

CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE)

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

ITALY

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.

The relationship between public prosecutors and media is regulated by law (Legislative Decree No. 106/2006, Article 5). It provides for: (i) relations with the media shall be maintained by the chief public prosecutor, either personally or through another prosecutor from his office, directly delegated by him; (ii) any information concerning activities of the prosecution office shall be provided referring it impersonally to the office, excluding any reference to the individual prosecutor(s) in charge of the case; (iii) the chief prosecutor shall inform the District Judicial Council (which has a function to control and to make disciplinary reports) of the conduct of those prosecutors belonging to his office who do not follow the above mentioned regulations.

Another Legislative Decree (No. 109/2006, Article 2.v) sets forth disciplinary sanctions for any public prosecutor who: (A) makes a public statement or interview concerning persons involved in a pending case (which has not yet been decided by a final judgment), when (and only when) it is directed to improperly infringe the rights of other persons; (B) violates the obligation that any information is impersonally referred to the prosecution office.

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?

Yes, prosecutors are authorized to have direct contact with the media, as indicated in the answer to question No. 1. The limitations –as well as the disciplinary provisions– there specified must be applied.

Frequently, with reference to relevant cases (and particularly when precautionary measures, like provisional arrest, are applied to the defendant(s)), press-conferences are held by the chief prosecutor (or by the vice-chief prosecutor in the larger offices).

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)?

No specific provisions are given in this respect. Obviously, the rules concerning the investigative secret (Article 329 of the Code of Criminal Procedure) must be respected, as well as the legislation which provides for criminal sanctions for the disclosure of secrets by a public official (Article 326 of the Penal Code). It must be taken into consideration that, during the investigation, those documents and information which the suspect has the right to know are not qualified as secret.

In cases of relevant interest for the media, defence lawyers usually have constant relationships with journalists. In this way, the point of view of the defence is frequently rendered public from the phase of the investigation, in particular when precautionary measures (like provisional arrest) are applied to the suspect. The same happens during the following phases of the criminal proceedings, with contacts

by defence counsels with the media on the occasion of hearings, verdicts and appeals.

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

With reference to relevant cases, and in particular when arrests and/or important seizures are executed, a press-conference is frequently held by the chief prosecutor (or by the vice-chief prosecutor, in the larger offices) together with representatives of the police forces which took part in the investigation and, sometimes, also with the prosecutor(s) in charge of the case.

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)?

Public prosecutors cannot communicate information during pre-trial investigations, until the investigation's acts are no longer secret. The violation of this prohibition would constitute a crime by the prosecutor.

The prosecutor can communicate information to the media (with the limits specified in the answers No. 1 and No. 3) when pre-trial investigations have been closed, as well as when –during the investigations– some documents and information are not secret because of the right of defence to know them.

In practice, public prosecution offices have contacts with the media when provisional measures are applied (as specified above). This usually happens during pre-trial investigations, with reference to acts not qualified as secret. Contacts can also take place after the formal accusation, as well as during the court proceeding and after the judgment.

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

No specific provisions are given in this respect. Italian judges usually do not inform the press about their activities.

If they give their opinion, they could be challenged by the parties.

Press-releases are sometimes given after important judgments, to avoid mis-interpretation of the results by the public.

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

No, there isn't.

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"?

Disciplinary provisions are set forth for prosecutors and judges who spread (voluntarily or also for negligence) secret information or information whose publication is prohibited. Moreover, the violation of confidentiality on pending cases is disciplinary sanctioned. The same applies to filed cases, if the spreading of information unduly violates other people's rights.

Violating the secret on investigations represents a crime. Moreover, a journalist can be charged for it, if he induced a public official to violate the secret (although this situation is quite difficult to be proved in Court).

The publication of the identity of minors and sexually abused women is prohibited, as well as the publication of their photographs.

In order to avoid the so-called "trial by press", the law provides criminal sanctions for the publication of prosecution service's or judge's acts before the judgment of appeal. In practice, medias do not hesitate to publish such acts, because sanctions are quite low (a fine up to 7,500 euros) and the time of limitation for a crime is frequently reached.

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?

Yes, there are: see answers No. 1 and No. 8.

