

Our vision:

A world where every person's right to a fair trial is respected.

THE IMPORTANCE OF APPEARANCES

How suspects and accused persons are presented in the courtroom, in public and in the media (SIR)

(760469-SIR-JUST-AG-2016/JUST-AG-2016-06)

FRENCH NATIONAL MEDIA REPORT

May 2019

DOI 10.5281/zenodo.7801972

Fair

Trials

About Fair Trials

Fair Trials is a global criminal justice watchdog with offices in London, Brussels and Washington, D.C., focused on improving the right to a fair trial in accordance with international standards.

Fair Trials' work is premised on the belief that fair trials are one of the cornerstones of a just society: they prevent lives from being ruined by miscarriages of justice and make societies safer by contributing to transparent and reliable justice systems that maintain public trust. Although universally recognised in principle, in practice the basic human right to a fair trial is being routinely abused.

Its work combines: (a) helping suspects to understand and exercise their rights; (b) building an engaged and informed network of fair trial defenders (including NGOs, lawyers and academics); and (c) fighting the underlying causes of unfair trials through research, litigation, political advocacy and campaigns.

In Europe, we coordinate the Legal Experts Advisory Panel- the leading criminal justice network in Europe consisting of over 180 criminal defence law firms, academic institutions and civil society organizations. More information about this network and its work on the right to a fair trial in Europe can be found at: <https://www.fairtrials.org/legal-experts-advisory-panel>



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Co-funded by the European Union's Justice Programme (2014-2020).

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Executive summary

This report presents the findings of research carried out by Fair Trials on the presentation of suspects and accused persons in the French media. Fair Trials conducted media monitoring in France to identify whether reporting on criminal investigations is consistent with the presumption of innocence, a key component of every suspect and accused person's fundamental right to a fair trial. The monitoring was conducted pursuant to a methodology defined by the University of Vienna, a partner in this project. The report is part of "Suspects in Restraints", an EU-funded multijurisdictional project which looks into the presentation of suspects and accused persons in the courtroom and in the media, and its impact on the right to be presumed innocent.

Key findings of the media monitoring

Our monitoring reveals that **online media** presents a significantly higher rate of practices at odds with the presumption of innocence than other media outlets (such as traditional printed media). This finding suggests that the significant proportion of the French public (who report reading online media – up to over 2.8 million people for some online media based on their Facebook followership) is exposed to reporting on criminal investigations which does not fully comply with the principle of presumption of innocence.

Our research clearly shows **biases** in the way suspects and accused persons are portrayed in the media depending on their religion, national or ethnic background. Not only is this an indication of pervasive racism in the media, this shows that certain ethnic and religious groups are disproportionately affected by violations of the right to the presumption of innocence. Such findings raise questions which go beyond the presumption of innocence of the individual concerned and the scope of this project, relating to the role of the media in creating public figures of "danger" which can, in turn, lead to increased racism and discrimination.

Generally, reporting fell short of respecting the presumption of innocence in relation to:

- **References to ethnicity, religion, and other protected characteristics** – the religious affiliation of suspects and accused persons is only referenced in the case of Islamic faith. Nationality is typically identified when the suspects and accused persons are not French. When the suspect or accused person held French citizenship, the reports reviewed tend to include a reference to the person's "national origins".
- **Identification and representation of the suspect or accused person** – the photographs used in the media are typically mugshots taken at the police station or mugshot-like (close-ups), which convey an impression of guilt. Suspects and accused persons are often clearly identified by name or through the use of a photograph. Although their identification is not in itself a violation of the presumption of innocence, it can, when combined with reporting that does violate the presumption of innocence, amplify the impact of the violation of the right to a fair trial and the right to privacy generally.
- **Allegations as facts** – although the language used in media reporting is generally cautious (e.g. referring to "suspects", "allegations" and referring to facts "according to the accusation"), the media sometimes report on allegations in a tense that make them appear as facts. Our monitoring also flags the use of conclusive wording as to the guilt of the individuals – e.g. by referring to suspects as "jihadists".

We observed a general bias in reporting towards the prosecution rather than the defence' case, with reporting widely creating a presumption of guilt. This was observed in the following ways:

- **References to prior and unrelated criminal investigations** involving the suspect or accused person, regardless of the outcome of the proceedings, creating a presumption of guilt.
- **Limited reporting on defence arguments** and when there was some, the reporting was found to be biased – either ridiculing the defence or putting the arguments under a bad light.
- **Confessions, avowals and disavowals, and the suspect's or accused person's choice to remain silent** are also used to create an impression of guilt.
- **Public statements made by the prosecuting authorities** are given emphasis as opposed to the suspect's defence.
- **Largely sympathetic portrayal of the alleged victims.** Photos of victims often show smiling faces; relatives of the alleged victim are often portrayed in high distress, crying. The lawyers of the victims and victims themselves are quoted at greater detail than suspects' lawyers.

Conclusions

France has **sound laws** prohibiting the publication or broadcasting of images, recordings and documents which are there to **safeguard the presumption of innocence**. French law also criminalises the violation of the secrecy of criminal investigations and making specific allegations that portray someone as guilty before a final verdict has been reached (through the offense of defamation which prohibits attempting to the reputation or honour of a person through false statements). **This legal apparatus appears incomplete in its scope and effectiveness:**

- The law seems to have little effect on more 'subtle' forms of reporting which undermine the presumption of innocence – including reporting that clearly favours the prosecution or the victims' version of the events over the defence's, or highlights the suspect's decision to remain silent in ways which creates an impression of guilt.
- The secrecy of criminal investigations does not bind parties to the investigation, including alleged victims, who may freely reveal aspects of the case to the public and the media.
- An action for defamation exposes the complainant to considerable risks that his or her reputation and honour be even more tarnished, because the journalist or media accused of defamation are allowed to reveal all the information they hold on the complainant in open court in order to defend themselves.

Ethical charters and professional guidelines do not appear to fill these gaps, as they are not sufficiently precise and lack binding force. Finally, **legal remedies** for the violation of the presumption of innocence are purely compensatory and aimed at repairing damages to the privacy and dignity of a suspect or accused person – rather than **the person's right to a fair trial**. Little consideration appears to be given to the impact of violations of the presumption of innocence on the overall fairness of the criminal trial.

Introduction

This report presents the findings of research carried out by Fair Trials Europe in France¹ between September and November 2018 on the presentation of suspects and accused persons in the media. Part I provides an overview of the legislative, regulatory and institutional landscape as well as the case-law around reporting on criminal cases and presumption of innocence. Part II illustrates the findings of media monitoring carried out from June to September 2018 on crime news reporting from selected media in France.

The report is produced in the context of an EU-funded multijurisdictional project which looks into the presentation of suspects and accused persons in the courtroom and in the media, and its impact on the right to be presumed innocent as protected by EU Directive 2016/343² (“Suspects in Restraints” project). The project is coordinated by the Hungarian Helsinki Committee, which also leads research in Hungary, with research conducted by Aditus in Malta, Fair Trials Europe in France, Human Rights House Zagreb in Croatia, Rights International Spain in Spain, and the University of Vienna in Austria.

The aim of this report is to highlight any gaps in the regulatory framework and media practices in France which are at odds with the fundamental right to the presumption of innocence.

Part I: An overview of the legislative, regulatory and institutional landscape and relevant case-law

A long history of mediatisation of justice in France

France has a long tradition of mediatisation of justice.

Even though court hearings were not yet public at the time,³ the newspaper *Journal du Palais*, which included crime reporting, was published from 1672. Another newspaper, *Gazette des tribunaux*, founded in 1775 by Jean-Jérôme-Achille Darmaing, and published again from 1825 as a daily newspaper, included crime reporting which was targeted at lawyers and the general public alike.⁴

In 1827, there were 10 newspapers specialised in publishing and commenting case-law, 62 in 1862 and 87 in 1894.⁵

From at least the 18th century, prominent novelists also reported on judicial cases in the press. This mediatisation contributed to the evolution of criminal procedure and the reform of the justice system in France.

In 1763, Voltaire published his *Traité sur la tolérance à l’occasion de la mort de Jean Calas (Treaty on tolerance on the occasion of Calas’ death)*. The case concerned the death of Jean Calas’ son. Calas was arrested and charged with murder, allegedly in order to punish him for his conversion to Catholicism.

¹ With the support of Ms Karine Gilberg, who carried out the research in France on behalf of Fair Trials.

² 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>.

³ Publicity of court hearings was one of the first measures introduced after the French Revolution in 1789.

⁴ See *Gazette des tribunaux*, « Second Prospectus », 11 November 1826.

⁵ Dominique Kalifa, « La Chronique judiciaire », dans Dominique Kalifa, Philippe Régner, Marie-Ève Thérenty, Alain Vaillant (dir.), *La Civilisation du journal. Histoire culturelle et littéraire de la presse*, Paris, Nouveau Monde Éditions, 2011, p. 1008.

At first, Calas attributed the crime to an unknown intruder, but he later insisted that his son had committed suicide. Calas was then convicted and sentenced to death. Voltaire led a press campaign for the Calas' case to be reviewed. As a result, a 50-judge panel was appointed: Calas' conviction was overturned on 9 March 1765, and compensation was given to his family.

During the 19th and early 20th centuries, further major French novelists (Colette, Honoré de Balzac, Victor Hugo, and Emile Zola, to name a few) reported on judicial cases in newspapers:

- Colette covered many trials for several newspapers, including *Matin*, *Journal*, *L'Intransigeant* and *Paris-Soir*;⁶
- In 1829, Victor Hugo published the *Journal d'un condamné*, in which he campaigned for the abolition of the death penalty;
- In 1839, Balzac published an open letter (*Lettre sur le procès de Peytel*) in daily newspaper *Le Siècle*;⁷
- In 1898, Emile Zola published his famous paper *J'accuse*, an open letter to the President of the French Republic, in *L'Aurore*. In his piece, he defended Alfred Dreyfus, an officer who had been sentenced to life imprisonment and deported overseas to *Ile du Diable* for treason. In his letter, Zola wrote: "My duty is to speak out, not to become an accomplice in this travesty [of justice]. My nights would otherwise be haunted by the spectre of an innocent man, far away, suffering the most horrible of tortures for a crime he did not commit."⁸

Reporting on judicial cases: freedom of information and the rights of suspect and accused persons

French law protects the freedom of the media and freedom of information, in particular through freedom of communication, which is a constitutional principle protected by Article 11 of the French Declaration of the Rights of Men and Citizens (*Déclaration des droits de l'homme et du citoyen de 1789* or "**DDHC**").⁹ Journalists are free to report on judicial proceedings insofar as they do not violate the presumption of innocence or the confidentiality of the preliminary criminal investigation. The Law of 29 July 1881 on the Freedom of the Press (the "**1881 Law**") (Articles 35 ter, 38 ter, and 41),¹⁰ as well

⁶ See Amélie Chabrier, PhD Thesis, *Les Genres du prétoire : chronique judiciaire et littérature au XIXe siècle*, 2013. Available on: <https://tel.archives-ouvertes.fr/tel-00942986/document>

⁷ Patricia Baudouin, « Justice, presse et politique. L'engagement de Balzac dans l'affaire Peytel », *Revue d'histoire du XIXe siècle*, 26/27, 2003, p. 331-348.

⁸ Free translation. Full text available on: <https://www.nouvelobs.com/societe/20060712.OBS4922/j-accuse-par-emile-zola.html>. Alfred Dreyfus was only fully rehabilitated in 1906.

⁹ Constitutional Court, Decision n° 84-181 DC, 10 and 11 October 1984. Available on: <https://www.conseil-constitutionnel.fr/decision/1984/84181DC.htm>.

On freedom of audio-visual communication, see Constitutional Court, Decision n° 88-248 DC, 17 January 1989. Available on: <https://www.conseil-constitutionnel.fr/decision/1989/88248DC.htm>.

