

Consultative Council of European Prosecutors

QUESTIONNAIRE

For preparation of the opinion of CCEP N 8 about the interrelation between prosecutors and mass media

Replies from Armenia

A. Introduction

The Recommendation REC(2003)13 of the Committee of Ministers of the Council of Europe on providing information to mass media during the criminal trial contains the following statements;

- the obligations of state-members to respect the freedom of receiving information, having personal opinion guaranteed by the article 10 of European Convention on protection of Human Rights and Fundamental freedom,
- mass media has the right to inform the public about the rights and freedoms to receive information, including on issues of public interest guaranteed by the article 10, and that the public awareness is the professional duty of mass media.
- the importance of public awareness about criminal trials provided by mass media is the visibility of the function of criminal right, as well as guaranteeing the public security and the activity of criminal justice,
- the presumption of innocence, the right to fair trial and the right to respect the personal and family life are fundamental freedoms provided by the articles 6 and 8, which should be respected in each democratic society,
- balancing the rights on each certain case and the possible conflicts of the rights provided by the articles 6, 8 and 10 of the Convention is the duty of the states, the supervision over the implementation of which is performed by the European Court of Human Rights.

B. Questions

a) current legal statements and regulations

- 1) which legal acts regulate the interrelation between the prosecution office and mass media? To describe briefly;

In Armenia there are several fundamental documents regulating the interrelations between the prosecution office and mass media, and in general, the provision of information about the works of prosecution office. First of all, according to the article 27 of RA Constitution everyone has the right to freedom of expression, including freedom to search for, receive and impart information and ideas by any means of information regardless of the state frontiers. Freedom of mass media and other means of mass information is guaranteed. The RA Law "On Freedom of Information" regulates the bases and ways of receiving information. Particularly, the article 7 of the mentioned law provides 13 groups of information the publication of which is necessary at least once a year, if anything else is not provided by law. The prosecution office publishes the information required by law in its website. The article 9 of the same law provides the procedures of information inquiry application and the terms and limitations of replies. Taking into consideration the peculiarities of prosecution activity, RA Law "On Prosecution" also referred to the basic principle of providing information, and the article 5 just fixes that the prosecution gets the public informed about its performed activity so far as it does not contradict the human and civil rights, freedoms and legal interests, as well as the protection of state secrets and secrets protected by law.

At the same time, realizing that while providing information on criminal cases, prosecution activity, in the result of non legitimate activity there might be a possible conflict between the rights provided by the articles 6, 8 and 10 of the Convention, the articles 21, 23 and 27 of the Constitution, the Prosecution Office together with the Centre of Information Freedom developed rules on providing information about criminal cases, taking into consideration the principles of Recommendation REC(2003)13 of the Committee of Ministers of the Council of Europe on providing information to mass media during the criminal trial. The national legal criteria defined by the order of RA Prosecutor General are meant to provide the balanced maintenance of human rights while imparting information about criminal trial. (Hereinafter Rules). The document consists of 16 points;

1. Purpose
2. Principles of balanced maintenance of rights
3. Freedom of information during the criminal trial
4. Secret of preliminary investigation and freedom of information
5. Availability of official messages on criminal cases

6. Public comments of Prosecution Office, as a body implementing criminal prosecution, on separate cases
7. Interrelation with the representatives of mass media
8. Provision of information via the website of RA Prosecution Office
9. Freedom of information on criminal cases and the confidentiality of personal and family life of the person
10. Freedom of information on criminal cases and human right to honor and dignity
11. Presumption of innocence
12. Peculiarities of providing information on criminal cases regarding minors
13. Freedom of information on criminal cases and the protection of witnesses, victims
14. Freedom of information on corruption-related crimes
15. Prohibition of abusing information and prevention of harmful influence on the process of trial
16. Periodicity of information

Besides, by the order of RA Prosecutor General dated September 25, 2006 the form of accreditation of journalists in prosecution office was confirmed, which is aimed at providing equal conditions for journalists elucidating the work of prosecution office.

2. Do the prosecutors have the right to directly communicate with mass media? How is the interrelation with mass media on judicial and criminal cases implemented?

