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Transparency and courts

- In Law and Practice –

Recommended Changes in Latvia

Changes recommended in this report also should affect the Administrative Procedure Law, which has been adopted by the Saeima but will only come into force on July 1st 2003. Proposed changes to the Criminal Procedure Code should be taken into account for the draft of the Criminal Procedure Law as well. During preparation of the draft Law on Sworn Court Bailiffs the legislators should take into consideration the need for public access to information regarding the enforcement of judgments.

It should also be noted that a detailed examination of which laws, regulations or instructions should be revised and how (or new ones written) will be described in detail during preparation of the Project Document (Component 1, Activity 5). The following recommendations do not specify, for example, which paragraph and which sentence of which law must be changed and how, as this process requires not only changes to an existing law, it may also require changes to other laws (or other laws may take precedence and it may not be easily possible to change the required law). The following recommendations do specify which laws, regulations or instructions will have to be reviewed and possibly changed. The actual changes themselves, of course, are the final decision of the appropriate ministry of government agency.

1. Composition of courts and distribution of cases

The current situation in Latvia regarding the composition of court corresponds to the general requirements of West European standards. Cases should be distributed randomly, but regard could also be paid to judges' workload and qualifications. Random distribution of cases could be more frequent in Latvia. There are, however, no violations of existing international obligations by Latvia in relation to transparency of distribution of cases among judges.

Changes in legislation could be necessary in the distribution of cases among judges as to increase the liability of judges and/or Chief judges who do not follow precisely the instruction of the Ministry of Justice No 1-2/4, March 17, 2000. In addition, special attention has to be made to the deviations from the principles adopted by a particular court. The most appropriate way of accomplishing this task would be with a regular internal audit.

2. Identification of court proceedings

It has to be easy to for the general public and mass media to find out what proceedings have been initiated, are ongoing and/or have been concluded in a court. For this reason the court shall keep a register of all cases. Deviations exist among courts in providing the general public and mass media with up-to-date information about the initiated court proceedings. Ministry of Justice has to be stricter regarding the use of instructions and the observance by the courts of keeping registers up to date. Ministry of Justice has to write down transparent instructions how detailed the registers must be (time, date, etc.) as well as. These changes in legislation shall be done at the level of the Ministry of Justice. Courts have met international obligations in processing personal data from the registers. The changes should be made in the national legislation in order to eliminate the possibility for courts to deny access for general

public and mass media to these registers. To the extent that registration is made by processing the provisions of the Personal Data Protection law must be observed.

3. Public attendance at court proceedings

3.1. Hearings

The concept of hearings in Latvia includes, inter alia: detention (preliminary) hearings in criminal cases, main hearings (trial proceedings) in civil, criminal and administrative cases. The legislation as well as the practice regarding the oral court hearings in Latvia complies with the principle that an oral hearing shall be held if an individual requests so, provided that such hearing is not unnecessary and that there are no particular reasons against it (Article 6 of the European Convention on Human Rights).

3.2. The right to attend

In general, court hearings in Latvia are public, but since the right to attend hearings implies also that the public shall have the possibility of following the hearings, two steps (from the point of view of practice) should be taken in order to make necessary changes:

- the courtrooms shall be made of a size that is sufficient for the public to be present at the court hearing, taking into account the area where the particular court is located;
- larger courtrooms shall preferably be equipped with technical aids such as microphones and hearing loops.

3.3. Detention hearings (preliminary hearing)

According to the Art. 76 of the Criminal Procedure Law it is not stated that detention hearing may be held in camera. In practice, however, most detention hearings are not accessible for the public. In order to ensure that when the preliminary investigation has not been concluded by the time of a detention hearing and a public hearing could be counterproductive to the continuing investigation if the information was to be made public, the mentioned article should be amended:

> *In the case when the preliminary investigation has not been concluded by the time of a detention hearing and a public hearing could be counteractive to the continuing investigation if the information was to be made public, the court can decide that the hearing be held in-camera*.

3.4. Restrictions on public attendance at court hearings

The right to attend can be restricted in two ways; by partial exclusion of the public, i.e. expulsion or limitation of the number of people allowed in a courtroom, or by total exclusion when hearings are held in camera. Further, there are provisions restricting the attendance indirectly, such as restrictions of the use of certain equipment or concerning the use of security controls.

