European Network of Councils for the Judiciary (ENCJ)

Réseau européen des Conseils de la Justice (RECJ)

ENCJ PROJECT TEAM

# Justice, Society and the Media

# Report 2011-2012

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## 1. INTRODUCTION

Justice, society and the media is a topic of special interest for the ENCJ as all European Judiciaries face similar challenges in this area. The European Judiciary is criticised for not being transparent and for not being outdated and insular. But at the same time the Judiciary lacks a voice in the public debate, because it is strongly believed that the Judiciary should only communicate through its decisions. Is this still correct, especially if the media misinforms the public? In this report, we will answer this question in the negative because the society has got a right to be correctly informed about the functioning of the Judiciary and the justice system.

The project team looked at what kind of measures can be taken to close the gap between the Judiciary and the society and how to enhance the cooperation and the relation between the Judiciary and the media. Further this report researches how to secure a proper information exchange with media, and if there is a way to secure that the information is portrayed correctly in the media. Can the Judiciary also improve the image of itself in the eyes of the public?

This report will provide an ENCJ perspective and identify recommendations to increase the understanding of the Judiciary and to ensure that the justice system is more transparent for the public and society. This will need a proactive media approach of the Judiciary. In return the Judiciary can achieve a better relation with the media and can narrow the gap which is perceived as being between the Judiciary and the public.

The methodology and activities undertaken involved:

- collection of information from the Judicial Councils represented in the working group and from other members and observers;
- round tables with representatives of the bar and academics;
- drafting of the documents by the Project team and support staff;
- analysis of the draft documents in the steering committee;
- working meetings;
- approval or adoption by the General Assembly.

This Report is based on the answers to a questionnaire agreed in The Hague meeting (15-16 September 2011) and on the discussions and conclusions of the working meetings held in Barcelona (9 December 2011), The Hague (9-10 February 2012) and Rome (19 March 2012).

This report focuses:

1. Spokespersons on behalf of the Judiciary: press judges and communications advisors;
2. Audiovisual recordings in the court and the use of social media;
3. Publication of judgments on the internet;
4. Press guidelines
5. Proactive media approach by the Judiciary.

These five subjects will be discussed in each chapter. For each topic, first, a factual description is given on the current developments in Europe, based on the responses to the questionnaire and subsequent discussions in the working group. Second, examples of best practices are given throughout the chapter and each section concludes with recommendations.

## 2. SPOKESPERSONS ON BEHALF OF THE JUDICIARY: PRESSE JUDGES AND COMMUNICATIONS ADVISORS

### 2.1 ACTUAL EUROPEAN DEVELOPMENTS

Many of the countries questioned have a form of spokesperson with the role of speaking for or on behalf of the Judiciary. Such a person may or may not be a judge and it is important to emphasise and define the different levels and legal qualifications of the spokesperson. The responses covered the following:

1. The press judges or other spokespersons who spoke on behalf of the Judiciary at a national level. This involved the chief justice, the very top level of judges and members of the Council for the Judiciary.
2. Judges who spoke on behalf of regional judges. In some jurisdictions this included high level Judiciary.
3. Judges who spoke on behalf of a district or local Judiciary at a lower and local level.
4. Press officers who might speak nationally or locally but who are not judges but are civil servants attached to the Ministry of Justice or Court Service or the Council for the Judiciary or other governmental, institutional or political body.
5. Communication advisors – who may also be press officers but who have the particular role of advising, informing and training judges and other spokespersons who might speak publically on a given topic.

In some countries there seemed to be a pattern of having a judge who spoke to the press at national and regional levels and for there to be local press judges where the number of local courts reached a certain number. The position of press officers and communications advisers was not so marked or defined.

Thus, countries with press judges at national/regional level include Austria, Bulgaria, Denmark, England and Wales, Hungary, Netherlands, Norway, Poland and Romania.

Some of the responding countries, which did not have a national level of press judge, expressed a particular desire or need to have such a level of judicial spokesperson (e.g. Belgium). Further in Italy, the only national spokesperson was not a serving judge but was an official attached to the High Council. Other countries were content to leave the national role to press officers and communications advisors, such as Ireland, Lithuania, and Scotland. Furthermore, some principally rely on the public prosecutor to lead communications with the media – such as Turkey and to an extent Belgium.

Many of the countries which had national judicial spokespeople also had them at local level. Italy does not have local level press judges, but expressed the wish that they should have local press judges. England and Wales also had no such provision, although this probably reflects the nature of the court structure which is heavily London centric with the Supreme Court, all Courts of Appeal and most of the High Court situated there.

In the Netherlands, all press judges meet twice a year to discuss their experiences with the media during the previous six months. Typical topics include incidents with the press, where the privacy of a defendant or witness was violated, or negative experiences with the interviewing techniques of some journalists. These meeting provide an opportunity to exchange experiences, but these meetings also serve to refine the common guidelines for dealing with the media. Examples of such guidelines include those regarding audiovisual recordings in the courtroom or procedures for dealing with journalists who infringe the guidelines. The meetings are attended by a delegation of communication advisors of each court. The committee of press judges has a governing body that prepares the agenda for these meetings. The committee has got not competence to make decisions. Thus, when the assembly of press judges agrees on a certain new manner of conduct, the committee needs to present these new guidelines to the assembly of presidents of the courts who need to approve the new guidelines.

