

Constitutional Courts Speak Their Voice

Their Fight Against Fake News and Disinformation on Constitutional Justice

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Abstract

The rise of the Internet and associated technologies and the widespread use of social media have deeply affected the relationship between constitutional courts, the media and public opinion. Increased public exposure increases the risks of misunderstandings of courts' judgments and attacks on courts' legitimacy. The article aims at addressing the challenges that changes in institutional communication are now posing for constitutional courts. It focuses on the courts' concern that their decisions are faithfully reported by the media and understood by a specialized audience and the general public. It analyzes the different tools courts have adopted to counteract misinformation and addresses the reasons why constitutional courts have been engaging in a more proactive communication in order to prevent misreading or even exploitation of the contents of their decisions.

Keywords

constitutional courts – information – public opinion – media – communication

1 Do Courts Still Speak Only through Their Cases?

According to a 2017 survey, the Italian *Corte Costituzionale* is the least known institution among the branches of government in Italy. Only 15 per cent of those interviewed declared to know the Court and its powers. Surveys reveal a similar discouraging landscape about the knowledge of other constitutional/supreme courts, their composition, and powers. In the United States – where Supreme Court justices are appointed by the President of

the United States and confirmation hearings always attract great media attention – a 2018 survey showed that 91 per cent of the people think that the Court's decisions have an impact in their everyday life and 68 per cent declared to (often or somewhat often) follow news stories about the Court, but just 48 per cent of those interviewed is able to name a sitting justice.¹ In France, in 2020, on the 10th anniversary of the introduction of the *Question prioritaire de constitutionnalité* ("QPC"), less than one French out of three has ever heard of the new procedure and only 10 per cent can explain its purpose and meaning.²

In the past, constitutional and supreme courts dealt with the public only on rare occasions. In Italy, as the former President of the Court emphasized, the annual press conference – in which the President of Court illustrates the judgments and activities of the Court in the past year – was the only occasion for the Court to meet journalists and other representatives of the media.³ At the time of its establishment in 1984, the Belgian *Cour d'Arbitrage* (renamed *Cour Constitutionnelle* after the constitutional reform of 2007) adopted a very cautious approach with the media,⁴ imposing to its members great self-restraint to avoid any kind of engagement with the public and the press. Even in the United States both the Supreme Court and individual justices have been traditionally bound by an institutional reticence towards the press: not only has the Supreme Court always accommodated the press in a very limited way, but "for most of the Court's history, the justices eschewed public interviews with reporters".⁵

Such a cautious approach was based on the idea that it was superfluous to maintain any kind of relationship with the press, the media and the public. Courts – it has been argued across different jurisdictions – speak only through

1 See C-SPAN and PSB, "New C-SPAN/PSB Survey: American Attitudes about U.S. Supreme Court", 28 August 2018, available at: <<https://static.c-span.org/files/pressCenter/C-SPAN+Poll+on+Supreme+Court+August+2018.pdf>>.

2 Conseil Constitutionnel (France), "Communiqué de presse du 12 novembre 2020: Enquête grand public BVA – 10 ans de la QPC", 12 November 2020, available at: <<https://www.conseil-constitutionnel.fr/actualites/communiquede/communiquede-de-presse-du-12-novembre-2020-enquete-grand-public-bva-10-ans-de-la-qpc>>.

3 *Corte Costituzionale*, "Relazione del Presidente Alfonso Quaranta sulla giurisprudenza costituzionale del 2011: Incontro con la stampa", 23 February 2012, p. 1, available at: <https://www.cortecostituzionale.it/documenti/relazioni_annuali/Conferenza_Stampa_23022012.doc>.

4 *Cour d'Arbitrage* (Belgium), "Aperçu des activités de la Cour d'arbitrage pendant la première année de son fonctionnement 1984–1985", para. 13.

5 DAVIS, "The US Supreme Court and the Journalists Who Cover It", in DAVIS and TARAS (eds.), *Justices and Journalists. The Global Perspective*, Cambridge, 2017, p. 281 ff., p. 285.

their judgments⁶ and the justifications behind the courts' rulings must be exclusively found in the opinions of the courts (or in the separate writings of the justices).⁷

Therefore, the relationship between the constitutional or supreme courts and the media (especially journalists) was conceived in contrasting terms: although it was considered a necessity (or in some jurisdictions a duty prescribed by the law) in order to ensure transparency on the courts' activities and judgments, it was also seen as a potential danger for the legitimacy and authoritativeness of the courts. In Canada, Justice Beverley McLachlin – the first Chief Justice to speak with journalists – believed that speaking to the media was an “important thing to do” but described the relationship between the Supreme Court and the press as “a mutual, if sometimes uncomfortable embrace”.⁸

Courts and the press need each other, but for different purposes: the former need the latter because the publication of courts' rulings in official reports alone does not reach the general public; conversely, the press needs the courts not only to fulfil its duty to inform that is an essential feature of democracy, but also to transmit a message, to sell copies and to attract readers' attention. Furthermore, as it has been emphasized, the communication of constitutional

6 HUFF, “Information ist auch eine Aufgabe des BVerfG. Anmerkungen zur Öffentlichkeitsarbeit”, *Neue Juristische Wochenschrift* (NJW), 2001, p. 2951 ff., p. 2952 (emphasizing that before 1996 it was trite that the *Bundesverfassungsgericht* “must not sell and spoke through its judgments”) or the Belgian *Cour Constitutionnelle* whose “decisions, written in clear language, had to speak for themselves” (see *infra* note 25 and corresponding text) and ALÉN, DELRUELLE and MARTENS, “Rapport belge sur les modes de décision du juge constitutionnel”, *Revue belge de droit constitutionnel*, 2004, p. 354 ff. In Italy the argument of unanimity of the Court's judgments has been invoked in order to reject proposals of introduction of the dissenting opinion. See CASSESE, “Lezione sulla cosiddetta opinione dissenziente”, *Quaderni Costituzionali*, 2009, p. 973 ff.; PANIZZA, *L'introduzione dell'opinione dissenziente nel sistema di giustizia costituzionale*, Torino, 1998; DI MARTINO, *Le opinioni dissenzienti dei giudici costituzionali. Uno studio comparativo*, Napoli, 2016.

7 Even in the United States, where the independence of the courts and the transparency of the judicial process are highly praised, Chief Justice Roberts suggested in his confirmation hearings that “the U.S. Supreme Court may attract greater deference, and provide clearer guidance, when it speaks with one voice” and avoid unnecessary dissents. See also GINSBURG, “The Role of Dissenting Opinion”, *Minnesota Law Review*, 2010, p. 95 ff. (emphasizing the value of unanimous opinions but arguing that she spoke in dissent when important matters are at stake).

