



CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE)

**Questionnaire for the preparation of the CCPE Opinion No. 8
on the relationship between prosecutors and media**

Replies from Turkey

A. Introduction:

The Recommendation Rec(2003)13 of the CoE Committee of Ministers on the provision of information through the media in relation to criminal proceedings referred to the following:

- the commitment of the member states to the fundamental right to freedom of expression and information as guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- the media have the right to inform the public due to the right of the public to receive information, including information on matters of public concern, under Article 10 of the Convention, and they have a professional duty to do so;
- the importance of media reporting in informing the public on criminal proceedings, making the deterrent function of criminal law visible as well as in ensuring public scrutiny of the functioning of the criminal justice system;
- the rights to presumption of innocence, to a fair trial and to respect for private and family life under Articles 6 and 8 of the Convention constitute fundamental requirements which must be respected in any democratic society;
- the possibly conflicting interests protected by Articles 6, 8 and 10 of the Convention and the necessity to balance these rights in view of the facts of every individual case, with due regard to the supervisory role of the European Court of Human Rights in ensuring the observance of the commitments under the Convention.

B. Questions:

A. Existing legal provisions and regulations

1. Is the relationship between prosecutors and media determined by law or other written provisions? Describe them briefly.
There is not a law or an equivalent regulation regulating the relationship between prosecutors and media in Turkey. However, there is not a legal provision preventing that situation. Through media and considering the balance between the freedom of information of society and the privacy of investigations, the requirements in this field are tried to meet by an administrative regulation (a circular) which is enacted by the High Council of Judges and Prosecutors.
2. Are prosecutors authorized to have direct relations with media? If this is not the case, who communicates the information concerning judicial and criminal cases to the press?
In line with the circular #33 of High Council of Judges & Prosecutors, in order to inform public about the investigations and proceedings conducted by judicial authorities, it is envisaged that (1) the Public prosecutor (wherever assigned as a spokesperson) and (2) chief Public prosecutors (where no spokesperson assigned) will hold the press releases verbally or in writing about the investigations.
3. Which other persons are authorized to provide information to the press within the framework of these cases (police service, lawyers, parties to a proceeding, other persons)?
In the Article 157 of Code on Criminal Procedures, the provision states "Unless provided otherwise by the code and under the requirement to not harm the defense rights, procedural interactions during the investigation phase shall be kept as a secret." Accordingly, since investigations are carried out in secrecy, it is not a matter of discussion that other people or authorities provide information for the press.
4. Do you have any experience of joint communication by several public authorities (e.g. prosecutor and police)?
No, we do not.
5. During which stage of the procedure can prosecutors communicate the information (make a distinction between the pre-trial investigation (including formal accusation), the court proceedings and the situation after the judgment)?

An investigation concerning a crime starts with the judicial authorities (justice police or Chief Public Prosecutor's Office) being informed about the evidences that could raise reasonable doubts on the crime was committed. The Prosecution Office is responsible completely for the procedure after the start of the investigation and all processes of the investigation. Also, the only competent authority who is responsible for informing the press in the stage of investigation is the Prosecution Office.

It is the duty of the Prosecutors who are entrusted by HCJP to inform the media on the investigation process. If there is not such kind of entrusting, the Chief Public Prosecutor is the authorized person that shares information with press as stated in the Circular of HCJP.

Informing press on the judicial process starting after the completion of investigation is also fulfilled by the Prosecutors who are press agents.

