A large, horizontal, teal-colored brushstroke with a rough, textured edge, resembling a paint stroke, serves as a background for the title text.

THE PRESUMPTION OF INNOCENCE

A Toolkit for Journalists Reporting on Suspects

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AIM OF THE TOOLKIT

Who is this toolkit for?



Journalists, of any medium, reporting on suspects in criminal cases



Officers involved in public information campaigns



Other individuals and organisations involved in public communication

Why is this toolkit useful?

- Expands knowledge among journalists about the presumption of innocence.
- Identifies good and bad practice.
- Provides guidance on how to best present defendants.
- Alerts journalists and public communication officers about the significance of the manner in which defendants are presented in public.
- Assists journalists and media workers assess ethical concerns between satisfying the public interest principle and upholding human rights.

INTER-NATIONAL LAW

European Commission Directive 2016/343 seeks to counter the presentation of suspects in court and in public in ways that may suggest guilt.

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

According to Article 5 of the Directive : “Suspects or accused persons shall not be presented in court or in public as being guilty through the use of measures of physical restraints”.

Article 7 (5) of the Directive states that: “The exercise by suspects and accused persons of the right to remain silent or of the right not to incriminate oneself shall not be used against them and shall not be considered to be evidence that they have committed the criminal offence concerned.”

Impact assessment carried out by the European Commission before publication of its original Directive proposal found that, in practice, “there is insufficient protection of certain aspects of the principle of presumption of innocence of suspects and accused persons across the EU” <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0343>.

Additionally, the European Commission found: “The protection of the principle of presumption of innocence by the European Court of Human Rights has not resulted in sufficient protection of suspects or accused persons in the EU.”

Directive to be understood in connection with established case law from the European Court of Human Rights (ECHR) underscoring suspects’ right to due process and a fair trial.

Connected to the fundament of civil rights.

Article 11 of the UN Declaration of Human Rights: “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense”.

Article 6 of the European Convention of Human Rights (ECHR): “Everyone is entitled to a fair and public hearing ... Everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law.”

Article 48 of the European Charter of Fundamental Rights: “Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. ... In accordance with Article 52(3), this right has the same meaning and scope as the right guaranteed by the ECHR.”

Also enshrined in the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, as well as various other international treaties and covenants.

NATIONAL LAW IN EU & AUSTRIA

National laws vary from country to country.

The right to presumption of innocence embedded in Constitution where one exists.

For e.g. Article 28 of the Constitution of Croatia stipulates: “Everyone is presumed innocent and may not be held guilty of a criminal offence until such guilt is proven by a binding court judgment.”

Reference to right to presumption of innocence under criminal law and references to media often fragmented across national law.

Specific laws regarding rights of media in reporting on criminal trials.

Rights and obligations of media reporting on criminal trials often covered in Media Acts.

Not always a specific mention of the duty of media to uphold presumption of innocence in reporting.

Sometimes, not always, enshrined in national media laws, such as broadcasting acts.

Criminal trials usually public, but with conditions.

Public, as well as media, may be excluded if national security or public safety threatened, to protect privacy of persons or to protect witnesses.

Journalists may find themselves in contempt of court for violating national legal references to presumption of innocence.

National laws in Austria

Article 90 (1) of the Austrian constitution outlines the right to a fair trial, which is to be guaranteed by the public as the judicial review body.

Name of the accused person, images, as well as any information by means of which the identity can be disclosed, must be protected.

Presumption of innocence covered by “right to honour”, one of the recognized rights of §16 ABGB (Privileged Rights) and considered an absolute right.

Insults to honour (§1330 ABGB), involving for e.g. character and behaviour (§ 111 Criminal Code: Defamation) are not allowed.

Paragraph 7b of the Media Law (Medien-gesetz) specifically states that the media must respect the presumption of innocence in its reporting.

STRUCTURAL FACTORS



Labour



Employment



Ethical



Financial



Cultural



Economic



Political

The presumption of innocence & press freedom

Politically captured reporting imperils the presumption of innocence

Self-regulation in line with professional ethical journalistic standards avoids populism

Reporting with respect for presumption of innocence pre-supposes editorial independence

Press freedom is a friend of self-regulation

Editorial independence requires press freedom

Respect of right to presumption of innocence: regulation & self-regulation

- Regulatory and self-regulatory instruments and actors
- European and national law
- Professional Codes of ethics
- Editorial power and responsibility / peer example
- Press councils
- Unions / syndicates
- Broadcast regulators
- Ombudsmen

SELF-REGULATION IN AUSTRIA

The Austrian Press Council 's Ethics Code provides for cases to be brought to its attention.