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

Investigations are carried on in case of illicit disclosure of information, but they are seldom successful. On one hand, people involved in the news leak have no interest to cooperate with the investigators; on the other hand, for the crimes committed in this field, interception of telecommunications, audio and video surveillance cannot be authorized, unless there are no more serious crimes (like corruption, for instance).

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, there aren't.

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.)?

Mainly through press conferences (which are more frequently used than press releases).

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

Yes, they can. They are usually previously agreed (and possibly held together) with representatives of the prosecution offices and/or of the police of the other countries involved in the investigation.

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

The press conference is usually announced to all the media operating in the area.

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

Yes, there are. The use of confidential or preferential relations with the media is a disciplinary offence.

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?

There are no spokespersons in the Italian prosecution offices.

See answer No. 1

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

They usually communicate through specialized journalists.

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)?

See answers No. 1, No. 5 and No. 11.

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

There are no national guidelines. Each prosecution office can establish its "policy" to keep the public appropriately informed about relevant cases.

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 aren't.

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)?**

It is up to each prosecution office to decide when public opinion has to be informed. It is usually done with press conferences on the occasion of the provisional arrest of the defendant(s) in relevant cases.

- 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)?**

This kind of initiatives is usually not taken by the prosecution offices. The Italian national Association of judges and prosecutors sometimes organizes open days and visits in courts, as well as initiatives for students.

- 23. Can communication with media be used as an investigative tool (for instance by spreading identikits around or even pictures showing the commission of a crime)? If yes, please specify.**

Sometimes (although not frequently) the media have been used for investigative purposes. For instance, during investigations concerning very serious crimes (homicides, kidnapping of children) images have been published with the aim of gathering information from the public (respectively, a video registered on the scene of the murder and photographs of the disappeared children were broadcasted).

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?**

Yes, they are. Both the initial training and the in-service training deal with these topics.

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

No, they aren't.

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

No, they aren't (as far as we know).

- 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?**

Some joint seminars have been organized (e.g. on the topic "Representations of justice").

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

No, there aren't (as far as we know).

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 isn't such an institution, but two independent administrative Authorities (respectively competent for communication and for the protection of personal data) can indicate guidelines in the mentioned fields (and in some cases they can apply sanctions).

- 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?**

Libel and slander are criminal and civil offences. They can be prosecuted by the public prosecution office only upon the victim's specific complaint.

When a criminal action is initiated, the (civil) claim for damages can be presented directly in the criminal proceeding. During the criminal proceeding the public prosecution plays its usual role.

Otherwise, compensation for damages can be requested by the victim with a claim in a civil proceeding. In this case the public prosecution does not play any role.

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

A journalist can be convicted for libel, if he acted with malice. Penalties can vary from a small fine to a term of imprisonment (up to 3 years).

In case of a libel, also the director of a newspaper or of an internet site commits a specific crime for negligence if he does not properly check the content of an article.

In case of disclosure of secrets, there is no criminal liability of a journalist if he only receives the information and publishes it. On the contrary, he commits a crime together with a public official if he induced the latter to disclose a secret.

- 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?**

In real practice the seizure of press is not permitted in Italy. On the contrary, libeling web pages can be seized by order of a judge upon initiative of a public prosecutor. No preventive censorship is admitted. Prosecutors do not supervise media activities.

- 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?**

The Italian national Association of judges and public prosecutors usually makes a press release rejecting unjustified attacks and expressing its support to the involved public prosecutor.

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

Yes, she/he is.

- 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?**

The High Council for the Judiciary makes official statements supporting public prosecutors, when they are under improper attacks by the media.

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.**

As indicated above, the prosecution service usually gives public information on relevant cases only in the initial stage (in particular when provisional arrest is enforced). By their side, on the contrary, private parties keep constant contacts with the media throughout the whole proceedings (investigation, trial, appeal). This can sometimes lead to a somehow "unbalanced" public information.

Another thorny question is represented by an excessive presence of some public prosecutors on the media stage, which can lead to an overexposure not only of a single public prosecutor, but also of the prosecution service as a whole in front of the public opinion.

Another problem is the quite frequent violation of the secret during investigations. Intercepted conversations are sometimes improperly published.