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Assessment Report

of the Guidelines on the relations between the judiciary of the Republic of Moldova and the mass-media, and the Communication Strategy of the Superior Council of Magistracy of the Republic of Moldova

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1. Preliminary Remarks

1.1 Aim of the Assessment

This paper is intended to be a review of the “Guidelines on the Relations between the Judiciary System of the Republic of Moldova and the Mass-Media, Annex 19” (hereafter - guidelines) as well as the “Communication Strategy of the Superior Council of Magistracy of the Republic of Moldova” (hereafter-strategy) with regard to the recommendations of the CEPEJ.

1.2 Documents

In addition to the aforementioned documents, I also refer to:

- “Guide on communication with the media and the public for courts and prosecution authorities”, published in 2018 by the CEPEJ Working Group on quality of justice (hereafter-CEPEJ guide) <https://rm.coe.int/cepej-2018-15-en-communication-manual-with-media/16809025fe>
- “Opinion No.7 (2005) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on Justice and Society, adopted by the Council of Europe`s CCJE at its 6th meeting November 2005” (hereafter CCJE Opinion No. 7) <https://rm.coe.int/1680747698>

1.3 Further Remarks

I would like to point out that this survey is my private opinion and not one of an official organization. In addition, it is quite possible that misunderstandings may arise due to translation difficulties. I would also like to point out that I do not know the relevant laws such as the Criminal Procedure Code in Moldova, which fact may also be a source of misunderstandings.

Mostly I have only quoted verbatim excerpts from the statements in the CEPEJ guide and the CCJE Opinion No. 7 referred to because they can be read at any time online.

2. Guidelines Summary

The guidelines intend to improve the relationship between the judiciary and the media by fulfilling their role of informing the public. On the basis of the existing legal framework in Moldova, the guidelines define criteria and standards for reporting in compliance with the legal requirements. They define common provisions for the SCM and the courts, general responsibilities of the communication services and the spokespersons, and recommendations for the spokespersons. Further on they describe rules applicable in the trial process, proceedings carried out in front of a judge, in the preliminary phase, as well as during and after sentencing. Last but not least, the guidelines explain rules applicable in civil trials.

3. Communication Strategy Summary

The communication strategy of the SCM is formulated as a medium-term strategic vision document to improve the image of the justice system and the SCM. The aim is to build public confidence by several measures as long-term collaboration with journalists and opinion leaders, ensuring the knowledge by the citizens of legal services. The strategy focuses on facilitating communication between the justice system and the society. Better communication is also recognised as a means of countering political influences. In particular, crisis communication should be regulated and improved. The strategy also recognises the different uses of the various tools. The strategy focuses on four areas of intervention:

- strengthening the skills of SCM employees and those in the judiciary responsible for communication with the press;
- ensuring transparency and efficient communication with the public;
- improving the image of the SCM and the justice system;
- prompt reaction in situations of image crisis.

Last but not least, the strategy paper formulates the key messages like transparency.

4. Guidelines Assessment

4.1 General Remarks

Both, the CEPEJ guide and the CCJE Opinion No. 7 agree that external communication is an important factor in improving the image of the judiciary. **Visibility and transparency** of the work help to understand the judiciary and thus to accept it (1.1 - 1.4 CEPEJ guide and p. A CCJE Opinion No. 7). The guidelines are also clearly based on these purpose and objectives. It seems to me right and important that the observance of the key values like protection of fundamental human rights are already cited in the introduction.

The CEPEJ guide expressly does not refer to **internal communication** (1.1). But external communication without functioning communication within an authority, i.e. a court or a public prosecutor's office, cannot function adequately. That is why I think it is appropriate that the guidelines also deal with internal communication (Chapter I 1, Art.6 and Section 4). In my opinion, however, there is room for improvement by clearly mentioning and structuring internal communication.

The **general structure** of the guidelines can, in my opinion, be even clearer and therefore easier to handle. Perhaps the paper can build on the structure of the CEPEJ guide by listing the **responsibilities** (who communicates when) **and the means** like:

- press release;
- press conference;
- interview;
- written responses;
- website;
- social media;
- conferences and debates;

- filmed messages.

I see the guidelines as such for daily use, so that the spokespersons can access them immediately.

4.2 Introduction (Purpose and Objectives)

I propose to expand the introduction. The CEPEJ guide (chapter 9, no 234) indicates a list of judicial communication which define the goal of communication more clearly:

- to inform about concrete activities of the judicial system in particular cases;
- to assert the role of justice in the society;
- to affirm the independence of the judicial institutions;
- to promote respect for judicial institutions and their representatives;
- to take public position on matters of interest to justice and society;
- to improve the understanding of laws by the public;
- more generally, to strengthen the image of justice.