3.4.1. Limitation and expulsion of audience

According to the Art. 152 of the Civil Procedure Law and Art. 207 of the Administrative Procedure Law when limitation on the number of spectators is necessary due to overcrowding, the spectators are divided into groups: relatives, journalists and the general public. Relatives and journalists have the priority over the general public. No similar provisions could be found in the Criminal Procedure Code, where there should be made necessary amendments, for example, in Art. 17:

> *The number of persons to be admitted to the hearing room of a court shall be determined by the court according to the number of seats in the room. Relatives of parties and representatives of mass media shall have the priority to be present at the adjudication of a case.*

3.4.2. Hearings behind closed doors

Legislation, as well practice, in Latvia corresponds to Western principles regarding closed hearings.

There is no special provision that if a hearing is held behind closed doors, the reasons for it shall be noted down in the court records. Thus, Art. 87 of the Criminal Procedure Code, Art. 62 of the Civil Procedure Law and Art. 137 of the Administrative Procedure Law regarding the content of the court records should be amended.

3.4.3. Prohibition of certain equipment and security controls

As there is no general norm in Europe whether photographs, including film and TV recordings and live broadcasts, should be permitted in court hearings and the delivery of judgements, it is not possible to say that there should be mandatory changes in legislation made in this respect. But as the general trend in Europe is in favour of increased openness, the practice of courts should be directed in such a way.

There are no provisions in the Civil Procedure Law nor in the Criminal Procedure Code (although in this procedure there is not even a specific rule regulating the issue) that the court, during examination of persons, may prohibit audio recording if it will so embarrass the person being heard as to be detrimental to the inquiry. However, in practice in such cases it occurs frequently that judges do prohibit audio recording. Article 152 of the Civil Procedure Law provides that photographing, filming or videotaping at a court sitting shall be allowed only with the permission of the court. Before deciding such an issue, the court shall hear the opinion of the participants in the case. These provisions do not contradict West European standards of judicial transparency.

3.5. Public attendance at deliberations and the delivery of the judgment

Deliberations on judgments and decisions are not public in Latvia and it is in compliance with the European approach.

The same changes of the rules regarding public attendance in court hearings apply also to attendance at the pronouncement of judgement (see 3.2., 3.3., 3.4.1., 3.4.3.).

4. Public access to court opinions and court information

4.1. Courts' duty to provide documents

The general public shall be entitled to access documents - opinions and other court information - held by courts if the document is regarded to be official and not secret. The reasons for secrecy should be laid down in law and be given a narrow interpretation. Latvia should change legislation and practice on access to court opinions and court information. It is recommended to supplement basic legislative acts on the judiciary with the principle of the general public's access to information and the court's duty to provide it. Thus, Article 19 of the Law on judicial power should be amended as:

Judgments and decisions shall be public when they have been pronounced or despatched and information about the outcome of the case shall be accessible by this time. Upon request courts shall make information contained in an official document in their files and archives available to the public, provided it is not secret, and does not constitute an impediment to the usual functioning of the court.

Moreover, it is also recommended to apply the Freedom of information law in relations with judicial institutions.

In addition, the court shall not be permitted to inquire into a person's identity or her/his purpose for examining an official document. However, insofar as such an inquiry is necessary for the court to decide whether there is any secrecy-related obstacle to make a public document available, the court may conduct such an inquiry. If part of a document contains secret information, this may still not be a sufficient reason for denying an applicant access to the rest of the document. If a full document cannot be made available without disclosing the secret part, the rest of the document shall be made available to the applicant in the form of a transcript or a copy.

4.2. Courts' duty to provide information

The same change of the rules regarding the court's duty to provide documents also applies to the court's duty to provide information (see 4.1.).

In addition to the above-mentioned courts shall provide information regarding their judging activities to a suitable degree; inter alia, courts ought to give information about the progress of a case and composition of the court.

4.3. Right to appeal

It is recommended to amend the domestic legislation in a way that the applicant have a right to seek for remedy if the court has rejected a request to make a document available or if it has supplied a document subject to certain reservations. In order to make it possible for the applicant to appeal, the refusal has to be in writing. There shall always be granted a right to request a written decision.

4.4. Procedure for providing information

The Ministry of Justice should issue instructions, ensuring that the procedure is applied in a uniform way by all courts. Such instructions shall not be given a restrictive interpretation.

Personal contact - Courts shall be open to the general public during weekdays, and the court registry, where documents of adjudicated cases are kept, shall be open during regular office-hours**.** General questions of practical nature e.g. when a hearing will be initiated etc, shall generally be answered directly at the registry. More detailed requests and inquiries shall be directed to the officer handling the matter.

Telephone - Information on the telephone shall be obtainable to a certain degree during regular office hours. It shall be possible to order copies of documents relating to adjudicated cases as well as copies relating to ongoing cases on the phone and to have information of a practical nature relating to an ongoing case, e.g. whether an application has been filed with the court, when a hearing will be held etc.