¹⁰ Law of 29 July 1881 on the Freedom of the Press. Available on: <https://www.legifrance.gouv.fr/affichTexteArticle.do?cidTexte=LEGITEXT000006070722&idArticle=LEGIARTI00006419715>.

as the Code of Criminal Procedure (Articles 11 and 308),¹¹ and the Civil Code (Article 9-1),¹² also regulate reporting on judicial proceedings.

The following sections go over these principles.

Freedom to report in writing on court hearings

During a trial, journalists are free to report in writing on court hearings, as long as their reporting is considered to be faithful. They are forbidden from taking pictures, recording, publishing images or broadcasting speeches made during the court hearings.

The freedom of information on judicial proceedings is protected by Article 41 of the 1881 Law, which provides “immunity” to those who report faithfully on public hearings, in the sense that no judicial action for defamation, insults or contempt of court is permitted.¹³ According to the law, courts may still order the deletion of insulting, offensive, and defamatory speeches, and order compensation of the targeted person by the perpetrator of the offence (generally the editor of the concerned media).¹⁴

Based on Article 41 §3 of the 1881 Law, the Court of Cassation (*Cour de cassation*) ruled in 1994 that a journalist reporting on a trial shall be measured, careful and objective, and shall give information that is sincere, loyal and correctly illustrates the court hearings.¹⁵

Once the court decision is issued, the law provides some restrictions to the freedom of information; however, it does not foresee a general “right to be forgotten”,¹⁶ except in cases involving a decision of pardon or rehabilitation.¹⁷ These exceptions do not stand when the information on those cases is published in scientific or historical publications.¹⁸

Protection of the presumption of innocence

The presumption of innocence is protected by Article 9 DDHC and is a constitutional principle.¹⁹ According to this provision, a civil action may be lodged on the grounds provided by Article 9-1 of the Civil Code, which protects the presumption of innocence and prohibits the portrayal of a person as

¹¹ Code of Criminal Procedure, Article 11. Available on:

<https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006071154&idArticle=LEGIARTI00006574847>.

¹² Civil Code, Article 9-1. Available on:

<https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070721&idArticle=LEGIARTI00006419316>.

¹³ Law of 29 July 1881, Article 41 §3. Available on:

https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=E3647A2F087B437B12B81F74F9BF1DB7.tplgfr34s_1?idArticle=LEGIARTI000019769519&cidTexte=LEGITEXT000006070722&dateTexte=20181121.

¹⁴ Law of 29 July 1881, Article 41 §4. *Ibid.*

¹⁵ Court of Cassation, Criminal Chamber, 10 May 1994, case n° 93-82553, available on:

<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000007067753&fastReqlD=1251035695&fastPos=1>

¹⁶ The right to be forgotten is generally defined as a right for individuals to have information, videos, or photographs about themselves deleted from the internet.

¹⁷ Court of Cassation, 1st Civil Chamber, 16 May 2013, case n°: 12-19783. Available on:

<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000027423461&fastReqlD=418197607&fastPos=1>.

¹⁸ Constitutional Court, Decision n° 2013-319 QPC du 7 juin 2013. Available on: <https://www.conseil-constitutionnel.fr/decision/2013/2013319QPC.htm>.

¹⁹ Constitutional Court, Decision n°89-258 DC, 8 July 1989, §10. Available on: <https://www.conseil-constitutionnel.fr/decision/1989/89258DC.htm>.

guilty before any finding of guilt has been pronounced. The judge may order measures (including the publication of a correction or of a press release) to put an end to the infringement of the presumption of innocence. The judge may also order the responsible media to compensate the person affected by the violation of his or her presumption of innocence.

In addition, the criminal offense of defamation prohibits the publication of a specific allegation likely to prejudice the honour or reputation of another person.²⁰ This offense may cover the publication of news articles portraying someone as guilty before a final decision is reached in a criminal case. Defamation is punished by a fine of up to €12,000.²¹ Proving the reality of the defamatory statements is a defence, and this means that the alleged offender (the journalist of media) may present any and all documents and information to show that the allegations are in fact true – this defence in open court may end up doing more harm than good to the victim of a violation of the presumption of innocence.

Recording and broadcasting or publishing statements or images from court hearings

Article 38 ter of the 1881 Law prohibits the use of any device that can record (both audio and video) and broadcast statements or images from the courtroom during hearings.²² Such prohibition was introduced to preserve the order and dignity of court hearings and to preserve the right of the accused to a fair trial.

The prohibition was adopted following the excessive press coverage of the Marie Besnard (1952 and 1954) and the Gaston Dominici (1954) cases. In the latter case, 30 photographers surrounded the accused during the hearings, triggering the flash-light of their devices whenever they deemed interesting. The legislator underlined that the principle of publicity of the hearings is sufficiently guaranteed by the possibility for the public to attend the hearings.

In 2010, the Court of Cassation ruled that the prohibition set by Article 38 ter was a proportionate restriction to freedom of expression, which is necessary in a democratic society as far as it protects the reputation and other rights of the accused person, and as it protects the authority and impartiality of the judiciary. Following this reasoning, the French Court further declared that the provision at hand is in compliance with Article 10 of the European Convention on Human Rights (“ECHR”), which protects freedom of expression. In particular, the Court of Cassation held that Art 38 ter was violated when an “audio-visual recording showing the presiding judge and the other judges in a Court of Assize when the sentence is handed down” was broadcasted on TV.²³

French law provides two exceptions to the above-mentioned prohibition.

²⁰ Law of 29 July 1881, Article 29. Available on:

<https://www.legifrance.gouv.fr/affichTexteArticle.do?idArticle=LEGIARTI000006419790&cidTexte=LEGITEXT00006070722&dateTexte=19440520>

²¹ Law of 29 July 1881, Article 32. Available on:

https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=A09AA38E6BEC5AF3CEDBCA477B11BF1E.tplgfr28s_1?idArticle=LEGIARTI000033975090&cidTexte=JORFTEXT000000877119&dateTexte=20190508&categorieLien=id&oldAction=&nbResultRech=

²² This prohibition to record and take pictures in the courtroom was introduced by the Law of 6 December 1954 which amended the 1881 Law (Article 38 ter). Law of 28 July 1881, Article 38 ter. Available on:

https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=E3647A2F087B437B12B81F74F9BF1DB7.tplgfr34s_1?idArticle=LEGIARTI000006419761&cidTexte=LEGITEXT000006070722&dateTexte=20181121.

²³ Court of Cassation, Criminal Chamber, 8 June 2010, case n° 09-87.526. Available on:

<https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000022457147>.

First, Article 38 ter of the 1881 Law provides that the president of the court may authorise pictures in the courtroom upon request, but only before the hearings have started (or when they are closed), and only if the parties, their lawyers and the prosecutor give their consent.

Second, Article L. 221-1 of the Heritage Code (*Code du patrimoine*) provides that “public hearings before judicial courts may be audio-visually or audio recorded in case such a recording is of interest for the constitution of historical archives”.²⁴ The historical interest is determined by the first presiding judge (*premier président*) of the Court of Appeal. According to Article L. 222-1 of the Heritage Code, such recordings may be made available to researchers once the trial is over and the court’s decision is final. An authorisation of the presiding judge of the Paris *Tribunal de Grande Instance*, or one of his/her delegates, is necessary to copy or distribute the recordings. If the trial concerns crimes against humanity, the copy and distribution of the recordings may be authorised as soon as a definite decision has been handed down. The copy and distribution of the recordings no longer require any authorisation by the Paris Court of First Instance (*Tribunal de Grande Instance*) 50 years after the date of the final decision in a case.

According to Article 308 §1 of the Code of Criminal Procedure, if a recording device is used, or pictures are taken during court hearings, the president of the court may order the seizure of the recording device and the pictures, and impose a fine, which can amount to up to 4,500 € in minor criminal cases, and up to 18,000 € in major criminal cases (i.e. cases involving up to 10 years of prison).²⁵ The broadcasting of pictures and recordings which were collected unlawfully is also punishable by the same sentences.

In practice, when pictures or recordings are taken during the court hearings, the president of the court seizes the device as well as the pictures and the recordings. Depending on the gravity of the offence, the prosecutor will press charges against the person concerned, or will issue a formal reprimand (*rappel à la loi*). In compliance with this provision, the Court of Cassation ruled in 2010²⁶ that filming a court hearing without the authorisation of the presiding judge is an infringement of the 1881 Law. The Court stated that the right to inform the public should be balanced with the rights of the accused, the rights of victims, and/or the principle of good administration of justice (*sérénité des débats*, or the peacefulness of court hearings). In that 2010 case, the journalist was sentenced to a €4,500 fine for having filmed and broadcasted a hearing without any authorisation.

²⁴ Heritage Code, Article L221-1. Available on:

<https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006074236&idArticle=LEGIARTI00006845625&dateTexte=&categorieLien=cid>.

²⁵ Code of Criminal Procedure, Article 308 §1. Available on:

<https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006071154&idArticle=LEGIARTI00032656017&dateTexte=&categorieLien=id>.

²⁶ Court of Cassation, Criminal Chamber, 8 June 2010, case n°: 09-87526. Available on:

<https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000022457147>.

CASE STUDY: Historical interest for the justice's archives in the Merah case

In the 2017 *Merah* case, which concerned the terrorist attacks that took place in 2012 in Toulouse and Montauban, there was a dispute between the presiding judge and the victims (*parties civiles*) over the filming of the trial. The victims requested such filming arguing that the alleged crimes had an international reach, both because of the international context of terrorism and the fact that several victims were children, but the presiding judge refused it. The Court of Cassation confirmed the decision taken by the presiding judge stating that despite the extremely violent nature of the crimes and the above-mentioned context, recordings of such a trial were not of a historical interest.¹

Broadcasting of images of a person in handcuffs or shackles, or in pre-trial detention

Publishing and broadcasting images of a person in handcuffs or shackles, or in pre-trial detention, is a criminal offence. According to Article 35 ter of the 1881 Law,²⁷ the broadcasting of any image of the suspect or accused person without their consent, and showing them in handcuffs or other restraint measures is punishable by a fine of up to €15,000.

In cases where the use of handcuffs or any other measure of restraint is deemed necessary, Article 803 §2 of the Code of Criminal Procedure provides that all measures should be taken to avoid that pictures or recordings of the person concerned are taken.

Publication of procedural documents before they are read in open court

Article 38 of the 1881 Law also prohibits the publication of indictments and any other procedural documents before they have been read in open court. This offense is punishable by a fine of up to €3,750.

Secrecy of the investigation/preliminary phase and lawyers professional secrecy obligation

The preliminary phase of the criminal proceedings is covered by the principle of secrecy of the investigation (*secret de l'instruction*). In this phase, disclosure of information is strictly regulated. The principle has been gradually softened to accommodate the principle of freedom of information.

Article 11 of the Code of Criminal Procedure²⁸ states that - except when the law provides otherwise, and in respect of the rights of the defence - preliminary proceedings (including the investigation by the prosecutor or investigating judge) are secret. Any person contributing to the preliminary proceedings (including judges, investigating judges, registrars, police officers, and interpreters) is

²⁷ As amended by the Law n° 2000-516 of 15 June 2000 on the protection of presumption of innocence and victims' rights, Article 92. Available on: https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=D9B5459CB4C83D87743AB989C6EEB3AF.tplgr34s_1?idArticle=LEGIARTI000006419800&cidTexte=JORFTEXT00000877119&categorieLien=id&dateTexte=

²⁸ Code of Criminal Procedure, Article 11. Available on: <https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006071154&idArticle=LEGIARTI00006574847>.

bound by professional secrecy, except when the law provides otherwise.²⁹ Disclosing confidential information is punishable by one year of imprisonment and a €15,000 fine.³⁰

Article 11 §3 of the Code of Criminal Procedure provides an exception for public prosecutors to communicate information to the public when it is deemed necessary to prevent the publication of partial or false information, or to prevent public disorder. This can be done at the request of either the investigative judge or the parties to the investigation (including the victims). Information given by the prosecutor shall be factual and with no opinion on the charges. Prosecutors regularly hold press conferences to give information on ongoing proceedings.

