

Strasbourg, 18 March / *mars* 2013

**CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS**  
***CONSEIL CONSULTATIF DE PROCUREURS EUROPEEN***  
**(CCPE)**

**on the relationship between prosecutors and media**  
***sur les relations entre procureurs et médias***

**Compilation of replies to the questionnaire**  
***Compilation des réponses au questionnaire***

## Contents Table des matières

Albania / <i>Albanie</i> .....	3
Armenia / <i>Arménie</i> .....	8
Austria / <i>Autriche</i> .....	14
Belgium / <i>Belgique</i> .....	18
Bosnia-Herzegovina / <i>Bosnie et Herzégovine</i> .....	20
Bulgaria / <i>Bulgarie</i> .....	23
Croatia / <i>Croatie</i> .....	26
Cyprus / <i>Chypre</i> .....	34
Czech Republic / <i>République Tchèque</i> .....	38
Denmark / <i>Danemark</i> .....	43
England and Wales / <i>Angleterre et le Pays de Galle</i> .....	49
Finland / <i>Finlande</i> .....	56
France .....	63
Georgia / <i>Géorgie</i> .....	66
Germany / <i>Allemagne</i> .....	71
Greece / <i>Grèce</i> .....	74
Hungary / <i>Hongrie</i> .....	79
The Cabinet .....	83
Iceland / <i>Islande</i> .....	89
Ireland / <i>Irlande</i> .....	92
Italy / <i>Italie</i> .....	96
Latvia / <i>Lettonie</i> .....	101
Liechtenstein .....	105
Lithuania / <i>Lituanie</i> .....	108
Monaco .....	112
Montenegro / <i>Monténégro</i> .....	116
Norway / <i>Norvège</i> .....	120
Poland / <i>Pologne</i> .....	123
Portugal .....	134
Romania / <i>Roumanie</i> .....	145
Russian Federation / <i>Fédération de Russie</i> .....	150
Slovakia / <i>Slovaquie</i> .....	157
Slovenia / <i>Slovénie</i> .....	163
Spain / <i>Espagne</i> .....	168
Sweden / <i>Suède</i> .....	171
Suisse / <i>Switzerland</i> .....	174
Turkey / <i>Turquie</i> .....	179

**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/juridical 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.

### **Armenia / Arménie**

#### **A. Introduction**

The Recommendation REC(2003)13 of the Committee of Ministers of the Council of Europe on providing information to mass media during the criminal trial contains the following statements;

- the obligations of state-members to respect the freedom of receiving information, having personal opinion guaranteed by the article 10 of European Convention on protection of Human Rights and Fundamental freedom,
- mass media has the right to inform the public about the rights and freedoms to receive information, including on issues of public interest guaranteed by the article 10, and that the public awareness is the professional duty of mass media.
- the importance of public awareness about criminal trials provided by mass media is the visibility of the function of criminal right, as well as guaranteeing the public security and the activity of criminal justice,
- the presumption of innocence, the right to fair trial and the right to respect the personal and family life are fundamental freedoms provided by the articles 6 and 8, which should be respected in each democratic society,
- balancing the rights on each certain case and the possible conflicts of the rights provided by the articles 6, 8 and 10 of the Convention is the duty of the states, the supervision over the implementation of which is performed by the European Court of Human Rights.

#### **B. Questions**

a) current legal statements and regulations

1) which legal acts regulate the interrelation between the prosecution office and mass media? To describe briefly;

In Armenia there are several fundamental documents regulating the interrelations between the prosecution office and mass media, and in general, the provision of information about the works of prosecution office. First of all, according to the article 27 of RA Constitution everyone has the right to freedom of expression, including freedom to search for, receive and impart information and ideas by any means of information regardless of the state frontiers. Freedom of mass media and other means of mass information is guaranteed. The RA Law "On Freedom of Information" regulates the bases and ways of receiving information. Particularly, the article 7 of the mentioned law provides 13 groups of information the publication of which is necessary at least once a year, if anything else is not provided by law. The prosecution office publishes the information required by law in its website. The article 9 of the same law provides the procedures of information inquiry application and the terms and limitations of replies. Taking into consideration the peculiarities of prosecution activity, RA Law "On Prosecution" also referred to the basic principle of providing information, and the article 5 just fixes that the prosecution gets the public informed about its performed activity so far as it does not contradict the human and civil rights, freedoms and legal interests, as well as the protection of state secrets and secrets protected by law.

At the same time, realizing that while providing information on criminal cases, prosecution activity, in the result of non legitimate activity there might be a possible conflict between the rights provided by the articles 6, 8 and 10 of the Convention, the articles 21, 23 and 27 of the Constitution, the Prosecution Office together with the Centre of Information Freedom developed rules on providing information about criminal cases, taking into consideration the principles of Recommendation REC(2003)13 of the Committee of Ministers of the Council of Europe on providing information to mass media during the criminal trial. The national legal criteria defined by the order of RA Prosecutor General are meant to provide the balanced maintenance of human rights while imparting information about criminal trial. (Hereinafter Rules). The document consists of 16 points;

1. Purpose
2. Principles of balanced maintenance of rights
3. Freedom of information during the criminal trial
4. Secret of preliminary investigation and freedom of information
5. Availability of official messages on criminal cases



6. Public comments of Prosecution Office, as a body implementing criminal prosecution, on separate cases
7. Interrelation with the representatives of mass media
8. Provision of information via the website of RA Prosecution Office
9. Freedom of information on criminal cases and the confidentiality of personal and family life of the person
10. Freedom of information on criminal cases and human right to honor and dignity
11. Presumption of innocence
12. Peculiarities of providing information on criminal cases regarding minors
13. Freedom of information on criminal cases and the protection of witnesses, victims
14. Freedom of information on corruption-related crimes
15. Prohibition of abusing information and prevention of harmful influence on the process of trial
16. Periodicity of information

Besides, by the order of RA Prosecutor General dated September 25, 2006 the form of accreditation of journalists in prosecution office was confirmed, which is aimed at providing equal conditions for journalists elucidating the work of prosecution office.

2. Do the prosecutors have the right to directly communicate with mass media? How is the interrelation with mass media on judicial and criminal cases implemented?

The Prosecution Office is a joint system and the interrelation with mass media is provided by the Adviser of the Prosecutor General of RA on the issues of cooperation with mass media. By the order of RA Prosecutor General the adviser is authorized to make official announcements, comments or impart press release in the name of the prosecution office. In separate cases, other officials authorized by the Prosecutor General can make announcements, as well. The interrelation of prosecutors with mass media is organized by the adviser, in the courts the prosecutors are authorized to make comments in some cases.

The prosecution office periodically provides information to mass media about the implemented work, summaries of researches, the process of preliminary investigation and the final results of criminal cases of public interest.

The ways, periodicity and the volume of providing information, communicating with mass media is regulated by Rules. According to it the Prosecution office periodically provides information to mass media about prosecution activity, as well as the results of preliminary investigation of criminal cases of public interest so far as its publication does not harm the prevention of crimes, the objectiveness and comprehensiveness of preliminary investigation of the criminal case, does not breach the confidentiality of personal and family life of the person, as well as the honor and dignity of other people and the protection of rights.

Nevertheless, the mentioned conditions can not be a reason to refuse the provision of just factual information, and if, arising from the interests of the preliminary investigation, particularly the materials of pre-trial proceeding of the criminal case are not subject to publicizing in the given stage, the provision of information about initiation of a criminal case or the number of defendants (without publicizing their names) cannot be refused. Moreover, according to the point 16 of the Rules, information about the criminal cases of public interest shall be periodically provided to mass media. If the Prosecution Office provided the public with the information about initiation of a certain criminal case, prosecuting any person, in the same way information about the preliminary investigation, final results, as well as circumstances proved by the court shall be provided.

3. What other people are authorized to provide information to mass media? (police structures, lawyers, participants of trial, other people)

According to the Article 201 of RA Criminal Procedure Code during the pre-trial proceeding the data of preliminary investigation are subject to publicizing only with permission of the body implementing the proceeding. In case of necessity, the investigator, the investigation body warns the participants in the case in written form not to publicize the data of preliminary investigation without permission.

4. Is there a joint experience of communicating with mass media by several departments in your country? (for example, prosecution office and police)

In separate cases, in order to regulate the flow of information on emergency or criminal cases of public interest, particularly the responsible persons of prosecution office and appropriate investigation service (Special Investigation Service of National Security of Police) cooperate.

5. From which stage can the prosecutors provide information? (the stage of preliminary investigation, including the accusation, trial, after bringing in the verdict)

The prosecution office has the right to provide information in each stage taking into consideration the public interest, respecting the citizens' right to receive information, at the same time taking note of the confidentiality of preliminary investigation and the rights of other participants of the trial. If the prosecution office decided to provide information in any stage of the investigation by its initiation, it must periodically provide the information

about the accusation, the completeness of preliminary investigation, the assessments of court and the final judicial act according to the Rules.

6. Do judges have the right to provide information to mass media, if yes, in which stage?

In Armenia there is a judicial-informational system Dataleqs, through which on the internet everyone can get informed about the cases entered the court, get acquainted with the schedule of judicial sessions, download the judicial acts. The judges do not provide information or comment on certain cases. The communication with mass media is implemented by Judicial Department.

7. Is there a control over the interrelation between the prosecution office and the mass media in your country? If yes, how and by whom?

As it was mentioned above, the cooperation with mass media is regulated by current Legislation of the Republic of Armenia. No special mechanism of supervision is provided, however, the backward connection gives an opportunity to follow the interrelations. Monitoring of mass media is also implemented and, if there are any complaints, their verity is examined by the instruction of RA Prosecutor General.

8. What special rules are there to exclude the violation of confidentiality of personal life, the dignity, not respecting the presumption of innocence? What measures are there to exclude the trial by mass media?

Highlighting the necessity of excluding the possible conflict of fair trial, the rights of freedom of expression, respecting personal and family life, by the rules established by the order of RA Prosecutor General, an attempt was made to provide the balanced maintenance of the mentioned rights.

According to the point 4 of the Rules, the data of preliminary investigation are subject to being publicized only with the permission of the body implementing the proceeding of the case, as defined by law. During the pre-trial proceeding the prosecution office, when possible, shall support the mass media in providing information, recording that the provided information is preliminary based on factual data obtained by the body implementing the trial at that moment. The prosecution office has the right not to publicize the information requested by mass media if its publication may harm the objectiveness and comprehensiveness of preliminary investigation of the criminal case, the security of participants of trial, the presumption of innocence, may breach the confidentiality of personal and family life, as well as the honor and dignity of other people.

Information about the completeness of preliminary investigation, the number of people involved as defendants, the bill of indictment shall be provided on the base of the query. in the term defined by law. The point 9 refers to confidentiality of personal and family life of the person. According to it, it is necessary to be guided by Constitution while providing information on criminal cases, according to which everyone has the right to freedom of expression, including freedom to search for, receive and impart information and ideas, as well as everyone has the right of respect to his personal and family life. It is forbidden to gather, keep, use or impart other information, not provided by law, about a person without his agreement. While providing information about the process of trial the prosecution office shall keep the right to confidentiality of personal and family life of the person, including the participants of trial and avoid to publicize information about personal life.

According to the point 10 of the Rules, it was fixed that while providing information or making public comments on the process of criminal trial, the prosecution office should avoid the qualifications, comments which can spatter the person's honor and dignity or the business reputation of legal persons. It should be admitted that the announcements based on certain facts (except natural shortcomings) or conditioned by public interest cannot be observed as imparting information spattering the person's honor and dignity.

In order to respect the presumption of innocence the point 11 of the Rules states that ***everyone charged with a crime offence shall be presumed innocent until proved guilty according to law.***

***The respect to the principle of presumption of innocence is inseparable part of the right to fair trial. Opinions and information about criminal cases in process can be provided to mass media only in case and in volume, if it does not harm the presumption of innocence of the suspect or defendant. Nevertheless, if in the stage of pre-trial proceeding the prosecution office decided to provide information by its initiation or at the request of mass media, it must avoid to demonstrate the suspect or defendant with handcuffs or any other way of representing him as a criminal.***

***During the pre-trial proceeding the press release spread by prosecution office should contain a note with the following content.***

***"Everyone charged with a crime offence shall be presumed innocent until proved guilty according to law".***

***By RA Prosecutor General's requirement the mentioned note is available in each press release on accusations by criminal cases.***

9. Are there any punishments (disciplinary or of other nature) for prosecutors who breach the interrelation between the prosecutors and mass media?

***The prosecutors shall be brought to responsibility if they breach*** "the Code of Conduct for Prosecutors", perform the official duty not conscientiously. In case of receiving such alarms the Logistical Supervision

Department of RA Prosecutor General's Office carries out appropriate examinations, appoints service examination in case of availability of bases the results of which are considered in the Committee of Ethics if they are sufficient.

10. How do the prosecution offices get over the security risks arisen in the result of publicizing about the prosecutors or cases?

According to the article 5 of RA Law "On Prosecution Office" the public is informed about the activity performed by prosecution office so far, as it does not contradict the human and civil rights, freedoms and legal interests, as well as the protection of state secret and other secrets protected by law. If the provision of information about a case can threaten the prosecutor's security or harm the preliminary investigation, the prosecution office has the right not to provide detailed information for this reason.

11. Are there any statements forbidding the personal data of prosecutor performing supervision over the case being publicized?

There are not any legislative regulations. This question was referred by the Rules confirmed by RA Prosecutor General, according to which, taking into consideration the peculiarities of the certain criminal case, the personal data of the prosecutor implementing supervision shall not be publicized in pre-trial proceeding, if it may threaten his security, and it is necessary in order to exclude the possible indirect influence on prosecutor. Regarding the publications, in Armenia the independence of mass media is guaranteed by Constitution and no legislative procedures are provided to prevent publications like that.

b. organization of communication

12. How do prosecutors communicate with mass media? (press releases, press conferences, on the phone or via e-mail, social networks or other means)

There are several tools to elucidate the activity of prosecution office. Particularly, official messages are spread which are e-mailed to mass media, they are also inserted in the website of prosecution office providing their availability to all the interested parties.

Press conferences are also organized, in case of necessity inviting every mass media accredited in prosecution office. Besides, they are invited to be present at board meetings, public discussions, as well. At the same time, respecting the right of mass media to receive exclusive information, at the request of mass media separate interviews are also held, and written queries are given written replies.

13. Can press conferences be held on cases on which international investigation is implemented? If yes, what kind of procedures are used?

In general, the prosecutors don't have the right to participate in discussions, hearings of certain criminal cases in the stage of investigation. According to the instruction of RA President dated April 25, 2000 "RA Prosecutor General and prosecutors under him are warned about the fact that they are not permitted to participate in hearings of any criminal case".

14. Is the communication implemented with every mass media, or selecting some mass media, networks or internet?

By RA Prosecutor General's order dated September 25, 2006, the form of accreditation of journalists in RA Prosecution Office was confirmed, according to which equal conditions are provided for each of them.

15. Are there any limitations connected with giving priority to some journalists?

In order to elucidate the work of prosecutor's office, the mass media elucidating judicial-legal subjects can be accredited. Taking into consideration the peculiarities of certain occasion, the hall of the occasion, the prosecution office can limit the number of mass media, however, providing equal conditions for similar mass media. For example, if the number of journalists is to be limited, only the journalists of TV and radio are invited, as they have a task to broadcast, as well, the messages and all the materials are sent to printed and network media.

In fact, limitations like this happen very rarely, once or twice a year.

16. How is the communication organized, are there spokesmen, if yes, what is their status, whether or not they are prosecutors, if not, how do prosecutors themselves communicate, is there a control over them in this sphere?

The Adviser of the Prosecutor General of RA on the issues of cooperation with mass media is authorized to make announcements, comments in the name of prosecution office, who also coordinates the cooperation of prosecution office with mass media. The prosecution offices of regions don't have spokesmen, and according to

the order of RA Prosecutor General, the prosecutor of the given region is responsible for cooperation with mass media in regions who in advance sends the copy of the information to the Adviser of Prosecutor General.

The Adviser of the Prosecutor General of RA on the mentioned issues doesn't have a status of a prosecutor, she is a specialist of public relations.

17. How do mass media communicate with prosecutors? (whether there are official representatives, special journalists, necessary patenting)

The answer of the mentioned question is already reflected in the answer of question 14. The journalists have the right to be accredited in order to elucidate the work of prosecution office and the prosecution office shall provide equal conditions for every mass media. It doesn't mean that the questions of not accredited journalists remain without a reply. The prosecution office sends the information at first to accredited mass media, and priority of participating in the public occasions of prosecution office is given just to accredited mass media.

18. What kind of information can be publicized? (the names of parties, witnesses, prosecutors, some kind of information during the investigation, some circumstances of the case)

The volume of the publicized information is determined by the body implementing the proceeding. During the pre-trial proceeding the prosecution office, when possible, supports the mass media in providing information, recording that the provided information is preliminary based on the factual data obtained by the body implementing the proceeding at the moment. The information requested by mass media cannot be publicized if its publication can harm the objectiveness and comprehensiveness of preliminary investigation, the security of participants of trial, the presumption of innocence, breach other people's rights, honor and dignity, personal and family life. In preliminary publications the prosecution avoids publicizing the names of witnesses, investigators and prosecutors in order to exclude possible influence on them. In separate cases the names of witnesses or quotations from the testimony given by them are reflected in official messages, if the mentioned witness has previously made public announcements in mass media by his initiation.

19. Is there a certain policy according to which prosecutors are encouraged to work with mass media, how is this policy realized?

The Board of RA Prosecution Office has discussed the issues regarding the cooperation with mass media for many times and tasked the prosecutors to activate the cooperation with mass media providing the balanced maintenance of human rights.

20. Is there a periodical monitoring over the interrelation between the prosecutors and mass media, for example public monitoring, through responses, assessments of cooperation and other ways?

Two NGO-s acting in Armenia periodically implement monitoring, in the result of which the work of prosecution office in providing the publicity of its activity, in developing the mechanisms of information freedom was assessed positively by civil society. In 2006 the official website of the Prosecution Office was recognized as the best official website at the award organized by Information Freedom Centre and OSCE Office in Yerevan, International Agency of Development of the USA. In the following years it kept not only the positive index, but also recorded new achievements. As a result, in January, 2011 according to the observation results published by NGO "Committee of freedom of speech" (the monitoring was realized in 2010) the website of the prosecution office was considered the most penetrative by the availability of information. And in September, 2011 at the awards organized in connection with the international day of information freedom RA Prosecutor General's Office got an acknowledgement letter from the NGO "Centre of Information Freedom" for developing the freedom and publicity of information in Armenia. In 2012 according to the observation results published by NGO "Committee of freedom of Speech" involved in special departments of the third group (monitoring was implemented in 2010) the website of the prosecution office again had the highest index for availability of information.

c) proactive approach of prosecutorial structures to mass media

21. Do the prosecutorial structures have a proactive approach towards the mass media – availability of prosecutorial decisions, drawing the attention of mass media to some cases?

Yes, the prosecution office performs a proactive information policy. Particularly, in the website of RA prosecution office either the basic orders of RA Prosecutor General or the references on researches made by prosecution office are inserted. Besides, in some cases the prosecution office itself makes some initiated criminal cases public drawing the attention of mass media. Particularly, the prosecution office, by its initiation, makes press release on criminal cases initiated on latent crimes, detainment on criminal cases of public interest, accusations and completeness of preliminary investigation.

22. Does the prosecution office have a procedure of elucidating its work, as well as informing about development to public, mass media, open doors day, visits to courts, publications of bulletins, materials taught online?

By the order of RA Prosecutor General Rules on providing information about criminal cases was confirmed, 16 points of which are enumerated in the answer of the first question. Besides, the Adviser of RA Prosecutor General together with the Centre of Information Freedom has developed a guideline for mass media aiming to guide journalists properly in the process of receiving the necessary information on criminal trial from relevant bodies.

23. Can the cooperation with mass media be used as means of revealing the investigation, for example dissemination of criminal's data, photo, photos of committing crime, etc. If yes, we would like details

In some cases it can. First of all, according to the article 176 of RA Criminal Procedure Code the publications about crime in mass media can be a reason for initiation of a criminal case, and in the result of monitoring the mass media, the publications containing information about crime become a subject of investigation. In fact, there have been cases when a criminal case was initiated based on the publication of mass media, the case of the crime was grounded and the identity of the defendant was found out by the investigation, the defendant was accused and the case was sent to court. Besides, due to cooperation with mass media the photo of the person under prosecution or lost person is spread with the expectation of finding them, in some cases the police publicizes the photos of defendants accused particularly of fraud to discover other citizens having possibly suffered from their activities. The proper cooperation with mass media and using their possibilities correctly can help to reveal the crime.

d) professional training of prosecutors and journalists on the issues of ethics, behavior rules and cooperation

24. Do the prosecutors learn about protection of human rights and basic freedoms with the statements of information availability and freedom of opinion of European Convention during preliminary or current trainings?

In RA Prosecutor's school prosecutors periodically participate in different trainings on several topics of protection of human rights and basic freedoms of European Convention. However, trainings just on freedom of opinion and information availability are not held though it has always been highlighted.

25. Do the prosecutors have trainings on interrelation with mass media?

Prosecutors of different subdivisions of RA Prosecution Office take part in such kind of international seminars taking into consideration the peculiarities of some crimes.

26. Do the journalists have trainings on interrelation with prosecutors?

Journalistic professional organizations periodically hold trainings on legal topics for writer journalists. As a rule, representatives of prosecution office are invited to participate in them.

27. Are joint trainings, conferences, seminars held for prosecutors and journalists on the issues of estimating each other's role and supporting each other in the context of balancing the above-mentioned rights, presumption of innocence and rights of protection of private life?

Yes, the prosecution office together with several NGOs holds joint seminars twice or thrice a year with participation of journalists and prosecutors. During the seminars issues on their missions and functions, balanced protection of rights guaranteed by European Convention on protection of human rights and basic freedoms, security of witnesses, victims, peculiarities of presumption of innocence are discussed. During the seminars communication without a tie is also held which gives an opportunity to organize the discussions more freely and not to treat each other with dislike.

28. Are there any associations of journalists which are responsible for regulation of interrelation between prosecutors and journalists?

Different Armenian mass media have ethic rules, and in 2002 rules of professional behavior of journalists elucidating legal topics were developed in Armenia. Some journalists from different mass media joint it who were qualified in elucidating legal topics. All the attempts to form journalistic courts or committees of ethics failed in Armenia. At present, there is a Council of Information issues, which studies the claims against journalists and makes a professional conclusion. There are not any special associations for regulation of interrelation between prosecutors and journalists in Armenia.

e) regulation of mass media

29. Is there any internal council or other structure regulating the mass media and is authorized to consider the complaints against mass media on violation of rights during the trial

There are some journalistic organizations in Armenia which, in case of recording cases of violations of journalists' rights, make statements regardless of the fact whether the violation of journalist's right was during the trial or by an official or physical person.

Besides, as it was mentioned in the answer of the question 28, there is a Council of Information issues, which studies the claims against journalists and makes a professional conclusion.

30. We ask to clarify the criminal, administrative and civil procedures on violations against reputation of a person, as well as slander and insult. What is the role of prosecution office in this sphere?

Insult and slander were decriminalized in Armenia in 2010. A responsibility is provided for the harm caused to honor, dignity or business reputation by RA Civil Code (prime article 1087) and the prosecution office doesn't have any role in this sphere.

31. We ask to represent information about bringing journalists to criminal or administrative responsibility, as well as the punishments defined by law.

As it was already mentioned Insult and slander were decriminalized in Armenia and no criminal responsibility is provided. Instead, according to RA Criminal Code a responsibility is provided for hindering the professional activity of journalists pursuant to article 164 of RA Criminal Code. A responsibility is provided for the harm caused to honor, dignity or business reputation by prime article 1087 of RA Civil Code.

If there is an insult in the information imparted by a performer of journalistic activity, the person has the right to require a public apologize, as well as publish the court verdict wholly or partially in the given mass media. The way and volume of publication is defined by the court. Besides, it is punished with a fine in the amount of 1000 minimal salaries.

If mass media slandered, the person has the right to require a public denial through the given mass media and/or publish his reply about the factual data considered slander. The form of denial and the answer is confirmed by

the court being guided by RA Law "On Mass Media". Besides, He can require a fine in the amount of 2000 minimal salaries.

32. We ask to represent the means of protection provided by criminal and administrative procedures/confiscation or prohibition of publications/ and the role of prosecution office. Whether or not these means can be considered a preliminary censorship. What role does the prosecution office have in controlling over the activity of mass media?

There is no censorship in the Republic of Armenia and the prosecution office doesn't have any function of controlling over the activity of mass media.

33. Are prosecutors criticized for their activity connected with trials? What is the role of the associations of prosecutors?

By the instruction of RA Prosecutor General the publications of mass media on the behavior of prosecutors or legality of decisions, objectiveness of activity are considered by the appropriate subdivisions and are given written replies, which are also inserted in the website of prosecution office.

34. Does the prosecutor feel constrained in discretionary duty, if was slandered by mass media?

By the instruction of RA Prosecutor General the publications of mass media on certain criminal cases, announcements on prosecutor's behavior and activity become a subject of consideration. And if the journalists impart uncalled-for insulting or slandering information about prosecutors, the prosecution office makes appropriate announcements.

35. Are there in your country any other types of structures, than the associations of prosecutors which are predetermined to rebut the groundless attacks of mass media against prosecutorial service?

There are not any special professional structures like that in Armenia.

g) other information

36. Is there any other comment or additional information on interrelation between prosecutors and mass media in your country which you would like to provide? If yes, we ask you to represent your comments on it.

## **Austria / Autriche**

### **A. Existing legal provisions and regulations**

1. *Is the relationship between prosecutors and media determined by law or other written provisions? Describe them briefly.*

There are no special legal provisions regulating the relationship between prosecutors and media. Important are the general provisions of official secrecy (Article 20 paragraph 3 of the Constitution Act, section 58 of the Law on Judges and Prosecutors) and data protection (section 1 paragraph 1 of the Data Protection Act).

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?*

According to the „media-order“ of the Austrian Ministry of Justice only the press relations officers, who are also public prosecutors (or concerning the courts: judges), and the heads of the public prosecution offices and his/her deputy are authorized to have direct contacts 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)?*

Beside the public prosecution offices also the courts and the police have press relations officers. (Private) lawyers and parties are not bound to official secrecy. This concerns especially the new field of the „litigation PR“.

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

According to the leading function of the public prosecutor in criminal investigations (section 20 paragraph 1 of the Code of Criminal Procedure) the public prosecution offices usual undertake – in accordance with the police - the task of media-communication in big and more complex cases. In minor cases without special public interest usually the police carry out communication with media. In „jointly“ cases there is also (or should be) a mutually information between the public prosecution offices and the courts. In accordance with the provisions of the „media-order“ of the Ministry of Justice there exists also the duty to let the superior public prosecution office and the Ministry of Justice know about an important media-communication, especially before having television-interviews (such interviews have to be approved). With other public authorities no similar communication takes place.

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 investigation (including accusation) the press relations officer of the public prosecution office concerned has to carry out communication with media, afterwards the press relations officer of the court,

6. *Are the judges authorised to inform the press? If this is the case, during which stage of the procedure?*  
See answer to point 5.

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

The press relations officer of every public prosecution office is supervised by the head of his/her office first of all. He/she is obliged to inform the head about important media-communication. In a second step there is also supervision (and duty to supply information) by the superior public prosecution office and the Ministry of Justice, but only in important cases with public interest. Television-interviews have to be approved before by these superior authorities.

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 regulations of official secrecy and data protection (see answer to point 1) mark off the range of information which can be given to media. Besides the Media Law guarantees compensation for violation of privacy and the presumption of innocence.

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?*

Public prosecutors who violate the official secrecy (see answer to point 1) could commit the crimes of abuse of power (section 302 Penal Code) or violation of official secrecy (section 310 Penal Code). For minor violations disciplinary sanctions can be applied.

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

Public prosecutors have to keep the official secrecy. The defendant and other persons involved into the proceedings (victims etc), who have under the provisions of the Code of Criminal Procedure access to the files, are not obliged to keep the official secrecy and have no difficulty to give information to the media. But even in case of knowledge of the media of sensible information, the press relations officers of the public prosecution service have still to keep official secrecy and are under circumstances not allowed to confirm information. A public prosecutor, who is not a press relations officer, is not allowed to give any information to the media, apart from a special permission of the head of his/her prosecution office.

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?*

Such provisions do not exist. But during the preliminary investigations the names of the investigating public prosecutors (and policemen) are usually not communicated to media to avoid a „personalisation“ („public prosecutor xy against defendant yz“) of the proceedings and also to avoid in special cases security risks for these persons. In the trial stage the names of public prosecutors and judges involved are public.

## **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.)?*

Predominantly the press relations officers communicate with media by telephone and also frequently by e-mail. Especially in cases of public interest also television-interviews (cut and live) take place. Also press releases are used, especially to inform all the media-institutions simultaneously about closing of proceedings or impeachments. In such cases the press releases are forwarded also to the accused before they are sent to the press. Press conferences are rare, only in cases of public interest. At the moment communication via social networks (twitter, facebook etc) does not take place. Except in cases of press releases and press conferences, the press relations officers only (re-)act after receiving an individual question from the press.

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

Press Conferences or other releases in cases of international investigations are possible. In such cases it would be advisable to care for a coordination with the foreign investigating authorities and inform these (especially the press relations officer) about the intended steps.

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

In general communication takes place with all the media, especially with newspapers (also internet-newspapers), radio and tv.

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

Special advantages should not be given to single journalists. This would create dependence and expectations for a „special-support“ (which could not be fulfilled) and would have harmful effects to the independence from media. But the „rule“ to act only in case of special request makes it possible to have intense contact to single journalists who are specialized in the field of crime and investigation. In case of special requests of a single journalist only this journalist will be contacted and not all his/her colleagues. It is the duty of all press relations officers to inform media in a correct, objective and impartial manner.

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?*

See answers to the points 2, 4, 7, 9 and 10.

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

In most cases the media (journalists, reporter) communicate with public prosecution offices by telephone, sometimes also per e-mail. But also „background talks“ could be useful instruments to communicate. In such a talk the press relations officer talks with one or few specialised journalist(s) about the work of the office in general, the regulatory framework of the proceedings and the characteristics of special proceedings, without violation of official secrecy. During the „background talk“ there is much more time to explain certain complicated circumstances in a more detailed (and for outsiders more informative) manner than it would be possible in a (usually) shorter telefon call. A special authorization is not necessary for journalists to contact the prosecution service.

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 general names and personal details of parties, witnesses, prosecutors etc are not disclosed. Only in cases of special public interest (see answer to point 12.), the names of these persons, especially of suspected persons, are disclosed, if the names are already known by the public and the disclosure does not harm the ongoing investigation. If damages for further investigations are expected or the rights of personality and fair trial or official secrecy would be endangered, the press relations officers would not confirm information already known by the public. Every case requires a special and difficult balance of the right of the public for information and the individual rights of the persons involved in the proceeding. Details of the proceeding, especially details of particular evidences and their importance, are usually not communicated (presumption of innocence). Information is generally given in an objective manner, without forecasts of the estimated closing of the investigation (eg accusation or acquittal).

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

At the moment no special written instruction to encourage prosecutors to respond to the needs of media exists, but it is unwritten common sense to support the media in their work with information within the above mentioned legal framework. This opinion is also part of the ethic code of the Austrian public prosecutors. At the moment the Ministry of Justice is drafting a new media order, which should encourage prosecutors to proactive media work.

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

In 2011 a large evaluation of the work of the press relation officers of the Austrian courts and public prosecution offices took place, also in order to prepare the above mentioned (drafted) new media order. At the moment a tool to monitor or evaluate the prosecutors' communication with media systematically does not exist. But the internal justice-homepage contains a press review of the reports of the media on the activities of the courts and the prosecution service.

### **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)?*

Currently the Ministry of Justice is drafting a new „media-order“ (see also answer to point 19), which should promote a proactive approach in the daily work of the press relations officers of the public prosecution offices and the courts. At present it is possible to publish important decisions of closing the investigation which are of public interest on the homepage of the Ministry of Justice in an anonymized form ([www.justiz.gv.at](http://www.justiz.gv.at) - „Einstellungsentscheidungen der Staatsanwaltschaften“). The possibility to release press informations remains unaffected. At some courts a „court case-mirror“ for media which includes interesting trials in the following week with a very short description of their content is published. At some public prosecution offices and courts periodically meetings with local journalists (eg „media breakfast“) are held.

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)?*

By using all the above mentioned different forms of communication (especially „background-talks“ and „press-breakfasts“) the press relations officers of the public prosecution offices (and also of the courts) try to explain the work of the public prosecutors also in order to raise the (mutual) understanding of the general public and the media for the (often daily) difficulties of the prosecutors' work. In this sense „mutal understanding“ between the media and the public prosecutors is very important to achieve a correct and – as far as possible – fair reporting. In this way it would make sense to explain the regulatory framework (official secrecy, fair trail, respect for private and family life, presumption of innocence etc) – together with representatives of the judiciary and the lawyers - to young journalists or to hold joint seminars to raise the sensibility of the media for this rights and for the situations, in which the press relations officer cannot give any information. In the last years many activities and events on the topic „the judiciary and the media“ took place in Austria. The press relations officers are also trained very professionally in different media-trainings (basic, follow-up and for special situations) under participation of well-known radio- and tv-spokesmen an – women.



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.*

Under specific circumstances it is possible to publish „wanted posters“ or other pictures combined with the appeal to report information. Some years ago in Austria, Switzerland and Germany a joint television series called „Aktenzeichen XY ungelöst“ („registrationnumber xy – unsolved“) was broadcasted, in which short films of the commission of unsolved crimes played by actors have been showed combined with the appeal to the public to give useful information to 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?*

Only a special training of the „technical communication“ (manner to speak, behaviour in front of the camera, guidelines for cut and live interviews etc) with media takes place for the press relations officers. A special training of these persons in the mentioned legal fields seems not to be necessary, because these issues are - without the special connection to the media - already part of the general education of the public prosecutors and judges.

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

Yes; see answers to the points 22. and 24 (media-training basic and follow up and for special situations).

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

We have no information.

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?*

Sometimes; see also answer to point 22.

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

We have no information.

***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 Austrian Press Council ([www.presserat.at](http://www.presserat.at)) as a self regulative institution decides whether a report of the press (also tv-, radio- and internet-communication with a link to the [printing] press) complies with the principles of the ethical code of the Austrian press. The Council is an incorporated society supported by the most important Austrian unions of journalists and publishers. In its decisions the Council can assess a violation of this principles and publish this decision on its website. If the violation hits an individual person, the Council can – if the press-institution and the individual person sign a mutual arbitration agreement – instruct the press-institution to publish the decision of the Council in its media. Almost all important press-institutions have signed a general arbitration-agreement. In the case of such an arbitration proceeding it is not possible to appeal (also) to a court.

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?*

The offences of defamation (section 111 Criminal Code), allegation concerning a crime, of which the sentence was already served or placed on probation (section 113 Criminal Code), and slander (section 115 Criminal Code) committed against a private person can be prosecuted only by the victim itself (private accusation); the public prosecutor does not play a role. The crime of libel (section 297 Criminal Code) is prosecuted by the public prosecutor. Besides the victim can claim compensation (damages) from the media according to the regulations of the Media Law in a criminal procedure, in which the public prosecutor does not play a role too.

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

A journalist is personally liable for the offences mentioned in the answer to point 30. The penalty for the offence of defamation (section 111 Criminal Code) is imprisonment up to one year or up to 360 day fines, for the offences of allegation concerning a crime, of which the sentence was already served or placed on probation (section 113 Criminal Code), and slander (section 115 Criminal Code) imprisonment up to three months or up to 180 day fines, for the crime of libel (section 297 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?*

If one of the offences mentioned in the answer to point 30 has been committed by a publication in a media,

the publication has to be confiscated, when the (private) prosecutor files an application for this measure. The public prosecutor has this right only in case of libel (see answer to point 30). A preventive censorship does not exist in Austria; it is excluded by the Constitution. The public prosecutor does not have a competence for supervising media activities.

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?*

Usually the Austrian Association of Prosecutors does not comment proceedings. But in grave cases when a prosecutor is unjustly blamed for abuse of power, the association will support him/her with a public statement.

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

Yes, these circumstances would not allow to violate the official secrecy. In such a case it would not be advisable for the prosecutor concerned to communicate directly with the media. The press relations officers, the head of his/her prosecution office and the Ministry of Justice have the task to protect him/her and to care for proper information of the public.

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?*

See answer to point 34. Besides the labour union for the public service could support the prosecutor concerned.

#### **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 other information available, no more comments.

### **Belgium / Belgique**

#### **A) Dispositions légales et réglementaires**

1. -La loi (article 28 quater §3 du code d'instruction criminel) prévoit que « le procureur du Roi peut, lorsque l'intérêt public l'exige, communiquer des informations à la presse. Il veille au respect de la présomption d'innocence, des droits de la défense des personnes soupçonnées, des victimes et des tiers, de la vie privée et de la dignité des personnes. Dans la mesure du possible, l'identité des personnes citées dans le dossier n'est pas communiquée. » Les avocats ont le même droit lorsque l'intérêt de son client l'exige.  
-L'article 57 du même code prévoit que lorsque l'enquête est confiée à un juge d'instruction, c'est aussi le procureur du roi qui peut communiquer des informations à la presse (jamais le juge d'instruction) mais il doit demander l'accord du juge d'instruction afin de ne pas dévoiler des informations qui pourraient nuire à l'enquête. Les avocats ont le même droit lorsque l'intérêt de son client l'exige.  
-L'article 80 la loi du 8 avril 1965 relative à la protection de la jeunesse prévoit l'interdiction de la diffusion du compte rendu des débats des juridictions de la jeunesse de quelque manière que ce soit de même que l'interdiction de la publication de textes, dessins, photos ou image de nature à révéler l'identité des mineurs poursuivis pour une infraction ou qui font l'objet d'une mesure de préservation.  
-L'article 25 de la constitution prévoit la liberté de la presse et l'interdiction de la censure.  
-L'article 150 de la constitution prévoit que les délits de presse sont poursuivis devant la cour d'Assises (juridiction populaire composée de 12 jurés-citoyens)  
-La loi du 30 avril 2005 sur le secret des sources prévoit qu'un journaliste ne peut être contraint de dévoiler ses sources.
2. Les procureurs sont autorisés à avoir des relations directes avec les médias pour communiquer des informations judiciaires.
3. Les avocats sont aussi autorisés à communiquer avec les médias dans l'intérêt de leur client en respectant les mêmes obligations que les magistrats du parquet.  
Les parties communiquent librement avec la presse.  
Les services de police sont autorisés à avoir des contacts avec la presse mais ne peuvent communiquer des informations judiciaires qu'avec l'autorisation du procureur du Roi compétent.
4. Il arrive fréquemment que le procureur du Roi organise une conférence de presse en présence d'une autorité administrative (gouverneur de province ou bourgmestre, pour les questions relatives à la police administrative, par exemple) ou d'un service de police chargé de l'enquête. Cela permet de répondre plus facilement à des questions précises sur lesquelles le procureur ne dispose pas toujours de toutes les informations.
5. Il n'existe aucune limitation sur le moment de la communication. Elle peut intervenir peu après la survenance d'un événement ayant donné lieu à l'ouverture d'un dossier judiciaire, pendant l'enquête, au stade de l'audience ou du jugement ou même après, au moment de l'exécution de la peine, par exemple.
6. Les juges d'instruction ne sont pas autorisés à informer la presse des dossiers qu'ils traitent. Il existe cependant des « juges de presse » au niveau des tribunaux ou des cours d'appel et de la cour de cassation qui informent la presse de questions liées à l'organisation de la juridiction, d'un procès

médiatique, à des difficultés de fonctionnement, à la procédure, par exemple. En aucun cas ils ne peuvent évoquer le contenu des dossiers judiciaires.

7. Le contrôle sur les magistrats qui communiquent avec la presse est effectué par le chef de corps ou l'autorité supérieure (parquet général près la cour d'appel) mais il n'existe pas de contrôle spécifique pour ces tâches. Si une plainte est déposée contre un magistrat dans le cadre de la communication, elle sera suivie par l'autorité pénale ou disciplinaire compétente.
8. La loi prévoit que ces éléments doivent être respectés par ceux qui communiquent (voir question 1) mais il n'y pas de règles spécifiques pour les faire respecter. Il appartient à celui qui transmet des informations à la presse de le faire en faisant preuve de professionnalisme et de la prudence requise en la matière.
9. Si la communication n'est pas conforme à la loi, l'autorité disciplinaire peut être saisie et exercer sa compétence. Des actions civiles ou pénales peuvent être engagées par ceux qui se sentiraient victimes d'une communication fautive du parquet.
10. Il n'existe aucune protection particulière pour ceux qui communiquent avec la presse. Comme pour tout autre magistrat qui serait l'objet de menaces, des mesures de protection générales ou rapprochées peuvent être mises en place.
11. Il n'existe aucune disposition visant à interdire la divulgation du nom d'un magistrat (juge ou procureur) chargé de l'enquête.

#### B) Organisation de la communication

12. Il n'existe aucune limite pour les moyens de communication utilisés. Des contacts téléphoniques ou l'envoi de mails se passent journalièrement avec des journalistes concernant les événements journaliers. Si l'événement est plus important, des conférences de presse sont organisées sur un événement particulier ou l'ouverture d'un procès qui intéresse particulièrement les médias. Les réseaux sociaux ne sont pas (encore) utilisés.
  13. En cas d'enquête internationale, qui concerne le plus souvent le parquet fédéral belge, il n'y a généralement aucune communication sauf en cas de nécessité après concertation avec les responsables des autres pays concernés.
  14. La communication se fait avec l'ensemble des médias qui se montrent intéressés.
  15. Il n'existe pas de réglementation interdisant d'accorder une préférence à certains journalistes mais les règles élémentaires de déontologie prévoient de traiter tous les médias sur le même pied sans en favoriser aucun. Le règle est toutefois de travailler avec des journalistes professionnels disposant d'une carte de presse. Il est arrivé d'exclure un journaliste de la communication (momentanément ou définitivement) en raison d'un comportement contraire à la déontologie journalistique ou infractionnel de celui-ci.
  16. Il n'existe pas de règle uniforme concernant l'organisation de la communication. Dans les parquets importants, un (ou des) magistrat est spécialisé et chargé de la communication journalière avec les médias. Ce peut être le magistrat de garde dans un parquet ou tout autre magistrat désigné. Parfois, c'est le chef de corps lui-même qui prend en charge la communication. Parfois, la tâche sera déléguée à un service de police dans des dossiers particuliers. La loi autorise la communication du parquet. (voir question 1). Pour un dossier particulièrement sensible une concertation peut être organisée avec l'autorité hiérarchique (parquet général) sur la communication.
  17. Il n'existe aucun système d'autorisation ou d'accréditation. Chaque journaliste professionnel peut contacter le parquet pour obtenir des informations ou se rendre à une conférence de presse du parquet. Dans les faits, ce sont le plus souvent des journalistes spécialisés qui ont l'habitude de travailler avec les parquets et qui sont parfaitement connus des magistrats.
  18. Il appartient à chaque procureur qui communique de le faire en respectant les règles légales : respect de la présomption d'innocence, des droits de la défense, des victimes et des tiers, de la vie privée et de la dignité des personnes (voir question 1).  
La loi précise que « dans la mesure du possible, l'identité des personnes citées dans le dossier n'est pas communiquée ». S'il s'agit d'une personnalité connue, le nom sera souvent déjà connu des médias et sera confirmé par le parquet. Le nom des victimes et des témoins sera aussi tu autant que possible afin de leur éviter toute publicité qu'ils ne souhaiteraient pas.
  19. Aujourd'hui, du fait de la loi qui date de 1998 et qui autorise les parquets à communiquer, tous les parquets sont encouragés à répondre aux sollicitations légitimes de la presse, même si on constate que les pratiques sont différentes selon les régions et les habitudes locales. Des formations sont régulièrement organisées pour favoriser une communication plus uniforme et plus professionnelle.
  20. Il n'existe aucun mécanisme de suivi, de contrôle ou d'évaluation. On relève toutefois les « bonnes pratiques » afin que celle-ci soient encouragées à l'occasion des sessions de formation des magistrats.
- #### C) L'approche proactive du ministère public vis-à-vis des médias
21. Il n'y pas véritablement d'approche proactive dans le cadre des dossiers judiciaires. Le parquet prend toutefois l'initiative de convoquer la presse d'initiative lorsqu'un fait pouvant intéresser les médias est survenu. Par contre, il arrive fréquemment que les parquets s'adressent à la population par l'intermédiaire des médias pour l'informer d'un phénomène criminel nouveau ou la mettre en garde contre les agissements de malfaiteurs dans la région, à titre préventif, ou pour solliciter des témoignages dans un dossier particulier (voir 23).

22. Effectivement, des journées portes ouvertes sont régulièrement organisées en concertation avec le barreau et le tribunal ou la cour afin de mieux faire connaître à la population le travail de la justice. Le parquet a développé un site internet national à destination de la population expliquant le travail de la justice et les démarches à effectuer pour y accéder ([www.om-mp.be](http://www.om-mp.be)).
  23. Effectivement, les médias sont fréquemment utilisés comme outil d'enquête, par exemple pour la recherche de personnes disparues (il existe un système de 'Child-Alert' mobilisable en quelques instants sur tout ou partie du territoire national ou à la demande d'un pays voisin selon des accords internationaux). Les médias diffusent aussi, à la demande du parquet, des portraits robots ou des enregistrements de caméras vidéo montrant un fait infractionnel afin de susciter des témoignages permettant d'élucider ces faits.
- D) La formation
24. Il n'y a pas à l'heure actuelle de formation spécifique sur la Convention Européenne des Droits de l'Homme et, en particulier sur les articles 10 et 25 concernant la liberté de la presse et la liberté d'expression.
  25. Ce thème est toutefois abordé lors des formations sur les relations avec la presse et la communication qui sont organisées régulièrement par l'Institut de Formation Judiciaire.
  26. Les écoles de journalisme et l'Association des Journalistes Professionnels (AJP) organisent des formations comprenant les relations avec les autorités judiciaires.
  27. Les formations organisées pour les magistrats comprennent la participation de journalistes et sont orientées vers la compréhension mutuelle de leurs missions respectives.
  28. Il existe un Conseil de Déontologie Journalistique qui rassemble des journalistes, des éditeurs de journaux et des « externes », qui a défini un code de principe du journalisme et qui rend des avis sur des plaintes déposées par des personnes s'estimant victimes d'agissements de la presse.
- E) Règlementation des activités de médias
29. Voir réponse 28.
  30. Un infraction de calomnie ou diffamation peut entraîner des actions tant pénales que civiles. Si une plainte pénale est déposée, c'est le ministère public qui effectue l'enquête ou la dirige et il exerce les poursuites s'il y a lieu. En cas d'action civile, le parquet émet un avis devant le tribunal ou la cour.
  31. Lorsqu'un délit de presse est constaté dans le chef d'un journaliste, la plainte sera actée et transmise au parquet mais le plus souvent, elle sera classée sans suite car la juridiction compétente pour en traiter est la cour d'assises que l'on ne réunit pratiquement jamais pour ce type d'infraction. C'est donc devant la juridiction civile que le plaignant se dirigera.
  32. La saisie ou l'interdiction de publication peuvent être prononcées par le tribunal.  
Sur le plan civil, l'interdiction de publication sera souvent accompagnée de la condamnation à une astreinte en cas de non-respect de la mesure. Le tribunal pourra aussi condamner les responsables de la faute au paiement de dommages et intérêts. Il peut aussi ordonner la publication d'un droit de réponse de la victime.  
Il arrive aussi que des émissions de télévision soient interdites de diffusion si elles peuvent causer un préjudice à quelqu'un. Il ne s'agit pas d'une censure préalable mais une mesure décidée par le tribunal pour éviter un préjudice. Les procureurs n'ont pas de rôle dans le contrôle des médias, seulement constater a posteriori des infractions qui auraient été commises.
  33. Les associations de magistrats peuvent s'exprimer librement et, le cas échéant, défendre publiquement un magistrat qui aurait été injustement attaqué dans l'exercice de ses fonctions.
  34. Les magistrats, juges ou procureurs, sont tenus d'observer un devoir de réserve dans la manière de réagir mais ils pourront le faire en concertation avec la hiérarchie qui pourra aussi intervenir pour le défendre.
  35. Le ministre de la justice, le collège des procureurs généraux ou le conseil supérieur de la justice pourraient intervenir en cas d'attaque inappropriée contre un procureur.
  36. Il manque en Belgique un service pouvant aider un parquet à communiquer en cas de communication de crise à l'occasion d'un événement judiciaire qui émeut l'opinion publique et suscite une importante demande des médias. L'organisation de conférences de presse et la réponse aux multiples sollicitations des médias doivent être faites par les magistrats qui traitent le dossier et sont déjà retenus par ces tâches prioritaires. L'aide d'un service professionnel serait particulièrement utile dans de telles circonstances.

## **Bosnia-Herzegovina / Bosnie et Herzégovine**

Informing the public in accordance with the provisions of the European Convention on Human Rights

A. In its scope of work the Prosecutor's Office of BiH adheres to standards and provisions of the European Convention on Human Rights, in particular Articles 6, 8 and 10 thereof, while providing information and news releases.

The practice of the Prosecutor's Office of BiH is to, if deemed necessary, provide information to the media and public in accordance with standards that define confidentiality of the investigation, presumption of innocence, protection of the identity of minors, protection of the identity of witnesses and injured parties and other legal

standards that define the specified area as well as the regulations of the Law on Protection of Secret Data , Law on Protection of Personal Data and the Freedom of Access to Information Act.

When communicating with the media, the Prosecutor's Office of BiH adheres to the constraints that are needed to achieve the balance between the rights and needs of the public to access any information, and the rights of citizens to have their human rights protected in accordance with the European Convention on Human Rights.

In this regard, the Prosecutor's Office of BiH adheres to the principle of confidentiality of the investigation when preparing information for the media, where information about specific cases, for the most part, becomes available only after the confirmation of the indictment.

There are specific situations where certain information may be given during an ongoing investigation, mainly in cases where such a procedure should contribute to reassure the citizens and the public of their safety due to the extremely serious consequences of a committed crime (i.e. terrorism, multiple murders, etc.), as well as in situations requiring that the citizens be given the information but only under the condition that such activity can not jeopardize the investigation but may instead help shed some light on the committed criminal offense.

During the release of information to the media we are extremely careful that the information does not violate the privacy and dignity of persons subject to investigation, as well as the privacy of third parties or legal entities.

When releasing information to the media, while respecting the principle of presumption of innocence, the Prosecutor's Office of Bosnia and Herzegovina attaches a note to the news stating that persons referred to in the news and information have the status of a suspect or an accused person, depending on the stage of the proceedings, and that no person shall be considered guilty until his/her guilt has been established by a final verdict.

The Prosecutor's Office of BiH has internal procedures relating to disclosure of information to the media, hence official documents, evidence, official records or other official material are not available to media.

The information prepared for the media also states that it is made exclusively for the use of media and that it does not have the status of a document intended for official use.

B.In the past period a number of different trainings on public relations were organized in Bosnia and Herzegovina, in which representatives of the Public Relations Department of the Prosecutor's Office of BiH have actively taken part both as trainers and participants.

The training was targeting prosecutors and legal staff of the prosecutor's offices throughout BiH, who are in contact with the press and media.

The Prosecutors in the Prosecutor's Office of BiH have a good knowledge of techniques that apply to contacts with the media and journalists.

Specific and specialized trainings for journalists reporting on justice and law enforcement agencies were held in order to train the journalists about the standards governing this area, and to ensure that the reporting is as professional as possible without possibility of causing injuries to citizens, injured parties or any other person involved in the process.

There exist certain ethical norms and standards, which are usually published in specific brochures, instructions or recommendations. In terms of Prosecutors cooperating with the media, it is important to note that there are rules and standards of prosecutorial ethics which are, inter alia, governing cooperation with the media and the press, as well as their media presence.

There are professional associations in Bosnia and Herzegovina that bring together journalists and media representatives of different profiles, with the aim of raising the standards of professional journalism in Bosnia and Herzegovina.

The majority of prosecutor's offices in Bosnia and Herzegovina have spokespersons or persons tasked with public relations and media contacts within their ranks. The Public Relations Department of the Prosecutor's Office of Bosnia and Herzegovina headed by a Spokesperson has been functioning for more than 5 years.

This department handles communication with the media and public relations, and transmits several hundreds of news and information for the media annually. It also handles radio and TV statements, and responds to a number of inquiries from journalists from both print and electronic media.

The Prosecutor's Office of BiH, as well as the rest of the prosecutor's offices at the local level, organizes press conferences when needed (i.e. when indictments are issued for very serious criminal offenses, identification and arrest of suspects, etc.).

Journalists may be given access to a particular location of the committed criminal offense, if the police investigating the scene and the prosecutor leading the investigation permit it.

The Prosecutor's Office of BiH does not often have cameras entering its premises but it can be arranged in specific situations.

There are situations in which the Public Relations Department prepares and then shares or transfers video recordings or photographs of an event that is relevant for the media to the press/media.

News and information of the Prosecutor's Office of BiH is delivered to more than 300 e-mail addresses of different users (journalists, newsrooms, NGOs, etc.) thus ensuring high-quality distribution of news, information and photographs in all parts of Bosnia and Herzegovina.

C.Legislation of Bosnia and Herzegovina regulates the possibility of legal action for false journalist reporting through the Law on Protection against Defamation.

There are mechanisms that allow for retraction and repudiation of false statements presented in the print media through the BiH Press Council.

In case of false reporting, slander and libel, the injured party may initiate proceedings before the competent court and seek damages for injury caused to the plaintiff's honor and reputation.

There have been such proceedings, in the past few years, in which the reporters and editors were found guilty and ordered to pay fines generally ranging from 5.000 to 10 000 BAM per individual case.

There are also provisions that protect privacy, private photographs, private residence and living area, and it is possible to take action if journalists breach any of the standards relating to the aforementioned area, but in practice such cases do not happen often.

In Bosnia and Herzegovina, unfortunately, there are no strong professional standards of journalism, or a set degree of formal and general education that is required for a person to be able to work as a journalist or to work in the media.

Journalists should always verify their information from multiple sources, but unfortunately there are situations when they do not adhere to the ethical standards that require verification of information.

If the information is officially transmitted by the prosecutor's offices, police agencies or administrative bodies, it does not have to be verified. Any unofficial information however does have to be verified.

There is a difference between news and information, and comments made about an event, but it often happens that no such distinction is made hence certain journalist comments and personal views are imposed as information.

There are certain standard precautions in reporting and transmittal of news through radio and television and it is necessary to make sure not to cause any harmful consequences or to disturb citizens with inappropriate images or footage of disturbing content.

If they somehow find themselves on the spot or if they obtain unofficial information about the identity of the suspects, the reporters and media do not practice to protect the image or identity of suspects subject to police operations.

Journalists and the media are much more considerate when it comes to protecting the identity of victims or injured parties.

Payment of damages for media reporting about the suspects or accused persons is not a common feature.

There is also no censorship of the media in Bosnia and Herzegovina. No seizures of newspapers or publications were recorded (except in situations which include activities that are considered copyright infringements, i.e. illicit copying of printed, video or audio material).

There are associations of prosecutors - a professional community, which respond to cases of unfounded media attacks on Prosecutors in Bosnia and Herzegovina.

## **Bulgaria / *Bulgarie***

### **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 not legally regulated by Bulgarian national law or other legislative provisions. There is no a special Media /Press/ act.  
At the Prosecutor's Office the relationship between prosecutors and media is partly governed by the Instruction for the operation and interaction of the Prosecutor's Office with media (the Instruction) and the Media strategy of the Prosecutor's Office of the Republic of Bulgaria (MS). It should be emphasized that the purpose of the cited regulations is to regulate primarily the behavior of prosecutors towards media, since the opposite is not included in the competence of the 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?  
According to the Instruction and the MS the relation with media is performed primarily by the spokesperson of the relevant Prosecutor's Office, appointed by order of the head of administration, coordinated with the spokesperson of the Prosecutor General, who is also the head of the sector "Publicity and Communications" at the Supreme Prosecutor's Office of Cassation, but there are also exceptions which are widely-spread.
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)?  
The Prosecutor's Office is competent only to prohibit the disclosure of the materials of the investigation and this is the only one instrument to determine the media behavior of other institutions or persons. At the other cases it is not authorized to do this.
4. Do you have any experience of joint communication by several public authorities (e.g. prosecutor and police)?  
Sometimes we conduct coordinated media events with state authorities, but this is not a common practice.
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)?

