



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 media

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.

There are no separate legal provisions determining contact between prosecutors and the media, but the duty and right of prosecutors to provide information to the media complies with general provisions governing disclosure and secrecy. This means in practice that the media therefore has the same right to be informed as other third parties (other than parties and certain authorities - such as child welfare authorities, etc. – which have particular rights to be informed). In practice, this means that during the pre-trial investigation and consideration of charges, it is basically not possible to provide any information to the media about the substance of a case. Once the case has been before the court in an oral hearing, the media have a right to receive very extensive information about the substance of a case. This also applies to a situation where a prosecutor has decided to waive charges. In such situations, too, information about health and other sensitive information, state secrets, etc. must be kept secret from the media and other third parties.

2. Are prosecutors authorised to have direct relations with media? If this is not the case, who communicates the information concerning judicial and criminal cases to the press?

Yes they are. Each prosecutor himself or herself communicates with the media about the cases he or she is dealing with.

3. Which other persons are authorised to provide information to the press within the framework of these cases (police service, lawyers, parties to a proceeding, other persons)?

Under the government decree dealing with pre-trial investigations, the head of the investigation and his or her supervisor are authorised to provide information to the press. Otherwise, each party to a case is independently responsible for providing information.

4. Do you have any experience of joint communication by several public authorities (e.g. prosecutor and police)?

In some criminal cases that have generated wide attention, the prosecutor and the police have held joint media conferences. Discussing media communications is part of good pre-trial investigation work between the prosecutor and the pre-trial investigation authority.

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)?

A prosecutor's responsibility for communication begins when a case is passed to him or her for consideration of charges. At the pre-trial investigation stage, the pre-trial investigation authorities are responsible for communication. An exception to this is criminal cases where the suspect is a police officer. In such cases, the prosecutor acts as the head of investigation and is also responsible for communication at the pre-trial investigation stage.

6. Are the judges authorised to inform the press? If this is the case, during which stage of the procedure?

Courts of law are independently responsible for their own communication once a case has passed to the court for consideration. In Finland, it is not customary for judges to comment on the decisions they make. Nevertheless, courts of law give press releases and reports of the decisions they hand down. As a rule, the decisions are public.

7. Is there supervision on the relationships between prosecutors and media in your country? By whom and how?

Not particularly, only supervision relating to such matters. These things are part of prosecutors' activities which are subject to general oversight of the legality of prosecutors' activities. If a prosecutor communicates contrary to good prosecutorial practice, the supreme prosecutor, which in Finland is the prosecutor general, can intervene in the matter. If a prosecutor discloses information that is to be kept secret, he or she may be guilty of an offence in office.

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"?

Under the Pre-trial Investigation Act, information about a pre-trial investigation must be communicated in such a way that no one is unjustifiably incriminated or unnecessarily harmed or inconvenienced. This principle also applies to communication by prosecutors. "Trial by press" alongside trial by a court is not good prosecutorial practice. A prosecutor may also express his or her opinion, but any view in this respect is required to be relevant and objective.

The Act on the Prosecution Service provides for the disqualification of a prosecutor. Under this Act, a prosecutor is disqualified from consideration of a case if, inter alia, there is reason to suspect his or her impartiality in the case. This means, for example, that a prosecutor cannot adopt a position a priori, for example in the media, in a case under investigation.

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?

If a prosecutor pursues a case in trial by the press, he or she can receive a warning from the supreme prosecutor. In such cases, the prosecutor general may relieve the prosecutor of the case and assign it to another prosecutor. If a prosecutor discloses information that is to be kept secret, he or she may be guilty of an offence in office.

10. How do the prosecution services deal with the security risks caused by disclosure of information concerning the prosecutors and the cases?

The name of a prosecutor in a case is in the public domain, but contact and other personal information can be kept secret. If there is a security risk involved in a case being dealt with by a prosecutor, the case can be assigned to several prosecutors. The Office of the Prosecutor General must be notified of any threats against prosecutors. Where necessary, the police are notified 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?

Publication of a prosecutor's name cannot be prevented because this is public information.

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 answer telephone and email enquiries, give interviews, publish press releases, write reports of decisions and sometimes also hold press conferences.

13. Can press conferences or other releases be made by prosecutors in cases of international investigations? If yes, which procedure do you follow?

