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“The importance of appearances: How suspects and accused persons are presented in the courtroom, in public and in the media”
- A COMPARATIVE REPORT

Media Governance & Industries Research
Lab, University of Vienna



The importance of appearances: How suspects and accused persons are presented in courtrooms, in public and in the media

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1. Executive Summary

From October 2017 until June 2019, the Hungarian Helsinki Committee (HHC) oversaw a project designed to counter the presentation of suspects and accused persons as guilty, in courtrooms and public, particularly by the media. The project, "[The importance of appearances: How suspects and accused persons are presented in the courtroom, in public and in the media](#)", was funded by the [European Union's Justice Programme](#) (2014-2020). HHC's partners for the project included: the Media Governance & Industries Research Lab at the University of Vienna, Aditus in Malta, Fair Trials France, Human Rights House Zagreb, Mérték in Hungary, Rights International Spain / Universidad Carlos III de Madrid and Athena Research and Innovation Center in Information, Communication and Knowledge Technologies, in Greece.

The project was specifically designed to promote the aims behind European Union Directive 2016/343¹, which seeks to counter the presentation of suspects in court and in public in ways which may suggest guilt. Article 5 of the Directive specifically states: "Suspects or accused persons shall not be presented in court or in public as being guilty through the use of measures of physical restraints". The project thereby sought to expand knowledge and capacities of stakeholders regarding respect for the presumption of innocence, identify good practices and provide guidance on how to present defendants, and sensitise public authorities, the media and the public with regard to the significance of the manner in which defendants are presented.

This international comparative analysis report documents the process and findings of the project, which also includes the production of a toolkit as well as national workshops to assist journalists in enshrining the presumption of innocence in their reporting.

At the core of this comparative report are conclusions drawn from content analysis of crime-related news published² in quality and tabloid press as well as in online-only press, and also broadcast in television news programmes from June to September 2018, in seven countries: Austria, Croatia, France, Greece Hungary, Malta and Spain.

A number of keywords were identified as a basis for the initial gathering of news reports for analysis and the researchers sought to answer the following questions:

- How is the presumption of innocence at the heart of the Directive reflected in the media of the seven EU member states included in this study?
- Is the presumption of innocence respected by journalists?
- How are accused people and suspects portrayed by the media?
- How does this portrayal influence the perception of defendants as guilty or innocent?
- What are the characteristics of representation of accused people and suspects vis-a-vis the values, norms and legal stipulations of the Directive?
- What further alignment actions may be recommended to the journalists?

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0343>.

² For full list of media outlets analysed, by country, see Annex 4.

The following conclusions derive from the comparative analysis:

- The single most common form of the violation of the right to presumption of innocence, across all countries examined, was the representation, through video material, images, and text, of *allegations as fact*.
- The violation of the right to the presumption of innocence was highest for suspects who are assumed to not hold the citizenship of the country in question. Among such suspects it was highest among migrants, refugees, or Muslims (or a combination of two or more of the three). The second most consistent form of violation across all countries examined is the deliberate and pronounced underscoring of a suspect's 'foreign' citizenship. Additionally, there was consistent emphasised reference to suspects' status as migrants, refugees or asylum seekers. Also consistent across the countries examined was reference to the suspect's religion if Muslim. Other religious affiliations were not underscored.
- Across the countries examined, regular use is made of 'anonymous sources' for quotes and information that indicate guilt of the suspect; such quotes and information are not countered with rebuttals from the suspect or the suspect's lawyers, or their family members or friends or neighbours.
- Clear evidence of an at least episodic lack of respect for the principle of the presumption of innocence is observable, in all countries, across all the media types examined, but, in order of media type, the violation intensity increased on the whole from at the lower end TV, through daily broadsheets, tabloids, and finally Internet platforms.
- Connections and commonalities between press freedom status and violation of the presumption of innocence were sometimes notable, but overall mixed. One clear correlation between press freedom and the violation of suspects rights to the presumption of innocence is Hungary – the only country among those included in our study, which is ranked by Freedom House as only 'partly free'.
- Press bodies, as regulatory or self-regulatory mechanisms, are failing to counter the systematic violation of the principle of presumption of innocence, especially for migrants and/or Muslims. This is arguably due to the weakened status of regulatory bodies as independent non-partisan bodies, in particular manifested through 1) politicisation of the regulatory body in question; 2) inability to oblige all media outlets (especially the most egregious violators) to recognise their authority and abide by their 'voluntarily accepted' sanctions. Additionally, the most significant of self-regulatory mechanisms – ethical oversight by editors, peer example setting, and voluntary subscription by journalists to the professional values, and principles, of the profession, appear to be systematically failing.

2. Introduction

The notion of "innocent until proven guilty" is a legal concept that is inextricably intertwined with the concept of civil rights and is anchored in international law, including in Article 11 of the UN Declaration of Human Rights. The European Union, in 2016, sought to bolster this fundamental inalienable right of suspects through EU directive 2016/343 on the presumption of innocence, which seeks to protect the right of suspects not to be portrayed as guilty in the public sphere. The directive is to be understood in connection with established case law from the European Court of Human Rights (ECHR) that underscores suspects' right to due process and a fair trial.

Article 3 of the Directive specifically states that “Member States shall ensure that suspects and accused persons are presumed innocent until proved guilty according to law.”³

The presumption of innocence is a fundamental right and a crucial factor in ensuring fair trials and is also covered by Article 6 of the European Convention of Human Rights (ECHR) and Article 48 of the European Charter of Fundamental Rights. It is also enshrined in the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, as well as various other international treaties and covenants.

Given the fact that journalism and the media are considered core pillars for democratic societies, and taking into account the media’s power to affect public opinion through the manner in which they employ words, photographs and video material, including related to criminal suspects from the moment they are arrested through the pre-trial period and then throughout the trial, an important question presents itself: to what extent are European media respecting the fundamental right of suspects not to be cast as guilty unless convicted in a fair trial? In this respect, to what extent do the European media consciously and deliberately uphold this right as a fundamental human right, and by extension to what extent is the understanding of and commitment to this human right a micro-manifestation of a commitment by the media to human rights in general? Where such a commitment may be lacking, what may be the reasons? In which ways does such omission of commitment, where it exists, manifest itself? Also, in the cases where there is a commitment to upholding the right to be considered innocent until proven guilty in a fair trial, what are the reasons for this commitment? To what extent does all of this matter for democracy and human rights across Europe? These questions form the basis for this comparative report, which follows our examination of the way in which the media handle this fundamental human right in seven countries throughout Europe, therefore through examining the media’s approach to crime reporting.

In theory, in Europe, conditions exist that should allow for the media, on the whole, to uphold the right of suspects to be presumed innocent until proven guilty. These include comprehensive historical frameworks at the global, supranational and national levels, democratic systems (albeit it with varying levels of maturity), and the existence of journalism cultures (of varying strength) of self-regulation and adherence to ethical standards, as well as of bodies such as press councils with varyingly effective powers to sanction and coax conformance to this human right.

Nevertheless, the manner in which the media engage with crime reporting and the human right to be regarded as innocent until proven guilty does not occur in a vacuum. Instead, it is set against the parameters of governance of information in general, and slots in to broader societal and governmental norms, shifts, and traits. It occurs also against the backdrop of economic and political interests that journalists may feel they need to satisfy or cater to, to increase a medium’s popularity by, for example, engaging in both the cultivation of consumer demand for and supplying sensationalism; to ensure that advertising income sources remain content, at a time of shrinking advertising revenue and digital only challenges; to, unwillingly or otherwise, serve political interests, so that this translates into advertising from non-transparently affiliated economic and business entities.

Fully conscious that national media landscapes may differ significantly on a variety of levels, including for example adherence by journalists to professional norms, industry structure characteristics, socio-political and economic constraints and so on, this project has sought to identify patterns of reporting on suspects and accused individuals in Austria, Croatia, Hungary, Spain, France, Greece and Malta. For example, we have sought to identify examples of violations of Article 5 of the Directive: “Suspects or

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0343>

accused persons shall not be presented in court or in public as being guilty through the use of measures of physical restraints.”⁴

In doing so, and cognizant of the afore-mentioned broader picture, we have examined and analysed the wider conditions, motivations, constraints, propellants of the generation of news as information, and its dissemination under the umbrella of a variety of goals, some of them high-minded and democratic, others less so. We examine and compare the legal frameworks against which journalists’ crime reporting is set and within which it must operate, in practice or in principle. We also consider technological developments, which have facilitated journalists’ jobs on one level but have also created an environment in which the race to continuously update, by the second, and be first to disseminate, generate challenges as well as opportunities.

The various influencing factors, ranging from the political to the labour- employment- ethical-financial-cultural- and economic structural input elements, operating sometimes independently, sometimes in varying degrees of inter-related dynamics, generate, we find in this report:

- Significant variances in approaches to and practices of crime reporting across the countries examined.
- Various forms of systematic undermining of suspects’ and arrested persons’ right to the presumption of innocence.
- A disparity between the law in theory, and its observance in practice, by journalists and editors covering crime reporting and the representation of suspects and arrested persons.

3. Press freedom and pluralism overview

The 2017 Media Pluralism Monitor⁵ rates countries under four categories: basic protection; media plurality; political independence; and social inclusiveness. The Monitor differentiates in these four categories between low risk, medium risk and high risk. Of the examined countries, France is the only country to score low risk in all four categories. Then comes Austria, with low risk in basic protection but medium risk in the other three categories. Croatia, Malta and Spain score medium risk in all four categories. Greece and Hungary score high risk for social inclusiveness and political independence, respectively, and medium risk in the remaining three categories, respectively. In a separate evaluation section, Austria scores highest in good governance, with Greece lowest, and Hungary second-lowest.

In the Reporters without Borders (RSF) 2018 world press freedom index⁶, Austria is ranked 11th. This ranking does not, however, take into account developments throughout much of 2018 (the ranking is based primarily on developments in 2017) when the public broadcaster was verbally attacked by politicians from the far right FPÖ which rules in coalition with right wing People’s Party. It also emerged in 2018 that three critical media outlets had been blacklisted by the Interior Ministry. These and other developments are likely to negatively influence Austria’s ranking in 2019. However the ranking does note that threats to independent media have been growing since the far right joined the coalition government.

The Austrian far right’s – and to a certain extent that of the People’s Party – political public campaign revolves around the vilification of asylum seekers and refugees and the tabloid press is largely

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0343>

⁵ <http://cmpf.eui.eu/media-pluralism-monitor/>

⁶ <https://rsf.org/en/ranking>

supportive of the far right in Austria. The report notes as well that the public broadcaster and other critical journalists are now regularly targeted with verbal attacks by politicians.

Although the Austrian chancellor has emphasised that Austria is attached to press freedom, he has not specifically condemned this verbal abuse. The report also notes that the funding mechanism for Austria's public broadcaster is potentially under threat. A government plan for the revamp of the broadcaster due to be released in 2019 may change the model – based on comments by government representatives – to one in which it is funded through a segment of the state budget rather than a licence fee. This may threaten the autonomy of the broadcaster it is feared.

The report additionally notes that since the refugee crisis of 2015 mistrust of the mainstream media has grown, and the term 'lying press' has become common. Social media platforms, especially in contexts linked to the far right are systematically engaged in hostile discourses directed at mainstream journalists, especially prominent reporters, for the public broadcaster and reporters for broadly considered left wing, or centre left aligned publications.

The RSF 2018 world press freedom report ranks Hungary at a low 73rd place, underscoring the lack of media pluralism in the country. It notes that businesses close to the prime minister, Viktor Orban, were able to increase their media portfolios in 2017, even replacing some foreign-owned ones (Hungary dropped two places in the ranking over the 2017 report). They notably also took control of the last main three regional dailies.

Although online investigative media platforms do still exist, and regularly publish allegations of corruption and other alleged crimes, their reach is limited because Orban has brought the big-reach media entities, such as the public media and major dailies under his control or influence. The report notes that – as with the tabloids in Austria – the pro-Orban media bubble shares his obsession with the 'dangers' of migration, and the defence of Hungary and its borders, as well as the vilification of international financier and philanthropist George Soros, who they suggest is at the heart of a conspiracy to flood Hungary and the European Union with migrants. The pro-Orban media recently picked up on Orban's addition to the vilification list – in an advertising campaign – of European Commission president Jean Claude Juncker. European Commission vice-president Jan Timmermans was recently hounded by pro-Orban media when he visited Budapest.

Greece is one place behind Hungary on 74th. The report notes that the country's oldest privately owned TV station is on the verge of closing after having been in operation for 29 years, that an auction of broadcast licences in 2016 at the heart of a plan to overhaul the broadcasting sector failed to generate the funds anticipated, and that journalists continue to receive suspended sentences due to defamation convictions.

Spain comes in at 31st, down two places over the previous year, with the report noting that the Catalonia independence push had ratcheted up pressure on the independent media. It stated that journalists who do not support Catalanian independence have been targeted on social media, and that Catalan press officers have allegedly supported this.

The report also notes that a number of journalists were attacked while covering events linked to the referendum on Catalanian independence, while others were the target of intimidation by the police while seeking to report on such events. Reporters from all TV channels, the report adds, have been obstructed in their work covering pro-and anti-independence demonstrations by crowds from both sides of the Catalanian issue.

The report also notes that a law reforming the public broadcaster passed parliament and there was optimism it would restore the independence and plurality of the broadcaster, but it also pointed out

that a similarly positive resolution remained out of reach on the so-called Gag Law, which is widely seen as stifling media freedom.

France improved six places coming in at 33rd in 2018. The report says that the French media are free overall and also well protected under French law. Nevertheless, the report also notes that the media landscape is dominated by powerful businesses whose interests extend beyond the media sector, in a dynamic that poses a threat to the independence and sometimes even economic survival of media outlets.

Also of concern is the slew of legal suits filed against journalists as well as a rise in what the report calls “media bashing” involving virulent criticism of the media by politicians and personalities. This aligns with trends in other countries where independent critical media have increasingly borne the brunt of intensifying verbal aggression. The report also notes that journalists from certain media were denied accreditation at various events including at some staged by the far right party, and that there was concern about an announced law on Fake News, because of the danger that the term could be used to stifle independent reporting.

Croatia improved five places to 69, but the report noted that journalists going after corruption, organised crime or war crimes stories, were often specifically targeted in campaigns of harassment. Criminal defamation remains on the books, with prison sentences of up to three years. Included among the criminal defamation offences prosecutable are insulting the republic, emblem, national hymn or flag. The report also notes that “humiliating” media content has been criminalised for over five years.

Just as in some of the other countries we examined in the report, RSF states that government meddling in the public broadcaster remains a problem and is a constraint on media independence. In short, the report notes, the public broadcaster is consistently under political pressure with not just the government but a variety of interest groups seeking to influence its editorial content and even management.

In early 2018, the report says, press freedom groups that visited the country did note some progress in particular with an increase in arrests by the police of people suspected of physically attacking journalists. But physical attacks, as well as threats and cyber vilification campaigns remain serious inhibitors for journalistic plurality and freedom in Croatia.

