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JUDICIAL COMMUNICATION AND PROFESSIONAL ETHICS

RENEWING THE RELATIONSHIP BETWEEN THE JUDICIARY AND THE PUBLIC

TEAM FRANCE 4

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INTRODUCTION

“So long as a Judge keeps silent, his reputation for wisdom and impartiality remains unassailable: but every utterance which he makes in public, except in the course of the actual performance of his judicial duties, must necessarily bring him within the focus of criticism”

Lord Kilmuir, Lord Chancellor of England and Wales, responsible for the independence of the courts and Head of the Judiciary, 1955.

For a long time, justice has been associated with the principles of secrecy and discretion. It was considered both inappropriate and unnecessary for judges or prosecutors to engage in public discussion, as their comments risked undermining judicial independence and authority.

The “Kilmuir rules” offer an example of this view. In 1955, the Lord Chancellor of England and Wales was asked by the BBC to participate in a broadcast about the great judges of the past. As a reply, he set out the rule that members of the judiciary should not appear on television or on the radio. Furthermore they should obtain consent from the Lord Chancellor before engaging in any kind of public discussion¹.

In the 1980s and 1990s however, this point of view started to change. The public’s loss of trust in the justice system and the demand for more democratic accountability led to redefining the role of the judiciary. In France and Belgium for instance, judicial scandals were the starting point for important changes in the way judges and prosecutors (or, in some cases, their representatives) perceived the need to communicate with the media and the public. In Belgium, a decision by the Supreme Court regarding the high profile Marc Dutroux case triggered massive demonstrations, with more than 300 000 people marching in the streets of Brussels². Members of the judiciary became more aware of the importance of using

¹ « Communications and the judiciary in England and Wales » by Mike Wicksteed, Lisbon Network, ENCJ, 2008 ; « Senior Judge cautions colleagues over courting publicity », opinion by Lord Neuberger, The Guardian, 16/03/2012

² « La formation des magistrats en matière de Média et Justice – relations et coopération à la lumière de l’affaire Dutroux » by Philippe Morandini, Lisbon Network, ENCJ, 2008
Retrieved on: May 19, 2015, from http://www.coe.int/t/dghl/cooperation/lisbonnetwork/rapports/RL-2008-7-Morandini_fr.pdf

communication strategies in order to improve comprehension and acceptance of their decisions and activities.

The rising influence of the European Court of Human Rights (ECHR) in Strasbourg over European justice systems contributed to the development of the “appearance doctrine” and the view that “not only must Justice be done; it must also be seen to be done” (see in particular ECHR, Case of Delcourt v. Belgium 1970). The European Court acknowledged “the increased sensitivity of the public to the fair administration of justice” (ECHR, Case of Borgers v. Belgium, 1991)³, leading to changes in communications practices among courts throughout Europe.

At the same time, media and communications in all fields underwent considerable evolution. The relationship between the public and information changed. The development of media on the Internet and social networks now generates a continuous stream of information in which the public and the media need to be guided. People do not look for information themselves; they wait for information to be brought to them. Thus the notion of “public” has evolved: ensuring public access to court rooms is no longer perceived as sufficient to make a decision “public”. The state of being public implies accessibility, which in turn requires bringing simple, understandable and accurate information to the widest possible range of individuals. In this paper we define communication as a link, a transmission of information from the judiciary to the media and the public at large and through the media to the public. But, if both the justice system and the media address the public, they have very different ways of doing so. This discrepancy is at the very centre of our inquiry.

The evolution of the relationship between the media and the judiciary has sometimes been difficult. In France, for instance, students of the French School for the Judiciary, fearing for their independence, went on strike in 1985 when media training was introduced in their training programme⁴. This evolution has differed from one country to another, each dealing with it in its own way.

³ See also: Piersack v. Belgium 1982, Campbell and Fell v. the United Kingdom 1984, Hauschildt v. Denmark 1989, Langborger v. Sweden 1989.

⁴ « La communication par le bas au ministère de la Justice » Carole Thomas, in *Communication et organisation*, 35 (2009).

