



CCPE(2013)4 Final

Yerevan, 9 October 2013

**CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS
(CCPE)**

**OPINION (2013) No. 8
OF THE CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS
ON RELATIONS BETWEEN PROSECUTORS AND THE MEDIA
adopted by the CCPE at its 8th plenary meeting
(Yerevan, 8-9 October 2013)**

I. INTRODUCTION

1. The Consultative Council of European Prosecutors (CCPE) was established by the Committee of Ministers of the Council of Europe in 2005 with the task of rendering Opinions regarding the functioning of public prosecution services and promoting the effective implementation of Recommendation Rec(2000)19 of the Committee of Ministers to member States on the role of public prosecution in the criminal justice system.

2. The Committee of Ministers instructed the CCPE to adopt an Opinion in 2013 for its attention on relations between prosecutors and the media.

3. The CCPE has drafted the present Opinion on the basis of replies received from 36 member States to a questionnaire¹.

4. According to these replies, it appears that the various aspects of relations between prosecutors and the media are determined either by the Constitution and/or national laws, or by internal regulatory instruments (e.g., orders and instructions by the Prosecutors General, rules of conduct, ethical codes, etc.).

5. The diversity of the legal systems of member States explains the diversity in communication of prosecutors with the media, assigning them different tasks and roles, while always under the obligation of respecting human rights and fundamental freedoms.

A. Reference texts

6. The CCPE underlines the importance of referring to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the case-law of the European Court of Human Rights (the Court).

7. The CCPE examined, in particular, the proper balance between the fundamental rights to freedom of expression and to information as guaranteed by Article 10 of the ECHR and the right and duty of the media to inform the public regarding legal proceedings, and the rights to presumption of innocence, to a fair trial and to respect for private and family life as guaranteed by Articles 6 and 8 of the ECHR.

8. The CCPE took into consideration the following Council of Europe Committee of Ministers' Recommendations concerning prosecutors:

- the Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system, and in particular paragraph 6 on the effective right of prosecutors to freedom of expression, paragraph 7 on their training, paragraph 20 on the obligation of objectivity and fairness of the prosecutors, as well as all their duties and responsibilities regarding individuals (paragraphs 24 to 36).
- the Recommendation Rec(2012)11 on the role of public prosecutors outside the criminal justice system, and in particular paragraphs 4 to 9.

9. The CCPE also took into consideration other instruments adopted by the Council of Europe, particularly:

- the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108);
- the Recommendation Rec(2002)2 on access to public documents and the Recommendation Rec(2003)13 on the provision of information through the media in relation to criminal proceedings;
- the Recommendation Rec(2011)7 on a new notion of media.

10. In addition, the CCPE relied on the principles contained in its joint Opinion with the Consultative Council of European Judges (CCJE) on relations between judges and prosecutors in a democratic society – “Bordeaux Declaration” (2009), as well as in the CCJE Opinions No. 7 (2005) entitled “Justice and society”, and No. 14 (2011) entitled “Justice and information technologies (IT)”.

11. The CCPE also took into account the relevant documents of the United Nations such as the Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)² and the Guidelines on the Role of

¹ See the replies of member States to the questionnaire on the CCPE website (www.coe.int/ccpe) under “Preliminary works – relations between prosecutors and the media”.

² The Beijing Rules were adopted by the UN General Assembly in its Resolution 40/33 of 29 November 1985.

Prosecutors (1990). The CCPE also considered the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, adopted by the International Association of Prosecutors in 1999.

B. Scope

12. This Opinion aims at putting in place recommendations to facilitate the media having access to appropriate information and to promote proper communication between prosecutors and the media in a manner consistent with their respective national laws and the international obligations of member States.

13. This Opinion, in line with the mandate of the CCPE, is addressed to prosecutors, and it is not to be understood as recommendations for journalists. The CCPE is committed to assisting in developing a continuing understanding by the media and public in general on the role of the prosecutor and the justice system. The CCPE invites journalists, as well as all other professionals concerned, to get acquainted with this Opinion and to contribute to its dissemination.

