

Innocent until proven guilty?



The presentation of suspects
in criminal proceedings

Conclusions and recommendations

The presumption of innocence has been described as a “golden thread” running through criminal law. It is a norm of customary international law and is protected by numerous international treaties and in national legal systems. The presumption of innocence is crucial to ensuring a fair trial in individual cases, to protecting the integrity of the justice system, and to respecting the human dignity of people who are accused of committing crimes. Despite this, in practice, violations of this important legal principle are common. Public appetite for sensation, real-crime, real-time stories places enormous pressure on public authorities and the media to violate the presumption of innocence. The presumption of innocence also has to be balanced against other aspects of the right to a fair trial (such as the principle of open justice) and other human rights (such as free speech).

Our report seeks to identify key threats (and possible solutions) to violations of the presumption of innocence resulting from statements made by public authorities about ongoing proceedings; the content and tone of press coverage; and the use of restraints in courtrooms or in public settings. It draws on a wealth of data: (a) a global survey of law and practice on the presentation of suspects; (b) a sociological study on the impact of images of arrest and different measures of restraint on public perceptions of guilt; (c) content analysis of crime-related news stories in newspapers, online press and broadcast television news programmes in seven countries to assess compliance with the presumption of innocence; and (d) comparative research on the presentation of suspects before the courts in five countries.

Summary of conclusions and recommendations

Prejudicial statements

Although it is a clear violation of the presumption of innocence for a public authority to make public statements implying the guilt of a suspect, such statements are a common occurrence in many countries across the globe (including in Europe). This is a particular problem where there is considerable public interest due to the nature of the offence or identity of the suspect. Furthermore, in many countries there is systemic press reliance on leaks of confidential information from public authorities, which are exceedingly hard to investigate and sanction.

- Clear legal regimes are required to prohibit public officials making public statements that imply the guilt of a suspect. Crucially, violations need to be investigated and enforced by impartial bodies, regardless of the seniority of the official in question.
- Journalists should not be required to reveal their sources but efforts, detailed in the report, should be taken to address the issue of leaks to the press and to sanction violations.
- Where public officials make public statements implying the guilt of a suspect or leak information to the press, effective redress must be provided.

“Television and newspapers are loaded with interviews of police officers who give journalists copies of arrest warrants and pictures. Police push their agenda with videos they took for the case file – giving the material to TV channels and websites.”

– Italian lawyer

Press coverage

Media reporting on crime-related cases frequently violates the presumption of innocence. Suspects are commonly presented as though they are guilty and reporting is often unbalanced against the suspect. Some groups of marginalised suspects are more likely to bear the brunt of these problems. This problem is not, however, easily addressed due to the important principle of media freedom, the growing range of media outlets and social media.

- Training should be offered to journalists on the presumption of innocence to help them understand this important but complex issue and the impact their reporting can have on the fairness of trials and the dignity of suspects.
- It should be prohibited for the press to take and publish photographs of people in restraints.
- The codes of conduct adopted by professional associations of journalists should contain a specific section on covering criminal proceedings.
- Where reporting is found to violate the presumption of innocence, appropriate measures should be taken to rectify this.

“The police officers arrested my client at 5 a.m. in the morning. She opened the door in her nightwear, dishevelled. When she opened the door, the press were behind the police. It is to be noted that she is an elderly woman. After the arrest, all newspaper and TV channels broadcast pictures and videos of her and the arrest.”

– Croatian defence lawyer

“Member States shall take appropriate measures to ensure that suspects and accused persons are not presented as being guilty, in court or in public, through the use of measures of physical restraint.”

– EU Presumption of Innocence Directive

Presentation of suspects in court and in public

In many countries it is common for suspects to be paraded in physical restraints before the public and media at the time of their arrest and during their transfer to and from court. In courts, too, it is common for suspects to be restrained (even placed in cages or glass boxes) when there is no justification for this. This can cause irreversible damage to a suspect’s reputation and can also affect judgments about a person’s guilt or innocence. Even robust rules governing how suspects are presented in public and in court do not always prove effective in practice, including because of the huge public appetite for these images.

- Robust legal regimes (and practical infrastructure, such as court layouts) should be put in place to limit the use of restraints and the suspect’s exposure to the public and press at the time of arrest and during transport to and from court.
- Any form of restraint in court should be strictly limited and should only be used where a case-specific decision has been made by the court that this is required. Relevant information on circumstances relevant to the necessity of restraints should be provided to judges well in advance of hearings. Cages or glass boxes should be removed from all courtrooms.
- Training of law enforcement officials is needed to change the culture in relation to the use of restraining measures and special protections against the use of restraints should be put in place for vulnerable groups of suspects (children, elderly people, pregnant women).

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The full report 'Innocent until proven guilty? The presentation of suspects in criminal proceedings' is available at www.fairtrials.org/publication/innocent-until-proven-guilty.

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