The judiciary now has to deal with a duty to communicate. But who among judges and prosecutors can speak on behalf of the judiciary? What should the content of these messages be, and to whom should they be directed? These questions raise many issues regarding judicial ethics. How must judges and prosecutors behave in this new role assigned to them in society?

For the purpose of this paper, we will focus specifically on the way prosecutors and judges communicate about individual cases and decisions, leaving aside institutional communication in a broader sense. Indeed, general information about the judicial system, although also of crucial importance, is very often left to players other than the members of the judiciary themselves (school teachers, press officers in the Ministry of Justice, judge's unions or associations etc). We intend to look into the way judges and prosecutors interact with the public in the various justice systems in Europe and in the European courts themselves. How can best practices be drawn upon in the attitude of European judges and prosecutors towards the media? After reviewing the main principles that can collide with each other in the process of judicial communications (I), we will compare and assess the way members of the judiciary communicate in different European countries (II). This analysis will enable us to draw up best practices and suggest guidelines for the future (III).

Our work owes a great debt to two previous studies carried out by the European Network of Councils of Justice (ENCJ)⁵: “Justice, Media and Society” in 2011-2012; and by the Consultative Council of European Prosecutors (CCPE)⁶: “Relations between prosecutors and the media” in 2013, based on data collected in the 28 Member States of the European Council.

⁵ http://www.encj.eu/index.php?option=com_content&view=category&layout=blog&id=21&Itemid=25

⁶ http://www.coe.int/t/dghl/cooperation/ccpe/opinions/travaux/travaux_8_EN.asp

PROCEDURAL AND ETHICAL PRINCIPLES GOVERNING JUDICIAL COMMUNICATION

The necessity to improve communication between the courts and the public has been acknowledged and has led to the development of the principle of publicity and a necessity for motivation (A). But other ways of communicating have become necessary to maintain the public's trust in the Justice System. These new tasks assigned to members of the judiciary put them in a position in which they must find innovative ways to preserve their impartiality and independence (B).

PUBLICITY AND MOTIVATION

Publicity is a key component in the right to a fair trial, as defined by the European Court of Human Rights. Article 6-1 of the European Convention on Human Rights reads as follows: “everyone is entitled **to a fair and public hearing (...). Judgement shall be pronounced publicly**”. Publicity is considered as a guarantee against arbitrary decisions and is a means of improving the public's trust in its courts. In the 1997 *Werner v. Austria* case the ECHR stated:

“This public character protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention”.

The ECHR also stresses the importance of making decisions accessible to the public by explaining them. In the case of *Taxquet v. Belgium* in 2010, it was ruled that:

*“For the requirements of a fair trial to be satisfied, the accused, and **indeed the public, must be able to understand the verdict that has been given**; this is a vital safeguard against arbitrariness. As the Court has often noted, the rule of law and the avoidance of arbitrary power are principles underlying the Convention. In the judicial sphere, those principles serve to foster public confidence in an objective and transparent justice system, one of the foundations of a democratic society.”*

The European Court acknowledges the “*importance attached to appearances and to the increased sensitivity of the public to the fair administration of justice*” (Case of *Borgers v. Belgium* 1991). Therefore, it considers that public opinion’s perception of Justice is of essential importance, according to the dictum “justice must not only be done; it must also be seen to be done”.

All these principles constitute the way justice systems usually communicate with the media and society. The purpose of this interaction is to show and explain the work of the judge, so as to help understanding and the acceptance of decisions. This also applies to the prosecutor. At a time when state administration is growingly held accountable for its actions, it is of prime importance to ensure transparency and democratic control over those who are in charge of representing the people’s interests in courts.

To sum up, communication participates in the general mission of Justice: the healing of social conflicts. Healing supposes mutual understanding and listening, which in turn implies communication.

INDEPENDENCE AND IMPARTIALITY

The increased necessity to communicate to ensure the public's trust in the justice system can threaten other procedural and ethical principles that stem from the right to a fair trial.

