

Strasbourg, 6 February 2012



Germany

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**

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.
It is based on German constitutional law (Art. 5 Grundgesetz). Journalists are entitled to information required for media coverage. The entitlement is subject to restrictions, such as personal rights or rules of confidentiality, secured by criminal and civil law. In the Länder and for the Federal judiciary there are similar regulations concerning the relationship between justice -including prosecution Services-) and the media ("RiStBV Anlage B" - for research in the Internet). These provisions describe who may or shall give what kind of information and when.
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?
Yes. The prosecution offices and the Federal Public Prosecutor General maintain a press office or at least a press spokesperson especially to be within the media's reach.
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)?

During the pre-trial investigation the basic rule for public authorities is the information of the media only by the office of the Public Prosecutor (in general, sometimes under the aegis of the Prosecutor this may be done by the police). At the court house, sometimes the acting prosecutor is allowed to give statements immediately.

4. Do you have any experience of joint communication by several public authorities (e.g. prosecutor and police)?
Yes, e. g. joint press conferences with the police during the pre-trial investigations.
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)?
Basically during the pre-trial investigation.
6. Are the judges authorised to inform the press? If this is the case, during which stage of the procedure?
The deciding judges do not give information to the media, but the court speakers may, especially to explain the reasons for court decisions. Generally prosecutors will not comment on these informations.
7. Is there supervision on the relationships between prosecutors and media in your country? By whom and how?
There is no supervision by superior institutions. Journalists can enforce the entitlement to the required information by legal action.
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. See the rules of action for criminal proceedings, no. 23 (Richtlinien für das Strafverfahren [RiStBV], Nr. 23). Beyond that the constitutional and civil law is to be observed.
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?
This cannot be answered in general terms. There may be disciplinary sanctions or sanctions according to criminal or civil laws. It depends on the case.
10. How do the prosecution services deal with the security risks caused by disclosure of information concerning the prosecutors and the cases?
Adhere to the rules of action for criminal proceedings, RiStBV no. 23 (see answer to question 8).
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? (see answer to question 8)

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.)?
Press releases, press conferences, telephone, E-mail (via press office).
13. Can press conferences or other releases be made by prosecutors in cases of international investigations? If yes, which procedure do you follow?
Yes, these procedures are following the national law, rules and regulations.
14. Is there communication with all the media or with some (newspapers, audiovisual media, internet)?
We communicate with all.
15. Are there regulations prohibiting public prosecutors to give an advantage to single journalists (and/or leaving out some of them)?
No, as the equality principle demands to communicate with all journalists.
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?

The prosecutor's office has a spokesperson that is in charge of the press office. She or he is a prosecutor. If prosecutors are willing to communicate with journalists by themselves directly, they need to have the previous authorisation by the press unit or the head of the prosecution service.

17. How do the media communicate with the prosecutors (official representatives, specialized journalists, necessary authorizations)?
All journalists can ask for information. The main problem is to define the profession of person being a "journalist", as this profession is under no authorisation.
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)?
(see answer to question 8)
19. Is there an official policy encouraging prosecutors to respond to the needs of media, and how is this policy implemented?
(see answer to question 8)
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, e.g. press release, press conferences.
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, all kinds of services mentioned in the question.
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 investigatory means arise from the German code of criminal procedure. In general, public searching and investigating measures are under the permission given by the investigation judge.

B. 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?
The freedom of speech and the access to information belong to the fundamental rights in Germany. They are part of the training programme.
25. Are prosecutors trained on how to interact with media?
The spokespersons are trained.
26. Are journalists trained on how to interact with the prosecution services?
I do not know.
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?
There are training units held for prosecutors and judges containing this topic. Journalists may often take part as speakers and professional experts.
28. Are there professional associations of media and journalists competent to regulate their interaction with the prosecution services?
Not known.

C. 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 German Press Council ("Deutscher Presserat"). It is a Non-Government Organisation of self-control, founded and ruled by the media.
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?
There are no special rules and sanctions concerning the behaviour of journalists.
31. Please give information about criminal or administrative liability of journalists and the penalties provided by law.
No special liability of journalists, their behaviour is governed by the general rules of law.
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?
Prosecutors do not have any general supervising role. They only may intervene in cases of unlawful criminal actions of journalists.
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?
Yes, they will defend their colleagues.
34. Is the prosecutor bound by a duty of discretion even if a media campaign has been started against him or her?
This question cannot be generally answered. It depends on the case.
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?
Every prosecutor or prosecution office can launch a complaint or protest to the German Press Council (see above No.29).

D. 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.

If you look into the internet, you will find "Anlage B RiStBV". It contains regulations concerning the communication of Prosecutors with the media in a very detailed way. I was not able to translate them so far.

Karlsruhe/Germany, 28 Feb. 2013-02-28
 Harald Range
 Federal Prosecutor General of Germany