
Francisco Seoane Pérez
<https://orcid.org/0000-0002-4680-558X>
francisco.seoane@uc3m.es
Universidad Carlos III de Madrid

Lidia Valera-Ordaz
<https://orcid.org/0000-0002-1085-980X>
lidia.valera@uv.es
Universitat de València

Submitted
July 13th, 2020
Approved
December 5th, 2020

© 2021
Communication & Society
ISSN 0214-0039
E ISSN 2386-7876
doi: 10.15581/003.34.3.15-30
www.communication-society.com

2021 – Vol. 34(3)
pp. 15-30

How to cite this article:
Seoane Pérez, F & Valera-Ordaz, L.
(2021). Stolen innocence?
Observance of the EU Directive on
presumption of innocence by
Spanish crime reporting.
Communication & Society, 34(3), 15-
30.

Stolen innocence? Observance of the EU Directive on presumption of innocence by Spanish crime reporting

Abstract

This paper examines the compliance of Spanish crime reporting with the principles of the 2016 EU Directive on presumption of innocence, which aims at preventing the publication of information that might bias the public and the jurors against the suspect. A content analysis applied to a sample of 200 crime news stories published by eleven of the most popular print and online news platforms in 2018 reveals that the Spanish press coverage of crime is centered around the pre-trial and sentence stages, with little attention to the oral trial. The full name and the face portrait of the suspect appear in roughly one-third of the stories, but this overwhelmingly happens in news stories reporting on the court's decision, so that the presumption of innocence is generally protected. Interestingly, the legacy media are more likely to report on the victim's full name and the crime details that online digital media. One-fourth of the stories include accusations of guilt, as prosecutor attorneys and other officials are more frequently cited than defense lawyers. Although the Spanish press is largely compliant with the recommendations of the EU Directive, the lack of attention to the oral phase, where the arguments of both parts are deployed and contrasted, leads to a bias in the coverage against the suspect.

Keywords

Crime news, Spain, presumption of innocence, fundamental rights, EU Directive 2016/343, legacy press, digital news media.

1. Introduction: Suspects in the news after the EU Directive

Of all the reasons why ordinary citizens get media coverage (vox pops, witnessing an accident, winning an award...), there is one which is certainly unwanted: their involvement in a criminal cause (Palmer, 2017). In such cases, any misrepresentation of facts by journalists can have lasting harmful consequences for the reputation of the individuals concerned. This is why the notion of "innocent until proven guilty" is a legal concept anchored in international law, present in most Western constitutions. In 2016, the European Union sought to bolster this fundamental inalienable right of suspects through the directive 2016/343 on the presumption of innocence, which seeks to protect the right of suspects not to be portrayed as guilty in the public sphere. The directive goes hand in hand with established case law from the European

Court of Human Rights (ECHR), which underscores the suspects' right to due process and a fair trial.

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." The presumption of innocence is a fundamental right and a crucial factor in ensuring fair trials. It is covered by Article 6 of the European Convention of Human Rights and Article 48 of the European Charter of Fundamental Rights. It is also enshrined in the International Covenant on Civil and Political Rights (Article 14) and the Universal Declaration of Human Rights (Article 11).

In a media-driven society, the public image of a crime suspect is largely shaped by journalistic reports. Therefore, whether a suspect is presumed innocent by the public will depend on the work of criminal justice reporters. The journalists who are assigned to the police and court 'beats' deal with accused individuals from the moment they are arrested through their trial, by way of the pretrial investigations that might get leaked to the press. If the European Commission saw the need to initiate law to ensure continental-wide respect to that such a fundamental right, it is worth studying the degree to which Spanish crime reporting heeds to the principle of presumption of innocence, paying special attention to the cases in which journalists fall short from fulfilling their own ethical guidelines.

This article presents a first assessment of the degree of compliance of Spanish crime reporting with the EU directive, which was due to be transposed into each of the member states' domestic law systems by April 1, 2018. During the Summer of 2018, crime news on both legacy print media and digital born outlets were analysed to ascertain if the Spanish press was acting according to the ethical standards of the journalistic professional field, and whether it fell into 'trial by the media' situations.

2. Presumption of innocence: legal tenets and journalism practice

The right of every person to be considered innocent of any accusation until proven guilty by a fair and public trial is codified in most national constitutions and taken for granted by nearly every Western citizen. The principle of presumption of innocence is, however, far from natural and self-understanding.

Within Spanish law, given its placement in the Constitution as a fundamental right (Article 24.2), it is a subjective right, that is, existent and applicable even if it were not to be developed any further by law, and may be invoked up the judicial ladder, from the Constitutional Court to the European Court of Human Rights (Villanueva Turnes, 2015).

Nieva Fenoll (2016) argues that, first and foremost, the principle of presumption of innocence is a sort of moral blueprint to isolate the judge from the social inertia of seeing guilt in any accused individual. The principle is applicable from the first police investigations to the ultimate irrevocable sentence, and has internal and external dimensions (Barrero Ortega, 2010). Internal, within the judicial proceedings, as the evidence of wrongdoing must be conclusive enough to erode the presumed innocence of the accused and lead the judge to an intimate certainty, 'beyond any reasonable doubt', of the suspect's guilt. If such evidence is not conclusive enough, then the *in dubio pro reo* principle should apply. The external dimension of the principle refers to the social consideration of the suspect. Police and judicial authorities, along with the news media, should be careful when dealing with the accused, making sure she/he is not treated in public in a way that would lead to her/his consideration as a criminal before trial. Even if within doors the suspect is treated fairly by the judge, her/his reputation might be tarnished if seen conducted by the police in handcuffs or if deemed as criminal by the press before the trial ends.