The Prosecution Office is a joint system and the interrelation with mass media is provided by the Adviser of the Prosecutor General of RA on the issues of cooperation with mass media. By the order of RA Prosecutor General the adviser is authorized to make official announcements, comments or impart press release in the name of the prosecution office. In separate cases, other officials authorized by the Prosecutor General can make announcements, as well. The interrelation of prosecutors with mass media is organized by the adviser, in the courts the prosecutors are authorized to make comments in some cases.

The prosecution office periodically provides information to mass media about the implemented work, summaries of researches, the process of preliminary investigation and the final results of criminal cases of public interest.

The ways, periodicity and the volume of providing information, communicating with mass media is regulated by Rules. According to it the Prosecution office periodically provides information to mass media about prosecution activity, as well as the results of preliminary investigation of criminal cases of public interest so far as its publication does not harm the prevention of crimes, the objectiveness and comprehensiveness of preliminary investigation of the criminal case, does not breach the confidentiality of personal and family life of the person, as well as the honor and dignity of other people and the protection of rights.

Nevertheless, the mentioned conditions can not be a reason to refuse the provision of just factual information, and if, arising from the interests of the preliminary investigation, particularly the materials of pre-trial proceeding of the criminal case are not subject to publicizing in the given stage, the provision of information about initiation of a criminal case or the number of defendants (without publicizing their names) cannot be refused. Moreover, according to the point 16 of the Rules, information about the criminal cases of public interest shall be periodically provided to mass media. If the Prosecution Office provided the public with the information about initiation of a certain criminal case, prosecuting any person, in the same way information about the preliminary investigation, final results, as well as circumstances proved by the court shall be provided.

3. What other people are authorized to provide information to mass media? (police structures, lawyers, participants of trial, other people)

According to the Article 201 of RA Criminal Procedure Code during the pre-trial proceeding the data of preliminary investigation are subject to publicizing only with permission of the body implementing the proceeding. In case of necessity, the investigator, the investigation body warns the participants in the case in written form not to publicize the data of preliminary investigation without permission.

4. Is there a joint experience of communicating with mass media by several departments in your country? (for example, prosecution office and police)

In separate cases, in order to regulate the flow of information on emergency or criminal cases of public interest, particularly the responsible persons of prosecution office and appropriate investigation service (Special Investigation Service of National Security of Police) cooperate.

5. From which stage can the prosecutors provide information? (the stage of preliminary investigation, including the accusation, trial, after bringing in the verdict)

The prosecution office has the right to provide information in each stage taking into consideration the public interest, respecting the citizens' right to receive information, at the same time taking note of the confidentiality of preliminary investigation and the rights of other participants of the trial. If the prosecution office decided to provide information in any stage of the investigation by its initiation, it must periodically provide the information about the accusation, the completeness of preliminary investigation, the assessments of court and the final judicial act according to the Rules.

6. Do judges have the right to provide information to mass media, if yes, in which stage?

In Armenia there is a judicial-informational system Dataleqs, through which on the internet everyone can get informed about the cases entered the court, get acquainted with the schedule of judicial sessions, download the judicial acts. The judges do not provide information or comment on certain cases. The communication with mass media is implemented by Judicial Department.

7. Is there a control over the interrelation between the prosecution office and the mass media in your country? If yes, how and by whom?

As it was mentioned above, the cooperation with mass media is regulated by current Legislation of the Republic of Armenia. No special mechanism of supervision is provided, however, the backward connection gives an opportunity to follow the interrelations. Monitoring of mass media is also implemented and, if there are any complaints, their verity is examined by the instruction of RA Prosecutor General.

8. What special rules are there to exclude the violation of confidentiality of personal life, the dignity, not respecting the presumption of innocence? What measures are there to exclude the trial by mass media?

Highlighting the necessity of excluding the possible conflict of fair trial, the rights of freedom of expression, respecting personal and family life, by the rules established by the order of RA Prosecutor General, an attempt was made to provide the balanced maintenance of the mentioned rights.