Victims, suspects and accused persons and journalists are not bound by this confidentiality principle. They may release to the public information on the investigations or pretrial proceedings. They are not, however, allowed to communicate documents pertaining to the proceedings or investigation to any third party (who are not party to the proceedings). Article 114-1 of the Code of Criminal Procedure provides that the disclosure of documents from the investigative file by the parties to the investigation is punishable by a €10,000 fine. The Court of Cassation recently ruled that searches in the presence of a journalist filming is a violation of the secrecy of the investigation and necessarily harms the interests of the suspect or accused person.³¹ The court ruled that the searches were null even though the person concerned was not recognisable on the video, and irrespective of whether the documentary had been broadcasted.³²

In a recent ruling, the Constitutional Court (*Conseil constitutionnel*) stated that Article 11 of the Code of Criminal Procedure does not prevent journalists from reporting either on criminal proceedings or on the different phases of a preliminary inquiry.³³

Defence lawyers are not bound by the secrecy of the investigation but by the principle of professional secrecy (confidentiality). As for the violation of the secrecy of investigations, the violation of professional secrecy is a criminal offense.³⁴ Disclosing confidential information is punishable by one

²⁹ Criminal Code, Article 226-14. Available on:

https://www.legifrance.gouv.fr/affichCodeArticle.do?sessionId=CDC3624E9CDD852CBB5D8C74526E7967.tpl&rf34s_1?idArticle=LEGIARTI000031428820&cidTexte=LEGITEXT000006070719&dateTexte=20190502&categorieLien=id&oldAction=&nbResultRech=

³⁰ Criminal Code, Article 226-13. Available on:

<https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070719&idArticle=LEGIARTI00006417944&dateTexte&categorieLien=cid>.

³¹ Court of Cassation, Criminal Chamber, 10 January 2017, case n°16-84.740. Available on:

https://www.courdecassation.fr/jurisprudence_2/chambre_criminelle_578/5994_10_35830.html.

³² The court departed from its previous jurisprudence. In previous cases, the court required the concerned person to show that their interest had been harmed. See Court of Cassation, Criminal Chamber, 25 January 1996, n° 95-85.560. Available on:

<https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000007066679>.

³³ Constitutional Court, 2 March 2018, Decision n° 2017-693 QPC. Available on: <https://www.conseil-constitutionnel.fr/decision/2018/2017693QPC.htm>.

³⁴ Criminal Code, Article 226-13. Available on:

<https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070719&idArticle=LEGIARTI00006417945>

year of imprisonment and a €15,000 fine.³⁵ However, defence lawyers may disclose confidential information when it is in the interests of the defence.³⁶

In a case involving a defence lawyer giving several interviews to the media during the preliminary phase of the proceedings, in which he revealed the content of an expert's report, part of which is later published in the press. The Court of Cassation found that this amounted to a violation of the principle of professional secrecy because the disclosure was not necessary to exercise the rights of the defence.³⁷

Although journalists are not bound by the secrecy of the investigations, knowingly possessing the product of an offense – here the violation of the secrecy of the investigations – is a criminal offense (*recel de la violation du secret de l'instruction*).³⁸ The offense is punished by a maximum of 5 years' imprisonment and a €375,000 fine.³⁹ Proving the offense requires the prosecution to establish that the disclosure of the information or documents was made by a person bound by the principle of secrecy or that the journalists physically received the documents covered by the secrecy of the investigation or investigation.⁴⁰ Although the identity of the person who breached the secrecy is not necessary, such a fact is still extremely difficult to prove, in particular due to the protection of the confidentiality journalistic sources.

Mediatisation after conviction

French law and professional codes of ethics regulate the mediatisation of cases after a court decision has been issued.

Pursuant to Article 41 of the Penitentiary Law, detainees must give their consent to the broadcasting or publication of their image or their voice, when they are recognisable.⁴¹ The penitentiary administration may oppose the broadcasting or the publication of the image or voice of a convicted person if such a restriction is deemed necessary to prevent the commission of further offences, or to protect public order, victims' or others' rights, as well as the rehabilitation of the person concerned. For accused persons in pre-trial detention, the authorisation of a judge is required to publish or broadcast their image or voice.⁴²

³⁵ Criminal Code, Article 226-13. Available on:

<https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070719&idArticle=LEGIARTI00006417944&dateTexte&categorieLien=cid>.

³⁶ Court of Cassation, Criminal Chamber, 28 October 2008, case n° 08-81.432. Available on:

<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000019739156&fastReqId=1645015220&fastPos=1>.

³⁷ Court of Cassation, Criminal Chamber, 28 October 2008, case n° 08-81.432. Available on:

<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000019739156&fastReqId=1645015220&fastPos=1>.

³⁸ Criminal Code, Article 321-1. Available on:

<https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070719&idArticle=LEGIARTI00006418233&dateTexte=&categorieLien=cid>

³⁹ See for example, Court of Cassation, Criminal Chamber, 9 June 2015, case n° 14-80713. Available

on: <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000030717716&fastReqId=1356323481&fastPos=1>

⁴⁰ See for example, Court of Cassation, Criminal Chamber, 11 May 2016, case n° 15-82365. Available

on: <https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000032535888>

⁴¹ Law 2009-1436, Article 41. Available on: https://www.legifrance.gouv.fr/eli/loi/2009/11/24/2009-1436/jo/article_41.

⁴² *Id.*

French law does not provide a general “right to be forgotten” once the sentence has been executed. Similarly, the European Court of Human Rights (“**ECtHR**”) recently ruled that there is no obligation for a media outlet to anonymise online archive material about a crime at the request of its perpetrators in view of their imminent release.⁴³

On 2 August 2011, the High Council for Audio-visual Media (*Conseil supérieur de l’audiovisuel* or “**CSA**”) and the French National Torture Prevention Mechanism (*Contrôleur général des lieux de privation de liberté*) signed an agreement to protect the right to one’s image and to promote the right to be forgotten for persons involved in criminal cases. This agreement is not binding and only aims to facilitate the cooperation between the two institutions.

Criminal and civil cases against media outlets

French judges (17th Chamber, Paris *Tribunal de Grande Instance*) report⁴⁴ a very limited number of criminal and civil cases either on the basis of the 1881 Law or Article 9-1 of the Civil Code. Generally, the prohibition of taking and publishing pictures of the accused in court is complied with by the press. Furthermore, in high profile cases, the parties consider it more efficient to communicate through their counsel directly in the media to counteract any negative image diffused in the press.

Art 38 ter of the 1881 Law. There are few cases decided on the basis of Article 38 ter of the 1881 Law (prohibition to take pictures or record court hearings and to diffuse them). In June 2018, a newspaper’s director was convicted and sentenced to a €4,000 fine for publishing pictures taken in a courtroom before the verdict was handed down. The director did not deny that the pictures were taken and published in violation of the law, but argued that the publication was necessary to inform the public about the attitude of the accused person. The Paris tribunal did not accept the journalist’s argument that only pictures could illustrate the attitude of the accused in court and capture his detachment and disregard for the victims’ families. This argument was rejected by the tribunal, which held that this information could have been reported in writing. The journalist filed an appeal which is under consideration at the time of writing. In a press release, the Judicial Press Association (*Association de la Presse Judiciaire*) “regretted [...] that *Paris Match* published the two photos taken in the courtroom during the trial. In doing so, this newspaper violated Article 38 ter of the Law of 29 July 1881 and jeopardised the good cooperation between the judges and the Association, which has facilitated the work of journalists with justice actors.”⁴⁵

Art 35 ter of the 1881 Law. There is no recent case regarding the interpretation of Article 35 ter (prohibition to take or diffuse images of the accused when they are handcuffed). The Court of Cassation ruled in 2004 that: “the broadcasting of the image of a person identified or identifiable, without that person’s consent, showing that the person is in pre-trial detention, is prohibited by Article 35 ter, regardless of the comments that accompany the publication of the image, and of the circumstances that another newspaper published an identical photograph with the consent of the person concerned”.⁴⁶ In that case, a French newspaper had published a picture representing a person in a pre-trial detention facility.

⁴³ ECHR, *M.L. and W.W. v. Germany*, App. No(s). 60798/10 and 65599/10, 28/06/2018.

⁴⁴ Interviews conducted by Fair Trials consultant, Karine Gilberg.

⁴⁵ Judicial Press Association, *Paris Match torpille le travail de la presse judiciaire*, 9 November 2017. Available on: <http://pressejudiciaire.fr/2.html>.

⁴⁶ Court of Cassation, Criminal Chamber, 7 December 2004, case n° 04-80.088. Available on: <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000007610690&fastReql=1706590659&fastPos=1>

The introduction of electronic devices in the courtroom makes it difficult to ensure that pictures are not taken and published on the web, but those cases mainly concern natural persons. In such cases, and when there is no ill-intention, the prosecutor usually asks for the deletion (*effacement*) of the picture and issues a formal reprimand (*rappel à la loi*) on the ground of Article 38 ter of the 1881 Law on the freedom of the press. In an interview carried out in the framework of this project, a French prosecutor confirmed such a procedure in a case where teenagers had taken pictures with their smartphones in the courtroom during the hearings, which were later posted on social media. The prosecutor immediately asked for the deletion of the pictures and issued a formal reprimand.

CASE STUDY : ‘Association Le Collectif des Parties Civiles pour le Rwanda’¹

The case concerned an accused at one of the Rwandan genocide trials appearing before the Court of Assize in Paris. Pictures showing him, next to a police officer (*gendarme*), and published online by the ‘*Association Le Collectif des Parties Civiles pour le Rwanda*’, an organisation representing victims of the Genocide in the proceedings (the “Organisation”). At the time when the pictures were published, the accused had not been definitively convicted (an appeal was under consideration).

The accused asked the judge to a) declare that the pictures published on the Organisation’s website violated his presumption of innocence; b) compel the Organisation to delete the pictures including on any other website which may have published them too, for which it is responsible; and c) order the Organisation to pay €500 per day until the pictures are deleted.

The court recalled that to conclude that there is an infringement of the presumption of innocence, the publications must contain definitive findings suggesting that the person concerned is definitely guilty (“*L’atteinte à la présomption d’innocence suppose, pour être caractérisée, que les publications litigieuses contiennent des conclusions définitives, manifestant un préjugé tenant pour acquise la culpabilité*”).

The court ruled that the publication of a picture of the accused alone, which gave no indication that he was under arrest, did not violate his right to be presumed innocent. As for the comments accompanying the picture, the court ruled that a) the website was commenting on the hearings before the Court of Assize; b) hearings were public, and transcripts of hearings were not prohibited, even on the website of the victims’ associations; c) the comments published on the website strongly challenged the arguments of the defence, the description of the facts by the defence, and the credibility of the defence witnesses; and d) web-users could not ignore that those comments are published on a website linked to the victims.

The court dismissed the case brought on the ground of Article 9-1 and Article 9 of the Civil Code (right to one’s image) – allowing the right to information of the general public to prevail in such circumstances.

The Court of Cassation ruled that an article in which the journalist presents objective information not presuming the guilt of the person concerned does not violate their right to be presumed innocent.⁴⁷

The High Council for Audio-visual Media frequently reaffirms the necessity for TV documentaries to respect the presumption of innocence. In a decision issued on 30 April 2018 regarding a documentary on rape allegations against a politician, the High Council noted that the documentary did not question

⁴⁷ See for instance Court of Cassation, 1st Civil Chamber, 19 March 2015, case n°14-11.517. Available on: <https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000030384367>.

the presumption of innocence, but that it was nevertheless unbalanced as it was insisting on the charges pressed against him.

Professional ethical rules for journalists

Journalistic professional bodies

Since 1887, journalists specialised in reporting on judicial cases (*presse judiciaire*) have been affiliated to the Organisation of the Judicial Press (*Association de la presse judiciaire*).