Firstly, the efficiency of justice, as well as the respect of certain fundamental rights, may in some cases appear as irreconcilable with transparency. Consequently, the ECHR admits that certain information may be held secret during investigations. For instance, the French law providing that access to the investigation file is restricted to lawyers in order to preserve the secrecy of the investigation does not violate the right to a fair trial (Case of *Menet v. France* 2005). In other cases, the ECHR rules that information should not be released, in order to guarantee individual rights such as presumption of innocence and the rights of defence. Article 6-2 of the European Convention on Human Rights states: “Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law”. The ECHR has held that this principle encompasses the right not to be publicly presented as convicted by public authorities before the final judgement (see for instance the case of *Urfi Centikaya v. Turkey* 2013).

Secondly, judges should not communicate information that could lead to calling their impartiality into question. In a recent case, the ECHR considered that a member of the French Court of Cassation, who had expressed his support for a colleague several years earlier, could not take part in a defamation trial in which this judge was a party (Case of *Morice v. France*, 2013). In an inadmissibility decision, a Court approved the dismissal of a public prosecutor who acted contrary to the impartiality which his position required, showing no discretion in his political comments and making political statements against the Minister of the Interior and a political party (Case of *Altin v. Turkey* 2000).

Finally, communicating in the media or directly towards the public can harm the dignity and authority of the judiciary. Ethical rules such as discretion and humility are hardly compatible with some of the requirements of modern media communications. In France and the United Kingdom, the participation of judges in public entertainment programmes – respectively a TV concert and a cooking show – raised the question of to what extent judges and prosecutors should demonstrate their personal life and opinions⁷. While the media, and especially the more recent forms, demand more and more personalisation and rapidity of information, European Justice systems are conceived to be timeless and impersonal⁸. By showing judges and prosecutors as human, fallible beings who can be influenced, the media tends to undermine the legitimacy of Justice as an institution. Growing pressure to give information very quickly and from the early stages of a case also increases the risk of giving false or incomplete information, thus harming the credibility and efficiency of justice.

As it is essential for judges and prosecutors to communicate with the public in order to achieve public confidence in the judicial system, judicial communications need to obey certain rules, so as not to harm fundamental principles such as impartiality and authority, but also to preserve individual rights such as the presumption of innocence.

Hereafter follows an overview of some of the rules instated by the 28 countries of the European Union to improve the communication of the judiciary in accordance with ethical standards and procedural rules.

⁷ « Senior Judge cautions colleagues over courting publicity », opinion by Lord Neuberger, *The Guardian*, 16/03/2012; « Le juge Trevidic en concert » *L'Express*, 05/06/2014

⁸ « La justice est-elle délocalisable dans les médias ? » A. Garapon, in *Droit et Société* 26 (1994)

ASSESSING JUDICIAL COMMUNICATIONS IN EUROPEAN COUNTRIES

In matters of judicial communications, there is a great variety of approaches in Europe, each raising its own problems and ethical questions. Consequently, the diversity of answers from the judicial systems on the old continent presents a complex, but enlightening picture of what can, cannot, should, and should not be done. However, there is a striking common thread in the way most of these countries approach the problems posed by the modern imperative of transparency. Indeed, two kinds of overarching conflicts seem to be identified by most countries, and treated accordingly. On the one hand, there is the question of who is put in charge of communicating, and with what degree of independence (A). And, on the other hand, the question of how the mere act of communicating outside the courts requires a strong set of ethical rules to protect the fundamental principles of a fair trial (B).

THE SELECTION AND TRAINING OF SPOKESPERSONS

The development of democracy, the emergence of mass media and the unquenchable demand for transparency have been met everywhere in Europe with attempts at adapting the judicial institution to a new level of attention from the public at large.

First comes the question of who should be communicating. Since judges and prosecutors are under a high level of scrutiny from the press and the public, there is tension between those who are demanding information, and those in charge of delivering it.

The first issue that arises is the one emerging from the dichotomy between prosecutors and judges. In most European countries, the prosecutor is recognised as either a *de facto* or *de jure* spokesperson in judicial matters. According to the 2013 CCPE report on relations between prosecutors and the media⁹, prosecutors in most European countries have direct contact with the media, even if this usually applies to the heads, or deputy heads of prosecution offices. Meanwhile, as studied by the ENCJ in their 2012 report on Justice, Media and Society¹⁰, the situation is more complex for judges: some European countries have created the position of spokesperson that is given to designated judges (e.g. Austria, Belgium, Bulgaria, England and Wales, the Netherlands, Romania etc.), while some others forbid contact between judges, or at

⁹ *Op. cit.*

¹⁰ *Op. cit.*

least certain judges, and the media (e.g. In Belgium, investigative judges cannot communicate with the press, while in Italy, this is not explicitly forbidden, but it is not customary for judges to do so). Another group of countries leaves judges more or less free to manage their public relations as they see fit (e.g. Croatia, France, Ireland, Spain etc.).

