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## Relations of the judge with mass media and society:

### Theoretical and practical review

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#### Abstract

At the earliest stage of the development of society, a person used various means of communication and communication. Man, as a social being, constantly sought to interact with other people. Today, communication represents, the transfer of information from person to person, from one system to another. Communication also means connection, message, news, interaction, exchange of information in society, creation, and dissemination of information, as well as a means of communication. In this case, judges are not the exception, they have the right to communication, and however they are limited in their actions, which are regulated by the Code of Judicial Ethics, In this case, it should be interpreted that the Code of Judicial Ethics represents an act of the judicial community, it establishes rules of conduct binding on each judge in the exercise of professional activities in the administration of justice and extrajudicial activities, based on high moral and ethical requirements, provisions of the law.

**Keywords:** Judges, Relations, Judicial ethics, Media, Courts

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## INTRODUCTION

The judge is independent in his work and obeys only the Constitution and the law. Any influence on a judge or interference in his activities to influence decision-making is prohibited and punishable by law (Parliament of the Republic of Georgia, 1995). Article 17 of the Constitution of Georgia defines the freedom of expression and is protected freedom of opinion and its expression. Everyone has the right to freely receive and impart information. Here, should be noted the important role of the media, which often acts as a link between the judiciary and civil society. Thus, it is necessary to emphasize the place and importance of the media in the process of democratization of our society, transparency, and strengthening of public authorities (Groves, 2021). The media has an important role in ensuring the transparency of the activities of the judiciary, as it plays the role of an intermediary between the sources of information and the receiver of information. Here we have to highlight that the source of information is the government, and the consumer is the population of the country, the media becomes the main subject of information transmission. The judiciary is the body that implements justice in the state, in modern conditions there are several cases in which public interest is very high (Drechsel, 1989). Therefore it is very important to create a correct, objective, and real picture of the information by the media because it affects the authority of the court and the mood of the citizens accordingly. Most citizens' knowledge of the judicial system is limited to the knowledge and experience they may have acquired as a litigant, witness, or juror in court proceedings. The role of the media in providing information to the public about the role and importance of the courts is extremely large, in addition to the dissemination of information related to the courts by the media, it is extremely important to establish direct relations between the public and the courts. Court sessions are open to the public, except for the cases stipulated by the law, also, according to the decision of the Constitutional Court, it is already possible to get acquainted with the full text of the court acts adopted at the open court session (Constitutional Court of Georgia, 2019). The mentioned issue has a positive impact on the relationship between the court and society.

### **Current Issue of Judicial Ethics**

One of the topical issues of judicial ethics is the issue of the rules of ethical behavior, in particular, the relationship and contacts between representatives of the media (journalists) and courts (judges, civil servants). The concept of the Code of Judicial Ethics states that the Code of Ethics for Judges is based on the conclusions of the standards of conduct of each judge and the rules of conduct contained in the opinion of the Constitutional Court of the European Union on the 'Principles'. Therefore, the rules governing the professional conduct of judges, namely ethical norms, inconsistent behavior, and impartiality should be based on the following:

1. A judge should be guided by the principles of professional conduct in his/her activities;
2. Such principles should be formulated in a code of judicial ethics and offer recommendations to judges on how to behave in certain cases, how to overcome the obstacles and difficulties they face to maintain their independence and impartiality;
3. Each judge must do everything to preserve the independence of the judiciary, both at the institutional and individual levels;
4. A judge must be honest both in his/her official duties and in his/her private life;
5. A judge must always be impartial and be perceived as such by others;
6. A judge must perform his duties without any preference or partiality;
7. His decisions must take into account all the circumstances of the case, be based on the application of the relevant rules of the law, and exclude the influence of any inappropriate circumstances;
8. A judge must respect all persons involved in the proceedings, as well as those who may be affected by the proceedings;

9. A judge must perform his duties with due respect for the principle of equality of the parties, avoiding partiality and discrimination, maintaining a balance between the parties, and ensuring a fair hearing for each party;
10. A judge must exercise discretion (judges must have a moderate relationship with the media) - when interacting with the media, maintain their independence and impartiality, refrain from using the relationship with the media for any personal purposes, as well as from making any unsubstantiated statements (The National Judicial College, 2015);
11. Judge must maintain a high level of professional knowledge;
12. A judge must have a high level of professional integrity and work tirelessly to issue timely judgments (judgments to be received within the time limit established by law) (Egorova, n.d.);
13. A judge must devote most of their working time to the performance of judicial functions, including related activities;
14. A judge must refrain from any political activity that could call into question his independence and harm his impartiality (Lim, Snyder, & Strömberg, 2015).

