

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 Norway

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 are no general provisions in law concerning the relationship between prosecutors and media. However, there are a few sections in the law concerning this relationship specifically. Notably, the Criminal Procedure Act section 125 establishes the right of protection of sources for the editor of a printed publication. Also, the General Civil Penal Code has two chapters concerning felonies (chapter 32) and misdemeanours (chapter 43) in printed matter.

The DPP has issued guidelines concerning communications to the public about criminal cases (DPP circular no 1/1981, 12 February 1981). These guidelines are important as the Criminal Procedure Act states that the duty of secrecy shall not prevent prosecutors from giving the public information concerning criminal cases in accordance with rules prescribed by the DPP (The Criminal Procedure Act section 61c).

Also the DPP has published a report (no1/2000) from a working group that was appointed to draft a media strategy for The higher prosecution service (not including the prosecution service in the police).

Finally, a working committee appointed by the DPP and the Norwegian Bar Association presented a report 25 October 2001 suggesting common guidelines for prosecutors and defence lawyers regarding statements to the media at the investigation stage.

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.

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 Norway, the first level of the prosecution service is integrated in the police. The chief of police has the authority to provide information to the press himself or to delegate this task (DPP circular no 1/1981, IV,8 and 11).

Concerning lawyers, parties to a proceeding and ordinary citizens, there are no restrictions on the right to provide information to the press other than any duty of secrecy that may apply.

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

Yes. This is not very usual, but happens sometimes in large cases of major public interest.

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)?

There are no absolute rules governing when information can be given to the media. The right to provide information depends on the circumstances, and particularly on the type of information and the purpose of giving it.

As a general guideline, prosecutors must exercise due care in providing information about – and the content of – reported crime before the matters are assessed and further investigated (DPP circular no 1/1981, IV,5). The content of the recommendation on whether to prosecute or not from a subordinate level to a higher level in the prosecution service may at the earliest be communicated when a final decision is made (op.cit.,6). If possible, information about prosecutorial decisions shall not be communicated to the press before the accused is notified (op.cit.,7).

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

Yes. Judges can inform the press when a case is before the court.

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

No, except for the general responsibility for the DPP to supervise all prosecutorial activity.

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”?

First, all communication of information to the media has to be constrained within the limits set by the general duty of secrecy that applies as a starting point for prosecutors. The considerations underlying this duty must be given proper weight when giving information to the media (DPP circular no 1/1981, II i.f. and III). The right to privacy and human dignity must be taken into account when deciding whether to give information or not and these considerations should also influence how detailed the given information should be, and in what form it is presented. Concerning the presumption of innocence, prosecutors must exercise great caution in providing information to the media concerning accusations before the matters are

assessed and – if necessary – further investigated (DPP circular no 1/1981, III if., see also the answer to question 5 above).

In the common guidelines for prosecutors and defence lawyers (mentioned in the answer to question 1 above) guideline no 2 reads “Be aware that anyone is considered innocent until final conviction” and no 8 underlines the importance that the question of guilt is argued in court, not in the media prior to the court proceedings.

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?

Breach of the duty of secrecy is a criminal offence, and the legislation also have penal provisions concerning offences in the public service (The General Civil Penal Code section 121 and chapter 11 and 33). Apart from that, the general rules concerning misconduct of duties are applicable, including the possibility to give warnings and disciplinary sanctions. However, it is not likely that a prosecutor would be sanctioned for not providing information to the media.

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

There are no general formalised routines specifically concerning security risks caused by such disclosure. What measures to take will be determined by the perceived security risk in each particular case.

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.

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.)?

In all these manners, depending of the case and the prosecutor.

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

Yes. There is no formalized procedure.

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

The regulations from the DPP states a principle of equality for all media; no part of the media or any particular press agency must be given preferential treatment (DPP circular no 1/1981,IV,2). In practice the prosecution service has most contact with the printed media.

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

See the answer to the previous question.

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?

In general, the prosecutor in charge of a criminal case is also handling the communication. (A couple of offices have an information officer who is not a prosecutor. This person gives advice, but does not serve as a spokesperson. It is by far most common to not have such an officer.)

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

In general, the individual journalists contact the prosecution service.

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 already mentioned, there are no absolute regulations on what sort of information can be given. Names of parties and witnesses are normally not disclosed.

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

Yes. The media's information needs are acknowledged, and information should be given when appropriate (DPP circular no 1/1981,II).

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

No.

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)?

To some extent.

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)?

To some extent.

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.

Yes. Under due consideration of the right to privacy, information – also e.g. pictures of a perpetrator or a crime – can be communicated to the media in order to prevent danger, solve a crime or promote the general law-abiding (DPP circular no 1/1981,IV,4).

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, although the continuous training in this respect is not extensive.

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

Prosecutors are periodically offered such training.

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

Not to my knowledge.

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.

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

The Norwegian Press Association has adopted its own ethical guidelines ("beware poster") partly relevant to the interaction with the prosecution service. The guidelines are enforced by the Norwegian Press Complaints Commission. Critique or "judgements" from this body has no legal effects.

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?

See the answer to the previous question.

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?

According to the General Civil Penal Code chapter 23, defamation (libel/slander) is a criminal offence. As a general rule, defamation is only subject to public prosecution when the aggrieved person so requests and it is also required in the public interest. In practice public prosecution does not take place anymore. There is in principle a right to private prosecution in defamation cases, but such cases are rare. In 2005 a new penal code – not yet in force – was adopted. In this code defamation is no longer a crime.

Civil lawsuits for compensation in cases of defamation are possible, and will continue to be possible when the 2005 penal code enter into force.

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

In principle the penalty provisions apply to anyone, also journalists. The impact of ECHR Article 10, however, takes on importance in cases concerning the media. Norwegian law must be interpreted in accordance with this provision.

Formally, the maximum penalty for the most severe cases of defamation is imprisonment for a term not exceeding 3 years. This does not reflect the level of punishment if anyone were to be convicted of such a crime today. Imprisonment would be highly unlikely.

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?

Prosecutors have no role in administering measures that might be considered as a form of preventive censorship, and they have no role in supervising the media as such. If a crime were to be committed by any (representative of the) media, it is the responsibility of the prosecution service to deal with it.

Objects that are deemed to be significant as evidence may be seized. A publication could in principle be such an object (but presumably it would normally be sufficient to seize one copy of the publication in question).

Objects – including publications – that have been produced by or been the subject of a criminal act may be confiscated as part of a court sentence if this is considered necessary for the purpose of the provision that prescribes the penalty for the act.

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. Such critic will normally not attract the attention of the prosecutorial associations.

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

Prosecutors must of course act in accordance with the law, and with due consideration of the duty of secrecy. However, a legitimate reason for communicating information could be to correct false information that has been published, particularly when the false information is likely to harm the reputation of any person or institution (DPP circular no 1/1981,IV,4b).

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 DPP or any prosecutor could reply, but has no particular powers regarding this situation. Also the DPP, or any prosecutor, could in principle file a complaint to the body mentioned in the answer to question 28. This happens very rarely, if ever.

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.