4.3 Section 1 (Common Provisions)

The **responsibilities** seem to be clearly regulated. Whether there is also a media specialist as press contact in addition to a judge is regulated differently in European countries (3.6. CEPEJ guide). Of course, lawyers know the subject better, while media professionals understand and use the language of the press. In my opinion, the ideal solution is a judge as spokesperson and a media officer working together.

Art. 4: The President of the SCM and the court Presidents can be the ideal spokespersons, when they are trained for this task. The President may delegate another person of the SCM or the court (spokesperson) due to the fact that it might be impossible for the President to perform the task alone and all times.

Art. 4: Spokespersons should be available 24/7; the media also work day and night.

The CEPEJ guide (3.6.3) describes what tasks the spokesperson is supposed to perform. You can see the details there.

4.4 Section 2 (General Responsibilities)

Art. 7 to Art 11: It is not clear from the guidelines that the spokesperson or/and the press officer is responsible for **all communication activities** on behalf of his/her judicial body (3.6.3. CEPEJ guide). I would suggest an addition here or later (*Art. 17*). When appropriate, the spokesperson should combine and coordinate the information not only to the media but also to other institutions, bodies and people like prosecutorial offices, justice academy, police, ministry, politicians, etc.

The CCJE Opinion No 7 CCJE advocates “the development of reception and communication services in the courts, not only to receive the public and guide users of judicial services, but also

to contribute to a better understanding by the media of judicial activity” (para 41). Exactly here you can see the intersection between purpose and responsibility.

Section 2 also deals with the accreditation of media representatives. The CEPEJ guide (chapter 4.12) addresses this topic. The advantages and disadvantages of this procedure are described. It would be useful if the guidelines may include information about the exact accreditation procedure and the specific rights and duties of accredited journalists. So, if there are accredited and non-accredited journalists, then a distinction must be made between the two groups in all chapters of the guidelines. I myself consider accreditation only useful in cases in which there is insufficient space in the courtroom due to the extraordinary interest. My opinion is based on the fact that general access for all media must be clear.

4.5 Section 3 (Recommendations for the Communication Service/Spokesperson)

Art. 12: I totally agree that the SCM and the courts need a well-structured and updated **website** with all essential information and easy access. Quick access to the press department is very important. I recommend a corporate design, so that the use of all websites is simple and clear. In addition, the togetherness and unity of the courts is demonstrated. Which content and which links appear on the website should be precisely determined with all parties involved, including the groups of potential users.

Art. 13: At this point, I propose expanding the recommendations to include the **tools** and **means**, as shown above (4.1, general remarks).

4.6 Section 4 (Relations between the Communication Structures of the Judiciary)

Art. 14: Of course, cooperation between SCM and the courts is essential.

I recommend a regular meeting between all those involved on current issues, but also to improve communication in general (keyword: **internal communication**). As far as the word “crisis” appears, I would like to point out that a distinction must be made between crisis management and **crisis communication**. Both cannot be achieved spontaneously and without preparation. In this context, a crisis management plan including communication and repeated exercises are required. A crisis always comes unexpectedly; however, the reaction to this must be prepared. Having your own manual with clear instructions and accessibilities as well as constant training is essential.

Art. 16: I cannot understand this chapter because I don’t know the content nor the background of the mentioned code.

4.7 Section 5 (Responsibilities /Communication Structure)

Art. 17: This chapter deals (again, see *Art. 7 – 11*) with the **responsibilities** of the communication service/spokesperson. It would be clearer if the functional and content-related tasks could be summarised in one chapter. The CEPEJ guide defines the responsibilities and tasks among others as follows (3.6.3):

- responsible for all communication activities on behalf of his judicial body;
- ensures a proactive, reactive, regular, accurate, sufficient, consistent and appropriate communication;

- identifies and meets specific communication needs, within the limits imposed by the law and the specific situation;
- ensures that journalists are fairly treated (principle of equality among the media).

Of course, it goes without saying that the press officer observes the press, compiles a press review, invites media representatives to hold regular discussions, etc. The individual activities that he develops should be mentioned in a strategy plan.

It is not easy to decide whether and in which cases a reply should be given. Sometimes a counter-representation only solidifies the wrong or unfavourable representation in the consciousness of the public; sometimes it is urgently needed. That will always be an individual decision. Please read chapter 7 §§ 219 of CEPEJ guide and chapter 7 § 221 regarding the situation of a judge being unfairly treated in the media.