8 MCLACHLIN, “The Relationship between the Courts and the Media. Remarks of the Right Honourable Beverley McLachlin, PC, Chief Justice of Canada”, Carleton University, Ottawa, 31 January 2012, available at: <<https://www.scc-csc.ca/judges-juges/spe-dis/bm-2012-01-31-eng.aspx>>. See also HARADA, “The Uncomfortable Embrace. The Supreme Court and the Media in Canada”, in DAVIS and TARAS, *cit. supra* note 5, p. 81 ff.

courts “rests on a paradox”:⁹ if democratic debate requires easy and open public access to courts’ judgments, the complexity of their contents makes it challenging to divulge them. Technicalities of the legal jargon, lack of background knowledge, length of the cases increase the risks of misunderstanding (or even misreporting) of the contents of the cases. Presidents of the *Corte Costituzionale*, for instance, have repeatedly emphasized that the large number of constitutional cases makes it challenging to fully understand “the entirety of the Constitutional Court’s role” and “to grasp the real message of the Court behind legal rules and procedures”.¹⁰

The rise of the Internet and associated technologies and the widespread use of social media have deeply affected the institutional communication of all branches of government and largely changed the relationship between constitutional courts, the media, and public opinion. Public communication, which in the past appeared a duty or a delicate task to undertake with great caution and only on rare occasions, is now a mission that constitutional and supreme courts must conduct daily. With the increased public exposure, the risks of misunderstanding and the dangers of attacks on courts’ legitimacy have become more serious and widespread. That is the reason why whereas parliaments and political institutions soon discovered the potentialities of public communication to promote and amplify their political message, until a few years ago, constitutional courts have been quite reluctant to enter the public arena.¹¹

This article aims at addressing the challenges that changes in institutional communication are now posing for constitutional courts. I will focus on the communication of the final judgments of constitutional courts through press releases and other means of communication and on the distortion of courts’ message by the media. Although in the last few years constitutional courts have also been communicating a large number of extra-judicial activities, this article deals only with the courts’ concern that the contents of their decisions are faithfully reported and understood by a specialized audience and the general public.

9 Association of Francophone Constitutional Courts (*Association des Cours Constitutionnelles Francophones*, “ACCF”), “Les cours constitutionnelles face aux enjeux de la communication”, Bulletin no. 4, 2003, p. 19.

10 *Corte Costituzionale*, “Relazione del Presidente Paolo Grossi sulla giurisprudenza costituzionale del 2017”, 2018, available at: <https://www.cortecostituzionale.it/documenti/relazioni_annuali/grossi2018/grossi_relazione2018.pdf>.

11 See SPERTI, “The Impact of Information and Communication Revolution on Constitutional Courts”, in BELOV (ed.), *The IT Revolution and its Impact on State, Constitutionalism and Public Law*, Oxford, 2021, p. 183 ff.

In the first place, I will address how the communication of the judicial activity of courts has been affected by the rise of the Internet and associated technologies and in the second place I will attempt to clarify the main concerns that stimulated courts to radically change their communication policy. In particular, I will analyse the reasons why constitutional courts felt the need to engage in a more proactive communication in order to counteract the misreading or even exploitation of the contents of their decisions. Finally, I will address major changes in the relationship among courts, media, and public opinion in the last few years in order to emphasize the reasons influencing the courts' decision to speak directly to the public, with the mediation of the press. In the end of the article, I will argue that transformation of public communication of the courts calls the courts – and individual justices – to new responsibilities for the future.

2 The Constitutional Courts' Need to Better Communicate the Contents of Their Rulings

Public communication, as mentioned above, is in the first place a necessity for constitutional courts due to the difficulties in reaching a wider audience through traditional and official means of publication of courts' decisions. Courts aim, in the first place, to convey a message that gives a sense of which issues have been addressed and how they have been solved.

It is a task that in the past constitutional courts have traditionally fulfilled through press releases and annual reports. The Supreme Court of Canada was ahead of the times when in 1981 it established a specialized service for the relations with the media¹² and introduced a regular practice of releasing press releases.¹³

Nonetheless, those documents did not usually escape the technicalities of legal jargon: their contents were actually directed to a specialized audience, such as scholars or lawyers or specialized journalists. Furthermore, press releases were in the past quite occasional, usually reserved for the most important cases and their contents were often concise and highly technical. The technicalities of the texts also helped to conceal the political aspects of the issues addressed in the cases.

¹² The Office is composed of two justices, the *Adjoint exécutif juridique* and the *Agent juridique*. As stated by the Court, their role is to provide “neutral and objective information”. See ACCF, “Les cours constitutionnelles et les médias”, Bulletin no. 11, 2016, p. 75.

¹³ See also, HARADA, *cit. supra* note 8.

Press accounts of courts' activities and rulings followed a similar approach: D. Stasio – the incumbent Head of Communication of the *Corte Costituzionale* and a former journalist of *Il Sole 24 Ore*, the main business-focused newspaper in Italy – for instance, recalls:

“My pieces were highly appreciated by the legal public due to their technical precision, but too often they were difficult, if not obscure, to everyone else. That is to ordinary people, who, however, have the same right to be informed and join the public debate with full awareness of the facts”.¹⁴

The highly specialized legal jargon was, in Stasio's words, “difficult but reassuring” because it made the accounts appear neutral and impartial.

As far as transparency and communication on cases were concerned, self-restraint was, in other words, the usual policy for both courts and the press. In recent times, this landscape has largely changed. In Italy, the number of press releases of the *Corte Costituzionale* has highly increased in the last few years, shifting from a single press release in 2005 to more than 50 in the last year.¹⁵ Press releases now serve also multiple purposes: some of them announce the cases that will be considered by the Court in the next public hearing (*agenda dei lavori*); other press releases anticipate rulings that have not been published yet (often on very important issues of high societal concern); finally, other press releases illustrate judgments after their publication.

This implies that some judgments are announced twice: in the first place, with an anticipatory statement, usually addressed to the general public, and, in the second place, with a more technical and lengthy statement, following the publication of the case and usually addressed to a more specialized audience.¹⁶ In both cases, therefore, the *Corte Costituzionale* aims at providing as

14 STASIO, “Il ‘ruolo sociale’ del giurista impone una comunicazione più inclusiva”, *Questione giustizia*, 2018, available at: <https://www.questionegiustizia.it/articolo/il-ruolo-sociale-del-giurista-impone-una-comunicazione-piu-inclusiva_21-03-2018.php>.