**A. Selection and Training**

The selection and training of press judges varied widely, although certain patterns arise from the answers and certain core qualities can be found, as listed below.

1. the responsibility for the selection of press judges should be that of a senior judge or judges. At a national level this should involve the approval of the Chief Justice; at a regional and local level this should involve the approval of the Court President or local senior judge.
2. the training appears to be quite limited but a minimum would be a few days a year of media training and this should include contact and training with journalists.
3. it was important to select a serving judge who had the correct profile and ability. There is concern that judges with the wrong qualities or retired judges used in media were inappropriate and can be damaging. Indeed it is a firmly held view, that the best press judge is a volunteer who gets no extra financial compensation for being a press judge.
4. the press judge should generally be a judge of the same level as the judges on whose behalf he or she is speaking. It is also important for the press judge to have the requisite legal knowledge if dealing with the judgement or decision in a particular legal jurisdiction.
5. it is noted that except for Poland, all of the press judges do not get paid extra for their role. It is part of their judicial appointment and they use their legal time to deal with the press and media matters. It is important that the press judge is given the requisite time and support to carry out the role, which can in certain circumstances be very demanding in time and energy.

In England and Wales press judges are trained by a media consultant. This training is refreshed annually. The training includes a day in a national television and radio studio. The judges are given scenarios on which they are interviewed and then the resulting interview is then played back and analysed. Different forms of interviewing are used - such as down the line and short sound bite interviews, as well as the more traditional studio interview.

**B. Tasks and Scope of the Press Judge**

The main purpose of a press judge is seen to be the provision of information to the press and to explain and inform the press on legal decisions and procedures. In some countries the press judge will seek to explain particular decisions and cases. In other countries this is expressly forbidden and

no judge is allowed to speak publically about other judges' judgements – unless it is during a court session in a court of appeal dealing with that judgement.

At a national level the role of press judge may include a general explanation of the existing law, its effects and consequences for the public. It is not thought that the role of a national press judge should involve direct criticism of the laws and codes passed or created by the legislature, although the press judge could point out the consequences of such legislation.

At a local level the role of press judges is seen as having its importance in contact with local press and media and being a point of information for them. Whilst this may include reference to local decisions such as verdicts and sentences in criminal cases, the press judge again would explain the decisions and should not be seen to criticise them. In all cases it is expected that the judgement or ruling would contain in the judge's own words a full explanation and reasons for the decision and the press judge may be doing no more than repeating and emphasising them.

At all levels much of the work of a press judge is seen as one of information and explanation at quite a basic level. The topics include the presumption of innocence in criminal cases and the burden and standard of proof in all cases. Also included would be simple explanations of the role of the judge, the hierarchy of the courts and the Judiciary, the different jurisdictions of courts and tribunals, public involvement in justice such as being a witness or serving on a jury or as a lay magistrate or judge, court procedures and listing of cases.

## 2.2 RECOMMENDATIONS

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. the press judges and communication advisors should operate at a national level as well as at a local (and in some countries) regional level. These press judges should be judges who are serving at the level of the court and in the jurisdiction which is relevant to the press enquiry to be dealt with.

3. the press judge should be appointed by the President of the relevant court or area in which the press judge operated – and the press judge should be answerable to the appointing judge.

4. there should be basic guidelines as to the functions and role of a press judge, including rules as on whose initiative the press judge should act and any system for coordinating such action. The relationship between press judges, press officers and communications advisors can be defined in such guidelines. The guidelines should also take into account national press codes, national standards of judicial ethics.

5. there should be training available to aid the press judge in the work required. There should also be the full support of the press officer or communication advisor.

6. it is suggested that the press judge should have the following duties and responsibilities:

a. to inform and instruct the press in law and procedure;
b. to explain the public as to the nature and effect of judgements and rulings – this can also include involvement in legal education of the basics of constitutional and substantive law;
c. to further the interest of justice in promoting transparency and understanding of the public in the court system and the Judiciary;
d. to work with press officers and communication advisers in discharging their functions and monitor contact with the press and media;
e. to follow and react upon media through websites and other social media;
f. to develop contacts with the media as well as appropriate professional bodies, specialists and academic institutions.

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## 3. AUDIOVISUAL RECORDING IN THE COURTROOM AND THE USE OF SOCIAL MEDIA

### 3.1 ACTUAL EUROPEAN DEVELOPMENTS

#### A. Audiovisual Recording in the Courtroom

The legislation, and the culture, varies a lot throughout the European countries when it comes to audio and video recording in courtrooms.

In some countries, like Austria, Bulgaria, England & Wales, Ireland, and Turkey it is totally, or more or less, prohibited to make audio and video recordings for private use or for broadcasting. In Austria also broadcasting outside the courtroom (but in the court) is forbidden, but the President can give permission in individual cases.