4.8 Chapter II, Section 1 (Rules applicable in the Trial Process...)

Art. 18, 19: I totally agree with these points.

Art. 20: What is meant by “protected social values”? Of course, there are areas worth protecting, e. g. state secrets, tax secrets, protection of juveniles and children, protection of victims of sexual abuse. I recommend regulating these topics by law like the Code of Criminal Procedure. It is mentioned in *Art. 23*.

4.9 Section 2 (Rules in a Hearing)

Art. 21, 22: I am not sure whether I understand this chapter correctly. Files or parts thereof should under no circumstances be disclosed to media representatives. To help the media to get to understand the workings of the justice system and specific cases better, judiciary can offer (Par. 42 of the CCJE Opinion No.7):

- summaries of court decisions to the media;
- provide the media with factual information about court decisions;
- liaise with the media in relation to hearings in cases of particular public interest.

Art. 23: I totally agree (see above comment to Art. 20).

Art. 24: The judiciary should always be careful when making exceptions. General effective regulations are easier to enforce and also fairer. I also cannot imagine of any preventive measures that are at stake here.

Art. 25: With regard to the recordings, the same applies as with regard to files and file components.

4.10 Section 3 (Rules in the Trial Stage)

Art. 26: No comment, That`s clear.

Art. 27: As already mentioned, I recommend restricting **unlimited access to the hearing** not to the free decision of the judge or the court, but to a **legal basis**. The courts are open for all

and always, except for specific cases behind closed doors. It should therefore be possible to justify any exception to the basic regulation by means of a law and it should also be possible to contest with an appeal.

Art. 28: Of course, access to the courtroom must be restricted if there is not enough capacity. In this case, I recommend digital accreditation based on previously defined and visible criteria. A part of the court room should always be reserved for the general public and a further part for the (accredited) press. If necessary, the court can move to a larger building or broadcast the hearing into another room via video.

4.11 General Rules on the Presence of Mass-Media during proceedings

Art. 29: Why should journalists work without **technical support**? For one thing, journalists are used to working with electronic devices; on the other hand, it can no longer be controlled effectively. Muted smartphones and tablets also do not interfere with the course of a proceeding. In any case, journalists can write everything down. I don't see any difference.

Art. 30-32: The extent to which **broadcasting** should be possible and allowed during a hearing is controversial in all European countries and is handled very differently (Para 44, 45 of the CCJE Opinion No. 7 CCJE and CEPEJ Guide 4.10). I personally sympathise with it according to certain rules, e.g. as practiced in the Netherlands. The advantage is transparency, the disadvantage is that the participants of the trial and even the public may be tempted to adapt their behaviour. In my experience, in our world dominated by electronic media, the advantages are greater than the disadvantages. In the generation "selfies", people are used to cameras. But I agree with the solution that witnesses and victims should not be filmed without their permission. If there are fixed cameras in the courtroom, anyone can get used to them very quickly and forget about the fact that they are being filmed (nevertheless see more in the CCJE Opinion No. 7, para 45-50).

4.12 Rules regarding written Requests and Rules applicable to the Stage of Enforcement

Art. 33 - 37: I think that introducing restrictions on free access "in special circumstances" is too vague. Here I would prefer to describe the situation in more detail. Otherwise, I fully agree.

Art. 38: I agree.

4.13 Rules in Civil Trials

Art. 39 ,40: In my opinion, there should be no fundamentally different rules for dealing with the public in **civil proceedings** than in criminal proceedings. In civil proceedings, as in criminal proceedings, there are processes that take place behind closed doors. But here, too, the rules that exclude **general free access** should be clearly defined by law. Even if the interest in civil proceedings is generally not as great as in criminal proceedings, it may well happen that e.g. a dispute between two celebrities or involving a celebrity is of great public concern.

Final result of the assessment of the guidelines:

Regardless of the individual comments I made on the above issues, I miss statements on the following topics:

- judges` comments on their cases (see chapter 3.5, 6.2.1 -6.2.4 CEPEJ guide and CCJE Opinion No. 7);
- judges` private comments in the framework “freedom of expression” (see chapter 3.9 CEPEJ guide);
- communication of court employees;
- equipment of the courts for the work of the press;
- anonymising judgements;
- use of social media;
- internal communication;
- cooperation between courts and prosecutorial offices;
- cooperation between courts and other institutions;
- last but not least, a comprehensive crisis communication plan.

