

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 Hungary

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.

On 1st July 2003 the legislator enacted the provisions pertaining to the right of the public to be informed into Act XIX of 1998 of the Criminal Procedure. Section 74/A of this Act regulates those bodies (investigating authority, prosecution service, court) which are entitled to inform the press in the various stages of the criminal procedure.

Section 74/A (1) provides as follows:

„Information to the press may be provided by the following persons: prior to the conclusion of the investigation, the member of the investigating authority authorized to do so in the relevant legal regulation; prior to the indictment, the prosecutor or the person authorized thereby; and during the court proceeding, the person authorized by the Act on the Legal Status and Remuneration of Judges.”

A more detailed regulation concerning the relationship between the prosecutors and the media, the procedure and rules to be followed when informing the press is provided by Order No. 19/2012 (X.9.) of the Prosecutor General of Hungary in compliance with the authorization specified by Section 8 (3) of Act CLXIII of 2011 on the Prosecution Service.

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 have relations with the media both in the course of the investigation and in the pre-trial stage.

As in Hungary there are certain criminal offences which only prosecutors are entitled to investigate, it is only the prosecution service that has the right to officially communicate information in such cases until the end of the investigation.

The Prosecution Service is also entitled to communicate information in cases investigated by investigating authorities – police, tax investigators – also in the course of their investigation.

In the court proceeding, however, the prosecutor does not have this right. It is only the court that is entitled to communicate information about the court procedure.

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 authorized representatives and spokespersons of the investigating authorities – of the police and the investigators of the tax authority – are entitled to provide information until the end of the investigation.

The defence counsel of the defendant and the suspect who is not under any coercive measure depriving him of his liberty is entitled to express their position regarding the criminal procedure.

In case the suspect in pre-trial detention wishes to communicate a statement to the media, the prosecution office directing the investigation may authorize him to communicate that statement. If the prosecutor refuses such an authorization in the interests of the investigation, the suspect and his defence counsel are entitled to lodge a complaint against such a refusal to the investigative judge.

The injured party is entitled to freely communicate with the press about his/her own case.

When analyzing the wider context of some criminal cases, the media regularly interviews university professors of law, experts or lawyers who are non-participants in the given case in addition to representatives of competent authorities.

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

In recent years, joint investigation teams have been set up in several high-priority cases where the investigation of economic crimes and crimes against public justice have been conducted – under the direction of a prosecutor – by prosecutors, policemen and investigators of the tax authority.

In such cases the representatives of the prosecution service and the investigating authorities reported about the outcome of the investigations in a joint press conference.

In most cases the joint action and the outcomes of the investigations involving the Central Investigative Chief Prosecutor's Office – which was established to investigate high-priority corruption cases and other cases of serious criminal offences with a jurisdiction encompassing the entire territory of Hungary – and the police units cooperating with it were provided in this form of communication.

Specific examples for joint press conferences include the following: the investigation concerning the Hungarian line of the criminal organizations specializing in betting fraud, the investigation of bribery-series involving several members of the tax authority, and the procedure initiated for the investigation of "carousel fraud" relating to several EU members states.

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 are entitled to communicate information to the media both in the investigatory stage of the procedure and the pre-trial stage following the investigatory stage.

As in Hungary only the prosecutor has the power to investigate specific criminal offences, only the prosecution service has the right to provide official information in such cases until the end of the investigation.

In addition to this, the prosecution service is also entitled to provide information in the course of the investigation of cases investigated by the investigating authorities, namely the police and the investigators of the tax authority.

After the end of the investigation, the prosecution service is entitled to provide information about the pre-trial stage and its result (the indictment, or the termination of the investigation).

On the other hand, only the court has the power to provide official information about the court proceeding.

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

Act CLXII of 2011 on the Legal Status and Remuneration of Judges stipulates as follows:

“Section 43 Outside his service relationship a judge may not publicly express an opinion on a case currently or previously tried by the court with special regard to cases adjudicated by him.

Section 44 (1) A judge may not provide information on cases under his administration for the press, radio stations and television channels.

(2) The chair of the court or a person authorized by him may provide information on ongoing or completed cases for the press, radio stations and television channels.”