15 I analyzed recent changes in the institutional communication of the *Corte Costituzionale* in SPERTI, “Corte costituzionale e opinione pubblica”, *Diritto e società*, 2019, p. 735 ff.

16 According to the former president of the *Corte Costituzionale*, Giorgio Lattanzi, “press releases no longer aim at anticipating the contents of the judgments, but they try to translate them into an informative language”. In particular “they provide some information on the reasons for the decision in order to explain its meaning”. The press releases that follow the judgment, in particular, “aim at giving the press and citizens information as much accurate as possible, but still accessible, on the reasons for the decision before the publication of the ruling in the Official Gazette”. See, *Corte Costituzionale*, “Relazione del presidente della Corte costituzionale Giorgio Lattanzi sul tema della ‘Comunicazione istituzionale’”, 2019, p. 4, available at: <www.cortecostituzionale.it/documenti/news/CC_NW_20190902.pdf>.

much accurate information as possible: in “anticipatory” press releases – as the former President of the Court stated – the Court’s purpose is to prevent “leaks of information or uncontrolled, superficial or even instrumental manipulations or readings of the judgment”; in the case of statements following the release of the judgment, the Court aims at providing public opinion and the media with the tools to fully understand the meaning of the judgments. This purpose is often achieved through the quotation of “a significant passage of the reasoning, in order to prevent the meaning of the case from being unnoticed by the public or manipulated or exploited”.¹⁷

This abundance of statements has attracted some criticism, due to the risks of inconsistencies between the two press releases. Furthermore, the informal language and journalistic style adopted in the first statements with the purpose of attracting the attention of the public often gave rise to uncertainties about the results of the rulings or their actual scope.

Despite the growing number of press releases, the *Corte Costituzionale* has not codified the procedure for their adoption and publication yet. Therefore, the use of press releases is still governed by informal rules: in the case of press releases before the publication of the judgments, due to the delicacy of the communication and its potential impact on the media, the text is jointly written by the justices in the chamber with the support of the Press Office of the Court (and in particular of the Head of Communication of the *Corte Costituzionale*, a role that since 2016 has been held by a professional journalist). In the case instead of press releases following the publication of the judgment, as stated by the former President of the Court Lattanzi, “the choice to publish a press release is adopted by all the justices at the time of the collective reading of the text of the decision”.¹⁸

The criterion governing the selection of the cases, as the former President himself clarified, is “flexible” because a press release “is not made for all ‘important’ judgments, but only when the judgment constitutes ‘news’”.¹⁹ The drafting of the text of the press release is always left to the rapporteur of the case and to the Head of Communication of the Court; the text and its title are then

17 *Ibid.* The *Corte Costituzionale* has sometimes published a “synopsis” of the main cases, that is a very brief summary or a general survey of the contents of its main judgments. Therefore, the communication of the Court covers all its productive cycle, from the submission of the case to the release of the judgment. See D’AMICO, “Comunicazione e persuasione a Palazzo della Consulta: i comunicati stampa e ‘le voci di dentro’ tra tradizione e innovazione”, *Diritto e Società*, 2018, p. 237 ff.

18 *Corte Costituzionale*, “Relazione del presidente della Corte costituzionale Giorgio Lattanzi sul tema della ‘Comunicazione istituzionale’”, *cit. supra* note 16, p. 4.

19 *Ibid.* (emphasis added).

submitted to the President of the Court for a final evaluation to ensure that the most relevant passages of the decision are correctly reported in the press release.

In recent times, other constitutional courts have followed a similar path in ensuring better communication of their judgments through press releases. The practice is now widely shared among most of the constitutional courts.

Some courts publish press releases on a regular basis: for instance, the *Bundesverfassungsgericht* (German Federal Constitutional Court) has released an increasing number of press releases since 1996 (when it professionalized its communication by establishing a public relations department):²⁰ most of them cover the contents of important judgments, some others provide information on the Court's or individual justices' activities, or announce cases that will be discussed in the next public hearing (suggesting how citizens can retrieve further information).²¹ In Germany, the adoption of press releases is regulated by the Rules of procedure of the Federal Constitutional Court, which clarify that "the official information on the decisions adopted must be approved by the *rapporteur* member of the Senate and by the president and may be published only if the decision has been communicated to the parties to the proceedings".²² Results of a recent analysis of the press releases from 1996 until 2018 revealed that "the Federal Constitutional Court's press release strategy is compatible with principles of open justice as long as its rulings do not indicate internal dissent or intra-judicial conflicts". Instead, "rulings concerned with concrete reviews, constitutional disputes and status quo changes are associated with an increased likelihood that the Federal Constitutional Court will publish a press release".²³ In other words, the Federal Constitutional Court "is eager to publish press releases to communicate legal and political conflicts (e.g. status quo changes and concrete reviews) as long as the conflicts are not internal or instances of intra-judicial dissent (e.g. dissenting opinions or an overruling of a lower court case)".²⁴

20 See MEYER, "Judicial public relations: determinants of press release publication by constitutional courts", *Political Studies*, 2020, p. 477 ff., p. 479 (analyzing 1131 press releases of the *Bundesverfassungsgericht* from 1996 to 2018).

21 See "Information for interested citizens" (*Hinweise für interessierte Bürgerinnen und Bürger*).

22 See Rules of Procedure of the Federal Constitutional Court (*Geschäftsordnung des Bundesverfassungsgerichts*) of 19 November 2014, *Federal Law Gazette*, 2015, I, p. 286, para. 32 (emphasis added), available at: <https://www.bundesverfassungsgericht.de/SharedDocs/Downloads/EN/Gesetze/GO_BVerfG.pdf?__blob=publicationFile&v=11>.

23 See MEYER, *cit. supra* note 20, p. 490.

24 *Ibid.*, p. 479.

The French *Conseil Constitutionnel* started to divulge press releases in 1993 for the most important cases only. Since 1997 the practice has become systematic for all the cases concerning *a priori* and *a posteriori* judicial review, although the practice has not been codified. Press releases have a fixed structure, summarizing the main parts of the cases (*saisine*, arguments of the parties, opinion and final ruling of the court).

The practice of releasing statements to the press in order to provide information on judgments in the most important cases is also followed by constitutional courts that traditionally have been more reluctant to announce the contents of their judgments. The *Cour Constitutionnelle* of Belgium, for instance, has adopted new strategies to foster communication with the general public. Until recently, the *Cour Constitutionnelle* did not issue press releases to illustrate the contents of its judgments, arguing that its “decisions, written in clear language, had to speak for themselves”.²⁵ The practice of press releases was considered taboo²⁶ and they were published only to mark special occasions, such as the launch of the court’s website in 2000 or the organization of the 12th Meeting of the European Constitutional Courts in 2002.