The Organisation of the Judicial Press, which has some 200 journalists as members at the time of writing, is a member of the French Observatory of the Deontology of Information (*Observatoire de la déontologie de l'information* or "ODI"), founded in 2012. According to Article 2 of its Statute, the Observatory is in charge of collecting and analysing data on the implementation of principles of ethics by the French media (press, radio, TV and online media). The Observatory collects information on, identifies and analyses good practices and infringements of ethical rules.

There is no press authority in France. In October 2018, when the bill concerning the fight against the mishandling of information (*proposition de loi relative à la lutte contre la manipulation de l'information* – also known as the "Fake News Bill"⁴⁸ – was discussed in Parliament, the Minister of Culture announced that Mr Emmanuel Hoog, former President of *Agence France Presse*, would draft a report on the possibility of establishing a Press Council in France. An official report had been published in 2014, which compared existing experiences and issued recommendations on the creation of a Press Council.⁴⁹ The law concerning the fight against the mishandling of information was adopted by the Parliament on 20 November 2018.⁵⁰ Mr Emmanuel Hoog communicated his report to the Minister of Culture at the end of March 2019, which recommends the creation of a Press Council.⁵¹

Prominent academics⁵² in the field of communication law consider that, compared to other countries, France has a very developed and long-standing (since 1881) legal framework regulating the media, which includes criminal sanctions, the possibility for the victims to claim civil compensation when their rights to their image or to private life are infringed, and oversight mechanisms and bodies (such as the High Council for Audio-visual Media). According to these academics, the legal framework has expanded to such an extent that professionals themselves may now consider that developing self-regulation would be redundant.

But the reasons for the absence of self-regulation mechanisms may be more complex considering the evolution of self-regulation in France. Even though codes of ethics constitute a long-standing self-regulation tool, the establishment of a Press Council has failed for different reasons, such as fears that such body would hamper the freedom of the press, and divisions among journalists' unions.

⁴⁸ The « Fake news Act » was the former name of the bill, which has been changed with « Law on the manipulation on information ». Available on: http://www.assemblee-nationale.fr/dyn/15/dossiers/alt/fausses_informations_lutte#acte-15-ANLDEF-DEBATS.

⁴⁹ Marie Sirinelli, « Autorégulation de l'information : Comment incarner la déontologie ? », <http://www.ladocumentationfrancaise.fr/rapports-publics/144000105/index.shtml>.

⁵⁰ Law n° 2018-1202 of 22 December 2018 on the fight against the mishandling of information. Available on: https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=6F8FFD32E25F3C3C4073FBB0ABF22482.tplgfr25s_2?cidTexte=JORFTEXT000037847559&categorieLien=id

⁵¹ Available on: [file:///C:/Users/EmmanuelleDebouverie/Downloads/Rapport%20mission%20Hoog03-04%20\(1\).pdf](file:///C:/Users/EmmanuelleDebouverie/Downloads/Rapport%20mission%20Hoog03-04%20(1).pdf)

⁵² See in particular, E. Derieux, « Droit et déontologie de l'information, le cas français », in D. Giroux, P. Trudel, *La régulation du travail journalistique dans dix pays*, Centre d'étude sur les médias, 2014, pp. 207-246.

Moreover, reluctance towards the establishment of a Press Council may also exist for historical reasons: the Vichy Regime had introduced such a body during the Second World War.⁵³

The creation of a National Union of Journalists (*Syndicat national des journalistes* or “SNJ”) in March 1918 is seen as a crucial step in the debate on self-regulation,⁵⁴ with the development of a code of honour (*code de l’honneur*) as early as July 1918 as one of its first accomplishments.⁵⁵ After the Second World War, several other journalists’ unions were created making it impossible for the National Union of Journalists to act as a Press Council.

The idea of having a Press Council has been regularly debated even before the Second World War.⁵⁶ In 1931, the SNJ established a disciplinary body to ensure self-regulation, as provided by its own statutes. This body did not however concern journalists who were not affiliated to the SNJ. In 1936, the member of Parliament Louis Deschizeaux introduced a bill to create a Press Association (*Conseil de l’Ordre de la Presse*) which was meant to draft a code for the profession and to issue sanctions (including bans to exercise the journalistic profession). The bill was never discussed.

Following the Second World War and the revelation of cases of journalists who collaborated with the Nazi-backed Vichy regime, journalists’ unions promoted the idea that it would be necessary to reinforce journalists’ ethics in general and establish a professional association, or even a specialised tribunal. In 1945, the Press Federation (*Fédération de la presse*) published a text in which it advocated for the establishment of a professional association (*Ordre de la presse*). Division among the journalists’ unions, however, hampered this project.

The idea re-emerged in 1950 when the General Secretary of the National Union of Journalists proposed the establishment of a High Council of Journalists (*Conseil supérieur des journalistes*) composed of a judge and 14 journalists, which would have delivered professional cards to journalists and issued sanctions, including the possibility to withdraw a professional card for a maximum of 2 years. Such a proposal has regularly re-emerged but has been systematically rejected considering that it could jeopardise the independence of journalists and could be turned into a tool for politicians and media owners to pressure journalists.

Several initiatives have taken place more recently. For instance, in its 1995, the National Commission on Human Rights (*Commission nationale consultative des droits de l’homme* or “CNCDH”)⁵⁷ issued an Opinion on freedom of the press and journalists’ responsibility (*Avis sur la liberté de la presse et la responsabilité des journalistes (pour une déontologie de la liberté d’expression)*)⁵⁸ which underlined that the legal framework on the presumption of innocence should be paired with ethical requirements in order to prevent damages to one’s reputation and violations of other rights. The profession itself would be directly in charge of the implementation of those requirements, without interference by

⁵³ This idea is discussed by Charon Jean-Marie in « L’éthique des journalistes au XXe siècle. De la responsabilité devant les pairs aux devoirs à l’égard du public », in *Le Temps des médias*, 2003/1 (n° 1), p. 200-210.

⁵⁴ See Charon Jean-Marie, « Journalisme, le défi de l’autorégulation », in *Réseaux*, Volume 18, n°100, 2000, pp. 385-401.

⁵⁵ In December 1918, the SNJ stated that it would have a moral role similar to the one of the Bar Association (*Ordre des avocats*).

⁵⁶ See D. Ruellan, *Le journalisme ou le professionnalisme flou*, 2007, PUG, pp. 68 and following.

⁵⁷ Established in 1947, the CNCDH is the French National Human Rights Institution. It issues opinions and recommendations to the Parliament and the Government on human rights matters.

⁵⁸ Commission Nationale Consultative des Droits de l’Homme, *Avis sur la liberté de la presse et la responsabilité des journalistes (pour une déontologie de la liberté d’expression)*, 21 March 1995. Available on: https://www.cncdh.fr/sites/default/files/95.03.21_avis_sur_la_liberte_de_la_presse_et_la_responsabilite_des_journalistes.pdf.

public authorities. The idea was once again under consideration in the context of the discussions regarding the so called “Fake News Bill”.

Professional guidelines and reporting on judicial proceedings

Professional guidelines for journalists have existed in France at least since the foundation of the National Union of Journalists in 1918, when a Charter on Journalists Professional Obligations (*Charte des devoirs professionnels des journalistes français*) was adopted. Reviewed in 1938, and again in 2011,⁵⁹ the now renamed Charter on Journalists Professional Ethics (*Charte d'éthique professionnelle des journalistes*) states that journalists shall respect the dignity of the person and the presumption of innocence, and shall act neither as a police officer nor as a judge.

First issued in 1991 and reviewed in 2011, the Charter on daily regional newspapers (*Charte de la presse quotidienne régionale*) also includes principles on rules of ethics and presumption of innocence and refers to the principle of presumption of innocence. In particular, the Charter requires journalists to:⁶⁰

- State the principle of presumption of innocence in their reporting;
- Report on judicial proceedings with heightened caution, using the correct legal terms, in particular if revealing the name of the accused person. In case of misdemeanours, names shall not be revealed if such an element is not necessary to the public's right to information.⁶¹ The same caution applies to information on suspended sentences;
- Avoid publishing pictures presenting the person concerned as guilty;
- Report on acquittals.

Guidelines on the protection of the presumption of innocence were confirmed by the High Council for Audio-visual Media in its “seven themes of ethics”,⁶² one of which is specifically dedicated to the mediatisation of judicial cases. The High Council recommends that media treat the information in a way that protects the presumption of innocence, and that they anonymise the names of child offenders. Heightened care must be given to faithfully reporting on criminal cases and presenting the views of the different parties.

In 2016, the Law of 29 July 1881 on Freedom of the press was amended⁶³ to integrate the rules of ethics in the contract of employment between the journalist and the hiring media company. This

⁵⁹ SNJ, *Charte d'éthique professionnelle des journalistes*, 2011. Available on: <http://www.snj.fr/content/charte-d%E2%80%99C3%A9thique-professionnelle-des-journalistes>.

⁶⁰ The Charter is not legally binding and is not structured by Articles and paragraphs. We only provide here a list of the main recommendations included in the Charter.

⁶¹ Such an assessment is determined by the journalist themselves or the editor, based on the criteria identified by the relevant case-law. In particular, the ECHR has identified several criteria, including the contribution to a debate of general interest, the fame of the person concerned, the subject of the report, prior conduct of the person concerned, the method of obtaining the information and its veracity, the content, form and consequences of the publication, as well as the severity of the sanctions imposed. See ECHR, *Axel Springer AG v. Germany*, 2012. Available on: <http://hudoc.echr.coe.int/eng?i=001-109034>.

⁶² Conseil Supérieur de l'Audiovisuel, *Les sept principaux thèmes de la déontologie*. Available on: <https://www.csa.fr/Protéger/Garantie-des-droits-et-libertes/La-deontologie-des-programmes/Les-sept-principaux-themes-de-la-deontologie>.

⁶³ Article 1 of the Law n°2016-1524 of 14 November 2016 reinforcing the freedom, independence and pluralism of the media (*Loi Bloche*) adding an Article 2 bis to the 1881 Law. Available on: <https://www.legifrance.gouv.fr/eli/loi/2016/11/14/MCCX1603797L/jo>.

provision only entered into force in July 2017. There has not been a review of the implementation of this provision to this date, and journalists' unions have not yet provided feedback.

According to the new Article 2 bis of the 1881 Law,⁶⁴ a contract signed between a journalist and a media company implies adhering to the charter of ethics of the company. Companies which have no such charter shall adopt one, as established by law of 14 November 2016 reinforcing the freedom, independence and pluralism of the media.⁶⁵ The charters have to be drafted by the company together with representatives of the editorial staff.

The High Council for Audio-visual Media is responsible for certifying that the company charters comply with Article 2 bis of the 1881 Law.⁶⁶ However, its mandate only covers radio and TV broadcasting companies.

The Law of 30 September 1986 on the freedom of communication⁶⁷ was amended as well, so that every media company (TV and radio broadcasting general information or information on politics) is required to establish a special committee on integrity, independence and pluralism of information. These committees review any case on their own motion or are consulted by the governing bodies of the company or a mediator when such an institution exists.⁶⁸

State of play of the freedom of the press in France

Freedom of the press and freedom of audio-visual communication derive directly from the constitutional principle of freedom of communication.⁶⁹ Freedom, pluralism and the independence of the media are also guaranteed by Article 34 of the French Constitution.⁷⁰

Different laws regulate the implementation of these constitutional principles:

- The Law of 29 July 1881 enshrines the freedom of "printing" and provides that the publication of newspapers does not require any authorisation;⁷¹
- The Law of 2 April 1947 protects the freedom to disseminate print press; and⁷²

⁶⁴ Article 1 of Law n° 2016-1524 of 14 November 2016 reinforcing freedom, independence and pluralism of the media. Available on: <https://www.legifrance.gouv.fr/eli/loi/2016/11/14/MCCX1603797L/jo>.

