

**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 Spain**

**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.  
*It has been determined by an internal instruction of the Attorney General and it describes the organization into every office. It also gives general rules that develop the relationships between prosecutors and media.*
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?  
*The general rule is that, in every office, there is a prosecutor responsible for the relationships with the media, but it doesn't prevent the possibility of every prosecutor having a personal relationship with the media if he follows the general rules about communication.*
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)?  
*Obviously, the prosecutor service has its own rules and organizations, but it doesn't prevent other people – like mentioned- from communicating with the media. In these cases, it is necessary to respect general rules concerning limits related to the proceedings or individual rights of people involved in them.*
4. Do you have any experience of joint communication by several public authorities (e.g. prosecutor and police)?  
*It is very exceptional but we can mention a recent occasion when there was a press conference where an important prosecutor and a high authority of the Home Office appeared altogether in order to give information to the media about an important 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)?

The prosecutor can communicate with the media in every stage of the procedure, but it is obvious that the kind of information that he can give is different. It is especially limited during the pre-trial investigation so as to protect its own interest and those of people involved.

6. Are the judges authorised to inform the press? If this is the case, during which stage of the procedure?  
There is not a general rule as for prosecutors. In fact, the prosecutor has as a function the duty to give information to the public opinion. The particularities of the judicial function make judicial authorities to use institutional communication services in order to give information to the media.
7. Is there supervision on the relationships between prosecutors and media in your country? By whom and how?  
There is a general principle of hierarchy in the institution, but it has been organised through prosecutors responsible for communication with the media in every office. So there is not a typical supervision because it's supposed that the prosecutor is going to perform his function according to the rules.
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"?  
These are principles specifically mentioned in the internal instruction that rules the communication between prosecutors and media and the necessity to avoid the phenomenon of "trial by press" is also mentioned by that instruction.
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?  
The general disciplinary regime that rules the way that prosecutors perform their functions is applicable to this matter because it is considered to be one more itself.
10. How do the prosecution services deal with the security risks caused by disclosure of information concerning the prosecutors and the cases?  
The prosecutors have to assume their own responsibility if they had had a part on it and there is also a possibility of pursuing the responsibility who has created the risk, even having criminal consequences.
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 general rule is that prosecutors and judges have not personal right to preserve their own intimacy (mainly as right to self-image) when they are performing their functions.

## **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.)?  
Every mean is permitted and it is being used.
13. Can press conferences or other releases be made by prosecutors in cases of international investigations? If yes, which procedure do you follow?  
Press conference is one of the possibilities, not only limited to international investigations. The general rule is to preserve the equity between the media (every one has to be informed and called).
14. Is there communication with all the media or with some (newspapers, audiovisual media, internet)?  
Every media plays his role on a basis of equality.
15. Are there regulations prohibiting public prosecutors to give an advantage to single journalists (and/or leaving out some of them)?  
It is specifically forbidden by the internal 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?  
There is a spokesperson in every office and he performs this function freely according to the general rules and down the supervision of the prosecutor who manages every office, who most of times is the prosecutor in charge.
17. How does the media communicate with the prosecutors (official representatives, specialized journalists, necessary authorizations)?  
They organize by themselves the way they work in these area; most of times they choose 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)?  
There are not specific limits. The general rule is to keep informed the public opinion and it is obvious that the media are the most commonly used medium between the prosecutor service and that public opinion. The limits are few and obvious: the proceeding, the presumption of innocence, the fundamental rights (honour, privacy) of the parties involved.

19. Is there an official policy encouraging prosecutors to respond to the needs of media, and how is this policy implemented?  
A general instruction given by the Attorney General encourages to make it effective.
20. Are the prosecutors' communications with media systematically monitored and evaluated by using monitoring, feedback from the public, communication surveys or other measures?  
No, there is not that kind of implementation.

### **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. Really it has not been institutionalized. There is a press office in the Attorney General Office and the Web page is being used like a platform that can give this service.
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)?  
The tools are mainly:  
- The Web page as the main platform.  
- A booklet that gives a general idea about the institution.  
- Occasional courses, meetings or lectures for prosecutors, for journalists or between prosecutors and media
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.  
It is not properly a tool used by prosecutors but it has been used by the police.

### **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?  
Not specifically about that matter but it is common to devote somehow courses to Human Rights.
25. Are prosecutors trained on how to interact with media?  
Not specifically.
26. Are journalists trained on how to interact with the prosecution services?  
I believe it is very uncommon.
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 such sporadic activities are organized from time to time, but it is far to be a habit.
28. Are there professional associations of media and journalists competent to regulate their interaction with the prosecution services?  
I believe 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?  
There is nothing so specific. I think the most similar thing is the press ombudsman like an institution inside some media.
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 prosecution service is always a qualified party in most of these proceedings (always criminals and most of times even civil proceedings). The prosecutor always intervenes defending the legality with objectivity and impartiality.
31. Please give information about criminal or administrative liability of journalists and the penalties provided by law.  
There are crimes conceived as defamation and libel. For defamation the penalty is prison (from six to two years) and fine; there is only fine for libel. It always implies civil liability to the benefit of the victim.
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?

The most common measures are seizure or prohibition of publications and the obligation to publish or broadcast a correction or denial. The prosecutor can apply for them even in civil or criminal proceedings. I don't believe it might be considered as a form of preventive censorship and there is not a special role for the prosecutors in supervising 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?

These associations might play this specific role in order to protect the members of the Institution, no matter if they are members or not of the association.

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

Yes, it is. It is obvious that a prosecutor can't play the same role than a private individual and he is bound by a more strict duty of discretion.

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 Prosecutor General's Office, as governing body of the whole Institution and even the Chief Public Prosecutor may act this way.

#### **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.

The Instruction 3/2005, from the Prosecutor General's Office acts as the internal legislative body that rules these questions. It can be found in the Web page [fiscal.es](http://fiscal.es) (in Spanish)