It is precisely the external dimension of the principle of presumption of innocence that most affects journalism practice, and the reason why professional ethical codes and newsroom guidelines refer to this central tenet in their texts. Actually, the principle of

presumption of innocence is, along with the requirement of truthful reporting and the respect towards personal honor and intimacy, one of the three limits to the constitutional right to receive and share information (Barata, 2009; Del Moral, 2008; Rodríguez Gómez, 2014).

Of the several codes of journalism ethics existent in Spain, the one approved by the federation of press associations (FAPE) in 1993 is considered the standard for the profession. Its fifth article is entirely devoted to the principle of presumption of innocence. The FAPE also established in 2006 the closest body to a press council in Spain, the Committee of Arbitration, Complaints and Ethics of Journalism, which oversees the performance of reporters and issues a non-binding statement whenever a complaint is received.

When covering criminal affairs, there are several moments where the general principle of the publicity of justice might collide with the ‘personality rights’ of honor, intimacy and self-image (Montalvo Albiol, 2012). The investigation phase (summary) is generally secret, and journalists should be careful not to make detainees identifiable in their images, as they might prove eventually innocent. Police forces should also refrain from exhibiting suspects in handcuffs while being carried to a court (the so-called *prep-walk* or *paseillo*).

As for the oral phase, a sentence from the Spanish Constitutional Court established in 2004 that trials should be available for reporters to be covered, although courts might restrict access to journalists through a motivated order declaring the applicability of any of the exceptions to publicity codified in the Law of Criminal Procedure, such as the protection of minors or victims of domestic violence (Navarro Marchante, 2007).

In 2004 the General Council of the Judiciary (Consejo General del Poder Judicial), the body governing the judiciary in Spain, issued a ‘communication protocol’ with recommendations on how to regulate the access of reporters to public hearings. The protocol, updated in 2015 and 2018, asks not to shoot frontal images of suspects, suggesting lateral or back shootings instead, unless the accused is a public figure being judged by facts of great social salience. In such a case, frontal recordings and full identification is permitted.

3. Crime news coverage in Spain

Crime news has been historically one of the most popular news items, and Spain is no exception (Wardle, 2008). One of the earliest media sensations in the history of Spanish press was the crime of calle Fuencarral, the assassination of a wealthy widow of which her servant was accused and eventually executed. The crime and the trial were intensively covered by the press of the time, including contributions from the renowned Spanish writer Benito Pérez Galdós. The event was so popular it would be featured in books and films, among them masterpieces like Edgar Neville’s *El crimen de la calle de Bordadores* (1946) or TV films like Angelino Fons’ episode for the series *La huella del crimen* (1988) featuring renowned Spanish actress Carmen Maura.

Nowadays, it is not the print press but television the main venue for the media sensationalism regarding crime news. In August 2018, the Comisión Nacional de los Mercados y la Competencia (CNMC), the state agency that in Spain assumes the task of a media council, issued a warning against three TV shows, *Espejo Público* (Antena 3), *El Programa de Ana Rosa* (Telecinco) and *Más Vale Tarde* (La Sexta) for not respecting the principle of presumption of innocence during the coverage of the ‘Gabriel case’, the kidnapping and eventual assassination of a child in the province of Almería (Arranz, 2018, August 3).

Long gone are the years of *El Caso*, a popular weekly published between 1952 and 1987 famous for its sensational coverage of crime, with very explicit pictures and illustrations. With the disappearance of *Interviú* in 2018, a weekly news magazine that mixed political commentary with crime reporting and female nudes, the tabloid-style journalism is restricted to morning TV magazines, whose main formula of success is the mixing of gossip celebrity news and street-level crimes.

Research on the respect to the principle of presumption of innocence by Spanish journalists has mostly taken the form of case studies of landmark cases. Barata (2003) recalled how the parallel trial conducted by the media after the killing of 19-year-old girl Rocío Wanninkhof led to the conviction of an innocent woman, who happened to have had a romantic involvement with the girl's mother. Journalists revealed the full identity of the arrested and conducted TV shows featuring the girl's mother voicing attacks towards her partner.

Maciá Barber and Galván Arias (2012) looked at the coverage of the Aitana case, a 3-year-old girl from the Canary Islands whose accidental death was initially attributed to the partner of the girl's mother. The man would be eventually acquitted, but only after a public campaign that would be embarrassing for both the police and the press. The lowest ground would be touched by the centenary *ABC* newspaper, which pictured the suspect in its front page, labelling him a criminal. The man would sue *ABC* which, after an unsuccessful appeal, was sentenced in 2015 to pay 60,000 euros for not respecting the suspect's right to be presumed innocent.

Redondo García (2013) studied how the Spanish quality press (*El País*, *El Mundo*, and *ABC*) covered the disappearance of 4-year-old British girl Madelaine McCann, who went missing in Portugal in May 2007. These newspapers were found to be adopting a sensationalist outlook, engaging in a true 'media trial' that questioned the innocence of the missing girl's parents.

The killing and disappearance of 17-year-old Marta del Castillo in Seville in January 2009 deserved at least two studies. Puebla Martínez and Lozano Vizcarro (2014) compared the coverage by *El País* and *El Mundo*, finding the second more likely to engage in interpretation and opinion. Herrero Curiel (2013) contrasted the public broadcaster RTVE with private Telecinco, with the first being more informative and the second more sensationalist.

More recently, Vázquez Miraz (2019) looked at the coverage of a parricide in Galicia in 2017 and found that most digital dailies did not respect the presumption of innocence of the suspect, revealing many personal details, such as his neighborhood of residence, his full name and image.

