



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 Slovakia

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.

*Relationship between prosecutors and media is not regulated by any specific law. Freedom of expression and right to information are guaranteed in the **Constitution of the Slovak Republic**. Everybody has right to express their views orally, in writing, in printed form, pictures or by any other means. The same applies to free access to, reception and distribution of ideas and information worldwide. Publication of press is not subject to licensing procedure and censorship is prohibited.*

*Terms, procedures and extent of free access to information is regulated by the Act no. 211/2000 Coll. on **Free Access to Information** as amended (Free Access to Information Act).*

*Rights and obligations of a publisher (editor) of periodicals and obligations of a press agency in relation to acquisition and dissemination of information is regulated by the Act no. 167/2008 Coll. on **Periodicals and News Agencies** as amended (Press Law).*

*Broadcasting and Retransmission Council/Board has the responsibility to promote interests of the public in relation to exercise of right to information, freedom of speech and right to access to cultural values and education; also it carries out the State regulation in the area of broadcasting, televising, retransmission and provision of audiovisual and media services upon request (Act no. 308/2000 Coll., on **Broadcasting and Retransmission** as amended and Act no. 195/2000 Coll., on telecommunications). The Council observes plurality of information in news broadcasted on the basis of a law or on the basis of a license under the law. It supervises the observance of legal regulations regulating broadcasting, retransmission and audiovisual*

media services upon request and it also carries out State administration in the area of broadcasting, retransmission and audiovisual media services upon request, in the extent defined by a law. Information about criminal proceedings is given pursuant to the Act no. 301/2005 Coll., i.e. **Code of Criminal Procedure**.

Instruction no. 12/2006 as amended by the Instruction no. 14/2012 of the General Prosecutor of the Slovak Republic regulates provision of internal information from the Public Prosecution Service to media.

Classified information processed within the Public Prosecution Service of the Slovak Republic is defined within the meaning of the effective legal regulation by means of the **Order of the General Prosecutor of the Slovak Republic** (Order no. 7/2006, 1/2008, 4/2009).

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

The task to provide true, timely and universal information to the public is fulfilled by the Press and Information Section (hereinafter referred to as "spokesperson") at the Office of the General Prosecutor of the Slovak Republic and also by the appointed prosecutor in each Regional Prosecution Office (regional spokesperson). As far as the matters falling within the supervision of the Special Prosecution are concerned, information is provided by the spokesperson there unless Special Prosecutor decides otherwise.

Information is provided to the media primarily by the spokesperson, regional spokesperson, spokesperson of the Office of Special Prosecution. Prosecutors give media information immediately prior to termination or after termination of proceedings in specific matter. Court spokespersons give information regarding judicial proceedings.

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)?

Police spokespersons and investigators are authorized to provide information to the press in limited extent (in order to prevent any possible obstruction of the investigation). The same applies to lawyers representing parties to the proceedings as well as to any other person e.g. sworn experts.

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

Yes, there are joint briefings organized for the police and prosecutors in order to coordinate provision of information to media.

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)?

Police spokespersons communicate within investigation stage (since commencement of criminal proceedings until accusation). Spokespersons of the Public Prosecution Service communicate since accusation until submission of the indictment. Courts spokespersons and prosecutors communicate after indictment i.e. in the course of the judicial proceedings; they give information directly to the media immediately prior to the termination or after termination of proceedings in specific matter.

Judgments (without personal data) are published in the web page of the Ministry of Justice of the Slovak Republic.

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

In the course of proceedings before a Court, the extent of information provided results from the principle of the public nature of a trial. In the course of judicial proceedings, participants may not be prohibited to take notes or make drawings provided that they do not disturb the course of proceedings.

Judicial proceedings are public unless judge excludes the public. Court spokespersons inform the press. Decisions are made public after termination of judicial proceedings.

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

No, there is not any specific supervision on the relationship between prosecutors and media. Broadcasting and Retransmission Council supervises the observance of legal regulations regulation broadcasting, retransmission and provision of audiovisual media services upon request. The Press Law regulates right to

information and obligation of the public power authorities to provide information regarding their own activities to publisher of periodical or to press agency.

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”?

