



European Network of Councils  
for the Judiciary (ENCJ)

Reseau européen des Conseils  
de la Justice (RECJ)

# Public Confidence and the Image of Justice

*Individual and Institutional use of  
Social Media within the Judiciary*

## ENCJ Report 2018-2019



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**Annex**

# CHAPTER I - INTRODUCTION

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## A. Preamble

The draft report 2018-2019 is the second stage of the ENCJ project: “Public Confidence and Image of Justice”, in line with the Strategic Plan 2018-2021 of the ENCJ. The whole project aims at streamlining the internal and external communication of the judiciary system.

The first stage, ENCJ Report 2017-2018 outlined the main working hypotheses, and set out some recommendations on surveys of public trust, using media by the judiciaries, establishing a communication strategy, training in communication skills, taking social media into consideration, having a judiciary branding approach and, communication with the general public.

The Report for 2018-2019 envisages the development of communication guides needed by judges and public prosecutors in the use of social media and, additionally, to the drafting of principles to be considered in institutional communication with citizens and other institutional participants. It is intended to develop tools to incorporate the principles of transparency, accessibility and judicial education. At the end of the Report recommendations are made, to include projections of the future activities to be carried out within the project “Public Confidence and the Image of Justice”.

## B. Argument and description of Report 2018-2019

A transparent, accountable and independent judiciary is one of prerequisites for the 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. Transparency should also include access to information about the judicial process to promote and encourage public confidence in those involved in the judicial process.

Trust is the bedrock of any successful process whether it be private or State. The Judiciary is not in competition with other branches of power but it should be recognized that trust is fundamental to establish a genuine recognition of its independence in the way it functions. Trust, like respect cannot be demanded, it must be earned in the way the Judiciary functions. This must include all those participants in the process, including prosecutors and court officials. It should be acknowledged that, to increase and improve trust in the Judiciary, it is not fully possible to do so without building trust in institutions generally,

To gain trust requires effective and clear communication from the judiciary. The general public and other branches of power need to be fully informed regarding its activity. A digitized and dynamic social media creates an interdependency and plays a crucial role to ensure that the message of the judiciary heard. This project seeks to respond to a recognition of the need for the judiciary to adapt its communication skills to the demands of the 21<sup>st</sup> century. This report identifies some of the main principles to consider when using social media, both by institutions in the judiciary system, and also by individual judges and prosecutors.

The ENCJ is aware of this and its Strategic plan for 2018-2021 therefore 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.*<sup>1</sup> An open and transparent system of justice is a further precondition for establishing and maintaining the Public trust in justice, which is a

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<sup>1</sup> ENCJ 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](https://www.encj.eu/images/stories/pdf/GA/Paris/encj_4_year_plan_2018_2021_adopted_ga_2017.pdf)

cornerstone of the legitimacy of the judiciary.

The Strategic Plan also mentions that the ENCJ wishes to initiate a dialogue on the Rule of Law and the role of the judiciary in democracies. One of the issues to be discussed in this regard is the role of Councils for the Judiciary as guarantors of the independence of the judiciary. The 2016 survey among judges shows that judges do not feel respected by the other State Powers. The most recent Flash Eurobarometer 447 (April 2017) on the general's public's perception of the independence of the judiciary, the interference of politicians and government is mentioned most frequently as a reason for a negative perception of the independence of the judiciary.

In establishing the objectives proposed by the ENCJ-Public Confidence and the Image of Justice project-, Report 2018-2019 focuses on two major themes:

**GUIDELINES FOR USING SOCIAL MEDIA BY INDIVIDUAL JUDGES AND PROSECUTORS** which take into consideration the following:

- Advantages and Disadvantages of Using Social Media: Rights and Risks
- Judges' Identification on Social Media
- Content and Behaviour on Social Media
- Friendships and Connections on Social Media
- Use of social Media for Evidence Gathering and Non-Legal Research
- Privacy and Security on Social Media
- Training

The desired objectives are as follows:

- Improve internal and external communication
- Sharing regular and consistent information
- Developing a satisfying organisational culture
- Understanding roles and responsibilities
- Enhancing productivity and effectiveness
- The Judiciary feeling relevant and valued in promoting his/her work in order to defend the system

**GUIDELINES FOR INSTITUTIONAL USE OF SOCIAL MEDIA** which take into consideration the following

- Why using social media institutionally - objectives and content
- Drawbacks
- Communication strategies for social media
- Types of social media and channels
- Privacy settings in case of institutional use of social media and fake pages, input - output or just output?
- How to deal with (malicious or contemptuous) comments?
- Monitoring social media
- Language
- Staff and budget (criteria)
- The use of social media in court rooms

The desired outcomes are as follows:

- Developing productive relationships with other participants and the general public
- Regular institutional contact
- Public awareness
- Education and responsibilities
- Guidance and consistency in delivering information



### **1.1. Paradigm**

In addressing the title of the Project, “Public Confidence and the Image of Justice”, carried out during 2017/2018, the principal aim of the Project Team was to focus on the importance of communication by and for the judiciary.

The Project Team felt that, for the purposes of this project, public confidence should be analyzed more from the perspective of how to improve and build upon the image of the judiciary via communication in written and oral form than by measuring public trust. From the perspective of measuring public confidence, the Project Team only recommended 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. A model of a possible survey for the court users is to be formulated by Project Team 1 on Independence, Accountability and Quality of the Judiciary.

The current Report, 2018-2019, will continue having the same work hypothesis as the former Report from 2017-2018, as presented above.

### **1.2. What has been done the previous year<sup>2</sup>**

Last year’s Project considered how the main recommendations from the Project ‘*Society and the Media*’ have been implemented in various countries. Accordingly, this Project has not covered this topic.

It also treated topics such as: *How to draft a communication strategy?* (describing the most important requirements, content and form of a communication strategy, providing a model and assessing the main risks); *The establishment of a spokesperson* (who should be a specialist in communication; the profile of a press judge/prosecutor; the independence of a press judge/prosecutors; the necessity of protocols /regulations/agreements about who will be responsible if an issue crosses different responsibilities); *Training in communication skills - crisis communication protocols* (definition, examples, recommendations); Audio and visual recordings in court rooms and judicial council meetings (positive outcomes and possible drawbacks, examples of best practices, recommendations); Procedures for defending the independence of the judiciary and individual judges and prosecutors (procedures in place, making public aware of defending the independence, recommendations); Reaching out to general public (examples of best practices in place).

### **1.3. Future projects proposed by the Project team**

The ENCJ Project ‘Public Confidence and the Image of Justice’ carried out during 2017/2018 continued with its goal to reach maximal standards in inspiring confidence in the public when accessing Justice and improving the image of the Judiciary.

Additional topics are considered necessary and are suggested in the last chapter of the Report on the topic, covering future projects. These are:

#### **I. Building trust in institutions generally and communication with other branches of power.**

As was concluded in Chapter 3 of the previous report on public confidence and the image of justice, it is difficult, if not impossible to significantly increase 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 recommends the introduction of a set of guidelines.

The project team proposed the draft of such guidelines to constitute a continuation of the project next year.

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<sup>2</sup> Public Confidence and the Image of Justice, ENCJ report 2017-2018, <https://www.encj.eu/articles/72>.

## **II. Guides of best practices with other legal professionals**

Acknowledging the importance of communication with other legal professionals and the influence they can exercise on public confidence and the image of justice, the project team recommend the drafting of guidelines, using quality groups, comprising judges/prosecutors and advocates. How to develop and implement such a guideline is recommended as a topic of a continuation of the project.

## **III. Protocols on how to deal with those who are regarded as the most influential participants in terms of promoting public confidence and the image of Justice.**

The most influential actors are those who are willing to participate even in the most difficult or sensitive situations. They can be politicians, reporters, judges/prosecutors or those well known in social media, law professors etc. The judiciary should identify those participants who themselves may influence the general public.

The project team recommended to the Councils to seek to develop protocols with such participants, and the way this should be developed would be considered as a topic for a continuation of the project.

## **IV. “The corporate use of social media”**

The Project team proposed a continuation of this project to consider the development of guidelines for the use of social media for the various institutions within the judiciary, in order to raise public confidence and improve the image of Justice.

