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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 Albania

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.

Relations among media and prosecution are not adjusted through a special law, but the article 23 of the Constitution of the Republic of Albania provides that. "1. The right of information is guaranteed. 2. Everyone is entitled, in accordance with the law, to obtain information on the activity of the state bodies, as well as of the persons exerting state functions".

Articles 103 and 279/2 of the Criminal Procedure Law provide rules for forbidding the publication of acts and the case when their publication is allowed.

The Order of the General Prosecutor nr. 257 Dated 14. 12. 2005 regulates relations between Prosecution and the media aiming at the realization of a direct and objective communication with the public opinion paying attention at the obligation to preserve secrecy of investigative actions in the criminal process and avoid wrong practices on the publication of data and investigative acts.

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?

Article 40 of the law 8737/2001 "On the organization and functioning of the Prosecution in the Republic of Albania" (amended), defines that: "Prosecutors are forbidden from making public or providing data to third persons, given that it might undermine the case in a process of investigation or trial, as well as from disclosing data with confidential and reserved character. The Order of the General Prosecutor nr. 257 Dated 14. 12. 2005 provides: "1. Communication with the media on data of criminal prosecution, pressing charges in the court and the execution of criminal decisions on general or special problems of criminality in their jurisdiction, should be carried out every 3-months. Communication with the media on sensitive facts that are claimed in criminal denunciations or events, on the procedural situation of persons of interest for the public and media, on important issues where investigation terminates and which are sent to court, in the judiciary district prosecutions of first category should be carried out every two weeks, while in the Judiciary district Prosecution of Tirana and Serious Crimes Prosecution in Tirana it should be carried out every week. 2. Communication with the media and public on data regarding the activity of the prosecution on a national scale and sensitive issues to the public, preserving the secrecy of investigation and as mentioned in the point 1 above, is carried out by the spokesperson of the General Prosecutor, following the approval of the General 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)?

Relations with the media are built and carried out only by the spokesperson of the General Prosecutor. In special cases, upon order of the General Prosecutor, prosecutors might distribute information on prosecuted criminal cases, rigorously preserving the secret investigative material.

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

Joint media conferences with the State Police are carried out periodically on cases of high public interest.

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)?

The article 279/1 of the CPC provides that: "investigative actions are secret until the defendant gets informed about them. If needed for the continuation of investigation the prosecutor might order the preservation of secrecy on special acts until the end of the investigation". Article 103 of the CPC provides that;

1. It is prohibited to publish, even in part, secret documents or only their contents that are connected to the case through means of press or mass media.
2. It is prohibited to publish, even in part, non secret documents until the conclusion of the preliminary investigations.
3. It is prohibited to publish, even in part, trial documents when it is closed to public. Restriction on publication is removed when the time limits provided for by law on state archives expire or ten years have lapsed from the date when the decision became final, provided that the publication is authorized by the Minister of Justice.
4. It is prohibited to publish personal details and photographs of minor defendants and witnesses, accused or injured by the criminal offence. The court may allow the publication only when the interest of the minor requires so or when the minor has reached the age of sixteen years.

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

Court proceedings in the Republic of Albania are open, with the exception of cases when such a thing is requested by the prosecution and ordered by the court, in accordance with legal provisions. For this reason, in normal situations the court allows the media to follow court proceedings.

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

There is no exterior control of these relationships. Within the prosecution system the implementation of the above order is checked by heads of prosecutions and General Prosecution.

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”?

Constitutional principles for the safeguard and respect of fundamental human rights and freedoms are implemented as well as those of the Criminal Procedure Code and law 9887/2008 “On personal data protection” (amended).

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?

The order of the General Prosecutor nr. 257 Dated 14. 12. 2005 has sanctioned that the violation of articles 103, 279 and on of the Criminal Procedure Code, articles 6, 40 and on of the law "On the organization and functioning of the Prosecution" and the article 14/l(a, ç) of the law "On the organization and functioning of the judiciary police", when it does not constitute a criminal offence, are considered violations of discipline in the exercise of duty against a prosecutor, officer or agent of judiciary police.

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

The article 104 of the CPC provides that: “1. Breaching prohibition on publication by a state or public entity officer is a disciplinary infringement unless it constitutes a criminal offence. In this case, the prosecutor notifies the authority entitled to take disciplinary sanction”.

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 such provisions.

B. Organization of communication

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

There are no specific provisions on the way of communication. On specific cases prosecutors are ordered by the General Prosecutor to communicate 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?

It is possible to organize conferences on the media at the end of international investigation, when it is assessed that such a thing is of interest of the public and when there is full conviction in accordance with the evidence that persons under investigation are responsible on the criminal offence/offences they are accused of.

Procedure in the cases of international investigation is the same followed with the cases within the territory of the Republic of Albania.

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

The General Prosecution Office of Albania carries out a correct and general communication with each media (newspapers, television, radio, online agencies in the internet)

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

There is no such provision in the regulation.

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?

Prosecution services (Prosecutions of First Instance and of Appeal) do not have a spokesperson. On specific cases, prosecutors of the case might communicate with the media after obtaining the authorization of the General Prosecutor. The institution implements the hierarchic structure and the General Prosecution supervises the activity of the prosecutors as far as the communication with the media is concerned.