Longitudinal studies are the exception and have only been carried by academics from the Basque Country. The most ambitious project examined the coverage of crime news by mainstream dailies from 1977 to 2000. Although the most recurrent news genre was that of information, interpretive features became more frequent in the 1990s, with a tendency towards melodrama (Marauri *et al.*, 2011). The 1990s would also mark a change in sourcing patterns, with journalists becoming less reliant on official sources and interviewing more witnesses (Marauri *et al.*, 2012).

Much closer to the interests of our study, the research by Armentia Vizquete *et al.* (2015) looked at how respectful the Basque press has been of professional ethical codes. Covering a decade (2002–2012), the authors find that the use of the word 'presunto' (presumed) is far more common in the body of news texts than in headlines. The general rule of anonymizing the identity of suspects is fulfilled in most cases, with the naming of initials being the most common form of identification.

In a case study of crime news in *El País*, Barata (2009) found that suspects are referred to incorrectly in 30% of the cases. A common mistake is presuming guilt rather than innocence, with expressions like *presunto delincuente* (presumed offender) or *presunto asesino* (presumed criminal).

Our study introduces several novelties compared to previous research: it analyzes how the Spanish press respects the presumption of innocence in a way that goes beyond the case-study approach, looking both beyond a single newspaper and a single criminal case. In addition, it compares the legacy and online-born media, and examines specifically the performance of the Spanish press with regards to the EU Directive on presumption of

innocence in the summer of 2018, when the directive was due to have been transposed in all EU member states.

4. The impact of negative pre-trial publicity

The EU directive is concerned with all forms of negative publicity that might lead to the public or popular juries to see suspects as guilty individuals. To that end, the directive states that:

- Public authorities should refrain from referring to accused persons as being guilty for as long they are not proved guilty after trial.
- The suspects should not be presented in public or in court with measures of physical restraint, such as handcuffs, glass boxes, cages or leg irons, unless it is strictly necessary for the safety of those around.
- The burden of proof is always on the prosecution, not on the suspects, so no accused person should be asked to prove her/his innocence.
- The exercise of the rights to remain silent and not to incriminate oneself should not be seen as evidence of guilt.

As a member state, Spain has not transposed the directive into its own legal system, as its own national rules are considered to be in line with the requirements of the directive. However, notorious cases like the detention of former minister Rodrigo Rato in April 2015 (staged for the news media), or the imprisonment of former F.C. Barcelona president Sandro Rosell, who spent nearly 2 years in jail (May 2017–April 2019) and was eventually acquitted of charges of money laundering, reveal the Spanish judicial system is wanting in the respect of presumption of innocence (Rosell, 2020).

The negative impact of prejudicial pre-trial publicity has been carefully studied in the USA. After the Supreme Court overturned several murder convictions in the 1960s because of the influence of negative publicity in the jurors, the American Bar Association (ABA) decided to establish guidelines for police and judicial authorities regarding the publication of information on suspects (*Project on Standards for Criminal Justice*, 1968). The guidelines would be reviewed and would culminate in the 1983 *Model Rules of Professional Conduct*, whose recommendations partially overlap with those of the 2016 EU directive. In particular, the ABA rules recommend not to publish the prior criminal record of the suspect, references to her/his reputation or character, the existence of any confession or the refusal to make a statement, and the performance on tests or the refusal to take them, among other information.

Both the ABA guidelines and the EU directive allow for the publication of information that might be needed to apprehend an accused person, or warnings to the public if the fugitive is considered to be dangerous.

The prevalence of pretrial publicity in the news programs was investigated by Imrich *et al.* (1995). The researchers conducted a content analysis of the 14 major American newspapers, attempting to investigate the results of the implementation of the ABA's guidelines mentioned above. The study found that during the 8-week sample of crime news in the USA, 27% of the suspects were described in a way that gave them a negative publicity (Imrich *et al.*, 1995, p. 110). In most cases the researchers noted negative statements about the character of the suspects and general statements about the suspect's guilt.

To determine whether negative pretrial information influences the perception of an accused person as guilty, Dixon and Linz conducted an empirical research with the news programs aired by Los Angeles-based stations used as samples (Dixon & Linz, 2002, p. 119). The study found that 19% of defendants were described in a negative way that potentially could influence the trial (Dixon & Linz, 2002, p. 129). In most cases the prejudicial statements were associated with legal proceedings and criminal records.

Whereas in the USA several studies on pretrial information and its impact on the presumption of innocence were conducted already in early 1990s (Linz & Penrod, 1992; Ogloff & Vidmar, 1994; Steblay, Besirevic, Fulero & Jimenez-Lorente, 1999), in Europe such

investigations have only taken place more recently. Thus, Patterson, Smith Fullerton and Tuñón Navarro (2016) addressed the issue of crime coverage in Portugal, Spain and Italy as a part of a larger ethics project on comparison of crime coverage in North America and some European countries (Smith Fullerton & Patterson 2013, 2016). In their study of the Mediterranean countries, these authors interviewed law enforcement agents and journalists to know how these professionals balanced the principle of presumption of innocence and the public's right to know. They found that most pretrial information was leaked through personal contacts, rather than being issued on public records. Journalists revealed themselves highly cooperative with the police, to the point they would conceal information if its publication was going to obstruct the detention of a suspect. Still, the competitive pressures among news media outlets led to the airing of rumors.

Now that the EU directive suggests a series of items the news media should be careful about (e.g., not showing suspects in restraint, or making any public statements that would imply guilt on the accused) it is time to evaluate the ethical performance of crime news reporting in Spain, to assess how closely it follows the recommendations of the directive.

5. Research design

This is a study of compliance with norms. Just as Armentia Vizueté *et al.* (2015) evaluated the coverage of homicides by the Basque press in the light of journalists' ethical codes, we content-analyzed crime news in the Spanish press to assess reporters' allegiance to the EU directive on presumption of innocence, right after the spring of 2018, when all member states had been asked to incorporate the provisions of the directive, if not into their legal systems (Spain did not deem it necessary), at least to their legal, police, and media practice.