The Code does not specifically mention "right to presumption of innocence".

Duty of care with regard to this is covered by the sections "Accuracy", "Protection of Personal Rights", "Privacy" and "Discrimination".

These state: "Journalists have a major responsibility to report the news and quotes accurately and conscientiously"; "everyone has the right to protection of personal dignity and rights"; "personal defamation, slander and mockery violate journalistic ethics"; "everyone has the right to privacy"; "sweeping suspicions and slander against individuals and groups are to be avoided"; "there can be no discrimination based on age, disability, or gender, nor due to ethnicity, religion, sexuality or views held".

Austrian Press Council Political & financial independence reminders

1. "Influence through an outsider on content or form of a piece of reporting is unacceptable."
2. "Unacceptable attempts to influence include not just interventions and pressures but also the granting of personal advantages beyond the immediate professional activity."
3. "Whoever accepts, in conjunction with their activity as a journalist, gifts or other personal benefits that could influence reporting is violating journalistic ethics."
4. "Economic interests of the media platform can in no way influence editorial content, lead to inaccurate reporting or the suppression of essential information."

Austrian Press Council rulings on presumption of innocence violations

„The headline on the front page, ‚From bio-trader to IS-killer‘ and the associated article ‚Mohamed H. : From bio-trader to IS-Murderer‘, published on 7.07.2017 on pages 1 and 3 of the daily newspaper ‚Oesterreich‘ violates Item 5 of the Ethical Code for the Austrian press (right to protection of personal rights).“ *Statement of allegation as fact and accompanied with identifiable photo of suspect.*

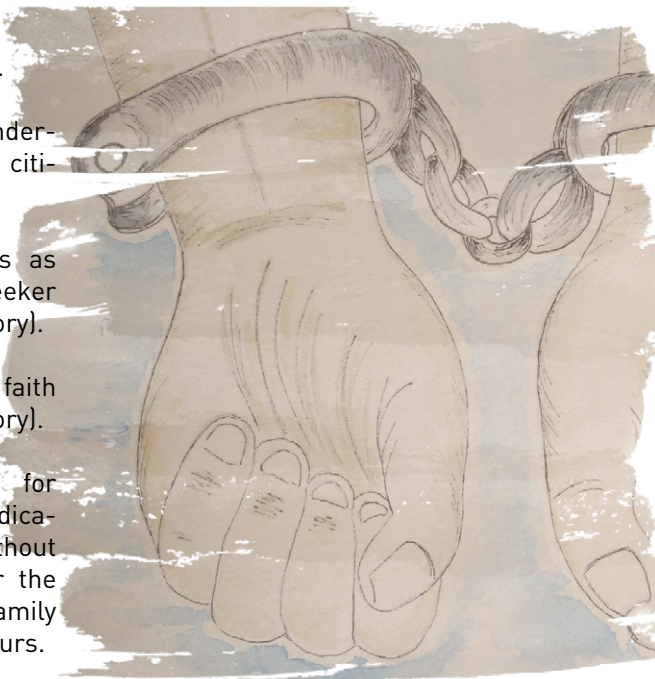
„The post ‚+++ BREAKING +++ Presented to the remand judge. Here are the death traffickers of the A4:‘ on the Twitter account of the Kronen Zeitung with a photo showing two of the suspects ... is a violation of Item 5 of the Ethical Code for the Austrian press (right to protection of personal rights).“ *No reference to presumption of innocence.*

CHALLENGES TO SELF-REGULATION

- Press bodies, as regulatory or self-regulatory mechanisms, fail to counter the systematic violation of the principle of presumption of innocence, in particular for migrants and Muslims.
- Politicisation of the regulatory body in question.
- Inability to oblige all media outlets (especially the most egregious violators) to recognise Council authority and abide by 'voluntarily accepted' sanctions.
- Most significant of self-regulatory mechanisms – ethical oversight by editors, peer example setting, and voluntary subscription by journalists to the professional values, and principles, of the profession – failing as well.