Yes, protection of personal rights, privacy and human dignity is guaranteed by the Constitution of the Slovak Republic, by the Civil Code, Act no. 458/2002 Coll., on Protection of Personal Data, Act no. 256/1998 Coll., on Protection of Witness; presumption of innocence is stipulated by the Code of Criminal Procedure.

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?

Any prosecutor has the obligation to fulfill obligations resulting from the Constitution of the Slovak Republic, constitutional laws, laws and other generally binding legal regulations. Any prosecutor is held responsible for any disciplinary wrong under the Act no. 154/2001 Coll., on Prosecutors and Trainee Prosecutors. Intentional (voluntary) failure to fulfill obligation or breach of prosecutor’s obligations, or any prosecutor’s behavior which gives reasonable grounds for doubts regarding his/her conscientiousness and impartiality in decision-making, or any prosecutor’s behavior in public which diminishes the dignity of the Public Prosecution Service is considered disciplinary wrong. Under the conditions defined in the law, one from among several disciplinary measures is imposed on prosecutor for disciplinary wrong.

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

There are several internal rules regarding treatment of files, archives and circulation of files; also, any superior prosecutor has the authority to monitor and supervise treatment of files; there is also the Organizational and Controlling Department in the General Prosecutor’s Office.

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?

Section 11, the Civil Code stipulates that any natural person has right to the protection of personal rights, especially life and health, integrity of a citizen, human dignity, privacy, his/her name and manifestations of personal (private) nature. In its Section 12, par. 3 it stipulates that portraits, photo shots and video and audio records may be produced and used without consent of natural person for scientific and artistic purposes as well as for publishing news in press, film (movies), radio and TV broadcasting. Any use of such material may not be contrary to legitimate interests of a natural person.

Section 7, Act no. 428/2002 Coll., on the Protection of Personal Data stipulates that personal data may be processed only upon consent of the person concerned.

Section 34, par. 7, Act no. 385/2000, Coll., on Judges and Lay Judges as amended stipulates that a face and address of a judge may not be made public without his/her consent; the same applies to members of his/her family if it is necessary for the protection of the judge and his/her family and provided that the family members give their consent. Judges have also right to adequate concealment of personal data regarding themselves and their families.

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 communicate with press only exceptionally e.g. after termination of proceedings in specific matter. Spokespersons of the Public Prosecution Service use any of the above mentioned channels for communication.

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

The below stated explanation has wider impact than merely application of information in relation to media, but it includes this area as well.

Despite the fact that the term “international investigations” has not been defined, the below included explanation is applicable in relation to any institute of international judicial co-operation defined in the Part 5., Code of Criminal Procedure (including Joint Investigation Teams).

Under the Section 482, par. 1, Code of Criminal Procedure, when Slovak authorities provide information regarding their own activity under the Part 5, Code of Criminal Procedure, they proceed accordingly pursuant to the Section 6, Code of Criminal Procedure. The provision of the Section 482, par. 1, Code of Criminal Procedure reacts primarily to the activity of Slovak authorities in relation to requests made by foreign authorities.

Provision of the Section 482, par. 2, Code of Criminal Procedure protects information and evidence from obtained from abroad. This provision includes protection for information provided and at the same time, it includes the specialty principle (i.e. prohibition to use the information for purpose other than it was provided for).

In case that the above mentioned obligation does not result from an international treaty, provision of information is restricted within the meaning of the quoted provision if foreign authority requested for protection of their information or if it provided such information under the condition that Slovak authorities will protect the information. In cases where protection and use of information is governed by international contractual regulation, the quoted provision may be used only in extent not defined by international treaty and the protection is left to be defined by provisions of the domestic legal order (provisions of the Section 478, Part 5, code of Criminal Procedure will be used unless provided otherwise by international treaty).

Currently, it may be stated that in the international cooperation, there is a trend to increasing protection of information provided – it has also been reflected in more modern international treaties in the judicial area (e.g. Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 8 November 2001; Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Strasbourg, 8 November 1990; UN Convention against Transnational Organized Crime, New York, 15 November 2000 etc).

The scope of protection of information may also be defined in the Agreement on setting up the joint investigation team; in any case it is limited by the requirements of the legal orders concerned.

As far as publication of information is concerned, we should not omit the commitments resulting for the Slovak Republic from international treaties by which it is bound (also, the SK Constitution) regulating fundamental rights and freedoms, from international treaties and EU legislation in the area of the protection of personal data.