The three research questions guiding our inquiry care about the suspects, the victims, and differences between the legacy and online native media:

RQ1. To what extent are the different dimensions of presumption of innocence contained within the EU Directive 2016/343 effectively respected by the Spanish press coverage of criminal offenses?

RQ2. How are the victims of criminal offenses treated in the news stories published by the Spanish press?

RQ3. Is the principle of presumption of innocence equally respected by the so-called quality or legacy press in comparison with online native newspapers?

To explore the extent to which presumption of innocence is respected throughout the Spanish press coverage of criminal offenses, we selected a sample of the most relevant Spanish general information newspapers according to their audience numbers and circulation. We intentionally excluded the sports press, despite its large circulation, and regional newspapers, since we wanted to focus on national newspapers of general information as a first exploratory approach.

The sample includes eleven news media outlets: five newspapers that belong to the so-called quality legacy press (*El País*, *El Mundo*, *La Vanguardia*, *ABC* and *La Razón*), and six digital news providers originally founded as online publications (*elconfidencial.com*, *eldiario.es*, *elespañol.com*, *okdiario.com*, *huffingtonpost.es*, and *público.es*).

According to the ranking of elaborated by Asociación para la Investigación en Comunicación (AIMC, 2018), the most important Spanish newspapers of general information during the timeframe of our study were *El País* (1,027,000 readers per day), *El Mundo* (702,000 readers per day), *La Vanguardia* (572,000 readers per day), *ABC* (408,000 readers per day), *El Periódico de Catalunya* (358,000 readers per day) and *La Razón* (207,000 readers per day). We included all of them except *El Periódico de Catalunya* because it has historically been more focused on regional issues despite its recent and increasing relevance as a national publication.

According to Comscore, the most important Spanish digital native newspapers in terms of audience during 2018 were: 1) El Confidencial (13.4 million unique users), 2) Ok Diario (10.8 million unique users) 3) El Español (10.6 million unique users), 4) eldiario.es (8.4 million unique users), 5) Huffington Post (5.1 million unique users) and 6) Público (5 million unique users) (Comscore, September 2018)¹. That is, we selected the most important online Spanish news websites in terms of readership.

Table 1: Composition of the sample.

Newspaper	Number of news stories
<i>El País</i>	12
<i>El Mundo</i>	11
<i>La Vanguardia</i>	2
<i>ABC</i>	14
<i>La Razón</i>	5
Elconfidencial.com	20
Okdiario.com	27
Elespañol.com	40
Eldiario.es	12
Huffingtonpost.es	19
Publico.es	38
Total	200

Source: Own elaboration.

Since we wanted to ensure the representativeness of the sample, we used two constructed weeks during the months of June, July and September 2018 to select news stories about criminal offenses. Specifically, the two constructed weeks comprised the following days: 5 June 2018, 13 June 2018, 21 June 2018, 29 June 2018, 2 July 2018, 7 July 2018, 15 July 2018, 16 July 2018, 24 July 2018, 2 September 2018, 5 September 2018, 13 September 2018, 21 September 2018, and 29 September 2018. August was intentionally excluded because it is not fully a working month in Spain, and most newspapers offer a more limited media coverage since they have fewer human resources at their disposal.

All the news stories related to criminal offenses published during the above-mentioned days were included in the sample, resulting in a total of 200 units of analysis (Table 1). The number of stories significantly varies across news media outlets, and it is worth noting that digital newspapers generally offer more crime reporting than the legacy press. Online there are no space limitations, and stories from previous days may linger on the homepage if they are popular enough. On print, space is limited and consequently the frequency of crime reports will be lower. Stories related to non-criminal misdemeanors were excluded on purpose, since the Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings specifically applies to suspects of criminal offenses. Moreover, only informative and interpretive genres were included in the sample. Opinion articles were intentionally avoided, since columnists express a particular voice not necessarily endorsed by the newspaper.

The 200 units of analysis were content-analyzed using 40 dichotomous variables derived from previous works about prejudicial publicity (Dixon & Linz, 2002; Imrich, Mullin & Linz, 1995). In addition, some variables were created *ad hoc* to cover specific aspects particularly emphasized by the directive, such as the reversal of the burden of proof, and comments about the suspect's behavior during the trial (the coding protocol is available upon request).

¹ Comscore analyzes cross-platform audiences of several websites. Although their data are not publicly available, they are sometimes reported by news media outlets. We obtained them from the following news story by Okdiario: <https://okdiario.com/audiencia/comscore-septiembre-2018-3262706>.

Our variables were related to four major themes: 1) details about the suspect's identity (full/given name, face portrait, race, nationality, sex, age, residence, religion and sexual orientation); 2) details about the crime victim (full/given name, face portrait, life anecdotes, crime details, etc.); 3) information about the suspect's visual depiction (if he/she was shown conducted by the police, and with measures of physical restraint); and 4) prejudicial statements undermining the presumption of innocence (prior convictions, prior arrests, good/bad reputation, confession, refusal to talk, test performance, test refusal, guilt and innocence).

Two coders analyzed the 200 units of analysis. A pretest of 10% of the sample -20 units of analysis- was conducted to check inter-coder reliability. For most variables, inter-coder agreement exceeded 80%, and Krippendorff's alpha values, which also account for inter-coder agreement by chance, ranged between .65 and 1. The variables that scored below this threshold were further developed and specified to reach enough reliability.

Table 2 informs about the authorship of the analyzed news pieces, since knowing who is responsible of the media coverage of criminal offenses will help understand to what extent media coverage respects the presumption of innocence. The majority of the news stories addressing criminal offenses are either produced by specific reporters (43.5) or by the newsroom as such (21.0) -with no signature of a particular journalist heading the story. Indeed, only one out of five stories is made from news agency material, at least according the bylines declared by the media outlets.

