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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

#### Replies from Croatia

#### 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.

Relationship between state attorneys/prosecutors and media is prescribed by the provisions of the State Attorney's Office Act and the Rules of Conduct of the State Attorney's Office ([SAO](#)). Relationship deriving from these two acts is described in more detail on our web page ([www.dorh.hr](http://www.dorh.hr)).

Article 38 of the State Attorney's Office Act prescribes that public announcements via mass media regarding proceedings of individual cases, as well as operations of the State Attorney's Office ([SAO](#)) are given by the State Attorney, or Deputy State Attorney authorized by the former.

Also, State Attorney General of the Republic of Croatia may authorise another person for public relation activities regarding announcements of operations of the State Attorney'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?

As it is prescribed in the above referenced Act, State Attorneys or Deputy State Attorneys are authorized to have relations 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)?

Journalists, i.e. representatives of media, in an individual case, can obtain information from State Attorney's Office, but also from representatives of the Police and courts, both within the framework of their competence, i.e. they can only provide information pertaining to their field of jurisdiction. Of course, journalist can also communicate with lawyers who provide information from their own perspective and point of view.

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

In certain individual cases joint communication is agreed upon and performed. Therefore, joint communication is present between the state Attorneys' Offices and police. Such joint communication is most common between the Office for the Suppression of Corruption and Organised Crime (USKOK, specialised state attorney's office competent for the prosecution of perpetrators of criminal offences of corruption and organised crime) and police.

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)?

State Attorney communicates information in a form of press announcement published on web page once the decision regarding the case is made (order on conducting investigation, indictment, correction and response to published information), and responds to written queries of journalists providing information on the stage of proceedings in a specific case regarding the submission of a specific criminal report.

State attorneys provide notices, information and data from their jurisdiction taking into consideration the stage of the proceedings and data confidentiality.

State attorney does not provide information in following cases.

a. when police investigation is on-going in an individual case. State attorney does not provide information during proceedings before court. He/she only reports on action of State attorney in proceedings before court.

b., as a rule, information on receiving a criminal report are not communicated to media, only in exceptional cases if such information is of public interest or the person who submitted the criminal report notified the public.

c. no information are provided on the content and the course of procedure against minors and decisions made in cases involving minors.

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

Judges are authorised to inform the press and communicate with media regarding information from their jurisdiction.

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

There is no formal supervision on the relationships between state attorneys and media.

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”?

In communication with the media it is fundamental to consider provision from the Constitution of the Republic of Croatia regarding the freedom of opinion and expressing opinions, that is, the right of a journalist to report freely and have access to information, while limitations of the right to access information must be proportional to the nature of the need for limitation in each individual case and necessary in free and democratic society and as such are prescribed by law.

In communication with the press, all state attorneys and deputy state attorneys are guided by Article 28 of the Constitution of the Republic of Croatia referring to the presumption of innocence: “Everyone shall be presumed innocent and may not be considered guilty of a criminal offence until his guilt has been proved by a final court judgment.”

Provisions of the State Attorney's Office Act regarding data secrecy regulate that information from the competence of a state attorney's office does not result in breach of privacy, dignity and presumption of innocence and as such presents a measure to avoid „trial by press“.

Data referring to juvenile cases of the State Attorney's Office, data from case file in which special investigative measures and other state attorney's activities are being carried out until the decision on submitting criminal report is made, case file with evidence collecting actions prior to initiating investigation, case file during investigation, and data and documents in criminal, civil and administrative and other cases that state attorney or deputy state attorney classified as such are considered confidential/secret.

However, although journalist and media request confirmation that criminal report was submitted against a person, SAOs do not confirm that so as to avoid trial by media.

In line with the Personal Data Confidentiality Act, Criminal Procedure Act prescribes that the data on the identity of the person against whom a criminal report has been submitted and the data that might lead to conclusions about the identity of the person shall be kept confidential.

Media Act and Code of Honour of Croatian Journalist prescribe that journalist should:

- respect, protect and promote fundamental human rights and freedoms, and especially the principle of equality of all citizens
- should protect person's privacy from sensationalist and any other unjustified disclosure in public, that is, protect everyone's right to privacy
- special attention, consideration and responsibility is requested in reporting on suicides, accidents, personal tragedies, illnesses, deaths and violent act, and journalist should avoid interviewing and showing persons who are directly or indirectly affected by these events, except in the case of exceptional public interest
- obliged to take into consideration the honour, reputation and dignity of individuals on whom they report
- in reports on court proceedings, they should respect constitutional principle of presumption of innocence and dignity, integrity and feelings of all parties in the dispute
- in criminal cases, they are obliged to respect the right to the protection of identity of protected witnesses, informants, whistleblowers and injured parties, which may not be disclosed without their consent, except in cases of exceptional public interest
- may not reveal identity of a child or a minor involved in sexual abuse cases or any other form of violence or criminal offence, regardless of the fact whether child or a minor is a witness, victim, suspect or defendant.

