

Presumption of Innocence: procedural rights in criminal proceedings

Social Fieldwork Research (FRANET)

Country: PORTUGAL

Contractor's name: Centre for Social Studies

Authors: Conceição Gomes, Paula Fernando, Carolina Carvalho, Marina Henriques

Date: 05 June 2020 (Revised version: 14 July 2020; second revision: 18 August 2020)

DISCLAIMER: This document was commissioned under contract as background material for a comparative analysis by the European Union Agency for Fundamental Rights (FRA) for the project '[Presumption of Innocence](#)'. The information and views contained in the document do not necessarily reflect the views or the official position of the FRA. The document is made publicly available for transparency and information purposes only and does not constitute legal advice or legal opinion.

Table of Contents

PART A. EXECUTIVE SUMMARY	5
PART B. INTRODUCTION.....	7
• B.1 PREPARATION OF FIELDWORK	8
• B.2 IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS	8
• B.3 SAMPLE AND DESCRIPTION OF FIELDWORK	9
• B.4 DATA ANALYSIS	11
• B.5 LEGAL FRAMEWORK.....	11
PART C. MAIN REPORT ANALYTICAL STRUCTURE.....	13
• C.1 The right to be presumed innocent in general.....	13
a. How are the different professions implementing the presumption of innocence?	14
b. Potential factors that have an effect on guaranteeing the presumption of innocence	18
c. The role of prejudices and stigma.....	20
d. Discussion of findings.....	23
• C.2 Public references to guilt.....	23
a. How do the different professions liaise with the media?	25
b. Effects media has on presumption of innocence	30
c. Differences in media coverage concerning certain groups	35
aa. Men and women	35
bb. Children and adults	35
cc. Nationals and non-nationals (including ethnic minorities, e.g. Roma)	35
dd. Persons with disabilities.....	35
d. Discussion of findings.....	35
• C.3 The presentation of suspects and accused persons	36
a. Measures used to present the accused and its impact on their presumption of innocence ...	36
b. Clothing.....	40
c. Presentation of vulnerable groups.....	41
d. Reactions to presenting accused as being guilty	42
e. Discussion of findings.....	44
• C.4 Burden of proof	44
a. Exceptions to the burden of proof.....	45
b. Confession.....	47
c. Discussion of findings.....	49
• C.5 The right to remain silent and not to incriminate oneself	50

a. The right to remain silent in practice.....	50
b. How is information on the right to remain silent and not to incriminate oneself shared with the accused?.....	55
c. Self-incrimination	57
d. Right to remain silent.....	58
e. Discussion of findings.....	59
• C.6 The right to be present at the trial and to have a new trial	60
a. Consequences of non-appearance.....	61
b. What has been understood as “effective participation”?	64
c. Vulnerable groups	65
d. Discussion of findings.....	67
• C.7 Challenges and improvements	68
a. Challenges	68
b. Improvements.....	71
c. Suggestions	73
PART D. GENERAL ASSESSMENT	74
PART E. CONCLUSIONS	75
Annex A - SR 23 Presumption of innocence - Case study.....	79

List of Tables

Table 1: Sample professionals	9
Table 2: Challenges concerning the presumption of innocence.....	68
Table 3: Have defendants' procedural rights become stronger or weaker over the past 2-3 years? ..	71
Table 4: Further protection of the right to be presumed innocent.....	73

PART A. EXECUTIVE SUMMARY

This report is based on the results of 12 semi-structured interviews with judges, public prosecutors, lawyers and police officers, as well as desk research and two case studies. The interviewees made a positive overall assessment of the legal framework that ensures the protection of the presumption of innocence and acknowledge that it is a generally accepted and embodied principle in the daily practice of the criminal justice system. Nonetheless, interviewees also have, at some point, identified circumstances that challenge the application of that principle in practice. These challenges can be divided in: a) the ones that undermine the presumption of innocence inside the criminal proceeding and may influence the final outcome or, at least, the way the procedure is conducted; and b) the ones that hinder the presumption of innocence in the general public eye.

In general, the case studies analysed in this project confirm the main findings of the interviews concerning the practical application of the right to be presumed innocent.

The right to be presumed innocent in general:

All interviewees recognise that the legal framework accurately guarantees and protects the right to be presumed innocent. However, the interviewees also pointed out some factors (e.g. the public pressure of the justice system, the personal views or pre-conceptions of the professionals) that may hinder the application of the presumption of innocence in practice.

Public references to guilt:

The interviewees emphasized the absence of an efficient, transparent and ethical relationship between the judicial system and the media that has several negative consequences. Therefore, even though they all acknowledge that the media could play a fundamental role in the public scrutiny of the criminal justice system and improve its performance, they tend to highlight the negative effects.

The presentation of suspects and accused persons:

The interviewees believe that handcuffs do not affect the defendant's presumption of innocence within the criminal proceedings, but they do harm the defendant's public image. There are no prison clothes in Portugal and defendants are free to choose their clothes. Even though not establishing a direct link between clothes and the presumption of innocence, the interviewees acknowledge the importance of the adequate presentation of defendants in court. Finally, the interviewees reported major limitations on possible reactions to presenting defendants as being guilty.

Burden of proof:

The interviewees did not identify immediately any exceptions to the burden of proof. However, the fact that the loss of assets to the State in relation to unlawful acts of a specified type does not harm the criminal proceedings was mentioned in this context by lawyers, public prosecutors and judges. They have pointed out that it does not constitute an exception to the burden of proof since there is always the need to prove that the defendant committed the crime. When asked specifically about the case of drug trafficking, most of the interviewees noted that it is a consequence of the legal construction of the crime and cannot be considered as a shift of the burden of proof. The interviewees pointed out that even though statements made by the defendant before the police cannot be used in the trial phase, the trial judge has access to those statements and this can be particularly harmful since, as a rule, the defendant can waive the presence of his/her lawyer when giving statements to the police.

The right to remain silent and not to incriminate oneself:

Interviewees believe that the legal framework provides for a robust protection of the right to remain silent in theory. However, the interviewees, mainly lawyers, but also other professionals, reported informal practices that hinder the effectiveness of the right to remain silent.

The right to be present at the trial and to have a new trial:

When it comes to the right to be present at the trial, the Portuguese criminal procedure relies greatly on the efficiency of the statement of identity and residence, that transfers responsibility to the defendant for the correct notification of the trial. The interviewees showed different perspective on the awareness of defendants as to the consequences of the statement of identity and residence. In general, judges, public prosecutors and lawyers gave a common definition of effective participation in the trial. Judges and lawyers pointed out cases where that right is not fully fulfilled, mainly when defendants are unfamiliar with the Portuguese language.

PART B. INTRODUCTION

In total, **12 eligible interviews** were carried out within the timeframe of 21 February to 04 May 2020.

The social fieldwork research, consisting of twelve semi-structured interviews, despite not all of them being face-to-face interviews as was foreseen, achieved the objectives of providing evidence-based analysis on the practical application of the right to be presumed innocent in criminal proceedings and the fundamental rights implications for the persons concerned. This fieldwork research benefited from the extraordinary collaboration of all interviewees, both in scheduling the interviews and answering the questions according to their perspectives and professional experience. The interviewees were selected considering their profile, knowledge and practical experience, in order to contribute to a detailed analysis of the principle of presumption of innocence based on their practice and concrete examples. Some of them had experience in contacts with the media.

The first two interviews were carried out face-to-face¹. These interviews were essential to understand the application of the interview script in practice, according to the views and experiences of the judicial actors interviewed. After submitting the corresponding interview reporting templates and receiving the feedback and instructions of FRA, we focused our efforts on identifying the remaining interviewees.

Due to the COVID-19 outbreak, the Portuguese government declared a state of emergency on 19 March. Courts were only open for urgent cases and judges and public prosecutors were advised to work from home. In this context, it was not possible to carry out face-to-face interviews. Thus, complying with the government implementation of social distancing and isolation measures, but also meeting the requirement of achieving the fieldwork research and to avoid derailing the scheduled activities, the last ten interviews were carried out using electronic means of communication. Despite the pandemic context, the fieldwork was performed without difficulties. Scheduling and conducting interviews did not raise any constraints and all interviewees were very willing to participate sincerely during the interviews.

The twelve interviews were as follows:

As regards the group of police officers, the team members had an explicit concern to interview two criminal investigation police officers from the Criminal Police (from different geographical areas), one from the Public Security Police and one from the National Republican Guard. So, we included elements from the three main police forces. All of the interviews of this professional group were performed via electronic means of communication.

The selection of the 2 judges was made on the basis of their experience in criminal courts. One was an enforcement judge with extensive experience in criminal courts and who has already performed different functions in local and central criminal courts (trial phase and investigation). This was a face-to-face interview. Another was a judge with many years of experience, currently serving as a pre-trial judge. This was an interview via electronic means of communication.

Concerning the public prosecutors, the first to be interviewed had extensive experience in the criminal area. He has performed in different districts and in a Regional Criminal Investigation Office responsible for serious crimes. This was an interview via electronic means of communication. The selection of the second public prosecutor to be interviewed, with equally extensive experience in the criminal area, was based on her long experience in a criminal investigation department, dealing with various types

¹ In February, when these interviews were conducted, there were no confirmed cases of Covid-19 in Portugal. After the first cases, on 13 March the situation of alert was declared and the state of emergency lasted from 19 March to 2 May.

of crimes, especially crimes against people. This was an interview via electronic means of communication.

The selection of lawyers to be interviewed under this project considered their experience with criminal law and also concerning the contacts with media outlets, since some of them are lawyers in media cases. The first lawyer interviewed has extensive experience and competence in defending individuals and organisations that have been charged in criminal cases, including complex ones, ranging from domestic violence crimes, drug crimes, tax and economic crimes, etc. This was a face-to-face interview. Another lawyer interviewed has comparably extensive experience and is a criminal defence lawyer in high profile cases. This was an interview via electronic means of communication. The third lawyer has extensive experience and is a criminal defence lawyer in high-profile cases that were covered widely in the media and involved people who were politically and economically relevant. This interview was performed via electronic means of communication. The fourth lawyer has many years of experience and is a criminal defence lawyer in high-profile cases, namely transnational and economic crimes. This was an interview via electronic means of communication.

B.1 PREPARATION OF FIELDWORK

The preparation and implementation of the fieldwork research benefited from the articulation of the Permanente Observatory for Justice of the Centre for Social Studies (OPJ/CES) with the several institutions of the judicial system and involved all team members from the beginning of the project. First of all, the team members who carried out interviews actively participated in the translations of the interview reporting templates, according to the national legal framework and relevant concepts of the Portuguese criminal law. After the FRA's approval of the interview scripts (interview reporting templates), there was a meeting with the team so that everyone was fully attuned about how to proceed and what was intended with each question.

Then, the first two interviews were conducted by a legal expert from the OPJ/CES team with relevant experience and expertise both within the national legal framework concerning the presumption of innocence and in fieldwork research, namely in conducting interviews with judicial actors. After the first two interviews, and once we receive the comments from FRA, there was a team meeting to share the result of those interviews, particularly with regard to the approach and the dynamics of the interviews (duration, order of questions, reaction of the interviewees, etc.). This procedure of internal discussion of the interviews' main results was repeated after all the interviews and was very productive, because it made it possible to anticipate some important aspects in conducting the interviews. Furthermore, this working method was particularly important for conducting interviews via electronic means of communication, since this is less usual in fieldwork research. Hence, after the first interview, some specific procedural aspects regarding these means were discussed among the team members, thus contributing to the success of the following interviews.

As planned, the interview script was not sent to the interviewees before the interview. All interviews were audio-recorded without setbacks, with the agreement of the interviewees, after being informed (prior to the interview) that their anonymity would be respected, and that FRA would destroy the recordings in accordance with data protection rules.

B.2 IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS

The identification and selection of the interviewees was carried out accordingly to the FRA's guidelines and the approved profile, without any difficulties. The main selection criterion was the practical experience of judges, public prosecutors, police officers and lawyers concerning the application, in practice, of criminal procedural rights that deal specifically with the presumption of innocence and

the right to be present at the trial. The other selection criteria concerned the gender of the interviewees, the type and complexity of criminal cases they deal with and their geographical location.

In the case of judges, public prosecutors and lawyers, the selection, according to the profile approved by FRA, was made directly by the team, so the contacts were always direct with each interviewee.

Regarding the police officers, the selection of the interviewees registered some differences associated with the selection procedure. Due to the requirement for authorisation from their superiors to collaborate with this research project, we contacted the national directors of the main police forces in Portugal – Criminal Police, Public Security Police and National Republican Guard (*Polícia Judiciária, Polícia de Segurança Pública and Guarda Nacional Republicana*) – to request permission to interview police officers selected by them in accordance with the requested profile.

After identifying and contacting the interviewees, they immediately expressed their willingness to collaborate with the team.

B.3 SAMPLE AND DESCRIPTION OF FIELDWORK

Police officers:

Requested: 4, completed: 4.

Judges/prosecutors:

Requested: 4, completed: 4.

Defence lawyers:

Requested: 4, completed: 4.

Table 1: Sample professionals

Code	Group	Operational expertise on criminal investigations and trials	Experience with media	Gender
Police officer, Portugal	Police officer	Criminal investigation police officer, with extensive experience in operational work.	Yes.	Male
Police officer, Portugal	Police officer	Criminal investigation police officer, with extensive experience in operational work.	Professionally no, but was selected for a tv programme.	Male
Police officer, Portugal	Police officer	Criminal investigation police officer, with extensive experience in operational work.	Professionally no, except for media coverage of investigative acts.	Female
Police officer, Portugal	Police officer	Criminal investigation police officer, with extensive experience in operational work.	Yes.	Male
Lawyer, Portugal	Lawyer	Lawyer with extensive experience in defending individuals.	Yes, but the interviewee reported not to liaise with the media.	Male
Lawyer, Portugal	Lawyer	Criminal defence lawyer with extensive	Yes, but the interviewee reported to only liaise with the	Male

		experience in high profile cases.	media on an ad hoc basis, if at all.	
Lawyer, Portugal	Lawyer	Criminal defence lawyer with extensive experience in high-profile cases involving politically and economically influential persons.	Yes.	Male
Lawyer, Portugal	Lawyer	Criminal defence lawyer with extensive experience, including in several high-profile cases concerning transnational and economic crimes.	Yes, but the interviewee reported not to liaise with the media.	Female
Judge, Portugal	Judge	Criminal court judge with extensive experience.	The interviewee has no contact with the media.	Male
Public prosecutor, Portugal	Public Prosecutor	Public prosecutor with extensive experience.	Yes, but the interviewee tends to keep contact with the press to a minimum as communication with the media is centralised and has to be authorised.	Male
Judge, Portugal	Judge	Criminal court judge with extensive experience, currently functioning as a pre-trial judge.	No.	Male
Public prosecutor, Portugal	Public Prosecutor	Public prosecutor with extensive experience.	Yes, but the interviewee tends to keep contact with the press to a minimum as communication with the media is centralised and has to be authorised.	Female

The average length of the interviews was about two hours (122 minutes), varying between the shortest interview lasting about one hour and the longest interview lasting more than three hours.

The interviewers were able to achieve an appropriate level of trust with all interviewees, which was essential to obtain information about their practice, experience and general knowledge about the application of the presumption of innocence principle beyond what is legally provided. Some interviewees were particularly clear concerning the difference between what is provided for by law and what happens in practice and identified some blockages to the effective exercise of those rights. In addition, the diverse experiences of contacts with media outlets are important to explain the perceptions of the different judicial actors regarding the public references to guilt in the media. References to some criminal cases in Portugal were also frequent in several interviews. For example, the “Casa Pia” case and the situation of the parliamentarian that was filmed being arrested in Parliament in order to emphasise the overwhelming effect of media coverage on the presumption of innocence was mentioned as a turning point in media coverage of judicial cases, mainly for two

reasons. Firstly, before this case, media coverage focused on the trial phase and with this case it started focusing more on the investigation phase. Secondly, media coverage of judicial cases became more intense.

B.4 DATA ANALYSIS

The results of the twelve interviews were particularly illustrative and clarifying about the perceptions of the interviewed lawyers, judges, prosecutors and police officers with regard to the concept of the right to presumption of innocence and its practical implementation.

The methodological approach used was qualitative content analysis. Concerning the interviews, the purpose of this approach was to identify the common elements that emerge from the information collected, to carry out an in-depth analysis based on the interviewees' perceptions to detect regularities and differences relevant to understanding the practical implementation of the right to presumption of innocence. Thus, once the interviews were concluded, we transcribed all the interviews. The next step was the analysis of their contents and discussion of the results gathered which was performed according to the structure and contents of the country report template provided by FRA, differences and common aspects among and within professional groups, etc.

This approach was strategically followed to develop a critical understanding from the semi-structured interviews, through some techniques for synthesising qualitative data into a structured thematic analysis. Our approach followed three main stages: the review of the interview transcripts; the discussion and reflection about the key findings and quotes extracted from the interviews, through the interviews reporting templates submitted to FRA; and the final draft of the country report based on the analysis. The scientific supervision and review of the country report by the senior expert was fundamental to guarantee its global coherence.

Besides the interview analysis, the desk research (legal overview, including the relevant legal provisions regarding the presumption of innocence) and the case studies of two court cases dealing with the right to presumption of innocence and its media coverage were also carried out through the methodological approach of qualitative content analysis. Thus, the following sections of this country report present an analysis that cross-references the results of the three methods. Following the legal framework, when relevant, the critical analysis of the interviews is presented in dialogue with the main conclusions of the case studies, namely the implications of the case with regard to the presumption of innocence.

B.5 LEGAL FRAMEWORK

Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016, on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings was not transposed into Portuguese national law, since the legal framework in force was considered to meet all the requirements of the Directive.

The presumption of innocence is a fundamental right enshrined in the Portuguese Constitution. Article 32(2) of the Constitution clearly states that “every accused person is presumed innocent until the sentence under which he/she was convicted has transited in *rem judicatam*, and must be tried as quickly as is compatible with the safeguards of the defence”². This fundamental right is applicable in criminal proceedings as well as in proceedings involving administrative offences and in any proceedings in which sanctions may be imposed.

The constitutional right of presumption of innocence has several repercussions on the different phases of criminal proceedings. One of those is the defendant's right not to be subjected to an unjustified

² Portugal, [Constitution of the Portuguese Republic](#) (*Constituição da República Portuguesa*), 10 April 1976. Last amended by Constitutional Law 1/2005, 18 August.

trial. The Code of Criminal Procedure rules on the prerequisites for subjecting a defendant to trial. The Code of Criminal Procedure states that the Public Prosecution should only produce a bill of indictment against a defendant where enough evidence on the commission of a criminal offence has been gathered during investigation and where this evidence enables the defendant to be identified³, and specifies that “sufficient evidence is the evidence on the basis of which it is reasonable to believe that a sentence or a security measure would be imposed on the defendant should he/she face trial”⁴. After a bill of indictment, the defendant is entitled to request a preliminary judicial stage at which a pre-trial judge can decide whether to prosecute or to end the proceedings, thus establishing whether the case is to be tried in a court⁵. The pre-trial judge should submit the case to a criminal court for trial only where sufficient evidence has been collected for the application of a sentence or a security measure⁶. Another example of the repercussions of the constitutional right of presumption of innocence in the criminal proceedings is the fact that sentences are only enforceable when the conviction has transited *in rem judicatam*⁷. Acquittals, on the other hand, are immediately enforceable⁸.

Particularly, the four dimensions of the presumption of innocence established in Chapter 2 of the Directive – the public references to guilt; the presentation of suspects and accused persons; the burden of proof; and the right to remain silent and not to incriminate oneself – are covered both by constitutional and infraconstitutional national law.

Regarding the first dimension, **the need to ensure that, for as long as a suspect or an accused person has not been proved guilty according to law, public statements made by public authorities, and judicial decisions do not refer to that person as being guilty**, the constitutional right of presumption of innocence, itself, has been understood, on the one hand, as a prohibition to make any reference to the guilt of the suspect or the defendant, and, on the other, as an imposition to prevent any discriminatory treatment of the defendant based on his/her statute, either inside or outside the criminal proceeding. This dimension of the presumption of innocence is also protected by infraconstitutional law. One of the means to prevent any public reference to guilt is based on the legal secrecy regime. The right of the defendant not to be referred as guilty is also protected by duties imposed on judges, public prosecutors and lawyers, both inside and outside the criminal proceedings.

The second dimension considered in Chapter 2 of the Directive - the **presentation of suspects and accused persons** – is regulated under the Code of Enforcement of Prison Sentences or Measures involving the deprivation of liberty⁹. It states that handcuffs can be used when leaving prison, in order to prevent escape or acts of violence. Handcuffs can only be used on the wrists and must be removed when the person appears before a judicial or administrative authority and during the performance of a medical act, unless the authority or doctor determines otherwise¹⁰. Also, the Code of Criminal

³ Article 283 (1) of the [Criminal Procedure Code](#).

⁴ Article 283 (2) of the [Criminal Procedure Code](#).

⁵ Article 286 of the [Criminal Procedure Code](#).

⁶ Article 308 of the [Criminal Procedure Code](#).

⁷ Article 467 (1) of the [Criminal Procedure Code](#).

⁸ Article 467 (2) of the [Criminal Procedure Code](#).

⁹ Portugal, [Code of Enforcement of Prison Sentences or Measures involving the deprivation of liberty](#) (*Código da Execução das Penas e Medidas Privativas da Liberdade*), 12 October 2009. Last amended by Law 27/2019, 28 March.

¹⁰ Articles 91 and 124 of the [Code of Enforcement of Prison Sentences or Measures involving the deprivation of liberty](#).

Procedure prescribes that the defendant, even if arrested or detained, must be free when making statements, unless special measures are necessary in order to prevent the risk of evasion or violence¹¹.

As for the third dimension – the **burden of proof** – the constitutional principle of presumption of innocence comprises both a prohibition to place the burden of proof on the defendant, and also the consecration of the *dubio pro reo* principle. Also, the Portuguese criminal procedure has an accusatory structure¹², mitigated by the judge's duty to discover the truth, according to the facts described in the indictment, those alleged by the defence, or those that, in the defendant's benefit, arise during the trial hearing¹³.

The fourth dimension of the presumption of innocence established in Chapter 2 of the Directive is **the right to remain silent and the right not to incriminate oneself**. The *nemo tenetur se ipsum accusare* principle is considered to be an unwritten constitutional principle, stemming from the constitutional rights to a due and fair trial and to the presumption of innocence and from the accusatory structure of the criminal procedure. It comprises the right to remain silent and the right not to incriminate oneself. This constitutional principle is widely densified in the Criminal Procedure Code in all phases of the criminal proceedings.

Finally, the most challenged right under the Portuguese national law is the **right to be present at the trial**. The Portuguese legal regime has two different solutions for suspects who formally become defendants in a case and provide for an address, and for suspects that cannot be located and do not become formally defendants (hence, do not provide for his/her address).

PART C. MAIN REPORT ANALYTICAL STRUCTURE

C.1 The right to be presumed innocent in general

The presumption of innocence – a fundamental right enshrined in the Portuguese Constitution¹⁴ – is a foundational principle of Portuguese criminal procedure that guides its entire structure and can be broken down into multiple dimensions, with various repercussions both on the legal regime and on constitutional and penal jurisprudence, which has actively densified this principle. One of those repercussions, as will be discussed below, is the defendant's right not to be subjected to an unjustified trial¹⁵. Another is the fact that sentences are only enforceable when the conviction has transited *in rem judicatam*¹⁶. Acquittals, on the other hand, are immediately enforceable¹⁷.

The case studies analysed within this project are also relevant as examples of actual court practice to critically reflect on the practical application of the right to be presumed innocent. There were two cases analysed. The first, was the Rosa Grilo case, which is one of the most high-profile media cases in Portugal in the past few years. A woman and her lover were accused of murdering and disposing the body of the woman's husband, who was a triathlete. On 3 March 2020, the jury court convicted the woman to an overall sentence of 25 years' imprisonment, the maximum prison sentence in Portugal, for the crimes of aggravated murder, desecration of a corpse and possession of a prohibited weapon,

¹¹ Article 140 of the [Criminal Procedure Code](#).

¹² Article 32 (5) of the [Constitution](#).

¹³ Articles 53 and 340 of the [Criminal Procedure Code](#).

¹⁴ Portugal, [Constitution of the Portuguese Republic](#) (*Constituição da República Portuguesa*), 10 April 1976. Last amended by Constitutional Law 1/2005, 18 August.

¹⁵ Article 283 (1) of the Criminal Procedure Code.

¹⁶ Article 467 (1) of the [Criminal Procedure Code](#).

¹⁷ Article 467 (2) of the [Criminal Procedure Code](#).

and the man to a 2-year suspended sentence for the possession of a prohibited weapon. He was acquitted of the charges of aggravated murder and desecration of a corpse on the basis of the *in dubio pro reo* principle. This decision is currently under appeal. The second is the Ana Saltão case, which was also a high-profile case in Portugal. A woman, who is a Criminal Police inspector, was accused of stealing a co-worker's gun and murdering the grandmother of her husband. In a case that spread for several years, the defendant was first acquitted by a jury trial on the basis of the *in dubio pro reo* principle and later convicted by the Coimbra Court of Appeal to 17 years' imprisonment for the crimes of aggravated murder and embezzlement. However, this decision was overturned by the Supreme Court of Justice, which ordered a re-trial of the case by the first instance court. On 29 September 2017 a jury court acquitted the defendant, again, on the basis of the *in dubio pro reo* principle. Finally, the Coimbra Court of Appeal, on 9 January 2019, confirmed the decision of the jury court and the case was, finally, settled.

a. How are the different professions implementing the presumption of innocence?

The different professionals interviewed in the current project tend to highlight the dimensions of the presumption of innocence that are most relevant for their daily work. All interviewees make a positive overall assessment of the legal framework that ensures the protection of the presumption of innocence and underline that this is a principle present in their day-to-day activity, as can be extracted by the examples they provided and that are mentioned below. Nonetheless, as to the legal practice, lawyers tend to have a more sceptical opinion.

For police officers, considering that their intervention is mainly during the investigation phase, keeping an open mind throughout the investigation, which compels them to follow every available lead, and the need to gather as much evidence as possible, to seek the truth, are the main consequences of implementing the presumption of innocence in their daily practice.