In this sense, findings seem to suggest that Spanish newspapers make a reasonable effort when covering criminal offenses: they use their own human resources most of the time, relying sporadically on news agencies. However, it is worth noting that sometimes Spanish newspapers produce news using the information provided by wire services and then use the term "Newsroom" or "Desk" to avoid quoting the agency. Put differently, we can only rely on the fact that almost half of the coverage is produced by specific reporters.

Table 2: Authorship of the news pieces.

	Frequency	Percentage
Reporter	87	43.5
News agency/Wire service	42	21.0
Newsroom (Desk)	71	35.5
Total	200	100.0

Source: Own elaboration.

6. Results

Results will be reported in the following way. First, descriptive findings of all the specified variables will be presented, and then statistical differences between the legacy press and the digital native newspapers will be discussed using standardized residuals, which allow for establishing associations between variables.

Table 3 offers detailed information about the types of news stories that Spanish newspapers produce when covering criminal offenses. Results show that most news stories consist of initial reports of a crime (36.5), follow-up news stories which add more information about the crime before the trial (24.0), or stories about the court decision (23.5). Journalistic reports of the trial celebration, stories addressing the aftermath of a crime for the victim/community, reports about the pattern of a crime or portraits of the suspect are significantly less frequent and only sporadically published by the Spanish press.

Table 3: Types of news stories on criminal offenses.

	Frequency	Percentage
Initial report of a crime	73	36.5
Follow-up report pretrial	48	24.0
Report during the trial	10	5.0
Story about the sentence	47	23.5
Report of the aftermath of a crime for victim/community	9	4.5
Report of the pattern of a crime	4	2.0
Portraits of the suspect	5	2.5
Other types of story	4	2.0
Total	200	100.0

Source: Own elaboration.

Table 4 presents information about the media treatment of criminal offenses, including details about the suspect’s identity, details about the victim, and the presence of different prejudicial statements throughout the news pieces. Findings show that the most common media strategy to describe the suspect of a criminal offense is to report his/her sex, age, as well as details about the place of residence. These are, by far, the most frequent identifiable information reported by Spanish newspapers about the suspects of criminal offenses. Still, in 37.5% of the cases we can also find the full name of the suspect, and in 31.5% of the news pieces a face portrait of the suspect is also included.

To further investigate if these details about the suspect’s identity were equally included in all story types –such as an initial report of a crime, a pretrial follow-up, or they were only reported in news stories about the trial or the sentence, we analyzed the association between variables through chi-square tests and standardized residuals. Our findings clearly indicate that most news stories including the full name or a face portrait of the suspect were journalistic reports about either the trial itself, or the court’s final decision. This points out that the suspect’s identity is generally initially preserved by Spanish newspapers, and that it is only during or after the judicial process –when suspects have effectively exerted their right to defense– when their identity is revealed to the public.

Other personal information about the suspect potentially prejudicial is far less frequent in the media coverage of criminal offenses. For example, religion and sexual orientation of the suspect are never reported, and race is only included in 2.5% of the news stories. Nationality, however, is slightly more frequent: 15% of the news pieces include some reference to the suspect’s citizenship.

Regarding the depiction of the suspect with measures of physical restraint, that is, with handcuffs or being arrested/conducted by police authorities –two questions particularly emphasized by the directive as clearly prejudicial–, our results show that only 8.5% of the news stories include a picture of the suspect being conducted by the police, and even less (5%) include an image of him/her with handcuffs.

Table 4: Media treatment of criminal offenses.

Suspect's Identity and Depiction	Frequency	Percentage
Full Name	75	37.5
Given Name	14	7
Face Portrait	63	31.5
Suspect conducted by the police	17	8.5
Suspect shown with measured of physical restraint	10	5
Race	5	2.5
Nationality	30	15
Religion	0	0
Sexual orientation	0	0
Residence	83	41.5
Age	64	32
Sex	179	89.5
Prejudicial Pre-trial Statements		
Prior convictions	31	15.5
Prior arrests/charges	28	14
Good reputation	3	1.5
Bad reputation	23	11.5
Suspect's confession	16	8
Suspect's refusal to talk	7	3.5
Suspect's test performance	9	4.5
Suspect's test refusal	1	0.5
Guilt	49	24.5
Innocence	16	8
Prejudicial On-Trial Statements		
Suspect's behavior during the trial	3	1.5
Reversal of burden of proof	1	0.5
Victim's details		
Full name	35	17.5
Given name	15	7.5
Face portrait	18	9
Life details	56	28
Crime details	136	68
Positive statements	14	7
Negative statements	12	6

Source: Own elaboration.

Regarding the inclusion of prejudicial statements which might undermine the suspect's right to presumption of innocence, results show that one story out of four contains explicit statements about his/her guilt (24.5), while only 8 percent feature opinions of innocence. To get a more precise picture of who actually made the statements of guilt in the news pieces, we identified the different types of sources throughout the sample. The results showed that in 29.2 percent of the news pieces no sources were linked to statements about guilt, while in 25 percent prosecuting attorneys were responsible for them, followed by police authorities (10.4 percent), judges (10.4 percent), and family, friends or neighbors of the suspect (8.3).

In addition, 15.5 percent of the news pieces include references to prior convictions, and 14 percent to prior charges or arrests. In the same vein, 11.5 percent of the stories include negative statements about the suspect's character or reputation, while only 1.5 contain positive statements. Additional prejudicial pre-trial statements related to the suspect's confession, refusal to talk, test performance and test refusal, are only sporadically present in

the news coverage –ranging from 0.5 to 8 percent of the sample. In regard to prejudicial on-trial statements, such as comments about the suspect’s behavior during the trial or assertions which imply the reversal of burden of proof, both are significantly absent in the analyzed news pieces. Still, these results need to be interpreted in light of the scarce news pieces devoted to the coverage of the trial itself.

