

SUMMARY OF THE INSTRUCTION ON EXTERNAL COMMUNICATIONS CONCERNING INVESTIGATION AND PROSECUTION

Established by the Board of Procurators General (the Board) on 11 December 2006. Date of entry into force 1 January 2007. Valid through 31 December 2010.

The citizen is entitled to be informed correctly and in a timely manner about actual investigations and criminal cases. The instruction on External Communications concerning Investigation and Prosecution contains indications with respect to the principles which form the basis for communication with the media by the Public Prosecution Service (PPS) and the police. An essential principle is providing the right information at the right time. This involves a fundamental choice to follow an alert and assertive information policy by the PPS and the police. Images may be decisive in the assessment of facts. Accurate and timely information about investigations and criminal cases may influence these images. In their policy, the PPS and the police give due consideration to these communication effects.

Investigations and prosecutions are aimed at truth-finding, which calls for a communication policy that offers openness regarding procedures during the investigation while observing the interest of the investigation and the privacy of the person involved.

In this instruction the Board provides a sketch of the legal framework for external communications concerning investigation and prosecution and it gives an indication to what extent people involved in criminal proceedings are entitled to privacy protection. Furthermore it describes who may provide which information to the media and when. Finally a number of points of particular interest are mentioned. In case this instruction mentions the public prosecutor or the briefing prosecutor, this should be read as advocate general or briefing advocate general when it concerns a case in a court of second instance.

BACKGROUND

The instruction on External Communications concerning Investigation and Prosecution describes in which way the Public Prosecution Service (PPS) and the police have organised the information to the press: who is responsible for the transmission of information to the press in case of actual investigations and criminal cases and at what moment in time this information will be provided to the media. This instruction was realised by mutual consultation between the PPS and the police; the mode of operation included in this instruction will also be applied to the Special Investigation Services and the Royal Netherlands Military Constabulary.

When drawing up this instruction, the Board looked for a new balance between public access and transparency on the one hand and the interest of fair legal proceedings and privacy of the persons involved on the other. In a society which is subject to constant changes, it is the responsibility of the PPS to monitor fair legal proceedings, by showing respect for the position of the court and the defence, as well as observing the rights of the suspect and possible victims.

The police are primarily responsible for the external communication concerning the actual performance of their duties, and from the perspective of privacy law and on the basis of the legal framework in which the police can operate, they have their own duties and responsibilities.

The ultimate responsibility for the investigation and prosecution of criminal offences lies with the PPS. This also includes strategic choices with respect to the investigation (e.g. selection and extent of investigations) and decisions for prosecution purposes.

This instruction makes a connexion between the various responsibilities of the PPS and the police and the way in which the PPS and the police handle the information concerning investigation and prosecution. Policies and decisions of the PPS set the framework within which the Police Commissioner is responsible for the information provided by the police.

It is impossible to establish information guidelines for *all* events and incidents. In those cases in which the PPS and the police do not come to an agreement concerning the information policy to be followed, the PPS will take the decision since the PPS has final responsibility with respect to the process of investigation and prosecution.

BASIC PRINCIPLES

The instruction is based on the following basic principles:

- The PPS has final responsibility with respect to the information policy of both the PPS and the police;
- Press briefing contributes to more trust of the citizen in PPS and police. Therefore PPS and police have a common interest in proper press briefing;
- Transparency strengthens the social legitimacy of PPS and police. PPS and police follow an assertive information policy. An alert attitude of PPS and police will result in the 'right information at the right time';
- Investigation and prosecution are aimed at truth finding which calls for open communication; within this information policy there is no room for 'spin doctoring';
- The established communication policy set out in this instruction should prevent as much as possible a situation in which the criminal proceedings take place in the media in stead of in the court room. It is in the common interest of PPS, police and the legal profession to prevent information to escalate;
- External communication by the police is one of the actual duties performed by the police and therefore, has an operational character. Depending on the nature of an incident, an important purpose of the communication by the police is to limit feelings of unrest or insecurity. In addition, it provides the police the opportunity to explain their actions. Communication with respect to strategic choices concerning investigation and decisions in criminal proceedings is the responsibility of the PPS;
- Communication by PPS and police should be conducted in a concise and objective manner;
- In case a defence lawyer is involved, the PPS will contact this defence lawyer if possible before the information is sent to the press;
- All sections of the PPS and all police forces shall observe the same arrangements concerning press briefing in actual investigations and prosecutions.

- The rules described in this Instruction shall also be applicable in those cases in which the PPS issues a punitive order. In accordance with art. 257 of the Code of Criminal Procedure, anyone besides the punished person and his counsel has the right to request a copy of the punitive order. For the procedure in this respect, reference is made to the Guideline Provision of Information on PPS Settlements, which is attached as an appendix to the PPS Settlements Instruction.