According to the point 4 of the Rules, the data of preliminary investigation are subject to being publicized only with the permission of the body implementing the proceeding of the case, as defined by law. During the pre-trial proceeding the prosecution office, when possible, shall support the mass media in providing information, recording that the provided information is preliminary based on factual data obtained by the body implementing the trial at that moment. The prosecution office has the right not to publicize the information requested by mass media if its publication may harm the objectiveness and comprehensiveness of preliminary investigation of the criminal case, the security of participants of trial, the presumption of innocence, may breach the confidentiality of personal and family life, as well as the honor and dignity of other people.

Information about the completeness of preliminary investigation, the number of people involved as defendants, the bill of indictment shall be provided on the base of the query. in the term defined by law. The point 9 refers to confidentiality of personal and family life of the person. According to it, it is necessary to be guided by Constitution while providing information on criminal cases, according to which everyone has the right to freedom of expression, including freedom to search for, receive and impart information and ideas, as well as everyone has the right of respect to his personal and family life. It is forbidden to gather, keep, use or impart other information, not provided by law, about a person without his agreement. While providing information about the process of trial the prosecution office shall keep the right to confidentiality of personal and family life of the person, including the participants of trial and avoid to publicize information about personal life.

According to the point 10 of the Rules, it was fixed that while providing information or making public comments on the process of criminal trial, the prosecution office should avoid the qualifications, comments which can spatter the person's honor and dignity or the business reputation of legal persons. It should be admitted that the announcements based on certain facts (except natural shortcomings) or conditioned by public interest cannot be observed as imparting information spattering the person's honor and dignity.

In order to respect the presumption of innocence the point 11 of the Rules states that everyone charged with a crime offence shall be presumed innocent until proved guilty according to law.

The respect to the principle of presumption of innocence is inseparable part of the right to fair trial. Opinions and information about criminal cases in process can be provided to mass media only in case and in volume, if it does not harm the presumption of innocence of the suspect or defendant. Nevertheless, if in the stage of pre-trial proceeding the prosecution office decided to provide

information by its initiation or at the request of mass media, it must avoid to demonstrate the suspect or defendant with handcuffs or any other way of representing him as a criminal.

During the pre-trial proceeding the press release spread by prosecution office should contain a note with the following content.

“Everyone charged with a crime offence shall be presumed innocent until proved guilty according to law”.

By RA Prosecutor General’s requirement the mentioned note is available in each press release on accusations by criminal cases.

9. Are there any punishments (disciplinary or of other nature) for prosecutors who breach the interrelation between the prosecutors and mass media?

The prosecutors shall be brought to responsibility if they breach “the Code of Conduct for Prosecutors”, perform the official duty not conscientiously. In case of receiving such alarms the Logistical Supervision Department of RA Prosecutor General’s Office carries out appropriate examinations, appoints service examination in case of availability of bases the results of which are considered in the Committee of Ethics if they are sufficient.

10. How do the prosecution offices get over the security risks arisen in the result of publicizing about the prosecutors or cases?

According to the article 5 of RA Law “On Prosecution Office” the public is informed about the activity performed by prosecution office so far, as it does not contradict the human and civil rights, freedoms and legal interests, as well as the protection of state secret and other secrets protected by law. If the provision of information about a case can threaten the prosecutor’s security or harm the preliminary investigation, the prosecution office has the right not to provide detailed information for this reason.

11. Are there any statements forbidding the personal data of prosecutor performing supervision over the case being publicized?

There are not any legislative regulations. This question was referred by the Rules confirmed by RA Prosecutor General, according to which, taking into consideration the peculiarities of the certain criminal case , the personal data of the prosecutor implementing supervision shall not be publicized in pre-trial proceeding, if it may threaten his security, and it is necessary in order to exclude the possible indirect influence on prosecutor. Regarding the publications, in Armenia the independence of mass media is guaranteed by Constitution and no legislative procedures are provided to prevent publications like that.

b. organization of communication

12. How do prosecutors communicate with mass media? (press releases, press conferences, on the phone or via e-mail, social networks or other means)

There are several tools to elucidate the activity of prosecution office. Particularly, official messages are spread which are e-mailed to mass media, they are also inserted in the website of prosecution office providing their availability to all the interested parties.