E-mail – If courts can be contacted by e-mail such messages shall be handled in the same way as any other form of communication. Hence, questions shall be answered rapidly.

Facsimile – If courts can be contacted by fax, and information is requested this way it shall be handled in the same way as any other form of communication.

Oral information shall, in principle, always be free of charge. If the information is provided as a copy of an official document the court has the right to charge for this.

4.5. Public accessibility to information relating to the progress of a case

4.5.1. Pre-proceedings information

The following information shall be public:

- Decisions on whether or not to prosecute, whether or not to instigate a preliminary investigation or whether to discontinue a preliminary investigation
- Information relating to a preliminary investigation if and when prosecution proceedings have been instituted or when the prosecutor has decided not to prosecute.
- All documents submitted by the parties of a case, including applications.

(See also point 4.5.2 below)

4.5.2. Information about ongoing proceedings

The following information shall be public:

- All court decisions served upon the parties and thereby considered as despatched and accessible to the public. This includes, inter alia, decisions concerning refusal to accept a summons application, leaving a summons application without examination or issuing a summons.
- Information about the composition of the court as soon as it is decided (which is often not the case until the session begins).

- Information about persons involved in a case. The case list shall show the identities of the parties. The identities of the counsels and the prosecutor shall also be part of official information.
- Information about the exact time of a hearing. It shall be clear from the case list.
- Decisions on whether judicial proceedings have been transferred to another court, whether a judgment of a court in a given case has been postponed, or whether judicial proceedings have been stayed.

In order for information to be public as mentioned in point 4.5.1, 4.5.2 and 4.7 of the report, supplementary amendments to criminal and civil procedural laws are necessary. Thus, Article 17 of the Criminal Procedure Code should be amended as:

The general public shall be entitled to access documents (judgements, decisions and other court information) held by courts if the document is regarded to be official and not secret. The reasons for secrecy should be laid down in law and be given a narrow interpretation.

The following documents, inter alia, shall be public and accessible:

- *Decisions on whether or not to prosecute, whether or not to instigate a preliminary investigation or whether to discontinue a preliminary investigation*
- *Information relating to a preliminary investigation if and when prosecution proceedings have been instituted or when the prosecutor has decided not to prosecute;*
- *All documents submitted by the parties of a case, including applications;*
- *All documents submitted by the parties including summons applications and evidence;*
- *Interim court decisions after being despatched;*
- *Court records after the judgment has been pronounced or despatched ;*
- *Court recordings of examination in the court;*
- *Judgments and final decisions when they have been pronounced or despatched. The documents shall be accessible in the form of an exact copy of the original, including reasons, dissenting opinions, result of voting and identities of the participants;*
- *Writ of execution - whether a judgment or other type of title of execution*

It is also recommended to introduce the same clause in the new Draft of the Criminal Procedure Law.

Article 11 of the Civil Procedure Law and Article 108 of the Administrative Procedure Law should be amended as:

The general public shall be entitled to access documents (judgements, decisions and other court information) held by courts if the document is regarded to be official and not secret. The reasons for secrecy should be laid down in law and be given a narrow interpretation. The following documents, inter alias, shall be public and accessible:

- *All documents submitted by the parties of a case, including applications;*
- *All documents submitted by the parties including summons applications and evidence;*

- *Interim court decisions after being despatched;*
- *Court records after the judgment has been pronounced or despatched;*
- *Court recordings of examination in the court;*
- *Judgments and final decisions when they have been pronounced or despatched. The documents shall be accessible in the form of an exact copy of the original, including reasons, dissenting opinions, result of voting and identities of the participants;*
- *Writ of execution - whether a judgment or other type of title of execution.*

4.5.3. Information about delivery of judgments

Judgments and final decisions shall be public when they have been pronounced or despatched and information about the outcome shall be accessible by this time.

Appropriate changes concerning this issue are mentioned in point 4.1 regarding changes in Law on judicial power.

4.5.4. Information regarding appeal

An appeal shall be accessible to the public. Thus, the same rules regarding accessibility to information during the first hearing stage also applies to accessibility to information during appeal stage.

4.5.5. Information regarding enforcement

All information about the progress of enforcement shall be accessible at the Enforcement Authority. For that reason the present practice of the court bailiffs must be changed.

4.6. Access to documents from court archives

All courts shall have means (copying facilities and staff) to make documents in their archives available not only relating to recently adjudicated cases but also older documents.