We usually communicate the information to media at the pre-trial stage. We communicate the information about preliminary inspections only in exceptional cases and on rare occasions at the trial stage.

6. Are the judges authorised to inform the press? If this is the case, during which stage of the procedure?  
The relationship between court and media is independent from the one of the Prosecutor's Office and media. The first one is directly connected with judicial pronouncements.
7. Is there supervision on the relationships between prosecutors and media in your country? By whom and how?  
The control of the relationship between prosecutors and media in the Republic of Bulgaria is not legally determined. It is regulated only on internal level by the Instruction of the Prosecutor's which is cited in question № 1.
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"?  
Beyond the legal framework outlined by different laws (Access to Public Information Act; Protection of classified information act; Law for protection of the personal data; Judiciary system act; Penal code; Penal procedure code, etc.) the MS contains restrictions which guarantee that the information communicated to the press does not violate the privacy, the human dignity and the presumption of innocence.
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 administrative heads are allowed to impose administrative sanctions towards public prosecutors who break the rules of the Instruction and the MS.
10. How do the prosecution services deal with the security risks caused by disclosure of information concerning the prosecutors and the cases?  
The spokespersons of the prosecution services are doing very well so far in this aspect of their relationship with media.
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 similar provisions but if the monitoring prosecutor in a particular case does not want to be disclosed his/her name in order to avoid being harassed by media or he/she does not want to communicate with media, or for personal reasons, the spokesperson of the prosecution service usually is complying with this fact.

## **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.)?  
Prosecutors communicate with the press (press releases, press conferences, directly by telephone or e-mail, use of social networks etc.) through the spokespersons of the relevant prosecution services, the spokesperson of the Prosecutor General and the department "Public Relations".
13. Can press conferences or other releases be made by prosecutors in cases of international investigations?  
If yes, which procedure do you follow?  
Yes, but this happens very seldom. There is not stipulated a procedure which has to be followed. We usually discuss every single case.
14. Is there communication with all the media or with some (newspapers, audiovisual media, internet)?  
There is communication with all the media.
15. Are there regulations prohibiting public prosecutors to give an advantage to single journalists (and/or leaving out some of them)?  
According to the MS the spokesperson submits the same information to all media except the one concerning a concrete journalist investigation of a particular media or the information regarding to a concrete question from a certain journalist – in these cases the information is provided only to the media which has asked the certain questions.
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? Communication with media is primarily realized by the spokesperson of the relevant prosecution service. The spokespersons are active



prosecutors appointed by order of the administrative heads after a consultation with the spokesperson of the Prosecutor General.

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

There are not any restrictions on their communication by the Prosecutor's Office. As a result the communication can be defined as unorganized and often causes problems to the institution and to the prosecutors themselves.

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 general terms we specify: - details of the crime - when, where, what offense has been committed; - first and last name of the accused who has this procedural capacity; - the victim (when the victim is a physical person /a human being/ it is not necessary to be indicated. It depends on the nature of the criminal offence); - the amount of the damages; - the mechanism of the crime, if it is not an investigation secret; - upcoming activities of the Prosecutor's Office, without details, for example: impending instituting technical examination and interrogation of witnesses; In general, we do not report the witnesses.

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

Yes and its expression is the Media strategy. The implementation is done by the the Instruction for the operation and interaction of the Prosecutor's Office with media.

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

It is an extremely important issue. The objective, external monitoring that prosecutors at their turn have to evaluate and make conclusions under it unfortunately is almost an impossible task. At the Prosecutor's Office there are no PR experts, sociologists, so our attempts in this direction are not so successful. One of the information agencies makes us content analysis, but this is rather just one fact that does not give results.

### **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)?

We have worked hard with the spokespersons of the prosecution services already several years in order to achieve a proactive approach to media. But on the one hand, the spokespersons are active prosecutors and their priority is the normal prosecutorial work, which is normal. On the other hand, the conducting of the proactive media policy requires a great deal of enterprise and a lot of time which colleagues find very difficult, because of their official workload. Therefore, this issue requires a lot of work to be done.

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)?

I am going to list only a part of the events that we have held and are going to hold: - there are developed information brochures which have to help citizens. They are available at the Information center and they are published on the official website of the Prosecutor's Office. - there are held although seldom joint seminars between the spokespersons of prosecution services and media. - there are led discussions with students in order to increase their awareness of the work of the Prosecutor's Office. - In 2013 was signed the Memorandum of Cooperation between the Prosecutor's Office of the Republic of Bulgaria and the Law Faculty of the University of National and World Economy; - Since this year at the most of the prosecution services is also held "The Day of the open doors".

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.

There is no such practice. Rather, the police uses similar mechanisms.

### **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?

Rather not.

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

Objectively, it is impossible to organize trainings on the interaction with media for all the prosecutors. That's why we have created the figure of the spokesperson. So the mentioned spokespersons are regularly trained.

26. Are journalists trained on how to interact with the prosecution services?  
In previous years there have been such attempts.

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?  
There is no a common regulator for all types of 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?  
This issue is not relevant to the Prosecutor's Office

31. Please give information about criminal or administrative liability of journalists and the penalties provided by law.  
The journalists are responsible at the same extent like the other citizens due to the lack of a special Media act. The Prosecutor's Office does not have an opinion in such cases.

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?  
The Bulgarian legislation does not provide possibilities for censorship, including the confiscation or banning the publications.

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, the professional organisations of the magistrates are entitled to express opinion and – if necessary – to defend their member or colleague. This happens in the practice.

34. Is the prosecutor bound by a duty of discretion even if a media campaign has been started against him or her?  
Yes, as far as, there is no reason for non-joinder.

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**

35. 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.  
N/A.

### **Croatia / Croatie**

<b>C. Introduction:</b>
-------------------------

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.

## **A. 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:

- a. respect, protect and promote fundamental human rights and freedoms, and especially the principle of equality of all citizens
- b. should protect person's privacy from sensationalist and any other unjustified disclosure in public, that is, protect everyone's right to privacy

- c. 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
- d. obliged to take into consideration the honour, reputation and dignity of individuals on whom they report
- e. 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
- f. 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
- g. 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 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:

- h. there is no reasonable alternative measure of detecting the source of information or the body requesting publication of the source already used the measure
- i. 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.

## Cyprus / Chypre

<b>A. Introduction:</b>
-------------------------

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**

- Is the relationship between prosecutors and media determined by law or other written provisions? Describe them briefly.  
No

- 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 Attorney General (who is the head of the prosecution Service in Cyprus) himself decides whether information concerning a specific case should be communicated to the press and usually this is done directly by him.*

- 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 informs the press for on-going investigations.*

*Lawyers, parties etc. could provide information to the press, provided that they do not violate the Courts of Justice Law, especially section 44 (Contempt of Court), Data Protection Law or other relevant statutory provisions (see. e.g. Violence in the Family (Prevention and Protection of Victims) Law 119(I)/2000 (which prohibits the publication of material relevant to case concerning violence in the family)).*

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

*Usually this is not the case.*

- 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)?

*See Q.2.*

*Although there are no pre-defined guidelines for that purpose, the Attorney General takes into consideration the fact that, on one hand, the media have the right to inform the public on matters of public concern (and the public have the right to receive information) and, on the other hand, the rights to presumption of innocence, to a fair trial and to respect for private and family life.*

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

*Apart from the fact the court procedure is an open procedure to everyone, including the press, the judges do not have any direct contact with the press.*

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

*There is not an external mechanism for the supervision of the relationships between prosecutors and media.*

- 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"?

*See Q.2 and Q.3.*

*See also the establishment and the powers of the Cyprus Radiotelevision Authority Law 7(I) of 1998:*

*"One of the most important aspects of the Authority's wider duty is to safeguard the right to freedom of expression. Nevertheless, in order for the operation of radio-television bodies to be feasible, specific conditions and restrictions are necessary so as to serve the public interest and so that human rights are not violated and that harm is not caused to viewers and listeners. The need to regulate arises from a number of reasons relating to a) the role, nature and mission of radio-television and b) the fact that the airwaves are a public commodity and part of our national wealth, means that their exploitation must aim at safeguarding the public interest and maximising the social benefit. The need for regulation aims at safeguarding:*

- The right to freedom of expression, which is imposed and exercised in such a manner that the rights of others are not violated*

- *The right to free and pluralistic information, as a condition to form an opinion and make a decision*
- *Transparency in the ownership of media service providers in order to avoid oligopoly or monopoly conditions*
- *The Media from unwanted persons.” (quotation from the website of the Authority).*

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?

*Prosecutors are public servants; therefore they are bound by the Public Servants Disciplinary Code (part of Law 1/90). There is not a specific disciplinary offence, as far as the rules of inter-relationships with media are concerned, since, as we explained above, there are no such specific rules. However, since the Attorney General himself decides whether information concerning a specific case should be communicated to the press, if a public prosecutor disobey his orders, he commits a disciplinary offence (see section 82 of Law 1/90, Appendix 1 , Part 1, para. 6 and 7).*

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

*The Attorney General usually communicates with the press either by press releases or 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?

*See Q.12.*

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

*Usually there is communication with all the media.*

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?

*See Q.2 and 12.*

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

*See Q.2 and 12.*

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)?

*It depends on the special circumstances of the case and on the stage of the procedure.*

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

*No. See Q.2 and 12.*

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

*No. See Q.2 and 12.*

## **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)?

See Q.2 and 12.

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)?

*There is information about the work of prosecutors on the Law Office's website. Furthermore, from time to time, relevant conferences or events are organised (not on a regular basis).*

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 Police may use the media for that purpose (e.g. publish the photograph of a fugitive or a suspect who run away).*

#### **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?

*This is part of their general training.*

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

*There is not such specialized training.*

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

*Not known (doubtful).*

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?

*See next section (I do not think that those associations regulate specifically the interaction of journalists with the prosecution services. However, they do regulate the general approach and professional behaviour of their members).*

#### **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?

*See Q.8 (the Cyprus Radiotelevision Authority, Law 7(I) of 1998). There is also the Union of Cyprus Journalists and the Cyprus Media Complaints Commission:*

*"The Cyprus Media Complaints Commission is an independent press council, responsible for the self-regulation of the news media, both written and electronic. It is entirely free from government interference or judicial supervision, ensuring that through self-regulation freedom of the press is maintained, standards of conduct are raised and the members of the public are given the opportunity to lodge their grievances against the media when they feel they have been offended. The Cyprus Media Complaints Commission was established in May, 1997 by the Association of Newspapers and Periodicals Publishers, the owners of private Electronic Media and the Cyprus Union of Journalists. The Cyprus Broadcasting Corporation, a self-governing organization operating under public law, acceded to the regulations governing the operation of the CMCC and the Code of Media Ethics six months later." (quotation from its website).*

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?

*Libel/slander etc. is a tort under Cyprus Law. Libel/slander etc. is not a criminal offence anymore. Therefore, there is not a role for the prosecution service in this sense.*

*Violations of section 44 of the Courts of Justice Law (Contempt of Court), relevant sections of Data Protection Law and Violence in the Family (Prevention and Protection of Victims) Law, Law 119(I)/2000,*

(which mainly deal with the unlawful publication of material relevant to case concerning violence in the family, section 34) constitute criminal offences.

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

*Violation of section 44 of the Courts of Justice Law (Contempt of Court: punishable with a term of imprisonment of six months*

*Violation of section 34 of Violence in the Family (Prevention and Protection of Victims) Law, Law 119(I)/2000: punishable with a term of imprisonment of up to two years.*

*Disciplinary measures are provided by the Code of Media Ethics and the constitution of the Union of Cyprus Journalists.*

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 are such protective measures within both criminal and civil procedures.*

*Prosecutors' role is limited to prosecute journalists or media only when they are committing criminal offences.*

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?

*There are no prosecutorial associations in Cyprus. Prosecutors are members of the Pancyprian Public Employees Trade Union (PASYDY).*

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

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?

See Q.33.

## **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.

## **Czech Republic / République Tchèque**

### **C. 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.

### **D. 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 is determined by the Law on a Free Access to Information (Law No. 106/1999 Col.)<sup>1</sup>, by the Code of Criminal Procedure, by the Public Prosecution Act (Law No. 283/1993 Col.), and by the General Notice on Information of the Supreme Public Prosecutor (No. 10/2011) which specifies some provisions of the law.*

*According to the mentioned laws the duty to provide information related to their competence shall apply to state authorities and territorial self-governance authorities and public institutions managing public means.*

*Furthermore, the duty to provide information shall apply to those who were encharged with decision making on rights, legally protected interests and duties of individuals or legal entities in the realm of public administration; however, the duty shall be limited to the extent of their decision making.*

*Personal data protection as well as confidential information shall be respected as stipulated by the law.*

*As for information on particular criminal cases the Code of Criminal Procedure (Articles 8a – 8d) obligates prosecutors to provide media with information. There are provisions concerning data protection of the accused, victims, witnesses and other participating persons with a special regard to juveniles.*

*On the other hand prosecutors shall not get influenced by public opinion or by the media. (Art. 24 Para. 2 item a) of the Public Prosecution Act - Law No. 283/1993 Col.).*

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 chief public prosecutor of each office is responsible for such relations. It is up to his/her decision to either nominate a spokesperson or let prosecutors communicate directly.*

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)?

*The police and the courts shall also provide information. In the pre-trial proceedings the public prosecutor may reserve providing information for himself/herself – in such a case the police may give information only upon his/her approval.*

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

*Communication strategy shall be shall be a natural part of prosecution – police relationship in all complex cases in pre-trial proceedings.*

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 may communicate with the media in all stages of criminal proceedings.*

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

*The police, the prosecution and the courts are obliged to provide information (with certain restrictions given by the law) to public through the media in all stages of the criminal proceeding (Art. 8a – 8d of the Code of Criminal Procedure). Naturally, the police and prosecution are more in touch with the media in the pre-trial phase.*

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

---

<sup>1</sup> the law is implementing the Directive 2003/98/EC on the re-use of public sector information

*A refusal to give information may be appealed to a superior authority or subsequently sued at court. The relationships are therefore under general supervision of higher public prosecutors offices and by courts.*

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 rules are explicitly given by the above mentioned provisions of the Code of Criminal Procedure and by the Law on a Free Access to Information (Law No. 106/1999 Col.).*

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?

*Breach of the law provisions or misbehavior may lead to disciplinary proceedings and sanctions (reprehension, fine, dismissal).*

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

*In danger of leaks of sensitive information prosecutors shall reserve providing information for himself/herself. In exigent situations prosecutors may be given temporal personal protection.*

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 not 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.)?

*By press releases, press conferences, directly/in person, by telephone, by regular mail or e-mail.*

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

*There are no special rules for “international investigations” (the term should be clarified first). In case of JITs communication to media should be covered by the agreement on a JIT.*

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

*There is communication with all the media.*

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

*There are no specific provisions, although, giving such advantages (the term should be clarified first) could be seen as a disciplinary offence.*

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 chief public prosecutor of each office is responsible for such relations. It is up to his/her decision to either nominate a spokesperson or let prosecutors communicate directly to the press. Prosecutors communicating directly need no further authorization.*

*The spokespersons may be prosecutors, but larger offices (especially the Supreme PPO and the High PPOs) employ professionals. They belong to the administrative staff of prosecution.*

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

*There are no special regulations; it is up to the media to choose the way. No authorizations are needed.*



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)?

*Of course, information which could hamper the investigation shall not be disclosed.*

*The criminal code also prohibits publishing of the following data:*

*In the pre-trial proceedings:*

- *information leading to disclosure of identity of an accused, a victim, a witness and participating persons with a special regard to juveniles*

*In any phase of proceedings:*

- *information leading to disclosure of identity of a juvenile victim or a person who was a victim of listed offences (i.e. murder, rape)*
- *information leading to disclosure of identity of a juvenile offender unless decided otherwise by a judge after conviction of serious offences*
- *confidential information*
- *information disclosure of which could breach privacy regulated by special laws*

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

*Providing the public with information through the media is obligatory as given by the provisions of the Code of Criminal Procedure – please see the answers above.*

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

*Press monitoring is provided by the Ministry of Justice and is at prosecutors' disposal on daily basis. There is not a system of evaluation of prosecutors' performances, but their interaction with the press is monitored by the daily monitoring. We are not aware of communication surveys relating to prosecutors.*

### **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 Supreme Public Prosecutors office publishes its appellate reviews on its web page, organises regular meetings with journalists, press conferences and promotes prosecutors' visibility with the aim to increase public awareness of the work of prosecutors. There are as much information as possible on the homepage of the Supreme Public Prosecutor's Office ([www.nsz.cz](http://www.nsz.cz)).*

*Prosecutors' decisions shall be anonymized before they are made public otherwise they are accessible exclusively to persons concerned.*

*It is a domain of the spokespersons to make ad hoc press releases concerning cases which deserve special 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)?

*The Supreme Public Prosecutor's Office explains the work and activities as well as e.g. history of prosecution on the web page ([www.nsz.cz](http://www.nsz.cz)). The press secretary to the Supreme Public Prosecutor continually cares about comprehensiveness of prosecutorial activities and actively deals with the media on daily basis.*

*Legal opinions of the Supreme Public Prosecutor's Office are public and may serve as teaching materials. Handbooks are aimed at prosecutors exclusively.*

*Trials are public and they are under administration of courts. Trial schedules are published on court's web pages and/or boards.*

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.

*Yes, information that otherwise shall not be published may be made public through the media if there is a search for a person or if the public interest prevails over protection of privacy of a person concerned. They may be also published in order to achieve the goal of criminal proceedings (Article 8d of the Code of Criminal Procedure).*

#### **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?

*Trainee prosecutors are educated and examined during their preparatory 3 years training. Questions of access to information and fundamental rights and freedoms are part of their final exam. Further education of prosecutors is provided by a wide range of activities of the Judicial Academy, although the education is voluntary.*

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

*They are trained during their preparatory 3 years training; further education in this regard is voluntary but free provided by the Judicial Academy.*

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

*We are not aware of such trainings.*

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?

*Some journalists and media specialists are lecturers of the media and communication seminars organized by the Judicial Academy.*

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

*Associations of this kind do not play a special role in communication between prosecution and the public.*

#### **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 Council for Radio and Television Broadcasting is the body responsible for the regulation of broadcasting in the Czech Republic. The function and responsibilities are set out in the Broadcasting Act (Law No. 231/2001 Col.). It deals with objectivity, plurality and balance of broadcasting and secures protection of children and juveniles and deals with relevant complaints. It may start administrative proceedings with a broadcaster in case of a breach of the law.*

*Press is regulated by the Press Act (Law No. 46/2000 Col.) and technically administered by the Ministry of Culture and by Regional Offices.*

*A breach of an individual right may lead as far as to criminal responsibility for the offence of Unauthorized Handling of Personal Data (Art. 180 of the Criminal Code).*

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?

*Such a behaviour may lead to:*

- a) *Civil suit for defamation of character (according to Art. 13 of the Civil Code - Law No. 40/1964 Col.).*

b) *Complaint about a breach of public peace (according to Art. 49 of the Misdemeanours Act - Law No. 200/1990 Col.) which would be dealt in administrative proceedings.*

c) *Reporting the offence of Criminal Defamation (according to Art. 184 of the Criminal Code).*

*Prosecution takes part only in criminal proceedings in these cases.*

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

*Please see the answer to the question no. 30.*

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?

*Censorship is absolutely prohibited by the Charter of Fundamental Rights and Freedoms which is a part of the Constitution.*

*Prosecution is not involved in supervision of the media.*

*Although, if an individual journalist or media as a legal person by his/her/its actions commits a criminal or an administrative offence standard procedures take place. In case of criminal proceedings prosecution is involved and the whole range of procedural options, including taking coercive measures, is available.*

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?

*Union of Public Prosecutors may decide to make a protective comment in the media upon request of the prosecutor concerned or upon its own decision.*

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

*Prosecutors shall not get influenced by public opinion or by the media. (Art. 24 Para. 2 item a) of the Public Prosecution Act - Law No. 283/1993 Col.).*

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?

*We are not aware of existence of such institutions.*

## **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.

*We do not wish to make further comments.*

## **Denmark / Danmark**

### **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.

***In Denmark, investigation and prosecution of criminal cases are based on a principle of openness towards the public, including the media. Thus, it follows expressly from the travaux préparatoires of the Administration of Justice Act (AJA) that the Police and the Prosecution Service must demonstrate as much openness towards the media as possible without being in breach of the duty of confidentiality.***

***According to the AJA, the media may gain access to information from both pending cases and concluded cases. Access to documents etc. from criminal cases is only limited by the rules on duty of confidentiality. Thus, prosecutors cannot provide pieces of information to the media which are considered confidential. This may be the case if, for instance, dissemination of the information can compromise further investigation or the court proceedings, or if the information consists in personal data related to e.g. physical or mental health, previous criminal convictions, political or religious opinions, genetic data, sex life etc.***

***In exceptional cases, even confidential information can be provided to the media. This is possible if, based on an individual assessment, the significance of the media ensuring public scrutiny of the functioning of the criminal justice system ("public watchdog") is considered to be more important than the protection of public or private information.***

***The hearing and adjudication of criminal cases usually takes place as open trials. As a consequence, prosecutors may communicate with the media parallel with the court proceedings. However, as a main rule only factual pieces of information, and no subjective opinions, are given to the media at this stage in order to avoid "trial by press". According to the AJA, public reports from court hearings must be objective and loyal. Please also refer to the answer to question 5 below.***

***The judge may in certain cases prohibit the reporting of details from the court hearings. Under special circumstances, the judge may also, upon request or ex officio, decide that the court proceedings should be conducted as a private hearing (behind closed doors).***

***Such decisions on closed doors or bans on reporting are usually taken in order to protect the defendant or witnesses from reprisals etc. or to ensure that further investigation or statements from witnesses are not affected by information from the proceedings. Before deciding whether to close the doors or prohibit the reporting of details from the hearing, the judge must give representatives from the media that are present an opportunity to express their view on the question.***

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 communicate directly with the media. It is decided on a case-by-case basis who within the prosecution service should communicate with the media. Usually, the prosecutor conducting the court proceedings is also responsible for the contact with the media. Prosecutors are encouraged to interact actively with the media.***

***Please also see the answer to question 1 above.***

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)?

***As a main rule, all persons involved in the handling of a criminal case, e.g. police officers, the prosecutor, the defense lawyer, parties to the proceedings etc., are authorized to provide information to the press. However, confidential information and information that have been put forward behind closed doors may, as a main rule, not be given to the press. Please also refer to the answer to question 1 above.***

***In exceptional and aggravating cases, the Police may impose a duty on a defense lawyer not to divulge any information from a criminal case that he or she has received from the Police.***

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

***In Denmark, the local Police and Prosecution Service are organised as one authority. It is therefore common that statements to the media are made according to a joint decision by the investigator and the prosecutor. Also, communications with the media is often co-organised with the Courts or the Ministry of Justice.***

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)?

***Please see the answer to question 1 above.***

***As a principal rule, no distinction is made between different stages of the procedure of a criminal case as regards the media's access to information. However, the assessment whether information from a criminal case can be provided to the media does, of course, depend on whether the investigation or the trial is concluded. If, for instance, the publication of certain pieces of information might compromise an on-going investigation, that information will not be given to the media.***

***It should be noted that according to the AJA, no person dealing with a criminal case may make a public out-of-court statement regarding the question of guilt, until the case has been determined.***

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

***The Danish Courts have specific judges appointed to the task of communicating with the media. All levels of the Courts issue press releases on court decisions that may be of special interest to the public. The media may in cases of special public interest obtain permission to transmit by television to the public the pronouncement of a court decision.***

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

***There is no supervision as such. However, the individual prosecutor is bound by both general and local media policies. All prosecutors receive training on how to interact with the media. Moreover, the Director of Public Prosecutions has issued guidelines on how to interact with the 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"?

***Please see the answers to questions 1 and 5 above***

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

***In cases where such risk may occur, the Prosecution Service will request the Police to make a threat assessment and to protect the involved parties accordingly. In Denmark, however, such need is rarely identified.***

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 such provisions exist. A need for such provisions has not been identified.**

## **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 Danish prosecution Service communicates with all mass media through its own web site, through press releases and through telephone and email contact and personal interviews.**

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

**Yes. No specific procedures are followed. However, in these cases media contact may be coordinated with the authorities of other countries.**

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

**The Danish Prosecution Service communicates with all mass media regardless the means and opinion of the media.**

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

**It is not prohibited for the prosecutor strategically to target a specific media. However, an effort is made in order to treat all mass media equally. It is unlawful to exclude a specific media or journalist for example from a press conference or systematically to deny them interviews if requests are accepted from other media.**

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 Danish Prosecution Service does not use media spoke persons but has instead authorised all prosecutors to make statements to the media regarding the specific cases that they handle. All prosecutors undergo – as part of their basic, obligatory training - media training, specifically on how to address and interact with the media in a proactive and service minded way. Furthermore, advanced courses in media contact are offered to all prosecutors.**

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

**Journalists do not need special credentials or authorisation in order to contact the Prosecution. All representatives from the media are handled equally.**

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)?

**Please see the answer to question 1 above**

**As the principal rule, the names of the defendant, the witnesses and other persons involved in a criminal case are known to the public.**

**However, if there is a risk that a publication of the identity may put those persons in danger or cause an undue invasion of privacy, the judge may grant an injunction against the media publishing the names, addresses and positions of the defendant, the witnesses etc. When deciding whether to prohibit the publication of names etc., the judge must take into consideration the gravity of the offence and the societal importance of the case. If the defendant has taken up a position of trust, this speaks against a prohibition of publication of names etc.**

**The name of the prosecutor is always public.**

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

***The Danish Prosecution Service wishes to promote an open and proactive communication and interaction with the media in order to contribute to a transparent and objective administration of its powers and the criminal justice system in general. At the level of specific cases, the strategy is to use the interaction with the media in creating a balanced and objective picture of the case. However, the Prosecution Service may never argue the specific case before the media. This stems from the principle of objectivity which applies to all activities of the Prosecution Service.***

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

***The Director of Public Prosecutions has established a central media unit that evaluates efforts and achievements with regard to media contact.***

### **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)?

***Please see the answer to question 19***

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)?

***The Prosecution Service has a wide range of activities and publications aiming at giving the public access to information concerning the tasks and functions of prosecutors. At the official web site of the Prosecution Service, both general information and information targeting specific groups of citizens is available***

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 media can under certain circumstances be involved in the investigation of a criminal case. According to the AJA, the Police may issue a description or other information of an unidentified person through the press if the publication must be presumed to be of significant importance to the investigation, including for the establishment of the identity of the person, or in order to prevent further criminal offences. Publication of a photograph of the presumed perpetrator may only take place if there is substantiated suspicion that the individual has committed an offence which under the law can result in imprisonment for one year and six months or more.***

***In addition, the Police may, by the use of the media, institute a search for an identified wanted person. This procedure can be used if there is a particularly confirmed suspicion that the person has committed an offence which under the law can result in imprisonment for one year and six months or more, and if a public search is presumed to be of crucial importance for the accomplishment of criminal prosecution or to prevent further criminal offences of a similar seriousness.***

***Publication of a description etc. or public search must not take place if, considering the purpose of the measure, the significance of the case, and the offence and inconvenience which the measure can be presumed to cause the concerned person, it would be a disproportional measure.***

### **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?

***All Danish prosecutors are – through their basic, obligatory training - trained in principles on freedom of expression and access to information. They are also trained in rules governing the right to and limits of giving information to the media.***

***These topics are also targeted through specialised training following basic training.***

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

**All prosecutors undergo – as part of their basic, obligatory training - media training, specifically how to address and cooperate with the media in a proactive and service minded way. Furthermore, advanced courses in media contact are offered to all prosecutors.**

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

**General principles of criminal law and information on the partners of the criminal justice systems and their tasks are part of the curriculum for journalists.**

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?

**The Prosecution Service has continuous meetings with the media and with journalists in order to ensure a professional and well functioning interaction.**

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

#### **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 Danish Press Council is an independent, public council which deals with complaints about the mass media. The council can rule in cases relating to whether a publication is contrary to "sound press ethics" which is interpreted in the light of published Press Ethical Rules.**

**The Council can decide that a mass media shall be under the obligation to publish a reply in which the complainant gets the opportunity to correct the published information.**

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?

**The Danish Penal Code sets out provisions incriminating the violation of personal honour by offensive words or conduct or by making or spreading allegations of a person committing acts that are likely to disparage him of the esteem of his fellow citizens. Also, defamation is criminalized.**

**The public prosecutor plays no role in these cases as they are liable only to private prosecution.**

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

**Journalists' publication of confidential information is, as the principal rule, considered a criminal offence. If, however, the journalist acted in order to lawfully safeguard e.g. obvious public interest, the publication will not be considered unlawful. The maximum penalty provided by law for breach of confidentiality is imprisonment for up to one year and six months. Under aggravating circumstances, the penalty may be raised to imprisonment for up to two years.**

**Furthermore, according to the Criminal Code, any person who unlawfully forwards information or pictures concerning another person's private life or other pictures of the person in question in circumstances which can obviously be expected to be withheld from the public, shall be liable to a fine or to imprisonment for any term not exceeding six months. The provision also applies where the information or picture concern a deceased person.**

**In addition, any person who unlawfully photographs persons who are not in a place open to the public shall be liable to a fine or to imprisonment for any term not exceeding six months.**

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?



***According to the Administration of Justice Act, the Court of Enforcement can – in very exceptional cases - issue a prohibition against an intended action, including the intention to publish. This measure must be seen only as an interim measure, normally pending the legal decision of a conflict.***

***Such prior restraint conflicts with the freedom of expression and calls for most careful scrutiny by the Court. The provisions enabling the Court to issue such prohibition must thus be interpreted under due considerations to the freedom of expression.***

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 for Prosecutors play no role in these cases. The Danish Director of Public Prosecutions may in severe cases issue a statement in this regard.***

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

***Yes, always.***

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?

***Please see the answer to question 29***

#### **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.

### **England and Wales / Angleterre et le Pays de Galle**

#### **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**

Please note that the use of 'prosecutors' in these responses refers specifically to lawyers employed by the Crown Prosecution Service (CPS) – it is not used as a shorthand for the CPS as a whole.

Press officers also refer to press officers and some communications staff authorised to speak to the media. It should be assumed that, unless stated otherwise, all communication is carried out with press office support.

1. Is the relationship between prosecutors and media determined by law or other written provisions? Describe them briefly.

There is no one piece of legislation that defines how prosecutors should deal with the media. Prosecutors and other public office holders are bound by the provisions of the Official Secrets Act 1989 with regard to the disclosure of information. They are also subject as are others to the Data Protection Act 1998. Offences such as misconduct in a public office may also apply - see the CPS Media Guidelines. With regards to disclosure of lawfully requested information the CPS have a media protocol in place to deal with such requests which is available on our website.

<http://www.cps.gov.uk/publications/agencies/mediaprotocol.html>

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 authorised to speak to the media about particular issues/cases as agreed with communications staff, and with the support of a press officer. Press engagement is encouraged, particularly among senior Headquarters (HQ) staff and the Chief Crown Prosecutors who head up the CPS Areas.

If approached directly in court, prosecutors, and those acting on behalf of the CPS, are expected to provide basic information (i.e. factual information about a case which is in the public domain such as the particulars of a charge). This should be done without the need to refer to the press office. Any request for more detailed or general information should be passed through the press office.

Contact between CPS employees and the media is also covered in the CPS Code of Conduct. In summary, dealing with the media is a specialist role and only those specifically authorised may do so. If an employee is approached by a member of the media seeking information or comments on a CPS case or any other official matter the request should always be declined and the caller referred to the Area Communications Manager/HQ Press Office.

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)?

Other prosecuting authorities, the police, Judiciary and the Courts & Tribunals Service regularly provide information about criminal proceedings to the media. Their internal procedures are a matter for them to comment on. Other parties involved in proceedings – such as defence firms – also engage with the press.

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

Yes, joint statements are sometimes used in high-profile or complex cases. Press events can also be held jointly as this can provide journalists with all of the information they need in an efficient manner.

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)?

#### **Pre-trial: Charging Stage**

Before a charge, the CPS will generally only confirm that it is considering evidence in relation to a specific incident, if asked. No details of the allegations will be released.

At the time of charge, the CPS will sometimes release (either proactively or upon request) a short statement outlining the charges. This statement will normally contain basic information about the alleged criminality.

If a decision is made not to charge, the CPS will, where there is a public interest in doing so, make public that decision, and give reasons as far as is appropriate.

#### **Pre-trial: Post-Charge**

In some cases which are particularly high profile, or complex, the media may be invited to attend a briefing so that key facts surrounding the prosecution can be explained, and logistics relating to media handling can be arranged. Information given at this stage is embargoed until it is heard in open court, or to the end of proceedings.

### **During trial**

The opening statement from the prosecution is sometimes made available, in order to help the press report the prosecution case accurately.

As the trial progresses, prosecution material (e.g. CCTV footage shown to the court) may be released to the media as it is shown to the jury. The media are entitled to this material under the [Media protocol on the release of prosecution materials](#) agreed between the CPS, the Association of Chief Police Officers and the media. This does not give the media a right to this material, but indicates the prosecuting authorities' commitment to openness and transparency where appropriate and where there are no legal reasons not to. For example, the victims and/or witnesses in a case are consulted where appropriate before material is released. This Protocol is aimed at helping the press to accurately report ongoing criminal proceedings. It is not intended as a commitment to release archive footage from cases.

### **At the end of a trial**

Prosecutors may make a statement at the end of a case, and are often interviewed and asked to explain the prosecution case in detail or to discuss the challenges faced by the prosecution with certain types of cases. This may also include discussion over the CPS Policy in a certain area – the vast majority of CPS Policy is available on our [website](#).

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

#### **Information in relation to England and Wales:**

Judges in England and Wales do not have any role as prosecutors. Unlike some jurisdictions, there is no 'investigating judge'. The judge in England and Wales is wholly independent of the executive and therefore of the prosecuting authorities. The role of the judge in criminal trials is as an impartial arbiter of the law and to ensure the proper administration of justice. The judge has no prosecutorial function at all.

Open justice is a key principle and although there are some statutory exceptions in the interests of justice, in general, judges deliver their rulings in open court to which the public and the media have admittance, and their rulings can be reported by the media. In addition there is provision under the Criminal Procedure Rules Part 5.8 for information and documents to be provided to the public and the media by the court. Following the judgment in *R (Guardian News and Media Limited) v City of Westminster Magistrates' Court* [2012] EWCA Civ 420, further practice guidance may be issued on the exercise of the discretion under rule.5.8.(7).

The key part of judicial conduct is that judges do not discuss their cases or rulings, or comment on any individual case other than in giving judgment. Judgments stand alone, and judges do not amplify or explain their judgments to the media.

Judges do not respond to public criticism of their judgments either to the media or in court. If a judge is factually mis-reported, or there is a likelihood that a case might be misinterpreted, perhaps because it is complex, high-profile or controversial, the Press Office for the Judiciary can assist the judge by issuing a statement or a written copy of the ruling, so that the media can report more accurately.

Requests for interviews are usually declined and would not be undertaken without the senior judiciary having been consulted. Judges do occasionally speak to the media. For example, during the recent launch of the Sentencing Council's Consultation Paper on Sex Offences, the judicial members spoke about the work of the Council and the consultation, but not about any individual cases.

These principles are not in statutory law, but are contained in guidance to judges. There is a very strong and important convention underpinning the guidance. They are intended to preserve the dignity of the judicial office and ensure there is no appearance of bias or anything that might undermine the judge's impartiality or independence.

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

Prosecutors are civil servants and are therefore bound by the Civil Service Code and the Official Secrets Act 1989.

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 Contempt of Court Act 1981 imposes a duty on anyone publishing/broadcasting information about criminal proceedings to avoid creating a substantial risk of prejudice to those proceedings. This applies directly to the CPS when publishing information on its website, etc, and journalists are reminded of their general legal obligations when given information about a case – although responsibility for complying with those obligations rests firmly with the media.

The CPS must also abide by its duty as a data controller under the Data Protection Act 1998 and as a public authority under the Human Rights Act 1998 - there must be a justification for releasing information that may adversely affect the privacy of any individual, including defendants and victims.

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?

Contact with the media is covered within the CPS Code of Conduct. Failure to comply with the rules (summarized at question 2) may result in action taken under the CPS disciplinary procedure.

In addition, rules relating to confidentiality in general are covered in the CPS Code of Conduct. In summary, employees must not breach confidentiality in the course of their employment, particularly in respect of personal or sensitive information. Failure to comply may result in action being taken under the disciplinary procedure. Employees must not inappropriately disclose or misuse confidential information acquired in the course of employment that they know about Ministers, employees, contractors, individuals involved in a case, or other organisations working with the CPS. Under the Civil Service Code, civil servants must not disclose official information without authority. This duty continues to apply after employees leave the Civil Service. The Official Secrets Act 1989 applies to CPS employees and, by signing their contract of employment, they agree that they will not disclose information acquired through official duties to any unauthorised person or authority. All employees holding official information, on paper or in computerised form, are responsible for keeping it safely and in accordance with any security classification. They may not give or show any unpublished official document of any description, without the CPS' authority, to anyone who is not authorised to see it. Similarly, no unauthorised or premature communication of any information to which an officer has access in the course of official duties may be made to any person, including the media. Particular care must be taken at all times to avoid mentioning confidential official matters to anyone outside the office, or in such circumstances as to incur a risk of them being made public. All requests for information by the press should be referred to the Area Communications Manager/HQ Press Office.

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

The Press Office does not release information without the agreement of the lawyers in the case, and material likely to cause a security risk is very unlikely to be released. Personal information (phone numbers etc.) about prosecutors is not generally released, and the practice of referring the media through a press office allows any potential security risk to be properly assessed by the organisation through our Departmental Security Unit.

Paragraph 4.12 (g) of the Code for Crown Prosecutors states that in cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need to be made public that could harm sources of information, international relations or national security. It is essential that such cases are kept under continuing review.

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?

A prosecutor in court (a barrister) is required to give their name to the media, unless an order is made otherwise. CPS solicitors are often named, though their permission is sought. On some occasions, it may be felt that the head of an Area or Division is named as the ultimate decision maker rather than a more junior member of staff.

## **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 CPS communicates with the press through:

- Its website
- Social media
- Press releases
- Press statements (shorter, and assumes knowledge of the case or issue at hand)
- Press briefings – like press conferences though not normally televised
- Articles submitted to newspapers
- Interviews
- Statements outside court after trials
- Background discussions to give wider context to inform journalists but not for immediate use.
- Telephone, email and in person.

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

Yes, this will be determined on a case by case basis. In extradition cases, the CPS does not comment until a suspect is in custody.

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

The CPS engages with all professional journalists. Unaccredited, freelance journalists, such as individuals writing blogs, are engaged with where resources allow.

Any person seeking information from the CPS can also request it via the Public Enquiry point or the Freedom of Information Unit.

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?

Communication is done in agreement with, and with the support of, the CPS Press Office.

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

The CPS is unable to respond to this question as it relates to procedures operated by media organisations/bodies.

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 Press Office will routinely disclose:

- The names of defendants and the offences that they have been charged with.
- The reasons for a decision to charge/not to charge (when legally appropriate)
- The reasons for actions taken in particular stages of a case (when legally appropriate)
- Brief details of the allegation – where and when it occurred, the damage caused, etc.
- Details of relevant policy

The Press Office will not routinely disclose:

- Personal information not given in open court
- Details of exactly what has been said in court – journalists should attend court so they can hear exactly what is said by the prosecutor.
- The argument put forward by the defence – this is for the defendant's legal representatives to discuss.
- Details of investigations or arrests as these are a matter for the police.

- Details of a court order as that is a matter for the Courts service.
- A defendant's criminal record, which is held by the police.

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

The Media Protocol provides guidance to CPS prosecutors on key points they need to consider when providing the media with access to prosecution materials, in particular after a conviction or a guilty plea has been entered. The Media Protocol provides that where there is a conviction or a guilty plea entered, the CPS should normally recognise and wherever possible respond to the need for the media to have swift access to information, and provide materials taking into account victim and witness considerations and availability of resources to provide the material. The purpose of the Media Protocol is also to demonstrate the prosecution team commitment to providing the public with an open and transparent prosecution process whenever the law and interests of justice permit it. The protocol enables the police, the CPS and the media to work in partnership to provide the public with access to factual information about criminal convictions.

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

A survey of journalists is carried out periodically. Media coverage is monitored, and output is measured in terms of website analytics, social media engagement.

### **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 CPS is committed to openness and transparency, and is often accountable to the public through the media. We endeavour to explain our decision making, raise awareness of our work, and fulfil requests for information where possible in order to build confidence in the organisation, particularly among victims and witnesses.

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)?

The CPS engages with the public through localised community engagement, as well as through the media. Teaching materials were also developed a number of years ago to help classroom learning about the court process.

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.

Prosecutors have no investigative function in England and Wales. However, the police may use the media to issue an appeal to the public.

### **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?

When the Human Rights Act 1998 was implemented in 2000, all CPS employed lawyers underwent classroom training on it. Following that, training on human rights is accessed via e-Learning on the CPS e-learning platform, Prosecution College. There is a module in this course on Article 10 of the European Convention on Human Rights (ECHR), which provides the right to freedom of expression, and examines the circumstances when that right can be curtailed or interfered with (i.e. by a prosecution against the individual). The perspective is on whether individuals should be prosecuted for what they have said or done (usually under the Public Order Act 1986). There is also a module relating to Information Sharing, which considers what information the CPS can provide to victims/witnesses/third parties, and the practical issues/ECHR Articles which are engaged when giving out information (particularly whether giving out information might breach an individual's right to a private and family life under Article 8, or a suspect's presumption of innocence until convicted under Article 6). The training is recommended for all prosecutors but not at any specific point in their initial or continuous training.

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

Prosecutors are always supported by press officers, who give advice and help on interaction with the media. Further training can be made available if required.

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

This is really a question for the media, but formal journalistic training includes media law training and court reporting.

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, however Chief Crown Prosecutors do seek to build constructive relationships with the media in their Areas.

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

There are professional media associations (e.g. National Union of Journalists). Interactions with prosecution authorities are the same as with other Government departments, where a well established process of right to reply, and avenue of complaint on both sides works well.

## **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 Press Complaints Commission is an industry regulatory body and the recent Leveson Inquiry has led to further debate on press regulation.

Any reporting that creates a substantial risk of serious prejudice to criminal proceedings may lead to a prosecution by the Attorney General for contempt of court.

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?

Libel is a civil matter in England and Wales and one in which the CPS have no involvement

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

.The CPS website may be accessed for further information on the [Guidelines for Prosecutors on assessing the public interest in cases affecting the media](#).

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 are automatic reporting restrictions that prevent publication that identifies children and young people who appear in youth court proceedings as victims, witnesses or defendants (section 49 Children and Young Persons Act 1933) and victims of rape and other serious sexual offences (section Sexual Offences Act 1992). The court also has a power to make an order prohibiting a publication that identifies children and young people who appear in adult courts (e.g. Magistrates' Courts and Crown Court) as victims, witnesses and defendants (section 39 Children and Young Persons Act 1933). The court can make this order on application by the parties to the case (prosecution or defence) or by any interested person, which includes the child or young person and the media, or of its own motion. It must give the parties and interested persons the opportunity to make representations before the order is made. An application can be made to lift an order under section 39 or the automatic restriction imposed by section 49 when a youth is convicted. Again, all parties and interested persons must have the opportunity to make representations before the court decides whether to lift the order. Breach of these reporting restrictions is a summary offence, punishable with a fine, and the CPS brings prosecutions against those who breach reporting restrictions.

If the CPS becomes aware of any material published on the internet that appears to breach a reporting restriction or that appears to amount to a contempt of court, we will draw it to the publisher's attention and request that the matter is removed. The CPS will refer to the Attorney General any publications that appear to amount to a contempt of court so that he can consider instituting contempt proceedings. Publications may amount to a contempt if they breach an order made by the court, e.g. under section 11 Contempt of Court Act 1981, not to publish the name of a person, or if they cause a serious risk of prejudice or impediment to the administration of justice e.g. by publishing derogatory material about a suspect/offender or details of his previous convictions.

In addition, a voluntary system operates within the UK known as the Defence Advisory (DA) Notices System, which is overseen by the Defence, Press and Broadcasting Advisory Committee. The DA-Notice System is a means of providing advice and guidance to the media about defence and counter-terrorist information the publication of which would be damaging to national security. The system is voluntary, it has no legal authority and the final responsibility for deciding whether or not to publish rests solely with the editor or publisher concerned. CPS prosecutors play no role in the DA Notice System.

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?

Where a prosecutor is criticised by the media for reasons connected with criminal proceedings, it will invariably prompt an internal fact-finding investigation to determine whether the issues require a more formal disciplinary investigation or whether the facts do not justify any further action.

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

The rules regarding contact with the media and confidentiality contained within the CPS Code of Conduct, and obligations under the Civil Service Code and Official Secrets Act 1989, would continue to apply in such circumstances.

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?

If the CPS feels it has been wrongly represented in the media it is dealt with on a case by case with the media outlet in question.

## 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.

## Finland / *Finlande*

### 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.

***There are no separate legal provisions determining contact between prosecutors and the media, but the duty and right of prosecutors to provide information to the media complies with general provisions governing disclosure and secrecy. This means in practice that the media therefore has the same right to be informed as other third parties (other than parties and certain authorities - such as child welfare authorities, etc. - which have particular rights to be informed). In practice, this means that during the pre-trial investigation and consideration of charges, it is basically not possible to provide any information to the media about the substance of a case. Once the case has been before the court in an oral hearing, the media have a right to receive very extensive information about the substance of a case. This also applies to a situation where a prosecutor has decided to waive charges. In such situations, too, information about health and other sensitive information, state secrets, etc. must be kept secret from the media and other third parties.***

2. Are prosecutors authorised 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 they are. Each prosecutor himself or herself communicates with the media about the cases he or she is dealing with.***

3. Which other persons are authorised to provide information to the press within the framework of these cases (police service, lawyers, parties to a proceeding, other persons)?

***Under the government decree dealing with pre-trial investigations, the head of the investigation and his or her supervisor are authorised to provide information to the press. Otherwise, each party to a case is independently responsible for providing information.***

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

***In some criminal cases that have generated wide attention, the prosecutor and the police have held joint media conferences. Discussing media communications is part of good pre-trial investigation work between the prosecutor and the pre-trial investigation authority.***

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)?

***A prosecutor's responsibility for communication begins when a case is passed to him or her for consideration of charges. At the pre-trial investigation stage, the pre-trial investigation authorities are responsible for communication. An exception to this is criminal cases where the suspect is a police officer. In such cases, the prosecutor acts as the head of investigation and is also responsible for communication at the pre-trial investigation stage.***

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

***Courts of law are independently responsible for their own communication once a case has passed to the court for consideration. In Finland, it is not customary for judges to comment on the decisions they make. Nevertheless, courts of law give press releases and reports of the decisions they hand down. As a rule, the decisions are public.***

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

***Not particularly, only supervision relating to such matters. These things are part of prosecutors' activities which are subject to general oversight of the legality of prosecutors' activities. If a prosecutor communicates contrary to good prosecutorial practice, the supreme prosecutor, which in Finland is the prosecutor general, can intervene in the matter. If a prosecutor discloses information that is to be kept secret, he or she may be guilty of an offence in office.***

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”?

***Under the Pre-trial Investigation Act, information about a pre-trial investigation must be communicated in such a way that no one is unjustifiably incriminated or unnecessarily harmed or inconvenienced. This principle also applies to communication by prosecutors. “Trial by press” alongside trial by a court is not good prosecutorial practice. A prosecutor may also express his or her opinion, but any view in this respect is required to be relevant and objective.***

***The Act on the Prosecution Service provides for the disqualification of a prosecutor. Under this Act, a prosecutor is disqualified from consideration of a case if, inter alia, there is reason to suspect his or her impartiality in the case. This means, for example, that a prosecutor cannot adopt a position a priori, for example in the media, in a case under investigation.***

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?

***If a prosecutor pursues a case in trial by the press, he or she can receive a warning from the supreme prosecutor. In such cases, the prosecutor general may relieve the prosecutor of the case and assign it to another prosecutor. If a prosecutor discloses information that is to be kept secret, he or she may be guilty of an offence in office.***

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

***The name of a prosecutor in a case is in the public domain, but contact and other personal information can be kept secret. If there is a security risk involved in a case being dealt with by a prosecutor, the case can be assigned to several prosecutors. The Office of the Prosecutor General must be notified of any threats against prosecutors. Where necessary, the police are notified of security risks.***

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?

***Publication of a prosecutor’s name cannot be prevented because this is public information.***

## **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.)?

***Prosecutors answer telephone and email enquiries, give interviews, publish press releases, write reports of decisions and sometimes also hold 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. To date, prosecutors have only written press releases in some cases of international interest. The same principles apply in communicating international cases as in communicating national ones. The date and way of communication is agreed together with the authorities of the other state involved in situations where an investigation is ongoing at the same time in both countries.***

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

***Prosecutors must treat reporters equally and fairly. This means public information is given to everyone requesting it irrespective of the medium or media it is published in.***

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

***Favouring certain journalists is not good prosecutorial practice. Under the Act on the Openness of Government Activities everyone has the right to access information available in public documents.***

16. How is the communication organised 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 authorisation to do so? Are prosecutors supervised in this field?

***Each prosecutor himself or herself communicates with the media about the cases he or she is dealing with. A prosecutor may use the help of a communications specialist, for example, in writing a release and in its circulation to journalists or in arranging a press conference. In individual cases, responsibility for communication always rests with the prosecutor dealing with the case in question. A communications specialist may provide journalists with general information about the activities of the prosecution service. The prosecutor general has ultimate responsibility for the communications policy of the prosecution service.***

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

***Journalists are in direct contact with prosecutors. Some media have journalists specialising in criminal and legal matters, some journalists writing an article are so-called all-round reporters.***

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)?

***During the pre-trial investigation and before a prosecutor has decided whether to pursue a case or to waive charges, the name of the suspect must not be disclosed to third parties. When the prosecutor has made the decision, the name of the accused (or the person against whom charges have been waived) is public. The offence for which a charge has been brought (the category of the offence charged) and the court in which the case is to be heard are also public. Unless the prosecutor has ordered it to be kept secret (this is usually the practice in rape cases), the name of the injured party is public once the pre-trial investigation has been completed. The name of a witness to be heard in a case is secret until the charge has been considered in court or the prosecutor has decided to waive charges. The name of the prosecutor dealing with a case is public from the start of proceedings. Information about the incident and other content relating to the case appearing in the pre-trial investigation, the description of the act charged and items of evidence are secret until the matter has been before the court in oral proceedings.***

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

***The Office of the Prosecutor General has drawn up a communications plan which is updated as necessary. Local prosecution offices are given written communication guidelines by the Office of the Prosecutor General. These guidelines emphasise the openness and activeness of prosecutors in communication. The Act on the Openness of Government Activities commits the authorities to providing information about public documents. Persons requiring information must be treated equally and fairly. Finland has two national languages, Finnish and Swedish. The Finnish- and Swedish-speaking population must be served on an equal footing. Customers are served in both languages and key communication material is provided in both Finnish and Swedish. Prosecutors received media training to encourage them to cooperate with journalists.***

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

***There is no general or systematic evaluation. The communications manager at the Office of the Prosecutor General monitors news about prosecutors in various media and provides media follow-up information to management where necessary. In addition, feedback about the activities of the prosecution service can be given via the service's website or by email. The communications manager receives information about feedback. Questionnaires have also been used to study the external communications of the prosecution service. In problem situations, the Office of the Prosecutor General can deal with the procedure of a prosecutor.***

### **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)?

***Decisions made by prosecutors are, as a rule public and can, if required, be ordered from the prosecution service. Also press releases and reports of decisions are written concerning decisions that generate wider interest. These are also publicly available, for example, by email and online. In addition to individual cases the activities of the prosecution service are also posted on the service's website and through various publications.***

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)?

**Prosecution offices have held various discussions and open days. In addition, activities are posted on websites and through publications such as brochures and the annual report. The prosecution service presents the work and career of a prosecutor each year to, for example, students, recent graduates and other persons interested at employment agencies, recruitment fairs and at educational establishments. Prosecutors often appear at various events held by stakeholders. A set of slides is generally used to present the activities of the prosecution service.**

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.

**By law, pre-trial investigations must be reported so as not to unjustifiably incriminate anyone or to unnecessarily harm or inconvenience anyone. This enables the photo of a suspect of a serious offence who can also be assessed as dangerous to be published in a newspaper or other media and in this connection, the public are requested to notify the authorities of possible sightings.**

**The head of an investigation may, within the limits permitted by law, communicate information about a case to be able to obtain tips from the public to help take the investigation further. In certain situations, providing information about a case may be necessary where publicising it can prevent other offences.**

#### **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?

**The Office of the Prosecutor General arranges basic and advance training for prosecutors. The basic training programme is compulsory for everyone and includes a three-day module about human and constitutional rights. A two-day training module covering freedom of speech is also provided and is part of the basic competence of every prosecutor. Training covering publicity is also given both centrally and in the form of local training in prosecution offices. This training module lasts three hours.**

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

**The induction programme for new prosecutors contains a section covering media publicity. Prosecutors are given a three-day media training course to provide them with the skills to interact with the media and to understand media communication. The course covers the provisions of the Act on the Openness of Government Activities and media communications at the prosecution service.**

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

**Legal affairs reporters have formed their own association which provides training and discussions about legal affairs, also about the activities of prosecutors. Media training arranged by the prosecution service also includes visits to editorial offices where prosecutors and journalists learn about each other's work and discuss key working practices. In addition, prosecutor offices have also held discussion and familiarisation events for journalists.**

27. Are there joint training courses, conferences, seminars, etc. organised 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?

**See reply above**

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

**The Council for Mass Media (CMM) in Finland is a self-regulating body established by the media, publishers and journalists. The Council is tasked with interpreting good professional practice and to defend the freedom of speech and publication. The Council also considers the methods a journalist employs to obtain information and oversees compliance with the Guidelines for Journalists. These form professional ethical instructions for journalists. The Council for Mass Media is not a court of law and does not exercise public authority. See detailed answer to question 29.**

## 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 Council for Mass Media is a self-regulating committee established in 1968 by publishers and journalists in the field of mass communication. Its task is to interpret good professional practice and defend the freedom of speech and publication. CMM does not exercise legal jurisdiction. The journalists and other personnel engaged in media who have affiliated to the CMM have, ipso facto, committed themselves to advancing and upholding the ethical principles of the profession.***

***Any person who considers that there has been a breach of good professional practice by media may bring this to the attention of the CMM. Once the CMM has established that good professional practice has been breached, it issues a notice which the party in violation must publish within a short time span. Under certain circumstances involving important principles, the CMM can initiate an investigation. It can also issue policy statements regarding questions of professional ethics. The CMM handles complaint investigations free of charge, within an average timeframe of five months. The Chairman may give independent resolutions of matters which clearly do not refer to a breach of good professional practice and are of no significant importance.***

***The CMM is comprised of a chairman and eleven members whose term of office is three years. Seven members represent areas of expertise in the field of media, and four represent the public. The chairman, whose expertise also may be in the field of media, is appointed by the Managing Group of The Council for Mass Media. Representatives of the public are elected by the council itself. They may not be employees or board members of any media entity. The media representatives are appointed by the Managing Group.***

***The framework of the CMM's operations is stipulated in a Charter, which is signed by all the organisations which have committed to themselves to self-regulation and accepted its objectives. A complaint may be filed by any individual or organisation requesting the investigation of a matter concerning breach of good professional practice or the freedom of speech and publication. The CMM will not investigate complaints submitted anonymously, nor complaints where more than three months has elapsed since publication. The complaint must be submitted in writing and signed. Nowadays the council gets most of the complaints via electronic complainant form.***

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?

***Penal provisions are contained in Chapter 24, Sections 8-10 (531/2000) of the Criminal Code of Finland. It is a prosecutor's duty to pursue charges in such offences if the injured party has requested charges to be brought (see provision on the right to bring charges in Section 12 below) and sufficient proof has been obtained for an offence. However, if an offence is minor, the prosecutor can waive charges.***

### **Chapter 24**

#### **Section 8 – Dissemination of information violating personal privacy**

(531/2000)

(1) A person who unlawfully

(1) through the use of the mass media, or

(2) otherwise by making available to many persons

disseminates information, an insinuation or an image of the private life of another person, so that the act is conducive to causing that person damage or suffering, or subjecting that person to contempt, shall be sentenced for dissemination of information violating personal privacy to a fine or to imprisonment for at most two years.

