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Weak men act to satisfy their needs, stronger men their duties
(Nassim Nicholas Taleb. “The Bed of Procrustes”, 2010)

Introduction

(Respect and role of the judge in the society)

Learning from the mistakes, which were made after the First World War, and recovering from the Second World War, the civilized world admitted that every human is a value, thus allowing natural rights to revive and receive a new sounding. The United Nations Organizations was established.

One document, if not the most significant, which was adopted by the United Nations Organization, is the Universal Declaration of Human Rights.

The ambitious aims, which the United Nations Organization put forward while adopting this document, as well as the purposes of this document, were defined in the declaration’s preamble. The text of the preamble is aimed at reminding and emphasizing one more time that a human is the value, displaying such important considerations like equality, self-respect and freedom.

Natural rights arise from human nature irrespectively of social conditions, and it cannot contradict positive rights. The ancient Romans had already defined the natural rights - *quod natura omnia animalia docuit*, - being the rights, which the nature teaches to every being. They arise from the nature (*natura*), human’s conscience, just (*acquitas*), sense (*ratio*), and pretend to so comprehensive spectrum that it cannot be restricted either by the state territory or the normative acts valid within limited time or any issued state power acts.

The idea of natural rights appeared already in the ancient philosophy; Aristotle and Cicerone were the ones to speak about it, for example. However, one of the most significant documents containing information about the initial natural, inalienable human (nature) rights is the Bible.

Doctrine of the natural rights provides for that every human has dignity, as it means human essence and nature. The idea that a human is the absolute value arises from the Old Testament that each human has the God in itself; the first Book of Moses says (1:27): “So God created human beings making them to be like himself”.

Human’s dignity is owned only by humans and no other living beings. Such a conclusion arises from the words the God told to Adam and Eve in the first Book of Moses (1:28): “Bring forth fruit, and multiply, and fill the earth, and subdue it, and rule over the fish of the sea, and over the fowl of the heaven, and over every beast that moves upon the earth”. Not only the first people have dignity, which the God created directly, but also people, as they were born from Adam and Eve. The first Book of Moses says (5:3): “And Adam lived an hundred and thirty years, and begat a son in his own likeness, and after his image”. It shall be noted that the Old Testament provides for women and men equal dignity, which arises from the first Book of Moses (1.26), which says: “So God created man in his own image,

in the image of God created he him; male and female created he them”, as well as the first Book of Moses says (5:1-2): “This is the book of the generations of Adam. In the day that God created man, in the likeness of God made he him; Male and female created he them; and blessed them, and called their name Adam, in the day when they were created”. The Old Testament does not consider the human dignity within the context of property status; it is shown by Solomon wisdom 22:2, which says: “The rich and the poor have a common bond, the Lord is the maker of them all.” Likewise, the Old Testament admitted dignity for slaves, for example, which is shown by the fifth Book of Moses (23:16- 17) saying: “He shall dwell with thee, in the midst of thee, in the place which he shall choose within one of thy gates, where it pleases him best: thou shalt not oppress him”.

Thus it may be concluded that human dignity is an essential element in implementation of mutual relations between people, as a human is bearer of high mental and moral values; self-value causes responsibility to others to respect him/her.

Influence of the religion in the Middle Times left considerable impact on the development of rights, as the dignity was developed as the highest legal category, accustoming to the idea: “I am human”. This idea is at the heart of the modern human rights, which are absolutely necessary for existence of a socially and legally responsible country.

The idea of dignity as the leading-motive of mutual relations of people has been fixed in the Article 1 of the Universal Declaration of Human Rights: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. This is a very important regulation, because it creates all fundament for other human rights, which are included into this declaration. Only attitude with dignity and equal attitude towards each other can be the grounds for human rights’ existence.

This thesis considers rights of every human to a fair trial included into the normative acts regulating the human rights from the point of view of impartiality. The term “a fair trial” includes also the criterion of behaviour and attitude of the judge in the court hearing room, which must confirm the impartiality of court judgments or actually the compliance of the adjudication with the law and the justice considerations (from the point of view of application of legal standards and final result). Although the court is impersonal, the court’s function is implemented through a human. That is why it is important to remind that mutual relations of people in the society are very important and directly influence the essence of the court’s judgments.

One of the most prominent Latvian lawyers – a professor Vasilijš Sinajskis points in his article “Principle of Justice in the Civil Law of Latvia” to the necessity of division of biased justice from the impartial justice noting that exactly the latter one has sense in the law. Defining the impartial justice, the professor stated: “Justice is something obvious to all of us, based on common sense of people and that is why it is something they have, something that can be referred to them, constant, therefore protected

by all people as the principle of life of the society (..).” Thus, if the judgment of the court is unjust (also impartial), there is no such confidence to say that the rights to a fair trial were implemented to the extent, to which they are provided for.

Thus the role of a judge (court) is also important performing the function of law-enforcement officer to implement impartial justice. Herewith, we put the question of the research forward, whether behaviour of a judge in the court hearing room may influence adoption of an impartial and just judgment of the judge, besides undermining the prestige of the judicial power and the trust of the society.

In a democratic legal state, for duly functioning of the juridical power, the society’s trust in the judicial power is significant, as well as provision of justice in the court’s judgments.¹

Although the judicial power is implemented through the courts, because the court decides the matters², still, each person being a part of the society sees every specific judge as the person representing the judicial power and associates action directed at him/her with the judicial power in general. Action of every judge impacts the authority of the judicial power.³

Thus, “Law ideas” covering the Universal Declaration of Human Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms, and its implementation is embodied by the judge, as only by specific persons – judges – a person may defend his/her affected rights. The task of the judicial power is to take care that while making decisions at the court, implementation of constitution standards, laws and other legal acts, observation of principle of rules of law would be guaranteed, as well as human rights and freedoms would be protected.⁴

Thus, due to the fact that a duty of judges is to make the final decision in relation to individual’s life, freedom, rights, duties and property⁵ and the format, in which the judge will implement this justice, an opinion of all society is construed about the “idea of law” and ability of the judicial power to ensure justice, both on national and on international level, when a range of normative acts and soft laws (guidelines) is adopted, which define and recommend management and provision of the court activity, which would ensure to individuals trust into the rights to a fair trial on subjective and objective level. Thus, the judges, both individually and collectively, shall respect the judge’s position as the expression of the society’s trust and must strengthen and keep the reliance upon the court system.⁶

Trust on the judicial power is formed by different aspects – professional conduct of the court hearing, confident argumentation in the court’s judgment, attitude of judges towards the society’s

¹ Judgment in the case No. 2012-16-01, dated May 10, 2013, of the Constitutional Court of the Republic of Latvia.