Malta dropped 18 places to 65th in the ranking, in great part due to the assassination in 2017 of anti-corruption investigative journalist Daphne Caruana Galizia, who was murdered in a car bomb attack. The report points out that such were the feathers she had ruffled in her hard hitting reports on the nexus of corruption and local politics that when she was killed she was the target of 42 different civil defamation suits, and that for years there had been sustained campaigns of threats and different forms of harassment against her. The judicial campaigns against her highlight the utilisation of so-called strategic lawsuits against public participation, whereby powerful plaintiffs intimidate critics including journalists through the threat of enormous legal costs. There are echoes here of the lawsuits brought in France. Such is the pressure exerted by powerful individuals and business groups in Malta that media platforms are regularly obliged to remove stories, not because they believe them to be inaccurate but because they dare not risk the enormous legal costs associated with seeking to defend their veracity in the face of legal threats from the powerful people and interests they have implicated.

Journalistic cultures and issues of trust are potentially also relevant. However, they are beyond the scope of this study.

4. Methodology

4.1. Introduction

The comparison of countries was focused on content analysis of crime-related news published⁷ in quality and tabloid press as well as in online-only press, and also broadcast in television news programmes from June to September 2018. In selecting the countries, we sought variety of a geographic and legal nature, as well as in terms of the size of media markets.

A number of keywords were identified.

In conducting the analysis and comparison we were guided by, among other things, the question of whether or not our findings supported the results of an impact assessment carried out by the European Commission before publication of its original Directive proposal. That assessment found that, in practice, “there is insufficient protection of certain aspects of the principle of presumption of innocence of suspects and accused persons across the EU.”⁸ Additionally, the European Commission found: “The protection of the principle of presumption of innocence by the European Court of Human Rights has not resulted in sufficient protection of suspects or accused persons in the EU.”

The project assessed through in-depth research in the participating countries the extent to which practices related to the presentation by the media are in line with the Directive’s requirements.

4.2. Research questions

In the above context, and set against the values and parameters laid out by the Directive and the pre-proposal assessments by the European Commission, the fundamental research questions underpinning our study are:

- How is the presumption of innocence at the heart of the Directive reflected in the media of the seven EU member states included in this study?
- Is the presumption of innocence respected by the journalists?
- How are accused people and suspects portrayed by the media?
- How does this portrayal influence the perception of defendant as guilty or innocent?
- What are the characteristics of representation of accused people and suspects in line with the values, norms and legal stipulations of the Directive?
- What further alignment actions may be recommended to the journalists?

4.3. Specific methods

Following is an overview of the various steps and attributes of the methodology we opted for in this study.

⁷ For full list of media outlets analysed, by country, see Annex 4.

⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0343>.

4.3.1. Deductive qualitative content analysis

Content analysis can be employed to analyse both qualitative and quantitative data (Elo S & Kyngas (2008, p.109), whereby selection of the appropriate method is dependent on the aims of the research and the data to be analysed.

There are three phases to content analysis: the preparation phase, organising and reporting. However, there are not any strict rules governing the exact manner in which data should be analysed (ibid). A preoperational phase permits selection of the precise unit of analysis; in the second phase, the focus is on completion of the process of organising the data in the form of open coding, coding sheets, grouping, categorization and abstraction (Elo S & Kyngas, 2008, p.110). The final phase involves reporting the results of the study.

Qualitative content analysis involves an examination of the characteristics of language as communication in the context of the content and contextual meaning of the text (Hsieh & Shannon, 2005, p. 1278). Such analysis may be based on inductive data going from the specific to the general, or deductive. Deductive qualitative content analysis builds on already existing theories and proceeds from the general to the specific (Elo S & Kyngas, 2008, p.9).

In our research proposal, we determined that we would analyse both textual and audiovisual data from the media of the seven countries we selected. We thus opted to focus on research data from leading newspapers (so-called quality press and tabloids) and leading television news shows. Our analysis incorporates collection and evaluation of the representation of suspects and accused persons at the various stages of legal proceedings; to this we have added audience context and reception.

4.3.2. Population parameters

We examined media stories, during a specified sample period, about persons accused of criminal offences in relation to criminal cases published in selected leading newspapers, aired on leading TV news programmes, and uploaded on leading Internet-only news platforms.

4.3.3. Basic parameters of the sample

We defined the sampling frame as per four principal parameters: channels, programme types, sampling times (evening) and sampling periods, as was effected in a similar study conducted by Dixon and Linz (2002).

4.3.4. Sampling frame

We focused on news stories about accused persons from each of the countries participating in the project. The news stories were collected simultaneously during the same sample period.

4.3.5. Newspapers

The sampling in each country involved selection of the two national newspapers with the highest circulation. All issues were sampled and only news content related to criminal offences and the people accused of, or suspected of, committing them were coded.

4.3.6. TV

With regard to TV news, two evening news programs broadcasting on national channels and with the largest audience were selected. The complete news programmes were sampled.

Again, only news content related to criminal offences and the people accused of, or suspected of, committing them were coded.

4.3.7. Internet

We sampled the content of the countries' two primary news portals not in any way affiliated with the print, TV or radio media – again over a period of one month. All of the news content related to criminal offences was sampled and coded.

4.3.8. Coding the samples

All of the news stories relating to people accused of a crime were coded. A coding sheet was provided in advance. Coders were tasked with identifying news content about people accused in criminal cases, based on a typology of crimes⁹.

4.3.9. Measuring reliability

Coders were responsible for identifying news stories related to crime, as well as the specific persons accused of a crime or crimes, within the stories.

4.3.10. Sampling unit

The sampling unit was defined as persons accused of crimes of a criminal law nature.

⁹ For the full typology, see Annex 1 at the end of this report

4.3.11. Definitions of crime

For this project, we defined crime as law-breaking as per the criminal code of each of the participating countries.

4.3.12. Member-state level of analysis

In addition to the coding sheets, participants also submitted contextual information, including:

- factual information about the accusation(s) and the accused person;
- information about the legal framework concerning the respective cases;
- information about any professional guidelines (at least some of the) journalists in the respective countries may be (or feel they are) bound by.

4.3.13. Media outlet level of analysis

The national teams provided the following information about the news sources sampled:

- circulation or audience;
- quality of the source (for example, so-called quality media, or tabloid);
- ownership of the source;
- political alignment of the source (where applicable).

4.3.14. Crime story level of analysis

Only alleged or actual law-breaking acts committed within the borders of each participating country were analysed. International stories were excluded from the coding (Imrich, Mullin, & Linz, 1995, p. 101).

The analysis included ascertaining:

- the text size, the article type, where exactly the news content was located, and how it was visually represented (in the newspapers and on the Internet platforms sampled);
- the broadcasting order and the amount of time allotted to the specific instances of coverage of the crimes in the selected programmes on TV and radio;
- the type of crime and any other addition contextual factors relating to the crime story.

4.3.15. Defendant and victim level of analysis

Here, the analysis involved recording of information (sex, age, accusation) about the accused persons as well as the victims of the crimes. When a specific crime story involved more than one accused person, separate coding sheets were completed for each of the accused persons.

4.3.16. Categories of prejudice against principle of right to presumption of innocence

The categories of public references to guilt and the representation of suspects and accused persons described in Articles 4-5 of the EU Directive were included in the coding sheet and explored in the analysis.

Furthermore, and consistent with similar studies (Dixon & Linz, 2002, p.121; Imrich, Mullin & Linz, 1995, p.101), as well as consideration of the fact that this is the most detailed algorithm of identification of prejudicial information corresponding also to the Articles 4-5 of the EU Directive, for this study the identification¹⁰ of prejudicial information in media coverage was based on guidelines drawn up by the American Bar Association (2013)¹¹.

5. Comparison of reporting on suspects

In our comparison we specifically set out to assess the degree to which there was in the countries examined, a disparity between the terms of the Directive, and its implementation, including through the adoption – or not – of the values it embodies, by the media.

In so doing, we sought to identify examples from our narrowed-down samples of both failure to embody the values of the Directive as well as good practice examples.

The purpose of this comprehensive comparative analysis is to assist domestic and EU institutions in their assessment of whether action is needed with regard to an improved reflection of the values of the Directive in reporting on suspects and accused persons by the media.

5.1. Austria

Our Austrian results indicated that the guilt of suspects or arrested persons is often implied or stated as fact in the headline, in a clear contravention of the EU Directive, and indeed journalistic norms and ethics. This systematic violation is compounded by the fact that the language of the reports as well as

¹⁰ See Annex 2.

¹¹ See Annex 3.

accompanying illustrations adds to the sometimes subtle, sometimes overt implication of guilt. This holds true primarily for tabloid journalism. Quality dailies and weeklies, as well as the public broadcaster, tend to respect the presumption of innocence values and prerogatives of the Directive.

Violation of the Directive was particularly dominant with regard to refugees and asylum seekers. Among the most common infringements on the right to the presumption of innocence was deliberate reference to ethnicity, nationality and religion (when Muslim), in a manner not necessary in terms of providing information in the public interest. Closely linked was explicit spelling out of the refugee context in a manner that implied that refugees are by their nature criminals.

The sentence 'the presumption of innocence applies' (Es gilt die Unschuldsvermutung) is often, particularly in the tabloids, included as a throwaway final sentence following repeated infringement on the right to the presumption of innocence in the headline and throughout the article. Sometimes the juxtaposition of the preceding disregard for the presumption of innocence and the throwaway final sentence is so stark that the latter appears almost ironic. In some instances even the sentence that the presumption of innocence applies is not included, and thus the entire article indicates that the suspect is guilty.

In the tabloids, the term 'alleged' or 'mutmasslich' is virtually never used, so, as noted, headlines represent suspected guilt as fact. For example, a headline about the capture of a suspected robber and sex attacker reads: "Brutal robber and sex offender caught". This headline also highlights use of sensational adjectives to whip up anti-suspect emotions, in the context of implied guilt. Another such headline identified during sampling is: "17-year-old girl raped by refugee". Note that the crime is stated as fact, there is no use of the term 'alleged' or 'it is claimed', or 'is suspected of' and the fact that the suspect is a refugee is highlighted in the headline.

Furthermore, although Austrian law forbids naming the last name of a suspect, tabloids often publish photographs of the suspects from which they are identifiable. Particularly, when it appears from the photos that they are not of Austrian origin, the violation of the presumption of innocence is compounded, because of the intensifying public conception (particularly since 2015), fuelled by the tabloid media, that foreigners, in particular asylum seekers and refugees, are inherently criminal.

Another common form of violation of the principles of the Directive in Austrian tabloids is reference to previous criminal convictions of the suspect.

The violations are particularly egregious in online media not affiliated with any offline journalistic outlet. The most notable example in Austria, as per our sampling, is unzensuriert.at, an online news platform affiliated and aligned with the far right FPOE party, which is currently the junior coalition partner in a governing coalition with the centre right People's Party. The language of unzensuriert.at is similar in its violation of the presumption of innocence and its stereotyping of foreigners as criminals, in particular refugees and asylum seekers, to that regularly employed by far-right politicians.

So, for example, unzensuriert.at has taken to tagging stories about alleged criminal behaviour involving foreign (especially refugee or asylum seeker) suspects as "#Einzelfall". Translated into English this means "isolated case". Use of the term stems from the FPOE itself to, initially, describe cases of alleged anti-Semitic behaviour by its members or affiliates. The term was subsequently picked up by critics of the FPOE to ironically describe each of a series of incidents of anti-Semitic behaviour, and increasingly anti-refugee, or anti-asylum seeker, or anti-critic behaviour by party members or party supporters. The FPOE and its supporters, as well as other far right parties in Europe, have in turn taken the term to ironically describe what they see as a series of crimes committed by asylum seekers and refugees. Thus, used as a tag in a headline in the context of a crime stated as fact, especially when the suspect

is a refugee or an asylum seeker, it is highly pejorative and a stark violation of the presumption of innocence.

An example that emerged in our sampling is the headline: “#Isolated case. Chechen junior criminals wanted to extort protection money from a pub owner”. Note here, as mentioned, use of the pejorative tag, reference to the nationality of the suspects, even though as per Austria’s nationality and residency laws, they may have been born in Austria, statement of the alleged crime as fact in the headline, use of pejorative guilt-implying language such as “junior criminals” (this continues throughout the article).

Noteworthy as well is the fact that this article is one of a series about allegedly criminal foreigners. In fact, directly under his article were further articles involving foreign suspects.

In another article by the same media outlet, entitled “Graz: Terror suspects had to be freed, Identitarians get monster trial”, the headline implies a double standard between the freeing of terror suspects for lack of evidence and the trial of extreme right so-called Identitarians, inserting the loaded adjective ‘monster’, to emphasise the purported injustice and disproportionality. The implication is that the Identitarians should not be on trial, while the Islamists should - because the latter are guilty. Indeed, despite the fact that the suspects have been freed for lack of evidence, the article still refers to them as a threat to the public. Meanwhile the 17 Identitarians accused of forming a criminal organisation are referred to as non-violent patriots. Reference is made to an Islamist already in prison whose company the freed men would supposedly have ‘enjoyed’ had they been imprisoned. It is also pointed out that the family of that particular prisoner are welfare recipients.

The text also refers to the legal system in the city of Graz as “Absurdistan”, a judgmental term, further emphasising the purported ‘laughable’ injustice of putting the far right individuals on trial while letting terror suspects walk (regardless of the lack of evidence), that is a pejorative play on the names of countries like Afghanistan and Pakistan (from where many asylum seekers and refugees come, and the origin of a handful of terror suspects in recent years). In addition, the article refers contemptuously to the “mainstream media” in a way that suggests they are complicit in the ‘absurdity’.

So we see in Austria, a downwards slope from the mainstream quality dailies, to the tabloids, to far right aligned online news sites such as unzensuriert.at, with a steady deterioration of respect for the right of suspects to the presumption of innocence, particularly in the context of migration and alleged terrorist activity. Ironically, unzensuriert.at appears to be demanding the presumption of innocence for members of the extreme right Identitarian movement, even an ‘over-presumption’ of innocence.

The tabloid press and online news site also make avid use of so-called symbolic photos, especially in the context of alleged sexual assaults, showing a female crouching in the throw of a shadow, apparently designed to sensationalise, and mediatise the alleged offence.

Regarding private TV broadcaster news, Puls 4 regularly failed to respect the presumption of innocence by not clearly stating that certain acts were ‘alleged’.

5.2. Croatia

In contrast to Austria, the violation of the presumption of innocence in the context of migrants and refugees was less widespread in Croatia, with only three of all of the sampled stories highlighting the status of the suspects as migrants. However, this may be due to the fact that there are simply not many migrants in Croatia, compared to Austria – which at the height of the crisis took in more asylum seekers

than all other EU countries apart from Sweden. So, the 'migrant crisis' made less of a media impact there than in Austria.