Yes. To date, prosecutors have only written press releases in some cases of international interest. The same principles apply in communicating international cases as in communicating national ones. The date and way of communication is agreed together with the authorities of the other state involved in situations where an investigation is ongoing at the same time in both countries.

14. Is there communication with all the media or with some (newspapers, audiovisual media, internet)?

Prosecutors must treat reporters equally and fairly. This means public information is given to everyone requesting it irrespective of the medium or media it is published in.

15. Are there regulations prohibiting public prosecutors to give an advantage to single journalists (and/or leaving out some of them)?

Favouring certain journalists is not good prosecutorial practice. Under the Act on the Openness of Government Activities everyone has the right to access information available in public documents.

16. How is the communication organised 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 authorisation to do so? Are prosecutors supervised in this field?

Each prosecutor himself or herself communicates with the media about the cases he or she is dealing with. A prosecutor may use the help of a communications specialist, for example, in writing a release and in its circulation to journalists or in arranging a press conference. In individual cases, responsibility for communication always rests with the prosecutor dealing with the case in question. A communications specialist may provide journalists with general information about the activities of the prosecution service. The prosecutor general has ultimate responsibility for the communications policy of the prosecution service.

17. How do the media communicate with the prosecutors (official representatives, specialised journalists, necessary authorisations)?

Journalists are in direct contact with prosecutors. Some media have journalists specialising in criminal and legal matters, some journalists writing an article are so-called all-round reporters.

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)?

During the pre-trial investigation and before a prosecutor has decided whether to pursue a case or to waive charges, the name of the suspect must not be disclosed to third parties. When the prosecutor has made the decision, the name of the accused (or the person against whom charges have been waived) is public. The offence for which a charge has been brought (the category of the offence charged) and the court in which the case is to be heard are also public. Unless the prosecutor has ordered it to be kept secret (this is usually the practice in rape cases), the name of the injured party is public once the pre-trial investigation has been completed. The name of a witness to be heard in a case is secret until the charge has been considered in court or the prosecutor has decided to waive charges. The name of the prosecutor dealing with a case is public from the start of proceedings. Information about the incident and other content relating to the case appearing in the pre-trial investigation, the description of the act charged and items of evidence are secret until the matter has been before the court in oral proceedings.

19. Is there an official policy encouraging prosecutors to respond to the needs of media, and how is this policy implemented?

The Office of the Prosecutor General has drawn up a communications plan which is updated as necessary. Local prosecution offices are given written communication guidelines by the Office of the Prosecutor General. These guidelines emphasise the openness and activeness of prosecutors in communication. The Act on the Openness of Government Activities commits the authorities to providing information about public documents. Persons requiring information must be treated equally and fairly. Finland has two national languages, Finnish and Swedish. The Finnish- and Swedish-speaking population must be served on an equal footing. Customers are served in both languages and key communication material is provided in both Finnish and Swedish. Prosecutors received media training to encourage them to cooperate with journalists.

20. Are the prosecutors' communications with media systematically monitored and evaluated by using monitoring, feedback from the public, communication surveys or other measures?

There is no general or systematic evaluation. The communications manager at the Office of the Prosecutor General monitors news about prosecutors in various media and provides media follow-up information to management where necessary. In addition, feedback about the activities of the prosecution service can be given via the service's website or by email. The communications manager receives information about feedback. Questionnaires have also been used to study the external communications of the prosecution service. In problem situations, the Office of the Prosecutor General can deal with the procedure of a prosecutor.

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)?

Decisions made by prosecutors are, as a rule public and can, if required, be ordered from the prosecution service. Also press releases and reports of decisions are written concerning decisions that generate wider interest. These are also publicly available, for example, by email and online. In addition to individual cases the activities of the prosecution service are also posted on the service's website and through various publications.

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)?

Prosecution offices have held various discussions and open days. In addition, activities are posted on websites and through publications such as brochures and the annual report. The prosecution service

presents the work and career of a prosecutor each year to, for example, students, recent graduates and other persons interested at employment agencies, recruitment fairs and at educational establishments. Prosecutors often appear at various events held by stakeholders. A set of slides is generally used to present the activities of the prosecution service.

23. 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.

By law, pre-trial investigations must be reported so as not to unjustifiably incriminate anyone or to unnecessarily harm or inconvenience anyone. This enables the photo of a suspect of a serious offence who can also be assessed as dangerous to be published in a newspaper or other media and in this connection, the public are requested to notify the authorities of possible sightings.