² Law “On the judicial power”, Article 1. Reporter of the Supreme Council and the Government of the Republic of Latvia, January 14, 1993, No. 1/2.

³ Collection of conclusions of the Commission of Judicial Ethics. Explanations, acknowledgments, decisions 2008-2016, Riga: Court House Agency, Council of Justice, 2016, Page 28.

⁴ Judgment of the Constitutional Court of the Republic of Latvia from December 21, 1999 in the case No. 16/98.

⁵ Basic principles of independence of the judicial power of the United Nations, adopted by the General Assembly of the United Nations Organization on December 13, 1985, resolution No. 40/14.

⁶ Bangalore Principles of judicial ethics of the United Nations Organization, Clause 7 of preamble, 2002.

interest about the court work⁷, mutual communication between judges, scientific contribution of judges etc. In its turn, the enlisted factors are influenced by the professionalism of judge, maturity of their personality and intelligence.

The preamble of basic principles of independence of the United Nations Organization's Judicial Power emphasizes that, to start with, attention should be paid to the role of judges in the field of implementation of system of justice, as well as significance of judge selection, training and their behaviour.⁸ Clause 2.2 of the Bangalore Principles on judge behaviour adopted by the Economic and Social Council of the United Nations Organization defines that a judge must ensure that his behaviour both at the court and outside it must maintain and facilitate society's trust to lawyers and belief of participants of trial into justice of the judge and the judicial power.⁹

The place where a judge finds the closest contact with the individual and which leaves the deepest imprint in the individual's memory is the court hearing. Although the procedure of the court hearing provides for procedural rules, observation of formalities does not lead to provision of a fair trial procedure so that an individual would have an opinion about independent and impartial court procedure.

The judicial power will be powerful when every judge will act the way his/her action will facilitate the society's trust to the court's justice and impartiality. When each judge, making decisions, will have enough citizen courage to not be influenced by interests of individual persons, protests of the society or fear of critics about the judgment made, the judicial power will start moving to the correct direction, thus strengthening also the society's trust to the judicial power. The opinion of a judge is also the opinion of the respective state. Such approach is the only possible model to protect legal interests of human and society. Protecting everyone, the society is protected. Judge is the last guard of democracy and legal values in the society. That is why the power granted to the court must serve the society.

Replying to the issue of the research put forward, evaluation will be given whether the judge's behaviour in the court hearing room may influence adoption of impartial and just judgment by the judge, thus undermining the society's trust to the judicial power.

The thesis will consider both the international judicial practice, which provides evaluation of the judge's ethics, and the national judicial practice, making conclusions regarding issues, which may influence the adoption of impartial and just judgment by the judge.

⁷ Laviņš A. Thoughts about the Constitutional rights to a judge. *Jurista Vārds*, 15.05.2018. No.20.

⁸ Basic principles of independence of the judicial power of the United Nations, adopted by the General Assembly of the United Nations Organization on December 13, 1985, resolution No. 40/14.

⁹ Bangalore principles of judicial ethics, preamble.

Chapter 1

Insight into the international practice

One of the general law principles is the justice, besides justice is also one of the purposes of the law. That is why, being subject to the law, judges are at the same time subject to the justice. Herewith, every time when the judge applies law and adopts a judgment, the result must be just. Judgment made by the court is just, if it complies with the ideas of values. Such ideas about values are owned both by individuals and by the society in general, that is why we can part biased justice from impartial justice. Bias justice is the idea of each individual about what is just, whereas, impartial justice is the balance of ideas of these individuals according to the values generally admitted by the society. The mentioned law usually reflects in the law, that is why the court, when applying the law, implements impartial justice.¹⁰

A philosopher *Immanuel Kant*, 1724-1804, has formulated the rule of justice: “Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end”¹¹. In other words, human is a subject, and not an object – also in the court procedure. It means that participants of the procedure shall be allowed to actively take part in the procedure and they shall have a possibility to defend their rights. In its turn, a participant of the procedure shall be listened to by the court and it shall take his considerations into account so that the idea of justice would arise not only regarding the judgment of the court, but also about the court procedure itself. Although the material justice has been parted from the procedural justice, still, there is interaction between these two types of justice¹², as observation of rules of procedural justice is a precondition to materially just judgment¹³.

The judge’s service is not a simple public service. A judge is a part of the society’s elite – due to educational, professional skills and personal qualities imposed on him/her. A judge is the society’s supervisor and the highest arbiter. That is why violations and mistakes of the judge service are perceived by the society justified very acutely. The society’s awareness of justice also requests the judge to go deep into the matter, control, see and say more than an average individual could do.¹⁴

That is why the issue from the society’s horizon is still topical, what behaviour and what action should follow from the part of the judge for the judge to not only create but also ensure rights to a fair trial, which is the “key” of providing the rest rights within the law.

Referring to the Article 10 of the Universal Declaration of Human Rights of the United Nations Organizations, first part of Article 6 of the Convention for Protection of Human Rights and Fundamental

¹⁰ Bārdiņš G. Dialoga loma tiesas spriešanā. Rīga: Court House Agency, 2016, Page 46.

¹¹ Kant I. Grundlegung zur Metaphysik der Sitten. Herausgegeben von K.Vorländer. Hamburg: Meiner, 1965., seite 52.