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

There is no authority or body supervising the relationship between prosecutors and media, between the investigation authority and the media, or even between the court and the media.

Legal provisions regulating the right to inform the media and relevant orders of the Prosecution Service of Hungary determine the framework, limitations and the content of this relationship. If the information is considered to be injurious, the injured person is entitled to file a lawsuit and request the rectification, cancellation of the published press release, is entitled to claim for damages or request an apology to be made”.

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”?

Order No. 19/2012 (X.9.) of the Prosecutor General of Hungary regulating the procedure of communicating information to the press ensures the enforcement of such rights and the presumption of innocence by stipulating:

„Section 4 (1) With regard to information pertaining to cases having been completed from the aspect of prosecutorial procedure:

- a) facts established in the course of the procedure,
 - b) circumstances and reasons of the possibly discovered violation of law,
 - c) the decision of an authority
- may be disclosed.

(2) In the communicated information the prosecutor does not have the power to assess the evidence pertaining to the ongoing criminal case, nor is he entitled to make any assumptions regarding the expected evolving of the facts of the case or the expected legal consequences. The press may only be informed of measures against which legal remedies may be sought when the person having the right to remedy had already been informed of such measures.

(3) While communicating information about ongoing cases, the presumption of innocence, legal provisions regulating the protection of personal data and privacy shall be respected, and this has to be expressed in the wording of the communication, as well. While communicating information the interests of the criminal procedure shall also be taken account of. In the communication

- a) facts established in the course of the procedure,
 - b) circumstances – and if known reasons – of the criminal offence,
 - c) measures taken for detecting the case and for the collection of evidence as well as the progress of the procedure
- may be disclosed.

(4) In ongoing cases dealt with by the prosecution service the press may only be provided information about the fact that there is an investigation conducted and the expected date of conclusion thereof.”

As far prosecutors are concerned, the provisions of this Order of the Prosecutor General also prevent the phenomenon of “trial by press”.

That there are not so unambiguously formulated provisions applying to the defence is another matter, thus while the prosecution service is attentive to respecting the presumption of innocence and the fundamental rights referred to above, some lawyers strive to win the lawsuit and the public in the press (as well), and in this way they try to influence the administration of justice indirectly.

This endeavour by them is largely assisted by the regulation which prohibits the prosecution service communicating to the media during the court proceeding, while such a prohibition is not imposed on the defence. Some lawyers strive to benefit from the lack of this a prohibition and use it to increase their clients' and partly their own prestige.

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 rule stipulating that a prosecutor who culpably violates his/her official responsibilities commits a disciplinary breach shall also apply to prosecutors assigned to the position of spokespersons just like to any prosecutor.

Disciplinary liability is regulated by Chapter X of Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and Other Prosecution Employees and the Prosecution Career.

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

Pursuant to the provisions of the Code of the Criminal Procedure at the end of the investigation the defendant and his defence council are entitled to be shown the entire file of the criminal investigation and upon their request they may receive a copy thereof.

Afterwards, in possession of the documents and papers pertaining to the investigation the persons concerned – as recently more often experienced – disclose information contained in those documents and papers in some cases. Such documents and papers also include the name of the prosecutors acting in the given case.

Up to now it has only occurred in some cases that the defendant used violence against the prosecutor assigned to the case in relation to the prosecutor's acting in the case. This conduct shall constitute the criminal offence of violence against an official person or harassment, and the prosecution service tries to take every possible measure in such cases to achieve a quick and determined judgement.

Within the Cabinet of the Office of the Prosecutor General it is the Department for Data Protection and Security that is responsible for and deals with issues of data protection and security – including the security risks concerning the prosecution offices and the prosecutors.

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?

In a public trial the names of the judges sitting on the panel in charge of the case, the names of the prosecutors and the defence counsel can be equally disclosed. The prosecutor together with the judge is considered to be a person in the public eye in relation to his activity, in the trial; consequently, their names and – if representatives of the electronic media also attend the trial – their photos as well can be disclosed there.

Pursuant to Section 237 (3) of Act XIX of 1998 on the Criminal Procedure the court ex officio or the prosecutor upon the motion of the defendant, the defence counsel, the offended party or the witness shall be entitled to exclude the public including the media from the entire trial or from part of it by a reasoned decision, in order to protect the interest of those involved in the criminal procedure apart from other reasons.