At the end of 2012, the *Cour Constitutionnelle* abandoned its policy of closure to the media. It realized that “judgments, despite the clear language, often concern technically complex or socially sensitive issues, or are very long due to the large number of arguments that the Court must examine”. Therefore “the Court decided – in the beginning as an experiment – to divulge for some cases some ‘notes informatives’ instead of press releases”.²⁷

The notes – inspired by press releases from the European Court of Human Rights – have been recently renamed “*Communiqués de presse concernant les arrêts*” and are drafted by the person in charge of the relations with the press (*Responsable des relations avec la presse*) – a former *Référéndaire* of the Court, with many years of experience. Its adoption is, however, decided by the plenum of the Court (or by its session of seven justices) on the basis of “the complexity of the issue at stake, or its importance or the relevance of the issue for the general public”.²⁸

As in Italy, the drafting of press releases is integrated into the decision-making process: a first draft of the press release is submitted by the *Responsable des relations avec la presse* and submitted to the law clerks (*Référéndaires*) of the

25 ACCF, *cit. supra* note 9, p. 149.

26 *Ibid.*, p. 148 (mentioning the “taboo surrounding the idea of considering the issuance of press releases in connection with important judgments”).

27 *Ibid.*

28 *Ibid.*

justices. The purpose of this procedure is to verify that the contents of the note are consonant with the scope of the case. “Although it is nothing more than a ‘presentation of the case’ care is nevertheless taken that the informative note does not contain any mistake due to an excessive abstraction and synthesis”.²⁹ Furthermore, the *Cour Constitutionnelle*’s website clarifies that “due to their nature, the press releases do not contain the reasoning developed in the decisions or the nuances specific to each judgment. They are not binding on the Court”.³⁰

Compared to the contents of press releases of other constitutional courts – such as those of the *Corte Costituzionale* – in Belgium the contents of press releases are, with the exclusion of exceptional cases, “reduced to the essentials in order to issue a direct, clear and accessible information”.³¹ They simply aim at presenting the modalities of referral, the grievance, the point of law and the meaning of the decision in order to issue basic information on the institution and to highlight the normative content of decisions. Therefore, to prevent misunderstanding, press releases “cannot be used to clarify or interpret decisions pronounced by the court”.³²

Even the change in the names of press releases marks the progressive evolution of courts’ communication strategies on cases: until 1996 the *Bundesverfassungsgericht*, for instance, released only “press announcements” (*Verlautbarung*) which were later replaced by “announcements from the Press Office” (*Mitteilung der Pressestelle*) and finally by “press releases” (*Pressemitteilung*). The *Corte Costituzionale* only released in the past the “featured decisions” announcements (*pronounce in evidenza*) – short statements reporting the most important passages of the court’s judgments, in very technical terms. They were followed in the mid-2000s by statements – with no title – “from the Consulta Palace” (“*dal Palazzo della Consulta*”), in 2016 by the presentation of the major cases pending before the Court (*agenda dei lavori*), and – as mentioned above – since 2018 by anticipatory statements (*pronounce anticipate*) which anticipate the contents of the cases and are also addressed to the general public.

The circulation of the press releases is now greatly increased by their publication on the websites of the constitutional courts (where the main cases are also

²⁹ *Ibid.*

³⁰ *Cour Constitutionnelle* (Belgium), “Communiqués de presse concernant les arrêts”, available at: <<https://www.const-court.be/fr/media/press-releases-concerning-the-judgments?with-archive=true>>.

³¹ See ACCF, *cit. supra* note 12, p. 67.

³² *Ibid.*

available in English): the French *Conseil Constitutionnel* launched its website in 1997, followed by the Supreme Court of Canada and *Bundesverfassungsgericht* in 1998, the *Corte Costituzionale* in 1999, and the *Cour Constitutionnelle* of Belgium in 2000.³³

All constitutional courts also foster their communication through many other means of communication. The landscape is so varied that it is impossible to address thoroughly all the communication strategies courts have recently adopted to provide (easily accessible or more specialized) information on their judicial activity. However, it should be mentioned that, in the first place, all the constitutional courts make use of social networks such as Twitter, Facebook, YouTube or Instagram.³⁴ In the second place, the French *Conseil Constitutionnel* also launched its app for mobile in 2017; analogously, the *Corte Costituzionale* has recently released a free app through which users can receive the latest press releases and news concerning the activities of the Court in real-time. Thirdly, many constitutional courts (such as the *Corte Costituzionale*, the *Bundesverfassungsgericht*, and the *Conseil Constitutionnel*) send information about their cases and activities to mailing lists whose subscribers are usually scholars, legal practitioners, or representatives of the media. Finally, podcasts, videos or booklets also contribute to providing the general public with accessible information about the courts' many activities and – as far as it is relevant for the purposes of this work – on the landmark cases that contributed to forging the courts' constitutional role. The *Corte Costituzionale*, for instance, launched an initiative through its website entitled “The cases who changed the life of the Italians”³⁵ where in 100-second videos each justice analyzes the Court's landmark cases on selected topics.

33 For an overview of the structure of the (first versions of the) websites of some constitutional courts, see COSTANZO, “La Corte costituzionale come ‘nodo’ della Rete”, *Consulta Online*, 20 April 2015, p. 264 ff.

34 On the recent launch of the Instagram account of the *Bundesverfassungsgericht*, see STEININGER, “Swipe up for the German Federal Constitutional Court on Instagram. Judicial Storytelling in the Era of Social Media”, *Verfassungsblog*, 19 August 2021, available at: <<https://verfassungsblog.de/the-gfcc-on-instagram/>>.

35 The videos (addressing many different issues such as “Rights of foreigners and integration”, “Dignity”, “Right of property in the Italian history”, “Abortion”, etc.) are available at: <https://www.cortecostituzionale.it/jsp/consulta/rapporti_cittadini/vitaz.do>.

3 The Dangers of Disinformation and Misreading of the Cases

It is interesting to note that most of those changes occurred after institutional crises and episodes of misinformation or exploitation of courts' rulings in controversial cases.