Having said this, there is hate speech online and negative presentation of migrants across the media (especially in the context of integration), but less so in the context of violation of the principle of the presumption of innocence. Possibly also of significance is the fact that Muslims are less of an 'unknown' entity in Croatia because when the latter still formed part of Yugoslavia, Yugoslavia also included today's Bosnia & Herzegovina with a sizeable Muslim population.

As with Austria, there was less violation of the presumption of innocence in TV reporting in Croatia, with most of the news items samples examples of good reporting, in line with the standards of the Directive. Sometimes, photos of victims were used, as were sensationalist terms when reporting on suspects. Also used were symbolic archive materials without a clear indication that they were symbolic and archival. These three transgressions could be seen as contributing to the emotional notion that suspects were guilty.

A common feature of TV reporting on suspects is footage of their arrest. For example, one news report on the transportation of a drug trafficking suspect from prison to a court appearance used archive material of arrests, without indicating that the material was archival and without contextualising it. It was also reported that the suspect was brought to court amid intense security measures but there was no footage of these measures. In a blatant example of violation of the right to presumption of innocence through use of loaded words, the suspect is referred to across the media sampled (including print and online) as "the Croatian Escobar" in reference to a notorious convicted Latin American drug trafficker.

As with Austrian media, there is in Croatian media repeatedly a failure to note that suspects are suspected of a crimes, or that crimes are alleged to have been committed by them. Headlines and article content report allegations as fact. This is true also for TV news reports. In fact sensationalist headlines, with use of colourful language, and the statement of suspicions as fact, are common across the sampled news reports in Croatia, in a strong parallel with Austria. However, often, the term suspected or alleged does make its way into the subsequent text in the Croatian examples, unlike in Austria, where a throwaway presumption of innocence statement is inserted at the end (or not inserted at all). This occurred in three of the five Croatian internet portal articles, three of five articles from online portals of print newspapers, and four out of the five articles from printed newspapers.

Croatian media usually only publish the initials of suspects or a first name and family name initial. However, as in Austria, this was sometimes violated, with the publication of the full name. In one instance involving a migrant from Algeria, the suspect's full name was published, as well as the fact that he was an Algerian migrant, and his place of residence (a hotel) was also published, as well as his profession (although not relevant to the public interest aspect of the report).

This was repeated in another article involving migrants suspects. The headline read "Migrants were stealing bags in the centre of Zagreb; They were caught by the woman they had stolen from". In addition to the highlighting of the fact that they were migrants, in the headline, again their place of residence, professions and other information not of relevance to the allegations was published. The article's text body went on to emphasise that the "trio" were migrants and had exchanged their place of residence from a hotel to "the cells" of Remetinec prison, because of the crimes they had committed. Here too their presumption of innocence rights are transgressed because it is stated as fact that they have committed the crimes.

We may extrapolate that even though the reporting on migrants is less prevalent in Croatia than in Austria, due to the aforementioned reasons, when they are reported on their right to the presumption

of innocence – especially through the highlighting of their migrant status and the commission of crimes as facts rather than suspicions or allegations - is more likely to be disrespected. We thus see a parallel to the anti-migrant reporting trend in Austria albeit on a less widespread level.

Also common in the Croatian reporting on suspects are photos in the online portals and print dailies of suspects in handcuffs and with police visible in the image. This was the case of a 29 June news item involving a murder suspect. Accompanying headlines used the word killer without any reference to the presumption of innocence. As noted earlier, reference to suspected crimes followed later in the text. A follow-up print article a week later inserted colourful language into the headline, again without reference to presumption of innocence: “The killer from Zrce stabbed with his knife wherever he could”. The online news portal T-Portal published a full 10 photos of the suspect in handcuffs and in the presence of police, and a further 13 photos of the investigation and the crime scene.

As in Austrian media, the presumption of innocence is also violated through reference to previous crimes. For example the headline “Killer of a drug dealer from Split earned a new indictment; He took out a bank loan through identity theft and hoarded money”. Only later in the text is it noted that the first ‘crime’ stated in the headline as fact, remains an allegation.

Similarly, a 2 September article about a suspect – both print and online – refers to the “Psycho from Travno”, and a subtitle refers to a “monster”. The article also makes reference to the suspect’s previous criminal record. The headline and article state suspicions as fact and – as is so common also in Austrian media – insert loaded colourful language that lends weight to emotional suggestions of guilt. Additionally, the online version is followed with the hashtag #slaughtered – another clear violation of the right to presumption of innocence.

In a further parallel with (at least tabloid) reporting in Austria, victims’ photos are regularly published in Croatia. Sometimes the face of the victim is blurred but the injuries suffered in an alleged attack are clearly depicted. In one article where this was the case, the report also included a photo of the suspect shirtless, and appearing strong and bold. The headline contains the pejorative terms “scum” and “trash”, and the text refers to a “maniac”.

At times, as in Austria, articles make use of unidentified sources as cover for non-factual reporting that violated the right to presumption of innocence.

So, as in Austria, we see a clear gap between TV news reporting and print and online reporting, whereby the TV reporting is far less likely to violate the presumption of innocence. This is the case in Croatia too where good practice examples were found in TV reporting. In a divergence from Austria, in Croatia when a suspect is high-profile, i.e. a high-profile Croatian politician or business person, the media outlet including online and print is more likely to observe the presumption of innocence principle through use of terms such as alleged and suspected, defendant, accused etc.

5.3. France

France confirmed the trend in Austria and Croatia that online news portals not related to a print news product are more likely to violate the principle of presumption of innocence. As in other countries examined, a sizeable segment of the French public is exposed to crime reporting, which does not live up the notion of presumption of innocence, particularly since the online outlets, as in Croatia and Austria, have very high numbers of visitors, relative to for e.g. print circulation figures, on both the

websites and through their Facebook presence and the sharing function of that particular social media platform.

In a common attribute with the other countries examined, the primary area of problematic transgressions against the presumption of innocence came in news reports related to terrorist suspects and people suspected of sexual harassment. The problematic terrorism related reporting involved exclusively suspected Islamic fundamentalism-related terrorism. And as in the other countries, Islam as a religion, along with its symbols, were often used in such a way as to imply guilt in the context of the purported affinity of Muslims for terrorist activities. Very often suspects were labelled as 'jihadists'.

In another commonality, full names were more likely to be fully stated in cases involving Islamist terror suspects (as well as celebrities), and also through photos even if the text reference involved initials. As in Croatia, frequent reference to where a suspect lives or works was mentioned. Again, identification of a suspect through a photo, in the report, was more likely if the alleged crime involved Islamism-linked terrorism. In such cases, the photographs involved were usually official arrest mugshots, or close-ups that resembled mug shots.

As in other countries in the study, victims too were often identified with full name as well as in some instances photos. In fact, out of 25 cases involving murder and assault the victim was fully identified in all 25. In some cases, the victim's photo was even placed next to the photo of the suspect, creating a visual link likely to contribute to the violation of the presumption of innocence.

As in other countries, suspects are also regularly depicted in handcuffs and in the presence of police officers, creating an impression of guilt.

In a strong consolidation of the trend observed in other countries, emphasis that violated the presumption of innocence was made on nationality and religion when the suspects were citizens of a country other than France. Even when the suspect was French, reference was made to the 'origins' of the suspect, where the suspect's parents were not holders of French citizenship. This is a practice that this study found also occurs in Austria and Malta.

In another strong consolidation of a trend across the countries sampled, reference to the suspect's religious affiliation was only made if the suspect was Muslim, especially in the context of alleged crimes involving terrorism, but also in cases that had nothing to do with terrorism. The clear implication is that the very fact that a suspect is Muslim is an indication of their probably or definite guilt – a clear violation of the principle of presumption of innocence. And this is a commonality with the other countries examined for this report.

But it is not just in the context of alleged terrorism that suspects' Muslim faith is underscored. This also occurs in cases involving alleged sexual crimes. In one example involving allegations of sexual harassment made against a (male) doctor, a news report referred to the suspect as being "renowned for his stands in favour of Islam in France" – information that has no relevance to the allegations and no public interest value, but that appears to have been included in order to provide a context of misconduct on the basis of cultural incompatibility, the accused person being a Muslim.

As noted, the coverage analysed in France regularly – just as in the other countries – referred to prior criminal cases involving the suspect, regardless of whether or not they had been found guilty. This occurred in almost half of all the news reports sampled. Also in this context, reference was made to criminal cases that were unrelated to the case being currently reported on. This contributes to a sense of guilt by inference. For example, in the aforementioned case involving a Muslim medical professional accused of sexual harassment, it is noted in the reporting that he has consistently defended renowned French Muslim academic, Tariq Ramadan, who has also been accused of sexual assault. In terrorism-

related cases, the connections to other non-related cases often occurs through reference to suspicions and accusations involving other family members, especially brothers, and so to invoke guilt by association.

In a dynamic that is also prevalent in other countries examined, reporting is weighted in favour of the accusations, giving little or no space to arguments from the defence. Sometimes, as in the case of Austria with reference to “Absurdistan”, the reporting mocks the defence with the use of sarcastic phrases and comments or by quoting negative remarks from the judge. As in Austria and elsewhere, prosecuting or investigating authorities are quoted anonymously and are described as “sources close to the investigation”. The use of quotes and information made available by these anonymous sources - especially in the absence of counterbalancing quotes from the defence - contributes to a perception of guilt. In one instance, in the French media samples, such a quote – involving the evidence reportedly collected and reportedly indicating guilt on the part of the suspect – was highlighted in bold text in a box embedded within the article.

Quotes reflecting negatively on the suspect are also used from neighbours, the victims and the victims’ lawyers without equitable attention being given to counterarguments. Indeed, relatives of the alleged victims were often portrayed in a distressed condition. Also disproportionately used as quotes, without reasonable counterbalance with quotes for example from the suspect’s lawyers or family members, are quotes from representatives of victim associations

In another common dynamic to France, and Austria in particular, suspects’ use of their right to remain silent, is portrayed as evidence of guilt, with such portrayals a violation of Article 7 (5) of the Directive, which states that: “The exercise by suspects and accused persons of the right to remain silent or of the right not to incriminate oneself shall not be used against them and shall not be considered to be evidence that they have committed the criminal offence concerned.”¹²

In conclusion, French reporting of crime investigations include the most cases of violations of the presumption of innocence in relation to cases involving Islamic fundamentalist terrorist crimes and sexual harassment, where the suspect is Muslim. Particularly in light of the fact that other religions are not highlighted, this is an egregious violation of the right to presumption of innocence, implying that Muslims are criminals. This is a commonality across the sampling of the countries involved in this study. Another commonality across all countries is the highlighting of national origin only when the suspect is not a national of the country, with efforts even being made to highlight the foreign origins of parents when the suspect does hold citizenship.

5.4. Greece

In the Greece case, though, this systematic pre-judgment appears linked to the tumult of the after-effects of the economic, social and political crisis that has roiled the country, with media in a chaotic politicised state of competition, amid rising prejudice as a result of the aforementioned crises and dramatic decline in living standards and institutional trust.

As in the other countries examined, the most blatant and systematic violation of the right to presumption of innocence comes from the presentation of allegations and suspicions as fact. It is also

¹² EU Directive 2016/343 of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0343&from=EN>.

noticeable in the Greek context, that the sensationalist style of reporting on suspects appears designed to hype the supposed public interest at stake in the revelation of information that prejudices the presumption of innocence. This includes the justification, for example, for fully identifying a suspect.

The country's self-regulatory Mass Media code appears ultimately ineffective in terms of countering this, in a commonality with other countries examined such as Austria, where, as noted, the voluntary participation Press Council does not have as members the tabloids (the most egregious violators of the right to be presumed innocent) because the latter claim the Press Council is a broadsheet conspiracy designed to destroy their business model.

Greece consolidated the second major commonality with other countries in the study: the identification of a suspect's race, ethnicity or religion in a manner not in the public interest (i.e. not necessary for the apprehension of the suspect). As in France, Austria and other countries examined, media reports also highlight suspects' failure to make a statement, i.e. using their right to remain silent, as evidence of guilt.

In the case of the Greek sampled reporting, the press also represented suspects as guilty by portraying visuals of them in physical restraints, or in a glass box in court. In only 27% of the sampled media coverage was the "presumption of innocence" mentioned at all. As in France, especially, excessive weight was given in the Greek reporting to statements by the public prosecutors or investigating authorities implying or stating that the suspect is guilty.

Similarly, too, reference is systematically made to a suspect's prior criminal record.

The Greek reporting also relies heavily on presumption of innocence violating 'clickbait' dynamics, just as in particular the Austrian tabloid press and far right online news platforms. In other words, headlines are sensationalised, allegations and dangers are exaggerated, and all this occurs in the statement of guilt as fact in the headline, whereby the alleged crimes and guilt of the suspect are stated as fact. In the Greek reporting, 90 percent of the online articles sampled involved some form of clickbait.

Greek reporting, as in France and Austria in particular, made strong use too of anonymous sources with information and quotes indicating guilt. Again, in crimes involving physical harm, vague sourcing phrases of inculpatory information are used such as "police information indicates". This is similar to the "sources close to the investigation" phrase used in France, or the "insiders say" used in Austrian tabloid and online reporting.

In a dynamic that is particularly strong in Greece, because of the above-mentioned polarisations due to the financial crisis and possibly as collateral damage, the Greek reporting samples indicated stark levels of bias against presumption of innocence. This cultivation of 'antipathy' towards political actors as suspects depending on where they fit in in the political spectrum is served by disregarding the obligation to respect presumption of innocence. So politicised is the media in Greece, that a right-wing media outlet is more likely to violate the right to presumption of innocence for a suspect of a left-wing political stature, than for a right wing one, and vice versa.

5.5. Hungary

Hungary's right-wing nationalist government has presented migration as an existential threat to a white Christian Hungary. The space for critical reporting in the country is severely restricted and has been seen in this study to substantiate the primary comparative commonality finding: the presumption

of innocence is more likely to be violated when the suspects are not citizens of the country, and in particular if they are refugees or asylum seekers or Muslims.

In the case of Hungary the predominant violation of the presumption of innocence related to migrants manifested itself in two primary forms: i) in, as in Austria, France and Croatia, an underscoring of the non-national origin of the suspect, as well as of their migrant status, when the case was one not linked per se in the populist discourse to migration, and ii) an underscoring of the migrant status in crimes seen in populist fuelled public discourse as linked to the dangers of migration, such as sexual assault.

It should be noted that failure of the term “presumption of innocence” to appear in any of the sampled articles does not necessarily mean that presumption of innocence is being violated, because the presumption of innocence can be underscored in other clear-cut semantic ways. In British reporting for example (not part of this study) that phrase is not used but instead the terms alleged, allegations, suspected of etc are designed to avoid violating the presumption of innocence. In Austrian tabloid reporting insertion of the throwaway phrase “the presumption of innocence exists” after an article full of violations does not diminish the gravity of them. Especially the media close to the government were keen to highlight the migrant aspect of such crimes, thus portraying any migrant suspects as guilty in the court of public opinion.