⁶⁵ Law n° 2016-1524 of 14 November 2016 reinforcing freedom, independence and pluralism of the media. Available on: <https://www.legifrance.gouv.fr/eli/loi/2016/11/14/MCCX1603797L/jo>.

⁶⁶ Article 3-1 §3 of Law n° 86-1067 of 30 September 1986 on the freedom of communication (*Loi Léotard*). Available on: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068930>.

⁶⁷ Law n° 86-1067 of 30 September 1986 on the freedom of communication (*Loi Léotard*). Available on: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068930>.

⁶⁸ Article 30-8 of Law n° 86-1067 of 30 September 1986 on the freedom of communication. Available on: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068930>.

⁶⁹ DDHC, Article 11, 1789. Available on: <https://www.legifrance.gouv.fr/Droit-francais/Constitution/Declaration-des-Droits-de-l-Homme-et-du-Citoyen-de-1789>.

⁷⁰ French Constitution, Article 34, 1958. Available on: https://www.legifrance.gouv.fr/Droit-francais/Constitution/Constitution-du-4-octobre-1958#ancre1_6_1_1.

⁷¹ Law of 29 July 1881, Articles 1 and 5. Available on:

https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=8F345B0C7A8851CF2CFC5BEF1A3F85B4.tplgfr34s_1?idArticle=LEGIARTI000025576958&cidTexte=LEGITEXT000006070722&dateTexte=20181121.

⁷² Law n°47-585 of 2 April 1947. Available on:

https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=8F345B0C7A8851CF2CFC5BEF1A3F85B4.tplgfr34s_1?idArticle=LEGIARTI000006419889&cidTexte=LEGITEXT000006068035&dateTexte=20181121.

- The Law of 30 November 1986 on the freedom of audio-visual communication enshrines the freedom of online communication.⁷³ Those freedoms are not unconditional and are to be mitigated with others' rights and freedoms (in order, for instance, to protect minors and to respect the right to private life).

Freedom of the Press

Ranking of France since 2013

Reporters without Borders (*Reporters sans frontières*)

Year	Ranking
2017	39 / 180
2016	45 / 180
2015	38 / 180
2014	39 / 180
2013	37 / 180

Although France has a generally free media environment, in its 2017 report on freedom of the press, Reporters Without Borders ("**RSF**") considered that ownership of media by large private companies may put editorial independence at risk.⁷⁴ Freedom House also considers⁷⁵ that defamation cases and recent laws may undermine freedom of information, despite the law on reinforcing freedom, independence and pluralism in media (*Loi Bloche*).⁷⁶ According to *Loi Bloche*, journalists have the right to refuse any pressure, to protect their sources, to refuse to sign a paper, a show or part of a show or any contribution whose content was modified without their knowledge or their consent. Journalists may oppose any action that would infringe upon their professional standards or convictions. A media outlet which violates this right may incur the total or partial suspension of its public subsidies.

⁷³ Law n°86-1067 of 30 November 1986. Available on:

https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=8F345B0C7A8851CF2CFC5BEF1A3F85B4.tplgfr34s_1?idArticle=LEGIARTI000006274711&cidTexte=LEGITEXT000006068930&dateTexte=20181121.

⁷⁴ Reporters Without Borders, 2018. Available on: <https://rsf.org/en/france>.

⁷⁵ Freedom House, Freedom in the World 2018. Available on: <https://freedomhouse.org/report/freedom-world/2018/france>.

⁷⁶ Law n°2016-1524 of 14 November 2016. Available on:

<https://www.legifrance.gouv.fr/eli/loi/2016/11/14/MCCX1603797L/jo>.

Challenges to freedom of the press include:

- **Laws adopted in the context of the fight against terrorism**

Laws adopted in the aftermath of the terrorists' attacks do not directly concern the freedom of the press but may affect freedom of communication, and especially freedom of online communication. The Law of 13 November 2014⁷⁷ criminalises the provocation and glorification of terrorism, and generalises the scope of such acts well beyond the original non-criminal provision in the 1881 Law, which only concerned printed media. The sanctions introduced by the 2014 law can go up to a 5-year imprisonment and €75,000 fine. In its decision of 18 May 2018, the Constitutional Court ruled that the limitation to the freedom of speech imposed by the Law of 13 November 2014 is necessary, appropriate and proportionate to the goal pursued by the Law itself.⁷⁸

- **Protection of journalistic sources**

Article 2 of the 1881 Law, as amended by the Law of 4 January 2010 on the protection of confidentiality of journalists' sources, states that confidentiality of journalists' sources is protected in the exercise of their mission to inform the public.⁷⁹ This principle may be limited only when an overriding public interest justifies such limitations, and when such limitations are strictly necessary and proportionate to the legitimately pursued goal. A proposed amendment to Article 2 attempted to limit the possibility to violate the secrecy of journalistic sources and created an immunity against criminal prosecutions for journalists. The amendment was brought before the Constitutional Court. The Court overruled it on the grounds that it failed to ensure a sufficient balance between, on the one hand, the freedom of expression and communication, and on the other, the right to one's private life and confidentiality of communication, as well as the requirement to safeguard the fundamental interests of the Nation (i.e. tracking the perpetrators of criminal offences and preventing breaches of the peace).⁸⁰

- **Protection against the mishandling of information (or "fake news")**

The Parliament adopted a law concerning the fight against the mishandling of information at the end of 2018.⁸¹ The new law imposes specific transparency obligations on online platform providers (*opérateurs de plateforme en ligne*) towards the final users of those platforms and would task the High Council for Audio-visual Media to help fight against the broadcasting of false information that could harm public order or the fairness of the elections.

In November 2018, France supported the International Declaration on Information and Democracy: principles for the global information and communication space,⁸² issued by RSF. This Declaration aims,

⁷⁷ Law n° 2014-1353 of 13 November 2014. Available on:

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000029754374&categorieLien=id>.

⁷⁸ Constitutional Court, Decision n° 2018-706 QPC, 18 May 2018. Available on: <https://www.conseil-constitutionnel.fr/decision/2018/2018706QPC.htm>.

⁷⁹ Law n° 2010-1 of 4 January 2010, Article 2, §1.

Available on: https://www.legifrance.gouv.fr/eli/loi/2010/1/4/2010-1/jo/article_2.

⁸⁰ Constitutional Court, Decision n°2016-738 DC, 10 November 2016, §§14 and 23. Available on: <https://www.conseil-constitutionnel.fr/decision/2016/2016738DC.htm>.

⁸¹ Law n° 2018-1202 of 22 December 2018 *relative à la lutte contre la manipulation de l'information*. Available on:

https://www.legifrance.gouv.fr/affichTexte.do?jsessionid=6F8FFD32E25F3C3C4073FBB0ABF22482.tplgfr25s_2?cidTexte=JORFTEXT000037847559&categorieLien=id

⁸² Reporters Without Borders, International Declaration on Information and Democracy: principles for the global information and communication space, November 2018. Available on: <https://rsf.org/en/global-communication-and-information-space-common-good-humankind>.

in particular, to protect the right to reliable information, and to promote the integrity of news and information. It calls for the establishment of an international group of experts to determine an international framework for information and democracy.

- **Ownership of the media**

As developed in Part II, the media ownership in France 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.

Part II: Monitoring media representation of suspects and accused persons

Introduction

Fair Trials was tasked with conducting media monitoring related to the French domestic media landscape to document cases where crime news reporting is at odds with the presumption of innocence, analyse any emerging trends and provide a first evidentiary basis for future research into the issue.

The French media landscape

According to the Commission of publications and press agencies (*Commission paritaire des publications et agences de presse*),⁸³ there are currently 369 publications (both print and electronic) which qualify as newspapers (*Presse d'information politique et générale*) in France.

In addition, High Council for Audio-visual Media data shows that there are 9 radio stations and 31 TV channels diffused through digital terrestrial television which deliver general and political information. 7 of the 9 radio stations are state-owned, and broadcast news bulletins or news shows, on a regular basis.⁸⁴ 8 of the TV channels are state-owned,⁸⁵ 18 are private and free-to-air, and 5 are private and not free.

Recently, the law reinforced the obligation of transparency on media outlets ownership. Article 19 of Law n° 2016-1524 of 14 November 2016 amended Article 6 of the Law n°86-897 of 1 August 1986 to introduce an annual obligation for each media outlet to inform their readers (including online readers) on its ownership structure (details on shareholders detaining more than 5% of the shares) and the composition of its management board. The owner company must indicate the identity of the shareholders and the repartition of the shares between them.⁸⁶

Pluralism in the media, first a constitutional objective, is now enshrined in Article 34 of the French Constitution,⁸⁷ along with freedom and independence of the media. Article 11 of Law n°86-897 of 1 August 1986⁸⁸ aims to prevent media trusts by prohibiting ownership which would lead to the control of 30% or more of the press distributed in France. This provision only concerns print daily news press.

⁸³ The Commission is an independent body, composed of representatives of the public administration and the press industry, in charge of delivering opinions which allow publications to benefit from the tax regime applicable to the press.

⁸⁴ Conseil supérieur de l'audiovisuel, *Composition du paysage audiovisuel français : la radio*. Data from 2014. Available on: <https://www.csa.fr/Cles-de-l-audiovisuel/Connaitre/Le-paysage-audiovisuel/Composition-du-paysage-audiovisuel-francais-la-radio>.

⁸⁵ Conseil supérieur de l'audiovisuel, *Composition du paysage audiovisuel français : la télévision*. Available on: <https://www.csa.fr/Cles-de-l-audiovisuel/Connaitre/Le-paysage-audiovisuel/Composition-du-paysage-audiovisuel-francais-la-television>. There are 311 channels diffused by other means than the TNT network.

⁸⁶ Law n° 2016-1524 of 14 November 2016, Article 19. Available on: https://www.legifrance.gouv.fr/eli/loi/2016/11/14/2016-1524/lo/article_19.

⁸⁷ French Constitution, Article 34, 1958. Available on: <https://www.legifrance.gouv.fr/affichTexteArticle.do?idArticle=LEGIARTI000019241018&cidTexte=LEGITEXT00006071194>.

⁸⁸ Law n°86-897, Article 11, 1st August 1986. Available on: https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=D186B2315C7D8F71BC740FB8292BE422.tplgr34s_1?idArticle=LEGIARTI000006275056&cidTexte=LEGITEXT000006068976&dateTexte=20181121.

For other media outlets, Articles L430-1 to L430-10 of the Code on trade law⁸⁹ regulates mergers in compliance with EU law.

Several academic researches and books published by journalists report a growing number of French businessmen owning media outlets,⁹⁰ and note that there are no state-owned print media. A study from Sciences Po Toulouse “identified 405 different unique owners of the French print and online media and 237 different owners of the television and radio stations”.⁹¹

The ownership structure in the media sector (press, online, broadcast) is complex, therefore the following comments can only give a broad overview of the French media landscape.

Private companies represent 80% of the owners of print media (the total number of owners being 2,065), and 78% of the owners of broadcast media (among a total number of 749 owners; the State represents 5%), and 76% of online media. According to the Sciences Po Toulouse study, the financial and insurance services sector has the highest level of representation among the private companies (51% of the private companies that own the print and online media) followed by information and communication companies. For broadcast media, the financial and insurance services sector counts for 38% of the private ownership, and the information and communication sector for 5%.

As for the ownership structure of print press,⁹² local press is mainly owned by a few large media companies: for instance, media group “La Montagne”, whose main shareholder is Fondation Varenne (40%), edits daily local newspapers for the central regions of France. National press is owned by a higher number of companies, which are largely not active in the media sector. For instance, one of the French leading newspapers (Le Monde) was owned in majority from 2010 to 2017 by 3 businessmen (Pierre Bergé, Xavier Niel, and Matthieu Pigasse).⁹³ The company “Le Monde Libre”, that belonged to them, controls 64% of the editing company of the newspaper Le Monde (*Société Editrice du Monde*).

