



**RIGA  
GRADUATE  
SCHOOL OF  
LAW**



**LATVIAN JUDICIAL  
TRAINING CENTRE**

# **JUDICIAL ETHICS AND PROFESSIONAL CONDUCT: CHOICE BETWEEN RECUSAL AND NON-RECUSAL**

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## Introduction

Virtue is the basic principle of ethics. A good knife is the one that cuts sharp and smooth. A good man is the one that strives to moderation (*Aristotle*).

Ethics is one of the oldest theoretical disciplines, the object of research of which is morality. It is a lesson in moral obligation, freedom and values. Ethics is also a lesson in correct behaviour. As noted by scientific literature, ethics is a lesson in morality, its essence, nature and structure, the logic of its birth and development, its place in the system of other social relations<sup>1</sup>.

The basic concepts of ethics are also values – the good and the bad, duty, responsibility, honour, respect, conscience, happiness, the meaning of life and virtue. Ethics consists of the values of life consciousness, activity, free will, goals and ideals. Nevertheless the best principles and guides lose their meaning if not effectuated in time and if peculiarities of the situation are not considered.

Judicial ethics – the manner of behaviour, culture, attitude and conduct of an official (a judge): while dispensing, in their attitude towards the participants of a case (a process), towards colleagues, employees (assistants, secretaries), outside the court, while performing the duties of a member of society, in relationships with family members, while performing duties in favour of society, while participating in entertainment events, while travelling, while communicating in social networks, and so on.

With respect to judicial ethics in the scientific literature, among other things it is indicated that a judge should avoid anything that may decrease the authority of judicial power. A judge should not cause detriment to the prestige of judicial power in his/her own interests or in the interests of others. Correspondence of the activity of a judge to high virtuous requirements and positive moral qualities are the necessary preconditions in order for society to trust judicial power. It is the righteousness of courts and judges that ensures the judicial power's authority, the prestige of judges, and their reputation as impartial and uninfluenced servants of the law<sup>2</sup>.

Judges in Latvia, just as in any other country are in the habit of facing different problem issues, or, in other words, ethical/professional dilemmas, where the lack of precise regulations and guidelines cause difficulties. This paper will be closely related to judicial ethics that will reflect itself as making a judge's decision in respect of recusal and accepting removal.

The authors of this paper will view the normative regulation of recusal by Latvian judges, reflecting it in the manner stipulated by national and international law and recommendations (principles, codes). The paper will also reflect the way the only institution in Latvia that maintains adherence to the rules of ethics of judges – The Committee of Judicial Ethics – looks at the issue.

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<sup>1</sup> Кобликов А.С. Юридическая этика: учебник для вузов. 3-е издание. М.: Норма, 2007, с. 9 -10.

<sup>2</sup> Ibid, с 160.

The authors of this paper will also look at the consequences of non-recusal by a judge, through the perspective of national court practice and normative regulation, as well as through examples from international court practice and through evaluation of the practice of the European Court of Human Rights, as well as looking at ungrounded recusal by a judge and its consequences.

## **Consequences of non-recusal and ungrounded recusal of judge**

### **1.1. Consequences of non-recusal**

On January 7, 2016 the European Court of Human Rights announced the judgment in the case *Dāvidsons and Savins versus Latvia*<sup>3</sup>. The court had merged two applications into one and announced a united judgment, taking into account that the facts and legal grounds of both cases were similar. In both cases the applicants alleged a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms, article 6 paragraph 1 (right to a fair trial) in relation to lack of impartiality by the judges of the national courts.

In the case *Dāvidsons versus Latvia* the applicant, R. Dāvidsons, (the first applicant) complained that his right to trial of a case in an impartial and independent court were violated as the court of the first instance – Vidzeme Regional Court – had examined his criminal case in an illegal composition of the court, because one and the same judge examined the complaint on applying the security measure – arrest – as well as later forming the composition of the court of first instance.

In turn in the case *Savins versus Latvia* the applicant R. Savins (the second applicant) complained that during the hearing of a criminal case one and the same composition of Latgale Regional Court examined both the complaint of the applicant in respect of application of a security measure and later the appellate complaint filed by the applicant in respect of the convicting judgment of the court of first instance.

Under such similar circumstances of the case the European Court of Human Rights rejected the complaint of the first applicant, but with regard to the case of the second applicant admitted that a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms, article 6 paragraph 1 had taken place.

The European Court of Human Rights in both cases referred to principles well founded in its case law, indicating that the matter of independence of the court (a judge) should be evaluated from both subjective and objective aspects. Firstly, the personal belief or interest in the outcome of a particular judge is evaluated (the subjective aspect). With regard to this aspect the objectivity of a judge should be admitted while the opposite is not proven. Secondly, it is evaluated whether in the frame of the trial of the case it was indemnified in a due manner that any grounded fear be

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<sup>3</sup>*Dāvidsons and Savins v. Latvia*. Judgments and Decisions of European Court of Human Rights. [http://hudoc.echr.coe.int/eng#{"respondent":\["LVA"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-159768"\]}](http://hudoc.echr.coe.int/eng#{) ; (viewed on 24.05.2016.)

excluded in respect of lack of independence and impartiality of the court (the judge). Namely, when evaluating the objective aspect, it must be evaluated whether, notwithstanding the personal conduct of the judge, any verifiable facts may cause doubt in respect of the impartiality of the judge. In cases where one and the same judge has passed decisions during the pre-trial criminal procedure and afterwards participated in the trial of the case, a certain fear may occur to the defendant in respect of the impartiality of this judge. While these fears are understandable, they still may not themselves be considered as objectively founded.

As the first applicant in this case did not claim that there was a personal interest by the particular judge in the outcome of the case, the European Court of Human Rights evaluated only the objective aspect, namely, whether the role and involvement of the judge during examination of the complaint on applying the safety measure – pre-trial arrest – caused grounded fear in respect of lack of her impartiality when later on trying the criminal case of the first applicant. The court admitted that the chairwoman of the court composition really had been looking through the complaint of the first applicant on the safety measure applied to him – pre-trial arrest. However, in the insight of the European Court of Human Rights, the court decision was passed, based on indisputable and objective evidence, that is, the first applicant had already prior to the fact been trying to avoid a criminal prosecution, and he had no permanent registered place of residence. Therefore the court had sufficient grounds to consider that he could try to further avoid the investigation and the court. There was no other evidence in the possession of the European Court of Human Rights to the fact that, when examining the necessity of the applied safety measure, the judge would have in anyway evaluated the guilt of the first applicant, or in any other way given a ground to doubt her impartiality. Taking into account the above mentioned the European Court of Human Rights rejected the complaint of the applicant R.Dāvidsons.