(2) The spreading of information, an insinuation or an image of the private life of a person in politics, business, public office or public position, or in a comparable position, does not constitute dissemination of information violating personal privacy, if it may affect the evaluation of that person's activities in the position in question and if it is necessary for purposes of dealing with a matter with importance to society.

#### **Section 9 - Defamation (531/2000)**

(1) A person who

(1) spreads false information or a false insinuation of another person so that the act is conducive to causing damage or suffering to that person, or subjecting that person to contempt, or (2) disparages another in a manner other than referred to in subparagraph (1) shall be sentenced for defamation to a fine or to imprisonment for at most six months.

(2) Criticism that is directed at a person's activities in politics, business, public office, public position, science, art or in comparable public activity and that does not obviously overstep the limits of propriety does not constitute defamation referred to in subsection 1(2).

(3) Also a person who spreads false information or a false insinuation about a deceased person, so that the act is conducive to causing suffering to a person to whom the deceased was particularly close, shall be sentenced for defamation.

#### Section 10 - Aggravated defamation (531/2000)

(1) If, in the defamation referred to in section 9(1),

(1) the offence is committed by using the mass media or otherwise by making the information or insinuation available to many persons, or (2) considerable or long-lasting suffering or particularly or significant damage is caused and the defamation is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated defamation to a fine or to imprisonment for at most two years.

#### Section 11 - Definition (531/2000)

Domestic premises refers to homes, holiday homes and other premises intended for residential use, such as hotel rooms, tents, mobile homes and vessels with sleeping capacity, as well as the stairwells and corridors of residential buildings and the private yards of the residents and their immediate outbuildings.

#### Section 12 - Right to bring charges (531/2000)

(1)-

(2) The public prosecutor may not bring charges for dissemination of information violating personal privacy, defamation or aggravated defamation, unless the injured party has reported the offence for the bringing of charges. However, the Prosecutor-General may order that charges be brought, if the offence has been committed through the use of the mass media and a very important public interest requires that charges be brought.

(3) An offence referred to above in section 9(3) may be reported for the bringing of charges by the surviving spouse, sibling, direct descendant or direct ascendant of the deceased, as well as by a person who lived in the same household with the deceased or a person to whom the deceased was particularly close.

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

***In principle, a journalist may be sentenced to punishment of a fine or imprisonment as referred to in the answer to question 30 above. However, in its decision 2011:100, the Supreme Court gave significant importance to point 1 Towards decriminalisation of defamation in Resolution 1577 (2007) of the Council of Europe's Parliamentary Assembly which urges states to abolish provisions in their legislation for prison sentences for defamation without further delay. Such legislative amendment is under preparation. When implemented, it would mean the abolition of prison sentences for ordinary defamation and dissemination of information violating personal privacy (the potential to hand down a prison sentence would be retained in aggravated offences). Even though this amendment to the law has not yet occurred, the view of the Supreme Court means that, today, a journalist would no longer be sentenced to imprisonment for defamation. A journalist who is guilty of punishable defamation could be ordered to be liable for damages for personal suffering caused.***

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?

***Under the Constitution of Finland, everyone has freedom of expression, which also includes the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. However, under the Constitution of Finland, provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act. The answer to the question is therefore that only restrictions relating to pictorial programmes that are necessary for the protection of children can be prevented in advance. In practice, this means pictorial programmes containing particularly brutal violence, pornography or cruelty to animals. Otherwise prior intervention in dissemination is not possible.***

33. If a prosecutor is criticised by media for reasons connected with the criminal proceedings, is there a role to play for the prosecutorial associations?

***The prosecutors' trade union or any other union does not formally have such a role. Neither do they act in such a manner in practice. However, there is nothing to prevent a trade union from, for example, presenting views in a prosecutor's defence in public if he or she has been the subject of groundless criticism.***

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

***The fact that the media started a campaign against a prosecutor does not give the prosecutor the right to disclose such information that, by law, must be kept secret.***

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. Although the prosecutor general or the Office of the Prosecutor General can speak in a prosecutor's defence in public if the situation requires an expression of such support.**

#### **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.

## **France**

### **Introduction**

La Recommandation Rec(2003)13 du Comité des Ministres du Conseil de l'Europe sur la diffusion d'informations par les médias en relation avec les procédures pénales a fait la référence aux points suivants :

l'engagement des Etats membres envers le droit fondamental à la liberté d'expression et d'information tel qu'il est garanti par l'article 10 de la Convention européenne de sauvegarde des Droits de l'Homme et des Libertés fondamentales;

les médias ont le droit d'informer le public en égard au droit de ce dernier à recevoir des informations, y compris des informations sur des questions d'intérêt public, en application de l'article 10 de la Convention, et qu'ils ont le devoir professionnel de le faire;

l'importance des reportages réalisés par les médias sur les procédures pénales pour informer le public, rendre visible la fonction dissuasive du droit pénal et permettre au public d'exercer un droit de regard sur le fonctionnement du système judiciaire pénal;

les droits à la présomption d'innocence, à un procès équitable et au respect de la vie privée et familiale, garantis par les articles 6 et 8 de la Convention, constituent des exigences fondamentales qui doivent être respectées dans toute société démocratique ;

les intérêts éventuellement conflictuels protégés par les articles 6, 8 et 10 de la Convention et la nécessité d'assurer un équilibre entre ces droits au regard des circonstances de chaque cas individuel, en tenant dûment compte du rôle de contrôle de la Cour européenne des Droits de l'Homme pour garantir le respect des engagements contractés au titre de la Convention.

### **Questions**

#### **Dispositions actuelles légales et réglementaires**

Les relations entre procureurs et médias sont-elles déterminées par la loi ou par d'autres normes écrites? Décrivez-les brièvement.

R. Le texte fondamental est l'article 11 du code de procédure pénal français qui dispose que d'une part : « sauf dans le cas en dispose autrement et sans préjudice des droits de la défense , la procédure au cours de l'enquête et de l'instruction est secrète. »

et que :

« toute personne qui concourt à cette procédure est tenue au secret professionnel » .

Cependant le même texte ajoute que :

« Toutefois, afin d'éviter la propagation d'informations parcellaires ou inexactes ou pour mettre fin à un trouble à l'ordre public, le procureur de la République peut, d'office et à la demande de la juridiction d'instruction ou des parties, rendre publics des éléments objectifs tirés de la procédure, ne comportant aucune appréciation sur le bien fondé des charges retenues contre les personnes mises en cause. ».

Les procureurs sont-ils autorisés à avoir des relations directes avec les médias? Sinon, qui communique à la presse les informations concernant les affaires judiciaires?

R. Oui les procureurs ont même reçu mission de par la loi ci dessus rappelée, de communiquer avec la presse sur les procédures en cours .

Qui d'autre est autorisé à fournir des informations à la presse dans le cadre de ces affaires (la police, les avocats, les parties, d'autres personnes) ?

R. Les avocats peuvent le faire concernant leurs clients

Avez-vous déjà expérimenté une communication conjointe par plusieurs autorités publiques (par exemple, procureur et police) ?

R Il arrive que le procureur se fasse assister des enquêteurs de la police et de la gendarmerie mais c'est à lui d'en décider .

A quel stade de la procédure les procureurs peuvent-ils communiquer l'information (veuillez distinguer l'enquête préliminaire, y compris l'accusation, la procédure judiciaire et la situation après le prononcé du jugement) ?

R; A tous stades, avec une prudence particulière quand l'enquête est sous le contrôle d'un juge d'instruction et pendant la période qui sépare l'audience (le procès) et le rendu de la décision (période du délibéré) ;

Les juges sont-ils autorisés à informer la presse? Si oui, à quel stade de la procédure?

R. Leur intervention n'est pas prévue par la loi mais ils peuvent communiquer avec la presse sur des sujets généraux qui ne concernent pas des affaires en cours précises par exemple : la drogue , la prévention de la délinquance etc..

Les relations entre procureurs et médias sont –elles contrôlées dans votre pays? Le cas échéant, par qui et de quelle manière?

R. Le seul contrôle est le contrôle disciplinaire en cas de manquement par le procureur à ses obligations déontologiques (notamment le devoir de réserve, l'objectivité et l'impartialité) et le contrôle juridictionnel sur les griefs qui pourraient être faits par des parties s'estimant victimes de la communication et qui intentent des procès pour violation du secret de l'instruction, diffamation etc.

Existe-t-il des règles spécifiques garantissant que les informations communiquées à la presse ne violent pas la vie privée, la dignité humaine et la présomption d'innocence? Quelles mesures peuvent être prises pour éviter le phénomène de «procès dans la presse»?

R. Pas de règles particulières que celles résultant des textes et de la jurisprudence sur la protection de la vie privée, mises en balance avec la liberté de la presse, très protégée notamment quant à la protection des sources des journalistes.

Des sanctions existent-elles (disciplinaires ou autres) à l'encontre des procureurs qui enfreignent les règles régissant les relations avec les médias, si elles existent?

R. Il peut y avoir des sanctions disciplinaires avec intervention du Conseil Supérieur de la Magistrature et du ministère de la justice, allant de l'avertissement à la révocation dans le cas où le manquement serait d'une gravité exceptionnelle, absolument inconciliable avec l'exercice des fonctions de procureur.

De quelle manière le ministère public peut-il faire face aux risques en matière de sécurité posés par la divulgation d'informations concernant les procureurs et les affaires?

Existe-t-il des dispositions visant à interdire la publication du nom d'un procureur (ou d'un juge) en charge d'une affaire? Existe-t-il des procédures qui, en pratique, visent à prévenir une telle publication?

R. La meilleure façon de procéder est d'établir des relations avec la presse et de s'entendre avec les journalistes sur un certain nombre de règles dont le respect réciproque conditionnera la qualité des échanges mais cela n'est pas toujours possible. Il faut en tout cas que les procureurs soient formés à la communication avec la presse. Les procureurs français, comme tous les magistrats, sont dotés d'un guide pratique sur les relations avec la presse. Il est bon aussi que les journalistes soient dotés d'une organisation de la presse judiciaire qui les aide et les forme en cette matière. En France c'est le rôle de l'"Association de la presse judiciaire" et des écoles de journalisme qui ont des accords avec la justice. L'approche française consiste plutôt dans la recherche du consensus que dans une codification précise de ce que doivent être les relations presse justice.

#### **Organisation de la communication**

De quelle manière les procureurs communiquent-ils avec la presse (communiqués de presse, conférences de presse, téléphone ou e-mail, réseaux sociaux, etc.) ?

R. Ils communiquent en utilisant tous ces moyens.

**Les procureurs** peuvent-ils tenir des conférences de presse ou faire d'autres communications en cas d'enquêtes internationales? Si oui, quelle est la procédure à appliquer?

**R. Les procureurs agissant sur demandes d'autorités judiciaires étrangères ne devraient pas communiquer, sauf autorisation de celles-ci.**

-

-

La communication se fait-elle avec tous les médias ou avec certains d'entre eux (journaux, média audiovisuels, internet)?

R. En principe avec tous les médias dont les titres sont déposés légalement mais un procureur pourra toujours considérer préférable de ne pas communiquer personnellement avec un média dont le type d'information est contradictoire avec les impératifs d'objectivité et d'impartialité ex : presse à scandale. Le processus en vigueur d'accréditation des journalistes pour assister aux procès n'est pas utilisé pour en empêcher certains d'assister mais pour éviter de dépasser le nombre de places disponibles.

Existe-t-il une réglementation interdisant le droit d'accorder une préférence à certains journalistes ou, au contraire, d'en exclure certains?

R. Non

De quelle manière la communication est-elle organisée par le ministère public? Existe-t-il des porte-paroles? Si oui, quel est leur statut et sont-ils procureurs? Sinon, les procureurs communiquent-ils eux-mêmes? Le cas échéant, doivent-ils obtenir une autorisation pour le faire? Les procureurs sont-ils contrôlés en la matière?

R. Les procureurs communiquent librement (au stade de l'appel c'est le procureur général). Maîtres de cette communication sur les procédures dont ils sont saisis, ils peuvent se faire aider par les magistrats délégués à la communication en poste dans chaque cour d'appel (un pour le siège et un pour le parquet) et spécialement formés pour cela par exemple sur des questions comme : comment organiser la communication en marge d'un grand procès médiatique, comment préparer un communiqué de presse, une conférence de presse etc.

Il a été envisagé de créer des "porte parole" mais ce choix confiscatif de la parole des procureurs en charge des dossiers n'a pas été retenu.

Comment les médias communiquent-ils avec les procureurs (veuillez préciser, le cas échéant, s'il existe des représentants officiels, des journalistes spécialisés, si des autorisations sont nécessaires)?

R. Il n'y a pas de réglementation précise de cette question. Une plus grande professionnalisation existe dans les grandes villes où il y a une presse judiciaire spécialisée.

Quelles sont les informations qui peuvent être divulguées? (noms des parties, des témoins, des procureurs; certains faits qui sont dévoilés grâce à l'enquête, liés ou non à l'affaire)?



R. Pas de règles rigides sur cette question traitée au cas par cas sinon l'interdiction de dévoiler l'identité des mineurs et de limiter les prises de vues des procès à l'accord de toutes les parties .

Existe-t-il une politique officielle visant à encourager les procureurs à répondre aux besoins des médias, et le cas échéant, de quelle manière cette politique est-elle mise en œuvre?

R. Les procureurs sont vivement incités à communiquer. Ils le sont par des circulaires et par le suivi de formations dites de "media training" de plusieurs niveaux , organisées par L'Ecole Nationale de la Magistrature avec le concours des écoles

de journalisme .

Les communications de procureurs avec les médias sont-elles systématiquement contrôlées et évaluées à l'aide d'un mécanisme de suivi, de réactions du public, d'enquêtes de communication ou d'autres mesures?

R. Non . Mais les qualités de communicant font partie des critères d'évaluation de la qualité professionnelle des procureurs .

#### **L'approche pro-active du ministère public vis-à-vis des médias**

Le ministère public a-t-il développé une approche pro-active vis-à-vis des médias (accès aux décisions du procureur, envoi d'une sélection d'affaires pertinentes à l'attention des médias)?

R. Les médias sont informés de l'actualité judiciaire : tableau des affaires passant à l'audience et des dates de décision mais sans préselection car on ne peut prévoir à quelle affaire la presse s'intéressera.

Le ministère public a-t-il développé des activités visant à expliquer au public et aux médias le travail des procureurs et à les informer des derniers développements (journée portes ouvertes, visites des tribunaux, publication de brochures, production de matériel éducatif en ligne)?

R. Oui tout cela est fait surtout en direction des jeunes : festival des films judiciaires , organisation de simulations de procès (mock trials) stages d'étudiants , conférences etc.

La communication avec les médias peut-elle être utilisée comme un outil d'enquête (par exemple en diffusant des portrait-robots, voire même des images des scènes de crimes)? Si oui, veuillez spécifier.

R. Oui notamment dans le cas de diffusion d'alerte en cas d'enlèvement d'enfant : procédure "alerte enlèvement": diffusion sur toutes les médias, d'un communiqué et d'un signalement ainsi que d'un appel à témoins .

#### **La formation professionnelle de procureurs et des journalistes, leur éthique, leurs comportements et les moyens de communication**

Au cours de leur formation initiale et continue, les procureurs sont-ils formés sur les normes de la Convention européenne des droits de l'homme en matière de la liberté d'expression et d'accès à l'information?

Les procureurs sont-ils formés sur la manière de travailler avec les médias?

Les journalistes sont-ils formés sur la manière de travailler avec le ministère public?

Existe-t-il des cours de formation, des conférences, des séminaires conjoints organisés pour les procureurs et les journalistes afin de les aider à mieux comprendre le rôle de chacun et de se soutenir mutuellement, dans le cadre d'un juste équilibre entre les droits mentionnés ci-dessus, la présomption d'innocence et le droit à la protection de la vie privée?

R. Oui les procureurs sont formés et ils peuvent continuer à l'être en formation continue et de nombreuses sessions et stages organisés par l'Ecole nationale de la Magistrature , tant en formation initiale que continue .

Du côté des journalistes , ce sont leurs écoles qui s'en chargent.

Existe-t-il des associations professionnelles rassemblant des médias et des journalistes qui sont compétentes pour réglementer les interactions avec le ministère public?

R. Oui : L'association de la presse judiciaire ( [www.pressejudiciaire.fr](http://www.pressejudiciaire.fr)).

#### **Réglementation des activités de médias**

Existe-t-il une structure professionnelle interne (ou une autre institution) qui réglemente les activités des médias ou qui traite des plaintes déposées contre les médias en raison d'une violation d'un droit individuel dans le cadre d'une procédure pénale?

#### **R. Non cela relève de chaque parquet**

Veuillez décrire brièvement la procédure pénale, administrative et/ou civile concernant la diffamation, la calomnie et/ou une violation équivalente concernant la réputation d'une personne. Quel est le rôle du ministère public en la matière ?

R. Le rôle du ministère public est assez limité : la victime est généralement l'initiatrice du procès pénal en se constituant partie civile devant le juge d'instruction, dont le procureur veille à la régularité juridique par rapport à un droit de la presse très protecteur quant à la liberté d'information. La prescription est très courte : trois mois et la procédure pointilleuse .

En quoi consistent la responsabilité pénale ou administrative des journalistes et les sanctions prévues par loi? Veuillez décrire les mesures de protection disponibles dans les procédures pénales et civiles (saisie ou l'interdiction de publications) et le rôle des procureurs. Dans votre pays, existe-t-il des mesures qui sont ou pourraient être considérées comme une forme de censure préventive? Les procureurs ont-ils un rôle dans le contrôle des activités de médias?

R. Au pénal Les procureurs peuvent exercer des poursuites en cas de violation de la loi sur la presse concurremment avec les parties civiles qui peuvent se constituer devant le juge d'instruction. La saisie des publications peut être ordonnée par un juge elle est cependant très rare plus fréquente est l'obligation d'insérer un rectificatif dont le respect contrôlé par le juge . Au pénal , le délit de diffamation est réprimé par la loi du 29 juillet 1881 sur la presse mais rigoureusement encadré et limité par le principe de bonne foi retenu par la jurisprudence.

Ce délit peut être aggravé et puni d' emprisonnement et de lourdes amendes pouvant aller jusqu'à 45000 euros d'amende par exemple en cas de provocation à des violences ou à la haine homophobe ou raciale .

Un droit de réponse dans la presse peut être ouvert aux personnes s'estimant diffamées ou victimes d'allégations leur causant un préjudice; il est exercé sous le contrôle du juge.

En matière civile, c'est l'article 9 qui fonde le droit au respect de la vie privée et au juge de prendre toutes mesures pour faire cesser le trouble, sans interventio du procureur .

Si un procureur est critiqué par les médias pour des raisons liées à la procédure pénale, les associations de procureurs peuvent-ils intervenir?

R. Pas d'objection de principe à ce que les associations professionnelles interviennent moralement au soutien d'un magistrat injustement traité mais elles ne peuvent porter plainte ni se constituer partie civile à sa place ou à celle de son administration .

Un procureur est-il tenu à un devoir de discrétion, même si une campagne médiatique a été lancée contre lui?

R. Tout est question d'équilibre : Il peut se défendre sans pour autant sortir de son devoir de réserve et de la dignité de sa charge . Il peut porter plainte . Il peut demander un droit de réponse dans la presse dont l'exercice sera contrôlé par le juge .

Avez-vous des institutions, autres que les associations de procureurs, disposant d'un pouvoir de réponse en cas d'attaques inappropriées par les médias à l'encontre du ministère public ou des procureurs pris individuellement?

R. Oui le ministère de la justice qui peut assurer les frais d'avocat d'un procureur attaqué et le Conseil Supérieur de la Magistrature garant de l'indépendance de celle-ci.

#### **Autres informations**

Avez-vous d'autres informations ou commentaires concernant la communication entre procureurs et médias dans votre pays? Si oui, veuillez les décrire

### **Georgia / Géorgie**

#### **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 is determined by the Law on a Free Access to Information (Law No. 106/1999 Col.)<sup>2</sup>, by the Code of Criminal Procedure, by the Public Prosecution Act (Law No. 283/1993 Col.), and by the General Notice on Information of the Supreme Public Prosecutor (No. 10/2011) which specifies some provisions of the law.*

*According to the mentioned laws the duty to provide information related to their competence shall apply to state authorities and territorial self-governance authorities and public institutions managing public means.*

<sup>2</sup> the law is implementing the Directive 2003/98/EC on the re-use of public sector information

*Furthermore, the duty to provide information shall apply to those who were encharged with decision making on rights, legally protected interests and duties of individuals or legal entities in the realm of public administration; however, the duty shall be limited to the extent of their decision making.*

*Personal data protection as well as confidential information shall be respected as stipulated by the law.*

*As for information on particular criminal cases the Code of Criminal Procedure (Articles 8a – 8d) obligates prosecutors to provide media with information. There are provisions concerning data protection of the accused, victims, witnesses and other participating persons with a special regard to juveniles.*

*On the other hand prosecutors shall not get influenced by public opinion or by the media. (Art. 24 Para. 2 item a) of the Public Prosecution Act - Law No. 283/1993 Col.).*

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 chief public prosecutor of each office is responsible for such relations. It is up to his/her decision to either nominate a spokesperson or let prosecutors communicate directly.*

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)?

*The police and the courts shall also provide information. In the pre-trial proceedings the public prosecutor may reserve providing information for himself/herself – in such a case the police may give information only upon his/her approval.*

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

*Communication strategy shall be a natural part of prosecution – police relationship in all complex cases in pre-trial proceedings.*

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 may communicate with the media in all stages of criminal proceedings.*

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

*The police, the prosecution and the courts are obliged to provide information (with certain restrictions given by the law) to public through the media in all stages of the criminal proceeding (Art. 8a – 8d of the Code of Criminal Procedure). Naturally, the police and prosecution are more in touch with the media in the pre-trial phase.*

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

*A refusal to give information may be appealed to a superior authority or subsequently sued at court. The relationships are therefore under general supervision of higher public prosecutors offices and by courts.*

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 rules are explicitly given by the above mentioned provisions of the Code of Criminal Procedure and by the Law on a Free Access to Information (Law No. 106/1999 Col.).*

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?

*Breach of the law provisions or misbehavior may lead to disciplinary proceedings and sanctions (reprehension, fine, dismissal).*

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

*In danger of leaks of sensitive information prosecutors shall reserve providing information for himself/herself. In exigent situations prosecutors may be given temporal personal protection.*

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 not 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.)?

*By press releases, press conferences, directly/in person, by telephone, by regular mail or e-mail.*

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

*There are no special rules for "international investigations" (the term should be clarified first). In case of JITs communication to media should be covered by the agreement on a JIT.*

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

*There is communication with all the media.*

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

*There are no specific provisions, although, giving such advantages (the term should be clarified first) could be seen as a disciplinary offence.*

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 chief public prosecutor of each office is responsible for such relations. It is up to his/her decision to either nominate a spokesperson or let prosecutors communicate directly to the press. Prosecutors communicating directly need no further authorization.*

*The spokespersons may be prosecutors, but larger offices (especially the Supreme PPO and the High PPOs) employ professionals. They belong to the administrative staff of prosecution.*

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

*There are no special regulations; it is up to the media to choose the way. No authorizations are needed.*

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)?

*Of course, information which could hamper the investigation shall not be disclosed.*

*The criminal code also prohibits publishing of the following data:*

*In the pre-trial proceedings:*

- *information leading to disclosure of identity of an accused, a victim, a witness and participating persons with a special regard to juveniles*

*In any phase of proceedings:*

- *information leading to disclosure of identity of a juvenile victim or a person who was a victim of listed offences (i.e. murder, rape)*

- information leading to disclosure of identity of a juvenile offender unless decided otherwise by a judge after conviction of serious offences
- confidential information
- information disclosure of which could breach privacy regulated by special laws

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

*Providing the public with information through the media is obligatory as given by the provisions of the Code of Criminal Procedure – please see the answers above.*

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

*Press monitoring is provided by the Ministry of Justice and is at prosecutors' disposal on daily basis. There is not a system of evaluation of prosecutors' performances, but their interaction with the press is monitored by the daily monitoring. We are not aware of communication surveys relating to prosecutors.*

### **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 Supreme Public Prosecutors office publishes its appellate reviews on its web page, organises regular meetings with journalists, press conferences and promotes prosecutors' visibility with the aim to increase public awareness of the work of prosecutors. There are as much information as possible on the homepage of the Supreme Public Prosecutor's Office ([www.nsz.cz](http://www.nsz.cz)).*

*Prosecutors' decisions shall be anonymized before they are made public otherwise they are accessible exclusively to persons concerned.*

*It is a domain of the spokespersons to make ad hoc press releases concerning cases which deserve special 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)?

*The Supreme Public Prosecutor's Office explains the work and activities as well as e.g. history of prosecution on the web page ([www.nsz.cz](http://www.nsz.cz)). The press secretary to the Supreme Public Prosecutor continually cares about comprehensiveness of prosecutorial activities and actively deals with the media on daily basis.*

*Legal opinions of the Supreme Public Prosecutor's Office are public and may serve as teaching materials. Handbooks are aimed at prosecutors exclusively.*

*Trials are public and they are under administration of courts. Trial schedules are published on court's web pages and/or boards.*

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.

*Yes, information that otherwise shall not be published may be made public through the media if there is a search for a person or if the public interest prevails over protection of privacy of a person concerned. They may be also published in order to achieve the goal of criminal proceedings (Article 8d of the Code of Criminal Procedure).*

### **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?

*Trainee prosecutors are educated and examined during their preparatory 3 years training. Questions of access to information and fundamental rights and freedoms are part of their final exam. Further education*

*of prosecutors is provided by a wide range of activities of the Judicial Academy, although the education is voluntary.*

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

*They are trained during their preparatory 3 years training; further education in this regard is voluntary but free provided by the Judicial Academy.*

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

*We are not aware of such trainings.*

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?

*Some journalists and media specialists are lecturers of the media and communication seminars organized by the Judicial Academy.*

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

*Associations of this kind do not play a special role in communication between prosecution and the public.*

#### **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 Council for Radio and Television Broadcasting is the body responsible for the regulation of broadcasting in the Czech Republic. The function and responsibilities are set out in the Broadcasting Act (Law No. 231/2001 Col.). It deals with objectivity, plurality and balance of broadcasting and secures protection of children and juveniles and deals with relevant complaints. It may start administrative proceedings with a broadcaster in case of a breach of the law.*

*Press is regulated by the Press Act (Law No. 46/2000 Col.) and technically administered by the Ministry of Culture and by Regional Offices.*

*A breach of an individual right may lead as far as to criminal responsibility for the offence of Unauthorized Handling of Personal Data (Art. 180 of the Criminal Code).*

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?

*Such a behaviour may lead to:*

*d) Civil suit for defamation of character (according to Art. 13 of the Civil Code - Law No. 40/1964 Col.).*

*e) Complaint about a breach of public peace (according to Art. 49 of the Misdemeanours Act - Law No. 200/1990 Col.) which would be dealt in administrative proceedings.*

*f) Reporting the offence of Criminal Defamation (according to Art. 184 of the Criminal Code).*

*Prosecution takes part only in criminal proceedings in these cases.*

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

*Please see the answer to the question no. 30.*

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?

*Censorship is absolutely prohibited by the Charter of Fundamental Rights and Freedoms which is a part of the Constitution.*

*Prosecution is not involved in supervision of the media.*

*Although, if an individual journalist or media as a legal person by his/her/its actions commits a criminal or an administrative offence standard procedures take place. In case of criminal proceedings prosecution is involved and the whole range of procedural options, including taking coercive measures, is available.*

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?

*Union of Public Prosecutors may decide to make a protective comment in the media upon request of the prosecutor concerned or upon its own decision.*

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

*Prosecutors shall not get influenced by public opinion or by the media. (Art. 24 Para. 2 item a) of the Public Prosecution Act - Law No. 283/1993 Col.).*

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?

*We are not aware of existence of such institutions.*

#### **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.

*We do not wish to make further comments.*

### **Germany / Allemagne**

<b>B. Introduction:</b>
-------------------------

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>C. Questions:</b>
----------------------

#### **F. Existing legal provisions and regulations**

35. 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.*
36. 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.*
37. 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.*
38. 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.*
39. 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.*
40. 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.*
41. 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.*
42. 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.*
43. 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.*
44. 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).*
45. 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).*



- a. 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.*

### **G. 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.*

## **H. 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).*

## **I. 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.*

## 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.  
*There is no specific framework; there is, however, an overall prohibition of disclosure by judicial officers (including prosecutors) of information that is part of the investigation procedure of criminal cases, when the latter is secret.*
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?  
*There is no framework governing the method of communication between prosecutors and the media. A Press Office was established only in 2012 at the Prosecution Services in the Court of Appeal and the First Instance Court of Athens (which are the relatively largest agencies of the country), pursuant to their bylaws; such office communicates information on criminal cases that are of interest to the media. In the other prosecution services of the country, information is communicated by the head of the prosecution service.*
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)?  
*The Police has a Press Office and selectively issues press releases about its actions in specific cases of wider interest. The parties to a proceeding are free to provide the press with any information relating to their case, as long as such information is accessible and they consider it necessary to communicate it.*
4. Do you have any experience of joint communication by several public authorities (e.g. prosecutor and police)?  
*No.*
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)?  
*At the moment, given that only the Press Office of the Prosecution Service at the First Instance Court of Athens has been established and is operating, information given to the press by such office are communicated when, at the pre-trial stage, either the prosecutor orders preliminary investigations (before the initiation of criminal proceedings) or when criminal proceedings are initiated, with an order to conduct preliminary or main investigations. As regards the other prosecution services, the head of such services.*
6. Are the judges authorised to inform the press? If this is the case, during which stage of the procedure?  
*Judges are not authorised to inform the press.*

7. Is there supervision on the relationships between prosecutors and media in your country? By whom and how?  
*No, there is not.*
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"?  
*Information is communicated to press in a manner that certainly guarantees that the fundamental rights of the persons involved are not violated. In this context, communication does not concern the names of the persons involved, but only the investigated offence. The names of the defendants in certain categories of serious offences, that are enumerated in Law 2472/1997 (on the protection of personal data) are communicated under the guarantees of the judicial authority and by order of the prosecutor. If the media publicise or defame persons involved in a criminal case, in view of the presumption of innocence, they have at their disposal all civil and criminal remedies to lift such insult and prevent it from occurring again in the future.*
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?  
*If a piece of information or document comprised in a pending secret case is communicated, the prosecutor may undergo criminal inspection for the offence of violation of secrecy of judicial sessions (article 234 of the Criminal Code) or disciplinary inspection.*
10. How do the prosecution services deal with the security risks caused by disclosure of information concerning the prosecutors and the cases?  
*In that case, they will deal with it by implementing the legal framework governing the confidentiality obligation in criminal 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 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.)?  
*This Office communicates with the media through (a) press releases; (b) announcements relating to actions taken by the prosecution service at the court of appeal or the first instance court of Athens in criminal cases of major interest, forwarded by email to journalists accredited in justice-related matters. Finally, (c) information may also be communicated by telephone by the nominated representative of the prosecution service' press office to the said journalists (who have his contact details) in order to provide clarifications or explain some obscure points. In the other prosecution services, by the Head of such services and, in the prosecution service at the Supreme Court, the prosecutor, through his secretariat, informs the media by press releases or emails and/or orally.*
13. Can press conferences or other releases be made by prosecutors in cases of international investigations?  
If yes, which procedure do you follow?  
*Yes, orally or by press releases or emails.*
14. Is there communication with all the media or with some (newspapers, audiovisual media, internet)?  
*No.*
15. Are there regulations prohibiting public prosecutors to give an advantage to single journalists (and/or leaving out some of them)?  
*There are no such regulations. However, for ethical reasons, efforts are made not to exclude any media or single 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?  
*Where there is a press office, its manager is supervised by the Head of the Prosecution Service. Press releases are issued or information is provided orally or by email. Where there is no press office, the Head of the Prosecution Service makes the communication and there is no need for authorisation.*

17. How does the media communicate with the prosecutors (official representatives, specialized journalists, necessary authorizations)?  
*Specialised journalists or journalists accredited to judicial reporting.*
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)?  
*Disclosed information does not include the names of parties or witnesses but, on a case-by-case basis, the name of the prosecutor or the specific section in which he serves and conducted criminal investigation may be disclosed.*
19. Is there an official policy encouraging prosecutors to respond to the needs of media, and how is this policy implemented?  
*There is no such policy.*
20. Are the prosecutors' communications with media systematically monitored and evaluated by using monitoring, feedback from the public, communication surveys or other measures?  
*There is no such evaluation mechanism.*

### **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)?  
*On a case-by-case basis, when cases are of wider interest to the public.*
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)?  
*See response 16.*
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.  
*This is police work.*

### **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, by attending courses at the National School for Judicial Officials and the continuous training programme for judicial officials.*
25. Are prosecutors trained on how to interact with media?  
*This may be included in the topics addressed by the courses referred to in response 24.*
26. Are journalists trained on how to interact with the prosecution services?  
*There is no such information.*
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?  
*There is an independent body, the Greek National Council for Radio and Television.*

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 event that the media insult a person (simple or slanderous defamation, if the journalist knows that the fact is false etc.), the victim may turn against the reporter and the media by (a) civil remedies (by lodging an action before the civil court and demand that the insult be lifted and prevented from occurring again in the future, pecuniary satisfaction due to non-pecuniary damage etc.) and (b) criminal remedies (by bringing charges against the perpetrator and asking his criminal sentencing). In the latter case, the Prosecutor is empowered to demand the initiation of criminal proceedings, introduce the case to the Criminal Court by drafting the charges and maintain that the perpetrator is guilty or non-guilty during the trial.*
31. Please give information about criminal or administrative liability of journalists and the penalties provided by law.  
*The criminal liability of journalists in case they commit slanderous defamation etc. is detailed above [question 30, response (b)]. For simple defamation, the sentence may be imprisonment for up to two years and a monetary fine (article 362 of the Criminal Code), while for slanderous defamation, the sentence is imprisonment for at least three months (which can, in theory, reach the maximum limit of 5 years) (article 363 of the Criminal Code). Administrative sanctions are imposed by the journalists' trade union, but a peculiar system of "self-limitation" of their actions is in place, by invoking the principle of freedom of expression and the needs of information, so that the overall framework of criminal sanctions is rather inactive and, in any event, ineffective.*
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?  
*The seizure of newspapers or other publications matter before circulation is prohibited. By way of exception, they may be seized after circulation, by order of the prosecutor, in the following four instances, specified in article 14§3 of the Constitution: (a) offence against the Christian or any other known religion, (b) insult against the person of the President of the Republic, (c) publication which discloses information on the composition, equipment and set-up of the armed forces or the fortifications of the country, or which aims at the violent overthrow of the regime or is directed against the territorial integrity of the State, (d) an obscene publication which is obviously offensive to public decency, in the cases stipulated by law. The Prosecutor may order the seizure pursuant to the foregoing; such seizure may be made further by investigating officers (in the context of preliminary and main investigations, if so ordered). In the light of the foregoing, there is no scope to suggest "preventive censorship" of the press. The Prosecutor has no say in the supervision of media activity, provided that such activity does not lead to the commission of criminal offences, in which case he acquires power.*
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?  
*Given the distinction of powers and the independence of justice, no criticism is allowed about the way judges or prosecutors perform their jurisdictional tasks. Such criticism may be subject to disciplinary inquiries or produce civil or criminal liability. Judicial Associations, whose operation is directly provided for in the Constitution, have occasionally issued notices, whereby they remind about the independence of justice and the limits of criticism that is expected and allowed to be made of the decisions of judicial authorities under the Constitution and the laws.*
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?  
*There are no other institutions.*

## **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.  
*We think that the establishment and operation of press offices are initiatives that need to be boosted and expanded in other judicial services. There is precedent in several European Union countries and the United States. With the operation of such an office, (a) the method of communication between courts or prosecutors and the media could be formulated in a uniform, official and formal way, in order to prevent news leaks, expression of subjective views etc., (b) the public may receive information in an official and regular manner about the activities of the court or the prosecution service in cases of major social interest and information provided by the media would have to be objective since it would be based on official,*

*documented data stemming from the judicial authority that, by definition, respects the principle of secrecy and the fundamental rights of suspects and defendants, (c) At the same time, through such an official press office, the court or the prosecution service may publicise activities of wider interest, relating to its intermediating-social actions, with positive impact on society (participation in campaigns, scientific events, initiatives for minors or vulnerable groups, awareness-raising actions for the rights of citizens, "open door" days etc.). It is necessary to create a clear operating framework of such offices, either in the bylaws of courts/prosecution services or by law.*

## Hungary / Hongrie

### 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.

### 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.

On 1st July 2003 the legislator enacted the provisions pertaining to the right of the public to be informed into Act XIX of 1998 of the Criminal Procedure. Section 74/A of this Act regulates those bodies (investigating authority, prosecution service, court) which are entitled to inform the press in the various stages of the criminal procedure.

Section 74/A (1) provides as follows:

„Information to the press may be provided by the following persons: prior to the conclusion of the investigation, the member of the investigating authority authorized to do so in the relevant legal regulation; prior to the indictment, the prosecutor or the person authorized thereby; and during the court proceeding, the person authorized by the Act on the Legal Status and Remuneration of Judges.”

A more detailed regulation concerning the relationship between the prosecutors and the media, the procedure and rules to be followed when informing the press is provided by Order No. 19/2012 (X.9.) of the Prosecutor General of Hungary in compliance with the authorization specified by Section 8 (3) of Act CLXIII of 2011 on the Prosecution Service.

##### 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 relations with the media both in the course of the investigation and in the pre-trial stage.

As in Hungary there are certain criminal offences which only prosecutors are entitled to investigate, it is only the prosecution service that has the right to officially communicate information in such cases until the end of the investigation.

The Prosecution Service is also entitled to communicate information in cases investigated by investigating authorities – police, tax investigators – also in the course of their investigation.

In the court proceeding, however, the prosecutor does not have this right. It is only the court that is entitled to communicate information about the court procedure.

##### 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)?

The authorized representatives and spokespersons of the investigating authorities – of the police and the investigators of the tax authority – are entitled to provide information until the end of the investigation.

The defence counsel of the defendant and the suspect who is not under any coercive measure depriving him of his liberty is entitled to express their position regarding the criminal procedure.

In case the suspect in pre-trial detention wishes to communicate a statement to the media, the prosecution office directing the investigation may authorize him to communicate that statement. If the prosecutor refuses such an authorization in the interests of the investigation, the suspect and his defence counsel are entitled to lodge a complaint against such a refusal to the investigative judge.

The injured party is entitled to freely communicate with the press about his/her own case.

When analyzing the wider context of some criminal cases, the media regularly interviews university professors of law, experts or lawyers who are non-participants in the given case in addition to representatives of competent authorities.

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

In recent years, joint investigation teams have been set up in several high-priority cases where the investigation of economic crimes and crimes against public justice have been conducted – under the direction of a prosecutor – by prosecutors, policemen and investigators of the tax authority.

In such cases the representatives of the prosecution service and the investigating authorities reported about the outcome of the investigations in a joint press conference.

In most cases the joint action and the outcomes of the investigations involving the Central Investigative Chief Prosecutor's Office – which was established to investigate high-priority corruption cases and other cases of serious criminal offences with a jurisdiction encompassing the entire territory of Hungary – and the police units cooperating with it were provided in this form of communication.

Specific examples for joint press conferences include the following: the investigation concerning the Hungarian line of the criminal organizations specializing in betting fraud, the investigation of bribery-series involving several members of the tax authority, and the procedure initiated for the investigation of "carousel fraud" relating to several EU members states.

**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 are entitled to communicate information to the media both in the investigatory stage of the procedure and the pre-trial stage following the investigatory stage.

As in Hungary only the prosecutor has the power to investigate specific criminal offences, only the prosecution service has the right to provide official information in such cases until the end of the investigation.

In addition to this, the prosecution service is also entitled to provide information in the course of the investigation of cases investigated by the investigating authorities, namely the police and the investigators of the tax authority.

After the end of the investigation, the prosecution service is entitled to provide information about the pre-trial stage and its result (the indictment, or the termination of the investigation).

On the other hand, only the court has the power to provide official information about the court proceeding.

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

Act CLXII of 2011 on the Legal Status and Remuneration of Judges stipulates as follows:

"Section 43 Outside his service relationship a judge may not publicly express an opinion on a case currently or previously tried by the court with special regard to cases adjudicated by him.

Section 44 (1) A judge may not provide information on cases under his administration for the press, radio stations and television channels.

(2) The chair of the court or a person authorized by him may provide information on ongoing or completed cases for the press, radio stations and television channels."

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

There is no authority or body supervising the relationship between prosecutors and media, between the investigation authority and the media, or even between the court and the media.

Legal provisions regulating the right to inform the media and relevant orders of the Prosecution Service of Hungary determine the framework, limitations and the content of this relationship. If the information is considered to be



injurious, the injured person is entitled to file a lawsuit and request the rectification, cancellation of the published press release, is entitled to claim for damages or request an apology to be made”.

**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”?**

Order No. 19/2012 (X.9.) of the Prosecutor General of Hungary regulating the procedure of communicating information to the press ensures the enforcement of such rights and the presumption of innocence by stipulating:

„Section 4 (1) With regard to information pertaining to cases having been completed from the aspect of prosecutorial procedure:

- a) facts established in the course of the procedure,
  - b) circumstances and reasons of the possibly discovered violation of law,
  - c) the decision of an authority
- may be disclosed.

(2) In the communicated information the prosecutor does not have the power to assess the evidence pertaining to the ongoing criminal case, nor is he entitled to make any assumptions regarding the expected evolving of the facts of the case or the expected legal consequences. The press may only be informed of measures against which legal remedies may be sought when the person having the right to remedy had already been informed of such measures.

(3) While communicating information about ongoing cases, the presumption of innocence, legal provisions regulating the protection of personal data and privacy shall be respected, and this has to be expressed in the wording of the communication, as well. While communicating information the interests of the criminal procedure shall also be taken account of. In the communication

- a) facts established in the course of the procedure,
  - b) circumstances – and if known reasons – of the criminal offence,
  - c) measures taken for detecting the case and for the collection of evidence as well as the progress of the procedure
- may be disclosed.

(4) In ongoing cases dealt with by the prosecution service the press may only be provided information about the fact that there is an investigation conducted and the expected date of conclusion thereof.”

As far prosecutors are concerned, the provisions of this Order of the Prosecutor General also prevent the phenomenon of “trial by press”.

That there are not so unambiguously formulated provisions applying to the defence is another matter, thus while the prosecution service is attentive to respecting the presumption of innocence and the fundamental rights referred to above, some lawyers strive to win the lawsuit and the public in the press (as well), and in this way they try to influence the administration of justice indirectly.

This endeavour by them is largely assisted by the regulation which prohibits the prosecution service communicating to the media during the court proceeding, while such a prohibition is not imposed on the defence. Some lawyers strive to benefit from the lack of this a prohibition and use it to increase their clients’ and partly their own prestige.

**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 rule stipulating that a prosecutor who culpably violates his/her official responsibilities commits a disciplinary breach shall also apply to prosecutors assigned to the position of spokespersons just like to any prosecutor.

Disciplinary liability is regulated by Chapter X of Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and Other Prosecution Employees and the Prosecution Career.

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

Pursuant to the provisions of the Code of the Criminal Procedure at the end of the investigation the defendant and his defence council are entitled to be shown the entire file of the criminal investigation and upon their request they may receive a copy thereof.

Afterwards, in possession of the documents and papers pertaining to the investigation the persons concerned – as recently more often experienced – disclose information contained in those documents and papers in some cases. Such documents and papers also include the name of the prosecutors acting in the given case.

Up to now it has only occurred in some cases that the defendant used violence against the prosecutor assigned to the case in relation to the prosecutor’s acting in the case. This conduct shall constitute the criminal offence of violence against an official person or harassment, and the prosecution service tries to take every possible measure in such cases to achieve a quick and determined judgement.

Within the Cabinet of the Office of the Prosecutor General it is the Department for Data Protection and Security that is responsible for and deals with issues of data protection and security – including the security risks concerning the prosecution offices and the prosecutors.

**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?**

In a public trial the names of the judges sitting on the panel in charge of the case, the names of the prosecutors and the defence counsel can be equally disclosed. The prosecutor together with the judge is considered to be a person in the public eye in relation to his activity, in the trial; consequently, their names and – if representatives of the electronic media also attend the trial – their photos as well can be disclosed there.

Pursuant to Section 237 (3) of Act XIX of 1998 on the Criminal Procedure the court ex officio or the prosecutor upon the motion of the defendant, the defence counsel, the offended party or the witness shall be entitled to exclude the public including the media from the entire trial or from part of it by a reasoned decision, in order to protect the interest of those involved in the criminal procedure apart from other reasons.

Should the nature of the case or the security risks arising from it require, the judge, the prosecutor and their relatives can be entitled to protection to the extent and until it is deemed necessary. This protection is secured by special units of the police trained for this specific task.

**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.)?**

Prosecutors who are entrusted with the task of a spokesperson – upon individual invitations – communicate with the media primarily via e-mail, by phone or directly and personally.

The individual Chief Prosecution Offices issue press releases about criminal cases of high importance, while in cases attracting large media attention and/or evoking public indignation the Office of the Prosecutor General, the Chief Prosecution Offices of Appeal or the Chief Prosecution Offices hold press conferences.

The Prosecutor General, the Deputy Prosecutors General, the Cabinet, the Appellate Chief Prosecutors and the Chief Prosecutors have the power to issue or forward official releases to the press.

With the exception of press conferences held by the Prosecutor General or the Deputy Prosecutors General, press conferences are subject to the prior consent obtained from the Cabinet.

At the Office of the Prosecutor General the Cabinet prepares and arranges press conferences.

At the Chief Prosecution Offices of Appeal, at the Chief Prosecution Offices press conferences, the preparation and arrangement of which spokespersons may also be entrusted with, are held by the appellate chief prosecutors and the chief prosecutors respectively.

In cases attracting media attention the Press Office, placed within the Cabinet of the Office of the Prosecutor General, also provides regularly updated information via the Press Releases section of the prosecution service's public website ([www.mklu.hu](http://www.mklu.hu)).

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

It was in 2011 when Hungarian prosecutors joined an international joint investigation team for the first time in order to detect European lines of a criminal organization with Far-Eastern relations. Within the framework of this joint investigation team prosecutors of the Central Investigative Chief Prosecutor's Office co-operated chiefly with Finnish and German colleagues.

The Central Investigative Chief Prosecutor's Office held press conferences about the outcomes and accomplishment of the joint investigation teams on two occasions, once in Hungary, and last time in The Hague at the beginning of 2013, organized by the EUROPOL.

Meanwhile the Hungarian prosecution service also initiated setting up another international joint investigation team.

Upon the initiation of the Győr-Moson-Sopron County Prosecution Office, the National Tax and Customs Administration of Hungary in co-operation with Slovakia and the Czech Republic wound-up a criminal organization specializing in international so called "carousel frauds" the centre of which was in Hungary. The results of the investigation were communicated in an international press conference held in January 2013.

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

Spokespersons of the prosecution service communicate with the written, audiovisual and online media as well. Recently, however, several internet bloggers pretending to be journalists tried to get access to criminal data; therefore, Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules on Media Content provides a clear definition of „printed press materials” which reads as follows:

„Individual issues of daily newspapers and other periodicals as well as on-line newspapers and news portals provided as a service for profit, for the content of which a natural or legal person or a business association without legal personality bears editorial responsibility, the primary objective of which is to distribute textual or image contents to the public for information, entertainment or training purposes in a printed form or via an electronic communications network. Editorial responsibility shall refer to responsibility for control over the selection and compilation of media content; however, it does not necessarily imply legal liability in relation to printed press materials. Individual, business-like service regularly provided for profit and by economic risk taking shall be construed as a service for profit.

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

In compliance with the relevant principles set forth in statutes and the orders of the Prosecutor General the prosecution service communicates with the different types of media impartially and in a balanced way.

As part of this communication, the prosecution service makes its press releases accessible to all the media to be concerned simultaneously.

There are of course journalists specialized in criminal matters who regularly contact spokespersons with their questions in individual cases, and the spokespersons answer those questions if replying them does not harm the interests of the criminal procedure. Replying those frequently asked questions, however, does not mean giving advantage to or favouring any single journalist.

**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?**

In 2011 a network of spokespersons was created within the structure of the Hungarian prosecution service. Until then the prosecution service's communication with the media was not regular, random and sporadic.

Within the prosecution service media communication is directed by the Cabinet of the Office of the Prosecutor General. The Press Office operating within the Cabinet is headed by the spokesman of the Office of the Prosecutor General.

The Cabinet

- informs the public through the spokesman about the activities of the Office of Prosecutor General and about the official position of the prosecution service in issues specified by the Prosecutor General;
- makes arrangements concerning possibly occurring press rectifications on the instruction of the Prosecutor General
- ensures that heads of the Office of the Prosecutor General and – as far as possible – spokespersons of the Chief Prosecution Offices of Appeal and of the Chief Prosecution Offices are informed by preparing daily press reviews electronically
- arranges the archiving of pieces of writings concerning the prosecution service from the most important documents, press articles, press reviews and organizes the collection of the Prosecutor General's parliamentary reports and other communications
- keeps contact with the spokespersons of the Chief Prosecution Offices of Appeal and of the Chief Prosecution Offices

At each Chief Prosecution Office of Appeal and Chief Prosecution Office there is a prosecutor entrusted with the task of keeping contact with the media who performs this task in addition to his other official responsibilities.

The Prosecutor General, an Appellate Chief Prosecutor and a Chief Prosecutor may also assign a prosecutor to communicate with the media in individual cases.

Prosecutors assigned to the position of spokespersons keep regular contact with the Cabinet of the Office of the Prosecutor General in the course of which they inform the spokesperson of the Office of the Prosecutor General

- about cases examined by the Chief Prosecution Offices of Appeal and the Chief Prosecution Offices which information has been formerly been communicated in the press,
- about cases concerning persons who are well known locally or nationally
- about criminal offences which attract public attention because of their seriousness or for other reasons (e.g. the unusual mode or special circumstances of the commission of the criminal offence)
- about cases relating to the field of protection of public interest, evoking national public attention

If there is an ongoing case dealt with at the subordinated prosecution offices which, in a chief prosecutor's or spokesperson's opinion, may potentially attract national attention in the future, then the Cabinet shall be informed of the essence and the measures taken in the case.

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

There are journalist specialized in criminal matters who regularly contact spokespersons with their questions in individual cases, and the spokespersons answer those questions if replying them does not harm the interests of the criminal procedure. Some of the more significant media communicate with the prosecution service through the same one or two journalists.

This is not a general phenomenon, however, nor is it a pre-condition for the prosecution service to provide information. If the journalist raises his questions on behalf of a specific printed press in a verifiable way, he is entitled to receive replies from the prosecution service without any further licensing.

Recently, however, several internet bloggers pretending to be journalists tried to get access to criminal data. In order to detect this, the spokespersons of the prosecution service check when a journalist representing a so far unknown medium contacts them whether the medium requesting information meets the requirements set for "printed press materials".

**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)?**

Order No. 19/2012 (X.9.) of the Prosecutor General of Hungary provides as follows:

„ Section 4 (1) With regard to information pertaining to cases having been completed from the aspect of prosecutorial procedure:

- a) facts established in the course of the procedure,
  - b) circumstances and reasons of the possibly discovered violation of law,
  - c) the decision of an authority
- may be disclosed.

(2) In the communicated information the prosecutor does not have the power to assess the evidence pertaining to the ongoing criminal case, nor is he entitled to make any assumptions regarding the expected evolving of the facts of the case or the expected legal consequences. The press may only be informed of measures against which legal remedies may be sought when the person having the right to remedy has been informed of such measures.

(3) While communicating information about ongoing cases, the presumption of innocence, legal provisions regulating the protection of personal data and privacy shall be respected, and this has to be expressed in the wording of the communication as well. While communicating information interests for the criminal procedure shall also be taken account of. In the communication

- a) facts established in the course of the procedure
  - b) circumstances – and if known reasons – of the criminal offence,
  - c) measures taken for detecting the case and for the collection of evidence as well as the progress of the procedure
- may be disclosed.

(4) In ongoing cases dealt with by the prosecution service the press may only be provided information about the fact that there is an investigation conducted and the expected date thereof.”

Pursuant to the provisions of the Code of the Criminal Procedure at the end of the investigation the defendant and his defence council are entitled to be shown the entire file of the criminal investigation and upon their request they may receive a copy thereof.

Afterwards, in possession of the documents and papers pertaining to the investigation the parties concerned – as recently more often experienced – disclose information contained in those documents and papers in some cases. Such documents and papers also include the name of the prosecutors acting in the given case.

In a public trial the names of the judges sitting on the panel in charge of the case, the names of the prosecutors and the defence counsel can be equally disclosed. The prosecutor together with the judge is considered to be a person in the public eye in relation to his activity, in the trial; consequently, their names and – if representatives of the electronic media also attend the trial – their photos as well can be disclosed there.

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

A more detailed regulation concerning the relationship between the prosecutors and the media, the procedure and rules to be followed when informing the press is provided by Order No. 19/2012 (X.9.) of the Prosecutor General of Hungary in compliance with the authorization specified by Section 8 (3) of Act CLXIII of 2011 on the Prosecution Service.

Within the framework of this Order there is a continuous contact keeping and communication between the Cabinet of the Office of the Prosecutor General and the spokespersons. The media activity performed both by the Office and the Prosecutor General and the Chief Prosecution Offices have substantially become more active in the past few years, which is partly due to the increased demand for criminal news reports and partly to the conscious policy of the prosecution service relevant to this.

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

Every spokesperson makes reports to the Cabinet of the Office of the Prosecutor General on every Friday. In their reports they summarize which representative of which medium in what issue and in what form they have communicated information to in the given week.

The Cabinet of the Office of the Prosecutor General archives, summarizes, analyzes both the weekly reports and the relating occasional reports, and it uses this data for strategic planning as well.

By meeting the journalists specialized in criminal matters working for more significant media several times annually, the spokesperson of the Office of the Prosecutor General receives a feedback regarding the media activity of the prosecution service.

### **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 addition to the answers given in reply to the occasional requests of the media, the Chief Prosecution Offices issue press releases about the criminal cases of high importance, while in cases attracting large media attention and/or evoking public indignation the Office of the Prosecutor General, the Chief Prosecution Offices of Appeal or the Chief Prosecution Offices hold press conferences.

The Cabinet Press Office of the Office of the Prosecutor General coordinates the communications of the spokespersons of the Chief Prosecution Offices in cases of higher importance, so that superabundant information having the same value and provided simultaneously should not extinguish each other.

The spokesperson of the Office of the Prosecutor General also keeps contact with the spokespersons of the partner organizations and authorities – primarily the police, the investigators of the tax authority, and the courts – with the objective of coordinating the exchange of experiences on the one hand and harmonizing the communicative measures on the other hand.

In cases attracting media attention the Press Office operating within the Cabinet of the Office of the Prosecutor General also provides regularly updated information via the Press Releases section of the prosecution service's public website ([www.mklu.hu](http://www.mklu.hu)).

The Press Release section of the website contains downloadable reports and coverage about cases of high importance, events and latest news relating to the prosecution service illustrated with continuously updated images and graphs.

In addition to this, collections of statistics of the most versatile aspect can also be downloaded from the website of the prosecution service.

#### **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)?**

By meeting the journalists specialized in criminal matters working for more significant media several times annually, the spokesperson of the Office of the Prosecutor General receives a feedback regarding the media activity performed by the prosecution service.

Beside this, the spokesperson of the Office of the Prosecutor General regularly delivers presentations on the media activity of the prosecution service on forums organized by civil societies, universities and colleges.

On judicial open days the Cabinet of the Office of the Prosecutor General also provides information to university students showing interest in the activity of the prosecution service.

