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CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE)

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

Replies from Slovenia

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.

The relationship between prosecutors and media is regulated in State Prosecutor's Office Act in Art 178

Article 178 (Informing the Public)

(1) The State Prosecutor General or another state prosecutor under his authorisation shall forward the notices on the work of state prosecutors to the mass media by sending written messages and/or calling press conferences and/or in another appropriate manner as determined by the State Prosecutor General.

(2) The State Prosecutor General or another state prosecutor under his written authorisation or head of a state prosecutor's office may inform, in accordance with the provisions of the act regulating the media, the public on the state of a particular case which is being considered by the state prosecutor office, provided this is not detrimental to the interests of the proceedings, confidentiality of the proceedings or privacy of persons.

(3) The State Prosecutor General may, on his own initiative or on a proposal of the head of a state prosecutor's office, make a statement to the press in which he may warn that certain data or comments published in the media seriously threaten or violate the constitutional right to the presumption of innocence of a suspect in pre-trial proceedings, the constitutional right to the presumption of innocence of a person undergoing the criminal proceedings, the independency of state prosecutor's offices or actions of state prosecutors pursuant to the Constitution and statutory law.

State Prosecutor's Order also has provisions regarding the publicity of work and informing the public in Chapter II.

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?

Prosecutors are authorized to have direct relations with the media according to Art 14 of the State Prosecutor's Order.

Supreme State Prosecution Office also has a spokesperson (PR person) who is in charge of communicating with the 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)?

All of the above.

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

Yes, often joint press conferences are organized when an important case has been concluded in the pre-trial procedure, for example Specialized Prosecution Office and National Bureau of Investigation.

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)?

Prosecutors can communicate the information to the media. During pre-trial investigation the names of the suspects can not be mentioned. If a case is in the pre-trial procedure phase we usually give the answer: "The matter is in the phase of the pre-trial procedure and at this stage we can not convey you more information. After the formal accusation and during the court proceedings the names of the accused may be mentioned.

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

Yes, they are authorised to inform the press, during all stages of the procedure.

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

There is no supervision on the relationships between prosecutors and the media. Prosecutors must act according with the legislation that regulates communication with the media. If the prosecutor fails to do so, there is a possibility of administrative control.

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 presumption of innocence must be respected at all times. As already mentioned in the previous answers the names of the suspects are not to be mentioned during the pre-trial procedure.

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, disciplinary sanction may be issued on a state prosecutor.

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

If prosecutors have a function that involves security risks, they have protection according to different legislation (for example Witness Protection Act).

The prosecutors are informed of the provisions of the State Prosecutor's Order that regulate disclosure of information concerning the cases.

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?

There are no provisions that prevent this.

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.)?

The most common way of communication are written answers to written questions from the media. Information to the media is also communicated via press releases, press conferences and posts on the website of the prosecution office. Prosecutors often answer questions in front of the camera before of after the trial. Social networks are not used for communicating with the media.

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

Yes. Procedure is the same as for domestic investigations.

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

There is communication with all the media. All national media are invited to press conferences.

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

No.

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?

Supreme State Prosecution Office has a spokesperson (PR person), she is not a prosecutor. Prosecution Offices do not have a spokesperson. Prosecutors can communicate themselves for their cases unless the head of the prosecution office orders otherwise. The answers from the prosecution offices are also sent to the Supreme State Prosecution Office so that the Supreme State Prosecution office is informed of their communication with the media.

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

The media usually send their requests via e mail to the prosecution office from which they want an answer or to the Supreme State Prosecution Office. The question is then forwarded to the prosecutor in charge of the matter who prepares the answer which is then sent to the 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)?

In the pre-trial procedure names are not disclosed.

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

Art 45 of the Media Act states that the answer to the media must be given within 7 working days. In practice we always provide the media with the answer the same day or the following day otherwise we get negative treatment in the media. If we won't answer the question or if we will answer it in part, we are obliged to let the media know the

same day or the following day. We can refuse the answer if it is exempted from the free access according to Act on the Access to Information of Public Character.

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

Based on the publications in the media we decide whether additional explanations or corrections are necessary. This is decided on a daily basis by following the clippings.

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)?

Some prosecution offices have started doing this and are bringing a selection of relevant cases to the attention of the media.

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)?

Regarding the changes in legislation and other organisational changes the public is informed by posting this information on our website. For the last 4 years we have not had promotional brochures and open day.

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.

Prosecution does not have an investigative function. This is done by the Police. New patterns of crimes are presented to the media by the Police.

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

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

There are no specific trainings regarding this topic.

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

There are no such trainings for all the prosecutors. Heads of prosecution offices had a media training 4 years ago. Support from the spokesperson is provided at all times. Sometimes the spokesperson is asked for advice regarding certain cases.

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

In agreement with the prosecution they send their written questions and follow our website.

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?

No.

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?

Journalistic honourable arbitration board.

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 such cases a person is always entitled to file a civil suit against the person who violated personal rights. In criminal law all these acts are prosecuted upon a private action. According to the principle of legality, prosecutor is bound to institute criminal prosecution if there is reasonable suspicion that a criminal offence liable to prosecution ex officio has been committed. In cases when such violations have occurred against a state authority or municipal or provincial authority or against military persons in relation to the exercising of their office, the prosecution shall be initiated upon a complaint. Then the prosecution takes over the case.

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

In cases of criminal offences against honour and reputation (Insult, Slander, Defamation, Calumny, Malicious False Accusation of Crime) if the criminal act has been committed through the press, radio, television or other means of public information the perpetrator is punished stricter. But this does not apply only to journalists but to all people who commit these crimes by such means.

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?

In civil procedure injunction to prevent dissemination of the article or recording is possible.

Prosecutors have no role in supervising media activities, form of preventive censorship does not exist in Slovenia.

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?

Prosecutorial association has a duty to protect the prosecutor and react in such cases.

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

Yes.

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.