On the other hand, when analysing the text of the decision of Latgale Regional Court by which the national court rejected the complaint of the second applicant R.Savins on application of arrest, and in which *inter alia* it was indicated: “*Despite having served a prison sentence, [the second applicant] does not learn any lessons and is once again suspected of having committed an identical crime. He commits such acts regardless of the considerations included in his own appeal, [such as] a bank loan, an intention to start a family, a permanent job and a place of residence...[The applicant’s] personality and tendency to commit crimes are to be seen as exceptional grounds for [applying pre-trial detention]*”.

In the insight of the European Court of Human Rights, the language used in the text of the decision allowed the conclusion that the judges prior to examination of the criminal case at first instance had expressed an opinion that would invite reasonable doubt in respect of their impartiality and that would be contradictory to the requirement of the pre-trial instance to withhold

expression of an attitude in respect of the outcome of the case. Referring in its case law to the previously mentioned recognitions<sup>4</sup>, the court concluded that the second applicant could have had grounded doubt in respect of the impartiality of the judges as both the complaint on application of the arrest, and the appellate complaint in respect of the convictive judgment by the first instance the three judges of Latgale Regional court was examined in completely equal composition. In addition the Court indicated that a two year period between the moment when the judges of Latgale Regional Court passed a decision in respect of the complaint applying the arrest and examining the appellate claim in respect of the convicting judgment, was not long enough to dispel the doubt in respect of impartiality of the judges.

When examining the appealed decision by the Latvian Judicial Disciplinary Board, the Latvian Disciplinary Court in its decision Nr.DT-1/2015, dated January 8, 2015<sup>5</sup> concluded that a judge by not accepting a request for removal addressed to him/her and not recusing himself/herself from the trial of the case, had violated the Judges Code of Ethics, 3<sup>rd</sup> Canon (paragraphs 8 and 18). Therefore he/she would be subject to disciplinary sanction – a reprimand, taking into account the character of the disciplinary violation, and the significant impact of the consequences to the prestige of the courts and attitude of the judge towards the violation.

In the mentioned case the judge did not accept the removal and did recuse himself from the trial of the case in a civil case in which one of the participants was a legal entity (a bank) against which the judge himself had brought a claim in respect of revoking of information offending honour and dignity and recovery of remuneration.

While in the above mentioned civil case litigation was taking place (appellate instance), a case on mortgage and prohibition note entry deletion came into the record-keeping of the judge, in which the defendant was the same legal entity against which the judge had brought a claim in respect of revoking information offending honour and dignity and recovery of remuneration. The defendant requested the judge's removal: this was not accepted by the judge. The judge also had not recused himself from the trial of the case.

When giving explanations the judge indicated that he did not have a personal, economic interest or interest in kind when examining the mentioned civil case. Besides, at the time of the violation for which the judge was blamed he was the only judge in the district court who resolved all incoming claims and other matters. In addition in the record – keeping of the judge already prior to the fact were civil cases in which one of the parties was a legal entity (the bank) against which the judge had brought the claim. In these cases no request for removal was placed in respect of the judge and the judge had not recused himself.

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<sup>4</sup> Judgments and Decisions of European Court of Human Rights *Mironenko and Martenko v. Ukraine*, No.4785/02, §71; *Lavents v. Latvia*, No.58442/00, §119

<sup>5</sup> The Disciplinary court decision of 08.01.2015.Nr.DT-1/2015, [http://at.gov.lv/lv/par-augstako-tiesu/disciplinartiesa/disciplinartiesas-lemumi/\(aplukots 06.05.2016.\)](http://at.gov.lv/lv/par-augstako-tiesu/disciplinartiesa/disciplinartiesas-lemumi/(aplukots%2006.05.2016.))

In its turn the Disciplinary Court and the Judicial Disciplinary Board ascertained that on the basis of the Civil Procedure Law, article 19, section 1, paragraph 4 in similar cases a judge had recused himself from examination of the case. In other cases the judge had informed the other representative of this legal entity in respect of his civil law dispute with a bank and requested to consider the matter of applying for removal.

The Disciplinary Court and the Judicial Disciplinary Board also concluded that the circumstance that a judge had a civil dispute in a court with a legal entity (bank), i.e. the same person, in relation to which the judge had to pass a ruling in another court case, caused grounded doubt in respect of the impartiality of the judge. Namely, the judge had a civil dispute with the mentioned bank in respect of a matter important to the reputation of the judge – revoking of information offending honour and dignity and recovery of remuneration, besides in direct relation to the judge's duty. In such situation it was an obligation of the judge to recuse himself from examination of the case according to the Civil Procedure Law, article 19, section 1, paragraph 4 or to accept the request for removal, and thus eliminate the doubt of the process and of society in respect of the impartiality of the court.

The judge had grounds for his recusal from passing the ruling notwithstanding the whether the participants in the case had used their right to request the judge's removal, as there were circumstances that distinctly caused grounded doubt in respect of the impartiality of the judge in examination of the case not only to litigants, but also to a reasonable observer from aside.

### **1.2. An ungrounded recusal and its consequences**

Additionally, cases when a judge would recuse himself from the trial of the case ungrounded may lead to disciplinary liability of a judge according to Latvian normative regulation.

A judge recused herself from the trial of a civil case according to the Civil Procedure Law, article 19, section 1, paragraph 4 and section 2. In the decision the judge *inter alia* indicated that during several years she had disciplinary matters initiated against her and she was penalized. The mentioned civil case had a wide resonance; the defendant in this case had been writing complaints to the Ministry of Justice in respect of other judges. Therefore the judge considered that the civil case should be transferred for trial to another court or judge who had not been subjected to disciplinary liability and who had a positive working evaluation.

The disciplinary matter against the judge was initiated by the chairman of the court who had indicated in the decision that motivation included in the decision passed by the judge in respect of her recusal was not objectively related to the particular civil case and possible non objectivity of the judge. There was a basis to consider that the judge did not wish to examine the particular civil case. Therefore the judge had not been completing her direct working obligations.

During the session of the Judicial Disciplinary Board the judge did not admit herself to be guilty.