When we start an investigation - and this is important in our work - we are not limited to one line of investigation. There may be one that directs us more in a sense, either by experience or by facts, but we have to be open minded so as not to neglect other lines (Police officer, Portugal)

Quando iniciamos uma investigação - e isso é importante no nosso trabalho - não nos cingimos a uma linha de investigação. Pode haver uma que nos direcione mais num sentido, quer pela experiência, quer pelos factos indiciários, mas temos que ter espírito aberto para não descurar as outras (Police officer, Portugal)

Public prosecutors emphasise the accusatory structure of the Portuguese criminal procedure and the duty of the prosecution to actively pursue the truth, whether it is to prove that a crime has been committed, or to discover that there was no crime or that a particular person was not involved in the crime. According to the public prosecutors that were interviewed the presumption of innocence acts as a guide throughout the investigation phase.

The principle of the presumption of innocence of the defendant guides the investigation through a prognostic judgment on whether the conviction of the defendant in trial is likely or not, based on the evidence we have. If a conviction is not probable, if there are flaws or omissions of relevant evidence, then the case is dismissed (Public prosecutor, Portugal)

O princípio da presunção de inocência do arguido pauta o inquérito através de um juízo de prognose, com base na realidade probatória que temos, sobre se é provável a condenação do arguido em julgamento ou se não é provável. Não sendo provável, havendo falhas ou omissões de provas relevantes, então, o processo é arquivado (Public prosecutor, Portugal)

Hence, the prime duty of the Public Prosecution is to seek the truth and if, during trial, there is no evidence of the defendant's guilt, public prosecutors should ask for the defendant's acquittal. Nonetheless, in late 2019 a debate emerged following a newspaper article that revealed that the hierarchy of a regional Public Prosecution office issued an instruction that suggested public prosecutors to support a charge or to appeal against an acquittal decision in cases involving serious crimes¹⁸. This generated criticism from the Public Prosecutors' trade union, which argued that such instructions would violate the public prosecutors' technical autonomy and their objectivity and legality duties¹⁹. Although stating that such instructions would be unlawful, one interviewee claims that the Public Prosecution must have caution in asking for an acquittal at trial, since it could lead to some restrictions in a future appeal against an acquittal decision.

These are very controversial topics and I have lots of reservations to those type of directives or instructions, although I sometimes understand them and I can explain why. Obviously, as I said, the Public Prosecution is not a proper party to the process, it does not have an interest as does a lawyer or a civil party. Our goal is to search for the truth, that's why the Public Prosecutor charges a defendant and, then, at trial, according to the evidence, asks for an acquittal, because sometimes evidence at trial shows that the defendant did not actually commit that crime. Or, sometimes, it remains an insurmountable doubt, that is, I cannot prove beyond all reasonable doubt that that person committed a crime and, therefore, I must ask for the defendant's acquittal. This is another aspect of the presumption of innocence: doubt will always benefit the defendant". (Public prosecutor, Portugal)

Isso são pontos de vista que têm sido polémicos e que eu vejo com muitas reservas esse tipo de diretivas ou esse tipo de instruções, embora as compreenda, por vezes e posso explicar porquê. Obviamente, como disse, o Ministério Público não é uma parte propriamente dita no processo, não tem um interesse como tem um advogado ou uma parte civil. O nosso objetivo é a busca da verdade, por isso é que o Ministério Público acusa e depois no julgamento face à prova que é feita, pede a absolvição porque às vezes prova-se que efetivamente a pessoa não cometeu aquele crime. Mas, por vezes, fica uma dúvida insanável, ou seja, para lá de toda a dúvida razoável eu não consigo provar que aquela pessoa fez aquilo e nesse pressuposto eu tenho que pedir a absolvição da pessoa, ou seja, e lá está outro aspeto da presunção de inocência, a dúvida vai sempre beneficiar o arguido. (Public prosecutor, Portugal)

¹⁸ Público (2019), '[Prosecutors should not ask for acquittals in serious cases](#)' ('Procuradores do Ministério Público não devem pedir absolvições em processos graves'), 23 November 2019.

¹⁹ Expresso (2019), '[Porto Public Prosecutor's Office prohibits prosecutors from asking for acquittal of defendants](#)' ('Ministério Público do Porto proíbe procuradores de pedirem absolvição de arguidos'), 23 November 2019.

The interviewee referred to a judgment, delivered in an appeal on a point of law, of the Supreme Court that ruled that the Public Prosecution lacks the procedural prerequisite of interest in taking action to appeal decisions that agree with its position previously assumed in the proceedings²⁰. An acquittal request from the Public Prosecution at the trial phase might, according to the interviewee, compromise any future appeal from the public prosecution.

In the Rosa Grilo case, the media coverage underlined that the acquittal of the male defendant was largely due to the inability of the Criminal Police to present evidence. This circumstance brought to the discussion the preparation of the police and the Public Prosecution to lead the investigation and the fact that the Public Prosecution accused without having robust evidence, thus also calling into question the principle of the presumption of innocence. This issue was especially relevant also because, according to the media, the public prosecutor stated that there was some “facilitation” in the collection and evaluation of the evidence, but the testimony of the female defendant was sufficient to incriminate the accused man as well²¹.

From the judges’ perspective, the implementation in practice of the presumption of innocence is different according to the phase of the criminal procedure. During the investigation phase, emphasis is put on the role of the presumption of innocence in the proportionality and needs assessment made by a pre-trial judge when deciding on investigative actions or preventive measures that place restrictions on the suspects and defendants’ fundamental rights.

(...) above all, for those who are in this very preliminary phase of the proceedings, when dealing with suspicious, the presumption of innocence is fundamental. Especially in the evaluation of the [fundamental rights] restrictions, because there may be an acquittal of the defendant in the future, and (...) those restrictions [carried out in the investigation phase have to be] acceptable taking into account that preliminary phase of the procedure. (...) It is a principle, which in addition to being a principle, is a fundamental right. These fundamental right guides all the intervention of the pre-trial judge in this preliminary stage of the process (Judge, Portugal)

(...) sobretudo para quem está nesta fase muito preliminar do processo, em que se lida com indícios, a presunção de inocência é fundamental. Sobretudo na avaliação das restrições [dos direitos fundamentais], porque depois futuramente pode acontecer uma absolvição do arguido, e (...) essas restrições [realizadas na fase de investigação têm que ser] aceitáveis tendo em conta aquela fase preliminar do processo. (...) É um princípio, que para além de ser um princípio, é um direito fundamental. Desse direito fundamental decorre toda a intervenção do juiz de instrução nesta fase preliminar do processo (Judge, Portugal)

At the trial, the main concern is to be fully aware of the rule that establishes that all evidence must be presented during the trial and that the judge cannot be influenced by what happened during the investigations when those acts are not valid in trial. The Criminal Procedure Code establishes that any evidence that is not produced or examined at a trial is not valid and cannot be taken into

²⁰ Supreme Court of Justice, [Ruling of the Supreme Court 2/2011](#), Case 287/99, 27 January 2011.

²¹ Jornal de Notícias (2019), [“Prova testemunhal e pericial é zero” reconhece MP sobre Rosa Grilo e António Joaquim](#) (“Testimonial and expert evidence is zero” the public prosecution recognises regarding Rosa Grilo and António Joaquim’), 26 November 2019.

consideration, with the exception of those contained in procedural acts whose reading, viewing or hearing in the trial is allowed²².

I believe that the way the system was built, namely, at the trial phase, is clearly a system in which the presumption of innocence is assured because the judge is almost like a blank slate, with some exceptions. This means that I shouldn't be examining everything that is in the file before the trial (Judge, Portugal)

Portanto, eu acho que a maneira como o sistema foi construído, designadamente, na fase de julgamento, é claramente um sistema em que a presunção de inocência é assegurada por o juiz estar quase como uma folha em branco, com exceções. Isso faz com que eu não deva andar a escalpelizar tudo o que está no inquérito antes do julgamento (Judge, Portugal)

Lawyers, on the other hand, immediately focus on the *in dubio pro reo* principle as a fundamental dimension of the presumption of innocence, arguing that it is their duty to make sure that the court understands that, when in doubt, the ruling must be given in the defendant's favour. Furthermore, according to a lawyer, this principle has an impact on legal interpretation.

The presumption of innocence manifests itself in the trial phase in the in dubio pro reo principle: when in doubt, the evidence must be evaluated in the defendant's favour and we often invoke it in the closing arguments (either written or oral) and in appeals (...). The presumption of innocence and the in dubio pro reo principle are also used in legal interpretation, that is, when there are 2 or 3 or 4 different hermeneutical possibilities of a legal text we should choose the one most favourable to the defendant. In addition, when a decision is appealed, the presumption of innocence can be invoked through the dubio pro reo principle, arguing and questioning the sufficiency of evidence, but it is more difficult (Lawyer, Portugal)

A presunção da inocência tem essa manifestação probatória no princípio in dubio pro reo: em caso de dúvida deve ser valorada a favor do arguido e nós invocamo-lo em alegações, quer escritas, quer orais, quer de recurso, (...). A presunção da

²² Article 355 of the [Criminal Procedure Code](#). Article 356 of the Criminal Procedure Code rules on cases and prerequisites where the statements of witnesses, assistants and civil parties made before a judge or a public prosecutor, prior to the trial, may be read during the trial. As a rule, statements made by witnesses, assistants or civil parties cannot be read during trial. However, the reading of statements, given before a judge, by the assistant, the civil parties and witnesses is allowed if they were done as statements for future memory; if the Public Prosecution, the defendant and the assistant agree in their reading; or in case of declarations obtained through legally permitted rogatory or precatory orders. A statement given to a judicial authority (a judge or a public prosecutor) can also be read during trial in the part necessary to revive the memory of those who declare at the trial that they no longer remember certain facts; or when there are contradictions or discrepancies between them and those made in the trial. It is forbidden, however, to read the statement of a witness who, during trial, validly refuses to testify. Also, police officers who received statements not allowed to be read cannot be questioned as witnesses about the content of those. Article 357 of the Criminal Procedure Code, on the other hand, establishes the rules on the reading of the defendants' statements given prior to the trial. It allows such reading only at the defendant's request (and, in this case, whatever the entity before which they were provided); or when they were made before a judicial authority (a judge or a public prosecutor) with the assistance of a lawyer and the defendant was informed that those statements might be used in the court of law, even if he/she is tried in absentia or makes no statements during the trial hearing, and shall be subject to a free assessment of evidence.

inocência e o in dubio pro reo também têm incidência na própria interpretação da lei, ou seja, quando há 2 ou 3 ou 4 possíveis atividades hermenêuticas sobre a norma, devemos escolher sempre aquela que mais favorece a posição do arguido (Lawyer, Portugal)

b. Potential factors that have an effect on guaranteeing the presumption of innocence

The interviewees have identified three main circumstances that may impact the right to be presumed innocent in practice: a) the quality of the defence; b) the way the criminal file is organised and taken to trial; and c) the attitude of the professionals towards the criminal case.

A public prosecutor stated that an effective and efficient defence plays a fundamental role in guaranteeing the presumption of innocence.

Question: Is the quality of the defence different according to the financial capacity of the defendant?

Answer: A lot of the times yes, but I have witnessed situations where it does not make a difference. I have seen very tough lawyers appointed to low income defendants, sometimes because they are young or because they get intensely involved in the defence. I have seen very competent defences from appointed lawyers. Some much better than those provided by expensive lawyers that even harm their clients. But, of course, it makes a big difference having a good lawyer or an average or weak lawyer (Public prosecutor, Portugal)

Pergunta: A qualidade da defesa é diferente de acordo com as capacidades financeiras das pessoas?

Resposta: Muitas vezes sim, mas também já tive exemplos em que não é assim. Já tive exemplos de defensores oficiosos mais aguerridos, até às vezes por serem novos ou porque se envolvem de uma forma mais intensa na causa de quem está a defender. Já vi defesas oficiosas muito bem feitas. Muito melhores até do que às vezes pagando muito dinheiro a um mandatário que depois faz ali coisas que até prejudicam os clientes. Mas claro que é muito diferente ter um bom advogado ou um advogado médio ou fraco (Public prosecutor, Portugal)

The second circumstance that was mentioned during the interviews is the way the criminal file is organised and taken to court for trial. This circumstance affects, mainly, the practical application of the principle by judges during the trial phase and, according to the interviews, mainly the most complex cases. As mentioned before, one of the consequences of the presumption of innocence is the need to examine and produce all evidence during trial. Nonetheless, when a charge is made against a defendant and the case is referred to the trial phase, the file that is given to the judge contains all the documents produced and action taken during investigations, even though they may not be admissible in the trial. For example, the criminal procedure has the witness statements and defendant's statements made to the police (which are not admissible in court). A judge stated that he does not, as a rule, look at these documents, since evidence should only be presented during the trial. He acknowledges, however, that this is not done by all judges.

Yes, it is human [for the judge to want to read the witnesses' statements, even if only to see whether they know a lot or not, to see if the testimony at trial will take a long time or not], but there is no doubt in my mind that it can influence the trial. (...). (Judge, Portugal).

Pois, é humano [que o juiz queira ler as declarações das testemunhas, até para ver se sabem muito ou se sabem pouco, para ver se o depoimento no julgamento vai demorar muito tempo, se vai demorar pouco], mas eu não tenho dúvidas que isto condiciona o modo como o julgamento pode correr (Judge, Portugal)

This attitude from judges towards the criminal case that is presented in court is acutely related to the criticism some lawyers raised on how the presumption of innocence is implemented in practice and which constitutes the third circumstance identified. Although all lawyers acknowledge that this a fundamental principle deeply embodied in Portuguese criminal procedure and that the legal framework accurately provides for guarantees, some highlighted that the behaviour of the professionals throughout the criminal case is decisive and that one can identify some deviation to the rule of treating defendants as presumed innocent. As a lawyer phrased it, presumption of innocence should be a “state of mind” for all those involved in the criminal procedure (lawyers, judges, prosecutors, police officers). According to this lawyer, in practice, this does not happen, mainly during the investigation phase.

What we see is the presumption of guilt on a large scale, both at the level of the criminal police and the prosecutor's office and, very often, the pre-trial judge himself, unfortunately. (Lawyer, Portugal)

O que nós vemos é a presunção de culpa, mas com uma implantação muito grande, quer ao nível do órgão de polícia criminal, quer ao nível do Ministério Público e, muitas vezes, do próprio Juiz de instrução criminal, lamentavelmente. (Lawyer, Portugal).

Another lawyer argues that, in practice, the presumption of innocence may be undermined due to certain **pre-understandings, pre-concepts and pre-judgments** that limit the performance of the legal practitioner.

(...) From the point of view of what is said, of the manifested and expressed discourse, things seem well. Now, there is another dimension which is the dimension of the unspoken, the dimension of the subliminal, of pre-understandings. From this point of view, I must say, based on experience, that I have some doubts that the principle of the presumption of innocence is fully respected. On the one hand, within the proceedings, and we all know that it is so, it is inevitable, is the human nature. And, nowadays, there is a series of factors that deepen this situation, there are pre-understandings, pre-concepts and pre-judgments that can somehow jeopardize, in certain situations, the presumption of innocence, whether in its broad sense of treating the defendant while immersed in doubt in the proceedings as someone who is innocent, whether, namely, in a pre-judgment, or not to condition the impartiality that should guide the judge until the final decision. (...) This is particularly relevant in the so-called media cases, that is, that have a great public impact, but it can also happen in cases that don't have public impact, but in which the issues raised or the actors involved have to do with topics with public impact. (Lawyer, Portugal)

(...) Do ponto de vista do dito, daquele que é o discurso manifestado e expresso, as coisas parecem-me bem. Agora, há uma outra dimensão que é a dimensão do não dito, a dimensão do subliminar, das pré compreensões. E, desse ponto de vista, eu devo dizer, com base na experiência, que tenho algumas dúvidas que o princípio da presunção de inocência seja inteiramente respeitado. Por um lado, dentro dos processos, e todos nós sabemos que é assim, é inevitável, é da natureza humana. E hoje em dia há um conjunto de fatores que adensam isso, existem pré-compreensões, pré-conceitos e pré-juízos que podem de alguma forma pôr em causa em determinadas situações, a presunção de inocência, seja no seu sentido mais abrangente de tratar o imputado ou o arguido enquanto está mergulhado na dúvida no processo como alguém que é inocente, seja, nomeadamente, num pré-juízo, ou de não condicionar a imparcialidade que deve nortear o julgador até ao final da decisão. (...) Isto é particularmente relevante nos casos ditos mediáticos, isto é, que têm uma grande ressonância pública, mas também pode acontecer em casos que não têm ressonância pública, mas em que os temas ou os atores têm que ver com matérias que têm ressonância pública. (Lawyer, Portugal)

c. The role of prejudices and stigma

The attitude of professionals is particularly important when interviewees were confronted with the general question of whether the principle of presumption of innocence is equally applied to everyone. Despite the majority of the interviewees initially stating that all defendants are equally treated and equally benefit from such principle, three particular factors emerged as playing a role in the professionals' attitude towards defendants: a) the public exposure of the case; b) the professionals' own worldview and pre-conceptions; and c) previous convictions of the defendants.

As for the first, interviewees (one judge and lawyers) argued that **public exposure may affect the presumption of innocence**. This public exposure may arise from the fact that defendants are publicly exposed persons and, thus, subjected to more intense media coverage and to higher scrutiny from the public. As one judge noted, there is a tendency for the judicial system, in those cases, to be on show and that can be prejudicial. He believes that, in these cases, the judge must make a special effort not to be influenced by public pressure and tends to take special care in explaining the reasons for the decisions that do not meet public expectations (often created from media coverage that is not accurate).

I believe that this noise in the public space can affect and necessarily affects the presumption of innocence, not only before the community in general, but also among judicial actors. I believe so. (Judge, Portugal)

(...) Acredito que esse ruído no espaço público possa afetar e afeta necessariamente a presunção de inocência, não só perante a comunidade em geral, mas até que possa ter alguma intervenção nos próprios operadores judiciários. Eu acredito que sim. (Judge, Portugal).

Public exposure may also arise from the particular attention of the public towards certain types of crimes – those where the public tends to put more pressure on the judicial system to “get results” and that lawyers identify as “trendy” or “fashionable” subjects (with a special focus on its combat), such as domestic violence, sexual offences, and crimes that offend the intentional autonomy of the State (e.g. crimes committed by holders of political offices, corruption, undue receipt of an advantage, etc.).

I believe that judges are part of a given society, of a given community, and, obviously, are not immune to social assessments and to social noise around certain behaviours. There is, for sure, social pressure. There are “trendy crimes” for which, in order to avoid censorship of judicial activity, there may be some fragility and some practical compression of the defence rights. I am not saying that these are situations of unjust condemnation, from the moral assessment point of view. But, these are displaced condemnations from the legal point of view, namely, by the successive compression of the in dubio pro reo principle (Lawyer, Portugal)

Eu acho que efetivamente os juizes estão inseridos numa determinada sociedade e numa determinada comunidade e, como é obvio, não conseguem ser impermeáveis ou imunes às valorações sociais e ao ruído social sobre determinadas condutas. E, efetivamente, há pressão social. Crimes há que são da moda, relativamente aos quais, para que não haja censura sobre a atividade judicativa, existe eventualmente alguma fragilização e alguma compressão prática dos direitos de defesa. Eu não estou a dizer que são situações de condenações injustas, do ponto de vista da valoração moral. Agora, são condenações deslocadas do ponto de vista da judicidade aplicável, designadamente, pela compressão sucessiva do in dubio pro reo. (Lawyer, Portugal)

Lawyers also stressed that there was some prejudice among professionals within the criminal justice system. The most emphatic located prejudice mainly in the investigation phase, arguing that some defendants are treated differently because of their race or ethnic origin.

Ethnicity is clearly a factor and I am thinking about Roma. During the investigation phase there is a clear presumption of guilt. (...) In terms of race, especially in the police, the presumption of guilt also plays a big role when the defendant is not Caucasian. I notice that. It gives the idea that they are dealing with a second or third-class human being and, therefore, you always get that feeling, in the way they address them, even when they start treating the person informally, you can see immediately... why would they treat a person this way just when he/she is black or Roma? This happens very often (Lawyer, Portugal)

A etnia claramente e estou a pensar nos ciganos, então no inquérito há uma presunção de culpa descarada (...) Em termos de raça, sobretudo nos OPC, também funciona muito a presunção de culpa quando não se trata da raça branca. Eu noto isso. Dá ideia de que estão a tratar com um ser humano de segunda ou terceira categoria e, portanto, fica-se sempre com essa sensação, na forma do trato, inclusivamente quando começam a tratar por tu, nota-se logo... porque é que hão de estar a tratar uma pessoa por tu quando é de raça negra ou de etnia cigana? Acontece isso com muita frequência. (Lawyer, Portugal)

Police officers, nonetheless, reject such criticism and say that often it is used as an argument to discredit the Police. As one police officer puts it, people may take advantage of being from ethnic minority to put pressure on the police.

(...) I can say that on the other side there is also a provocative opportunism with these arguments. It is obvious that on our part there is a greater sensitivity, it is not a difference in treatment. But there is greater sensitivity if we are dealing with a Roma or a black suspect. We are sensitive to that. (Police officer, Portugal)

(...) Posso dizer que do outro lado também há um oportunismo de provocação com esses argumentos. É óbvio que da nossa parte há uma maior sensibilidade, não é uma diferença de tratamento. Mas há maior sensibilidade se estamos a tratar uma pessoa de etnia cigana, negra, do que não estando. Nós estamos sensíveis a isso. (Police officer, Portugal)

Some interviewees (one public prosecutor and two lawyers) also identify prejudice among some judges, particularly against Roma.

(...) A judge does not come into the courtroom, puts on his/her robe and this robe does not automatically wash away all his/her prejudices. There are judges who have a security precondition regarding certain ethnicities. I can think of one or two. There are others who have no security drive in relation to any of those. As for social background, I don't think so. Eventually, they may have a hastier trial, even due to the lack of an informed, combative and professionally dedicated defence. But I must say that I don't see that there is justice for the rich and justice for the poor. As for previous convictions, it can, indeed, weaken the defence's credibility, I believe so. Not the social background. But, ethnicity - and we know who we're talking about - we talk about Roma who somehow have a presumption of guilt. Previous convictions, too. In fact, the judge is not immune to looking at previous convictions and thinking: whoever has done it before can do it again (Lawyer, Portugal)

(...) o juiz não chega à sala, veste a toga e a toga lava-o de todos os preconceitos. Há juízes que têm pulsões securitárias relativamente a determinadas etnias. Estou a pensar em um ou dois. Há outros que não têm pulsão securitária em relação a nada disso. Quanto à origem social, confesso que não perspetivo isso. Eventualmente poderão ter um julgamento mais apressado, até pela falta de uma defesa informada, combativa e profissionalmente atenta. Agora, confesso que não vejo que haja uma justiça dos ricos e uma justiça dos pobres. Quanto às condenações anteriores, pode fragilizar a credibilidade da defesa, isso eu acho que sim. A origem social não me parece. Mas, a etnia - e sabemos de quem estamos a falar - falamos dos ciganos que têm de alguma maneira uma presunção de culpabilidade. As condenações anteriores, também. De facto, o juiz não é imune a olhar para as condenações anteriores e pensar: quem faz um cesto faz um cento. (Lawyer, Portugal)

The third factor – previous convictions of the defendant – is generally not identified as a prejudice by the interviewees, but it is flagged as strengthening the plausibility of the charges against a defendant or as a factor that undermines the credibility of the defendant, mainly by lawyers and police officers.

When we start an investigation, the first thing we do is check our databases to see if [the person has a criminal record]. For example, a generic report that an individual is engaged in forging documents. (...) If the databases tell us that he/she already has a history of forgery, it is an investigation worth investing in. If he/she doesn't, it may be an investigation that, instead of being a priority, will be carried out later on when we have more time. (Police officer, Portugal)

Quando nós começamos uma investigação, a primeira coisa que fazemos é consultar as nossas bases de dados para saber se [tem antecedentes criminais]. Por exemplo, uma denúncia genérica de que determinado indivíduo se dedica à falsificação de documentos (...). Se as bases nos disserem que ele já tem antecedentes por falsificação, é uma investigação em que vale a pena investir. Se virmos que não, pode ser uma investigação que, em vez de ser prioritária, passa para mais tarde quando houver mais tempo. (Police officer, Portugal)

d. Discussion of findings

All interviewees are unanimous in the evaluation that the legal framework accurately guarantees and protects the right to be presumed innocent. Furthermore, the interviewees' evaluation is generally positive, emphasising societal change that favours the non-discriminatory application of the presumption of innocence, since society, in general, is more sensitive to discriminatory actions.

However, the interviewees also pointed out that there are some factors that may hinder the application of the presumption of innocence in practice, like the public pressure to which the criminal justice system is put and the personal views, attitudes and pre-conceptions of the various professionals which can impact the efficiency of its application.

C.2 Public references to guilt

The relationship between the criminal justice system and the media is a relatively tense topic. The media increasingly pays attention to criminal cases and their coverage focuses, mainly, on the investigation phase, which, in complex and high-profile cases, may take a few years before a charge is formally delivered. The time it takes for the justice system to formulate an accusation and then to try a defendant is out of step with the news cycle of the media. During this period, both defendants and the performance of the justice system are placed under intense scrutiny and interviewees stress that this scrutiny is not without consequences.

One of the means to prevent any public reference to guilt is based on the legal secrecy regime. Following the amendment to the Code of Criminal Procedure enforced by Law 48/2007 (that is, from 15 September 2007 onwards), criminal proceedings, including the investigation phase, are generally public²³, and this implies the general public's right to attend the preliminary hearing and the trial; the media's right to report on and reproduce procedural acts; and the right to consult the files and get copies of relevant documents²⁴. However, the disclosure of the criminal proceedings does not cover any data that may affect the right of privacy when these are not valid as evidence. The judicial authority should specify, *ex officio* or upon request, which data are covered by legal secrecy²⁵. On the other hand, the Criminal Procedure Code provides for some exceptions to the general rule of the public nature of the criminal proceedings: the pre-trial judge may determine that the proceedings are covered by legal secrecy during the investigation phase (a) where he/she believes that disclosure could affect the rights of the defendant, of the party assisting the public prosecutor or of the victim (upon their request); (b) where the Public Prosecutor believes that, for the sake of the investigation or of the rights of parties, the proceedings should be secret²⁶. If the criminal proceedings are under legal

²³ Article 86 (1) of the [Criminal Procedure Code](#).

²⁴ Article 86 (6) of the [Criminal Procedure Code](#)

²⁵ Article 86 (7) of the [Criminal Procedure Code](#).