#### **23. Can communication with media be used as an investigative tool (for instance by spreading identikits around or even photos showing the commission of a crime)? If yes, please specify.**

Act XVIII of 2011 regulating arrest and seizure warrants provides as follows:

"Section 12 (1) In order to locate a person or object whose whereabouts are unknown and in order to identify an unknown person or corpse the Police are entitled to collect data in the course of which they

...

d) are entitled to issue announcements in the public interest free of charge on the radio and television which are considered to be civil service media providers and are entitled to issue warnings in the press and on the internet;

e) are entitled to disclose the warranted person's the name, photo, data necessary for identification, the presumed place of his appearance or whereabouts as well as the reason for their disclosure, for important public interest or for private interest deserving special consideration unless the authority ordering the warrant has expressly prohibited it;

f) are entitled to disclose the photo, drawing, code suitable for identification, and other features or characteristics of the warranted object unless the authority ordering the warrant has expressly prohibited it ..."

### **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?**

All prosecutors – thus in particular prosecutors entrusted with the task of a spokespersons – shall be familiar with and apply in their work the freedom of speech and the right of the public to receive information set forth by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Beyond this, since a network of spokespersons was established in 2011, spokespersons participate in an intensive training held in the training centre of the Office of the Prosecutor General every autumn. One of the themes of these trainings includes how to apply provisions of the Convention appropriately.

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

Every autumn spokespersons attend an intensive training held in the training centre of the Office of the Prosecutor General within the framework of which they analyze the modes of interaction with the media and practice such modes by simulating hot/ difficult situations with the involvement of journalists.

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

In the recent years the number of places providing communication trainings has significantly increased, but this quantitative increase has rather reduced than raised the level of qualification and preparedness of journalists who have just finished their studies. Unfortunately, during the course of their studies journalists are imparted none or only very superficial knowledge about how the administration of justice – and within this how the prosecution service – functions and how they should interact with them.

Only a very narrow segment of the journalists can be considered criminal journalists understood in the classical sense.

Taking account of all this, for prosecutor spokespersons interaction with journalists is very often restricted not only to communicating information connected to the particular criminal case, but their communication should also include informing journalists about the most fundamental procedural rules – thus about law enforcement, administration of justice, and specifically about the functioning of the prosecution service.

**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?**

Representatives of different media rotate in attending the annual trainings organized for prosecutor spokespersons, which also targets mutual sharing of knowledge and learning more about each other's work among the participants.

Beside this, joint seminars and conferences are also held.

A latest example for this was the so called KRIMINALEXPO organized by The Office of the Prosecutor General and the National Association for Prosecutors in November 2012, where prosecutors responsible for media relations and the representatives of media of different European countries discussed the relationship between prosecutors and the media in an international seminar.

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

Beside the various associations for journalists, there is a society uniting criminal journalists, but this society does not have real impact within the media, the majority of its members do not play an active role in interactions with the prosecution service; thus it does not exert essential, qualitative influence over the relationship between the prosecution service and the media.

**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?**

Pursuant to the provisions of Act CLXXXV of 2010 on Media Services and Mass Media the Media Council – among others – shall

- oversee and guarantee the freedom of the press under this Act and the Press Freedom Act;
- perform the supervisory and control tasks prescribed by this Act - by recording programme flows or programmes or examining the programme flows recorded by the media service provider, or by making official requests;

The National Authority for Data Protection and Freedom of Information (hereinafter referred to as Authority) established by Act CXII of 2011 on the Right to Self-determination and Freedom of Information shall monitor and facilitate the enforcement of the right to protection of personal data and access to public data. If this Authority suspects that relating to its own procedure a criminal offence, misdemeanour or disciplinary breach has occurred concerning data protection, it is entitled to initiate a procedure at the competent authority.

**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?**

*Libel, slander, and/or similar violations of a person's reputation* are only punishable upon private motion. The charges are represented by the injured party in the capacity of the private complainant.

Libel, slander, and/or similar violations of a person's reputation shall, however be prosecuted by public prosecutors if they are committed to the prejudice of an official person in the course of or due to his/her official procedure and to the prejudice of an authority in relation to its official functioning.

The public prosecutor – similarly to other cases prosecuted by public prosecutors – only plays part in criminal proceedings in the latter case.

With regard to *defamation* and *media remedy* Act IV of 1959 on the Civil Code provides as follows:

"Section 78 (1) The protection of inherent rights shall also include protection against defamation.

(2) The statement, publication, or dissemination of an injurious untrue fact pertaining to another person or a true fact with an untrue implication that pertains to another person shall be deemed defamation.

Section 79 The provisions for the enforcement of claims for media remedy are contained in Act CIV of 2010 on Freedom of the Press and on the Basic Rules Relating to Media Content and in the Act on the Code of Civil Procedure."

Pursuant to Section 12 of Act CIV of 2010 on Freedom of the Press and on the Basic Rules Relating to Media Content:

"(1) Where published media content disseminates false facts or distorts true facts about a person, the person affected shall be entitled to demand the publication of an announcement to clearly identify the false, distorted and/or unfounded facts of the communication and indicate the true facts.

(2) The remedy communication shall be published - in the case of newspapers, online journals and news agencies within five days upon receipt of the request therefore, using the means similar in style and size as the contested part of the communication; in the case of on-demand media services within eight days upon receipt of the request therefore, using the means similar in style and size as the contested part of the communication; in the case of other periodicals after eight days from the time of receipt of the request therefore, in the next edition, using the means similar in style and size as the contested part of the communication; and in the case of linear media services also within eight days, using the means similar in style as the contested part of the communication, at the same time of day."

Provisions of Act III of 1952 on the Code of Civil Procedure concerning *media remedy procedures* stipulate:

"Section 342 (1) Publication of a statement of remedy may be demanded by the person affected in accordance with Act IV of 1959 of the Civil Code and Act CIV of 2010 on Freedom of the Press and on the Basic Rules Relating to Media Content from the media service provider, the press product editors or news agency implicated within thirty days from the date of publication or broadcast of the disputed communication.

(2) Publication of a statement of remedy, if requested in due time, may be refused only if the argument made in the request is promptly refutable.

Section 343 (1) If the media service provider, the press product editors or news agency fails to satisfy the publication of a statement of remedy, the person seeking remedy shall have the right to bring action against the media content provider, press product editors or news agency involved.

(2) The provisions of Chapters I-XIV shall apply in actions for media remedy subject to the exceptions set out in this Chapter. An action for media remedy may not be joined or consolidated with any other actions.

(3) The action shall be filed within fifteen days from the last day of the obligation of publication. An application for continuation (Sections 106-110) may be submitted upon failure to meet this deadline. The body referred to in Subsection (1) shall be involved as a party even if otherwise lacking legal capacity (Section 48).

(4) The statement of claim shall expressly specify the contents of the statement of remedy, contain proof that the plaintiff made the request for remedy within the legal deadline, and - in the case of a newspaper, magazine or periodical - the volume that contains the contested allegation, or a printed version of the contested communication in the case of online journals shall be attached, if available.

Section 344 (1) The court in whose jurisdiction the main offices, or home address of the press product editors, news agency or media service provider are located shall have competence to hear such cases. Jurisdiction may also be based on the location of the local studio of the media service provider.

(2) The court shall handle actions for media remedy in priority proceedings. The presiding judge shall set the date of the hearing not later than the eighth day following the date of submission of the statement of claim, except if the statement of claim is submitted in delay, in which case the presiding judge shall reject the statement of claim without issuing any writ of summons.

(3) In such cases no applications for continuation and no counterclaims will be admissible, and such cases may not be suspended.

Section 345 (1) Holding the first hearing shall not be prevented by the plaintiff's or the defendant's failure to appear. However, if neither of the parties is present in the first hearing, the case shall be dismissed. In actions for media remedy court orders may not be issued.

(2) Taking of evidence may be performed solely in connection with such evidence that is available at the hearing, and which appears to have the capacity to promptly corroborate the authenticity of the allegations contained in the contested publication, or to promptly refute the arguments made in the claim. Taking of evidence may be performed with respect to any evidence offered by the plaintiff on the spot. The hearing may be postponed - for maximum eight days - only if the plaintiff so requested, or if the evidence presented appear sufficient to prove the success of the taking of evidence.

(3) If the court's decision is in favour of the plaintiff, it shall render a judgment ordering the defendant to publish a statement of remedy worded by the court within the prescribed deadline, and to bear the costs of the proceedings.

*Section 346* (1) The court of the second instance shall hear the appeal within not more than eight days from the time of receipt of the relevant documents.

(2) A motion for retrial may not be submitted against a judgment rendered in an action for media remedy."

Pursuant to the provisions of the press order of the prosecution service concerning media remedy:

"Section 8 (1) In case of a media communication concerning the activity of the prosecution service the Prosecutor General shall decide on the media remedy procedure regarding national publications and radio- and television channels broadcasting country-wide; in other cases the decision shall be taken by the appellate chief prosecutor or the chief prosecutor in accordance with the procedure defined in Subsection (2). The Cabinet of the Office of the Prosecutor General is immediately to be informed on the fact of the media remedy procedure initiated by the appellate chief prosecutor and the chief prosecutor and the completion thereof.

(2) The appellate chief prosecutor and the chief prosecutor inform the Cabinet and the Division for Legal Representation of the Prosecution Service in Judicial Proceedings of their intention of initiating a media remedy procedure. Media remedy procedures can only be initiated with the prior consent of the Prosecutor General forwarded via the Cabinet."

Unfortunately, there is no uniform practice concerning the defamation proceedings with regard to public prosecutors.

Some courts admit statements of claim in which the public prosecutor taking public action is directly sued for defamation, in spite of the fact that, as it is clear from the operative legal regulations, if a person acts on behalf of a legal person and does not conflict the interests of this legal person, the proceeding for the violation of personal rights can exclusively be initiated against the legal person.

The new civil law legislation to be passed in the near future unequivocally states that in such cases only the prosecution service/court can be sued and not the public prosecutor/judge himself.

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

As referred to in the answer given to the previous question, journalists' possibly occurring/committed unlawful activity may be suitable to constitute mostly the suspicion of defamation or libel or misuse of personal data in the field of criminal law, whereas in the field of civil law journalists might face procedures initiated for defamation/slander and media remedy.

The afore-mentioned criminal offences – with the exception of the aggravated cases of the felony of misuse of personal data – are punishable by imprisonment for up to one year.

Further legal consequences of defamation may involve restraint from the further infringement/(unlawful) activity, making restitution by ways or press statement, and non-pecuniary damages.

The effective criminal law regulations do not contain any specific criminal offences in the case of which only journalists could be perpetrators.

In case of certain criminal offences – such as libel – the commission in "broad publicity" is regarded as an aggravating circumstance. Pursuant to the provisions of the Criminal Code broad publicity shall also involve commission by ways of publishing data in the media, other means of mass communication, electronic communication network or reproduction.

**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?**

Pursuant to Section 151 (4) of the Code on Criminal Procedure:

"Seizure of mail and new communication not delivered to the addressee yet as well as of documents of the editorial office of printed matters shall be ordered prior to filing the indictment by the prosecutor, or thereafter by the court.

Until the decision is made, the consignment may only be subject to retention."

We have no cognizance of any measures in our county that might be considered as a form of preventive censorship.

Public prosecutors do not have a role in supervising media activities.

The spokesperson prosecutor may, of course, request (and actually should request) that he is shown the draft of the article based on his/her own statement prior to its publication.

Apart from this – in accordance with the previously described procedure – the Prosecution Service may initiate a media remedy procedure.

This, however, does not constitute supervising media activities.

At the same time, in the scope of his/her activities protecting the public interest the public prosecutor may file action for the annulment of the contract and the enforcement of the legal consequences of the invalidity of the contract in order to cease the injury caused to the public interest by a null and void contract.)

A new scope of null and void contracts is defined by the provision, according to which no pecuniary advantage can be stipulated for the benefit of the finally convicted person or any other person related to the convicted person for the publication of the criminal offence committed by the finally convicted person in the media, any media services or other publications or any other activities falling under copyright protection as long as the criminal record of the convicted person is not cleared.. Any agreement contrary to this provision is null and void. Upon the action of the



prosecutor the pecuniary advantage provided on the basis of a null and void contract and to be returned to the provider of the service or the already agreed but not yet effected pecuniary advantage should be awarded for the state.

**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?**

There is none.

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

The prosecutor is bound by a duty of discretion even if this occurs. It is the Cabinet of the Office of the Prosecutor General – the Spokesperson of the Office of the Prosecutor General – that has competence to handle and countervail media campaigns started against prosecutors.

The prosecution service is represented by the Prosecutor General, thus in issues and questions regarding the prosecution service as a structural body, the Prosecutor General, the Deputies Prosecutor General and – as specified in the press order - the Cabinet of the Office of the Prosecutor General upon the Prosecutor General's authorization, through its spokespersons are entitled to communicate information.

**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?**

Again, it is the Cabinet of the Office of the Prosecution Service – the Spokesperson of the Office of the Prosecutor General that has the power to reply, handle and countervail such media attacks.

#### **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.**

We do not have any further observations.

### **Iceland / Islande**

#### **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.

**Answer:** No not bound by law or other written provision.

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?

**Answer:** Prosecutors can have direct relation with media under supervision of their superior prosecutors.

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)?

Answer: In the pretrial state the police can, the defendant's lawyer.

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

Answer: Yes

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)?

Answer: During all stages of the procedure if it does not harm the investigation. Depending on the nature of information.

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

Answer: Judges do not inform the press. That is a tradition.

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

Answer: No supervision.

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"?

Answer: There has not been any rules applied to this situation other than the general rules of art. 18 of the Law on Criminal Procedures and art. 136. of the General Criminal Code regulating general code on silence of prosecutors and public officials in general. The supervision of superior prosecutors including the Director of Public Prosecutions (DPP) is also active in general control of how information are provided. This has not been a problem probable due to rather conservative attitude of Icelandic prosecutors to wards possible threat of "trial by press".

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?

Answer: No sanction but if serious it could lead to disciplinary sanction and in extreme cases dismissal from duties.

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

Answer: On case to case bases.

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?

Answer: 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.)?

Answer: All the above.

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

Answer: The same procedure as in domestic cases but with consultation with the foreign authorities.

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

Answer: All

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

Answer: 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?

Answer: The prosecutors communicate. The inferior prosecutors need to seek permission to the superior prosecutor.

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

Answer: In every possible way.

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)?

Answer: No names of parties, and no information that can damage the investigation or inform of the tactics of the police and the prosecution in handling cases. Personal and private information of parties cannot be revealed.

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

Answer: No

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

Answer: 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)?

Answer: Yes to some degree.

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)?

Answer: No

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.

Answer: Yes it is mostly used to locate accused or witnesses.

### **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?

Answer: No

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

Answer: No

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

Answer: No

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?

Answer: No

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

Answer: 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?

Answer: Yes

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?

Answer: Prosecution of cases of that kind is in the hand of the victim of the violation. The prosecution service has only in exceptional cases prosecuting power in cases of that sort.

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

Answer: Cases mentioned above under no. 30 can be penalized by fines and imprisonment up to 1 year, according to art. 234 and 235 GPC. In most cases of violation the sentence is fine and or punitive damages.

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?

Answer: No preventive censorship.

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?

Answer: The association of prosecutors can intervene but that is not common.

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

Answer: 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?

Answer: 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.

### **Ireland / Irlande**

#### **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.

There is no statutory framework specifically providing for a relationship between the Office of the Director of Public Prosecutions and the media. However, the Prosecution of Offences Act 1974 sets out a statutory framework governing communication with the Director's Office and provides that certain persons are permitted to contact that Office. These permitted persons are;

- a victim of a crime;
- a family member of a victim of a crime;
- an accused person;
- or a family member of an accused person (as defined in section 6(2)(b) of the Prosecution of Offences Act, 1974, set out below).

The following persons can also write to the Director's Office on behalf of their clients:

- lawyers;
- doctors; and
- social workers.

It is against the law for anybody else to contact the Office of the Director of Public Prosecutions for the purpose of influencing a decision to withdraw or not to start a prosecution or for the purpose of influencing the making of a decision in relation to an application under section 2 of the Criminal Justice Act, 1993 to review a sentence.

The prosecutor is precluded, by virtue of section 6 of the Prosecution of Offences Act, 1974, or section 2(4) of the Criminal Justice Act, 1993 from considering such unlawful communications when considering a decision to prosecute or to seek a review of sentence on the grounds of undue leniency. The text of section 6 of the Prosecution of Offences Act, 1974, and section 2(4) of the Criminal Justice Act, 1993, are set out for ease of reference as follows:

Prosecution of Offences Act, 1974

*6(1)(a) Subject to the provisions of this section it shall not be lawful to communicate with the Attorney General or an officer of the Attorney General, the Director or an officer of the Director, the Acting Director, a member of the Garda Síochána or a solicitor who acts on behalf of the Attorney General in his official capacity or the Director in his official capacity, for the purpose of influencing the making of a decision to withdraw or not to initiate criminal proceedings or any particular charge in criminal proceedings.*

*(b) If a person referred to in paragraph (a) of this subsection becomes of opinion that a communication is in breach of that paragraph, it shall be the duty of the person not to entertain the communication further.*

*6(2)(a) This section does not apply to –*

*(i) communications made by a person who is a defendant or a complainant in criminal proceedings or believes that he is likely to be a defendant in criminal proceedings, or*

*(ii) communications made by a person involved in the matter either personally or as legal or medical adviser to a person involved in the matter or as a social worker or a member of the family of a person involved in the matter.*

*(b) In this subsection "member of the family" means wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister, a person who is the subject of, or in whose favour there is made, an adoption order under the Adoption Acts, 1952 and 1964.*

Criminal Justice Act 1993

*2(4) Section 6 of the Prosecution of Offences Act, 1974 (which prohibits certain communications in relation to criminal proceedings), shall apply, with any necessary modifications, to communications made to the persons mentioned in that section for the purpose of influencing the making of a decision in relation to an application under this section as it applies to such communications made for the purpose of making a decision to withdraw or not to initiate criminal proceedings or any particular charge in criminal proceedings.*

The general jurisdiction of the courts as well as the general law of contempt also enables courts to award remedies for the purpose of ensuring a fair trial of accused persons eg postponement of trials, issuing appropriate ruling and directions to a jury and also enables courts impose sanctions, including fines and imprisonment, on the media where actions by the media improperly interfere with the proper running of a trial.

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?

No. All criminal prosecutions taken on indictment in Ireland are taken in the name of the People and prosecuted at the suit of the Director; except for a limited category of offences still prosecuted at the suit of the Attorney General. The Director has published guidelines setting out standards and conduct which the Director expects of those who prosecute on her behalf. These include reference to the provisions referred to at 1 above. The Director, and prosecutors acting on her behalf, does not comment publicly, other than as part of appropriate legal argument during a prosecution in court, on any individual case and does not provide press briefings. The Director, as in the case of each of her predecessors, has provided interviews to the media on the general role and function of the Office but these interviews have not dealt with any individual cases. The Office will also through a designated spokesperson provide general information e.g.

dealing with policy matters or the general working of the Office. As all criminal proceeding before the courts are conducted in public, the press are free to attend and report on those proceedings.

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)?

See answer to 2 above. The Director does not authorise anyone else to communicate with the press on her behalf in relation to criminal cases. The term "prosecutor" is used to mean all or any of the following, depending on the context in which the word is used: the Director and her professional officers, both in the Directing and Solicitors Division of his Office; the local State Solicitors who provide a solicitor service in the areas outside Dublin; counsel who act for the Director on a case by case basis; and members of the Garda Síochána (Irish police) prosecuting on the Director's behalf.

While the Director cannot direct an accused or anyone acting on the accused's behalf as to whether or not he may communicate with the media the general law of contempt is relevant to ensure the proper running of a trial.

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

No. See replies to 2 and 3 above.

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)?

See replies to 2 and 3 above.

6. Are the judges authorised to inform the press? If this is the case, during which stage of the procedure? Judges do not comment publicly, other than as part of legal proceedings in court, on any individual case.

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

See replies to 1, 2 and 3 above. There is no additional supervision.

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"?

See replies to 1, 2 and 3 above. The general jurisdiction of the courts as well as the general law of contempt also enables courts to award remedies for the purpose of ensuring a fair trial of accused persons eg postponement of trials, issuing appropriate ruling and directions to a jury and also enables courts impose sanctions, including fines and imprisonment, on the media where actions by the media improperly interfere with the proper running of a trial.

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?

See replies to 1, 2 and 3 above. The Director may additionally take disciplinary action and/or cease to employ prosecutors who fail to adhere to the standards expected of them

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

See replies to 1, 2 and 3 above. It is not clear what is meant by security risks but it has not arisen in practice. If it is intended to refer to identification of prosecutors acting on the Director's behalf, this is a normal part of the prosecution process where all criminal prosecutions are conducted in public.

If it is intended to refer to information relating to witnesses or otherwise relevant to a prosecution case it is a requirement that all information and material in the possession of the prosecution and relevant to an accused's guilt or innocence or which otherwise might assist an accused in his defence must be disclosed to the defence. This is provided directly to the defence. However, the addresses of witnesses and other such details, where not relevant will be omitted from the material furnished. While there are some limitations on the duty to disclose (such as in relation to identification of confidential informants, alerting persons to police investigations or methods or which might otherwise be of assistance to criminals, involving legal professional privilege or the security of the State or where disclosure might lead to publication of the names of others in respect of whom investigative discussions may be ongoing but where they are entitled to a presumption of innocence), these are subject to the "innocence at stake" exception where disclosure is necessary because the evidence could show the innocence of the accused. Ultimately if the prosecution is unable or unwilling to disclose relevant material for any reason including security concerns it may be necessary to discontinue the prosecution.

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. This is a normal part of the prosecution process where all criminal prosecutions are conducted in public.

## **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.)?

Insofar as queries are dealt with press releases, and response by telephone or email have been utilised. See replies to 1, 2 and 3 above.



13. Can press conferences or other releases be made by prosecutors in cases of international investigations?  
If yes, which procedure do you follow?  
No. See replies to 1, 2 and 3 above
14. Is there communication with all the media or with some (newspapers, audiovisual media, internet)?  
See replies to 1, 2 and 3 above. Generally media queries from whatever *bona fide* source are replied to even if the office is saying no comment.
15. Are there regulations prohibiting public prosecutors to give an advantage to single journalists (and/or leaving out some of them)?  
No. Not applicable. See replies to 1, 2 and 3 above
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 Office has a designated non-prosecutor spokesperson. See replies to 1, 2 and 3 above
17. How does the media communicate with the prosecutors (official representatives, specialized journalists, necessary authorizations)?  
Not applicable – individual prosecutors do not comment. See replies to 1, 2 and 3 above.
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)?  
Not applicable. We do not discuss individual cases. See replies to 1, 2 and 3 above
19. Is there an official policy encouraging prosecutors to respond to the needs of media, and how is this policy implemented?  
Not applicable. See replies to 1, 2 and 3 above
20. Are the prosecutors' communications with media systematically monitored and evaluated by using monitoring, feedback from the public, communication surveys or other measures?  
Not applicable. See replies to 1, 2 and 3 above

#### **B. 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)?  
No. See replies to 1, 2 and 3 above
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. See replies to 1, 2 and 3 above. The Office of the Director of Public Prosecutions also maintains a website [www.dppireland.ie](http://www.dppireland.ie) which highlights the role and function of the Office. The Office has published on that website a number of publications outlining these functions as well as details as to how the Office is organised. The publications include annual reports, strategy statements, policy and directives issued, the Guidelines for Prosecutors and the Code of Ethics and well as booklets on the "Role of the DPP" and "Going to Court as a Witness". The booklets are published on line in Irish, English, French, Polish, Portuguese, Spanish, Romanian, Latvian, Arabic, Mandarin, Lithuanian and Russian. The website includes links to other relevant websites including that of the Consultative Council of European Prosecutors.
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 investigation of alleged criminal offences in Ireland is carried out by An Garda Síochána (Irish Police). The Director's Office does not have a role in that regard. It is a matter for An Garda Síochána to consider how best to pursue its investigations. An Garda Síochána do, however, communicate with the media as part of their investigations where they consider this to be of assistance to the investigation. This includes through TV programmes where the assistance of the public is sought in relation to crimes highlighted in the programme. The assistance may include an appeal for general information or assistance in identifying individuals shown in a recording of the crime or identikit shown on the programme.

#### **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?  
It is expected that this would form part of a lawyer's general legal training before qualifying as a lawyer prior to appointment as a prosecutor. It is also expected that prosecutors would keep up to date with legal developments and the Office encourages and facilitates continuous professional development.
25. Are prosecutors trained on how to interact with media?  
No. See replies to 1, 2 and 3 above.
26. Are journalists trained on how to interact with the prosecution services?  
See replies to 1, 2 and 3 above.
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. See replies to 1, 2 and 3 above.

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

See replies to 1, 2 and 3 above.

#### **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?

Within the prosecution service, no. See replies to 1, 2 and 3 above.

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?

The offence of Criminal Libel may be prosecuted depending on the exact circumstances and seriousness of any alleged libel and intent involved. However, it is rarely prosecuted. The general law of contempt also enables courts to impose sanctions, including fines and imprisonment, on the media where actions by the media interfere with the proper running of a trial.

However, the main remedies available for an attack on a person's character and reputation are civil remedies such as actions for libel or slander or injunctions. These civil remedies are available to individuals and the prosecution service has no role in that regard.

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

See replies to 1, 2, 3 and 30 above.

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?

See replies to 1, 2, 3 and 30 above.

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?

See replies to 1, 2 and 3 above. The Director and prosecutors acting on her behalf do not comment on individual cases.

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

See replies to 1, 2 and 3 above. The Director and prosecutors acting on her behalf do not comment on individual cases. However as per 30 an attack which legally constitutes defamation could be pursued by a prosecutor as an individual.

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?

See replies to 1, 2 and 3 above. The Director and prosecutors acting on her behalf do not comment on individual cases.

#### **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.

### **Italy / Italie**

#### **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



**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 public prosecutors and media is regulated by law (Legislative Decree No. 106/2006, Article 5). It provides for: (i) relations with the media shall be maintained by the chief public prosecutor, either personally or through another prosecutor from his office, directly delegated by him; (ii) any information concerning activities of the prosecution office shall be provided referring it impersonally to the office, excluding any reference to the individual prosecutor(s) in charge of the case; (iii) the chief prosecutor shall inform the District Judicial Council (which has a function to control and to make disciplinary reports) of the conduct of those prosecutors belonging to his office who do not follow the above mentioned regulations.

Another Legislative Decree (No. 109/2006, Article 2.v) sets forth disciplinary sanctions for any public prosecutor who: (A) makes a public statement or interview concerning persons involved in a pending case (which has not yet been decided by a final judgment), when (and only when) it is directed to improperly infringe the rights of other persons; (B) violates the obligation that any information is impersonally referred to the prosecution 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?**

Yes, prosecutors are authorized to have direct contact with the media, as indicated in the answer to question No. 1. The limitations –as well as the disciplinary provisions– there specified must be applied. Frequently, with reference to relevant cases (and particularly when precautionary measures, like provisional arrest, are applied to the defendant(s)), press-conferences are held by the chief prosecutor (or by the vice-chief prosecutor in the larger offices).

- 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)?**

No specific provisions are given in this respect. Obviously, the rules concerning the investigative secret (Article 329 of the Code of Criminal Procedure) must be respected, as well as the legislation which provides for criminal sanctions for the disclosure of secrets by a public official (Article 326 of the Penal Code). It must be taken into consideration that, during the investigation, those documents and information which the suspect has the right to know are not qualified as secret.

In cases of relevant interest for the media, defence lawyers usually have constant relationships with journalists. In this way, the point of view of the defence is frequently rendered public from the phase of the investigation, in particular when precautionary measures (like provisional arrest) are applied to the suspect. The same happens during the following phases of the criminal proceedings, with contacts by defence counsels with the media on the occasion of hearings, verdicts and appeals.

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

With reference to relevant cases, and in particular when arrests and/or important seizures are executed, a press-conference is frequently held by the chief prosecutor (or by the vice-chief prosecutor, in the larger offices) together with representatives of the police forces which took part in the investigation and, sometimes, also with the prosecutor(s) in charge of the case.

- 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)?**

Public prosecutors cannot communicate information during pre-trial investigations, until the investigation's acts are no longer secret. The violation of this prohibition would constitute a crime by the prosecutor.

The prosecutor can communicate information to the media (with the limits specified in the answers No. 1 and No. 3) when pre-trial investigations have been closed, as well as when –during the investigations– some documents and information are not secret because of the right of defence to know them.

In practice, public prosecution offices have contacts with the media when provisional measures are applied (as specified above). This usually happens during pre-trial investigations, with reference to acts not qualified as secret. Contacts can also take place after the formal accusation, as well as during the court proceeding and after the judgment.

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

No specific provisions are given in this respect. Italian judges usually do not inform the press about their activities.

If they give their opinion, they could be challenged by the parties.

Press-releases are sometimes given after important judgments, to avoid mis-interpretation of the results by the public.

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

No, there isn't.

**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"?**

Disciplinary provisions are set forth for prosecutors and judges who spread (voluntarily or also for negligence) secret information or information whose publication is prohibited. Moreover, the violation of confidentiality on pending cases is disciplinary sanctioned. The same applies to filed cases, if the spreading of information unduly violates other people's rights.

Violating the secret on investigations represents a crime. Moreover, a journalist can be charged for it, if he induced a public official to violate the secret (although this situation is quite difficult to be proved in Court).

The publication of the identity of minors and sexually abused women is prohibited, as well as the publication of their photographs.

In order to avoid the so-called "trial by press", the law provides criminal sanctions for the publication of prosecution service's or judge's acts before the judgment of appeal. In practice, medias do not hesitate to publish such acts, because sanctions are quite low (a fine up to 7,500 euros) and the time of limitation for a crime is frequently reached.

**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: see answers No. 1 and No. 8.

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

Investigations are carried on in case of illicit disclosure of information, but they are seldom successful. On one hand, people involved in the news leak have no interest to cooperate with the investigators; on the other hand, for the crimes committed in this field, interception of telecommunications, audio and video surveillance cannot be authorized, unless there are no more serious crimes (like corruption, for instance).

**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, there aren't.

**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.)?**

Mainly through press conferences (which are more frequently used than press releases).

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

Yes, they can. They are usually previously agreed (and possibly held together) with representatives of the prosecution offices and/or of the police of the other countries involved in the investigation.

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

The press conference is usually announced to all the media operating in the area.

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

Yes, there are. The use of confidential or preferential relations with the media is a disciplinary offence.

**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?**

There are no spokespersons in the Italian prosecution offices.  
See answer No. 1

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

They usually communicate through specialized journalists.

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 answers No. 1, No. 5 and No. 11.

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

There are no national guidelines. Each prosecution office can establish its “policy” to keep the public appropriately informed about relevant cases.

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

No, they aren’t.

### **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)?**

It is up to each prosecution office to decide when public opinion has to be informed. It is usually done with press conferences on the occasion of the provisional arrest of the defendant(s) in relevant cases.

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)?**

This kind of initiatives is usually not taken by the prosecution offices. The Italian national Association of judges and prosecutors sometimes organizes open days and visits in courts, as well as initiatives for students.

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.**

Sometimes (although not frequently) the media have been used for investigative purposes. For instance, during investigations concerning very serious crimes (homicides, kidnapping of children) images have been published with the aim of gathering information from the public (respectively, a video registered on the scene of the murder and photographs of the disappeared children were broadcasted).

### **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, they are. Both the initial training and the in-service training deal with these topics.

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

No, they aren’t.

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

No, they aren’t (as far as we 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?**

Some joint seminars have been organized (e.g. on the topic “Representations of justice”).

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

No, there aren’t (as far as we know).

## **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?**

No, there isn't such an institution, but two independent administrative Authorities (respectively competent for communication and for the protection of personal data) can indicate guidelines in the mentioned fields (and in some cases they can apply sanctions).

- 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?**

Libel and slander are criminal and civil offences. They can be prosecuted by the public prosecution office only upon the victim's specific complaint.

When a criminal action is initiated, the (civil) claim for damages can be presented directly in the criminal proceeding. During the criminal proceeding the public prosecution plays its usual role.

Otherwise, compensation for damages can be requested by the victim with a claim in a civil proceeding. In this case the public prosecution does not play any role.

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

A journalist can be convicted for libel, if he acted with malice. Penalties can vary from a small fine to a term of imprisonment (up to 3 years).

In case of a libel, also the director of a newspaper or of an internet site commits a specific crime for negligence if he does not properly check the content of an article.

In case of disclosure of secrets, there is no criminal liability of a journalist if he only receives the information and publishes it. On the contrary, he commits a crime together with a public official if he induced the latter to disclose a secret.

- 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 real practice the seizure of press is not permitted in Italy. On the contrary, libeling web pages can be seized by order of a judge upon initiative of a public prosecutor.

No preventive censorship is admitted. Prosecutors do not supervise media activities.

- 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 Italian national Association of judges and public prosecutors usually makes a press release rejecting unjustified attacks and expressing its support to the involved public prosecutor.

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

Yes, she/he is.

- 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?**

The High Council for the Judiciary makes official statements supporting public prosecutors, when they are under improper attacks by the media.

## **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.**

As indicated above, the prosecution service usually gives public information on relevant cases only in the initial stage (in particular when provisional arrest is enforced). By their side, on the contrary, private parties keep constant contacts with the media throughout the whole proceedings (investigation, trial, appeal). This can sometimes lead to a somehow "unbalanced" public information.

Another thorny question is represented by an excessive presence of some public prosecutors on the media stage, which can lead to an overexposure not only of a single public prosecutor, but also of the prosecution service as a whole in front of the public opinion.

Another problem is the quite frequent violation of the secret during investigations. Intercepted conversations are sometimes improperly published.

**A. Existing legal provisions and regulations**

1. The regulation of relationships between Prosecutors and media stems out from the Section 6(1) of the Law on Prosecution Office, which provides for that Prosecutor in his/her work is independent from any influence of other public and administrative institutions or officials and shall comply only with law, as well as from the Part 5 of the given Section, which provides for that Prosecutor shall have the right to refuse to provide information on the files of inspections or investigations which are in the proceedings of the Prosecution Office.

Additionally the Chapter "Mutual Relationships of Prosecutors and Principles of Conduct" of the Code of Conduct for Prosecutors of Latvia provides for that official written and oral communications of Prosecutor to mass media, and public presentations should be constructive and well-weighted, keeping in mind that those might be perceived as opinion of the Prosecution Office.

Section 396(1) of the Criminal Procedure Law provides for that information obtained during the preliminary criminal procedure as long as it is not completed shall be disclosed only with the permission of investigator or Prosecutor and in the amount specified by him or her. An investigator or prosecutor shall warn a person in written form on criminal liability for disclosure of such information.

The Section 66(2) of that Law provides for that an image of a suspect recorded during procedural operations as a photograph, video, or by other types of technical means shall not be published in the mass media without the consent of such suspect, unless it is needed for the disclosure of a criminal offence.

The Section 7(2) of the Law on Press and Other Mass Media provides for that no files of the preliminary investigation shall be published without written consent of Prosecutor or investigator. In the reflection of court proceedings is not allowed to publish such files, which violate the presumption of innocence. During open court sittings journalists may make recordings by means of technical devices, if that do not hinder the course of judicial procedures.

2. Prosecutors are allowed to maintain direct relationships with the media, that stems out from legal acts referred to in paragraph 1.

3. The institutions referred to in this question have rights to provide information to press on specific cases, keeping in mind that Section 7 of the Law on Press and Other Mass Media prohibits publication of such information that is a state secret or other according to the legal provisions specifically classified secret, that promotes violence and the overthrow of the prevailing order, advocates war, cruelty, racial, national or religious superiority and intolerance, and incites to the commission of some other crime. The files from pre-trial investigations shall not be published without the written permission of the prosecutor or the investigator. Publication of materials that violate the presumption of innocence shall not be permitted in the reporting of judicial proceedings. During open court sittings journalists may make recordings by means of technical devices, if these do not hinder the course of judicial procedures.

It is prohibited to publish the content of correspondence, telephone calls and telegraph messages of persons without the consent of the person addressed and the author or their heirs. The use of mass media to interfere in the private life of persons is prohibited and shall be punished in accordance with the law. It is prohibited to publish information that injures the honour and dignity of natural persons and legal persons or slanders them. It is prohibited to publish information concerning the health condition of persons without their consent. It is prohibited to publish business secrets and patent secrets without the consent of their owners. It is prohibited to publish an information, by which is possible to identify a child who is a victim of illegal activities, under-age offender or a victim, unless consent of persons and institutions referred to in the Children Rights Protection Law is received.

4. Yes, the Prosecution Office has experience regarding provision of a joint communications together with other law enforcement institutions, for example, arranging joint police and the Prosecution Office press conferences and informing about any topical criminal cases.

5. The Prosecutors during preliminary investigation of criminal procedure have rights to communicate information to the mass media, agreeing provision of information with investigator.

During criminal prosecution (presenting of accusation) Prosecutor can communicate information regarding the criminal procedure to the mass media upon his/her own discretion and in such amount, which he/she considers to be possible and not causing harm to the interests of the preliminary criminal procedure.

During examination of the criminal procedure in the court the Prosecutor can freely express to the press his/her opinion on the criminal procedure in cases which are examined openly. According to the Section 450(1) of the Criminal Procedure Law the criminal case shall be examined in open court hearing (certain categories of the criminal cases shall be examined in closed court hearings). The Paragraph 5 of the mentioned Section provides for that a court ruling shall be announced publicly. If the criminal case is examined in closed court hearing, publicly is announced introductory and findings part, and then in closed hearing – background and description part of the court ruling.

The mentioned legal act allows that Prosecutors in different stages of criminal procedure examination communicate information to the press, but while giving such communication the legal acts referred to in reply to 1<sup>st</sup> and 2<sup>nd</sup> question must be complied with.

6. According to the Section 10(1) of the Law on Judicial Power the Judges, while examining cases, are independent and shall act only according to the law.

The Section 19 of that Law provides for that in all courts of the Republic of Latvia the cases shall be examined in open hearings. The examination of case in closed hearing is allowable only in instances provided for by the Law, complying with other regulations regarding court proceedings. The court judgments and rulings must always be announced publicly.

In the Chapter 3<sup>1</sup> "Availability of information" of the Law on Judicial Power are set out detailed regulations on public availability of information related with examination of cases.

In any case judge, while providing information to the press, must comply with the legal acts referred to in reply to 1<sup>st</sup> and 2<sup>nd</sup> question.

7. No specific supervision of relationships between Prosecutors and mass media is performed.

8. The Constitution of the Republic of Latvia provides for that the State recognizes and protects fundamental human rights according to the Constitution, laws and international treaties binding to Latvia. Anyone has rights to inviolability of freedom and person. Nobody may be deprived freedom and restricted it otherwise that according to the law. The State protects the honour and dignity of the human being.

The Section 100 of the Constitution provides for that everyone enjoys rights to freedom of speech, including rights freely obtain, keep and disseminate information, express his/her own views. The censorship is prohibited.

Section 7 of the Law on Press and Other Mass Media prohibits publication of such information that is a state secret or other according to the legal provisions specifically classified secret, that promotes violence and the overthrow of the prevailing order, advocates war, cruelty, racial, national or religious superiority and intolerance, and incites to the commission of some other crime.

The files from pre-trial investigations shall not be published without the written permission of the prosecutor or the investigator. Publication of materials that violate the presumption of innocence shall not be permitted in the reporting of judicial proceedings. During open court sittings journalists may make recordings by means of technical devices, if these do not hinder the course of judicial procedures.

It is prohibited to publish the content of correspondence, telephone calls and telegraph messages of persons without the consent of the person addressed and the author or their heirs.

The use of mass media to interfere in the private life of persons is prohibited and shall be punished in accordance with the law.

It is prohibited to publish information that injures the honour and dignity of natural persons and legal persons or slanders them.

It is prohibited to publish information concerning the health condition of persons without their consent. It is prohibited to publish business secrets and patent secrets without the consent of their owners.

It is prohibited to publish an information, by which is possible to identify a child who is a victim of illegal activities, under-age offender or a victim, unless consent of persons and institutions referred to in the Children Rights Protection Law is received.

It is prohibited to publish the child pornography and files wherein violence against children is displayed.

It is prohibited to publish erotic and pornographic content, if thereby are being violated procedures provided for by the legal acts governing circulation of erotic and pornographic content.

9. If Prosecutor violates ethical aspects related with provision of information to the press, then ethical sanctions can be applied to Prosecutor. Also disciplinary liability is possible. If Prosecutor discloses to the press the sensitive information or state secret, then criminal liability is provided for.

10. The Prosecution Office does not specifically manage security risks deriving from disclosing of information regarding Prosecutors and cases.

11. No regulations exist in the Republic of Latvia and no specific procedure is provided for, which would prohibit publishing of names of Prosecutors and Judges dealing with the case.

## **B. Organisation of communication**

12. Basically the representatives of the mass media communicate with Prosecutors through Press Secretary of the Prosecution Office. In some cases the journalist may directly communicate with respective Prosecutor. The needed information is provided to him/her by phone, e-mail or personally. The prosecution Office does not employ social networks (for example, Twitter) in communication with the press.

13. No restrictions exist which would prohibit Prosecutor to take actions mentioned in this question.

**14.** The Prosecution Office provides information to all mass media which wish to receive it. No mass media has any priority against other mass media.

**15.** No regulations which would prohibit Prosecutors to give advantage to single journalists (and/or not cooperate with some journalists) exist.

**16.** Communication of the Prosecution Office with the mass media is mainly organized via Press Secretary, who is employed by the Prosecution Office directly under the Head Prosecutor of the Department of Analysis and Management of the Prosecutor's General Office.

**17.** The representatives of the mass media basically apply to Press Secretary of the Prosecution Office (by phone or e-mail). They are journalists specialized in criminal law issues and they are not required to pass through accreditation in advance.

**18.** When providing information to the mass media in relation with the criminal cases, the names of parties, witnesses and prosecutors are not disclosed without their consent. In its turn facts established during preliminary investigation and related or unrelated with case are disclosed, if it does not impede investigation and court proceedings.

**19.** No specific regulation exist on procedure how information request shall be submitted with the Prosecution Office, and how reply should be provided.

**20.** As Prosecution Office interaction with the mass media basically is organized through Press Secretary of the Prosecution Office, then no specific regulations regarding systematic supervision and assessment of Prosecutors performance in these issues exist.

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

**21.** No specific proactive working methods for interaction with the mass media are developed in the Prosecution Office. The updated news mainly related with decisions taken by Prosecutors in criminal procedures which has attracted wide public attention are provided to Press Secretary for publishing in the mass media by Heads of the Prosecution Office units.

In its turn the procedure for familiarization with the files accumulated in the criminal case is provided for by the Section 375 of the Criminal Procedure Law. It provides for that during criminal proceedings, the files attached to the criminal case shall be a secret of the investigation, and the officials who perform the criminal proceedings, as well as the persons to whom the mentioned officials present the relevant files in accordance with the procedures provided for in this Law, shall be permitted to familiarise themselves with such files. After the completion of criminal proceedings and the entering into effect of the final ruling, employees of the court, the Prosecution Office, and investigative institutions, and persons whose rights were infringed in the specific criminal proceedings, as well as persons who perform scientific activities shall be permitted to familiarise themselves with the materials of the criminal case. From the latter provision stems out that access of the mass media to the decisions taken by Prosecutors and familiarization with files of the criminal case till rendering of final decision is restricted. At the same time it should be noted that all final rulings in the criminal cases are publicly accessible subject to protection of information laid down by the legal acts.

**22.** According to the Recommendation of the Committee of Ministers of the Council of Europe Rec(2000)19 „On the Role of the Public Prosecutor in the Criminal Justice System” Prosecutor General once a year during especially convened meeting provides public report on general performance of the Prosecution Office, achieving of previously declared priorities and performance of Prosecutors. Annual report of Prosecutor General is published in the website of the Prosecution Office where is also provided communications to the mass media and other updated information related with performance of the institution.

**23.** A person directing the proceedings may ask to publish in the mass media the images of persons obtained during procedural activities of the criminal procedure investigation, including those ones captured at the moment of crime commission or identikits, except restriction provided for by the Section 66(2) of the Criminal Procedure Law and set out in reply to 1<sup>st</sup> question.

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

**24.** The Prosecutor's General Office organizes participation of Prosecutors in seminars (courses and lectures) for improving of professional qualification on wide range of topics. Although no special training on requirements of the European Human Rights Convention regarding freedom of speech and access to information has taken place, Prosecutors have attended training courses on Community law arranged in cooperation with Riga Graduate School

of Law in Riga. That training encompassed issues regarding standard of the mentioned Convention and case-law of the European Court of Human Rights in the context of human rights promotion and protection. Facilitation of Prosecutor's understanding of requirements laid down by the Convention was also ensured by regional seminars in cities of Rīga, Cēsis, Jelgava, Liepāja and Rēzekne.

**25.** The cooperation with the mass media and rules on compliance with professional conduct during interaction with journalists were considered in several Prosecutor's training events, especially at those ones arranged for heads of Prosecution Office units. The wide attendance in that training should be noted, for example, in seminar "Communication with the Mass Media" participated 48 Head Prosecutors, equal to more than 90% of total number of the Prosecution Office units heads.

**26.** The Prosecution Office has no information on existence of such specific type training for journalists.

**27.** No joint training events for Prosecutors and journalists have taken place.

**28.** No list of professional organizations of the mass media or journalists competent to regulate interaction with the Prosecution Office is laid down by the legal acts. Two in our country existing professional nongovernmental organizations established by journalists, described in reply to 29<sup>th</sup> question, have not shown such initiative.

#### **E. Regulation of media activities**

**29.** The work of the mass media in the Republic of Latvia is governed by the Law on the Press and Other Mass Media and the Law on Electronic Mass Media. In Latvia exists no joint internal council (or another body), which would regulate activities of the mass media or would examine complaints submitted against the mass media on violations of individual rights. Also the mentioned Laws do not provide for necessity to establish such body. Nevertheless in Latvia is established Association of Journalists (nongovernmental organization) and its main objectives is to improve professional environment of journalists, to defend freedom of speech and press, to facilitate discussion on professional and ethical problems, to defend professional, economical and social rights of journalists, to improve and develop legislation in the field of the mass media, to promote and ensure professional training and growth of its members, to ensure lifelong training for journalists. The Association has founded Ethics Commission of journalists and have developed the Code of Conduct. The Commission also examines complaints regarding actions of the journalists, if provisions of the Code of Conduct are violated (only regarding members of the Association). Additionally in Latvia is established the Union of Journalists of Latvia (nongovernmental organization) founded for purpose of representing and defending of its members professional, labour and other social and economical rights and interests. Also mentioned Union has developed and adopted the Code of Conduct for Journalists. In Latvia exists also National Council of the Electronic Mass Media, which according to the Law on Electronic Mass Media is independent competent autonomous body, that within its competence represents the interests of society in the field of the electronic mass media, as well as supervises the compliance with the Constitution of the Republic of Latvia, laws and other legal acts in their work. The National Council of the Electronic Mass Media accepts, analyses and summarizes proposals and complaints of spectators and listeners, and other information on work of electronics mass media. The Section 7 of the Law on the Press and Other Mass Media provides for information, publishing of which is prohibited (see replies to A section questions). The editor (chief editor) of the mass media is responsible for content to be published in the mass media. The natural and legal persons within six months (since publishing) have rights to request revocation of information published (broadcasted) by the mass media on such persons, if information is not true, or to request apologizing, if such information has insulted their honour and dignity. The editor of the mass media is obliged to consider applications of such persons.

**30.** The criminal liability for defamation in the mass media is provided for by the Section 157 of the Criminal Law "Defamation". If there are grounds to believe that criminal offence is committed, the criminal procedure is instituted during which the Prosecutor performs supervision of investigation, criminal prosecution and maintaining of charges in the Court. The Section 2352<sup>1</sup> of the Civil Law provides for that everyone has rights to lodge with the court a claim on revocation of information that insults his/her honour and dignity, unless disseminator of such information proves that such information is true. In such cases the claim application with the court should be lodged by person himself/herself or his/her representative according to the procedure laid down by the Civil Law.

**31.** The Section 157(1) provides for liability for intentional distribution of fictions, knowing them to be untrue, and defamatory of another person, in printed or otherwise reproduced material, as well as orally, if such has been committed publicly (defamation). The applicable sentence for commission of such criminal offence is community service or a fine not exceeding sixty times the minimum monthly wage (LVL 12 000). The Section 157(2) of the Criminal Law provides for liability for defamation in a mass media. The applicable sentence for defamation in mass media is custodial arrest, or community service, or a fine not exceeding eighty times the minimum monthly wage (LVL 16 000).

**32.** According to the Section 18 of the Law on Prosecution Office Prosecutor can to warn in written form the editor (owner) of the mass media or according to the Section 20 of the mentioned Law to submit written application to the editor (owner), if it is necessary to interrupt illegal activities, to prevent consequences of such activities or prevent



violations. If Prosecutor has found violation, which has no constituent elements of the criminal offence, but he/she has not managed or it was not possible to restore the lawfulness by means of the warning or application, he/she shall lodge with the court a claim application. The Section 12 of the Law on Press and Other Mass Media provides for that Prosecutor General of the Republic of Latvia has the right to initiate that the court examines a matter regarding termination of operation of a mass media (to lodge claim application), if it has published a call to use violent or any other unlawful methods, has published a call not to comply with laws of the Republic of Latvia, has not paid the taxes provided for by the laws of the Republic of Latvia within the deadline and the extent specified and disobey to a check taken by the State financial institutions, has published information which in a criminal case has been found by court judgment to be slanderous and defamatory, a disclosure of the state secret, war propaganda, or violation of racial and national equality and children pornography, or within a one-year period has repeatedly committed other violations of the provisions of this Law (for example, published non-publishable information referred to in the Section 7 of the given Law). The Prosecution Office does not perform a general supervision of the mass media or preventive censorship. A censorship according to the provisions provided for by the Section 100 of the Constitution is prohibited.

**33.** In Latvia is established the Association of Prosecutors of Latvia. It is independent non-profit voluntary professional association which unites Prosecutors of the Republic of Latvia and promotes professional growth of Prosecutors, protection of moral, social and economical interests, strengthening of Prosecutors prestige and judicial power and defending of the rule of law in the country. The Management Board upon request of association member on behalf of the association within its competence defends his/her rights and lawful interests, including in relationships with the mass media.

**34.** The Chapter "Mutual Relationships of Prosecutors and Principles of Conduct" of the Code of Conduct for Prosecutors of Latvia provides for that official written and oral communications of Prosecutor to mass media, and public presentations should be constructive and well-weighted, keeping in mind that those might be perceived as opinion of the Prosecution Office. At the same time, if Prosecutor believes that his/her honour and dignity has been insulted, he/she can lodge the claim with the Court according to the procedures provided for by the Civil Law.

**35.** In Latvia exist no specific body or association, which would be empowered to intervene in cases of groundless attacks of the mass media against the Prosecution Office or some Prosecutors.

## Liechtenstein

### 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.

*There is a General Law on the information of the public. It is called "Gesetz vom 19. Mai 1999 über die Information der Bevölkerung (Informationsgesetz, LGBl. 1999, Nr. 159 und Verordnung vom 19. Oktober 1999 zum Informationsgesetz - Informationsverordnung). See <https://www.gesetze.li/Seite1.jsp?LGBl=1999159.xml&Searchstring=Informationsgesetz&showLGBl=true>*

and <https://www.gesetze.li/Seite1.jsp?LGBI=1999206.xml&Searchstring=Informationsgesetze&showLGBI=true>

*The Law is applicable for all organs of the state including the Public Prosecutors Office and the Courts*

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*
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, Courts, parties of a proceeding, but within certain limits.*
4. Do you have any experience of joint communication by several public authorities (e.g. prosecutor and police)? *Yes*
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)? *In all stages of the procedure, however distinctions are being made between the pre-trial stage and after a formal indictment.*
6. Are the judges authorised to inform the press? If this is the case, during which stage of the procedure? *Judges handling cases are not authorised to inform the press. Every Court has a press speaker who is authorised to give information to the press.*
7. Is there supervision on the relationships between prosecutors and media in your country? By whom and how? *No*
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, internal regulation. The phenomenon "trial by press" has never occurred.*
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, Article 310 Criminal Code*  
[https://www.gesetze.li/Seite1.jsp?LGBI=1988037.xml&Searchstring=%A7+310&show\\_LGBI=true](https://www.gesetze.li/Seite1.jsp?LGBI=1988037.xml&Searchstring=%A7+310&show_LGBI=true)
10. How do the prosecution services deal with the security risks caused by disclosure of information concerning the prosecutors and the cases? *Such security risks have not occurred in Liechtenstein.*
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.)? *Type of communication depends on case and necessity to inform the public. Normality communication is only upon a press inquiry. In some cases press releases are made and in a few cases press conferences held. Direct press inquiries are answered by telephone or e-mail.*
13. Can press conferences or other releases be made by prosecutors in cases of international investigations? If yes, which procedure do you follow? *Theoretically yes, but in practice unusual. If an information is released it is done so in coordination with other affected jurisdictions.*
14. Is there communication with all the media or with some (newspapers, audiovisual media, internet)? *Press releases are sent to all media.*
15. Are there regulations prohibiting public prosecutors to give an advantage to single journalists (and/or leaving out some of them)? *Yes, see Art. 3 Informationsgesetz.*
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 Prosecutors Office has a spokesperson, who currently is the chief-prosecutor. Prosecutors do not communicate themselves on their own cases.*
17. How does the media communicate with the prosecutors (official representatives, specialized journalists, necessary authorizations)? *Since Liechtenstein is a small country, the few media representatives are known to the Prosecutors Office and do not need formal authorizations. With foreign requests authorization is usually checked before an answer is given.*
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)? *This depends on the kind of case and its facts. Generally neither names of parties, witnesses or prosecutors are disclosed.*
19. Is there an official policy encouraging prosecutors to respond to the needs of media, and how is this policy implemented? *This is laid down in the Informationsgesetz which states, that all acts of public authorities shall be made transparent in order to promote the trust of the public in Government and in order to facilitate democracy..*
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)? *No.*
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)? *Not really. The chief prosecutor occasionally gives interviews explaining the activities of the Prosecutors Office.*
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. *No.*

### 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.*
25. Are prosecutors trained on how to interact with media? *Yes.*
26. Are journalists trained on how to interact with the prosecution services? *No.*
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? *No.*
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? *Several articles of the criminal code protect a persons reputation, namely article 297 (slander) <https://www.gesetze.li/Seite1.jsp?LGBI=1988037.xml&Searchstring=%A7+297&showLGBI=true> and articles 111, 112 and 113 StGB, <https://www.gesetze.li/Seite1.jsp?LGBIm=1988037> § 297 StGB is to be prosecuted ex officio, §§ 111, 112 and 113 StGB cannot be charged by the prosecutor but by the victim of these crimes (private suit).*
31. Please give information about criminal or administrative liability of journalists and the penalties provided by law. *See answer to art. 30.*
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? *The prosecutor does not supervise media in any way. There is no preventive Censorship. However the law (Mediengesetz) <https://www.gesetze.li/Seite1.jsp?LGBI=2005250.xml&Searchstring=Mediengesetz&showLGBI=true> allows for seizure and confiscation of publications (Art. 47 and 50).*
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? *No.*
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? *The chief prosecutor has the power to reply.*

### 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.*

Answers:

**A. Existing legal provisions and regulations**

1. Relationship between prosecutors and media is regulated by the following:
  - Law of the Republic of Lithuania on Provision of Information to the Public. This Law establishes the procedure for collecting, preparing, publishing and disseminating public information and the rights, duties and liabilities of public information producers, disseminators, participants therein, journalists and institutions governing their activities. This Law is applied to all state and municipal institutions and agencies, including the Prosecutor's Office.
  - Law of the Republic of Lithuania on the Right to Obtain Information from State and Municipal Institutions and Agencies. This Law ensures the right of persons to obtain information from state and municipal institutions and agencies, defines the procedure for the implementation of the right and regulates actions of state and municipal institutions and agencies in relation to the provision of information to persons.
  - Guidelines on the Publication of the Pre-trial Investigation Data approved by the Order of the Prosecutor General of the Republic of Lithuania No. I-48 of 10 February 2011. The aim of these Guidelines is to ensure the successful criminal prosecution, protection of the pre-trial investigation data and the public's right to information with a view of securing human rights and freedoms, the interests of the state and the public. The Guidelines on the Publication of the Pre-trial Investigation Data are mandatory to the prosecutors, heads of pre-trial investigation agencies or their subdivisions, pre-trial investigation officers, employees of the pre-trial investigation agencies and subdivisions (representatives) of the Prosecutor's Office or pre-trial investigation agencies, which (who) are in charge of public relations.
  - Description of the Procedure on the Provision of Information to Producers of Public Information approved by the Order of the Prosecutor General of the Republic of Lithuania No. I-49 of 10 February 2011. This Description establishes the form, means and procedure of provision of information from the Prosecutor General's Office and territorial Prosecutor's Offices to producers of public information, as well as the rights of the prosecutors, public servants or employees working on the basis of the employment contract, who provide the information.
2. Yes, the prosecutors of the Republic of Lithuania maintain relations with the representatives of the Lithuanian media. Provision of the information to journalists within the Prosecutor General's Office is coordinated by the Specialists of the Communication Division, while four Regional Prosecutor's Offices each has one Chief Specialist (for communication). The information, which has been approved by the prosecutor, is also frequently provided to the press by the Communication Specialists.
3. Information to the press may also be provided by the representatives of the agencies of pre-trial investigation (police, Special Investigations Service, Financial Crime Investigation Service, Customs, etc.), but only to the extent permitted by the prosecutor. The effective legal acts of the Republic of Lithuania do not grant the right for the lawyers or parties to the proceedings to provide information to the press.
4. Yes, the information about the progress of high-profile pre-trial investigations or closure of such criminal cases is provided by arranging joint press conferences of prosecutors and police officers (or heads or investigators of other pre-trial investigation agencies).
5. The prosecutors can communicate the information during any stage of the procedure, i.e. during the pre-trial investigation, during the court proceedings and after the judgment.
6. Yes, the judges are authorised to inform the press during any stage of the court proceedings.
7. Yes. The purpose of the activity of the Republic of Lithuania Seimas Ombudsmen is to protect a person's right to good public administration securing human rights and freedoms, to supervise fulfilment by state authorities of their duty to properly serve the people. Any person, including the representatives of the media, may apply to the Seimas Ombudsmen. The gross violations of the rules governing public information may be addressed to the self-regulatory bodies of the media. One of them is the Office of Inspector of Journalist Ethics, whose mission is to ensure respect for human rights and freedoms in the field of provision of information to the public, promote civil society, a critical approach to the processes of provision of information to the public, raise legal awareness of the society, perception of human rights, promote harmonious relationship between the producers and disseminators of public information and the public and to encourage the responsibility of the producers and disseminators of public information. Another self-regulatory body of the media is the Ethics Commission of Lithuanian Journalists and Publishers. It is a collegial self-regulatory institution of public information producers and disseminators, whose functions are provided for in the Republic of Lithuania Law on Provision of Information to the Public.