By its decision, dated May 11, 2015 Nr.DT-6/2015<sup>6</sup> the Disciplinary Court left the decision of the Judicial Disciplinary Board by which the disciplinary sanction – to suggest to dismiss the judge from duty - was applied, valid as it concluded that argumentation of the judge’s decision in respect of recusing herself from the trial of the case indicated not only to the fact that it did not correspond to the grounds of recusal set forth by the law, but also caused serious fears with regard to the ability of the judge to pass rulings in accordance with the professional qualities necessary for a judge. Besides, the opinion and attitude of the judge would not certify that she would understand the wrongfulness of her act and its harmful consequences and would further wish to change her conduct.

The Judicial Disciplinary Board by its decision Nr.D-14/2015<sup>7</sup>, dated September 18, 2015 applied to a judge with regard to an ungrounded recusal a disciplinary sanction – annotation.

The judge passed a decision in a civil case in respect of her recusal from a case of the extrajudicial legal protection process of a limited liability company “XXXXX” as she had previously three times recused herself from examination of complaints against joint stock company “XXX” in cases of extrajudicial legal protection of limited liability company “XXXXX” owing to the act of the attorneys at law of joint stock company “XXX” through submitting complaints in respect of the conduct of the judge to the minister of justice and through spreading false information about the judge in the mass media.

The judge also passed a decision in respect of her recusal from resolving on acceptance of a claim against the Corruption Prevention and Combating Bureau as she had for a long period of time been the chairwoman of the court who had also passed decisions in respect of the complaints of the Bureau with regard to the decisions of the investigating judges.

On the grounds of similar cases, the judge during a year passed a recusal decision in another 9 (nine) cases during a year.

The minister of justice had initiated a disciplinary matter on an intentional violation of the Civil Procedure Law, article 19, section 1, paragraph 4, namely, the intentional violation of the law in examination of court cases by the judge and non-fulfilment of working obligations.

The Judicial Disciplinary Board concluded that the Civil Procedure Law, article 19, section 2 obliges a judge to recuse himself/herself from the trial of a case should the circumstances of section 1, paragraph 4 exist i.e., the judge has a direct or indirect personal interest in the outcome

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<sup>6</sup> The Disciplinary courts decision of 11.05.2015. No.DT-6/2015, <http://at.gov.lv/lv/par-augstako-tiesu/disciplinartiesa/disciplinartiesas-lemumi/> (aplūkots 06.05.2016.)

<sup>7</sup> The Disciplinary board of Judges decision of 18.09.2015.No. D-14/2015 <https://www.tiesas.lv/tiesnesu-disciplinarkolegijas-pienemtie-lemumi> (viewed on 06.05.2016.)

of the case, or if other circumstances create well-founded doubt as to his or her objectivity. In the insight of the Judicial Disciplinary Board an opinion on the impact of complaints by the participants in the case or their representatives as to the impartiality of the judge was mistaken as the judge should be ready to be at the centre of attention, ready that his/her work will not only be praised, but also criticized, complained about, etc. If expression of complaints alone could be the only circumstance that would cause grounded doubt with regard to the impartiality of the judge, in that case it would be a comfortable manner for the participant in a case to get the particular judge in his/her case or it would lead the court hearing process into deadlock (*cul de sac*).

The Judicial Disciplinary Board had also concluded that an opinion that resolving separate procedural legal relationship according to an application a particular participant in the case through performing the functions of a judge stipulated by the law, would cause grounded doubt in respect of the impartiality of the judge in other cases, in which there is the same participant, is not correct.

According to the above, it can be concluded that there is no common comprehension on the issues connected with the recusal of a judge in Latvia between Latvian judges.

## **2. Normative regulation of recusal**

### **2.1. Normative regulation of recusal in Latvia and other EU states**

And to your judges I have one day commanded: listen to your brothers and judge in just manner between a man and his neighbour, and a stranger. (5. Moz. (Deuteronomy) 1:16)

The above quotation certifies how important and honourable the position of a judge is, and what a responsibility it puts upon a person appointed to this position.

One of the objectives of ethical behavioural standards is to strengthen the trust of society in the court system. The behaviour and actions of a judge should confirm faith in the honesty of the judiciary. This implies not only a need to act right, but also that this conduct should be obvious. Therefore the objective aspect is a particularly significant aspect of evaluating mutual communication. Each participant in court proceedings should have a right to expect that judges will act in accordance with the principles of law, the law itself and also the rules of professional ethics.

The institution of a judge's recusal and removal is an element of a fair trial. The institution of a judge's recusal and removal should serve to maintain the necessary distance of a judge.

Judicial disqualification, also referred to as recusal, corresponds to the act of abstaining from participation in an official action as a legal proceeding due to a conflict personal to the judge. Applicable statutes or canons of ethics may provide standards for recusal in a given proceeding or matter. Providing that a judge should be free from disabling conflicts of interest makes the fairness of proceedings less likely to be questioned.



In Latvia, judicial ethics rules stem from several sources. The basic principles that form the frame of operation of judges are stipulated in the Constitution (*Satversme*) of the Republic of Latvia<sup>8</sup>, article 92 of which sets forth that everyone has the right to defend his or her rights and lawful interests in a fair court.

In its turn, article 83 of the Latvian Constitution<sup>9</sup> provides that judges should be independent and subject only to the law. This implies that independence and equity are two general principles on which both other legal rules and ethical requirements with respect to judges are grounded.

The Latvian Judges Code of Ethics<sup>10</sup> was passed during the Conference of Judges of the Republic of Latvia on April 20, 1995. The Code of Ethics includes both general principles and detailed regulation in respect of specific aspects of the activity of a judge. The Code does not have the power of law. However, in accordance with the Judicial Disciplinary Liability Law,<sup>11</sup> article 1, section 1, paragraph 3, the grounds for subjecting a judge to disciplinary liability may be dishonourable actions or gross violation of the norms of the Judges' Code of Ethics. The Code of Ethics is not only a regulatory document, but also a message to the community as to values and principles which are maintained by judges.

The Latvian Judges Code of Ethics<sup>12</sup> is laconic, with recusal of judges set forth by canon 3 of the Code, paragraph 17. This stipulates that a judge recuses himself/herself from court proceedings in which he/she personally, his/her spouse or other relatives and family members have an economic interest with regard to the essence of the proceedings to be tried or a party involved in the proceedings.

In its turn, the Estonian Judges Code of Ethics<sup>13</sup> regulates the recusal of a judge in a wider manner. The Estonian Judges Code of Ethics notes that the grounds for a judge's removal from a case are set in the codes of civil, administrative and criminal procedure.