Should the nature of the case or the security risks arising from it require, the judge, the prosecutor and their relatives can be entitled to protection to the extent and until it is deemed necessary. This protection is secured by special units of the police trained for this specific task.

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 who are entrusted with the task of a spokesperson – upon individual invitations –communicate with the media primarily via e-mail, by phone or directly and personally.

The individual Chief Prosecution Offices issue press releases about criminal cases of high importance, while in cases attracting large media attention and/or evoking public indignation the Office of the Prosecutor General, the Chief Prosecution Offices of Appeal or the Chief Prosecution Offices hold press conferences.

The Prosecutor General, the Deputy Prosecutors General, the Cabinet, the Appellate Chief Prosecutors and the Chief Prosecutors have the power to issue or forward official releases to the press.

With the exception of press conferences held by the Prosecutor General or the Deputy Prosecutors General, press conferences are subject to the prior consent obtained from the Cabinet.

At the Office of the Prosecutor General the Cabinet prepares and arranges press conferences.

At the Chief Prosecution Offices of Appeal, at the Chief Prosecution Offices press conferences, the preparation and arrangement of which spokespersons may also be entrusted with, are held by the appellate chief prosecutors and the chief prosecutors respectively.

In cases attracting media attention the Press Office, placed within the Cabinet of the Office of the Prosecutor General, also provides regularly updated information via the Press Releases section of the prosecution service's public website (www.mklu.hu).

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

It was in 2011 when Hungarian prosecutors joined an international joint investigation team for the first time in order to detect European lines of a criminal organization with Far-Eastern relations. Within the framework of this joint investigation team prosecutors of the Central Investigative Chief Prosecutor's Office co-operated chiefly with Finnish and German colleagues.

The Central Investigative Chief Prosecutor's Office held press conferences about the outcomes and accomplishment of the joint investigation teams on two occasions, once in Hungary, and last time in The Hague at the beginning of 2013, organized by the EUROPOL.

Meanwhile the Hungarian prosecution service also initiated setting up another international joint investigation team.

Upon the initiation of the Győr-Moson-Sopron County Prosecution Office, the National Tax and Customs Administration of Hungary in co-operation with Slovakia and the Czech Republic wound-up a criminal organization specializing in international so called "carousel frauds" the centre of which was in Hungary. The results of the investigation were communicated in an international press conference held in January 2013.

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

Spokespersons of the prosecution service communicate with the written, audiovisual and online media as well. Recently, however, several internet bloggers pretending to be journalists tried to get access to criminal data; therefore, Act CIV of 2010 on the on the Freedom of the Press and the Fundamental Rules on Media Content provides a clear definition of „printed press materials” which reads as follows:

„Individual issues of daily newspapers and other periodicals as well as on-line newspapers and news portals provided as a service for profit, for the content of which a natural or legal person or a business association without legal personality bears editorial responsibility, the primary objective of which is to distribute textual or image contents to the public for information, entertainment or training purposes in a printed form or via an electronic communications network. Editorial responsibility shall refer to responsibility for control over the selection and compilation of media content; however, it does not necessarily imply legal liability in relation to printed press materials. Individual, business-like service regularly provided for profit and by economic risk taking shall be construed as a service for profit.

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

In compliance with the relevant principles set forth in statutes and the orders of the Prosecutor General the prosecution service communicates with the different types of media impartially and in a balanced way.

As part of this communication, the prosecution service makes its press releases accessible to all the media to be concerned simultaneously.

There are of course journalists specialized in criminal matters who regularly contact spokespersons with their questions in individual cases, and the spokespersons answer those questions if replying them does not harm the interests of the criminal procedure. Replying those frequently asked questions, however, does not mean giving advantage to or favouring any single journalist.

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?

In 2011 a network of spokespersons was created within the structure of the Hungarian prosecution service. Until then the prosecution service's communication with the media was not regular, random and sporadic.

Within the prosecution service media communication is directed by the Cabinet of the Office of the Prosecutor General. The Press Office operating within the Cabinet is headed by the spokesman of the Office of the Prosecutor General.