## **V. 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 is advisable to draft guidelines for the use of social media. This is not to seek to limit its use or freedom of speech, but to increase consistency in the way it is used. By doing so it should promote a more cautious approach in relation to the use of social media by identifying and highlighting the risks including those that could lead to disciplinary action. The establishment of a media adviser may be considered. Such a topic has been recommended to be addressed as a continuation of the project.

### **Proposed projects for 2018-2019**

All the proposed topics could not be covered during one year. For this reason, the project team has chosen to develop the most urgent topics:

- 1. The corporate use of social media by the institutions within the judiciary
- 2. Guidelines for using social media by individual judges/prosecutors (clerks) and the institution of media adviser;
- 3. Communication instruments with other branches of state power.

### **Proposed projects for 2019-2020**

- 1. Protocols with those who are regarded as most influential actors in terms of promoting public confidence and the image of Justice;
- 2. Guides of best practices with other legal professionals;
- 3. Branding justice (?) - this topic was not proposed to be continued, but it is worth to consider it in the future.
- 4. Organisation of a conference with representatives of other state powers on the communication instruments developed in 2018/2019.

### **1.4. Objectives of the project**

The topics regarding Justice, society, and the relationship between them as well as relations

among the legal professionals and among state powers and establishing best ways of communication represent a topic of special interest for the ENCJ and for all European Judiciaries, as they face similar challenges in this area.

As the idea that the Judiciary shall only communicate through its decisions has been disbanded and as result from the conclusions of the previous Project on *Public Confidence and the Image of Justice*, 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.

Therefore, the main objectives of the current Project is the following:

1. - To identify gaps of communication and to improve relations and communication between the judiciary and other branches of state power;
2. - To improve the use of social media by individual judges/prosecutors to contribute to a better image of justice and for preventing possible disciplinary measures or possible damages related to the image of justice;
3. - To improve the use of social media within the Judiciary by the Judicial Councils and other similar bodies in order to improve the image of justice by the courts and prosecutor offices as well.

In a future project, we shall consider as main objectives for the uncovered topics:

4. -To identify best practices and to promote strategies of communication and cooperation with most influential actors in terms of promoting public confidence and the image of Justice;
5. - To emphasize the importance of a fair communication among legal professionals, to identify best practice in terms of guidelines for communication between judges/prosecutors and other legal professionals;
6. - To use brand equity and design to improve the image of justice.

### **1.5. Outputs**

A report containing:

- An overview and analysis of the need for improving communication with the other state powers.
- Recommendations in terms of relations and communication with the other branches of power - how to draft a guide of best practices.

In addition, identifying general principles in terms of social media and social networking policy<sup>3</sup>.

- Sharing best practices in terms of using social media by institutions within the judiciary.
- Sharing best practices in terms of using social media by individual judges and

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<sup>3</sup> [https://www.cacp.ca/law-amendments-committee-activities.html?asst\\_id=844](https://www.cacp.ca/law-amendments-committee-activities.html?asst_id=844)

- prosecutors<sup>4</sup>.
- Recommendations in terms of using social media within the judiciary by institutions (Judicial Councils and other similar institutions, courts and prosecutor offices).
- Possible recommendations for the future involvement in drafting guidelines for the use of social media by individual judges and prosecutors and the development of the institution of the media adviser.

The report of the project can be used by national judicial authorities, Councils for the Judiciary (other similar institutions) and other state powers, when assessing their communication methods, respectively for drafting guidelines for the use of social media in institutions within the judiciary and by individual judges/prosecutors.

## 1.6. Results

**Immediate results:** to improve knowledge on which actions to undertake to increase public confidence and to improve image of the judiciaries using the tools proposed in the project, surpassing the possible problems encountered during the implementation process having the support of the Project Team.

**Long term results:** improved public trust in public institutions in general, and in the Judiciary, in particular.

## 1.7. Boundaries of the project

What will not be included in the results (what will not be realized): The project does not provide a detailed analysis of the existing national systems on the topics, but it takes into consideration the national experience of each of the participants into the project.

The project does not evaluate compliance of national judicial systems with the possible recommendations proposed by the project team.

Although 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 Accountability and Quality of Justice, the current Project shall not interfere with the objectives of the Project on Independence.

## 1.8. Coherence with other projects or work done by other organizations

### On the use of social media

- **UNODC** started a project that would address the individual use of social media by judges as well. The ENCJ participated to their expert meeting on the topic of Social Media by Judges, Vienna, Austria, 5-7 November 2018. The Romanian coordinator of the present project presented the core elements of the previous report on public confidence and the image of justice adopted by the ENCJ, with special focus on some elements of the institutional use of social media<sup>5</sup>. The conclusions of the expert meeting are not available, because they are going to be adopted by The High-Level Meeting of the Global Judicial Integrity Network 18-19 of November, Doha, Qatar<sup>6</sup>.

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<sup>4</sup> [http://www.familylaw.co.uk/system/redactor\\_assets/documents/491/Blogging\\_by\\_Judicial\\_Office\\_Holders.pdf](http://www.familylaw.co.uk/system/redactor_assets/documents/491/Blogging_by_Judicial_Office_Holders.pdf).

<https://lawreview.law.miami.edu/wp-content/uploads/2011/12/Why-Cant-We-Be-Friends-Judges-Use-of-Social-Media.pdf>

<sup>5</sup> <https://www.unodc.org/ji/en/events/index.html>.

<sup>6</sup> *Ibidem*.

The project team invited UNODC for the meetings having the same topic and used the discussion guide prepared by UNODC for its expert meeting, with the acceptance of the institution. Special thanks to UNODC for its kind support.

- **Reseau francophone des Conseils de la Magistrature Judiciaire** has also developed a project on the individual use of social media by judges adopted on 23 November 2018<sup>7</sup>. The Belgian coordinator of the present project was part of that project too and informed the project team about the results which were taken in consideration when drafting this report.

### On the relationship with other branches of power

- The ENCJ was invited by **FRA (European Union Agency for Fundamental Rights)** to participate to the Fundamental Rights Forum, 25-27 September, Vienna, Austria<sup>8</sup>, for an open session on the topic Protecting the Rule of Law, by Promoting Understanding of and Respect for Judicial Independence and Accountability. The Romanian coordinator of the present project participated with the secretariat of the ENCJ and the conclusions were published on the site of the organisation.<sup>9</sup>
- The ENCJ was part of the **EJTN (European Judicial Training Network)** programme on Rule of Law<sup>10</sup>. The Romanian coordinator of the present project was one of the coordinating experts in charge of the seminars for leaders<sup>11</sup>, also participating as a speaker and facilitator in working groups on the topic of communication and trust. The president of ENCJ, Mr. Kees Stark was one of the speakers in the seminar for members of judicial councils on the topic of independence and the role of the judicial councils in protecting the independence of the judiciary. Some documents, presentations and reports drafted by the experts are useful for the topic on communication with other branches of power.

### 1.9. Risks

- Pursuing an excessively ambitious goal in light of the substantial differences between the judicial systems and judicial cultures and thereby failing to establish a set of best practices.
- The reluctance of Councils for the Judiciary to assume the recommendations in the context of the project.
- The reluctance of EU judicial systems to accept the conclusions of the project.
- The complexity of the proposed topics exceeds the timeline dedicated for the current Project 2018 /2019 (For this reason the project team proposed from the very beginning the prolongation of the Project for the next year). As it results in the following parts of the report, the guide for best practices with other branches of power has not been finished, the project team proposing the continuation of this topic for the next year along with just one more guide for best practices namely the one

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<sup>7</sup> <https://rfcmj.com/fr/actualites>, <https://rfcmj.com/fr/actualites/article/rapport-portant-sur--les-reseaux-sociaux-et-la-magistrature--un-magistrat-branche--a-quelles-conditions--.16>.

<sup>8</sup> [https://www.fundamentalrightsforum.eu/en/frf/frf\\_programme](https://www.fundamentalrightsforum.eu/en/frf/frf_programme)

<sup>9</sup> [https://fra.europa.eu/sites/default/files/frf-2018-harvest-encj-rule-of-law\\_en.pdf](https://fra.europa.eu/sites/default/files/frf-2018-harvest-encj-rule-of-law_en.pdf).

<sup>10</sup> <http://www.ejtn.eu/News/EJTN-launches-its-new-Rule-of-Law-Project/>.