The media audience in France

According to Médiamétrie,⁹⁴ in 2016, 98% of French people reported that they search for news: 90% at least once daily, 63% several times a day, and only 1% once a week.

97.1% of the French population report that they read online or print press each month: among them, 45% read press only in print, 15% only on their mobile phone.⁹⁵

In France, the media are mainly financed through advertising revenues and public subsidies, as well as by sales and subscriptions (for print press and some TV channels).

Scholars have underlined that “[t]he intervention of the French State in the newspaper industry has often been justified by the public service mission that daily newspapers exercise in ensuring the widest

⁸⁹ Code on trade law, Articles L430-1 to L430-10. Available on:

<https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000005634379&idArticle=LEGIARTI00006232012&dateTexte=&categorieLien=cid>.

⁹⁰ Julia Cagé, Olivier Godechot (coord.), *Who Owns the Media? The Media Independence Project*, Sciences Po, LIEPP, 2017, p. 40.

⁹¹ *Ibid.* Julia Cagé and Olivier Godechot retrieved information on the ownership structure of 303 print and online press (out of the 369 under consideration). Missing information mainly concerns the smaller and online media.

⁹² *Ibid.*

⁹³ Pierre Bergé passed away in 2017.

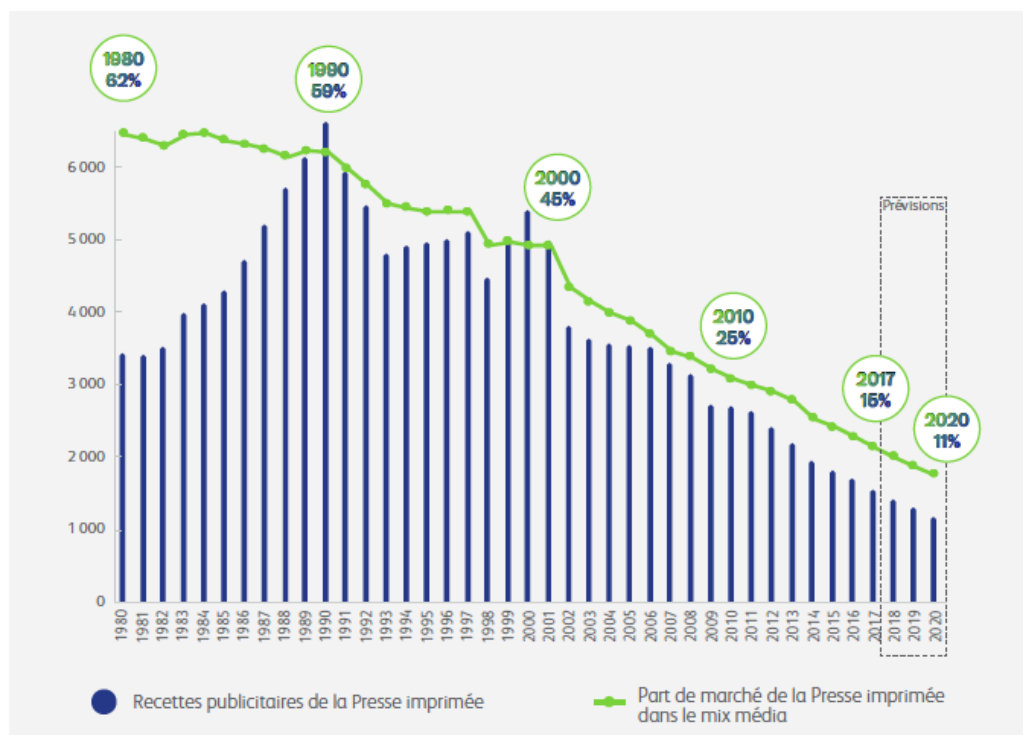
⁹⁴ Médiamétrie is a private company, founded in 1985, which measures media outreach in France, especially the of radio, TV and online media. It is the leading company in this field.

⁹⁵ Detailed figures about the readership of national daily newspapers, weekly magazines and regional newspapers are provided for in Annexes 1, 2, and 3.

possible dissemination of information”.⁹⁶ Public subsidies aim to support media pluralism as they are “salient guarantors of survival for many newspapers, in particular the national daily press”.⁹⁷ In 2016, financial support for the media from the state, either direct or indirect, amounted to €79,657,023.⁹⁸ Media pluralism as a principle is also supported by a system established by the Law of 2 April 1947⁹⁹ on the status of companies distributing the daily and weekly press (*Loi Bichet*).¹⁰⁰ A reform of the distribution system is under consideration¹⁰¹ following growing critiques about its inefficiency.

Advertising revenues of the print press have rapidly decreased over the years as shown by the following graph¹⁰² (blue columns, in million Euros; the green line corresponds to the market share of the print press in advertising revenues of all media).

Press support advertising revenues (in millions of euros) and the share of the Press in the media mix (in %)



Analysis: BearingPoint - data: Zenith, Advertising Expenditure Forecast, 12/2017

⁹⁶ Matthieu Lardeau, Patrick Le Floch, “France: Press Subsidies—Inefficient but Enduring”, in P. Murschetz (ed.), *State Aid for Newspapers, Media Business and Innovation*, Springer-Verlag, Berlin Heidelberg, 2013.

⁹⁷ Matthieu Lardeau, Patrick Le Floch, *op. cit.*

⁹⁸ See data from the Ministry of Culture on 2016, 2018. Available on:

<http://www.culture.gouv.fr/Thematiques/Presse/Aides-a-la-presse/Les-chiffres-des-aides-a-la-presse/Tableaux-des-titres-et-groupes-de-presse-aides-en-2016>.

⁹⁹ Law of 2 April 1947. Available on:

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068035>.

¹⁰⁰ See Franceschini, L. et Broyelle, C., dir., *La loi Bichet sur la distribution de la presse, 70 ans après*, Editions Panthéon-Assas, 2018.

¹⁰¹ See Marc Schwartz, *Dix propositions pour moderniser la distribution de la presse*, Report to the Minister of Economy and Finance and to the Minister of Culture, June 2018. Available on:

<http://www.culture.gouv.fr/Espace-documentation/Rapports/Rapport-au-ministre-de-l-Economie-et-des-Finances-et-a-la-ministre-de-la-Culture-Dix-propositions-pour-moderniser-la-distribution-de-la-presse>.

¹⁰² Conseil Supérieur de l’Audiovisuel, *Media et publicité en ligne*. Available on:

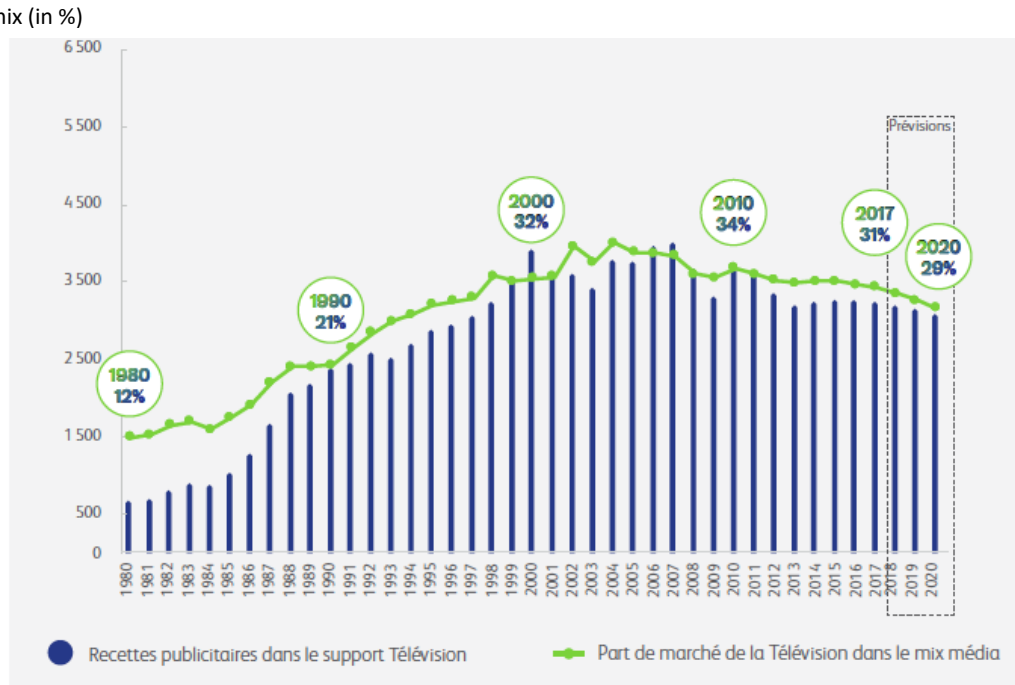
file:///C:/Users/EmmanuelleDebouverie/Downloads/CSA_Etude%20M%C3%A9dias%20et%20Publicit%C3%A9s.pdf

In the audiovisual sector, the main source of public media broadcasting funding comes from a dedicated tax (*contribution à l'audiovisuel public*, "CAP"). According to media reports,¹⁰³ public subsidies for audiovisual media in 2018 amounted to €3,816 billion, mainly covered by the CAP (€3,809 billion). The main beneficiaries were France Télévisions (€2,516 billion), Radio France (€596 million), and Arte France (€279 million).

The rest of the resources comes from advertising revenues. For instance, advertising revenues of France Télévisions in 2017 amounted to €347.2 million.

For private and public broadcast media, advertising revenues are stable, as shown by the following graph¹⁰⁴ (blue columns, in million Euros; the green line corresponds to the market share of the TV among other media).

Television advertising revenues (in millions of euros) and Television's share of the market in the media mix (in %)



Analysis: BearingPoint - data: Zenith & IREP

¹⁰³ See e.g., Libération, *Combien rapporte la redevance TV à l'Etat?*, 21 September 2018. Available on: https://www.liberation.fr/checknews/2018/09/21/combien-rapporte-la-redevance-tv-a-l-etat_1680283.

¹⁰⁴ Conseil Supérieur de l'Audiovisuel, *Media et publicité en ligne*. Available on: file:///C:/Users/EmmanuelleDebouverie/Downloads/CSA_Etude%20M%C3%A9dias%20et%20Publicité%20A9s.pdf

A study of July 2018 commissioned by the Ministry of Culture shows that TV and print press has not captured the ever-growing advertising revenues of Internet.¹⁰⁵

Media monitoring: methodology

In addition to desk research and interviews with various stakeholders carried on by Fair Trials consultant Karine Gilberg for the purpose of Part 1 of the report, the following methodology was adopted for the media monitoring.

The sampling involved selecting up to 7 daily print media, up to 3 weekly print media, 3 web-based media, and 2 TV broadcasters. The media monitoring was conducted throughout June, July and September 2017, on random dates¹⁰⁶ selected by the University of Vienna. Where there were no news on the day, for instance because of strikes or because of editorial calendars, the monitoring was carried out the day before or the day after the agreed date. The methodology permitted to narrow down the scope of the research **to 25 representative samples**.

Selecting the media

Print press

Following the agreed methodology, Fair Trials Europe selected 6 daily and 3 weekly newspapers with the widest circulation in France. Data on the circulation of the 9 outlets was retrieved from the website of the *Alliance pour les Chiffres de la Presse et des Médias* (“ACPM”), whose mission is to provide official measurements on the number and circulation of print media in France.¹⁰⁷

Daily print press

Based on the data provided by the ACPM referring to the 10 most circulated daily print media in France for 2017,¹⁰⁸ the following 6 daily print media were chosen:

1. *Le Parisien / Aujourd’hui en France*
2. *Le Figaro*
3. *Le Monde*
4. *La Croix*
5. *Libération*
6. *L’Humanité*

The selection was focused on those newspapers which report on criminal cases (*faits divers*). It did not, for example, include *L’Equipe*, which mostly deals with sports issues, *Les Echos*, which mostly reports on economic and financial issues, nor the Paris-based international edition of *The New York Times*, as it is not a domestic medium.