5.6. Spain

The samples analysed in Spain offer an apparent aberration from the norm apparent in the other countries, because of the absence on the Spanish market of sensationalist print tabloids. Sensationalist TV shows exist, in which there is a degree of presumptuous discussion of migrants as suspects (in a consolidation of the apparent trend emerging from our analysis of the other countries) but these shows were not part of the sampling. This explains the reasons why, overall, the Spain reporting analysed appears to be less contravening of the standards of presumption of innocence than the reporting in the other countries examined.

Nonetheless, in the Spanish example, some commonalities could still be observed with the reporting in the other countries examined.

For a start, as in the other countries, suspects were often identified with full name and photo, particularly when they had a degree of social notoriety. Similarly, as in the other countries examined, TV coverage was by far the least dismissive of presumption of innocence standards.

Likewise, suspects are regularly shown in handcuffs in the presence of, or being led by, police officers. In a number of instances, also included in the imagery and/or descriptive are crowds shouting for justice.

As in the other countries examined, reference to past convictions, even when unrelated to the crime for which the suspect has currently been arrested, is the norm among Spanish journalists. For example a suspect in the reported killing of a teenager was reported as having “a criminal record of minor threats to his wife”.

In another commonality – with the most prevalent infringement of the suspects’ right to the presumption of innocence across all countries examined – the Spanish reporting consistently referred to suspects as “criminals”, implying as fact their guilt through choice of wording and terminology. As with the other countries, this occurred primarily in the headlines. In fact, this type of sensationalist presumption of innocence violating headline – in the absence of tabloids, which disappeared in 2018 -

is most common in the online-native news websites that are relative newcomers to the Spanish media scen, and for whom the number of unique visitors drawn in by juicy headlines is key to advertising revenue.

Despite the absence of sensationalist tabloids on the Spanish market, though, the second primary communal finding across all countries examined is the naming of the race, nationality or religion of the suspects, albeit it not to the degree prevalent in the tabloid media present in the other countries.

As in the other countries examined, TV news is the least disrespectful of the notion of presumption of innocence, with the sensationalist coverage of suspects left, as noted, to the talk shows (not part of this study). In fact three such talk shows were reprimanded by the regulator in 2018 for violating the principle of presumption of innocence in the case of a suspect who was ultimately found to have no bearing on the reported crime.

Given the stature of the legacy print dailies in Spain as part of a collegial ‘fraternity’ between journalists and the political class, it may be no surprise that these legacy print outlets are more careful in terms of underscoring race and religion of suspects especially when they are migrants or Muslim. This is a trend observable in other countries too, whereby it is noticeable that where the independence of the legacy print media has been usurped by an anti-migrant populist government, as in Hungary, violation of the right to presumption of innocence for migrants and refugees and Muslims is increasingly violated.

5.7. Malta

The Malta sampling analysis strongly consolidated the primary findings in the other countries. The cases indicate that journalists from across all media platforms made explicit reference to the nationality and ethnicity of suspects. This can be at once seen as a commonality and a point of difference with the other countries, in the sense that Malta does not show a degradation of the right to presumption of innocence especially among migrants from public broadcaster through legacy broadsheets to tabloids and online Internet platforms. But the striking commonality is that here again we see the nationality and ethnicity of suspects underscored when they are non-Maltese. Maltese suspects are not referred to as Maltese. In a similarity with Austria and France, even when a suspect holds Maltese citizenship but is of non-Maltese origin, the suspect’s non-Maltese origin is underscored. For example, we see a headline “Russian with Maltese citizenship”.

Another commonality with the other countries examined prevalent in Malta was the type of photographs and video portraying suspects entering court buildings, through front entrances, handcuffed and in the presence of police officers. Such photos and footage are broadcast, and presented in print and online. In the Malta case, there was less reference to previous criminal convictions than in the other countries examined.

6. Comparison of efficacy of media governance and (self)-regulation

The existence (or not) of regulatory frameworks and self-regulatory bodies such as press councils appears, from the samples we analysed, to have less of a bearing on respect or not for the presumption of innocence than does the political situation in the country (for eg a populist free media-eroding

government in Hungary, a crisis-riven political class in Greece, and a political class that according to critics has a fraternal relationship with many legacy journalists in Spain), and also the structural business imperatives and contexts relevant to the media (for eg the need for a maximum number of clicks for online news).

These findings across the countries we analysed, where transgressions against the principle of the presumption of innocence are occurring, indicate that regulators and press complaints commissions and press councils do not seem to be effective in terms of changing the situation.

6.1. Austria

One of the problems is the lack of legitimisation some of these bodies hold, because of a refusal of all actors to respect their legitimacy, such as in Austria where the tabloids are not members of and do not recognise the self-regulatory authority of the Council, or their politicisation.

And yet it is the Austrian Press Council that monitors compliance with its “Code of Ethics for the Austrian Press”. As a consequence, the most egregious violators of it (tabloids and online news sites) with regard to the presumption of innocence, do not recognise its authority, or value, and refuse to abide by its opinions. In particular they do not abide by its advice to publish its opinions on complaints levelled against a particular media outlet over its reporting. This means that tabloid and online news site consumers in Austria never see an opinion by the Press Council regarding violation of the presumption of innocence, especially with regard to migrants and Muslims, if this occurs in the tabloids or online news websites.

The Austrian Press Council specifically accords people “Protection against general disparagement, general suspicion and discrimination of a person or groups of persons.” And yet the very media outlets that do not recognise the legitimacy of the Council are the lead violators of the presumption of innocence, in particular of a group of persons based on their status as migrants, foreigners and Muslims.

6.2. Croatia

Croatia’s Journalist Association contains specific guidelines for journalists reporting on suspects, as does the Ethics Code for Journalists and Creative Staff of Croatian Radio & Television.¹³ The former underscores that “the constitutional principle of presumption of innocence of the accused is to be respected when reporting on court proceedings, as well as the dignity, integrity and feelings of all parties to the dispute. The reference of the latter Ethics Code is: “In reporting on crimes and court proceedings, journalists and editors must respect the constitutional and legal presumption that a person is innocent until a valid court verdict has declared him guilty. The expressions such as “suspect”, “defendant”, “accused” and “convicted” have to be used correctly and accurately, in accordance with criminal law.” The Ethics Code notes that journalists should not reveal the identities of suspects, nor information about them, unless it has already been made public by the police or another state body or is revealed by permissible and trusted other sources. The self-regulatory body, which can reprimand or sanction, has not done so in the last four years in relation to ethics violations regarding the

¹³ Croatian Radiotelevision, Ethics Code for Journalists and Creative Staff, available at https://www.hrt.hr/fileadmin/video/ETicki_kodeks_za_novinare_i_kreativno_osoblje_HRT_a.pdf

presumption of innocence, though. In terms of self-regulation through peer standard-setting, only two Croatian media platforms were found to have ethical codes on their websites: Croatian Radio & Television, and the daily newspaper Večernji list. The ethical code of the latter does not mention the presumption of innocence.

6.3. France

In France, there is no Press Council, possibly due to fears that it would hamper journalistic freedoms, especially since the Vichy Regime, which collaborated with the Nazis during World War II, introduced such a body.

Nonetheless, the National Union of Journalists has had a charter on journalists' ethics since 1918, which specifically states that journalists must respect the dignity of persons, and the presumption of innocence, and must not act like the police or a judge. Additionally, a charter of daily regional newspapers includes comprehensive guidelines on reporting on suspects and the presumption of innocence.

Meanwhile, the Conseil Supérieur Audiovisuel, or Higher Audiovisual Council, seeks to ensure that audio and visual broadcast companies both have – and comply with ethical charters. The jurisdiction of this authority does not cover the press.

6.4. Greece

In Greece, the Union of Athens newspaper editors has a journalistic code accepted by the PanHellenic Federation of Authors and recognised across the press industry, and the National Broadcasting Council monitors broadcasting standards.

Unlike the other countries examined in this report, Greece also has a digital media code of conduct that binds, in a self-regulatory fashion, members of the Online Publishers Association.

This progressive dynamic though is counterbalanced by the fact that the media companies themselves do not have their own ethical charters and codes. And the conservatism of publishers coupled with the reticence of managing editors means they will not submit to a supervisory mechanism by independent bodies such as Press Councils. Furthermore, the various associations and regulatory bodies are heavily politicised damaging their credibility as independent arbiters of ethics.

6.5. Hungary

Hungary has a self-regulatory complaints handling system operated by the Forum of Editors-in-Chief, the Hungarian Publishers Association, and the Association of Hungarian Content, complete with an ethical code, but the influence of the body is weak. Its independence is also in question, because all of its decisions must be reviewed by the all-powerful Media Council, a regulatory body staffed with government loyalists. Indeed, the structure and powers of the Media Council (created after the current government took power a decade ago) have been strongly criticised by human rights observers, and played a significant role in the evaluation by Freedom House and others of Hungary as being no longer

fully democratic. The power of the Media Council in the context of the right to presumption of innocence can be seen to be particularly noxious. If we imagine that the self-regulatory body wishes to reprimand a media outlet for failing to respect the presumption of innocence related to a Muslim migrant suspect, such a wish would have to be approved by the Media Council whose staff are aligned with the government's view that migration and Muslims are an inherent danger to the country. It is thus unlikely that such a decision would be implemented.

6.6. Spain

Spain has a code of ethics approved by the federation of press associations that serves as a guiding light, and this code makes explicit reference to the right to the presumption of innocence, noting, "5.- The journalist must assume the principle that all persons are innocent for as long the contrary is demonstrated ..."

Unlike in most of the other countries examined, legacy newspapers have clear ethical codes in their editorial guidelines, and the public broadcaster has a particular article in its code, on the presumption of innocence, that is a reflection of the one in the Press Association code.

The Federation of Press Associations also established in 2006 a Committee of Arbitration, Complaints and Ethics of Journalism, recognised by virtually all benchmark media outlets. As noted though this achievement is rendered easier in Spain by the absence of tabloids on the market. The Committee cannot sanction but relies on public shaming instead.

Audiovisual councils monitor broadcast coverage of trials, with one of them noting that no one should be referred to even as 'accused' before the oral stage of a trial.¹⁴

6.7. Malta

In Malta, broadcasting is overseen by the Broadcasting Authority which underscores the need for ethical considerations, accuracy, and balance, as well as respect for privacy, in reporting but unlike in France for example there are no specific provisions for standards relating to the portrayal of suspects and the right to the presumption of innocence.

The Institute of Maltese Journalists meanwhile in theory self-regulates through a set of guidelines it has established. The Code of Journalistic Ethics comprises a set of guiding principles and also incorporates a Press Ethics Commission for handling complaints. The Code does note that in crime and court reporting facts are of the essence¹⁵. However, as in the other countries examined, we once again see a yawning chasm between the principles of self-regulatory professional journalistic standards mechanism and actual practice, whereby in Malta the failings appear even more grave in the sense that they appear to consistently span all types of media platform when it comes, for example, to underscoring the ethnicity and religion of suspects when they are not Maltese.

¹⁴ p. 31, Consejo del Audiovisual de Andalucía (2013). *Derecho a la información y justicia. Guía sobre el tratamiento informativo de los procesos judiciales*. Retrieved 15 November 2018 from http://www.consejoaudiovisualdeandalucia.es/sites/default/files/noticia/pdf/1303/guia_para_el_tratamiento_informativo_procesos_judiciales.pdf.

¹⁵ Paragraph 7 and 8 of the Code of Journalistic Ethics, Institute of Maltese Journalists <https://igm.org.mt/resources/code-of-journalistic-ethics/>

In summary, each of the countries we examined has some form of self-regulatory and regulatory mechanism. But these vary widely both in form and efficacy. It is possible to say though, that in countries (Spain, for example) where there is a longstanding tradition of such bodies, and in which they are seen to be fairly effective, the degree of violation of the principle of presumption of innocence tends to be lower than in countries (Hungary, Austria, Greece, Croatia for example), where they are seen to be ineffective because of lack of buy-in, lack of acknowledgment or politicisation. Nonetheless, even in France the self-regulatory mechanisms are not sufficient to significantly counter the violation of the presumption of innocence particularly when it comes to Muslim and migrants suspects.

7. Comparative Conclusions

Our study has identified a number of forms of transgression against the principle of the presumption of innocence that were in evidence in the samples analysed, across all countries examined:

7.1. Allegations as fact

The single most common form of the violation of the right to presumption of innocence, across all countries examined (albeit to varying degrees dependent on political, structural, and economic contexts) was the portrayal, through video material, images, and text, of allegations as fact. This occurred most often in headlines, but in certain countries more than others (e.g. Austria) also in the text. For instance, suspects are referred to as criminals in the headline, or as killers or rapists or abusers, with no reference to ‘alleged’ or ‘suspected’.

7.2. ‘Outsiders’: foreigners, migrants, Muslims & refugees

The violation of the right to the presumption of innocence is highest with regard to suspects who do not hold the citizenship of the country in question i.e. are either visibly not likely or expected to belong to assumed national identities or are characterised as such due to their status. Among such suspects it is highest among those who are migrants, refugees, or Muslim (or a combination of two or more of the three). In such instances, the primary manner of violation is as noted above the portrayal of allegations as fact, through the failure to include adjectives that underscore the presumption of innocence such as ‘alleged’ or through the use of pejorative terms and insinuations.

The second most consistent form of violation the consistent, across all countries examined, was the deliberate and pronounced underscoring of a suspect’s ‘foreign’ citizenship. Additionally, there was consistent emphasised reference to suspects’ status as migrants, refugees, and asylum seekers. Also consistent across the countries examined was reference to the suspect’s religion if this was Muslim. Other religious affiliations were not underscored. It is clear from the analysis that reference to the foreign status of these categories of suspects, and the underscoring of their Muslim religion, particularly by tabloids (online and off) and online news websites is designed to maximise circulation and especially unique online ‘clicks’, in turn linked to the financial imperative of advertising as a revenue model. A further motivation may be an effort to appear to be on board with a government’s anti-migrant or anti-Muslim attitudes and policies (whether these are covert or overt), in a quest for

continued or increased government advertising spend. It also cannot be ruled out that to a certain extent this apparent prejudice against foreigners, migrants and Muslims is in certain cases also a direct result of existing prejudices in the newsroom, on the part of editors and journalists, especially as a consequence of the migrant 'crisis' of 2015, a rising tide of anti-migrant and anti-Muslim political populism, and a wave of lone wolf terrorist attacks across Europe carried out by Muslims.

7.3. Flawed use of anonymous sources

While the professional, ethical use of anonymous sources is a lynchpin of watchdog journalism in democratic societies, across the countries examined, regular flawed use is made of 'anonymous sources' for quotes and information that indicates guilt of the suspect, whereby such quotes and information are not countered with rebuttals from the suspect or the suspects lawyers, or their family members or friends or neighbours. Often these anonymous sources are described in the reporting as being "close to the investigation", implying deep inside knowledge indicating guilt. Where quotes are on the record, they disproportionately favour negative comments indicating guilt, whether these are from the judge, the victims' families, the victims' lawyer, neighbours etc. In short, the principle of balanced and fair reporting that underpins professional journalism in general, in theory, and indeed the reporting on suspects in particular, in line with the right to the presumption of innocence, is being regularly undermined across the reporting in the countries we examined.