²⁶ Article 86 (2) and (3) of the [Criminal Procedure Code](#).

secrecy, its participants and anyone who has for any reason learned about the proceedings and their subject matter are prohibited from providing information on the occurrence of the procedural activity or on its content²⁷. A breach of legal secrecy is a crime²⁸. Regardless of the legal secrecy regime, the judicial authority (that is, the Public Prosecution during the investigations or the pre-trial judge during the preliminary hearing) may when necessary provide public information to clarify the truth, provided that this does not affect the investigation. This can be done at the request of anyone who has been publicly put into question, or to ensure public order or the security of individuals and assets²⁹.

Media, within the limits of law, can give a detailed account of the content of procedural acts that are not under legal secrecy or where the general public may be able to consult them. They cannot, however, (a) up to the first instance sentence, reproduce documents that are on the file, unless specifically authorised by the judicial authority; (b) stream or record images or sound from any procedural act, namely the trial, unless specifically authorised by the judicial authority and the persons recorded do not oppose it; (c) publicise, by any means, the identity of victims of the following crimes: trafficking in human organs, human trafficking, crimes against sexual freedom and self-determination, crimes against a person's honour or right to a private life, unless the victim expressly consents to the disclosure of his/her identity or the crime is committed through the media. Also, divulging by any means the conversations or communications intercepted in the context of an investigation is forbidden, unless those conversations or communications are not subject to legal secrecy and the persons involved expressly consent to publication³⁰. A breach of the rules set out in article 88 of the Code of Criminal Procedure constitutes a crime of disobedience.

Another is based on the duties of reserve imposed on judges, public prosecutors and lawyers, both inside and outside the criminal proceedings. If the defendant chooses to make a statement during trial, the court must listen to all he/she wishes to say, within the limits of the matter under trial, without expressing any opinion or making any comments from which a judgment on guilt can be inferred. Regulation on media also protects defendants' rights. The Media Law³¹ states that the only limits on the freedom of press are those that stem from the Constitution and the law and are designed to safeguard the accuracy and objectivity of information, to guarantee citizens' rights to personal reputation, private life, and image, and to protect the public interest and the democratic order³². According to article 14(2)(c) of the Journalist's Statute³³, journalists have a duty to refrain from making allegations without evidence and to respect the presumption of innocence. Journalists must also refrain from collecting statements or images that harm a person's dignity or exploit his/her psychological, emotional or physical vulnerability³⁴, and must preserve a person's right to intimacy and privacy, according to the nature of the case and the status of the person, except for reasons of undeniable public interest³⁵. On 27 November 2003, the former High Authority for the Mass Media (*Alta Autoridade para a Comunicação Social*) wrote a statement of principles on judicial proceedings

²⁷ Article 86 (8) of the [Criminal Procedure Code](#).

²⁸ Article 371 of the [Criminal Code](#).

²⁹ Article 86 (13) of the [Criminal Procedure Code](#).

³⁰ Article 88 of the [Criminal Procedure Code](#).

³¹ Portugal, [Law 2/99, 13 January, that approves the Media Law](#) (Lei da Imprensa), 13 January 1999. Last amended by Law 78/2015, 20 July.

³² Article 3 of the Media Law.

³³ Portugal, [Law 1/99, 13 January, that approved the Journalist's Statute](#) (Estatuto do Jornalista), 13 January 1999. Last amended by Law 64/2007, 6 November, and rectified by Declaration 114/2007.

³⁴ Article 14 (2) (d) of the Journalist's Statute.

³⁵ Article 14 (2) (h) of the Journalist's Statute.

coverage³⁶ that several media outlets have signed. That document states that the media investigate, disclose and debate, but do not accuse, judge or convict anyone, that the media do not undermine the right to the presumption of innocence and that the media respect the individual rights of defendants. The new deontological code of journalists³⁷, approved by the 4th Journalist's Congress in January and ratified by referendum on October 2017, states that the journalists shall protect the defendants' presumption of innocence until the sentence has transited in *rem judicatam*, and shall not, directly or indirectly, identify the victims of sexual crimes or under-age sources, victims, witnesses, suspects or defendants.

Nevertheless, interviewees stress the impact of media coverage, either on ongoing judicial cases or on the public image of defendants. Two major issues are addressed by the interviewees: the violation of legal secrecy and the effect of media coverage on the presumption of innocence.

a. How do the different professions liaise with the media?

The majority of the interviewees claimed not to have contact with the press, since all the statutes of the different professions interviewed contain provisions that oblige them not to make public statements about pending legal proceedings. All, nonetheless, argued that it would be beneficial to provide for an institutionally based contact with the media. One can, however, identify that the relationship established with the media is different for the various professions.

Public prosecutors and police officers stated that the relationship between their institutions and the media changed over the last years, moving from a position of discretion to interaction. This is more evident in the police. During an investigation, their offices can issue press releases with general information on the fight against crime, avoiding any reference to the identity of the suspects or to any characteristic that might identify them.

No, we only provide information on how many suspects there are, ages, age groups. For example, if I make 17 arrests, I say there were 7 male individuals, aged between 23 and 60, etc. As for nationality, we can say that they are Portuguese or from African countries, but without going into details. We do not refer any specific nationality. When they are Portuguese, we usually say it. But for other nationalities, we try to put them on the continent and not in the country. These are the directives: we never reveal names, at least I never do. (Police officer, Portugal)

Não, fornecemos apenas informação sobre quantos suspeitos existem, idades, as faixas etárias. Por exemplo, se fizer 17 detenções digo que foram 7 indivíduos do sexo masculino, com idades compreendidas entre os 23 e os 60, etc. Quanto à nacionalidade, podemos dizer que é portuguesa ou de países de origem africana, mas sem entrar em pormenores. Não nos referimos à nacionalidade concreta. No caso da nacionalidade portuguesa, normalmente dizemos. Mas quanto às outras, tentamos pô-los no continente e não no país. As diretivas são essas: nunca revelamos nomes, pelo menos eu nunca revelo. (Police officer, Portugal)

These press releases are justified with their public interest and as a contribution to social peace.

³⁶ Alta Autoridade para a Comunicação Social (2003), [Declaração de princípios e acordo de órgãos de comunicação social relativo à cobertura de processos judiciais](#), 27 November 2003.

³⁷ For more information, see [the webpage of the Journalist's Union on the new deontological code of journalists](#).

(...) if they see a crime as news, and if there are elements to strongly support the person who may have committed the crime or who is the main suspect, this should also be news, even to reassure the public. There should be no problem for the police to let the public know how justice is being done. (...) These types of clarifications have to be very contained. We never identify suspects, much less victims, we do not provide any data that allows the media to reach victims. (Police officer, Portugal)

(...) se eles noticiam a prática de que ocorreu um crime, se há elementos que permitam já sustentar uma forte probabilidade de quem cometeu o crime ou quem é o principal suspeito, isso também deve ser notícia, até para tranquilizar a sociedade. Não tem de haver da parte das polícias qualquer problema que a sociedade saiba como a justiça está a ser feita. (...) esses tipos de esclarecimentos têm que ser muito contidos. Nunca identificamos autores, muito menos as vítimas, não fornecemos qualquer dado que permita aos órgãos de comunicação social chegar às vítimas. (Police officer, Portugal)

Press releases from the Public Prosecution, as stated by the public prosecutors that were interviewed during the fieldwork, are usually centralised in the Press Office of the Attorney General's Office or in the Regional Deputy Attorney General's Offices, which is consistent with the provisions of the Public Prosecutors' Statute³⁸. As for the police, although it is possible to identify different models according to the different police forces, interviewees mention an organisation and defined rules to interact with the media. The National Republican Guard, for example, provides for specific training on how to deal with the media and what information can or cannot be transmitted. Information given to the media is also monitored by a Communication and Public Relations Directorate at its headquarters.

The judges were the ones who showed the greatest reservations in relation to the media. They denied any contact with the media and have only outlined their concern to be particularly clear during sentencing when there are media representatives in the courtroom, so that the message is clear.

It is not a matter of indifference if a journalist is present during sentencing. In this case, I have to be more explanatory and I try to adjust my speech. I do that (...). If I see that it is a high-profile case, covered by the media, I adjust my speech knowing that it may come out in the news (Judge, Portugal).

Não me é indiferente perceber se está ali um elemento da comunicação social. Nesse caso, eu tento ser mais explicativo e tento adequar o discurso. Isso admito que sim (...). Se vejo que é uma coisa que teve grande repercussão mediática faço um discurso percebendo que aquilo irá sair na comunicação social. (Judge, Portugal)

Judges also stressed that any public statement on a pending case should be done by the High Council or the presiding judge of the court. Indeed, the Judges' Statute prevents judges from revealing information or documents under legal secrecy and judges may not make public statements or comments on any judicial proceedings, except when authorised by the High Council. Declarations and information not covered by legal or professional secrecy may be given when the aim is to exercise a legitimate right or interest, such as the right to information. These declarations and information are to be provided by the High Council, by the presiding judge of the court or by another judge appointed by the High Council, in response to a proposal from the presiding judge³⁹.

³⁸ Article 102 of the [Public Prosecutor's Statute](#).

³⁹ Article 7 of the [Judges' Statute](#).

Nonetheless, one interviewee claimed that there is an **absence of an efficient dialogue between courts and media**, since there are no guidelines concerning how courts communicate with the press and since this communication is done, mostly, as a reaction to media coverage.

This is a central issue these days - when the media has entered the courts, (...) and did it in an intrusive way, and often invading spaces of justice and violating ethical rules and the rules of criminal procedure. Obviously, it would be fundamental and it is inconceivable today [that it doesn't exist]. (Judge, Portugal)

Seria uma questão fulcral nos dias que correm - em que a comunicação social entrou nos tribunais, (...) e entrou até de uma forma intrusiva, e muitas vezes invadindo espaços da própria justiça e violando as regras estabelecidas na própria deontologia e nas próprias normas do processo penal. Obviamente que seria fundamental e é inconcebível nos dias de hoje [que não exista]. (Judge, Portugal)

According to this interviewee, at a time where media coverage of criminal proceedings is particularly intense, specifically in cases with particularly exposed persons, as a rule, relating to economic and financial crimes, the judicial system should build a fruitful relationship with the media, based on clear rules, in order to avoid misinformation, the publication of a malicious selection of pieces on the case, the speculation around the case, and the violation of the defendants' rights and of the principles of criminal procedure. In his opinion, the regulation of the relationship between the media and the judicial system would be able to appropriately balance the public interest, the right to information and the freedom of the press, and the defendants' fundamental rights, namely their right to the presumption of innocence. This is a concern shared by one public prosecutor who believes that the judicial system should be better equipped to provide the public with information, thus avoiding misinterpretations from journalists.

This topic is particularly important since, as every interviewee acknowledged, there are a number of criminal cases and even procedural acts, protected under legal secrecy, that were revealed by the media. In these cases, the defendants' identity is always unveiled and they are subjected to a public judgement. Although every interviewee stated that they respect the duty of confidentiality and the legal secrecy of the procedures, they have all commented on leakage of information on ongoing investigations that they tend to identify as serving the interests of one of the parties in the case, either by trying to influence public opinion or to legitimise some investigative actions.

We see information and even means of evidence being disseminated in the media. This means that people have access to the case (...). People do not enter the court and assault the court, or the Public Prosecutors' Office, or the police ...” (Judge, Portugal).

Vemos informações e até meios de prova a serem divulgados na comunicação social. Isto significa que as pessoas têm acesso ao processo (...). As pessoas não entram no tribunal e assaltam o tribunal, ou o MP, ou a polícia... (...) (Judge, Portugal).

The breach of legal secrecy is seen by most of the interviewees as a generalised practice that has no practical consequences for those committing this unlawful act, although it is considered a crime.

According to an interviewee, another perverse consequence of the lack of a fruitful relationship between the criminal justice system and the media is the recent trend of some journalists who become assistants in a criminal case in order to gain access to information. According to Article 68 of the Code of Criminal Procedure, in cases of crimes against peace and humanity, improper influence, personal advantage committed by a public employee, denial of justice, malfeasance, corruption,

embezzlement, unlawful economic advantage in a transaction, abuse of power or fraud in obtaining or diverting subsidies or grants, any person may take part in the procedure as an assistant. Assistants collaborate with the Public Prosecutor and may intervene in the inquiry and in the preliminary judicial phase (Article 69 of the Code of Criminal Procedure), and thus have access to the criminal proceedings, regardless of the rules on legal secrecy. After giving the public prosecution and the defendant the opportunity to comment on the request, the judge decides by order, which is immediately notified (Article 69 of the Code of Criminal Procedure). Since high-profile cases (the most appealing to the media) are usually declared to be subject to legal secrecy during the investigation phase, some journalists have asked to become assistants in the case if it involves one of these crimes, in order to gain access to information. This method of gaining access to information is the subject of intense debate, as is the balance between the right to inform, the public interest, the right to privacy, and the interests of the investigation, especially when the suspects or defendants are particularly exposed persons.

The intense exposure to media coverage of certain defendants puts defence lawyers in a particularly difficult position. Lawyers also have a professional duty not to give public statements, namely to the press, on pending cases. A specific authorisation to give, exceptionally, a public statement may be given to a lawyer by the Bar Association, where the exercise of the right to reply is justified in order to prevent or remedy an offense to the lawyer's or the lawyer's client dignity or a violation of his/her rights or lawful interests⁴⁰. As the lawyers who were interviewed mentioned, there is some debate on this matter and some lawyers claim the right to speak with the media on behalf of their clients, since the anonymity of the suspects is often not ensured. Most, nonetheless, argued that they only speak with the media about objective procedural aspects of the case (if there is a right to appeal, if the defendant has the right to remain silent – an explanation of how the law works), but do not speak about the concrete facts of the case. One lawyer, however, clearly stated that it is part of his/her work, as a defence lawyer, to have frequent contacts with the media.

Let me answer this in parts because I think this is a very important matter- high profile cases are where the question of the presumption of innocence is most critical. First of all, I have very frequent contacts with journalists about ongoing cases, and I have contacts on and off the record and I think it is essential that the lawyer has these contacts, both on and off. It is my personal opinion, I have a critical position in relation to the majority of the jurisprudence from the Bar Association regarding lawyers being prevented from speaking in public about their cases, because I think that speaking in public about the cases and having these contacts is absolutely essential for two things, one to defend clients in the extra-procedural sphere where their rights, freedoms and guarantees, the right to a good name, honour, are also at stake and, I know that what I am going to say next is controversial but I have no problem saying it, I have said it and written it several times, I think that the public resonance of the case influences its outcome. (...) So the answer is: I make these contacts, I respond to those contacts, I only have two limits (...) one is the confidentiality of the investigation, (...) the other limit is my client's wishes, I establish the contacts that the clients allow me to. Outside these two limits, then I establish contacts, yes, I give information and more, I assume, I try to influence (...). (Lawyer, Portugal)

Deixe-me ir por partes porque acho que é uma matéria muito relevante, os processos mediáticos é onde é mais crítica a questão da presunção de inocência. Em primeiro lugar, eu tenho muito frequentemente contactos com jornalistas

⁴⁰ Article 93 of the [Bar Association Statute](#).

sobre processos em andamento, e tenho contactos em on e off e acho que é fundamental que o advogado tenha estes contactos, quer em on quer em off. É a minha opinião pessoal, tenho aliás uma posição crítica relativamente àquilo que é a jurisprudência maioritária da Ordem dos Advogados relativamente aos advogados serem impedidos de falarem em público dos seus processos, porque eu acho que falar em público sobre os processos e ter estes contactos, é absolutamente essencial para duas coisas: uma defender os clientes na esfera extraprocessual onde também os seus direitos, liberdades e garantias, o direito ao bom nome, a honra estão em causa e, eu sei que isto que eu vou dizer a seguir é polémico mas não tenho problemas nenhum de o dizer, já o disse e escrevi várias vezes, eu acho que a ressonância pública do processo influencia o destino do processo. (...) Portanto, a resposta é: eu estabeleço esses contactos, respondo a esses contactos, só tenho dois limites (...) um é o segredo de justiça, (...) o outro limite é a vontade dos clientes e eu estabeleço os contactos que os clientes me permitem. Fora esses dois limites, aí estabeleço contactos, sim, dou informações e mais, assumo, procuro influenciar (...). (Lawyer, Portugal)

The case law analysis confirms the information provided in the interviews. In both the Rosa Grilo case and the Ana Saltão case, law enforcement authorities and/or other actors interacted with the media to inform them about the case. For example, in the Rosa Grilo case, the Criminal Police gave a press conference providing some details about the arrest of the suspects. At the time, only the name of the woman was known and, therefore, the Criminal Police only provided details about the co-defendant's age, sex, profession and relationship with the woman⁴¹. In addition, in both cases, the lawyer's interacted with the media. In the Rosa Grilo case, both the woman's lawyer and the men's lawyer gave interviews to television stations and addressed the media when arriving or leaving court, in general terms, regarding the public details of the case⁴². In the Ana Saltão case, the lawyer also addressed the media when arriving or leaving court, namely criticising how the investigation was conducted and emphasising the justice of the acquittal decision⁴³. Finally, in the Ana Saltão case the presiding judge of the Coimbra Court of Appeal gave a statement to the media, to explain the reason for the postponement of the decision⁴⁴. With regard to the defendant's interaction with the media, there are significant differences. In the Ana Saltão case, the defendant did not engage with the media. On the contrary, in the Rosa Grilo case, the female defendant felt compelled to engage with the media several times. Before being arrested, she gave interviews to television stations, with her face concealed⁴⁵. After being arrested, she contacted the media from inside the prison, namely by phone or letters to

⁴¹ Observador (2018), "[Rosa Grilo terá tido "motivações de natureza financeira e sentimental"](#)" ("Rosa Grilo had "financial and sentimental motivations"), 27 September 2018.

⁴² SIC Notícias (2020), "[A morte de Luís Grilo](#)" ("The death of Luís Grilo"), TV report of the programme "Police cases", 3 March 2020; Expresso (2020), "[A dúvida foi a chave: Rosa Grilo é que ficou com a culpa toda](#)" ("The doubt was key: Rosa Grilo got all the blame"), 8 March 2020.

⁴³ Público (2017), "[Inspetora da PJ Ana Saltão absolvida pelo Tribunal de Coimbra](#)" ("Criminal Police inspector acquitted by Court of Coimbra"), 29 September 2017; Jornal de Notícias (2019), "[Defesa diz que absolvição de Ana Saltão é um "trunfo da justiça"](#)" ("Defence says that acquittal of Ana Saltão is a "triumph of justice"), 9 January 2019.

⁴⁴ SIC Notícias (2019) "[Relação de Coimbra confirma absolvição de Ana Saltão](#)" (Court of Appeal of Coimbra confirms the acquittal of Ana Saltão), 9 January 2019.

⁴⁵ SIC Notícias (2018), "[As explicações e contradições de Rosa Grilo numa entrevista à SIC](#)" ("The explanations and contradictions of Rosa Grilo in an interview to SIC"), 27 September 2018.

present her version of the facts and try to prove her innocence⁴⁶. In addition, the male defendant, after being acquitted, gave interviews aiming to reinforce his innocence⁴⁷.

b. Effects media has on presumption of innocence

Interviewees underline three main effects of media scrutiny of criminal proceedings: increase demand to be accurate and objective in the performance of justice; impact on the assessment of the case by the court; and influence on the public perception of the defendant's guilt. The interviewees outlined that media coverage should have positive effects on the presumption of innocence, since it could contribute to greater efforts to impartiality and objectivity by courts and it could push the judicial system to perform better. In that sense, public scrutiny could be beneficial, by pressuring for more grounded decisions and, thus, enhancing the protection of the defendants' rights. Nonetheless, they all stressed that this is merely a theoretical effect and that in practice it doesn't impact the judicial system in that way. In order to have that impact, it would be necessary to have a different relation between the judicial system and the media and other ethical practices from the media in coverage.

However, the way in which scrutiny is carried out, that is, the way in which the media, on the one hand, and the consumers of media, on the other, tend to treat proceedings, which is very much given to the entertainment, on the one hand and on the other hand to drama, the way in which the specific scrutiny is carried out and the way the user receives it, necessarily creates, or at least can create, in most cases, a collective inclination towards which must be a good or appropriate decision. (...) since the judge is someone who is part of society and that in addition to his own world view is influenced by daily life, he will be affected by this (...)".
(Lawyer, Portugal)

Todavia, o modo como o escrutínio é feito, isto é, o modo como a comunicação social, por um lado, e os consumidores da comunicação social, por outro, tendem a tratar os processos, que é de uma forma muito dada ao entretenimento, por um lado e por outro lado à dramaticidade, o modo como o escrutínio em concreto é feito e o modo como o utilizador o recebe, cria, necessariamente, ou pelo menos pode criar na maior parte dos casos, uma inclinação coletiva no sentido de qual deve ser a decisão boa ou conveniente. (...) sendo o julgador alguém que está inserido na sociedade e que para além da sua mundividência própria e da sua cosmovisão tem as influências do dia a dia, ele vai ser contaminado por isso (...).
(Lawyer, Portugal)

In the opinion of a judge, media coverage could be beneficial for the overall fairness of the proceedings if it is done properly, with accuracy and obeying journalistic truth. This public scrutiny demands from judges a greater effort to substantiate their decisions, to carefully explain the grounds of their rulings – and this is a positive aspect. However, interviewees argue that news are not presented as impartial and are treated with sensationalism and headline grabbing, putting pressure on the performance of

⁴⁶ SIC (2020), TV programme "[Linha Aberta](#)", 12 February 2020; SIC Notícias (2019), "[Deu-lhe um tiro atrás da cabeça. Só me lembro do Luís sorrir e caiu-me no colo](#)" ("He shot him in the back of the head. I only remember Luís smiling and falling into my lap"), 19 March 2019.

⁴⁷ For e.g. TVI 24 (2020), "[António Joaquim em entrevista à TVI: "Gostaria de ter uma explicação da Rosa para o que aconteceu ao Luís"](#)" ("António Joaquim in an interview to TVI: "I would like to have and explanation from Rosa about what happened to Luís""), 5 March 2020.

the judicial system and influencing public opinion, often without complete knowledge of what is happening in the criminal case.

Sometimes it convicts defendants. We [the prosecutors] are still full of doubts and the defendants are already convicted in the public eye. Or, also, there is an opposite effect. The media has very extreme positions: they either convict defendants without taking into account all the variables of the case or even the lack of elements of the case, or otherwise, there is almost a presumption of guilt by the Public Prosecution or the police involved in the investigation (...) that they are harassing someone. (Public prosecutor, Portugal)

Às vezes condena-os. Ainda nós estamos cheios de dúvidas e já estão todos condenados na praça pública. Ou, também, há um efeito contrário. A comunicação social tem posições muito extremadas: ou fazem uma condenação sem atender às variáveis todas que os processos têm ou até à falta de elementos que os processos têm, ou então, em sentido contrário, há uma quase presunção de culpa do Ministério Público ou das entidades policiais na investigação (...) de que estão a perseguir alguém. (Public prosecutor)

Interviewees talked about selective or inaccurate media coverage and of manipulation of the information provided by the media that can entail a public perception of guilt which will not be dispelled by an acquittal in court.

Sometimes, the information is segmented, chosen, selected. It transmits a sense of guilt. And the in-depth, fair and lawful trial to which everyone is entitled is sometimes able to overcome that sense of guilt, but it does so inside the criminal proceedings. Outside the criminal proceedings, it is no longer able to do so. We are no longer able to remove the stigma (Lawyer, Portugal)

Às vezes a informação passa segmentada, escolhida, eleita, dá uma imagem de culpabilidade que depois o julgamento abrangente, o julgamento justo e legítimo a que todas as pessoas têm direito até dissipa, mas dissipa endo-processualmente. Porque fora do processo isso já não conseguimos. Já não conseguimos apagar aquele estigma. (Lawyer, Portugal)

The interviewees, therefore, mainly highlighted the **negative effects of media coverage on the presumption of innocence**. All of them agreed that media coverage is most of the times very harmful for the defendants' public image and that it can ruin the presumption of innocence of defendants in the public eye. Interviewees stated that, long before the trial is over, the public has already formed a judgement and that the outcome of the trial may have no impact on the public image of the defendant, since either the general public tends to see an acquittal as a flaw of the justice system or the trial takes so long that the general public loses interest on the outcome. Several interviewees gave examples of particularly exposed persons that have suffered from such exposure:

(...) Even today we look at people who may never be able to shake off the label [of guilt] even though they have not even been accused. I speak, for example, of [xxx]. Invariably anyone will look at him and remember the case. That person will never again in life, no matter how innocent he may be, he will never escape from what happened. (Public prosecutor, Portugal)

(...) Ainda hoje olhamos para pessoas que se calhar não conseguem descolar o rótulo embora nem sequer tenham sido acusadas. Falo, por exemplo, do [xxx]. Invariavelmente qualquer pessoa vai olhar para ele e se vai lembrar do caso. Essa pessoa nunca mais na vida, por mais inocente que seja, nunca mais se vai descolar daquilo que se passou. (Public prosecutor, Portugal)

I think that many people have had their social and political life completely harmed by so much that has been said. (Police officer, Portugal)

Acho que, socialmente, muitas pessoas ficaram com a vida social e política completamente prejudicada por tanto que se falou e por tanto que se disse. (Police officer, Portugal)

If, on the one hand, the interviewees are unanimous in affirming the devastating effect of the media coverage on the defendants' public image, on the other, they diverge as to its impact on judicial decisions. Some interviewees, mainly judges, public prosecutors and police officers, believe that public exposure and media coverage do not affect judicial decisions or the way investigations are carried out. Although acknowledging that judges also read newspapers and watch tv, they believe that the rules on prohibited evidence and the presumption of innocence adequately protect defendants and are internalised by judges, public prosecutors and police officers in practice.

One judge, for example, while answering on the effects of media coverage on the presumption of innocence, gives two examples of high-profile cases covered by the media in which he was a judge. In both cases, the defendants were acquitted. In one of the cases, the defendant had confessed before the police and it was all over the news. The judge states that media coverage does not influence the judge, since the judge has to obey legal rules on prohibited evidence and the presumption of innocence.