In any case, the set of rules regulating the ability of prosecutors and judges to act as spokespersons varies greatly in Europe. No correlation could be made between countries where prosecutors have a greater liberty or tight oversight and the corresponding level of scrutiny over judges.

Furthermore, two sets of issues emerge when it comes to who is in charge of speaking to the media. On the one hand is the matter of how specialised in public relations the member of the judiciary responsible for communications should be. While on the other is the question of how much oversight he or she receives.

Most of the time the media asks for commentary on a very specific case from the judge or prosecutor who is specifically in charge. Moreover, members of the judiciary might sometimes also want to communicate on the lawsuits and trials over which they are presiding because they feel that the public must either be informed of something or because the development of a case is being misrepresented. The government and their hierarchy may also take a position on the matter. Taking these three points into account, there appear to be several different ways of organising spokespersonship in the judiciary, ranking from the more independent to the more centralised.

One approach is the designation by the judicial hierarchy or the ministry of justice of a judge, prosecutor or special officer in charge of communications. There are two ways of doing this: firstly, by the creation of a national office or judicial position in charge of all communications in the country. And secondly, by the creation at local level of press-prosecutors or press-judges. These two modes of organising judicial communication can also be used together. Not all countries use both solutions at the same time, but there is a tendency to have specialised press-judges and prosecutors at both national and local level. For instance in Austria, Denmark, England and Wales and Romania, there is a national office or a national press-prosecutor or judge, while in Portugal there seems to be only a national office for prosecutors. In England and Wales, specialised press-judges do not exist, and prosecutors are encouraged to engage with the press, but only in specific issues as agreed with national level

communications staff. Interestingly, even if Denmark has a national/regional level press-judge, prosecutors remain free to discuss with the media, and are even encouraged to do so.

Another approach consists in letting every prosecutor and judge relate with the media according to their own perspective of a case or situation. This is the case in Belgium, France, Norway, Spain (where even if each court has a spokesperson, prosecutors and judges may freely enter into contact with the media in accordance with particular guidelines) and Sweden. The idea being that a judge or prosecutor is at a sufficiently high level of responsibility to evaluate the merits of any kind of communications with the public at large.

Nevertheless, it is interesting to note that several of these states have expressed a desire to streamline the way the judiciary relates to the media¹¹. In Belgium in particular, where in a string of high profile cases public relations were sub-optimal (most notably following the aftermath of the Marc Dutroux case¹²), there is a clear evolution in the way the judicial community manages its relationship with the media. For instance, the country has evolved from a position that was originally similar to the French or Spanish one, where any judge or prosecutor could communicate with the media, to one where a number of press-judges have been specifically designated and trained. Furthermore, some judges that could freely interact with the public at first have been restrained; for instance, the investigating judge cannot communicate with any media. An analogous evolution was seen in Spain, following the 2004 Madrid bombing trial¹³.

The question of who should bear the responsibility of communicating with the media and the public not only concerns the efficiency of communication in a modern context. It is also important because some parts of the judicial process require secrecy and because of the importance a particular case can have for the people involved in it. The misrepresentation of a trial can make the court of public opinion clash head on with the courts of Justice. An indiscreet prosecutor could release information that should have stayed secret for the sake of an investigation, or even for the security of the persons involved. As such, the member of the

¹¹ This is stated both by the ENCJ and the CCPE reports quoted above.

¹² « La formation des magistrats en matière de Média et Justice – relations et coopération à la lumière de l’affaire Dutroux » by Philippe MORANDINI, already quoted above.

