

Strasbourg, 6 February 2012



CCPE (2013)1

## CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE)

### Questionnaire for the preparation of the CCPE Opinion No. 8 on the relationship between prosecutors and media

#### Reply from Montenegro

##### 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.  
*Yes, according to the Law on State Prosecutor's Office of Montenegro in article 105 it is determined the relationship between prosecutors and media. According to this provision, the Supreme State Prosecutor is in charge to provide information about the work of state prosecutor's office.*
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 Supreme State Prosecutor, according to the Law is in charge to have direct relationship with media. In the exception he can authorise one or more person to have direct relations with media. Having in mind that in Montenegro, the prosecutors are in charge of leading the investigation, information about the specific case can be provided by the prosecutor in charge of that case. This was regulated by the internal authorisation given by the Supreme State Prosecutor.*

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)?

*Police service, lawyers and other persons will provide information to the media in accordance with their specific rules and in case that they will not breach the secrecy if the case is in the phase where the information cannot be provided to the media because of the secrecy.*

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

*Yes, according to the different agreements that we have signed on forming joint teams we have had an experience on providing information to the media that was prepared by several institution.*

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 pre-trial investigation and investigation, prosecutor in charge of the specific case can provide information about the case only if it is not disturb the procedure. During the court procedure, only the judge can provide the information about that stage of the procedure.*

6. Are the judges authorised to inform the press? If this is the case, during which stage of the procedure? *Relationship between judges and press is regulated by the Law on courts. Judges can provide the information about the cases that are in the phase of main trial.*

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

*Supervision on the relationship between prosecutors and media is done by the Supreme State Prosecutor. Supervision is in the competences of the internal control within the prosecutor's service.*

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"?

*Yes, there are specific rules, determined in the general provisions of the Criminal Code and Criminal procedure Code.*

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?

*Yes, there are disciplinary measures prescribed by the Law.*

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

*Based on the Law on State Prosecutor's Office and Guidelines on internal conduct the risk caused by disclosure of information concerning the prosecutors and the case are minimized.*

11. Are there any provisions set forth to forbid publishing a public prosecutor's (or a judge's) name when he/she is in charge of a case? Are there any procedures that in practice tend to prevent such a publishing?

*No*

## **B. Organisation of communication**

12. How prosecutors communicate with the press (press releases, press conferences, directly by telephone or e-mail, use of social networks etc.)?

*In Montenegro, prosecutors communicate with the press by press releases and press conferences*

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

*Yes, press conferences can be made by prosecutors of international investigation and this question is regulated by the Agreement.*

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

Yes

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

*Yes, in the Law on State Prosecutor's Office there is a provision that prescribes obligation to inform the publicity as a whole.*

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?

*Yes, we have a spokesperson, who is Deputy Supreme State Prosecutor and The President of the Prosecutorial Council.*

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

*This question is not regulated and the question of authorization is regulated by the law on media.*

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)?

*The prosecutors can disclose only such information that cannot influence on the procedure and the names of the parties are protected by the Law on protection of personal data.*

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

*Yes, there are specific strategies and action plans for specific crimes (such as organized crime and corruption, as well as other forms of crime) where there are parts determined to the relationship between media and prosecutors.*

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

No

### **C. Proactive media approach of the prosecution service**

21. Has the prosecution service developed a proactive media approach (access to prosecutor's decision, bringing a selection of relevant cases to the attention of the media)?

*Yes, because prosecutors will inform the publicity through the media about all the cases that might be of the public interest.*

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)?

*Yes, very year we do organize prosecutorial days in which we present our work and part of the program is open for the media. Also, we have open days for students.*

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.

*The practice in Montenegro's prosecutors' office has shown that the newspapers articles can be on of the sources that the criminal offence has been committed and base to open a case.*

#### **D. Professional training of prosecutors and journalists, their ethics, conduct and means of communication**

24. Are prosecutors trained during their initial and continuous training on the requirements of the European Convention on Human Rights as regards freedom of expression and access to information?

*Yes, prosecutors are trained during their initial education and on going trainings about the ECHR as well as the case law of the European Courts for Human Rights.*

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

*Yes.*

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

*That is the question of the internal organization of the specific media. The practice shows us that most of the journalist do not know criminal procedure.*

27. Are there joint training courses, conferences, seminars, etc. organized for prosecutors and journalists in order to help them to better understand each other's role and support each other, in the context of striking the right balance between the above-mentioned rights and the presumption of innocence and the right to protection of private life?

*No.*

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

*Yes, there is a regulatory body for the question of the media ethics.*

#### **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?

*Yes, that is the Regulatory body for ethics.*

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?

*In the amendments of the Criminal Code, the criminal offence of defamation and assault are deleted. However, in the civil procedure, there is a possibility to ask for the compensation of damage for the violations of the persons reputation.*

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

*According to the current legislation there is only possibility for the compensation of damage.*

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?

*No.*

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?

*Association of prosecutors are in charge to promote the ethical standards of the prosecutors.*

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

*Supreme State Prosecutor and other prosecutor acting on behalf of her/him can confute the untruth that was announced in the media, as well as to initiate the procedure before the self regulatory body.*

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?

*No.*

**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.