¹² Müller G.F. Vertrauensbildung durch faire Entscheidungsverfahren in Organisationen. In: Schweer M.K.W. (Hg.) Vertrauen und soziales Handeln. Facetten eines alltäglichen Phänomens. Neuwied: Luchterhand, 1997, seite 192.

¹³ Hoffmann R. Verfahrensgerechtigkeit. Studien uz einer Theorie prozeduraler Gerechtigkeit. Paderborn: Schöningh, 1992, seite 134.

¹⁴ Neimanis J. Par tiesneša dienesta standartu un atbildības lomu. Jurista vārds, September 13, 2016, No. 37

Freedoms, first part of Article 14 of the International Covenant on Civil and Political Rights¹⁵, everybody has rights to just and open and timely consideration of the case by independent and impartial court defined by the law.

The rights to a fair trial is one of the forms of manifestation of basic principle of a legal state – power distribution, in its turn, one of the principles of rights to a fair trial is the rights to impartial court. Ethic action of the judge multiplies trust to the judicial power and the respective court group, but non-ethic action – forms negative idea about the judicial power and causes anxiety about impartiality of the respective court. It arises from this that ethic action of the judge multiplies the society's trust to the judicial power in general, as it creates an idea on observation of the principle of impartiality during the procedure of court judgment. In its turn, non-ethic action of the judge in some cases may be covered even by the rights to impartial court.

Two elements describe partiality:

1. subjective element, which is connected with personal prejudices or partiality of the specific judge;
2. objective element, which is connected with such issues like expressions of partiality.¹⁶

The court shall be considered free from personal prejudices, unless opposite is proved¹⁷. To prove subjective partiality, personal opinions of the judge of specific proceedings shall be clarified, and it is very complicated. In the judicial practice of the European Human Rights, examples of subjective partiality include expressions of hostility or unfavourable attitude from the part of the judge or evidence that the judge, due to personal beliefs, has managed that the case consideration is entrusted upon him/her¹⁸. However, in most cases, when it is asserted that there is a lack of impartiality, attention is paid to the partial verification, during which one must make sure whether a judge has ensured enough guarantees to exclude any justified doubt in this connection¹⁹.

Within the subjective aspect, it is presumed that a judge personally or a group of judges in general is impartial, unless opposite is proved, in its turn, in relation to the objective aspect even apparent assumptions might have sense. The court must be not only just, but the case participants must see that the court judges justly. At the same time, the opinion of persons asserting that the court is not impartial, is although important, but not the decisive one. The fact whether anxiety regarding impartiality is justified is decisive, which, in its turn, is a legally evaluated category. Between the subjective and the objective aspect, there is no strict border because behaviour of a judge may cause not only objectively justified doubt about his/her impartiality from the point of view of an independent observer (objective

¹⁵ International Covenant on civil and political rights, United Nations Organization, December 16, 1966

¹⁶ Decision of the European Council CCJE, 2002, opinion No. 3 "On ethics and liability of judges", November 19, 2002.

¹⁷ Judgment of the European Human Rights Court from December 15, 2005 in the case *Kyprianou v. Cyprus* No. 73797/01, Clause 119.

¹⁸ Judgment of the European Human Rights Court, from April 23, 2015 in the case *Morice v. France* No. 29369/10, Clause 74.

¹⁹ *Ibid*, Clause 119.

test), but at the same time, may be connected with personal belief of the judge (subjective test). For example, in the case *Kyprianou v. Cyprus* No. 73797/01, both subjective element and objective element was evaluated in the action of judges related to behaviour of judges and their reaction to expressions of lawyer (advocate) in the court room. The claimant turned to the European Human Rights Court, as he believed that the court, which had sentenced him, was not impartial within the Article 6 of the European Convention on Human Rights. The European Human Rights Court really stated the violation of Article 6 of the European Convention on Human rights: from the objective element – the court stated that judges were affected personally and they acted at the same time as plaintiffs, witnesses, prosecutors and judges in their case, but from subjective element – what was written in the decision made by the judges – that they are “deeply insulted” – showed that the judges were personally involved and felt insulted; as well as quite emotional language was used in the decision; he was immediately sentenced to imprisonment; and it actually resulted from it that the judges immediately expressed their attitude about guilty offence – disrespect to the court²⁰.

The case *Vardanyan and Nanushyan v. Armenia*²¹ was connected with a dispute regarding rights to house ownership, which was alienated for the needs of the state. Before the court hearing of cassation instance, the court of the court hearing-referents suggested an agreement of settlement, in which the applicant (third party in the court trial) would receive compensation, if he refused from property rights, where the applicant agreed with it. At the court hearing, the chairperson offered an agreement of settlement to the parties, stating that otherwise the court procedure would be long. However, the applicant did not agree with the agreement of settlement offered at the court hearing. During the next court hearing, the chairperson again offered an agreement of settlement, stating that the court: “always pays significance to the circumstance, which part exactly has refused to sign a reasonable agreement of settlement”, as well as “this is the last time when the court give you a possibility to discuss issues [on agreement of settlement] one more time before the next court hearing and give your answer”. The applicant did not agree and the cassation instance court adopted judgment unfavourable to the applicant. Inter alia, the claim was submitted to the European Human Rights Court regarding circumstances that, in the view of the applicant, the judge-referent has not been impartial. Although the European Human Rights Court has not stated a subjective element, which would express in personal prejudices from the part of judges, still, the court stated the objective element, namely, the language used by the judge-referent during the procedure (“always pays significant role to the circumstance”, “which party”, “this is the last time”, “we give you a possibility”) could clearly cause justified doubt to the applicant that failure to agree with the agreement of settlement can leave negative consequence regarding the case

²⁰ Judgment of the European Human Rights Court from December 15, 2005 in the case *Kyprianou vs Cyprus* No. 73797/01.

²¹ Judgment of the European Human Rights Court from October 27, 2016 in the case *Vardanyan and Nanushyan v. Armenia* No. 8001/07.

hearing. The court concluded that the action of judge-referent had no necessary isolation, which is requested by the principle of court's neutrality.