As for the judge's relations with the mass media and the public, they are regulated by the following articles of the third part of the Rules of Judicial Ethics of Georgia: 15, 16, 17, 18, 19, 20, 21 (Disciplinary Committee of Judges of Common Courts of Georgia, n.d.)

### **Interaction Between Media and Courts**

Judges express their views through their decisions, and they are not required to explain their decisions to the press or make public statements about the cases they hear. Nevertheless, it should be noted that it is advisable to improve the contact between the court and the press (Council of Europe, 2021). First of all, this is because the public gets to know and see the role of the court and the media better. There are often cases of incorrect coverage of cases or the distorted use of legal terms, so cooperation in this regard is also necessary. I think the state should facilitate the exchange of information on the regulations and practices related to

these two professions by organizing round tables to clarify the problems and challenges that are specific to these areas.

The main goal of the interaction between the media and the courts is objective, reliable, and fast coverage of court activities based on the principles of publicity, openness, and transparency of justice. The judiciary enjoys sufficient authority among citizens, other persons, and bodies, which is based, in particular, on the formality of procedures, transparency, publicity, and the position and role of the judiciary in the state. Important factors are public opinion and citizens, and society as a whole's faith in the court, which is largely shaped by the media, the "fourth estate", as they provide people with information about the court's activities. However, it should be noted here that a judge's appearance on commercial television or radio may be interpreted as promoting the financial interests of that organization or its sponsors. On the other hand, many citizens get information about current events, issues of public life, and the law from such media. Therefore, depending on the specific circumstances, the participation of a judge in a program related to legal issues may be justified and appropriate (Deutsche Gesellschaft für Internationale Zusammenarbeit, 2011).

It should be noted here that both the court and journalist's activities are regulated by the Code of Professional Ethics of Georgia. Judicial ethics is based on the current legislation of Georgia and established international standards in the field of judicial ethics, especially the "Bangalore principles of the conduct of judges" and the conclusion of the Constitutional Council of Europe (CCJE) (Council of Europe, 2002). As for the journalist's activity, it is based on the Code of Conduct of the Charter of Journalistic Ethics of Georgia, where it is defined that the journalist's mission is to raise the public responsibility of the media through the protection of professional and ethical standards and the creation of self-regulation mechanisms. They are obliged to observe the rules of conduct established by the document, the main principle of which is: reliability, impartiality, transparency, responsibility, and accountability (Georgian Charter of Journalistic Ethics, 2017).

There is no doubt that the influence of social media on the lives of all of us is a phenomenon of our time. The proliferation of social media also raises new questions of behavior and ethics for all Bangalore principals. The functioning of social media is a huge challenge for the modern judge, whether it is in the preparation and conduct of hearings or the judge's personal life. Attitudes Judges in social networks may be concerned with issues of conduct and ethics (United Nations Office on Drugs and Crime, 2019).

In modern conditions, the media has gained a fairly wide area of distribution. It is not only print and television media, there is an internet space where there are many platforms for disseminating information. It is necessary to define the scope of the judge's expression, because all people, including the judge, have the freedom of expression guaranteed by the Constitution. Judges have the right to express their opinions publicly, although there are ethical norms that establish certain frameworks and which all judges are obliged to follow, it is natural that the violation of the standard of freedom of expression by a judge cannot be the basis for discipline. Disciplining all instances of unethical expression may discourage dissent within the system (Trochev & Ellett, 2014). The basis for the imposition of responsibility should be only such an expression that is directly and unambiguously provided for by the Organic Law "On Common Courts". For example, there were extreme cases when the judge made political statements and took part in political debates. Such action clearly represents a violation of the law, directly hurts the reputation of the court, and therefore should lead to disciplinary responsibility (Transparency International Georgia, 2021).

A judge should have the opportunity to participate in discussions that are related to the effective functioning of the court. In addition, the judge, while exercising this right, should not harm the interest of justice, impartiality, and independence. A judge should refrain from voicing such opinions on his social network that would harm the interest of justice. In this case, we can refer to the French disciplinary practice (see the case of 2013-14), where a judge and a member of the prosecutor's panel in a criminal case were engaged in a familiar conversation via Twitter, which was accessible to the general public and publicized in the

media. As for the judicial system, there are speaker judges who are in charge of communicating with the media, however, unfortunately, it should be noted that their activity is quite low (Blitsa, Papathanasiou, & Salmanli, 2015).