In Lithuania broadcasting from the courts is prohibited, but parties can record the hearing for their own use. The Supreme Court of England & Wales has its proceedings broadcasted, otherwise it is not allowed. In other countries, like Belgium, Denmark, Portugal, Poland, Hungary and Norway, audio and video recording is not allowed but the judge can make exceptions. This can for example be cases with huge public interest. In some countries there is a difference between the possibilities to record civil and criminal cases. It is more common to allow recording of criminal cases, but there are exceptions. In Norway recording is generally allowed in civil cases, but not in criminal cases.

In other countries again, audio and video recording is allowed within certain limits. This is the situation in, for example Italy, Netherlands, Romania and Spain. Such limits can cover a part of the court hearing or a type of case.

In the Netherlands recording is permitted at the opening, including reading out the charges, the closing pleadings, and the passing of sentence. For other parts of the hearings, permission to recording is decided by the judge. In Romania audio and video recording is allowed outside the courtroom and might be allowed for the first minutes of a case. In Spain television has been covering the courtrooms for 25 years. However, in some cases the president of the court can decide

only to allow television cameras during the first ten to fifteen minutes of the trial. Recording is not allowed for statement of minors, victims of sexual crimes and protected witnesses.

In Sweden audio recording is generally allowed in public sessions, while video recording only is prohibited unless specific statutory basis is present. In Italy cases from the High Council are broadcasted by radio. Recording for broadcasting is in all countries, with a few exceptions, made by the media themselves.

Live broadcasting from courtrooms is possible in several countries like Belgium, Denmark, Lithuania, Norway, Poland and Spain. In some countries it is not allowed to broadcast personal information (f.e. the names of the defendant). In those cases the footage is edited and broadcasted with a delay. When live audio and video recording is allowed it's almost always done by the media, but there are some exceptions. In several countries the Judiciary themselves are recording court hearings for the purpose of the registry office. The Supreme Court and the National Audience of Spain and The Supreme Court of England & Wales produce the recording themselves. This is also a question about resources and competence. By most countries it's not seen as a possibility to finance and manage such a solution.

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| The Supreme Court of the United Kingdom is on a television stream. Thus all the proceedings and judgments are televised as they happen. The Supreme Court only hears legal arguments and deals with cases of national and constitutional importance. There is very little spontaneity in these proceedings, so there is no need for a high level of editorial control and it has got very low viewing figures. |

**B. Cell phones**

In general, the replies to this survey do not make the distinction (if it exists), between mobile phone usage by journalists and members of the public. In the majority of European countries, the use of cell phones in courtrooms is prohibited to some degree. Cell phones are banned from use in Bulgaria, Denmark, England and Wales, Hungary, Ireland, Norway, Portugal, Romania, and Turkey.

Cell phones are banned outright in Bulgaria, Romania, and Portugal. In Norway, there are no specific regulations on the use of cell phones. However, general rules prohibiting court disturbances, preserving the dignity of the court and preventing the interruption of court procedures would seem to apply equally to cell phones as to any other form of disturbance. In Denmark, it is not prohibited to bring a mobile phone into a courtroom. However a person will be ordered to desist from using such a device if the judge becomes aware of its use in the courtroom. A similar situation exists in Belgium and Austria.

In Turkey, a warning is usually issued in respect of an individual engaging in activities which affect the procedures of trial, and it seems that mobile phone usage would fall under this category. If an individual continues to defy a court warning they may be removed from court in Turkey.

In England and Wales, the use of a mobile phone in court is an offence, while in Ireland contempt of court considerations may arise from interferences caused by the use of cell phones, but a prohibition on mobile phone usage is not provided for in legislation. Interestingly, in Austria, Ireland and Slovenia, the control of the proceedings during trial is vested in the individual judge, whereas in Spain, for example, such behaviour is regulated by order of the President of the particular division of court.

Cell phones are not prohibited in Hungary, Italy, Lithuania and The Netherlands.

Whilst cell phones are not prohibited in Hungary and such usage is rare, any photographic or audio visual devices (which, with developing technologies might arguably include smart phones etc.) which disturb a court session may be restricted by a judge. However external communications tools, including but not limited to laptop computers with internet connection, are not prohibited in Hungary.

The use of cell phones is permitted in Italy. Nonetheless, if the court is disturbed by a person, that person can be directed to be removed from the courtroom.

In Lithuania, cell phones can be used for audio recording purposes by parties participating in the case. However, video recording is not permitted. It seems there are no provisions as to their usage for email, or social media purposes, either by journalists or by private individuals. Finally, in the Netherlands mobile phone usage is permitted in courtrooms. However, the taking of photographs with the use of mobile phone technologies is prohibited and there are measures in place for guards to confiscate phones and to remove such pictures in these circumstances. It is noted that this rule is subject to further exception in the Netherlands, as the use of cell phones *is* prohibited at the two extremely secured courtrooms in Rotterdam and Amsterdam.

In most European countries, there are no specific provisions regulating the use of social media, such as Twitter, in court. However the Lord Chief Justice of England and Wales has issued guidance permitting such use by journalists in December 2011. As a result, journalists do not longer have to apply at the courts to be permitted to tweet, text or email from within the courtroom.