14. Subject to the limitations mentioned in paragraphs 21, 23, 25 and 26 below, the fundamental right to freedom of expression and information is a requirement which is applicable to the various tasks and functions of prosecutors in general. This Opinion concerns all kinds of prosecutorial activities, and any provision in this Opinion that relates to the activities in the criminal justice sphere relates, *mutatis mutandis*, to prosecutors acting outside this sphere.

15. Whenever the prosecutor uses a new policy or methods of communications to disseminate information, the principles expressed in this Opinion will be applicable, since it is expected that information disseminated by prosecutors is of public interest.

16. As regards the term “media”, the conclusions, principles and recommendations formulated primarily with regard to the print media, apply also to the audiovisual and electronic media, as well as to the internet when used as media.

II. BASIC PRINCIPLES

17. Relations between prosecutors, the media and any parties to the cases can be understood as relating to three basic groups of principles:

- principles aiming to guarantee a proper balance between the need to ensure an independent, impartial and transparent justice and the need to guarantee other fundamental rights, such as the freedom of expression³ and press, which can themselves be subject to limitations which shall have a legal base, shall conform to one or several legitimate aims such as the protection of rights of others, the smooth running of investigations or the protection of private life, and shall be necessary in a democratic society and proportional to legitimate aim(s) for responding to pressing social needs;
- principles protecting individuals’ rights – especially those of defendants and victims (including the right to dignity, private life⁴ and security of person, as well as the presumption of innocence⁵);
- principles relating to procedural rights, especially when prosecutors act as an equal party in litigation (for example, the requirement of the equality of arms and fair trial).

In case of conflict between these principles, a proper balance should be maintained between each one of them.

³ Concerning Article 10 of the ECHR, the Court has repeatedly stated that the “freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for each individual’s self-fulfilment” (See *Lingens v. Austria*, no. 9815/82, 8 July 1986; *Sener v. Turkey*, no. 26680/95, 18 July 2000; *Thoma v. Luxembourg*, no. 38432/97, 29 June 2001; *Maronek v. Slovakia*, no. 32686/96, 19 July 2001; *Dichand and Others v. Austria*, no. 29271/95, 26 February 2002).

⁴ The Court has repeatedly underlined the State’s positive obligations under Article 8 of the ECHR to protect the privacy of persons targeted in ongoing criminal proceedings (*A. v. Norway*, no. 28070/06, 9 April 2009) (see also in this judgment principle 8 in the Appendix to Recommendation Rec(2003)13 of the Committee of Ministers to member States on the provision of information through the media in relation to criminal proceedings).

⁵ According to the Court, the presumption of innocence “will be violated if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved so according to law. It suffices, even in the absence of any formal finding, that there is some reasoning to suggest that the official regards the accused as guilty”, *Daktaras v. Lithuania*, no. 42095/98, § 41, 10 October 2000.

Freedom of expression and of the press

18. Everyone, including participants in legal proceedings, is entitled to the right of freedom of expression.
19. Prosecutors also have the right to freedom of expression⁶, while having to respect the professional secrecy, the duty of confidentiality, the duty of discretion⁷ and objectivity. When prosecutors appear in the media in any capacity, they should pay attention to the risks that may arise for impartiality and integrity of the prosecution service.
20. Freedom of the press should be guaranteed during legal proceedings⁸. According to the case-law of the Court under Article 10 of the ECHR, the press has a duty to impart information or ideas on matters of public interest⁹ which includes the right of the public to receive them, enabling the press to play its role as a “public watchdog” (according to the terminology of the Court). In doing so, the press will be protected all the more if it contributes to the discussion of issues that have a legitimate public interest¹⁰.
21. During their communications with the media, prosecutors should seek to ensure that the freedom of expression and the freedom of the press do not violate the lawful rights and interests of individuals (including vulnerable persons such as juveniles, victims, defendants’ family members), the requirement of data protection and the obligation of confidentiality.