8. Article 177 of the Code of Criminal Procedure of the Republic of Lithuania provides that the data of the pre-trial investigation may not be made public. Such data may be made public before the hearing of the case in court only by the prosecutor's permission and only to the extent determined as permissible. It is prohibited to publish the data about juvenile suspects and victims. When necessary, a prosecutor or a pre-trial judge shall warn the parties to the proceedings or other persons who were witnesses to the procedural actions of the pre-trial proceedings that it is not permissible, without his authorisation, to make the information about the pre-trial investigation public. In such cases a person shall be warned and shall attest it by his signature about his liability under Article 247 of the Criminal Code of the Republic of Lithuania.

Paragraph 8 of the Guidelines on the Publication of the Pre-trial Investigation Data approved by the Order of the Prosecutor General of the Republic of Lithuania No. I-48 of 10 February 2011 specifies that the data about the person's private life may be published only with the consent of the person and if the publication of the information does not cause any harm to the person. In the absence of the person's consent, the data about the person's private life may be published only when the publication of such data may help disclose violations of the laws or criminal acts.

9. The Prosecutor General's Office of the Republic of Lithuania has the Division of Internal Investigations, which either independently or by the commission of the Prosecutor General (his Deputy) performs official inspections concerning the procedural activities and procedural decisions of the prosecutors, the acts discrediting the name of the prosecutor, violations of the law and draws up conclusions of the official inspections. Such procedure ensures legitimacy of the activities performed by the prosecutors and enforces the service-related liability of prosecutors. The Official Inspection Commission proposes imposition of a specific service-related penalty on the prosecutor (censure, reprimand, reduction of the qualification rank, transfer to a lower position or dismissal from service). The final decision is passed by the Prosecutor General.

The Republic of Lithuania Law on the Prosecutor's Office provides that the Prosecutor General may form the Prosecutors' Ethics Commission for the investigation and evaluation of violations of the Prosecutors' Ethics Code. The purpose of this Commission is to investigate possible violations by the prosecutors of laws, misconduct in office or actions discrediting the name of the prosecutor, also other infringements of the Ethics Code and to present its conclusions. The Commission is formed from seven members. The College of the Prosecutor's Office of the Republic of Lithuania nominates two member prosecutors of the Commission, the Prosecutor General nominates other two member prosecutors, one of whom must have been nominated by the Trade Union of Prosecutors, and the President of the Republic of Lithuania, the Chairman of the Seimas and the Prime Minister each nominate one person, who must be of good repute. The Commission may decide that the prosecutor has committed the violation of law, misconduct in office, actions discrediting the name of the prosecutor or any other infringement of the Ethics Code and may propose imposition on the prosecutor of a specific service-related penalty (censure, reprimand, reduction of the qualification rank, transfer to a lower position or dismissal from service). The final decision is passed by the Prosecutor General.

10. Disclosure of information about pre-trial investigations may result in the institution of a pre-trial investigation regarding disclosure of the data of the pre-trial investigation without authorisation. This may also result in the performance of official inspection and imposition of service-related penalties.
11. There are no provisions, which forbid publishing the name and surname of the prosecutor, when he/she is in charge of the case. In practice, it sometimes happens when the name and surname of the prosecutor who leads the pre-trial investigation, is not disclosed for the purposes of avoiding any direct contacts with the prosecutor by journalists and preventing disturbance of the prosecutor's duties while conducting a pre-trial investigation. In such cases the communication with the media is maintained by the Communication Specialists.

## **B. Organisation of Communication**

12. Information to journalists in the form of press releases, by telephone or e-mail may be provided by the Public Relations Specialists of the Prosecutor's Office or directly by the prosecutors. The prosecutors maintain direct communication with journalists by giving their comments during press conferences or after the court sessions in courts.
13. Yes, the prosecutors can arrange press conferences or make joint press releases in cases of international investigations. In such cases, the specific communication means with the media would be separately agreed in each particular case.
14. When arranging press conferences, the prosecutors of the Republic of Lithuania maintain communication through all means of media, but answers by telephone or e-mail may be given to some means of media.

15. The Republic of Lithuania does not have any legal acts allowing the prosecutors to give an advantage to single journalists. The Description of the Procedure on the Provision of Information to Producers of Public Information approved by the Order of the Prosecutor General of the Republic of Lithuania establishes the principle of equivalence, which means that on the initiative of the Prosecutor's Office, the information about its activities must be provided at the same time to all producers of public information.
16. The provision of information to journalists within the Prosecutor General's Office of the Republic of Lithuania is organised by the Specialists of the Communication Division, who are all public servants, but not prosecutors. The provision of information within four Regional Prosecutor's Offices is organised by Chief Specialists for Communication (one Chief Specialist for Communication in each Regional Prosecutor's Office), who are the employees working on the basis of the employment contract. In practice it sometimes happens when prosecutors directly communicate with the representatives of the media (when a journalist personally calls the specific prosecutor and asks for a comment or invites him/her to a particular TV/radio broadcast). The Description of the Procedure on the Provision of Information to Producers of Public Information approved by the Order of the Prosecutor General of the Republic of Lithuania No. I-49 of 10 February 2011 specifies those who may provide information to journalists. In any other cases the prosecutors must inform the Communication Specialists of the Prosecutor's Office about any contacts by the producers of public information in order to find out about the pre-trial investigations conducted and(or) led by the Prosecutor's Office, and then the provision of information to journalists is performed by the Communication Specialists.
17. On most occasions the journalists communicate with the prosecutors through the Specialists of the Communication Division of the Prosecutor General's Office or through Chief Specialists for Communication of four Regional Prosecutor's Offices. Journalists do not need any special authorisations.
18. The data about the obvious event of the criminal act, i.e. publicly available information about the place, time and other relevant circumstances of commission of the criminal act, are permitted to be disclosed. In each particular case the prosecutor individually decides which data of the pre-trial investigation may be disclosed. The prosecutor, who upholds public charge, may publish or comment on such data of the pre-trial investigation, which have been examined or announced during the public hearing of the case in court, also such data, which would not prejudice the success of the ongoing investigation and the hearing of the case in court.
19. There are Guidelines on the Publication of the Pre-trial Investigation Data approved by the Order of the Prosecutor General of the Republic of Lithuania No. I-48 of 10 February 2011, the aim whereof is to inform the public, to protect the victims' interests, to ensure the presumption of innocence and the procedural rights of individuals, to increase the transparency of the activities performed by the Prosecutor's Office and agencies of pre-trial investigation and the society's understanding of the peculiarities of criminal procedure. The Strategic Plan of the Prosecutor General's Office of the Republic of Lithuania for the years 2013-2015 also defines the criteria for the efficient development of communication in order to achieve the desired results. They are the availability factor of the information published by the Prosecutor's Office, the number of comments given by the prosecutors to the means of mass media, the number of initiatives not related with the direct activities of the prosecutors and the changes in the percentage of those who give a favourable assessment of the activities of the Prosecutor's Office on the basis of the market research data. Both documents are followed in practice.
20. Since 2007, the Communication Division of the Prosecutor General's Office performs the monitoring of public opinion survey results regarding the opinion of the Lithuanian population about the Lithuanian Prosecutor's Office, which are published in one of the largest national daily newspapers "Respublika". The monitoring of public opinion survey results regarding the population's confidence in the Prosecutor's Office, which are published in another largest daily newspaper "Lietuvos rytas", is also performed since 2010. The analysis of the monitoring of the information disseminated/published by the Prosecutor's Office was performed on the initiative of the Prosecutor's Office in 2011. It showed that the information about the Prosecutor's Office was provided by the Lithuanian media in averagely 79 publications per day.

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

21. Journalists who wish to get acquainted with the prosecutor's decision or an indictment in concrete criminal case, or prosecutor's decision on termination of pre-trial investigation, have to address the prosecutor supervising the relevant case. It cannot be stated unequivocally that media can access prosecutor's decisions, because in each case prosecutor makes his own independent decision on whether to give journalists the access to procedural documents or not. Website of Prosecutor's Office regularly publishes information about pre-trial investigations and the course thereof which are of great interest in the society. In addition, the public is always informed about the procedural decisions made in these investigations.
22. Every year in the Prosecutor General's Office and territorial prosecutor's offices events for pupils and students are organized. These events aim to enhance and promote the conception of legal state among young people, provide them with information about the profession of prosecutor, explain what assistance is provided to the victims of crimes and what is juvenile's liability for improper behaviour towards peers.
23. Yes, sometimes with the help of mass media prosecutors and officers of pre-trial investigation institutions address the society with request for help; for example, seeking to identify the person or people who have

suffered from particular criminal offence, a photograph or identikit of a wanted person is presented to the journalists working at television, internet websites or printed press, and people are encouraged to assist in particular cases.

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

24. No.
25. Yes, every year training programs for prosecutors also include training on how the prosecutors should interact with media.
26. No, but sometimes meetings with representatives of media are organized, during which these issues are discussed.
27. No.
28. There is Lithuanian Journalists' Union functioning in our country; however, neither the chairman nor members of the Union have the right to regulate media's interaction with prosecutor's office or any other state institution.

**E. Regulation of media activities**

29. In case there are alleged violations of norms regulating provision of information, the following self-regulating media institutions can be addressed:
  - Office of the Inspector of Journalist Ethics which seeks to ensure that human rights are freedoms are respected when providing information to the public, enhance public spirit, encourage critical attitude towards the processes of provision of information to the public, increase public awareness, increase perception of human rights and foster harmonious relations between producers and disseminators of information and the society, and encourage responsibility of producers and disseminators of information, or
  - Commission for Lithuanian Journalist and Publishers' Ethics which is a collegial self-regulating institution of producers and disseminators of public information and which carries out the functions as prescribed by the Republic of Lithuania Law on Provision of Information to the Public.

30. Criminal Code of the Republic of Lithuania provides for criminal liability for libelling, i.e. criminal offence when a person spreads false information about another person that could arouse contempt for this person or humiliate him or undermine trust in him, and/or libels a person accusing him of commission of a serious or grave crime or in the media or in a publication. The Criminal Code also provides for criminal liability for public or non-public insult. A person shall be held liable for this criminal offence only subject to a complaint filed by the victim or a statement by his authorised representative or at the prosecutor's request. In Lithuania criminal offences of this type, such as label and insult, are attributed to the category of private prosecution cases, and thus no pre-trial investigation is initiated and carried out in such cases; also, prosecutor does not participate in these cases (he neither organizes nor supervises the pre-trial investigation). Nevertheless, there are several exceptions thereto.

When criminal offences are of great significance to the public or damage has been made to a person who cannot defend his legal interests due to grounded reasons, a prosecutor, disregarding the fact whether there is a complaint filed by the victim or a statement by victim's authorised representative, is obliged to initiate criminal proceedings. Pre-trial investigation has to be initiated and carried out also when identity of the person who has allegedly committed abovementioned criminal offences (libel, insult) is not known. When that person is identified, a notification about suspicions is served to him, and pre-trial investigation in respect of him is terminated, whereas the victim is explained about his right to proceed with criminal proceedings under procedure of private prosecution, and apply directly to the court to submit his complaint about the alleged committed offences.

When deciding whether a criminal offence is of great significance to the public, it is necessary to consider the fact that victim's position or social status, or his nationality, or race, religion or any other social or relevant dependence to the group of people or individuals does not determine the public significance of a criminal offence, because all people are treated equally by law and the court. When deciding about the criminal offence's significance to the public, in each case it is necessary to assess how the society, the state and the legal system could be affected if criminal proceedings into that particular offence or other analogous offences were not initiated.

The object of the abovementioned criminal offences namely, libel and insult, covers the honour and dignity of a natural person, whereas violation of reputation of a legal entity is a tort and thus object of civil proceeding. A natural person can defend his honour, dignity and professional reputation by means of civil proceedings too. A person has a right to demand that any information that humiliates his honour and dignity and that is false was denied under court's order as well as material and non-material damage incurred due to the dissemination of such information was awarded. When false information is disseminated through mass media (press, television, radio etc.), a person about whom the information was spread has the right to write a denial and demand that the mass media concerned print or otherwise publish it to the public free of charge. Mass media has to print or otherwise publish that denial within two weeks of the receipt thereof; however, it can refuse printing or publishing that denial only if the content of denial text contradicts the good morality principles. If mass media refuses to print or otherwise publish the denial or fails to do that within the set period of time, the person shall have the right to apply to the court. The procedure and terms of denying information which is false and humiliates person's reputation shall be defined by the court.

31. The Criminal Code provides that journalists, the same as all other persons shall also be liable for libel, and they can be punished by a fine or restriction of liberty, or arrest or imprisonment for a term of two years.

Similarly, a person who insults another person can be punished by community works, a fine or restriction of liberty or arrest or imprisonment for a term of one year.

32. According to the laws of the Republic of Lithuania, censorship of public information is prohibited in the Republic of Lithuania. Any actions which aim at controlling the content of information in the mass media prior to publication thereof are prohibited, except for the cases specified in laws.

Legislative acts do not grant authorisation to the prosecutors to supervise mass media and apply any sanctions for violations. Having established violations of legislative acts and when defending the public interest, a prosecutor has a right to apply to competent institutions (court, Inspector of Journalist Ethics or Commission of Lithuanian Radio and Television) requesting that these institutions applied particular sanctions within the limits of competence of these institutions. On the basis of claimant's request (the request can be submitted by a prosecutor who defends the public interest in cases provided for in the laws) in the civil proceedings, the court can pass a ruling on imposing provisional preventive measures namely, on prohibiting mass media to disseminate information that violates person's interests.

33. No.

34. Yes.

35. No.

#### **F. Other Information**

36. In Lithuania there is a number of internet websites with one or two persons (not necessarily journalists) working there who by appealing to the society's right to know, collect information from law enforcement institutions (prosecutor's office) and publish that information with prejudice against that institution. Effective legislative acts do not provide for exceptions who can collect information, in order to secure society's right to know. Besides, effective legislative acts do not provide for possibility not to provide information (at least for some time) to the mass media which are recognized by self-regulating media institutions as having violated ethics or are declared to be non-ethic mass media.

#### **Monaco**

- 1. Les relations entre procureurs et médias sont-elles déterminées par la loi ou par d'autres normes écrites? Décrivez-les brièvement.**

*Oui, elles résultent de l'article 31 du code de procédure pénale.*

*Article 31 .- (Remplacé par la loi n° 1.394 du 9 octobre 2012 ) « Sauf dans les cas où la loi en dispose autrement et sans préjudice des droits de la défense, la procédure au cours de l'enquête et de l'instruction est secrète.*

*Toute personne qui concourt à cette procédure est tenue au secret professionnel selon les dispositions de l'article 308 du Code pénal.*

*Toutefois, afin d'éviter la propagation d'informations parcellaires ou inexactes ou pour mettre fin à un trouble à l'ordre public, le procureur général peut, d'office ou à la demande de la juridiction d'instruction ou des parties, rendre publics des éléments objectifs tirés de la procédure ne comportant aucune appréciation sur le bien-fondé des charges retenues contre les personnes mises en cause. »*

- 2. Les procureurs sont-ils autorisés à avoir des relations directes avec les médias? Sinon, qui communique à la presse les informations concernant les affaires judiciaires?**

*Oui et ils sont les seuls à pouvoir communiquer des informations.*

- 3. Qui d'autre est autorisé à fournir des informations à la presse dans le cadre de ces affaires (la police, les avocats, les parties, d'autres personnes) ?**

*Seuls les avocats ou les parties peuvent fournir d'autres informations, mais en aucun cas la police ou des tiers.*

- 4. Avez-vous déjà expérimenté une communication conjointe par plusieurs autorités publiques (par exemple, procureur et police) ?**

*Oui. Des points presse ont été organisés au cours desquels la police a pu communiquer sur les moyens mis en œuvre dans le cadre d'une enquête, mais en aucun cas sur le contenu de l'enquête elle-même, cette communication étant réservée au procureur général.*

- 5. A quel stade de la procédure les procureurs peuvent-ils communiquer l'information (veuillez distinguer l'enquête préliminaire, y compris l'accusation, la procédure judiciaire et la situation après le prononcé du jugement) ?**



A tout moment de la procédure.

**6. Les juges sont-ils autorisés à informer la presse? Si oui, à quel stade de la procédure?**

Non.

**7. Les relations entre procureurs et médias sont –elles contrôlées dans votre pays? Le cas échéant, par qui et de quelle manière?**

Non.

**8. Existe-t-il des règles spécifiques garantissant que les informations communiquées à la presse ne violent pas la vie privée, la dignité humaine et la présomption d'innocence? Quelles mesures peuvent être prises pour éviter le phénomène de «procès dans la presse»?**

L'article 31 du code de procédure pénale prévoit que la communication du procureur général ne concerne que « des éléments objectifs tirés de la procédure ne comportant aucune appréciation sur le bien fondé des charges retenues contre les personnes mises en cause ». Mais il est difficile d'éviter que les avocats ou les parties essaient d'intenter un procès médiatique. Ils peuvent néanmoins, en cas d'injures ou de diffamations ou d'atteinte à la vie privée et familiale, encourir des sanctions pénales et/ou engager leur responsabilité civile.

**9. Des sanctions existent-elles (disciplinaires ou autres) à l'encontre des procureurs qui enfreignent les règles régissant les relations avec les médias, si elles existent?**

Oui. Il existe un délit de violation du secret de l'instruction, de violation du secret professionnel (1 à 6 mois d'emprisonnement et 2950 à 9000 € d'amende) et des poursuites disciplinaires sont également possibles.

**10. De quelle manière le ministère public peut-il faire face aux risques en matière de sécurité posés par la divulgation d'informations concernant les procureurs et les affaires?**

Exceptionnellement, il lui est possible de demander une protection particulière à la police.

**11. Existe-t-il des dispositions visant à interdire la publication du nom d'un procureur (ou d'un juge) en charge d'une affaire? Existe-t-il des procédures qui, en pratique, visent à prévenir une telle publication?**

Non.

**A. Organisation de la communication**

**12. De quelle manière les procureurs communiquent-ils avec la presse (communiqués de presse, conférences de presse, téléphone ou e-mail, réseaux sociaux, etc.) ?**

Tous ces modes de communication sont utilisés.

**13. Les procureurs peuvent-ils tenir des conférences de presse ou faire d'autres communications en cas d'enquêtes internationales? Si oui, quelle est la procédure à appliquer?**

Oui. Le procureur général peut organiser un point presse en faisant convoquer les journalistes de la presse écrite des radios et des télévisions.

**14. La communication se fait-elle avec tous les médias ou avec certains d'entre eux (journaux, média audiovisuels, internet)?**

Oui avec tous les médias.

**15. Existe-t-il une réglementation interdisant le droit d'accorder une préférence à certains journalistes ou, au contraire, d'en exclure certains?**

Non.

**16. De quelle manière la communication est-elle organisée par le ministère public? Existe-t-il des porte-paroles? Si oui, quel est leur statut et sont-ils procureurs? Sinon, les procureurs**

**communiquent-ils eux-mêmes? Le cas échéant, doivent-ils obtenir une autorisation pour le faire? Les procureurs sont-ils contrôlés en la matière?**

Le procureur général communique lui-même sans aucune autorisation ni contrôle en la matière.

**17. Comment les médias communiquent-ils avec les procureurs (veuillez préciser, le cas échéant, s'il existe des représentants officiels, des journalistes spécialisés, si des autorisations sont nécessaires)?**

La communication s'organise autour de points presse, de courriers électroniques ou d'appels téléphoniques. Certains journalistes sont effectivement spécialisés en matière judiciaire.

**18. Quelles sont les informations qui peuvent être divulguées? (noms des parties, des témoins, des procureurs; certains faits qui sont dévoilés grâce à l'enquête, liés ou non à l'affaire)?**

Voir l'article 31 du code de procédure pénale cité à la réponse n° 1. Les informations divulguées seront aussi celles qui ne compromettent pas la réussite de l'enquête.

**19. Existe-t-il une politique officielle visant à encourager les procureurs à répondre aux besoins des médias, et, le cas échéant, de quelle manière cette politique est-elle mise en œuvre?**

Oui, le procureur général ayant déjà effectué des sessions de « média training ».

**20. Les communications de procureurs avec les médias sont-elles systématiquement contrôlées et évaluées à l'aide d'un mécanisme de suivi, de réactions du public, d'enquêtes de communication ou d'autres mesures?**

Non.

#### **B. L'approche pro-active du ministère public vis-à-vis des médias**

**21. Le ministère public a-t-il développé une approche pro-active vis-à-vis des médias (accès aux décisions du procureur, envoi d'une sélection d'affaires pertinentes à l'attention des médias)?**

Les listes des affaires évoquées aux audiences sont communiquées aux journalistes, lesquels s'intéressent beaucoup plus aux affaires pénales qu'aux affaires civiles. Sauf situation particulière, le ministère public ne prend pas l'initiative de contacter les médias. Il se borne à répondre à leurs sollicitations en étant plus réactif qu'actif.

**22. Le ministère public a-t-il développé des activités visant à expliquer au public et aux médias le travail des procureurs et à les informer des derniers développements (journée portes ouvertes, visites des tribunaux, publication de brochures, production de matériel éducatif en ligne)?**

Oui. Il existe des journées portes ouvertes, des visites des juridictions, des publications de brochures et notamment des discours du président, du premier président et du procureur général. Il existe également un site éducatif sur l'organisation judiciaire.

**23. La communication avec les médias peut-elle être utilisée comme un outil d'enquête (par exemple en diffusant des portrait-robots, voire même des images des scènes de crimes)? Si oui, veuillez spécifier.**

Oui. Des appels à témoins peuvent être diffusés par les médias de même qu'une alerte du public en cas d'enlèvement peut être mise en œuvre.

#### **C. La formation professionnelle de procureurs et des journalistes, leur éthique, leurs comportements et les moyens de communication**

**24. Au cours de leur formation initiale et continue, les procureurs sont-ils formés sur les normes de la Convention européenne des droits de l'homme en matière de la liberté d'expression et d'accès à l'information?**

Oui.

**25. Les procureurs sont-ils formés sur la manière de travailler avec les médias?**

Oui.

**26. Les journalistes sont-ils formés sur la manière de travailler avec le ministère public?**

Non.

**27. Existe-t-il des cours de formation, des conférences, des séminaires conjoints organisés pour les procureurs et les journalistes afin de les aider à mieux comprendre le rôle de chacun et de se soutenir mutuellement, dans le cadre d'un juste équilibre entre les droits mentionnés ci-dessus, la présomption d'innocence et le droit à la protection de la vie privée?**

Non.

**28. Existe-t-il des associations professionnelles rassemblant des médias et des journalistes qui sont compétentes pour réglementer les interactions avec le ministère public?**

Il existe en France une association des journalistes judiciaires dont certains membres ont déjà contacté le procureur général de Monaco.

**D. Réglementation des activités de médias**

**29. Existe-t-il une structure professionnelle interne (ou une autre institution) qui règlement les activités des médias ou qui traite des plaintes déposées contre les médias en raison d'une violation d'un droit individuel dans le cadre d'une procédure pénale?**

Non.

**30. Veuillez décrire brièvement la procédure pénale, administrative et/ou civile concernant la diffamation, la calomnie et/ou une violation équivalente concernant la réputation d'une personne. Quel est le rôle du ministère public en la matière ?**

Le ministère public peut engager des procédures pénales contre des journalistes en cas d'injures, de diffamation ou encore d'atteintes à la vie privée et familiale. Si la victime de ces faits engage un procès civil, le ministère public peut donner son avis sur la décision que la juridiction doit rendre dans ce cadre.

**31. En quoi consistent la responsabilité pénale ou administrative des journalistes et les sanctions prévues par loi?**

Les peines encourues en matière de provocation aux crimes et délits, d'injures ou de diffamation peuvent aller jusqu'à 5 ans d'emprisonnement et jusqu'à 90 000 € d'amende. Les dommages-intérêts accordés aux victimes correspondent à une évaluation de leur préjudice.

**32. Veuillez décrire les mesures de protection disponibles dans les procédures pénales et civiles (saisie ou l'interdiction de publications) et le rôle des procureurs. Dans votre pays, existe-t-il des mesures qui sont ou pourraient être considérées comme une forme de censure préventive? Les procureurs ont-ils un rôle dans le contrôle des activités de médias?**

Des saisies ou des interdictions de publication sont juridiquement possibles, mais sur seule décision d'un juge après avis du procureur général. Il n'existe pas de censure préventive et le procureur général ne contrôle pas les activités des médias.

**33. Si un procureur est critiqué par les médias pour des raisons liées à la procédure pénale, les associations de procureurs peuvent-ils intervenir?**

Non.

**34. Un procureur est-il tenu à un devoir de discrétion, même si une campagne médiatique a été lancée contre lui?**

Oui. Le procureur général est tenu au secret de l'instruction, au secret professionnel et à un strict devoir de réserve même s'il fait l'objet d'attaques relayées par les médias.

**35. Avez-vous des institutions, autres que les associations de procureurs, disposant d'un pouvoir de réponse en cas d'attaques inappropriées par les médias à l'encontre du ministère public ou des procureurs pris individuellement?**

*Il existe un syndicat de magistrats qui pourrait répondre à des attaques inappropriées à l'encontre du ministère public.*

**E. Autres informations**

**36. Avez-vous d'autres informations ou commentaires concernant la communication entre procureurs et médias dans votre pays? Si oui, veuillez les décrire**

*Il convient de souligner que le temps médiatique est totalement distinct du temps judiciaire et que cette différence est source de multiples difficultés. Les relations entre les procureurs et les médias ne s'avèrent satisfaisantes que dans l'hypothèse où il existe des liens personnels entre le procureur général et certains journalistes dignes de confiance.*

**Montenegro / Monténégro**

**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, layers 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.

### **Norway / Norvège**

#### **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.

There are no general provisions in law concerning the relationship between prosecutors and media. However, there are a few sections in the law concerning this relationship specifically. Notably, the Criminal Procedure Act section 125 establishes the right of protection of sources for the editor of a printed publication. Also, the General Civil Penal Code has two chapters concerning felonies (chapter 32) and misdemeanours (chapter 43) in printed matter.

The DPP has issued guidelines concerning communications to the public about criminal cases (DPP circular no 1/1981, 12 February 1981). These guidelines are important as the Criminal Procedure Act states that the duty of secrecy shall not prevent prosecutors from giving the public information concerning criminal cases in accordance with rules prescribed by the DPP (The Criminal Procedure Act section 61c).

Also the DPP has published a report (no1/2000) from a working group that was appointed to draft a media strategy for The higher prosecution service (not including the prosecution service in the police).

Finally, a working committee appointed by the DPP and the Norwegian Bar Association presented a report 25 October 2001 suggesting common guidelines for prosecutors and defence lawyers regarding statements to the media at the investigation stage.

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.

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)?

In Norway, the first level of the prosecution service is integrated in the police. The chief of police has the authority to provide information to the press himself or to delegate this task (DPP circular no 1/1981, IV,8 and 11).

Concerning lawyers, parties to a proceeding and ordinary citizens, there are no restrictions on the right to provide information to the press other than any duty of secrecy that may apply.



4. Do you have any experience of joint communication by several public authorities (e.g. prosecutor and police)?  
Yes. This is not very usual, but happens sometimes in large cases of major 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)?

There are no absolute rules governing when information can be given to the media. The right to provide information depends on the circumstances, and particularly on the type of information and the purpose of giving it.

As a general guideline, prosecutors must exercise due care in providing information about – and the content of – reported crime before the matters are assessed and further investigated (DPP circular no 1/1981, IV,5). The content of the recommendation on whether to prosecute or not from a subordinate level to a higher level in the prosecution service may at the earliest be communicated when a final decision is made (op.cit.,6). If possible, information about prosecutorial decisions shall not be communicated to the press before the accused is notified (op.cit.,7).

6. Are the judges authorised to inform the press? If this is the case, during which stage of the procedure?  
Yes. Judges can inform the press when a case is before the court.
7. Is there supervision on the relationships between prosecutors and media in your country? By whom and how?  
No, except for the general responsibility for the DPP to supervise all prosecutorial activity.
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”?  
First, all communication of information to the media has to be constrained within the limits set by the general duty of secrecy that applies as a starting point for prosecutors. The considerations underlying this duty must be given proper weight when giving information to the media (DPP circular no 1/1981, II i.f. and III). The right to privacy and human dignity must be taken into account when deciding whether to give information or not and these considerations should also influence how detailed the given information should be, and in what form it is presented. Concerning the presumption of innocence, prosecutors must exercise great caution in providing information to the media concerning accusations before the matters are assessed and – if necessary – further investigated (DPP circular no 1/1981, III if., see also the answer to question 5 above).  
In the common guidelines for prosecutors and defence lawyers (mentioned in the answer to question 1 above) guideline no 2 reads “Be aware that anyone is considered innocent until final conviction” and no 8 underlines the importance that the question of guilt is argued in court, not in the media prior to the court proceedings.
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?  
Breach of the duty of secrecy is a criminal offence, and the legislation also have penal provisions concerning offences in the public service (The General Civil Penal Code section 121 and chapter 11 and 33). Apart from that, the general rules concerning misconduct of duties are applicable, including the possibility to give warnings and disciplinary sanctions. However, it is not likely that a prosecutor would be sanctioned for not providing information to the media.
10. How do the prosecution services deal with the security risks caused by disclosure of information concerning the prosecutors and the cases?  
There are no general formalised routines specifically concerning security risks caused by such disclosure. What measures to take will be determined by the perceived security risk in each particular case.
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 all these manners, depending of the case and the prosecutor.
13. Can press conferences or other releases be made by prosecutors in cases of international investigations? If yes, which procedure do you follow?  
Yes. There is no formalized procedure.
14. Is there communication with all the media or with some (newspapers, audiovisual media, internet)?

The regulations from the DPP states a principle of equality for all media; no part of the media or any particular press agency must be given preferential treatment (DPP circular no 1/1981,IV,2). In practice the prosecution service has most contact with the printed media.

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

See the answer to the previous question.

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?

In general, the prosecutor in charge of a criminal case is also handling the communication. (A couple of offices have an information officer who is not a prosecutor. This person gives advice, but does not serve as a spokesperson. It is by far most common to not have such an officer.)

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

In general, the individual journalists contact the prosecution service.

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)?

As already mentioned, there are no absolute regulations on what sort of information can be given. Names of parties and witnesses are normally not disclosed.

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

Yes. The media's information needs are acknowledged, and information should be given when appropriate (DPP circular no 1/1981,II).

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)?

To some extent.

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)?

To some extent.

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.

Yes. Under due consideration of the right to privacy, information – also e.g. pictures of a perpetrator or a crime – can be communicated to the media in order to prevent danger, solve a crime or promote the general law-abiding (DPP circular no 1/1981,IV,4).

### **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, although the continuous training in this respect is not extensive.

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

Prosecutors are periodically offered such training.

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

Not to my knowledge.

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?

The Norwegian Press Association has adopted its own ethical guidelines ("beware poster") partly relevant to the interaction with the prosecution service. The guidelines are enforced by the Norwegian Press Complaints Commission. Critique or "judgements" from this body has no legal effects.

### **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?  
See the answer to the previous question.
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?  
According to the General Civil Penal Code chapter 23, defamation (libel/slander) is a criminal offence. As a general rule, defamation is only subject to public prosecution when the aggrieved person so requests and it is also required in the public interest. In practice public prosecution does not take place anymore. There is in principle a right to private prosecution in defamation cases, but such cases are rare. In 2005 a new penal code – not yet in force – was adopted. In this code defamation is no longer a crime.  
Civil lawsuits for compensation in cases of defamation are possible, and will continue to be possible when the 2005 penal code enter into force.
31. Please give information about criminal or administrative liability of journalists and the penalties provided by law.  
In principle the penalty provisions apply to anyone, also journalists. The impact of ECHR Article 10, however, takes on importance in cases concerning the media. Norwegian law must be interpreted in accordance with this provision.  
Formally, the maximum penalty for the most severe cases of defamation is imprisonment for a term not exceeding 3 years. This does not reflect the level of punishment if anyone were to be convicted of such a crime today. Imprisonment would be highly unlikely.
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 have no role in administering measures that might be considered as a form of preventive censorship, and they have no role in supervising the media as such. If a crime were to be committed by any (representative of the) media, it is the responsibility of the prosecution service to deal with it.  
Objects that are deemed to be significant as evidence may be seized. A publication could in principle be such an object (but presumably it would normally be sufficient to seize one copy of the publication in question).  
Objects – including publications – that have been produced by or been the subject of a criminal act may be confiscated as part of a court sentence if this is considered necessary for the purpose of the provision that prescribes the penalty for the act.
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?  
No. Such critic will normally not attract the attention of the prosecutorial associations.
34. Is the prosecutor bound by a duty of discretion even if a media campaign has been started against him or her?  
Prosecutors must of course act in accordance with the law, and with due consideration of the duty of secrecy. However, a legitimate reason for communicating information could be to correct false information that has been published, particularly when the false information is likely to harm the reputation of any person or institution (DPP circular no 1/1981,IV,4b).
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?  
The DPP or any prosecutor could reply, but has no particular powers regarding this situation. Also the DPP, or any prosecutor, could in principle file a complaint to the body mentioned in the answer to question 28. This happens very rarely, if ever.

## **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.

## **Poland / Pologne**

### **Introduction**

La Recommandation Rec(2003)13 du Comité des Ministres du Conseil de l'Europe sur la diffusion d'informations par les médias en relation avec les procédures pénales a fait la référence aux points suivants :

l'engagement des Etats membres envers le droit fondamental à la liberté d'expression et d'information tel qu'il est garanti par l'article 10 de la Convention européenne de sauvegarde des Droits de l'Homme et des Libertés fondamentales;

les médias ont le droit d'informer le public en égard au droit de ce dernier à recevoir des informations, y compris des informations sur des questions d'intérêt public, en application de l'article 10 de la Convention, et qu'ils ont le devoir professionnel de le faire;

l'importance des reportages réalisés par les médias sur les procédures pénales pour informer le public, rendre visible la fonction dissuasive du droit pénal et permettre au public d'exercer un droit de regard sur le fonctionnement du système judiciaire pénal ;

les droits à la présomption d'innocence, à un procès équitable et au respect de la vie privée et familiale, garantis par les articles 6 et 8 de la Convention, constituent des exigences fondamentales qui doivent être respectées dans toute société démocratique ;

les intérêts éventuellement conflictuels protégés par les articles 6, 8 et 10 de la Convention et la nécessité d'assurer un équilibre entre ces droits au regard des circonstances de chaque cas individuel, en tenant dûment compte du rôle de contrôle de la Cour européenne des Droits de l'Homme pour garantir le respect des engagements contractés au titre de la Convention.

## Questions

### Dispositions actuelles légales et réglementaires

Les relations entre procureurs et médias sont-elles déterminées par la loi ou par d'autres normes écrites? Décrivez-les brièvement.

Les relations entre procureurs et médias sont déterminées par les dispositions législatives suivantes :

Loi du 2 avril 1997 – Constitution de la République de Pologne

Plus précisément : l'article 30 selon lequel « La dignité inhérente et inaliénable de l'homme constitue la source des libertés et des droits de l'homme et du citoyen. Elle est inviolable et son respect et sa protection sont le devoir des pouvoirs publics » ; l'article 42 paragraphe 3 introduit le principe de la présomption d'innocence « Toute personne est présumée innocente jusqu'à ce que sa culpabilité ait été établie par un jugement ayant force de chose jugée » ; l'article 47 dispose « Chacun a droit à la protection juridique de la vie privée et familiale, de sa dignité et de sa réputation, et de décider de sa vie personnelle » ; l'article 61 introduit le principe de l'accès du public à l'information.

La doctrine et la jurisprudence font valoir que c'est toute information à laquelle l'accès ne se trouve pas limitée par la législation en raison du respect des droits et des libertés d'autrui et en raison d'autres valeurs importantes que la Constitution énonce fait l'objet de la liberté d'information.

Loi du 6 juin 1997 – Code de procédure pénale

Le droit d'accès au dossier de la procédure préliminaire en cours pour les médias est régi par les dispositions de l'article 156 paragraphe 1 la deuxième phrase et par celles de l'article 156 paragraphe 5 la deuxième phrase du Code de procédure pénale. Il en résulte que l'accès au dossier de la procédure préliminaire en cours n'est accordé que dans des cas exceptionnels et au consentement du procureur chargé de la procédure préliminaire. Ces dispositions ont un caractère de *lex specialis* par rapport à d'autres dispositions régissant l'accès à l'information publique.

Lorsque le procureur permet à un journaliste d'accéder au dossier, il prendra en considération l'intérêt social – l'efficacité des poursuites pénales (communément appelée intérêt de l'enquête). En invoquant le « secret de la procédure préliminaire », le procureur peut refuser l'accès aux documents contenant de l'information publique. Le journaliste qui demande l'accès au dossier est tenu de déposer une demande écrite et présenter une carte de presse valide.

Loi du 26 janvier 1984 sur la presse

Article 4 paragraphe 1 de la loi sur la presse dispose que des entrepreneurs et des opérateurs ne faisant pas partie au secteur des finances publiques et réalisant des activités à un but non-lucratif (et cela signifie que le ministère public y fait partie) sont tenus d'informer la presse de leurs activités, sauf que, en vertu des dispositions distinctes, ces informations soient confidentielles ou portent atteinte à la vie privée.

Le journaliste est tenu de respecter « la vérité objective », à savoir, il est tenu de viser la vérité matérielle où la description correspond à la réalité avec la diligence et l'honnêteté requises. L'article 12 paragraphe 1 point 1 de la loi sur la presse introduit ces deux normes communes de presse.

Un journaliste qui se conforme aux règles de l'article 12 paragraphe 1 point 1 de la loi sur la presse, même lorsqu'il rend public de fausses informations et ainsi il porte atteinte aux droits de la personnalité d'autrui pourrait se référer au droit à l'erreur dite impérieuse et échapperait à la responsabilité légale.

Lorsqu'un journaliste respecte les normes de presse prévues par la loi, en cas d'atteinte consommée, la personne lésée ne pourra pas demander une indemnisation (article 448 du Code civil) ou des excuses (article 24 deuxième phrase du Code civil). Cependant, les normes de presse doivent tenir compte à la protection des droits de personnalité. Pour cette raison, en cas d'atteinte aux droits de la personnalité, la personne lésée pourrait demander un rectificatif ou une réponse.

#### Loi du 6 septembre 2001 sur l'accès à l'information publique

La notion de l'information publique est largement interprétée à l'aune de la Loi du 6 septembre 2001 sur l'accès à l'information publique. Conformément à l'interprétation adoptée, des informations sur l'enquête pénale relèvent de l'information publique, non seulement dans le cas où l'enquête vise aux questions d'intérêt général, mais également dans l'enquête menée contre un particulier. Le droit aux informations permet non seulement obtenir des informations sur une enquête, mais également permet d'accéder au dossier de l'affaire.

Conformément aux dispositions de la loi précitée, le ministère public est un des organes étant tenu de fournir des informations. Des tribunaux et la police sont également des organes tenus de fournir des informations, ce qui signifie qu'à tout stade de la procédure, le dossier pénal est susceptible d'être requis en vertu de la loi sur l'accès à l'information publique.

La loi sur l'accès à l'information publique, tant dans la littérature juridique qu'à la jurisprudence est considérée comme ayant un caractère de *lex generalis*, cela signifie que ces dispositions sont applicables dans le cadre non réglementé par d'autres dispositions.

Pour estimer, si une information demandée relève du champ d'application de la loi sur l'accès à l'information publique, en respectant le principe de l'accès, il convient d'interpréter les dispositions en faveur de l'exerçant le droit à l'information concernée. Par conséquent, l'accès au dossier de la procédure préliminaire et judiciaire en cours de la procédure pénale est régi par l'article 156 du Code de procédure pénale (ci-après : CCP). Par contre, les dispositions de la loi sur l'accès à l'information publique sont applicables dès que le jugement est devenu définitif (l'annulation du jugement).

Lorsque le procureur permet l'accès au dossier, il n'est pas tenu d'expliquer son contenu, et d'autant plus, les raisons pour lesquelles une telle décision de fond a été prise.

Le fait de considérer le dossier de l'enquête préliminaire comme source de l'information publique ne signifie pas automatiquement que ce dossier est accessible sans aucune restriction après que la procédure judiciaire aboutit à une décision définitive. Ces restrictions résultent des dispositions de l'article 5 paragraphes 1 et 2 de la loi et visent à la protection de la vie privée, à la protection du secret des affaires et à la protection d'autres secrets légalement protégés.

En cas de conflit de la loi sur la protection des données à caractère personnel avec les dispositions de la loi sur l'accès à l'information publique, la protection des données est prioritaire. La décision de refus d'accès peut faire l'objet d'un recours devant la cour administrative.

#### Loi du 29 août 1997 relative à la protection des données à caractère personnel

La loi prévoit l'interdiction du traitement des données à caractère personnel sous réserve des modalités abrogeant cette interdiction.

Conformément à l'article 3a paragraphe 2 de la loi relative à la protection des données à caractère personnel n'est pas applicable aux activités de presse au sens de la loi du 26 janvier 1984 sur la presse. La loi relative à la protection des données à caractère personnel n'est pas donc applicable à la collecte, élaboration, mise en œuvre et publication des documents dans la presse. Les activités de journalistes sont régies par la loi sur la presse.

Au vu de ce qui précède, il y a lieu de souligner que la légalité des révélations de la presse sur une personne concrète est susceptible d'être examinée en vertu des dispositions de la loi sur la presse qui déterminent, entre autres, les droits et devoirs des journalistes et régissent les questions de la responsabilité légale pour violation du droit suite à la publication d'un article de presse.

Les dispositions du titre 7 de la loi sur la presse introduisent effectivement la responsabilité légale pour violation du droit suite à la publication d'un article de presse. L'article 37 de cette loi prévoit que « les principes généraux (à savoir, ceux résultant du droit civil, dont les dispositions sur la protection des droits de la personnalité – articles 23 et 24 de la Loi du 23 avril 1964 – Code civil) sont applicables à la responsabilité légale pour violation du droit suite à la publication, sauf disposition contraire de cette loi ». L'auteur de l'article, le rédacteur en chef ou un tiers ayant fait publier un article de presse sont civilement responsables de la violation du droit par cette publication ; cela n'exclue pas la responsabilité de l'éditeur (l'article 38 paragraphe 1 première phrase de la loi sur la presse). Toute personne considérant l'atteinte à la protection de ses droits de la personnalité peut engager une action devant le tribunal conformément à la procédure prévue par la Loi du 17 novembre 1964 – Code de procédure civile. Par contre, le Contrôleur général de la protection des données n'est pas compétent dans ce domaine.

Les procureurs sont-ils autorisés à avoir des relations directes avec les médias ? Sinon, qui communique à la presse les informations concernant les affaires judiciaires ?

Rien ne s'oppose à ce que les procureurs chargés de l'enquête préliminaire aient des relations directes avec les médias. Ils peuvent rédiger des messages d'information et fournir des informations aux journalistes, ainsi que organiser ou participer à des conférences de presse. Néanmoins, par principe, ce sont les chefs des unités de parquets qui sont responsables de la politique de communication et d'information. Ces derniers peuvent exercer cette fonction personnellement ou par l'intermédiaire de porte-parole. Le bureau du Procureur général, des parquets d'appel et des parquets régionaux ont leurs porte-paroles et c'est lui qui a le plus souvent des relations avec les médias. Par contre, au niveau des parquets de district, ce sont leurs chefs qui sont, en premier lieu, autorisés à contacter avec les médias. Bien que les procureurs soient indépendants à l'exercice de leurs fonctions, ils sont, quand même, tenus, en respectant le principe des relations hiérarchiques au sein du parquet, d'informer leurs chefs de l'intention de communiquer des informations à la presse. Ces questions sont régies par la loi sur les parquets du 20 juin 1985 et par son acte exécutif - le règlement du Ministre de la justice du 24 mars 2010 « Règlement interne d'unités organisationnelles du ministère public » (ci-après, le règlement).

Qui d'autre est autorisé à fournir des informations à la presse dans le cadre de ces affaires (la police, les avocats, les parties, d'autres personnes) ?

Ce sont seulement les procureurs qui sont autorisés à fournir des informations dans le cadre des affaires judiciaires, même si l'enquête était subdéléguée à la police ou bien à un autre service autorisé légalement à mener les procédures et le parquet contrôle seulement cette enquête.

Des porte-paroles de police sont autorisés à fournir des informations sur les mesures prises par ces services. Ils sont autorisés, notamment, à présenter des tâches réalisées par la police (description générale des tâches). Ces informations ne contiennent pas d'éléments qui auraient pu permettre de formuler des jugements de culpabilité des participants d'événement ou bien d'identifier des personnes impliquées dans l'affaire. La loi du 6 avril 1990 sur la police et son acte exécutif « Ordonnance du Directeur général de la police du 12 novembre 2007 sur les formes et méthodes des activités de communication et d'information de la police constituent la base juridique de ces activités.

Rein ne s'oppose à ce que l'avocat considérant que pour protéger les intérêts du client dont il représente il serait utile fournir des informations à la presse sous forme d'une déclaration ou de commentaire, le fasse. Néanmoins, dans ses déclarations verbales ou écrites, l'avocat ne peut pas outrepasser la limite de la liberté d'expression. Il doit, en outre, tenir compte du secret d'enquête et de la protection des données à caractère personnel.

Les parties peuvent, elles aussi, transmettre à la presse leurs commentaires et opinions, tout en tenant compte de limite de la liberté d'expression, du secret d'enquête et de la protection des données à caractère personnel.

Avez-vous déjà expérimenté une communication conjointe par plusieurs autorités publiques (par exemple, procureur et police) ?

Oui. Une communication conjointe par ministère public et police ou d'autres services est pratiquée, de même avec la participation d'experts de différentes matières en fonction de besoin. Des communiqués de presse sont aussi préparés conjointement.

Cependant, cette forme de communication avec les médias est réalisée dans des cas exceptionnels. Cela arrive en cas d'incidents graves, comme par exemple : catastrophe dans la circulation terrestre, fluviale ou aérienne ou bien effondrement, ou encore attentat à la bombe ou infractions graves contre les échanges, etc. Cette forme de communication est pratiquée également des cas de moindre importance mais étant une question d'un grand intérêt général.

Il ressort du dossier examiné que la pratique dans ce cadre n'est pas uniforme. Dans de certains parquets d'appel la pratique de cette forme de communication est constante, dans d'autres, cela est pratiqué très rarement et finalement dans de certains parquets d'appel cette forme de communication avec les médias n'était plus pratiquée au cours de dernières années.

A quel stade de la procédure les procureurs peuvent-ils communiquer l'information (veuillez distinguer l'enquête préliminaire, y compris l'accusation, la procédure judiciaire et la situation après le prononcé du jugement) ?

Le procureur chargé de l'enquête préliminaire est autorisé à communiquer les informations à la presse sur le stade de cette procédure. Outre, le procureur peut décider d'un accès au dossier, non seulement dans le cas où il est personnellement chargé de l'enquête, mais aussi dans les cas où l'exécution des diligences est subdéléguée en tout ou en partie à la police ou à une autorité habilitée (paragraphe 159 du règlement). Outre, le procureur décide d'un accès au dossier de la procédure préliminaire, aussi lorsque le dossier est transmis au tribunal

exerçant les diligences au cours de l'enquête préliminaire, ce que le procureur devrait mentionner lors de la transmission du dossier (paragraphe 160 du règlement).

Selon les dispositions de la loi sur l'accès à l'information publique, c'est le procureur qui décide également d'un accès des journalistes au dossier après le classement sans suite de l'enquête préliminaire (plus d'informations sur cette question, cf. point 1).

Au stade de la procédure judiciaire, le procureur ne décide pas d'accès aux éléments d'informations contenus au dossier. Bien qu'au stade de la procédure judiciaire ou après sa clôture, il n'y ait pas interdit aux procureurs de donner des interviews aux médias, en pratique et eu égard au respect du pouvoir judiciaire, les procureurs se prononcent assez rarement.

Les juges sont-ils autorisés à informer la presse ? Si oui, à quel stade de la procédure ?

Les juges sont autorisés à informer la presse au stade de la procédure judiciaire selon les dispositions du Code de procédure pénale. Après le jugement, l'accès au dossier de la procédure est régi par les dispositions de la loi sur l'accès à l'information publique.

Les relations entre procureurs et médias sont –elles contrôlées dans votre pays ? Le cas échéant, par qui et de quelle manière ?

Les relations entre procureurs et médias ne sont pas contrôlées.

Existe-t-il des règles spécifiques garantissant que les informations communiquées à la presse ne violent pas la vie privée, la dignité humaine et la présomption d'innocence ? Quelles mesures peuvent être prises pour éviter le phénomène de «procès dans la presse» ?

Il est interdit à tous les journalistes de faire un «procès dans la presse» au cours de l'enquête préliminaire et au cours de la procédure de première instance (article 13 paragraphe 1 de la loi sur la presse), ainsi que de divulguer des données à caractère personnel et de l'image des personnes soupçonnées, accusées ou lésées ou bien celui des témoins dans le cadre prévu par l'article 13 paragraphes 2 et 3 de la loi sur la presse.

L'article 13 paragraphe 1 de la loi sur la presse prévoit qu'il est interdit de se prononcer sur une décision dans la procédure judiciaire avant qu'un jugement en première instance ne soit rendu. Ce n'est pas un jugement rendu en deuxième instance, mais c'est celui rendu en première instance, alors celui qui n'est pas définitif, qui détermine la limite. Après toute opinion, tous commentaires et toutes propositions sont admissibles. C'est seulement un jugement de presse prématuré qui est inadmissible.

Conformément aux dispositions de l'article 13 paragraphe 2 et 3 de la loi sur la presse, il est interdit de publier dans la presse des données à caractère personnel et de l'image des personnes à l'encontre desquelles une procédure préliminaire ou judiciaire est ouverte, ainsi que des données à caractère personnel et de l'image des témoins et des personnes lésées, sauf que ces personnes y consentent. Pour un motif d'intérêt public important, le juge ou le procureur peut autoriser la divulgation des données à caractère personnel et l'image des personnes soupçonnées, accusées ou celui d'un défendeur dans la procédure civile.

Malgré ces dispositions, « les procès dans la presse » sont malheureusement fréquents. Il paraît que les médias rivalisent entre eux : qui dira plus et qui « tranchera » plus vite.

On peut arriver à une constatation que l'article 13 de la loi sur la presse a un caractère d'un classique *lex imperfecta* à l'aune du droit pénal.

Des sanctions existent-elles (disciplinaires ou autres) à l'encontre des procureurs qui enfreignent les règles régissant les relations avec les médias, si elles existent ?

En vertu des dispositions de l'article 66 de la loi sur les parquets, le procureur engage sa responsabilité disciplinaire pour fautes commises, dont la violation évidente et flagrante des dispositions de la loi et le manquement à la dignité du procureur. Parmi ces fautes, on peut aussi mentionner une atteinte à la liberté d'expression par le procureur.

Les procureurs peuvent être reconnus responsables pour mise à disposition aux médias des données à caractère personnel recueillies au dossier (article 51 de la loi sur la protection des données à caractère personnel) ; pour non divulgation de l'information publique, contrairement à la loi (article 23 de la loi sur l'accès à l'information publique) ou pour fuite d'informations à savoir pour violation d'un secret de la procédure préliminaire (article 241 du CP).

De quelle manière le ministère public peut-il faire face aux risques en matière de sécurité posés par la divulgation d'informations concernant les procureurs et les affaires ?

Le ministère public ne peut pas interdire la publication des articles de presse sans décision du tribunal. Le ministère public a droit aux mêmes recours juridiques que d'autres autorités.

Existe-t-il des dispositions visant à interdire la publication du nom d'un procureur (ou d'un juge) en charge d'une affaire ? Existe-t-il des procédures qui, en pratique, visent à prévenir une telle publication ?

Il n'existe pas de dispositions visant à interdire la publication du nom d'un procureur ou d'un juge en charge d'une affaire. Il n'existe pas non plus de procédures spécifiques.

En pratique, des noms de procureurs ou ceux de juges ne sont pas trop souvent cités dans des articles de presse. Ce sont plutôt des tribunaux ou des parquets compétant qui y sont mentionnés.

#### Organisation de la communication

De quelle manière les procureurs communiquent-ils avec la presse (communiqués de presse, conférences de presse, téléphone ou e-mail, réseaux sociaux, etc.) ?

Les procureurs communiquent avec la presse par communiqués de presse et conférences de presse. Des informations sont aussi fournies par téléphone ou par voie électronique. Les procureurs publient des communiqués sur leurs sites internet. S'il s'agit de la communication par réseaux sociaux, c'est seulement le porte-parole du Bureau du Procureur général qui est autorisé à transmettre des informations par réseau social-Twitter.

Les procureurs peuvent-ils tenir des conférences de presse ou faire d'autres communications en cas d'enquêtes internationales ? Si oui, quelle est la procédure à appliquer ?

Nous ne sommes pas très expérimentés dans des enquêtes internationales menées dans le cadre d'équipes communes d'enquête. Pour l'instant, les équipes communes d'enquête n'ont été créées que deux fois. Dans les deux cas, les accords créant les équipes communes d'enquête n'ont pas prévu de modes de communication avec les médias. Les parties se sont réservé la possibilité de profiter de leurs propres procédures dans les contacts avec les médias. En pratique, dans les deux cas, les parties n'ont préparé que de courts communiqués de presse qui informaient sur la création de ces équipes d'enquête. Il serait plus judicieux d'admettre que plus amples informations seraient fournies en ce qui concerne la partie locale de la procédure, sauf que de décisions différentes soient prises au sein de l'équipe.

La communication se fait-elle avec tous les médias ou avec certains d'entre eux (journaux, média audiovisuels, internet) ?

La communication du ministère public se fait avec tous les médias. Il n'existe pas de dispositions qui auraient limitées ou favorisées certains d'entre eux.

En pratique, ce sont le plus souvent des quotidiens à tirage national et des journaux régionaux tenant des rubriques des faits divers. Il paraît évident que des journaux de type tabloïde subissent une critique puisque pour ce type de journaux la sensation médiatique est plus importante que la vérité de l'information.