Real time reporting from the courtroom using cell phones - by the print media and general public - is a challenge in several countries as visitors increasingly use cell phones to communicate directly from the courtroom. In other countries cell phones are hardly used for this purpose (Hungary, Ireland).

The privacy of the defendant, witnesses and jurors can be violated by the use of cell phones for live reporting during the court session.

Journalists are usually allowed to bring and use their own computer in to the courtroom. In some countries (Denmark, Austria, Italy, Netherlands, Romania, Turkey) cell phones are allowed in the courtrooms but it's not permitted to *use* cell phones during the court session for recording, reporting and pictures and other purposes – this applies both for the media and the general public. In those cases there are no specific regulations. The judge regulates this matter and will usually ask everyone not to use their cell phones, and will react if someone uses their cell phone.

In Denmark and Norway some print news media do live reporting from their computer (only written reporting).

### C. Use of Social Media by the Judiciary

Social media offers the Judiciary an opportunity to interact with the public in new ways which promotes transparency, interactivity and collaboration. Society uses social media tools

differently than traditional media which means that existing communication strategies have become out of date. The common goal of social media is to maximize user accessibility and self-publication through a variety of different formats. Social media can take many forms: social and professional networking (Facebook, Linkedin), blogging (Web log), micro-blogging (Twitter), wikis (Wikipedia), social bookmarking (Digg), video sharing (Youtube), online discussions goups and etc.

Social media and courts are basically quite different:

1) social media are decentralized and multidirectional, while the courts are institutional and unidirectional;

2) social media are personal and intimate, while the courts are authoritative and independent;

3) social media are multimedia, incorporating video and still images, audio and text, while the courts are highly textual.

In some countries the Judiciary has started to use social media. In Denmark and Norway some courts have started to use Facebook and Twitter. It has been a useful channel for the Oslo District Court to inform international media about the Oslo terror case. Councils for the Judiciary and Court Administrations have also started to use social media, for example in Lithuania, Norway, Spain and Turkey.

The Norwegian Courts Administration has started using Facebook, Twitter, Flickr and made guidelines for the use of social media. The Twitter account is used to share information about news, press releases, practical information in media focused cases, retweeting court information. The Norwegian Courts Administration, and some courts, use Twitter to communicate with media and the law sector, as they are the mayor target groups, but also with public in general. The tweets and information is quite often shared by the followers of the Norwegian Courts Administration to their followers. It has been used proactive to get publicity concerning issues about the Judiciary, but also to guide public which have misunderstood opinions. The Norwegian Courts Administration also uploaded pictures which can be used by media to illustrate articles about the courts in a way that supports public confidence. Also the Norwegian Courts Administration shared pictures of persons from within the Judiciary which are interviewed from time to time. An interesting example is "Dommerbloggen" (the judge blog) where one judge is blogging about being a judge, dilemmas or court practice that is under debate in society. People can leave comments and the judge often replays and explains how things work. It takes some time to maintain but it contributes a lot to the knowledge about the Judiciary.

Use of social media by individual judges and staff of the courts in their private life is now fairly widespread in most countries. Certainly, we can not forbid judges and staff of the courts to use social media in their private life when it concerns private matters, as such use falls under the right of freedom of speech. However, the importance of the role played by the judges and staff of the courts implies, necessarily, limits to the contents.

## 3.2 RECOMMENDATIONS

### A. Audio and Video Recording Courtroom

Recognizing the great differences between the legislation and culture in the European countries, it is not possible to have at this moment a common view on audio and video recordings in courts. In some countries such recordings are completely forbidden and in other countries it is basically allowed. However it is still desirable to reduce the gap between the Judiciary in Europe in these matters.

1. When allowing video recording there should be taken special measures to protect non-professionals, like suspects, witnesses, lay judges and jurors from being filmed. In some countries there is a general practice to prevent them from being filmed. If exceptions are made from this it is important that non-professionals gives their permission, and even if they do that the court judge independently considers if such recording/broadcasting is appropriate.

2. If the legislation allows video recording there is no need for a veto right for professional parties, like judges, prosecutors and lawyers. However, it is good practice to hear their say before the court makes a decision. If recording is generally permitted, and the judge denies such recording the decision should be motivated.

3. If recording in principle is permitted, but the court can make exceptions, it is good practice to let media have their say before the court make a decision.

4. When audio and video recording is allowed it is recommended to use remote cameras or not to have too many in the courtroom.

5. In high profile cases it is advisable to sort out and solve issues before the court hearing starts. This can be done by organizing a meeting with representatives of the courts and the media to discuss practical arrangements concerning audio and video recording (satellite buses, parts of the hearing that can be filmed, number of cameras allowed).

6. Broadcasting should usually not be allowed live, but preferably with a delay or a control button, so that any information which is not for broadcasting can be cut from the broadcasting before being transmitted.

7. It is desirable to have comprehensive and precise guidelines on audio and video recording in each country.[1]

8. Some questions must still be solved by an assessment by the judge. This might be the best solution in cases where there is a considerable public or principal interest.

### B. Cell phones

9. If cell phones are permitted to be brought into court, they should be turned off or put on silent mode to ensure minimal disruption to the court. Furthermore, it is clear that in the

[1] For more information, see Chapter 5: Press Guidelines, p. 19 and further.

regulation of smart phones, and other communication devices, strict guidelines ought to be issued as to when use is permitted and the procedure in the event of a breach.