The European Human Rights Court, in our opinion, has justly pointed that isolation from behaviour of process's participants or the desirable course of the procedure is the basic conditions, failure to observe which very probably may lead to violation of rights to impartial court.

The Latvian Judicial Training Centre (association), which is the only in Latvia, ensures further education of judges and court employees and does it with a purpose to strengthen a legal state and facilitate unified comprehension of the law in the common law space of the European Union. It has developed eight pillars of judge work, where the 4th pillar reminds us: "Be competent in the court room!" It means that a judge must always keep in mind his/her role of a judge and must act according to it. A judge must be aware of what he/she does or says, he/she must follow things other persons involved into the procedure say and do during the court procedure. A judge must analyse and manage his/her reactions, feelings, thoughts about what is happening and bear in mind what he/she must do during the court procedure. A judge must treat the case participants (and the society in general) with respect. The 5th pillar emphasizes: "Be neutral!" A judge, not only in the court room, but also outside the court room, must not perceive everything happening personally. A judge must not get involved into the dispute and must not become someone's advocate or teacher. According to the 7th pillar: "a judge must be aware of his/her duties and stereotypes!" A judge must be open, must challenge his/her assumptions and he/she must not judge before the term.

As it was stated before, then the rights to impartial court are closely connected with the society's trust to the judicial power, that is why the objective aspect requires serious and justified evaluation of every situation causing doubt not only to the court, which has received a claim on the specific case or situation, but also judges themselves must learn to be more critical towards their own behaviour and action, must learn to look on themselves "from the side".

In the case *Upīte v. Latvia*, the judge considering the case received rejection because the name of this judge was mentioned in the book "Tiesāšanās kā ķēķis" (*Litigation as a hitch*) (the book represented mutual talks of judges and advocates); then ethical and legal aspects of action of the judge were evaluated. The dismissal applied to the judge was not accepted; likewise violation of ethics of the judge was not stated in relation to publication in the book. Despite the fact that doubt regarding the judge's action was not connected with the specific court proceedings and that violation of ethics norms was not stated on the national level, the European Human Rights Court had no obstacle to perform legal assessment of the objective aspect. The European Human Rights Court has stated in its judgment that communication of judges and advocates must be based on the common ethics values and it must take place the way to not cause doubt about their ability to perform their duties irrespectively of each other; otherwise, trust to the judicial power is undermined and the court efficiency is weakened. Although the

European Human Rights Court that had doubts about the judge's impartiality did not state violation of Article 6 of the European Convention on Human Rights, still, it emphasized that during the court procedure and beyond it, the judge must be able to isolate himself from the action and of the parties and the desirable solutions of the procedure, otherwise the court ceases to be neutral, and it is seen by an independent observer²².

Although the previously mentioned judgments adopted by the European Human Rights Court show that the European Human Rights Court, in its judgments, has many times turned to behaviour and language of judges during the procedure, which the judge uses verbally or in writing, however, our deepest confidence that the most part of procedures, in which it is obvious that the judge was unable to isolate from the actual circumstances of the case and has forgotten about his role of a judge, which he should bring to the society, does not reach the European Human Rights Court, as the persons choose to close their eyes to such circumstances, unless it has obviously affected interests of some of the case participants.

In Latvia, on the national level, legal evaluation of behaviour of judges is performed by the Latvian Judge self-government institution – Judicial Ethics Commission, the competence of which is to give acknowledgments on the interpretation and the violations of ethics norms, as well as to explain standards of ethics of the judges.²³ The Judicial Ethics Commission, giving another explanation, has stated that it receives regularly applications from persons, in which they request to state violations of the judge ethics related to unethical action in the court room.²⁴ Namely, it is stated that the way, in which the judge communicates with the procedure's participants, is unacceptable and, in the point of view of the procedure's participants, does not comply with polite and dignified action of the judge.²⁵

Herewith, even if references on behaviour of the judge do not reach the European Human Rights Court, if the case participant will be ambitious and active, then the claim may be transferred for evaluation by the Judicial Ethics Commission. Besides, failure to observe the ethics standards may be the reason that a disciplinary case is initiated against the judge, which directly arises from the Law on Judge Disciplinary Liability.

Still, Despite the given and taking the position of the society towards judges as the persons expressing "law idea" into account, in our opinion, not all individuals use their rights to inform the Judicial Ethics Commission on possible violations of ethics norms by the judge. The reason may be different subjective circumstance, for example, inner feelings: "the result is anyway known there", "friends defend friends", "they are all like this", "no sense to waste time" etc. This is the moment, which

²² Judgment of the European Human Rights Court from September 1, 2016 in the case *Upīte v. Latvia* No. 7636/08.

²³ Law "On the judicial power", Article 91.¹ Reporter of the Supreme Council and the Government of the Republic of Latvia, January 14, 1993, No. 1/2

²⁴ Collection of conclusions of the Commission of Judicial Ethics. Explanations, acknowledgments, decisions 2008-2016, Riga: Court House Agency, Council of Justice, 2016, Page 28.

²⁵ *Ibid*, Page 28.

must cause the most worries, as the opinion of the society is formed by an opinion of each individual and, if the individual chooses to not file a claim, it means that he selects the legal state model, in which a judge can violate the ethics standards. As a result, the most part of cases, when the judge probably has acted not according to the standard of service of judge, has not reached the self-government institution to be evaluated by it, that is why it is important to remind to each judge, that the court declares the judgment in the name of the state; and the duty of a judge is to serve the society, and not conversely.

Chapter 2

Sources regulating behaviour of the judge at the court hearing

2.1. The Bangalore principles

Standards of ethical behaviour of judges are found in ethics codes, international organization documents, public normative acts, as well as judicial practice. One of the most important sources of ethics norms is the Bangalore principles of judge behaviour, which were established based on the several national, regional and intra-national acts²⁶.

Analysing the Bangalore principles of judge behaviour²⁷, we have stated that behaviour of judges at the court hearing is directly regulated by Clauses 2.4, 5.2, 5.3 and 6.6.