Namely, Media Act prescribes that every person has a right to the protection of privacy, dignity, reputation and honour, and in line with the referenced, media principles and obligations are further elaborated.

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?

There are no disciplinary offences relating to the violation of internal rules of relationship with the media. However, there are numerous disciplinary offences referring to possible abuses committed by deputies, and in activities of individual case, it would be possible to evaluate if disciplinary offence containing these elements occurred.

SAO Act (Article 137) lists disciplinary offences and sanctions, and in line with that, if elements of one of disciplinary offences are determined in the relationship between a deputy state attorney and a journalist or editor, deputy state attorney can be sanctioned by the State Attorney's Council.

Some disciplinary offences are: abuse of power or exceeding authority, conduct or activities in breach of the basic principles of the Code of Ethics of the State Attorneys and Deputy State Attorneys, Code of Ethics prescribes rules of conduct that provide protection of rights of others, including the protection in regard to the possible violation of privacy right.

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

Within the framework of regular education, state attorney's/deputy state attorneys are trained on aspects of reporting on cases. „Security aspects“ are dealt with also and security risks in communicating information are taken into account

Disclosing information on prosecutors and cases is frequent, and despite all frustrations that occur we try to minimise damage that may occur by providing information that can be given, considering confidentiality of vital information, in timely manner.

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. 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.)?

Usual manner of communication with media, and two most frequent ones are press releases published in web site of the state attorney's offices and written queries received via e-mail or fax referring to specific cases, and to which we provide written answer.

Press conferences are rarely organised in state attorney's offices, but deputy state attorney participate in police press conferences which are organised for large actions and cases of great public interest (see joint communication under 4).

Communication via social networks is not envisaged.

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

In principle, state attorneys could hold a press conference and publish press release in cases of international investigations, while complying with the Act on Mutual Legal Assistance in Criminal Matters, that is, Memoranda of Understanding between states, that is, SAOs.

However, cases of international cooperation are frequently of confidential nature, and therefore it is not appropriate for the requested country to provide press releases. In any case, without the consent of the requesting state, information is not provided. If Joint Investigation Team (JIT) has been set up, Agreement on establishing JIT regulates the issue.

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

SAO communicates with all media, in Croatia and abroad, independently of their owners and the type of media in question. No exclusives.

Namely, selection of certain media, that is, favouring some media would be impermissible from the point of view of the State Attorney's Office which, for the purpose of providing „all available information to all journalists“, initiated the web page where information are published.

Also, Media Act and Code of Honour of Croatian Journalists both emphasize availability of information, i.e. that bodies of executive, legislative and judicial branch as well as other authorities (...) with the aim of publishing information through media are required to provide true, complete and timely information on issues from their competence, and that those information have to be available to journalists under same conditions.

According to the Code, journalist has a right to express freely all facts of public interest, and a right to access all available information sources, and if requested information of public interest has been unjustly withheld, he/she has a right to inform the public thereof.

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

No, there are no such regulations.

As answered under 14, practice of favouring certain journalists would be contrary to provisions of the Media Act, Code of Ethics of SAO and Code of Honour of Croatian Journalists.

Also, principle of equality is emphasized in the Access to Information Act which stipulates that right to access information belongs to all authorised persons in equal manner and under same conditions and that they are equal in exercising that right. It is also emphasized that public authorities must not favour any authorised person by providing information to one person before the other.

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?

Relationship between a state attorney and media representatives is prescribed by the State Attorney's Office Act and Rules of Conduct of the State Attorney's Office.

Article 38 of the State Attorney's Office Act prescribes that public announcements via mass media regarding proceedings of individual cases, as well as operations of the State Attorney's Office are given by the State Attorney, or Deputy State Attorney authorized by the former.

Also, State Attorney General of the Republic of Croatia may authorise another person for public relation activities regarding announcements of operations of the State Attorney's Office.

Relationship stemming from these two acts is further elaborate in the text published on web page: ([www.dorh.hr](http://www.dorh.hr)):

The Office of the State Attorney General prepares and publishes press announcements referring to work under competence of the State Attorney's Office of the Republic of Croatia.