Taken together, our findings show that the media treatment of criminal offenses by Spanish newspapers is at least partially prejudicial against the suspect: it tends to emphasize some aspects that undermine the right to the presumption of innocence (guilt, prior convictions, bad reputation), while those that could strengthen his/her innocence are rather overshadowed. This is probably the result of the newspapers’ preference for sensationalism, drama and negativism.

What happens with the media treatment of the crime’s victims? How do Spanish newspapers report on them? The most remarkable finding indicates that 68 percent of the news stories report some details about the trauma inflicted to the victim, especially related to the crime scene, or the cause of death. Moreover, 28 percent include information about the victim’s life, such as his/her job, family, friends, life routines, etc.

When it comes to protecting the victim’s right to privacy, 17.5 percent of the news pieces include the full name, which clearly allows for her/his identification. Still, we should note that this is generally the case when the judicial process is about to end, and the court decision is publicly announced. In other cases, however, newspapers use the given name of the victims, especially when they initially report about a crime or offer pretrial follow-up reports. Interestingly, the media treatment of the victims’ reputation is notably balanced, since a similar percentage of news stories contain positive and negative opinions about them.

Table 5: Adjusted standardized residuals derived from cross tabulating media coverage variables by newspaper type.

	Suspect’s Sex	
	<i>No</i>	<i>Yes</i>
Legacy Press	-2.6	2.6
Digital native press	2.6	-2.6
	Prior Arrests	
	<i>No</i>	<i>Yes</i>
Legacy press	-1.9	1.9
Digital native press	1.9	-1.9
	Test Performance	
	<i>No</i>	<i>Yes</i>
Legacy press	-2.5	2.5
Digital native press	2.5	-2.5
	Test Refusal	
	<i>No</i>	<i>Yes</i>
Legacy press	-1.9	1.9
Digital native press	1.9	-1.9
	Victim’s Full name	
	<i>No</i>	<i>Yes</i>
Legacy press	-2.4	2.4
Digital native press	2.4	-2.4
	Crime details	
	<i>No</i>	<i>Yes</i>
Legacy press	-1.9	1.9
Digital native press	1.9	-1.9

Source: Own elaboration.

To ascertain if the so-called legacy press offers a substantially different coverage of criminal offenses in comparison with digital native newspapers, we crossed tabulated each variable by the type of newspaper (legacy vs. digital native) using adjusted standardized residuals. Values greater than +1.96 (+2.58) or lesser than -1.96 (-2.58) indicate that residuals are significant, i.e., there is an association between variables at 95% (99%) confidence level. In other words, values above or beneath those thresholds indicate that there are significant statistical differences between the media treatment of the legacy press vs. digital native newspapers. For clarity's sake, we have only included those variables that do exhibit statistical association in Table 5.

First, we should point out that only a few variables analyzing the media coverage of criminal offenses show statistical differences across newspaper types. In regard to the suspect, these variables include the suspect's sex, information about his/her prior arrests, test performance, and test refusal. Regarding the treatment of the victims, only two variables exhibit significant differences across newspaper types: the victim's full name and crime details. In other words, when it comes to respecting the principle of presumption of innocence, differences across newspaper types are not particularly pronounced, given that in most cases no differences were found.

Still, calculations offer a second interesting finding, namely, that all the differences across newspaper types take place in a single direction. It is the legacy press who offers more prejudicial information about the suspect compared to digital newspapers, who generally include significantly less prejudicial statements that undermine the presumption of innocence. Specifically, Spanish printed newspapers include more frequently prejudicial information about the suspect's prior arrests, about the performance of any physical test, and about the suspect's refusal to submit to any examination during the police investigation. Moreover, they are also more likely to emphasize the suspect's sex in their coverage of violent crimes.

What happens with the media treatment of the victims of criminal offenses? Are there any differences to be found between traditional and digital newspapers? Our findings point out that it is the legacy press who more often includes the victim's full name, and who more frequently reports details about the crime, such as the crime scene or the cause of death. In other words, digital newspapers tend to provide more protection to the victim's privacy in comparison with the legacy press.

7. Discussion

This study is a first assessment of Spanish press' degree of compliance with the recommendations of the EU directive on presumption of innocence. Due to the key role journalism plays in the publicity of justice, and the difficult balance it must strike between the pursuit of the public interest and the respect of fundamental rights like honor and privacy, the reporters' ethical conduct is a keystone in evaluating the impact of the EU directive.

The Spanish press devotes considerable human resources to the coverage of crime news. Nearly half (43.5%) of the stories have a byline, and more than one-third (35.5%) are signed by the news desk, suggesting further elaboration of the reports received by press agencies –not necessarily with complementary data though–, which are reproduced as they come in one-fifth of the cases (21%).

Spanish crime reporting has both good and bad news regarding its abidance with the EU directive prescriptions: suspects are very rarely identifiable whenever they are shown in handcuffs or being conducted by the police. In this sense, Spanish newspapers generally respect the spirit of the EU directive when it comes to the visual representation of the suspect in such a way that his/her presumption of innocence is not undermined.

However, the full name of the suspect (37.5%) and the accused's face portrait (31.5%) are published in more than one-third of the stories. Still, we should emphasize that this overwhelmingly happens in news pieces either covering the trial or –most importantly–

reporting about the court's final sentence. In other words, most news stories revealing details about the suspect's identity that could potentially harm his/her reputation are published only after the suspect has been found guilty by a court's decision, which does not really diminish the right to presumption of innocence.