I am sure that I have acquitted a lot of guilty people, but I am fully satisfied that no innocent person is serving a sentence having been convicted by me. This is something that comforts me, it is something that puts my mind at rest. The presumption of innocence has a lot to do with this. I have this very internalised. (Judge, Portugal)

Tenho a certeza que já absolvi muita gente culpada, mas estou plenamente convencido que não está ninguém inocente a cumprir pena condenado por mim. Isto é uma coisa que me conforta, é uma coisa que me descansa. A presunção de inocência tem muito a ver com isto. Eu tenho isso muito interiorizado (Judge, Portugal)

A public prosecutor, despite not denying that judges may be influenced by the public opinion, noted that, although judges, public prosecutors and lawyers are also influenced by what they read in the newspapers, they have the duty to make a distinction between what is said by the media and the evidence provided by the proceedings.

One has to have mental agility to separate what is seen and what are the opinions of the commentators and all that, from what is the concrete proof that I have, because sometimes it doesn't coincide either. What is said on television or in the newspaper can be distorted in relation to the rest of the proceedings and when we are analysing the case, we have to see the evidence as a whole and then take a stand from there. But I don't deny [that it may have an influence]. (Public prosecutor, Portugal)

O que é facto é que temos que ter alguma agilidade mental para separar o que vê e o que são as opiniões dos comentadores e tudo isso, daquilo que é a prova concreta que eu tenho, porque às vezes também não coincide. O que se diz na televisão ou que sai no jornal, pode ser distorcido em relação ao resto que existe no processo e nós quando estamos a analisar o processo temos que ver a prova como um todo e depois a partir de aí tomar uma posição. Mas, não nego [que possa existir influência]. (Public prosecutor, Portugal)

Lawyers tend to have a more assertive opinion. They, although in different degrees, consider that media coverage also influences judicial decisions.

(...) In terms of justice it is completely harmful to the defendant, I have no doubt. The treatment of the defendant who was massacred for years in the media is perfectly visible during the trial, (...). I would say that when the defendant in this situation sits on the court bench, on a scale of 0 to 100, where 0 is innocent and 100 is guilty, he/she stands at 100 on the scale and, during the trial, he/she can move down on that scale, when it should be the other way around (...). But, the judge is a human being (...), they also read newspapers, watch television. It is evident that judges have training that common people don't have, or at least they should have it - because I also don't know if they have. (Lawyer, Portugal)

(...) Em termos de justiça é completamente prejudicial para a pessoa do arguido, não tenho a mínima dúvida. Vê-se em audiência de julgamento perfeitamente, o tratamento dispensado ao arguido que foi massacrado durante anos na comunicação social. (...) Eu diria que quando o arguido nessa situação se senta no banco dos arguidos, numa escala de 0 a 100 em que 0 é inocência e 100 é o culpado, ele senta-se na escala 100 e depois poderá começar a baixar, ou não, quando deveria ser o contrário. (...) Mas, o juiz é um ser humano (...), eles também lêem jornais, vêem televisão. É evidente que têm um treino que o comum das pessoas não tem, ou pelo menos se não têm deveriam tê-lo - porque eu também não sei se têm. (Lawyer, Portugal)

In addition, one judge has also pointed out this impact inside the criminal proceedings, mostly when information provided by the media is inaccurate, partial or taken out of context.

We, judges, are people like everyone else, we are not a caste, we do not live outside the world, nor outside the community, and therefore we are influenced and susceptible to being disturbed by this noise. Obviously, we have to make an effort to distance ourselves, but we are people like everyone else. Let's not have the illusion of thinking that the judges, the public prosecution or the police are a separate caste and live outside of the real world, because that is not true. (Judge, Portugal)

Nós magistrados somos pessoas como toda a gente, não somos uma casta, não vivemos fora do mundo, nem fora do meio, e, portanto, somos influenciáveis e somos suscetíveis de sermos perturbados por esse ruído. Obviamente que temos de fazer o exercício de não nos condicionarmos, mas somos pessoas como todos os outros. Não vamos ter ilusão de achar que os juizes, o MP ou a polícia são uma casta à parte e estão fora do mundo, porque isso não é verdade. (Judge, Portugal)

As stated above, the interviewees point out that the differences in media coverage result, essentially, from the type of crime and the characteristics of the defendants that can make them more exposed. This can be perceived, for example, in the Ana Saltão case. In fact, apart from the violent nature of the crime, one of the reasons for the high media coverage is related to the profession of the defendant, who is a Criminal Police inspector⁴⁸.

The way the media reports on and characterises the defendants, such as the defendant's behaviour, can also affect the presumption of innocence. In this regard, it is possible to identify some differences in the characterisation of the defendant's in the Rosa Grilo case. The woman was often reported by the media as cold, insensitive and indifferent to the death of her husband⁴⁹. On the other hand, the male defendant was described as quiet and sad⁵⁰. The media coverage of this case also included the public scrutiny and disclosure of the personal and professional life of both defendants. In fact, one of the concerns expressed by the lawyer of the female defendant regarding the jury trial was that the jurors had access to information, namely through the media, that may not correspond to the truth⁵¹. In the Ana Saltão case, the defendant was perceived as assertive and confident⁵².

The intensive media coverage in both the Rosa Grilo case and the Ana Saltão case helped deepen the interest of citizens, leading to a very large audience during the trial hearings, that are public. For example, in the Rosa Grilo case, citizens often lined up at court since early in the morning to attend the hearings⁵³. In addition, the media coverage increased the outrage among citizens. In the Rosa Grilo case, the defendants were sometimes booed and accused by groups of citizens when arriving or leaving the court⁵⁴. The involvement of citizens in these cases can help illustrate the contrast between routine cases, where trial hearings are usually held without any audience and which are of little interest to the public, and high-profile cases, in which people actively want to participate.

The Ana Saltão case brought back an important discussion regarding the protocols for collecting, recording and storing evidence, due to how some of the evidence was mishandled by the police. The coat of the defendant, which had gunpowder residues, was delivered to the police by the defendant herself in a plastic bag, breaking the chain of evidence and was photographed on the floor of an office of the Criminal Police, without any protective sheet of paper below. This debate highlights the need for adequate protocols that support the criminal investigation⁵⁵.

⁴⁸ Público (2017), "[Inspetora da PJ Ana Saltão absolvida pelo Tribunal de Coimbra](#)" ("Criminal Police inspector acquitted by Court of Coimbra"), 29 September 2017; SIC Notícias (2019), "[Chegou ao fim processo de inspetora da PJ absolvida, condenada e de novo absolvida](#)" ("The case of the Criminal Police inspector acquitted, convicted and acquitted again ended"), 9 January 2019.

⁴⁹ TVI 24 (2020), "[Os pormenores que marcaram a sentença de Rosa Grilo](#)" ("The details that determined the sentence of Rosa Grilo"), 4 March 2020.

⁵⁰ TVI 24 (2020), "[Juíza diz que Rosa Grilo mostrou uma frieza de ânimo 'que nunca tinha visto'](#)" ("Judge says that Rosa Grilo showed a coldness 'that she never saw'"), 3 March 2020.

⁵¹ SIC Notícias (2019), "[Advogada de Rosa Grilo critica recurso ao tribunal de júri](#)" ("Lawyer of Rosa Grilo critiques the use of the jury court"), 10 September 2019.

⁵² Diário as Beiras (2017), "[Ana Saltão repete inocência em tribunal](#)" ("Ana Saltão reaffirms innocence in court"), 23 May 2017.

⁵³ Observador (2019), "[Rosa Grilo insiste na tese dos angolanos e mantém que é inocente. Juízes apontam várias contradições](#)" ("Rosa Grilo insists on the Angolan thesis and maintains that she is innocent. Judges point out several contradictions"), 10 September 2019.

⁵⁴ Jornal de Notícias (2018), "[Viúva de triatleta e amante vaiados à chegada ao tribunal](#)" ("Widow of the triathlete and lover booed when arriving to court"), 28 September 2018

⁵⁵ Costa, S.; Santos, F. (2019), "[The social life of forensic evidence and the epistemic sub-cultures in an inquisitorial justice system: Analysis of Saltão case](#)", Science & Justice, Vol. 59, Issue 5, pp. 471-479.

c. Differences in media coverage concerning certain groups

aa. Men and women

In general, interviewees believe that there are no differences in the way the media covers cases of male and female suspects that may affect (either negatively or positively) the presumption of innocence. Most of them pointed out that the gender issue is usually relevant in certain types of crime, such as domestic violence, where the offender is most of the times a man. But they state that there is no bias, since it is a matter of a fact that most of the offenders are male.

bb. Children and adults

The interviewees didn't identify any differences between media coverage of cases involving children or adult suspects.

cc. Nationals and non-nationals (including ethnic minorities, e.g. Roma)

The main difference identified by the interviewees in media coverage relates to cases concerning defendants from an ethnic minority, mainly Roma. According to some interviewees, sometimes the media mentions the nationality or the ethnicity of the defendant and mentioning such characteristics shows some prejudice.

Nobody says he is Caucasian, but if he is Roma perhaps it will be mentioned, or if he is gay, he is said to be gay, or if he is Pakistani he is said to be Pakistani. Even though that is of no interest for the news. But this is what sticks and what generates that media garbage, which then follows with racist, homophobic comments, etc. (Public prosecutor, Portugal)

Ninguém diz que ele é branco, mas se for cigano se calhar diz-se que ele é cigano, ou se for gay diz-se que é gay, ou se for paquistanês diz-se que é paquistanês, embora isso não tenha interesse nenhum para o caso, mas isso depois é o que cola e é o que gera aquele lixo mediático e que depois se segue com os comentários racistas, homofóbicos, etc. (Public prosecutor, Portugal)

Interviewees, nevertheless, distinguish between the media and tabloids, pointing out that only the latter give personal information on the suspect (unless it is a high-profile case) and that there are differences between editorial lines of various media outlets, since some are more sensationalist and others tend to give more objective information and pay more attention to not encouraging prejudice.

On the other hand, some interviewees noted that the media is playing a fundamental role in abolishing all types of discrimination by influencing for greater equality and that the media are becoming more careful not to make those references.

dd. Persons with disabilities

The interviewees didn't identify any differences between media coverage of cases of suspects with disabilities.

d. Discussion of findings

Interviewees emphasised the absence of an efficient, transparent and ethical relationship between the judicial system and the media, that encourages misinformation, speculation around the case, and violation of the defendants' rights and of the principles of criminal procedure. Hence, although every interviewee acknowledges that the media could play a fundamental role in the public scrutiny of the criminal justice system and improve its performance, they all tend to highlight the negative effects, mostly on the public image of the defendants. Interviewees argue that media coverage often results in a public judgement of defendants, without providing for accurate and impartial information.

This assessment is aggravated by the fact that some media coverage is carried out through the publication of information subject to legal secrecy.

C.3 The presentation of suspects and accused persons

One of the dimensions of the right to be presumed innocent is not to be presented in a way that might suggest guilt and not to be subjected to a discriminatory treatment, either inside or outside the proceedings. This dimension is put under pressure when the defendants are under police custody or are arrested. Although in Portugal there are no prison clothes, there are special rules on the transportation and on measures to physically restrain detained or arrested defendants. According to Article 91 of the Code of Enforcement of Prison Sentences or Measures involving deprivation of liberty (applicable to arrested defendants and to detained defendants under article 124) states that handcuffs can be used when leaving prison to prevent escape or acts of violence. Handcuffs can only be used on the wrists and must be removed when the person appears before a judicial or administrative authority and during the performance of a medical act, unless the authority or doctor determines otherwise. According to article 27 of the General Rules on Prison Establishments, the transportation of an arrested defendant is incumbent on prison services and is carried out in a cellular vehicle. If necessary, for reasons of order and security, the Director-General of the Prison Services may determine that an escort is assigned. The arrested defendant remains handcuffed during transportation, but the head of the prison may waive the application of handcuffs.

Article 140 of the Code of Criminal Procedure prescribes that the defendant, even if arrested or detained, must be free when making statements, unless special measures are necessary in order to prevent the risk of evasion or violence.

a. Measures used to present the accused and its impact on their presumption of innocence

The interviewees stated that for defendants that are not under arrest in a prison or that are not under police custody there are no measures to physically restrain them when they go to court, to the public prosecution building or the police headquarters. They receive a notification to be present at court, or at the police or at the public prosecutors' office, and attend by their own means. Detained or arrested defendants may be subjected to handcuffs that can only be used on the wrists, when being transported to a courtroom, to the public prosecution building or the police headquarters. They remain in handcuffs until the judicial authority arrives to the room. According to the interviewees, the need to use handcuffs is an assessment made by prison guards or police officers.

We make an assessment based on the risk of escape or on whether the defendant is violent or not. (...) I have no problems in transporting a defendant without handcuffs if he/she is calm and peaceful, or if he/she is an elderly person, if he/she is a peaceful and calm person, a person who found himself/herself in a criminal situation, but has his/her dignity as a human being and has to be respected. (...). If

the defendant is a violent person, who fights us, the police device will be bigger. The defendant will come and go to court in handcuffs. When the defendant is already in prison and we need to hear him/her, sometimes he/she is brought in by prison guards, other times we will pick him/her up if they are on the premises next to the police. In these cases, the defendant comes handcuffed, usually (...) (Police officer, Portugal)

Nós fazemos a avaliação com base no risco de perigo de fuga ou no facto de o arguido ser ou não violento. (...) Eu não tenho problemas nenhuns em transportar um arguido sem algemas se for calmo e pacífico, ou se for uma pessoa de idade, se for uma pessoa pacífica e calma, uma pessoa que se viu numa situação criminosa, mas tem a sua dignidade humana e tem que ser respeitada. (...). Se for uma pessoa violenta, que se insurja contra nós, o dispositivo policial é maior. Vai e vem para o tribunal algemado. Quando já está preso e precisamos de o ouvir em declarações, umas vezes é a guarda prisional que o transporta, outras vezes somos nós que o vamos buscar se estiver nas instalações aqui ao lado da polícia. Aí vem algemado, normalmente (...) (Police officer, Portugal)

Although police officers mention that the police make an assessment, based on the risk that the defendant may flee and on how dangerous he/she is, lawyers, judges and public prosecutors stated that, as a rule, detained or arrested defendants are escorted and subjected to handcuffs when leaving cars and entering the court, the public prosecution building or the police headquarters. These are not incompatible statements, since police officers are only responsible for the transportation of defendants that are under police custody. Defendants that are under pre-trial detention or that are arrested and serving prison sentence for another crime are transported by prison guards.

All defendants who are held in pre-trial detention or who are serving sentence are handcuffed. They get in the car without handcuffs, they often travel without handcuffs, but most of them are handcuffed even during transportation itself and when they get out of the car they are always handcuffed (...). (Lawyer, Portugal)

Todos os arguidos que estão em prisão preventiva ou que estão em cumprimento de pena (...) são algemados. Entram no carro sem serem algemados, fazem a viagem muitas vezes sem serem algemados, mas a maior parte deles vão algemados até no próprio carro e ao sair do carro são sempre algemados (...). (Lawyer, Portugal)

According to Article 140 of the Code of Criminal Procedure, defendants are, nonetheless, in any case, free of handcuffs when making statements, unless special measures are necessary in order to prevent the risk of escape or violence. All interviewees noted that, as a rule, the defendant is always free of handcuffs during his/her statements. None of them witnessed any case where defendants made their statements handcuffed. If the defendant is considered to be dangerous or when there is a risk of flight, security can be ensured by the presence of prison officers inside the courtroom near the defendant, placed in strategic locations, especially if there is a risk of flight. Defendants are, once again, handcuffed when leaving the room.

I have never conducted a trial in which the defendant was handcuffed. It is humiliating, vexing and even causes discomfort to the person. I have never allowed anyone to be tried in handcuffs. I always insisted that the trial did not start while the person was handcuffed. Some might argue that the person is dangerous, but

there are other ways to ensure safety for everyone in the courtroom. (Judge, Portugal)

Eu nunca julguei ninguém que estivesse algemado. É humilhante, vexatório e até causa desconforto à pessoa. Eu nunca permiti que alguém fosse julgado algemado. Eu fazia mesmo questão que o julgamento não começasse enquanto a pessoa estivesse algemada. Podem dizer que a pessoa é perigosa, mas há outras formas de assegurar segurança para toda a gente que está na sala. (Judge, Portugal)

If I am not mistaken, the only thing that the law forbids is to have someone before a judge physically restrained, with handcuffs. He/she has to be free, without handcuffs. During transportation, I do not know. From my experience, restrained defendants are handcuffed until they go into the courtroom and handcuffs are removed before the judge arrives. (Lawyer, Portugal)

A única coisa que a lei regula, salvo erro, é o facto de a pessoa que depõe perante o juiz ter de estar absolutamente livre na sua pessoa, não pode estar algemada, maniatada. No transporte, desconheço. Da minha experiência empírica, normalmente os arguidos estão algemados até chegar à sala e na sala antes de chegar o juiz são retiradas as algemas. (Lawyer, Portugal)

In some courts, defendants have a special door to enter the courtroom and they are not seen by the general public or filmed by the media in handcuffs. Police officers mentioned that, whenever possible, they try to prevent defendants from being seen or filmed in handcuffs, by, for example, using a backdoor of the court.

(...) If there is no need, we don't subject anyone to exposure. There is no need for the police to expose the "trophy", the result of our work. We often enter courts through the backdoors at great speed, with people covered, exactly to avoid this. (...) (Police officer, Portugal)

(...) Não havendo a necessidade de expor, não se expõe. Na polícia não há essa necessidade de expor o "troféu", o resultado do nosso trabalho. Muitas vezes nos tribunais entra-se pelas portas traseiras a grande velocidade, com as pessoas cobertas, exatamente para evitar isso. (...) (Police officer, Portugal)

Nowadays, regularly, there are "private" access points and this removes the possibility of the media filming the situation to reproduce it in a mass way and, on the other hand, it prevents this image from being passed on. Maybe the judicial system itself, as the Government could create the possibility in all courts of police access to courts when they take defendants in isolation and independently through a garage, through an alternative door, or something similar. (Police officer, Portugal)

Hoje em dia, na grande maioria, existem locais de acesso "privados" e isso afasta a possibilidade de os órgãos de comunicação social fazerem filmagens para replicar de forma massiva e, por outro lado, impede que essa imagem seja passada dessa forma. Se calhar era uma forma do próprio sistema judiciário, do Governo criar em todos os tribunais a possibilidade de acesso aos tribunais por parte dos policias quando levam os arguidos de forma isolada e independente através de uma

garagem, através de uma porta alternativa, qualquer coisa do género. (Police officer, Portugal)

A public prosecutor described a building where those measures to protect defendants are in place.

This building has a circuit where the defendants do not cross paths with the public. They meet the necessary judicial actors who will attend the procedural act. From the transportation they leave for the cells, where they are with the police. Then they are taken by their own route, with a dedicated elevator, to the room where the procedural act will take place (Public prosecutor, Portugal)

Nestas instalações há um circuito próprio em que os arguidos não se cruzam quase com o público. Cruzam-se com os profissionais de justiça necessários e que têm que estar na diligência. Da carrinha saem para as celas, onde estão com a polícia. Depois são encaminhados por um percurso próprio, com elevador próprio, para a sala onde vai ser a diligência. (Public prosecutor, Portugal)

However, interviewees pointed out that the architecture of some courts requires the defendant to pass through public spaces before entering the courtroom, since these courts are not equipped with a special entrance for restrained defendants. In this case, when restrained defendants cannot enter by a special door, the defendants can cover their faces with their own clothes, but, as mentioned by a judge, this is a degrading image that can be amplified when the media is present.

Interviewees believe that these measures do not affect the presumption of the defendant's innocence within the criminal proceedings, but they do harm the defendant's public image, since public exposure of defendants in handcuffs puts them in a fragile position that encourages a public judgment of guilt and as being dangerous.

It is a position of fragility versus a position of dominance. Obviously, in relation to people who are contained and confined, a guilt judgment is already being made. These are aspects that the State should take care of, especially in the architecture of the buildings, so that people do not circulate publicly and are not exposed publicly in this fragile and degrading situation. (Judge, Portugal)

Está uma posição de fragilidade versus uma posição de domínio. Obviamente que em relação às pessoas que estão contidas e confinadas já se faz um juízo de culpa. São aspetos que o Estado deveria acautelar sobretudo na arquitetura dos próprios edifícios para que as pessoas não circulassem publicamente e não fossem expostas publicamente nessa situação frágil e degradante. (Public prosecutor, Portugal)

One public prosecutor even questions the legitimacy of the media filming defendants in this situation:

In media, we see several examples. An issue that raises serious doubts is whether the media can be filming people like that. That person is entitled to his/her image and good name and the public interest does go above all. That question comes to me when I see people trying to cover their faces. (Public prosecutor, Portugal)

Na comunicação social vemos vários casos desses. Saber se a comunicação social pode estar a filmar assim as pessoas é uma questão que levanta sérias dúvidas. Está ali uma pessoa que tem direito à sua imagem e ao bom nome e o interesse

público não cobre tudo. Essa questão ocorre-me quando vejo as pessoas a tentarem resguardar-se. (Public prosecutor, Portugal)

In the Rosa Grilo case, since the defendants were subject to pre-trial detention, they were often filmed and photographed with handcuffs when arriving and/or leaving the court. To avoid being identified, the male defendant often tried to cover his face with pieces of clothes (for e.g. a t-shirt or jacket). The woman did not cover her face but, occasionally, tried to hide the handcuffs⁵⁶. Furthermore, the media shared several photos of the defendants, which made them easily identifiable. In the Ana Saltão case, images of the defendant were also frequently shared. The reproduction of these images by television and newspapers had a strong impact in the public opinion. This can, in fact, hinder the defendant's image even if they are acquitted, since people will continue to link the crime to the image of the defendants.

b. Clothing

In Portugal, there are no prison clothes. Suspects and defendants can use their own clothes to the hearings. As a rule, people when in court tend to wear more formal and careful clothing.

As a lawyer noted, the liberty to choose their own clothes is a corollary of the presumption of innocence in the sense that defendants are entitled to the same level of dignity in their treatment as anyone else.

A prison uniform would be totally stigmatizing, it is already stigmatizing to have a special place to sit, it is already stigmatizing to have certain rules (...). In fact, it stems from the presumption of innocence (...). The in dubio pro reo is just a corollary of the presumption of innocence, there are many other corollaries, and one of them is that the accused must be treated with the same dignity as the citizen who is not subject to a judicial proceeding, the only difference being that he may have his freedom of movement or some rights, freedoms and guarantees restricted during the proceedings, but his or her dignity and his or her status as a human person is not called into question (...). (Lawyer, Portugal)

Uma farda seria totalmente estigmatizante, já é estigmatizante terem um lugar especial para se sentarem, já é estigmatizante haver determinadas regras (...). Aliás, decorre da presunção de inocência (...). O in dubio pro reo é apenas um corolário da presunção de inocência, tem muitos outros corolários, e um deles é que o arguido deve ser tratado com a mesma dignidade que o cidadão que não está sujeito a um processo, a única diferença é que pode ter a sua liberdade ambulatória ou alguns direitos, liberdades e garantias restringidos por via do processo, mas a sua dignidade e o seu estatuto de pessoa humana não fica posto em causa (...). (Lawyer, Portugal)

Although interviewees believe that clothes do not directly impact the presumption of innocence, in general – and this is a statement made taking into account that defendants do not wear prison clothes, which are considered by all as stigmatizing – they all agree that the way a person presents himself/herself to court is important, due to the solemnity of the trial and because the image of the defendants is part of the communication that a trial entails.

⁵⁶ SIC Notícias (2020), "[A morte de Luís Grilo](#)" ("The death of Luís Grilo"), TV report of the programme "Police cases", 3 March 2020

I always say to my clients “wear a tie”, except for those who when looking at them you can clearly see that the tie is something artificial (...). Our appearance is also very important in a judgment because judges are human beings like us (...) and they let themselves be influenced, whether we like it or not, by what they see. An unshaven, scruffy, sloppy defendant unconsciously gives the impression that he’s a criminal. If you have a good appearance, are well-dressed, clean-shaven, have nice hair, looking good makes a difference because the first encounter is a positive one. (...) (Lawyer, Portugal)

Eu digo sempre aos meus clientes “leve uma gravata”, a não ser para aqueles que se olha para eles e se vê perfeitamente que a gravata é artificial (...). A nossa aparência tem muita importância também no julgamento porque os senhores juízes são seres humanos como nós, (...) e também se deixam influenciar, quer queiramos quer não, pelo que vêem. Um arguido com a barba por fazer, mal vestido, desleixado, passa inconscientemente a ideia de que é um criminoso. Se tiver um ar de bem vestido, com a barba feita, cabelo arranjado, com bom aspeto em termos de roupa, é diferente porque o primeiro embate é um embate positivo (...). (Lawyer, Portugal)

As pointed out in the interviews, as a rule, whenever the defendants go to court they try to present themselves with appropriate and more formal clothing. This happened in both the Rosa Grilo case and the Ana Saltão case. In the Rosa Grilo case, the media frequently described the clothes and appearance of the defendants, specifically the woman’s, namely during the trial hearings⁵⁷. In the Ana Saltão case, the defendant was always photographed well dressed, with elegant clothes.

c. Presentation of vulnerable groups

Interviewees referred to underage defendants, defendants with disabilities and victims in domestic violence cases (female or male and children) as possible vulnerable groups.

Nonetheless, none mentioned any special safeguard in place to protect these groups and they argued that they should benefit from measures made available to all defendants – the right to go into court without being seen or filmed by the general public in handcuffs. As one judge noted, defendants may not authorize their filming inside the courtroom, but they have no way of preventing being filmed while entering or leaving the court.

How effective is this measure?! (...) When defendants leave the court, they are already handcuffed, escorted by prison guards, or have to walk around covering their faces, taking off their clothes, (...). This could be prevented, and the state would have to guarantee it. (Judge, Portugal)

Que eficácia é que esta medida tem?! (...) Quando as pessoas saem do tribunal, já estão algemadas, são levadas por guardas prisionais, ou têm de andar ali a tapar

⁵⁷ Expresso (2019), [“Que cansa a senhora dona Rosa, a senhora cansa-me”](#) (“Such fatigue Mrs. Rosa, you make me tired”), 10 September 2019; Observador (2019), [“Rosa Grilo insiste na tese dos angolanos e mantém que é inocente. Juízes apontam várias contradições”](#) (“Rosa Grilo insists on the Angolan angle and maintains that she is innocent. Judges point out several contradictions”), 10 September 2019.

as caras, tirando a roupa, (...). Isso poderia ser evitável, e o Estado teria que garantir isso. (Judge, Portugal)

A lawyer mentioned the possibility established in the Criminal Procedure Code to request for trials to be held behind closed doors, when publicity can jeopardize a person's dignity⁵⁸. In trials for the crimes of human organ trafficking, human trafficking or against sexual freedom and self-determination, procedural acts are, as a rule, excluded from publicity⁵⁹. However, this rule serves to protect the victim and not the defendant.

