



CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE)

**Questionnaire for the preparation of the CCPE Opinion No. 8
on the relationship between prosecutors and media**

Replies from the Czech Republic

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.)¹, 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 entrusted 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.

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

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).

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). 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.