¹³ “Relations between the Judiciary and the Press during the "11-M" trial, concerning the 2004 Madrid bombings” by Carlos BERBELL, Lisbon Network, ENCJ, 2008
Retrieved on: May 19, 2015, from http://www.coe.int/t/dghl/cooperation/lisbonnetwork/rapports/RL-2008-5-BERBELL_en.pdf

judiciary in charge of communications is also the one that can be exposed to sanctions if something goes wrong with the way he acts as a spokesperson.

Communicating in the context of the judiciary is therefore a fundamental need of any judicial system in a modern society, and a tool that should be used with caution because it could worsen an already complex relationship between the courts and the public.

However, the great majority of states in the European Council do not seem to have implemented external supervision of the relationship between members of the judiciary and the media (with the exception of Austria)¹⁴. Generally, the internal hierarchy of prosecutors is in charge of overseeing communications with the media, while the only oversight of judges comes from the bodies already in charge of enforcing ethical rules. This means that not much is done to control the actions of the judges in charge of media relations. It should also be noted that in some cases, a breach of regulations on communication with the media may be criminal, but most of the time is only seen as an administrative or disciplinary problem.

Finally, there are great disparities regarding training programmes for the judges and prosecutors in charge of communications. Of course, all members of the judiciary are trained in all Member States of the Council of Europe on requirements of the European Convention on Human Rights. Yet, where the professional training of judges and prosecutors on how to interact with the media is concerned, there is no uniformity. Prosecutors are trained by media consultants or even journalists most of the time (sometimes even in joint sessions with other journalists, where both learn how to interact with each other)¹⁵. But press-judges are barely trained, with the notable exception of England and Wales where training is refreshed annually¹⁶. This preparation covers interviews, press conferences, television, radio, national or local news, etc.

The variety of forms which the judiciary's communication can take is a problem in itself that goes beyond the simple question of knowing whether judges and prosecutors are trained in their use. It is an entirely independent ethical question to identify which media the judiciary should be communicating with, and what tools they use.

¹⁴ CCPE Report, *op. cit.*

¹⁵ *Ibid.*

¹⁶ ENCJ Report, *op. cit.*

The traditional form of communication is the press conference and this is still the main tool at the disposal of a prosecutor or judge today. It is often seen as the best way to reproduce the solemnity of a courtroom, its publicity and openness, and to have a broader reach ensuring that a biased selection is avoided. Nonetheless, direct interviews of members of the judiciary have started to develop over the past few years. This creates deeper ethical issues, as it often becomes unclear whether the judge or prosecutor who is being interviewed is speaking only on the court's or prosecution office's behalf or on his own. The personal aspect of some of the questions asked sometimes tends to blur the lines between institutional communication and personal speech. Nevertheless, in the last decade, the interview has become more and more common in the judiciary, and apart from Italy and Spain (where it is a disciplinary offence to give advantage to a single journalist), entering into contact with a single media is not regulated. It remains the duty of the press-prosecutor or judge to inform the media in an objective and impartial manner, to avoid any potential misinterpretations by the interviewer or the public as far as possible.

In the arsenal of tools that a press officer has at his disposal, one is extremely controversial, and there is a serious debate over whether it should be used at all: the use of social media and networks (Twitter, Facebook etc.) for judicial communications. It is explicitly forbidden in some countries (Austria, Belgium, Latvia and Portugal), and where it is not forbidden it is seldom used. Further, these social media are almost always banned from the courtroom (except England and Wales, where it is allowed for journalists). The use of such forums raises the question of the image of the judiciary. Some consider that making the judiciary's message so banal is harmful.

On the other hand, outside the courtroom, social media is a serious tool that can enable quick and broad communication. Indeed, social media offers the Judiciary an opportunity to interact with the public in new ways which promote transparency, interactivity and collaboration. Such a worthy goal has made some countries develop and regulate the use of social media. Denmark and Norway have started to use Facebook and Twitter. For instance, this channel was used during the Oslo terror case for the purposes of allowing the Oslo District Court to inform international media and the Norwegian public that were following the case closely. Councils for the judiciary and Court administrations have started to use social media in Lithuania, Norway, Spain and Turkey.

PROFESSIONAL CONDUCT OF SPOKESPERSONS

When discussing the possibilities for the justice system to develop its communication towards the media and the public, another set of problems appears, surrounding the notion of impartiality.