Most common presumption of innocence reporting flaws

- Reporting of allegations as fact.
- Deliberate and pronounced under-scoring of a suspect's 'foreign' citizenship.
- Emphasis on suspect's status as migrant, refugee or asylum seeker (although not relevant to the story).
- Emphasis on suspect's Muslim faith (although not relevant to the story).
- Use of 'anonymous sources' for quotes and information that indicates guilt of the suspect, and without rebuttals from the suspect or the suspect's lawyers, or their family members or friends or neighbours.



CHECKLIST-GENERAL

The Big Picture

Journalists, public information officers and other individuals and organisations involved in the generation and dissemination of information about an accused person commit to:

- ✓ Apply independent, ethical and professional self-regulation
- ✓ Portray the suspect fairly
- ✓ Not seek to present the suspect as guilty
- ✓ Provide a portrayal of the suspect in line with the values, norms and legal stipulations of the Directive
- ✓ Respect the presumption of innocence

Media Organisations

Must ensure that:

- ✓ Everyone involved in reporting the story is aware of the ethical guidelines on the presumption of innocence
- ✓ Everyone involved in reporting the story is aware of the legal guidelines on the presumption of innocence
- ✓ No one involved in reporting the story has been subjected to pressures to present the suspect in a certain way
- ✓ Editorial processes are guaranteed independence

CHECKLIST-SPECIFIC

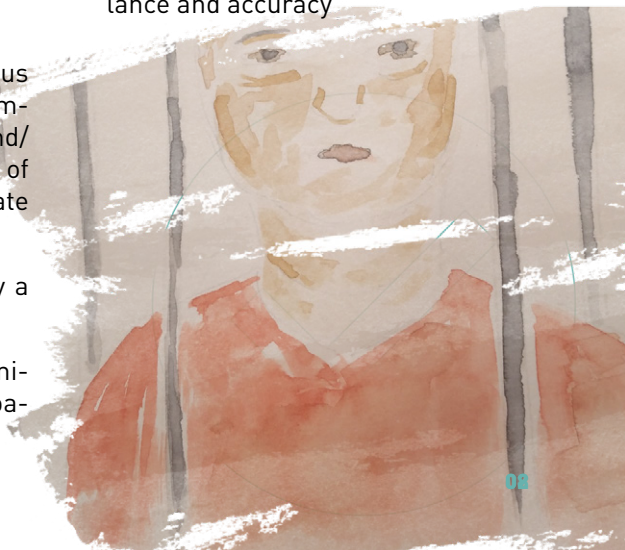
Bad Practice in Reporting

- Reporting allegations as fact
- Implying that a suspect's use of the right to remain silent, or retraction of testimony, suggests guilt
- Referencing unrelated criminal cases involving either the suspect or their family
- Referencing criminal cases involving the suspect, in which they were found not guilty
- Promoting the suspect's guilt by inference or by association (by for e.g. referring to criminal friends or family members)
- Using "the presumption of innocence applies" at the end of the report in the belief that this adequately covers requirement for balance, after the preceding text creates presumption of guilt
- Abusing the use of anonymous sources, by for e.g. granting anonymity where this is not necessary and/or serves as a basis for the sharing of 'information' and 'quotes' that violate presumption of innocence
- Exaggerating the danger posed by a suspect
- Employing loaded metaphors, similes, comparisons, such as the "Croatian Escobar", for suspect

- Reporting one-sidedly for e.g. only through the prosecutor or friends of the victim etc.
- Emphasizing demographic markers such as nationality, religious faith, gender, culture, migrant status when this is not relevant to the story.

Good reporting practice

- Ensuring the report is factually correct
- Ensuring the report is fair and balanced
- Ensuring the report is not sensationalist
- Ensuring the report does not reflect personal views of the reporter thereby compromising fairness, balance and accuracy



Photos & videos

- Do not use symbolic photos that are emotionally laden against the suspect
- Clearly identify symbolic photos as such
- Clearly denote archive footage as such and without contextualisation
- Do not publish , if permitted to identify the suspect, photos of them likely to violate the presumption of innocence, for e.g. 'aggressive' poses
- Do not include in the report video or photos of the suspect in appearances implying guilt, for e.g. in shackles, in jumpsuits, in cages, in prison vans, being accompanied by police officers etc.
- Do not use footage of crowds shouting for justice

