



SPECIAL REPORT

The New Code of Criminal Procedures

A historic turning point on criminal proceedings
with an impact on reputation management

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1. INTRODUCTION

Managing reputation along criminal proceedings is currently a tough task which is going to be affected by the changes on the current Code of Criminal Procedures (LEC). Some of these changes will directly affect reputation.

The changes of the new regulation will not change the substance of the matter but probably the forms, especially regarding the changes on the management of a case's publicity.

The keys for success are still the same. However, there are **three aspects regarding** reputation management we need to pay attention to.

- **Preparation:** global (of the case) and specific (regarding each aspect of the case).
- **Permanent coordination** with the legal team.
- **Legal decisions** taking into account the reputation variables.

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2. THE CODE OF CRIMINAL PROCEDURES: MAIN CHANGES AND IMPLICATIONS

Through the Ministry of Justice, the Government intends to pass a bill called “**the Code of Criminal Procedures**” which has been elaborated by an Institutional Commission of experts. Should the mention bill be passed, it will replace the current Code of Criminal Procedures and will mean a historical turning point on the Spanish Criminal Code due to the changes it presents. The bill could be passed by the Council of Ministers before the end of the year. Remains to be decided whether the law denomination will be the same as the current one (LEC) or it will go for a more ambitious denomination such as the Code of Criminal Procedures.

Here we present the main changes based on the new Code:

1. **The examining magistrates of the Criminal Court** disappear and become supervisory judges. Criminal cases would go now to the Public Prosecution Ministry with new deadlines and to which the judiciary police belongs. This major change goes in accordance with a) comparative law which assigns to prosecutors the inquiries and b) the imperative need to change the inquisitorial principle by the accusing part. We are talking about a “protectionist” change since the public prosecutor is controlled by a judge as the

institution making the most sensitive decisions –such as precautionary measures or permission for test running–. Moreover, in order to enable the public prosecutor to develop the new tasks, there has to be a change on the Statute of the Public Prosecution Ministry.

2. **Popular action is significantly reduced although** it is still allowed in cases of crimes committed by public officials, corruption, electoral and offenses against the “collective interest”. Again, a major change since there are currently many processes that have started because of the popular action.

3. **According to the Explanatory Memorandum**, the publicity of the cases will now be regulated in order to “achieve a balance between the right to be informed and the need to guarantee a fair process and to properly protect the privacy of the parts”. It is well known –and criticized– that processes are completely open to the public: the record of the proceeding is being constantly and illegally revealed without any punishment. This weakness is favoring parallel trials.

The Spanish Federation of Press Associations has complaint to the Ministry of Justice about the possibility of a judge or a jury silencing the Media in specific cases in order to preserve the rights of one of the parts. However, the target of the

project is to meet the external facts of the process and avoid a hasty and sometimes even arbitrary social judgment. This change –regulated according to the Public Prosecution Ministry– will be the most controversial one. We also have to bear in mind that there will be a change on terminology: the “charged” is now the “accused” (the Spanish terms are “imputado” and “encausado”) as a strategy to avoid the negative connotations of the word “accused”.

4. There are **new regulated ways to close a criminal proceeding** avoiding an oral trial. These ways are: a) agreeing with the penalty can sometimes lead to its reduction and b) the discretionary principle, which is when a prosecutor does not issue an indictment for certain offences (for example, avoiding an oral trial when the sentence to be applied cannot change the one imposed and also for minor offences which may lead to the suspension of the oral trial on condition that certain duties are fulfilled). There are big changes regarding the regulation of protective measures: there are no changes on the preventive detention’s length (remains in four years) but there is a reduction in the deadline before being handed over to the competent judicial authority, which drops to 24 hours. The confinement in a mental hospital is now
- regulated as a protective measure and it is part of the law of the Habeas Corpus procedure (a legal institution which aims to avoid arbitrary arrests and detentions).
5. Se regulan con **grandes novedades las medidas cautelares**, manteniéndose los plazos de prisión provisional (cuatro años), reduciéndose el plazo máximo de detención hasta la puesta a disposición de la autoridad judicial (24 horas). Asimismo, se regula como medida cautelar el internamiento en un centro psiquiátrico y quedando integrada dentro de la ley el procedimiento de habeas corpus (institución jurídica que persigue evitar arrestos y detenciones arbitrarias).
6. There are also great changes regarding the regulation of **criminal investigations**: inspections and field interventions, gathering and using DNA data, interception of communications, incorporation to the data process of the communications and regulating the police systematic monitoring. We can also find some innovations regarding the use of technical devices for tracking and localization and the inclusion on the automated process and treatment of personal data.
7. There is a **new regulation for special processes**:

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- » rapid resolution processes (processes by acceptance of the Public Prosecutor’s decree and direct suit). That means a process without any previous investigation’s stage due to its obvious nature;
 - » **autonomous confiscation** process; and
 - » there is a deep change regarding the **jury’s** competences. It will only be part of the process on those cases of completed offence of homicide and murder. We must highlight the **limited action of the jury during the criminal procedure since there is empirical** prove their functioning has failed.
8. We can also find a **new appeals’ system**: direct appellation procedures are now allowed. However, the judge who established the sentence is also allowed to annul the appeal in order to reevaluate it. The right to appeal is also regulated in a different way according to the following system. The right to appeal is only possible when presented against a condemnatory sentence. That means it cannot be applied to a judgment of acquittal. If the tribunal observes a completely arbitrary decision, the sentence, as an exception, can be sent back to the previous tribunal to be reconsidered.