4.7. Accessible documents

The following documents, inter alia, shall be public and accessible:

- All documents submitted by the parties including summons applications and evidence.
- Interim court decisions after being despatched.
- Court records after the judgment has been pronounced or despatched.
- Court recordings of examination in the court.
- Judgments and final decisions when they have been pronounced or despatched. The documents are, in principle, accessible in the form of an exact copy of the

original, including reasons, dissenting opinions, result of voting and identities of the participants.

- Writ of execution - whether a judgment or other type of title of execution

For the recommended statutory changes see point 4.5.2 of the report.

4.8. Ways of releasing copies

Irrespective of the way by which the court chooses to release a copy the request shall be dealt with promptly.

Personal contact - Documents shall be made available immediately upon request, if possible. If a document is secret in part, the rest of the document shall be made available in the form of copy. Regarding documents relating to ongoing cases, some delay may occur if the judge handling the case is using the requested documents, or if the document is being used in some other way. There shall be facilities for the applicant to read the original documents in the court. If the document cannot be read or understood without using technical aids, e.g. tape recordings or other technical evidence, the court shall arrange for such equipment.

Postal service - The general public shall also have the possibility to receive copies by post.

Facsimile - If possible, fax is recommended unless documents are very comprehensive.

The instructions by the Ministry of Justice under point 4.4 of the report should include procedure for release of copies.

4.9. Costs of access to information and court opinions

Copies of documents (including documents released by fax) may be charged for. Taking into account Latvian practice it is recommended to revise rates of charges regarding administrative costs because the concept of charges in Latvia includes constant fee per document irrespective of quantity. But it would be advisable in exceptional circumstances that there be an upper limit for these charges. Otherwise, copies of extensive preliminary investigations, for example, could be very expensive. Nothing more than the copies themselves shall be charged for. Thus, the time spent on finding a document shall be free of charge. Also information delivered over the telephone or by e-mail shall be free of charge.

5. Training of judges and court staff

5.1. Transparency Aspects of the Judicial Training Centre's Activities

At the moment none of the Judicial Training Centre's (JTC) courses are specifically aimed at addressing transparency issues. Nevertheless, quite a number of courses have been held in the past that have some relationships to transparency, e.g. media relations, ethics (general), presentation of judgments as well as courses on anti-corruption issues. The media relations course is the one most closely associated with transparency. There have been some general courses as well for heads of chancellery, but not with a focus on transparency.

5.2. Recommendations for Change

This project envisages a training programme for judges and court workers on transparency issues. Such a programme has already been developed in close collaboration with the JTC and it is specifically aimed at increasing judges' and court workers' knowledge of transparency issues. The program is included in the report on Training of Judges and Court Employees.

There are following some specific recommendations:

- this program continues to be offered to judges after the completion of this project. It is also recommended that one to two new courses on transparency issues be developed each year, and these courses make up a given number of all of the JTC's courses – the exact number will have to be determined in cooperation with the JTC, but it should probably be not less than four to five courses.
- a certain number of courses have an international perspective and be presented by qualified international lecturers. In this regard, one of the major problems that beset almost all judges is their poor knowledge level of the English language. Thus, it is recommended, that over time, all judges gain at least a working knowledge of the English language (which will allow them to read and understand legal literature written in English).
- as a part of the media training program guidelines be developed in booklet form for working with the media, which then can be distributed to all judges and court employees (whether or not they have taken the media relations course).

To help to maximize the efficiency of the courses on transparency we make the following additional medium-term recommendations (six months to one year):

- identify funding in order to print study materials for every course, as well as store study material information in electronic form for future use (it might be possible to do this on this project's portal); these materials can then always be used as a reference
- improve the systematisation of course' s and lecturers' evaluation information, by motivating judges to participate more actively in the course evaluation process; create a data base of course evaluation results
- acquire a software program which will allow the Ministry of Justice to share and exchange judges' data base information with the JTC
- develop a 5 year business plan with the objective of helping the JTC to become self-sufficient financially.

6. Drafting of opinions

The legislation regarding the drafting of opinions in Latvia complies with the principle that the language used by a court shall be intelligible to an average layman and the reasons for the judgment clearly structured and explained. It is not in conflict with international obligations of Latvia Article 6-1 of the European Convention on Human Rights. Therefore, there is no need to make changes in the Latvian legislation. Most important are changes in Latvian practice regarding transparency relating to the drafting of opinions. Due to the lack of sufficient legal argumentation in judgments, the judge's training program should devote special attention to

Western-type of legal reasoning. This should be incorporated within training of judges as a separate lecture.