Press conferences are also organized, in case of necessity inviting every mass media accredited in prosecution office. Besides, they are invited to be present at board meetings, public discussions, as well. At the same time, respecting the right of mass media to receive exclusive information, at the request of mass media separate interviews are also held, and written queries are given written replies.

13. Can press conferences be held on cases on which international investigation is implemented? If yes, what kind of procedures are used?

In general, the prosecutors don’t have the right to participate in discussions, hearings of certain criminal cases in the stage of investigation. According to the instruction of RA President dated April 25, 2000 “RA Prosecutor General and prosecutors under him are warned about the fact that they are not permitted to participate in hearings of any criminal case”.

14. Is the communication implemented with every mass media, or selecting some mass media, networks or internet?

By RA Prosecutor General’s order dated September 25, 2006, the form of accreditation of journalists in RA Prosecution Office was confirmed, according to which equal conditions are provided for each of them.

15. Are there any limitations connected with giving priority to some journalists?

In order to elucidate the work of prosecutor's office, the mass media elucidating judicial-legal subjects can be accredited. Taking into consideration the peculiarities of certain occasion, the hall of the occasion, the prosecution office can limit the number of mass media, however, providing equal conditions for similar mass media. For example, if the number of journalists is to be limited, only the journalists of TV and radio are invited, as they have a task to broadcast, as well, the messages and all the materials are sent to printed and network media.

In fact, limitations like this happen very rarely, once or twice a year.

16. How is the communication organized, are there spokesmen, if yes, what is their status, whether or not they are prosecutors, if not, how do prosecutors themselves communicate, is there a control over them in this sphere?

The Adviser of the Prosecutor General of RA on the issues of cooperation with mass media is authorized to make announcements, comments in the name of prosecution office, who also coordinates the cooperation of prosecution office with mass media. The prosecution offices of regions don't have spokesmen, and according to the order of RA Prosecutor General, the prosecutor of the given region is responsible for cooperation with mass media in regions who in advance sends the copy of the information to the Adviser of Prosecutor General.

The Adviser of the Prosecutor General of RA on the mentioned issues doesn't have a status of a prosecutor, she is a specialist of public relations.

17. How do mass media communicate with prosecutors? (whether there are official representatives, special journalists, necessary patenting)

The answer of the mentioned question is already reflected in the answer of question 14. The journalists have the right to be accredited in order to elucidate the work of prosecution office and the prosecution office shall provide equal conditions for every mass media. It doesn't mean that the questions of not accredited journalists remain without a reply. The prosecution office sends the information at first to accredited mass media, and priority of participating in the public occasions of prosecution office is given just to accredited mass media.

18. What kind of information can be publicized? (the names of parties, witnesses, prosecutors, some kind of information during the investigation, some circumstances of the case)

The volume of the publicized information is determined by the body implementing the proceeding. During the pre-trial proceeding the prosecution office, when possible, supports the mass media in providing information, recording that the provided information is preliminary based on the factual data obtained by the body implementing the proceeding at the moment. The information requested by mass media cannot be publicized if its publication can harm the objectiveness and comprehensiveness of preliminary investigation, the security of participants of trial, the presumption of innocence, breach other people's rights, honor and dignity, personal and family life. In preliminary publications the prosecution avoids publicizing the names of witnesses, investigators and prosecutors in order to exclude possible influence on them. In separate cases the names of witnesses or quotations from the testimony given by them are reflected in official messages, if the mentioned witness has previously made public announcements in mass media by his initiation.

19. Is there a certain policy according to which prosecutors are encouraged to work with mass media, how is this policy realized?

The Board of RA Prosecution Office has discussed the issues regarding the cooperation with mass media for many times and tasked the prosecutors to activate the cooperation with mass media providing the balanced maintenance of human rights.

20. Is there a periodical monitoring over the interrelation between the prosecutors and mass media, for example public monitoring, through responses, assessments of cooperation and other ways?