There are some situations included<sup>14</sup>, inter alia, where a judge, his/her spouse or cohabitee, close relatives or close relatives of the judge's spouse or cohabitee is/are a party to the proceedings, where the judge has acted as a representative or adviser to one of the parties or conducted pre-trial proceedings or participated in the adoption of a decision which has been subsequently annulled by a higher court. A judge must also withdraw in cases where there are other circumstances which put in doubt his/her impartiality.

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<sup>8</sup> The Constitution of the Republic of Latvia (*Satversme*); <http://likumi.lv/doc.php?id=57980>; (viewed on 24.05.2016.)

<sup>9</sup> The Constitution of the Republic of Latvia (*Satversme*); <http://likumi.lv/doc.php?id=57980>; (viewed on 24.05.2016.)

<sup>10</sup> The Latvia Judge of ethics code; [https://www.tiesas.lv/Media/Default/Tiesnešu\\_etikas\\_komisijas/Latvijas\\_tiesnešu\\_etikas\\_kodekss\(2\).doc](https://www.tiesas.lv/Media/Default/Tiesnešu_etikas_komisijas/Latvijas_tiesnešu_etikas_kodekss(2).doc) (viewed on 09.04.2016.)

<sup>11</sup> Judicial Disciplinary Liability Law; <http://likumi.lv/doc.php?id=57677>; (viewed on 09.04.2016.)

<sup>12</sup> The Latvian Judges code of Ethics; <https://www.tiesas.lv/normativie-akti-3> (viewed on 24.05.2016.)

<sup>13</sup> Estonian Judges' Code of Ethics <http://www.kohus.ee/en/judges/estonian-judgescode-ethics> (viewed on 06.05.2016)

<sup>14</sup> [https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4\(2012\)5\\_Estonia\\_EN.pdf](https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4(2012)5_Estonia_EN.pdf) (viewed on 24.05.2016.)

If a judge has recused him/herself from proceedings in criminal matters and cannot be replaced within the same court, the president of circuit court refers the matter for hearing to another county court within the territorial jurisdiction of the circuit court, subject to approval by the Supreme Court Chief Justice. The period of limitation for challenging a biased judge is not specified by law. The authorities submit that, in order for a petition not to turn into a deliberate prolongation of proceedings, it has to be submitted immediately after the basis for removing a judge has become evident. Nevertheless, if such evidence were to become known at a later stage of the process, a possibility for challenging a biased judge would still be maintained.

The GRECO<sup>15</sup> evaluation team observes that parties to judicial proceedings have the right to challenge the impartiality of a judge and that this right is exercised in practice. That said, from interviews held on-site, the GRECO evaluation team concluded that judges would only consider withdrawing from a case when formally challenged by one of the parties but not on their own initiative, since self-recusal was perceived by many of them as dishonourable. Nevertheless, the GRECO evaluation team is satisfied that statistics shared with it subsequent to the visit clearly indicate that the practice of judges' self-recusal has been rather widespread.

Notably, in Germany specific codes of ethics for judges do not exist. In Germany, the judiciary of the supreme courts is governed by federal law, while the judiciary of the lower courts (including courts of appeal) is governed by law of the *Länder*.<sup>16</sup>

A number of states report that they have no codes of conduct for judges (e.g., the Czech Republic, Luxembourg).<sup>17</sup>

The basis for complying with the Code of Ethics is the free will of the judge. In turn, "free will is the basis for a human to be able to be a virtuous thing" (*Immanuel Kant*).

As a general international legal basis of judicial ethical standards, the Convention for the Protection of Human Rights and Fundamental Freedoms may be considered<sup>18</sup>, article 6, section 1 of which stipulates that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Equity, publicity, independence and impartiality should be the principles which form the grounds of judicial hearing in the member states in the whole territory of the European Union, including Latvia.

An international standard which is currently applied in Latvia when clarifying matters of professional ethics and conduct is the Bangalore Principles of Judicial Conduct (Bangalore

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<sup>15</sup> The Group of States against Corruption; [http://www.coe.int/t/dghl/monitoring/greco/general/3.%20What%20is%20GRECO\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/general/3.%20What%20is%20GRECO_en.asp); (viewed on 26.05.2016.)

<sup>16</sup> Questionnaire for the preparation of the CCJE Opinion No.16, [http://www.coe.int/t/DGHL/cooperation/ccje/textes/OP\\_16\\_Germany.pdf](http://www.coe.int/t/DGHL/cooperation/ccje/textes/OP_16_Germany.pdf) (viewed on 06.05.2016.)

<sup>17</sup> Summary of replies to the Questionnaire for the preparation of CCJE Opinion No. 16, [http://www.ejtn.eu/Documents/About%20EJTN/Independent%20Seminars/Human%20Rights%20BCN%2028-J29%20April%202014/CCJE\\_Answers\\_%20Questionnaire\\_Judges\\_Lawyers\\_2013.pdf](http://www.ejtn.eu/Documents/About%20EJTN/Independent%20Seminars/Human%20Rights%20BCN%2028-J29%20April%202014/CCJE_Answers_%20Questionnaire_Judges_Lawyers_2013.pdf) (viewed on 06.05.2016)

<sup>18</sup> European Convention on Human Rights, [http://www.coe.lv/konv\\_sar.php?kid=5](http://www.coe.lv/konv_sar.php?kid=5) (viewed on 09.04.2016.)

Principles)<sup>19</sup>. Development of this document commenced in 2000 in Vienna with the first meeting of the UN Justice Group for the purposes of strengthening fairness of judges. The aim of the Bangalore Principles is to introduce standards of judicial ethics. Their goal is to provide recommendations to judges and ensure the principles of regulation of ethics of members of the judicial system. The basis of these principles is an assumption that judges are liable for their activity before the respective institutions that are formed in order to maintain the standards of conduct of judges. They are independent, impartial and meant for supplementing the existing legal and ethical rules that are binding on judges. The Bangalore Principles of Judicial Conduct mention independence, impartiality, integrity, conformity, equality, competence and carefulness.

## **2.2. Normative regulation of recusal and its connection with the conflict of interests**

In 2006 The UN Economic and Social Council (ECOSOC) passed a resolution<sup>20</sup> that encourages promotion of compliance with and completion of the Bangalore Principles.

As mentioned above, the authors will look at the issue of elimination of conflict of interests of a judge, i.e., of recusal of a judge at the hearing of a particular case. The objective of creating the institution of judicial recusal (or removal) is to ensure impartiality and independence in a court trial. In its essence for the purposes of ensuring impartiality and independence, it is necessary for rulings to be passed solely in accordance with the facts, not taking into account any external considerations that would in any way impact the result. A judge must be impartial and therefore may not be personally interested in the outcome of the case that he/she is looking through. It is important that participants in proceedings do not doubt the impartiality of the judge.