### **International Standards of Judicial Ethics and Review of the Existing Legislative Framework in the Field of Judicial Ethics in Georgia**

The 2015 report of the Secretary General of the Council of Europe, was about the current situation in terms of ensuring democracy, human rights, and the rule of law in Europe. Two main issues have been identified that pose a challenge in terms of achieving the democratic security set by the Council of Europe - the weakness of the judiciary and the deterioration of the situation in terms of media freedom. It should be noted here that the codes of judicial ethics in different European countries differ from each other, which is due to the legal traditions of the country and the challenges faced by judges in a particular country (Kochikian, 2016).

Following the Organic Law on General Courts of Georgia, the Conference of Judges adopts the rules of judicial ethics on the submission of the Supreme Council of Justice of Georgia. The Judges' Conference of Georgia adopted the Code of Judicial Ethics by Resolution No. 6 of June 23, 2001. Thus, the judges of the general courts of Georgia are obliged to fulfill the norms considered by this code from June 23, 2001 (Foundation ALPE, 2001). And, the latest amendments to the Code of Ethics of Judges of Georgia (hereinafter referred to as NJEG) were made on February 8, 2012. The Code consists of a preamble and 28 articles, and it is based on: the Constitution and laws of Georgia, as well as international legal values in the field of judicial ethics, including the Bangalore Principles of Judicial Conduct and Opinion of the Consultative Council of European Judges on the principles and rules of professional conduct of judges, namely ethics, misconduct and impartiality.

### Specific Comments and Recommendations

According to the preamble, the main purpose of the Code is to increase public trust and faith in the judiciary. Specific recommendations and comments are given for this. In particular, I would like to discuss the comments regarding the relationship between the judge and the media. Article 7 says, "A judge should not publicly express a negative opinion or view on the professionalism or personal qualities of another judge or colleague, and should not disrespectfully refer to the decision made by another judge" (Foundation ALPE, 2001). This article does not fit into the "independence and impartiality section". It would be appropriate to move this article to the part that deals with the principles of appropriateness (Kochikian, 2016).

In articles 16-18 the term "mass media" should be replaced by the term "society" because it is more comprehensive and relevant. In addition, the code should be a detailed provision (one or two articles) in which the rules of the judge's relations with the public will be spelled out. The issue of judges' relations with the public (including the media) arises from the principle of transparency and the need to increase public trust in justice. Concerning this issue, the Bulgarian Code of Conduct for Judges contains the following provisions that may be considered in this regard:

1. A judge must not make public comments or statements regarding the cases under his consideration, which may influence the outcome of the case, create the impression that the outcome of the case is pre-judged, or that the judge has a biased attitude. As well as shall not discuss matters outside the courtroom with other parties to the proceedings, lawyers, or third parties, except when this is provided by law;
2. Under the requirements of the law, judges must provide the public with the necessary and comprehensive information promptly;



3. Judges, in compliance with the requirements of the law, must ensure the publicity of their decisions without harming the rights and interests of the participants in the proceedings;
4. He must present to the public in person or through the media the justification of his decision concerning such matters of high interest to the public and at the same time refrain from such behavior or actions that may be perceived as an attempt to present himself or gain recognition from the public.

As for articles 19-21, they are more about acceptable behavior than "the media". It is recommended that these provisions be removed from the section "Relations between judges and the media" and placed under a separate heading. Furthermore, articles 19 and 21 repeat each other and could be combined into one (Kochikian, 2016).

### **Bangalore Principles of Judicial Conduct**

The following principles are intended to set standards of ethical behavior for judges. They are intended as a guide for judges, as well as for the court to use as basic principles for regulating the conduct of judges. In addition, they should promote better understanding and support for the justice process among the executive and legislative authorities, lawyers, and the public as a whole. These principles imply that judges are subject to the relevant bodies, which are created to promote judicial standards, act objectively and independently, and aim not to diminish, but to enhance, the importance of existing legal norms and rules of conduct to be protected by judges. They also seek to help law enforcement and the general public better understand, and support the court. These principles assume that judges are accountable for their actions to appropriate bodies that are flexible in maintaining judicial standards that are independent and impartial and are intended to supplement and not violate existing laws and rules of conduct binding judges (Supreme Court of Georgia, 2002).