<sup>11</sup> <http://www.ejtn.eu/Catalogue/EJTN-funded-activities-2019/Independence-and-Accountability-of-the-Judiciary-and-Effective-Judicial-Protection-RoL201903/>.

with other legal professionals.

#### **1.10. Methodology, external input and output**

- Collection of all information needed for analysing the proposed topics within ENCJ documents/previous projects and in other relevant international documents and the relevant communication bibliography.
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- Preparation of the meetings by the coordinators - establishing the relevant subtopics for each guideline and discussing them in the project team. An adapted form of the snowball methodology <sup>12</sup> for drafting the conclusions, namely dividing the project team in subgroups for answering each subtopic and debating the conclusion of the subgroups in the plenary session till a consensus is obtained. This method has been proven to be very efficient and inclusive, each member of the project team having a valuable contribution to the topic. As it was observed, each guideline needs at least two meetings, one for establishing the subtopics and discussing them in subgroups and one for debating them in the plenary sessions. For this reason, the project team proposes for the Report 2019-2020 to draft two types of guidelines: finishing the one on best practices with other branches of power and drafting another one on communication with other legal professionals.
- Collection of useful information and examples of best practices about the way the councils dealt with the topics of the project, the problems they encountered by doing it and, if possible, in this point, how this affects/improves the level of public trust and the image of the judiciary in various countries.
- The deliverables of the project are the two guides of best practices for individual and institutional use of social media and some proposed subtopics for a guide of best practices with other branches of power, which will be drafted next year.

#### **1.11. Coordination of the project**

##### **Coordinators of the Project Group:**

Consiliul Superior al Magistraturii România - *judge Andrea Annmaria Chis*

Conseil Supérieur de la Justice/Hoge Raad voor de Justitie / Belgium - *judge Christian Denoyelle*

Državno sudbeno vijeće / State Judicial Council of Croatia - *judge Damir Kontrec*

##### **Secretaries of the project group:**

*Alina Barbulescu - CSM Romania and Gerd Van Den Eede - HRJ/CSJ Belgium*

**Expert:** Magor Kadar - Romania

#### **1.12. Timeline**

The work of the project team was developed during discussions in four meetings, which were scheduled as follows:

Kick off meeting - 17-18 September, Bucharest

Second meeting - 3-4 December 2018 Bucharest

Third meeting - 4-5 February 2019, Brussels

Fourth meeting - 8-9 April 2019, Rome.

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<sup>12</sup> See EJTN - Handbook on Judicial Training Methodology in Europe, 2016.

## CHAPTER II - GUIDELINES FOR USING SOCIAL MEDIA BY INDIVIDUAL JUDGES AND PROSECUTORS

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The use of social media is now an everyday fact of modern life. The benefits are considerable but so are the risks. These Guidelines seek to set out the principles and some of the details that will direct how Judges (and see below how this is defined in these Guidelines) as individuals may take advantage of the benefits of and be aware of and avoid the risks of using social media.

Judges can use social media, but they need to behave in accordance with the ethical principles of the judiciary, with reference to the Bangalore Principles and the Judicial Ethics Report of 2009-2010. In general, there is no distinction in judicial responsibilities in the use of social media from any other form of media. They must also remember that they may always be accountable to their governing bodies.

Therefore:

### 2.1. Advantages and Disadvantages of Using Social Media: Rights and Risks

- Judges<sup>13</sup> may use social media, but they need to behave in accordance with the ethical principles of the judiciary, with reference to the Bangalore Principles and the Judicial Ethics Report of 2009-2010. Judges have a right to use social media, as an aspect of freedom of expression. By using social media judges share in modern life.
- Judges should always be aware of the particular risks of using social media such as being exposed to harassment, profiling, data phishing, becoming victim of extortion etc. There is also an increased/significant risk that, by sharing some content (such as posts, commentaries, tags, likes, photos, etc.), a judge will undermine his or her reputation or the reputation of the whole judiciary.
- Judges should use social media responsibly and they must be aware that there is an instant wider exposure of any information they share on social media with the consequence of greater scrutiny. If used responsibly, social media may provide more transparency and can promote a good/positive image of the judiciary.
- Judges are responsible for the way they use social media, and may be answerable to their governing bodies.

### 2.2. Judges' Identification on Social Media

- Judges should not use social media for professional purposes<sup>14</sup> under a nickname or an alias.
- Whilst there should not be a prohibition on judges using pseudonyms for private purposes, it is not advisable for judges to do so.
- Concealing one's identity should not be employed to conduct oneself unethically or unprofessionally.
- There is no difference between restricted and open access to a social media profile; any information shared on social media can become public.
- Judges should exercise caution in publishing personal information (such as location, telephone numbers, family relationships, photographs etc.) which might expose them to risks.

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<sup>13</sup> The term “judge” for these purposes includes prosecutors.

<sup>14</sup> On any forum in which you are identified as a judge.

### **2.3. Content and Behaviour on Social Media**

- Assess the content before posting it, and if in doubt, don't! Exercise judgement when posting on social media, taking into account your disciplinary/ethical/deontological code.
- When posting, think about the future! Once it's out there, it is too late: you have lost control. Take into account that what you post might be exploited by others. Revise and clean out your activity (comments, post, likes, tags, shares, etc.) on social media platforms periodically.
- The rules which apply to judicial commentary or endorsements in the media generally, apply to social media as well.

### **2.4. Friendships and Connections on Social Media**

- Any respectable online relationships should be acceptable if a reasonable observer would not consider that they may create the potential for, or a perception of, influence or bias. Any online relationships or connections which might reflect badly on the reputation of the judiciary must be avoided.
- Care is required when choosing or maintaining online relationships. However, online relationships or connections do not necessarily equate to those in real life.
- Online connections with parties, lawyers of the parties and other participants in pending cases should be avoided.
- Judges should exercise discretion in choosing their online relationships and connections but should not feel obliged to confine them to close friends or members of the family. The possibility that an intended connection may be involved in a pending case need not, on its own, prohibit the making of the connection. Procedural solutions, such as self-recusal, should be considered whenever there is the possibility of a breach of the appearance of impartiality.
- Indirect relationships or connections with someone (such as being part of the same groups/communities/groups of friends/interest groups on social media) do not carry the same importance as having a direct relationship or connection with that person.

### **2.5. Use of social Media for Evidence Gathering and Non-Legal Research**

- There is no distinction between social media and any other form of media (for example television or newspapers).

### **2.6. Privacy and Security on Social Media**

- Judges should be aware of, and periodically check, the privacy settings of social media platforms on which they are active.
- No matter how hard (s)he tries to protect private or sensitive information (such as location, family, contact information etc.), a judge should beware of sharing it because it can become public.
- Restrictions will depend on the type of social medium involved and the way judges use it.
- Judges may allow comments sections on their posts. In the event of inappropriate contributions, comments may be moderated/deleted.



## **2.7. Training**

- Judges should engage in training in the use of social media (which should be provided within formal judicial training). The forms of training could include brochures to be distributed to judges, seminars, or on-line courses, depending on the need. This kind of training should be included in the curricula of judicial academies.
- The content of the training should cover technical aspects (such as the different privacy settings of different social platforms), aspects of profiling, data issues and how to educate your friends and relations on the risks of using social media. In particular it should raise awareness of issues which are peculiar to social media.

## CHAPTER III - GUIDELINES FOR INSTITUTIONAL USE OF SOCIAL MEDIA

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The judiciary should update their communication means and systems. Since many people use (only) these social media, the judiciary has to do so too to communicate with different target groups and the general public. The use of social media should enhance the visibility, the publicity, transparency and accessibility of the judiciary and it should serve educational purposes. It should help to build public trust and create or improve a modern image of the judiciary. Using social media should be a way of fast and direct communication to address messages to a targeted audience. In fact, the judiciary can become the broadcaster itself, without needing a medium (such as traditional media).

The traditional media is also using social media to disseminate information. Generations Y and Z can be reached that way.

### 3.1. Why using social media institutionally – objectives and content

The use of social media encourages and empowers the professional activity of the judiciary entirely. It is noted that other institutions, and other branches of power, are constantly using social media, and that most users are connected to these platforms where information is getting faster. Just as the needs of the system have to be considered, it has to be understood that the social media has to be constantly used. It can be seen that an attack on the judiciary, launched on a social media platform, is easily obtained by the general public. That is why the answer to these attacks must be made by using social media, so that the message of defending the reputation of the system is understood and perceived as quickly and clearly.