**C. Social Media**

10. Social media can be used by 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. This strategy should include and define: the target groups for each social media, the goals of each social media, how the media should be followed-up and who has the responsibility to do that. But also the strategy should include how to use the social media proactive. This can be reached by making links to the pages or articles you like, by creating photo and video albums, by posting relevant messages which add value by providing unique, individual perspectives on what is going on. All these posts need to be meaningful and have respectful comments that inform, educate and engage citizens. It is not recommended to just repost press releases on social media.

11. Individual judges who use social media shall recognise the general ethical codes and breach of these codes shall be handled with ordinary disciplinary actions. It is recommended to use the highest privacy settings.

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## 4. PUBLICATION OF JUDGMENTS ON THE INTERNET

### 4.1 ACTUAL EUROPEAN DEVELOPMENTS

All of the countries questioned publish judgements on the internet. However there are three different ways in which way they are published. In some countries the Judiciary has no website and therefore the decisions are published on state websites of the ministries. In other countries there is a private system where decisions are published on the websites of private publishing houses. One has to pay to get access to these websites. A third practice and the most common one, is that the judgements are published on a website of the Judiciary and this database is freely accessible and without a charge for professionals and the public.

It is important that the independence of the Judiciary is emphasised. To stress this independent position of the Judiciary, the website should be under the responsibility of the Council for the Judiciary, the Court Administration or the courts. Judgments should be published on the website of the Judiciary and not –as in some countries- on websites of the government or private publishing houses.

Besides this general website of the Judiciary every court can develop its own site on a section of this website. These sites should contain information for the professional, the press and the general public. To enhance the transparency and uniformity of the Judiciary it is advisable to provide the same information on each site and develop a general format which structures the content in the same way. These sites should contain at least:

- general information about the courts and the services it provides;
- practical information for the litigants;
- agenda of upcoming cases/case schedules;
- information for jury duty;
- court rules;
- press releases;
- (summary of) judgments;
- forms (downloads);
- career possibilities.

Because the Judiciary must be transparent, judicial decisions should be made available for the general public. Therefore the website of the Judiciary should contain a database of judgments which is freely accessible for the public. Judgements should be published for judicial professionals as well as for the public. The first group is mainly interested in judgments which are interesting from a legal point of view. The press and the public are mostly interested in high profile cases. This database should contain a 'search' facility using keyword and a user friendly index. It is desirable that as many publications as possible are published. Also annotation of the decisions is preferable. If the decision is published for the public and the press, than it is important to publish an abstract which explains the decision in plain language. It should be simultaneously published together with the judgments. The abstracts should be most of the time anonymised. There are some questions about the legal status of the abstracts. If it is published by the court, it can be interpreted as an official judgement. But in practice no country has experienced any problems with the abstracts

In Poland the courts are obliged to run their own websites. Each year an ever growing number of courts take part in a special contest "E-courts in a Polish way" organised by a newspaper called Rzeczpospolita, a foundation called Forum of Citizens' Development as well as the Polish branch of Helsinki Foundation for Human Rights. The winners are awarded with a special award from the Minister of Justice. The goal of this award is to promote best practices in this area (with emphasis to online access to each court's judgments), improve contacts of courts with society and media (also by testing promptness and adequateness of courts' staff reaction to the e-mail messages). Last year's ranking (in Polish) is accessible online: http://www.rzeczpospolita.pl/pliki/prawo/pdf/ranking_e-sady_2011.pdf. An effect of the award is that the courts that just kept their last year's level, dropped on the ranking list as many courts made progress and superseded them.

**A. Anonymising Decisions**

It is custom in almost all countries questioned that the decisions are anonymised before they are published on the internet. Only in England & Wales all names and places are published. In some countries the small, regular civil cases are published with the names of the parties. There are different means of anonymising names. In some countries initials are published, in other countries just letters (party A, party B, etc.). In disseminating court decisions it is important to protect the privacy of interested persons, especially the non-professional process parties, like defendants and witnesses in criminal cases and parties in civil and administrative law cases. Therefore it is essential to leave out names and other personal information that reveals the identity of the persons

involved.[2] The Judiciary should draft guidelines how to anonymise judgments (which names, data and in which way). These guidelines should be accessible for the public and be published on the website of the Judiciary. It is recommended to make a special IT tool for this purpose.

**B. Selection**

All countries questioned admit that not all judgements are published. Most of the countries publish all decisions of the Supreme Court on the internet and a selection of decisions of the higher courts and just a minority publishes judgements of the courts of first instance.

There are also countries which publish judgements from courts in first instance, although parties have gone in appeal. The main purpose for this is to inform the public.

It is recommended that at least all court decisions of the Supreme Court and the higher courts should be accessible through internet. Considering the huge amount of all court decisions, the other courts can publish a selection of important judgments. Being final is not a necessary condition for publishing the decision, but it must be clear to the public whether the decision is final or not.