According to the Bangalore Principles of Judicial Conduct (2002), the conduct of judges should be governed by the following 6 principles:

1. Independence: Judicial independence is a prerequisite for fundamental guarantees of the rule of law and due process. Accordingly, the judge is obliged to maintain independence in both individual and institutional contexts.
2. Impartiality: It is essential to the proper exercise of judicial power; It applies not only to the decision but also to the process by which the decision is made.
3. Immutability: This is essential to the exercise of judicial power.
4. Decency: Decency and the appearance of decency are essential in all activities of a judge.
5. Equality: Ensuring equal treatment of all before the courts is essential in the exercise of judicial power.
6. Competence and discretion: Competence and discretion are prerequisites for the proper exercise of judicial functions (Deutsche Gesellschaft für Internationale Zusammenarbeit, 2015).

It should be noted here that according to the Bangalore principles, the judge adheres to the norms of ethics. It is not permissible for him to behave improperly in the performance of any action related to his position. To avoid damage to the reputation of the judicial system, the judicial members of the Council must strictly observe the principles of independence, impartiality, impartiality, decency, equality, competence, and consideration. Adherence to these principles is of particular importance in the protection of human rights, since the exercise of all other rights depends entirely on the proper administration of justice. Public trust in the judicial system, its moral authority and integrity play a primary role in modern democratic society. Judge members of the board are also required to comply with the Code of Ethics, including Article 10: "A judge must show appropriate correctness in his statement, not use offensive, derogatory words and expressions or discriminatory terminology." In addition, the judge should also advise the court official to refrain from making such a statement." The CEPEJ guidelines, which refer to the standards of the judicial system's communication with the public and the media, also point to the need for the correctness of the content of the expression. Judicial communication should be distinguished by its quality

- factual truth, objectivity, and clarity. The speech used by the court must be distinguished by such high quality and effectiveness that it commands respect (Kakhidze, Jimsheleishvili, Chitashvili, 2021).

It should be noted here that the European Court of Human Rights explained in the case of Kudeshkina v. Russia that even accurate information should be disseminated moderately and properly (Council of Europe, 2009). The Court found that the decision to bar the applicant from holding office in the judiciary had been prompted by statements made by him in the media. Neither the applicant's fulfillment of the requirements for the position in the state service, nor his professional ability in terms of performing the functions of the court, did not represent arguments for the national authorities. Accordingly, the impugned measure concerned freedom of expression and not the holding of public office in the administration of justice, a right not guaranteed by the Convention. Thus, the court concluded that the application of Article 10 of the European Convention was applied concerning this issue, and the applicant's freedom of expression was interfered with.

Here we must explain the first paragraph of Article 10, which includes 3 elements of freedom of expression (Korkelia, Kurdadze, 2004):

1. Freedom to follow one's own opinion;
2. Freedom of information dissemination;
3. Freedom of receiving information.

## CONCLUSION

Adhering to and demonstrating ethical standards, both professionally and personally, are important elements in a judge's life. Society sets the same high standard for a judge, so his behavior in society is very important for the reputation of the entire judicial system. It is because of this that the ethical obligations of judges are established. The judge must ask himself: "How does a particular behavior look in the eyes of the public?" (Transparency International Georgia, 2021). Freedom of expression is one of the basic human rights. Its

importance is especially great for a transitional democracy like Georgia. Any person, including a judge, should be able to enjoy freedom of expression. However, some values are also important to protect. For example, an independent court and its authority, which is critically important for the full functioning of the legal state. Words spoken by a judge in public may harm the interests of justice and/or the public's perception of the impartiality and independence of the judiciary. The existing Code of Ethics for Judges of Georgia is a good starting point for determining the ethical obligations of judges, but to make this document more consistent and comprehensive, the Georgian judiciary may consider it appropriate to revise the structure of the Code taking into account the above recommendations. The Code of Ethics of Georgian Judges is an important component of the justice process and it is an important tool for increasing the independence of judges and public trust. I think that the public should have enough information about the events taking place in the judicial system, which ensures both the increase of trust in the court and the increase of access to justice. For this purpose, the court should be proactive and initiate communication about reforms or current important events.

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