

FAIR TRIALS INTERNATIONAL



A Guide to
**The risks of media coverage in criminal cases
- and how to manage them**

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This Guide is available online at www.fairtrials.net/publications/training/MEDIAGUIDE

About Fair Trials International

Fair Trials International ('FTI') is a UK-based non-governmental organisation that works for fair trials according to international standards of justice and defends the rights of those facing charges in a country other than their own. Our vision is a world where every person's right to a fair trial is respected, whatever their nationality, wherever they are accused.

We pursue our mission by providing assistance, through our expert casework practice, to people arrested outside their own country. We also addresses the root causes of injustice through broader research and campaigning and build local legal capacity through targeted training, mentoring and network activities. In all our work, we collaborate with our Legal Expert Advisory Panel, a group of over 80 criminal defence practitioners from 22 EU states.

Although we usually work on behalf of people facing criminal trials outside of their own country, we have a keen interest in criminal justice and fair trial rights issues more generally. We are active in the field of EU Criminal Justice policy and, thanks to the direct assistance we provide to hundreds of people each year; we are uniquely placed to provide evidence on how policy initiatives affect suspects and defendants throughout the EU.

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If you have any difficulty using this guide, or any comments on how we could improve it, please email us at office@fairtrials.net

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What this guide covers

This guide looks at media coverage in criminal cases, and best practice in managing some of the risks involved for your client. In particular the guide looks at:

- The basic legal principles relating to media reporting in criminal cases, including under the European Convention on Human Rights (**ECHR**)
- The risks involved in seeking, or contributing to, media coverage of your client's case
- Practical advice on dealing with media interest in criminal cases

Basic legal principles

All European states are required to respect the right to free expression. Furthermore, once a criminal case has reached the trial stage, the defendant enjoys the right to be tried in a public hearing. Both these principles are enshrined under the ECHR¹: see further below. Where cases have been tried or investigated in an atmosphere of extreme media interest and extensive media coverage, there is a risk that the final decision will be set aside and a retrial ordered, because the trial was rendered unfair by the coverage.

On the other hand, in many countries there are specific rules restricting the reporting or discussion in the public media of ongoing cases, under the legal principle of *sub judice*, Latin for "under judgment". This applies where a particular case or matter is currently under trial or being considered by a judge or court. In many common law countries with adversarial systems and trial by jury, the *sub judice* principle is protected by laws that make it a contempt of court, punishable by a fine or even a prison sentence, to publicise information about a pending criminal case, as this is seen as an interference with due process. In other countries this is dealt with as a disciplinary matter under Bar Association rules or similar.

Article 6(1) ECHR and its interpretation

Article 6(1) of the European Convention on Human Rights (ECHR) provides:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and **public hearing** within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly **but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.**”

¹ Article 10 and Article 6(1) of the European Convention on Human Rights respectively

The European Court of Human Rights (ECtHR) has considered the issue of whether excessive media coverage of a case can breach the right to a fair trial Article 6 ECHR. The Court has stated that an extremely negative press campaign during a criminal case may affect the fairness of the trial and the impartiality of the jury (**Hauschildt v. Denmark**²).

In **Mustafa Kamal Mustafa (Abu Hamza) (No. 1) v. the United Kingdom**³ the judge in the domestic case instructed the jury to ignore the media coverage of the case and the way that the defendant had been portrayed by the media. He also issued repeated warnings to the media to respect fairness and the presumption of innocence. The ECtHR ruled that there were no breaches of Article 6 in this case in relation to excessive media coverage.

The issue was also considered in the case of **T v United Kingdom** and **V v United Kingdom**⁴ which concerned two minors, who were both convicted for the abduction and murder of a two year old boy. The trial took place in an adult court without special restrictions on media reporting, despite the fact that the defendants were just 11 at the time of the trial. An issue that the Court was concerned with was whether the two boys received a fair trial in accordance with Article 6(1) due to the extremely high levels of media interest in the case. The ECtHR held that the trial should have been conducted in a more appropriate environment for the two minors, in order to protect their privacy.

In its defence, the UK relied on Article 6 and argued that public trials were necessary for the transparent administration of justice. However, the ECtHR held that a balance could be struck between the need to protect the young defendants and the need for open justice, by holding the trial in a more appropriate court. The Court held that there had been excessive media coverage in the case and that this and other factors meant that the applicants had been denied a fair hearing, in breach of Article 6(1) of the Convention.

Some practical questions about dealing with media interest in your client's case

Should clients in criminal cases seek media coverage?

Media coverage can be a useful tool to raise the profile of your client's case, attract public or political support, and help add force to a wider campaign for law reform that the case may be relevant to. Clearly, media interest in a lawyer's role can also raise the lawyer's profile. However, it is crucial to ensure that when dealing with media interest in a client's case you are at all times acting in the best interests of your client.

² 10486/83 [1989] ECHR

³ 31411/07 [2011] ECHR

⁴ 24724/94 [1999] ECHR

Media coverage can in fact be a dangerous way to seek support for your case. It can damage your client's defence - and your reputation - in ways that are hard to predict or control.

What are the risks of media coverage?

Before seeking or contributing to media coverage of your client's case, you must ensure you fully understand the legal ramifications under your domestic law and professional rules. It might be illegal or a breach of professional ethics for you to brief journalists if the case is ongoing. It could also be a 'contempt of court', attracting fines or even prison sentences for you or your client, putting the trial at risk of delay and further expense for your client in fees, lost income and other expenses, for example, if a retrial is ordered.

It could also damage your client's defence by angering prosecutors or judges by 'going public' with complaints. It may weaken the defence case if you choose to publicise details about the defence you plan to run or witnesses you will call to defend your client. Prosecutors could take advantage by altering the case against your client or looking for other witnesses.

Media interest can also put enormous pressure on clients and their families.

Are there any other risks?

Journalists are interested in getting a good story. Clients' interests might be secondary to theirs.

Once you have given information to a journalist, s/he can investigate and report on the case without your client's input and publish information without their consent or involvement. Once this process has started, it can be hard to control.

The press are asking questions. What should I do?

Think carefully about whether media coverage will help or harm your client's case, and how s/he will respond to further questions. Do not be pushed into making any comments before you have your client's consent and a clear strategy. Say 'no comment' until then.

Make sure your client's family and friends also respond to the media with 'no comment' – unless and until they are ready to speak, and have been advised of the risks.

What is the best way to prevent negative coverage of your client's case?

There is no way to do this. The safest thing to do if you are worried about negative media is to say 'no comment' at all stages and ensure your client does the same.

This may seem strange if a journalist seems sympathetic to your client's case; but journalists are simply after a story. They have no obligation towards you or your client.