The selection of judgements for the internet differs from country to country. Sometimes the judge or the law clerk offers the decision for publication. In some countries courts appoint a committee of judges who make the selection. Some countries have developed criteria for selection but they are considered very general. In some countries from time to time a discussion is started by the press or universities that all judgments should be published for research purposes.

To make sure that all important and interesting decisions are accessible for the public it is suggested that every court appoint a special committee of judges who decide which decisions should be published.

In general, the decisions that meet the following criteria should be made public:

- the media is interested in the decision;
- the decision is of general importance for society;
- the decision can have influence upon the interpretation of law or other regulations;
- there is interest of a special group of people;
- the decision is important for the specialized press in the field of justice and law.

The criteria on the basis of which the selection is made should be freely accessible for the public and published on the website of the Judiciary.

## 4.2 RECCOMMENDATIONS

1. The Judiciary in each country should have a website under the responsibility of the Council for the Judiciary or the Courts Administration. Judgments should be published on the website of the Judiciary.

[2] An exception to this practice can be made when the party is a celebrity and the case is known to the public.

2. 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.

3. The website of the Judiciary should contain a database of judgments which is freely accessible and free of charge for the public. This database should contain a 'search' facility using keywords.

4. All judgments which are in the database should be published in full text together with a short abstract for quick reference.

5. All court decisions of the Supreme Court and the higher courts should be accessible on the internet. The remaining courts should publish a selection of the decisions. The criteria on the basis of which the selection is made should be freely accessible for the public and published on the website of the Judiciary. It is recommended that decisions that meet the following criteria should be made public:
   a. the media is interested in the decision;
   b. the decision is of general importance for society;
   c. the decision can have influence upon the interpretation of law or other regulations;
   d. there is interest of a special group of people;
   e. the decision is important for the specialized press in the field of justice and law.

6. To protect the privacy of non-professional process parties judgments should be anonymised.

7. It is recommended that in high profile cases an abstract of the decision written in plain, non-judicial language should be published on the internet.

8. In high profile cases it is recommended to hand out a paper print of the court decision immediate after pronouncing the judgment.

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## 5. PRESS GUIDELINES[3]

### 5.1 ACTUAL EUROPEAN DEVELOPMENTS

In some of the questioned countries (Belgium, The Netherlands, Austria, Hungary, Bulgaria, Lithuania, Norway, Romania, Spain, Turkey) there is a form of regulation (sometimes called press guidelines or communication protocols) for the relations between the Judiciary and the media. In some countries these relations are regulated by law (for example the Danish Administration of Justice Act).

[3] Due to Danish legislation on the relation between the Judiciary and the media, Denmark is not in a position to fully concur with all the views and all the recommendations in this chapter.

Almost every country questioned expressed a need for a set of press guidelines to deal with the relation between the Judiciary and the media. Some countries however stay reluctant towards the media when it comes to give case related information.

Press guidelines could clarify what the press may expect of the staff of the courts and how the courts should brief the press before, during and after court proceedings. It also should regulate a number of practical matters.

Most members questioned believe that press guidelines should work both to the spokesmen (their task and role) and to the media (their role and ways of conduct in courthouses and courtrooms).

Press guidelines could let the judges and prosecutors know their roles and the limits of their communications, and the journalists would know what they could require and expect from the Judiciary. The press guidelines could be an instrument that helps to promote the goal of ensuring full and correct public disclosure on legal matters through the objective and impartial representation of relevant facts.

Whilst not compromising judicial independence, press guidelines should have an internal binding effect for the individual courts and judges. It could bring unity in press relations and be a stronghold how to act in the case of specific questions asked by the press in individual cases. Further it would make clear to the journalists how the connection between the Judiciary and the press is organised.

There also should be made a difference between press guidelines for the Judiciary and the prosecutor's office. The reasons for this are the different goals of these organisations and the moments these organisations communicate to the public. Thus it is better to have separate press guidelines,[4] although if these press guidelines are separate they still should refer to each other. The definition of the press guidelines should consider the specific nature of the judicial offices involved and the current stage of the proceedings for any affairs that could attract the interest of the media. It would need to take into account, for instance, the different degrees of confidentiality that exist while investigation is under way and while judgment is pending, plus the different judicial roles of the investigating office and the judging office.
The prosecutors' office should be in charge of disclosures during the investigatory phase,[5] with the judging office (e.g. press judges) taking over at the beginning of the subsequent process phase until the judgment has been pronounced. When it comes to the execution or enforcement of judgments it would be better to leave it to the spokesmen for the prosecutor's office (depending on the system in the different countries – in some countries this phase could be under the control of police authorities who in turn, would be subject to their own press guidelines).

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. The press guidelines should be implemented on a national level, so that the judges will know what they can do when and media and public will know and can expect what kind of information is communicated when. The press guidelines should

[4] Therefore when we are talking about press guidelines we refer to press guidelines for the Judiciary. Although the Project Team does recognise that this report could be of use for the press guidelines for the prosecutor's office.