The Cabinet

- informs the public through the spokesman about the activities of the Office of Prosecutor General and about the official position of the prosecution service in issues specified by the Prosecutor General;
- makes arrangements concerning possibly occurring press rectifications on the instruction of the Prosecutor General
- ensures that heads of the Office of the Prosecutor General and – as far as possible – spokespersons of the Chief Prosecution Offices of Appeal and of the Chief Prosecution Offices are informed by preparing daily press reviews electronically
- arranges the archiving of pieces of writings concerning the prosecution service from the most important documents, press articles, press reviews and organizes the collection of the Prosecutor General's parliamentary reports and other communications
- keeps contact with the spokespersons of the Chief Prosecution Offices of Appeal and of the Chief Prosecution Offices

At each Chief Prosecution Office of Appeal and Chief Prosecution Office there is a prosecutor entrusted with the task of keeping contact with the media who performs this task in addition to his other official responsibilities.

The Prosecutor General, an Appellate Chief Prosecutor and a Chief Prosecutor may also assign a prosecutor to communicate with the media in individual cases.

Prosecutors assigned to the position of spokespersons keep regular contact with the Cabinet of the Office of the Prosecutor General in the course of which they inform the spokesperson of the Office of the Prosecutor General

- about cases examined by the Chief Prosecution Offices of Appeal and the Chief Prosecution Offices which information has been formerly been communicated in the press,
- about cases concerning persons who are well known locally or nationally
- about criminal offences which attract public attention because of their seriousness or for other reasons (e.g. the unusual mode or special circumstances of the commission of the criminal offence)
- about cases relating to the field of protection of public interest, evoking national public attention

If there is an ongoing case dealt with at the subordinated prosecution offices which, in a chief prosecutor's or spokesperson's opinion, may potentially attract national attention in the future, then the Cabinet shall be informed of the essence and the measures taken in the case.

17. How does the media communicate with the prosecutors (official representatives, specialized journalists, necessary authorizations)?

There are journalist specialized in criminal matters who regularly contact spokespersons with their questions in individual cases, and the spokespersons answer those questions if replying them does not harm the interests of the criminal procedure. Some of the more significant media communicate with the prosecution service through the same one or two journalists.

This is not a general phenomenon, however, nor is it a pre-condition for the prosecution service to provide information. If the journalist raises his questions on behalf of a specific printed press in a verifiable way, he is entitled to receive replies from the prosecution service without any further licensing.

Recently, however, several internet bloggers pretending to be journalists tried to get access to criminal data. In order to detect this, the spokespersons of the prosecution service check when a journalist representing a so far unknown medium contacts them whether the medium requesting information meets the requirements set for "printed press materials".

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)?

Order No. 19/2012 (X.9.) of the Prosecutor General of Hungary provides as follows:

„ Section 4 (1) With regard to information pertaining to cases having been completed from the aspect of prosecutorial procedure:

- a) facts established in the course of the procedure,
 - b) circumstances and reasons of the possibly discovered violation of law,
 - c) the decision of an authority
- may be disclosed.

(2) In the communicated information the prosecutor does not have the power to assess the evidence pertaining to the ongoing criminal case, nor is he entitled to make any assumptions regarding the expected evolving of the facts of the case or the expected legal consequences. The press may only be informed of measures against which legal remedies may be sought when the person having the right to remedy has been informed of such measures.

(3) While communicating information about ongoing cases, the presumption of innocence, legal provisions regulating the protection of personal data and privacy shall be respected, and this has to be expressed in the wording of the communication as well. While communicating information interests for the criminal procedure shall also be taken account of. In the communication

- a) facts established in the course of the procedure
 - b) circumstances – and if known reasons – of the criminal offence,
 - c) measures taken for detecting the case and for the collection of evidence as well as the progress of the procedure
- may be disclosed.

(4) In ongoing cases dealt with by the prosecution service the press may only be provided information about the fact that there is an investigation conducted and the expected date thereof.”

Pursuant to the provisions of the Code of the Criminal Procedure at the end of the investigation the defendant and his defence council are entitled to be shown the entire file of the criminal investigation and upon their request they may receive a copy thereof.

