

ANSWERS
of the **Romanian Public Ministry** – The Prosecutor’s Office
Attached to the High Court of Cassation and Justice –
to the **Questionnaire for the preparation of the CCPE Opinion No. 8**
on the relationship between prosecutors and media

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.¹

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.²

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?

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

¹ This possibility is stipulated by the provisions of Article 25 of the *"Guide on the relationship between the Romanian judiciary and the mass-media"*.

² 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."

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.³

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.

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.

³ 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".

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.

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*⁴, 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 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**

⁴ 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.

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.