The *Bundesverfassungsgericht*, for instance, only established a press office and centralized its public relations activities in 1996, when the Court's popularity suffered due to a series of controversial judgments.³⁶ In 1994 the Second Senate released a controversial decision on the use of cannabis,³⁷ whose contents were reported in a distorted manner by the press, giving the public the impression that the Tribunal had, in some respects, supported the consumption of "light" drugs. The case was followed by four controversial decisions in 1994–1995:³⁸ in the first one, the Court reversed the conviction of a man who had pronounced the words "Soldiers are murderers" (*Soldaten sind Mörder*). The case gave rise to political backlash: politicians – without direct knowledge of the contents of the case – labelled it a "scandalous verdict" (*Freie Demokratische Partei*, "FDP") which "offended the dignity of the Army" (*Christlich Demokratische Union Deutschlands*, "CDU").³⁹ The press followed in the same tone, arguing that the Court had encroached on legislative and judicial powers.⁴⁰ It should be noted that criticism against the *Bundesverfassungsgericht* was also due to the poor quality of its statements

36 See HOLTZ-BACHA, "The German Constitutional Court and the Media", in DAVIS and TARAS, *cit. supra* note 5, p. 101 ff.

37 Bundesverfassungsgericht (Germany), Decision of 9 March 1994, 2 BvL 43/92, BVerfGE 90, 145, available at: <https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/1994/03/1s19940309_2bv1004392.html>.

38 Bundesverfassungsgericht (Germany), *Soldaten sind Mörder*, Judgment of 10 October 1995, 1 BvR 1476/91, BVerfGE 93, 266, available at: <https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/1995/10/1s19951010_1bv1147691.html> (confirming a previous case of 1994, Bundesverfassungsgericht, August 28, 1994, *Neue Juristische Wochenschrift* (NJW), 1994, 2943) gave rise to harsh criticism by pacifist movements, pushing the Court to release a statement in order to clarify its rulings (*Verlautbarung*, no. 38/94, 23 September 1994). Before that episode the *Bundesverfassungsgericht* had attracted fierce criticism in the case concerning the so-called "sit-in demonstrations" (Bundesverfassungsgericht (Germany), *Sitzblockaden II*, Judgment of 10 January 1995, 1 BvR 718, BVerfGE 92, 1, available at: <<https://www.servat.unibe.ch/dfr/bv092001.html>>) and in the "Crucifix case" (Bundesverfassungsgericht (Germany), *Cruzifix*, Judgment of 16 May 1995, 1 BvR 1087/91, BVerfGE 93, 1, available at: <<https://www.servat.unibe.ch/dfr/bv093001.html>>).

39 See LAMPRECHT, "Kooperation und Konfrontation: Das Bundesverfassungsgericht und die Medien. Nähe und Distanz", *Zeitschrift für Rechtspolitik*, 2012, p. 149 ff., p. 152.

40 *Ibid.*, p. 153.

which did not give the public and the media the possibility to properly understand – and therefore, report – the contents of the cases.⁴¹

As a consequence of those episodes, the *Bundesverfassungsgericht* established its press office in the same year. In the last decades, thanks also to better communication, the popularity of the Court has steadily increased.

In the same years the French *Conseil Constitutionnel* faced the most serious political crisis in its history when it was called upon by the Prime Minister before the National Assembly to explain the reasons of its ruling in a case concerning immigration policy and the conditions of entry, reception and stay in France for foreigners.⁴² The decision established a constitutional statute for foreigners and enshrined the full constitutional value of the right of asylum. However, it stimulated the reaction of Prime Minister Edouard Balladur, who introduced a constitutional amendment before Congress and harshly criticized the *Conseil Constitutionnel*, condemning the “political and philosophical more than legal character” of the court’s ruling and its interference with the prerogatives of the executive and the judiciary.⁴³ The affirmation of this political stance gave rise for the first time to a public reaction of the President of the *Conseil Constitutionnel*, Robert Badinter, who released a statement to *Le Monde*, criticizing “the impatience of the majority *vis-à-vis* constitutional judges”, which, he said, “is that of a power *vis-à-vis* a counter-power”.⁴⁴ This response, in turn, led to the reaction of Jean-Louis Debré, deputy secretary

41 *Ibid.*, p. 152.

42 Conseil Constitutionnel (France), Decision of 13 August 1993, 93–325 DC, concerning “la loi relative à la maîtrise de l’immigration et aux conditions d’entrée, d’accueil et de séjour des étrangers en France”, available at: <<https://www.conseil-constitutionnel.fr/en/decision/1993/93325DC.htm>>.

43 See Journal Officielle du Parlement de la République Française, Congrès du Parlement, Compte Rendu Intégral, 19 novembre 1993:

“Depuis que le Conseil constitutionnel a décidé d’étendre son contrôle au respect du Préambule de la Constitution, cette institution est conduite à contrôler la conformité des lois au regard de principes généraux, parfois plus philosophiques et politiques que juridiques, quelquefois contradictoires et de surcroît, conçus à des époques bien différentes de la nôtre. Plutôt que de laisser au législateur un large pouvoir d’interprétation de ces principes, le Conseil Constitutionnel a préféré en définir lui-même et très précisément le contenu et indiquer au Gouvernement et aux juges administratifs ou judiciaires comment la loi votée par le Parlement doit être appliquée, allant parfois loin dans le détail”.

44 Badinter, “Le pouvoir et le contre-pouvoir”, *Le Monde*, 23 November 1993. On the institutional crisis between the *Conseil Constitutionnel* and the Prime Minister, see also DISANT, “La communication du Conseil constitutionnel. Évolution, organisation, méthodes”, *Annuaire international de justice constitutionnelle*, 2018, p. 59 ff., pp. 60–61.

general of the *Rassemblement pour la République*, who denounced “the political attitude” of the President of the *Conseil Constitutionnel*.

The institutional crisis made clear to the *Conseil Constitutionnel* the opportunity to get more control of information about its judgments and to replace its “formal” vision of transparency⁴⁵ (consisting basically of the publication of judgments in the *Journal Officiel*) with more open communication with the public and the media. Therefore, between late 1993 and early 1994 the *Conseil Constitutionnel* adopted a communication policy and began issuing press releases of selected and important cases. As mentioned above, in 1997 the publication of press releases became systematic for judgments in *a priori* (and, since 2010, *a posteriori*) judicial review of legislation. In 1995 the *Conseil Constitutionnel* began also publishing a six-monthly journal, *Les cahiers du Conseil constitutionnel*,⁴⁶ with the purpose of providing scholars, students, legal professionals with comprehensive and in-depth information about judgments and constitutional legal issues.