The head of an investigation may, within the limits permitted by law, communicate information about a case to be able to obtain tips from the public to help take the investigation further. In certain situations, providing information about a case may be necessary where publicising it can prevent other offences.

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?

The Office of the Prosecutor General arranges basic and advance training for prosecutors. The basic training programme is compulsory for everyone and includes a three-day module about human and constitutional rights. A two-day training module covering freedom of speech is also provided and is part of the basic competence of every prosecutor. Training covering publicity is also given both centrally and in the form of local training in prosecution offices. This training module lasts three hours.

25. Are prosecutors trained on how to interact with media?

The induction programme for new prosecutors contains a section covering media publicity. Prosecutors are given a three-day media training course to provide them with the skills to interact with the media and to understand media communication. The course covers the provisions of the Act on the Openness of Government Activities and media communications at the prosecution service.

26. Are journalists trained on how to interact with the prosecution services?

Legal affairs reporters have formed their own association which provides training and discussions about legal affairs, also about the activities of prosecutors. Media training arranged by the prosecution service also includes visits to editorial offices where prosecutors and journalists learn about each other's work and discuss key working practices. In addition, prosecutor offices have also held discussion and familiarisation events for journalists.

27. Are there joint training courses, conferences, seminars, etc. organised 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 reply above

28. Are there professional associations of media and journalists competent to regulate their interaction with the prosecution services?

The Council for Mass Media (CMM) in Finland is a self-regulating body established by the media, publishers and journalists. The Council is tasked with interpreting good professional practice and to defend the freedom of speech and publication. The Council also considers the methods a journalist employs to obtain information and oversees compliance with the Guidelines for Journalists. These form professional ethical instructions for journalists. The Council for Mass Media is not a court of law and does not exercise public authority. See detailed answer to question 29.

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 Mass Media is a self-regulating committee established in 1968 by publishers and journalists in the field of mass communication. Its task is to interpret good professional practice and defend the freedom of speech and publication. CMM does not exercise legal jurisdiction. The journalists and other personnel engaged in media who have affiliated to the CMM have, ipso facto, committed themselves to advancing and upholding the ethical principles of the profession.

Any person who considers that there has been a breach of good professional practice by media may bring this to the attention of the CMM. Once the CMM has established that good professional practice has been breached, it issues a notice which the party in violation must publish within a short time span. Under certain circumstances involving important principles, the CMM can initiate an investigation. It can also issue policy statements regarding questions of professional ethics. The CMM handles complaint investigations free of charge, within an average timeframe of five months. The Chairman may give independent resolutions of matters which clearly do not refer to a breach of good professional practice and are of no significant importance.

The CMM is comprised of a chairman and eleven members whose term of office is three years. Seven members represent areas of expertise in the field of media, and four represent the public. The chairman, whose expertise also may be in the field of media, is appointed by the Managing Group of The Council for Mass Media. Representatives of the public are elected by the council itself. They may not be employees or board members of any media entity. The media representatives are appointed by the Managing Group.

The framework of the CMM's operations is stipulated in a Charter, which is signed by all the organisations which have committed to themselves to self-regulation and accepted its objectives. A complaint may be filed by any individual or organisation requesting the investigation of a matter concerning breach of good professional practice or the freedom of speech and publication. The CMM will not investigate complaints submitted anonymously, nor complaints where more than three months has elapsed since publication. The complaint must be submitted in writing and signed. Nowadays the council gets most of the complaints via electronic complainant form.

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?

Penal provisions are contained in Chapter 24, Sections 8-10 (531/2000) of the Criminal Code of Finland. It is a prosecutor's duty to pursue charges in such offences if the injured party has requested charges to be brought (see provision on the right to bring charges in Section 12 below) and sufficient proof has been obtained for an offence. However, if an offence is minor, the prosecutor can waive charges.

Chapter 24

Section 8 – Dissemination of information violating personal privacy

(531/2000)

(1) A person who unlawfully

(1) through the use of the mass media, or

(2) otherwise by making available to many persons

disseminates information, an insinuation or an image of the private life of another person, so that the act is conducive to causing that person damage or suffering, or subjecting that person to contempt, shall be sentenced for *dissemination of information violating personal privacy* to a fine or to imprisonment for at most two years.

