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**THE REACTION TO NEGATIVE CRITICISM
OF COURT JUDGMENTS**

REPORT

by

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Reaction to negative criticism of a court judgment

I would like to express my gratitude to the Constitutional Court of Armenia and the Venice Commission to arrange this conference. It brings us the excellent opportunity to exchange experience and views and make clearer the different conditions and traditions of the countries in order to optimize cooperation with the media.

Next I will say, that the previous speakers have already said very wise things about this topic: Reaction to negative criticism of court judgments.

I will start with a brief introduction of Danish democracy, Danish courts and the media to make it easier to approach the Danish perspective on the topic.

Danish society, the judiciary and the media:

The framework of the cooperation between Danish courts and Danish media - and not to forget the politicians who use the media - is based on: high trust in the courts in general. The trust in government and other institutions are in Denmark also very high, ranging as no. 1 in the world. Corruption is very low. The Danes are according to international polls the happiest people in the world. And add to this the fact that in criminal cases and in some civil cases the court is assisted by laymen and specialists that are not lawyers.

Furthermore the Supreme Court of Denmark was founded more than 350 years ago and for at least the last 200 years has been independent of the monarchy - although the Danish Constitution and democracy is only about 160 years old. Denmark is a very old democracy.

And that is an important component to understand the situation in Denmark and the cooperation between the courts, media and the public opinion. The state powers have found their role in the society within the democracy. The number of constitutional cases are therefore very few. Only once the Supreme Court found a law unconstitutional. That was in 1999. Many of these questions that young democracies have and struggle against have been solved in Denmark years ago.

As the Constitution is old also the role of the media is rather clear and the media are independent but often related to a political ideology or a political party. The media has a long tradition of freedom of speech and of the written press. The state powers do not make any restrictions – besides libel laws - on the media.

That is also important to ensure transparency of the state power. This includes the courts.

In Denmark the courts handle all kinds of cases. Civil cases, administrative cases as well as cases about constitutional topics. And in general there is no specialisation between the courts nor the judges. A lawsuit must be brought in front of a city court and an appeal can be made to a high court. A party can get leave to appeal to the Supreme Court if the case concerns a matter of principle issues. There is no access to bring a case directly to the Supreme Court. The government, Parliament or the public can not bring a case about the constitutionality of a bill in front of the courts. A party must have a particular interest in the question of constitutionality, that means he or she is involved in a specific situation that involves such issues.

What is negative criticism or does negative criticism exist?

To consider the best way to react we must be aware of the elements that lead to the criticism. And this can be very complex. Criticism is often the tip of the iceberg in combination with the quality of

- a) the judgment and information level of the court
- b) the agenda of the media (and/or politicians)

The most important issue when we discuss the reaction to negative criticism is to be PROACTIVE. The most important element of good cooperation between the media and the court is to be proactive towards the media and the public in general and the courts website should be easy to access and understand by the public. The public must be informed about the courts and their working conditions. The court must ensure:

- Public court hearings or access to streaming during hearings.
- A spokesman must always be available for the media. It can be a judge or another spokesman. But it is important that the spokesman does not add any new explanations to the judgment but only talks about the courts' work on a case.
- The court must be the primary source of information about a case. That is why information about a case must always be available e.g. on the website before the hearing and judgment and an abstract must be published as soon as it is pronounced
- Judgments are written in a straightforward language that not only professionals understand. The argumentation must be simple – as simple as possible – but sufficient.
- The judgment must be published on the website not only in full length but also an abstract that makes it easy to approach for the public and the media.
- Arrange frequent open house events so everybody can enter the court and be informed about the court, the functioning of the courts in society.

This brings me to my point: the courts must always have the attitude that negative criticism is a quality in a democracy. Negative criticism brings an excellent opportunity to promote the courts and the judicial system focused on the courts function in society – also constitutionally. We have the opportunity to stress the position of parliament, government and the courts. To stress and explain these functions leads us to defining the borders between them. It is very important and a never ending story to use these opportunities and express this in clear judgments and afterwards in our day-to-day work.

In this perspective I will use the words negative criticism as:

- misunderstanding of the judgment or misinformation of the public. The latter can be based on ignorance or in order to create a scandal without there being one.

I bring up a few examples from Denmark:

Politicians comment a judgment that is not final, but can be or is appealed. In this way the politician tries to put pressure on the court of appeal and that must not be done. The politicians must be told by the court, for example in a press release by the judge who is going to handle the case, that the court will not be influenced by politicians or the media. This is a very sober way of reacting without discussing the case.

The media refers to the judgment or the case in a wrong manner. This is often the case when one of the parties to the case wants to talk about the case to the media. Anyway the court can

correct the framework of this type of cases in general without mentioning any details of the case. This can be done in a press release or in a newspaper feature article.

Media goes for drama and scandals. Interviews with the party that did not win – the best scenes of the case of the little man versus the system. Or criminal cases that involve children.

In these cases an article or abstract on the website and in the newspapers to explain in general the rules and the facts that the courts job is to make decisions not to discuss them and make it clear that the right place for discussions is the political arena.

In Denmark we currently have a discussion about deportation cases following the conviction of criminals after they have served their sentence. One case concerned Parliament before the bill on the obligations of the state of Denmark under international agreements was passed, particularly with respect to the European Convention on Human Rights. Without any further specifications. The Supreme Court had to be constitutive in that area because Parliament had not been specific enough. The judgment of the Supreme Court in that case was criticised by politicians in the media. They said that the Supreme Court did not respect the intention of Parliament that was to make deportations easier. In its judgment, the Supreme Court referred to the remarks from Parliament, it was therefore easy to repeat these parts of the judgment to react to the criticisms.

Good negative criticism is the prerequisite for political debates on lawmaking.

It is quite a job to control all the information in the media about the court, even though Internet services make it easier, it is in any case important to remember that the court and the media have different perspectives. The courts cannot and should not control this. The Courts close a certain case with a judgment and make a legal position clear, the media uses the case as a means to an end, as long as there is a political or commercial interest. We must accept that.

Consider the media as an indispensable partner in democracy. The state power and the media are each other's condition.