Freedom to receive and impart information

22. The right of the public to receive information should also be secured¹¹. However, the way this is done may depend on and may be influenced by the specific circumstances of the particular legal proceedings and may be subject to restrictions as appropriate to ensure that basic principles are respected.
23. Prosecutors should seek to ensure that information provided to the media does not undermine the integrity of investigations and prosecution or the purpose of the investigations. Neither should it breach the rights of third parties, nor influence those involved in the investigation or prosecution. It should not influence the outcome of legal proceedings.

Presumption of innocence and rights of the defense

24. Prosecutors should especially be sensitive to the rights of the defense, freedom of expression, the presumption of innocence and the right to be informed.

⁶ The Court reiterates that the protection of Article 10 extends to the workplace in general and to public servants in particular (Guja v. Moldova (Grand Chamber), no 14277/04, § 52, 12 February 2008). In the case of Harabin v. Slovakia (no 58688/11, § 149, 20 November 2012), the Court establishes that belonging to the judiciary (in that case, the applicant was the President of the Supreme Court), does not deprive the applicant of the protection of Article 10.

⁷ The Court is “mindful that employees have a duty of loyalty, reserve and discretion to their employer. This is particularly so in the case of civil servants since the very nature of civil service requires that a civil servant is bound by a duty of loyalty and discretion (Guja v. Moldova (Grand Chamber), no. 14277/04, § 70, 12 February 2008). Disclosure by civil servants of information obtained in the course of work, even on matters of public interest, should therefore be examined in the light of their duty of loyalty and discretion (Kudeshkina v. Russia, no. 29492/05, § 85, 26 February 2009; see also Guja v. Moldova (Grand Chamber), no. 14277/04, §§ 72-78, 12 February 2008). More specifically, in the case of Ozpinar v. Turkey, 20999/04, 19 October 2010, the Court reiterates that it is legitimate for a State to impose on public servants, on account of their status, a duty of reserve in respect of Article 10 or a duty of discretion in the expression of their religious beliefs in public (Kurtuluş v. Turkey (dec.), no 65500/01, 24 January 2006). These principles apply, *mutatis mutandis*, to Article 8 of the ECHR. In this regard, the Court observes that the ethical obligations of judges might encroach upon their private life when their conduct – even though private in nature - tarnished the image or the reputation of the judiciary.

⁸ See *The Sunday Times v. United Kingdom (No. 1)* (no. 6538/74, § 65, 26 April 1979), in which the Court has established that “the general principles stemming from Article 10 case-law “are equally applicable to the field of the administration of justice, which serves the interests of the community at large and requires the co-operation of an enlightened public”.

⁹ See, *inter alia*, *Observer et Guardian v. UK*, no. 13585/88, 26 November 1991.

¹⁰ See *Bladet Tromsø and Stensaas v. Norway* (Grand Chamber), no. 21980/93, 20 May 1999.

¹¹ See, *inter alia*, *Arrigo and Vella v. Malta* (dec.), no. 6569/04, 10 May 2005; *Yordanova and Toshev v. Bulgaria*, no. 5126/05, § 53, 2 October 2012.

25. In their communications, prosecutors should make sure not to compromise the rights of the defense by distributing information in a premature manner and by not allowing the defense to respond to it¹². They should also be careful not to transmit information which does not respect the rights of victims to be informed in an appropriate manner. Providing information should not undermine individuals' right to a fair trial.

26. In their communications, prosecutors should ensure that they do not compromise the security of those involved, including witnesses, victims, prosecutors and judges dealing with sensitive cases.

27. A balance has to be established, through respecting the presumption of innocence, between the public interest in information and the protection of persons' honour and integrity. The prosecutor, where this is within his or her jurisdiction, should take care that a detainee is not through his/her actions publicly exposed to media curiosity and that the persons involved in a case are protected appropriately from pressure from the media¹³, more specifically that victims are protected in such a way as to avoid any risk of being harassed by the media.

Private life and dignity

28. At any stage of legal proceedings, the participants, whatever their role, have the right to dignity, respect for private and family life and to personal security.

29. As far as possible, during the investigation phase, the identity of suspects should not be disclosed. Attention to victims' rights should be given prior to the disclosure.