Existe-t-il une réglementation interdisant le droit d'accorder une préférence à certains journalistes ou, au contraire, d'en exclure certains ?

Il n'existe pas de telles dispositions.

De quelle manière la communication est-elle organisée par le ministère public ? Existe-t-il des porte-paroles ? Si oui, quel est leur statut et sont-ils procureurs ? Sinon, les procureurs communiquent-ils eux-mêmes ? Le cas échéant, doivent-ils obtenir une autorisation pour le faire ? Les procureurs sont-ils contrôlés en la matière ?

Comme il était indiqué ci-dessus (point 12), les procureurs profitent pleinement de possibilité de communiquer les médias.

Au sein des parquets d'appel et des parquets régionaux, ainsi qu'au Bureau du Procureur général, il existe des unités organisationnelles distinctes ayant parmi d'autres missions, celle visant aux relations avec les médias. Des porte-paroles exercent leurs activités au sein de ces unités. Ils n'ont pas de statut particulier et les relations avec les médias constituent une de leurs missions principales. Leurs missions sont déterminées par les chefs des unités. Les missions consistent notamment à informer le chef de l'unité de publications concernant les problèmes importants liés aux activités du ministère public, à répliquer aux critiques de la presse, à préparer des rectificatifs et des analyses des articles de presse, à préparer des informations et communiqués présentant des événements importants des activités du ministère public, à préparer des interventions aux médias, à participer à des conférences de presse, à avoir des relations avec les médias et avec d'autres institutions visant à créer un bon image du ministère public.

Comment les médias communiquent-ils avec les procureurs (veuillez préciser, le cas échéant, s'il existe des représentants officiels, des journalistes spécialisés, si des autorisations sont nécessaires) ?



Les dispositions régissant les relations entre le ministère public et les médias ne demandent pas à ce que des journalistes ayant des relations avec des porte-paroles, avec des chefs ou avec ceux qui demandent des procureurs chargés des enquêtes des interviews ou bien un accès au dossier ou encore une participation à une conférence de presse aient des compétences particulières. Un journaliste est tenu tout simplement de présenter une carte de presse valide. En cas de demande d'accès au dossier, un journaliste est tenu de déposer une demande écrite. Conformément au paragraphe 158 du règlement, un consentement du procureur à un accès d'un journaliste au dossier ou bien un refus d'autoriser la mise à disposition du dossier sont délivrés sous forme d'une ordonnance qui est toujours accompagnée de ses motifs.

Il est clair que des journalistes se spécialisent dans de différents domaines au sein de rédactions généralistes. Il y a des journalistes spécialisés dans le domaine juridique.

Quelles sont les informations qui peuvent être divulguées ? (noms des parties, des témoins, des procureurs ; certains faits qui sont dévoilés grâce à l'enquête, liés ou non à l'affaire) ?

La loi sur la presse dans son article 13 introduit les limites suivantes :

il est interdit de se prononcer sur une décision dans la procédure judiciaire avant qu'un jugement en première instance ne soit rendu.

il est interdit de publier dans la presse des données à caractère personnel et de l'image des personnes à l'encontre desquelles la procédure préliminaire ou judiciaire est ouverte, ainsi que des données à caractère personnel et de l'image des témoins et des personnes lésées, sauf que ces personnes y consentent. Pour un motif d'intérêt public important, le juge ou le procureur peut autoriser la divulgation des données à caractère personnel et de l'image des personnes soupçonnées, accusées contre lesquelles la procédure préliminaire ou judiciaire est ouverte.

Existe-t-il une politique officielle visant à encourager les procureurs à répondre aux besoins des médias, et, le cas échéant, de quelle manière cette politique est-elle mise en œuvre ?

Actuellement, aucunes actions particulières ne sont réalisées pour mettre en œuvre cette politique. Une question des relations entre procureur et médias sont pris en compte au programme de formation initiale des procureurs ainsi qu'à celui de formation continue de ces magistrats.

Les communications de procureurs avec les médias sont-elles systématiquement contrôlées et évaluées à l'aide d'un mécanisme de suivi, de réactions du public, d'enquêtes de communication ou d'autres mesures?

De telles mesures ne sont pas prises.

L'approche pro-active du ministère public vis-à-vis des médias

Le ministère public a-t-il développé une approche pro-active vis-à-vis des médias (accès aux décisions du procureur, envoi d'une sélection d'affaires pertinentes à l'attention des médias)?

Des porte-paroles prennent des mesures visant à créer l'image du ministère public, entre autres, par médias. Le ministère public commence à prendre part au dialogue à des fourmes de discussions en ligne. Le porte-parole du Bureau du Procureur général est autorisé à transmettre les informations par réseau social- Twitter. Des porte-paroles préparent des communiqués de presse, notamment, dans des affaires ayant un écho particulier dans la société, ainsi que d'autres informations à diffuser par médias.

Le taux de participation s'il s'agit des relations avec les médias et une politique d'information plus vaste varie d'une unité à l'autre. Certains parquets ont des relations très étroites avec les médias et d'autres restreignent ces contacts au minimum nécessaire.

Le ministère public a-t-il développé des activités visant à expliquer au public et aux médias le travail des procureurs et à les informer des derniers développements (journée portes ouvertes, visites des tribunaux, publication de brochures, production de matériel éducatif en ligne) ?

Oui, le ministère public développe ces activités. Le site du Bureau du procureur général publie des informations pour des victimes de l'infraction, des listes des centres de l'information pour l'aide aux victimes, des bases de données des fonctionnaires chargés de la prévention de la violence au sein de famille et notamment des bases de données des personnes chargées du contrôle et de la coordination des travaux de services responsables de la prévention de la violence au sein de famille aux bureaux de la voïvodie, aux tribunaux régionales, aux directions régionales de la police, aux parquets d'appel. Le bureau du procureur général vient de préparer une publication d'éducation « Procureur pour les victimes de l'infraction ». Un matériel d'information plus large est publié sur le site du ministère de la Justice et il n'est pas nécessaire de le doubler. Un large informateur (de 174 pages) pour des victimes de l'infraction rédigé en termes clairs et compréhensible pour des personnes n'ayant pas de formation juridique et pour des personnes ayant un faible niveau d'étude mérite notamment de attirer l'attention. Il y est également publié des publications présentant des questions de l'administration de la justice

ainsi que des brochures et du matériel d'éducation p.ex. « citoyen dans le cadre d'une procédure pénale », « citoyen dans le cadre d'une procédure civile », « citoyen dans le cadre d'une procédure administrative » etc. Le site consacré à la question de la prévention de la violation au sein de famille a été préparé de manière très approfondie. Au-delà des actes juridiques, il y est publié plusieurs informations pratiques très utiles pour des personnes confrontées à la violence au sein de la famille. Outre, on organise des rencontres d'éducation à des écoles secondaires et supérieures présentant le fonctionnement de l'administration de la justice. Durant les années écoulées, on met en œuvre un programme éducatif périodique « Semaine d'aide aux victimes d'infraction ». Les parquets prennent, de plus en plus souvent, part aux actions éducatives de la société, développent des informations sur leurs sites et certains d'entre eux organisent des journées portes ouvertes.

La communication avec les médias peut-elle être utilisée comme un outil d'enquête (par exemple en diffusant des portraits robots, voire même des images des scènes de crimes) ? Si oui, veuillez spécifier.

Oui, c'est possible. Ces documents peuvent être publiés dans la presse ou dans d'autres médias. Le ministère public s'efforce à ne pas abuser cette opportunité et alors cette forme d'adresser à la société n'est pas très souvent utilisée. Outre, il existe des programmes de télévision sur la criminalité où sont présentés des portraits robots et des photographies d'auteurs des infractions dont du matériel audiovisuel des lieux et des reconstitutions des événements accompagnées des demandes au public d'aider de localiser un auteur des faits ou bien de fournir d'autres informations susceptibles de révéler la vérité.

L'article 32 de la loi sur la presse présente des dispositions en ce qui concerne la publication des informations liées au fonctionnement de l'administration de la justice aux médias.

Conformément à cette disposition le rédacteur en chef d'un quotidien est tenu de faire publier, à titre onéreux à une date demandée ou convenue, un jugement définitif du tribunal ou une autre décision judiciaire accompagnée d'une clause de publication, ainsi qu'un avis du tribunal ou d'une autre autorité. Outre, le rédacteur en chef est tenu de faire publier un avis de recherche, à titre gratuit et à une date demandée ou convenue.

La formation professionnelle de procureurs et des journalistes, leur éthique, leurs comportements et les moyens de communication

Au cours de leur formation initiale et continue, les procureurs sont-ils formés sur les normes de la Convention européenne des droits de l'homme en matière de la liberté d'expression et d'accès à l'information ?

Oui. Les procureurs sont formés sur les normes de la Convention européenne des droits de l'homme en matière de la liberté d'expression et d'accès à l'information au cours de leurs formations initiales et continues. Il convient, quand même, de noter qu'au cours de la formation continue organisée au niveau central, cette question n'est pas très souvent abordée. Pareil, pendant des formations organisées au niveau régional ces questions ne figurent pas en bonne place.

Les procureurs sont-ils formés sur la manière de travailler avec les médias ?

Les procureurs sont formés sur la manière de travailler avec les médias au cours de leurs formations initiales. S'il s'agit du programme de formation continue, cette thématique est brièvement présentée. Des porte-paroles des parquets sont invités à une formation organisée une fois par an au niveau central. Par contre, au niveau régional, des formations de ce type sont organisées à une fréquence différente. La pratique au niveau du ressort territorial de divers parquets d'appel est inégale. Certains organisent ces formations fréquemment, d'autres ne les organisent qu'occasionnellement.

Les journalistes sont-ils formés sur la manière de travailler avec le ministère public ?

Au sens large, les questions liées au droit (introduction à la jurisprudence et fonctionnement de l'administration de justice) sont prévues dans le programme d'études aux facultés de journalisme.

Par contre, les programmes de formation continue des procureurs ne prévoient pas de formation des journalistes en ce qui concerne les bases juridiques et formelles nécessaires en relations avec les procureurs.

Existe-t-il des cours de formation, des conférences, des séminaires conjoints organisés pour les procureurs et les journalistes afin de les aider à mieux comprendre le rôle de chacun et de se soutenir mutuellement, dans le cadre d'un juste équilibre entre les droits mentionnés ci-dessus, la présomption d'innocence et le droit à la protection de la vie privée?

Il arrive que des cours de formation conjoints pour les procureurs et les journalistes sont organisés, mais très rarement. Les journalistes sont invités à participer aux formations annuelles pour des porte-paroles des parquets. Au niveau régional, ce type de formation est également organisé au niveau du ressort territorial de plusieurs parquets d'appel.

Existe-t-il des associations professionnelles rassemblant des médias et des journalistes qui sont compétentes pour régler les interactions avec le ministère public ?

Il n'existe pas d'association professionnelle qui aurait rassemblée les procureurs et les journalistes. Chacun de ce groupe professionnel a son association professionnelle séparée.

### Réglementation des activités de médias

Existe-t-il une structure professionnelle interne (ou une autre institution) qui règle les activités des médias ou qui traite des plaintes déposées contre les médias en raison d'une violation d'un droit individuel dans le cadre d'une procédure pénale ?

Il n'existe aucune structure professionnelle interne qui aurait traité des plaintes déposées contre les médias en raison d'une violation d'un droit individuel dans le cadre d'une procédure pénale.

Veuillez décrire brièvement la procédure pénale, administrative et/ou civile concernant la diffamation, la calomnie et/ou une violation équivalente concernant la réputation d'une personne. Quel est le rôle du ministère public en la matière ?

## PROCÉDURE PÉNALE

### Description

La diffamation est une infraction décrite à l'article 212 du Code pénal (ci-après : CP)

L'article 212 du CP porte sur la protection des valeurs telles que : la réputation, l'honneur, la dignité personnelle et la renommée. Il est possible d'imputer (de diffamer) non seulement un particulier, mais également un groupe de personnes ou une personne juridique. Il est possible de diffamer oralement, par écrit, par l'intermédiaire des documents imprimés et par tous moyens techniques d'information (par téléphone, par Internet) et parfois même par un geste. Dans certaines circonstances, la diffamation peut être commise par répétition ou citation de certains propos.

Selon l'article 212 du CP que la diffamation pourrait s'appliquer au comportement d'une personne ou d'un opérateur (p.ex. perpétration de l'infraction, comportement immoral) ou bien aux qualités d'une personne ou d'un opérateur susceptibles d'humilier une personne concernée dans l'opinion publique ou l'exposer à perdre la confiance requise pour un poste, une profession ou un genre d'activités données et ceci sans qu'il ne soit nécessaire que ces effets se produisent en réalité. Il suffit que, par exemple, des propos tenus aient pu avoir des effets négatifs à la réputation de la personne concernée. C'est qui est essentiel, c'est le fait que la diffamation est une infraction qui ne peut être commise qu'intentionnellement, à savoir lorsque l'auteur est conscient des effets négatifs que les propos diffamatoires pourraient provoquer et en plus, il voudrait les atteindre, ou il les accepterait.

Il n'est pas nécessaire que les propos diffamatoires soient prononcés au public. Par contre les propos critiques prononcés à l'adversaire en tête à tête n'est pas une infraction de la diffamation. Il suffit cependant qu'un tiers/un témoin y assiste.

### Poursuites pénales

La diffamation est une infraction dont la poursuite est exercée par voie d'accusation privée. L'initiative de la poursuite de cette infraction appartient aux personnes lésées et non pas aux autorités nationales – au ministère public. Dans les procédures menées de l'article 212 du CP, la victime exerce une fonction d'accusateur privé.

Par principe, le procureur ne prend pas part à des procédures ouvertes pour diffamation. L'accusateur privé, lui-même établit un acte d'accusation, l'adresse directement au tribunal et soutient l'accusation au cours des phases subséquentes de la procédure.

Cela ne signifie pas que le procureur est entièrement déchargé des poursuites pénales en ce qui concerne les infractions poursuivies par voie d'accusation privée. Conformément à l'article 60 paragraphe 1 du Code de procédure pénale, le procureur pourrait ouvrir une enquête ou intervenir dans la procédure déjà en cours (dans les infractions poursuivies d'accusation privée) s'il reconnaît l'intérêt public dans cette affaire. Le procureur agirait donc en tant qu'accusateur public et la victime jouirait du droit de l'accusateur privé qui agirait dans la procédure en tant que partie.

### Sanctions

Le Code pénal distingue deux types de diffamation : celui de base (article 212 paragraphe 1 du CP) et l'autre qualifié aggravé (article 212 paragraphe 2 du CP). Le type de base est passible d'une amende ou d'une peine de limitation de liberté.

Le type qualifié aggravé relatif à la commission de la diffamation par truchement de médias, prévoit la responsabilité pénale plus sévère de l'auteur introduisant, à part de la peine d'amende et de celle de privation de liberté, la peine privative de liberté pouvant aller jusqu'à 1 an. La peine plus sévère est motivée par le degré plus

élevé de la gravité social des faits. Cela résulte de l'influence particulière des médias qui permettraient à ce que des propos diffamatoires atteignent un large public et aient un réel impact sur la vision du monde de l'opinion publique.

Outre, l'article 212 paragraphe 3 du CP prévoit qu'en cas de condamnation pour une diffamation, le tribunal peut prononcer une indemnité-amende au profit de la victime, de la Croix-Rouge polonaise ou d'un autre but social indiqué par la victime (à concurrence de 100.000 zlotys). Le tribunal peut également prononcer la diffusion du jugement de condamnation (article 215 du CP) ou la saisie d'un document de presse, lorsque l'infraction a été commise par sa publication (article 37a de la loi sur la presse) et même l'interdiction professionnelle.

#### Types contraires

Conformément à l'article 213 paragraphe 1 du CP, la diffamation ne peut pas être reprochée lorsqu'elle ne s'est pas produite en public. Cependant, si les propos ont été tenus en public (dans tous les cas, alors, où l'auteur agirait par l'intermédiaire des médias), l'auteur échapperait à la responsabilité dans le cas où il prouverait au cours de la procédure que les propos tenus étaient vrais et qu'il défendait l'intérêt social légitime.

### PROCÉDURE CIVILE

#### Description

L'article 23 du Code civil (ci-après : CC) prévoit que les droits de la personnalité d'un individu, tels que, notamment, le droit à la santé, le droit à la liberté, le droit à la réputation, le droit à la liberté de conscience, le droit au nom ou à un pseudonyme, le droit à l'image, le droit au secret de la correspondance, le droit à l'inviolabilité du domicile, les droits sur les œuvres scientifiques ou artistiques, [ainsi que] les droits sur les inventions et améliorations, sont protégés par le droit civil, sans préjudice de toute protection énoncée dans d'autres dispositions légale.

#### Poursuites

Un individu s'estimant offensé par des paroles ou des écrits pourra engager une action en protection de sa bonne réputation en vertu des dispositions du Code civil (articles 23-24 du CC). Autrement dit, une personne risquant de subir une atteinte à ses droits peut exiger que l'auteur potentiel ne commette pas l'acte préjudiciable, à moins que l'acte en question ne soit pas illégal. En cas d'atteinte consommée, la personne lésée peut notamment demander à ce que l'auteur fasse une déclaration rectificative sous une forme appropriée (p.ex. publication des excuses dans les médias indiqués). Conformément au code, la personne lésée peut exiger une réparation équitable ou le versement d'une somme au profit d'une institution caritative à titre de réparation. Si l'atteinte portée à un droit de la personnalité cause un préjudice financier, la personne lésée peut demander une indemnisation. Ces dispositions ne portent pas atteinte aux droits prévus par d'autres dispositions (article 24 paragraphes 1-3 du CC).

Le procureur n'intervient pas dans les procédures civiles.

#### Irresponsabilité civile

Lorsqu'un journaliste défendant l'intérêt social légitime a fait preuve de la diligence et de l'honnêteté particulières dans la collecte des informations pour un article de presse et dans son exploitation ultérieure (article 12 paragraphe 1 point 1 de la loi sur la presse), la publication de cet article n'est pas illégale (article 24 paragraphe 1 du Code civil) même si cela s'avère que cet article contient de fausses informations.

Dans ce cas, une journaliste n'assumera pas la responsabilité civile.

**PROCÉDURE ADMINISTRATIVE** (l'accès aux données à caractère personnel à la lumière de la loi relative à la protection des données à caractère personnel)

Un particulier qui considère que le procureur a illégalement mis ses données à caractère personnel (p.ex. son nom, son prénom, son âge ou sa profession) à disposition de la presse peut engager une procédure de recours administratif auprès de l'inspecteur général de protection des données personnelles (ci-après IGPDP). Le requérant pourra invoquer l'atteinte à sa vie privée et requérir que IGPDP prennent des mesures nécessaires dont cette autorité est habilitée en vertu de l'article 12 de la loi relative à la protection des données à caractère personnel. IGPDP rend une décision administrative qui peut être attaquée auprès du tribunal administratif de voïvodie.

En quoi consistent la responsabilité pénale ou administrative des journalistes et les sanctions prévues par loi ?

Les informations présentées au point 30 sont y applicables.

Par ailleurs, la responsabilité des journalistes pour publication dans un article des données à caractère personnel contrairement à la loi relative à la protection des données personnel se présente comme suit :

C'est le rédacteur en chef ayant l'obligation légale de protéger les données à caractère personnel qui est responsable pénalement en vertu de l'article 51 paragraphe 1 de la loi relative à la protection des données à caractère personnel pour publication dans un article de presse des données à caractère personnel (par exemple, une adresse) en violation de l'article 14 paragraphe 6 de la loi sur la presse.

Le journaliste qui a préparé un article de presse publié n'est pas responsable puisque les dispositions de la loi relative à la protection des données à caractère personnel ne prévoient pas clairement sa responsabilité de protéger les données à caractère personnel contre l'accès à ces données par des personnes non-autorisées (article 36 paragraphe 1). Par ailleurs, comme la responsabilité pénale pour contenu de documents de presse incombe au rédacteur en chef (article 25 paragraphe 4), la loi sur la presse n'engage pas la responsabilité de journaliste pour publication d'un article de presse en violation de l'article 14 paragraphe 6.

La responsabilité civile prévue par l'article 38 de la loi sur la presse pour publication dans la presse des données à caractère personnel est plus étendue. À part du rédacteur en chef, c'est le journaliste – l'auteur de document de presse qui est responsable. C'est une responsabilité solidaire.

En cas de responsabilité civile pour atteinte aux droits de la personnalité, c'est l'illégalité et non pas la faute qui constitue une condition de la responsabilité du rédacteur en chef (cette dernière condition est importante en cas d'une demande d'indemnisation ou le versement d'une somme au profit d'une institution caritative à titre de réparation ou encore en cas de demande en réparation du préjudice matériel causé par l'atteinte aux droits de la personnalité).

Veuillez décrire les mesures de protection disponibles dans les procédures pénales et civiles (saisie ou l'interdiction de publications) et le rôle des procureurs. Dans votre pays, existe-t-il des mesures qui sont ou pourraient être considérées comme une forme de censure préventive ? Les procureurs ont-ils un rôle dans le contrôle des activités de médias ?

Cf. point 30.

À part cela, il n'existe pas de censure préventive. Sauf la procédure pénale, le procureur ne participe pas activement dans le contrôle des activités de médias. L'interdiction de la censure préventive découle directement de l'article 54 paragraphe 2 de la Constitution qui détermine les garanties constitutionnelles principales de la liberté des médias.

Si un procureur est critiqué par les médias pour des raisons liées à la procédure pénale, les associations de procureurs peuvent-ils intervenir ?

Oui. Rien n'empêche à ce que les associations de procureurs interviennent.

Un procureur est-il tenu à un devoir de discrétion, même si une campagne médiatique a été lancée contre lui ?

Rien n'interdit au procureur de prendre position dans cette situation. Dans la pratique, les procureurs se distancent de ces publications et n'entrent pas dans des polémiques avec les médias qui auraient pu avoir un impact négatif à des enquêtes en cours.

Avez-vous des institutions, autres que les associations de procureurs, disposant d'un pouvoir de réponse en cas d'attaques inappropriées par les médias à l'encontre du ministère public ou des procureurs pris individuellement ?

Oui. C'est un Conseil national des procureurs, instance collégiale (25 membres) qui a pour mission principale de garantir l'indépendance des procureurs, notamment à l'égard du pouvoir exécutif.

Autres informations

Avez-vous d'autres informations ou commentaires concernant la communication entre procureurs et médias dans votre pays ? Si oui, veuillez les décrire.

En ce qui concerne les dispositions du droit polonais et la pratique des relations communes entre procureurs et médias, nous présentons des remarques suivantes :

La question de l'accès des journalistes au dossier d'enquêtes est une règle qui satisfait pleinement aux normes de la Convention européenne de sauvegarde des Droits de l'Homme et des Libertés fondamentales.

Par contre, une question de déterminer la communication commune d'une manière appropriée reste ouverte. La mise en œuvre des relations dans un climat de compréhension, de confiance et de moralités communs avec journalistes en ce qui concerne la disposition des informations obtenues, par exemple la non-utilisation de données à caractère sensible apprises lors de l'examen du dossier et qui sont protégées et qui n'ont pas fait l'objet de publication en vertu d'autres dispositions.

On peut cependant s'interroger si des relations parfois mauvaises résultent effectivement du manque de savoir et de bonne volonté des deux côtés (journalistes – procureurs).

En ce qui concerne les médias, le ton sensationnel donné aux informations obtenues du dossier contribue très souvent à l'augmentation du tirage d'un quotidien et ne serait pas le résultat d'une négligence de journaliste.

S'il s'agit des procureurs, une certaine réserve vis-à-vis des journalistes pourrait résulter du fait que les procureurs sont chargés du travail important supplémentaire, par exemple en cas d'accès au dossier en vertu de la loi sur l'accès à l'information publique. Dans ce cas, le procureur, pour protéger des données à caractère personnel et des secrets protégés par des droits, est tenu de préparer le dossier avec minutie. Lorsque le dossier compte quelques, quelques dizaines ou plusieurs dizaines de milliers de pages, ce qui n'est pas rare, le procureur chargé d'examiner le dossier en fonction sa mise à disposition en vertu de la loi évoquée, doit, pour un certain temps, laisser les dossiers qu'il suit normalement.

## Portugal

### I. Introduction

La Recommandation Rec(2003)13 du Comité des Ministres du Conseil de l'Europe sur la diffusion d'informations par les médias en relation avec les procédures pénales a fait la référence aux points suivants

- l'engagement des Etats membres envers le droit fondamental à la liberté d'expression et d'information tel qu'il est garanti par l'article 10 de la Convention européenne de sauvegarde des Droits de l'Homme et des Libertés fondamentales;
- les médias ont le droit d'informer le public en égard au droit de ce dernier à recevoir des informations, y compris des informations sur des questions d'intérêt public, en application de l'article 10 de la Convention, et qu'ils ont le devoir professionnel de le faire;
- l'importance des reportages réalisés par les médias sur les procédures pénales pour informer le public, rendre visible la fonction dissuasive du droit pénal et permettre au public d'exercer un droit de regard sur le fonctionnement du système judiciaire pénal;
- les droits à la présomption d'innocence, à un procès équitable et au respect de la vie privée et familiale, garantis par les articles 6 et 8 de la Convention, constituent des exigences fondamentales qui doivent être respectées dans toute société démocratique ;
- les intérêts éventuellement conflictuels protégés par les articles 6, 8 et 10 de la Convention et la nécessité d'assurer un équilibre entre ces droits au regard des circonstances de chaque cas individuel, en tenant dûment compte du rôle de contrôle de la Cour européenne des Droits de l'Homme pour garantir le respect des engagements contractés au titre de la Convention.

### I. Questions

#### A. Dispositions actuelles légales et réglementaires

1. Les relations entre procureurs et médias sont-elles déterminées par la loi ou par d'autres normes écrites? Décrivez-les brièvement.

La loi ne règle pas spécifiquement les rapports entre le Parquet et les média. Pourtant on peut extraire du Statut du Ministère Public aussi comme des Codes de procédure civile et pénale un ensemble de règles lesquelles définissent le règlement juridique applicable même si leur nature ne permet qu'affirmer que cette définition sera faite vis-à-vis le cas concret.

Ainsi:

Statut du Ministère Public (Loi n ° 47/86, 15/10), l'article 84 réglemente le devoir de réserve de la façon suivante:

1 - Les procureurs ne peuvent pas faire des déclarations ou des commentaires concernant les dossiers concrets, sauf si un permis hiérarchiquement supérieur leur a été donné, pour défendre l'honneur ou permettre que des intérêts légitimes soient garantis.

2 – Les informations qui ne sont pas protégées par le secret de l'Instruction ou le secret professionnel et visent aboutir à l'application de droits et intérêts légitimes, nommément celui du droit à l'information, ne sont pas assujetties au devoir de réserve.

Le Code de procédure pénale (article 86 ° - publicité et secret de l'Instruction), souligne que:

Nº 9 - L'autorité judiciaire peut, de façon justifiée, donner ou ordonner ou permettre que connaissance soit donnée à certaines personnes du contenu d'un document ou d'un acte réservé par le secret de la procédure, dès que cela ne porte pas atteinte à l'enquête et qu'il semble:

- a) Justifié ayant en vue la clarification de la vérité, ou
- b) Indispensable pour que les parties puissent exercer leurs droits.

N° 13 - Le secret de l'instruction ne sera pas un obstacle à la présentation publique de clarifications, par l'autorité judiciaire toutefois que celles là sont considérées nécessaires pour rétablir la vérité et toujours si elles ne portent pas d'atteinte à l'investigation quand :

- a) Des personnes publiquement mises en question demandent qu'elle soient prêtées, ou
- b) Pour assurer que la sécurité des personnes et des biens ou la paix publique sont maintenus.

Dans le cas de la procédure civile sa nature publique, ne comporte de restrictions à la publicité que dans certaines situations, à savoir: (article 168 °.):

1 – L'accès aux documents est limité aux cas où la divulgation du contenu peut nuire à la dignité des personnes, de la vie privée ou familiale, ou de la morale publiques, ou mettre en question l'efficacité de la décision qui sera rendue.

2 – Les procédures suivantes correspondent aux restrictions à la publicité prévues au numéro précédent:

- a) Les procédures d'annulation du mariage, de divorce, de séparation, de personnes et de biens, et celles qui concernent la déclaration de paternité ou son opposition, qui ne peuvent être accédées que par les parties civiles et leurs avocats.
- b) Les procédures provisoires urgentes, qui ne peuvent être ouvertes qu'aux parties requérantes et à leurs avocats et aux parties requises et leurs avocats, quand ils doivent être auditionnés avant qu'une décision ne soit prise.

2. Les procureurs sont-ils autorisés à avoir des relations directes avec les médias? Sinon, qui communique à la presse les informations concernant les affaires judiciaires?

En principe, il n'y a pas d'autorisation expresse. L'articulation entre les normes décrites dans la réponse 1, nous permet de conclure que toute communication avec le public menée à bout par les procureurs ne pourra être effectuée qu'après autorisation supérieure hiérarchique, respectés les limites de la loi, et toujours dans le respect du devoir de réserve. Au Portugal, c'est le Bureau du Procureur General qui assure cette communication.

3. Qui d'autre est autorisé à fournir des informations à la presse dans le cadre de ces affaires (la police, les avocats, les parties, d'autres personnes) ?

En ce qui concerne un procès concret, il n'y a pas de règles qui explicitement donnent permis à la police, aux avocats, aux partis politiques et aux autres personnes ou entités privées ou publiques pour donner des informations aux médias.

Dans le cas de la police, ils interviennent dans une procédure pénale sous la direction du Parquet et uniquement avec leur permission peuvent-ils investiguer.

La loi que règle l'organisation et les compétences de la police judiciaire, (article 13., n ° 2, de la loi n.º 37/2008, 6/08) stipule à cet égard que les fonctionnaires qui travaillent dans la police judiciaire ne peuvent pas divulguer publiquement des informations concernant les procédures ou des questions de nature privée, sauf ce qui est prévu dans cette loi sur l'information publique et les mesures de prévention auprès de la population ainsi que ce qui est disposé dans la loi de procédure pénale.

Il faut souligner, en outre, que ces déclarations dépendent toujours d'autorisation préalable.

Le même régime s'applique aux polices qui interviennent dans le procès pénal.

Pour les avocats, c'est leur statut professionnel (Loi n ° 15/2005, 26/01) qui établit une obligation de confidentialité.

L'article 88 ° - (débat public sur des questions professionnelles) stipule:

1 - L'avocat ne doit pas s'exprimer publiquement, dans les médias imprimés ou autres, sur les questions qui sont en cours.

2 – L'avocat pourra se prononcer, à titre exceptionnel, dépendant d'autorisation du président du conseil du district, dans un cas où l'exercice de ce droit de réponse est justifié, afin de prévenir ou de remédier à l'infraction à la dignité, les droits et les intérêts légitimes de son représenté ou de lui-même.

3 - La demande d'autorisation est justifiée et indique la portée des problèmes éventuels sur les quels il a l'intention de se prononcer.

4 - La demande d'autorisation est décidée dans les trois jours ouvrables suivants, compte tenu que l'absence de réponse, dûment communiquée au requérant, sera interprétée comme consentement tacite.

5 - La décision du président du conseil de district de rejeter une demande peut être contestée devant le Bâtonnier, qui décidera, dans le même délai.

6 -. Nonobstant les paragraphes précédents, en cas d'urgence manifeste, l'avocat peut exercer son droit de réponse mentionné au n° 2, de la façon la plus restreinte et limitée possible, informe, dans un délai de cinq jours ouvrables, le président du conseil de district des circonstances qui ont déterminé une telle conduite et le contenu des déclarations prêtées.

En ce qui concerne les partis politiques, ils doivent respecter la séparation des pouvoirs et ne sont donc pas en mesure de faire des commentaires sur des dossiers judiciaires qui sont en cours.

On peut, encore, trouver, comme exemple, dans le Statut des Greffiers, compte tenu de son rôle particulier dans le domaine des relations communautaires et sa connexion avec les procédures judiciaires, une obligation de confidentialité énoncée à l'article 66 du décret-loi no. 343/99, 26/08 qui lit :

2 – Il est un devoir de la justice civile: a) Ne pas faire des déclarations ou des commentaires concernant les procédures, nonobstant le devoir d'informer qui correspond aux actes de son service;

4. Avez-vous déjà expérimenté une communication conjointe par plusieurs autorités publiques (par exemple, procureur et police) ?

Au Portugal, il n'y a pas d'expérience de communications publiques conjointes entre la police et les autorités judiciaires. Il y a eu des cas de conférences de presse organisées conjointement par plusieurs polices criminelles, mais dont l'objet était seulement de donner visibilité aux actions de police et de fournir des informations sur les mêmes, pas de révéler des faits contenus dans un dossier concret.

5. A quel stade de la procédure les procureurs peuvent-ils communiquer l'information (veuillez distinguer l'enquête préliminaire, y compris l'accusation, la procédure judiciaire et la situation après le prononcé du jugement) ?

Au Portugal, compte tenu de la position procédurale de titulaire de l'action pénale qui correspond aux procureurs, laquelle a une base constitutionnelle, la loi ne leur donne le pouvoir d'informer le public que pendant la phase de l'Enquête. Pour les étapes suivantes de la procédure, après l'accusation, est dire l'Instruction et l'Audience, l'autorité judiciaire compétente est le Juge d'Instruction et le Juge de jugement compétents, respectivement.

6. Les juges sont-ils autorisés à informer la presse? Si oui, à quel stade de la procédure?

La réponse est similaire à celle qui fut donnée déjà. Il faut remarquer, pourtant, les règles déjà mentionnées dans la première réponse, en ce qui concerne les limites légaux, et aussi les dispositions légales du Statut des magistrats judiciaires, en ce qui concerne le devoir de confidentialité, pareil à celui prévu pour les procureurs.

L'article 12, de la Loi n° 21/85, 3/7, dispose que:

1 - Les juges ne peuvent pas faire des déclarations ou des commentaires concernant les procédures, sauf s'ils sont autorisés par le Conseil supérieur de la magistrature, pour défendre l'honneur ou garantir que d'autres intérêts légitimes soient respectés.

2 – Les informations qui, concernant de la matière non protégée par le secret de la procédure ou le secret professionnel, visent exercer des droits ou intérêts légitimes, nommément celui de l'accès à l'information ne sont pas couvertes par le devoir de confidentialité.

7. Les relations entre procureurs et médias sont –elles contrôlées dans votre pays? Le cas échéant, par qui et de quelle manière?

Les relations entre les procureurs et les médias sont réglées par les dispositions légales déjà mentionnées. Toute violation de la réserve ou la divulgation illégale d'informations sur un dossier concret protégé par le secret peut mener à la responsabilité disciplinaire, civile et pénale des Procureurs. C'est le *Conselho Superior do Ministério Público* et les Tribunaux, respectivement, qui vérifient les conditions pour que cette responsabilisation soit faite.

8. Existe-t-il des règles spécifiques garantissant que les informations communiquées à la presse ne violent pas la vie privée, la dignité humaine et la présomption d'innocence? Quelles mesures peuvent être prises pour éviter le phénomène de «procès dans la presse»?

Oui, la Constitution portugaise reconnaît les garanties de la procédure pénale et consacre expressément le principe de la présomption d'innocence, à l'article 32., n° 2.

En outre, le procès criminel, en dépit de la règle de la publicité, permet aux procureurs de requérir que la procédure soit maintenue sous secret et, une fois terminé celui-ci, que les aspects de la vie privée restent toujours protégés.

En outre, et à titre d'exemple, il peut être interdit que, sous peine d'un crime de désobéissance, les médias puissent divulguer le contenu d'interceptions téléphoniques, même dans les cas où le dossier est devenu public ou est déjà terminé.



En tout cas les citoyens peuvent demander que certains aspects de leur vie privée soient divulgués ou que la présomption d'innocence ne soit pas violée, par biais de procédures judiciaires et d'actions en dommages et intérêts contre les médias.

Par fin le Code de procédure pénale, dans son article 88 dispose, efficacement sur ces aspects. Son libellé est le suivant :

1 - Il est permis pour les médias, dans les limites de la loi, la narration détaillée du contenu des actes de procédure qui ne sont pas couverts par le secret judiciaire ou dont le cours est permis à l'assistance de la population en général.

2 - Il n'est pas, toutefois, autorisé sous peine de désobéissance simple:

a) La reproduction de mémoires ou actes incorporés dans le processus, jusqu'à ce que la phrase 1<sup>re</sup> cour d'appel, à moins qu'il n'ait été obtenu le certificat demandé, indiquant l'objet pour lequel il est destiné, ou si elles ont été à l'autorisation expresse de l'autorité présider la phase judiciaire de la procédure au moment de la publication;

b) les images de transmission ou d'enregistrement sonore ou de décisions concernant la pratique de toute procédure pénale, y compris l'audience, à moins que l'autorité judiciaire visée à l'alinéa précédent, par arrêté, autoriser, ne peut, cependant, être autorisée à diffuser enregistrer des images ou des sons ou de la décision concernant la personne qui s'oppose à une telle;

c) La publication, par tous moyens, l'identité des victimes de la traite des personnes crimes contre la liberté sexuelle et à l'autodétermination, à l'honneur ou à la vie privée, sauf si la victime expressément consenti à la divulgation de leur identité ou de la le crime est commis par le biais des médias de masse.

3 - Jusqu'à ce que la décision sur l'audience publicitaire n'est pas encore autorisé, sous peine de désobéissance narration simple de plaidoiries devant la Cour que, lorsque de sa propre initiative ou à la demande, ont interdit la base des faits ou des circonstances visées au n. 2 de l'article précédent.

4 - Il est interdit, sous peine de simple désobéissance, la publication, par tous moyens, conversations ou de communications interceptées en vertu d'une procédure, sauf si elles ne sont pas soumises au secret et les parties prenantes expressément consenti à la publication.

9. Des sanctions existent-elles (disciplinaires ou autres) à l'encontre des procureurs qui enfreignent les règles régissant les relations avec les médias, si elles existent?

Voir réponse n°7

10. De quelle manière le ministère public peut-il faire face aux risques en matière de sécurité posés par la divulgation d'informations concernant les procureurs et les affaires?

Au Portugal, il n'y a pas de règles spécifiques sur cette issue. Quoi qu'il en soit, et en général, quand il y a des risques de sécurité pour un Procureur en raison de son intervention concrète dans une procédure judiciaire, il ou elle peut demander qu'une surveillance particulière de sa personne, de sa famille et de sa propriété, lui soit accordée. Cette protection est accordée par le Conseil supérieur du ministère public, par les procureurs généraux à niveau des districts judiciaires, en délégation, ou, en cas d'urgence, par le magistrat lui-même ou elle-même, lequel ou laquelle s'adressera au commandement de la force de police de son lieu de résidence, lorsque des motifs de sécurité l'exigent (article 107.<sup>o</sup> n.º 1, j) du Statut du ministère public).

11. Existe-t-il des dispositions visant à interdire la publication du nom d'un procureur (ou d'un juge) en charge d'une affaire? Existe-t-il des procédures qui, en pratique, visent à prévenir une telle publication?

Não existem regras ou procedimentos especiais que permitam a proibição da publicação ou da divulgação da identidade do procurador ou do juiz, titulares de um determinado processo judicial.

Il n'y a pas de règles ou de procédures spéciales qui permettent d'interdire la publication ou la divulgation de l'identité d'un ou d'une procureur ou d'un ou d'une juge, qui interviennent dans un dossier concret.

Cependant, ce résultat pourra être obtenu, par le biais d'une procédure civile, qui a comme fondement ses droits de la personnalité, de la défense de sa réputation, le droit à son image, à sa vie privée, à sa sécurité personnelle et institutionnelle.

La décision sur le conflit entre les soi disant droits de personnalité et le droit à l'information/liberté de la presse devra, dans le cas concret, dans le cadre établi par la Constitution, faire l'élection de l'intérêt supérieur, ayant en vue le point de vue de la société et les droits personnels de la personne concernée.

Le Code civil énonce ces droits de la personnalité à l'article 70 et suivants. Le droit procédural civil prévoit une mesure conservatoire spéciale en cas de protection des droits de la personnalité, dans les articles 1474. <sup>o</sup> et 1475. Ce-ci, sans préjudice des règles générales des mesures conservatoires établies par les articles 381<sup>o</sup> à 392<sup>o</sup>.

Aussi le Code de procédure civile prévoit à l'article 391<sup>o</sup> qu'en cas de violation de la mesure imposée, l'infracteur pourra être puni comme auteur d'un délit de désobéissance qualifiée.

## **B. Organisation de la communication**

12. De quelle manière les procureurs communiquent-ils avec la presse (communiqués de presse, conférences de presse, téléphone ou e-mail, réseaux sociaux, etc.) ?

Le Parquet General de la Republique ou le Conseil supérieur du ministère public, dans de cas justifiés, délivre des bulletins ou des communiqués de presse.  
Les conférences de presse ne sont pas un moyen de communication largement utilisé, mais il y a des cas où des conférences ont déjà eu lieu.  
Les contacts / demandes de journalistes sont présentés, le plus souvent par e-mail et la réponse est donnée par la même voie.  
Les réseaux sociaux ne sont pas utilisés. Toutefois, les pages officielles du Parquet General de la Republique et du Procureur général du district (Lisboa et Porto) sont également utilisés pour diffuser des informations d'intérêt public pour le public et les médias.

37. Les procureurs peuvent-ils tenir des conférences de presse ou faire d'autres communications en cas d'enquêtes internationales? Si oui, quelle est la procédure à appliquer?

En ce qui concerne les enquêtes qui ne sont pas diligentées par le ministère public portugais, celui-ci ne donne normalement aucune information. Si les autorités de l'État qui mène l'enquête demandent à notre pays d'exécuter une commission rogatoire internationale et si les médias nous demandent des informations sur un acte judiciaire déterminé, le Parquet général de la République ne donne pas d'informations sans y être autorisé par l'État qui requiert l'entraide judiciaire internationale.  
Quand il s'agit d'une investigation menée conjointement par le Portugal et un autre pays, les informations seront seulement données après une appréciation en commun sur la possibilité de fournir des renseignements sur ce cas. En tous les cas, comme il est déjà fait, il est possible de donner des informations sur la constitution d'équipes communes d'enquête – cette information peut être fournie, à l'initiative du Parquet général de la République, par des communiqués de presse ou sur le site officiel si elle est considérée comme appropriée et importante pour le public et les médias ou lorsque ceux-ci posent des questions sur ce sujet.

38. La communication se fait-elle avec tous les médias ou avec certains d'entre eux (journaux, média audiovisuels, internet)?

Les communiqués de presse sont diffusés à tous les médias et publiés sur le site officiel Parquet général de la République.  
En dehors de ces cas, la communication est établie avec les médias qui contactent le Parquet général de la République pour lui poser des questions concrètes. Dans ces cas, la réponse n'est donnée qu'au journal ou qu'au média audiovisuel qui pose la question

39. Existe-t-il une réglementation interdisant le droit d'accorder une préférence à certains journalistes ou, au contraire, d'en exclure certains?

L'article 54, paragraphe 1, du Statut du ministère public (loi n<sup>o</sup> 47/86 du 15/10, telle que modifiée par la loi n<sup>o</sup> 60/98 du 27/8) prévoit que «L'accès à l'information relative à l'activité du ministère public est assuré au public et aux médias, conformément à la loi.»  
Cette norme, ainsi que les principes fondamentaux du droit à l'information, y compris l'accès des journalistes à l'information, la liberté et le pluralisme des médias, ne permettent pas que le Parquet général de la République donne la préférence à certains journalistes et exclut d'autres.  
Les lois qui peuvent exister sur les contrats d'exclusivité ne s'applique pas aux relations des procureurs avec les médias.

40. De quelle manière la communication est-elle organisée par le ministère public? Existe-t-il des porte-paroles? Si oui, quel est leur statut et sont-ils procureurs? Sinon, les procureurs communiquent-ils eux-mêmes? Le cas échéant, doivent-ils obtenir une autorisation pour le faire? Les procureurs sont-ils contrôlés en la matière?

Au sein du Parquet général de la République, un Bureau de presse a été créé, réglementé par le décret-loi n<sup>o</sup> 333/99 du 20/8, et exerce plusieurs fonctions, notamment les orientations sur l'exercice de la communication sociale, le développement des moyens de diffusion systématique d'informations sur l'activité du ministère public, la préparation de diverses informations pour faciliter l'exercice des activités journalistiques.  
Ce service de presse, en vertu dudit décret-loi, se compose d'un maximum de trois personnes, dont l'une, au moins, doit avoir une formation en communication sociale.

Actuellement, le service de presse se compose d'un seul élément qui est responsable de la fonction d'attaché de presse et agit comme porte-parole auprès des médias. Cet élément n'est pas procureur. Les informations fournies par l'attaché de presse sont contrôlées supérieurement par les membres du Cabinet du Procureur général, y compris par le chef du Cabinet ou, dans certains cas, par le Procureur général lui-même. Il est prévu de réorganiser le Bureau de la presse et de définir une politique de presse, dont le plan n'est pas encore pleinement défini.

41. Comment les médias communiquent-ils avec les procureurs (veuillez préciser, le cas échéant, s'il existe des représentants officiels, des journalistes spécialisés, si des autorisations sont nécessaires)?

La communication avec les médias se fait par l'intermédiaire du Bureau de presse du Parquet général de la République qui fournit les informations demandées.

Si le journaliste veut parler directement avec les procureurs, il doit prendre contact à travers ce service de presse.

Les procureurs sont tenus au devoir de réserve et ne peuvent donc, conformément à l'article 84 de leur Statut (loi n° 47/86 du 15/10, telle que modifiée par la loi n° 60/98 du 27/8) faire aucune déclaration ou aucun commentaire sur des affaires judiciaires sauf, sur autorisation supérieure, pour défendre leur honneur ou en défense d'autres intérêts légitimes.

Quoi qu'il en soit, ne sont pas concernées par le devoir de réserve les informations dont le contenu n'est pas couvert par le secret de l'instruction ou le secret professionnel et qui visent à réaliser des droits ou des intérêts légitimes, notamment le droit d'accès à l'information.

Il n'y a pas de journalistes accrédités pour les contacts avec le Parquet général de la République.

42. Quelles sont les informations qui peuvent être divulguées? (noms des parties, des témoins, des procureurs; certains faits qui sont dévoilés grâce à l'enquête, liés ou non à l'affaire)?

Les informations qui compromettent les droits fondamentaux des personnes ne sont pas divulguées.

Il y a des limites juridiques concernant les informations à fournir, en particulier celles liées par le secret de l'instruction (articles 86 et suivants du Code de procédure pénale).

Il convient de noter qu'à l'heure actuelle, la règle est celle de la publicité de la procédure, en tenant compte des exceptions énoncées, en termes généraux, aux paragraphes 2 et 3 du même article du Code de procédure pénale. Bien que la publicité de la procédure implique le droit de « narration des actes de procédure ou la reproduction de ses pièces par les médias (paragraphe 6, al. b) de l'article 86), sont exclues de la publicité "des données relatives à la vie privée qui ne constituent pas de moyens de preuve. Il incombe à l'autorité judiciaire de préciser quels sont les éléments couverts par le secret de l'instruction.

Par ailleurs, comme il est dit dans l'article 88 du Code de procédure pénale, bien que les médias soient autorisés, dans les limites de la loi, « à faire la narration détaillée des actes de procédure qui ne sont pas couverts par le secret de l'instruction ou auxquels est permise l'assistance du public en général », est interdite, sous peine de désobéissance, la « reproduction de pièces de procédure ou d'actes versés au dossier de la procédure jusqu'au prononcé du jugement en première instance, à moins que ces éléments aient été obtenus par un certificat attestant l'usage auquel ils sont destinés ou expressément autorisés par l'autorité judiciaire qui dirige le stade de la procédure au moment où ils sont publiés.

Il est également interdit de diffuser ou d'enregistrer toute image ou parole, en particulier de l'audience, sauf si cela est autorisé par ordonnance de l'autorité judiciaire qui dirige le stade de la procédure et s'il n'y a pas opposition de la personne dont l'image ou la parole est recueillie.

Il est également interdit de publier, par tous moyens, l'identité de personnes victimes de crimes et délits de la traite des êtres humains, contre la liberté sexuelle et l'autodétermination, l'honneur, la vie privée, sauf si la victime y donne expressément son consentement ou si le crime ou délit est commis à travers les médias.

Sont également exclues, sous peine de désobéissance simple: (i) Jusqu'à la décision sur la publicité de l'audience, la narration des actes de procédure avant celle-ci, si le juge, d'office ou sur demande, l'interdit sur la base des faits et des circonstances qui justifient toute interdiction à l'égard de l'identité des victimes des crimes et délits énumérés ci-dessus, (ii) la publication, par tout moyen quel que ce soit, de conversations ou de communications interceptées, sauf si celles-ci ne sont pas couvertes par le secret de l'instruction et si les parties intervenantes autorisent expressément leur publication.

19- Existe-t-il une politique officielle visant à encourager les procureurs à répondre aux besoins des médias, et, le cas échéant, de quelle manière cette politique est-elle mise en œuvre?

Le Parquet général de la République considère très importante l'existence d'une politique de communication avec les médias et vise à améliorer les méthodes suivies jusqu'à présent, afin de répondre efficacement aux besoins des moyens de communication, dans un esprit de coopération et de compréhension mutuelle des besoins

découlant du droit d'accès à l'information et des limites imposées par la loi et des principes généraux concernant les informations susceptibles d'être fournies.

En dehors du fonctionnement permanent du Bureau de presse qui répond quotidiennement aux questions qui lui sont posées par les journalistes, le Parquet général de la République diffuse des communiqués de presse chaque fois que l'intérêt public l'exige, met à disposition sur son site officiel des informations diversifiées, notamment sur les fonctions du ministère public, sur ses actions et sur la législation clé, publie le planning hebdomadaire du Cabinet du Procureur général, ce qui permet aux médias de suivre son activité, participe à des débats sur des thèmes concernant les relations entre les médias et la justice, propose des initiatives ou des réunions ouvertes aux médias, prépare les communiqués de presse pour faire connaître les résultats des réunions ; le Parquet a également signé un protocole avec l'Autorité de régulation des médias ayant pour but, entre autres, d'organiser des ateliers permettant d'approfondir la réflexion sur des questions liées aux médias.

Il est à noter de plus que, sur le site officiel des parquets généraux des districts de Lisbonne et de Porto, des renseignements d'intérêt pour les médias sont également diffusés, à savoir, les décisions finales concernant des affaires judiciaires ayant un intérêt public, l'activité exercée par les procureurs de chacun des districts judiciaires respectifs et les informations statistiques relatives aux phénomènes de la criminalité dans chacun de ces districts judiciaires.

Comme il a déjà été dit, une refonte de la stratégie de communication du Parquet général de la République est en cours afin de concevoir et de mettre en œuvre des structures qui assurent une relation de communication plus fluide et plus réfléchie.

20. Les communications de procureurs avec les médias sont-elles systématiquement contrôlées et évaluées à l'aide d'un mécanisme de suivi, de réactions du public, d'enquêtes de communication ou d'autres mesures?

Il n'y a pas une approche systématique et structurée. Quoiqu'il en soit, cette évaluation est recherchée à travers la réaction du public et des médias.

La définition des critères et des moyens d'évaluation fait aussi l'objet du plan de rénovation de la stratégie et de la politique de communication que le Parquet général de la République vise à mettre en œuvre.

#### **F. L'approche pro-active du ministère public vis-à-vis des médias**

21. Le ministère public a-t-il développé une approche pro-active vis-à-vis des médias (accès aux décisions du procureur, envoi d'une sélection d'affaires pertinentes à l'attention des médias)?

Il n'existe pas une approche pro-active systématique et structurée de ce point de vue.

En règle générale, les médias ont uniquement accès aux décisions des procureurs s'ils demandent d'accéder au dossier d'une affaire, quand la décision finale est prononcée.

Comme il a été mentionné précédemment, au niveau des parquets généraux des districts de Lisbonne et de Porto, surtout le premier, certaines décisions finales sont divulguées, par synthèse, notamment quant au sens et au bien-fondé, sur leurs sites officiels.

Parfois, certaines affaires sont transmises aux médias qui pourraient être importantes pour leur mission d'information.

22. Le ministère public a-t-il développé des activités visant à expliquer au public et aux médias le travail des procureurs et à les informer des derniers développements (journée portes ouvertes, visites des tribunaux, publication de brochures, production de matériel éducatif en ligne)?

Comme il est mentionné à la question 19, le Parquet général de la République propose sur son site officiel des informations diversifiées sur, notamment, les fonctions de procureur et son histoire, son travail et la législation clé, fournit une base de données rassemblant les circulaires et directives du Parquet général de la République tendant à uniformiser l'action des procureurs et une base de données des avis du Conseil consultatif du Parquet général de la République, publie les protocoles signés par le Parquet général de la République et d'autres entités, publie l'agenda hebdomadaire du Cabinet du Procureur de la République permettant aux médias de suivre son activité, participe à des initiatives pour débattre des questions liées aux relations entre les médias et la justice, ainsi que d'autres sujets d'intérêt sur la justice, déploie des initiatives ou des réunions ouvertes aux médias ; un magazine a déjà été publié pour faire connaître l'activité du Parquet général de la République et du ministère public; des visites à l'édifice où se situe le Parquet général de la République sont souvent organisées.

Sur le site officiel du Parquet général de district de Lisbonne, de nombreuses informations sur le travail des procureurs dans différentes juridictions sont mises à disposition, avec force détails sur les procédures que les citoyens peuvent utiliser (un lien est dédié au Citoyen), outre une base de législation d'un champ d'application très large ; de même, plusieurs informations d'intérêt juridique pour le public et les médias peuvent y être trouvées ainsi qu'un forum pour y poser des questions de nature juridique.

23. La communication avec les médias peut-elle être utilisée comme un outil d'enquête (par exemple en diffusant des portrait-robots, voire même des images des scènes de crimes)? Si oui, veuillez spécifier.

Dans certaines situations, les médias peuvent effectivement être utiles pour la divulgation de certains renseignements susceptibles d'être utilisés aux investigations, tels que la divulgation de portraits robot d'éventuels suspects ou de photos de personnes disparues, la divulgation de certaines images ou d'informations sur certains crimes afin de permettre que de possibles témoins des faits ou, du moins, de faits importants pour l'investigation, soient alertés et puissent s'adresser aux autorités pour collaborer avec la justice (la divulgation est faite en respectant les droits fondamentaux des personnes).

En règle générale, c'est la police criminelle, en particulier la police judiciaire, qui aide les procureurs dans les enquêtes et déclenche ces initiatives, lesquelles, soulignons-le, sont toutefois portées à la connaissance du ministère public et autorisées par celui-ci, autorité judiciaire qui dirige l'enquête.

Il est à noter qu'à l'égard du Système d'alerte d'enlèvement des mineurs (en vertu duquel il appartient au Parquet général de la République de décider sur son activation et sur les moyens à utiliser dans la détection des mineurs), les médias eux-mêmes s'impliquent dans la diffusion des messages d'alerte.

#### **D. La formation professionnelle de procureurs et des journalistes, leur éthique, leurs comportements et les moyens de communication**

24. Au cours de leur formation initiale et continue, les procureurs sont-ils formés sur les normes de la Convention européenne des droits de l'homme en matière de la liberté d'expression et d'accès à l'information?

La réponse est oui. Au fil des ans, le Centre d'études judiciaires - institution au Portugal chargée de la formation initiale et continue des juges et des procureurs - a organisé des cours de formation consacrés aux thèmes ci-dessus mentionnés.

25. Les procureurs sont-ils formés sur la manière de travailler avec les médias?

Oui, même si cette formation est encore embryonnaire. Au sein du Parquet général de la République, est en cours la réalisation d'une stratégie de base pour approfondir le thème d'une meilleure communication avec les médias.

26. Les journalistes sont-ils formés sur la manière de travailler avec le ministère public?

La réponse à cette question ne peut être donnée avec certitude. Il existe déjà des médias axés sur le thème de la justice, cependant, une grande partie de l'information communiquée n'est pas d'une grande précision technique.

Il est possible de constater, à titre d'exemple, que les cursus universitaires dispensés dans certaines universités portugaises proposent un cours intitulé «Droit de la communication et droits fondamentaux» ; néanmoins, en examinant leur programme, rien n'est spécifiquement indiqué au sujet de l'objet même de l'action du ministère public

(cf. Faculté des sciences humaines de l'Université catholique portugaise [http://www.fch.lisboa.ucp.pt/recursos/Documentos/Programas%202012-2013/Pasta%20CSC/CSC\\_Direito.pdf](http://www.fch.lisboa.ucp.pt/recursos/Documentos/Programas%202012-2013/Pasta%20CSC/CSC_Direito.pdf).)

