



**Information Note of the Council of Europe Expert Advisory Group  
to the Office of the Prosecutor General of Ukraine  
on the Public Outreach in War Crimes Proceedings:  
Compliance with Articles 6, 8 and 3 of ECHR**

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There is inevitably pressure from the media for information about the progress of investigation into war crimes and other offences committed in the course of the aggression by the Russian Federation, as well as about the conduct of proceedings against suspected offenders. Moreover, it is important to keep members of the general public informed about such progress in order to maintain their confidence in the administration of justice.

However, statements about the progress of investigations and the conduct of proceedings, as well as the release of information relating to them, can have a detrimental effect on the ultimate success of those proceedings. This is because such statements and information can undermine the right to a fair trial under ECHR Article 6 - whether because this is contrary to the presumption of innocence or has a prejudicial effect - and the right to respect for private life under ECHR Article 8.

### **A. Presumption of innocence**

*ECHR Article 6(2): Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law*

The presumption of innocence will be violated if, without the accused's having previously been proved guilty according to law, there is some official conduct concerning him or her that reflects an opinion that he or she is guilty.

The presumption will be breached by statements by police officers and prosecutors that assert expressly or in substance a person's guilt outside of the conduct of the criminal proceedings themselves and before any conviction.

It is important, therefore, to avoid statements at press conferences and interviews with the media, as well as those issued through social media, such as:

**X was the instigator of the offence** [[Allenet de Ribemont v. France](#), no. 15175/89, 10 February 1995]] **or had organised the criminal group and committed the offences** [[Ergashev v. Russia](#), no. 12106/09, 20 December 2011]

**We have enough sound evidence of X's guilt** [[Butkevicius v. Lithuania](#), no. 48297/99, 26 March 2002]

**X killed Y** [[Maksim Petrov v. Russia](#), no. 23185/03, 6 November 2012] **or was the murderer of Z** [[Turyev v. Russia](#), no. 20758/04, 11 October 2016]

**This group, with X in the lead, was involved in the most grievous crimes** [[Korban v. Ukraine](#), no. 26744/16, 4 July 2019]

**It has been established that X did particular criminal acts** [[Krivolapov v. Ukraine](#), no. 5406/07, 2 October 2018 and [Mirgadirov v. Azerbaijan and Turkey](#), no. 62775/14, 17 September 2020]

**Referring to X as a “criminal” without any reservation** [[Khuzhin and Others v. Russia](#), no. 13470/02, 23 October 2008 and [Dovzhenko v. Ukraine](#), no. 36650/03, 12 January 2012]

**X ought to have been charged with this offence but must be absolved from criminal liability owing to the expiry of the criminal limitation period** [[Grabchuk v. Ukraine](#), no. 859902, 21 September 2006 and [Farzaliyev v. Azerbaijan](#), no. 29620/07, 28 May 2020]

However, there is nothing problematic about:

- a) statements by a prosecutor that there was a sufficient basis for a prosecution to be pursued, although it is better to avoid a word like “proved”

[Daktaras v. Lithuania](#), no. 42095/98, 10 October 2000]

- b) statements about the policy of dealing with those committing particular offences without referring to a particular individual or the proceedings brought against her/him

[Natsvlshvili and Togonidze v. Georgia](#), no. 9043/05, 29 April 2014

- c) the release of just an indictment to the press

[Pandy v. Belgium](#) (dec.), no. 13583/02, 5 July 2005

## **B. Disclosure of information**

The right to respect for private life can affect the extent to which information (including photographs and a person’s identity) relating to a suspect or accused should be released in the course of an investigation or a prosecution

Such release must always have **a legal basis**

[Sciacca v. Italy](#), no. 50774/99, 11 January 2005

and be **justified in the specific circumstances** of the case.

Such a justification would, e.g., exist where the use of a suspect’s photograph was necessary for the conduct of an investigation

[Doorson v. Netherlands](#) (dec.), no. 20524/92, 29 November 1993

but not where its release had no connection with the conduct of criminal proceedings

[Peck v. United Kingdom](#), no. 44647/98, 28 January 2003

or where it could influence the course of the proceedings, whether against or in favour of the accused

[Bédat v. Switzerland](#) [GC], no. 56925/08, 29 March 2016

It should also be kept in mind that the release of details about witnesses and any person affected by the offence being investigated could be in breach of their rights under ECHR Article 8

[Z. v. Finland](#), no. 22009/93, 25 February 1997

[B. and P. v. United Kingdom](#), no. 36337/97, 24 April 2001

There is, therefore, an obligation under ECHR Article 8 to ensure the safe custody of material gathered in the course of an investigation which includes information protected by the right to respect for private life and thus prevent it from being accidentally or deliberately made public

[Craxi v. Italy \(No. 2\)](#), no. 25337/94, 17 July 2003

[Draksas v. Lithuania](#), no. 36662/04, 31 July 2012

[Cășuneanu v. Romania](#), no. 22018/10, 16 April 2013

[Apostu v. Romania](#), no. 22765/12, 3 February 2015

These cases also require that, in the event of such disclosure occurring, there should be effective action taken to discover its source and the relevant body should condemn it and dissociate itself from it. Moreover, the European Court of Human Rights expects the State to organise its services and to train its staff in order to avoid the circumvention of official procedures regarding the disclosure of information covered by the right under ECHR Article 8.

It is important also not to cooperate with the media in ways which facilitate interferences by it with the right to respect for private life, such as by providing opportunities for a suspect to be photographed or filmed without her/his consent

[Toma v. Romania](#), no. 42716/02, 24 February 2009

[Khmel v. Russia](#), no. 20383/04, 12 December 2013

In addition, apart from the specific obligation under Article 13 of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 to protect prisoners of war at all times against “insults and public curiosity”, it should be borne in mind that it is contrary to Article 3 to treat persons suspected or accused of an offence in a manner which have the effect of humiliating or debasing them in front to others. This can be the consequence of exposing them to the public or the press in the course of their apprehension or subsequently

[Erdoğan Yağız v. Turkey](#), no. 27473/02, 6 March 2007