Afterwards, in possession of the documents and papers pertaining to the investigation the parties concerned – as recently more often experienced – disclose information contained in those documents and papers in some cases. Such documents and papers also include the name of the prosecutors acting in the given case.

In a public trial the names of the judges sitting on the panel in charge of the case, the names of the prosecutors and the defence counsel can be equally disclosed. The prosecutor together with the judge is considered to be a person in the public eye in relation to his activity, in the trial; consequently, their names and – if representatives of the electronic media also attend the trial – their photos as well can be disclosed there.

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

A more detailed regulation concerning the relationship between the prosecutors and the media, the procedure and rules to be followed when informing the press is provided by Order No. 19/2012 (X.9.) of the Prosecutor General of Hungary in compliance with the authorization specified by Section 8 (3) of Act CLXIII of 2011 on the Prosecution Service.

Within the framework of this Order there is a continuous contact keeping and communication between the Cabinet of the Office of the Prosecutor General and the spokespersons. The media activity performed both by the Office and the Prosecutor General and the Chief Prosecution Offices have substantially become more active in the past few years, which is partly due to the increased demand for criminal news reports and partly to the conscious policy of the prosecution service relevant to this.

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

Every spokesperson makes reports to the Cabinet of the Office of the Prosecutor General on every Friday. In their reports they summarize which representative of which medium in what issue and in what form they have communicated information to in the given week.

The Cabinet of the Office of the Prosecutor General archives, summarizes, analyzes both the weekly reports and the relating occasional reports, and it uses this data for strategic planning as well.

By meeting the journalists specialized in criminal matters working for more significant media several times annually, the spokesperson of the Office of the Prosecutor General receives a feedback regarding the media activity of the prosecution service.

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)?

In addition to the answers given in reply to the occasional requests of the media, the Chief Prosecution Offices issue press releases about the criminal cases of high importance, while in cases attracting large media attention and/or evoking public indignation the Office of the Prosecutor General, the Chief Prosecution Offices of Appeal or the Chief Prosecution Offices hold press conferences.

The Cabinet Press Office of the Office of the Prosecutor General coordinates the communications of the spokespersons of the Chief Prosecution Offices in cases of higher importance, so that superabundant information having the same value and provided simultaneously should not extinguish each other.

The spokesperson of the Office of the Prosecutor General also keeps contact with the spokespersons of the partner organizations and authorities – primarily the police, the investigators of the tax authority, and the courts – with the objective of coordinating the exchange of experiences on the one hand and harmonizing the communicative measures on the other hand.

In cases attracting media attention the Press Office operating within the Cabinet of the Office of the Prosecutor General also provides regularly updated information via the Press Releases section of the prosecution service's public website (www.mklu.hu).

The Press Release section of the website contains downloadable reports and coverage about cases of high importance, events and latest news relating to the prosecution service illustrated with continuously updated images and graphs.

In addition to this, collections of statistics of the most versatile aspect can also be downloaded from the website of the prosecution service.

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)?

By meeting the journalists specialized in criminal matters working for more significant media several times annually, the spokesperson of the Office of the Prosecutor General receives a feedback regarding the media activity performed by the prosecution service.

Beside this, the spokesperson of the Office of the Prosecutor General regularly delivers presentations on the media activity of the prosecution service on forums organized by civil societies, universities and colleges.

On judicial open days the Cabinet of the Office of the Prosecutor General also provides information to university students showing interest in the activity of the prosecution service.

23. Can communication with media be used as an investigative tool (for instance by spreading identikits around or even photos showing the commission of a crime)? If yes, please specify.

Act XVIII of 2011 regulating arrest and seizure warrants provides as follows:

“Section 12 (1) In order to locate a person or object whose whereabouts are unknown and in order to identify an unknown person or corpse the Police are entitled to collect data in the course of which they

...

d) are entitled to issue announcements in the public interest free of charge on the radio and television which are considered to be civil service media providers and are entitled to issue warnings in the press and on the internet;

e) are entitled to disclose the warranted person's the name, photo, data necessary for identification, the presumed place of his appearance or whereabouts as well as the reason for their disclosure, for important public interest or for private interest deserving special consideration unless the authority ordering the warrant has expressly prohibited it;

f) are entitled to disclose the photo, drawing, code suitable for identification, and other features or characteristics of the warranted object unless the authority ordering the warrant has expressly prohibited it ...”