5. Communication Strategy Assessment

5.1 Introduction:

First, let me define how I understand a communication strategy plan. Strategies are not goals, but the paths to the goal. It is therefore important:

- to define the **goals**;
- to carry out a SWOT (**S**trengths, **W**eaknesses, **O**pportunities, **T**hreats) analysis;
- to determine **measures** for implementation;
- by agreeing on the **target groups**;
- and the **core messages** in advance;
- Finally, the **evaluation** must follow.

The CEPEJ guide addresses the subject of the communication strategy only marginally (1.5).

5.2 Communication Strategy of the SCM

All the points mentioned under 5.1 can be found scattered in the strategy paper, but nevertheless I miss a strict timetable, evaluation and the assignment of the people involved to the various measures. **Who does what, when and how?** I have listed the structure of the strategy paper and put in brackets the things that I miss:

- general objectives;
- specific objectives;
- target groups (participating public and factors of influence);
- situational analysis (I miss the opportunities and the strengths);
- strategic positioning and approach (I miss detailed measures within a timeframe);
- intervention methods (activities and a time specification are described in this context);

- ensuring transparency and efficient communication with the public (here you can find a selection of measures, but no specific action plan);
- improving the image of SCM and the justice system (this is a goal already mentioned above and again some measures);
- prompt reaction in crisis situations (you need a crisis management plan including a crisis communication plan);
- key messages (I totally agree with the key messages, but the question is how to implement them).

Here you can see in extracts an **example** for a communication strategy plan I developed for another country. However, this strategy is not intended for a council or magistrate, but for the judiciary in general.

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| Mutual understanding judiciary and media¹ | Press guidelines on what journalists can expect from the judiciary and vice versa | Experts, judges, prosecutors, journalists, spokespersons | Revision every 3 years |
| | Establish a procedure for complaints from media and judiciary in case the press guideline is not abided with | Judiciary, journalists | Parallel to implementation of press guideline |
| | Survey on 'customer satisfaction' on the press guideline | By the Ministry of Justice (MoJ), amongst the judiciary and journalists | After 2 years |
| | Short, informal meetings in court to discuss daily business, like facilities and exchange experiences | Spokespersons, media officers and court journalists | Every month, at most 30 minutes each time |
| | Working visits to the media (e.g. newspapers/magazines, TV) to talk with the journalists about their work | Spokespersons of the courts and of the prosecutor offices and court journalists | 2 x per year |

¹ It is good to take into account that in general in some countries preliminary investigation on journalists is an obstacle for mutual understanding and trust.

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| Meetings on legal topics under the name of "Let's talk about..." | Judges, prosecutors and journalists, court correspondents | 1 x per year |
| Up-to-date website with the court's agenda and all the news Up-to-date website with information regarding judiciary topics that are interesting for the public | Media offices | Ongoing |
| Regular press releases e.g. with summaries on verdicts, policy priorities for the coming year Regular press releases with summaries on verdicts that are interesting for the public | Media offices | As much as possible |
| Publish Questions & Answers on important cases and topics on the website Information for the journalists regarding how to conduct their work (use of cameras, sitting order in the court room, when, how and to whom make a press release) on the website To bring the websites in line with the national legislation | Media offices | A.s.a.p. |
| Court program by e-mail to all journalists | Media offices | Once a week |
| A glossary with the translation of legal terms into clear language on a webpage | MoJ | Once a year an update |

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| | <p>Publish judgements in high profile cases after they are public</p> <p>To make press releases regarding decisions that are interesting for the public</p> | Media offices | <p>Ongoing</p> <p>A.s.a.p.</p> |
| | Educational program for judges and prosecutors on external and internal communication | | <p>A.s.a.p.</p> <p>Periodically</p> |
| | Explore the possibilities for collaboration with the Faculty of Journalism of the universities | MoJ | <p>Within 5 years</p> <p>Regularly</p> |
| | Provide good suitable facilities for the press in big court halls and in the court rooms | <p>All the courts</p> <p>In all courthouses where press spokesman-ship has been established</p> | A.s.a.p. |
| Increase awareness within the judiciary on the importance of communication with the media external communication | To raise the awareness internally by an awareness campaign | Media office in cooperation with court management and spokespersons | <p>In the first year</p> <p>Regularly</p> |
| | To establish an appropriate information structure | From judges and prosecutors towards press spokespersons | <p>Ongoing</p> <p>Regularly</p> |

