



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 Denmark

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 photos 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.