7. Courts and Media relations

7.1. General issues

Transparency in courts to large extent depends on communication between the courts and media because it represents the interests of general public. It is very important for both media (general public) and courts to have defined communication policy (so called “rules of the game”). This would stipulate common understanding of transparency principles and their practical application.

The common communication policy should be based on certain legal principles, international obligations and internal regulations and customs. According to the Freedom of Information Law everybody is entitled to ask for and to obtain information from public institutions if this information is not restricted. However, the law applies these conditions only to public administrative institutions and local governments. It means that freedom of information in judicial institutions has not been regulated. In order to change situation, judicial institutions (including courts) should be included in the Freedom of Information Law.

The communication policy should be formed based on the above mentioned law and government accepted Guidelines for the Government Communication Policy. The objective of the Guidelines for the Government Communication Policy is to establish an effective correlation between public administration and the general public.

The Guidelines offer fundamental changes in the communication system and work methods that will result in a deeper understanding of the public administration work as well as transparent and effective system for organising communication work in public administration.

Such a policy for courts system can be created by Ministry of Justice in cooperation with courts and media representatives. This process should be as open and transparent as possible involving all the interest groups. Communication policy should be adopted by the courts and used as practical instrument and general guideline dealing with media. The strategic objective of communication policy should be to promote public access to court judgments and courts information.

The effective communication policy might have a positive influence on the quality of judgments. When preparing a judgment, the judge will know that besides reading it out once in the courtroom, there will be an opportunity for an unlimited number of people to examine the judgment.

The publication of court judgments might assist in the fight against corruption. It would be more difficult for a judge to acquit a guilty person or to impose inappropriate punishment for a serious crime.

Publication of court decisions on the internet would make it easier to analyse them. At the moment it is quite complicated due to technical problems. It is difficult and even impossible to collect all materials, which are related to the issue in question. It is understandable that the shortage of materials reflects itself in the quality of research. Availability of judgments would improve their analysis and case studies. Consequently it will help to develop legislation and improve the court practice.

The publication of judgments and courts information might have a preventive effect which is important factor in the fight against corruption. The publication of court decisions will reflect the transparency level in state authorities. At present the members of the public (media) have access to the information on the activities of the Saeima, the government, local governments. The same level of transparency should also be achieved in the court system.

By ensuring public access to court judgments it is important to protect people's rights to privacy. It means that certain information should not be disclosed when decisions are published on the internet. First, this refers to the data of the people involved in the court proceedings – the witnesses and the victim. The public is entitled to know that a certain person who has committed a crime has been found guilty and has been convicted. But there is no need to publish data on the witnesses and the victim. This information can remain undisclosed and initials may be used in place of first and last names.

The issue on the scope of the information to be disclosed can be discussed after a public database of court judgments is established. But at the moment, taking into account that access to information is the foundation of democracy, it is important for government officials to adopt a conceptual decision on the publication of court judgments.

Court officials shall have a possibility of informing the media about what is going on in their field of activity. However, Court officers may not, for instance, breach pertinent stipulations about secrecy. Neither may they make an official document, classified as secret, available to the public.

7.2. The Judge and the media

A judge may not disclose any information regarding the content of any judgment or other decision, which has not yet been rendered. Nor may he or she disclose information regarding what has taken place in the course of deliberations. A judge commenting on an ongoing case may risk disqualification for having a preconceived opinion on the matter in hand.

Thus, a judge who wants to make comments on the cases he has participated in shall be barred from revealing anything more than what is evident from the court reasons. However, a judge shall be permitted to discuss a specific case as long as he does not reveal more than what can be obtained from the reasons and it is not, morally or legally, wrong if a participating judge defends himself in public, in an appropriate way, when a certain ruling is criticized.

7.3. Working conditions for the media

Courts shall strive to meet the interests of the journalists. Working conditions must, however, differ from court to court. Some of the smaller courts can provide active service to the media by sending out case lists in advance, for instance, while others have a more passive policy. The different working-conditions of the courts and the different demands from media organisations explain the diversity.

It shall be easy for journalists to find out whether any interesting applications have been filed with the court and simple items of information shall be provided promptly. However, if the journalist asks for material, that requires an extensive search in the court archives, the court will need some time to produce the requested material. Documents may be handed out free of charge to the media, particularly if they are short.

7.4. Responsiveness of courts to mass media

Each court ought to establish well-functioning contacts with the media organisations, even though the exact nature of these relations varies from court to court. In the end, it is always the head of the court who is responsible for information activities.