Of course, the first rule in every single country in the European Union or in the Council of Europe is that all the ethical rules governing judges' and prosecutors' professional conduct apply both to the courtroom and media relations outside. The way a court spokesperson relates to the media should at least abide by these pre-existing ethical rules.

Several problems arise with the position of spokesperson in a judicial context, the first being the issue of impartiality. A judge should not be seen as partial, and according to the appearance doctrine, he must not even be suspected of being partial. An equivalent burden of impartiality, albeit different in scope, rests on the shoulders of the prosecution too. Furthermore, apart from the question of impartiality, the judiciary also has the obligation of enforcing several principles at trial, namely the presumption of innocence, the serenity of Justice and the protection of witnesses and victims, in other words, the right to a fair trial.

The European Committee of Ministers of the Council of Europe has put forward a recommendation¹⁷ (*Rec 2003-13*) to Member States on the provision of information through the media in relation to criminal proceedings. In this recommendation, the Council of Europe provides a series of 18 principles that can be implemented by the Member States and that form a basis on which discussions on the ethics of judicial communications can rely.

Such discussions start with the question of knowing at which stages of the judicial process communication is allowed and to what extent. Disparities exist in Europe concerning such regulation, but some rules set a common ground: the protection of the presumption of innocence, the secret of investigations, and the prevention of prejudicial influence. Likewise, in most countries, a judge never enters into a relationship with the media before the transmission of a case to the court, and in some countries it is only after the court's ruling that a press-judge can give a press conference to talk about it. However, it has not been agreed upon between European countries when communications should take place for prosecutors. In some

¹⁷ COUNCIL OF EUROPE, COMMITTEE OF MINISTERS, "Recommendation Rec(2003)13 to member states on the provision of information through the media in relation to criminal proceedings", 10 July 2003. Retrieved on: May 19, 2015, from: <https://wcd.coe.int/ViewDoc.jsp?id=51365>

countries (e.g. Belgium, Czech Republic, England and Wales, France among others), the prosecutor can intervene at any point in the criminal procedure. In others (Austria, Croatia, Germany, Portugal, etc.), prosecutors can only communicate about a case in the pre-trial investigation, and when the case is sent to the court, but not thereafter. This rule can be seen as a way to preserve the serenity of the trial, ensuring that no discordant voice within the judiciary will express itself outside the court. Furthermore, as the prosecution is a party to the trial, allowing it to communicate on the matter in hand could blur the line in the eyes of the public between the accusation and the judiciary as a whole, even if the prosecutor is more restrained than other parties at trial, who are free to interact with the media as they see fit. These limits are necessary since the prosecutor represents society and is part of the judiciary, making him an institutional voice. This therefore justifies a higher level of control over the prosecutor's communications with the media.

The content of the message sent by the institution is of course a core issue. In Europe, there seems to be a common understanding of what kind of information a press officer, judge or prosecutor is allowed to give to the media. In some countries the member of the judiciary in charge of communications will explain particular decisions and cases, while other states do not allow the press-judge to do so. And if the prosecutor can comment on the decision of a court, he is always forbidden to harm the confidence of the public in the judicial system by discrediting a judgement. This rule has been confirmed by the ECHR, which has, in an inadmissibility decision¹⁸, held that the confidence of the public in the independent administration of justice must not be impaired by the conduct of a member of the judiciary. This decision applies to a judge or prosecutor commenting negatively or not carefully enough on another judge's decision. Moreover, the ECHR ruled¹⁹ that in their communications, prosecutors should make sure they are not compromising the rights of the accused by spreading any information prematurely, or violating the rights of the victims. Judicial communications should not be a way to circumvent due process and the right to a fair trial. Similarly, the ECHR judged that the presumption of innocence is violated if an official declaration (such as a press conference by a press-judge) concerning the defendant gives the impression that the defendant is guilty, although he has not been found so yet after a proper trial. Even without formal

¹⁸ ECHR, *Altın v. Turkey*, 6 April 2000 (application No. 39822/98, inadmissible)

¹⁹ ECHR, *Stoll v. Switzerland*, 10/12/2007 (no. 69698/01, §§ 61 and 143,) and ECHR, *Craxi v. Italy* (No. 2), 17/07/2003 (no. 25337/94)

acknowledgment of guilt, the mere fact that a judge conveyed the perception that the defendant was guilty is a violation of the presumption of innocence²⁰. These elements form a relatively well shared framework on the European continent, and more so in the European Union, of ethical rules that govern what members of the judiciary can or cannot say while communicating with the press.