7.4. Layering of transgression intensity, by media type

A clear degradation of respect for the principle of the presumption of innocence is observable, in all countries, across the media type examined. Thus, the least objectionable reporting in terms of respect for the presumption of innocence was observable in public broadcasters (where they are independent of government control – not the case in Hungary). The public broadcasters tended to underscore the fact that a suspect was accused or suspected of a crime, but was presumed innocent. Likewise, independent public broadcasters were the least likely to underscore a suspect's status as a refugee, migrant or Muslim. This may be in great part due to the fact that unlike private broadcasters, as well as other forms of private media outlets, public broadcasters are not dependent on advertising revenue for their business model, and as such do not rely on 'clickbait' type strategies that increasingly (observed across all countries examined) rely on the sensationalism of crimes committed by foreigners, migrants and Muslims, as evidence of a purported 'threat' to national cultures, religions, norms, values, identities and the safety of national citizens.

Next came the private TV broadcasters. Not as respectful as the public broadcasters of the presumption of innocence, their primary transgression was – in line with the overall lead common trend – a failure to clearly avoid stating or implying that allegations are facts of a crime committed by a suspect. Nonetheless, the private broadcasters were on the whole less likely to underscore a suspect's race, ethnicity, religion or status as a 'foreigner'.

The so-called quality, or legacy, print media, where they are independent, were also, on the whole much less likely to violate the standards of presumption of innocence. As noted, this may have to do with the fact that in the countries examined, the legacy quality print media tend not to report on salacious crime, but are more forums for reporting on politics. Exceptions are yet again when the broadsheets fall under the control of anti-migrant anti-Muslim leaders and governments, when the

policy shifts from alignment with ethical and legal principle, to alignment with government policy (this is as noted also the case with public broadcasters).

Most likely to violate the standards of the presumption of innocence were the tabloids in all countries examined (where they existed; in Spain there are no tabloids anymore). The tabloids – both online and off – were the most likely to a) state allegations as fact, in headlines and to a lesser extent, but still consistently, in the body of the text b) use pejorative words, adjectives, language, ironic twists of phrase (*e.g.* “Absurdistan – see Austria) to attribute guilt to suspects either overtly, implicitly, by inference, by association etc. Again, this was by far most likely to occur if the suspects were migrants, refugees, asylum seekers, or Muslims.

The biggest offenders in this respect were the online news websites aligned with populist or far-right ideologies and political parties such as *unzensuriert.at* in Austria. Although such news websites are not as widespread and do not have the reach of the tabloids, they nonetheless enjoy a degree of magnification through social media platform sharing, especially on Facebook, meaning they should by no means be ignored. *Unzensuriert.at* and other such websites systematically state allegations as fact, omit any reference to the presumption of innocence, highlight suspects’ foreign, migrant and Muslim status and – to a degree even more intense than the tabloids – display an overt bias in headlines and text against migrants and Muslims. This can even include, as in the case of *unzensuriert.at* (see Austria) insertion of a sarcastic tag to denote ‘yet another’ ‘isolated case’ of violence committed by a foreigner, migrant or Muslim, or open anti-Muslim anti-migrant opinionizing in news reports involving such suspects.

7.5. The link between press freedom and presumption of innocence reporting

Our study paid heed to the press freedom situations in each of the countries for which news reporting on suspects was sampled. Correlations and commonalities in this respect were sometimes notable, but overall mixed. For example, Austria ranks highest (11th) of all countries overall in the Reporters without Borders World Press Freedom Index, and yet is by no means the least egregious offender when it comes to violation of the presumption of innocence. Indeed, Austrian tabloids (online and off) and the Austrian news website *unzensuriert.at* are among the most intense offenders as per our sampling. This may be explained by the grading of the Media Pluralism Monitor, which although slotting in Basic Protection at ‘Low Risk’ attributes ‘Medium Risk’ to the other three categories: Market plurality; political independence; and social inclusiveness. France for example, despite coming in much lower on the Reporters without Borders ranking (33rd) is graded Low Risk in all four media plurality categories, and we note from our analysis that while French media reporting on suspects violates their presumption of innocence rights in certain ways that are common to all countries examined, it does so with less intensity and less virulently than for example Austria and Hungary.

Spain, meanwhile, which ranks 31st in the Reporters without Borders ranking, and Medium Risk in all four media pluralism monitoring categories, is the least egregious violator of the presumption of innocence, in our study. However, this may be explained by the absence on the media landscape of tabloid media outlets which ceased to exist amid shifting structural media winds in 2018.

One clear correlation between press freedom and the violation of suspects’ rights to the presumption of innocence is Hungary – the only country among those included in our study, which is ranked by

Freedom House as only 'partly free', meaning not fully democratic, despite shortcomings. This is due to the well-documented erosion by the Hungarian government and ruling party of among other things, media plurality, and media independence, in a climate of populism and illiberalism based in great part on the vilification of migrants and Muslims.

In the case of Hungary, there is a clear link between the parlous state of press freedom and violations against the presumption of innocence, with Hungary emerging as one of the worst offenders in our study. Unlike in other countries, the public broadcaster (firmly aligned staff-wise, editorially and ideologically with the ruling party) does not emerge as a bastion of on the whole good case reporting on suspects, particularly migrants and Muslims.

Naturally, the wide-reach broadsheets and tabloids also align with a policy of vilification of migrants and Muslims and are thus regular violators of the principle of presumption of innocence.

7.6. Regulation and self-regulation

Press bodies, as regulatory or self-regulatory mechanisms – in the various forms in which they exist in the countries examined – are failing to counter the systematic violation of the principle of presumption of innocence. In particular, they appear unable or unwilling to counter the particularly concerning trend of the violation of the principle of presumption of innocence focused specifically and disproportionately on Muslims and migrants. This is due to a variety of reasons: 1) politicisation of the regulatory body in question 2) lack of legitimacy because unable to oblige all media outlets (especially the most egregious violators) to recognise its authority and abide by its 'voluntarily accepted' sanctions.

Additionally, the most significant of self-regulatory mechanisms – ethical oversight by editors, peer example setting, and voluntary subscription by journalists to the professional values, and principles, of the profession, appear to be systematically failing in respect to the principle of the presumption of innocence, with that failure particularly visible in regard to migrants and Muslims, and 'foreigners'. The value and indeed necessity of such peer-led editorial value setting and adherence is specifically mentioned by the Austrian press Council as a vital aspect of the upholding of democratic values and norms. And yet when it comes to the presumption of innocence this peer-led example setting is failing in Austria, and in the other countries we examined.

This raises the possibility, as mentioned before, that even in countries where journalistic independence has not been deliberately and systematically eroded by the ruling party (Hungary), the growing wave in Europe of populism and anti-foreigner, anti-migrant rhetoric, which is making its mark across countries' socio-cultural, political and other sectors is doing so also in the field of journalism.

In this respect, a possibly useful future study could be examination in these same countries, of opinions expressed online, on Twitter and Facebook, by journalists regarding Muslims and migrants (and violating the principle of presumption of innocence).

8. Comparative matrix

A comparative matrix for 'legal framework', 'professionalism', 'media landscape', and 'reporting on suspects', comprising each of the countries examined, can be found [here](#).

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10. Annexes

10.1. Annex 1: Typology of crimes as per criminal code of countries participating in the project (representative list based on criminal code of Hungary) 16:

-CRIMES AGAINST HUMANITY, Genocide, Crime of apartheid;

- WAR CRIMES (Illegal Recruitment, Breach of Armistice, Assault Against a War Emissary, Assault on Protected Persons, Command to Liquidate Survivors, Human Shield, Unlawful Enlistment, Assault on Protected Property, War-Time Looting, Use of Weapons Prohibited by International Convention, Assault Against a Humanitarian Organization, Criminal Offenses with Internationally Protected Signs and Marks);

- CRIMES AGAINST LIFE, LIMB AND HEALTH (Homicide, Voluntary Manslaughter, Aiding and Abetting Suicide, Battery¹⁷, Professional Misconduct, Failure to Offer Aid or Assistance, Failure to Provide Care);

- MEDICAL PROCEDURES AND CRIMINAL OFFENSES AGAINST THE ORDER OF RESEARCH (Illegal Use of Human Gametes, Violation of the Rules of Experimental Research on Humans, Violation of the Rules of Experimental Research with Embryos or Gametes, Producing Genetically Identical Human Individuals, Illegal Use of a Human Body);

- CRIMINAL OFFENSES AGAINST HEALTH (Drug Trafficking, Possession of Narcotic Drugs, Inciting Substance Abuse, Aiding in the Manufacture or Production of Narcotic Drugs, Criminal Offenses with Drug Precursors, Illegal Possession of New Psychoactive Substances, Criminal Offenses with Performance Enhancers, Falsification of Health Care Products, Charlatanry, Criminal Offenses with Toxic Substances, Criminal Offenses with Harmful Consumer Goods);

- OFFENCES AGAINST PERSONAL FREEDOM (Kidnapping, Misprision of Kidnapping, Trafficking in Human Beings, Forced Labor, Violation of Personal Freedom, Duress¹⁸);

- SEXUAL FREEDOM AND SEXUAL OFFENSES (Sexual Exploitation, Sexual Violence, Sexual Abuse, Incest, Pandering, Procuring for Prostitution or Sexual Act, Living on Earnings of Prostitution, Exploitation of Child Prostitution, Child Pornography, Indecent Exposure);

- OFFENSES AGAINST CHILDREN AND AGAINST FAMILY LAW (Abuse of a Minor, Child Labor, Preventing the Exercise of Visitation Rights, Changing of the Custody of a Minor, Nonsupport, Domestic Violence, Violation of Family Status, Plural Marriage);

- CRIMES AGAINST HUMAN DIGNITY AND FUNDAMENTAL RIGHTS (Violation of the Freedom of Conscience and Religion, Violence Against a Member of the Community, Violation of the Freedom of Association and Assembly, and Participation in Electoral Rallies, Violation of the Right of Self-Determination in Medical Procedures, Misuse of Personal Data, Misuse of Public Information, Illegal

¹⁶ This list is based on criminal code [of Hungary](#) and is not final. For the final list of criminal crimes consultation national Criminal code is vital.

¹⁷ Causing bodily harm to or injures the health of another person.

¹⁸ Compelling another person by force or by threat of force to do, or to refrain from doing, some act, and thereby causing a considerable injury of interest.

Entry into Private Property, Harassment, Invasion of Privacy, Mail Fraud, Degrading Treatment of Vulnerable Persons, Defamation, Slander, Desecration);

- OFFENCES AGAINST TRAFFIC REGULATIONS (Offenses Against Transport Security, Endangerment of Railway, Air or Water Transport Systems, Dangerous Driving, Causing a Road Accident, Driving Under the Influence of Alcohol, Driving Under the Influence of Drugs, Unlawful Conveyance of Operating a Vehicle);

- CRIMINAL OFFENSES AGAINST THE ENVIRONMENT AND NATURE (Environmental Offenses, Damaging the Natural Environment, Cruelty to Animals, Poaching Game, Poaching Fish, Organization of Illegal Animal Fights, Violation of Waste Management Regulations, Criminal Offenses with Ozone-Depleting Substances, Misappropriation of Radioactive Materials, Illegal Operation of Nuclear Installations, Crimes in Connection with Nuclear Energy, Prohibition from Residing in a Particular Area);

- OFFENSES AGAINST THE STATE (Attempt to Overturn Constitutional Order by Force, Conspiracy Against Constitutional Order, Riot, Destruction, High Treason, Treachery, Espionage, Failure to Report Offenses Against the State);

- CRIMINAL OFFENSES IN CONNECTION WITH CLASSIFIED INFORMATION AND AGAINST PUBLIC RECORDS AND REGISTERS RECOGNIZED AS NATIONAL ASSETS

- CRIMES AGAINST THE JUDICIAL SYSTEM (False Accusation, Misleading of Authority, Perjury, Subornation of Perjury, Unlawful Refusal to Give Evidence, Coercion on the Part of the Authorities, Contempt, Violation of Confidentiality Related to the Judiciary, Suppressing Exculpatory Evidence, Harboring a Criminal, Escape from Custody, Prison Riot, Legal Malpractice, Pettifoggery, Breach of Seal, Obstruction of Judicial Enforcement, Obstruction of Justice in International Court);

- CRIMES OF CORRUPTION (Active Corruption, Passive Corruption, Interpretative Provisions, Active Corruption of Public Officials, Passive Corruption of Public Officials, Active Corruption in Court or Regulatory Proceedings, Passive Corruption in Court or Regulatory Proceedings, Misprision of Bribery, Indirect Corruption, Abuse of a Function);

- MALFEASANCE IN OFFICE (Mistreatment in Official Proceedings, Mistreatment in the Proceedings of Persons Entrusted with Public Functions, Unlawful Detention, Abuse of Authority, Abuse of a Public Function, Covert Investigation and Covert Information Gathering Without Authorization, Unlawful Integrity Test, Miscellaneous Provisions);

- OFFENSES AGAINST PUBLIC OFFICIALS (Assault on a Public Official, Assault on a Person Entrusted with Public Functions, Assault on a Person Aiding a Public Official or a Person Entrusted with Public Functions, Assault on a Person Under International Protection);

- OFFENSES AGAINST PUBLIC SECURITY (Acts of Terrorism, Failure to Report a Terrorist Act, Terrorist Financing, Unlawful Seizure of a Vehicle, Participation in a Criminal Organization, Public Endangerment, Interference with Works of Public Concern, Criminal Offenses with Explosives or Blasting Agents, Criminal Offenses with Firearms and Ammunition);

- CRIMINAL OFFENSES AGAINST ECONOMIC SANCTIONS IMPOSED UNDER INTERNATIONAL COMMITMENT FOR REASONS OF PUBLIC SECURITY (Criminal Offenses with Weapons Prohibited by International Convention, Violation of International Economic Restrictions, Failure to Report Violation of International Economic Restrictions, Criminal Offenses with Military Items and Services);