It is difficult to give a general answer on whether a court should have a permanent contact person responsible for facilitation of contacts with the media. Many journalists prefer to get in touch with the judges involved in a given case. A contact person would then not fulfill any meaningful function. But a temporary press secretary may be appointed for trials with great media coverage.

It is very important to define who is responsible for communication with media. This is a goal of the communication policy of the courts. Establishing the institution of press secretary might be useful, however, it depends on financial investments and perception of judges and courts personnel. Taking into account that usually courts chairpersons have high status and authority, they could be the responsible for media relations and implementation of the courts communication policy. Another important responsibility would be interpretation and translation of the courts information from the legal language into media language.

7.5. Ways of disseminating information

Various ways of disseminating information can be used. However, there is no common system of responding to the requests defined by law. Therefore, it is important to make relevant changes in Freedom of Information Law which also should apply to the courts and judiciary institutions.

Press conferences can be arranged in connection with trials evoking extensive media interest. The invitation to the conference should indicate, inter alia, the representatives of the courts and telephone numbers of person who can answer questions posed by those who cannot attend. Press releases can also be used. Subscription services can enable subscribers, e.g. media or law firms, to get updated court opinions related to specific cases. Broadcasting facilities in courtrooms can also facilitate media coverage. Dissemination of case lists to media can also be helpful.

8. Publication of Court Information and Court Opinions

The principle behind all the laws given in Section 8.1 of the Report on the existing situation in Latvia should be that, with certain restrictions governed by law, the public shall have reasonable and easy access to court opinions and court information. For this reason publication of such documents is important.

As noted in this report on the existing situation in Latvia, in practice reasonable and easy access is not always the case.

The following recommendations are based in Section 8 of the model of judicial transparency developed in Report 2.

8.1. Statutory issues

As far as publishing of court opinions is concerned, as stated in Section 8.1 of this report, with the exception of those of the Constitutional Court, there is no legal requirement for any court

opinion to be published. The only requirement is that, at the close of a case, the judgment (court opinion) be read out in an open court by the judge responsible.

8.2. Publication of Court Opinions

Latvian law should be changed to give legal force to the current practice, i.e. that a selection of court opinions from all court levels must be published. At the moment there is no reason to change the current publishing mechanism under which the Supreme Court publishes its own opinions, while the Courthouse Agency publishes all other opinions (for details see Section 8.2 of Report on the existing situation in Latvia). Changes to this process should only be made, if necessary, after development of the business plan for the Courthouse Agency (Activity 4 of Component 1 of this project) and after discussions with the Supreme Court. EU directive 95/46/EC on processing of personal data, and the Personal Data Protection Law implementing the Directive, will also have to be taken into account.

The current selection process for publishing cases works well and there is probably no reason to change it. While this process applies to publishing cases on paper (books) it can be extended to electronic publishing. A wider selection of cases could be published electronically (on the portal which will be developed as part of this project), but there does not appear to be any necessity to publish electronically all cases that are heard in all levels of courts. As indicated elsewhere, many of the cases heard in first instance courts are repetitive, e.g. land registrations, divorces, etc. and their publishing would contribute nothing to the issue of transparency. It may be also economically unfeasible to publish all cases electronically. If necessary, a selection of "typical" first instance cases can be published either on paper or electronically.

Nevertheless, if a member of the public wished to get access to a particular court opinion (that has not been published) this should be possible, but it does not have to be free of charge and it does not have to be done instantly (although there should be neither unnecessary delay in providing the opinion nor unnecessary costs imposed on the person making the request). A cost-recovery mechanism that ensures that all out-of-pocket costs for obtaining and providing the required information are covered should be developed and guidelines established. The same would apply for time limits within which the information has to be delivered to the recipient.

There should be no restrictions on providing court opinions to any private organization, e.g. a magazine, a scholarly journal, book publisher, etc. that wishes to publish court opinions. The only conditions would be that a request for information cannot put an unreasonable burden on a court or other institution that has to provide the information. "Unreasonable" would have to be defined, but it could be, for example, that a certain number of court opinions can be obtained for free and anything over that number must be paid for on the basis of cost-recovery mentioned earlier. This principle should apply to access whether in paper format or electronic format.

8.3. Publication of court information

The question of which court information to publish will be examined more closely during preparation of the project document and preparation of the CHA's business plan, and will be based on a variety of criteria such as cost vs. demand, legislative requirements, ease of access

to specific pieces of information, different types of users with different needs and thus different access privileges.

8.4. Publication of court opinions in the media

There should be no restrictions on publication of court opinions in the media. The only exceptions would be those provided for by law, e.g. in-camera court hearings.