Finally the *Rec 2003-13* recommendation of the European Committee of Ministers makes a strong point about the limits of judicial communications : a judicial authority should never use its ability to be heard by the public to spread something known to be a lie with the intent of gathering information, confuse a suspect or use some other kind of strategy (with the exception of the protection of those who need it, for instance in the case of witness protection or the protection of a minor who has been the victim of abuse). It would be a breach of trust that could severely undermine the confidence of the public in future situations.

²⁰ ECHR, *Daktaras v. Lithuania*, no. 42095/98, § 41, 10 octobre 2000

IMPROVING AND HARMONISING JUDICIAL COMMUNICATION

Various studies and inquiries have been conducted on the topic of judicial communication since the beginning of the 21st century, starting with the afore-mentioned recommendation of the Committee of Ministers of the European Council in 2003.

This started a movement that spread among European institutions and think-tanks dedicated to questioning the contemporary evolutions of Justice in Europe. Several reports were written by institutions such as the CCPE²¹, the CCJE²² and the ENCJ²³. Some were elaborated in common. Our goal so far has been to regroup that knowledge, summarise it and contribute to it. In this last step of our contribution, we intend to compare what has been proposed to improve the efficiency of judicial communication. Many ideas were put forward in the reports we have based our work on so far, some complementary, some identical and some contradictory. Let us examine the major ones.

EXISTING PROPOSALS

The reflection on judicial communication started with a very broad questioning which led first of all to insisting on principles that must be respected and that can become contradictory in this instance. For example, the recommendation of the Committee of Ministers of the European Council of 2003 simply stated that the necessity to inform the public should not get in the way of the presumption of innocence.

Then the solutions offered in later reports became more and more concrete and practical, especially the ones based on precise and exhaustive studies. 3 major themes emerged.

- Major guidelines.

The reports managed to isolate some fundamental limits that were not to be crossed, such as the presumption of innocence, the respect of the rights of the defence, the secrecy of enquiries, the right to information, the right to privacy and the non-discrimination of the media. They all revert back to major principles of the ECHR. There is a strong consensus on these principles and they will not be commented on further, but their practical application will be.

²¹ Consultative Council of European Prosecutors

²² Consultative Council of European Judges

²³ European Network of Councils for the Judiciary

The reports of the CCPE and CCJE insist on the necessity of ensuring respect of these principles through modification of the codes of practice when they exist, in order to take into account the new necessity for judges and prosecutors to communicate. Indeed this is seldom mentioned in existing codes. For example the French one mentions the communication role of members of the judiciary in two instances without clearly stating what should or should not be done while performing this new duty.

- Training the members of the judiciary in charge of communicating with the public and the media.

All reports emphasise the necessity for more training of judges and prosecutors in charge of communication for their court. These press-judges and press-prosecutors were created in some states in a state of emergency, like in France, Belgium and Italy, when high profile cases forced the courts to address the media directly. Training had to be set up rapidly. Most members of the judiciary that have been in charge of communicating ask for more thorough training programmes. Some of the improvements suggested consist in associating journalists with these programmes but also professionals that work in the communication sector. Feedback also appears to be needed, as previous press-judges rarely have the opportunity to transmit what they have learned in an institutionalised framework.

- Cooperating with the media.

Some reports state that a common collection of guidelines should be established by a commission formed of representatives of both the judiciary and the media. It should govern their interaction by stating clear rules of behaviour in situations in which they must cooperate.

It is also suggested that such a commission should be created at national or European level to arbitrate between the media and the courts. Authorisations to broadcast information should first be submitted to that commission, which would have a part to play in sanctioning the violation of its rules either by journalists or members of the judiciary. It should also verify that the non-discrimination rule is respected by representatives of the courts.

- Practical matters that remain unaddressed

Reports note that communication can be centralised by one office at national level or left to the appreciation of each court at local level. Both levels can also coexist. But no proposals have been made to harmonise this situation or to try to assert what is best.