This is the case with closed-door hearings that are either due to the nature of what is at stake, or due to the nature of the intervening parties – for example, sexual crimes with underage are mandatory behind closed doors. Or the judge can determine that the trial is behind closed doors whenever he/she so wishes to safeguard the persons involved. It can contribute to a greater reinforcement of the fight against the presumption of guilt in the public sphere. (Lawyer, Portugal)

É o caso das audiências à porta fechada que o são ou pela natureza do que está em causa, ou pela natureza dos intervenientes – por exemplo, crimes sexuais com menores são obrigatoriamente à porta fechada. Ou o juiz pode determinar sempre que assim entenda para salvaguarda dos envolvidos que o processo seja à porta fechada. Também pode contribuir para um maior reforço do combate à presunção de culpa na esfera pública. (Lawyer, Portugal)

One lawyer stressed that a possible safeguard would be for journalists to comply with an ethical code that implied treating the defendants (e.g. the way they are called and the image they transmit) with neutrality.

This helps the presumption of innocence. (...). I would say that the media has to make a great effort to be neutral, which is to say “so and so is accused of ...” without adjectives, it is not the “monster of Carcavelos”, it is not the “rapist of Brandoa”, it is not the “corrupt politician of Laranjeiras”... This would help a lot, it would not guarantee the presumption of innocence, but the more neutral the way of naming and communicating, the more it can combat the presumption of guilt. (Lawyer, Portugal)

Isso ajuda a presunção de inocência. (...) Eu diria que a comunicação social tem que fazer um grande esforço de neutralidade que é dizer “fulano é acusado de ...” sem adjetivos, não é o “monstro de Carcavelos”, não é o “violador da Brandoa”, não é o “político corrupto das Laranjeiras”... Isto já ajudaria muito, não garantiria a presunção de inocência, mas quanto mais neutral for o modo de nomear e de comunicar, mais de pode combater a presunção de culpa. (Lawyer, Portugal)

d. Reactions to presenting accused as being guilty

Interviewees had difficulty in identifying an effective reaction for cases when a defendant is presented as being guilty through certain measures. Referring to situations of possible disproportionate use of

⁵⁸ Article 87 (2) of the [Criminal Procedure Code](#).

⁵⁹ Article 87 (3) of the [Criminal Procedure Code](#).

handcuffs or of excessive and unnecessary exposure of the defendants, the interviewees mentioned that it would be a matter to be solved outside the criminal procedure.

The lawyer can raise the question in the proceedings saying it is excessive. Handcuffs are a criterion more of the prison establishment than ours. It is the prison service that determines whether the defendant needs to be transported handcuffed or not (...) The question then has to be communicated to the prison service to act on it. (Public prosecutor, Portugal)

Pode fazer um requerimento ao processo a dizer que é em excesso. As algemas são um critério mais do estabelecimento prisional do que nosso. É o estabelecimento que determina da necessidade de ele transitar algemado ou não (...). Isso depois tem que ser comunicado às instâncias ligadas aos estabelecimentos prisionais para atuarem (Public prosecutor, Portugal)

This opinion is shared by a defence lawyer:

The lawyer can always come to the proceedings and complain, but it's just venting. One can eventually trigger complaint mechanisms, say that rights have been violated... It still has no future (Lawyer, Portugal)

Processualmente o advogado pode chegar ao processo e queixar-se, mas é um desabafo. Pode eventualmente acionar mecanismos de queixa, dizer que foi violado os direitos... Segue sem futuro nenhum (Lawyer, Portugal)

In addition, lawyers and one judge argued that one remedy could be a civil suit against the State. Nonetheless, interviewees believe that this is not an effective reaction, due to the many constraints to effective access to justice, namely the length of proceedings in administrative courts.

There is a legal basis for a civil liability action, because deep down the State is neglecting a person who is in its custody: from the moment the person is arrested, his/her physical freedom is limited, and therefore the person is at the disposal of the State, physically, and therefore the State would have to guarantee [his/her rights]. And not guaranteeing this is violating its obligations towards that person. Obviously, afterwards, in practice, it is difficult for people to achieve these means, because we know very well how administrative courts work and access to justice, legal aid ... all of which makes the position of the most vulnerable people more difficult and fragile. (Judge, Portugal)

Há fundamento jurídico para uma ação de responsabilidade civil, porque no fundo o Estado está a negligenciar uma pessoa que está à sua guarda: a partir do momento em que a pessoa é detida, a sua liberdade física fica limitada, e portanto a pessoa está ao dispor do Estado, fisicamente, e portanto o Estado teria que garantir, e não garantindo, está a violar as suas obrigações para com aquela pessoa. Obviamente que depois na prática é difícil as pessoas concretizarem esses meios, porque sabemos muito bem como funcionam os tribunais administrativos e o acesso à justiça, o apoio judiciário... tudo isso dificulta e fragiliza a posição sobretudo das pessoas mais vulneráveis. (Judge, Portugal)

In addition, a lawyer pointed out that the prerequisites for a civil action against the State to be successful are too demanding and make it impossible to use it as a remedy for these situations.

In fact, the State is not even convicted in situations in which it has manifestly misused enforcement measures, let alone in these cases. There must be intention or gross negligence. Intention is never proved, except in exceptional circumstances and negligence is never gross. There may even be negligence, but it is never gross. So even in situations that have a physical, material aspect, it is very difficult to obtain a conviction. Let alone in those cases that where there is a more symbolic decision, more subliminal, it seems very difficult. (Lawyer, Portugal)

Aliás, o Estado nem é condenado em situações em que aplicou manifestamente mal medidas de coação, quanto mais. Tem que haver dolo ou negligência grosseira, dolo nunca se prova, a não ser em circunstâncias excepcionais e a negligência nunca é grosseira. Até pode haver negligência, mas nunca é grosseira, portanto, mesmo em situações que têm uma tradução física, material, é muito difícil obter uma condenação, quanto mais nestas que têm uma decisão mais simbólica, mais sub-reptícia, parece muito difícil. (Lawyer, Portugal)

In the Ana Saltão case, the defendant filed a complaint against three persons for defamation in a commentary segment of a morning television programme, asking for a compensation, because she felt embarrassed, humiliated and scorned with the commentaries⁶⁰.

e. Discussion of findings

Handcuffs – the measure used by police officers and prison services to physically restrain detained or arrested defendants – are used, according to the interviewees, for safety reasons, either of the defendant or of the police officers. In the opinion of the interviewees, these do not affect the presumption of the defendant’s innocence within the criminal proceedings but they do harm the defendant’s public image since public exposure of the defendants in handcuffs puts them in a fragile position that encourages a public judgment of guilt. To avoid this, interviewees believe that the solution is to equip courts, public prosecutors’ buildings and police headquarters with exclusive and private access for defendants, preventing them from being seen or filmed in handcuffs by the general public. This should also be the solution for vulnerable groups that do not benefit from specific safeguards.

Although interviewees didn’t make a direct linkage between clothes and the presumption of innocence, they acknowledge the importance of adequate presentation of defendants in court and its influence in the image transmitted to the judge.

Interviewees reported major limitations on possible reactions to presenting defendants as being guilty. This is unanimously recognised by judges, public prosecutors and lawyers. It is possible to file a civil action against the Portuguese State in the administrative courts, but it is not seen as effective by the interviewees.

C.4 Burden of proof

Directive (EU) 2016/343 establishes that Member States shall ensure that the burden of proof for establishing the guilt of suspects and accused persons is on the prosecution, without prejudice to any obligation on the judge or the competent court to seek both inculpatory and exculpatory evidence, and to the right of the defence to submit evidence in accordance with the applicable national law.

⁶⁰ Correio da manhã (2014), “[Ana Saltão leva Júlia Pinheiro a julgamento](#)” (“Ana Saltão takes Júlia Pinheiro to court”), 10 July 2014.

Portuguese criminal procedure has an accusatory structure⁶¹, mitigated by the judge's duty to discover the truth, according to the facts described in the indictment, those alleged by the defence, or those that, for the defendant's benefit, arise during the trial hearing⁶².

a. Exceptions to the burden of proof

The particular role of the Public Prosecution in Portuguese criminal procedure **questions the existence of an actual burden of proof**, since the prosecution shall cooperate with the court in the discovery of the truth and in the realisation of justice, obeying in all its procedural interventions the criteria of strict objectivity⁶³. Nevertheless, as criminal doctrine and jurisprudence have unanimously established, the constitutional principle of presumption of innocence prohibits a burden of proof on the defendant and requires the application of the *dubio pro reo* principle whenever there is any doubt.

When asked about any exceptions to the burden of proof in Portuguese criminal procedure, the interviewees described this legal framework, referring to the fact that there are no real examples of the reversal of the burden of proof.

Nonetheless, judges, lawyers and public prosecutors immediately mentioned the case of the loss of assets to the State in relation to different types of unlawful acts (that is, illicit drug trafficking, terrorism and terrorist financing, illicit trafficking in weapons, influence trading, undue receiving of advantage, corruption, embezzlement, unlawful economic advantage in a transaction, money laundering, criminal association, child pornography and incitement to child prostitution, computer sabotage, human trafficking, counterfeiting money and similar financial instruments, incitement to prostitution, smuggling, trafficking and tampering with stolen vehicles). This is a particular measure approved in the context of the fight against organised crime⁶⁴.

(...) There is no exception to the burden of proof in criminal proceedings, at least for now. (...) There are, for example, incidents related to criminal proceedings, like the loss of assets to the State. In this case, law presumes to be of illicit origin all assets whose value exceed what would be plausible according to his/her legal interest. It is the defendant who has to demonstrate that the provenance of such assets is lawful. This is not a criminal proceeding, but a procedure grafted, connected, embraced to the criminal procedure. (Lawyer, Portugal)

(...) Não há, no processo penal, pelo menos para já, nenhuma inversão do ónus da prova. (...) Há, por exemplo, incidentes conexos ao processo penal, por exemplo, a lei da perda alargada onde a ordem jurídica presume que tudo o que o arguido granjeou na sua vida que seja superior àquilo que são os seus ganhos lícitos é de proveniência ilícita. É o arguido que tem de demonstrar que a proveniência é lícita. Não no processo penal, mas num incidente enxertado ao processo penal, conexo, abraçado. (Lawyer, Portugal)

This is a civil procedure grafted onto criminal proceedings via which the difference between the worth of the defendant's assets and that which would be plausible given his or her legal interest is presumed

⁶¹ Article 32 (5) of the Portuguese Constitution.

⁶² Articles 53 and 340 of the [Criminal Procedure Code](#).

⁶³ Article 53 (1) of the [Criminal Procedure Code](#).

⁶⁴ Portugal, [Law 5/2002, 11 January, that establishes measures for fight against organised and economic and financial crime](#) (Lei n.º 5/2002, 11 de janeiro, que estabelece medidas de combate à criminalidade organizada e económico-financeira), 11 January 2002. Last amended by Law 30/2017, 30 May.

to be an economic advantage. When a defendant is convicted of one of the above-mentioned crimes, the difference between the value of the defendant's estate and the value proportionate to his or her lawful income is considered as an advantage deriving from a criminal activity and is declared a loss to the State⁶⁵. It is incumbent on the defendant to demonstrate the lawful origin of his/her property⁶⁶. The constitutionality of this mechanism has been raised before the Constitutional Court, questioning if it constitutes a shift of the burden of proof and a violation of the presumption of innocence. The Constitutional Court has ruled that this procedure is not of a criminal or sanctioning nature and thus the presumption of innocence does not apply⁶⁷.

A judge noted that this civil procedure does not contaminate the criminal proceedings, since there is always the need to prove that the defendant committed the crime.

The burden of proof has also recently been a subject of debate in connection with the attempts made to pass a law on the crime of unlawful enrichment. In 2012 and 2015, the Portuguese Parliament approved laws that instituted the crime of unlawful enrichment. The first law (2012) stated that whoever directly or indirectly acquires, owns or holds assets that are not of legally determined origin and are incompatible with his/her income and legitimate goods can be punished with a sentence of imprisonment of up to 3 years, if a more serious sentence is not specified by another legal provision. The second law (2015) specified that whoever directly or indirectly acquires, owns or holds assets incompatible with his/her declared income can be punished with a sentence of imprisonment of up to 3 years. Neither of those laws were approved because the President of the Republic requested the Constitutional Court to decide on their constitutionality prior to publication. In both cases, the Constitutional Court ruled the laws to be unconstitutional because they presume that incompatibility between a person's assets and his/her declared income is of an unlawful nature. It would be the defendant who would have to prove that the difference between his/her assets and declared income was lawful, and this would violate the presumption of innocence⁶⁸. Nevertheless, the need for a crime of unlawful enrichment continues to be debated, since some argue that is the only effective measure for fighting corruption.

When specifically asked if a person found in possession of illegal drugs is presumed guilty of drug trafficking, interviewees mentioned that in that case there is no real shift of the burden of proof in a technical sense, since the legal construction of the type of crime foresees that someone who is found in the possession of a certain amount of drugs is considered to be committing a crime.

It depends on the quantity, because the law establishes the quantities. When the amount of drugs is more than the one established by law for consumption, the person is immediately detained. (Police officer, Portugal)

Depende das quantidades porque a lei da droga tem essas quantidades, mas ultrapassando essas quantidades que é para o consumo, é logo detido em flagrante. (Police officer, Portugal)

One judge, nonetheless, has pointed out the particular situation of mere detention of a certain amount of illegal drugs as a possible shift in the burden of proof, although not in a technical sense.

⁶⁵ Article 7 of Law 5/2002.

⁶⁶ Article 9 of Law 5/2002.

⁶⁷ See [Constitutional Court's Case Law 498/2019](#).

⁶⁸ See [Constitutional Court's Case Law 179/2012](#) and [Constitutional Court's Case Law 377/2015](#).

Objectively, someone who is caught with drugs has committed a crime of drug trafficking even if there is no evidence that they intended to sell them or to deliver or give them to someone else. For this to happen the law has to assume that a person who holds a certain amount of drugs does not hold them exclusively for consumption. (Judge, Portugal)

Objetivamente, alguém que é apanhado com droga e ainda que não se demonstre nenhuma venda, nenhuma entrega, nenhuma cedência, essa pessoa praticou um crime de tráfico. Para que isto aconteça teve que se presumir que uma pessoa que tem aquela droga em determinada quantidade não é exclusivamente para consumo. (Judge, Portugal)

According to two lawyers, although there are no legal exceptions to the burden of proof, there are informal conducts that, in practice, lead to a reversal of the burden of proof. In their opinion, these situations depend on several factors: the type of procedure, media coverage, the particular circumstances of the defendants and what happened earlier in the case, since the trial judges have access to everything that is in the criminal file and may be influenced by it even though it cannot be used during the trial.

In my experience (...) many defendants are convicted by “feeling”. (...) It is very rare to see a ruling stating “the defendant proved his/her innocence” or “the defendant’s guilt was not proved”, it is never said. (...) if the lawyer is persistent and can provide for some proof, but there it is, I have to provide some proof, or I have to contradict the prosecutor’s proof (...). (Lawyer, Portugal)

Da minha experiência (...) condena-se muito pelo cheiro. (...) É raríssimo ver uma sentença em que se diz “o arguido provou a sua inocência” ou “não se fez prova da culpa do arguido”, nunca se diz isso. (...) se o advogado for persistente e conseguir fazer alguma prova, mas lá está, eu tenho que fazer alguma prova, ou eu tenho que contrariar a prova do MP (...). (Lawyer, Portugal)

In criminal proceedings, the rule that there is no burden of proof is an absolute rule. (...) Now, there is the burden of proof in practice. If there is a very strong pre-understanding that I am really guilty, I have the burden of proof, now that is the burden of informal, surreptitious proof. (...). (Lawyer, Portugal)

Em processo penal, a regra de que não há o ónus da prova é uma regra absoluta. (...) Basta que o Ministério Público não prove e o arguido é absolvido, não há ónus da prova. Agora, há o ónus da prova prático. Se houver uma pré compreensão muito forte no sentido de que eu sou culpado, verdadeiramente, eu tenho o ónus da prova agora, isto é o ónus da prova informal, sub-reptício. (...). (Lawyer, Portugal)

b. Confession

Under Portuguese criminal procedure, statements made before the police are never admissible in trial, unless the defendant so requests. When the defendant admits to having committed a crime in the pre-trial phase before a public prosecutor or a judge, and the defendant is represented by a

lawyer, that statement can be used in the trial phase and considered under the rule of the free assessment of evidence, but it is not considered as a confession⁶⁹.

A confession is only considered as such when made before the court, during the trial⁷⁰ and it does not, automatically, lead to a guilty verdict. When the defendant confesses, the judge may disregard further presentation of evidence, only if the confession is made by all the defendants in the case, if the judge is convinced that the confession is free and conscious, and if the crime at stake is punishable with imprisonment for up to 5 years⁷¹. If the crime at stake is punishable with a prison sentence of more than 5 years, or not all the defendants confess, or the judge is not convinced that it is a free, truthful and conscious confession, evidence may be presented.

I have had situations where the judge has suspected that the confession was not free and spontaneous and has asked further questions. The judge always has the opportunity to investigate the case and to evaluate whether the confession is made freely and spontaneously. Moreover, the defendant is represented by a lawyer. (Lawyer, Portugal)

Sim. Já tive juízes que suspeitaram do carácter livre e espontâneo da confissão e fazem mais perguntas. O juiz tem sempre essa possibilidade de investigar o caso e de se empenhar na averiguação dos pressupostos, da liberdade, espontaneidade, integral adequação da confissão. E o arguido está defendido, tem um advogado. (Lawyer, Portugal)

A public prosecutor mentioned a case where s/he himself/herself had some doubts whether the confession made before the court was true and asked to present further evidence.

The defendant was a drug addict who was in withdrawal and was charged with [a crime]. She confessed the facts and I thought she was confessing just to get rid of it and wanted to present further proof. When the defendant confesses, the judge may disregard any further presentation of evidence. But I did not ask for the presentation of evidence to be disregarded and justified why: because I thought that the confession was not free and that it could possibly be false and that, in this case, it might be necessary to listen to people and present evidence. The trial proved that it actually happened, but it wasn't because she confessed. (Public prosecutor, Portugal)

Era uma pessoa toxicod dependente que estava a ressacar e estava acusada de [crime]. Ela confessou os factos e eu achei que ela estava a confessar só para se ver livre daquilo e quis fazer alguma prova. Quando as pessoas confessam, prescinde-se da prova. Mas eu ali não prescindi e justifiquei porquê: porque achei que a confissão não estava a ser livre e que podia eventualmente ser falsa e que, nesse caso, podia ser preciso ouvir pessoas e fazer prova. Por acaso até se fez prova de que de facto aquilo aconteceu, mas não foi pelo facto de ela confessar. (Public prosecutor, Portugal)

⁶⁹ Article 357 of the [Criminal Procedure Code](#).

⁷⁰ Article 344 of the [Criminal Procedure Code](#).

⁷¹ Article 344 of the [Criminal Procedure Code](#).

Nonetheless, one lawyer noted that in order to guarantee that these safeguards to a free confession are fulfilled, the judge needs to take his/her time with the case and cannot consider the confession as an opportunity for a hasty trial.

To be valid, a confession is only possible at the trial stage and the judge should try to understand, by questioning the defendant, if that confession is a free and unreserved confession. (...) We see many times that the judges want to hurry because they are overwhelmed with work and this (...) leads them to rush and to say many times “ok, so you want to confess, is that it? Did you do that?” and the judge has to ask questions (...) but to do that he has to take time (...). (...) we cannot fall into this error “confess, great, this is already over and I can move on to another case”. (Lawyer, Portugal)

A confissão a valer como confissão só é possível em fase de julgamento e o juiz que deve tentar perceber, interrogando o arguido se aquela confissão é uma confissão livre e sem reservas. (...) Nós vemos muitas vezes que os juízes querem andar à pressa porque andam assoberbados de trabalho e isso (...) leva-os a precipitações e a dizer muitas vezes “pronto confessa é isso? Foi o Sr. que fez é isso?” e o juiz tem que fazer perguntas (...), mas para isso tem que perder tempo (...). (...) não podemos cair nesse erro “ora confessa, ótimo, este já está já me posso ir embora fazer o outro julgamento”. (Lawyer, Portugal)

Lawyers also pointed out that, although statements made by the defendant before the police cannot be used in the trial phase, the trial judge has access to those statements since they are written and are part of the criminal file that goes to court. That is to say, when the case goes to trial, the judge has access to any act conducted during the investigations. Therefore, if there is a written statement from the defendant before a police officer admitting to having committed the crime, the judge will have the opportunity to read it, and it may influence his/her judgment. This is considered to be particularly harmful since, as a rule, the defendant can waive the presence of his/her lawyer when giving statements to the police.

Question: Is there any safeguard to ensure that a confession made before a police officer is free and conscious?

Answer: It is not considered to be a confession. That is the safeguard. It cannot be used during trial. But, in practice, a judge must be asked about the value of such a confession ... (Lawyer, Portugal)

Pergunta: E há alguma garantia para que a confissão seja informada e livre quando é feita perante a polícia?

Resposta: Não vale como confissão. A garantia é essa. Não pode ser usada contra o arguido fora daquele espaço. Agora, informalmente, o valor dessa confissão, tem que se perguntar a um juiz... (Lawyer, Portugal)

c. Discussion of findings

The interviewees did not identify immediately any exceptions to the burden of proof. Nonetheless, the fact that the loss of assets to the State in relation to unlawful acts of a specified type does not harm the criminal proceedings was mentioned in this context by lawyers, public prosecutors and judges. They have pointed out that it doesn't constitute an exception to the burden of proof since

there is always the need to prove that the defendant committed the crime. Moreover, this is a civil procedure grafted onto criminal proceedings. When asked specifically about the case of drug trafficking, most of the interviewees noted that it is a consequence of the legal construction of the crime and cannot be considered as a shift of the burden of proof.

Despite not having identified legal exceptions to the burden of proof, two lawyers stressed that when there is a strong preconception that a person is guilty, an informal shift of the burden of proof is in place. They believe that this strong preconception that a person is guilty can depend on several factors: the type of procedure, the media coverage, the particular circumstances of the defendant and what happened earlier in the case, since trial judges have access to everything that is in the case file.

As for the value of a confession, interviewees noted that a confession is only considered as such when made during trial, before a judge. In these cases, provided that the legal requirements are met and in accordance with the judge's assessment of the spontaneity and veracity of the confession, the presentation of further evidence may be disregarded.

Lawyers, nonetheless, stressed, on the one hand, that in order to guarantee that these safeguards to a free confession are fulfilled, the judge needs to take his/her time with the case and cannot consider the confession as an opportunity for a hasty trial. On the other, they recalled that even though statements made by the defendant before the police cannot be used in the trial phase, the trial judge has access to those statements which can be particularly harmful.

C.5 The right to remain silent and not to incriminate oneself

The *nemo tenetur se ipsum accusare* principle is considered to be an unwritten constitutional principle, stemming from the constitutional rights to a due and fair trial and to the presumption of innocence and from the accusatory structure of the criminal procedure. It comprises the right to remain silent and the right not to incriminate oneself. The Portuguese criminal procedure provides a set of rules related to the duty to inform, the validity of statements or evidence obtained and the provision of guarantees of compliance, which aim to guarantee this constitutional right, and that are explained below.

The interviews showed that the challenges to the fulfilment of the right to remain silent and of the right not to incriminate oneself do not stem from the legal framework, that is generally considered as robust, but they come from the practice and the informal behaviours of professionals.

a. The right to remain silent in practice

The right to remain silent is effective during every stage of the procedure, since the suspect formally becomes a defendant until the end of the trial. Whenever an investigation is conducted into a specific person, he/she mandatorily becomes a defendant if there are grounds to suspect that that person has committed a criminal offence, if he/she makes statements before any judicial authority or criminal police, if a coercive or patrimonial guarantee is to be imposed, or if he/she is detained. As described below, defendants are informed of their right to remain silent every time they are to make statements in the proceedings, either in a pre-trial phase or during trial. There are different consequences on the validity of the defendants' statements according to the phase of the procedure and the authority before whom the defendant makes statements. These legal consequences influence how most lawyers advise their clients on the use of their right to remain silent.

During the investigation phase, defendants may waive their right to have a lawyer present during statements, except for defendants under 21, deaf, mute, blind, illiterate, unfamiliar with the

Portuguese language or thought not to have legal capacity⁷². Any statement made by the defendant before a police officer is not valid as evidence and cannot be reproduced in trial⁷³. Nevertheless, as mentioned previously, the statement given in the police department is part of the case file that goes to court and the trial judge can have access to such document. As some interviewees, mostly lawyers, have noted, those statements might influence the judge's opinion.

The judge cannot use it in the sentence, but I am absolutely convinced that, most of the times, the judge reads what the defendant said to the police back there. They all say they don't read it, but I am convinced otherwise" (Lawyer, Portugal).

O juiz não pode utilizar na sentença, mas estou absolutamente convicto que a maior parte das vezes o juiz lê aquilo que o arguido disse à polícia lá atrás. Eles dizem todos que não lêem, mas estou convencido disso. (Lawyer, Portugal)

Until 2013, defendants' statements made during a pre-trial phase before a public prosecutor could never be used during trial (unless the defendant himself/herself would request it). Defendants' statements made during a pre-trial phase before a judge could only be reproduced in trial if the defendant decided to make statements in trial and those statements would diverge from the previous ones. If the defendant used his/her right to remain silent during trial, his/her previous statements given to a pre-trial judge could never be used in trial. These rules changed in 2013⁷⁴. Currently, if statements are made before a public prosecutor or a judge during the pre-trial phase, the defence lawyer is present (mandatory), and the defendant has been informed that those statements might be used in the court of law, even if he/she is tried in absentia or makes no statements during the trial hearing, they can be reproduced in trial, although they are not considered a confession. The statements reproduced in trial are subject to free assessment of evidence⁷⁵. One judge questioned the lawfulness of this legal solution.