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

There is communication with all the media, namely with printed and audiovisual media.

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

Under the Act on Free Access to Information, any one has right to access to information available to obligated persons. Such behavior would be incompatible with Ethical Code adopted by the Association of Spokespersons of the Slovak Republic. If any member of the Slovak Syndicate of Journalists started working as spokesperson or press secretary, the relevant membership commission would propose his/her membership to be suspended.

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 General Prosecutor’s Office of the Slovak Republic and the Office of Special Prosecution have their spokespersons (they are not prosecutors). Regional Prosecution Offices have their Spokespersons in the Regional Prosecution Offices are appointed by the Regional Prosecutor from among prosecutors. Other prosecutors (as a rule) communicate with media immediately prior to termination or after termination of proceedings in specific matter or in relation with participation of individual prosecutor in proceedings before authorities of public administration.

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

There are not specific representatives of the media for the communication with prosecutors, as a rule, they communicate by means of press office. Journalists are specialized within editorial staff. Mostly various

editors from news and publicistic (documentary) programmes (broadcastings) communicate with prosecutors.

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)?

Law enforcement bodies and court inform the media about criminal proceedings according to the Code of Criminal Procedure. While doing so, they have the obligation to protect classified information, bank, trade, tax, mailing and telecommunication secrecy. Also, they have authority not to disclose any information which might frustrate or make difficult the clarification and investigation of a matter. Furthermore, they have to observe presumption of innocence. They are not allowed to disclose any protected personal data, information of private nature, especially from family life, dwelling and correspondence which are not directly linked to the criminal activity. Especially, they protect interests of minors, juveniles and aggrieved parties (personal data of these persons are never disclosed).

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

The Public Prosecution Service provides true, timely and universal information to the public by means of its Press and Information Section at the Office of the General Prosecutor and also by means of regional spokespersons pursuant to the Act on Free Access to Information. It has the obligation to observe the Act on Protection of Personal Data, Act on Protection of Classified Information, Act on Protection of Witness and Act on Protection of Classified Information and the Code of Criminal Procedure.

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

Press spokespersons and regional spokespersons carry out systematic monitoring of the communication of prosecutors with media. Daily press monitoring is available to prosecutors and if necessary, they have the possibility – by means of spokespersons and Press and Information Section - to publish their response in reaction to information in the media.

C. Proactive media approach of the prosecution service

21. Has the prosecution service developed a proactive media approach (access to prosecutor's decision, bringing a selection of relevant cases to the attention of the media)?

The Public Prosecution Service has proactive approach to the media and it selects cases which are appropriate for publication. It gives press releases to media, it reacts to articles regarding Prosecution Service published in printed media, it organizes briefings and discussions.

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)?

Press spokespersons and regional spokespersons monitor any request for information in the internal computer system and they provide the standpoint of the Public Prosecution Service to the media. The Public Prosecution Service provides press releases to the media on regular basis including statistical data. It is preparing a booklet about Public Prosecution Service and is starting operational program within the scope of the Project of Informatization of the Society.

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

Yes. It is used by the law enforcement bodies (within investigative stage) in order to search for persons suspected of commission of criminal acts, for search of missing persons or for calls for witnesses of a criminal act.

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 above mentioned issue is a part of the judicial examination of trainee prosecutors. Prosecutors have the possibility to attend trainings organized by the Judicial Academy.

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

Prosecutors may participate in educational programs and trainings organized by the Judicial Academy or other bodies, frequently there are also foreign lecturers.

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

Slovak Syndicate of Journalists (independent trade union) is one of founders of the Media Academy which performs activities aimed to training of journalists, it promotes professional improvement of their skills and organizes various events, discussions, workshops etc.

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?

Upon request of journalists, meetings are organized with prosecutors and journalists with the purpose of provision of information or explanation. In relation to specific cases, briefings are held upon request of journalists or Public Prosecution Service.

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

Slovak Syndicate of Journalists unites employees of printed media, TV, radio and digital media, press agencies and independent journalists. It is a member of the International Federation of Journalists and the European Federation of Journalists (Brussels).

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?