County State Attorney or Deputy authorised by former prepares and publishes press announcements referring to work under competence of the County State Attorney's Office.

Municipal State Attorney or Deputy authorised by former prepares and publishes press announcements referring to work under competence of the Municipal State Attorney's Office.

Within the State Attorney's Office of the Republic of Croatia, expert advisor – spokesperson is employed, while in County SAOs and Municipal SAOs spokesperson's tasks are performed by a State Attorney or a Deputy authorised to perform tasks of a spokesperson by Annual Work Schedule.

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

All journalist and editors have the same approach to any SAO and all SAOs are available in the same manner to everyone.

Recently, and with more Internet portals by day, journalist from the „judiciary“ sector disappeared or blended with other journalist. With disappearance of specialised journalists and sectors, communication with SAOs has a new role, so not only that SAOs provide information but also have to educate journalists so that public, and by public we mean journalists and their readers/viewers/listeners, would receive true and complete information.

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)?

Considering deficiencies of provisions of the Media Act and Code of Honour of Croatian Journalists since there are no explicit sanctions for publishing personal information of injured persons or witnessed, State Attorney's Office took over the role of educator in the view of the protection of identity of proceedings participants and protection of proceedings data.

Namely, ten years ago first guidelines for media relations were developed in the Ministry of Interior Affairs prescribing prohibition to publish the identity of parties, injured persons, witnesses, and also which information on some criminal or misdemeanour offence could be published.

Since State Attorney's Office of the Republic of Croatia was consulted while drafting the guidelines, they were taken over by the SAO RoC and in Instruction on Informing the Public provided instructions for drafting materials for internet press releases and answers to queries.

Instruction contained consultation with the spokesperson of the SAO to ensure protection of identity and limitations in publishing information.

Certain exceptions regarding identity publication have been made in cases of great public interest but such publications did not harm criminal proceedings.

However, all obey the law when juvenile perpetrators and injure persons are in question.

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

On several occasions, in the referenced Instruction which stemmed from the State Attorney's Office Act and Rules of Conduct of the State Attorney's Office and also during meetings with County State Attorneys and their deputies authorised to perform spokespersons' tasks, State Attorney General of the Republic of Croatia encouraged and still encourages, in line with legal possibilities, open and available communication with media.

Also, in regular and obligatory education of state attorneys/deputies necessity of communication with media is indicated. Result of such encouragement is openness of state attorneys and their deputies in giving statement after court hearings and larger higher number of press announcements published on the web page.

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

Methods of research usually used to evaluate media relations and public relations have not been applied and therefore there are no exact and verifiable results based on which assessment of communication between SAOs and media could be made.

But, from the time we started publishing press announcements on our web page, it was noticed that media rely on content that SAOs publish and that our web page became relevant and correct information source, while on the other hand, need to track media and public feedback was noticed and also the need to implement other research methods besides the analysis of what is published in media.

What is measured is the number and type of press announcements that SAOs publish in web page.

State Attorneys and deputies authorised to act as spokespersons are liable to evaluation by the competent state attorney, while spokesperson of the State Attorney's Office of the Republic of Croatia, in regard to the performance of her tasks, is evaluated by the State Attorney General of the Republic of Croatia.

### **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)?

In regular criminal cases, that is, proceedings conducted before court, proactive approach of SAO is not developed since such approach is not possible, and journalists can receive information from court or by sending written query to state attorney.

Proactive approach is developed and implemented by publishing press announcements on decisions that SAOs reached.

Proactive approach is realised in war crime cases when, once a year, prior to anniversaries of war events which are very interesting to media, press announcements that were published earlier are updated with current data.

Journalists do not have access to case files of on-going proceedings.

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)?

Public and by that, also media, are informed of activities of the State Attorney's Office of the Republic of Croatia and SAOs that do not relate to specific criminal and civil-administrative cases by publishing press announcements on our web page.

Press announcements with photographs regarding visits of representatives of the State Attorney's Office of the Republic of Croatia to other countries and prosecutor's offices, their participation in international and regional conferences and also protocol visits and international meetings (conferences, workshops, presentation of awards) organised by the State Attorney's Office of the RoC are regularly published on our web page.

The same refers to working meetings that are closed for public, i.e. media, but in a form of basic information. There is no open day; however, press announcement is published regarding Annual meeting of state attorneys and marking State Attorney's Day.

State Attorneys are frequent lecturers in the Faculty of Law, Judicial Academy and in that way, interested parties are acquainted with state attorneys' work.