According to the Clause 2.4 of the Principles, during legal proceedings or in case if such legal proceedings could be foreseen, a judge cannot intentionally express any comments, which may be justly believed as such affecting the result of such legal proceedings or clearly harming the justness of the procedure. The comments to the Bangalore Principles contain an example that an announcement by judges that they have agreed to sentence all offenders convicted of a particular offence to a prison sentence, but that the length of the sentence would be left to the individual judge's discretion depending on the facts and the law applicable to that offence, without making any distinction between a first offence and a subsequent offence, would, depending on the circumstances, usually entitle a defendant to disqualify a judge on the ground that he or she has announced a fixed opinion about the proper sentence for the offence with which the defendant is charged²⁸. A judge must not use inadequate expressions at the court hearing, for example, it would be not correct to ask the respondent in a civil case, why he does not admit the claim, because all evidence proves his liabilities, because within this scope, it clearly points to existence of the subjective element.

According to the Clause 5.2 of the Bangalore Principles, performing the judge duties, a judge cannot express prejudices with words or action towards any person or group due to insignificant reasons (race, skin colour, sex, religion, national origin, caste, invalidity, age, family status, sexual orientation,

²⁶ Bangalore Principles Commentary // <https://rm.coe.int/168066d6b9>, Pages 10-11.

²⁷ The Bangalore Principles Of Judicial Conduct // https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf

²⁸ Bangalore Principles Commentary // <https://rm.coe.int/168066d6b9>, Page 61

social and economical status and other reasons). It means that a judge should avoid comments, expressions, gestures or behaviour, which may reasonably be interpreted as showing insensitivity to, or disrespect for, anyone. Examples include irrelevant or derogatory comments based on racial, cultural, sexual or other stereotypes, and other conduct implying that persons before the court will not be afforded equal consideration and respect. A judge must not make improper and insulting remarks about litigants, advocates, parties and witnesses. There have been occasions when a judge, on sentencing a convicted person, has showered the prisoner with insulting remarks²⁹.

Besides, according to the Clause 5.3 of the Bangalore Principles, a judge performs his/her job responsibilities with duly attention towards all persons. It means that unequal or differential treatment of court users, whether real or perceived, is unacceptable. The judge must ensure that all such persons are protected from any display of prejudice based on race, gender, religion, or other irrelevant grounds³⁰.

Clause 6.6 of the Bangalore Principles cannot be left without attention, which defines that a judge ensures order and politeness during all court hearing and is patient, respectful and polite to all case participants, jurors, witnesses, advocates and other people, with which the judge contacts performing his/her job responsibilities. A judge requests the same behaviour from legal representatives, court employees and other persons, which are subordinated to the judge's influence, management or control.

The comments to the Bangalore Principles states, what judge may perceive to be an obvious departure from propriety, another judge may deem a harmless eccentricity, an irrelevancy or no departure at all. It is undesirable, and in any case impossible, to suggest a uniform standard of what constitutes 'order' and 'decorum'. Instead, what is required, is that a judge should take reasonable steps to achieve and maintain that level of order and decorum in court necessary to accomplish the business of the court in a manner that is both regular and manifestly fair, while at the same time giving lawyers, litigants and the public assurance of that regularity and fairness. A judge's demeanour is crucial to maintaining his or her impartiality, because it is what others see. Improper demeanour can undermine the judicial process by conveying an impression of bias or indifference. Disrespectful behaviour towards a litigant infringes on the litigant's right to be heard, and compromises the dignity and decorum of the courtroom. Lack of courtesy also affects a litigant's satisfaction with the handling of the case. It creates a negative impression of courts in general³¹.

The mentioned regulation defines an important feature of the judge – steadiness. Case participants and their representatives may use different means to unsettle the judge and try to provoke him/her to make a hasty step, to influence this way a fair trial judgment. That is why steadiness is an important condition in the judge's behaviour and it cannot be admitted that a judge does not control his/her

²⁹ Bangalore Principles Commentary // <https://rm.coe.int/168066d6b9>, Page 114

³⁰ Ibid, Page 115

³¹ Ibid, Pages 128-129.

behaviour at the court hearing. Procedural legal acts of the Republic of Latvia provide for a possibility to apply procedural sanctions for showing disrespect towards the judge (the court). A procedural sanction is an adequate reply to disrespectful or impolite action towards the judge (the court).

2.2. Regulation of the Republic of Latvia

Recovering from the occupation of the Soviet Union, the Republic of Latvia, being an independent democratic republic, in the early 90's of the previous century, had to do impossible – continue the state established in 1918 according to the standard that came 70 years later. During these 70 years, the world was already different. The challenge was also renewal of the judicial power. In the issue under discussion, adoption of the Latvian Code of Judicial Ethics was also important at the conference of judges of the Republic of Latvia on April 22, 1995.

The mentioned code, which was one of the first in the Eastern Europe, consists of five canons – highest standards of the judge behaviour³².

Judge behaviour at the court hearing is regulated by the principles defined in the 3rd canon:

- a judge must be patient, respectful and kind to all procedural participants, requesting similar attitude also from litigants, court personnel and other people, which are subject to the judge's management and control;
- a judge, judging the case, acts patiently, in a balanced way and without hurry, still, effectively and enterprisingly;
- a judge avoids words and speech, gestures or other actions, which might be perceived as impartiality or expression of prejudices;
- a judge must avoid showing priorities within the court procedure.

The Latvian Code of Judicial Ethics has been developed based on already available codes of ethics and international normative acts. It is important to note in Latvia those values were admitted, which were later entered into the Bangalore Principles. This is an important condition, because we can proudly note that the role of judicial power and judges in Latvia was defined according to the standard existing at that time. However, evaluating the norms of judicial ethics existing in Latvia, we can refer to the existing Bangalore Principles and materials issued with them, as the Bangalore Principles have gone slightly further than the Latvian Code of Judicial Ethics, providing for the “neutral observer” position. In this scope, the judge has been imposed a duty to evaluate his action in such aspect, as if he were a neutral observer. It would raise the issue on judicial ethics on a new level and establish a new, qualitative standard for regulation of the judicial ethics.

