

Strasbourg, 6 February 2012

SWEDISH REPLY



CCPE (2013)1

CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE)

Questionnaire for the preparation of the CCPE Opinion No. 8

on the relationship between prosecutors and the media

Replies by Sweden

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.