

SIR: Executive Summary Austria Media Report:

The Presumption of Innocence in Austrian Media

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- **Directive (EU) 2016/343 was transposed into Austrian law by the transposition deadline on 01/04/2018.** Eleven different measures in national law implemented the various aspects of the Directive, one of which, the Bundesgesetz, mit dem die Strafprozeßordnung 1975, das Staatsanwaltschaftsgesetz und das Telekommunikationsgesetz 2003 geändert werden (Strafprozessrechtsänderungsgesetz 2018 – Publication date: 2018-05-15) was adopted considerably later than the deadline. Kraml (n.d.) argues, since the Directive is essentially based on existing provisions of international and Union law in the field of fundamental and human rights relevant to criminal proceedings, there is no discernible need for implementation in Austria. In sum, the Directive did not necessitate specific and additional measures to be transposed.
- The §8 StPO Unschuldsvermutung – Strafprozeßordnung 1975 (code of criminal procedure – abbreviated: StPO) is the main legal source within Austrian law of the presumption of innocence: "Everyone shall be presumed innocent until finally convicted."
- The Protection of the presumption of innocence is also regulated in the Media Law by **§ 7b MedienG (Media Act) - Schutz der Unschuldsvermutung.**
- Relevant jurisprudence of the European Court of Human Rights (ECtHR) is the Case of Schwabe v Austria (Application no. 13704/88). Mr Schwabe had written a press release which was then also published in a magazine in which he referred to a previous court conviction of a deputy provincial governor for a serious traffic offence and compared this case with that of a mayor who did not want to resign from his political office despite a conviction for drunk driving. The press report criticized the state governor who had attacked the mayor. In September 1986, he was sentenced to a fine for accusations of an already dismissed criminal offence (§ 113 of the Criminal Code) and defamation (§ 111 of the Criminal Code). An appeal against the verdict was unsuccessful so that the European Court of Human Rights issued the following verdict in the final instance in August 1992. The conviction of the complainant constitutes an encroachment on the right to freedom of expression according to Article 10 ECHR. This interference was permitted by law and was aimed at the legitimate objective of protecting the reputation or rights of others. It was, therefore, a violation of Art. 10 ECHR by the Austrian courts. The decisive factor here was that the governor was a politician, i.e. a person of public interest.
- The "Code of Ethics for the Austrian Press" contains the rules for the daily work of the journalists of print media in Austria. Compliance is monitored by the Austrian Press Council, which has also set this code up. These rules aim to ensure the preservation of journalistic professional ethics. The Austrian Press Council must be confronted again and again with the charge that it lacks meaningful regulatory powers. This is related to the fact that it cannot speak legally binding judgments. Its competence is comparable to that of an arbitral tribunal. It cannot go to court and sue for punishable breaches of the Code of Ethics (Jaschke, 2010).
- The media investigated in this research project The Standard, Die Presse, Österreich, Kurier, Falter, Profil and News are committed to complying with the Code of Ethics for the Austrian Press, while Heute Zeitung and Kronen Zeitung are not (Austrian Press Council, 2018a).
- The Austrian media system is assigned to the Northern European public service model, which is characterised by a dual broadcasting system and its user-orientation (Blum, 2005).
- Actors usually negotiate their ethical norms themselves, i.e. self-regulation is another characteristic of this media system (see chapter 2).

- The most recent results of the Media Pluralism Monitor 2016 (Seethaler, Beaufort & Dopona, 2016), a Europe-wide study on media pluralism and concentration, summarise the dangers for/from media pluralism and independence from politics as mediocre. The categories examined included "basic protection" (36%, low risk; Freedom of opinion, media and information are enshrined in the Constitution, i.e. there is a ban on censorship), "market diversity" (34%, medium risk), "political independence" (53%, medium risk) and "social inclusion" (43%, medium risk).
- The Austrian media landscape is characterized by one of the highest press concentrations in Europe. Almost all relevant newspapers have entered into entrepreneurial connections with one another, for example, Mediaprint (Kontrast, 2018, Steinmaurer, 2012).
- On a European average, 40% of respondents trust the media, while 56% distrust them. For Austria, these values are 48% and 49% respectively (Standard Eurobarometer 89, 2018). This means that Austrians believe their media more than the EU average.
- Examined media outlets:
 - TV news: ORF 2 – ZiB 1 (public service media) and Puls4 news
 - daily newspaper: Krone, Heute, Österreich, Kurier, Der Standard, Die Presse.
 - Weekly print outlets: News, Profil.
 - Online media: Addendum, Dossier, Unzensuriert.at, Vienna.at.
- **Analysis results of Austrian crime reporting**
 - All of the articles were reports on male suspects. It is characteristic for the analysed articles that the construction of guilt of the alleged perpetrators already takes place in the headline. This happens in some cases by shortening the accusation to a concise statement, e.g. in the title "Family man raped 27-year-old".
 - So-called symbolic images (e.g. of a woman crouching on the floor) can often be found, which have no direct connection to the accused offence but are supposed to contribute to a dramatization and sensationalism.
 - Looking at the entire text corpus of the newspaper articles examined, one can find various information about the alleged perpetrators, which can be summarised in the context of this qualitative content analysis under the category "Social status of the accused/defendant". These include in particular the mention of nationality ("Syrian", "Afghan", but also "Austro-doctor") or residence status ("serious suspicion against refugee"), as well as the mention of religious affiliation in the case of the Muslim faith. If known, criminal records are also mentioned. If the accused is an asylum seeker, the emphasis on the native nationality of the victim or the location of the incident in the context of similar acts committed by asylum seekers can be observed.
 - Concerning linguistic styles, it was found that the accused offences are often described by pictorial language in the sense of a telling of experience (sequence of steps of the act).
- In summary, it can be stated that a large part of the population in Austria is reached through TV news reports and daily newspaper articles. While there are relatively few reports on crime on television, however, this situation is contradictory in the daily press. Many articles can be found, but in both types of media there are prejudices - sometimes more subtle, sometimes more direct.
- When finally considering all categories and dimensions of crime reporting in the Austrian press and a review of the material, it becomes apparent that guilt is often constructed subtly and the portrayal of defendants and suspects happens above all in a mixed manner. The correct use of the subjunctive, which can help to express a suspicion but not a fact in the German language, can be observed in numerous places. This would in and of itself be consistent with the principle of the presumption of innocence. Often the addition "The presumption of innocence applies." is added towards the end of an article. The question arises, however, as to whether it applies if the article contains numerous descriptions similar to those already mentioned, which construct concrete or subtle guilt and question the character of the accused persons.