³² Latvian Code of Judicial Ethics, available: <https://www.tiesas.lv/normativie-akti-3>

Herewith, we believe that, despite the fact that Latvia has its own code of judicial ethics, in addition to that, action of judges and their behaviour shall be evaluated also according to the Bangalore Principles, as this way the judge has a much higher ethics standard than it is provided for by the Latvian Code of Judicial Ethics, which must create more trust to the judicial power. Observation of the international standards gives more confidence that a judge uses the power granted to him/her the way to not only judge objectively and justly, but also certify the authority and legality of the court's image.

It shall be concluded from the Bangalore Principles and the Latvian Code of Judicial Ethics that the basic principles of the judge's behaviour in the court room is politeness, respectful attitude, tolerance, patience, as well as avoidance of such expressions, which would give reason to think that the court is bias and unjust. This way, in Latvia, the values defined in the Article 1 of the Universal Declaration of Human Rights were emphasized. These are values in the modern democratic and legal state.

Chapter 3

Analysis of individual issues (verbal, non-verbal communication etc.)

Despite the existing regulation, which a judge must follow while judging, going through training practice, we have faced issued of behaviour of the judges.

The first impression about the judge is formed, when the judge enters the court hearing room. During these seconds, the attention of people present in the court room is paid only to the judge. Case participants and listeners "scan" the judge's age, make-up, face expression, hairdo, jewellery, footwear and clothes. It is even more important that the case participants get the first positive impression about the judge.

It sounds surprising, but many judges, entering the court room, do not greet the people in the court room, forgetting that politeness is the most important and the simplest way to show the court's respect towards the case participants. Greeting should not be formal and cold, but it would be better to look at the case participants, besides, without fear to have an eye contact.

This is a very important aspect, as it shall be taken into account that quite often exactly the case participants come to defend their affected rights or interests protected by the law, probably, for whom this is the very first contact with the court. That is why the feelings, which the judge will cause to the case participant, more probably, will be transferred to other people. Case participants come to the court with respect and piety towards the court, that is why it is significant that a judge expresses respectful attitude by his/her action, so that later the court would keep respect from the point of view of the specific case participant. That is why it is important to remember – it is not the court that comes to a person, but a person comes to the court.

The next point, which the judge shall think about, is the face expression. Before entering the court room, judges wear indifferent mask of the host of the court room, however, from the position of the

observer, the face expression of the judge is arrogant or even supercilious. Thus, before entering the court room, a judge should answer the following questions: “How do I look right now? How should I look in the court room? Does my face expression show favourable attitude or some other emotions, which cannot be in the court room?” It was already noted in the thesis that the court is impersonal; still, its functions are performed by a human. The case participant shall feel that a judge sees and understands the parties, respectively perceiving things that a person considers important and wishes to tell the court. Here, we do not speak about violation of principles of impartiality or competition, because the judge needs to maintain equal attitude towards the case participants. However, it should be understood at the same time that a case, with which the case participant has come to the court, is the most important case specifically to him that is why he wishes to get undivided attention from the court (the judge). As the judge of the European Union Court Egīls Levits has stated: “Perfect judge personality must be, on the one hand, strict, on the other hand, delicate. It must be strict in relation to any impacts, which try to purposefully influence the judge in relation to the law application or result of specific case. A phone call, critics in the newspapers, social networks, a worse room at the court or bad look from the court chairperson may in no way influence the judge. A judge cannot be sensitive towards such impacts. Hyper sensibility in relation to different pressures from the environment, directly or indirectly expressed wishes points to the fact that a personality is yet immature to work as a judge. On the other hand, a judge must be enough open and delicate – delicate in relation to remarks on methodology of law application, justice of the outcome, open in relation to the society’s needs and development of rights.”³³

Individual attention is paid to the voice tone of the judge. For example, considering criminal cases, quite often judges speak in a strict voice, which, probably, is done to make the case participants more disciplined. One more explanation of such action is elementary human fear. Judges can feel nervous. Facing stress, people usually want to run away, for example, speak silently, avoid eye contact or attack (be impolite, harsh). But, if the case participants behave duly and follow the order in the court room, a judge shall not be too strict. Such unnecessary and unjustified acerbity of the judge may be perceived by the case participants as demonstration of the judicial power and aggression aimed at them, which clearly does not promote respect towards the court. In its turn, the accused person may have impression that the court has already an opinion about the guilt of the accused person, which is inadmissible, taking the presumption of innocence into account. However, problems with voice tone are seen not only in the criminal procedure, but also in the civil procedure, where the case participants are accustomed to take more active positions. Likewise, the practice shows that the voice tone of the judge (loudness, tone) often changes depending on the events at the court hearing. Mostly, it happens if the judge feels some

³³ Levits E. “Par dažiem tiesneša neatkarības aspektiem”, speech from the Latvian Judge Conference on November 3, 2017.

emotions (anger to case participants, intolerance, disagreement with the opinion expressed by the parties etc.).

In our opinion, such situations are inadmissible, because the judge must be able to maintain balance in any stressful situation, a judge shall be able to work with his feelings and model his/her voice tone. As it is unjustly defined in the comments to the Bangalore Principles, a judge must channel anger appropriately. No matter what the provocation, the judicial response must be a judicious one. Even if provoked by a lawyer's rude conduct, the judge must take appropriate steps to control the courtroom without retaliating³⁴. An excellent way for a judge to analyse himself is the audio minutes, when the judge can listen to his/her voice timbre, hear his/her own reactions to different case participants, analyse himself/herself and work.

A similar situation is also if the judge does not agree with the position of the case participant, then the judge should not try to convince the party in absurdity of its opinions (it does not refer to the cases, which affect the interests of children, as the judge must act within the best interests of children in these situations) or express harsh remarks about things the case participants say. If the judge gets involved into the discussions and disputes with the case participants, he/she ceases to perform the basic assignment – judge justly and impartially. In practice, judges not always can avoid remarks and their subjective opinion regarding the specific dispute. Formally, nobody awaits any comments from the judge, except the judgment.