All 6 selected daily media have both print and digital versions of the newspaper (which are accessible through a paying subscription), and they all have their own website (parts of which are freely

¹⁰⁵ Conseil supérieur de l’audiovisuel, *Etude sur les Médias et la publicité en ligne : transfert de valeur et nouvelles pratiques*, 2018. Available on: <http://www.culture.gouv.fr/Thematiques/Audiovisuel/Rapports-etudes/Etude-sur-les-Medias-et-la-publicite-en-ligne-transfert-de-valeur-et-nouvelles-pratiques2>.

¹⁰⁶ June 5, 13, 21, 29; July 2, 7, 15, 16, 24; September 2, 5, 13, 21, 29.

¹⁰⁷ Alliance pour les Chiffres de la Presse et des Médias, *Rôle et missions*, available on: <http://www.acpm.fr/Presentation/Role-et-missions>. Last retrieved on 11/10/2018.

¹⁰⁸ See Annex 4. Also available on: <http://www.acpm.fr/Chiffres/Diffusion/La-Press-Payante/Presse-Quotidienne-Nationale>. Last retrieved on 11/10/2018.

accessible). The study utilised the digital versions of the newspaper for all 6 outlets, and their websites. The sampling process was carried out by checking the headlines of the articles either on the PDF version (where it was possible to download it, i.e. *Le Parisien*, *Le Monde*, *La Croix*, and *Libération*) or on the publications' online reader (*Le Figaro*, *L'Humanité*). Selected samples were saved in PDF and stored in dated folders.

Weekly print press

We also relied on the ACMP database to select the most widely circulated weekly magazines in 2017 in France.

Our research returned 272 results for non-daily print media which are currently circulated in France.¹⁰⁹ Out of the total results, we focused our selection on those newspapers which a) are issued on a weekly basis (*hebdomadaire*), b) report on criminal cases (*faits divers*), and c) are *not* the weekly edition of the daily print media which we monitored already. As a result, we selected:

1. *Paris Match*
2. *Le Point*
3. *L'Obs*

All three selected weekly media have both print and digital versions of the magazine, both paying, and they all have their own website. As Fair Trials Europe is based in Brussels, the study relied on the digital versions for *Le Point* and *L'Obs*, and on hard copies for *Paris Match*, which were accessed in the Brussels library of the Alliance Française, the French cultural institute.

For *Le Point* and *L'Obs*, the sampling process was carried out on the publications' online reader and the samples were saved in PDF and stored in dated folders. For *Paris Match*, relevant samples were scanned and saved in PDF, and stored in dated folders.

Pure digital media outlets

The 3 online media were selected on the basis of the Alexa Top Sites classification for France, which lists the 500 most-visited websites in the country.¹¹⁰ Out of the 500 entries, Fair Trials selected news outlets which a) report on criminal cases, b) are not linked to any monitored daily and weekly print media, nor to the monitored TV channels, and c) have either a pure digital presence (*Huffingtonpost.fr*) or have a strong online presence, besides other formats (*20minutes.fr* and *BFMTV.com*).¹¹¹ The selection originally included two other pure digital outlets, i.e. *Médiapart.fr* and *Slate.fr*, based on Facebook followership rather than Alexa ratings.¹¹²

As a result, the following online outlets were selected:

1. *20minutes.fr* (49th place in the Alexa Top Sites classification for France)
2. *BFMTV.com* (92nd place)
3. *Huffingtonpost.fr* (125th place)

¹⁰⁹ See Annex 5. Also available on: <http://www.acpm.fr/Chiffres/Diffusion/La-Press-Payante/Presse-Magazine>. Last retrieved on 11/10/2018.

¹¹⁰ The full Top Sites classification is provided in Annex 7.

¹¹¹ *20minutes.fr* also has a free print edition, issued in local editions across France. *BFMTV.com* also has a TV channel. Neither the first nor the second one could have been included in the media monitoring of print and TV media, for which we relied on other official databases.

¹¹² *Médiapart.fr* only comes at the 405th place of the Alexa 500 Top Sites classification, while *Slate.fr* is not even included in the 500 Top Sites classification.

Research on *20minutes.fr* was carried out on the online archives of the outlet.¹¹³ All headlines related to articles published on the sampling dates were checked. All posts are accessible for free.

Research on *BFMTV.com* was carried out by screening all the headlines of articles published on the sampling dates under the website's section *Police et Justice*.¹¹⁴ All posts are accessible for free.

Research on *Huffingtonpost.fr*, as well as on *Médiapart.fr* and *Slate.fr*, was carried out through the websites' research engines, based on the agreed sampling keywords. All posts are accessible for free, except for *Médiapart.fr*, for which we purchased a monthly subscription.

TV channels

Following the agreed methodology, Fair Trials Europe selected 2 TV channels, one public and one private, with the widest broadcasting in France. Data on the broadcasting of the TV channels, updated to 2017, was retrieved from the website of *Médiamétrie*, a professional audience measurement and survey company.¹¹⁵

Based on the 2017 classification,¹¹⁶ we selected the following TV broadcasters:

1. *TF1* (private broadcaster)
2. *FRANCE 2* (public broadcaster)

Research on *TF1* was conducted by screening the headlines of all the reports included in the news programme (1 pm edition and 8 pm edition) on the monitoring date. Reports dealing with criminal cases were recorded with the free trial version of Camtasia software, watched and filed in dated folders.

Research on *FRANCE 2* was conducted by recording the news programme on the monitoring dates (1 pm edition and 8 pm edition) with free software Video Download Helper. The full recordings were watched and filed in dated folders.

Recordings of the two news programmes are available for free on *TF1* and *FRANCE 2* websites, but only for a limited period of time.

Monitoring the media

The sampling had to satisfy two main criteria, as indicated by the University of Vienna: a) making reference to a criminal proceeding, and b) making reference to real suspects or accused people.

Specific keywords were provided by the University of Vienna to help in the research.

The table below lists the keywords provided in English and matches them with the translation in French provided by Fair Trials Europe:

¹¹³ Available on: <https://www.20minutes.fr/archives/>.

¹¹⁴ The section comprises sub-sections *Terrorisme, Faits Divers, Sécurité, Justice, Police*. Available on: <https://www.bfmtv.com/police-justice/>.

¹¹⁵ *Médiamétrie*, available on: <http://www.mediametrie.com/index.php>.

¹¹⁶ See Annex 6. Available on: *Médiamétrie, Médiamat Annuel 2017*, <https://www.mediametrie.fr/television/communiques/l-audience-de-la-television-en-2017.php?id=1802>.

English	French
police	police
court	tribunal
prosecution	poursuites pénales
criminal case	procès pénal
criminal offence	infraction pénale
investigation	enquête
authorities	autorités
lawyer	avocat
suspicion	soupçon
suspect	suspect
crime	crime
delict	délit
defendant	prévenu
accused	accusé
charged	inculpé
arrested	arrêté

Keyword-based searches were carried out on 3 purely digital outlets, i.e. *Huffingtonpost.fr*, *Médiapart* and *Slate*, and on the websites of the 6 daily newspapers and 3 weekly magazines, which have electronic databases suitable for such searches. For other outlets, either the format did not allow for a keyword-based search¹¹⁷ or it was considered easier to screen all the headlines which were published on the monitoring date.¹¹⁸ The specific application of the research methodology for every media outlet is detailed in the sections above.

One further criterion for selecting the samples concerned the length of the reporting, set at a minimum of 50 words. The word-length of the articles were not measured, as this would not have been possible to apply when the samples were not available in searchable PDFs. We nevertheless did not select any reporting which was obviously short and could not be sampled adequately.

Out of all the selected samples, we short-listed 49 so-called “worst cases”, which were identified by one or more of the following criteria:

1. Explicit reference to ethnicity/religion/political status/citizenship;
2. Explicit reference to guilt or innocence/to prior convictions;
3. Explicit reference to cooperation with the authorities/confession/pleaded guilty or not;

¹¹⁷ This specifically concerned *Paris Match*, which was sampled on hard copies at the local seat of the *Alliance Française*.

¹¹⁸ This was specifically true for 2 online outlets, i.e. *20minutes.fr* and *BFMTV.com*, the 6 daily newspapers, and 2 weekly magazines, i.e. *Le Point* and *L’Obs*.

4. Visual representation of restraining measures, guards, lawyers, unfavourable angles, unusual facial expressions, shoes without shoe laces, the shoes and the ankle cuff, close-up of faces, presence of the police, severe restraining measures, representation of the defendant as aggressive/dangerous/threatening/repulsive/hot-tempered, 'hooligan';
5. Multiple reporting (more than 2-3 media outlets).

For ease of writing, we refer to these criteria as “tension points”, i.e. as points that are in tension with the principle of presumption of innocence.

The project team at the University of Vienna further short-listed 25 samples out of the 49 submitted samples, including 4 from daily outlets, 2 from weekly outlets, 12 from online media not related to monitored press, 5 from websites related to monitored press, and 2 from TV broadcasters, in an effort to ensure a balanced mix of formats and reported crimes across all project countries.

Media monitoring: the findings

Outlets

Based on the selections above, Fair Trials observed a disproportionate rate of tension points in crime news produced by online outlets. Such overrepresentation of online outlets was mainly driven by 2 websites, *20minutes.fr* and *BFMTV.com*, which by themselves accounted for almost half of the short-listed sample (11 out of 25).¹¹⁹

This finding suggests that a large segment of the French public is exposed to crime news which does not fully comply with the principle of presumption of innocence, considering both the high numbers of visits to their websites (as documented by their Alexa ratings) and their Facebook followership.¹²⁰

Types of crimes

The highest incidence of presumption of innocence tension points in crime news were observed in relation to terrorist activities and sexual harassment.

Terrorism-related crimes were reported in 8 out of 25 selected samples.¹²¹ The terrorism-related reporting which presented the highest number of problems in relation to the presumption of innocence dealt exclusively with Islamic fundamentalist terrorism. In such reporting, the Islamic faith and symbols were often conflated with a broader alleged terrorist background.

Suspects and people accused of terrorism-related activities were often labelled as *djihadistes* (jihadis).¹²²

Reporting on sexual harassment was highly driven by high-profile and highly mediatised cases, including those involving Hollywood producer Harvey Weinstein and Swiss intellectual Tariq Ramadan. However, such cases were not retained during the short-listing process performed by the University

¹¹⁹ This finding is coherent with anecdotal statements about the quality of criminal-case reporting, specifically of *BFMTV.com*, made by French defence lawyers, who Fair Trials Europe’s staff met in Paris at the margins of a conference on the presumption of innocence in criminal-case reporting, in March 2018.

¹²⁰ The Facebook followership of *20minutes.fr* is currently over 2.8 million, and *BFMTV.com*’s is over 2.3 million.

¹²¹ See Annex 8, cases n. 1, 6, 7, 10, 12, 19, 20, 25.

¹²² See Annex 8, cases n. 1, 6, 7, 10, 19.

of Vienna, on the ground that their inclusion would have distorted the final sample, which was to focus on ordinary cases. As a result, sexual harassment is only documented in one sampled case.¹²³

Other crimes where there were presumption of innocence tension points include murder (7 cases), assault (1), corruption (2), theft (2), defamation (1), hostage-taking (1), and facilitation of illegal immigration (1).

Identification and representation of the suspect or accused person

In the vast majority of short-listed samples (21 out of 25), suspects and accused people were identified by name.¹²⁴ In the remaining cases, the reporter either provided the initials of the name and surname or did not give any detail as to the name at all. The full name and surname were always stated when the suspect or accused person was either a famous person or accused of terrorism-related activities. Suspects and accused people were also identified through pictures (in 9 of the samples)¹²⁵ or through geo-localisation, which is at times illustrated in the report by means of a map detailing where the person lives or works.¹²⁶ Although this identification of suspects and accused persons is not in itself a violation of the presumption of innocence, it can, when combined with reporting that does violate the presumption of innocence, amplify the impact of the violation of the right to a fair trial and the right to privacy generally.