In Latvia, the particular grounds of a judge's recusal are stipulated by the Law on Judicial Power<sup>21</sup>, articles 14 and 15. These state that a judge who has participated in the adjudication of a matter may not participate in the repeated adjudication of the same matter, as well as a judge may not participate in the adjudication of a matter if he or she is personally, directly or indirectly, interested in the outcome of the matter, or if there are other circumstances which cause doubt regarding his or her impartiality, as well as in other cases provided for in the Law On Prevention of Conflict of Interest in Activities of Public Officials<sup>22</sup>.

On April 11, 2008 the (Latvian) Commission of Judicial Ethics (Commission) was formed. According to the Law on Judicial Power<sup>23</sup>, article 91.<sup>1</sup>, the Commission is a collegial administrative body the main objective of which is to provide opinions for the interpretation and violation of ethical standards, as well as to explain ethical standards of judges. The result of work

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<sup>19</sup>The Bangalore Principles of Judicial Conduct; <http://www.coe.int/t/dgl/legalcooperation/judicialprofessions/ccie/textes/BangalorePrinciplesComment.PDF> (viewed on 09.04.2016.)

<sup>20</sup>Resolution 2006/23 Strengthening basic principles of judicial conduct. <http://www.un.org/docs/ecosoc/documents/2006/resolutions/Resolution%202006-23.pdf> (viewed on 09.04.2016)

<sup>21</sup>Law on Judicial power, <http://likumi.lv/doc.php?id=62847>. (viewed on 09.04.2016.)

<sup>22</sup>Law On Prevention of Conflict of Interest in Activities of Public Officials <http://likumi.lv/doc.php?id=61913>. (viewed on 09.04.2016.)

<sup>23</sup>Law on Judicial power, <http://likumi.lv/doc.php?id=62847>. (viewed on 09.04.2016.)

by the Commission which relates to complying with the canons of judicial ethics can basically be framed as: 1) explanation in respect of interpreting the rules of judicial ethics; 2) conclusion in respect of compliance of acts by judges with the rules of the Latvian Judges' Code of Ethics.

The operation of the Commission is governed by the Regulation of the Commission of Judicial Ethics (Regulation) which provides for the manner in which violations of rules of ethics are to be considered. The Regulation<sup>24</sup> states that the Commission will consider and present its evaluation with regard to violations of the rules of ethics, with regard to complying with them: 1) should it have received an application from the chairman of a court (the Supreme court, Regional or District (city) court) or from the head of the Land Register department in respect of a possible violation of a rule of judicial ethics, which is not gross, and there have been circumstances of the particular violation laid out in the application and attached proof; 2) upon its own initiative would consider a possible violation of a rule of judicial ethics, which is not gross, should information come into its possession in respect of an act of a judge that would break the rules of ethics.

The Commission can give an explanation upon the judge's request or proposal from a member of the Commission on the regulations of the Latvian Judicial Code of Ethics. The Chairman in reasonable time, but not later than two months after the request has been received, summons a session of the Commission. In case of necessity the chairman of the Commission appoints a member responsible for interpretation of the regulation.

The authors of the paper consider that the work of the Commission in providing explanations and conclusions in respect of interpretation and compliance with the rules of ethics included in the Judges Code of Ethics is significant work that helps both the judge and any member of the community to understand what is meant by the ethical conduct of a judge.

While on duty a judge is subject to evaluation and attention from the community. Taking into account the attention of the community a judge has to undertake restrictions of a personal nature which may be considered cumbersome to ordinary citizens, and that must be done voluntarily. A judge should so act as not to bring shame on the position of judge.

The Bangalore Principles, paragraph 3.1 set forth that the conduct of judges in the evaluation of an independent observer should be irreproachable. In accordance with the Bangalore Principles, paragraph 2.2, a judge should ensure that his/her behaviour both in court and outside the court will preserve and promote the trust of society in lawyers and the belief of litigants in the equity of a judge and judicial power. This also corresponds to the rules of codes of ethics of judges, attorneys at law, notaries and prosecutors, so that it may be equally attributed to all regulated legal professions.

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<sup>24</sup>Regulations on Judicial ethics commission;<http://www.tiesas.lv/tiesnesu-etikas-komisijas-reglaments> (viewed on 09.04.2016.).

Clear and distinct is the fact that judges should, with regard to ethical behaviour, comply with the manner of behaviour and conduct stipulated by the legal rules – the Law on Judicial Power, the Civil Procedure Law<sup>25</sup>, the Criminal Procedure Law<sup>26</sup>, the Administrative Procedure Law<sup>27</sup>, the Constitution (*Satversme*)<sup>28</sup>.

According to the principles stipulated by the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>29</sup>, article 6, section 1, other member states of the European Union also regulate the matter of recusal of judges.

In the member states of the European Union, just as in Latvia, the question of recusal is regulated both in national normative acts, and in international normative acts, as well as in codes of ethics.

### **3. Reasonable doubt in respect of impartiality of court**

Impartiality of a judge is a mandatory precondition for due performance of the duties of a judge. It manifests itself not only in the contents of a ruling handed down, but also in all procedural acts that are necessary for handing down rulings. The principle of impartiality is an essential element of trust in the court, namely, in a democratic community a court (a judge) will act so as to establish trust in the court (the judge) by the litigants. Usually impartiality is understood as meaning that a judge has no previous prejudice.<sup>30</sup> As Professor Bukovskis has indicated, in order for a judgment to correspond to all requirements of a fair and impartial court, it is necessary for the judge during the hearing to have internal peace and an equal feeling towards both parties. A judge may not grant sympathy to one party. It is not possible to comply with this condition if a judge is personally directly or indirectly interested in the outcome of the case.<sup>31</sup>

According to the Bangalore Principles<sup>32</sup>, a judge, while on duty, should be free from any prejudice, previous assumptions, or advantages. A judge should recuse himself/herself from the trial of a particular case should he/she not be able to pass an impartial ruling in the case or should doubts arise to a reasonable observer from aside in respect of the impartiality of the judge.

