

Strasbourg, 6 February 2013



CCPE(2013)1

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 Ireland

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 no statutory framework specifically providing for a relationship between the Office of the Director of Public Prosecutions and the media. However, the Prosecution of Offences Act 1974 sets out a statutory framework governing communication with the Director's Office and provides that certain persons are permitted to contact that Office. These permitted persons are;

- a victim of a crime;
- a family member of a victim of a crime;
- an accused person;
- or a family member of an accused person (as defined in section 6(2)(b) of the Prosecution of Offences Act, 1974, set out below).

The following persons can also write to the Director's Office on behalf of their clients:

- lawyers;
- doctors; and
- social workers.

It is against the law for anybody else to contact the Office of the Director of Public Prosecutions for the purpose of influencing a decision to withdraw or not to start a prosecution or for the purpose of influencing the making of a decision in relation to an application under section 2 of the Criminal Justice Act, 1993 to review a sentence.

The prosecutor is precluded, by virtue of section 6 of the Prosecution of Offences Act, 1974, or section 2(4) of the Criminal Justice Act, 1993 from considering such unlawful communications when considering a decision to prosecute or to seek a review of sentence on the grounds of undue leniency. The text of section 6 of the Prosecution of Offences Act, 1974, and section 2(4) of the Criminal Justice Act, 1993, are set out for ease of reference as follows:

Prosecution of Offences Act, 1974

6(1)(a) Subject to the provisions of this section it shall not be lawful to communicate with the Attorney General or an officer of the Attorney General, the Director or an officer of the Director, the Acting Director, a member of the Garda Síochána or a solicitor who acts on behalf of the Attorney General in his official capacity or the Director in his official capacity, for the purpose of influencing the making of a decision to withdraw or not to initiate criminal proceedings or any particular charge in criminal proceedings.

(b) If a person referred to in paragraph (a) of this subsection becomes of opinion that a communication is in breach of that paragraph, it shall be the duty of the person not to entertain the communication further.

6(2)(a) This section does not apply to –

(i) communications made by a person who is a defendant or a complainant in criminal proceedings or believes that he is likely to be a defendant in criminal proceedings, or

(ii) communications made by a person involved in the matter either personally or as legal or medical adviser to a person involved in the matter or as a social worker or a member of the family of a person involved in the matter.

(b) In this subsection "member of the family" means wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister, a person who is the subject of, or in whose favour there is made, an adoption order under the Adoption Acts, 1952 and 1964.

Criminal Justice Act 1993

2(4) Section 6 of the Prosecution of Offences Act, 1974 (which prohibits certain communications in relation to criminal proceedings), shall apply, with any necessary modifications, to communications made to the persons mentioned in that section for the purpose of influencing the making of a decision in relation to an application under this section as it applies to such communications made for the purpose of making a decision to withdraw or not to initiate criminal proceedings or any particular charge in criminal proceedings.

The general jurisdiction of the courts as well as the general law of contempt also enables courts to award remedies for the purpose of ensuring a fair trial of accused persons eg postponement of trials, issuing appropriate ruling and directions to a jury and also enables courts impose sanctions, including fines and imprisonment, on the media where actions by the media improperly interfere with the proper running of a trial.

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?

No. All criminal prosecutions taken on indictment in Ireland are taken in the name of the People and prosecuted at the suit of the Director; except for a limited category of offences still prosecuted at the suit of the Attorney General. The Director has published guidelines setting out standards and conduct which the Director expects of those who prosecute on her behalf. These include reference to the provisions referred to at 1 above. The Director, and prosecutors acting on her behalf, does not comment publicly, other than as part of appropriate legal argument during a prosecution in court, on any individual case and does not provide press briefings. The Director, as in the case of each of her predecessors, has provided interviews to the media on the general role and function of the Office but these interviews have not dealt with any individual cases. The Office will also through a designated spokesperson provide general information e.g. dealing with policy matters or the general working of the Office. As all criminal proceeding before the courts are conducted in public, the press are free to attend and report on those proceedings.

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)?

See answer to 2 above. The Director does not authorise anyone else to communicate with the press on her behalf in relation to criminal cases. The term "prosecutor" is used to mean all or any of the following, depending on the context in which the word is used: the Director and her professional officers, both in the Directing and Solicitors Division of his Office; the local State Solicitors who provide a solicitor service in the areas outside Dublin; counsel who act for the Director on a case by case basis; and members of the Garda Síochána (Irish police) prosecuting on the Director's behalf.

While the Director cannot direct an accused or anyone acting on the accused's behalf as to whether or not he may communicate with the media the general law of contempt is relevant to ensure the proper running of a trial.

4. Do you have any experience of joint communication by several public authorities (e.g. prosecutor and police)?

No. See replies to 2 and 3 above.

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)?

See replies to 2 and 3 above.

6. Are the judges authorised to inform the press? If this is the case, during which stage of the procedure?

Judges do not comment publicly, other than as part of legal proceedings in court, on any individual case.

7. Is there supervision on the relationships between prosecutors and media in your country? By whom and how?

See replies to 1, 2 and 3 above. There is no additional supervision.

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”?

See replies to 1, 2 and 3 above. The general jurisdiction of the courts as well as the general law of contempt also enables courts to award remedies for the purpose of ensuring a fair trial of accused persons eg postponement of trials, issuing appropriate ruling and directions to a jury and also enables courts impose sanctions, including fines and imprisonment, on the media where actions by the media improperly interfere with the proper running of a trial.

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?

See replies to 1, 2 and 3 above. The Director may additionally take disciplinary action and/or cease to employ prosecutors who fail to adhere to the standards expected of them

10. How do the prosecution services deal with the security risks caused by disclosure of information concerning the prosecutors and the cases?