The *Cour Constitutionnelle* of Belgium (former *Cour d'Arbitrage*) has been concerned about misinformation since its establishment in 1984. After barely one month of activity of the *Cour Constitutionnelle*, a Dutch newspaper published an article criticizing its lack of impartiality due to the composition, made for a half of former members of parliament.⁴⁷ The *Cour Constitutionnelle* decided not to reply to the attacks nor to engage in a dispute with the press, arguing that “the only explanation could be found in the judgments”.⁴⁸ Two years later, a debate arose when at prime time newspapers and TVs released a picture of a member of the staff of the *Cour d'Arbitrage* who was caught up in a brawl at the House of Representatives during the question time on the relationship between the French and the Flemish communities. The staff member got a reprimand but, as it has been emphasized, “this anecdote has for many years almost traumatically influenced the cautious relationship of the *Cour d'Arbitrage* with the press”.⁴⁹ The tense relationship lasted until 2002, when the President of the Court released a statement to the press on a controversial case⁵⁰

45 See DISANT, *cit. supra* note 44, p. 60.

46 In 2010 the *Cahiers du Conseil Constitutionnel* have been replaced by the *New Cahiers du Conseil Constitutionnel*, and in turn, in September 2018, by an entirely digital six-monthly review, *Titre VII*, available on the Council's website.

47 See ACCF, *cit. supra* note 12, p. 134.

48 See ALEN, DELRUELLE and MARTENS, *cit. supra* note 6, pp. 354–355. See also ACCF, *cit. supra* note 12, p. 134.

49 ACCF, *cit. supra* note 12, p. 135.

50 “Les nominations politiques sont anticonstitutionnelles. La Cour d'arbitrage, sans l'annuler, ‘descend’ l'article 20 du pacte culturel”, *Le Soir*, 16 July 1993.

which gave rise to a request of parliamentary inquiry that was rejected by the President of the House.⁵¹

The episodes mentioned above give a sense of the difficulty for constitutional courts to strike a balance between “openness” and “closure”: on the one hand, courts feel the duty to provide the media and the general public with accurate information about their judgments and activities; on the other, they are aware of the risks of misreading because the technicalities of the legal jargon and the necessary conciseness of their statements do not make it possible to reproduce all the subtle nuances of the judgments. It is no coincidence that, as illustrated above, concerns have increased since the early 1990s when the world has entered a communication and information revolution, related to the rise of the Internet and associated technologies.

Although there are many differences in the organization of the public communication of constitutional courts, they all share the same concern about the risks that their rulings could be misunderstood or even exploited by the media. As Taras wrote,

“High Court judges in most countries seem to share many of the same fears in dealing with journalists. They worry that their judgments, which are often the product of weeks and sometimes months of writing and rewriting and are based on a complex series of precedents and highly refined legal arguments, will be misunderstood and/or sensationalised by reporters who have little or no legal training. They look on aghast as journalists sometimes get the facts wrong, pick winners and losers without understanding the judgment, and criticize judges who are unable and/or unwilling to respond to attack”.⁵²

Studies on the relationship between constitutional courts and the media are still scarce, but research has shown that the press tends to focus more on issues involving human rights or highly controversial social and political issues. Research on French-speaking constitutional courts has shown that “almost all the courts consider that the main risk of communication lies in the incorrect reading of legal arguments”.⁵³

51 Annuaire parlementaire, Chambre, 1992–1993, n° 78, 19 juillet 1993, p. 3618. See ACCF, *cit. supra* note 12, p. 136.

52 TARAS, “Judges and Journalists and the Spaces in Between”, in DAVIS and TARAS, *cit. supra* note 5, pp. 9–10.

53 ACCF, *cit. supra* note 12, p. 102. The research, which takes into account the French-speaking constitutional courts, lists:

Looking at how the cases of the Supreme Court of United Kingdom are reported by the press, Moran argues that

“The over-representation of particular aspects of the court’s caseload also offers some evidence that even the most diligent reader of the press reports would get a false picture of the work of the court. The diligent reader would learn more about constitutional aspects of the courts work involving a number of human rights and public law matters than what is in practice the dominant area of the court’s caseload, private and commercial matters, which are under reported”.⁵⁴

Another study on media reporting of the *Bundesverfassungsgericht*’s press releases (from 1993 to 2018) has highlighted – in line with earlier findings – “the usage of press releases for conflict-laden issues, for which journalists [are] more likely to invest their resources and write original news stories”. Furthermore, issues “that are already on the media’s agenda and are familiar to the public are more likely to be covered again”.⁵⁵

Furthermore, the tendency of the press to report cases in sensationalistic terms is quite widespread. Scholarly works on journalistic practices of news making have demonstrated how journalists tend to personalize and dramatize the cases.⁵⁶ This trend has been confirmed by Moran’s research on the

“different interpretation from that determined by the court in Algeria; discrepancy with the original text in Cambodia; prejudices or unspoken on positions other than those relating to the law; in Algeria again, manipulation or instrumentalization of decisions in the DRC, in Morocco, in Mauritania, Cambodia, even malicious or tendentious interpretation in Niger, with the effect of increasing media pressure on the court, as Burundi points out. In some countries, such as Mauritania, this can result in a drift towards the tribalization or the ethnization of the political debate”.

54 See MORAN, “Judicial Institutional Change and Court Communication Innovations. The Case of the UK Supreme Court”, in DAVIS and TARAS, *cit. supra* note 5, p. 255 ff., in particular pp. 261–262, emphasizing also that

“In the database as a whole [...] the overwhelming majority of the public law and human rights judgments were reported in the press. In contrast to this the [...] samples with the lowest levels of press reports had the highest per centage of judgments involving private/commercial matters. The snapshot as a whole suggests that a minority (about 30 per cent) of the judgments dealing with private law and commercial law matters, which are the court’s largest caseload, making up 40 per cent of its business, were reported”.

55 MEYER, “Promoted Media Coverage of Court Decisions: Media Gatekeeping of Court Press Releases and the Role of News Values”, *Journalism Studies*, 2021, p. 727 ff., p. 737.