27. Existe-t-il des cours de formation, des conférences, des séminaires conjoints organisés pour les procureurs et les journalistes afin de les aider à mieux comprendre le rôle de chacun et de se soutenir mutuellement, dans le cadre d'un juste équilibre entre les droits mentionnés ci-dessus, la présomption d'innocence et le droit à la protection de la vie privée?

Oui. Plusieurs cours et séminaires ont déjà été organisés sur les questions soulevées, y compris l'organisation du Centre d'études judiciaires, auxquels ont participé des procureurs, des juges et des journalistes.

En outre, le Parquet général de la République et l'Autorité de régulation des médias ont signé un protocole au cours de l'année 2012 établissant, entre autres, l'organisation et la tenue d'ateliers réguliers et d'actions de formation, ainsi que l'échange documentaire et bibliographique, liés à l'activité des procureurs et des médias.

28. Existe-t-il des associations professionnelles rassemblant des médias et des journalistes qui sont compétentes pour régler les interactions avec le ministère public?

Au Portugal, il existe l'Autorité de régulation des médias qui peut assurer ce rôle. Le protocole mentionné dans la réponse précédente a pour objet de contribuer à une plus étroite relation institutionnelle.

#### **E. Réglementation des activités de médias**

29. Existe-t-il une structure professionnelle interne (ou une autre institution) qui réglemente les activités des médias ou qui traite des plaintes déposées contre les médias en raison d'une violation d'un droit individuel dans le cadre d'une procédure pénale?

La Constitution prévoit à l'article 39 que cette réglementation des médias revient à une entité administrative indépendante qui doit assurer, entre autres, au sein des médias, "le respect des droits, libertés et garanties" et «Le respect des règles régissant les activités des médias. »

Actuellement, ce pouvoir est exercé par l'Autorité de régulation des médias (ERC) en application de la loi n° 53/2005, du 8 novembre.

Ce règlement vise, en outre, à «assurer la protection des droits de la personnalité individuelle lorsque ceux-ci sont mis en cause par les contenus des activités des médias soumis à la réglementation."

Toute personne intéressée peut déposer une plainte auprès de l'Autorité de régulation des médias concernant toute conduite susceptible de violation des droits, libertés et garanties ou des lois ou règlements applicables aux médias.

En outre, cet organisme intervient dans des situations de déni ou de déficiente exécution de l'exercice du droit de réponse ou de rectification par toute entité exerçant des activités dans le domaine des médias.

Le Conseil de régulation, organe de l'Autorité de régulation des médias, agissant de sa propre initiative ou sur demande d'une partie intéressée, peut adopter des directives génériques pour la promotion de bonnes pratiques dans le secteur des médias, et adresser des recommandations non contraignantes à un média individuel.

Les décisions de cette entité ont cependant un caractère contraignant et sont, tout comme les directives et recommandations, obligatoirement publiées sur le site officiel.

Les recommandations et les décisions sont publiées dans la presse, y compris son support électronique, et transmises à la télévision, à la radio et aux services d'édition disponibles par le biais des réseaux de communications électroniques.

Le non respect de la décision ordonnant la publication, la transmission ou la rectification d'une réponse, que ce soit dans son intégralité ou en partie, dans le but d'empêcher les effets visés, constitue un délit de désobéissance qualifiée.

Il incombe à l'Autorité de régulation des médias de poursuivre et de réprimer les infractions prévues dans le statut de cette entité et dans d'autres textes à l'égard des médias. Il y a également une Commission de la carte professionnelle du journaliste - décret-loi n° 70/2008, du 15 avril -, un organisme indépendant de droit public qui est chargé d'assurer le fonctionnement du système d'accréditation professionnelle des journalistes, assimilés aux journalistes, correspondants et collaborateurs du service d'information des médias, et le respect de leurs devoirs professionnels en vertu du Statut des journalistes et dudit décret-loi.

Cet organisme est aussi compétent pour apprécier, juger et sanctionner la violation, de la part des journalistes, assimilés aux journalistes, correspondants et collaborateurs du service d'information des médias, des obligations professionnelles énoncées au paragraphe 2 de l'article 14 du Statut des journalistes, instruire les procédures pour violation des articles 3, 4, 5, 7-A, 7-B, 15 et 17 du Statut des journalistes, et appliquer à leur encontre les amendes et les peines complémentaires. Il a également le pouvoir de sanctionner les violations des devoirs énumérés au paragraphe 2 de l'article 14 du Statut du journaliste, en particulier, « Ne pas faire d'accusation sans preuve et respecter la présomption d'innocence; d) Ne pas recueillir de déclarations ou d'images portant atteinte à la dignité des personnes, en exploitant leur vulnérabilité psychologique, émotionnelle ou physique ; ne pas traiter de manière discriminatoire les personnes en raison de leur ascendance, sexe, race, langue, territoire d'origine, religion, de leurs convictions politiques ou idéologiques, de leur éducation, statut économique, statut social ou orientation sexuelle ; f) Ne pas recueillir d'images et de sons par des moyens non autorisés, sauf si cela s'avère nécessaire pour la sécurité des personnes concernées et si l'intérêt public l'exige ; g) Ne pas identifier, directement ou indirectement, les victimes de délits contre la liberté sexuelle et l'autodétermination, contre l'honneur ou contre la vie privée, et ce jusqu'à l'audience ou au-delà de celle-ci, si la victime est un mineur de 16 ans, ainsi que les mineurs qui ont fait l'objet de mesures de tutelle punitives.

La violation des droits individuels dans le cadre d'une procédure pénale peut également entraîner des poursuites civiles ou pénales, l'enquête étant de la compétence du ministère public, autorité judiciaire chargée, en vertu de l'article 219 de la Constitution et du Code de procédure pénale, d'exercer l'action publique.

Ces procédures sont diligentées, selon les règles de compétence territoriale, par les mêmes services du Parquet qui enquêtent les autres affaires pénales, étant donné qu'il n'existe pas de structure / service du Parquet ou un tribunal spécialisés en la matière.

30. Veuillez décrire brièvement la procédure pénale, administrative et/ou civile concernant la diffamation, la calomnie et/ou une violation équivalente concernant la réputation d'une personne. Quel est le rôle du ministère public en la matière ?

Procédures pénales: La procédure criminelle pour des crimes de diffamation ou de calomnie, même quand ils sont commis par les médias, ne peut être déclenchée qu'après présentation d'une plainte par les personnes offensées (art. 188 du Code pénal) une fois qu'il s'agit de délits semi-publics.

Une fois présentée la plainte c'est le Parquet qui a compétence pour engager des poursuites (article 49 du Code de procédure pénale), qui fait la promotion et la direction de l'investigation pendant l'enquête, de présenter l'accusation (le cas échéant) et de la soutenir efficacement pendant les phases de l'Instruction (facultative) et du jugement; il doit interjeter appel contre les décisions, même dans l'intérêt exclusif de la défense et il doit faire impulsion l'exécution des peines et mesures de sûreté (art. 53 du Code de procédure pénale).

La procédure pénale est également soumise à de règles spécifiques mentionnées dans les diplômes relatifs aux médias.

La loi sur la presse - loi 2/99, 13/1 – prévoit (art. 30, paragraphe 1), dispose que c'est aux Tribunaux d'apprécier les crimes dont l'origine est la publication de textes ou d'images diffusées par les médias qui portent atteinte à de biens juridiques protégés par la loi pénale. L'art. 37 établit que la procédure pour délit de presse soit réglée par les dispositions du Code de procédure pénale et de la législation complémentaire, en tout ce qui n'est pas expressément prévu par cette loi.

En ce qui concerne la compétence territoriale l'article 38 établit des normes spécifiques, à savoir: la compétence pour investiguer les délits de presse appartient au tribunal du ressort où la personne morale propriétaire de la publication a son siège ou, si elle est propriété d'un particulier, le tribunal du ressort où la personne est domiciliée; pour investiguer des crimes de diffamation ou d'injure c'est au Tribunal du ressort qui correspond à la résidence de la victime.

La Loi de la Radio n° 54/2012 du 24/12 et la loi 27/2007, 30/7, tel que modifié par la Loi n. 8/2011, du 11 Avril, contiennent des règles identiques, en ce qui concerne sa nature et son sens.

Procédure civile – la procédure ne peut être déclenché que par l'action des lésés.

Les lois mentionnées – qui réglementent les activités de la radio et la télévision – disposent que pour déterminer les moyens de faire respecter la responsabilité civile découlant d'actes commis par voie de la presse les principes généraux doivent être observés; il n'y a donc pas de spécialité.

En principe, le Parquet n'a pas d'intervention dans les procédures civiles, surtout pas comme intervenant principal. Il peut intervenir comme représentant de personnes physiques ou morales qu'il est légalement engagé à représenter ; c'est le cas de mineurs ou d'handicapés dont les intérêts et droits ne peuvent pas être plaidés par autrui.

Les procédures administratives (infractions de nature administrative) - La phase administrative de ces procédures est soumise aux mêmes règles générales des procédures pour ce type d'infractions et qui est établie par le DL 433/82, 27/10.

Le Parquet, en règle, n'est pas impliqué dans la phase de l'instruction de la procédure, sauf dans les cas où il est nécessaire de recueillir des preuves par biais d'une intervention judiciaire.

La déclaration et le procès de décision sur l'infraction dans sa phase administrative dépend de la nature des infractions en cause ; la compétence pour décider appartient à l'Autorité de régulation des médias et le Comité portfolio professionnel Journaliste.

Le procès n'est remis aux organes judiciaires (Tribunaux que lorsque la personne affectée par la décision la conteste par biais d'un appel judiciaire.

Dans ce cas, le procès est remis par l'autorité administrative au Parquet, qui la transmettra à la cour ; cette transmission équivaut à la présentation d'une accusation (article 62 du DL 433/82, 27/10). Le Parquet impliqué dans les phases ultérieures du procès, défendra la décision de l'organe administratif, mais il est toujours soumis à de critères d'exemption, d'objectivité et de légalité.

31. En quoi consiste la responsabilité pénale ou administrative des journalistes et les sanctions prévues par loi?

Responsabilité pénale - Les journalistes peuvent être responsabilisés criminellement toujours et quand ils pratiquent, dans l'exercice de leur activité, des actes qui, peuvent mettre en péril des intérêts juridiques ou des valeurs pénalement protégées.

Ce sont les cas de :

Crimes contre l'honneur (articles 180 à 187 du Code pénal), punis avec peine de prison ou d'amende. Les sanctions pour ces crimes pourront être aggravés lorsqu'ils sont commis par les médias, par application de règles de la loi de la presse et de la télévision, ou dans le cas de l'infraction de diffamation et de publicité prévue au paragraphe 2 de l'art. 183 du Code pénal). Ces sanctions seront élevées dans la moitié de sa valeur minimale et maximale, si la victime est une personne mentionnée à l'al. j) de l'art. 132 du Code pénal, dans l'exercice de ses fonctions ou à cause de cet exercice.

Crimes contre la vie privée: l'article 192 du Code pénal (intromission dans la vie privée); l'article 194, paragraphe 3 du Code pénal (violation de la correspondance ou des télécommunications - «qui, sans le consentement, divulgue le contenu de lettres, de commandes, d'écrit privé, ou de télécommunication mentionnés dans les paragraphes

précédents ... "), l'article 195 du Code pénal (violation du secret), l'article 196 du Code pénal (utilisation incorrecte du secret).

Les sanctions pour les infractions prévues par les art. ° 192, 194 °, 195 ° sont augmentés d'un tiers en son minimum et maximum, si les infractions sont pratiquées avec le concours de la presse (art. 197, al. b) du Code pénal. Dans le cas de l'infraction prévue par l'art. 196 du Code pénal l'aggravation prévue par les lois pour la presse et la télévision est appliquée.

Crimes contre d'autres biens juridiques: Crimes d'enregistrements et de photographies (art. 199) ; la pénalité de ce crime est aggravée par application de l'article 197°.

Crimes contre les sentiments religieux: Outrage par des motifs de croyance religieuse (art. 251, 1); Outrage , perturbation ou obstacle à un acte de culte (art. 252, al B.).

Crimes contre la paix publique: incitation publique à un crime; apologie publique d'un crime (art. 298 °);

Crimes contre la sécurité nationale, crimes contre la souveraineté nationale, crimes contre l'indépendance nationale et l'intégrité (art.316 °) - Violation du secret d'État

Crimes contre les États étrangers et les organisations internationales: Outrage de symboles étrangers (art. 323);

Crimes contre la réalisation de l'état de droit: incitation à la désobéissance collective (art. 330.°); Outrage des symboles nationaux et régionaux (art. 332);

Obstacles à la justice: plainte calomnieuse (art. ° 365), violation du secret (art. 371).

Crimes pour la confidentialité de l'identité des mineurs: l'article 90, de la Loi n 147/99, 1 Septembre (protection juridique des enfants et des jeunes à risque) et l'article 97 de la Loi n 166/99 du 14 Septembre (loi tutelle éducative)

Tous ces crimes sont passibles de peines d'emprisonnement ou peines d'emprisonnement et d'amende.

32. Veuillez décrire les mesures de protection disponibles dans les procédures pénales et civiles (saisie ou l'interdiction de publications) et le rôle des procureurs. Dans votre pays, existe-t-il des mesures qui sont ou pourraient être considérées comme une forme de censure préventive? Les procureurs ont-ils un rôle dans le contrôle des activités de médias?

On peut dire tout de suite qu'il n'existe pas, en droit portugais, une procédure pénale, une action civile ou administrative qui puisse être considéré comme une forme d'obtenir la censure préalable à l'activité de communication exercée par les médias.

De la même façon, le Parquet n'exerce pas aucune activité pour contrôler ou surveiller les activités des médias. Pourtant, en conformité avec le système qu'on vient de décrire quand une activité des médias met en cause, les droits de la personnalité, il est possible d'envisager une action judiciaire portant sur une demande de suspension / interdiction de la diffusion de nouvelles dans une publication périodique en particulier, en déclenchant une mesure conservatoire.

Il convient de noter que seule une décision judiciaire pourra avoir comme effet l'interdiction et / ou la saisie d'une publication; une décision non judiciaire portant sur les mêmes effets est punie comme crime contre la liberté de la presse prévu par l'article 33. ° de la Loi sur la Presse ; cette conduite est aussi punie par l'article 19. ° du Statut des journalistes.

Du point de vue pénal, la seule réponse possible à cette question implique l'application d'une mesure coercitive au journaliste qui pratique des actes qualifiés comme crime, puni d'une peine supérieure à 2 ans de prison, laquelle pourra porter à la suspension de l'exercice de son activité, conformément à l'article 199, no. 1 et 2, alinéa a) du Code de procédure pénale.

33. Si un procureur est critiqué par les médias pour des raisons liées à la procédure pénale, les associations de procureurs peuvent-ils intervenir?

Conformément à l'art. 6 de son statut, le syndicat des magistrats du parquet a aussi comme objectif, défendre «les droits et les intérêts de ses membres, dans le plan professionnel, par tous les moyens autorisés, y compris l'assistance juridique.

34. Un procureur est-il tenu à un devoir de discrétion, même si une campagne médiatique a été lancée contre lui?

Comme Il a été déjà mentionné les procureurs sont obligés par le devoir de réserve prévu à l'art. 84 de leur Statut. En tout cas, pour défendre son honneur, ils peuvent, une fois supérieurement autorisés, faire des déclarations ou des commentaires sur des dossiers concrets.

Les informations dont le contenu n'est pas couvert par le secret de justice ou le secret professionnel et qui visent à réaliser des droits ou des intérêts légitimes, notamment le droit d'accès à l'information, ne sont pas concernées par le devoir de réserve

Dans tous les cas, les procureurs peuvent exercer les droits que tous les citoyens ont de défense de leur honneur et de leur réputation, en particulier en ce qui concerne de procédures judiciaires appropriées, et même en ce qui



concerne le droit de réponse. En tous cas les procureurs doivent sauvegarder les secrets, professionnel ou de la justice.

35. Avez-vous des institutions, autres que les associations de procureurs, disposant d'un pouvoir de réponse en cas d'attaques inappropriées par les médias à l'encontre du ministère public ou des procureurs pris individuellement?

Le Conseil supérieur du ministère public peut publier des communiqués pour clarifier les situations et reprendre la vérité au cas où des nouvelles portent atteinte au Ministère Public.

Le Parquet Général de la République peut aussi en prendre l'initiative

## F. Autres informations

36. Avez-vous d'autres informations ou commentaires concernant la communication entre procureurs et médias dans votre pays? Si oui, veuillez les décrire

Le Parquet Général de la République a fait des efforts pour mettre en œuvre des mécanismes appropriés pour établir une relation correcte et appropriée avec les médias.

Même si la structure existante, ne remplit pas encore les objectifs que le Parquet Général de la République souhaite développer, des informations aux médias, qui respectent les limites légaux, tout en satisfaisant le droit d'accès à l'information sont régulièrement fournies.

Une fois que l'activité du Parquet Général de la République est plutôt réactive, dans la mesure où, en règle, les informations sont prêtées sous demande de journalistes, il est prévu que brièvement, on pourra modifier cette conduite, en conformité avec les recommandations internationales et les principes constitutionnels de la liberté d'expression et de presse, conscients, comme on l'est que, seulement avec d'une action pro-active sera-t-il possible réduire les situations de violation des droits de réserve et de secret d'Instruction et prêter publiquement, aux citoyens, des informations correctes.

Quoi qu'il en soit, même s'il ne s'agit pas d'une spécialité du Portugal, il faut aussi assurer une adéquate coopération des médias, notamment en ce qui concerne l'obtention de l'information près de sources fiables, de sorte que le droit à l'information dans ses différents aspects – de s'informer, d'être informé, et d'informer – puisse acquérir son vrai sens.

## Romania / Roumanie

### A. Existing legal provisions and regulations

**Q1: Is the relationship between prosecutors and media determined by law or other written provisions? Describe them briefly.**

**A:** The relationship between prosecutors and the mass-media is governed by the provisions of the **Law No. 544/2001 on the free access to information of matters of public concern**, this being the main legal basis in this matter. The framework law is completed with a number of specific regulations concerning the activities carried out by prosecutors, such as the **Internal Regulations of prosecutor's offices** and the provisions of the **Order No. 116/2007 of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice** on the carrying out of the activities relating to the relations with the mass-media within the Public Ministry.

Thus, Chapter IX of the above-mentioned regulations entitled "The Public Information and Press Relations Bureau" contains provisions regarding the organization and operation of this bureau acting as an institutional communication vector at the top of the Public Ministry, in compliance with the provisions of the Law No. 544/2001.

The above-mentioned Order issued by the Prosecutor General was drawn up and structured in full compliance with the Recommendation No. 13 of July 10, 2003 of the Committee of Ministers of the Council of Europe Member States on the release of information concerning criminal proceedings to the mass-media, in order to create a climate of confidence among prosecutors as well.

The communication strategy forming a basis for the dialogue between prosecutors and journalists is in full compliance with the provisions of the **"Guide on the relationship between the Romanian judiciary and the mass-media"** as well as the **"Manual for the spokespersons and the structures for public information and the relations with the mass-media"** adopted through the Decision No. 482 of June 1, 2012 of the Plenum of the Superior Council of the Magistracy.

**Q2 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?**

**A:** Article 6 of the Order No. 116/2007 of the Prosecutor General stipulates as follows: "In order to achieve unitary and nondiscriminatory communication, prosecutors shall supply information to the mass-media only through the Public information and Press Relations Bureau or through the spokesperson."

Paragraph 2 provides an exception: "Prosecutors shall supply directly information to the mass-media after having previously informed the spokesperson only where a technical public presentation is required for the correct understanding of the respective case, the prosecutor being the only one who can make such presentation."

**Q3: 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)?**

**Q4: Do you have any experience of joint communication by several public authorities (e.g. prosecutor and police)?**

**A 3+4:** Representatives of various police structures supply to the mass-media primary data on the commission of criminal acts up to the moment when the respective case is docketed with a prosecutor's office. Afterwards, joint press releases may be issued on the investigations carried out in criminal cases, or they can issue their own press releases after a previous consultation among police officers and prosecutors.

Joint press conferences were organized for the more complex cases (generally, those cases concerning various forms of organized crime).

**Q5: 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)?**

**A:** During the criminal investigation, information concerning the charges filed against the suspect or the notification of the court to order the pretrial arrest can be released to the mass-media. The public disclosure can only be made after the previous notification of the persons concerned, to prevent them from learning about the accusations directly from the mass-media.

If journalists file requests based on the legal provisions asking for confirmation that a case has been docketed with a prosecutor's office, or about the stage of a certain criminal case providing actual data about it (such as the person who filed the criminal complaint, the docketing year, the names of the persons against whom charges have been brought) it is legally possible not to provide information.<sup>3</sup>

**Q6: Are the judges authorised to inform the press? If this is the case, during which stage of the procedure?**

**A:** Yes. Generally, after the case has been docketed with the court.

**Q7: Is there supervision on the relationships between prosecutors and media in your country? By whom and how?**

**A:** The general provisions of the Law No. 544/2001 regarding the system of complaints that can be filed against the authorities' denial to provide information of public interest are also applicable to prosecutors.

**Q8: 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"?**

**A:** All the normative acts mentioned in the answer to point 1 of this questionnaire include provisions for the creation of a set of specific rules ensuring the observance of the right to one's private life, the right to one's own image as well as the presumption of innocence. The provisions of Article 21 and 23 of the above-mentioned Guide drawn up by the Superior Council of the Magistracy also support the above specifications.<sup>4</sup>

**Q9: Are there any sanctions (either disciplinary/ sanctions or other types of sanctions) against public prosecutors who break the rules of inter-relationships with media?**

---

<sup>3</sup> This possibility is stipulated by the provisions of Article 25 of the "Guide on the relationship between the Romanian judiciary and the mass-media".

<sup>4</sup> Thus, Article 21 stipulates as follows: "The access of the mass-media representatives to the information deriving from the activity of courts and prosecutor's offices must be provided in a manner that does not infringe upon legally protected values. This is the reason why the Romanian judicial authorities must take the necessary steps to ensure a balance between limiting the access to public information and guarding the protected social values. The judicial authorities shall indicate the reasons for which a certain piece of information of such a nature has been exempt from disclosure. This legal provision must be corroborated with the provisions of Article 24 stipulating that: "Files docketed with prosecutor's offices cannot be studied by media representatives, their access to public information concerning the stage of the investigations carried out in the case being achieved through press releases or through information released on request in compliance with the legal provisions."

**A:** The **Superior Council of the Magistracy** may order disciplinary sanctions if prosecutors break any deontological provisions.

**Q10: How do the prosecution services deal with the security risks caused by disclosure of information concerning the prosecutors and the cases?**

**A:** The prosecutors cannot forbid the parties or the lawyers to communicate with the mass media about the progress of the investigation. However, no case has been seriously affected because of the communication with the media by others than the representatives of the judicial institutions involved.

**Q11: 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?**

**A:** There are no provisions forbidding that the name of a prosecutor or judge dealing with a certain criminal case be made public. Public disclosure does not require the particularization of the prosecutor who performs the investigation by publishing the latter's name.

### **B. Organizing communication**

**Q12: How prosecutors communicate with the press (press releases, press conferences, directly by telephone or e-mail, use of social networks etc.)?**

**A:** The actual ways in which prosecutors acting as spokespersons carry out their activity are :  
- **statements** by the spokesperson;  
- **press releases** and **notes**;  
- **interviews**;  
- **press conferences**;  
- any other means able to achieve the quick, correct and unbiased information on the activity of the prosecutor's office, such as: the right of reply, participation in round tables, seminars, and conferences."  
Communication is made by phone, e-mail, or the web site.

**Q13: Can press conferences or other releases be made by prosecutors in cases of international investigations? If yes, which procedure do you follow?**

**A:** Public disclosure in the case of files that involve international cooperation is allowed and is achieved according to the legal provisions previously mentioned.

**Q14: Is there communication with all the media or with some (newspapers, audiovisual media, internet)?**

**Q15: Are there regulations prohibiting public prosecutors to give an advantage to single journalists (and/or leaving out some of them)?**

**A14+15:** The communication with the written, on-line or audiovisual media is achieved without giving an advantage to single journalists or to leave others out.<sup>5</sup>

**Q16: 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?**

**A:** Some of the answers required under this point have already been given to questions 2 and 5. The spokesperson is a prosecutor and the communication with the media is organized by each prosecutor's office without special authorization.

Periodically, the spokespersons hold coordination meetings with the representatives of the specialized department of the Prosecutor's Office attached to the High Court of Cassation and Justice. The heads of prosecutor's offices exert direct control over the communication with the mass media, in compliance with the legal provisions.

---

<sup>5</sup> In the "Handbook for spokespersons and the structures of public information and relations with the media", in chapter II, entitled "Communication tools", it is stipulated: "The transmission of a release must be made to all editorial departments of the printed newspapers of the online environment and of the broadcasting and TV stations and media agencies, without discriminations and as much as possible during the same period of time".

**Q17: How does the media communicate with the prosecutors (official representatives, specialized journalists, necessary authorizations)?**

**A:** The *spokespersons* at the level of any prosecutor's office communicate with all media representatives, irrespective if these are or are not accredited to the Public Ministry or if they are or are not specialized for the justice field.

**Q18: 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)?**

**A:** The law provides exceptions to the communication of certain information, not to jeopardize the result of the investigation, to disclose confidential sources, or to jeopardize the life, bodily integrity or health of a person who was or is under investigation. Also excepted is the information concerning judicial procedures if their public disclosure would directly bear on the possibility to ensure a fair trial or on the legitimate interest of any of the parties involved in the process.

Concerning the disclosure of the names of the defendants or the accused, please refer to the answer to question 5. On the other hand, the names of the injured parties or of the witnesses are confidential, having in view the right of these persons to their own image and to private life, according to the legal provisions in this matter.

**Q19: Is there an official policy encouraging prosecutors to respond to the needs of media, and how is this policy implemented?**

**A:** The Order no. 116/2007 of the General Prosecutor defines the official policy regarding the institutional communication, respectively of encouraging a permanent dialogue between the journalists and the spokespersons or the chief prosecutors of the prosecution services in the country, for a prompt and correct information of the public opinion.

**Q20: Are the prosecutors' communications with media systematically monitored and evaluated by using monitoring, feedback from the public, communication surveys or other measures?**

**A:** The Prosecutor's Office attached to the High Court of Cassation and Justice assessed the communication between the institution and the media representatives, one of the means being the monitoring of the access to the site [www.mpublic.ro](http://www.mpublic.ro).

Other instruments used for this purpose are: assessing the number of requests received from journalists, that of additional requests asking for specifications following a press release; assessing the promptness of the response to such requests and the number of actions at law instituted following press releases by the Prosecutor's Office attached to the High Court of Cassation and Justice.

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

**Q21: 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)?**

**A:** See the answer to question 19.

**Q22: 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)?**

**A:** The Romanian Public Ministry publishes a yearly activity report, the most important public stands of the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice, and the proposals lodged concerning the consultations on the bills initiated. The presentation brochure of the Romanian Public Ministry is posed on the institution's site and the technical details can be accessed in the Internal Regulations. There is a section entitled *virtual library* on the web page. All the case law unification requests are published on this site.

In another train of thoughts, we would like to point out that the "Open doors" action is most highly appreciated by students.

**Q23: 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.**

**A:** The question regards the area of attributions specific to the *police*.

**D. Professional training of the prosecutors and journalists, their ethics applicable in the case of the two professions, conduct and inter-professional communication means.**

**Q24: 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?**

**A:** Professional training (initial and continuous) concerns the ECHR standards is compulsory for all magistrates.

**Q25: Are prosecutors trained on how to interact with media?**

**A:** See the answer to question 16. We would like to point out that prosecutors participate in seminars and conferences organized by the civil society.

**Q26: Are journalists trained on how to interact with the prosecution services?**

**A:** “The Guide on the relationship between the Romanian judiciary and the mass-media” (see the answer to question 1) was drafted following consultations with the representatives of the mass media and is posted on the sites of the judicial institutions.

**Q27: 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?**

**A:** See the answer to question 25.

**Q28: Are there professional associations of media and journalists competent to regulate their interaction with the prosecution services?**

**A:** The Public Ministry has initiated during 2007 a meeting with the representatives of the leadership of the *Romanian Press Club*<sup>6</sup>, among the topics addressed being the internal and European legislation, which favors or restricts the communication, starting from real situations which the journalists and the prosecutors meet in their daily activity. There are not mandatory rules.

**E. Regulation of media activities**

**Q29: 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?**

**A:** In Romania, the audiovisual sector is regulated by the Audiovisual Law no. 504/2002 which sets forth the organizational and functioning framework of the **National Audiovisual Council of Romania (CNA)** and the activity of broadcasters. CNA is an autonomous public authority under parliamentary control, and it is the warrantor of public interest in the field of audiovisual communication and, at the same time, the only regulatory authority of audiovisual media services.

**Q30: 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?**

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

**A30 + 31:** Art. 30 of the Constitution establishes the forms and topics of the liability if the limits of the freedom of speech are not observed. Thus, par. 8 explicitly establishes two forms of liability namely civil and criminal liability.

The **civil liability** falls on the editor or the producer, the author, the organizer of the artistic performance, the owner of the copying facilities, of the radio or television station, under the law. By use of the expression “under the

---

<sup>6</sup> The *Romanian Press Club* is one of the institutions that act as a fellow authority in the Romanian media space. This non-governmental professional association with legal personality aims to create an organizational framework necessary to promote the professional, economic and legislative interests of its members, to develop institutionalized relations with state authorities, civil society, other similar national and international organizations, to accomplish activities and initiatives that promote the professionalism, the moral values of journalism and the social responsibility of this profession.

law” the lawmaker is given the mission to set in a detailed manner the conditions of the liability, its size, the repartition of civil liability towards the liable individuals.

As for **criminal liability**, we would like to specify that the offences of insult and calumny have been expressly repealed in 2006.

Concerning the administrative liability, please refer to the answer to question no. 29.

As regards the condemnation of attacks against journalists, according to the principle of equality before the law enshrined in art.16 par. 1 of the Romanian Constitution, journalists – victims of offenses have all the rights recognized to persons in this situation by the criminal procedural legislation.

As to the investigation and prosecution, that is offering compensation for attacks against journalists, the activity of the prosecution authorities is carried out in compliance with the criminal procedure regulations in force, the law being equally and fairly applied to all people, and, as a consequence, to the situation in which the victim of a criminal act has the professional status of a journalist as well.

**Q32: 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?**

**A:** There don't exist norms or measures to allow the prosecutors to censure the media activity.

**Q33: If a prosecutor is criticized by media for reasons connected with the criminal proceedings, is there a role to play for the prosecutorial associations?**

**A:** The question concerns competences which exceed those specific to the Public Ministry. We mention that the **professional associations of the prosecutors** have a direct relationship with the media, not intermediated by the competent structures in this field within the units of the Romanian Public Ministry.

**Q34: Is the prosecutor bound by a duty of discretion even if a media campaign has been started against him or her?**

**A:** In such situations, the prosecutors can submit to the **Superior Council of Magistrature** a request for defending their reputation. According to the regulations in force, the judges and the prosecutors must act in their position with objectivity and impartiality, having as unique base the law, without following up the pressure and influences of any nature.

**Q35: 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?**

**A:** As shown in the answer to question 34, prosecutors can address the **Superior Council of Magistracy** applications for the defense of their professional reputation, and of their professional independence, in the situations in which they consider they are the target of an unfair attack from the press. Those requests are handled by the **Judicial Inspection of the Superior Council of Magistracy**, an autonomous structure that runs a series of verifications on the basis of which they draw up a report. According to it, the **Plenum of the Superior Council of Magistracy** allows or rejects the application for the defense of the professional reputation or of the professional independence that the prosecutor made, and a press release is conveyed to the press by which the public opinion is informed about the results of the verifications and the final solution given.

However, when a prosecutor or a prosecution unit considers that the press published materials making ungrounded accusations, the newspaper editors or the show producer may be asked to publish a right to reply or to allow live intervention of the spokesman or of the prosecutor in chief of that prosecution unit to make certain amendments.

## **F. Other information**

**Q36: 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.**

**A:** It is not the case.

## **Russian Federation / Fédération de Russie**

- 1. Is the relationship between prosecutors and media determined by law or other written provisions? Describe them briefly.**

The main parameters of the relationship between prosecutors and the media are established by laws (the Law of the Russian Federation "On Mass Media", the Criminal Procedure Code of the Russian Federation, Federal Laws "On the Order of Reporting the Activities of the Bodies of State Power in Mass Media", "On Combat Against Extremist Activities", "On the System of Civil Service of the Russian Federation", "On Information, Information Technologies and Information Security", "On Access to Information on the Activities of the State Bodies and the Bodies of Self-Government", "On Protection of Children Against Information, Damaging their Health and Development") and by many regulations, issued by the Prosecutor's Office (the Orders of the Prosecutor General of the Russian Federation "On Interaction of the Bodies of the Prosecutor's Office with Mass Media", "On Organization of Work to Ensure Access to Information on the Activities of the Bodies and Institutions of the Prosecutor's Office of the Russian Federation" and etc.).

According to the Federal Law "On the Prosecutor's Office of the Russian Federation", the Prosecutor's Office of the Russian Federation acts openly and publicly to the extent that does not contradict the requirements of the Russian legislation on protection of rights and freedoms of citizens, as well as the legislation of the Russian Federation on the state secret and any other secret, especially guarded by law. The Prosecutor's Office is obliged to inform federal and regional bodies of state power, bodies of local self-government, as well as the public on the state of legality. Moreover, the effect of the Media and representatives thereof on the prosecutor in any form in order to influence the decision, taken by the prosecutor, or to impede his/her activities in any form shall lead to the liability, stipulated by law.

**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?**

At the present time Russian prosecutors have a right to direct (immediate) relations with the Media. However, the transfer of the information on specific cases is possible solely within the framework of the competences of the Prosecutor's Office as a whole, observing certain procedures that guarantee the rights and freedoms of a person and a citizen, the interests of the public and the state and according to the official positions of certain officials.

The Order of the Prosecutor General of the Russian Federation "On Interaction of the Bodies of the Prosecutor's Office with Mass Media" establishes that the official statements on behalf of the Prosecutor General's Office of the Russian Federation are forwarded solely through the Department for Interaction with Mass Media and only with the consent of the Prosecutor General of the Russian Federation.

**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)?**

According to the Federal Law "On the Prosecutor's Office of the Russian Federation", nobody is entitled, without the Prosecutor's consent, to disclose materials of inquiries (checks) which are conducted by the Prosecutor's Office until they have been completed. The issue concerning the supply of the appropriate information on the materials of the Prosecutor's inquiries is solely within the competence of the Prosecutor's Office.

Beside the Prosecutor's Office, the body which conducts the case is also entitled to supply the information to Mass Media within the framework of the criminal case and within the limits of its competence.

According to the Criminal Procedure Code of the Russian Federation, the data of the preliminary investigation may be made public only with the permission of the investigator, the inquirer and only in the volume that will be considered by them to be admissible if such disclosure does not contradict the interests of the preliminary investigation and is not connected with violation of the rights and legal interests of the participants of the criminal proceedings. Disclosure of the data on the private life of the participants of criminal proceedings is not allowed unless the participants give their consent thereto.

Moreover, the investigator or the inquirer warns the participants of the criminal proceedings about the inadmissibility of the disclosure of the data of the preliminary investigation that has already become known to them without the relevant permission and for this end the participants sign the statement of non-disclosure with the warning of criminal liability.

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

In the Russian Federation we have the practice of communication of information to the public through the Media by the Prosecutor's Office jointly with other state bodies, for instance, by the prosecutor jointly with the representatives of police or bodies of preliminary investigation in the form of joint press-conferences or round tables.

We also have experience of communicating information to the Media jointly with the institutions of civil society and the Interpol on the issues of extradition.

**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)?**

In compliance with the established order, the prosecutors may communicate information on their activities to the Mass Media at all stages of the criminal proceedings, including at the stage of the pre-trial investigation, court hearing, as well as after the court decision has been adopted and only in the part, referring to their competence.

In the course of the pre-trial investigation, interaction of prosecutors with the Media may be preconditioned by the necessity of the appropriate communication of the information to the bodies of state power and to the public in order to prevent distribution of false information and for other reasons, connected with service needs.

The statements, made and distributed by the Prosecutor's Office, shall be accurate, unbiased and shall not contain any information of confidential nature.

The prosecutor is entitled, without coordination with other state bodies, to communicate the results of his/her activities to the Media, in particular, the information that criminal cases were forwarded to the court, that the court decisions were adopted on them. The prosecutor may present information about the course and results of the execution of court decisions, assess the facts of initiation of criminal cases and the results of investigation. At that, the reporting of the activities, concerning proceedings, supervision and protection of rights by the Prosecutor's Office, to the Media does not presuppose disclosure of the data, subject to protection as a secret of investigation.

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

According to the Russian law, court proceedings may be public and closed. Information about the cases, examined in the open court proceedings, is available to the Media immediately at all stages of court proceedings. Moreover, the provisions of the Law on the Prohibition to Communicate Information to the Media on the Activities of the Judge in the Court Deliberation Room and to Communicate with Representatives of the Mass Media about the cases under the judge's examination and to express his/her opinion before the court decision has entered into force.

In general the bodies of the court also have a right to inform the Media about their activities.

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

There is no official supervision on the relationships between prosecutors and media in the Russian Federation.

**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"?**

These rules do exist and their observance by prosecutors and representatives of the Media is ensured by the application of the measures of legal liability for violation of such rules.

According to the Order of the Prosecutor General's Office of the Russian Federation "On Interaction of the Bodies of the Prosecutor's Office with the Media", the statements, made and distributed by the Prosecutor's Office, shall be accurate, unbiased and shall not contain information of confidential nature. When preparing the materials to be communicated to the Media, the prosecutors shall be governed by the Constitution of the Russian Federation which guarantees a right to the protection of private life, personal and family secret, protection of dignity and reputation. It is also prohibited to make public any information which may lead to indication of the personality of a juvenile offender or victim without his/her consent and consent of his/her legal representative.

**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 such sanctions.

At the present time the organization of interaction of the bodies of the Prosecutor's Office with the Media is defined by the Federal Law "On the Prosecutor's Office of the Russian Federation", the Order of the Prosecutor General of the Russian Federation "On Interaction of the Bodies of the Prosecutor's Office with the Media". Moreover, the Order of the Prosecutor General of the Russian Federation "On Organization of the Work to Ensure Access to Information on the Activities of the Bodies and Institutions of the Prosecutor's Office of the Russian Federation" is in force now.

Violation of the rules of interaction with the media entails disciplinary, administrative, criminal and tort liability for the prosecutor for violations of the requirements of the established rules of interaction with the Media if corpus delicti of the relevant offence is found in the actions of the prosecutor.

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

According to the Federal Law "On the Prosecutor's Office of the Russian Federation", prosecutors enjoy special protection, provided by the state, including when there are security risks, caused by disclosure of information concerning the prosecutors themselves and the cases under their examination.

To ensure protection of the life and health of the protected persons and their property, the Federal Law "On State Protection of Judges, Officials of Law Enforcement and Controlling Bodies" stipulates the following security measures: 1) personal security, security of the dwelling and property; 2) granting arms, special means of personal protection and warning of the danger; 3) temporary movement to a safe place; 4) ensuring confidentiality of the information about the protected persons; 5) transfer to another place of work (service); change of work (service) or studies; 6) movement to another place of residence; 7) change of documents; change of appearance.

Prosecutors have a right to constantly wear and keep military small arms for personal security (pistols, revolvers) and special means and they have a right to use them.



**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?**

On the whole there are no regulatory provisions in the Russian Federation which prohibit publication of the name of the prosecutor when he/she is conducting a case.

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

Prosecutors communicate with the press by distributing press-releases, giving answers to journalists' requests; placing information in the Media; Officials of the Prosecutor's Office make speeches in the press, on the radio and television; they organize interviews; they prepare and widely distribute joint information materials, books, brochures; they invite representatives of the Media as public assistants, specialists, experts; they hold press-conferences and briefings for the representatives of the Media; they invite journalists at the sessions of coordination meetings, panels; journalists participate in seminars, conferences, "round tables" on the issues of strengthening legality which are held by the bodies of the Prosecutor's Office; officials and directors of the bodies of the Prosecutor's Office personally meet journalists of periodic editions, journalists of TV channels and radio; prosecutors and journalists participate jointly in social networks; they place information banners and distribute actual information by the "running letters" of the electronic information board in the places of mass gathering of people.

At the present time Russian prosecutors use all modern technical means for transmission of information and methodological techniques to present information to the Media—telephone lines, e-mails, press-releases, press-conferences and etc.

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

Yes, they can be made by the prosecutors within the established competence. However, there is no special procedure.

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

Relations, based on mutual respect and trust, are built by the Prosecutor's Office of the Russian Federation with all Media, interested in regular and productive interaction (printed editions, radio, TV, Internet-editions, information agencies).

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

According to the Code of Ethics of the Prosecutor of the Russian Federation, the prosecutor shall be governed in his/her activities by the principle of the equality of citizens irrespective of the citizen's profession.

**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 daily professional duty to realize interaction of the Prosecutor's Office of Russia with the media is the prerogative of special subdivisions and officials who are prosecutors.

The Department for Interaction with the Media, an independent structural subdivision of the Prosecutor General's Office of the Russian Federation, was established to maintain uniform information policy of the Prosecutor's Office, to contribute to the protection of rights and freedoms of citizens in the information environment and to ensure interaction of the Prosecutor's Office of the Russian Federation, its structural divisions with the media.

Official statements on behalf of the Prosecutor General's Office of the Russian Federation are forwarded solely through this department and only with the consent of the Prosecutor General of the Russian Federation.

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

The media maintains communication with prosecutors in different forms on the basis of the requests of the editor's offices. The relations of the media with prosecutors are governed by the provisions of the Law of the Russian Federation "On Mass Media", according to which the citizens have a right to receive trustworthy information concerning activities of state bodies, bodies of local self-government, organizations, public associations, their officials. The Prosecutor's Office supplies the information on its activities to the media upon the request of the editor's offices and by holding press-conferences, sending statistical and reference materials and in other cases.

It is common practice that journalists coordinate their visits to the Prosecutor's Office, observing the established pass control.

**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 information which is not prohibited by law, including the names of the parties, witnesses, prosecutors, facts, which are disclosed as a result of investigation and which are connected or not with the case, may be disclosed. The nature of the information which may be disclosed, is indicated in answers to questions 3, 5, 8, 10 and 11.

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

Yes, there is such policy.

The Prosecutor's Office of Russia considers interaction with the media as one of the most important directions of the work and according to the Order of the Prosecutor General of the Russian Federation "On Interaction of the Bodies of the Prosecutor's Office with the Media", the Prosecutor's Office maintains this interaction, taking into account the analysis of the status of legality and prosecutor's supervision; the Prosecutor's Office systematically informs the public through the official Internet representative offices of the Prosecutor's Office, information agencies, the press, radio and television about the state of legality and law and order; it operatively communicates to the media the criminal cases which are forwarded to court and which gave rise to a higher public interest and about the decisions, adopted on these cases by courts, as well as about prosecutor's checks, in the process of which multiple violations of legality were revealed; the Prosecutor's office constantly enhances the forms and methods of work with the media.

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

Yes, they are. The qualitative status of interaction with the media is the subject of the monitoring and performance assessment of the prosecutors. Prosecutors regularly report about their work and interaction with the media.

**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 Prosecutor's Office of the Russian Federation has developed and realized a proactive media approach by open and public reporting of its activities in the Internet, press, TV and radio. This information is reported according to the standards of the Russian Law on the state secret and any other secret, guarded by law.

**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's office, visiting courts, publishing booklets, developing online teaching materials)?**

To inform the public and the media and to explain the work of the Prosecutor's office, the following activities have been taken: to prepare information statements and press-releases (they are placed at the official Internet-representative offices of the Prosecutor's Office; they are forwarded to the editor's offices of the media via e-mails), to hold press-conferences, meetings and receptions; to publish brochures with explanation of laws, booklets on the activities of the Prosecutor's Office; to use the possibilities of the social advertising; to issue departmental periodic printed editions of the Prosecutor's Office; to open categories on the official Internet representative offices to explain the laws and to describe the history of the Prosecutor's Office; to hold competitions of journalists' articles on the Prosecutor's work and to host competitions for prosecutors for the best speech in the media and etc.

**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.**

The bodies of preliminary investigation may use communication with the media as an investigative tool (including for distribution of identikits with images of criminals) according to the Laws of the Russian Federation.

In the course of investigation of crimes, communication of the Prosecutors with the media may be used, for instance, to appropriately inform the bodies of power and the public in order to prevent distribution of false information, gossip and speculations; to reveal and prevent crimes; to search for the guilty with the use of the possibilities of the media and to neutralize attempts of the offenders to counteract the legal actions and requirements of the bodies of the Prosecutor's Office and etc. The statements, distributed by the Prosecutor's Office, shall be accurate, unbiased and shall not contain confidential information.

**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, they are. As far as the activities of the Prosecutor's Office of the Russian Federation are concerned, the requirements of the European Convention on Human Rights as regards freedom of expression and access to information are realized and enshrined in the Federal Law "On the Prosecutor's Office of the Russian Federation" which established the principle of "glasnost" (openness) of the activities of the Prosecutor's Office of the Russian Federation: "The bodies of the Prosecutor's Office act publicly and openly to the extent that does not contradict the requirements of the laws of the Russian Federation on protection of rights and freedoms of citizens and the laws of the Russian Federation on the state secret and any other secret, especially guarded by law".

The issues concerning the freedom of expression and access to the information are also included in the programmes of advanced training in order to form the relevant practical skills of the prosecutors when they are performing their official functions.

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

Yes, they are. The Order of the Prosecutor General of the Russian Federation "On Interaction of the Bodies of the Prosecutor's Office with the Media", the prosecutors of the subjects of the Russian Federation and prosecutors of the specialized Prosecutor's Office equal to them are obliged to hold a special training seminar annually with the prosecutors of cities, districts, other territorial prosecutors and prosecutors equal to them of other specialized Prosecutor's Offices on the issues of interaction with the media.

Moreover, the Academy of the Prosecutor General's Office of the Russian Federation regularly holds training for prosecutors, responsible for interaction with the media within the programmes of advanced professional training.

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

The Prosecutor's Office of the Russian Federation organizes events to train journalists how to interact with the prosecution services.

These events may be held in the form of participation in "round tables", "questions and answers" nights, press- and online conferences, briefings, organized by the media or with invitation of the media; sessions of the coordination meetings of the heads of the law enforcement bodies of the regions, interdepartmental working groups of law enforcement bodies, Panels of the Prosecutor's Offices, organized with the invitation of the representatives of the media; holding seminars for officers of the Prosecutor's Office, including with participation of the representatives of the media and etc.

**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?**

Yes, there are. Within the framework of interaction of the Prosecutor's Office with the media, conferences, seminars, "round tables" and similar events are organized, including with the aim to develop forms and methods of joint work to strike the legal balance between the above mentioned rights and the presumption of innocence and the right to protect private life.

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

The Union of Journalists is functioning in Russia with the status of a Creative Public Association, which has the competence to regulate relations with the media. The information on the activities of the Union is available on the information site of this Union—<http://www.ruj.ru>.

In practice there were some cases, when individual organizational forms of interaction with the Prosecutor's Office were realized through the Union of Journalists of the Russian Federation (as a rule by the mutual exchange of information).

**29. Is there an internal board (or another institution) that regulates the activities of media or deals with the complaints lodged against the media because of the violation of an individual right within the framework of a criminal procedure?**

No, there is not. Complaints, lodged against the media, including because of the violation of an individual right within the framework of a criminal procedure, are examined by the Prosecutor's Office in the general order.

**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?**

The Criminal Code of the Russian Federation envisages liability both for libel and slander, i.e. for distribution of the deliberately false information, defaming the dignity and honour of another person or undermining the person's reputation.

In the order of civil proceedings and according to the Law of the Russian Federation "On Mass Media", a citizen has a right to request the editor's office to refute the information which is contrary to the reality and which defames his/her business reputation and which was distributed in this media. If the editor's office of the media does not have any evidence that the information which was distributed corresponds to the reality, the editor's office is obliged to refute it in the same media.

The citizen about whom the information, defaming his/her honour, dignity and business reputation, was distributed, shall have a right to demand reimbursement of damages and moral harm, inflicted by such distribution, alongside with the refutation of such information.

In case libel or slander in any form has been revealed, the prosecutor has a right to initiate criminal prosecution of the person who has committed the libel/slander for which criminal liability is envisaged in the order of public and private and public prosecution, the prosecutor has a right to initiate proceedings for administrative offence and is entitled to apply to court with a statements on protection of the interests of citizens, society and the state, protected by law, and to participate in court proceedings in these cases according to the Procedure Laws.

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

Journalists bear criminal and administrative liability in the Russian Federation on a general basis. Journalists do not have any immunity.

According to article 128.1 of the Criminal Code of the Russian Federation and depending on the qualification features, the libel/slander is punished with a fine in the amount of up to 5 million roubles (approximately 125 000 Euros) or in the amount of the wages or other income of the convicted for the period of up to three years or compulsory work for the period of up to 480 hours.

The analysis of the prosecutor's practice shows that violations of laws in the field under consideration are not homogenous in its nature, direction and content.

Among the violations of laws, often committed by the media in the course of the activities (which are incriminated to the media), the following offences are the most widespread: humiliating the dignity, honour and business reputation (criminal liability, tort liability); invasion of private life and infringement of other non-property rights (criminal liability, tort liability); violations of registration and license rules (administrative liability); violations in advertising activities of the media (administrative liability); violations, connected with pre-election campaigns, refusal to publish compulsory information (administrative liability, tort liability); the use of the media with criminal purposes, including for actions of extremist nature (criminal liability, tort liability); abuse of rights of the media and journalists (criminal liability, tort liability).

**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?**

According to the Constitution of the Russian Federation and the Law of the Russian Federation "On Mass Media" the censorship of mass information, i.e. the demand to the editor's office of the media by the officials, state bodies, organizations, institutions or public formations to preliminarily coordinate statements and materials (except for the cases when the official is the author or the interviewee) and the imposition of the prohibition on distribution of the statements and materials, their separate parts are not permitted. It is also prohibited to create and finance organizations, institutions, bodies or vacancies the tasks of which or the functions of which are to censor mass information. Restriction of the freedom of the press and other media is permitted only if there is the state of emergency or the military situation.

According to the Law of the Russian Federation "On Mass Media" the moral (non-property) harm, inflicted to the citizen as a result of distribution of the information which is contrary to the reality and which defames the honour and dignity of a citizen or which inflicted him non-property harm, shall be reimbursed according to the decision of the court by the media, the guilty officials and citizens in the amount, defined by the court.

The subject-matter of the supervision activities of the Prosecutor's Office over the enforcement of laws, including in the sphere of the media, includes:

- observance of the constitutional right of citizens to receive information through the media, execution of the laws on the media which are in force in the territory of the Russian Federation by federal bodies of executive power, responsible for regulation, control and supervision in the sphere of the media, by legislative (representative) and executive bodies of state power of the subjects of the Russian Federation, the bodies of local self-government, bodies of military management, their officials and bodies of management and directors of commercial and non-commercial organizations (including the media);

- compliance of the regulations, adopted by the above mentioned bodies and officials on the issues of the activities of the media, with the laws and realization of the right of citizens to 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?**

No, there is no role like this.

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

The prosecutor has no right to act at his discretion, if he is subject to criticism in the media as a representative of the body of the Prosecutor's Office, but he shall act according to the Law.

If the media interferes in prosecutor's activities with the aim to influence the decision, adopted by the prosecutor, or to impede his activities in any form, then it is illegal and shall entail the liability, envisaged by law.

Interference in any form in the activities of the prosecutor in order to impede a comprehensive, full and unbiased investigation shall entail criminal liability.

The prosecutors also enjoy civil rights and that is why they may seek protection of their legal interests by other means, which are not prohibited by law.

Information on violations, committed by prosecutors, is subject to checks. The check of the information on the fact of any violation, committed by a prosecutor, is solely within the competence of the Prosecutor's Office and the check of the information on the crime, committed by the prosecutor, initiation of a criminal case against the prosecutor (except for the cases when the prosecutor is caught red-handed at the scene of the crime) and the preliminary investigation are conducted by the Investigation Committee of the Russian Federation in the order, established by the Criminal Procedure Law of the Russian Federation.

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, we do not have any.

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, we do not have any other information.

## Slovakia / Slovaquie

### 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 prosecutors and media is not regulated by any specific law. Freedom of expression and right to information are guaranteed in the **Constitution of the Slovak Republic**. Everybody has right to express their views orally, in writing, in printed form, pictures or by any other means. The same applies to free access to, reception and distribution of ideas and information worldwide. Publication of press is not subject to licensing procedure and censorship is prohibited.*

*Terms, procedures and extent of free access to information is regulated by the Act no. 211/2000 Coll. on **Free Access to Information** as amended (Free Access to Information Act).*

*Rights and obligations of a publisher (editor) of periodicals and obligations of a press agency in relation to acquisition and dissemination of information is regulated by the Act no. 167/2008 Coll. on **Periodicals and News Agencies** as amended (Press Law).*

*Broadcasting and Retransmission Council/Board has the responsibility to promote interests of the public in relation to exercise of right to information, freedom of speech and right to access to cultural values and education; also it carries out the State regulation in the area of broadcasting, televising, retransmission and provision of audiovisual and media services upon request (Act no. 308/2000 Coll., on **Broadcasting and Retransmission** as amended and Act no. 195/2000 Coll., on telecommunications. The Council observes plurality of information in news broadcasted on the basis of a law or on the basis of a license under the law. It supervises the observance of legal regulations regulating broadcasting, retransmission and audiovisual media services upon request and it also carries out State administration in the area of broadcasting, retransmission and audiovisual media services upon request, in the extent defined by a law.*

*Information about criminal proceedings is given pursuant to the Act no. 301/2005 Coll., i.e. **Code of Criminal Procedure**.*

*Instruction no. 12/2006 as amended by the Instruction no. 14/2012 of the General Prosecutor of the **Slovak Republic** regulates provision of internal information from the Public Prosecution Service to media.*

**Classified information** processed within the Public Prosecution Service of the Slovak Republic is defined within the meaning of the effective legal regulation by means of the **Order of the General Prosecutor of the Slovak Republic** (Order no. 7/2006, 1/2008, 4/2009).

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 task to provide true, timely and universal information to the public is fulfilled by the Press and Information Section (hereinafter referred to as "spokesperson") at the Office of the General Prosecutor of the Slovak Republic and also by the appointed prosecutor in each Regional Prosecution Office (regional spokesperson). As far as the matters falling within the supervision of the Special Prosecution are concerned, information is provided by the spokesperson there unless Special Prosecutor decides otherwise.*

*Information is provided to the media primarily by the spokesperson, regional spokesperson, spokesperson of the Office of Special Prosecution. Prosecutors give media information immediately prior to termination or after termination of proceedings in specific matter. Court spokespersons give information regarding judicial proceedings.*

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 spokespersons and investigators are authorized to provide information to the press in limited extent (in order to prevent any possible obstruction of the investigation). The same applies to lawyers representing parties to the proceedings as well as to any other person e.g. sworn experts.*

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

*Yes, there are joint briefings organized for the police and prosecutors in order to coordinate provision of information to media.*

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)?

*Police spokespersons communicate within investigation stage (since commencement of criminal proceedings until accusation). Spokespersons of the Public Prosecution Service communicate since accusation until submission of the indictment. Courts spokespersons and prosecutors communicate after indictment i.e. in the course of the judicial proceedings; they give information directly to the media immediately prior to the termination or after termination of proceedings in specific matter.*

*Judgments (without personal data) are published in the web page of the Ministry of Justice of the Slovak Republic.*

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

*In the course of proceedings before a Court, the extent of information provided results from the principle of the public nature of a trial. In the course of judicial proceedings, participants may not be prohibited to take notes or make drawings provided that they do not disturb the course of proceedings.*

*Judicial proceedings are public unless judge excludes the public. Court spokespersons inform the press. Decisions are made public after termination of judicial proceedings.*

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

*No, there is not any specific supervision on the relationship between prosecutors and media. Broadcasting and Retransmission Council supervises the observance of legal regulations regulation broadcasting, retransmission and provision of audiovisual media services upon request. The Press Law regulates right to information and obligation of the public power authorities to provide information regarding their own activities to publisher of periodical or to press agency.*

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, protection of personal rights, privacy and human dignity is guaranteed by the Constitution of the Slovak Republic, by the Civil Code, Act no. 458/2002 Coll., on Protection of Personal Data, Act no. 256/1998 Coll., on Protection of Witness; presumption of innocence is stipulated by the Code of Criminal 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?