In the case-law of the European Court of Human Rights it has been admitted that the impartiality of a court should be analysed from two aspects, namely, from the perspective of subjective criteria – the personal conviction of a judge with respect to the particular case and from the perspective of objective criteria – are there sufficient guarantees that any legitimate doubt in respect of the judge's impartiality be excluded. Besides, lack of independence and impartiality of the court could be ascertained not only when it has been proved but also when reasonable doubts

<sup>25</sup>Civil procedure law; <http://likumi.lv/doc.php?id=50500>; (viewed on 24.05.2016.)

<sup>26</sup>Criminal procedure law; [http://www.knab.gov.lv/uploads/eng/criminal\\_procedure\\_law.pdf](http://www.knab.gov.lv/uploads/eng/criminal_procedure_law.pdf); (viewed on 24.05.2016.)

<sup>27</sup>Administrative procedure law; <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN018406.pdf>; (viewed on 24.05.2016.)

<sup>28</sup>The Constitution of the Republic of Latvia (*Satversme*); <http://likumi.lv/doc.php?id=57980>; (viewed on 24.05.2016.)

<sup>29</sup>European Convention on Human Rights; [http://www.coe.lv/konv\\_sar.php?kid=5](http://www.coe.lv/konv_sar.php?kid=5); (viewed on 09.04.2016.)

<sup>30</sup>Judicial ethics commission explanations; <https://tiesas.lv/tiesnesu-etikas-komisijas-sedes>; (viewed on 24.05.2016.)

<sup>31</sup>"Civilprocesa mācības grāmata" V. Bukovskis, Rīga, 1933, page 483

<sup>32</sup>The Bangalore Principles of Judicial Conduct; [http://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf); (viewed on 24.05.2016.)

may arise in respect of the existence of independence and impartiality<sup>33</sup>, while an important circumstance is the independence and impartiality of the judge “as it looks from aside” as was, for instance, indicated in *Piersac v. Belgium*, when evaluating the participation of an ex-prosecutor in the status of a judge at the hearing of the case.<sup>34</sup> However, in order to doubt the impartiality of a judge, the fact of it must be objectively grounded; besides, the facts have to be evaluated in each individual case, taking into account the character, volume, and significance of the particular circumstances.

The resolution of the matter for a judge of whether it is necessary to recuse himself/herself from the trial of a case is not always simple: on the one hand there may be no doubt in respect of the impartiality of the court. On the other hand recusal of oneself is not always non-problematic, for instance for the reason of delaying the progress of the case. An act may become problematic that nominally is directed to avoidance of conflict of interest, if an impression arises that recusal of oneself has been ungrounded. A judge may attract criticism if doubt arises in respect of the validity of the recusal or even suspicion that a judge had recused himself/herself for the reason of the trial of a case seeming too unpleasant or cumbersome to him/her personally or for the reason of the judge’s submitting to pressure.<sup>35</sup>

In accordance with the Bangalore Principles, normally the grounds for recusal of a judge may not be the judge’s religion, ethnic background or citizenship, gender, age, social class sexual orientation, employment experience and education, membership in social organizations, previous court rulings and expressions outside the court. However this general guideline is conditional and is dependent upon the particular circumstances of the case.<sup>36</sup>

The question whether a particular circumstance causes doubt in respect of the impartiality of a judge is a question of whether the circumstance or the interest is sufficiently significant in order for doubt to arise. The situation is logically quite niggling as when such a question arises the doubt has already arisen for the judge himself/herself. This dilemma of whether to recuse or not to recuse oneself from the trial of the case, when there really are other circumstances that theoretically cause doubt in respect of the impartiality of a judge, usually actualize when recusal is problematic (there is no one whom to hand the case over to, a long delay is expected, the parties do not wish the case to be delayed) and the circumstances causing doubt are not very significant.<sup>37</sup>

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<sup>33</sup>*Delcourt v. Belgium*. Judgements and Decisions of European Court of Human Rights. [http://hudoc.echr.coe.int/eng#{"sort":\["kdateDescending"\],"respondent":\["BEL"\],"documentcollectionid2":\["JUDGMENTS"\],"itemid":\["001-57467"\]}](http://hudoc.echr.coe.int/eng#{); (viewed on 24.05.2016.)

<sup>34</sup>*Piersack v. Belgium*. Judgements and Decisions of European Court of Human Rights. [http://hudoc.echr.coe.int/eng#{"sort":\["kdateDescending"\],"respondent":\["BEL"\],"documentcollectionid2":\["JUDGMENTS"\],"itemid":\["001-57556"\]}](http://hudoc.echr.coe.int/eng#{); (viewed on 24.05.2016.)

<sup>35</sup>Centre for public policy “Providus” report on research “Tiesnešu ētika, kvalifikācija un atbildība Latvijā: kā neapstāties pie sasniegtā?”; [http://providus.lv/article\\_files/1903/original/Zinojums\\_FINAL.pdf?1339440792](http://providus.lv/article_files/1903/original/Zinojums_FINAL.pdf?1339440792); (viewed on 24.05.2016.)

<sup>36</sup>Commentary on the Bangalore Principles of Judicial Conduct. The Judicial Integrity Group, March 2007, 67.lpp.

<http://www.coe.int/t/dghl/cooperation/ccje/textes/BangalorePrinciplesComment.PDF>; (viewed on 24.05.2016.)

<sup>37</sup>Centre for public policy “Providus” report on research “Tiesnešu ētika, kvalifikācija un atbildība Latvijā: kā neapstāties pie sasniegtā?”; [http://providus.lv/article\\_files/1903/original/Zinojums\\_FINAL.pdf?1339440792](http://providus.lv/article_files/1903/original/Zinojums_FINAL.pdf?1339440792); (viewed on 24.05.2016.)

Taking into account the above mentioned if doubt arises to a judge as to whether to recuse or not to recuse himself/herself from the trial of a case in particular circumstances, the judge should answer the following questions which may help to resolve this matter:

- Would the outcome of the particular case really impact me or any person related to me beneficially or non-beneficially?
- Does this case attract huge attention of the community and cause contradiction, encouraging a specially critical attitude?
- Would I doubt the impartiality of a judge if I were a party to the case myself, where a judge would be in a similar situation?
- Would it be unpleasant for me if in case of non-recusal of myself other judges would find out about this situation and its circumstances, the mass media would report about it?<sup>38</sup>

A judge is a member of the community who in ordinary life is someone's neighbour, someone's classmate, someone's ex-colleague, someone's co-sportsman in the same sports club or just a simple passenger in public transportation, a buyer standing next to someone in a row in a store.