Two NGO-s acting in Armenia periodically implement monitoring, in the result of which the work of prosecution office in providing the publicity of its activity, in developing the mechanisms of information freedom was assessed positively by civil society. In 2006 the official website of the Prosecution Office was recognized as the best official website at the award organized by Information Freedom Centre and OSCE Office in Yerevan, International Agency of Development of the USA. In the following years it kept not only the positive index, but also recorded new achievements. As a result, in January, 2011 according to the observation results published by NGO "Committee of freedom of speech" (the monitoring was realized in 2010) the website of the prosecution office was considered the most penetrative by the availability of information. And in September, 2011 at the awards organized in connection with the international day of information freedom RA Prosecutor General's Office got an acknowledgement letter from the NGO "Centre of Information Freedom" for developing the freedom and publicity of information in Armenia. In 2012 according to the observation results published by NGO "Committee of freedom of Speech" involved in

special departments of the third group (monitoring was implemented in 2010) the website of the prosecution office again had the highest index for availability of information.

c) proactive approach of prosecutorial structures to mass media

21. Do the prosecutorial structures have a proactive approach towards the mass media – availability of prosecutorial decisions, drawing the attention of mass media to some cases?

Yes, the prosecution office performs a proactive information policy. Particularly, in the website of RA prosecution office either the basic orders of RA Prosecutor General or the references on researches made by prosecution office are inserted. Besides, in some cases the prosecution office itself makes some initiated criminal cases public drawing the attention of mass media. Particularly, the prosecution office, by its initiation, makes press release on criminal cases initiated on latent crimes, detainment on criminal cases of public interest, accusations and completeness of preliminary investigation.

22. Does the prosecution office have a procedure of elucidating its work, as well as informing about development to public, mass media, open doors day, visits to courts, publications of bulletins, materials taught online?

By the order of RA Prosecutor General Rules on providing information about criminal cases was confirmed, 16 points of which are enumerated in the answer of the first question. Besides, the Adviser of RA Prosecutor General together with the Centre of Information Freedom has developed a guideline for mass media aiming to guide journalists properly in the process of receiving the necessary information on criminal trial from relevant bodies.

23. Can the cooperation with mass media be used as means of revealing the investigation, for example dissemination of criminal's data, photo, photos of committing crime, etc. If yes, we would like details

In some cases it can. First of all, according to the article 176 of RA Criminal Procedure Code the publications about crime in mass media can be a reason for initiation of a criminal case, and in the result of monitoring the mass media, the publications containing information about crime become a subject of investigation. In fact, there have been cases when a criminal case was initiated based on the publication of mass media, the case of the crime was grounded and the identity of the defendant was found out by the investigation, the defendant was accused and the case was sent to court. Besides, due to cooperation with mass media the photo of the person under prosecution or lost person is spread with the expectation of finding them, in some cases the police publicizes the photos of defendants accused particularly of fraud to discover other citizens having possibly suffered from their activities. The proper cooperation with mass media and using their possibilities correctly can help to reveal the crime.

d) professional training of prosecutors and journalists on the issues of ethics, behavior rules and cooperation

24. Do the prosecutors learn about protection of human rights and basic freedoms with the statements of information availability and freedom of opinion of European Convention during preliminary or current trainings?

In RA Prosecutor's school prosecutors periodically participate in different trainings on several topics of protection of human rights and basic freedoms of European Convention. However, trainings just on freedom of opinion and information availability are not held though it has always been highlighted.

25. Do the prosecutors have trainings on interrelation with mass media?

Prosecutors of different subdivisions of RA Prosecution Office take part in such kind of international seminars taking into consideration the peculiarities of some crimes.

26. Do the journalists have trainings on interrelation with prosecutors?

Journalistic professional organizations periodically hold trainings on legal topics for writer journalists. As a rule, representatives of prosecution office are invited to participate in them.

27. Are joint trainings, conferences, seminars held for prosecutors and journalists on the issues of estimating each other's role and supporting each other in the context of balancing the above-mentioned rights, presumption of innocence and rights of protection of private life?