The victims' information is more carefully handed, with the full name being featured in less than one-fifth of the stories (17.5%), and the face portrait appearing in just 9% of the pieces. The most frequent information about a victim is the details of the crime (published in 68% of the stories) and its life details (28%).

Surprisingly, most of the crime coverage happens either before (60.5%) or after the trial (23.5%), but only 5% of the stories are about the trial itself, where the versions of the prosecution and the defense are contrasted. This might explain the presence of references to the suspects' guilt in one-fourth of the stories (24.5%), as the accusation is usually more vocal than the defense attorneys. To wit: those who made statements about the suspect's guilt were prosecuting attorneys (25.5), police authorities (10.4), or judges (10.4). In Imrich *et al.* study (1995), the sources of potentially prejudicial information about criminal suspects were the law enforcement officers and prosecutors. By covering trials more intensively, or by seeking more forcefully the versions of the defense, Spanish journalists could contribute to a more balanced coverage of crime.

The comparison between the legacy press and the online-born media also yields a shocking result: traditional newspapers are more likely to reveal details about the suspect (sex, prior arrest, test performance, test refusal) and the victim (full name and crime details) than the online-native news outlets. So, the legacy dailies, far from being the custodians of journalism ethics, are willing to delve into potentially sensational details that were thought to be the purview of click-bait seeking media, probably as a result of increasing competition and economic pressures.

8. Limitations and suggestions for further research

Finally, we should note some limitations of the study, while suggesting future avenues for research. Our sampling method –the constructed week– allows to account for cyclic variation of news content (Riffe, Aust & Lacy, 1993). But it generated very unequal sample sizes for each newspaper, since some publications presented many crime stories, while others only rarely contained news about criminal offenses. In this sense, the most populated dailies –such as *El Español* or *Público*– are overrepresented in our sample, which might have biased results. Put differently, future works relying on more nuanced samples will have to deepen our understanding about the Spanish press' compliance with the EU norms on presumption of innocence.

More generally, future research should definitely expand the scope of the present work in at least two significant ways. On the one hand, by using more extended time frames and bigger samples of news stories in order to confirm these provisional findings. On the other, by analyzing not only the print and online media, but also the broadcast news providers. Particularly the extent to which Spanish television programs (morning shows, news magazines, talk shows, interview programs) comply with the EU directive when reporting on criminal offenses. This is especially relevant for two reasons. First, because television is still the preferred source of information for Spaniards –with a penetration rate above 85% (AIMC, 2018)–, and it therefore has an immense potential to damage the right to the presumption of innocence. Second, because Spanish commercial television devotes a good deal of airtime to criminal offenses through a variety of programs, given that these dramatic and violent stories significantly attract audiences.

9. Conclusion

By April 2020, the EU directive stipulates that member states should be sending a report to the European Commission on how the rights laid down in the text have been implemented. By April 2021, another report should be submitted to the European Parliament and the Council. Although the directive is addressed towards judicial and police authorities, the news media are indirect addressees too. The press is key in upholding the external dimension of the principle of presumption of innocence: regardless of what happens inside the courts, a damaging media coverage can affect the honor and privacy of suspects and victims.

This content analysis of the Spanish crime coverage on the eve of the transposition of the directive is a first academic contribution to assess the degree of compliance with the directive. Despite Spain saw no need to transpose the directive because it considered that all its recommendations were already covered by the extant legal system, we found room for improvement. More coverage of the oral phase, whenever possible, might balance the public presence of defense and accusation. Also, Spanish journalists could do more to conceal the full name and face portraits of suspects.

The data used in this paper comes from the project “The Importance of Appearances: How Suspects and Accused Persons are Presented in the Courtroom, in Public and in the Media” (Acronym: ‘SIR’), directed by Professor Katharine Sarikakis of the University of Vienna as Principal Investigator, and funded by the European Union’s Justice Programme (2014–2020).

References

- Armentia Vizueté, J. I., Marín Murillo, F. & Caminos Marcet, J. M. (2015). Los homicidios en la prensa vasca (2002–2012): tratamiento informativo y códigos deontológicos. *Estudios sobre el Mensaje Periodístico*, 21(1), 53–72.
https://www.doi.org/10.5209/rev_ESMP.2015.v21.n1.49080
- Asociación para la Investigación de Medios de Comunicación (2018). *Resumen general de resultados (febrero a noviembre 2018)*. Retrieved from <https://www.aimc.es/aimc-content/uploads/2018/11/resumegm318.pdf>
- Barata, F. (2009). La devaluación de la presunción de inocencia en el periodismo. *Anàlisi*, 39, 217–236.
- Barata, F. (2003). Los *mass media* y la información criminal: el ‘caso King’ y las perversiones mediáticas. *Quaderns del CAC*, 17, 49–55.
- Barrero Ortega, A. (2010). *Juicios por la prensa y ordenamiento constitucional*. Valencia: Tirant lo Blanch.
- Del Moral, A. (2008). Derecho a un juicio público, libertad de información y derechos al honor y a la vida privada: relaciones, conflictos, interferencias. *Persona y Derecho*, 59, 253–293. Retrieved from <https://hdl.handle.net/10171/17360>
- Dixon, T. L. & Linz, D. (2002). Television news, prejudicial pretrial publicity, and the depiction of race. *Journal of Broadcasting & Electronic Media*, 46(1), 112–136.
https://www.doi.org/10.1207/s15506878jobem4601_7
- Imrich, D. J., Mullin, C. & Linz, D. (1995). Measuring the extent of prejudicial pretrial publicity in major American newspapers: A content analysis. *Journal of Communication*, 45(3), 94–118. <https://www.doi.org/10.1111/j.1460-2466.1995.tb00745.x>
- Linz, D. & Penrod S. (1992) Exploring the First and Sixth Amendments: Pretrial publicity and jury decision making. In D. K. Kagehiro & W. S. Laufer (Eds.), *Handbook of Psychology and Law* (pp. 3–20). New York: Springer. https://www.doi.org/10.1007/978-1-4757-4038-7_1
- Maciá Barber, C. (2010). El quehacer periodístico ante la presunción de inocencia. In S. Alsius & F. Salgado (Eds.), *La ética informativa vista por los ciudadanos: contraste de opiniones entre los periodistas y el público* (pp. 107–123). Barcelona: UOC.

