to raise public confidence and improve the image of Justice.

2.5. Guidelines for using social media by individual judges/prosecutors (clerks) and the institution of media adviser

The widespread use of social media as a means of communication even among judges and prosecutors cannot be ignored and therefore it would be advisable to draft guidelines for the use of social media, not to seek to limit its use and therefore freedom of speech, but to increase consistency in the way it is used and to promote a cautious approach in relation to the use of social media by identifying and highlighting the risks that could even lead to disciplinary action. This is also applicable the clerks. The institution of the media adviser is another possible alternative. Such a topic could be addressed in a future project or as a continuation of the present one next year.

3. Conclusions

The question as to why the judiciaries in Europe should focus on the importance of public confidence and on the reality of the image of justice is an entirely legitimate one.

Trust is the bedrock of any successful operation whether it be private or State. The Judiciary is not in competition with other branches of power but it is fundamental that trust is established and there is a recognition of its independence in the way it functions. Trust cannot be demanded, it must be earned in the way the Judiciary functions together with all other participants in the process including prosecutors and court officials.

The objective and subjective independence of the Judiciary is closely related to public confidence as can be seen from the results of the ENCJ Project on Independence and Accountability. It is vital that it is fully understood that Independence of the Judiciary is not for the benefit of the Judiciary but is fundamental for the protection of the general public. It is an indispensable condition to ensure access to justice for all as is enshrined in the core message of the ENCJ.

It is recognised that increasing and improving trust in the Judiciary is not fully possible in isolation but must be accompanied by building trust in institutions generally which is a path the Project recommends.

List of annexes

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