Also, visits to schools are organised and pupils are acquainted with inappropriateness of any form of corruption, improving traffic safety.

Also, expert papers and reports of SAO officials are published on our web page as well as information regarding the opening of certain projects and conclusions once the projects are closed.

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.

Communication with media as an investigative tool in a way that it is used to investigate and detect perpetrators of criminal offences by publishing materials of SAOs is not used since such communication is used by the Ministry of Interior Affairs or competent police administrations.

#### **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?

Officials in the state attorney's organisation undergo training program on freedom of expression and access to information.

State Attorneys and Deputy State Attorneys participated in workshops so as to be familiarised with the European Convention on Human Rights as regards freedom of expression and access to information and some of them are lecturers in such workshops.

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

Officials in the state attorney's offices are trained on how to communicate and interact with media and state attorneys and their spokespersons hold regular meetings on communication with media and their activities regarding press announcement publication on SAO web page. Education involves topics from legislative and ethical field as well as concrete and practical examples and analyses.

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

Yes. Workshops for state attorneys/deputies are also organised on that subject. This field is regulated by the Code of Ethics.

Code of Ethics of State Attorneys, in Section III, that is, Article 3 prescribes relationships and cooperation within SAO. Entire section deals with relationships and cooperation, and further parts prescribe relationships and cooperation with court, police and other state authorities, opposing parties, suspects and defendants, injured parties and parties represented by SAO and also with parties and citizens in general.

Also, there is the Code of Ethics for Public Servants as well.

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?

State Attorney's officials participated in all, up to now organised, workshops, trainings held jointly with Association of Court Reporters that operates with the Croatian Association of Journalists. On several occasions, Anticorruption and PR Department of the Office for the Suppression of Corruption and Organised Crime organised joint workshops.

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

There is the Association of Court Reporters that operates with the Croatian Association of Journalists and „judiciary“ sector, that is, media coverage of the referenced sector is communicated with them.

#### **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?

Year and a half ago, Croatian Association of Journalists and publishers of all major media founded Croatian Media Board that can sanction their members for violation of Media Act and other laws pertaining to media, while Journalist Honour Council is competent for sanctioning violations of the Code of Honour of Croatian Journalists.

Electronic Media Agency has a Council that sanctions violations from the electronic media filed of competence.

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?

Those are criminal offences for which criminal proceedings are initiated by private suit. Therefore, role of prosecution is utterly minor (certain possibility of extraordinary legal remedy).

Procedure is common: every person who feels that their honour or reputation was violated has a right to address the court, and regular criminal proceeding is conducted.

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

According to the Media Act, there is misdemeanour liability of journalist, and penalty is a fine. Provisions that refer to the above mentioned have been discussed above. Also, sanctions for the violation of Electronic Media Act are much more stringent and can result with termination of concession.

Regarding criminal liability (in criminal cases initiated by citizens – see under 30) they are liable as any other citizen.

Only fines are prescribed.

Public announcement of judgement in criminal proceedings conducted for criminal offence against honour and reputation is possible. Court decides on that.

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?

Media Act enables persons authorised for providing information to deny information if requested information are classified as state or military secret in an prescribed manner, and when publishing such information would constitute violation of personal information secrecy in line with the law, unless publication of such information would prevent perpetration of more severe criminal offence or prevent immediate danger for the life and property of persons.

Also, since journalists have the right to protect their source, there are cases when it is not possible to exercise such right. Namely, State Attorney's Office can, when that limitation is of national security interest, territorial integrity and protection of health, submit request to court to order a journalist to provide data on the source of information. Court may order a journalist to provide information on the source if it is necessary to do so to protect public interest, under especially significant and serious circumstances and it has been undoubtedly determined that:

- there is no reasonable alternative measure of detecting the source of information or the body requesting publication of the source already used the measure
- grounded public interest for detecting the source is prevalent to interest of protecting information source.

Taking into consideration of circumstances of the case, court will exclude the public during revelation of information, and warn all present persons that they must keep a secret all information they received during the proceedings. Court will also warn participants of consequences of revealing information.

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?

We have not recorded such activities by prosecutorial association.

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

Question unclear.

„Secrecy obligation“ is regulated by law, and therefore cannot be differently explained depending on the media campaign or other external factors

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?

State Attorney's Office of the Republic of Croatia, the Office for the Suppression of Corruption and Organised Crime and competent state attorney's offices react if media „attack improperly“ any state attorney's office or any state attorney official improperly.

#### **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.