- Maciá Barber, C. & Galván-Arias, M. A. (2012). Presumption of innocence and journalistic ethics: the Aitana case. *Revista Latina de Comunicación Social*, 67, 356-387. <https://www.doi.org/10.4185/RLCS-2012-960en>
- Montalvo Abiol, J. C. (2012). Los juicios paralelos en el proceso penal: ¿anomalía democrática o mal necesario? *Universitas, Revista de Filosofía, Derecho y Política*, 16, 105-125. Retrieved from <http://hdl.handle.net/10016/15200>
- Navarro Marchante, V. J. (2007). Las imágenes de los juicios: aproximación a la realidad en España. *InDret, Revista para el Análisis del Derecho*, 3, 1-28.
- Nieva Fenoll, J. (2016). La razón de ser de la presunción de inocencia. *InDret, Revista para el Análisis del Derecho*, 1, 1-23.
- Ogloff, J. P. & Vidmar, N. (1994). The impact of pretrial publicity on jurors: A study to compare the relative effects of television and print media in a child sex abuse case. *Law and Human Behavior*, 5, 507-525. <https://www.doi.org/10.1007/BF01499171>
- Palmer, R. (2017). *Becoming the news: How ordinary people respond to the media spotlight*. New York: Columbia University Press.
- Patterson, M. J., Smith Fullerton, R. & Tuñón Navarro, J. (2016). At a crossroads or caught in the crossfire? Crime coverage concerns for democracy in Portugal, Spain, and Italy. *Journalism Practice*, 11(9), 1-22. <https://www.doi.org/10.1080/17512786.2016.1234944>
- Puebla Martínez, B. & Lozano Vizcarro, V. (2014). Periodismo jurídico: el tratamiento informativo en prensa del caso 'Marta del Castillo' en los diarios *El País* y *El Mundo*. *Fonseca: Journal of Communication*, 8, 35-69. Retrieved from <https://revistas.usal.es/index.php/2172-9077/article/view/11811>
- Redondo García, M. (2013). El sensacionalismo y su penetración en la prensa española de calidad: el 'caso McCann' en *El País*, *El Mundo* y *ABC*. *Estudios sobre el Mensaje Periodístico*, 19(1), 235-253. https://www.doi.org/10.5209/rev_ESMP.2013.v19.n1.42519
- Riffe, D., Aust, C. & Lacy, S. (1993). The effectiveness of random, consecutive day and constructed week sampling in newspaper content analysis. *Journalism Quarterly*, 70, 133-139. <https://www.doi.org/10.1177/0276107769909307000115>
- Rodríguez Gómez, E. F. (2014). El Tribunal Constitucional y el conflicto entre la libertad de información y los derechos al honor, la intimidad y la propia imagen: revisión jurisprudencial. *Estudios sobre el Mensaje Periodístico*, 20(2), 1209-1224. https://www.doi.org/10.5209/rev_ESMP.2014.v20.n2.47061
- Rosell, S. (2020). *Una forta abraçada*. Barcelona: Rosa dels Vents.
- Smith Fullerton, R. & Patterson, M. J. (2013). Crime news and privacy: Comparing crime reporting in Sweden, the Netherlands and England. In R. Picard & J. Petley (Eds.), *Media and the boundaries of disclosure: Media, morals and public shaming* (pp. 115-143). London: I. B. Tauris & Reuters Institute, Oxford University.
- Smith Fullerton, R. & Patterson, M. J. (2016a). Not naming names? Crime coverage rituals in Canada, Sweden, and the Netherlands. In C. Richardson & R. Smith Fullerton (Eds.), *Covering Canadian crime: What journalists should know and the public should question*, (pp. 304-321). Toronto: University of Toronto Press.
- Smith Fullerton, R., & Patterson, M. J. (2016b). Telling tales in the shadow of giants: Canada, Ireland, and the ethics of crime coverage. *Journal of Media Ethics*, 31(23), 174-187. <https://www.doi.org/10.1080/23736992.2016.1188010>
- Stebly, N. M., Besirevic, J., Fulero, S. M. & Jiménez-Lorente, B. (1999). The effects of pretrial publicity on juror verdicts: A meta-analytic review. *Law and Human Behavior*, 23(2), 219-235. <https://www.doi.org/10.1023/A:1022325019080>
- Vázquez Miraz, P. (2019). El tratamiento de la presunción de inocencia de un parricida en las primeras crónicas informativas de la prensa española. *Revista de Antropología y Sociología: VIRAFES*, 21(1), 181-195. <https://www.doi.org/10.17151/rasv.2019.21.1.8>

Seoane Pérez, F & Valera-Ordaz, L.
**Stolen innocence? Observance of the EU Directive
on presumption of innocence by Spanish crime reporting**

- Villanueva Turnes, A. (2015). La presunción de inocencia: una aproximación actual al derecho. *Revista Catalana de Dret Públic*, 51, 209–222. <https://www.doi.org/10.2436/20.8030.01.62>.
- Wardle, C. (2008). Crime reporting. *The International Encyclopedia of Communication*. New York: John Wiley & Sons. <https://www.doi.org/10.1002/9781405186407.wbiecc155>