So, for example, the Commission on Judicial Ethics received an application with request to evaluate action of some judge during the court hearing due to possible non-ethic action of that judge. Taking into account that the letter had no disclosed information about the way possible non-ethic action of the judge expressed, the Commission of Ethics listened to the audio minutes of the court hearing.

The Commission stated that, during the court hearing, the judge many times spoke to the case participant raising her voice, she even yelled at the participant, involved into discussions, making excuses to her action and decisions made, being unable to control her emotions, which turned into anger.

At the court hearing, the judge expressed such phrases in a raised voice “(..) You will not tell me how to act; the procedure here is conducted by me, not you (..), “It is not my first day I work at the court. (..) I see something like this (..) for the first time”. In its turn, in the end of the court hearing, postponing the case consideration, the judge repeatedly turned to the decision already made during the hearing, stating that she is very sorry that it happened and that she was made to impose penalty, because behaviour and attitude of the case participant was horrible. The case participant “terrorized the court and wasted the time of the court, and the case participant's action was aimed at attempts to avoid case consideration”.

³⁴ Bangalore Principles Commentary // <https://rm.coe.int/168066d6b9>, page 129

The judge herself, in her explanations, stated that the case participant troubled the conduct of the procedure, showed disrespect to the court, failed to perform the direction of the court chairperson, raised voice. The judge emphasized that, during the specific court hearing, she felt emotional violence, and behaviour of the judge should not be evaluated isolated, but together with the behaviour and attitude of the case participant bet, because the judge was made to react and resist disrespect towards the judge and towards judging.

Referring to the canons 1 and 2, Clause 5 of the canon 3 of the Latvian Code of Judicial Ethics, and the Clauses 2.1 and 6.6 of the Bangalore Principles, the Commission admitted that the behaviour of the judge at the court hearing did not prove polite and respectful behaviour, as well as did not facilitate the case participant's trust to the courts. The judge failed to observe the norms of ethics at the court hearing; she was not polite and respectful towards the case participants. The Commission also disagreed that any emotional violence was directed at the judge, but stated that, starting uncontrolled discussion with the case participant, the judge failed to control herself emotionally and raised her voice, sometimes even yelled at the case participant, was impatient, at the same time she requested polite behaviour from the case participant. Although remarks to the case participant at the court hearing is not considered violation of norms of ethics, but the way, which the judge had selected to use, the used expressions, intonation did not prove observation of culture norms of high behaviour, as a result of which it was impossible to ensure order and polite behaviour during all court hearing and be patient, respectful herself towards the trial participants.³⁵

For comparison, we wish to represent other decision of the Commission of Judicial Ethics, which was adopted upon receipt of a claim and listening to the audio minutes of the court hearing. The case participant has stated in his claim that the judge was not neutral; she expressed personal attitude towards the explanations of the plaintiff, her behaviour was offensive and inadmissible. The case participant is disappointed in the Latvian judicial system, as behaviour of the judge has caused unpleasant impression about the judicial power in general.

The Commission stated that during all court hearing the judge expressed her opinion, not quite tactical remarks, and comments on the situation or the things the case participants were talking about. Individual proved involvement into a dispute, not its solution. The judge's attitude, voice tone and the words the judge used to express her opinion, showed irony, intolerance and irritating. In separate episodes, the judge expressed her intolerance and irritation raising her voice, actually yelling.

The judge herself, giving explanations, believed that she was equally objective and harsh to both parties. She did not deny that in separate cases, to provide impartiality, she raised her voice, however, she disagreed that she yelled exactly at one of the case participants. The judge wanted the parties to stop

³⁵ Decision of the Commission of Judicial Ethics, dated February 16, 2018. Available: <https://www.tiesas.lv/tiesnesu-etikas-komisijas-sedes>

mutual insulting and to think more about the child's interests. The judge admitted that her voice tone, during the emotional court hearing, sometimes could be perceived as raised voice or even offensive. The judge regretted that she had created wrong impression to the case participants about herself and the court.

Referring to the canons 1, 2 and 3 of the Latvian Code of Judicial Ethics, the Commission admitted that behaviour and attitude of the judge could influence the trust of the case participant to the court, as well as create wrong impression about the judicial system in general. The Commission emphasized that neither behaviour of the case participants, nor the essence of the issue under consideration, nor the meanness of the claims, how these claims are justified or not, all this cannot be the reason for impatience, intolerance, irritation or offensive behaviour of the judges.

The Commission emphasized that the way, in which the judge implements own powers is important, as seeing any judge's behaviour, the society evaluates also his/her abilities to consider the cases justly, independently and impartially.³⁶

Why these decisions were offered to compare them? Because in the first case, the judge did not see any violations of ethics in her action, still, in the second case, the judge admitted that she had some violations and would try to avoid expressions in future, which the case participants could interpret. In our opinion, this is a very important aspect, while it allows evaluating also the professionalism of the judge herself. Judge is the profession, which requires constant growth, not only on the professional knowledge level, but also in self-development. Self-development is impossible, if the judge is unable to "look at him/her from the side and critically evaluate his/her action, which does not correspond to the standard of the judge's service. According to J. Siliņš: "What you do represents what you are!"³⁷.

Likewise we wish to remind previous information that observation of procedural formalities does not guarantee "rights to a fair trial". In this connection, we see a problem – whether the judge can and may step away from the procedural language, because it is clear that if the case participant is a simple resident without legal education, then most probably he will not understand even those rights and duties, which the court will "explain" to him. That is why we believe that the judge must separate the two cases, when the cases are considered in the room with presence of lawyers, and the cases, when the cases are considered in the room, without participation of the person with legal education. In the second case, the judge must step back from the legal language so far the case participant can understand what is going in the court proceedings, as the most important thing is to resolve the dispute between the parties, so that the parties would understand what is going on in the court hearing room.

In general, although the thesis analyses only two decisions of the Latvian Commission of Judicial Ethics, it shall be noted that the Latvian Commission of Judicial Ethics receives a considerable amount

³⁶ Decision of the Commission of Judicial Ethics, dated February 16, 2018. Available: <https://www.tiesas.lv/tiesnesu-etikas-komisijas-sedes>.