- CRIMINAL OFFENSES AGAINST PUBLIC PEACE (Incitement to War, Incitement Against a Community, Open Denial of Nazi Crimes and Communist Crimes, Blasphemy of National Symbol, Use of Symbols of Totalitarianism, Incitement Against a Decree of Authority, Scaremongering, Threat of Public Endangerment, Public Nuisance, Disorderly Conduct);
- CRIMINAL OFFENSES AGAINST PUBLIC CONFIDENCE (Forgery of Administrative Documents, Forgery of Secure Identification Documents, Use of a Forged Private Document, Criminal Offenses with Authentic Instruments, Criminal Offenses with Individual Identifiers);
- CRIMINAL OFFENSES RELATED ADMINISTRATIVE PROCEDURES (Criminal Offences related to Elections, Referendum, Popular Initiative and European Citizens' Initiative, Abuse of the Right of Association, Unlawful Activities Concerning the Pursuit of Public Security, Illegal Immigrant Smuggling, Facilitation of Unauthorized Residence, Abuse of Family Ties, Unlawful Employment of Third-Country Nationals, Vandalism of Historic Monuments or Protected Cultural Goods, Criminal Offenses with Protected Cultural Goods, Violation of Legal Liabilities Relating to the Keeping of Dangerous Animals and Dangerous Dogs, Unlawful Gambling Operations, Violation of Epidemic Control Regulations, Violation of Legal Liabilities Relating to Genetically Modified Plant Varieties);
- VIOLENT CRIMES AGAINST PROPERTY (Robbery, Plundering, Extortion, Private Justice, Interpretative Provisions);
- OFFENSES AGAINST PROPERTY (Theft, Vandalism, Embezzlement, Fraud, Economic Fraud, Information System Fraud, Misappropriation of Funds, Defalcation, Unlawful Appropriation, Dealing in Stolen Goods, Larceny of Motor Vehicle, Usury, Private Motion, Interpretative Provisions);
- CRIMES AGAINST INTELLECTUAL PROPERTY RIGHTS (Plagiarism, Infringement of Copyright and Certain Rights Related to Copyright, Compromising the Integrity of Technical Protection, Falsifying Data Related to Copyright Management, Infringement of Industrial Property Rights);
- CRIMINAL OFFENSES RELATING TO COUNTERFEITING CURRENCIES AND PHILATELIC FORGERIES (Counterfeiting Currency, Aiding in Counterfeiting Operations, Forgery of Stamps, Counterfeiting of Cash-Substitute Payment Instruments, Cash-Substitute Payment Instrument Fraud, Aiding in Counterfeiting Cash-Substitute Payment Instruments);
- CRIMINAL OFFENSES AGAINST PUBLIC FINANCES (Fraud Relating to Social Security, Social and Other Welfare Benefits, Budget Fraud, Omission of Oversight or Supervisory Responsibilities in Connection with Budget Fraud, Conspiracy to Commit Excise Violation);
- MONEY LAUNDERING
- ECONOMIC AND BUSINESS RELATED OFFENSES
- CRIME AGAINST CONSUMER RIGHTS AND ANY VIOLATION OF COMPETITION LAWS
- ILLICIT ACCESS TO DATA AND CRIMES AGAINST INFORMATION SYSTEMS
- OFFENSES AGAINST MILITARY OBLIGATIONS
- MILITARY OFFENSES

10.2. Annex 2: Categories of prejudice against the presumption of innocence identified during coding

This information is present in media coverage:

(i) the prior criminal record of a defendant or a person or entity who has been publicly identified in the context of a criminal investigation;

- Yes / no.

If yes, please, indicate:

- Is it relevant?

- Is it proportional?

- Is it mentioned briefly or described in detail?

- Is it emotionally laden (reproachful or rather neutral?)

- Is it contextualized or given out of the context (for example, unnecessary information or information related to the past events)?

(ii) the character, credibility, or reputation of a defendant or a person or entity who has been publicly identified in the context of a criminal investigation, or the race, ethnicity, creed, religion, or sexual orientation of such person unless such information is necessary to apprehend a suspect or fugitive;

Yes / no.

If yes, please, indicate:

- What kind of information is included in media coverage?

- Is it relevant?

- Is it proportional?

- Is it mentioned briefly or described in detail?

- Is it emotionally laden (reproachful or rather neutral?)

- Is it contextualized or given out of the context (for example, unnecessary information or information related to the past events)?

(iii) the personal opinion of the prosecutor as to the guilt or innocence of a defendant or a person or entity who has been publicly identified in the context of a criminal investigation;

Yes / no.

If yes, please, indicate:

- Is it relevant?

- Is it proportional?
- Is it mentioned briefly or described in detail?
- Is it emotionally laden (reproachful or rather neutral?)
- Is it contextualized or given out of the context (for example, unnecessary information or information related to the past events)?

(iv) the existence or contents of any confession, admission, or statement given by a defendant or a person or entity who has been publicly identified in the context of a criminal investigation, or the refusal or failure of such person to make a statement;

Yes / no.

If yes, please, indicate:

- What kind of information is included in media coverage?
- Is it relevant?
- Is it proportional?
- Is it mentioned briefly or described in detail?
- Is it emotionally laden (reproachful or rather neutral?)
- Is it contextualized or given out of the context (for example, unnecessary information or information related to the past events)?

(v) the performance or results of any examinations or tests, or the refusal or failure to submit to an examination or test by a defendant or a person or entity who has been publicly identified in the context of a criminal investigation;

Yes / no.

If yes, please, indicate:

- What kind of information is included in media coverage?
- Is it relevant?
- Is it proportional?
- Is it mentioned briefly or described in detail?
- Is it emotionally laden (reproachful or rather neutral?)
- Is it contextualized or given out of the context (for example, unnecessary information or information related to the past events)?

(vi) the nature of physical evidence expected to be presented;

Yes / no.

If yes, please, indicate:

- Is it relevant?
- Is it proportional?
- Is it mentioned briefly or described in detail?
- Is it emotionally laden (reproachful or rather neutral?)
- Is it contextualized or given out of the context (for example, unnecessary information or information related to the past events)?

(vii) the identity, race, ethnicity, creed, religion, or sexual orientation, expected testimony, criminal record, character, reputation, or credibility of prospective witnesses other than the victim, and the race, ethnicity, creed, religion, sexual orientation, expected testimony, criminal record, character, reputation, or credibility of the victim;

Yes / no.

If yes, please, indicate:

- What kind of information is included in media coverage?
- Is it relevant?
- Is it proportional?
- Is it mentioned briefly or described in detail?
- Is it emotionally laden (reproachful or rather neutral?)
- Is it contextualized or given out of the context (for example, unnecessary information or information related to the past events)?

(viii) the possibility of a plea of guilty to the offense charged, or other disposition;

Yes / no.

If yes, please, indicate:

- What kind of information is included in media coverage?
- Is it relevant?
- Is it proportional?
- Is it mentioned briefly or described in detail?
- Is it emotionally laden (reproachful or rather neutral?)
- Is it contextualized or given out of the context (for example, unnecessary information or information related to the past events)?

(ix) information that the lawyer knows or has reason to know would be inadmissible as evidence in a trial».

Yes / no.

If yes, please, indicate:

- What kind of information is included in media coverage?
- Is it relevant?
- Is it proportional?
- Is it mentioned briefly or described in detail?
- Is it emotionally laden (reproachful or rather neutral?)
- Is it contextualized or given out of the context (for example, unnecessary information or information related to the past events)?

Questions based on Article 5 of the EU DIRECTIVE ON THE PRESUMPTION OF INNOCENCE:

(x) public statements of Public authorities referring to the suspect or accused person as being guilty until guilt has been proved according to the law

Yes / no.

If yes, please, indicate:

- Is it relevant?
- Is it proportional?
- Is it mentioned briefly or described in detail?
- Is it emotionally laden (reproachful or rather neutral?)
- Is it contextualized or given out of the context (for example, unnecessary information or information related to the past events)?

(xi) Information on the criminal proceedings disseminated by authorities when it is not strictly necessary for the purpose of the criminal investigation or in the public interest

Yes / no.

If yes, please, indicate:

- Is it relevant?
- Is it proportional?
- Is it mentioned briefly or described in detail?
- Is it emotionally laden (reproachful or rather neutral?)
- Is it contextualized or given out of the context (for example, unnecessary information or information related to the past events)?

(xii) any other information that breaches of the obligation not to refer to suspects or accused persons as being guilty

Yes / no.

If yes, please, indicate:

- What kind of information is included in media coverage?
- Is it relevant?
- Is it proportional?
- Is it mentioned briefly or described in detail?
- Is it emotionally laden (reproachful or rather neutral?)
- Is it contextualized or given out of the context (for example, unnecessary information or information related to the past events)?

2. Visual portrayal (based on Article 5 of the EU DIRECTIVE ON THE PRESUMPTION OF INNOCENCE)

This information is present in media coverage:

(xiii) Representation of suspects or accused as being guilty through the use of measures of physical restraints (for instance: handcuffs, cages, leg irons or other means of enclosures, a glass box)

Yes / no.

If yes, please, indicate:

- What kind of information is included in media coverage?
- Is it relevant?
- Is it proportional?
- Is it mentioned briefly or described in detail?
- Is it emotionally laden (reproachful or rather neutral?)
- Is it contextualized or given out of the context (for example, unnecessary information or information related to the past events)?

(xv) (xiii) Representation of suspects or accused as being guilty through the use of prison clothes or excessive police supervising:

Yes / no.

If yes, please, indicate:

- What kind of information is included in media coverage?

- Is it relevant?
- Is it proportional?
- Is it mentioned briefly or described in detail?
- Is it emotionally laden (reproachful or rather neutral?)
- Is it contextualized or given out of the context (for example, unnecessary information or information related to the past events)?

10.3. Annex 3: Prejudicial information in media coverage guidelines, American Bar Association (2013)

«Statements regarding the following subject areas, when made by prosecutors, pose a particular risk of violating Standard 8-2.1(a) and therefore ordinarily should be avoided by a lawyer participating in a criminal matter as a prosecutor during the pendency of that matter:

- (i) the prior criminal record of a defendant or a person or entity who has been publicly identified in the context of a criminal investigation;
- (ii) the character, credibility, or reputation of a defendant or a person or entity who has been publicly identified in the context of a criminal investigation, or the race, ethnicity, creed, religion, or sexual orientation of such person unless such information is necessary to apprehend a suspect or fugitive;
- (iii) the personal opinion of the prosecutor as to the guilt or innocence of a defendant or a person or entity who has been publicly identified in the context of a criminal investigation;
- (iv) the existence or contents of any confession, admission, or statement given by a defendant or a person or entity who has been publicly identified in the context of a criminal investigation, or the refusal or failure of such person to make a statement;
- (v) the performance or results of any examinations or tests, or the refusal or failure to submit to an examination or test by a defendant or a person or entity who has been publicly identified in the context of a criminal investigation;
- (vi) the nature of physical evidence expected to be presented;
- (vii) the identity, race, ethnicity, creed, religion, or sexual orientation, expected testimony, criminal record, character, reputation, or credibility of prospective witnesses other than the victim, and the race, ethnicity, creed, religion, sexual orientation, expected testimony, criminal record, character, reputation, or credibility of the victim;
- (viii) the possibility of a plea of guilty to the offense charged, or other disposition; and
- (ix) information that the lawyer knows or has reason to know would be inadmissible as evidence in a trial».

10.4. Annex 4: Media outlets analysed, by country

10.4.1.Austria

TV news: ORF (public); Puls 4 (private); ATV (private)

Daily newspapers: Kronen Zeitung; Heute (free); Kurier; Der Standard; Österreich (free) ; Die Presse

Online media: Addendum; Dossier; Unzensuriert.at; Vienna.at

10.4.2.Croatia

TV news: HRT1 Dnevnik (public); NovaTV (public); RTL (private)

Daily newspapers: Večernji list; Jutarnji list; 24 sata; Novi list; Slobodna Dalmacija

Weekly newspapers: 7dnevno; Globus; Nacional

Online media: Index.hr; Net.hr; T-portal)

10.4.3.France

TV news: FRANCE 2 (public); TF1 (private)

Daily newspapers: Le Parisien/Aujourd'hui en France; Le Figaro; Le Monde La Croix; Libération; L'Humanité

Weekly newspapers: Paris Match; Le Point; L'Obs

Online media: 20minutes.fr; BFMTV.com; Huffingtonpost.fr

10.4.4.Greece

TV news: ERT (public); Skai TV (private), Alpha TV (private)

Daily newspapers: Ta Nea; Eleftheros Typos; Kathimerini; Dimokratia; Efsyn

Sunday newspaper: Protothema

10.4.5.Hungary

TV news: MTV (public); RTL (private)

Daily newspapers: Blikk; Bors; Népszava; Magyar Idők; Magyar Hírlap; Ripost; Lokál; Nők Lapja; Story

Online media: 24.hu; origo.hu; index.hu

10.4.6.Malta

TV news: TVM (public); One TV (private)

Daily newspapers: Times of Malta; Malta Independent; Nazzion; I-Orizzont

Weekly newspapers: MaltaToday Midweek; Il-Mument; It-Torca

Online media: Lovinmalta; Shift news

10.4.7.Spain

TV: Televisión Española (public); Antena 3 (private)

Daily newspapers: El País; El Mundo; ABC; La Razón; La Vanguardia

Online media: El Confidencial; OK Diario; El Español; eldiario.es, The Huffington Post (Spanish version); publico.es

1. Informativni sažetak - Komparativno medijsko izvješće

Od listopada 2017. do lipnja 2019., Mađarski helsinški odbor (HHC) koordinirao je projektom namijenjenim suzbijanju prikazivanja osumnjičenih i optuženih osoba u sudnicama i javnosti na način kao da su krive, posebno od strane medija. Projekt „[Važnost prikazivanja: kako su osumnjičene i optužene osobe prikazane u medijima i javnosti](#)“ financirao je [Program za pravosuđe Europske unije](#) (2014-2020). HHC-ovi partneri na projektu bili su: Laboratorij za istraživanje medijskog upravljanja i industrija na Sveučilištu u Beču, Aditus s Malte, Fair Trials Europe iz Francuske, Kuća ljudskih prava Zagreb iz Hrvatske, Mérték iz Mađarske, Rights International Spain / Universidad Carlos III de Madrid iz Španjolske te Atenski istraživački i inovacijski centar za informacijske, komunikacijske tehnologije i tehnologije znanja iz Grčke.

Projekt je osmišljen radi promicanja ciljeva Direktive Europske unije 2016/343¹ kojom se nastoji suzbiti prikazivanje osumnjičenika na sudu i u javnosti na načine koji mogu ukazivati na krivnju. Članak 5. Direktive posebno navodi: „Osumnjičene ili optužene ne smije se na sudu i u javnosti predstavljati kao krive upotrebom mjera tjelesnog ograničavanja slobode“. Projektom se tako nastojalo proširiti znanje i kapacitete zainteresiranih strana u pogledu poštovanja pretpostavke nevinosti, identificirati dobre prakse i pružiti smjernice o tome kako predstaviti okrivljenike i osumnjičenike te senzibilizirati tijela javne vlasti, medije i javnost u pogledu važnosti utjecaja načina na koji su te osobe predstavljene.

Ovo izvješće o međunarodnoj usporednoj analizi dokumentira proces i rezultate projekta, koji također uključuju izradu alata kao i nacionalne radionice za pomoć novinarima u ugrađivanju pretpostavke nevinosti u njihovo izvještavanje.