**Giving information** - disseminate relevant practical information to those who use the courts and/or seek to access justice - e.g. information about the location of, and facilities in, court buildings; the listing and progress of cases and deployment of judges; and links to the definitive transcripts of judgments/proceedings with summaries if appropriate.

**Collecting information** - use polls, the (social) media can be scanned and artificial intelligence can be used to monitor what people think about a topic.

**Reaction** - give the appropriate reaction when considered opportune according to the practice, particularities of the judicial system and the court's users' expectations. By giving reactions, the institution is able to correct misleading information. Explaining and clarify all issues which reflect on the independence and reputation and image of the Judiciary and could influence public trust.

**Prevention and education, proactive approach**-performed through:

- in-depth information to allow people to learn more about the judiciary (how it functions, information related to legal institutions and glossary of legal terms, etc.) using educational materials such as: citizen's guides, videos, multi-media presentation etc.,
- press summaries,
- using social media for organising meetings and events for students and pupils to visit courts (prosecutor offices), discuss with and learn from judges and prosecutors and reflecting these meetings on social media,

- including members of the local public in different projects,
- introducing topics in the public debate, deliver core messages,
- using authorities and other public organisms to create networks for developing preventive measures and raising awareness.

**Transparency and accountability** - provide information on the way courts, judicial councils, institutions within the judiciary operates, how decisions are rendered and publish statistics related to the activity of the courts or links related to websites of the courts or institutions where such information are published etc.:

- delivering constant messages at the right moment,
- presenting constant reports on the activity of the judiciary,
- keeping up-to-date agendas, meetings, conferences, procedures,
- regular document sharing.

**Accessibility** - substantive (e.g. useful information related to access to justice) and formal (the language used, how user friendly is the page):

- developing apps,
- sharing accurate and updated information,
- using different types of social media,
- public relations office using social media for communication,
- providing the possibility for feedback,
- using clear and easy terms and vocabulary,

**Crisis communication**<sup>15</sup>.

### **3.2.Drawbacks**

- When using social media in an inappropriate way, the judiciary could be criticized, or the public image could be damaged.
- It is harder to be accurate when you have to be brief.
- The treatment of comments or other kind of input can be a difficult question, and needs a policy to respond (quickly or accordingly to the social medium used) to the reasonable responses (knowing that there could be abusive responses too.)
- When being active on social media, there is a need for enough capacity (staff) to address all information/input.
- There's always the possibility of influencing or even manipulating the information you posted on social media. There could be attacks by trolls, some people can create fake

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<sup>15</sup> For crisis communication, see Public Confidence and the Image of justice, ENCJ Report 2017-2018, <https://www.encj.eu/articles/72>.

accounts, and accounts can be hacked. But social media should not be avoided just because there is this risk.

### **3.3. Communication strategies for social media**

- The communication provided by the judiciary should be focused on the independence of the judiciary and of the judgements - aiming to give objective information on the function of the judiciary and to preserve the independence of the judiciary.
- The strategy for using social media institutionally should be part of the communication strategy.

Recommendations of the communication strategy for social media:

**Who:** Social media accounts should be managed by trained and authorised online spokespersons of the institution.

**What:** Communication should always be performed within the framework of the strategies and as advised by the experts in communication, in order to be able to provide useful information with regard to the main strategy and its reactive or proactive type.

**To whom:** Encourage the interest of different communication targets (judges, lay judges, court users, lawyers, politicians and other stakeholders, general public) in topics related to the activity of the judiciary.

### **3.4. Types of social media and channels**

- All public social media should be suitable to communicate with, including private or closed channels (eg. Facebook Messenger, direct message from Twitter or LinkedIn), depending on the target audience and the content.
- The target group and the type and length of the messages will determine the type of social media to be used.

### **3.5. Privacy settings in case of institutional use of social media and fake pages, input – output or just output?**

- Carefully moderated input may be used to encourage informed debate.
- The institution within the judiciary using social media should make a protocol with its rules of communication and publish it.
- Fake pages must be reported.
- Fake news and misleading information should be challenged and reported promptly in order to inform the public correctly.

### **3.6. How to deal with (malicious or contemptuous) comments?**

- Irrespective of the content of the message delivered, malicious or contemptuous comments cannot always be avoided.
- Do not be afraid of angry comments.
- 3.6.3. Determine whether the message calls for a reply/answer or not. Consider the possibility that an answer may make things worse.
- Determine whether a particular message is a comment or a question.

- Create a library for frequently asked questions or posted comments and their respective appropriate answers. (e.g.: When people make a comment about corruption or a crime, the answer could be that all crime should be reported to the police.)
- If you must respond to such comments, do not do it hastily.
- Explain. Stay polite. Use a neutral language.
- Beyond administrative information and correcting factual inaccuracies, it is inappropriate to comment on pending cases.
- It is advisable to publish rules as to the acceptable content of any comment and to make clear the consequences for any contributions which contravenes the rules. Rules may include challenge to comments which are gratuitously offensive, threatening, insulting, repetitive, accusations of criminal conduct, etc. and their consequences.

### **3.7. Monitoring social media**

- Monitoring of social media is recommended.
- Monitoring should take place on a frequent and daily basis in order to assess what is current and what may require action, either proactively or reactively.
- If it is a matter of significant public interest, action must be taken as soon as possible. A delayed response is decreasingly effective, especially in response to misleading information or fake news.

### **3.8.-Language**

- A communication is in plain language if its wording, structure and design are so clear that the intended audience can easily find what they need, understand what they find and use that information.
- Information should be presented as clearly and plainly as possible. The language used must strike a balance between (a) the need to convey the message accurately and precisely, and (b) the desire to inform the widest possible audience.
- One should keep in mind that the judiciary addresses the uniformed reader, but that its language should be accurate enough to satisfy the informed reader as well. The judiciary can be both accessible for a broad audience and have sufficient content for an informed one. In this respect, the use of references and hyperlinks offer a vehicle.

### **3.9. Staff and budget (criteria)**

- Judicial councils should have a dedicated staff for communication on social media.
- The tasks of this staff should be to ensure the quality and accessibility of information related to the judiciary. Some specific tasks can be:
  - monitoring information on social media and reacting in due time;
  - being proactive by introducing topics which are relevant to the general public, such as topics related to the accessibility and transparency of the courts (e.g. the services offered by the courts), legal education (institutions, procedures etc. in types of cases frequently occurred), clarification or correction of erroneous reporting/mistaken assumptions;
  - anticipating the need of the press for information (e.g. in pending cases, but within the legal limits established by the national and international regulations etc.).
- The staff of the judicial councils specialized in social media should have a close cooperation with the national spokespersons and should handle together reputation sensitive issues, if necessary.

- A dedicated budget for social media within the budget of the judicial councils/ judiciary is recommended. This budget has to take into account the tasks of the specialized web care team, including not just the salaries, but also the creation of the content (such as the creation of podcast, videos, sponsored messages etc.).

### **3.10. The use of social media in court rooms**

- The principles of open justice apply equally to social media and other media.
- The rules of the courts relating to publication of proceedings and content apply to social media as well as to other media.
- There is a difference between reporting or describing progress of proceedings and recording and/or broadcasting the proceedings themselves.
- In hearings open to the public there are risks involved in allowing the use of social media in the court by participants, court staff and members of the public. This may interfere with the administration of justice. Every judiciary should set up guidelines on the use of social media during the proceedings.