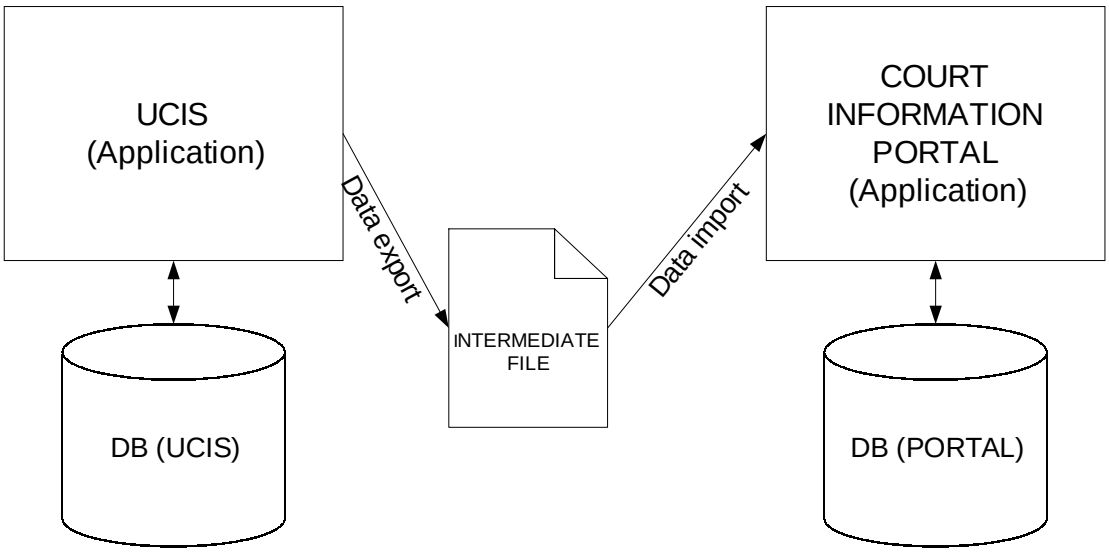
9. Recommendations for the courts' computer systems

Almost all Latvian courts have necessary computer equipment, Internet and trained staff. The Courthouse Agency is going to install the United Court Information System (UCIS) in all Latvian courts and train staff to use it.

In order to ensure the necessary extent of transparency in the Latvian court system, UCIS must be capable of exchanging information between UCIS and the proposed court information portal (the Portal) being prepared under this project.

In general UCIS and the Portal are fully independent systems with their own applications and databases (see schemes below). The Portal needs to receive certain UCIS information in order to be useful. There are three major ways to do it as illustrated below.

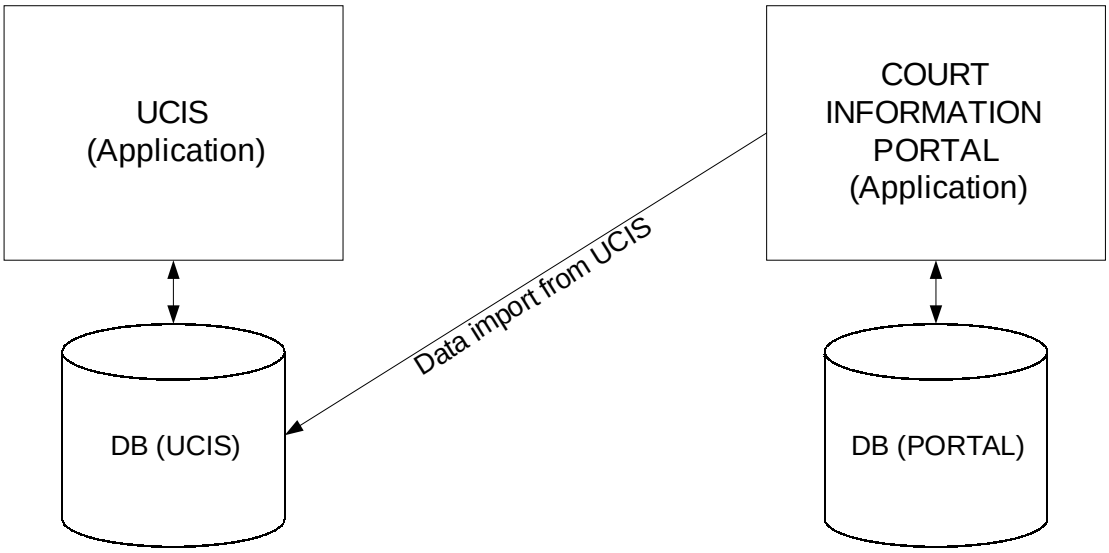
1. Data export/import using an intermediate file.



