

# **Austrian reply**

## **to the Questionnaire**

### **on the relationship between prosecutors and media**

#### ***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 special legal provisions regulating the relationship between prosecutors and media. Important are the general provisions of official secrecy (Article 20 paragraph 3 of the Constitution Act, section 58 of the Law on Judges and Prosecutors) and data protection (section 1 paragraph 1 of the Data Protection Act).

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?*

According to the „media-order“ of the Austrian Ministry of Justice only the press relations officers, who are also public prosecutors (or concerning the courts: judges), and the heads of the public prosecution offices and his/her deputy are authorized to have direct contacts with media.

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)?*

Beside the public prosecution offices also the courts and the police have press relations officers. (Private) lawyers and parties are not bound to official secrecy. This concerns especially the new field of the „litigation PR“.

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

According to the leading function of the public prosecutor in criminal investigations (section 20 paragraph 1 of the Code of Criminal Procedure) the public prosecution offices usual undertake – in accordance with the police - the task of media-communication in big and more complex cases. In minor cases without special public interest usually the police carry out communication with media. In „jointly“ cases there is also (or should be) a mutually information between the public prosecution offices and the courts. In accordance

with the provisions of the „media-order“ of the Ministry of Justice there exists also the duty to let the superior public prosecution office and the Ministry of Justice know about an important media-communication, especially before having television-interviews (such interviews have to be approved). With other public authorities no similar communication takes place.

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)?*

During the investigation (including accusation) the press relations officer of the public prosecution office concerned has to carry out communication with media, afterwards the press relations officer of the court,

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

See answer to point 5.

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

The press relations officer of every public prosecution office is supervised by the head of his/her office first of all. He/she is obliged to inform the head about important media-communication. In a second step there is also supervision (and duty to supply information) by the superior public prosecution office and the Ministry of Justice, but only in important cases with public interest. Television-interviews have to be approved before by these superior authorities.

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”?*

The regulations of official secrecy and data protection (see answer to point 1) mark off the range of information which can be given to media. Besides the Media Law guarantees compensation for violation of privacy and the presumption of innocence.

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?*

Public prosecutors who violate the official secrecy (see answer to point 1) could commit the crimes of abuse of power (section 302 Penal Code) or violation of official secrecy

(section 310 Penal Code). For minor violations disciplinary sanctions can be applied.

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

Public prosecutors have to keep the official secrecy. The defendant and other persons involved into the proceedings (victims etc), who have under the provisions of the Code of Criminal Procedure access to the files, are not obliged to keep the official secrecy and have no difficulty to give information to the media. But even in case of knowledge of the media of sensible information, the press relations officers of the public prosecution service have still to keep official secrecy and are under circumstances not allowed to confirm information. A public prosecutor, who is not a press relations officer, is not allowed to give any information to the media, apart from a special permission of the head of his/her prosecution office.

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?*

Such provisions do not exist. But during the preliminary investigations the names of the investigating public prosecutors (and policemen) are usually not communicated to media to avoid a „personalisation“ („public prosecutor xy against defendant yz“) of the proceedings and also to avoid in special cases security risks for these persons. In the trial stage the names of public prosecutors and judges involved are public.

## **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.)?*

Predominantly the press relations officers communicate with media by telephone and also frequently by e-mail. Especially in cases of public interest also television-interviews (cut and live) take place. Also press releases are used, especially to inform all the media-institutions simultaneously about closing of proceedings or impeachments. In such cases the press releases are forwarded also to the accused before they are sent to the press. Press conferences are rare, only in cases of public interest. At the moment communication via social networks (twitter, facebook etc) does not take place. Except in cases of press releases and press conferences, the press relations officers only (re-)act after receiving an individual question from the press.

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

Press Conferences or other releases in cases of international investigations are possible. In such cases it would be advisable to care for a coordination with the foreign investigating authorities and inform these (especially the press relations officer) about the intended steps.

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

In general communication takes place with all the media, especially with newspapers (also internet-newspapers), radio and tv.

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

Special advantages should not be given to single journalists. This would create dependence and expectations for a „special-support“ (which could not be fulfilled) and would have harmful effects to the independence from media. But the „rule“ to act only in case of special request makes it possible to have intense contact to single journalists who are specialized in the field of crime and investigation. In case of special requests of a single journalist only this journalist will be contacted and not all his/her colleagues. It is the duty of all press relations officers to inform media in a correct, objective and impartial manner.

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?*

See answers to the points 2, 4, 7, 9 and 10.

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

In most cases the media (journalists, reporter) communicate with public prosecution offices by telephone, sometimes also per e-mail. But also „background talks“ could be useful instruments to communicate. In such a talk the press relations officer talks with one or few specialised journalist(s) about the work of the office in general, the regulatory framework of the proceedings and the characteristics of special proceedings, without violation of official secrecy. During the „background talk“ there is much more time to

explain certain complicated circumstances in a more detailed (and for outsiders more informative) manner than it would be possible in a (usually) shorter telefon call. A special authorization is not necessary for journalists to 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)?*

In general names and personal details of parties, witnesses, prosecutors etc are not disclosed. Only in cases of special public interest (see answer to point 12.), the names of these persons, especially of suspected persons, are disclosed, if the names are already known by the public and the disclosure does not harm the ongoing investigation. If damages for further investigations are expected or the rights of personality and fair trial or official secrecy would be endangered, the press relations officers would not confirm information already known by the public. Every case requires a special and difficult balance of the right of the public for information and the individual rights of the persons involved in the proceeding. Details of the proceeding, especially details of particular evidences and their importance, are usually not communicated (presumption of innocence). Information is generally given in an objective manner, without forecasts of the estimated closing of the investigation (eg accusation or acquittal).