- Do not allow external advertising clients to influence reporting content, style etc.
- Do not violate the right to presumption of innocence for political reasons, for e.g. to curry favour with specific politicians, political parties or governments or because they have applied pressure

Privacy

- Do not publish the full or partial name of the suspect if doing so is in violation of norms, standards or laws
- Do not publish photos of the victim
- If the identity of the suspect is per law not to be made public, do not publish photos / footage of suspects through which they can be identified, even if they are not named in the report

Editorial independence checklist

- Do not allow marketing, clickbait, or revenue considerations to supplant ethical and professional ones in the creating of the report
- Do not permit marketing or advertising departments to overtly, subtly or circuitously influence the way in which the suspect is presented in the report

If the suspect is Muslim or migrant:

- religious faith of the suspect if not relevant to the story
- Do not emphasize the status of the suspect as a migrant, refugee or asylum seeker if not relevant to the story
- Do not oversimplify or stereotype
- Do not use sarcasm or subtly tendentious language, for e.g. the ironic hashtag “(another) #IsolatedCase”, to imply a cascade of crimes by Muslims and migrants, or for e.g. the use of “Absurdistan” to describe a city where in the opinion of the reporter / news platform foreign Muslim suspects are being treated better than ‘domestic’ ones, undermining the presumption of innocence
- Do not use pejorative adjectives such as “brutal” or “out-of-control”, “frenzied” etc. or pejorative words such as “jihadists”, or loaded epithets like “scum” and “filth”, implying guilt
- Do not run series of reports on foreign / Muslim / refugee suspects implying only they / predominantly they commit crimes
- Do not publish pejorative information likely to fuel bias, such as reference to family members of suspects who are welfare recipients or who have many children or who live in social housing
- Do not play to tropes and stigmatisations, such as the ‘unemployed migrant living on state handouts’
- Do not use loaded-question headlines such as “Why no murder charge for ...?”



GOOD EXAMPLES

“Double murder suspect still to be questioned”

(Maltese media)

- No statement of suspicion as fact; use of term suspect
- No reference to foreign citizenship or religion
- Clear factual statement without any loaded language

Carcassonne: Two of 11 suspected terrorists released

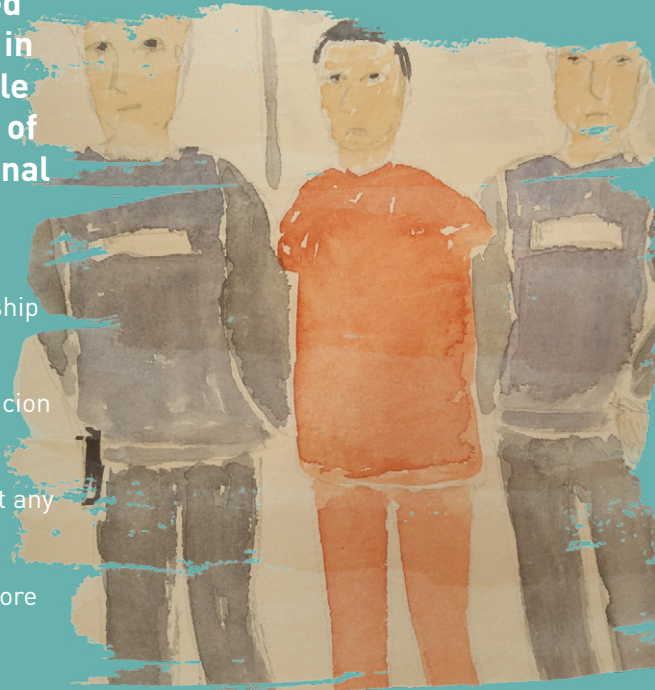
(French media)

- No reference to foreign citizenship or religion
- Use of ‘suspected’ to denote suspicion as opposed to fact
- Clear factual statement without any loaded language

Operation targets alleged Islamic State supporters in 11 German cities; 6 people said to have prepared act of violence threatening national security

(Austrian media)

- No reference to foreign citizenship or religion
- Use of ‘alleged’ to denote suspicion but not fact
- Clear factual statement without any loaded language
- Use of ‘said to have’ to underscore accusation as opposed to fact



BAD EXAMPLES

"17-year-old girl raped by refugee"

(Austrian media)

- Statement of allegation as fact
- Focus on status as refugee

"The Psycho of Travno"

(Croatian media)

- Statement of allegation as fact; if the suspect is a psycho, they must be guilty
- Pejorative language: "psycho"
- Sub-header refers to "monster"
- Online article followed with the pejorative emotionally-laden hashtag "#slaughtered"

„#IsolatedCase: Fired-up Russian car thief wanted to ram Vienna police car"

(Austrian media)

- Ironical use of hashtag "isolated case" to suggest continuation of series of crimes by foreigners.
- Reference to nationality.
- Use of pejorative adjective "fired-up".