[5] Except in those countries where there are examining judges.

be binding and seen as a summary of best practices for all the judges within all the courts in the country, the Council for the Judiciary and Court Administration.
Some countries consider that the press guidelines could better be enforced by means of law, providing sanctions in case of breach. In England and Wales there are contempt of court powers which can allow the courts to regulate the behaviour of the press for example should the press breach a court order preventing publicity in a sensitive or secret case.
The question about the possibility of providing sanctions in case of breach of the guidelines is proven to be very delicate in view of the fundamental principle of freedom of speech. But there could be specific sanctions for the breach of the guidelines within the court. In that case it should be specific and pointed out in the guidelines. It would be a good idea to establish a list of "sanctions" that could be implemented by the board of the court or a judge in its courtroom during the court session. Examples of sanctions could be: temporary withdrawal of accreditation, temporary ban of information, temporary denial of access to the courtroom (the presiding judge can decide this on his authority during the session), temporary denial of copy of the judgment, contempt of court, trust default and consequently a harder access to information.
The sanctioning of any conduct that fails to conform to the press guidelines could also be handled at disciplinary levels within the specific professional category in question by filing a complaint against the professional (e.g. ethical code for journalists).

The form of the press guidelines should be seen as a morally binding protocol that was made in consultation with all parties (media, press judges, spokesmen for the prosecutors' office, representatives of the Bar association). Therefore the press guidelines should be clear and of strict interpretation. An expert group should be appointed to make a draft. To formulate the principles of the press guidelines, the representative bodies of the relevant professional categories – magistrates, attorneys and journalists– also need to be involved in a way that endows them with ethical responsibility. Some countries do see this as a task for the Councils of the Judiciary or Court Administration.

The content of these press guidelines should include:

- a reference to the ethical codes of both the Judiciary and the media and International (European) recommendations;
- an explanation of the role and function of the Judiciary, the different procedural stages of all type of cases and the role and function of the spokespersons/press judges/communication advisors in each stage;
- the legal prohibitions and the rules of conduct for the media in the courthouses and in the courtrooms, but also the possibilities to rapidly expose/deny/oppose to news or statements released in the media that are false, confusing or dangerously vague;
- the definition of media;
- the limits of providing information of the Judiciary during the different stages of a case and which actor within the Judiciary is when responsible on how to communicate with the media;
- the right of the media on how they can get information and what information;
- what rules apply to audio or video recording and the use of mobile phones and social media in courtrooms and courthouses;
- the press guidelines also should be make a difference between information for the media and the public and information for news flashes and documentary programs.

Press guidelines should be reviewed and updated on a regular basis. There should be a national platform to exchange experiences with spokespersons and representatives of the media. A regular

mutual consultation for the purpose of updating prior expectations to accommodate any new demands that might arise and checking the outcomes of earlier agreements in order to apply practical experience to improve their capacity to regulate the matter, so as to gradually refine their utility in response to the relentless development of new tools of communication.
A survey among judges, press judges, public information officers of the courts and journalists would also be a way to lead to adjustments in the guidelines. Also conferences with all stakeholders could be held at reasonable intervals, and also on an international scale.

There will be a real advantage in the establishment of a system of a network of press judges and press officers/communication advisors on a national and European level and this network should coordinate the review of guidelines so that it will be updated on a regular basis. Further it could be very useful for inspiration of ideas and for benchmarking. But this could also be an opportunity for ENCJ to coordinate the review of these guidelines on a European level from time to time.

Recently, in December 2011 in Belgium, there is a national platform created for all press judges and spokespersons for the prosecutor's office. Goal of this platform is to ensure easy and informal contacts between these spokespersons, to review the existing guidelines, to elaborate a regular exchange of experiences between all the stakeholders (e.g. media and bar association) and to create a national spokesman's office.

### 5.2. RECOMMENDATIONS

1. 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 advisable. 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.

2. 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. The press guidelines should also regulate a number of practical matters.

3. Press guidelines should work both to the Judiciary and its spokespersons (their task and role) and to the media (their role and ways of conduct in courthouses and courtrooms). Press guidelines should let the judges know their role and the limits of communicating with the media, but it should also let the media know what they could require and expect from the Judiciary. They would not compromise judicial indepence.

4. Guidelines should be made in consultation with all parties (media, press judges, spokesperson for the prosecutors' office, representatives of the bar association).

5. The guidelines should be clear and of strict interpretation.

6. Guidelines should be reviewed and updated on a regular basis. There should be a national and European platform to exchange experiences with the stakeholders.

## 6. PROACTIVE MEDIA APPROACH OF THE JUDICIARY

### 6.1 ACTUAL EUROPEAN SITUATION

Most of the questioned countries express their need for a more proactive media approach, although at least three of the countries questioned are reserved. These countries question whether it is appropriate for the Judiciary to take the initiative in the communication with the media. Some of the responding countries consider a more proactive media approach as a special task of the Council of the Judiciary and that the Council for the Judiciary should support the courts in their contacts with the media.

When asked about the reasons, most of the countries mention the possibility of improving the image of the Judiciary in the eyes of the public. Society's view on the Judiciary is determined by reports in the written press and on radio and television. The press acts as an intermediary between the Judiciary and the general public. When the Judiciary is more transparent to the public then, interest and confidence in and the understanding of the Judiciary.