(...) these statements were obtained in phases where the defendant is in a fragile position: the defendant does not have access to the information on the case as a whole; or these statements are made when some other procedural act has occurred, for example, following a home search, which is an invasion of the defendant's privacy and is vexing (...). When the person is placed in this situation and then statements are made immediately afterwards (...), obviously that person is not fully free to exercise his/her rights of defence and free to make informed statements (...) (Judge, Portugal)

(...) essas declarações foram obtidas em fases em que o arguido se encontra numa posição mais fragilizada: não tem acesso à informação no seu todo; ou essas declarações são feitas quando ocorreu algum outro ato processual, por exemplo, na sequência de uma busca, sobretudo domiciliária, que é uma invasão da sua privacidade e é vexatória (...). Quando a pessoa é colocada nessa situação e depois são-lhe tomadas declarações logo a seguir (...), obviamente que a pessoa não está

⁷² Article 64 (d) of the [Criminal Procedure Code](#).

⁷³ There is one exception to this rule. Statements of defendants made before a police officer may only be reproduced in trial at the request of the defendant himself/herself (article 357 (1) (a) of the [Criminal Procedure Code](#)). Nonetheless, they can never be considered as a confession (article 357 (2) of the [Criminal Procedure Code](#)).

⁷⁴ With the amendment to the Criminal Procedure Code made by Law n.º 20/2013, 21 February.

⁷⁵ Article 357 of the [Criminal Procedure Code](#).

em plena liberdade para poder exercer plenamente os seus direitos de defesa e prestar livremente umas declarações esclarecidas (...). (Judge, Portugal)

This amendment to the law, according to some interviewees, introduced some changes in the way defendants act during the investigation, making them more cautious in the decision to speak or to remain silent. All lawyers have mentioned that the decision to remain silent or to speak during the investigation phase depends on the case and its specific circumstances. Three out of the four lawyers interviewed mentioned that, as a rule, and when there is no risk of pre-trial detention, they advise their clients to remain silent before the trial, at least in an early stage of the investigation when they do not yet know what evidence has been gathered.

I advise them not to talk in all those cases where I don't have access to the file and where the person was not caught in the act. (...) there are cases in which if the person does not speak he/she will be in pre-trial detention. These are the few cases in which I advise them to make statements, sometimes without having access to the proceedings. In others, when in doubt, it is better not to speak. Without being aware of the case it is usually harmful to make statements. There are other types of cases in which they decide not to use the right to silence, which are the high profile cases. For reasons of public appearance, people want to talk and, sometimes, this can harm them in the proceedings, but there are several factors to weigh up. (Lawyer, Portugal)

Aconselho a não falarem em todos aqueles casos em que não tenho acesso ao processo e em que a pessoa não foi apanhada em flagrante delito. (...) há casos em que se a pessoa não falar vai ficar em prisão preventiva. Esses são dos poucos casos em que é aconselhado a prestar declarações, por vezes, sem ter acesso ao processo. Nos outros, na dúvida, é melhor não falar. Sem ter o conhecimento do caso, normalmente é prejudicial prestar declarações. Há outro tipo de casos em que não se decide usar o direito ao silêncio que são os casos mediáticos. Por razões de aparência pública, as pessoas não querem ficar sem falar e, às vezes, isso prejudica-as processualmente, mas aí há uma série de fatores a ponderar. (Lawyer, Portugal)

One lawyer, on the other hand, argues that s/he does not advise his/her clients to use the right to remain silent because, in his/her opinion, it harms the defence.

Question: How do you in your work as a lawyer implement the right to remain silent?

Answer: I don't apply it. There are very few cases where I advise my clients not to speak. (...)

Question: Is that what your experience tells you?

Answer: My experience tells me this. Unless I know that there is no evidence, that is, before the knowledge of the proceedings it is either the statements of the defendant or zero. (...) If there is no evidence there, I tell the defendant not to speak. Other than that, it is best to speak and right from the start. (Lawyer, Portugal)

Pergunta: Como é que no seu trabalho enquanto advogado aplica o direito ao silêncio?

Resposta: Não aplico. São raríssimos os casos em que eu aconselho os meus clientes a não falarem. (...)

Pergunta: É isso que diz a sua experiência?

Resposta: Diz a minha experiência. A não ser que eu saiba que não existem meios de prova, isto é, perante o conhecimento do processo ou são as declarações do arguido ou é zero. (...) Se não há meios de prova aí eu digo ao arguido que se cale. Fora isso, o melhor é falar e logo de início. (Lawyer, Portugal)

The interviewees highlighted, however, that there is a key moment during the pre-trial phase where the decision on whether to exercise the right to remain silent or not is crucial – when the defendant is first questioned before a judge who decides on pre-trial detention. In those cases, interviewees noted that **remaining silent is most often harmful for the defendant**, since it may result in a more severe enforcement measure.

But we always explain: you can make statements, explain your version, clarify the facts. If you don't want to speak, you can reserve it for the trial, but you will probably be subjected to more stringent preventive measures than those applied if you collaborated. (Police officer, Portugal)

Mas isso é sempre explicado: pode prestar declarações, explicar a sua versão, esclarecer os factos. Se não quiser falar pode reservar para o julgamento, mas provavelmente pode sujeitar-se a medidas de coação mais gravosas do que se colaborasse. (Police officer, Portugal)

There are situations of constraint where the defendant is somewhat weakened and does not have the courage to use the right to remain silent. For a defendant that is detainee for first judicial questioning where a pre-trial detention can be decided, it takes a great deal of courage from the defendant and from the defence lawyer to remain silent, because serious crimes are at stake and the tendency is to speak. (Lawyer, Portugal)

Há situações de constrangimento onde a pessoa fica de alguma forma fragilizada e não tem coragem para usar o direito ao silêncio. Para um arguido detido para primeiro interrogatório e em que é possível fixar a prisão preventiva é preciso uma grande dose de coragem do arguido, quer do defensor para estar calado porque se imputam crimes graves e a tendência é falar. (Lawyer, Portugal)

A judge highlights that this is a perversion of the system, since the defendant is in a fragile position, particularly when the defendant is detained and presented to a pre-trial judge who will decide on the preventive coercive measures that might include his/her pre-trial arrest. In those situations, defendants might be inclined to try to take a collaborative approach, in order to avoid pre-trial arrest. The interviewee mentions situations where pre-trial judges pass on the message that a collaborative approach might be rewarded. He believes that the presence of a lawyer does not solve the problem, since he states that some lawyers do not react against it. The interviewee finds this extremely harmful.

This is a way to fraudulently obtain confessions. Confessions or collaboration, such as blaming other procedural subjects, providing information... It is not an honest way for the State to act on procedural subjects, particularly with defendants. (Judge, Portugal)

Isto é uma forma de obter confissões de forma fraudulenta. Confissões ou colaboração, como culpar outros sujeitos processuais, fornecer informações... Não é uma forma honesta de o Estado atuar para com os sujeitos processuais, em particular com os arguidos. (Judge, Portugal)

A lawyer shared this opinion and described similar situations where the defendant is compelled to speak and confess in order to try to avoid pre-trial arrest.

One thing is the legal framework, another thing is sometimes the motivations for which people confess, for example, a person can confess because s/he knows that if s/he does not do so, a more severe coercive measure is applied, for example, and this is a perversion of the confession regime. What I mean is, in terms of the legal framework the confession is completely shielded (...). Other than that, from the point of view of judicial practice, there are situations in which the defendant is almost as if compelled to confess and the biggest one is the first judicial interrogation of a detained defendant, in which the defendant knows that if he/she remains silent or do not confess there is a greater probability of applying a tougher enforcement measure and there are also judges who give this subliminal indication. (...) (Lawyer, Portugal)

Uma coisa é o quadro legal, outra coisa às vezes são as motivações pelas quais as pessoas confessam. Por exemplo, uma pessoa pode confessar porque sabe que se não o fizer é-lhe aplicada uma medida de coação mais severa, por exemplo, e isto é uma perversão do regime da confissão. O que quero dizer é que em termos de quadro legal a confissão está completamente blindada (...). Fora isto, do ponto de vista da prática judiciária, há situações em que a pessoa é quase como que compelida a confessar e a maior delas é o primeiro interrogatório judicial de arguido detido, em que o arguido sabe que se se remeter ao silêncio ou não confessar existe uma probabilidade maior de ser aplicada uma medida de coação mais dura e há aliás juízes que dão essa indicação subliminar. (...) (Lawyer, Portugal)

At trial, lawyers mention that the decision to speak or to remain silent depends on the specific circumstances of the case, on the ability of the defendant to defend himself/herself and on the evidence gathered. Interviewees stated that defendants are informed of the right to remain silent and that the exercise of that right cannot harm the defendant in any way. Nonetheless, lawyers described situations in which judges end up pressuring defendants to speak.

Some judges say: "If you want to remain silent, you can, but if you speak it can be used in your favour". In that context, it is a subtle and soft way to exert pressure. (Lawyer, Portugal)

Há juízes que dizem: "olhe, o Senhor se quiser estar calado esteja calado, mas se usar da palavra isso não deixará de ser levado positivamente". Naquele contexto, é uma forma de pressão, suave e subtil. (Lawyer, Portugal)

Another lawyer mentions that there is always an informal way of pressuring.

(...) Sometimes they make promises like "you may have some advantage here, you may not be arrested". In trial, the judges also say "the defendant does not want to

speak, obviously he/she has this right, but he/she cannot benefit from it either.”
(Lawyer, Portugal)

São pressionados sempre. (...) com promessas como “veja lá, pode ter aqui alguma vantagem, pode não ser preso”. Em julgamento os juízes também dizem “o arguido não quer falar, obviamente que tem esse direito, mas isso também não o pode beneficiar”. (Lawyer, Portugal)

b. How is information on the right to remain silent and not to incriminate oneself shared with the accused?

Information on the right to remain silent and the right not to incriminate oneself is given to defendants at different points in the criminal proceedings. Firstly, when a suspect acquires the status of defendant, a written document is handed over to him/her that indicates the defendant’s procedural rights and duties⁷⁶. Failure to comply with, or breach of, these formalities shall prevent the use of any statements made by the person concerned as evidence⁷⁷. Among those rights are the right to refuse answering any questions addressed by an authority on charges against him/her and on the substance of his/her statements on them⁷⁸.

Those rights are described in a written document that is handed over to the defendant and the defendant signs a copy that is included in the process.

In my experience, when he/she becomes a defendant formally, the rights and duties are informed in writing, and, when necessary, also orally. When he/she makes the statement of identification and residence, it includes the warning that he/she has the right to remain silent. (Public prosecutor, Portugal)

Na minha prática, na constituição como arguido, há os direitos e deveres que lhe são informados por escrito e oralmente, se for preciso também. Depois no próprio TIR, dá-se logo essa advertência de que tem o direito ao silêncio. (Public prosecutor, Portugal)

Some lawyers, nonetheless, have argued that this act is usually done before the police and that most of the times **the rights are not duly explained**, even when the lawyer is present.

(...) The defendant has no real idea of the rights he/she has. (...) Everything is done in a hurry; the rights are read in a hurry or the paper is given out and said: “read it at home quietly and your lawyer will explain it to you” and I always say “I won’t explain anything. That is your obligation”. (...) But the fulfilment of these formalities is written in the official report “it was fulfilled! Everything was said to the defendant and explained!”. (Lawyer, Portugal)

(...) o arguido não tem consciência, nem plena, nem não plena, dos direitos que tem. (...) é feito à pressa, lê-se muito depressa ou então não leem e dizem “depois lê em casa sossegadamente e o seu advogado depois explica-lhe”. Eu digo sempre a mesma coisa “não explico nada, o senhor é que tem que lhe explicar”. (...) Mas

⁷⁶ Article 58 (4) of the [Criminal Procedure Code](#).

⁷⁷ Article 58 (5) of the [Criminal Procedure Code](#).

⁷⁸ Article 61(1) (d) of the [Criminal Procedure Code](#).

depois isto tudo é escrito no tal auto “cumpriu-se...” Foi tudo dito ao arguido e explicado! (Lawyer, Portugal)

I have seen cases in the police where it was not explained, it was read, but not explained. When they don't have a lawyer, it is worse. They hand out papers and that is one of the papers and the person signs it. (Lawyer, Portugal)

Já assisti a casos na polícia em que não foi explicado, foi lido, mas não foi explicado. Naqueles que não têm advogado é pior ainda. No fundo são distribuídos papéis e esse é um dos papéis e a pessoa assina. (Lawyer, Portugal)

As the interviewees pointed out, if the defendant is not informed of the right to remain silent any statements made by the person concerned cannot be used. Nonetheless, lawyers have noted that, most of the times, rights are not duly explained when the suspect becomes a formal defendant.

The defendant signed and if s/he signed it was because it was approved. How do you prove that s/he was not informed if s/he signed the paper? Unless they are illiterate or do not speak the language. In those cases, it may have consequences (...) the annulment of an accusation, but it is very difficult for the defendant who speaks Portuguese to say that it was not explained or that s/he was told (...) “the diabolical evidence”. (Lawyer, Portugal)

O arguido assinou e se assinou é porque foi aprovado. Como é que se prova que não foi informado se assinou o papel? A não ser que seja analfabeto ou que não fale a língua. Aí pode ter consequências (...) a anulação de uma acusação, mas é muito difícil para o arguido que fale português dizer que não foi explicado ou que lhe foi dito (...) a “prova diabólica”. (Lawyer, Portugal)

Furthermore, when the defendant is questioned before a pre-trial judge, a public prosecutor or a police officer the defendant must always be informed of his/her right to remain silent. If the questioning is made before a judge or a public prosecutor and the defendant is accompanied by his/her lawyer, the defendant must be informed that should he/she choose not to remain silent, his/her statements might be used in the court of law, even if he/she is tried in absentia or makes no statements during the trial hearing, and shall be subject to free assessment of evidence⁷⁹.

In practice, people are informed of their procedural rights in an extensive way, underlining that they can choose whether or not to remain silent, and always stressing that this option can never be seen or valued as an assumption of guilt or as a presumption of guilt. I also inform them that they can opt for total or partial silence, as to some facts or questions: they can answer certain questions and remain silent in response to others. (...) (Judge, Portugal)

Na prática, as pessoas são informadas dos direitos processuais que têm de uma forma esclarecida, concretizando sempre que podem optar ou não pelo silêncio, e sublinhando sempre que essa opção não poderá nunca ser vista ou valorada como uma assunção de culpabilidade ou de alguma presunção de culpa. Também informo que poderão optar pelo silêncio total ou parcial, quanto a algum facto ou

⁷⁹ Articles 140 to 144 of the [Criminal Procedure Code](#).

alguma questão: podem responder em relação a determinadas perguntas e não responder às demais. (...) (Judge, Portugal)

Failure to do so results in defendant's statement being void.

This information is mandatory, otherwise the procedural act will be void. It is explained that they have the right to remain silent, that the exercise of this right cannot harm them in any way and that if they choose to speak, those statements may be used later, namely at trial. All of this is explained to the defendant. (Public prosecutor, Portugal)

É obrigatória a explicação, sob pena de a diligência ser nula. É explicado que têm o direito ao silêncio, que isso não os prejudica de nenhuma maneira e que se falarem essas declarações poderão ser usadas nomeadamente em audiência de julgamento. Tudo isso é explicado ao arguido. (Public prosecutor, Portugal)

Also, at the beginning of the trial, the judge must inform the defendant of the right to make statements at any time during the trial, as long as they refer to the subject of the proceedings, without, however, being obliged to do so, and that if he/she chooses to remain silent, it will not disfavour him/her⁸⁰. If the defendant chooses to make a statement, he/she can during deposition refuse to answer a particular question and the exercise of this right cannot disfavour him/her⁸¹. This information is given orally to the defendant. Any evidence obtained in violation of the right to remain silent or of the right not to incriminate oneself is considered inadmissible⁸².

c. Self-incrimination

One of the dimensions of the *nemo tenetur se ipsum accusare* principle is the right not to provide evidence that might incriminate oneself, which is constitutionally protected. Nonetheless, that principle is not without limits. According to Article 61 (3) (d) of the Criminal Procedure Code, defendants have the duty to submit to evidence formalities and to coercive and patrimonial guarantee measures, as specified by law and as ordered and implemented by a competent authority.

Criminal and constitutional jurisprudence have care for that evidence formalities respect the constitutional right not to incriminate oneself. DNA samples and blood samples that have been obtained from the defendant by means of coercion have been ruled as admissible, once they exist independently of the subject's will⁸³. Apart from searches and DNA samples, the interviewees have highlighted two particular circumstances where it might be understood that defendants are obliged to provide evidence that may affect their presumption of innocence. The first is the obligation of defendants to provide autographs for an examination of his/her handwriting. Courts have ruled uniformly since 2014, following a Supreme Court ruling, given upon a question of law⁸⁴, that the defendant who refuses to give signatures, upon order of the public prosecution, commits a crime of disobedience. Lawyers find it a violation of the right not to incriminate oneself.

⁸⁰ Article 343 (1) of the Criminal Procedure Code.

⁸¹ Article 345 (1) of the Criminal Procedure Code.

⁸³ Constitutional Court, [Case 695/06](#), 2 March 2007.

⁸⁴ Supreme Court, [Case 171/12.3TAFLG.G1-A.S1](#), 28 May 2014

In my opinion, it violates the right to non-self-incrimination, since, from the outset, it is not specifically foreseen that the defendant is obliged to submit himself to this diligence of evidence. (Lawyer, Portugal)

Quanto a mim viola o direito à não auto-incriminação, porque, desde logo, não está previsto especificamente que o arguido está obrigado a sujeitar-se a esta diligência de prova. (Lawyer, Portugal)

A public prosecutor, on the other hand, argued that it does not violate the right not to incriminate oneself.

There are consequences for refusing to give autographs, but even in this case the defendant is not obliged. (Public prosecutor, Portugal)

Há consequências para a não prestação de autógrafos, mas mesmo nesse caso não é obrigado. (Public prosecutor, Portugal)

The second case mentioned is when defendants are obliged to provide some information and documents, namely to the tax authority, under tax law. The constitutionality of using documents provided by the defendant to the tax authority under the duty to cooperate in a tax inspection as evidence in criminal proceedings has been the subject of Constitutional Court case law. The Constitutional Court has ruled that using these documents in future criminal proceedings is not unconstitutional and does not infringe the right not to incriminate oneself⁸⁵. But the Constitutional Court has also ruled that using these documents is unconstitutional and infringes the right not to incriminate oneself if criminal investigation is already pending⁸⁶. This debate was mentioned during one interview by a public prosecutor.

d. Right to remain silent

Several interviewees have pointed out informal practices, mainly during the investigation phase, that hinder the effectiveness of the right to remain silent. Those informal practices are used in specific contexts where defendants are in a fragile position, like for example, immediately after a house search where the defendant still has little knowledge of what is happening.

(...) for example, the other day, I spoke with a person whose house was searched by the police and the police officer asked her to accompany them to the police station to give a statement. The woman asked: "Shouldn't I take a lawyer?" and the police officer answered: "There is no need to bother the lawyer". So, the law in books is different from the law in action This does not happen with judges and public prosecutors, since a lawyer must be present. But the police sometimes use this psychological manipulation with suspects in an attempt to make them talk. (Lawyer, Portugal)

(...) Ainda no outro dia, falei com uma senhora que foi alvo de buscas e a quem a polícia chamou porque precisava de declarações. A senhora perguntou: "não é melhor levar um advogado?". A polícia respondeu: "não, não vale a pena maçar o advogado, venha cá falar"... Portanto, the law in book is different from the law in action Com os magistrados isso já não acontece porque tem de estar advogado,

⁸⁵ See [Constitutional Court Case Law 340/2013](#).

⁸⁶ See [Constitutional Court Case Law 298/2019](#).

agora com os polícias há alguma manipulação psicológica dos arguidos e alguma tentativa que eles falem. (Lawyer, Portugal)

A judge, for example, mentioned that there are subtle ways of getting defendants to speak.

And in practice there are subtle ways to [induce defendants to] speak. When you say: "so-and-so has already spoken, you know, look, think about it ...", these are all forms that are disturbing ... (Judge, Portugal)

E na efetividade existem formas subtis para [induzir os arguidos a] falar. Quando se diz: "o fulano tal já falou, o senhor é que sabe, veja lá, pense bem ...", tudo isto são formas que perturbam... (Judge, Portugal)

As mentioned above, interviewees highlighted that when the defendant is subjected to the first questioning before a judge that can decide on pre-trial detention, it is difficult to exercise the right to remain silent.

Remaining silent cannot harm the defendant, it cannot be used, nor can we promise that if he/she speaks he/she will have an advantage, because it is illegal, it is not provided by law. But in the tradition of Portuguese courts, this is taken into account and we do not ignore it. (...) One of the things that the defendants think is that if they confess they will not be arrested. We cannot guarantee that, because we are not the ones who decide. But what we can say is that the judge is not insensitive. So, if the defendant collaborates, shows regret, an alternative to prison can be found. This happens in practice; it is not indifferent. (Police officer, Portugal)

Não é a questão do silêncio que o pode prejudicar, isso não pode ser utilizado, nem nós podemos prometer que se ele falar vai ter vantagem, até porque é ilegal, não está previsto na lei. Mas na tradição da jurisprudência portuguesa isso é tido em conta e nós não ignoramos isso. (...) Uma das coisas que os arguidos pensam é que se confessarem não vão presos. Isso não podemos garantir, porque não somos nós que decidimos. Mas o que podemos fazer é que o juiz não é insensível. Por isso, se colaborar, mostrar arrependimento, arranja-se uma forma alternativa à prisão. Isso acontece na realidade, não é indiferente. (Police officer, Portugal)

As for the trial phase, as mentioned above, lawyers are the ones who identify some situations where judges pressure defendants to speak by reminding them that a confession could be beneficial when they consider their sentence.

e. Discussion of findings

The legal framework provides several safeguards for the right to remain silent.

Nonetheless, interviewees, mainly lawyers, but also other professionals, described informal practices that hinder the effectiveness of the right to remain silent, mainly in specific contexts where defendants are in a fragile position, like after a home search or when being questioned before a pre-trial judge that may decide on pre-trial arrest.

As for the right not to incriminate oneself, the interviewees highlighted the obligation of defendants to provide autographs for examination of his/her handwriting and the use in criminal proceedings of documents provided by the defendant to the tax authority under the duty to cooperate in tax inspection.

C.6 The right to be present at the trial and to have a new trial

One of the most challenged rights under the Portuguese national law is the right to be present at the trial. As explained above, the Portuguese legal regime has two different solutions for the right to be present at trial, depending on whether the defendant has made a **statement about his/her identity and residence**.

Where the suspect was never located to make a statement of identity and residence, the criminal proceedings are suspended, an arrest warrant is issued, and some civil measures are imposed on the suspect until he/she shows up in court (for example, the prohibition on obtaining public documents or the seizing of assets)⁸⁷. In this case, there is no trial until the suspect is personally notified of the pending criminal case.

In the majority of cases, however, the defendant makes a statement of identity and residence, thus fulfilling the obligation to indicate his/her residence, workplace or another address at his/her discretion. This document is signed by the defendant and must mention that the defendant was informed, among other things, of the obligation not to change his/her place of residence and not to be absent from it for more than five days, unless he/she reports a new place of residence or an address where he/she may be reached; that any ulterior notification shall be made by ordinary postal delivery to the reported address, except where the defendant indicates another address by application to be submitted or sent by registered mail to the Clerk's office of the Court where the case is pending; that failure to comply with these provisions shall imply his/her trial in absentia⁸⁸. From then on, notifications, namely the notification to attend the trial, are made by simple postal delivery⁸⁹. The court clerk draws up a note in the file indicating the date of dispatch of the notification and the address to which it was sent. The postman deposits the notification in the defendant's mailbox, draws up a statement indicating the date and confirming the exact location of the deposit and sends it immediately to the court. The notification is considered to be effective on the fifth day after the date indicated in the postman's statement⁹⁰.

The Criminal Procedure Code provides that when the defendant is notified of the date of the trial at the address given in the statement of identity and residence, he/she is presumed to be aware of the trial and the trial can be conducted in his/her absence, unless his/her presence is absolutely necessary for the discovery of the truth⁹¹. That presumption can be refuted by the defendant and if the trial was made in the defendant's absence it is considered null⁹².

The defendant tried in absentia must be personally notified of the sentence, either immediately after his/her detention or upon his/her voluntary appearance to court, and the period for filing the appeal is calculated from that date⁹³. The current criminal procedure does not provide for a remedy for the trial in absentia that resembles a retrial. The sentence may be appealed, both in terms of fact and in terms of law⁹⁴, but new evidence cannot be presented. The appeal may result in the annulment of the initial trial, and that the submission to a new trial, namely if the defendant was unlawfully tried in

⁸⁷ Article 335 of the [Criminal Procedure Code](#).

⁸⁸ Article 196 of the [Criminal Procedure Code](#).

⁸⁹ Articles 196 (2), 113 (1) (c), and 313 (3) of the [Criminal Procedure Code](#).

⁹⁰ Article 113(3) of the [Criminal Procedure Code](#).

⁹¹ Article 331 (1) of the [Criminal Procedure Code](#).

⁹² Article 119 (c) of the [Criminal Procedure Code](#).

⁹³ Article 333 (5) of the [Criminal Procedure Code](#).

⁹⁴ Article 428 and 431 of the [Criminal Procedure Code](#).

absentia. There is a debate, among scholars, whether this regime meets the minimum standards of Directive 2016/343 and some interviewees, as mentioned below, corroborate these doubts.

If the suspect cannot be located to formally become a defendant in a criminal case (that is, if he/she didn't make a statement of identity and residence), the criminal proceedings are suspended, an arrest warrant is issued, and some civil measures are imposed on the suspect until he/she shows up in court (for example, the prohibition on obtaining public documents or the seizing of assets). In this case, there is no trial until the suspect is personally notified of the pending criminal case.

a. Consequences of non-appearance

All interviewees pointed out that defendants, most of the time, make their statement of identity and residence during the investigation phase, generally before the police or the public prosecutor. This is the first act carried out when the suspect formally becomes a defendant. Together with the written document that provides the defendant with the information about his/her rights, s/he receives a second written document where the address provided by the defendant is filled in and there is a warning of the consequences of providing that address.

Judges and two lawyers, however, **questioned if defendants are always aware of the consequences** of the identity and residence statement.