U srži ovog komparativnog izvješća nalaze se zaključci analize sadržaja vijesti vezanih uz kriminal² objavljenih u kvalitetnim i tabloidnim tiskovinama, vijesti s isključivo internetskih portala kao i emitiranih u

televizijskim vijestima u razdoblju od lipnja do rujna 2018. godine u sedam zemalja: Austriji, Hrvatskoj, Francuskoj, Grčkoj, Mađarskoj, Malti i Španjolskoj.

Određen broj ključnih riječi identificiran je kao osnova za početno prikupljanje vijesti za analizu, a istraživači su pokušali odgovoriti na sljedeća pitanja:

Kako se presumpcija nevinosti u središtu Direktive odražava u medijima sedam država članica EU-a uključenih u ovu studiju? Poštuju li novinari presumpciju nevinosti? Kako se u optužene i osumnjičene osobe prikazuju u medijima?

Kako taj prikaz utječe na percepciju okrivljenika kao krivih ili nevinih? Koja su obilježja prikazivanja optuženika i osumnjičenika u odnosu na vrijednosti, norme i pravne odredbe Direktive? Koje bi se daljnje aktivnosti usklađivanja mogle preporučiti novinarima?

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0343>.

² Za cjelovit popis analiziranih medija prema zemljama vidi Dodatak 4.

4

Iz usporedne analize proizlaze sljedeći zaključci:

§ Jedini najčešći oblik kršenja prava na presumpciju nevinosti u svim razmatranim zemljama bilo je prikazivanje, putem video materijala, slika i teksta, *optužbe kao činjenice*, [SEP]

§ Kršenje prava na presumpciju nevinosti bilo je najveće u odnosu na osumnjičene osobe za koje se pretpostavlja da nemaju državljanstvo dotične zemlje. Među takvim osumnjičenicima bio je najveći broj migranata, izbjeglica ili muslimana (ili kombinacija dvije ili više od ove tri skupine). Drugi najdosljedniji oblik kršenja u svim razmatranim zemljama je namjerno i izričito naglašavanje „stranog“ državljanstva osumnjičene osobe. Osim toga, dosljedno se naglašavao status osumnjičenika kao migranata, izbjeglica ili

tražitelja azila. Isto tako, u svim je razmatranim zemljama bilo uočeno spominjanje religije osumnjičenika u slučaju da se radi o muslimanima. Ostale religijske pripadnosti nisu bile naglašavane.

[L]
[SEP]

§ U svim razmatranim zemljama redovito se koriste "anonimni izvori" za citate i informacije koje ukazuju na krivnju osumnjičenika; takve navode i informacije ne mogu pobijati osumnjičeni ili odvjetnici osumnjičenih, članovi njihovih obitelji ili prijatelji ili susjedi. [L]
[SEP]

§ Jasni dokazi o barem povremenom nedostatku poštovanja načela presumpcije nevinosti mogu se uočiti u svim zemljama u svim razmatranim vrstama medija, ali ovisno o vrsti medija intenzitet kršenja generalno se povećavao počevši od televizije, preko dnevnih novina, tabloida i na kraju do internetskih platformi. [L]
[SEP]

§ Povezanosti i zajedničke osobine između statusa slobode tiska i kršenja presumpcije nevinosti ponekad su bile značajne, no općenito pomiješane. Jedna jasna povezanost između slobode medija i kršenja prava osumnjičenika na pretpostavku nevinosti je Mađarska - jedina država među zemljama uključenim u istraživanje koju Freedom House rangira kao samo "djelomično slobodnu". [L]
[SEP]

§ Mediji, kao regulatorni ili samoregulatorni mehanizmi, ne uspijevaju se oduprijeti sustavnom kršenju načela pretpostavke nevinosti, posebno u odnosu na migrante i/ili muslimane. To je vjerojatno zbog oslabljenog statusa regulatornih tijela kao neovisnih nestranačkih tijela, što je posebice izraženo kroz: 1) politizaciju dotičnog regulatornog tijela; 2) nemogućnost da se svi mediji (posebno najozbiljniji prekršitelji) obvežu na priznavanje njihovog autoriteta i poštivanje njihovih "dobrovoljno prihvaćenih" sankcija. Osim toga, čini se da najznačajniji mehanizmi samoregulacije - etički nadzor od strane urednika, davanje primjera od strane suradnika i dobrovoljno pridržavanje novinara profesionalnih vrijednosti i načela struke - sustavno zakazuju. [L]
[SEP]

1. Résumé

D'octobre 2017 à juin 2019, le Comité Helsinki hongrois (CHH) a supervisé un projet visant à lutter contre la présentation des suspects et des accusés comme coupables, dans les salles d'audience et en public, en particulier par les médias. Le projet, « [De l'importance des apparences : ou comment les suspects et les accusés sont présentés au tribunal, au public et aux médias](#) », a été financé par le [Programme justice de l'Union européenne](#) (2014-2020). Parmi les partenaires de [HHC](#) pour le projet figuraient : le Media Governance and Industries Research Lab de l'Université de Vienne, Aditus à Malte, Fair Trials France, Human Rights House Zagreb, Mérték en Hongrie, Rights International Spain / Universidad Carlos III de Madrid et Athena Research and Innovation Center in Information, Communication and Knowledge Technologies, en Grèce.

Le projet a été spécifiquement conçu pour promouvoir les objectifs de la Directive de l'Union européenne 2016/343¹, qui vise à contrer la présentation des suspects devant les tribunaux et en public d'une manière qui peut suggérer la culpabilité. L'article 5 de la directive prévoit expressément que « les suspects et les personnes poursuivies ne [sont] pas présentés, à l'audience ou en public, comme étant coupables par le recours à des mesures de contrainte physique. » Le projet visait ainsi à accroître les connaissances et les capacités des parties prenantes concernant le respect de la présomption d'innocence, à identifier les bonnes pratiques et à fournir des conseils sur la façon de présenter les accusés, et à sensibiliser les autorités publiques, les médias et le public sur l'importance de la façon dont sont présentés les prévenus.

Ce rapport d'analyse comparative internationale documente la procédure et les conclusions du projet, qui comprend également la production d'une boîte à outils ainsi que des ateliers nationaux pour aider les journalistes à protéger la présomption d'innocence dans leurs reportages.

Au cœur de ce rapport comparatif se trouvent les conclusions tirées de l'analyse du contenu des articles liés aux affaires criminelles publiés² dans la presse de qualité et les tabloïds ainsi que dans la presse uniquement en ligne, et également les reportages diffusés dans des programmes d'information télévisés de juin à septembre 2018, dans sept pays : Autriche, Croatie, France, Grèce, Hongrie, Malte et Espagne.

Un certain nombre de mots clés ont été identifiés comme base pour la collecte initiale des articles de presse pour analyse, et les chercheurs ont cherché à répondre aux questions suivantes :

- Comment la présomption d'innocence, au cœur de la Directive, est-

¹ <https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX%3A32016L0343>

² Pour la liste complète des médias analysés, par pays, cf. l'annexe 4.

elle reflétée dans les médias des sept États membres de l'UE inclus dans cette étude ?

- La présomption d'innocence est-elle respectée par les journalistes ?
- Comment les accusés et les suspects sont-ils représentés par les médias ?
- Comment cette représentation influence-t-elle la perception des accusés comme coupables ou innocents ?
- Quelles sont les caractéristiques de la représentation des accusés et des suspects par rapport aux valeurs, aux normes et aux dispositions juridiques de la Directive ?
- Quelles autres mesures d'alignement peuvent être recommandées aux journalistes ?

Les conclusions suivantes découlent de l'analyse comparative :

- La forme la plus courante de violation du droit à la présomption d'innocence, dans tous les pays examinés, était la représentation, à travers des documents vidéo, des images et du texte, *d'allégations comme des faits*.
- La violation du droit à la présomption d'innocence était plus fréquente pour les suspects qui sont supposés ne pas détenir la citoyenneté du pays concerné. Parmi ces suspects, c'était plus fréquent pour les migrants, les réfugiés ou les musulmans (ou une combinaison de deux ou des trois facteurs). La deuxième forme de violation la plus courante dans tous les pays examinés est la mise en avant délibérée et prononcée de la nationalité « étrangère » d'un suspect. En outre, il est fait référence de façon constante et importante au statut de migrant, de réfugié ou de demandeur d'asile des suspects. La référence à la religion du suspect, s'il est musulman, est également constante dans l'ensemble des pays examinés. Les autres appartenances religieuses ne sont pas soulignées.
- Dans l'ensemble des pays examinés, des « sources anonymes » sont régulièrement utilisées pour des citations et des informations indiquant la culpabilité du suspect ; ces citations et informations ne sont pas contrebalancées par des réfutations du suspect, de ses avocats, de membres de sa famille, d'amis ou de voisins.
- La preuve claire d'un manque au moins épisodique de respect du principe de la présomption d'innocence est observable, dans tous les pays, dans tous les types de médias examinés, mais, par ordre de médias, l'intensité des violations, dans l'ensemble, allait croissant, en partant de la télévision, en bas de l'échelle d'intensité, en passant par les journaux quotidiens, puis les tabloïds, et enfin les plates-formes Internet en haut de l'échelle d'intensité.
- Les liens et les points de convergence entre le statut de la liberté de la presse et la violation de la présomption d'innocence étaient parfois notables, mais globalement mitigés. Il existe une corrélation claire entre la liberté de la presse et la violation des droits des suspects à la présomption d'innocence en Hongrie, le seul pays parmi ceux qui sont inclus dans notre étude à être classé par Freedom House comme seulement « partiellement libre ».
- Les organes de presse, ainsi que leurs mécanismes de réglementation ou d'autorégulation, ne parviennent pas à contrer la violation systématique du principe de présomption d'innocence, en particulier pour les migrants et/ou les musulmans. Cela est sans doute dû à l'affaiblissement du statut des organes de réglementation en tant qu'organes non partisans et indépendants, ce qui se manifeste en particulier par 1) la politisation de l'organe de réglementation ; 2) l'incapacité d'obliger tous les médias (en particulier ceux dont les violations sont les plus flagrantes) à reconnaître leur autorité et à se conformer à leurs sanctions « volontairement acceptées ». En outre, le plus important des mécanismes d'autorégulation - la surveillance éthique par les éditeurs, l'établissement d'exemples par les pairs et la souscription volontaire des journalistes aux valeurs et principes professionnels de

la profession, semblent être systématiquement en échec.



Magyar Helsinki Bizottság

**“The importance of appearances: how suspects and accused persons are presented in the courtroom, in public and in the media –A látszat fontossága –
Hogyan jelennek meg a gyanúsítottak és a vádlottak a tárgyalóteremben, a nyilvánosság előtt és a médiában?”**

SIR PROJECT - 760469-SIR-JUST-AG-2016/JUST-AG-2016-06 számú projekt

Összehasonlító tanulmány (média)

ÖSSZEFOGLALÓ



Jelen kutatási jelentés az Európai Unió anyagi támogatásával készült. Tartalmáért a kizárólagos felelősséget a Magyar Helsinki Bizottság viseli, az semmilyen vonatkozásban nem tekinthető úgy, mint amely az Európai Unió álláspontját tükrözi.

A Magyar Helsinki Bizottság (MHB) 2017 októberétől 2019 júniusáig vezette „A látszat fontossága: Hogyan jelennek meg a gyanúsítottak és vádlottak a tárgyalóteremben, a nyilvánosság előtt és a médiában” című projektet, amely az ártatlanság védelmének érvényesülését vizsgálta a tagállamokban. A projektet az Európai Unió Jogérvényesülés programja támogatta.

A projekt hat országban zajlott egyetemeken, kutatóintézetekben és civilszervezetekben közreműködésével. A projektben az alábbi szervezetek vettek részt:

- Bécsi Tudományegyetemen működő Media Governance & Industries Research Lab (Ausztria),
- Universidad Carlos III de Madrid (Spanyolország),
- Aditus (Málta),
- Fair Trials Europe (Franciaország),
- Human Rights House Zagreb (Horvátország),
- Mérték (Magyarország),
- Rights International Spain (Spanyolország)
- Athena Research and Innovation Center in Information, Communication and Knowledge Technologies (Görögország).

A projekt résztvevői vizsgálták az Európai Unió büntetőeljárás során az ártatlanság védelme egyes vonatkozásainak és a tárgyaláson való jelenlét jogának megerősítéséről szóló 2016/343 irányelvnek (továbbiakban: Irányelv) érvényesülését. Az Irányelv a terheltek olyan megjelenítésének módjai ellen kíván fellépni, amely a terhelt bűnösségére utal. Az Irányelv 5. cikke kifejezetten kimondja, hogy „[a] tagállamok megteszik a megfelelő intézkedéseket annak biztosítására, hogy a gyanúsítottakat és a vádlottakat fizikai kényszerítő intézkedések alkalmazása révén ne állítsák be bűnösnek a bíróságon vagy a nyilvánosság előtt.” A projekt ezért arra törekedett, hogy az ártatlanság védelmének védelmével összefüggésben bővítse a döntéshozók és a gyakorlati szakemberek ismereteit. Célja, hogy azonosítsa a jó gyakorlatokat és útmutatást nyújtson arról, milyen szabályok vonatkoznak a terheltek megjelenítésére a bíróságokon és a nyilvánosság előtt.

Ez a nemzetközi összehasonlító elemzés bemutatja a kutatást és annak eredményeit, a projekt során született kézikönyvet újságíróknak szóló kézikönyvet, továbbá beszámol egy nemzetközi műhelybeszélgetés eredményeiről.

Az összehasonlító elemzés alapja a hét országban (Ausztria, Horvátország, Franciaország, Málta, Magyarország, Görögország és Spanyolország) párhuzamosan zajló kutatás, melynek során 2018. júniustól szeptemberig a nyomtatott, az elektronikus és az online médiában megjelent bűncselekményekről szóló tudósításokat vizsgálták a projekt résztvevői.

A kutatók a következő kérdésekre keresték a választ:

- Az ártatlanság védelmének irányelvben rögzített elve hogyan tükröződik a kutatásban vizsgált hét EU tagállam médiájában?
- Tiszteletben tartják-e az újságírók az ártatlanság védelmének elvét?
- Hogyan jeleníti meg a média a gyanúsítottakat és a vádlottakat?
- A megjelenítés módja hogyan hathat egy terhelt ártatlansággal kapcsolatos megítélésére?
- Az Irányelvben előírtakhoz képest miként jeleníti meg a média a gyanúsítottakat és a vádlottakat?

- Az újságírók milyen módon járulhatnak hozzá az irányelvnek érvényesüléséhez?