A conversation with a judge on different household matters, for instance, on hobbies, social events, should not differ from a conversation with any other person. However, a conversation with a participant in a case or with a person who does it in favour of a participant of a case with a judge in respect of a case being in his/her proceedings outside the court hearing without the presence of the other participant (*ex parte*) is not acceptable.

The Bangalore Principles, paragraph 3.1 state that a judge's behaviour in the evaluation of an independent observer should be irreproachable. In accordance with paragraph 2.2 a judge should ensure that his/her conduct both in the court, and outside of it maintains and promotes the trust of society in lawyers and the belief of litigants in the equity of the judge and judicial power.

However, not every mutual familiarization should be considered as such a relationship that may create a basis to resolve in respect of recusal from duty.

In this regard it has to be taken into account that a judge, when choosing a model of behaviour, in any relationship, should act as much as possible so as to reduce the number of cases in which it is necessary to remove a judge (Bangalore Principles, paragraph 2.3).

One of the goals of standards of ethics should also be to strengthen the trust of society in the court system. The conduct of a judge should strengthen the honesty of judicial power. It is not only necessary to act right, but this conduct must also be obvious.

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<sup>38</sup> *ibid*

A judge should not only subjectively understand, when a contact is such, when it becomes unacceptable to participate in the trial of a case but also must acknowledge the possible evaluation of their conduct from aside and should avoid any situation which may be evaluated ambiguously or negatively.

Any separate conversation between persons involved in one case with the judge prior to the court hearing or during the time of passing the ruling, may cause doubt (even though ungrounded) on leading *ex parte* conversations and may give a wrong idea in respect of possible injustice. Therefore it is recommended to avoid such situations.

The institution of recusal and removal of a judge is an element of a righteous court. The institution of recusal and removal of a judge should serve to maintain the necessary judge's distance. On the one hand it should eliminate a situation where one party could easily avoid a judge they feel uncomfortable with. On the other hand it should also eliminate the situation where a non-impartial judge would use their competence in judicature in cases formally within his/her jurisdiction. When interpreting this rule both contradictory objectives should be taken into account. (Baumbach 2008: 41)<sup>39</sup>.

Notwithstanding all attempts to decrease non-impartiality of a judge regulated by law, hidden interests lurk in many trials. Additionally, a conscientious judge is accompanied by sympathies and antipathies towards a party, an expert or a witness, a representative or subject of the dispute. It happens more often that the judge in person acknowledges it. A personal link to a particular situation in professional work and outside of it should be viewed self - critically. One may not and should not view a judge as interested solely because he/she prior to, during the process or after it had had contact with a person as far as it had not become too close. A judge is and remains a human with human feelings and prejudices. (Baumbach 2008: 41)<sup>40</sup>.

The Civil Procedure Law, Articles 18 and 19, section 1 form a system of norms that determine the grounds for a judge's recusal and removal.

They may be split into two parts:

- 1) non-admissibility of a judge to participate in the proceedings already on the basis of the law;
- 2) non-admissibility of a judge to participate in the proceedings owing to lack of impartiality.

The first group of cases includes the following situations:

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<sup>39</sup>Baumbach/Lauterbach/Albers/Hartmann (2008) *Zivilprozessordnung*. Band 1, München: Beck

<sup>40</sup>Baumbach/Lauterbach/Albers/Hartmann (2008) *Zivilprozessordnung*. Band 1, München: Beck



1) A judge who has participated in the examining of a case in a first instance court may not participate in the examining of the same case in a court of appellate or cassation instance, or in a re-examining of the case in a first instance court, if the judgment or decision to terminate the court proceedings or leaving the action without being examined, made with participation of the judge, has been revoked.

2) A judge who has participated in the examining of a case in an appellate instance court or of cassation instance may not participate in the examining of the same case in a first instance court or appellate instance court.

3) A judge does not have the right to participate in the examination of a case if the judge in a previous examination of the case has been a participant, witness, expert, interpreter, or the court recorder of the court hearing.

4) A judge does not have the right to participate in the examination of a case if the judge is in a relationship of kinship to the third degree, or relationship of affinity to the second degree, with any participant in the case.

5) A judge does not have the right to participate in the examination of a case if the judge is in a relationship of kinship to the third degree, or relationship of affinity to the second degree, with any judge who is a member of the court panel examining the case.

The second group of cases includes all the other situations in which lack of impartiality may be a cause of reproach to a judge on a grounded basis. The Civil Procedure Law formulates it as: a judge has a direct or indirect personal interest in the outcome of the case, or if there are other circumstances as create well-founded doubt as to his or her objectivity. This rule will serve for the purposes of ensuring equity, for the purposes of legal certainty, eliminating improper use of the rights and impact on proceedings of circumstances not related to the case.

The law does not mention such circumstances, leaving the specifying of them to case-law and doctrine. This is founded because the legislature may not predict all the circumstances in which a judge may find himself/herself.

As the right to remove a judge is granted to both parties in the case, then exaggeration of empathy would allow the other party to use the right of removal of a judge. Therefore it is important from the legal perspective to determine where an expression of empathy by a judge would involve loss of impartiality.

Should a judge not recuse himself/herself during the process a participant in a process may request removal, indicating the reason. Thus a request for removal should be grounded.

Doubt in respect of lack of impartiality exists when objective reasonable grounds exist in case of which the participant in the case would reasonably be afraid that a judge would adjudicate the case non-objectively from the point of view of the contents. The Commission has indicated in several

of its conclusions that measurement of doubt in respect of lack of impartiality should be viewed not only from the point of view of the participants in the case, but also a general view of a reasonable observer should be taken into account (Commission of Judicial Ethics 2011: 9)<sup>41</sup>.

Latvian legal doctrine has not compiled circumstances that would cause grounded doubt in respect of the impartiality of a judge. Here, a comparative analysis in the matter could be used, looking through the experience of other countries. However, overall conclusions may not right away be made out of the listing provided for by doctrine and practice of other countries, as all the circumstances of the event must also be taken into account but these are frequently not directly provided by abstracts. In this case the authors will use the German experience.

The commentary on the German Civil Procedure Law indicates the following situations of leading court proceedings that would be related to elements of a judge's empathy and in case of which the act of a judge already has caused grounded doubt in respect of his/her impartiality (Baumbach 2008: 42)<sup>42</sup>

1) Aversion (even though it is indicated that this as a circumstance lies in a so called "grey zone", as the judge is not completely free from prejudice. The question is when the sympathies and antipathies of a judge reach such a level that other participants in a case may start doubting with fair grounds in respect of the impartiality of the judge.);

2) Behaviour;

For instance, a judge says that:

a) he/she considers the case totally meaningless or expressions of a participant in a case as totally preposterous;

b) he/she has no time for such trifles;

c) takes the case personally;

d) I will remember this;

e) he/she is not interested in what the law provides;

f) a note by the participant in a case is admitted as wondrous.

g) a judge yells at a participant that this is enough for him/her.