(2) The spreading of information, an insinuation or an image of the private life of a person in politics, business, public office or public position, or in a comparable position, does not constitute dissemination of information violating personal privacy, if it may affect the evaluation of that person's activities in the position in question and if it is necessary for purposes of dealing with a matter with importance to society.

Section 9 - Defamation (531/2000)

(1) A person who

(1) spreads false information or a false insinuation of another person so that the act is conducive to causing damage or suffering to that person, or subjecting that person to contempt, or

(2) disparages another in a manner other than referred to in subparagraph (1) shall be sentenced for *defamation* to a fine or to imprisonment for at most six months.

(2) Criticism that is directed at a person's activities in politics, business, public office, public position, science, art or in comparable public activity and that does not obviously overstep the limits of propriety does not constitute defamation referred to in subsection 1(2).

(3) Also a person who spreads false information or a false insinuation about a deceased person, so that the act is conducive to causing suffering to a person to whom the deceased was particularly close, shall be sentenced for defamation.

Section 10 - Aggravated defamation (531/2000)

(1) If, in the defamation referred to in section 9(1),

(1) the offence is committed by using the mass media or otherwise by making the information or insinuation available to many persons, or

(2) considerable or long-lasting suffering or particularly or significant damage is caused

and the defamation is aggravated also when assessed as a whole, the offender shall be sentenced for *aggravated defamation* to a fine or to imprisonment for at most two years.

Section 11 - Definition (531/2000)

Domestic premises refers to homes, holiday homes and other premises intended for residential use, such as hotel rooms, tents, mobile homes and vessels with sleeping capacity, as well as the stairwells and corridors of residential buildings and the private yards of the residents and their immediate outbuildings.

Section 12 - Right to bring charges (531/2000)

(1)-

(2) The public prosecutor may not bring charges for dissemination of information violating personal privacy, defamation or aggravated defamation, unless the injured party has reported the offence for the bringing of charges. However, the Prosecutor-General may order that charges be brought, if the offence has been committed through the use of the mass media and a very important public interest requires that charges be brought.

(3) An offence referred to above in section 9(3) may be reported for the bringing of charges by the surviving spouse, sibling, direct descendant or direct ascendant of the deceased, as well as by a person who lived in the same household with the deceased or a person to whom the deceased was particularly close.

31. Please give information about criminal or administrative liability of journalists and the penalties provided by law.

In principle, a journalist may be sentenced to punishment of a fine or imprisonment as referred to in the answer to question 30 above. However, in its decision 2011:100, the Supreme Court gave significant importance to point 1 Towards decriminalisation of defamation in Resolution 1577 (2007) of the Council of Europe's Parliamentary Assembly which urges states to abolish provisions in their legislation for prison sentences for defamation without further delay. Such legislative amendment is under preparation. When implemented, it would mean the abolition of prison sentences for ordinary defamation and dissemination of information violating personal privacy (the potential to hand down a prison sentence would be retained in aggravated offences). Even though this amendment to the law has not yet occurred, the view of the Supreme Court means that, today, a journalist would no longer be sentenced to imprisonment for defamation. A journalist who is guilty of punishable defamation could be ordered to be liable for damages for personal suffering caused.

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?

Under the Constitution of Finland, everyone has freedom of expression, which also includes the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. However, under the Constitution of Finland, provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act. The answer to the question is therefore that only restrictions relating to pictorial programmes that are necessary for the protection of children can be prevented in advance. In practice, this means pictorial programmes containing particularly brutal violence, pornography or cruelty to animals. Otherwise prior intervention in dissemination is not possible.

33. If a prosecutor is criticised by media for reasons connected with the criminal proceedings, is there a role to play for the prosecutorial associations?

The prosecutors' trade union or any other union does not formally have such a role. Neither do they act in such a manner in practice. However, there is nothing to prevent a trade union from, for example, presenting views in a prosecutor's defence in public if he or she has been the subject of groundless criticism.

34. Is the prosecutor bound by a duty of discretion even if a media campaign has been started against him or her?

The fact that the media started a campaign against a prosecutor does not give the prosecutor the right to disclose such information that, by law, must be kept secret.

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. Although the prosecutor general or the Office of the Prosecutor General can speak in a prosecutor's defence in public if the situation requires an expression of such support.

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.