## CHAPTER IV - COMMUNICATION WITH OTHER BRANCHES OF POWER: POSSIBLE TOPICS

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*The process of developing a Guide of best practice will require consideration of a whole series of topics and issues. For the purposes of this report we have reduced these issues and topics to a series of questions that could usefully form the framework for that process, although we are not suggesting that the questions that follow are in any way exhaustive.*

1. Why are public trust and confidence important for the judiciary and institutions? How could the three branches of government work together to build, maintain and enhance that public trust?
2. Do the three branches of state power share common values? Perhaps truth, transparency, loyalty might be those common values? Is Independence a fundamental value of other branches of power? How can the executive and the legislative powers be persuaded to respect the independence of the judiciary?
3. Should communication between branches of government be limited to just formal communication or is informal communication possible or appropriate or even beneficial? And if so, under which conditions? Perhaps personal communication at in preparing for formal meetings would be beneficial with the participants able to build relationships and so trust?
4. Who should be in charge with communicating with the other two branches of government - councils, professional associations, court presidents/chief prosecutors, or others? And why them?
5. Is it possible to adopt a gentlemen's agreement? What are the restrictions in relation to dealings with the two other branches of government? Should there be transparency and so public declarations as the way in which the three powers interact with each other and react to the way other powers are functioning?
6. Is it possible to implement a permanent communication process or protocol? And if so, how might that be done? How can the members of the branches of powers have personal knowledge and understanding (and so accountability) of the way in which the other two powers (especially the judiciary) work in specific circumstances? Is it possible to play roles? What kind of agenda should such meetings have?
7. Is there a role for mediation between the branches of power? How successful might it be? Who could be the mediator?
8. If a workshop/seminar/outreach activity were to be organized with the other branches of power (either jointly or individually) should external experts, such as experts in communication matters, in ethics, dynamic of groups, be invited? What would be the profile of the participants - from the judiciary (members of judicial councils, professional associations, court presidents/chief prosecutors, media judges/prosecutors, etc.) and from the other branches of power?
9. Given these difficulties and understanding potential conflicts of interest is it in fact possible to draft a guide of best practices with the other two branches of power? Is it worth to try? How could the other branches of government be persuaded to adopt and respect such a guide? And how would such a guide be structured?





## CHAPTER V - CONCLUSIONS AND FUTURE PLANS

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### 5.1. Recommendations

The foundation of this project was the fundamental principle of transparency. One of the responsibilities of any judicial system is to ensure appropriate and effective communication of its activities at least to ensure that it does not project the image of a weighty, inaccessible system but instead that it is committed to its purpose of public service. This communication will require establishing relationships with the general public as well as with different institutions, and/or other branches of power. There is a responsibility to constantly improve public opinion about the act of judgment. A communication strategy for the judiciary must not only be merely informative, but must be educational and answer the needs of the public.

Effective communication of the judicial system creates the opportunity to justify its role and activity, developing trust and the understanding that it is impartial and fair. Respect and trust in the judiciary system must be constantly strengthened, and this can be helped by processes and tools designed to raise awareness of the role and its importance to society.

In this new dynamic imposed by social media, with new instruments of information and understanding of the world, it becomes inevitable, even essential to have a judiciary system capable of promoting and defending the independence of the judiciary, also establishing or maintaining links with other power branches, institutions or individuals. The main premise we have started from is to maximise the use of technologies and social media to ensure compliance with the principle of transparency by constantly and accurately informing about the activities carried out.

### 5.2. Institutional communication

Institutional communication is not only a requirement and a responsibility, but that it must become a need and a desire on the part of the judiciary to promote its values. Transparency is not enough if it is not promoted. That is why the activity carried out should not only be available, but should also be promoted.

The report contains few general comments as to the ways in which social media can be used to promote this interest of the judiciary.

### 5.3. Communication by judges and prosecutors

In order to strengthen public confidence and trust, the project proposes that communication at the institutional level be carried out through a spokesperson. It is also possible for individual judges or prosecutors with certain communication skills to be involved in communicating to the general public the values and functionality of the judiciary, using neutral, and unbiased speech.

Therefore, the present project outlines the general principles by which on-line communication and interventions of a judge/prosecutor can be achieved through the creation of unitary communication policies. Drafting this communication guideline represents a major opportunity for judges and prosecutors to open up to the general public by promoting the values of the judiciary and building or enhancing public trust. Equally it allows the general public to understand the role of judges and prosecutors in the society.

#### **5.4. Future plans**

The judiciary must constantly adapt to new and developing communication tools to ensure that the general public remain confident that the judicial system respects its responsibility to deliver justice. For this reason, the project envisages the development of several guides, which set out some general principles in communication with other actors.

Thus, in order to ensure better, effective communication, consideration should also be given to the relationship and interaction with institutions, the other branches of power, and professionals. Notwithstanding the inherent risks and limits given different cultures and national approaches, the project draws out general recommendations, which can be applied in all systems.

##### **5.4.1. Communication with academics and researchers**

The types of communication by judicial systems has to be varied. So, establishing links, discussion platforms and debates with practitioners and law theorists should also be considered. The important role academics play is significant for the interpretation of the law to which judges and prosecutors can refer. This role of academics and researchers is important, not least because they are invited by the other branches of power to help create and develop the law which provides legitimacy to them being relied on where appropriate by the judiciary.

Therefore, drafting or approving guidelines on communication in cooperation with academics, professionals or communication experts should be considered.

##### **5.4.2. Communication with legal professionals**

The proposal of the project is that, working with legal professionals, gaps in the process and methods of communication can be identified. This requires constant updating but also a mutual understanding of needs. This will require a framework of regulations and protocols to ensure that good practices and recommendations are developed but in a way that is both transparent and accountable, not least to provide proper protection to the judicial system in this process, but also effectively.

The desired outcome is that those who appear before the judiciary have the clear belief that it is unbiased and just. Further, effective communication with lawyers must ensure that all the procedures used are clear, correct, designed to find the truth and that everyone regardless of who they are will receive equal treatment. This will improve the understanding of the judicial process, but also the respect for the system of justice, for judges and prosecutors, for the procedures and decisions.

##### **5.4.3. Communication with other branches of power**

The judiciary cannot be isolated from the political world. A constant and transparent communication with other branches of power is therefore necessary not just for defending the independence of the judiciary, but for increasing public confidence in institutions generally because when institutions work together in building trust, the level of trust in society as a whole is likely to increase.

#### **5.4.4. Protocols with influential actors**

It is very important to use a network of connections with influential people such as journalists, politicians and local NGO's. This can help to promote the values of the judicial system, to enhance public trust and to defend the independence of the judiciary. Guidelines for meetings with different actors should be considered as a proposition for the next year.

#### **5.4.5. The use of a clear language in all communication by the judiciary**

When focusing on the use of social media in communications with other actors, the classic ways of communication must not be neglected. Most judicial systems and judicial actors continue to suffer from so-called "legalese", the use of an unnecessarily complicated language, in all ways and types of communication, including judicial decisions. Despite already established quality guidelines promoting the use of a concise and clear language, legalese persists and continues to have a negative affect on the trust and confidence levels in our judicial systems.

Is is therefore recommended that this subject should also be examined in the near future, looking to establish guidelines or recommendations aiming to improve the use of clear language by the judiciary in all types of communication.

### **5.5. Conclusions**

On the basis of a thorough and collaborative methodology with partners from various Member States, the project has made available (a) an overview of best practices within the judiciary and (b) an analysis of the need for improving communication with the other state powers. It also has identified general principles and recommendations regarding the use of social media, by individual judges and prosecutors, as well as on an institutional level. It has established a social networking policy.

The project team strongly expresses the hope that this report will be used by national judicial authorities, Councils for the Judiciary (or similar institutions) and other state powers, when developing and implementing their respective (social media) communication methods. In Report 2018-2019, it was intended to draw general guidelines on the use of social media by judges and prosecutors. Judges and prosecutors should not be a hidden professional category, but assume their important role in society.

A periodic evaluation of the project results and outcomes in form of a future project (e.g. in 2024) could be beneficial and could lead to a refinement of these guidelines.

It is important to continue the work within the ECJN project "Public Confidence and Image of Justice". The development of communication mechanisms, methods and tools both at institutional and personal levels demonstrate the capacity of the judiciary to adapt to the challenges we face today.