Big changes are also observed regarding the cassation before the Supreme Court: in order to set a case law for all crimes it is planned the general cassation for criminal offences; as for serious offences, it will only be applied when there is a breach of procedure or precept. The key point is the cause of the cassation. The sentences established by the European Court of Human Rights are eventually considered a reason to review a sentence.

The above mentioned are the main changes on the Code of Criminal Procedures or the new Criminal law which:

- Has to work together with the Organic Law which sets a new judicial system and which so far, has been welcomed with reluctance. The reason for this mistrust can be found in the fact that the new law intends to condense different judicial offices (that means that important rural areas would lose their judicial headquarters).
- On the other hand, the Public Prosecution Ministry states the need to extend its personnel to be able to accomplish its new tasks. However, there will be processes for current investigating judges to become part of the Public Prosecution Ministry.
- Moreover, the Budget for tribunals and the judicial police will have to be

“Four main measures that could directly affect the reputation’s management of the different parts of the process”

updated together with the improvement of the criminal investigations which rely on technology and material and personal resources.

As for communication during the criminal procedures, the draft bill sets a new framework which does not exist yet and which will have a difficult and controversial implementation if the judges are not completely aware of the need to protect the privacy of the actionable and to avoid parallel judgments in the media. They should also bear in mind that the new communication technologies are instant and viral, so we need different policies from the ones been applied so far.

3. IMPACT ON REPUTATION’S MANAGEMENT

The new document introduces four main measures that could directly affect the reputation’s management of the different parts of the process:

- 1. New deadlines for investigations.** The prosecutor sets 6 months for the investigations with a possible extension of a maximum of 36 months for especially complex cases (for example, cases related to organized crime). The impact of this measure on the reputation’s management is positive. The sooner a case is solved, the smaller is the possible impact on reputation during the process.

- 1. There is a change on terminology: the “charged” is now the “accused”.** Thus, the new Code tries to avoid the social stigma coming from the word “charged” and chooses a neutral term. This change on terminology was adopted due to the duration of criminal proceedings, the media exposure, parallel judgments and the importance of some of the characters involved in certain cases.

A big part of the judicial sector considers this measure just a “disguise”. Regarding the point of view of reputation, the intention is clearly positive, but it is hard to imagine how the new term will avoid social stigmatization in the long term. A priori, it does not seem that a **change on terminology would be enough.**

- 1. Regulating the publicity of the case.** The information’s dismissal of a case is now legal, and there are limits concerning the images taken (and spread) at the beginning of a public hearing. The Press Association of Madrid has categorically refused this measure due to the limitations on the right to information “according to the judges’ and prosecutors’ wills instead of being limited to those cases of secrecy in summary proceedings (as it used to be)”. As the Association highlights, it is the first time judges and tribunals have the right to veto the news media in a process when the

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information could undermine the right to a fair trial, or the fundamental rights of the parts involved.

The Minister Alberto Ruiz-Gallardón expresses his concern about the **possible influence of the public opinion on a judge’s decision** during the investigation or the trial. The relationship between any measure limiting the publicity of a process and the reputation’s management of a company seems logical. Whether if it has a positive or a negative effect will depend on the communication strategy implemented. If one of the parts is highly interested on the case’s publicity, its strategy will probably be limited. When the objective is a low media repercussion, limiting or forbidding the publicity will probably help to achieve the goal.

Compliance. The new Code of Criminal Procedures enables compliance agreements between the prosecutor and

the parts at any time during the process and for all crimes regardless the sentence. When managing reputation during a judicial process, all the possible situations need to be taken into account.

The new measures require a higher preparation of the reputation’s management and the communication strategy before the proceeding starts. It will be especially important during the first months of the new Law’s implementation and for those companies working on the sectors with a higher rate of judicial proceedings.

Based on the companies’ and individual’s experiences on reputation management during judicial proceedings, we can state that the strategy on reputation’s management is more efficient when it starts before the beginning of the judicial proceeding. Moreover, the measures here explained will also have an impact on the daily’s management of the process regarding reputation.

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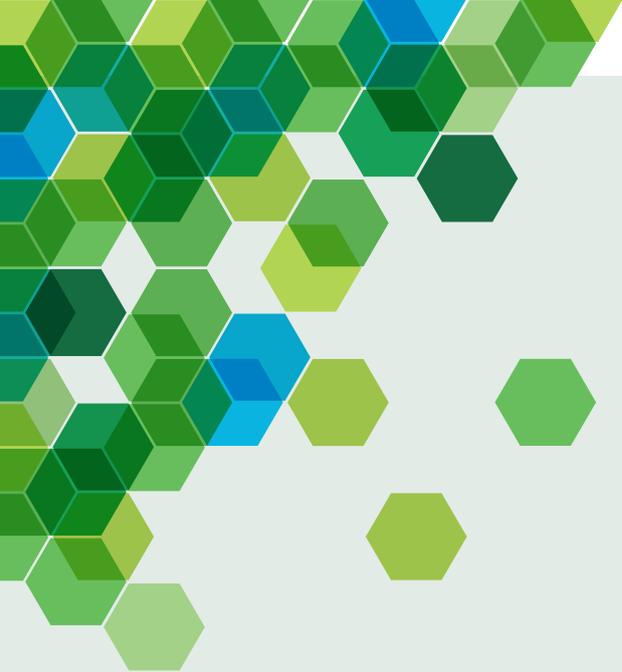
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