Formally, they are informed, because they are notified at the address provided in the statement of identity and residence. But we live in a country where education in some sectors is still very low, information and literacy are still low and I believe that the lack of awareness of these consequences is a reality. (Judge, Portugal)

Formalmente, podem estar informados, porque são notificados pelo TIR, mas vivemos num país onde a escolaridade nalguns setores ainda é muito diminuída, a informação e a literacia ainda são baixas e acredito que a falta de noção dessa consequência seja uma realidade. (Judge, Portugal)

The statement of identity and residence that is given by the defendant means that that defendant will always be presumed to have been notified. And sometimes he/she isn't. Sometimes due to negligence, carelessness on the part of the defendant, sometimes due to lack of information. But it is perfectly possible to have an enormous number of trials of people that are not aware of the trial. (Lawyer, Portugal)

O TIR quando é fixado significa que a pessoa é sempre notificada e às vezes não é notificada por incúria, por desleixo, por falta de informação, mas pode haver imensos julgamentos em que a pessoa nem sabe que está a ser julgada. (Lawyer, Portugal)

One lawyer stresses that the information given is confusing, and that, most of the time, defendants are under stress or in a fragile state and are not able to fully understand the consequences.

For example, the obligation to communicate the new address, people always understand that it means that it is not possible to change their address, even educated people. All that information that is provided at a time of stress for people because they are being established as defendants, is not always well understood

and some are even drunk. And the question of judgment in absentia, even when we explain it, people have no idea and, especially, I think it has to do with the type of defendants, a large part, that is, those defendants who do not have much education, who also do not have a very developed civic culture, from unstructured families, and it is just another piece of paper. (Lawyer, Portugal)

Por exemplo, a obrigação de comunicar a nova morada, as pessoas percebem sempre que é não podem mudar de morada, e até pessoas instruídas. Toda aquela informação que é fornecida até num momento de stress para as pessoas porque estão a ser constituídas como arguidas, não é sempre bem compreendida e alguns até estão alcoolizados. E a questão do julgamento na ausência, até quando nós explicamos, as pessoas não têm noção e, especialmente, acho que tem que ver com o tipo de arguidos, uma grande parte, isto é, aqueles arguidos que não têm muita instrução, que também não têm uma cultura cívica muito desenvolvida, que são de famílias todas destrutturadas e aquilo é tudo mais um papel. (Lawyer, Portugal)

One judge provides two examples in order to substantiate his opinion on the current legal framework..

I have already conducted a trial of a dead person and this is something that can happen very easily. But worse than that, I have conducted a trial of a defendant who was in prison. When in the course of the investigation the defendant gives his/her identity and residence statement and indicates an address for the purpose of notification, from that moment on he/she is notified of the trial date at the address he indicated. When there is no indication of another address in the file, that person will be notified of the date of the trial, of the charge, at that address. What happened is that that person died before being notified of the charge and that information never made it onto the file. I conducted the trial in the defendant's absence because s/he was presumed notified and the presence of that defendant was not considered essential. (...) Then the sentence has to be notified in person and when the notification was attempted, I was informed that the defendant had died. The sentencing was given, a trial was conducted and that person had already died. The other example is more complex and it was something that led me to change my procedure. I conducted a trial of a person for theft and sentenced him to imprisonment. That person signed the identity and residence statement and was notified at the address given, and I conducted the trial in his absence. The evidence was very conclusive. (...) I made the judgment and convicted him. He had to be personally notified of the sentence. They went in search of him at the address he indicated in his identity and residence statement and were informed he was in prison. A complex problem arose: the trial was held in the defendant's absence and he has the right to be present, but he did not get to indicate another address during the proceedings. Can the defendant be held responsible for failing to indicate his new address, when the new address is prison? When this change of address is not really a voluntary act? I don't think so, and I have annulled the trial. I repeated the trial. The notifications were issued to the address given in the identity and residence statement, and we presume that the notifications reach the defendants. In that case, I was sure that the person's absence was not a voluntary act. From this case on, before notifying the date of the trial, I always ask for a search of the databases to see if the defendant is in the prison system. (Judge, Portugal)

Eu já julguei um morto e isso é uma coisa muito fácil de acontecer. Mas pior do que isso, já julguei um preso. Quando no decurso do inquérito o arguido presta termo de identidade e residência e indica uma morada para efeitos de notificação, a partir desse momento é notificado do julgamento para a morada que indicou. Quando ao processo não chega nenhuma indicação de outra morada, aquela pessoa vai ser notificada da data do julgamento, da acusação, para aquela morada. O que aconteceu é que essa pessoa morreu antes de ter sido notificada da acusação e essa informação nunca chegou ao processo. Eu fiz o julgamento na ausência porque se considerou que estava notificado e que a presença daquela pessoa não era imprescindível. (...) Depois a sentença tem de ser notificada pessoalmente e quando se tentou fazer a notificação, informaram-me que o arguido tinha falecido. A decisão foi proferida, fez-se julgamento e aquela pessoa já tinha morrido. O outro exemplo é mais complexo e foi uma situação que me levou a alterar um procedimento. Julguei uma pessoa por furto qualificado e condenei-o a pena de prisão efetiva. Aquela pessoa prestou termo de identidade e residência e foi notificada para a morada indicada e fiz o julgamento. A prova era muito concludente. (...) Fiz o julgamento e condenei-o. Ele teve de ser notificado pessoalmente da sentença. Foram à morada que ele indicou no termo de identidade e residência à procura dele e disseram que ele estava preso. Problema complexo que se colocou: o julgamento fez-se na ausência do arguido e ele tem direito a estar presente, mas ele não veio indicar outra morada. Pode ser imputada ao arguido a falta de indicação da nova morada, quando a nova morada é o estabelecimento prisional? Quando esta alteração de morada não é propriamente um ato de vontade dele? Parece-me que não e eu anulei o julgamento. Repeti o julgamento. Quando as notificações são realizadas para a morada do termo de identidade e residência, presume-se que são feitas. Naquele caso, tive a certeza que a ausência daquela pessoa não foi um ato voluntário. A partir deste caso, antes de fazer a notificação do agendamento do julgamento passei a pedir sempre para se pesquisar nas bases de dados se o arguido está no sistema prisional. (Judge, Portugal)

The two public prosecutors that were interviewed, however, tend to devalue these criticisms. They believe that this is the responsibility of the defendant and that the appointed lawyer has the duty to inform the defendant of the consequences of the statement of identity and residence.

There is a burden on the defendant himself/herself for the purposes of notifications (...) He/she has an obligation to [communicate any change of address], and that is why I think there is a compliance with the directive. Especially because we have a legal remedy after this, that is, if he/she is tried in absentia, then he/she has to be personally notified and as such the rights he/she has, namely the right to appeal, are explained. (Public prosecutor, Portugal)

Há um ónus do próprio arguido para efeitos de notificações (...) Ele tem a obrigação de [comunicar qualquer alteração de morada], e por isso é que eu acho que há uma conformidade da directiva. Até porque temos um remédio legal mais a frente para isso, ou seja, se é julgado na ausência depois tem que ser notificado pessoalmente e sendo notificado pessoalmente são explicados os direitos que ele tem, nomeadamente, o direito a recurso. (Public prosecutor, Portugal)

I suppose so [that defendants are always aware of the trial and the consequences of a no-show], I suppose, as a rule, yes, except for some situations of vulnerable defendants. But I think so. Also, in the trial phase defendants already have a lawyer and, therefore, the lawyer accompanies and informs them. (Public prosecutor, Portugal)

Eu suponho que sim [que os arguidos estão sempre cientes da existência de julgamento e das consequências da não comparência], suponho que em regra sim, tirando algumas situações da tal vulnerabilidade do arguido. Mas penso que sim. Também há a questão de que quando estão na fase de julgamento já têm advogado e, portanto, o advogado acompanha e informa. (Public prosecutor, Portugal)

As mentioned above, if the defendant who has made the identity and residence statement doesn't show up for trial, the judge must decide if the defendant's presence is crucial for the trial or not. If the judge decides that it is not, the trial can be held in the defendant's absence.

Situations where the presence of the defendant is essential are very rare. In practice, as I recall, there are not that many cases where this has been decided. Sometimes it would be useful for him/her to attend the trial from the beginning because he/she could confess and save everyone time. But postponing trials because the defendant's presence is considered to be essential..... (...) As a rule, the presence of the defendant is not considered essential, precisely because the evidence shouldn't depend on him/her for anything. (...). (Public prosecutor, Portugal)

É muito raro haver essa imprescindibilidade. Na prática, que eu me lembre, não há assim muitos casos em que isso tenha sido entendido. Seria útil às vezes ele estar desde o início porque podia confessar e poupar trabalho a toda a gente, mas estar a adiar julgamentos porque se consideraria imprescindível... (...) Por norma não se considera que a presença do arguido é imprescindível, exatamente porque a prova não deve depender dele para nada. (...) (Public prosecutor, Portugal)

One judge mentioned that the court may issue arrest warrants when the trial involves more than one defendant and it is important to hear both sides of the story. According to his experience, when a trial involves more than one defendant and one fails to show up at court, the other defendants tend to blame everything on the absent defendant. If the police fail to locate the absent defendant, the judge may try the person in absentia or may refer the trial of the defendant to a separate criminal proceeding.

b. What has been understood as “effective participation”?

Judges, public prosecutors and lawyers gave a **common general definition of effective participation** in trial: the right to be present at trial, to request and present evidence, to speak and be heard whenever the defendant chooses.

The defendant attends the trial, is watching everything that is going on, and at all times, except for circumstances that may hinder the progress of the proceedings, is able to ask to speak and be heard. (Public prosecutor, Portugal)

O arguido assistir ao julgamento, estar a ver tudo o que se passa de prova, e a todo o momento, tirando exceções em que pode prejudicar o andamento do processo, poder pedir a palavra e ser ouvido. (Public prosecutor, Portugal)

Two interviewees added two particular points. One judge mentioned that effective participation entails the right to be present or absent at the trial according to the defendant's own free and informed will. One lawyer stressed that effective participation entails being able to understand the proceedings which raises the issue of effective participation by who is unable to fully understand the procedure.

Effective participation is to first understand, and to understand from the point of view of facts and from the legal point of view, which implies that you must necessarily have a defender, a legal expert and, on the other hand, assert your version, to be able to intervene, to request evidence, to be able to contribute to the decision-making result of the proceedings. (Lawyer, Portugal)

Participação efetiva é, compreender em primeiro lugar e compreender do ponto de vista de facto e do ponto de vista jurídico que implica que tenha que ter necessariamente um defensor, um técnico de direito e, por outro lado, fazer valer a sua versão, poder intervir, requerer provas, poder contribuir para o resultado decisório do processo. (Lawyer, Portugal)

c. Vulnerable groups

Safeguards to ensure the defendants' right to be present at trial when it comes to vulnerable groups may arise in two distinct situations. First, ascertaining that the defendant is fully aware of the consequences of the statement of identity and residence. Second, ensuring that defendants, when present, actually understand what is happening during the trial.

As to the first situation, all interviewees have mentioned that the Criminal Procedure Code makes it mandatory to have a lawyer present in every procedural act (thus, also when the defendant makes the statement of identity and residence), when the defendant is under 21, deaf, mute, blind, illiterate, unfamiliar with the Portuguese language or thought not to have legal capacity. The presence of the lawyer should guarantee a due right to be informed. Defendants unfamiliar with the Portuguese language also have the right to translation and to an interpreter, as do defendants with a hearing impairment.

As for the second situation, interviewees, once again refer to translators and interpreters when defendants are unfamiliar with the Portuguese language or have a hearing impairment.

Nonetheless, when asked if they have ever had a case in which the defendant, although physically present, was unable to understand what was going on, interviewees referred to two specific cases: defendants that are unfamiliar with the Portuguese language and defendants with mental health issues or low IQ.

Interviewees find that cases of defendants with mental health issues or low IQ are more difficult to safeguard.

I once had a situation in which the defendant was clearly unaware of the charges against him. He was clearly a person who lacked the necessary personal conditions and who had no perception of things. He was a person with a severe cognitive

impairment. In the middle of the trial I asked for a medical examination. It had not been done during the investigation phase. (Judge, Portugal)

Tive uma vez uma situação em que claramente o arguido não tinha noção do que tinha sido acusado. Era claramente uma pessoa com falta de condições pessoais e que não tinha perceção das coisas. Era uma pessoa com um défice cognitivo acentuadíssimo. A meio do julgamento pedi uma perícia. Não tinha sido feita no inquérito. (Judge, Portugal)

Interviewees pointed out possible safeguards: a) the possibility of the defendant having a social worker or an expert present to assist him/her, which, according to them, doesn't happen often; b) the special attention paid by the lawyer to explain what is going to happen during trial.

The lawyer plays a key role before the trial starts. (...) If the defendant (...) has some reasoning difficulties and does not understand things well, I explain all the concepts and explain how things will go (...). I draw a picture and say, "You are going to sit here, the person who will be in front of you is a judge, the person who is on your left and at the judge's right hand is the prosecutor". (...) I explain that if he/she wants to talk to me at any time, just raise a finger and I will immediately go to him/her (...). The judge, when he/she acts as such, is fully aware of what he/she is doing (...) they are very careful. There are others who are not careful in their language, who speak aggressively, are harsh to the defendant, (...) and I see this quite often and I shouldn't (...) especially with vulnerable defendants. (Lawyer, Portugal)

O advogado tem um papel fundamental antes do início do julgamento. (...) Se é um arguido (...) que tem algumas dificuldades de raciocínio e não percebe bem as coisas, eu explico os conceitos todos e explico como é que as coisas vão decorrer (...). Faço um desenho e digo, "você vai-se sentar neste sítio, a pessoa que vai estar à sua frente é um juiz, a pessoa que está à sua esquerda e à direita do juiz é o procurador". (...) explico que se ele quiser falar comigo em qualquer momento é só levantar o dedo e eu imediatamente vou ter com ele (...). O juiz, quando é um juiz como deve ser, tem plena consciência do que está a fazer (...) são muito cuidadosos. Há outros que não têm cuidado nenhum na linguagem, falam de forma agressiva, são ríspidos para o arguido, (...) e eu vejo isso com alguma frequência e não devia (...) sobretudo com arguidos vulneráveis. (Lawyer, Portugal)

As for defendants who are unfamiliar with the Portuguese language, although the law makes it mandatory to provide for translation of documents and for an interpreter during the trial, interviewees, mostly lawyers, stress several practical inefficiencies.

This is especially true for defendants who do not speak Portuguese, because we do not have a simultaneous translation system. They have an interpreter, but the interpreter only intervenes when the defendant speaks. Therefore, the defendant does not follow what is happening, what others say. Often, there are no simultaneous translation booths in the rooms. In other words, they often do not realize what is going on in the courtroom ... Sometimes the interpreter sits next to the defendant and "whispers" into his ear more or less what is going on, but it is not a total simultaneous translation of everything that is happening. (Judge, Portugal)

Isso verifica-se, sobretudo, em arguidos que não dominam a língua portuguesa, porque nós não temos um sistema de tradução simultânea. Têm um intérprete, mas o intérprete só intervém quando o arguido fala. Logo, o arguido não está a acompanhar o que se passa, o que os outros dizem. Muitas vezes, nas salas nem existem gabinetes de tradução simultânea. Ou seja, muitas vezes não se apercebem do que passa na sala... Por vezes, o intérprete senta-se ao lado do arguido e vai-lhe "bichanando" ao ouvido mais ou menos o que se vai passando, mas não é uma tradução simultânea total de tudo o que está a acontecer. (Judge, Portugal)

Lawyers also gave examples of **poor-quality translations** and languages where it is not easy to find a translator, like Chinese.

It is a tragedy from two points of view, because there are a significant number of translators who aren't of sufficient quality... in the languages that I understand because then there are those languages that I do not understand and have no idea what they are saying, but in the languages that I know, the translation isn't of sufficient quality, either because he/she doesn't master the language well, or because he/she doesn't understand that translating has certain requirements, (...) and then it is also a tragedy because there is no obligation, at least practical, for a complete translation of what is happening for the accused to understand what is happening and there should be. (Lawyer, Portugal)

É uma tragédia a dois pontos de vista, porque há um número significativo de tradutores que não tem qualidade suficiente ... das línguas que eu percebo porque depois há aquelas línguas que eu não percebo e não faço ideia do que estão a dizer. Mas nas línguas que eu sei, a tradução não tem qualidade suficiente, ou porque não domina bem a língua, ou porque não percebe que traduzir tem determinadas exigências, (...) e depois também é uma tragédia porque não há uma obrigação, pelo menos prática, de tradução integral do que se está a passar para o arguido perceber o que se está a passar e devia haver. (Lawyer, Portugal)

d. Discussion of findings

When it comes to the right to be present at the trial, Portuguese criminal procedure relies greatly on the efficiency of the statement of identity and residence. This legal mechanism transfers responsibility to the defendant for the correct notification of the trial. Interviewees showed different perspective on the awareness of defendants as to the consequences of the statement of identity and residence. Judges tend to say that it is very possible that defendants are not always aware of the consequences of non-appearance. Public prosecutors have a completely opposite opinion: it is a question of the defendants' responsibility and a duty of the lawyer to properly inform the defendant of the consequences. Lawyers, on the other hand, had more diverse opinions. Two lawyers pointed out that it is extremely rare to hear a defendant saying that he/she was tried without knowing and two lawyers stated that it occurs often, either due to the lack of information or to the carelessness of the defendant.

In general, judges, public prosecutors and lawyers gave a common definition of effective participation in the trial. Judges and lawyers pointed out cases where that right is not fully fulfilled, mainly when defendants are unfamiliar with the Portuguese language. Those interviewees mentioned the poor quality of some translations and the difficulty in arranging for translation for certain languages.

C.7 Challenges and improvements

a. Challenges

Table 2: Challenges concerning the presumption of innocence

	What in your opinion are the biggest challenges in relation to the presumption of innocence?
Judges	For one judge, it is to preserve the existing legal rights, that are being threatened by public debate about creating new instruments to fight corruption and similar crimes, such as the new type of crime of unlawful enrichment, that is based on presumptions. Another judge believes that the biggest challenge is to guarantee the effective exercise of presumption of innocence in practice, since there are informal behaviours that hinder that right.
Public prosecutors	According to one public prosecutor, the biggest challenge is to preserve the presumption of innocence outside the criminal proceedings, due to media coverage. Another public prosecutor states that the biggest challenge is to balance the rights of the defendants with the rights of the victims.
Lawyers	Lawyers identified two main challenges: avoiding obstacles to the rule of law in practice (both informal behaviours and the use of indirect evidence for certain types of crime); and ensuring responsible media coverage.
Police officers	The main concern of police officers is media coverage and its effects on the presumption of innocence in the eyes of the public. One police officer also feels there must be less disclosure about what is going on until the final stage of the investigation.

When asked about the main challenges to the presumption of innocence, the answers of the interviewees were quite diverse. All of them (except one) focused on issues addressed previously in the interview.

For one judge the biggest challenge is to preserve the existing legal rights and to prevent legislation from hindering them. The interviewee gives the example of the debate that is going on in Portugal on the possible approval of a law introducing the crime of illegal enrichment. In his opinion, this would be a breach of the rule of law and the rules of the burden of proof. The interviewee said that the risk of the approval of this new type of crime consists on the way it was proposed. As the interviewee stated, from a given fact unlawful conduct is presumed. And this, according to the interviewee, would pose a threat to the principle of legality.

I think the biggest risks are eventually in the way you start to design the types of crimes. A paradigmatic example will be drug trafficking and also illicit enrichment. What is being debated about illicit enrichment is clearly touching those borders. (Judge, Portugal)

Acho que os maiores riscos estão eventualmente na maneira como se começam a desenhar os tipos de ilícito. Um exemplo paradigmático será no tráfico e também no enriquecimento ilícito. O que se discute no enriquecimento ilícito está claramente a afetar essas fronteiras. (Judge, Portugal)

Another judge states that to ensure an effective exercise of the presumption of innocence, more emphasis should be put on training judges, especially in fundamental rights.

The biggest challenge is, above all, that the principle of presumption of innocence is no longer just that constitutional consecration and that it has a practical effect and that it is seen as such until the final judgment, as it is seen from the constitutional point of view and from the international rules that are in force in our legal system, (...) (Judge, Portugal)

O maior desafio é sobretudo que o princípio de presunção de inocência deixe de ser só aquela consagração constitucional e que tenha uma efetivação prática e que seja encarado como tal até ao trânsito em julgado, tal como é encarado do ponto de vista constitucional e dos próprios instrumentos internacionais que vigoram no nosso ordenamento jurídico (...) (Judge, Portugal)

Lawyers identified two main challenges: avoiding obstacles to the rule of law in practice that are bigger in this era of security; and ensuring responsible media coverage, stressing that media coverage may influence not only public perception, but also judges. As one lawyer puts it,

The biggest challenges I think are the question of the media and the conditioning that this causes... This is related to the greater use of indirect evidence for certain types of crime (...). Therefore, I think that the media and the public and incomplete disclosure of the cases, their dissemination on the internet and by the media (...). The majority of the crime in which it is not black and white and in which it is a matter of indirect proof, I think there is a very big risk. (Lawyer, Portugal)

Os maiores desafios acho que são a questão dos media e os condicionamentos que isso provoca... Isso relacionado com maior utilização da prova indireta para certo tipo de criminalidade (...). Portanto, eu acho que os media e a divulgação pública dada e não completa dos casos, a sua divulgação na internet e pelos media (...). Muita da criminalidade em que não é branco e preto e em que é muito mais uma questão de prova indireta, aí acho que há um risco muito grande. (Lawyer, Portugal)

According to lawyers, in order to tackle these challenges legal actors and journalists must become more aware of these issues and receive proper training.

"(...) the great challenge is the training of journalists, so that they realize that they are important in the community. (...) A change is necessary and journalism schools will play a very important role here. The journalist cannot function with the presumption of guilt, precisely because of the dignity of the human person". (Lawyer, Portugal)

(...) o grande desafio é a formação dos jornalistas, para eles perceberem que são importantes no seio comunitário. (...) É necessária uma evolução e aqui vão ter um papel muito importante as escolas de jornalismo. O jornalista não pode funcionar com a presunção da culpa, precisamente porque há a dignidade da pessoa humana. (Lawyer, Portugal)

The biggest challenge is to raise awareness among people, judicial actors in particular, and the community in general (...) the presumption of innocence is a

normative command that must be taken seriously and that must be internalised and put into practice by each one of us in our roles, daily, and in every situation. (Lawyer, Portugal)

O maior desafio é consciencializar as pessoas, os operadores judiciais, em particular, e a comunidade, em geral, (...) a presunção de inocência é um comando normativo que deve ser levado a sério e que deve ser interiorizado e posto em prática por cada um de nós no papel que lhe cabe, diariamente, e em cada situação. (Lawyer, Portugal)

Police officers were the most consistent professional group. They all identified media coverage as the biggest challenge. But, unlike lawyers who see media coverage as harmful both for public opinion and for criminal proceedings, police officers only see the negative effects of media coverage in public opinion.

I would say that it is what has the power to shape people's minds, the press. The use of the media, and of the police also, to attack innocent people and to expose them and try them publicly. (Police officer, Portugal)

Eu arriscaria dizer que é aquilo que tem o poder de moldar a mente das pessoas, a imprensa. A imprensa ser instrumentalizada e a polícia também com essa finalidade de atacar pessoas que são inocentes e vão ser expostas e julgadas publicamente. (Police officer, Portugal)

Another big challenge, for me, are the media. Because the media have a much greater impact than we do. (...) And social networks too. We often see absurd things on social media and people believe them because they are written on social media (...). We, in our awareness-raising actions, find it very difficult to counter what is transmitted by the media and social networks. (Police officer, Portugal)

Outro grande constrangimento, para mim, não deixa de ser os órgãos de comunicação social. Porque os órgãos de comunicação social têm um impacto muito superior ao nosso. (...) E as redes sociais também. Nós vemos muitas vezes coisas absurdas nas redes sociais e as pessoas acreditam nelas porque estão escritas nas redes sociais (...). Nós, nas nossas ações de sensibilização, temos muita dificuldade em contrariar aquilo que é transmitido pela comunicação social e pelas redes sociais. (Police officer, Portugal)

According to one police officer, some steps should be taken to make the investigation phase more secure.

I think that there will have to be less disclosure about what goes on until the final stage of the investigation, because it is inferred whether there is strong evidence that could lead to the conviction or accusation or the acquittal. (Police officer, Portugal)

Penso que o caminho terá que ser de maior reserva naquilo que se passa até à fase final do inquérito, porque aí infere-se se há provas indiciárias fortes que possam levar a condenação ou acusação ou à absolvição. (Police officer, Portugal)

As for public prosecutors, one mentioned media coverage and preserving the presumption of innocence outside criminal proceedings, i.e. for the general public. Another public prosecutor highlighted an innovative issue: the need to balance the rights of the defendants with the rights of the victims. According to the interviewee, this can be achieved if criminal proceedings are not seen as a procedure of parties, but as a procedure that seeks to unveil the truth. Also, the interests at stake at any given moment must be balanced and put into perspective: if there is a need to protect the victim's physical integrity, it must be done in a way that limits the restriction of the defendant's rights to the minimum.

b. Improvements

Table 3: Have defendants' procedural rights become stronger or weaker over the past 2-3 years?

	In your opinion, have defendants' procedural rights (such as those discussed during this interview) become stronger or weaker over the past 2-3 years?
Judges	One judge believes they are more or less the same and the other believes that they have become more fragile.
Public prosecutors	One public prosecutor states that they are more or less the same. The other believes they are stronger in some aspects, but also weaker in others due to the economic crisis.
Lawyers	Lawyers gave very diverse answers. One said they are more or less the same; another mentioned that they are stronger; the third one mentioned that they are weaker; and the fourth stated that it depends on the type of proceedings.
Police officers	All police officers mentioned that defendants' rights are stronger.

Apart from the police officers who were unanimous in stating that defendants' rights have become stronger in the past few years, the remaining professionals gave very diverse answers. One should bear in mind, as mentioned in section B5, that Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016, on strengthening certain aspects of the presumption of innocence and on the right to be present at the trial in criminal proceedings, was not transposed into Portuguese national law, since the legal framework in force was considered to meet all the requirements of the Directive. The interviewees could not associate any changes on the defendants' rights to the Directive.

One of the conclusions that can be drawn is the lack of knowledge on the Directive itself and its existence (...). It could be useful for both lawyers and the general public to raise awareness on the Directive and its positive effects in what may be the strengthening of the right to the presumption of innocence in Portugal (Public prosecutor, Portugal)

Uma das conclusões que pode ser retirada, é o desconhecimento da própria Diretiva e da existência dela (...). O dar a conhecer a Diretiva e as virtualidades dela naquilo que pode ser o robustecimento do direito à presunção de inocência em Portugal, podia ser útil quer para advogados, quer para o público em geral (Public prosecutor, Portugal)

The interviewees' assessment is based on legal practice or on legal reforms that were introduced regardless of the Directive. The interviewees highlight three main reasons for defendants' rights

having become weaker: 1) legal practice; 2) media coverage; 3) changes in the legal regime. One judge believes that defendants' procedural rights have become more fragile.