³⁷ Zemgale Region Court's Judge of the Latvian Judge Association J. Siliņš, speaking at the conference on May 21, 2018 – „Effective and ethical court hearing conduct”.

of claims, which are connected exactly with possible non-ethical behaviour of judges at the court hearings. Having listened to the audio recordings of the respective court hearings, the Commission of Judicial Ethics did not state rough violations of the norms of ethics, however, quite often they were made to conclude that the way the judge has conducted the court hearing and spoke to the case participants, was not fully compliant with the norms of ethics, including already widely mentioned Bangalore Principles. In this connection, the Commission of Judicial Ethics explained that the professional ethics of the judge needs a judge to treat any person in the court room with respect and following norms of polite behaviour³⁸. Only following the norms of ethics, we can speak about implementation of rights to a fair trial to the extent, which is provided for by this standard.

Conclusions and suggestions

Generalizing the above mentioned, there are no doubts that the judge's behaviour in the court room may influence adoption of impartial and fair judgment by the judge, thus undermining the society's trust to the judicial power.

Speaking about solutions to eliminate problematic issues, we would offer to divide them into two groups: external and internal methods.

1. External methods are connected with selection of candidates for the judge position and further training of judges.

1.1. For example, performing selection of candidates for the judge position, not only their knowledge must be evaluated, but it is also important to understand whether the candidate will follow the norms of ethics in specific situations. So, since 2018, it is planned to introduce in Latvia new order of selection of judge position's candidates, inter alia, candidates will have a psychology test. It would be desirable that this test evaluates also the ability of candidates to ethically act in problematic situations.

In this connection, we have stated a problem as well - in case if an decision was given by the Commission of Judicial Ethics about action of the judge, it is not taken into account, when the judge's professional activity is evaluated. Professional knowledge has zero value, if it cannot be applied duly.

1.2. No doubt that behaviour of judges at the court hearings may be improved by special trainings, court procedure play, psychological support, group work etc. It would be desirable to organize from time to time a dialogue of the judicial power with the representatives of other legal professions, to facilitate exchange of experience and opinions. Such meetings provide a possibility to discuss topical issues, for example, what you like/dislike in the behaviour of judges, what you like/dislike in the behaviour of case participants, and what solutions can be found to act ethically and legally in problematic situations.

³⁸ Collection of conclusions of the Commission of Judicial Ethics, 2008-2016 Riga: TNA, 2016, Pages 29-30.

1.3. It would be of value if, upon completion of the court hearing, the case participants are offered to give feedback with their opinion in relation to the evaluation, claim or recommendations about behaviour of the judge in the court room.

1.4. In case if the judge states at the court hearing that a representative of other regulated legal professions, probably, has acted non-ethically, it is necessary to inform the supervisory institution of the respective profession about this fact. It shall be noted that the prestige of the judicial power is not formed only by the judges alone, but all persons close to the judicial power. Thus, notifying about the possible violations of ethics, the judicial power will purify itself from persons, which undermine its authority in the eyes of the society.

2. The second group may be defined as internal methods or work of the judge with himself/herself. The judge shall constantly follow his/her psychological feelings, thoughts and emotions related to job responsibilities to correct attitude and behaviour.

In this connection, it shall be noted that the judge is the guard of human's dignity. He is the guard of human's dignity of the highest legal category. We can conclude from all this that respect as the element of mutual relations is seen in all norms of judicial ethics. This conclusion is rather logical, as in the modern world we admit any human rights and fundamental freedoms equally, showing respect to each other and in brotherhood spirit.

2.1. Laws and codes of ethics impose a duty on the judges to judge impartially. It means that the judge, performing his/her professional duties, must not take his/her personal attitude and confidence into account. However, looking at it from the point of view of psychology, it is impossible, as the human, irrespectively of his/her wishes, forms attitude, which has significant meaning and impact.

Often, jurisprudence ignores the human's psychological factor, still, following the significance of the profession [...], we should speak about whether and in what amount the personal attitude of lawyers and their internal confidence influences their professional activity and how the representative of some legal profession, in a daily routine, can maintain neutrality and impartiality. The second aspect is connected with psychological consequences, which may arise [...] to the judge, having a duty to judge the case that contradicts to his/her internal beliefs, and how does it affect his own personality, attitude and behaviour³⁹.

2.2. The judge must always work with his own attitude, which will influence his behaviour at the court hearing, and with his behaviour, which will impact his attitude. To cope with negative emotions, which may arise to the judge in the court room, it is recommended to always bear in mind that there are people in the court room, which have their own interests and which are entitled to defend these interests.

³⁹ Leja V. Psychological aspects of performance of tasks incompliant with the lawyer's attitude // Jurista Vārds, 15.05.2018, No.20 (1026) // <http://www.juristavards.lv/doc/272717-jurista-attieksmei-neatbilstosu-uzdevumu-izpildes-psihologiskie-aspekti/>

If the judge shall consider an unpleasant case, he can try placing himself in the position of the case participants, so-to-say, feel in somebody's boots to decrease negative emotions.

2.3. Resuming all the above, we believe that every judge must follow in his job two basic laws of the ethics – the Golden Law and the Silver Law. The Golden Law of ethics defines: “Treat other people the way you want to be treated”, in its turn, the Silver Law of ethics provides for: “Do not treat other people the way you do not want to be treated”. It means that the judge must perform the actions, which he awaits from other people, for example, he must be polite, tolerant and understanding towards the case participants, as well as avoid negative behaviour expressions, for example, conceit, subjective attitude, selfish power demonstration etc. The court hearing is a stress situation for everybody; however, with mutual respect and understanding, the tension may be decreased between the judge and the case participants. The judge may forget, what exactly is written in the Bangalore Principles or some other code of ethics, still, keeping these two laws in mind as the guidelines of the ethical behaviour, it is possible to achieve ethical behaviour of the judge in the court hearing room. Being a judge is not a profession, it is a lifestyle!