6. Are the judges authorised to inform the press? If this is the case, during which stage of the procedure?
Concerning the ongoing cases, there is not a provision that regulate judges to inform the press.
7. Is there supervision on the relationships between prosecutors and media in your country? By whom and how?
There is not a direct mechanism that regulates these relationships and could take binding decisions in terms of both parties. Yet, as the Circular numbered 33 of High Council of Judges and Prosecutors regulates the press statements of the prosecutors generally, the supervision for prosecutors is made indirectly by HCJP.
8. Are there specific rules which guarantee that the information communicated to the press does not violate the privacy, the human dignity and the presumption of innocence? What are the measures to avoid the phenomenon of "trial by press"?
There is not a specific rule in our country in that issue. But it is possible for HCJP to start a disciplinary sanction against the prosecutor who informs the media. Within the press statements, the right of privacy, the personal integrity and the presumption of innocence are guaranteed under the Circular No. 33. If the media makes news that could be considered as a "lynch of media", it is possible for the relevant persons to take judicial and penal measures within the frame of general provisions. In the Penal Law, to commit crimes such as insult or calumny via media is considered particularly and it imposes heavy sanctions.
9. Are there any sanctions (either disciplinary sanctions or other types of sanctions) against public prosecutors who break the rules of inter-relationships with media?
There is not a specific provision in Turkey regarding the issue. For that reason, the problem is solved within the frame of the general provisions. "the infringement of the privacy of the investigation" crime set forth in the Criminal Law is a valid provision in terms of prosecutors. The press statement made by the press agents should not infringe the privacy of the investigation. The activities of the prosecutors entrusted as press agent should be in accordance with the Circular of HCJP and also the Law of Judges and Prosecutors determining the code of ethics and practice that the judges and prosecutors should obey in their activities. The adverse activities may cause to start disciplinary sanctions against prosecutors who are press agents and also to impose them disciplinary sanctions.
10. How do the prosecution services deal with the security risks caused by disclosure of information concerning the prosecutors and the cases?
Such kind of documents and data are kept in secured cases in Chief Public Prosecutor's Office.
11. Are there any provisions set forth to forbid publishing a public prosecutor's (or a judge's) name when he/she is in charge of a case? Are there any procedures that in practice tend to prevent such a publishing?

The investigations in Turkey can be divided in two as general and special. Within the context of the general investigations, there is not any specific provision that forbid publishing the names of the judges or prosecutors conducting an investigation.

Yet, there is a specific provision preventing to publish the names of the judges and prosecutors conducting the investigations concerning terror and organized crimes.

The abovementioned provision is as below:

In the Anti-terror Law Article 6 "... those who expose or publish the identities of the public officers who served in antiterrorism or who targets those persons get prison sentence from 1 year to 3 years."

B. Organisation of communication

12. How prosecutors communicate with the press (press releases, press conferences, directly by telephone or e-mail, use of social networks etc.)?
The prosecutors as press agents primarily makes press statements or conduct conferences in order to inform the press. However, if the press agent prosecutor finds necessary, it is also possible to inform the press via telephone or e-mail. There is no regulation restraining those circumstances.
13. Can press conferences or other releases be made by prosecutors in cases of international investigations? If yes, which procedure do you follow?

There is not a specific regulation regarding the international criminal investigations that regulates the relationship between prosecution & media. For that reason, the principals in force for general investigations are also in force for criminal investigations. In this context, the press statements are made within the procedures mentioned in the answer to the question 12.

14. Is there communication with all the media or with some (newspapers, audiovisual media, internet)?
The chief goal of the Circular of HCJP that regulates the relation between Prosecution & media is to share the information with relevant persons without discriminating any media organs. In this sense, there is no discrimination between newspapers, media organs and the internet.
The prosecutor as a press agent can decide to make a statement to the press by himself about the investigation process or he can also decide to meet the demand of a media organ. That is, in the first one, the statement is transmitted all media organs and in the second one, the requested information of a media organ is transmitted in private.
15. Are there regulations prohibiting public prosecutors to give an advantage to single journalists (and/or leaving out some of them)?
There is not a specific regulation in this matter. The situation is considered within the frame of the of Ethics and Disciplinary rules.
16. How is the communication organized by the prosecution services? Do they have spokespersons? If yes, what is their status and are they prosecutors? If no, do the prosecutors communicate themselves? Do they need an authorization to do so? Are prosecutors supervised in this field?
An investigation starts when the judicial authorities (justice police or Public prosecutor's office) are informed about the evidences that cause suspicion regarding the crime. The Prosecution is the only office responsible for the process of the investigation and for all investigations conducted within that process. Also, the Prosecution Office is the competent authority for informing media at the investigation process. It is the duty of the Prosecutors who are entrusted as press agents by HCJP to inform press on investigation process. If there is not such kind of entrusting, the Chief Public Prosecutor is the authorized person of sharing information with press as stated at the Circular of HCJP. The duty of informing the press on the judiciary process starting after the completion of the investigation is also conducted by the prosecutors who are entrusted as press agents
17. How does the media communicate with the prosecutors (official representatives, specialized journalists, necessary authorizations)?
The media organs ask for the required information directly through the crime reporters who are highly trained and indirectly through e-mails and other written documents.
18. What kind of information may be disclosed (names of parties, witnesses, prosecutors, certain facts disclosed due to an investigation, whether or not linked to the case)?
As there is not a specific regulation determining the principles of prosecution and media, the problem is tried to be solved through the general provisions. In this regard, the information not to infringe the privacy of the investigation and the right of privacy can be shared with media. The names of the parties and witnesses are not revealed in the implementation. By indicating certain facts within the scope of the investigation, the evidences are correlated with the investigation.
19. Is there an official policy encouraging prosecutors to respond to the needs of media, and how is this policy implemented?
The judicial bodies do not have a specific policy in this matter.
20. Are the prosecutors' communications with media systematically monitored and evaluated by using monitoring, feedback from the public, communication surveys or other measures?
No, they are not.