**A. Proactive Media approach concerning Court Cases**

The media in most European countries have an overwhelming interest in high profile criminal cases. To counterbalance the attention for criminal cases in the media it is recommended to draw the intention of the press to interesting civil cases, for example labour cases, consumer rights and administrative law cases such as tax rules and social security rules. There seems to be no fundamental objection if the Judiciary makes a selection of judgments which can be of interest for the public.

Most responding countries make case lists of the court sessions available for the press free of charge on a weekly bias. In a few countries these non-anonymised lists can be consulted in the court buildings, in other countries they are send to the press by the Judiciary.

Denmark publishes non-anonymised case lists for the press on an extranet with limited access. After approval, journalists have access to the extranet with a code. A confidentiality agreement is signed by the media organisations in order to avoid misuse of non-anonymised data. Each media organisation can pick a few journalists who can get access in order to limit the number of people with access to confidential information. Access must be renewed annually (for free lance journalists after 4 months). The case lists have a search facility and also include information on the subject of the individual case.

In high profile cases the courts could have meetings with representatives from the media about the planning and the intended procedure of the case.

In several countries press releases/summaries of judgments are published on the website as soon as possible after the judgment is pronounced. In countries where cameras are allowed into the courtroom it occasionally occurs in high profile cases that a judge reads a short version of the decision in plain language in front of television cameras. In this manner the media gets the material what can be used in the news features and the pronouncement of the court decisions are broadcasted more often.

Since 2010 Denmark has been working on a more proactive Communications strategy. The strategy is based on surveys of the public's view of Danish Courts, media coverage of the Courts of Denmark and a survey of journalists' view of the courts. The analysis shows that the credibility of the courts is very high. However, it also shows that the courts themselves are "invisible" and rarely contribute to court-related press stories. Furthermore, analysis shows that public knowledge about the court system is very limited and that there is a gap between public perception of the level of sentencing on the one hand and actual case law on the other. The overall purpose of the strategy and the communications efforts is to increase knowledge of, interest in and thus understanding of the courts and the Judiciary among the population.

**B. Proactive media approach by the Council of the Judiciary and courts**

In several countries the Council for the Judiciary and courts organises informal annual meetings with the press. In these meetings the Council or court may present statistics, highlight some cases and learn about the practical needs of the press. These meetings are useful for the media and the Judiciary to get to know each other better. So it is recommended that the spokespersons and the public information officers attend these meetings.

In some countries, training sessions are provided for the magistrates and law clerks focused on communication and transparency. In one country the Judiciary deliberately takes part in public discussion on issues like: the role of the courts and judges in a democratic state and the importance of respecting the law for the individual citizen and the country as a whole.

Other activities mentioned are presenting annual reports to the press and explain the work of the Judiciary and providing training for journalists and journalism students.

**C. Individual performance of judges in the media**

In most of the countries questioned the performance of the individual judge in the media is not allowed: the judge speaks through his or her decision and the spokespersons for the press are the ones who speak to the media. In Austria individual performance of judges in the media is officially forbidden. In Belgium some judges give interviews about their work. This is acceptable if the topic of the interview is not linked with a certain case but a general issue. They can also perform as an expert. In some countries -mostly by lack of official spokespersons- the media invites the same retired judges into the studio to comment court hearings or to comment certain issues. The problem with this is that they are considered as spokespersons for the whole profession while in fact they have not been active as a judge for years.

Most of the countries consider the performance of individual judges in the media as a risk. Judges are limited in expressing their opinions and should be mindful of the implications of their comments for future cases. Nor should a judge give an interview before or during a case. The judge could appear subjective and biased towards one of the parties or could be accused of trying to influence the outcome of the case.

## 6.2 RECOMMENDATIONS

1. All countries are encouraged to develop a proactive media approach. This approach should be focused on individual court cases as well as the judicial system and principles of law.

2. The media should have access to the case lists of the courts in order to select court hearings and be able to attend them. Simultaneously courts can bring a selection of interesting court cases under the attention of the media.

3. The Councils for the Judiciary as well as the courts are encouraged to organize at least once a year an informal meeting with the national press to explain the work of the Judiciary and to inform them about recent developments.

4. Training in transparency of the Judiciary and explaining the way the media works should be part of the regular education programs of judges and clerks.

5. It is recommended that the Judiciary will be involved in the training to (student) journalists about the organization of the Judiciary and the law.

6. Individual judges -not being a press judge- should be reluctant of performing as a spokesperson in the media. If they intend to do so it is recommended they thoroughly prepare in cooperation with the press judges, senior judges or public information officers.

7. It is recommended that the Judiciary in all the countries develop activities to inform the general public and to educate students of different levels:
   a. organizing an 'open day (or week) of the courts' to inform the public about all aspects of the Judiciary;
   b. reception and guiding of groups visiting the courts;
   c. publishing booklets or information on the internet for the general public on topics as: coming to court, jury duty;
   d. developing online teaching materials about the court system for school students and to support the courts in connection with school visits.

## 7. MAIN RECOMMENDATIONS

The main recommendations that can be drawn out of all the research the Project Team Justice, Society and the Media has done, is that:

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 could 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 judgements 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 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.

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.

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