Under this mechanism UCIS (an application more precisely) will write the necessary data into an intermediate file with a fixed structure. The Portal (an application) takes information and inserts it into the Portal database.

The fixed intermediate file structure will guarantee that changes in UCIS will not affect the Portal's applications and database.

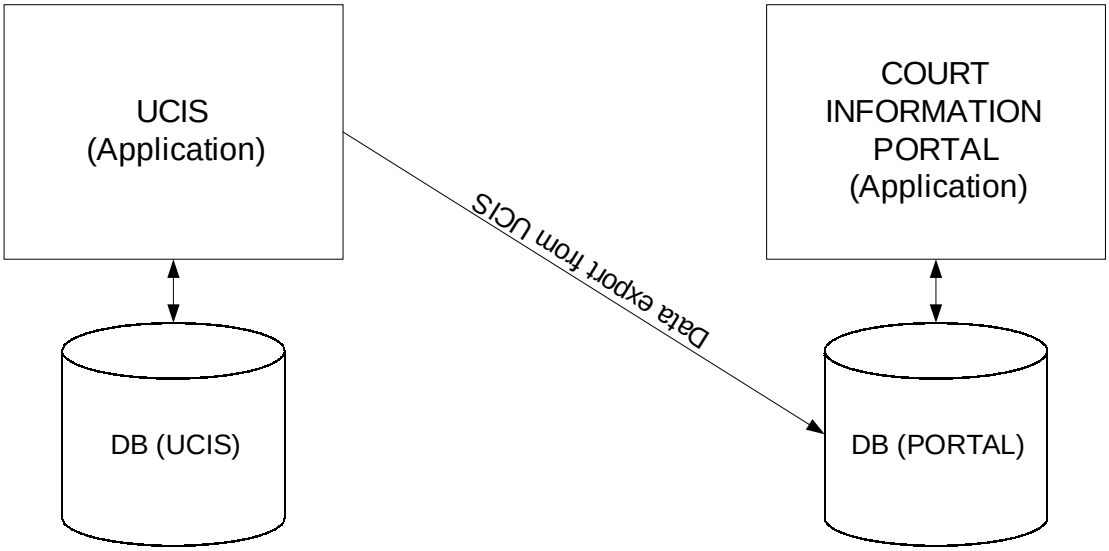
2. Direct data input from UCIS database.



The Portal (an application) takes information from the UCIS database directly and inserts it into the Portal's database.

In this case, changes in the UCIS database will call changes in the Portal application. However, in this case if UCIS changes something, court information will not be available until the Portal changes its application. Unless an information exchange system is developed there may be discrepancies between UCIS and the Portal.

3. Direct data export to Court Information Portal DB.



UCIS (an application) writes information into the Portal database directly.

In this case changes in the Portal database will call changes in the UCIS application. Again, if UCIS changes something (or the Portal changes something) court information will not be available until the Portal changes its application (or vice versa). Unless an information exchange system is developed there may be discrepancies between UCIS and the Portal.

Doing a comparison we see that the best choice is using intermediate fixed file (Scheme 1). This mechanism preserves the independence of both systems.

9.1. Issues related to UCIS

Even though 26 courts have UCIS installed, the reality is that only statistical data on civil cases is being entered. The only court that is actively working with UCIS is the Kuldiga court and the Supreme Court. Training on how to use UCIS has also not been completed. This means that at the moment there is very little information in UCIS that could be used in the Portal, and without UCIS information, the Portal is in practice useless.

In March, April and May of this year it is proposed to complete installation of UCIS in all courts, and complete training on UCIS. As well it is proposed that statistical data on criminal cases will be entered into UCIS.

While in theory it is possible (by the courts) to manually enter court opinions and court information into the Portal, in practice this will give the Portal very little information because of the sheer volume of information to be entered and the lack of resources within courts to do so. Entering data into the Portal is not a priority for court staff.

As completion of the UCIS project is only scheduled for 2006 (over 3 ½ years away) there is no indication of any urgency within UCIS to expedite matters.

Conclusions:

- Without UCIS information, by completion of this project there could be only statistical data in the Portal, plus any material that has been prepared as part of this project, eg training and educational materials and courses.
- It is possible to enter court opinions and court information, but within the project there are no resources to do so, and courts also do not have the resources to do so; the volume of data is too large for this solution to make any practical difference

Recommendation:

As court operations and activities are the responsibility of the Ministry of Justice, it may be necessary for the ministry to issue an instruction to courts to start entering court opinions and court information into UCIS.