C. Proactive media approach of the prosecution service

21. Has the prosecution service developed a proactive media approach (access to prosecutor's decision, bringing a selection of relevant cases to the attention of the media)?
No, it has not
22. Has the prosecution service developed activities to explain the work of prosecutors to the general public and media and to inform them about recent developments (open day in prosecutor office, visiting courts, publishing booklets, developing online teaching materials)?
No, it has not
23. Can communication with media be used as an investigative tool (for instance by spreading identikit around or even pictures showing the commission of a crime)? If yes, please specify.
No, it cannot. It is aimed to conclude the investigation by spreading the identikits of the suspects.

D. Professional training of prosecutors and journalists, their ethics, conduct and means of communication

24. Are prosecutors trained during their initial and continuous training on the requirements of the European Convention on Human Rights as regards freedom of expression and access to information?
The prosecutors take courses on human rights within the context of the training programme.
25. Are prosecutors trained on how to interact with media?
The prosecutors who are entrusted as a press agent by HCJP are being trained on judiciary & media relations periodically.
26. Are journalists trained on how to interact with the prosecution services?
We do not have such a training programme organized by the judicial bodies.
27. Are there joint training courses, conferences, seminars, etc. organized for prosecutors and journalists in order to help them to better understand each other's role and support each other, in the context of striking the right balance between the above-mentioned rights and the presumption of innocence and the right to protection of private life?
No, there are not.
28. Are there professional associations of media and journalists competent to regulate their interaction with the prosecution services?
No, there are not.

E. Regulation of media activities

29. Is there an internal board (or another institution) that regulates the activities of media or deals with the complaints lodged against media because of the violation of an individual right within the framework of a criminal procedure?
No, there is not.
30. Please describe criminal, administrative and/or civil procedure concerning libel, slander, and/or similar violations of a person's reputation. What is the role of the prosecution service in these matters?
The actions of the media offensive to people's reputation, and insulting or degrading via broadcasting or publishing may be considered as crimes of "defamation", "aspersion" or "violation of the investigation secrecy" as defined in Turkish Criminal Code. The consideration and the definitions of the aforementioned crimes via media are as follows:

Defamation

ARTICLE 125- (1) Any person who acts with the intention to harm the honor, reputation or dignity of another person through concrete performance or giving impression of intent, is sentenced to imprisonment from three months to two years or imposed punitive fine. In order to punish the offense committed in absentia of the victim, the act should be committed in presence of least three persons.
(2) The offender is subject to above stipulated punishment in case of commission of offense in writing or by use of audio or visual means directed to the aggrieved party.

Violation of Privacy

ARTICLE 134- (1) Any person who violates secrecy of private life, is punished with imprisonment from 1 to 3 years, or imposed punitive fine. In case of violation of privacy by use of audio-visual recording devices, the minimum limit of punishment to be imposed may not be less than one year.
(2) (Amend: art. 2/7/2012-6352/81) Any person who discloses audio-visual recordings relating to private life of individuals are sentenced to imprisonment from two years to five years. In case of commission of this offense through press and broadcast, the punishment is implemented as the same.

Recording of Private Information

Aspersion

ARTICLE 267-(1) Any person who cast aspersions on another person by raising complaint or notifying authorized bodies, or by using media in order to enable commencement of investigation and prosecution against this person, or imposition of administrative sanctions despite of his innocence, is punished with imprisonment from one year to four years.
(2) The punishment is increased by one half in case of commission of this offense by slander based on produced evidences.
(3) If an acquittal is declared by the court or decision is taken by stating that there is no need to start investigation for the person subject to aspersion due to his innocence, the punishment to be imposed is increased by one half according to above subsections unless a precautionary judgment other than custody or arrest is imposed against the aggrieved party.

