

# 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

#### 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.