See replies to 1, 2 and 3 above. It is not clear what is meant by security risks but it has not arisen in practice. If it is intended to refer to identification of prosecutors acting on the Director’s behalf, this is a normal part of the prosecution process where all criminal prosecutions are conducted in public.

If it is intended to refer to information relating to witnesses or otherwise relevant to a prosecution case it is a requirement that all information and material in the possession of the prosecution and relevant to an accused’s guilt or innocence or which otherwise might assist an accused in his defence must be disclosed to the defence. This is provided directly to the defence. However, the addresses of witnesses and other such details, where not relevant will be omitted from the material furnished. While there are some limitations on the duty to disclose (such as in relation to identification of confidential informants, alerting persons to police investigations or methods or which might otherwise be of assistance to criminals, involving legal professional privilege or the security of the State or where disclosure might lead to publication of the names of others in respect of whom investigative discussions may be ongoing but where they are entitled to a presumption of innocence), these are subject to the “innocence at stake” exception where disclosure is necessary because the evidence could show the innocence of the accused. Ultimately if the prosecution is unable or unwilling to disclose relevant material for any reason including security concerns it may be necessary to discontinue the prosecution.

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?

No. This is a normal part of the prosecution process where all criminal prosecutions are conducted in public.

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.)?

Insofar as queries are dealt with press releases, and response by telephone or email have been utilised. See replies to 1, 2 and 3 above.

13. Can press conferences or other releases be made by prosecutors in cases of international investigations? If yes, which procedure do you follow?

No. See replies to 1, 2 and 3 above

14. Is there communication with all the media or with some (newspapers, audiovisual media, internet)?

See replies to 1, 2 and 3 above. Generally media queries from whatever *bona fide* source are replied to even if the office is saying no comment.

15. Are there regulations prohibiting public prosecutors to give an advantage to single journalists (and/or leaving out some of them)?

No. Not applicable. See replies to 1, 2 and 3 above

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?

The Office has a designated non-prosecutor spokesperson. See replies to 1, 2 and 3 above

17. How does the media communicate with the prosecutors (official representatives, specialized journalists, necessary authorizations)?

Not applicable – individual prosecutors do not comment. See replies to 1, 2 and 3 above.

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)?

Not applicable. We do not discuss individual cases. See replies to 1, 2 and 3 above

19. Is there an official policy encouraging prosecutors to respond to the needs of media, and how is this policy implemented?

Not applicable. See replies to 1, 2 and 3 above

20. Are the prosecutors' communications with media systematically monitored and evaluated by using monitoring, feedback from the public, communication surveys or other measures?

Not applicable. See replies to 1, 2 and 3 above

B. 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. See replies to 1, 2 and 3 above

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)?

Yes. See replies to 1, 2 and 3 above. The Office of the Director of Public Prosecutions also maintains a website www.dppireland.ie which highlights the role and function of the Office. The Office has published on that website a number of publications outlining these functions as well as details as to how the Office is organised. The publications include annual reports, strategy statements, policy and directives issued, the Guidelines for Prosecutors and the Code of Ethics and well as booklets on the "Role of the DPP" and "Going to Court as a Witness". The booklets are published on line in Irish, English, French, Polish, Portuguese, Spanish, Romanian, Latvian, Arabic, Mandarin, Lithuanian and Russian. The website includes links to other relevant websites including that of the Consultative Council of European Prosecutors.

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.

The investigation of alleged criminal offences in Ireland is carried out by An Garda Síochána (Irish Police). The Director's Office does not have a role in that regard. It is a matter for An Garda Síochána to consider how best to pursue its investigations. An Garda Síochána do, however, communicate with the media as part of their investigations where they consider this to be of assistance to the investigation. This includes through TV programmes where the assistance of the public is sought in relation to crimes highlighted in the programme. The assistance may include an appeal for general information or assistance in identifying individuals shown in a recording of the crime or identikit shown on the programme.

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?

It is expected that this would form part of a lawyer's general legal training before qualifying as a lawyer prior to appointment as a prosecutor. It is also expected that prosecutors would keep up to date with legal developments and the Office encourages and facilitates continuous professional development.

25. Are prosecutors trained on how to interact with media?

No. See replies to 1, 2 and 3 above.

26. Are journalists trained on how to interact with the prosecution services?

See replies to 1, 2 and 3 above.

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. See replies to 1, 2 and 3 above.

28. Are there professional associations of media and journalists competent to regulate their interaction with the prosecution services?

See replies to 1, 2 and 3 above.

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?

Within the prosecution service, no. See replies to 1, 2 and 3 above.

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 offence of Criminal Libel may be prosecuted depending on the exact circumstances and seriousness of any alleged libel and intent involved. However, it is rarely prosecuted. The general law of contempt also enables courts to impose sanctions, including fines and imprisonment, on the media where actions by the media interfere with the proper running of a trial.

However, the main remedies available for an attack on a person's character and reputation are civil remedies such as actions for libel or slander or injunctions. These civil remedies are available to individuals and the prosecution service has no role in that regard.

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

See replies to 1, 2, 3 and 30 above.

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?

See replies to 1, 2, 3 and 30 above.

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?

See replies to 1, 2 and 3 above. The Director and prosecutors acting on her behalf do not comment on individual cases.

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

See replies to 1, 2 and 3 above. The Director and prosecutors acting on her behalf do not comment on individual cases. However as per 30 an attack which legally constitutes defamation could be pursued by a prosecutor as an individual.

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?

See replies to 1, 2 and 3 above. The Director and prosecutors acting on her behalf do not comment on individual cases.

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.

No.