Broadcasting and Retransmission Board (members are elected and removed by the National Council of the Slovak Republic) promotes interests of public in exercise of right to information, freedom of expression and right to access of cultural values and education and it also executes State administration (regulation) in the area of broadcasting and retransmission and provision of audiovisual media services upon request.

Within the scope of execution of State administration, it also deals with complaints in relation to any breach of the Act on Broadcasting and Retransmission and if a complaint is justified, it commences administrative proceedings in the matter, and notifies complainant of the outcome of the administrative proceedings.

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?

If a libel, slander and/or similar harm done to a reputation of a person accomplishes elements of any of the offences included in the Criminal Code, the offender will be prosecuted pursuant to the Code of Criminal Procedure. Prosecutor will commence criminal prosecution upon motion of aggrieved person e.g. in case of slander pursuant to the Section 373, Criminal Code: whoever communicates false information about another person, which is capable of considerably damaging the respect of fellow citizens for such a person, their career and business, their family relations, or that causes them other grievous harm. Or it might be a criminal act of illegal use of personal data (Section 374, Criminal Code), criminal act of violation of confidentiality of spoken conversation and other personal expressions (Section 377, Criminal code) or criminal act of false accusation (Section 345, Criminal Code) etc.

If slander does not accomplish elements of the offence, aggrieved person has right to protection of personal rights (Section 11, Civil Code) under which any natural person has right to protection of personal

rights, life, health, integrity of a citizen, human dignity and privacy, his/her name and other personal expression. Especially, any natural person has right to seek for refraining from any illegal interference with his/her right to protection of personal rights, to seek for removal of consequences thereof, and to demand satisfaction. If a person does not deem satisfaction sufficient because his/her dignity was significantly diminished, he/she has also right to compensation in cash money of non-proprietary loss. Amount of the compensation will be defined by a Court with regard taken to amount of loss caused through violation of a specific right.

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

Pursuant to the Criminal Code, a journalist is held responsible only if his/her acting accomplishes any of elements as provided for in the Criminal Code (e.g. criminal act of slander - please see par. 30 above); in such a case, a journalist may be imposed a sentence of deprivation of liberty with maximum term of two years. Any one who committed false accusation with the intention to cause criminal prosecution of another, will be sentenced to deprivation of liberty for 1 up to 5 years. Any one who committed criminal act of violation of confidentiality of spoken conversation and other personal expressions by means of illegal (unauthorized) recording and disclosure to third person of the recording or by means of any other use thereof and causes serious harm to rights of another, will be sentenced to deprivation of liberty with the maximum term of two years.

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?

Within criminal proceedings there is e.g. the sentence of forfeiture of a thing (Section 60, CC), punishment by disqualification (Section 61, CC) or confiscation of a thing (Section 83, CC).

As far as protection of personal rights under the Civil Code and protection pursuant to the rules on means of mass communication is concerned, an aggrieved party may submit action for the protection of personal rights to a Court; as result, a Court may issue preliminary measure e.g. prohibition of publication.

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?

Council of Prosecutors (self-governing body established in order to protect rights and legitimate interests of prosecutors) does not play any role in this area.

Upon motion of the Council of Prosecutors or upon its own motion, the General Prosecutor's Office may submit complaint to the Broadcasting and Retransmission Board competent to deal with complaints on violation of Act on Broadcasting and Retransmission. If the complaint includes facts indicating that this law was violated, the Board will commence administrative proceedings. Complainant will be notified by the Board of the outcome of administrative proceedings.

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

Prosecutor is bound by the duty of discretion. He/she may be released from this duty by the General Prosecutor, for the purposes of criminal proceedings. While providing information, prosecutor has right not to disclose facts which are likely to frustrate or made difficult the clarification and investigation of the matter. Within the possibilities defined by the law, prosecutors may react directly or by means of Press and Information Section or by means of a spokesperson.

Furthermore, prosecutor has right to correction under the Section 21, Act on Broadcasting and Retransmission – if untrue information or information distorting truth was published (broadcast) regarding him/her and if on the basis of such information a prosecutor may be identified, he/she has right to request for publication of the correction free of charge. Broadcasting agency has the obligation to publish the correction upon his/her request.

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?

Primarily, press spokespersons and regional spokespersons of the public Prosecution Service have power to reply.

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.