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 prosecutors – thus in particular prosecutors entrusted with the task of a spokespersons – shall be familiar with and apply in their work the freedom of speech and the right of the public to receive information set forth by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Beyond this, since a network of spokespersons was established in 2011, spokespersons participate in an intensive training held in the training centre of the Office of the Prosecutor General every autumn. One of the themes of these trainings includes how to apply provisions of the Convention appropriately.

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

Every autumn spokespersons attend an intensive training held in the training centre of the Office of the Prosecutor General within the framework of which they analyze the modes of interaction with the media and practice such modes by simulating hot/ difficult situations with the involvement of journalists.

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

In the recent years the number of places providing communication trainings has significantly increased, but this quantitative increase has rather reduced than raised the level of qualification and preparedness of journalists who have just finished their studies. Unfortunately, during the course of their studies journalists are imparted none or only very superficial knowledge about how the administration of justice – and within this how the prosecution service – functions and how they should interact with them.

Only a very narrow segment of the journalists can be considered criminal journalists understood in the classical sense.

Taking account of all this, for prosecutor spokespersons interaction with journalists is very often restricted not only to communicating information connected to the particular criminal case, but their communication should also include informing journalists about the most fundamental procedural rules – thus about law enforcement, administration of justice, and specifically about the functioning of the prosecution service.

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?

Representatives of different media rotate in attending the annual trainings organized for prosecutor spokespersons, which also targets mutual sharing of knowledge and learning more about each other's work among the participants.

Beside this, joint seminars and conferences are also held.

A latest example for this was the so called KRIMINALEXPO organized by The Office of the Prosecutor General and the National Association for Prosecutors in November 2012, where prosecutors responsible for media relations and the representatives of media of different European countries discussed the relationship between prosecutors and the media in an international seminar.

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

Beside the various associations for journalists, there is a society uniting criminal journalists, but this society does not have real impact within the media, the majority of its members do not play an active role in interactions with the prosecution service; thus it does not exert essential, qualitative influence over the relationship between the prosecution service and the media.

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?

Pursuant to the provisions of Act CLXXXV of 2010 on Media Services and Mass Media the Media Council – among others – shall

- oversee and guarantee the freedom of the press under this Act and the Press Freedom Act;
- perform the supervisory and control tasks prescribed by this Act - by recording programme flows or programmes or examining the programme flows recorded by the media service provider, or by making official requests;

The National Authority for Data Protection and Freedom of Information (hereinafter referred to as Authority) established by Act CXII of 2011 on the Right to Self-determination and Freedom of Information shall monitor and facilitate the enforcement of the right to protection of personal data and access to public data. If this Authority suspects that relating to its own procedure a criminal offence, misdemeanour or disciplinary breach has occurred concerning data protection, it is entitled to initiate a procedure at the competent authority.

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, slander, and/or similar violations of a person's reputation are only punishable upon private motion. The charges are represented by the injured party in the capacity of the private complainant.

Libel, slander, and/or similar violations of a person's reputation shall, however be prosecuted by public prosecutors if they are committed to the prejudice of an official person in the course of or due to his/her official procedure and to the prejudice of an authority in relation to its official functioning.

The public prosecutor – similarly to other cases prosecuted by public prosecutors – only plays part in criminal proceedings in the latter case.

With regard to *defamation* and *media remedy* Act IV of 1959 on the Civil Code provides as follows:

“Section 78 (1) The protection of inherent rights shall also include protection against defamation.

(2) The statement, publication, or dissemination of an injurious untrue fact pertaining to another person or a true fact with an untrue implication that pertains to another person shall be deemed defamation.

Section 79 The provisions for the enforcement of claims for media remedy are contained in Act CIV of 2010 on Freedom of the Press and on the Basic Rules Relating to Media Content and in the Act on the Code of Civil Procedure.”

Pursuant to Section 12 of Act CIV of 2010 on Freedom of the Press and on the Basic Rules Relating to Media Content:

“(1) Where published media content disseminates false facts or distorts true facts about a person, the person affected shall be entitled to demand the publication of an announcement to clearly identify the false, distorted and/or unfounded facts of the communication and indicate the true facts.