The question of the identity of the speaker is also often left aside. Reports simply set out that the people in charge of speaking for the courts or the justice system at national level can be judges, prosecutors, communication professionals or civil servants especially appointed for the task.

WHERE TO GO FROM HERE

In their reports, the various bodies that have studied the communication of the Justice system and its relationship with the public and the media generally retain a prudent position. When it comes to matters such as the identity of the spokesperson or the degree of centralisation of this mission, they do not try to offer strict, harmonised guidelines, as we have just showed. They note that the relationships between citizens, the media and Justice are very different from one country to another and that considerable national leeway should be given here.

But what these studies on judicial cooperation show is that it is a common concern to all European countries and European courts. Therefore harmonisation and strengthened cooperation are possible on some issues.

In light of these reports and the information gathered we think that some perspectives can be offered to improve cooperation in this matter and foster the development of best practices both at national and European level:

Training should be improved and exchange of feedback should be organised at European level. The reports underline the very positive outcomes of training programmes involving members of the judiciary, journalists and communication professionals. Such measures could be encouraged by European institutions and some feedback from states who have already implemented such programmes should be valued and spread to other states that wish to do the same. Moreover, European institutions or think-tanks such as the CCJE, the CCPE, the ENCJ or even the European Courts could organise common training sessions at European level. Harmonisation and cooperation seem to be desirable and possible in this matter.

If it seems impossible to detect a common position in Europe on the question of knowing whether spokespersons for the justice system should be judges, prosecutors, communication professionals or public servants, or on the issue of the centralisation of communication, some observations should be made nonetheless. One of the main goals of judicial communication being to bring members of the judiciary closer to the media and the people they serve, it seems

important that at least some of the communications be made directly by them. That said, when they exist, centralised offices in charge of communication often have a very positive impact. They contribute to harmonising the message sent out and generally ensure the basic training of press-judges and press-prosecutors. They can also help share out responsibility at national and local level.

In our opinion, the idea of a commission in charge of creating and enforcing rules to be respected in the interaction between members of the judiciary and the media is not desirable. It adds an extra obstacle to direct relations between judges and prosecutors and the media and the public. The risk is to complicate and rigidify a relationship that needs to be based on fluidity. It appears to us that common training for journalists, judges and prosecutors will help to solve problems more smoothly and will be more effective in making these two separate worlds understand each other better.

Using the internet, especially court websites to explain how the justice system works and to give information about particular topics when needed, is to be encouraged. More and more courts use this tool to create a link between them and the citizens living in their jurisdiction as well as with the local and national media. The European courts have been pioneers in this domain. As for the new social networks like Facebook, Twitter and others, some courts and spokespersons use them already. Even if this is a very good way of giving an impression of proximity, it should be used with caution because it can blur the limit between the word of the institution and personal expression. Moreover, such tools are in complete opposition with the serenity and solemnity of traditional judicial communication.

Such issues lead to our last proposal: encouraging research. For ten years now reflection has been carried out on this topic with a lot of positive outcomes. If many issues remain unaddressed, they can be so by fostering cooperation between stakeholders and the institutions involved with them. One topic that should particularly be addressed in our opinion is the updating of rules of professional conduct adapted to the use of new social networks. So far, the behaviour judges and prosecutors should adopt when communicating on behalf of the judiciary or the courts they represent must adapt general rules of caution, discretion and solemnity. By gathering experience from press judges and prosecutors throughout Europe, we could manage to specify these rules, thus clarifying what should and should not be done.

CONCLUSION

In the end, the whole issue of judicial communication boils down to making the citizens of Europe feel closer to their Justice system by fostering their knowledge of it. Judicial communication is a short term solution that, correctly implemented and coordinated, will contribute to spreading accurate and useful information to feed the democratic debate, without violating procedural principles or harming the image of Justice.

But the long term solution to the issue of the relationship between the public and its justice is, in our opinion - and here we venture outside the boundaries of this paper's topic - education. As the 2013 ENCJ report states, educating the public, opening up the courts and sending members of the judiciary to schools to explain the fundamental principles of their mission is the only way to ensure the public's trust at both national and European levels.

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