Upon a question from a participant in a case the judge indicates that "you will wonder". Body language and mimics are added to behaviour. At the same time the conduct of a judge that conforms with a definite and peaceful style of managing the court proceedings. For instance, a judge should ensure that order and peace, a dignified atmosphere will dominate during the court hearing. Therefore there are no grounds for doubt in respect of the impartiality of a judge should

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<sup>41</sup>The Judges ethics commission explanation of 08.04.2011. [http://www.tiesas.lv/files/%C4%92tikas\\_komisijas\\_1%C4%93mumi/Skaidrojums\\_8\\_0\\_4\\_2011.pdf](http://www.tiesas.lv/files/%C4%92tikas_komisijas_1%C4%93mumi/Skaidrojums_8_0_4_2011.pdf) (viewed on 24.05.2016.)

<sup>42</sup> Baumbach/Lauterbach/Albers/Hartmann (2008) *Zivilprozessordnung*. Band 1, München: Beck

a judge admonish a participant of a case on his behaviour, or stop or suspend unacceptable behaviour.

Also the other participants in the case should be obliged in such case to support the judge. It has to be taken into account that a judge is only human and he/she may behave humanly. For a person it is natural that in a situation surprising him/her he/she would exclaim, express surprise or otherwise react emotionally. For instance, there is no ground for doubt in respect of impartiality of a judge should a judge express his/her perception of the world or an opinion in respect of public processes as far as it is only in the manner of general expressions and as far as a participant in a case would express an evaluative opinion.

3) insulting;

Insulting a participant in a case is the most severe form of expressing one's aversion. Therefore situations are unacceptable when a judge in respect of a participant in the case would use rude words. However, here also the circumstances of the case must be considered. As an exception it is compatible if a judge characterizes a relationship between spouses by expressions used in society.

4) consulting a participant in a case;

In this regard attention may be drawn to the existence of out of court contacts between some judges and an attorney at law brightly highlighted in Latvia. Judges who consult with a participant in a case or its representative outside the court without the presence of other participants in the case (*ex parte*), break the principle of impartiality<sup>43</sup>

5) determining particularly short procedural time periods;

A particularly short procedural time period during which a procedural act may actually not be performed, is an obstruction of procedural rights. Also obvious hurry in the trial of the case may indicate non objectivity of the judge as the judge so demonstrates a non-critical attitude to examining the circumstances of the case.

6) determining a dissimilar manner of use of procedural rights;

For instance, a judge is not entitled to determine restrictions of the length of a speech solely to one participant in the case, if the same rule is not determined for the others. The set time limits must be equal.

A judge may also not refuse to allow the use of such procedural rights to one participant in the case, which have been granted to the rest of the participants in the case (for instance, mailing explanations solely to one participant in the case).

7) advise a participant in a case, discussion with regard to legal matters;

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<sup>43</sup>Liepa, L. (2007) *Izeja no krīzes jāmeklē kopīgi*. Latvijas Vēstnesis Jurista vārds, 11.09.2007, Nr.37

This aspect is one of the most complicated as a judge is obliged to hold a discussion with the participants in the case in respect of legal matters. Within that frame a judge must invite the participants in the case to a settlement. In order for the hearing to take place in a constructive manner, a judge may not avoid expressing an opinion on legal matters, as he/she provisionally sees it, what material (conclusions of doctrine, documents confirming history of legal rules) on the respective question he/she has examined.

German doctrine indicates that a judge may not give advice to just one participant in a case, as thus he/she indicates that he/she is not passionless. Recommendations should be addressed to all the participants in the case.

A judge may express an opinion on the law as far as the opinion is general, provisional or directed to the possibilities of seeking a settlement.

It must be noticed that in Latvia judges are very careful with regard to expressing their provisional thoughts during the court session: a discussion on legal matters often does not take place. Judges are anxious as far as one could blame them for non-objectivity. We lack case-law in these matters.

8) seeking settlement.

Seeking settlement itself is not grounds for doubt in respect of the impartiality of a judge as far as a judge maintains neutrality. A judge may not indicate to any of the participants in court claims that may be solved by settlement but which are not indicated at all by the participant in person. A judge may not put obvious psychological pressure upon a participant in the case in order for him/her to agree to a settlement.

In conclusion of this listing of examples, in a compelling manner it may be deduced that a judge's social and professional skills significantly impact the court proceedings, and the equity of those proceedings. Should a judge lack the skill of empathy, this may lead even to self-recusal obligation of a judge or to a basis for removal of a judge.

Empathy of a judge is not only a sociological or psychological question. It also has a legal dimension. The conduct of a judge leading the process is a legal matter. Inappropriate acts by a judge may be the grounds of a founded questioning of impartiality of a judge that may result in an application for recusal or removal of the judge.

### **Conclusions**

The authors of this paper have looked at the consequences of non-recusal by a judge, through the perspective of national court practice and normative regulation, as well as through examples from international court practice and through evaluation of the practice of the European Court of Human Rights, as well as looking at ungrounded recusal by a judge and its consequences.

According to the information laid down in this paper, it can be concluded that the case hearing in an objective and just court is one of the fundamental principles of human rights, as stipulated in the Convention for the Protection of Human Rights and Fundamental Freedoms, in the Constitution of the Republic of Latvia, and it follows from the European Court of Human rights practice. Meanwhile the recusal of judges is closely related with the right to an objective and just court. It is very important for judges to identify and evaluate whether there are any reasonable doubts on the bias of a judge in a reviewed case from the viewpoint of the reasonable observer.

On the other hand, non-reasonable recusal from the case without objective grounds reduces the authority of the court and can be the reason for infringement of the reasonable term of a court case hearing.

In situations where the judge has difficulties in evaluating the circumstances for recusal in a case or the circumstances which cause doubts as to the judge's objectivity from the point of view of the reasonable observer, notwithstanding possible opportunities to resolve the situation proposed in this paper, in the Republic of Latvia the judge has a possibility to consult with the Committee of Judicial Ethics or to receive official explanations.

By the aim of promoting a common understanding on the recusal of judge's issue, it is necessary to ensure wider discussions between judges.