„Graz: Terror suspects to be released, Identitarians get monster trial"

(Austrian media)

- Judgmental suggestion of injustice against far-right
- Identitarians through headline juxtaposition of their trial, and release of foreign Muslim terror suspects in unrelated case, as well as through use of adjective „monster„
- In text, reference to Graz as "Absurdistan", to underscore sense of injustice that foreign Muslim suspects freed while far right activists sent to trial; also a play on the "stan" suffix ending of predominantly Muslim countries such as Pakistan and Afghanistan, from where a lot of migrants and refugees come.
- In-text reference to Muslim already in prison who "would have enjoyed" the company of the Muslim suspects and whose family are welfare recipients.

“The killer from Zrce stabbed with his knife wherever he could”

(Croatian media)

- Allegation as fact; “killer”, not “alleged killer”
- Overly colourful language: “stabbed ... wherever he could”, suggesting frenzy; the journalists do not know this; better would be “stabbed multiple times”.
- 10 photos of the suspect in handcuffs, in the presence of police officers.

“Brutal robber and sex offender caught”

(Austrian media)

- Sensationalist adjective
- Statement of allegation as fact

„Algerian barber steals ... cell phone ...“

(Croatian media)

- Reference to foreign, Arab nationality with the further implication that he is Muslim.
- Statement of allegation as fact.

“A man with a restraining order kills his wife in Lepe [Huelva] and runs away”

(Spanish media)

- Statement of allegation as fact
- Use of “runs away” in conjunction with statement of suspicion as fact, implying guilt.

“Why will the scum from Zadar not be tried for attempted murder?”

- Statement of allegation as fact in conjunction with use of laden pejorative term “scum”
- Use of loaded-question headline to imply injustice and guilt.

„Handcuffs on the mysterious owner of the ERCI NGO“

(Greek media)

- Reference to handcuffs, implying guilt
- Use of laden term ‘mysterious’ implying justification of suspicion

“Russian with Maltese citizenship ...”

(Maltese media)

- Emphasis of foreign origins of suspect, despite the fact that they hold Maltese citizenship

“Two Poles beat up taxi driver”

(Croatian media)

- Statement of allegation as fact
- Reference to foreign nationality

„Croatian Escobar in Zagreb court: ‚I am not guilty of money laundering and I don’t want to respond to any questions‘”

(Croatian media)

- Use of colourful comparison implying guilt: „Croatian Escobar”; It is widely known that Pablo Escobar was a notorious Colombian drug kingpin.
- Quote referring to right to remain silent implying guilt.

“...renowned for his stands in favour of Islam in France”

(French media)

- Additional information that is irrelevant to the case at hand (alleged sexual assault) but that fuels a stereotype implying guilt
- Provides context of misconduct on basis of cultural incompatibility, the suspect being a Muslim.

“Albanian runaways: They locked out the owners and emptied the houses”

(Greek media)

- Reference to foreign citizenship
- Statement of allegation as fact



STEPPING STONES

- Self-regulation
- Peer 'leading by example'
- Clear lived-by in-house ethical guidelines with specific reference to presumption of innocence
- Recognition of authority of press councils
- Independence of press councils
- Independence of broadcast authorities
- Fostering of climate of press freedom
- Conducive structural / labour conditions
- Trainings



Based on the project “The importance of appearances: How suspects and accused persons are presented in the courtroom, in public and in the media”

Headed by:

Hungarian Helsinki Committee (HHC)

With:

the Media Governance & Industries Research Lab, University of Vienna Austria;
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The comparative report on which this toolkit is based is available here:

<https://mediagovernance.univie.ac.at/research/research-projects/sir-the-importance-of-appearances/>

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