(2) The remedy communication shall be published - in the case of newspapers, online journals and news agencies within five days upon receipt of the request therefore, using the means similar in style and size as the contested part of the communication; in the case of on-demand media services within eight days upon receipt of the request therefore, using the means similar in style and size as the contested part of the communication; in the case of other periodicals after eight days from the time of receipt of the request therefore, in the next edition, using the means similar in style and size as the contested part of the communication; and in the case of linear media services also within eight days, using the means similar in style as the contested part of the communication, at the same time of day.”

Provisions of Act III of 1952 on the Code of Civil Procedure concerning *media remedy procedures* stipulate:

“*Section 342* (1) Publication of a statement of remedy may be demanded by the person affected in accordance with Act IV of 1959 of the Civil Code and Act CIV of 2010 on Freedom of the Press and on the Basic Rules Relating to Media Content from the media service provider, the press product editors or news agency implicated within thirty days from the date of publication or broadcast of the disputed communication.

(2) Publication of a statement of remedy, if requested in due time, may be refused only if the argument made in the request is promptly refutable.

Section 343 (1) If the media service provider, the press product editors or news agency fails to satisfy the publication of a statement of remedy, the person seeking remedy shall have the right to bring action against the media content provider, press product editors or news agency involved.

(2) The provisions of Chapters I-XIV shall apply in actions for media remedy subject to the exceptions set out in this Chapter. An action for media remedy may not be joined or consolidated with any other actions.

(3) The action shall be filed within fifteen days from the last day of the obligation of publication. An application for continuation (Sections 106-110) may be submitted upon failure to meet this deadline. The body referred to in Subsection (1) shall be involved as a party even if otherwise lacking legal capacity (Section 48).

(4) The statement of claim shall expressly specify the contents of the statement of remedy, contain proof that the plaintiff made the request for remedy within the legal deadline, and - in the case of a newspaper, magazine or periodical - the volume that contains the contested allegation, or a printed version of the contested communication in the case of online journals shall be attached, if available.

Section 344 (1) The court in whose jurisdiction the main offices, or home address of the press product editors, news agency or media service provider are located shall have competence to hear such cases. Jurisdiction may also be based on the location of the local studio of the media service provider.

(2) The court shall handle actions for media remedy in priority proceedings. The presiding judge shall set the date of the hearing not later than the eighth day following the date of submission of the statement of claim, except if the statement of claim is submitted in delay, in which case the presiding judge shall reject the statement of claim without issuing any writ of summons.

(3) In such cases no applications for continuation and no counterclaims will be admissible, and such cases may not be suspended.

Section 345 (1) Holding the first hearing shall not be prevented by the plaintiff's or the defendant's failure to appear. However, if neither of the parties is present in the first hearing, the case shall be dismissed. In actions for media remedy court orders may not be issued.

(2) Taking of evidence may be performed solely in connection with such evidence that is available at the hearing, and which appears to have the capacity to promptly corroborate the authenticity of the allegations contained in the contested publication, or to promptly refute the arguments made in the claim. Taking of evidence may be performed with respect to any evidence offered by the plaintiff on the spot. The hearing may be postponed - for maximum eight days - only if the plaintiff so requested, or if the evidence presented appear sufficient to prove the success of the taking of evidence.

(3) If the court's decision is in favour of the plaintiff, it shall render a judgment ordering the defendant to publish a statement of remedy worded by the court within the prescribed deadline, and to bear the costs of the proceedings.

Section 346 (1) The court of the second instance shall hear the appeal within not more than eight days from the time of receipt of the relevant documents.

(2) A motion for retrial may not be submitted against a judgment rendered in an action for media remedy.”

Pursuant to the provisions of the press order of the prosecution service concerning media remedy:

“Section 8 (1) In case of a media communication concerning the activity of the prosecution service the Prosecutor General shall decide on the media remedy procedure regarding national publications and radio- and television channels broadcasting country-wide; in other cases the decision shall be taken by the appellate chief prosecutor or the chief prosecutor in accordance with the procedure defined in Subsection (2). The Cabinet of the Office of the Prosecutor General is immediately to be informed on the fact of the media remedy procedure initiated by the appellate chief prosecutor and the chief prosecutor and the completion thereof.