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| | <p>Daily media clippings for all court employees on cases in their court, e.g. on the courts' intranet</p> <p>To equip the media communication offices with necessary technological infrastructure so that the media communication officers can follow judiciary news.</p> | Media office of the courts and of the prosecutor offices | <p>Every day</p> <p>Regularly</p> |
| | Daily overview of media clippings gives information on changes regarding the national judiciary system issues for judges and prosecutors | MoJ | <p>Every day</p> <p>If necessary</p> |
| Professionalise the press relations in the courts and the public prosecutors' offices | Institutionalisation of spokesperson system in every relevant court | MoJ in cooperation with courts | A.s.a.p. |
| | Establish well equipped media offices in every relevant court house and prosecutor's office | MoJ | Within 5 years according to the strategy plan of the Ministry of Justice |
| | <p>Recruitment of eligible candidates for spokesperson and media officers</p> <p>Incentive: reduction of the regular workload of a judge selected as a spokesperson</p> | MoJ | A.s.a.p. |

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| Provide a training program for spokespersons | Justice Academy, Universities and Training Centres | Once a year |
| Develop a handbook for press relations | Media officers all together, staff of the media communication offices | A.s.a.p. If necessary |
| Exchange experiences and ideas nationally e.g. by creating a platform on intranet and by organising conferences To communicate through a regular system in terms of sharing information /experience amongst media communication offices | Spokespersons and Media officers | Ongoing |
| Develop a checklist: rules that need to be respected by media for the handling of big important media sensitive cases | Spokespersons | A.s.a.p. |
| Develop a guide for judges and prosecutors to support them in acting in high profile and media sensitive cases To define the rules regarding the procedures that judges and prosecutors shall respect when it comes to big cases followed by the media | Media officers and spokespersons in cooperation with the MoJ | A.s.a.p. |

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| <p>Develop and implement a crisis communication concept in all courts and prosecution offices</p> <p>To define standards for conducting crises communication at big courthouses</p> | <p>Media offices in cooperation with external institutional communication specialists (you need professional crisis management)</p> | <p>Regularly training and update of the concept</p> |
| <p>Good availability of media communication offices and spokespersons, at least during office hours, better 24/7</p> | <p>Media officers and spokespersons</p> | <p>A.s.a.p.</p> |

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| <p>Transparent and visible judiciary for the general public</p> | <p>Every court organises an open day for the public (e.g. "theatre trials")</p> <p>Media communication offices shall organise activities that presents the public that courts are judging open to the public and activities that introduce the courthouses to the public</p> | <p>Judiciary Media communication office</p> | <p>Every 2 years</p> |
| | <p>Visits of judges/prosecutors to schools to explain judicial procedures and laws</p> | <p>Judges and prosecutors</p> | <p>A few times per year</p> |
| | <p>Establish a team of judges, prosecutors, clerks, spokespersons and media officers to guide the students and explain on court proceedings ("moot courts")</p> | <p>Judges, prosecutors, clerks, spokespersons and media officers</p> | <p>A.s.a.p.</p> |

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| <p>Invite schools to courts: attending cases and explanation of court proceedings</p> <p>Invite university students to media communication offices: attending cases and explanation of court proceedings or even internships</p> | <p>Judges and prosecutors</p> | <p>As many as possible</p> |
| <p>Twitter account for every court and prosecutor's office</p> <p>Increase the social media usage of every court and prosecutor's office</p> | <p>Media offices</p> | <p>24/7</p> |
| <p>A website for every court and prosecutor's office with updated info/videos on upcoming court cases and verdicts</p> <p>To publish the up to date information given by the media communication office and press releases at the website</p> | <p>Media offices</p> | <p>24/7</p> |
| <p>Judges / prosecutors attend public TV-broadcastings</p> | <p>Judges, prosecutors</p> | <p>Ongoing</p> |
| <p>Nationwide information material like brochures, leaflets and videos to explain the work of the judiciary</p> | <p>MoJ in collaboration with communication specialists</p> <p>In courthouses where a media communication office exists</p> | <p>Revision every three years</p> <p>If required</p> |

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| Understandable judiciary | Trainings for judges to improve their skills to explain verdicts in a way the public understands it To organise activities in order to increase the understanding of the judge's verdicts by the public | Professional teachers, judges Judges and Justice Academy | Every year Periodically |
| | Oral verdicts in understandable language | Judges in cooperation with media officers | Ongoing |
| | Explore the possibilities of allowing media to make recordings of (part of) court sessions | Courts, MoJ | Ongoing |