56 See CHIBNALL, *Law and Order News: An Analysis of Crime Reporting in the British Press*, London, 1997; JEWKES, *Media and Crime*, London, 2011; and, in the United States, GILLIAN

Supreme Court of the United Kingdom, which emphasizes how the “news is all about ‘winners’ and ‘losers’”,⁵⁷ whereas Cornes writes that many Supreme Court’s cases “suffered narrative hijack”.⁵⁸

Similar conclusions can be reached on the reporting of the Italian constitutional cases, as demonstrated by the media reporting of the *Corte Costituzionale*’s landmark case on assisted suicide.⁵⁹

Finally, it should be emphasized that courts are aware that proactive information also entails risks of “personalisation”: the member of the court who releases statements or interviews to newspapers or who answers questions in a press conference, inevitably gets more prominence compared to other members of the court. In Germany, for instance, personalization of the *Bundesverfassungsgericht*’s coverage – in particular, the reporting focusing on individual justices instead of the Court – has become an issue.⁶⁰ According to a scholarly work of 2006, press reporting about individual judges has increased and it is often more positive than the reporting about the *Bundesverfassungsgericht* as a whole.⁶¹

Therefore, courts have tried to “depersonalize” their communication by establishing a press office or introducing the role of the Head of Communication. In the beginning, the *Corte Costituzionale* published statements without identifying them as “press releases” (and mentioning in the end that the statements came “from the Consulta Palace”). More recently, when the Court engaged in

and IYENGAR, “News Effects on Public Opinion about Crime”, in GRABER (ed.), *Media Power in Politics*, Washington, 2007, p. 127 ff. In Italy, see GIOSTRA, “La giustizia penale nello specchio deformante della cronaca giudiziaria”, *Rivista di diritto dei media*, 2018, p. 1 ff. (also available at: <http://www.astrid-online.it/static/upload/pape/paper1_giostra-2.pdf>) and AMODIO, *Eстетica della giustizia penale. Prassi, media, fiction*, Milano, 2016.

57 See MORAN, *cit. supra* note 54, p. 270.

58 CORNES, “A Constitutional Disaster in the Making? The Communications Challenge Facing the United Kingdom’s Supreme Court”, *Public Law*, 2003, p. 266 ff.

59 I am referring to the so-called “caso Cappato” (*Corte Costituzionale*, Order of 16 November 2018, No. 207, and Judgment of 22 November 2019, No. 242). On media reporting of the case, see SPERTI, *cit. supra* note 15.

60 HOLTZ-BACHA, *cit. supra* note 36, in particular pp. 114–115; and LAMPRECHT, *cit. supra* note 39.

61 See LEMBCKE, *Über das Ansehen des Bundesverfassungsgerichts. Ansichten und Meinungen in der Öffentlichkeit 1951–2001*, Berlin, 2007, p. 49 ff.; HOLTZ-BACHA, *cit. supra* note 36, p. 114, emphasizing that the trend toward personalization of the *Bundesverfassungsgericht*’s coverage has been corroborated by further research:

“In a comparison of newspaper reporting during the years 1995 till 1997 with the years 2005 till 2007, he found that references to individual justices increased and that there were some justices who got much more media attention than others. This was true not only for the president and vice president but also for the other justices”.

more open and direct communication with public opinion, all the justices share the task of divulging the Court's many extra-judicial initiatives, but the communication of the Court's rulings is always impersonal.

Another concern is that the press or the media could mistakenly attribute the contents of the press release to the courts. As mentioned above, this issue has been openly addressed by the *Cour Constitutionnelle* of Belgium, but other courts have also clarified the distinction between the text of the judgments and the contents of the press statements. The United States Supreme Court, for instance, makes clear that the syllabus – that summarizes the decision and is written by the Reporter's Office – is not part of the official opinion; the Canadian Supreme Court analogously states that “press releases cannot be used to clarify or interpret the meaning of the cases pronounced by the Court”.⁶²

4 Why Do Courts Need to Communicate Their Judicial Activity by Themselves?

Changes in the communication of judicial activity of the courts analyzed above went along with radical changes in the relationship between the courts and public opinion. The topic is very broad but as far as it is relevant for the purposes of this work, it suffices to recall that courts had in the past only an “indirect” and “unidirectional” communication with public opinion:⁶³ indirect, because the press usually mediated between courts and public opinion;⁶⁴ unidirectional because courts were mainly interested in ensuring transparency on their (judicial and non-judicial) activities, without any kind of direct interaction with their audiences.

The rise of the Internet and associated technology has largely contributed to the transition to a “direct” and “bidirectional” communication: regarding the information on courts' rulings, the changes illustrated above make it clear that courts now speak to the general public also *by themselves* through, for instance, press releases, mailing lists, websites, social networks, booklets, videos, and podcasts. Furthermore, communication is now bidirectional. In order to make the public be fully aware of their role in the constitutional system and everyday

62 ACCF, *cit. supra* note 12, p. 213.

63 SPERTI, *cit. supra* note 15, pp. 763–764.

64 See also THOMPSON, *Political Scandal: Power and Visibility in the Media Age*, Cambridge, 2000 (describing public audience participation as a form of “mediated quasi-interaction” because the press usually mediates between the court and public opinion).

life – a topic which has not been addressed in this article – courts have recently engaged in a large number of extra-judicial activities: the *Corte Costituzionale* or the French *Conseil Constitutionnel*, for instance, have felt the need to “get out of their palaces”⁶⁵ and to “connect with the country”⁶⁶ in order to meet “the real country”.⁶⁷

Direct engagement with the public in the communication of information about the cases can be considered both a necessity and a duty by constitutional courts.

It is, in the first place, a necessity because the speed of communication through the Internet now forces the courts to prevent misreading or disinformation by speaking almost in real time and by engaging directly with the general and specialized public. Dragičević Dičić, Justice of the Supreme Court of Cassation of the Republic of Serbia, stressed this need at the opening of the judicial year of the European Court of Human Rights in 2018:

“The main rule of the good communication strategy should be that communication of courts with public should always be proactive. If courts don’t tell their story, someone else will. First story out shapes message, second story is always reactive. We should either work with the press or they will work without us. If courts and judges do not actively participate in communicating their own story about what they do and how they do it, they risk that the message public is receiving may not be true, positive, or affirmative and very often it will violate the basic human rights. Courts should be constant relevant source of information, or they will have to deal with half information, arbitrary interpretation of the different authors and media scandals”.⁶⁸

65 *Corte Costituzionale*, “Riunione straordinaria del 21 marzo 2019: Relazione del Presidente Giorgio Lattanzi”, 21 March 2019, p. 2, available at: <https://www.cortecostituzionale.it/documenti/relazioni_annuali/lattanzi2019/Relazione_del_Presidente_Giorgio_Lattanzi_sull_attivita_svolta_nell_anno_2018.pdf>. See also the initiative of the French *Conseil Constitutionnel* “Audiences hors le murs”, available at: <<https://www.conseil-constitutionnel.fr/publications/titre-vii/pau-et-lyon-deux-nouvelles-destinations-des-audiences-hors-les-murs-du-conseil-constitutionnel>>, for holding public audiences across the country.

66 See for instance, the French *Conseil Constitutionnel*’s initiative entitled “Découvrons notre Constitution” (available at: <<https://www.conseil-constitutionnel.fr/evenements/concours-decouvrons-notre-constitution>>).