A kutatók az összehasonlító elemzés alapján az alábbi következtésekre jutottak:

- Az összes vizsgált országban, az ártatlanság véelme megsértésének legáltalánosabb formája a bűnösséggel kapcsolatos állítások tényként való feltüntetése volt (videó- és képfelvételen, valamint az írott szövegben egyaránt).
A vizsgált országokban a második leggyakoribb probléma a gyanúsított külföldi állampolgárságának szándékos hangsúlyozása volt, továbbá, következetesen és kiemelten utaltak a gyanúsított menedékkérő, menekült vagy bevándorló státuszára. A kutatásban részt vevő összes országban rendszeresen megjelentek utalások a gyanúsított vallására, ha az illető muszlim. Más valláshoz való hovatartozás azonban hangsúlyoztak.
- A vizsgált országokban gyakori, hogy a gyanúsított bűnösségét névtelen forrásokra hivatkozva írják le, mellette nem jelenik meg a terheltre kedvezőbb álláspont (pl. magától a terheltől, ügyvédjétől, családtagjaitól, barátaitól vagy szomszédjától).
- A kutatás alapján egyértelmű, hogy sérül az ártatlanság véelme a kutatásban részt vevő országokban. A média különböző formái (televízió, napilapok, bulvár újságok, online lapok) közül egyik sem tartja tiszteletben az ártatlanság véelmét.
- Az ártatlanság véelme és a sajtószabadság helyzete közötti néhány országban érzékelhető összefüggés, de összességében ez nem mutatható ki. A gyanúsított ártatlanság véelméhez való jogának megsértése és a sajtószabadság között egyértelműen van kapcsolat Magyarországon – ez az egyetlen vizsgált tagállam, amely a Freedom House besorolása szerint csak részben szabad.
- A szabályozó vagy önszabályozó mechanizmusok, nem tudnak hatékonyan fellépni az ártatlanság véelmének rendszerszintű megsértése ellen, különösen a bevándorlók, illetve a muszlimok esetében.

Ennek vélhetően oka a pártatlan és független testületek erőtlensége. Ezek a szervezetek gyakran átpolitizáltak, illetve sokszor nem képesek arra, hogy érvényt szerezzenek a döntéseiknek (különösen igaz ez azokra, akik leginkább semmibe veszik a követendő előírásokat). Úgy tűnik továbbá, hogy a legjelentősebb önszabályozó mechanizmusok – a szerkesztők etikai felügyelete, a média képviselőinek példamutatása, az újságírók szakmai értékek és elvek melletti önkéntes kiállása – rendszeresen elbuknak.

Informe comparativo "La importancia de las apariencias: cómo se presenta a los sospechosos ante los tribunales, el público y los medios"

Resumen ejecutivo

Desde octubre de 2017 hasta junio de 2019, el Comité Húngaro de Helsinki (HHC) supervisó un proyecto diseñado para contrarrestar la presentación de los sospechosos y acusados como culpables, en juzgados y en público, en particular por los medios de comunicación. El proyecto, "La importancia de las apariencias: cómo se presenta a los sospechosos ante los tribunales, el público y los medios", fue financiado por el Programa de Justicia de la Unión Europea (2014-2020). Los socios de HHC para el proyecto incluyeron: el Laboratorio de Investigación de Gobernanza de Medios e Industrias Mediáticas en la Universidad de Viena, Aditus en Malta, Fair Trials France, Casa de los Derechos Humanos de Zagreb, Mértékin Hungría, Rights International Spain/Universidad Carlos III de Madrid y el Centro Athena de Investigación e Innovación en Tecnologías de la Información, la Comunicación y el Conocimiento, en Grecia.

El proyecto fue diseñado específicamente para promover los objetivos detrás de la Directiva 2016/343¹ de la Unión Europea, que busca contrarrestar la presentación de los sospechosos en los tribunales y en público de manera que pueda sugerir culpabilidad. El artículo 5 de la Directiva establece específicamente: "los sospechosos o los acusados no se presentarán ante los tribunales ni en público como culpables mediante el uso de medidas de restricción física". Por lo tanto, el proyecto buscó ampliar el conocimiento y las capacidades de los interesados con respecto al respeto de la presunción de inocencia, identificar buenas prácticas y brindar orientación sobre cómo presentar a los acusados y sensibilizar a las autoridades públicas, los medios de comunicación y el público con respecto a la importancia de la manera en que se presenta a los acusados.

Este informe de análisis comparativo internacional documenta el proceso y los hallazgos del proyecto, que también incluye la producción de un conjunto de herramientas, así como talleres nacionales para ayudar a los periodistas a consagrar la presunción de inocencia en sus informaciones.

En el núcleo de este informe comparativo se encuentran conclusiones extraídas análisis de contenido de noticias relacionadas con la delincuencia publicadas² en la prensa de calidad y sensacionalista, así como en la prensa en línea, así como en noticieros televisivos de junio a septiembre de 2018, en siete países: Austria, Croacia, Francia, Grecia, Hungría, Malta y España.

Se identificaron varias palabras clave como base para la recopilación inicial de noticias para el análisis. Los investigadores intentaron responder las siguientes preguntas:

- ¿Cómo se refleja en los medios de los siete Estados Miembros de la UE incluidos en este estudio la presunción de inocencia que pretende amparar la Directiva?
- ¿Respetan los periodistas la presunción de inocencia?
- ¿Cómo se describe a los acusados y sospechosos en los medios de comunicación?

¹ <https://eur.fm/legal-content/EN/TXT/?Uri=CELEX%3A32016L0343>

² Para ver la lista completa de los medios de comunicación analizados, por país, consulte el Anexo 4

- ¿Cómo influye esa descripción en la percepción de los acusados como culpables o inocentes?
- ¿Cuáles son las características de la representación de los acusados y sospechosos en relación con los valores, las normas y las estipulaciones legales de la Directiva?
- ¿Qué otras medidas de seguimiento pueden recomendarse a los periodistas?

Las siguientes conclusiones derivan del análisis comparativo:

- La forma más común de violación del derecho a la presunción de inocencia, en todos los países examinados, fue la presentación, a través de material de vídeo, imágenes y texto, de acusaciones como hechos.
- La violación del derecho a la presunción de inocencia es mayor para los sospechosos que se supone que no son titulares de la ciudadanía del país en cuestión. Entre estos sospechosos, se registra un mayor número de migrantes, refugiados o musulmanes (o una combinación de dos o más de los tres). La segunda forma más consistente de violación en todos los países examinados es el subrayado deliberado y pronunciado de la ciudadanía "extranjera" de un sospechoso. Además, hubo una constante referencia a la condición de los sospechosos como migrantes, refugiados o solicitantes de asilo. También consistente en todos los países examinados fue la referencia a la religión del sospechoso si era musulmán, mientras que se obviaban referencias a otras religiones.
- En todos los países examinados, se hace un uso regular de "fuentes anónimas" para obtener citas e información que indiquen la culpabilidad del sospechoso; tales citas e información no se contrarrestan con refutaciones del sospechoso o de los abogados del sospechoso, o de sus familiares, amigos o vecinos.
- Se puede observar una clara evidencia de al menos una falta episódica de respeto al principio de la presunción de inocencia en todos los países, en todos los tipos de medios examinados, pero, por orden de tipo de medios, la intensidad de la violación partió desde el mínimo que marca la televisión, seguida de los diarios impresos, los tabloides sensacionalistas y, finalmente, los medios nativos online.
- Las conexiones y puntos en común entre el estado de libertad de prensa y la violación de la presunción de inocencia son a veces notables, pero en general varían. Una clara correlación entre la libertad de prensa y la violación de los derechos de los sospechosos a la presunción de inocencia es Hungría, el único país entre los incluidos en nuestro estudio, que la Freedom House califica de "parcialmente libre".

Executive Summary

Von Oktober 2017 bis Juni 2019 leitete das Hungarian Helsinki Committee (HHC) ein EU-Projekt, das der vorverurteilenden Darstellung von Verdächtigten und Angeklagten in Gerichtssäle und Öffentlichkeit, insbesondere durch die Medien, entgegenwirken sollte. Das Projekt „The importance of appearances: Wie Verdächtige und Beschuldigte im Gerichtssaal, in der Öffentlichkeit und in den Medien präsentiert werden“, wurde durch das *Justice Programme* der Europäischen Union (2014-2020) finanziert. Zu den Projekt-Partnern des HHC gehörten: das Media Governance & Industries Research Lab an der Universität Wien, Aditus in Malta, Fair Trials France, Human Rights House Zagreb, Mérték in Ungarn, Rights International Spain und die Universidad Carlos III de Madrid sowie das Athena Research and Innovation Center in Information, Communication and Knowledge Technologies in Griechenland.

Das Projekt wurde explizit konzipiert, um die Umsetzung der Richtlinie 2016/343¹ der Europäischen Union zu evaluieren, welche schuldzuweisenden bzw. vorverurteilenden Darstellungen von Verdächtigten vor Gericht und in der Öffentlichkeit entgegenwirken soll. In Artikel 5 Abs. 1 der Richtlinie heißt es hierzu ausdrücklich: „Die Mitgliedstaaten ergreifen die erforderlichen Maßnahmen, um sicherzustellen, dass Verdächtige und beschuldigte Personen vor Gericht oder in der Öffentlichkeit nicht durch den Einsatz von physischen Zwangsmaßnahmen so dargestellt werden, als seien sie schuldig“. Das EU-Projekt zielte darauf ab, das Wissen und die Fähigkeit von Stakeholdern in Bezug auf die Achtung der Unschuldsvermutung zu erweitern, Good-Practice-Beispiele zu ermitteln und Leitlinien für die korrekte mediale Darstellung von Angeklagten und Verdächtigten zu erstellen und Behörden, Medien und die Öffentlichkeit für die Bedeutung der Art und Weise, wie Angeklagte und Verdächtige präsentiert werden, zu sensibilisieren.

Dieser länderübergreifend-vergleichende Analysebericht dokumentiert den Prozess und die Ergebnisse des Projekts, zu dem auch die Erstellung eines Toolkits sowie die Durchführung von Workshops gehörten, die Medienschaffende dabei unterstützen sollen, das Prinzip der Unschuldsvermutung in der medialen Berichterstattung zu verankern.

Im Mittelpunkt dieses komparativen Forschungsberichts stehen Schlussfolgerungen basierend auf Inhaltsanalysen von Nachrichten und Artikeln mit Bezug zu Kriminalität, die in der sogenannten Qualitäts- und Boulevardpresse, in der reinen Online-Presse oder in Fernsehnachrichtensendungen erschienen sind². Alle untersuchten Beiträge stammen aus dem Zeitraum von Juni bis September 2018 und sind in einem der sieben Länder veröffentlicht worden: Frankreich, Griechenland, Kroatien, Malta, Österreich, Spanien oder Ungarn.

Mithilfe einer Reihe von Schlüsselbegriffen konnte eine erste Vorauswahl von Nachrichtenberichten für die anschließende Analyse getroffen werden. Die Forscher*innen versuchten daraufhin, die folgenden Fragen zu beantworten:

- Wie spiegelt sich das Kernkonzept der Unschuldsvermutung der Richtlinie in den Medien der sieben EU-Mitgliedstaaten wider?
- Wird die Unschuldsvermutung von Medienschaffenden respektiert?
- Wie werden Angeklagte und Verdächtige in den Medien dargestellt?
- Inwiefern beeinflusst diese Darstellung die Einschätzung, ob Angeklagten als schuldig oder unschuldig wahrgenommen werden?

¹ <https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX%3A32016L0343>

² Eine vollständige Liste der analysierten Medien, nach Ländern sortiert, finden Sie in Anhang 4.

- Welche Merkmale weist die mediale Darstellung von Angeklagten und Verdächtigten auf in Relation zu den Werten, Normen und gesetzlichen Bestimmungen der EU-Richtlinie?
- Welche weiteren Verbesserungsmaßnahmen können Medienschaffenden empfohlen werden?

Die folgenden Schlussfolgerungen ergeben sich aus der länderübergreifend-vergleichenden Analyse der Medienberichterstattung über die Darstellung von Angeklagten und Verdächtigten:

- Die häufigste Form der Verletzung des Rechts auf Unschuldsvermutung in allen untersuchten Ländern war die Darstellung von *Behauptungen als Tatsachen* durch Videomaterial, Bilder und Texte.
- Die Verletzung des Rechts auf Unschuldsvermutung war bei Verdächtigten, von denen angenommen wurde, dass sie nicht die Staatsangehörigkeit des betreffenden Landes besitzen, am stärksten ausgeprägt. Unter diesen Verdächtigten war sie am stärksten bei Migrant*innen, Flüchtlingen oder Muslimen (oder einer Kombination). Die zweithäufigste Form der Verletzung der Unschuldsvermutung in allen untersuchten Ländern ist die bewusste und ausgeprägte Betonung der "fremden" Staatsbürgerschaft von Verdächtigten. Darüber hinaus wurde immer wieder auf den Status von Verdächtigten als Migrant*innen, Flüchtlinge oder Asylwerber*innen hingewiesen. Ebenfalls einheitlich in den untersuchten Ländern war der Hinweis auf die Religion, wenn Verdächtige Muslime sind. Andere Religionszugehörigkeiten wurden nicht betont.
- In allen untersuchten Ländern wurden regelmäßig "anonyme Quellen" für Zitate und Informationen verwendet, die auf die Schuld der Verdächtigten hinweisen; diesen Zitaten und Informationen stehen keine Widerlegungen von Verdächtigten oder deren Anwälte, Familienangehörigen, Freund*innen oder Nachbarn gegenüber.
- Eindeutige Hinweise für eine zumindest zeitweise Missachtung des Prinzips der Unschuldsvermutung sind in allen Ländern, über alle untersuchten Mediengattungen hinweg, anzutreffen. Die Intensität der Verletzung nahm von TV über Tageszeitungen hin zu Internetplattformen zu.
- Zusammenhänge und Gemeinsamkeiten zwischen dem Grad der Pressefreiheit und der Verletzung der Unschuldsvermutung waren manchmal erkennbar, aber insgesamt gemischt. Ein klarer Zusammenhang zwischen Pressefreiheit und der Verletzung der Rechte von Verdächtigten im Hinblick auf die Unschuldsvermutung ist in Ungarn festzustellen - das einzige unter den in dieser Studie untersuchten Ländern, dessen Grad der Pressefreiheit von Freedom House nur als "teilweise frei" eingestuft wird.
- Presseorgane, welche als Regulierungs- oder Selbstregulierungsmechanismen dienen, können der systematischen Verletzung des Prinzips der Unschuldsvermutung, insbesondere für Migrant*innen und/oder Muslime, nicht entgegenwirken. Dies ist wohl auf den geschwächten Status der Regulierungsbehörden als unabhängige unparteiische Organe zurückzuführen, der sich insbesondere durch 1) die Politisierung der betreffenden Regulierungsbehörde; 2) die Unfähigkeit, alle Medien (insbesondere die schwerwiegendsten Verletzerinnen) zu verpflichten, ihre Autorität anzuerkennen und sich an ihre "freiwillig akzeptierten" Sanktionen zu halten. Darüber hinaus scheinen die wichtigsten Selbstregulierungsmechanismen - ethische Selbstkontrolle durch Redakteur*innen und Herausgeber*innen selbst, sogenanntes „mit guten Beispiel vorangehen“ unter Kolleg*innen und freiwillige Selbstverpflichtung von Medienschaffenden zu den professionellen Werten und Prinzipien des Berufsstandes - systematisch zu scheitern.