Pictures of suspects and accused people were found to be attached to reports of terrorism-related activities (in 4 cases) and murder (in 3 cases). Often, such pictures were either mugshots taken at the police station or pictures which look like mugshots (close-ups).

The use of pictures and videos showing the suspect or accused person in handcuffs and/or escorted by police agents were also observed, mainly in relation to high-profile cases concerning sexual harassment allegations (which again were largely left out of the final sample).¹²⁷

In addition, some media outlets used stock pictures featuring police agents on duty, without any factual link to the report.¹²⁸ In one case related to charges of terrorist activities, the cover picture showed the suspect flanked by a woman wearing a black hijab, which seems to imply some kind of radical background.¹²⁹

References to ethnicity, religion, and other protected characteristics¹³⁰

The protected characteristics which featured the most in the samples were nationality and religious affiliation (11 cases out of 25).¹³¹

The nationality of the suspect or accused person was only referenced when holders of a citizenship other than French were involved. Nationalities referenced in the samples included: Algerian, Belgian, Iraqi, Moroccan, Nigerian, Russian, Tunisian. When the suspect or accused person held the French

¹²³ See Annex 8, case n. 5.

¹²⁴ See Annex 8, cases n. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 17, 19, 20, 21, 22, 23, 24, 25.

¹²⁵ See Annex 8, cases n. 2, 7, 8, 9, 11, 19, 20, 23, 25.

¹²⁶ See Annex 8, cases n. 1, 2, 5, 6, 7, 13, 14, 16, 18, 24.

¹²⁷ See Annex 8, cases n. 8, 23 (the latter being a drawing).

¹²⁸ See Annex 8, cases n. 12, 13, 14, 15, 18.

¹²⁹ See Annex 8, case n. 25.

¹³⁰ This is made in reference to protected characteristics listed under art. 14 of the European Convention on Human Rights, which applies to France as a member of the Council of Europe and which covers all the rights set out in the Convention, including the right to be presumed innocent until found guilty (art. 6 par. 2).

¹³¹ See Annex 8, cases n. 6, 7, 8, 10, 11, 13, 14, 16, 18, 19, 25.

citizenship, there was reference to their “national origins” (i.e. supposedly the country of origin of any ascendants).¹³²

The religious affiliation of suspects and accused persons was only referenced in case of the Islamic faith. References to the Islamic faith of the suspect were widely documented in cases related to terrorism, but also in cases which have nothing to do with terrorist activities, as though this element by itself constituted an aggravating factor or contributing evidence against the suspect.

In one instance, in a report about the sexual harassment allegations made by a secretary against a doctor, the suspect was described as being “renowned for his stands in favour of Islam in France”, without any further detail as to how this may be linked to the case.¹³³

There were no references to sexual orientation or gender identity of the suspects or accused people.

References to gender and age were found to be more descriptive than discriminating.

Allegations as facts

Although the reporting generally use caution in referring to “suspects”, “allegations” and referring to facts “according to the accusation”, they sometimes relate allegations in a tense that make them appear as facts.¹³⁴ They also use conclusive wording as to the guilt of the individuals – e.g., by referring to them as “jihadists”¹³⁵.

References to prior and unrelated criminal cases

In several cases, reporters made reference to prior criminal cases, which involved the suspect or accused person, regardless of the outcome of the proceedings (11 cases out of 25).¹³⁶

In several instances, references were made to criminal cases which are completely unrelated to the case at hand. In such cases, the reporters seemed to draw a parallel between the two, in a way that creates or reinforces the impression that the suspect or accused person is guilty.

In the case concerning a doctor suspected of sexual harassment (cited above), reference is made to the suspect’s long-standing defence of Tariq Ramadan, himself accused of sexual harassment in a separate trial, and himself of Islamic faith.¹³⁷

In terrorism-related cases, suspicions and accusations against a brother or another family member were referenced in a way that contributes to create a presumption of guilt for the suspect at hand.¹³⁸

Presentation of the defence arguments

Defence arguments were not always presented. When they were, the reporting was found to be biased. In some instances, the reporter ridiculed the suspect’s defence, by means of rhetoric questions, or by quoting ironic statements from the judges.¹³⁹

¹³² See Annex 8, case n. 6.

¹³³ See Annex 8, case n. 5.

¹³⁴ See Annex 8, cases n. 7,13

¹³⁵ See Annex 8, cases n. 6,19

¹³⁶ See Annex 8, cases n. 5, 7, 8, 10, 11, 15, 16, 18, 21, 22, 24.

¹³⁷ See Annex 8, case n. 5.

¹³⁸ See Annex 8, cases n. 10, 25.

¹³⁹ See Annex 8, case n. 1.

Fair Trials further documented cases where the defence arguments are put under a bad light by statements of neighbours, victims and victims' lawyers.¹⁴⁰

Similarly, confessions, avowals and disavowals, and refusals to talk were also used to create an impression of guilt (in 10 out of 25 cases). In particular, confessions were cited when the suspect had withdrawn a previous avowal made at the police station, and were treated as the final evidence of the suspect's guilt.¹⁴¹ Similarly, refusals to talk were found to be largely highlighted in relation to a terrorism suspect, whose silence has been described in one instance as his "judicial strategy".¹⁴²

Public statements by the authorities

Much of the sampled reporting quoted statements from the prosecuting authorities¹⁴³ or details about the investigation,¹⁴⁴ which were made available to the reporter by anonymous sources, often described as "close to the investigation".

Public statements made by the prosecuting authorities were emphasised over to the suspect's defence. In one instance concerning a terrorism case, the reporter quoted part of the prosecutor's indictment about evidence collected during the investigation, drawing a link to the guilt of the suspects. The sentence was quoted and highlighted in a bold text box within the article.¹⁴⁵

Presentation of the victims

In cases where the alleged crime involved harm to a person, such as murders and assaults, the victim was often identified through full name and/or pictures in 7 cases out of 25.¹⁴⁶

In several instances, pictures were found to portray the victim or alleged victim with a smiling face.¹⁴⁷ In one instance, the portrait featured next to a suspect's picture, which creates the impression that the two people are linked in the reported crime.¹⁴⁸ Relatives of the victim or alleged victim were instead often portrayed in high distress, including crying, in wording.¹⁴⁹

In one instance, the cover picture of an article concerning terrorism charges showed candles placed in memory of the victims of the Paris attacks,¹⁵⁰ and in another one, the suspect was reported to deliver a statement in the courtroom, which reportedly showed no regret nor compassion for the victims of the same attacks.¹⁵¹

The lawyers of the victims and representatives of victims' associations were also found to be quoted at larger length as opposed to the suspects' lawyers.¹⁵²

¹⁴⁰ See Annex 8, cases n. 2, 3, 4, 23.

¹⁴¹ See Annex 8, cases n. 2, 3, 4, 7, 13, 18, 19, 20, 22, 23.

¹⁴² See Annex 8, case n. 19.

¹⁴³ See Annex 8, cases n. 1, 6, 9.

¹⁴⁴ See Annex 8, cases n. 11, 15, 16, 25.

¹⁴⁵ See Annex 8, case n. 1. The quote from the Paris prosecutions' indictment read "there is no doubt about the terrorist aim of these flight notes".

¹⁴⁶ See Annex 8, cases n. 2, 3, 4, 12, 22, 23, 24.

¹⁴⁷ See Annex 8, cases n. 2, 22, 24.

¹⁴⁸ See Annex 8, case n. 2.

¹⁴⁹ See Annex 8, cases n. 3, 4, 23.

¹⁵⁰ See Annex 8, case n. 10.

¹⁵¹ See Annex 8, case n. 20.

¹⁵² See Annex 8, cases n. 2, 12.

Conclusions

There is considerable public appetite for “real crime” stories in France. Reporting on crimes and judicial proceedings is common among many media outlets, and follows a long tradition of crime reporting which started at the latest in the 18th century. The popularity of crime stories in the medias inevitably increases the risk of reporting that undermines the presumption of innocence.

France has sound **laws** prohibiting the publication of certain types of images and recordings which are there to safeguard the presumption of innocence. In particular, the 1881 Law criminalises the recording of statements or images during hearings, and the publication of images showing the accused in handcuffs or shackles, and of official procedural documents such as indictments before they are read in open court. These principles are generally well adhered to by the media and journalists.

However, this legal **apparatus appears incomplete in its scope and effectiveness**. The presumption of innocence is not only undermined by images or recordings, or by the publication of procedural documents, but also by how suspects and accused persons are described or characterised in the media. These aspects are not clearly regulated and as a result, there is relatively poor compliance with the presumption of innocence in the way suspects and accused are described or characterised. The legal protections also appear to have little effect on more ‘subtle’ forms of reporting which undermine the presumption of innocence, including reporting that clearly favours the prosecution or the victims’ version of the events over the defence’s, that highlights suspects’ decision to remain silent in ways which create an impression of guilt, or that reports on allegations as factual assertions.

If the criminal offense of **defamation** generally prohibits publishing statements portraying a person as guilty before any finding of guilt, it appears to be a **limited deterrent** considering the considerable risk to one’s reputation that a victim of defamation takes when starting an action on that basis. Proving the truth of the statements is a defence for the media and/or journalists, and this may lead to more harm than redress for the complainant.

Similarly, the criminal offense of violating the secrecy of criminal investigations has a **limited scope**. The secrecy obligation does not bind the parties to the investigation, including the alleged victims. As a result, parties to the proceedings may freely reveal aspects of the case to the public and the press. Journalists are thus free to publish information about an ongoing criminal investigation which is obtained from parties as opposed to the stakeholders bound to the secrecy of the investigation, which would then constitute the criminal offense of knowingly possessing the product of a criminal offense. Proving this offense requires the prosecution to establish that the disclosure of the information or documents was made by a person bound by the principle of secrecy or that the journalists physically received the documents covered by the secrecy. Such proof appears extremely difficult to obtain, due in part to the protection of the confidentiality of journalistic sources.

Ethical charters and professional guidelines appear not to fill these gaps. Although the guidelines generally prohibit reporting that violates the presumption of innocence, these rules are not sufficiently precise and lack binding force. There is limited guidance for journalists on how to report on criminal cases. A report suggesting that a French Press Council be created was submitted to the Minister for Culture in March 2019. This may open the door to better regulations and self-governance. Our findings suggest that **online media reporting have a disproportionate impact** on the presumption of innocence vis-à-vis other outlets. Clear ethical rules, if adopted, should apply to all types of media which report on criminal proceedings.

The French system provides for purely financial **legal remedies** for the violation of the presumption of innocence. A civil action may be brought by a victim of such a violation against a journalist in order to obtain financial compensation for the violation of his or her presumption of innocence. However, little consideration appears to be given to the impact of violations of the presumption of innocence on the overall fairness of the criminal trial and on potential influence over judges. This appears to imply that the presumption of innocence primarily concerns the protection of privacy and dignity of the suspect or accused person – given that remedies are designed to rectify the damage done to the person’s reputation – rather than **the person’s right to a fair trial**.

Finally, there is a clear indication of **discrimination** in the way suspects and accused persons are portrayed in the media depending on their religion, national or ethnic background. The religion of suspects and accused persons were found to be reported only when they were Muslim. Similarly, reporters tend to specify the nationality (and even the “national origins”) of the suspect or accused person, only when they did not hold the French citizenship, or if they hold dual citizenship. Not only is this an indication of pervasive racism in the media, this shows that certain ethnic and religious groups are disproportionately affected by violations of the right to the presumption of innocence. Such findings raise concerns which extend beyond the presumption of innocence of the individual concerned (and the scope of this project), in relation to the role of the media in creating public figures of “danger” which can, in turn, result in increased racism and discrimination in society more broadly.

Annexes

Please find the annexes here: fairtrials.org/sir-annexes