*Any prosecutor has the obligation to fulfill obligations resulting from the Constitution of the Slovak Republic, constitutional laws, laws and other generally binding legal regulations. Any prosecutor is held responsible for any disciplinary wrong under the Act no. 154/2001 Coll., on Prosecutors and Trainee Prosecutors. Intentional (voluntary) failure to fulfill obligation or breach of prosecutor's obligations, or any prosecutor's behavior which gives reasonable grounds for doubts regarding his/her conscientiousness and impartiality in decision-making, or any prosecutor's behavior in public which diminishes the dignity of the Public Prosecution Service is considered disciplinary wrong. Under the conditions defined in the law, one from among several disciplinary measures is imposed on prosecutor for disciplinary wrong.*

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

*There are several internal rules regarding treatment of files, archives and circulation of files; also, any superior prosecutor has the authority to monitor and supervise treatment of files; there is also the Organizational and Controlling Department in the General Prosecutor's Office.*

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?

*Section 11, the Civil Code stipulates that any natural person has right to the protection of personal rights, especially life and health, integrity of a citizen, human dignity, privacy, his/her name and manifestations of personal (private) nature. In its Section 12, par. 3 it stipulates that portraits, photo shots and video and audio records may be produced and used without consent of natural person for scientific and artistic purposes as well as for publishing news in press, film (movies), radio and TV broadcasting. Any use of such material may not be contrary to legitimate interests of a natural person.*

*Section 7, Act no. 428/2002 Coll., on the Protection of Personal Data stipulates that personal data may be processed only upon consent of the person concerned.*

*Section 34, par. 7, Act no. 385/2000, Coll., on Judges and Lay Judges as amended stipulates that a face and address of a judge may not be made public without his/her consent; the same applies to members of his/her family if it is necessary for the protection of the judge and his/her family and provided that the family members give their consent. Judges have also right to adequate concealment of personal data regarding themselves and their families.*

## **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.)?

*Prosecutors communicate with press only exceptionally e.g. after termination of proceedings in specific matter. Spokespersons of the Public Prosecution Service use any of the above mentioned channels for communication.*

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

*The below stated explanation has wider impact than merely application of information in relation to media, but it includes this area as well.*

*Despite the fact that the term "international investigations" has not been defined, the below included explanation is applicable in relation to any institute of international judicial co-operation defined in the Part 5., Code of Criminal Procedure (including Joint Investigation Teams).*

*Under the Section 482, par. 1, Code of Criminal Procedure, when Slovak authorities provide information regarding their own activity under the Part 5, Code of Criminal Procedure, they proceed accordingly pursuant to the Section 6, Code of Criminal Procedure. The provision of the Section 482, par. 1, Code of Criminal Procedure reacts primarily to the activity of Slovak authorities in relation to requests made by foreign authorities.*

*Provision of the Section 482, par. 2, Code of Criminal Procedure protects information and evidence from obtained from abroad. This provision includes protection for information provided and at the same time, it includes the specialty principle (i.e. prohibition to use the information for purpose other than it was provided for).*

*In case that the above mentioned obligation does not result from an international treaty, provision of information is restricted within the meaning of the quoted provision if foreign authority requested for protection of their information or if it provided such information under the condition that Slovak authorities will protect the information. In cases where protection and use of information is governed by international contractual regulation, the quoted provision may be used only in extent not defined by international treaty and the protection is left to be defined by provisions of the domestic legal order (provisions of the Section 478, Part 5, code of Criminal Procedure will be used unless provided otherwise by international treaty).*

*Currently, it may be stated that in the international cooperation, there is a trend to increasing protection of information provided – it has also been reflected in more modern international treaties in the judicial area (e.g. Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 8 November 2001; Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Strasbourg, 8 November 1990; UN Convention against Transnational Organized Crime, New York, 15 November 2000 etc).*

*The scope of protection of information may also be defined in the Agreement on setting up the joint investigation team; in any case it is limited by the requirements of the legal orders concerned.*

*As far as publication of information is concerned, we should not omit the commitments resulting for the Slovak Republic from international treaties by which it is bound (also, the SK Constitution) regulating fundamental rights and freedoms, from international treaties and EU legislation in the area of the protection of personal data.*

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

*There is communication with all the media, namely with printed and audiovisual media.*

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

*Under the Act on Free Access to Information, any one has right to access to information available to obligated persons. Such behavior would be incompatible with Ethical Code adopted by the Association of Spokespersons of the Slovak Republic. If any member of the Slovak Syndicate of Journalists started working as spokesperson or press secretary, the relevant membership commission would propose his/her membership to be suspended.*

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 General Prosecutor's Office of the Slovak Republic and the Office of Special Prosecution have their spokespersons (they are not prosecutors). Regional Prosecution Offices have their Spokespersons in the Regional Prosecution Offices are appointed by the Regional Prosecutor from among prosecutors. Other prosecutors (as a rule) communicate with media immediately prior to termination or after termination of proceedings in specific matter or in relation with participation of individual prosecutor in proceedings before authorities of public administration.*

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

*There are not specific representatives of the media for the communication with prosecutors, as a rule, they communicate by means of press office. Journalists are specialized within editorial staff. Mostly various editors from news and publicistic (documentary) programmes (broadcastings) communicate with prosecutors.*

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)?

*Law enforcement bodies and court inform the media about criminal proceedings according to the Code of Criminal Procedure. While doing so, they have the obligation to protect classified information, bank, trade, tax, mailing and telecommunication secrecy. Also, they have authority not to disclose any information which might frustrate or make difficult the clarification and investigation of a matter. Furthermore, they have to observe presumption of innocence. They are not allowed to disclose any protected personal data, information of private nature, especially from family life, dwelling and correspondence which are not directly*



*linked to the criminal activity. Especially, they protect interests of minors, juveniles and aggrieved parties (personal data of these persons are never disclosed).*

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

*The Public Prosecution Service provides true, timely and universal information to the public by means of its Press and Information Section at the Office of the General Prosecutor and also by means of regional spokespersons pursuant to the Act on Free Access to Information. It has the obligation to observe the Act on Protection of Personal Data, Act on Protection of Classified Information, Act on Protection of Witness and Act on Protection of Classified Information and the Code of Criminal Procedure.*

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

*Press spokespersons and regional spokespersons carry out systematic monitoring of the communication of prosecutors with media. Daily press monitoring is available to prosecutors and if necessary, they have the possibility – by means of spokespersons and Press and Information Section - to publish their response in reaction to information in the media.*

### **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 Public Prosecution Service has proactive approach to the media and it selects cases which are appropriate for publication. It gives press releases to media, it reacts to articles regarding Prosecution Service published in printed media, it organizes briefings and discussions.*

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)?

*Press spokespersons and regional spokespersons monitor any request for information in the internal computer system and they provide the standpoint of the Public Prosecution Service to the media. The Public Prosecution Service provides press releases to the media on regular basis including statistical data. It is preparing a booklet about Public Prosecution Service and is starting operational program within the scope of the Project of Informatization of the Society.*

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.

*Yes. It is used by the law enforcement bodies (within investigative stage) in order to search for persons suspected of commission of criminal acts, for search of missing persons or for calls for witnesses of a criminal act.*

### **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?

*The above mentioned issue is a part of the judicial examination of trainee prosecutors. Prosecutors have the possibility to attend trainings organized by the Judicial Academy.*

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

*Prosecutors may participate in educational programs and trainings organized by the Judicial Academy or other bodies, frequently there are also foreign lecturers.*

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

*Slovak Syndicate of Journalists (independent trade union) is one of founders of the Media Academy which performs activities aimed to training of journalists, it promotes professional improvement of their skills and organizes various events, discussions, workshops etc.*

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?

*Upon request of journalists, meetings are organized with prosecutors and journalists with the purpose of provision of information or explanation. In relation to specific cases, briefings are held upon request of journalists or Public Prosecution Service.*

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

*Slovak Syndicate of Journalists unites employees of printed media, TV, radio and digital media, press agencies and independent journalists. It is a member of the International Federation of Journalists and the European Federation of Journalists (Brussels).*

#### **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?

*Broadcasting and Retransmission Board (members are elected and removed by the National Council of the Slovak Republic) promotes interests of public in exercise of right to information, freedom of expression and right to access of cultural values and education and it also executes State administration (regulation) in the area of broadcasting and retransmission and provision of audiovisual media services upon request.*

*Within the scope of execution of State administration, it also deals with complaints in relation to any breach of the Act on Broadcasting and Retransmission and if a complaint is justified, it commences administrative proceedings in the matter, and notifies complainant of the outcome of the administrative proceedings.*

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?

*If a libel, slander and/or similar harm done to a reputation of a person accomplishes elements of any of the offences included in the Criminal Code, the offender will be prosecuted pursuant to the Code of Criminal Procedure. Prosecutor will commence criminal prosecution upon motion of aggrieved person e.g. in case of slander pursuant to the Section 373, Criminal Code: whoever communicates false information about another person, which is capable of considerably damaging the respect of fellow citizens for such a person, their career and business, their family relations, or that causes them other grievous harm. Or it might be a criminal act of illegal use of personal data (Section 374, Criminal Code), criminal act of violation of confidentiality of spoken conversation and other personal expressions (Section 377, Criminal code) or criminal act of false accusation (Section 345, Criminal Code) etc.*

*If slander does not accomplish elements of the offence, aggrieved person has right to protection of personal rights (Section 11, Civil Code) under which any natural person has right to protection of personal rights, life, health, integrity of a citizen, human dignity and privacy, his/her name and other personal expression. Especially, any natural person has right to seek for refraining from any illegal interference with his/her right to protection of personal rights, to seek for removal of consequences thereof, and to demand satisfaction. If a person does not deem satisfaction sufficient because his/her dignity was significantly diminished, he/she has also right to compensation in cash money of non-proprietary loss. Amount of the compensation will be defined by a Court with regard taken to amount of loss caused through violation of a specific right.*

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

*Pursuant to the Criminal Code, a journalist is held responsible only if his/her acting accomplishes any of elements as provided for in the Criminal Code (e.g. criminal act of slander - please see par. 30 above); in such a case, a journalist may be imposed a sentence of deprivation of liberty with maximum term of two years. Any one who committed false accusation with the intention to cause criminal prosecution of another, will be sentenced to deprivation of liberty for 1 up to 5 years. Any one who committed criminal act of violation of confidentiality of spoken conversation and other personal expressions by means of illegal (unauthorized) recording and disclosure to third person of the recording or by means of any other use thereof and causes serious harm to rights of another, will be sentenced to deprivation of liberty with the maximum term of two 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?

*Within criminal proceedings there is e.g. the sentence of forfeiture of a thing (Section 60, CC), punishment by disqualification (Section 61, CC) or confiscation of a thing (Section 83, CC).*

*As far as protection of personal rights under the Civil Code and protection pursuant to the rules on means of mass communication is concerned, an aggrieved party may submit action for the protection of personal rights to a Court; as result, a Court may issue preliminary measure e.g. prohibition of publication.*

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?

*Council of Prosecutors (self-governing body established in order to protect rights and legitimate interests of prosecutors) does not play any role in this area.*

*Upon motion of the Council of Prosecutors or upon its own motion, the General Prosecutor's Office may submit complaint to the Broadcasting and Retransmission Board competent to deal with complaints on violation of Act on Broadcasting and Retransmission. If the complaint includes facts indicating that this law was violated, the Board will commence administrative proceedings. Complainant will be notified by the Board of the outcome of administrative proceedings.*

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

*Prosecutor is bound by the duty of discretion. He/she may be released from this duty by the General Prosecutor, for the purposes of criminal proceedings. While providing information, prosecutor has right not to disclose facts which are likely to frustrate or made difficult the clarification and investigation of the matter. Within the possibilities defined by the law, prosecutors may react directly or by means of Press and Information Section or by means of a spokesperson.*

*Furthermore, prosecutor has right to correction under the Section 21, Act on Broadcasting and Retransmission – if untrue information or information distorting truth was published (broadcast) regarding him/her and if on the basis of such information a prosecutor may be identified, he/she has right to request for publication of the correction free of charge. Broadcasting agency has the obligation to publish the correction upon his/her request.*

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?

*Primarily, press spokespersons and regional spokespersons of the public Prosecution Service have power to reply.*

## **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.

## **Slovenia / Slovénie**

### **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.

- a. 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 or 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.

## **Spain / Espagne**

### **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 has been determined by an internal instruction of the Attorney General and it describes the organization into every office. It also gives general rules that develop the relationships between prosecutors and media.
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 general rule is that, in every office, there is a prosecutor responsible for the relationships with the media, but it doesn't prevent the possibility of every prosecutor having a personal relationship with the media if he follows the general rules about communication.
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)?  
Obviously, the prosecutor service has its own rules and organizations, but it doesn't prevent other people – like mentioned- from communicating with the media. In these cases, it is necessary to respect general rules concerning limits related to the proceedings or individual rights of people involved in them.
4. Do you have any experience of joint communication by several public authorities (e.g. prosecutor and police)?  
It is very exceptional but we can mention a recent occasion when there was a press conference where an important prosecutor and a high authority of the Home Office appeared altogether in order to give information to the media about an important case.
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 prosecutor can communicate with the media in every stage of the procedure, but it is obvious that the kind of information that he can give is different. It is especially limited during the pre-trial investigation so as to protect its own interest and those of people involved.
6. Are the judges authorised to inform the press? If this is the case, during which stage of the procedure?  
There is not a general rule as for prosecutors. In fact, the prosecutor has as a function the duty to give information to the public opinion. The particularities of the judicial function make judicial authorities to use institutional communication services in order to give information to the media.
7. Is there supervision on the relationships between prosecutors and media in your country? By whom and how?



There is a general principle of hierarchy in the institution, but it has been organised through prosecutors responsible for communication with the media in every office. So there is not a typical supervision because it's supposed that the prosecutor is going to perform his function according to the rules.

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"?

These are principles specifically mentioned in the internal instruction that rules the communication between prosecutors and media and the necessity to avoid the phenomenon of "trial by press" is also mentioned by that instruction.

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 general disciplinary regime that rules the way that prosecutors perform their functions is applicable to this matter because it is considered to be one more itself.

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

The prosecutors have to assume their own responsibility if they had had a part on it and there is also a possibility of pursuing the responsibility who has created the risk, even having criminal consequences.

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?

The general rule is that prosecutors and judges have not personal right to preserve their own intimacy (mainly as right to self-image) when they are performing their functions.

## **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.)?

Every mean is permitted and it is being used.

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

Press conference is one of the possibilities, not only limited to international investigations. The general rule is to preserve the equity between the media (every one has to be informed and called).

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

Every media plays his role on a basis of equality.

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

It is specifically forbidden by the internal rules.

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?

There is a spokesperson in every office and he performs this function freely according to the general rules and down the supervision of the prosecutor who manages every office, who most of times is the prosecutor in charge.

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

They organize by themselves the way they work in these area; most of times they choose specialized journalists.

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)?

There are not specific limits. The general rule is to keep informed the public opinion and it is obvious that the media are the most commonly used medium between the prosecutor service and that public opinion. The limits are few and obvious: the proceeding, the presumption of innocence, the fundamental rights (honour, privacy) of the parties involved.

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

A general instruction given by the Attorney General encourages to make it effective.

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

No, there is not that kind of implementation.

## **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)?

No. Really it has not been institutionalized. There is a press office in the Attorney General Office and the Web page is being used like a platform that can give this service.

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)?  
The tools are mainly:
- The Web page as the main platform.
  - A booklet that gives a general idea about the institution.
  - Occasional courses, meetings or lectures for prosecutors, for journalists or between prosecutors and media
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.  
It is not properly a tool used by prosecutors but it has been used 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?  
Not specifically about that matter but it is common to devote somehow courses to Human Rights.
25. Are prosecutors trained on how to interact with media?  
Not specifically.
26. Are journalists trained on how to interact with the prosecution services?  
I believe it is very uncommon.
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?  
Some such sporadic activities are organized from time to time, but it is far to be a habit.
28. Are there professional associations of media and journalists competent to regulate their interaction with the prosecution services?  
I believe not.

#### **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?  
There is nothing so specific. I think the most similar thing is the press ombudsman like an institution inside some 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?  
The prosecution service is always a qualified party in most of these proceedings (always criminals and most of times even civil proceedings). The prosecutor always intervenes defending the legality with objectivity and impartiality.
31. Please give information about criminal or administrative liability of journalists and the penalties provided by law.  
There are crimes conceived as defamation and libel. For defamation the penalty is prison (from six to two years) and fine; there is only fine for libel. It always implies civil liability to the benefit of the victim.
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?  
The most common measures are seizure or prohibition of publications and the obligation to publish or broadcast a correction or denial. The prosecutor can apply for them even in civil or criminal proceedings. I don't believe it might be considered as a form of preventive censorship and there is not a special role for the prosecutors in supervising media activities.
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?  
These associations might play this specific role in order to protect the members of the Institution, no matter if they are members or not of the association.
34. Is the prosecutor bound by a duty of discretion even if a media campaign has been started against him or her?  
Yes, it is. It is obvious that a prosecutor can't play the same role than a private individual and he is bound by a more strict duty of discretion.
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?

The Prosecutor General's Office, as governing body of the whole Institution and even the Chief Public Prosecutor may act this way.

## 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 Instruction 3/2005, from the Prosecutor General's Office acts as the internal legislative body that rules these questions. It can be found in the Web page [fiscal.es](http://fiscal.es) (in Spanish)

## Sweden / Suède

### 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 the 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. *There are no specific laws regulating the relationship between prosecutors and the media. However, the principle of public access, which is a part of the constitution, guarantees that the general public and the media can get an unimpeded view of activities pursued by the government and authorities. There are some restrictions with the aim to protect, for example, the personal and economic position of private individuals and the prevention or prosecution of crimes.*
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 Code of Judicial Procedure states that all prosecutors make decisions independently, under full personal liability. Therefore, all prosecutors are responsible for communicating with the media in their own criminal cases.*
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)? *There is no particular authorization concerning who could communicate with the media in criminal cases. However, secrecy reasons often regulate what could be communicated in each particular case. This is regulated in the Public Access to Information and Secrecy Act.*
4. Do you have any experience of joint communication by several public authorities (e.g. prosecutor and police)? *Yes, prosecutors and the police – and sometimes prosecutors and the Customs Service – regularly cooperate in communication concerning criminal cases.*
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)? *Taking secrecy regulations into account, it is the prosecutor who is responsible for the investigation who decides when and what to communicate. This principle is valid from beginning to end.*
6. Are the judges authorised to inform the press? If this is the case, during which stage of the procedure? *See above. There is no particular authorization. Like prosecutors, judges are bound to the regulations concerning secrecy.*

7. Is there supervision on the relationships between prosecutors and media in your country? By whom and how? *There is no specific supervision concerning the relationship between prosecutors and the media. However, a prosecutor's decision not to disclose a public document could be appealed to the Administrative Court.*
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 Public Access to Information and Secrecy Act states that information could be kept secret to protect, for example, the personal and economic position of private individuals. If secret information is to be presented in court proceedings, the court is generally permitted to hold proceedings in closed session.*
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 Prosecution Authority has no particular internal rules regarding the relationship between prosecutors and media. It can be noted however that a public prosecutor who discloses information to the press, which he is duty-bound by law or other statutory instrument to keep secret, can be sentenced for breach of professional confidentiality to a fine or imprisonment for at most one year (Chapter 20 Section 3 in the Swedish Penal Code). In a case where information has been disclosed to the press the Chancellor of Justice would act as sole prosecutor.*
10. How do the prosecution services deal with the security risks caused by disclosure of information concerning the prosecutors and the cases? *The Prosecution Authority has a security programme for all prosecutors and takes measures according to the degree of security risks.*
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, this is not possible.*

## **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.)? *Prosecutors use the means of communication most suitable to each particular situation.*
13. Can press conferences or other releases be made by prosecutors in cases of international investigations? If yes, which procedure do you follow? *Yes, it is possible and sometimes happens. The procedure depends on the circumstances.*
14. Is there communication with all the media or with some (newspapers, audiovisual media, internet)? *All the media.*
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. We recommend prosecutors, as a rule, to treat all journalists equally.*
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 prosecutors usually communicate themselves due to the independent role of Swedish prosecutors. No authorization is needed. Spokespersons are seldom used, but if the prosecutor for some reason cannot communicate personally, someone else (e.g. a Chief prosecutor, a colleague, the Press Service) could communicate on behalf of the prosecutor.*
17. How does the media communicate with the prosecutors (official representatives, specialized journalists, necessary authorizations)? *The media is free to use any means of communication.*
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)? *It depends on the circumstances. The names of involved persons will, normally, become public as soon as the prosecutor submits the indictment. However, prosecutors, even after the indictment, usually avoid disclosing names if it is not absolutely necessary.*
19. Is there an official policy encouraging prosecutors to respond to the needs of media, and how is this policy implemented? *Yes there is. The policy is implemented mainly in the training of prosecutors, both in the basic and in the supplementary training. Furthermore, communication with media is an issue that is often discussed within the Authority. The Department of Communication/Press Service is active in training, supporting and motivating prosecutors concerning media issues.*
20. Are the prosecutors' communications with media systematically monitored and evaluated by using monitoring, feedback from the public, communication surveys or other measures? *We use professional media monitors and conduct communication surveys regularly.*

## **C. Proactive the 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.*

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, in different ways, e.g. by visiting schools and student fairs, publishing booklets, information on the website etc.*
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. *Yes, but the Prosecution Authority very seldom uses it. The Police do frequently though.*

#### **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.*
25. Are prosecutors trained on how to interact with media? *Yes.*
26. Are journalists trained on how to interact with the prosecution services? *We have no information concerning this. Journalists are regularly invited to seminars at the Prosecution Authority, where the aim is to provide information concerning the authority and the role of the prosecutor, but not to train the journalist in interacting with prosecutors.*
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? *See above.*
28. Are there professional associations of media and journalists competent to regulate their interaction with the prosecution services? *No.*

#### **E. Regulation of the 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? *There is a self-disciplinary system of the Swedish press which consists of the Press Ombudsman and the Swedish Press Council. It deals with all kinds of complaints from members of the public, not specifically criminal matters. The system is voluntary and financed by press organizations. A newspaper that has been found to violate good journalistic practice is expected to publish the written decision of the Press Council. It shall also pay an administrative fine.*
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? *Libel and slander are crimes according to Swedish law. Libel/slander is, however, only subject to public prosecution under certain circumstances.*
31. Please give information about criminal or administrative liability of journalists and the penalties provided by law. *Journalists are subject to the same criminal liability as everyone else in Sweden. There are few circumstances where a journalist can be exempted from criminal liability. One example can be found in the Swedish Personal Data Act where it is stated that the provisions regarding penalties shall not be applied to such processing of personal data as occurs exclusively for journalistic purposes.*
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? *The principle of public access, which is a part of the constitution, guarantees that the general public and the media can get an unimpeded view of activities pursued by the government and authorities. There are however, as mentioned above, some restrictions with the aim to protect, for example, the personal and economic position of private individuals and the prevention or prosecution of crimes. The prosecutors have no role in supervising media activities.*
33. If a prosecutor is criticized by the media for reasons connected with the criminal proceedings, is there a role to play for the prosecutorial associations? *If the Prosecution Authority has reason to believe that the criticism could be justified, the authority can decide to take action, i.e. supervise the matter. If the criticism is unjust or based on incorrect suppositions, the authority can decide to provide relevant facts.*
34. Is the prosecutor bound by a duty of discretion even if a media campaign has been started against him or her? *Regardless of media campaigns, prosecutors should apply the regulations in the Public Access to Information and Secrecy Act (see above).*
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 no such institution. Any citizen has the power to reply, if he or she decides to. This includes the prosecutor in question, and the Prosecution Authority.*

#### **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.

## Suisse / Switzerland

### I. Introduction

La Recommandation Rec(2003)13 du Comité des Ministres du Conseil de l'Europe sur la diffusion d'informations par les médias en relation avec les procédures pénales a fait la référence aux points suivants :

- l'engagement des Etats membres envers le droit fondamental à la liberté d'expression et d'information tel qu'il est garanti par l'article 10 de la Convention européenne de sauvegarde des Droits de l'Homme et des Libertés fondamentales;
- les médias ont le droit d'informer le public en égard au droit de ce dernier à recevoir des informations, y compris des informations sur des questions d'intérêt public, en application de l'article 10 de la Convention, et qu'ils ont le devoir professionnel de le faire;
- l'importance des reportages réalisés par les médias sur les procédures pénales pour informer le public, rendre visible la fonction dissuasive du droit pénal et permettre au public d'exercer un droit de regard sur le fonctionnement du système judiciaire pénal;
- les droits à la présomption d'innocence, à un procès équitable et au respect de la vie privée et familiale, garantis par les articles 6 et 8 de la Convention, constituent des exigences fondamentales qui doivent être respectées dans toute société démocratique ;
- les intérêts éventuellement conflictuels protégés par les articles 6, 8 et 10 de la Convention et la nécessité d'assurer un équilibre entre ces droits au regard des circonstances de chaque cas individuel, en tenant dûment compte du rôle de contrôle de la Cour européenne des Droits de l'Homme pour garantir le respect des engagements contractés au titre de la Convention.

### II. Questions

#### A. Dispositions actuelles légales et réglementaires

1. Les relations entre procureurs et médias sont-elles déterminées par la loi ou par d'autres normes écrites? Décrivez-les brièvement.

Gestützt auf Art. 17 des Reglements über die Organisation und Verwaltung der Bundesanwaltschaft (SR 173.712.22) hat der Bundesanwalt das Verfahrenshandbuch erlassen, welches in Ziffer 17 den Umgang mit den Medien und die (externe) Kommunikation regelt. Daneben enthalten auch die Art. 73 ff. der Schweizerischen Strafprozessordnung (StPO SR 312.0) Vorschriften betreffend Geheimhaltung und Orientierung der Öffentlichkeit.

2. Les procureurs sont-ils autorisés à avoir des relations directes avec les médias? Sinon, qui communique à la presse les informations concernant les affaires judiciaires?

Gemäss Verfahrenshandbuch erfolgt die Information der Öffentlichkeit grundsätzlich über den Medien- und Kommunikationsdienst. In bestimmten Fällen kann die Verfahrensleitung – nach Absprache mit dem Medien- und Kommunikationsdienst – Medienanfragen direkt beantworten.

3. Qui d'autre est autorisé à fournir des informations à la presse dans le cadre de ces affaires (la police, les avocats, les parties, d'autres personnes) ?

Siehe Art. 74 StPO.

4. Avez-vous déjà expérimenté une communication conjointe par plusieurs autorités publiques (par exemple, procureur et police) ?

Ja.

5. A quel stade de la procédure les procureurs peuvent-ils communiquer l'information (veuillez distinguer l'enquête préliminaire, y compris l'accusation, la procédure judiciaire et la situation après le prononcé du jugement) ?

Grundsätzlich gilt, dass während des Vorverfahrens keine Orientierung der Öffentlichkeit stattfindet (Art. 69 Abs. 3 Bst. a StPO). Vorbehalten bleiben Mitteilungen der Strafbehörden an die Öffentlichkeit gemäss Art. 74 Abs. 1 StPO.

6. Les juges sont-ils autorisés à informer la presse? Si oui, à quel stade de la procédure?

Siehe Art. 73 ff. StPO.

7. Les relations entre procureurs et médias sont –elles contrôlées dans votre pays? Le cas échéant, par qui et de quelle manière?

Nein. Die Staatsanwälte unterstehen jedoch dem Amtsgeheimnis. Die Verletzung von Amtspflichten wird straf- (vgl. Art. 320 Strafgesetzbuch [StGB; SR 311.0]) und disziplinarrechtlich (vgl. Art. 16 der Verordnung der Bundesversammlung über die Organisation und die Aufgaben der Aufsichtsbehörde über die Bundesanwaltschaft [SR 173.712.24]) verfolgt.

8. Existe-t-il des règles spécifiques garantissant que les informations communiquées à la presse ne violent pas la vie privée, la dignité humaine et la présomption d'innocence? Quelles mesures peuvent être prises pour éviter le phénomène de «procès dans la presse»?

Siehe Art. 10 und Art. 74 Abs. 3 StPO. Eine Vorverurteilung in der Presse kann auch eine Ehrverletzung im Sinne von Art. 173 StGB darstellen. Im Rahmen der verfassungskonformen Auslegung von Art. 173 StGB ist allen, teilweise gegenläufigen verfassungsrechtlichen Wertgesichtspunkten (Pressefreiheit, Persönlichkeitsschutz, Unschuldsvermutung) Rechnung zu tragen (vgl. Urteil des Kassationshofs des Schweizerischen Bundesgerichts vom 23. April 1990 i.S. Udo Proksch gegen X [BGE 116 IV 31]).

9. Des sanctions existent-elles (disciplinaires ou autres) à l'encontre des procureurs qui enfreignent les règles régissant les relations avec les médias, si elles existent?

Siehe Antwort zu Frage 7.

10. De quelle manière le ministère public peut-il faire face aux risques en matière de sécurité posés par la divulgation d'informations concernant les procureurs et les affaires?

Indem die Mitarbeitenden der Bundesanwaltschaft für die Problematik sensibilisiert und im Umgang mit der Presse geschult werden, damit keine Informationen widerrechtlich bekannt gegeben werden.

11. Existe-t-il des dispositions visant à interdire la publication du nom d'un procureur (ou d'un juge) en charge d'une affaire? Existe-t-il des procédures qui, en pratique, visent à prévenir une telle publication?

Nein. Es gibt keine Bestimmungen, welche eine bevorstehende Publikation verbieten. Eine erfolgte widerrechtliche Publikation wird in der Regel im Rahmen eines Strafverfahrens wegen Verletzung des Amtsgeheimnisses (Art. 320 StGB) verfolgt, wobei Medienschaffende in der Vergangenheit wegen Anstiftung verurteilt worden sind (vgl. Urteil des Kassationshofs des Schweizerischen Bundesgerichts vom 1. Mai 2001 i.S. X. gegen Staatsanwaltschaft des Kantons Zürich [BGE 127 IV 122] sowie Urteil der 4. Kammer des europäischen Gerichtshofs für Menschenrechte vom 25. April 2006, Rechtssache Dammann gegen Schweiz).

## **B. Organisation de la communication**

12. De quelle manière les procureurs communiquent-ils avec la presse (communiqués de presse, conférences de presse, téléphone ou e-mail, réseaux sociaux, etc.) ?

Die Bundesanwaltschaft verfügt über einen Mediendienst mit ausgebildeten Kommunikationsfachleuten. Die Information der Öffentlichkeit erfolgt grundsätzlich über den Mediendienst. Für die Kommunikation werden gängige Informationsmittel eingesetzt (ohne soziale Medien).

13. Les procureurs peuvent-ils tenir des conférences de presse ou faire d'autres communications en cas d'enquêtes internationales? Si oui, quelle est la procédure à appliquer?

Medienkonferenzen, Point de presse, Interviews oder Hintergrundgespräche mit Staatsanwälten werden vom Mediendienst organisiert und begleitet.

14. La communication se fait-elle avec tous les médias ou avec certains d'entre eux (journaux, média audiovisuels, internet)?

Die Bundesanwaltschaft (BA) informiert und kommuniziert gegenüber Medien und Öffentlichkeit sachlich und – unter Berücksichtigung der Interessen der Strafverfolgung – so umfassend, kontinuierlich und rasch als möglich und vor allem nach dem Prinzip der Gleichbehandlung aller Medien.

15. Existe-t-il une réglementation interdisant le droit d'accorder une préférence à certains journalistes ou, au contraire, d'en exclure certains?

Nein.

16. De quelle manière la communication est-elle organisée par le ministère public? Existe-t-il des porte-paroles? Si oui, quel est leur statut et sont-ils procureurs? Sinon, les procureurs communiquent-ils eux-mêmes? Le cas échéant, doivent-ils obtenir une autorisation pour le faire? Les procureurs sont-ils contrôlés en la matière?

Allfällig direkte Kontakte der operativ tätigen Staatsanwälte bedürfen der Autorisierung durch den Bundesanwalt und werden vom Mediendienst begleitet.

17. Comment les médias communiquent-ils avec les procureurs (veuillez préciser, le cas échéant, s'il existe des représentants officiels, des journalistes spécialisés, si des autorisations sont nécessaires)?

Allfällige Kontakte zu den operativ tätigen Mitarbeitenden werden durch den Mediendienst hergestellt. Medienanfragen, die direkt an Mitarbeitende der BA gerichtet werden, sind an die Mediendienst zu verweisen.

18. Quelles sont les informations qui peuvent être divulguées? (noms des parties, des témoins, des procureurs; certains faits qui sont dévoilés grâce à l'enquête, liés ou non à l'affaire)?

Bei der Orientierung der Öffentlichkeit sind der Grundsatz der Unschuldsvermutung und die Persönlichkeitsrechte der Betroffenen zu beachten. Namen von Verfahrensbeteiligten werden nicht kommuniziert. Der Untersuchungszweck darf nicht tangiert werden.

19. Existe-t-il une politique officielle visant à encourager les procureurs à répondre aux besoins des médias, et, le cas échéant, de quelle manière cette politique est-elle mise en œuvre?

Vgl. Antwort zu Frage 13.

20. Les communications de procureurs avec les médias sont-elles systématiquement contrôlées et évaluées à l'aide d'un mécanisme de suivi, de réactions du public, d'enquêtes de communication ou d'autres mesures?

Vgl. Antwort zu Frage 13

### **C. L'approche pro-active du ministère public vis-à-vis des médias**

21. Le ministère public a-t-il développé une approche pro-active vis-à-vis des médias (accès aux décisions du procureur, envoi d'une sélection d'affaires pertinentes à l'attention des médias)?

Die Einsichtnahme in Einstellungsverfügungen und Strafbefehle wird vom Rechtsdienst sichergestellt.

22. Le ministère public a-t-il développé des activités visant à expliquer au public et aux médias le travail des procureurs et à les informer des derniers développements (journée portes ouvertes, visites des tribunaux, publication de brochures, production de matériel éducatif en ligne)?

Hintergrundgespräche mit Staatsanwälten werden vom Mediendienst organisiert und begleitet.

23. La communication avec les médias peut-elle être utilisée comme un outil d'enquête (par exemple en diffusant des portrait-robots, voire même des images des scènes de crimes)? Si oui, veuillez spécifier.

Kommunikation kann taktisch eingesetzt werden.

### **D. La formation professionnelle de procureurs et des journalistes, leur éthique, leurs comportements et les moyens de communication**



24. Au cours de leur formation initiale et continue, les procureurs sont-ils formés sur les normes de la Convention européenne des droits de l'homme en matière de la liberté d'expression et d'accès à l'information?

Nein.

25. Les procureurs sont-ils formés sur la manière de travailler avec les médias?

Nein.

26. Les journalistes sont-ils formés sur la manière de travailler avec le ministère public?

Nein.

27. Existe-t-il des cours de formation, des conférences, des séminaires conjoints organisés pour les procureurs et les journalistes afin de les aider à mieux comprendre le rôle de chacun et de se soutenir mutuellement, dans le cadre d'un juste équilibre entre les droits mentionnés ci-dessus, la présomption d'innocence et le droit à la protection de la vie privée?

Nein.

28. Existe-t-il des associations professionnelles rassemblant des médias et des journalistes qui sont compétentes pour régler les interactions avec le ministère public?

Nein.

#### **E. Réglementation des activités de médias**

29. Existe-t-il une structure professionnelle interne (ou une autre institution) qui réglemente les activités des médias ou qui traite des plaintes déposées contre les médias en raison d'une violation d'un droit individuel dans le cadre d'une procédure pénale?

Nein.

30. Veuillez décrire brièvement la procédure pénale, administrative et/ou civile concernant la diffamation, la calomnie et/ou une violation équivalente concernant la réputation d'une personne. Quel est le rôle du ministère public en la matière?

Die Presse hat bei Berichterstattungen über hängige Strafverfahren der in Art. 6 Ziff. 2 EMRK verankerten Unschuldsvermutung Rechnung zu tragen. Auch die Strafverfolgungsbehörden haben die Unschuldsvermutung im Rahmen der Orientierung der Öffentlichkeit zu beachten (vgl. Art. 74 Abs. 3 StPO). Andernfalls haben sie sich unter Umständen wegen Persönlichkeits- und Ehrverletzung zivil- und strafrechtlich zu verantworten.

Als Rechtsgut von Art. 173 ff. StGB wird die Ehre benannt. Als tatbestandsmässige Ehreingriffe werden in Art. 173 f. StGB die Beschuldigung eines Menschen eines „unehrenhaften Verhaltens“ bzw. „anderer Tatsachen, die geeignet sind, seinen Ruf zu schädigen“, in Art. 177 StGB Angriffe auf die Ehre „in anderer Weise“ aufgeführt. Es bestehen jedoch keine Anhaltspunkte dafür, dass sich hinter diesen unterschiedlichen Formulierungen auch eine sachliche Unterscheidung verbirgt: Art. 173 f. und Art. 177 StGB normieren unterschiedliche Angriffe auf das gleiche Rechtsgut.

Der strafrechtliche Ehrbegriff ist nach der bundesgerichtlichen Rechtsprechung enger als der zivilrechtliche. Erfasst wird nur die sog. sittliche Ehre. In erster Linie schützen die Ehrverletzungstatbestände natürliche Personen, und zwar unabhängig von Alter oder geistigem Zustand. Nach Auffassung des Bundesgerichts können auch juristische Personen und Kollektivgesellschaften in ihrer Ehre verletzt werden. Nicht geschützt ist hingegen nach der bundesgerichtlichen Rechtsprechung die gesellschaftliche Ehre (Herabsetzung als Berufsmann, Kritik an der politischen Auffassung, Kritik wegen körperlicher Missbildung, wegen schwacher schulischer Leistung etc.). Bei der gesellschaftlichen Ehre geht es um Eigenschaften, welche für die Stellung einer Person in der Gesellschaft, für ihre soziale Bedeutung von Belang sind.

Ehrverletzungsdelikte sind abstrakte Gefährdungsdelikte. Es genügt, dass eine Äusserung geeignet ist, den Ruf zu schädigen.

Wahre ehrverletzende Behauptungen sind i.d.R. rechtmässig. Beweispflichtig ist der Äusserer. Kann der Äusserer den Wahrheitsbeweis erbringen – also dartun, dass seine Äusserung den Tatsachen entspricht und zur Wahrung öffentlicher Interessen oder sonstwie mit begründeter Veranlassung erfolgte – so ist er nicht strafbar. Ehrengriffe sind i.d.R. widerrechtlich, wenn sie unwahr sind. Ausnahmsweise ist aber jemand nach Art. 173 Ziff. 2 auch in diesem Fall nicht belangbar, wenn er nachweist, dass er ernsthafte Gründe hatte, eine Behauptung in guten Treuen für wahr zu halten. Ist der Gutgläubensbeweis erbracht, so ist ein Schuldvorwurf ausgeschlossen und der Äusserer freizusprechen.

Grundsätzlich kann strafrechtlich oder zivilrechtlich oder strafrechtlich und zivilrechtlich vorgegangen werden. Im Strafprozess können zivilrechtliche Ansprüche adhäsionsweise geltend gemacht werden.

Zivilrechtliche Folgen sind nicht eine Bestrafung, sondern Schadenersatz, Genugtuung, Gewinnherausgabe, Unterlassung, Berichtigung etc. Verwiesen sei auch auf die Möglichkeit der Gegendarstellung gemäss Art. 28 g - I des Schweizerischen Zivilgesetzbuchs vom 10. Dezember 1907 (ZGB; SR 210).

Der zivilrechtliche Persönlichkeitsschutz (Art. 28 und 28a ff. ZGB sowie Art. 41/49 des Bundesgesetzes vom 30. März 1911 betreffend die Ergänzung des Schweizerischen Zivilgesetzbuches (Fünfter Teil: Obligationenrecht [OR; SR 220]) gibt jeder Person, die von einer anderen Person widerrechtlich in ihrer Persönlichkeit verletzt wurde oder wird, das Recht, gerichtliche gegen die Täterin oder den Täter vorzugehen. Mit der Klage können Persönlichkeitsverletzungen verhindert werden und nach Persönlichkeitsverletzungen finanzielle oder anderweitige Wiedergutmachung eingefordert werden. Die betroffene Person kann vor Gericht verlangen:

- eine drohende Verletzung zu verbieten,
- eine bestehende Verletzung zu beseitigen,
- die Widerrechtlichkeit einer Verletzung festzustellen, wenn sich diese weiterhin störend auswirkt,
- Genugtuung wegen seelischer Unbill einzufordern,
- Schadenersatz einzufordern.

Die Bundesanwaltschaft ist nicht sachlich zuständig für die Verfolgung von Ehrverletzungsdelikten (vgl. Art. 23 und 24 StPO).

31. En quoi consistent la responsabilité pénale ou administrative des journalistes et les sanctions prévues par loi?

Vgl. Art. 173 ff. StGB.

32. Veuillez décrire les mesures de protection disponibles dans les procédures pénales et civiles (saisie ou l'interdiction de publications) et le rôle des procureurs. Dans votre pays, existe-t-il des mesures qui sont ou pourraient être considérées comme une forme de censure préventive? Les procureurs ont-ils un rôle dans le contrôle des activités de médias?

Die Verfahrensleitung kann einzig die Privatklägerschaft und andere Verfahrensbeteiligte sowie deren Rechtsbeistände unter Hinweis auf Artikel 292 StGB verpflichten, über das Verfahren und die davon betroffenen Personen Stillschweigen zu bewahren, wenn der Zweck des Verfahrens oder ein privates Interesse es erfordert (vgl. Art. 73 Abs. 2 StPO).

Präventive (zivilrechtliche) Massnahmen zur Verhinderung einer bevorstehenden Publikation durch die Medien hat die in ihren Persönlichkeitsrechten betroffene Person beim Gericht zu beantragen (vgl. Art. 28a Abs. 1 Ziff. 1 ZGB).

Die kantonalen Staatsanwälte üben lediglich im Bereich der Ehrverletzungsdelikte (Art. 173 ff. StGB) die strafrechtliche Kontrolle über die Medien aus.

33. Si un procureur est critiqué par les médias pour des raisons liées à la procédure pénale, les associations de procureurs peuvent-ils intervenir?

Es besteht die Möglichkeit einer Beschwerde an den Schweizer Presserat. Dieser steht der Öffentlichkeit als Beschwerdeinstanz in Bezug auf aktualitätsbezogene oder periodische Massenmedien sowie für medienethische Fragen zur Verfügung. In seiner Trägerschaft sind die journalistischen Berufsverbände, die Verlegerorganisationen und die Schweizerische Radio- und Fernsehgesellschaft vertreten. Der Presserat stützt seine Stellungnahmen auf nationale und internationale journalismus- und medienethische Vereinbarungen ab. Er versteht sich als ein Selbstregulierungsorgan des redaktionellen Teils der Schweizer Massenmedien.

Da er in diesem Fall nicht in seinen zivil- und/oder strafrechtlich geschützten Persönlichkeitsrechten verletzt sein dürfte (Herabsetzung als Berufsmann) kann weder zivil- noch strafrechtlich vorgegangen werden. Es besteht aber auch hier die Möglichkeit einer Beschwerde an den Schweizer Presserat.

34. Un procureur est-il tenu à un devoir de discrétion, même si une campagne médiatique a été lancée contre lui?

Der Staatsanwalt hat in jedem Fall das Untersuchungsgeheimnis zu wahren (vgl. Art. 73 Abs. 1 StPO). Er darf die Öffentlichkeit in den Fällen von Art. 74 Abs. 1 informieren.

35. Avez-vous des institutions, autres que les associations de procureurs, disposant d'un pouvoir de réponse en cas d'attaques inappropriées par les médias à l'encontre du ministère public ou des procureurs pris individuellement?

Nein.

#### F. Autres informations

36. Avez-vous d'autres informations ou commentaires concernant la communication entre procureurs et médias dans votre pays? Si oui, veuillez les décrire

Einzelne Staatsanwaltschaften verfügen über eigene Medienverantwortliche, welche sich in der SKIS zusammengeschlossen haben. Daneben besteht die Konferenz der polizeilichen Medienbeauftragten. Diese beiden Konferenzen arbeiten zurzeit noch getrennt.

### Turkey / Turquie

#### 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.  
***There is not a law or an equivalent regulation regulating the relationship between prosecutors and media in Turkey. However, there is not a legal provision preventing that situation. Through media and considering the balance between the freedom of information of society and the privacy of investigations, the requirements in this field are tried to meet by an administrative regulation (a circular) which is enacted by the High Council of Judges and Prosecutors.***
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?

***In line with the circular #33 of High Council of Judges & Prosecutors, in order to inform public about the investigations and proceedings conducted by judicial authorities, it is envisaged that (1) the Public prosecutor (wherever assigned as a spokesperson) and (2) chief Public prosecutors (where no spokesperson assigned) will hold the press releases verbally or in writing about the investigations.***

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)?

***In the Article 157 of Code on Criminal Procedures, the provision states “Unless provided otherwise by the code and under the requirement to not harm the defense rights, procedural interactions during the investigation phase shall be kept as a secret.” Accordingly, since investigations are carried out in secrecy, it is not a matter of discussion that other people or authorities provide information for the press.***

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

***No, we do not.***

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)?

***An investigation concerning a crime starts with the judicial authorities (justice police or Chief Public Prosecutor’s Office) being informed about the evidences that could raise reasonable doubts on the crime was committed. The Prosecution Office is responsible completely for the procedure after the start of the investigation and all processes of the investigation. Also, the only competent authority who is responsible for informing the press in the stage of investigation is the Prosecution Office.***

***It is the duty of the Prosecutors who are entrusted by HCJP to inform the media on the investigation process. If there is not such kind of entrusting, the Chief Public Prosecutor is the authorized person that shares information with press as stated in the Circular of HCJP.***

***Informing press on the judicial process starting after the completion of investigation is also fulfilled by the Prosecutors who are press agents.***

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

***Concerning the ongoing cases, there is not a provision that regulate judges to inform the press.***

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

***There is not a direct mechanism that regulates these relationships and could take binding decisions in terms of both parties. Yet, as the Circular numbered 33 of High Council of Judges and Prosecutors regulates the press statements of the prosecutors generally, the supervision for prosecutors is made indirectly by HCJP.***

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”?

***There is not a specific rule in our country in that issue. But it is possible for HCJP to start a disciplinary sanction against the prosecutor who informs the media. Within the press statements, the right of privacy, the personal integrity and the presumption of innocence are guaranteed under the Circular No. 33.***

***If the media makes news that could be considered as a “lynch of media”, it is possible for the relevant persons to take judicial and penal measures within the frame of general provisions. In the Penal Law, to commit crimes such as insult or calumny via media is considered particularly and it imposes heavy sanctions.***

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 is not a specific provision in Turkey regarding the issue. For that reason, the problem is solved within the frame of the general provisions.***

***“the infringement of the privacy of the investigation” crime set forth in the Criminal Law is a valid provision in terms of prosecutors. The press statement made by the press agents should not infringe the privacy of the investigation.***

***The activities of the prosecutors entrusted as press agent should be in accordance with the Circular of HCJP and also the Law of Judges and Prosecutors determining the code of ethics and practice that the judges and prosecutors should obey in their activities. The adverse activities may cause to start disciplinary sanctions against prosecutors who are press agents and also to impose them disciplinary sanctions.***

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

***Such kind of documents and data are kept in secured cases in Chief Public Prosecutor’s Office.***

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?

***The investigations in Turkey can be divided in two as general and special. Within the context of the general investigations, there is not any specific provision that forbid publishing the names of the judges or prosecutors conducting an investigation.***

***Yet, there is a specific provision preventing to publish the names of the judges and prosecutors conducting the investigations concerning terror and organized crimes.***

***The abovementioned provision is as below:***

***In the Anti-terror Law Article 6 "... those who expose or publish the identities of the public officers who served in antiterrorism or who targets those persons get prison sentence from 1 year to 3 years."***

#### **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 prosecutors as press agents primarily makes press statements or conduct conferences in order to inform the press. However, if the press agent prosecutor finds necessary, it is also possible to inform the press via telephone or e-mail. There is no regulation restraining those circumstances.***

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

***There is not a specific regulation regarding the international criminal investigations that regulates the relationship between prosecution & media. For that reason, the principals in force for general investigations are also in force for criminal investigations. In this context, the press statements are made within the procedures mentioned in the answer to the question 12.***

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

***The chief goal of the Circular of HCJP that regulates the relation between Prosecution & media is to share the information with relevant persons without discriminating any media organs. In this sense, there is no discrimination between newspapers, media organs and the internet.***

***The prosecutor as a press agent can decide to make a statement to the press by himself about the investigation process or he can also decide to meet the demand of a media organ. That is, in the first one, the statement is transmitted all media organs and in the second one, the requested information of a media organ is transmitted in private.***

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

***There is not a specific regulation in this matter. The situation is considered within the frame of the of Ethics and Disciplinary rules.***

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?

***An investigation starts when the judicial authorities (justice police or Public prosecutor's office) are informed about the evidences that cause suspicion regarding the crime. The Prosecution is the only office responsible for the process of the investigation and for all investigations conducted within that process. Also, the Prosecution Office is the competent authority for informing media at the investigation process.***

***It is the duty of the Prosecutors who are entrusted as press agents by HCJP to inform press on investigation process. If there is not such kind of entrusting, the Chief Public Prosecutor is the authorized person of sharing information with press as stated at the Circular of HCJP.***

***The duty of informing the press on the judiciary process starting after the completion of the investigation is also conducted by the prosecutors who are entrusted as press agents***

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

***The media organs ask for the required information directly through the crime reporters who are highly trained and indirectly through e-mails and other written documents.***

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)?

***As there is not a specific regulation determining the principles of prosecution and media, the problem is tried to be solved through the general provisions. In this regard, the information not to infringe the privacy of the investigation and the right of privacy can be shared with media. The names of the parties and witnesses are not revealed in the implementation. By indicating certain facts within the scope of the investigation, the evidences are correlated with the investigation.***

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

***The judicial bodies do not have a specific policy in this matter.***

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

***No, they are not.***

**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)?

***No, it has not***

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)?

***No, it has not***

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.

***No, it cannot. It is aimed to conclude the investigation by spreading the identikits of the suspects.***

**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?

***The prosecutors take courses on human rights within the context of the training programme.***

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

***The prosecutors who are entrusted as a press agent by HCJP are being trained on judiciary & media relations periodically.***

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

***We do not have such a training programme organized by the judicial bodies.***

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, there are not.***

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

***No, there are not.***

**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?

***No, there is not.***

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?

**The actions of the media offensive to people's reputation, and insulting or degrading via broadcasting or publishing may be considered as crimes of "defamation", "aspersion" or "violation of the investigation secrecy" as defined in Turkish Criminal Code. The consideration and the definitions of the aforementioned crimes via media are as follows:**

***Defamation***

***ARTICLE 125- (1) Any person who acts with the intention to harm the honor, reputation or dignity of another person through concrete performance or giving impression of intent, is sentenced to imprisonment from three months to two years or imposed punitive fine. In order to punish the offense committed in absentia of the victim, the act should be committed in presence of least three persons.***

***(2) The offender is subject to above stipulated punishment in case of commission of offense in writing or by use of audio or visual means directed to the aggrieved party.***

***Violation of Privacy***

***ARTICLE 134- (1) Any person who violates secrecy of private life, is punished with imprisonment from 1 to 3 years, or imposed punitive fine. In case of violation of privacy by use of audio-visual recording devices, the minimum limit of punishment to be imposed may not be less than one year.***

**(2) (Amend: art. 2/7/2012-6352/81) Any person who discloses audio-visual recordings relating to private life of individuals are sentenced to imprisonment from two years to five years. In case of commission of this offense through press and broadcast, the punishment is implemented as the same.**

#### **Recording of Private Information**

##### **Aspersions**

**ARTICLE 267-(1) Any person who cast aspersions on another person by raising complaint or notifying authorized bodies, or by using media in order to enable commencement of investigation and prosecution against this person, or imposition of administrative sanctions despite of his innocence, is punished with imprisonment from one year to four years.**

**(2) The punishment is increased by one half in case of commission of this offense by slander based on produced evidences.**

**(3) If an acquittal is declared by the court or decision is taken by stating that there is no need to start investigation for the person subject to aspersion due to his innocence, the punishment to be imposed is increased by one half according to above subsections unless a precautionary judgment other than custody or arrest is imposed against the aggrieved party.**

People whose personal rights are harmed, or who are insulted or defamed are entitled to apply to civil courts in order to submit a libel suit in line with the general provisions.

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

##### **1.Rebuttal**

A way of legal protection for those whose personal rights are attacked through media is the protection through Press Law, which would be a faster and relatively more sufficient on saving time than denunciation (or complaint) or restraining lawsuits or libel suits. Therefore, when Press Law is concerned, rebuttal is the primary and easy method for the content of an article to be corrected, and for an official reply to be published.

What we mean saying rebuttal in media is the right to reply and correct what is published in press, such as newspapers and magazines. And rebuttal in the press is as old as the legal texts. In our country, it has been regulated through Media (press) Law and other regulations.

##### **2.Suspending (or Ceasing) Publication/Broadcast,**

Another way of legal protection in Press Law for those whose personal rights are attacked through media is suspension/cessation of the publication/broadcast, which is confiscation for the press, and takedown of the web page content for the internet. Due to the instant nature of broadcasting, it is not possible to cease the audio-visual broadcasting, but it is possible to prevent the re-running of the content.

According to the Article 24 of Civil Code “*The person subject to assault on his/her personal rights may claim protection from the judge against the individuals who made the assault*”, which envisages a general protection enabling those to claim the necessary protection measures no matter what ways the assault took place.

According to the Article 25 of the same law “*The claimant may demand from the judge to take an action for prevention of assault, elimination of such threat and determination of unlawful consequences of the assault even though it is discontinued. In addition to such action, the claimant may also request publication or notification of the recovery or the judgment to the third parties*”. There is no obstacle to implement this provision. However, it is necessary to preserve the balance with freedom of the press, and the right to inform and be informed.

Cessation of the publication is particularly important when *the internet law* is concerned, and the principles mentioned above are valid for the online media, as well.

Due to the instant nature of broadcasting, it is not possible to cease *radio-television* broadcasting, but it is possible to prevent the re-running of the content. It is possible to submit a lawsuit to prevent unjust assault against personal rights, demanding interim injunction, in which the procedures follows the same principles mentioned above.

##### **3.Pecuniary and Non-Pecuniary Damages**

No matter what medium the assault is made, people are entitled to submit a lawsuit based on protection measures in civil code and code of obligations, which may be in accordance with the Articles 24-25 of the former and Article 41 (& follows) of the latter. In the cases submitted, it may be demanded that the assaults be ceased and pecuniary and non-pecuniary damages be paid.

##### **4.Criminal Sanctions in the Criminal Code**

In accordance with the legal regulations mentioned in the question 30, journalists may be convicted or fined for defamation, aspersion, disclosure of personal information and violation of investigation secrecy.

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?

***During the investigation of specific crimes in Turkish Criminal Code & special criminal laws, all published works may be confiscated through the decision of the judge (Article 25 of Press Law). Concerning the investigations on these crimes, judges may decide (upon requested by Public prosecutors) for confiscation, or permanent or temporary cessation of published materials. This decision may also be made by Public prosecutors to avoid delays; however, the decision has to be submitted to a judge for his/her approval in the following 24 hours. The decision will be void if it is not submitted to a judge for approval, or if the judge denies it.***

***Such decisions are interpreted as censorship by media and some non-governmental organizations in Turkish Republic.***

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?

***No, there is not.***

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

***Public prosecutors are appointed by HCJP, and the allocation of the workload among them is carried out by chief Public prosecutor in the location where they are appointed. Public prosecutors have to continue to perform their duties even if negative publicity is launched by media – unless his/her location is changed or the investigation they conduct is transferred to another Public 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?

***If considered necessary, HCJP may make a press statement against the misinformation and defamation campaigns, which gradually expand and concerning the judiciary as a whole.***

**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.