# ANNEX

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## 1. CCJE opinions

- **OPINION NO. 18 (2015) of CCJE - "The position of the judiciary and its relation with the other powers of state in a modern democracy"** <sup>16</sup>

Para 9: In principle the three powers of a democratic state should be complementary, with no one power being “supreme” or dominating the others. In a democratic state, ultimately it is the will of the people, expressed through the proper democratic process that is supreme (sovereignty of the people). It is also fallacious to imagine that any one of the three powers of state can ever operate in complete isolation from the others. The three powers rely on one another to provide the totality of public services necessary in a democratic society. So, while the legislature provides the legislative framework, it is the judiciary that must interpret and apply it by virtue of its decisions and the executive is often responsible for the enforcement of judicial decisions in the interest of society. In this way the three powers function in a relationship of interdependence, or of convergence and divergence. Accordingly, there can never be a complete “separation of powers”. Rather, the three powers of the state function as a system of checks and balances that holds each accountable in the interest of society as a whole. It has to be accepted, therefore, that a certain level of tension is inevitable between the powers of the state in a democracy. If there is such “creative tension”, it shows that each power is providing the necessary check on the other powers and thus contributing to the maintenance of a proper equilibrium. If there were no such tension between the three powers, the suspicion might arise that one or two powers had stopped holding the other to account on behalf of society as a whole and thus, that one or more powers had obtained domination over the rest. Thus, the fact of tension between the judiciary and the other two powers of the state should not necessarily be seen as a threat to the judiciary or its independence, but rather as a sign that the judiciary is fulfilling

Para 11: The principle of the separation of powers is itself a guarantee of judicial independence. However, despite the frequently expressed importance of judicial independence, it must be pointed out that nobody - including the judiciary - can be completely independent from all influences, in particular social and cultural influences within the society in which it operates. After all: “No man is an island, entire unto itself”. No judiciary - as with any power in a democratic state - is completely independent. The judiciary relies on the others to provide resources and services, in particular on the legislature to provide finances and the legal framework which it has to interpret and apply. Although the task of deciding cases according to the law is entrusted to the judiciary, the public relies on the executive to enforce judicial decisions. Shortcomings in the enforcement of judicial decisions undermine judicial authority and question the separation of powers. Whilst all three powers share responsibility for ensuring that there is a proper separation between them, neither that principle nor that of judicial independence should preclude dialogue between the powers of the state. Rather, there is a fundamental need for respectful discourse between them all that takes into account both the necessary separation as well as the necessary interdependence between the powers. It remains vital, however, that the judiciary remains free from inappropriate connections with and undue influence by the other powers of the state.

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<sup>16</sup> <https://rm.coe.int/16807481a1>

**Para 31: Discussion with other powers of state** - Each of the three powers of the state depends on the other two to work effectively. Discussion between all is crucial to improve the effectiveness of each power and its cooperation with the other two powers. Provided that such discussions are undertaken in an atmosphere of mutual respect and have particular regard to the preservation of the independence and impartiality of any judges participating in such exchanges, these discussions will be beneficial to all three powers of the state. The CCJE has stressed the importance of judges participating in debates concerning national judicial policy. In addition, the judiciary should be consulted and play an active part in the preparation of any legislation concerning their status and the functioning of the judicial system. The expertise of judges is also valuable when it comes to matters outside judicial policy. For example, by giving evidence to parliamentary committees, representatives of the judiciary (e.g. the highest authority of the judiciary or the High Council of Justice) can raise concerns about legislative projects and give the perspective of the judiciary on various practical questions. Some member states reported positive experiences with such exchanges. In some member states, the judiciary engages in dialogue with the executive, when judges take a temporary leave of absence to work in the civil or criminal department of a ministry of justice. In other member states, however, this is seen as a violation of judicial independence.

**Para 32: Dialogue with the public** - As the CCJE has noted before, dialogue with the public, directly or through the media, is of crucial importance in improving the knowledge of citizens about the law and increasing their confidence in the judiciary. In some member states, the appointment of lay judges is seen as providing a helpful link between the judiciary and the public. The CCJE recommended in its Opinion No. 7(2005) on “justice and society“ that the judiciary and individual courts should actively reach out to the media and the public directly. For example, courts should assume an educative role by organising visits for schoolchildren and students, by providing information, and by actively explaining court decisions to the public and the media in order to improve understanding and prevent misunderstandings. While there is a risk in engaging with the media, courts can help avoiding public misrepresentations through active contact and explanation. In so doing, the judiciary can be accountable to the society and ensure that the public perceptions of the justice system are accurate and reflect the efforts made by judges. In this way, the judges can also educate the public that there are limits to what a judicial system can do.

**Para 36:** It is especially difficult to balance the need to safeguard the judicial process from distortion and pressure from political sources against the need for open discussion of matters of public interest concerning the administration of justice. On the one hand, as the CCJE has pointed out, judges must accept that they are public figures and must not be over-sensitive. Thus, when judges engage with the other powers of the state and society at large, they must take responsibility themselves to safeguard their independence and impartiality. On the other hand, in all their dealings with the judiciary the other powers of the state must respect the principles of judicial independence and impartiality. Dialogue between the judiciary and other powers of state as well as with the public at large can be misused to violate judicial independence. For example, it is not acceptable for other powers of the state to criticise judicial decisions in a way that undermines judicial authority and encourages disobedience and even violence against judges. It is also not acceptable that valid critical comments by a member of the judiciary of one of the other powers of state (or a member of it) that are made in the course of judicial duties should be met by removal from judicial office by one or other power of the state<sup>95</sup>. It is essential that dialogue between the three powers of the state and between the judiciary and the general public, as well as any inspections and investigations that are undertaken, are conducted in a climate of mutual respect. These processes must never be used to influence a particular judicial decision or to encourage disrespect or disobedience to judicial decisions.

➤ **OPINION No. 7 (2005) of CCJE ON “JUSTICE AND SOCIETY”** <sup>17</sup>

PART C: 33. The media have access to judicial information and hearings, according to modalities and with limitations of established by national laws (see, e.g. Recommendation Rec(2003)13 on the provision of information through the media in relation to criminal proceedings). Media professionals are entirely free to decide what stories should be brought to the public's attention and how they are to be treated. There should be no attempt to prevent the media from criticising the organisation or the functioning of the justice system. The justice system should accept the role of the media which, as outside observers, can highlight shortcomings and make a constructive contribution to improving courts' methods and the quality of the services they offer to users.

34. Judges express themselves above all through their decisions and should not explain them in the press or more generally make public statements in the press on cases of which they are in charge. Nevertheless it would be useful to improve contacts between the courts and the media:

- i) to strengthen understanding of their respective roles;
- ii) to inform the public of the nature, the scope, the limitations and the complexities of judicial work;
- iii) to rectify possible factual errors in reports on certain cases.

35. Judges should have a supervisory role over court spokespersons or staff responsible for communicating with the media.

36. The CCJE would refer to the conclusions of the 2<sup>nd</sup> European Conference of Judges (see paragraph 3 above) in which the Council of Europe was asked both to facilitate the holding of regular meetings between representatives of the judiciary and the media and to consider drafting a European declaration on relations between justice and the media complementing Recommendation Rec(2003)13 on the provision of information through the media in relation to criminal proceedings.

37. States should encourage exchanges, in particular by round tables, on the rules and practices of each profession, in order to highlight and explain the problems they face. The CCJE considers that the Council of Europe could usefully establish or promote such contacts at European level, so as to bring about greater consistency in European attitudes.

38. Schools of journalism should be encouraged to set up courses on judicial institutions and procedures.

39. The CCJE considers that each profession (judges and journalists) should draw up a code of practice on its relations with representatives of the other profession and on the reporting of court cases. As the experience of states which already have such a system shows, the judiciary would define the conditions in which statements may be made to the media concerning court cases, while journalists would produce their own guidelines on reporting of current cases, on the publicising of the names (or pictures) of persons involved in litigation (parties, victims, witnesses, public prosecutor, investigating judge, trial judge, etc.), and on the reporting of judgments in cases which attracted major public interest. In conformity with its Opinion No. 3 (2002), paragraph 40, the CCJE recommends that national judiciaries take steps along these lines.

40. The CCJE recommends that an efficient mechanism, which could take the form of an independent body, be set up to deal with problems caused by media accounts of a court case, or difficulties encountered by a journalist in the accomplishment of his/her information task. This mechanism would make general recommendations intended to prevent the recurrence of any problems observed.

41. It is also necessary to encourage the setting up of reception and information services in courts, not only, as mentioned above, to welcome the public and assist users of judicial services, but also to help the media to get to understand the workings of the justice system better.