(2) The appellate chief prosecutor and the chief prosecutor inform the Cabinet and the Division for Legal Representation of the Prosecution Service in Judicial Proceedings of their intention of initiating a media remedy procedure. Media remedy procedures can only be initiated with the prior consent of the Prosecutor General forwarded via the Cabinet.”

Unfortunately, there is no uniform practice concerning the defamation proceedings with regard to public prosecutors.

Some courts admit statements of claim in which the public prosecutor taking public action is directly sued for defamation, in spite of the fact that, as it is clear from the operative legal regulations, if a person acts on behalf of a legal person and does not conflict the interests of this legal person, the proceeding for the violation of personal rights can exclusively be initiated against the legal person.

The new civil law legislation to be passed in the near future unequivocally states that in such cases only the prosecution service/court can be sued and not the public prosecutor/judge himself.

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

As referred to in the answer given to the previous question, journalists' possibly occurring/committed unlawful activity may be suitable to constitute mostly the suspicion of defamation or libel or misuse of personal data in the field of criminal law, whereas in the field of civil law journalists might face procedures initiated for defamation/slander and media remedy.

The afore-mentioned criminal offences – with the exception of the aggravated cases of the felony of misuse of personal data – are punishable by imprisonment for up to one year.

Further legal consequences of defamation may involve restraint from the further infringement/(unlawful) activity, making restitution by ways or press statement, and non-pecuniary damages.

The effective criminal law regulations do not contain any specific criminal offences in the case of which only journalists could be perpetrators.

In case of certain criminal offences – such as libel – the commission in “broad publicity” is regarded as an aggravating circumstance. Pursuant to the provisions of the Criminal Code broad publicity shall also involve commission by ways of publishing data in the media, other means of mass communication, electronic communication network or reproduction.

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?

Pursuant to Section 151 (4) of the Code on Criminal Procedure:

“Seizure of mail and new communication not delivered to the addressee yet as well as of documents of the editorial office of printed matters shall be ordered prior to filing the indictment by the prosecutor, or thereafter by the court. Until the decision is made, the consignment may only be subject to retention.”

We have no cognizance of any measures in our county that might be considered as a form of preventive censorship.

Public prosecutors do not have a role in supervising media activities.

The spokesperson prosecutor may, of course, request (and actually should request) that he is shown the draft of the article based on his/her own statement prior to its publication.

Apart from this – in accordance with the previously described procedure – the Prosecution Service may initiate a media remedy procedure.

This, however, does not constitute supervising media activities.

At the same time, in the *scope of his/her activities protecting the public interest* the public prosecutor may file action for the annulment of the contract and the enforcement of the legal consequences of the invalidity of the contract in order to cease the injury caused to the public interest by a null and void contract.)

A new scope of null and void contracts is defined by the provision, according to which no pecuniary advantage can be stipulated for the benefit of the finally convicted person or any other person related to the convicted person for the publication of the criminal offence committed by the finally convicted person in the media, any media services or other publications or any other activities falling under copyright protection as long as the criminal record of the convicted person is not cleared.. Any agreement contrary to this provision is null and void. Upon the action of the prosecutor the pecuniary advantage provided on the basis of a null and void contract and to be returned to the provider of the service or the already agreed but not yet effected pecuniary advantage should be awarded for the state.

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?

There is none.

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

The prosecutor is bound by a duty of discretion even if this occurs. It is the Cabinet of the Office of the Prosecutor General – the Spokesperson of the Office of the Prosecutor General – that has competence to handle and countervail media campaigns started against prosecutors.

The prosecution service is represented by the Prosecutor General, thus in issues and questions regarding the prosecution service as a structural body, the Prosecutor General, the Deputies Prosecutor General and – as specified in the press order - the Cabinet of the Office of the Prosecutor General upon the Prosecutor General's authorization, through its spokespersons are entitled to communicate information.

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?

Again, it is the Cabinet of the Office of the Prosecution Service – the Spokesperson of the Office of the Prosecutor General that has the power to reply, handle and countervail such media attacks.

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 have any further observations.