People whose personal rights are harmed, or who are insulted or defamed are entitled to apply to civil courts in order to submit a libel suit in line with the general provisions.

31. Please give information about criminal or administrative liability of journalists and the penalties provided by law.

1. Rebuttal

A way of legal protection for those whose personal rights are attacked through media is the protection through Press Law, which would be a faster and relatively more sufficient on saving time than denunciation (or complaint) or restraining lawsuits or libel suits. Therefore, when Press Law is concerned,

rebuttal is the primary and easy method for the content of an article to be corrected, and for an official reply to be published.

What we mean saying rebuttal in media is the right to reply and correct what is published in press, such as newspapers and magazines. And rebuttal in the press is as old as the legal texts. In our country, it has been regulated through Media (press) Law and other regulations.

2. Suspending (or Ceasing) Publication/Broadcast,

Another way of legal protection in Press Law for those whose personal rights are attacked through media is suspension/cessation of the publication/broadcast, which is confiscation for the press, and takedown of the web page content for the internet. Due to the instant nature of broadcasting, it is not possible to cease the audio-visual broadcasting, but it is possible to prevent the re-running of the content.

According to the Article 24 of Civil Code “*The person subject to assault on his/her personal rights may claim protection from the judge against the individuals who made the assault*”, which envisages a general protection enabling those to claim the necessary protection measures no matter what ways the assault took place.

According to the Article 25 of the same law “*The claimant may demand from the judge to take an action for prevention of assault, elimination of such threat and determination of unlawful consequences of the assault even though it is discontinued. In addition to such action, the claimant may also request publication or notification of the recovery or the judgment to the third parties*”. There is no obstacle to implement this provision. However, it is necessary to preserve the balance with freedom of the press, and the right to inform and be informed.

Cessation of the publication is particularly important when *the internet law* is concerned, and the principles mentioned above are valid for the online media, as well.

Due to the instant nature of broadcasting, it is not possible to cease *radio-television* broadcasting, but it is possible to prevent the re-running of the content. It is possible to submit a lawsuit to prevent unjust assault against personal rights, demanding interim injunction, in which the procedures follows the same principles mentioned above.

3. Pecuniary and Non-Pecuniary Damages

No matter what medium the assault is made, people are entitled to submit a lawsuit based on protection measures in civil code and code of obligations, which may be in accordance with the Articles 24-25 of the former and Article 41 (& follows) of the latter. In the cases submitted, it may be demanded that the assaults be ceased and pecuniary and non-pecuniary damages be paid.

4. Criminal Sanctions in the Criminal Code

In accordance with the legal regulations mentioned in the question 30, journalists may be convicted or fined for defamation, aspersion, disclosure of personal information and violation of investigation secrecy.

32. Please describe protective measures available, respectively within criminal and civil procedures (seizure or prohibition of publications) and the role of prosecutors. Are there measures in your country that are or might be considered as a form of preventive censorship? Is there a role for the prosecutors in supervising media activities?

During the investigation of specific crimes in Turkish Criminal Code & special criminal laws, all published works may be confiscated through the decision of the judge (Article 25 of Press Law). Concerning the investigations on these crimes, judges may decide (upon requested by Public prosecutors) for confiscation, or permanent or temporary cessation of published materials. This decision may also be made by Public prosecutors to avoid delays; however, the decision has to be submitted to a judge for his/her approval in the following 24 hours. The decision will be void if it is not submitted to a judge for approval, or if the judge denies it.

Such decisions are interpreted as censorship by media and some non-governmental organizations in Turkish Republic.

33. If a prosecutor is criticized by media for reasons connected with the criminal proceedings, is there a role to play for the prosecutorial associations?

No, there is not.

34. Is the prosecutor bound by a duty of discretion even if a media campaign has been started against him or her?

Public prosecutors are appointed by HCJP, and the allocation of the workload among them is carried out by chief Public prosecutor in the location where they are appointed. Public prosecutors have to continue to

perform their duties even if negative publicity is launched by media – unless his/her location is changed or the investigation they conduct is transferred to another Public prosecutor.

35. Do you have any institutions (different from public prosecutors' associations) having the power to reply if there are improper media attacks against the prosecution service or individual public prosecutors?

If considered necessary, HCJP may make a press statement against the misinformation and defamation campaigns, which gradually expand and concerning the judiciary as a whole.

F. Other information

36. Do you have other information or comments about the communication between prosecutors and media in your country? If yes, please describe this information or comments.