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<sup>17</sup> <https://rm.coe.int/1680747698>

42. These services, over which judges should have a supervisory role, could pursue the following aims:

- to communicate summaries of court decisions to the media;
- to provide the media with factual information about court decisions;
- to liaise with the media in relation to hearings in cases of particular public interest.
- to provide factual clarification or correction with regard to cases reported in the media (see also paragraph 34, iii above). The court reception services or spokesperson<sup>[8]</sup> could alert the media to the issues involved and the legal difficulties raised in the case in question, organise the logistics of the hearings and make the appropriate practical arrangements, particularly with a view to protecting the people taking part as parties, jurors or witnesses.

43. All information provided to the media by the courts should be communicated in a transparent and non-discriminatory manner.

44. The question of whether TV cameras should be allowed into courtrooms for other than purely procedural purposes has been the subject of wide-ranging discussions, both at the 2<sup>nd</sup> Conference of European Judges (see paragraph 3 above) and at meetings of the CCJE. Some members of the CCJE have expressed serious reservations about this new form of public exposure of the work of the courts.

45. The public nature of court hearings is one of the fundamental procedural guarantees in democratic societies. While international law and national legislation allow exceptions to the principle that judicial proceedings should be conducted in public, it is important that these exceptions should be restricted to those permitted under article 6.1. of the ECHR.

46. The principle of public proceedings implies that citizens and media professionals should be allowed access to the courtrooms in which trials take place, but the latest audiovisual reporting equipment gives the events related such a broad impact that they entirely transform the notion of public hearings. This may have advantages in terms of raising public awareness of how judicial proceedings are conducted and improving the image of the justice system, but there is also a risk that the presence of TV cameras in court may disturb the proceedings and alter the behaviour of those involved in the trial (judges, prosecutors, lawyers, parties, witnesses, etc.).

47. Where television recording of judicial hearings occurs, fixed cameras should be used and it should be possible for the presiding judge both to decide on filming conditions and to interrupt filming broadcasting at any time. These and any other necessary measures should protect the rights of the persons involved and ensure that the hearing is properly conducted.

48. The opinion of the persons involved in the proceedings should also be taken into account, in particular for certain types of trial concerning people's private affairs.

49. In view of the particularly strong impact of television broadcasts and the risk of a tendency towards unhealthy curiosity, the CCJE encourages the media to develop their own professional codes of conduct aimed at ensuring balanced coverage of the proceedings they are filming, so that their account is objective.

50. There may be overriding reasons justifying the filming of hearings for specific cases which are strictly defined, for example for educational purposes or to preserve a record on film of a hearing of particular historical importance for future use. In these cases, the CCJE emphasises the need to protect the persons involved in the trial, particularly by ensuring that filming methods do not disrupt the proper conduct of the hearing.

51. While the media plays a crucial role in securing the public's right to information, and acts, in the words of the European Court of Human Rights, as "democracy's watchdog", the media can sometimes intrude on people's privacy, damaging their reputation or undermining the presumption of their innocence, acts for which individuals can legitimately seek redress in court. The quest for sensational stories and commercial competition between the media carry a risk of excess and error. In criminal cases, defendants are sometimes publicly described or assumed by the media as guilty of offences before the court has established their guilt. In the event of a

subsequent acquittal, the media reports may already have caused irremediable harm to their reputation, and this will not be erased by the judgment.

52. Courts need therefore to accomplish their duty, according to the case-law of the European Court of Human Rights, to strike a balance between conflicting values of protection of human dignity, privacy, reputation and the presumption of innocence on the one hand, and freedom of information on the other.

53. As stated in the conclusions of the 2<sup>nd</sup> European Conference of Judges (see paragraph 3 above), criminal-law responses to violations of personality rights (such as reputation, dignity or privacy) should be limited to quite exceptional cases<sup>[9]</sup>. However, the courts do have a duty to ensure that civil damages are awarded, taking account not just of the damage incurred by the victim, but also the seriousness of the infringements suffered and the scale of the publication concerned.

54. The courts should be entitled, in exceptional cases that are strictly defined in order to avoid any accusation of censorship, to take urgent measures to put an immediate stop to the most serious infringements of people's personality rights (such as reputation, dignity or privacy), through the confiscation of publications or through broadcasting bans.

55. When a judge or a court is challenged or attacked by the media (or by political or other social actors by way of the media) for reasons connected with the administration of justice, the CCJE considers that, in view of the duty of judicial self-restraint, the judge involved should refrain from reactions through the same channels. Bearing in mind the fact that the courts can rectify erroneous information diffused in the press, the CCJE believes it would be desirable that the national judiciaries benefit from the support of persons or a body (e.g. the Higher Council for the Judiciary or judges' associations) able and ready to respond promptly and efficiently to such challenges or attacks in appropriate cases.

➤ **OPINION No. 12 (2009) of CCJE and OPINION NO 4 (2009) of CCPE on the RELATIONS BETWEEN JUDGES AND PROSECUTORS IN A DEMOCRATIC SOCIETY** <sup>18</sup>

The interest of society also requires that the media are provided with the necessary information to inform the public on the functioning of the justice system. The competent authorities shall provide such information with due regard in particular to the presumption of innocence of the accused, to the right to a fair trial, and to the right to private and family life of all persons involved in proceedings. Both judges and prosecutors should draw up a code of good practices or guidelines for each profession on its relations with the media.

67. Media play an essential role in a democratic society in general and more specifically in relation to the judicial system. The perception in society of the quality of justice is heavily influenced by media accounts of how the justice system works. Publicity also contributes to the achievement of a fair trial, as it protects litigants and defendants against a non-transparent administration of justice.

68. The expanding public and media attention to criminal and civil proceedings has led to an increasing need for objective information to be provided to the media both from the courts and public prosecutors.

69. It is of fundamental importance in a democratic society that the courts inspire confidence in the public<sup>[8]</sup>. The public character of proceedings is one of the essential means whereby confidence in the courts can be maintained.

70. Within the Council of Europe two main documents deal with this issue: a) Recommendation Rec (2003)13 on the Provision of Information through the Media in

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<sup>18</sup> <https://rm.coe.int/1680747391>



Relation to Criminal Proceedings, and b) Opinion No. 7 of the CCJE on Justice and Society (2005).

71. Bearing in mind the right of the public to receive information of general interest, journalists should be provided with necessary information in order to be able to report and comment on the functioning of the justice system, subject to the obligations of discretion of the judges and prosecutors on pending cases and to the limitations established by national laws and in accordance with the case-law of the Court.

72. Media, as well as judges and public prosecutors, shall respect fundamental principles such as the presumption of innocence [9] and the right to a fair trial, the right to private life of the persons concerned, the need to avoid an infringement of the principle and of the appearance of impartiality of judges and public prosecutors involved in a case.

73. Media coverage of cases under investigation or on trial can become invasive interference and produce improper influence and pressure on judges, jurors and public prosecutors in charge of particular cases. Good professional skills, high ethical standards and strong self-restraint against premature comments on pending cases are needed for judges and public prosecutors to meet this challenge.

74. Media liaison personnel, for example public information officers or a pool of judges and prosecutors trained to have contact with the media, could help the media to give accurate information on the courts' work and decisions, and also assist judges and prosecutors.

75. Judges and prosecutors should mutually respect each other's specific role in the justice system. Both judges and prosecutors should draw up guidelines or a code of good practice for each profession on its relations with the media [10]. Some national codes of ethics require judges to refrain from public comments on pending cases, in order not to make statements that might cause the public to question the judges' impartiality [11], and to avoid violation of the presumption of innocence. In any case, judges should express themselves above all through their decisions; discretion and the choice of words are important where judges give statements to the media on cases pending or decided in accordance with the law [12]. Public prosecutors should be cautious when commenting on the procedure followed by the judge or upon the judgment issued, stating his/her disagreement concerning a decision by means of an appeal, if appropriate.

➤ **OPINION No. 16 (2013) of CCJE on the RELATIONS BETWEEN JUDGES and LAWYERS**<sup>19</sup>

CCJE stresses the importance of the development of dialogues and exchanges between judges and lawyers at an institutional level (both national and international) on the issue of their mutual relations, whilst taking full account of the ethical principles of both lawyers and judges. Such dialogue should facilitate mutual understanding of and respect for the role of each side, with respect for the independence of both judges and lawyers.

IV. The CCJE recommends developing lines of communication between courts and lawyers. Judges and lawyers must be in a position to communicate at all stages in proceedings. The CCJE considers that states should introduce systems facilitating computer communication between the courts and lawyers.