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

The media are welcome to communicate at every moment and when they deem it reasonable with the authorized representatives of the Prosecution. In any case a preliminary authorization is requested to divulge information from the representatives of the institution. While journalists are not requested any preliminary accreditation from the institution.

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)?

Information becoming public is assessed case after case. The names of the defendants may be published, but only after the request for trial has been sent to court. Exceptionally, names of the defendants are not made public when they are minors. Names of defendants might become public only during the trial. Furthermore, facts and names of third persons linked to the trial are rendered public when such thing does not constitute a problem for the normal development of the trial or when it is requested to safeguard the moral and physical integrity of persons involved in investigation and trial.

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

Currently, the institution of the prosecution considers the realization of transparency preserving the investigative secrecy as one of its priorities.

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

In any case the communication of the prosecutors with the media is monitored by the respective structure in the General Prosecution. Furthermore, normal standards of assessment of communication through feedback from the media and public are applied.

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)?

The prosecution body permanently distributes decisions of prosecutors on cases of public interest (with the exception of elements that might affect the development process or life of minors, of third physical/judicial persons, etc.)

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)?

As far as February 2013, the prosecution office has not carried out an "Open Doors" activity. However, periodical meetings with media representatives take place to discuss on institutional activity.

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 prosecution considers media as an important factor in the fight against crime and communicates even on the cases of suspects' identikit spreading. Furthermore, the material published in the media serve as evidence for the starting of investigation.

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, there are different trainings organized by Magistrate School on the European Convention on Human Rights as regards freedom of expression and access to information.

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

Heads of prosecution offices are periodically trained in the communication with the media.

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

There are periodic meetings with the journalists to enhance the way of reporting on the activity of prosecution, as well as to strengthen cooperating mechanisms prosecution-media in the struggle against crime.

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?

Meetings with defined topics are mainly carried out aiming at the information's distribution way and the report of the prosecution's activity, as well as focusing in the realization of the transparency respecting and protecting life and private data.

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

There are some media associations with their statutes containing ways of communication with public institutions. We have no information if these associations have set a special regulation on cooperation with the prosecution.

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 National Council on Radio Television is an administrative independent institution that regulates the activity of the public and private radio and television in the territory of the Republic of Albania. We don't know the existence of any other internal board or institution which 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. If there is a violation of an individual right according to our national legislation, the person involved can bring a claim to the court on this violation and request compensation.

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?

Article 625 of the Civil Code provides that the person who suffers damage, different by property damage, has the right to claim compensation. The civil suit is lodged based on the articles 608 and on, 625 and 640 and on of the Civil Code.

Administrative responsibility arises in case the violation was provided in the collective or individual work contract of the subject, in the normative acts according to which the employer works, or in other provisions of specific laws.

Criminal responsibility arises in case actions form the shape of a criminal offence provided by the Criminal Code or other criminal laws. In this case the prosecution exerts its constitutional and legal duty to exercise criminal prosecution, carry out investigation, control preliminary investigation, represent accusation in court on behalf of the state etc.

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

The Criminal Code of the Republic of Albania does not have specific provisions, on criminal acts which might be committed by journalists only. They are subjects of all criminal offences provided by the Criminal Code, but we think that in particular they might be subject of the article 119 (fine or imprisonment up to a year), 120 (fine or imprisonment up to two years), 122 (fine or imprisonment up to two years), 239 (fine or imprisonment up to two years), 265 (fine or imprisonment up to ten years), 267 (fine or imprisonment up to five years), 295 ((fine or imprisonment up to five years), 318 ((fine or imprisonment up to two years) of the Criminal Code, article 24 of the Military 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?

There have been no cases in practice, but we think that in specific cases the article 274 i of the Criminal Procedure Code might be applied, providing that: "1. When there is a danger that free possession of an item connected to the criminal offence may aggravate or prolong its consequences or facilitate the commission of other criminal offences, the competent court, on the application of the prosecutor, orders its seizure by reasoned decision. (i.e. seizure of the newspaper or magazine number with an offending publication.

At the end of the criminal proceeding, the court is entitled to apply the article 30 point 9 and 43 of the Criminal Code, providing as a supplementary punishment the publication of the judiciary verdict when this publication is of interest for juridical or physical persons.

The prosecutor does not monitor the activity of the media. He might use the information published by the media when it is related to specific cases or it constitutes a criminal offence.

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?

The association of prosecutors aims at safeguarding and representing the interests of its members in the state bodies and institutions, as well as examines cases, when the interests of the association or its members are violated. In accordance with this goal it is its duty to undertake necessary measures for the protection of prosecutors case by case.

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

The prosecution body carries out a detailed analysis on cases regarding a media campaign against a prosecutor, to determine reasons of such an undertaking. If it is assessed that the engagement of a prosecutor on a case negatively affects the public perception on the prosecutor's work, there might be taken measures for his replacement with another prosecutor.

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, there is not such a institution.

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.

The questionnaire entirely covers cases related to the activity between the prosecution and the media and public.