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

At the moment no special written instruction to encourage prosecutors to respond to the needs of media exists, but it is unwritten common sense to support the media in their work with information within the above mentioned legal framework. This opinion is also part of the ethic code of the Austrian public prosecutors. At the moment the Ministry of Justice is drafting a new media order, which should encourage prosecutors to proactive media work.

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

In 2011 a large evaluation of the work of the press relation officers of the Austrian courts and public prosecution offices took place, also in order to prepare the above mentioned (drafted) new media order. At the moment a tool to monitor or evaluate the prosecutors' communication with media systematically does not exist. But the internal justice-homepage contains a press review of the reports of the media on the activities of the courts and the prosecution service.

### **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)?*

Currently the Ministry of Justice is drafting a new „media-order“ (see also answer to point 19), which should promote a proactive approach in the daily work of the press relations officers of the public prosecution offices and the courts. At present it is possible to publish important decisions of closing the investigation which are of public interest on the homepage of the Ministry of Justice in an anonymized form ([www.justiz.gv.at](http://www.justiz.gv.at) - „Einstellungsentscheidungen der Staatsanwaltschaften“). The possibility to release press informations remains unaffected. At some courts a „court case-mirror“ for media which includes interesting trials in the following week with a very short description of their content is published. At some public prosecution offices and courts periodically meetings with local journalists (eg „media breakfast“) are held.

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)?*

By using all the above mentioned different forms of communication (especially „background-talks“ and „press-breakfasts“) the press relations officers of the public prosecution offices (and also of the courts) try to explain the work of the public prosecutors also in order to raise the (mutual) understanding of the general public and the media for the (often daily) difficulties of the prosecutors' work. In this sense „mutal understanding“ between the media and the public prosecutors is very important to achieve a correct and – as far as possible – fair reporting. In this way it would make sense to explain the regulatory framework (official secrecy, fair trial, respect for private and family life, presumption of innocence etc) – together with representatives of the judiciary and the lawyers - to young journalists or to hold joint seminars to raise the sensibility of the media for this rights and for the situations, in which the press relations officer cannot give any information. In the last years many activities and events on the topic „the judiciary and the media“ took place in Austria. The press relations officers are also trained very professionally in different media-trainings (basic, follow-up and for special situations) under participation of well-known radio- and tv-spokesmen an – women.

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.*

Under specific circumstances it is possible to publish „wanted posters“ or other pictures combined with the appeal to report information. Some years ago in Austria, Switzerland and Germany a joint television series called „Aktenzeichen XY ungelöst“ („registrationnumber xy – unsolved“) was broadcasted, in which short films of the commission of unsolved crimes played by actors have been showed combined with the appeal to the public to give useful information to 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?*

Only a special training of the „technical communication“ (manner to speak, behaviour in front of the camera, guidelines for cut and live interviews etc) with media takes place for the press relations officers. A special training of these persons in the mentioned legal fields seems not to be necessary, because these issues are - without the special connection to the media - already part of the general education of the public prosecutors and judges.

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

Yes; see answers to the points 22. and 24 (media-training basic and follow up and for special situations).

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

We have no information.

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?*

Sometimes; see also answer to point 22.

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

We have no information.

### ***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?*

The Austrian Press Council ([www.presserat.at](http://www.presserat.at)) as a self-regulative institution decides whether a report of the press (also tv-, radio- and internet-communication with a link to the [printing] press) complies with the principles of the ethical code of the Austrian press. The Council is an incorporated society supported by the most important Austrian unions of journalists and publishers. In its decisions the Council can assess a violation of these principles and publish this decision on its website. If the violation hits an individual person, the Council can – if the press-institution and the individual person sign a mutual arbitration agreement – instruct the press-institution to publish the decision of the Council in its media. Almost all important press-institutions have signed a general arbitration-agreement. In the case of such an arbitration proceeding it is not possible to appeal (also) to a court.

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 offences of defamation (section 111 Criminal Code), allegation concerning a crime, of which the sentence was already served or placed on probation (section 113 Criminal Code), and slander (section 115 Criminal Code) committed against a private person can be prosecuted only by the victim itself (private accusation); the public prosecutor does not play a role. The crime of libel (section 297 Criminal Code) is prosecuted by the public prosecutor. Besides the victim can claim compensation (damages) from the media according to the regulations of the Media Law in a criminal procedure, in which the public prosecutor does not play a role too.

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

A journalist is personally liable for the offences mentioned in the answer to point 30. The penalty for the offence of defamation (section 111 Criminal Code) is imprisonment up to one year or up to 360 day fines, for the offences of allegation concerning a crime, of which the sentence was already served or placed on probation (section 113 Criminal Code), and slander (section 115 Criminal Code) imprisonment up to three months or up



to 180 day fines, for the crime of libel (section 297 Criminal Code) imprisonment up to five years.

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?*

If one of the offences mentioned in the answer to point 30 has been committed by a publication in a media, the publication has to be confiscated, when the (private) prosecutor files an application for this measure. The public prosecutor has this right only in case of libel (see answer to point 30). A preventive censorship does not exist in Austria; it is excluded by the Constitution. The public prosecutor does not have a competence for 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?*

Usually the Austrian Association of Prosecutors does not comment proceedings. But in grave cases when a prosecutor is unjust blamed for abuse of power, the association will support him/her with a public statement.

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

Yes, these circumstances would not allow to violate the official secrecy. In such a case it would not be advisable for the prosecutor concerned to communicate directly with the media. The press relations officers, the head of his/her prosecution office and the Ministry of Justice have the task to protect him/her and to care for proper information of the public.

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?*

See answer to point 34. Besides the labour union for the public service could support the prosecutor concerned.

#### ***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.*

No other information available, no more comments.