➤ **OPINION No. 19 (2016) of CCJE on The ROLE OF COURT PRESIDENTS**<sup>20</sup>

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<sup>19</sup> <https://www.csm.it/documents/46647/0/Opinion+No.+16+%282013%29.pdf/427def1a-7614-4cbb-92e8-997bf1462c7e>

<sup>20</sup> [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE\(2016\)2&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CCJE(2016)2&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true)

Para 12. In their relations with the media, court presidents should keep in mind that the interests of society require that the media be provided with the necessary information to inform the public on the functioning of the justice system. However, such information should be provided with due regard to the presumption of innocence, the right to a fair trial and the right to respect for private and family life of all persons involved in the proceedings<sup>[5]</sup>, as well as the preservation of the confidentiality of deliberations.

## 2. Other sources

- RECOMMENDATION REC(2003)13 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE PROVISION OF INFORMATION THROUGH THE MEDIA IN RELATION TO CRIMINAL PROCEEDINGS <sup>21</sup>
  
- THE USE OF SOCIAL MEDIA BY CANADIAN JUDICIAL OFFICERS -Member Social Media and Social Networking Policy- Principles <sup>22</sup>

### General Principles

You are responsible for all your online activity and for what you post. If you have any doubt about anything you are considering posting, speak to Tribunal Counsel first. In addition, if you see something online that causes concern, speak to the Chair and Tribunal Counsel immediately.

The policy on Appropriate Use of Government Resources applies to all online activities using WCAT equipment.

The WCAT Code of Conduct for Members applies to all online activities, including social media. Therefore, the use of social media by WCAT members must be in accordance with the WCAT Code of Conduct for Members, including item #2.7, which addresses outside activities (the Code of Conduct is set out in Appendix 12 to the MRPP):

### 2.7 Outside Activities

Members must ensure that their outside activities do not interfere with the impartial, effective, and timely performance of their responsibilities. Members must not engage in activities that bring WCAT into disrepute. Unless so authorized by the chair, members must not perform outside activities in a manner that appears to be officially supported by or connected to WCAT, or appears to represent WCAT opinion or policy. Members must not use their position in WCAT to lend weight to the public expression of a personal opinion. Members must not use WCAT letterhead for personal correspondence or non-WCAT related matters. Members are free to engage in political activities so long as they are able to maintain their impartiality and the perception of impartiality in relation to their duties and responsibilities. Members' political activities must be clearly separated from activities related to their role as members.

Members must not engage in political activities during working hours or use WCAT facilities, equipment, or resources in support of such activities.

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<sup>21</sup> [https://www.euromed-justice.eu/en/system/files/20100208101331\\_Recommendation200313mediainformationincriminalproceedings.pdf](https://www.euromed-justice.eu/en/system/files/20100208101331_Recommendation200313mediainformationincriminalproceedings.pdf)

<sup>22</sup> [https://www.cacp.ca/law-amendments-committee-activities.html?asst\\_id=844](https://www.cacp.ca/law-amendments-committee-activities.html?asst_id=844)

Members will not introduce partisan politics at the local, provincial, or national levels into the workplace. This does not apply to informal private discussions among coworkers. The BC Public Service Agency Standards of Conduct and the BC Public Service Agency Policy Statement - Discrimination and Harassment in the Workplace also apply. If you are a member of the Law Society of BC, you must also follow the Legal Profession Act, Law Society Rules and the Professional Conduct Handbook when dealing with social media. Remember that the Canons of Legal Ethics require that a lawyer's conduct at all times should be characterized by candour and fairness.

**Keep the following points in mind when accessing or posting on social media:**

(i) Think before you post. Postings on the Internet are often very easy to find and remain accessible long after they may be forgotten by the user. Nothing is truly "private" or ever deleted on the Internet. Do not post anything you would not want to read on the front page of the newspaper.

(ii) Use good judgment, discretion, and decorum. If you have any doubt about a posting or other activity, err on the side of caution. Do not get caught in "flame wars." Avoid personal attacks, online fights, and hostile communications.

(iii) Maintain professionalism, honesty, and respect. Do not behave in a manner or encourage behaviour that is illegal, unprofessional, or in bad taste. Even on a personal site and using your personal computer or device, do not engage in venting about work matters online. If you have a concern, raise it with a member of the executive team. If you publish inappropriate comments that reflect badly on WCAT in your personal space, disciplinary action may follow.

(iv) Ensure that your social media activity does not interfere with your work commitments.

(v) Do not identify yourself as a WCAT member on social media sites. If you identify yourself as a WCAT member, everything you post has the potential to reflect upon WCAT. You also become a portal for others who may post about WCAT. While you may control what you post, you cannot predict nor control what others, even family members, might post on your site.

(vi) Behave in a manner that promotes a safe and healthy workplace and supports the well-being of other employees and members. Discrimination or harassment of other members or WCAT employees is prohibited, whether during work-time or on personal time. This includes any such activities using social media. WCAT members and employees must treat each other with respect and dignity.

➤ **The Canadian Judicial Council: Ethical Principles for Judges** <sup>23</sup>

Some of the relevant ethical principles are:

1. Purpose: The purpose of this document is to provide ethical guidance for federally appointed judges.
2. Judicial Independence: An independent judiciary is indispensable to impartial justice under law. Judges should, therefore, uphold and exemplify judicial independence in both its individual and institutional aspects.
3. Integrity: Judges should strive to conduct themselves with integrity so as to sustain and enhance public confidence in the judiciary.
4. Diligence: Judges should be diligent in the performance of their judicial duties.
5. Equality: Judges should conduct themselves and proceedings before them so as to assure equality according to law.
6. Impartiality: Judges must be and should appear to be impartial with respect to their decisions and decision making.

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<sup>23</sup> [http://www.cjc-ccm.gc.ca/cmslib/general/news\\_pub\\_judicialconduct\\_Principles\\_en.pdf](http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf).

- **USA : Formal Opinion on Judge's Use of Electronic Social Networking Media** <sup>24</sup>
- **UK: „Blogging by Judicial Office Holders”** <sup>25</sup>

Blogging by members of the judiciary is not prohibited. However, officer holders who blog (or who post comments on other people's blogs) must not identify themselves as members of the judiciary. They must also avoid expressing opinions which, were it to become known that they hold judicial office, could damage public confidence in their own impartiality or in the judiciary in general.

### 3. Caselaw

- **Sunday Times v. the United Kingdom** (1979): the ECtHR noted the importance of openness in relation to courts: There is general recognition of the fact that the courts cannot operate in a vacuum. Whilst they are the forum for the settlement of disputes, this does not mean that there can be no prior discussion of disputes elsewhere, be it in specialised journals, in the general press or amongst the public at large. Furthermore, whilst the mass media must not overstep the bounds imposed in the interests of the proper administration of justice, it is incumbent on them to impart information and ideas concerning matters that come before the courts just as in other areas of public interest. Not only do the media have the task of imparting such information and ideas: the public also has a right to receive them.
- **De Haes and Gijssels v. Belgium** (1997) the Court recognised that members of the judiciary must enjoy public trust, stating: The courts - the guarantors of justice, whose role is fundamental in a State based on the rule of law - must enjoy public confidence. They must accordingly be protected from destructive attacks that are unfounded, especially in view of the fact that judges are subject to a duty of discretion that precludes them from replying to criticism.
- **Hurter v. Switzerland** (see also **Morice v. France**) the Court declared inadmissible an application concerning a fine imposed on a lawyer for stating, in the course of proceedings, that an Appeal Court had committed criminal offences. The Court again made the point that lawyers had a central position in the administration of justice as intermediaries between the public and the courts. It was therefore legitimate to expect them to play their part in proper administration of justice and in thus maintaining public confidence in the justice system. In the present case the seriousness and general nature of the charges were hardly compatible with that role. The penalty, not being excessively severe, was found to be necessary to maintaining the authority and impartiality of the judiciary.

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<sup>24</sup> [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/formal\\_opinion\\_462.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/formal_opinion_462.authcheckdam.pdf)

<sup>25</sup> [http://www.familylaw.co.uk/system/redactor\\_assets/documents/491/Blogging\\_by\\_Judicial\\_Office\\_Holders.pdf](http://www.familylaw.co.uk/system/redactor_assets/documents/491/Blogging_by_Judicial_Office_Holders.pdf).