III. COMMUNICATIONS WITH THE MEDIA

30. Transparency in the exercise of prosecutors' functions is a key component of the rule of law and one of the important guarantees of a fair trial. Justice must be done and must be seen to be done. In order to ensure that, the media should be enabled to report on criminal and other legal proceedings.

31. Application of the principle of transparency in the work of prosecutors is a way of ensuring public confidence and trust, as is the dissemination of information on their functions and powers. Thus, the image of the prosecution service forms an important element of public trust in the proper functioning of the justice system. The media's widest possible right of access to information on the activities of prosecutors also serves to strengthen democracy and to develop an open interaction with the public.

32. Prosecution services may also play a kind of training role and should in this capacity contribute to explaining how the justice system functions. They could make available, as appropriate, information to the media and the public in general in order to foster a better understanding and knowledge of the judicial system.

33. In addition, the openness of the work of prosecutors should contribute to improving the standard of the activities carried out by prosecution authorities. Law enforcement authorities and prosecution services may, by informing the media on the on-going proceedings and in particular on the investigations, obtain information from the general public, increasing thereby the efficiency of justice.

34. Prosecutors can also provide information, in accordance with law, to the general public through the media in order to prevent further crimes and other offences from taking place.

35. The prosecution service of each member State must consider, based on specific criteria related to its situation, legislation or traditions, the most appropriate way to communicate, whether as to who may communicate or what may be communicated.

36. In some member States, prosecutors, while providing general information to the media on policy matters or on the general role and functioning of the prosecution service, do not comment publicly on any individual case, other than as part of appropriate legal argument during court proceedings. In other member States, each individual prosecutor might communicate actively with the media about the cases he/she is dealing with, or might only provide limited factual information about a case already in the public domain. In any case, relations with the media should be built on the basis of mutual respect, trust, equal treatment and responsibility and be respectful of judicial decisions. Furthermore, in the exercise of their functions, prosecutors should act in a spirit of impartiality and equality towards all members of the media.

¹² With regard to the leak to the press of confidential information, see, inter alia, *Stoll v. Switzerland* (Grand Chamber), no. 69698/01, §§ 61 and 143, 10 December 2007; *Craxi v. Italy* (No. 2), no. 25337/94, 17 July 2003.

¹³ See, among others, *Nikolaishvili v. Georgia*, no. 37048/04, 13 January 2009; *Sciacca v. Italy*, no. 5077/99, 11 January 2005; *Karakas and Yesilimak v. Turkey*, 43925/98, 28 June 2005.