Yes, the prosecution office together with several NGOs holds joint seminars twice or thrice a year with participation of journalists and prosecutors. During the seminars issues on their missions and functions, balanced protection of rights guaranteed by European Convention on protection of human rights and basic freedoms, security of witnesses, victims, peculiarities of presumption of innocence are discussed. During the seminars communication without a tie is also held which gives an opportunity to organize the discussions more freely and not to treat each other with dislike.

28. Are there any associations of journalists which are responsible for regulation of interrelation between prosecutors and journalists?

Different Armenian mass media have ethic rules, and in 2002 rules of professional behavior of journalists elucidating legal topics were developed in Armenia. Some journalists from different mass media joined it who were qualified in elucidating legal topics. All the attempts to form journalistic courts or committees of ethics failed in Armenia. At present, there is a Council of Information issues, which studies the claims against journalists and makes a professional conclusion. There are not any special associations for regulation of interrelation between prosecutors and journalists in Armenia.

e) regulation of mass media

29. Is there any internal council or other structure regulating the mass media and is authorized to consider the complaints against mass media on violation of rights during the trial

There are some journalistic organizations in Armenia which, in case of recording cases of violations of journalists' rights, make statements regardless of the fact whether the violation of journalist's right was during the trial or by an official or physical person.

Besides, as it was mentioned in the answer of the question 28, there is a Council of Information issues, which studies the claims against journalists and makes a professional conclusion.

30. We ask to clarify the criminal, administrative and civil procedures on violations against reputation of a person, as well as slander and insult. What is the role of prosecution office in this sphere?

Insult and slander were decriminalized in Armenia in 2010. A responsibility is provided for the harm caused to honor, dignity or business reputation by RA Civil Code (prime article 1087) and the prosecution office doesn't have any role in this sphere.

31. We ask to represent information about bringing journalists to criminal or administrative responsibility, as well as the punishments defined by law.

As it was already mentioned insult and slander were decriminalized in Armenia and no criminal responsibility is provided. Instead, according to RA Criminal Code a responsibility is provided for hindering the professional activity of journalists pursuant to article 164 of RA Criminal Code. A responsibility is provided for the harm caused to honor, dignity or business reputation by prime article 1087 of RA Civil Code.

If there is an insult in the information imparted by a performer of journalistic activity, the person has the right to require a public apologize, as well as publish the court verdict wholly or partially in the given mass media. The way and volume of publication is defined by the court. Besides, it is punished with a fine in the amount of 1000 minimal salaries.

If mass media slandered, the person has the right to require a public denial through the given mass media and/or publish his reply about the factual data considered slander. The form of denial and the answer is confirmed by the court being guided by RA Law "On Mass Media". Besides, he can require a fine in the amount of 2000 minimal salaries.

32. We ask to represent the means of protection provided by criminal and administrative procedures/confiscation or prohibition of publications/ and the role of prosecution office. Whether or not these means can be considered a preliminary censorship. What role does the prosecution office have in controlling over the activity of mass media?

There is no censorship in the Republic of Armenia and the prosecution office doesn't have any function of controlling over the activity of mass media.

33. Are prosecutors criticized for their activity connected with trials? What is the role of the associations of prosecutors?

By the instruction of RA Prosecutor General the publications of mass media on the behavior of prosecutors or legality of decisions, objectiveness of activity are considered by the appropriate subdivisions and are given written replies, which are also inserted in the website of prosecution office.

34. Does the prosecutor feel constrained in discretionary duty, if was slandered by mass media?

By the instruction of RA Prosecutor General the publications of mass media on certain criminal cases, announcements on prosecutor's behavior and activity become a subject of consideration. And if the journalists impart uncalled-for insulting or slandering information about prosecutors, the prosecution office makes appropriate announcements.

35. Are there in your country any other types of structures, than the associations of prosecutors which are predetermined to rebut the groundless attacks of mass media against prosecutorial service?

There are not any special professional structures like that in Armenia.

g) other information

36. Is there any other comment or additional information on interrelation between prosecutors and mass media in your country which you would like to provide? If yes, we ask you to represent your comments on it.