67 Referral is to the Italian *Corte Costituzionale*’s initiative called “Journey in Italy” (available at: <<https://www.cortecostituzionale.it/jsp/consulta/viaggioItalia2/viaggio-in-italia-grossi-isernia.do>>) which brought the justices across the country to meet students (“Viaggio nelle scuole”) and detainees (“Viaggio nelle carceri”).

68 Intervention by Radmila Dragičević Dičić, “The Authority of the Judiciary: Communication Strategies”, European Court of Human Rights – Opening of the Judicial Year Seminar, 26

In the second place, information is now conceived by the courts as a social duty. In the courts' own words, engaging in a more proactive communication with citizens is "a mission",⁶⁹ a "responsibility"⁷⁰ or even "a task"⁷¹ for the justices, descending from the need to foster a constitutional culture and communicate "the idea of a democratic, plural, open and tolerant society".⁷² As I emphasized in a previous work on this specific topic,⁷³ the assumption of a proactive role in communication by constitutional courts rests not only on the will to provide accurate information about judgments and courts' work, but also on the awareness of the importance to educate the "constitutional conscience of citizens".⁷⁴ Although this conclusion mainly applies to the communication of extra-judicial activities of the courts, it is also relevant here, as courts aim at increasing citizens' knowledge and sensitivity towards constitutional principles and values by providing easily accessible information about their most important cases.

Both arguments – communication as a necessity and communication as a duty – are supported by existing studies in journalism and institutional communication. Research on media-source relationship (especially on politicians-journalists relationship) has demonstrated that they are mutually dependent and reciprocal.⁷⁵ However, most studies have reached the conclusion that political sources are more in control because "it is sources which instigate the large majority of stories".⁷⁶ Recent research has also demonstrated that the same model applies to the communication of courts, arguing that

January 2018, p. 2, available at: <https://www.echr.coe.int/Documents/Speech_20180126_Dragicevic-Dicic_JY_ENG.pdf>.

69 *Ibid.*, p. 1.

70 See the interview to the former President of the *Corte Costituzionale* Lattanzi: Milella, "La nostra Costituzione è uno scudo per i più deboli che siano italiani o stranieri", *La Repubblica*, 31 January 2019, p. 5.

71 See the interview to the Former President of the *Corte Costituzionale* Cartabia: Conti, "Porte aperte alla Consulta", *Corriere della Sera*, 27 March 2019.

72 Milella, *cit. supra* note 70, p. 5.

73 SPERTI, *cit. supra* note 15, p. 762.

74 Milella, *cit. supra* note 70, p. 5. See also DISANT, *cit. supra* note 44, p. 59 (arguing that "Communiquer est clairement ressenti comme une nécessité de nature objective, profondément inscrite dans la cause inlassable en faveur d'une "citoyenneté éclairée" et dans l'exigence corrélatrice de pédagogie du juge constitutionnel à l'endroit des citoyens et des acteurs juridiques et politiques").

75 SIGAL, *Reporters and Officials: the Organisation and Politics of Newsmaking*, Lexington, 1973.

76 DAVIS, "Journalist-Source Relations, Mediated Reflexivity and the Politics of Politics", *Journalism Studies*, 2009, p. 204 ff., p. 205; DONSBACH and BRADE, "Nothing is as Practical as a Good Theory: What Communication Research Can Offer to the Practice of Political Communication", *The International Journal of Press/Politics*, 2011, p. 508 ff.

courts' "assertiveness depends on the public's ability to monitor their actions" and "courts adapt news values when selecting a decision to be promoted by a press release in order to increase the chance of reaching the public through the media".⁷⁷

This is evident when the former President of the *Corte Costituzionale* argues that not all cases can be selected for a press release, but only those that are "news":⁷⁸ his assertion confirms the importance of an active role of the courts in identifying newsworthiness in order to attract the attention of the media and the public. In the United States, it has been argued that "as strategic players, the justices are conscious of what press coverage means and how it can be employed to their ends. The justices seem to be utilizing publicity about themselves for their own strategic purposes, primarily to convey certain themes".⁷⁹ At the same time, justices "are using publicity [...] to defend the institution. [...] When the justices have felt that their institution was under attack, they have sought to protect it"⁸⁰ and they do so by using "media sources to explain their rituals and practices, as well as the relevancy of the Court in a new age".⁸¹

4 New Challenges for the Future

It has been argued that better communication of constitutional courts aims at achieving four main purposes: 1. to foster civic education of citizens; 2. from an "offensive point of view", to orient, confirm or affirm a legal solution; 3. "from a defensive one", to clarify and prevent misunderstanding and, if necessary, to answer attacks; 4. to ensure transparency, responding to the opaque, secret, or informal nature of the procedures.⁸²

In the pages above, I have attempted to demonstrate how courts pursue those objectives when engaging in better communication of their judicial activity. But as communication, by its definition, involves an exchange of information, namely a mutual relationship between the subjects of communication, in recent times courts themselves have been affected by changes in the relationship with public opinion and the media. The former President Lattanzi addressed the consequences of the new communication strategy upon the *Corte Costituzionale* when he stressed that "it must know and be known, must

⁷⁷ MEYER, *cit. supra* note 55, p. 726.

⁷⁸ See *supra* note 16 and corresponding text.

⁷⁹ DAVIS, *Justices and Journalists: the U.S. Supreme Court and the Media*, Cambridge, 2011, p. 176.

⁸⁰ *Ibid.*, p. 181.

⁸¹ *Ibid.*, p. 182.

⁸² See ACCF, *cit. supra* note 9, p. 20.

understand and be understood, because this means to understand and let understand the Constitution".⁸³

In the communication of judicial decisions, this implies that the courts' message must be flexible: it must be adapted to the circumstances and to the specific target that public courts aim at reaching. Information must be alive and not frozen.⁸⁴ At the same time, courts must be receptive of the stimuli coming from the (general and specialized) public if they want to convey a persuasive and effective message.

In the age of the Internet and social networks this calls the courts to a new responsibility. In the past, as I mentioned above, the technicalities of the legal jargon or the concise style of press statements also worked as means to protect the courts, to preserve their legitimacy, to counter attacks, and to transmit a sense of impartiality. Today as courts "talk" more, they expose themselves to political and social attacks.

Therefore, in the future courts should find a new way to strike a balance between transparency and seclusion, proximity and distance from public opinion. At the same time, as far as the communication of judicial activity is concerned, courts should be able to capture public attention on their message, but at the same time resist the temptation to stimulate public approval on their cases. Despite radical changes in communication, the courts' main objective should remain the same as in the past, that is to draw attention on their institutional role and preserve authoritativeness and impartiality.

83 Milella, *cit. supra* note 70, p. 5.

84 See ACCF, *cit. supra* note 9, p. 25.