37. Information provided by prosecutors to the media should be clear, reliable and unambiguous.
38. Prosecutors can provide information to the media at all stages of prosecutorial activities with due respect for legal provisions concerning the protection of personal data, privacy, dignity, the presumption of innocence, ethical rules of relations with other participants in the proceedings, as well as the legal provisions precluding or restricting disclosure of certain information.
39. In any case, legal provisions on secrecy protected by law, including the confidentiality of the investigation, should be respected.
40. In some member States, any communication needs to be channeled through a spokesperson, who will not necessarily be a prosecutor, or through a specialised press office. In other member States, information needs to be authorised or communicated by the head of the prosecution office or of the prosecution service. Communications emanating from the prosecution service as a whole can avoid the risk of having the activities being presented in a personalised manner and can minimise the risks of personal criticisms.
41. Prosecutors may have a proactive approach to demands of the media; if needed, they may take the initiative to inform the public via the media, either regarding general questions related to justice, or exceptionally, where false information has become part of public opinion, regarding the rectification of such false information¹⁴.
42. In order to carry out its functions fairly, impartially, objectively and effectively, the prosecution service may consider it appropriate to issue a press release, briefing or other communication to the media, such as holding press conferences, giving interviews or/and participating in seminars and round tables. New information technologies can be widely used to inform the public, as appropriate and in a timely manner, about prosecutorial activities and other activities to maintain law and order in the State¹⁵. In this regard, it seems advisable for the prosecution services and offices to properly maintain their own internet sites.
43. The prosecution service may, if appropriate, cooperate especially with the police or other relevant authorities in the preparation of any press release, briefing or other such communication. This can contribute to demonstrating the coordination of different services' efforts, and to avoiding and preventing the dissemination of false information and negative consequences for society following particularly serious crimes. Such cooperation should reflect the general principles set out in paragraphs 22 and 23 of the Recommendation Rec(2000)19.
44. Prosecutors should resist expressing an opinion or disclosing information that runs contrary to the fundamental principles of good communication. They should always communicate independently and objectively, avoiding expressing personal opinions or value judgments regarding persons or events.
45. When an individual prosecutor is subject to an unfair attack through the media, he/she is entrusted with the right of having the contested information rectified or other legal remedies according to the national law. Nevertheless, in such cases, as well as when false information is spread about persons or events involved in the proceedings which he/she deals with, any reaction should preferably come from the head or a spokesperson of the prosecution office and, in major cases, by the Prosecutor General or the highest authority in charge of the service or the highest state authority. Such an institutional reaction minimises the need for the prosecutor concerned to make use of his/her right of response guaranteed to every person, and the risk of excessive "personalisation" of the conflict.
46. It is recognised that in some member States, there may be legal or practical issues to be considered in relation to informing persons affected by prosecutors' decisions of those decisions in criminal matters. However, it is recommended that prosecutors should seek to ensure, where possible and/or practical, that persons affected by their decisions be made aware of those decisions before any communication of that decision to the media.

IV. RECOMMENDATIONS

- i. Member States or prosecution services should establish a policy of communications aiming to ensure that the media have access to the appropriate information necessary to inform the public of the work of prosecution services. Guidelines on their relations with the media could also be**

¹⁴ See, for example, *Société Bouygues Telecom v. France* (dec.) no. 2324/08, 13 May 2012.

¹⁵ The Court accepted that press releases, even when published on the Internet site of the Public Prosecutor's Office, could serve the purpose of informing the public of the submission of the bill of indictment to the court (*Shuvalov v. Estonia*, no. 39820/08 and 14942/09, § 79, 29 May 2012).

included in the ethical codes of prosecutors. It is a matter for the prosecution service in each member State to consider to what extent and how best to communicate with the media, based on its situation, legislation and traditions.

- ii. Communications between prosecutors and the media should respect the following principles: freedom of expression and of the press, duty of confidentiality, right to information, principle of transparency, right to private life and dignity as well as the confidentiality of investigations, presumption of innocence, equality of arms, the rights of the defense and to a fair trial.
- iii. Relations of prosecutors with all media should be built on the basis of mutual respect, trust, responsibility, equal treatment and respect for judicial decisions.
- iv. In their relations with the media, prosecution services should consider adopting both a reactive approach, responding to the media requests, and a proactive approach, taking an initiative to inform the media of a judicial event.
- v. Consideration may be given to entrusting media relations of public prosecutors to spokespersons or prosecutors who are specialised in public relations.
- vi. It is recommended that prosecutors should seek to ensure, where possible and/or practical, that persons affected by their decisions in criminal matters be made aware of those decisions before any communication of that decision to the media.
- vii. Where prosecutors have direct relations with the media, in order to ensure proper information, training in the field of communication should be provided as appropriate. This training may be in common with/or be facilitated by experts and journalists.
- viii. Communications emanating from the prosecution service as a whole can avoid the risk of having the activities being presented in a personalised manner and can minimise the risks of personal criticisms.
- ix. In addition to legal means at the disposal of prosecutors, any reaction to incorrect information or unfair press campaigns against prosecutors should preferably come from the head or a spokesperson of the prosecution office and, in major cases, by the Prosecutor General or the highest authority in charge of the service or the highest state authority.
- x. It is recommended that new information technologies be used, including websites of prosecution services and offices, to inform the public in a timely manner about prosecutorial activities.
- xi. Prosecutors may, if appropriate, cooperate with the police and other relevant authorities, to consider information to be communicated to the media and to disseminate it.