Defendants' rights are becoming weaker. This is in an informal way, not as a result of legislation, but from legal practice and from this opening to public [scrutiny] that justice has had and continues to have. (Judge, Portugal)

Tem-se verificado uma fragilização e uma diminuição dos direitos dos arguidos. Uma fragilização informal, não decorrente da legislação, mas da prática jurídica e dessa abertura ao [escrutínio] público que a justiça teve e continua a ter. (Judge, Portugal)

One lawyer, however, is not so lenient on the legal framework. In his/her opinion, procedural guarantees have been reduced in the past few years, not necessarily with respect to the presumption of innocence, but to other issues such as, for example, the limitation of the right to appeal, the limitation of the scope of the investigation in criminal proceedings, the possibility of using, in court, declarations of the defendant from previous proceedings. When asked if this was contradictory to our progress as a society, the interviewee states s/he believes it isn't, since the progress of society has resulted in a greater demand from people in general and from a certain type of people that are at the centre of the scrutiny of criminal action, which has been accompanied by a great demand for speed and effectiveness. According to him/her, we have limited procedural guarantees in the name of speed and effectiveness of the criminal proceedings.

The interviewees that stressed that defendants' rights are stronger focused mainly on the legal framework and on the amendments made in 2007. One lawyer mentioned that the law is more robust and this is seen in practice as regards the defendants' procedural rights, mainly after 2007. He gives one example: when the defendant is questioned in the investigation phase, he/she must be informed about the facts of the case. The interviewee points out that rulings from the European Court of Human Rights have played a fundamental role, since they shape the way judges make their rulings.

In law, rights have become stronger and in practice they are also stronger because they are in law and have to be communicated to the defendant. (Lawyer, Portugal)

Em termos da lei tornaram-se mais forte e na prática também são mais fortes porque eles estão na lei e têm que ser comunicados ao arguido. (Lawyer, Portugal)

Police officers, who unanimously believe defendants' rights are stronger, list as factors for that improvement the quality of the professionals in the criminal justice system, the amendments to the Criminal Procedure Code that were introduced mainly in 2007, such as the changes in legal secrecy, and that defendants know their rights better.

I think that there has been a change in recent years with respect to their rights and even in the recognition of these rights by them because the defendants are increasingly aware of them. (...) They are perfectly aware of these rights and sometimes even think they have more rights than what they actually have. (...) I think defendants' rights are adequate and I think they have many rights compared to the old Code of Criminal Procedure and what the practical application was a few years ago. (Police officer, Portugal)

Noto uma evolução nos últimos anos em relação aos direitos deles e mesmo até no que respeita ao reconhecimento desses direitos porque eles, cada vez mais, estão

cientes disso. (...) Têm perfeita consciência desses direitos e muitas vezes até acham que têm direitos a mais do que aquilo que, efetivamente, têm. (...) parecem-me adequados os direitos que lhes assistem e eu entendo que os arguidos têm muitos, muitos direitos em comparação com aquilo que era o nosso Código de Processo Penal e aquilo que era a aplicação prática há uns anos atrás. (Police officer, Portugal)

c. Suggestions

Table 4: Further protection of the right to be presumed innocent

	Suggestions on further protection of the right to be presumed innocent
Judges	Training and assessment of legal professionals. Improve the right to legal counselling and access to a lawyer, mainly during the time defendants spend in prison.
Public prosecutors	Improve the quality of interpretation and translation. Improve general knowledge of the presumption of innocence.
Lawyers	Training of professionals and the media. Caution in the use of circumstantial evidence.
Police officers	Better media.

Interviewees repeatedly mentioned training, either focusing on the need for better training of legal professionals or on the need to improve the quality of the media. Furthermore, three innovative suggestions were made that may affect the presumption of innocence directly or indirectly. The first was mentioned by a judge, who argued that there is a lack of legal assistance to defendants serving prison sentences. He believes that the right to legal counselling and access to a lawyer, mainly during the time defendants spend in prison, should be improved. He states that inmates are often unaccompanied, lack access to a lawyer and/or do not benefit from the counselling of qualified lawyers. Access to a qualified lawyer could be decisive for the way they serve their sentences. When an inmate has more than one prison sentence, a lawyer, under some circumstances, can request a cumulative sentence - that is, a single sentence that will encompass all the inmate's sentences. The practical effect is shortening the prison sentence. If the cumulative sentence is not requested, the inmate serves the consecutive sentences.

Our criminal procedural system is protective of defendants. It is balanced. (...) I think that what could be perfected is the participation of lawyers in the post-sentencing phase (...). I think that the convicted defendants lack legal counselling from the moment of conviction (...). People enter a no-man's-land. (Judge, Portugal)

O nosso sistema processual penal é garantístico. É equilibrado. (...) Acho que verdadeiramente o que podia ser mais trabalhado era a participação dos advogados na fase de execução das penas (...). Eu acho que os condenados são muito pouco acompanhados a partir de momento da condenação (...). As pessoas entram numa terra de ninguém. (Judge, Portugal)

The second innovative suggestion came from a public prosecutor, who believes that there are greater concerns on the quality of interpretation and translation and these questions have not yet been

addressed properly. This point of view is in tune with the concerns expressed by several interviewees, as mentioned in section C6.

There is absolutely no control over this and this raises questions in terms of safeguarding translators and interpreters (...). (Public prosecutor, Portugal)

Não há controlo absolutamente nenhum sobre isso e isso gera questões ao nível da própria salvaguarda dos tradutores e intérpretes (...). (Public prosecutor, Portugal)

The third one was mentioned by a lawyer. According to him, there is a deification of circumstantial evidence which can be a menace to the presumption of innocence.

“(...) replacing the evidence with illations, with presumptions. But what is a fact is that there is also the rule of the free assessment of evidence. That has a lot to do with judicial training, with judicial exemption and impartiality that must be emphasized”. (Lawyer, Portugal)

(...) o substituir a prova por ilações, por presunções. Mas o que é facto é que também há a livre apreciação da prova, há muito de formação do magistrado, de isenção e imparcialidade do magistrado que é preciso sublinhar. (Lawyer, Portugal)

PART D. GENERAL ASSESSMENT

Interviewees made a positive overall assessment of the legal framework that ensures the protection of the presumption of innocence and acknowledge that it is a generally accepted and embodied principle in daily practice of the criminal justice system. As for the legal framework three particular items were highlighted by some interviewees. The first two have to do with the right to be present at trial. Firstly, the legal regime and consequences of the statement of identity and residence was considered by some interviewees (judges and lawyers) as having a negative impact on the defendant's right to be present at trial. Secondly, the quality and under regulation of translation services that results, in practice, in poor translation services and in a limitation to an effective participation of the defendant in trial.

The third item is a concern focused on possible amendments to the law that are under public debate over the past years, related to the creation of a new type of crime – the crime of unlawful enrichment. Interviewees (once again judges and lawyers) believe that this type of crime, if enforced as it has been debated, could lead to convictions based merely on presumptions and, thus, could harm the presumption of innocence.

Nonetheless, interviewees have also, at some point, identified circumstances that challenge the application of that principle in practice. One can divide challenges to the application of the presumption of innocence into two broad categories: a) the ones that undermine the presumption of innocence inside the criminal proceeding and may influence the final outcome or, at least, the way the procedure is conducted; b) the ones that hinder the presumption of innocence in the general public eye.

As to challenges in the application of the presumption of innocence principle **inside the criminal proceedings**, the following circumstances were identified: a) the quality of the defence; b) the way

the criminal file is organised and taken to trial; c) the attitude of the professionals towards the criminal case; d) the public exposure of the case; e) media coverage.

Interviewees were, nevertheless, not unanimous in the identification of those circumstances. Police officers tend to be more positive in the evaluation of the application of the principle, in its various dimensions, in practice. Lawyers, on the other hand, are the ones who show a more sceptical and critical approach. This is particularly relevant when it comes to the assessment interviewees make on the effect of media coverage inside the criminal proceedings. Police officers, public prosecutors and one judge argue that media coverage does not influence the outcome of a criminal case. It can influence the way it is handled, by trying to be clearer in the decisions, but it does not affect judicial decisions or the way investigations are carried out. On the other hand, one judge and lawyers manifest a different opinion, underlining that in cases with intense media coverage, either due to particularly exposed defendants (like politicians or public figures) or to the type of crimes involved, judicial decisions and investigation are influenced by the media.

Probably the most emphatic criticism to legal practice arises when answering on questions on the right to remain silent. Although interviewees stated that the legal framework provides for a robust protection of the right to remain silent in theory and for several safeguards some, mainly lawyers, but also other professionals, described informal practices that hinder the effectiveness of the right to remain silent, mainly in specific contexts where defendants are in a fragile position.

As for challenges in the enforcement of the presumption of innocence principle **outside the criminal proceedings**, interviewees were unanimous in underlining the relevance of media coverage in influencing the public perception on the defendants' guilt or innocence. Interviewees claimed for a more prepared media, but they have also acknowledged the deficiencies of the justice system institutions in dealing with the press. Among the professionals interviewed, the police officers were the ones who revealed the most efficient and organised form of communication with the media. Opposite to other professions, police officers reported to have concrete guidelines on who is in charge of the communication, how to communicate with the media, which information to divulge and how to preserve the interested persons identity. The Public Prosecution seems to be evolving through a similar path, but communication is reported to be, still, mainly reactive to the pressure of the media. An organised and well-defined and transparent system of communication can be identified as a best practice.

In close relation with the impact of media coverage in the public opinion is the issue of public exposure of defendants that are under restraining measures. A defendant in handcuffs is a powerful image and may influence the public perception on the defendants' guilt. A good practice that was identified in the interviews was the existence of special entrances in justice buildings for detained or arrested defendants that protect them from the eye of the public or from being filmed or photographed by the media.

PART E. CONCLUSIONS

The interviewees made a positive overall assessment of the legal framework of the presumption of innocence, namely in what concerns the protection of fundamental rights of the defendants. However, they underline some shortcomings arising from the practical implementation of the legal framework.

In general, interviewees make a clear distinction between high profile cases (that can relate either to the characteristic of the defendants involved that are considered to be public figures, or to the characteristics of the crimes at stake, like for example domestic violence) and routine criminal cases.

As for the first, that are under intense media coverage or public scrutiny, interviewees highlight the tense relationship between the criminal justice system and the media and the difficulty in adequately balancing the right to information and the preservation of the presumption of innocence. Although interviewees acknowledge the possibility of media coverage having positive effects on the presumption of innocence, since it could contribute to greater efforts to impartiality and objectivity by courts and it could push the judicial system to perform better, they focus mainly on the negative effects of such exposure. In these high-profile cases, public exposure is the center of the interviewees' concerns. Public exposure, as having a negative impact on the presumption of innocence, is mentioned in relation to several dimensions of that principle. All of the interviewees mention that media coverage potentiates a public judgement, often based on inaccurate information. Lawyers claim that the justice system is put under pressure and may be inclined to favor public expectations. In addition, the media coverage influences the personal views and attitudes of the different professionals, which can impact the application of the presumption of innocence principle. Another issue raised by the interviewees is the breach of legal secrecy by the media, which is considered a generalised practice. Although it is a crime, it has no legal consequences for journalists. According to the interviewees, the breach of legal secrecy often not only damages the rights of the defendants, but also contributes to a generalized view of the judicial system as not very transparent. Regardless of the real impact inside and outside of the judicial system, it is evident that an efficient, transparent and ethical relationship between the judicial system and the media is lacking. One way to surpass those shortcomings is to establish direct channels of communication between the different institutions of the judicial system (courts and Public Prosecution) and the media, with clear and transparent rules, that can adequately incorporate both the need to ensure the protection of the defendants' rights and to guarantee the public right to information. Alongside, the individuals in charge of that communication must benefit from specific training that allows them to efficiently perform their role.

On the other hand, interviewees emphasised the urgent need to provide for more intensive training to legal actors, as well as journalists, on fundamental rights, both during initial and ongoing training. Ongoing training is seen as playing a fundamental role, not only in providing legal actors with the key instruments to effectively apply the presumption of innocence in all its dimensions, but also in making them particularly aware to routine practices that are considered to be inappropriate.

As for the latter – the routine cases – emphasis is put on legal practice and on attitudes of judicial professionals, mainly when the right to remain silent is debated. Lawyers and one judge describe some situations where defendants are, in a very subtle way, when they are most fragile, pressured to waive his/her right to remain silent. According to them, this happens, mostly, when the defendant is first questioned before a judge who decides on pre-trial detention. In those cases, interviewees noted that remaining silent is most often harmful for the defendant, since it may result in a more severe enforcement measure. This disclosure may question the role of the pre-trial judge and the criteria used to decide on an enforcement measure. Once again, training is considered to be the key to transform legal culture.

In routine cases, another recurring issue raised is the ability of the defendant to be fully aware of what is happening in a given moment of the procedure. This issue is raised when the defendant is informed of his/her rights – usually when he/she becomes formally a defendant. This general information is given in a written document and some interviewees (mostly lawyers) argue that they are not dully explained. Moreover, such information is given, normally by the police, where the defendant can be unaccompanied of a lawyer, and at that moment, other documents are given to the defendant – such as the statement of identity and residence and information on the possibility to get legal aid – which makes it more confusing. The need to review the forms where the defendants' rights are described,

rephrasing them in a clear language is highlighted. The lack of effectiveness of the right to be informed is also mentioned referring to the statement of identity and residence and its consequences, for exactly the same reasons. Lastly, it is also referred to specifically for defendants who are unfamiliar with the Portuguese language. Although some interviewees have mentioned that the police already have pre-translated into different languages statements of identity and residence and lists of the defendants' rights and duties to hand over (which can be signed as a best practice), interviewees highlight the poor quality of translations and the lack of conditions in courts to host an effective simultaneous translation service.

The interviewees also underlined two issues that affect both media and routine cases. First, the need to equip courts, public prosecutors' buildings and police headquarters with exclusive and private access for the defendants, preventing them from being seen and filmed in handcuffs by the general public, which could also be a solution for vulnerable groups. In fact, due to the architecture of some courts, the defendant has to pass through public spaces before entering the courtroom when restrained. In these cases, they can cover their faces with their own clothes, but this can be degrading. The public exposure of defendants in handcuffs puts them in a fragile position and can encourage a public judgement of guilt. Second, lawyers underlined the access by the trial judge to the statements made during the investigation phase. Even though the statements made to the police cannot be used in the trial phase, the trial judges have access to those statements because they are part of the criminal file that goes to court. This is considered particularly harmful because the judge will have the opportunity to read it and it may influence his/her judgement. A rearrangement of the criminal file that goes to court, containing only the documents that are identified by the prosecution and the defence as evidence to be produced during trial, could avoid judges from being influenced by statements or other documents that cannot be used in the trial phase.

Annex A - SR 23 Presumption of innocence - Case study

Member State case study/ media coverage #1		
1	Reference details/Name/Title (please indicate here how the case has been publicly referred to)	The case has been publicly referred to as the “Murder of the triathlete” or the “Rosa Grilo case”.
2	Brief description of the case	The “Rosa Grilo case” is one of the most high-profile media cases in Portugal in the past few years. A woman and her lover were accused of murdering and disposing of the body of the woman’s husband, who was a triathlete. On 3 March 2020, the jury court issued its decision. The woman was convicted with an overall sentence of 25 years’ imprisonment, the maximum prison sentence in Portugal, for the crimes of aggravated murder, desecration of a corpse and possession of a prohibited weapon. Her lover was only convicted to a 2-year suspended sentence for the possession of a prohibited weapon. He was acquitted of the charges of aggravated murder and desecration of a corpse on the basis of the <i>in dubio pro reo</i> principle. This decision is currently under appeal.
3	Timeline of events (briefly outline major events in order to capture the nature of the case)	On 16 July 2018, the victim was reported missing by his wife. According to her, he had left the house to go training on his bicycle and never returned. Following this report, the searches for the victim began and lasted until 24 August 2018, the day his body was found. The disappearance and the searches were widely reported and followed daily by the media, specifically by television. The autopsy revealed that the victim had been murdered. On 26 September 2018, the victim’s wife and her lover were detained by the police and accused of the murder. Both were subject to pre-trial detention, but her lover was freed, after the trial had begun, on 6 December 2019, by decision of the court, since it was recognised that the evidence against him was weak. The trial began on 10 September 2019. The Public Prosecution requested a jury trial, which is not very usual in Portugal. The jury court issued its decision on 3 March 2020. The case was sent to the Court of Appeal of Lisbon on 26 May 2020.
4	Media coverage (how did the media refer to the suspects? How were the suspects presented, e.g. handcuffed, in	The case was highly covered by the media, specifically by television, from the beginning, i.e., since the victim was reported missing and found dead and until the decision of the jury court was announced. It is expected that this coverage will continue during the appeal. Since both suspects were subject to pre-

<p>prison clothes? Did law enforcement authorities or other actors inform about the case, e.g. in a press conference? Please include references, including links where possible)</p>	<p>trial detention, they were often filmed or photographed handcuffed whenever they arrived or left the court to be heard. The men usually tried to cover his face with clothes. The women did not cover her face, but, occasionally, tried to hide the handcuffs⁹⁵. In Portugal, the defendants don't wear prison clothes and, therefore, they are able to choose what they wear. As a rule, whenever the defendants go to court they try to present themselves with appropriate, more formal clothing, which was also the case. The media frequently described the clothes and appearance of the defendants, specifically the woman's, namely during the trial hearings⁹⁶. The media coverage of the clothes worn by the woman was subject to comedy sketches, aiming to satirise the absurd information that was being reported by some media outlets⁹⁷. Both defendants were referred in the media by their name. The man was almost always referred to as her lover. The media coverage included details of the evolution of the investigation, including the defendants' own statements, during the investigation phase, in violation of the secrecy of justice. This coverage also involved public scrutiny and disclosure of their personal and professional lives.</p> <p>When the suspects were arrested, the Criminal Police gave a press conference providing a few details about the case, including the reasons that justified the arrest. At that time, only the name of the woman was publicly known. With regard to the other defendant, the Criminal Police only revealed the sex, age, profession and relationship with the woman⁹⁸. The lawyers of both defendants often talked with the media about public details of the case, either through television interviews or before and after the trial</p>
--	---

⁹⁵ Observador (2018), "Medidas de coação só no sábado. Rosa Grilo ouvida durante horas, coautor fala amanhã" ("Coercion measures only Saturday. Rosa Grilo was heard for hours, co-defendant speaks tomorrow"), 28 September 2018; TVI 24 (2019), "Rosa Grilo acusa PJ de "agarrar dois idiotas" para os incriminar da morte do marido" ("Rosa Grilo accuses the Criminal Police of "grabbing two idiots" to frame them for the death of her husband"), 19 November 2019; SIC Notícias (2020), "A morte de Luís Grilo" ("The death of Luís Grilo"), TV report of the programme "Police cases", 3 March 2020

⁹⁶ Observador (2019), "Rosa Grilo insiste na tese dos angolanos e mantém que é inocente. Juízes apontam várias contradições" ("Rosa Grilo insists on the Angolan angle and maintains that she is innocent. Judges point out several contradictions"), 10 September 2019.

⁹⁷ TVI (2019), "Gente Que Não Sabe Estar vestiu o papel de polícia da moda e fez a análise ao guarda-roupa utilizado por Rosa Grilo durante o julgamento" ("People Who Don't Know How to Be had the role of fashion police and analysed the clothes worn by Rosa Grilo during the trial"), Gente Que não Sabe Estar TV programme, 9 October 2019.

⁹⁸ Observador (2018), "Rosa Grilo terá tido "motivações de natureza financeira e sentimental"" ("Rosa Grilo had "financial and emotional motivations""), 27 September 2018.

		hearings ⁹⁹ . Family members of the woman also gave interviews to the media ¹⁰⁰ . Finally, it is important to point out that the woman felt compelled to engage with the media several times. Before being arrested, she gave interviews to TV stations, with her face concealed ¹⁰¹ . After being arrested, she contacted the media from inside the prison, namely by phone or letters to present her version of the facts and try to prove her innocence ¹⁰² .
5	Key issues (e.g. major allegations of guilt in the media; where the presumption of innocence was concerned, reactions of persons involved and the media)	The woman was described by the media as the main suspect in the murder of her husband since the beginning ¹⁰³ . During the trial, the media often reported on her relaxed behaviour, stressing that she sometimes smiled at the questions asked by the judge and that she was not coherent, giving testimonies full of contradictions that did not make any sense, to the point of tiring the judge ¹⁰⁴ . The monitoring of the trial, especially in the case of television stations, was commented on by experts almost as if a “parallel trial” was being carried out. The behaviour of the woman after the crime was always extremely closely scrutinized by the media, through constant reports about her daily life, even before being arrested. In fact, one of the concerns of the woman’s lawyer regarding the jury trial was that the jurors had access to various information, namely through the media, that may not correspond to the truth ¹⁰⁵ . As mentioned above, due to the intensive media coverage of the case, the woman felt completed to

⁹⁹ SIC Notícias (2020), “A morte de Luís Grilo” (“The death of Luís Grilo”), TV report of the programme “Police cases”, 3 March 2020; Expresso (2020), “A dúvida foi a chave: Rosa Grilo é que ficou com a culpa toda” (“Doubt was key: Rosa Grilo got all the blame”), 8 March 2020.

¹⁰⁰ Público (2018), “Pai de Rosa Grilo acredita na inocência da filha e não conhecia alegado amante” (“Father of Rosa Grilo believes in his daughter’s innocence and did not know the alleged lover”, 28 September 2018; SIC Notícias (2020), “A morte de Luís Grilo” (“The death of Luís Grilo”), TV report of the programme “Police cases”, 3 March 2020.

¹⁰¹ SIC Notícias (2018), “As explicações e contradições de Rosa Grilo numa entrevista à SIC” (“The explanations and contradictions of Rosa Grilo in an interview to SIC”), 27 September 2018.

¹⁰² SIC (2020), TV programme “Linha Aberta”, 12 February 2020; SIC Notícias (2019), “Deu-lhe um tiro atrás da cabeça. Só me lembro do Luís sorrir e caiu-me no colo” (“He shot him in the back of the head. I only remember Luís smiling and falling into my lap”), 19 March 2019.

¹⁰³ Diário de Notícias (2018), “Rosa Grilo foi sempre suspeita: as pistas que levaram à detenção” (“Rosa Grilo was always a suspect: clues that lead to her detention”), 27 September 2018.

¹⁰⁴ Expresso (2019), ““Que cansa a senhora dona Rosa, a senhora cansa-me” (“Such fatigue Mrs. Rosa, you make me tired”), 10 September 2019; Observador (2019), “Rosa Grilo insiste na tese dos angolanos e mantém que é inocente. Juizes apontam várias contradições” (“Rosa Grilo insists on the Angolan angle and maintains that she is innocent. Judges point out several contradictions”), 10 September 2019; Diário de Notícias (2019), “Mensagens, sorrisos e seguros de vida. Rosa Grilo volta a ser apanhada em contradições” (“Messages, smiles and life insurances. Rosa Grilo is caught in contradictions again”), 17 September 2019

¹⁰⁵ SIC Notícias (2019), “Advogada de Rosa Grilo critica recurso ao tribunal de júri” (“Lawyer of Rosa Grilo critiques the use of the jury court”), 10 September 2019.

		engage with the media to defend her innocence several times, trying to present her version of the facts ¹⁰⁶ . Her family members also pointed out that she was not a “monster” in interviews given to the media ¹⁰⁷ . Other persons who know the woman and the victim were also interviewed. After being acquitted, the man gave interviews aiming to reinforce his innocence ¹⁰⁸ .
6	Key consequences or implications of the (case with regard to the presumption of innocence (with a focus on public reaction to publications in the media which might lead to a public debate)	The Rosa Grilo case was highly covered by the media and commented on in several TV programmes for several months. Even though the man was acquitted based on the <i>in dubio pro reo</i> principle, some opinion articles underlined that it was hard to believe that the woman had committed the crime without any help from others ¹⁰⁹ . The media coverage underlined that his acquittal was largely due to the inability of the Criminal Police to present evidence. This circumstance brought to the discussion the preparation of the police and the Public Prosecution to lead the investigation and the fact that the Public Prosecution accused without having robust evidence, thus also calling into question the principle of the presumption of innocence. This issue was especially relevant also because, as reported by the media, the public prosecutor admitted that there was some “facilitation” in the collection and evaluation of the evidence, but the testimony of the woman was sufficient to incriminate the accused man as well ¹¹⁰ . The intensive media coverage helped deepen the interest of citizens about the case. Contrary to what normally happens, citizens often lined up at the entrance of the court to attend the trial hearings, which are public, many times from early in the morning, before the court opened its doors ¹¹¹ . Moreover, on some

¹⁰⁶ SIC (2020), TV programme “Linha Aberta”, 12 February 2020.

¹⁰⁷ SIC Notícias (2018), “Mãe de Rosa Grilo: “Não acredito que tenha posto um monstro no mundo” (“Mother of Rosa Grilo: “I do not believe that I brought a monster in the world”), 30 November 2018.

¹⁰⁸ For e.g. TVI 24 (2020), “António Joaquim em entrevista à TVI: “Gostaria de ter uma explicação da Rosa para o que aconteceu ao Luís” (“António Joaquim in an interview to TVI: “I would like to have an explanation from Rosa about what happened to Luís”), 5 March 2020.

¹⁰⁹ Expresso (2020), “Os dias felizes de Rosa Grilo” (“The happy days of Rosa Grilo”), 5 March 2020.

¹¹⁰ Jornal de Notícias (2019), ““Prova testemunhal e pericial é zero” reconhece MP sobre Rosa Grilo e António Joaquim” (““Testimonial and expert evidence is zero” the public prosecution recognises regarding Rosa Grilo and António Joaquim”), 26 November 2019.

¹¹¹ Observador (2019), “Rosa Grilo insiste na tese dos angolanos e mantém que é inocente. Juízes apontam várias contradições” (“Rosa Grilo insists on the Angolan angle and maintains that she is innocent. Judges point out several contradictions”), 10 September 2019.

		occasions, due to the outrage that this case caused among the population, the defendants were booed and accused by groups of citizens when arriving or leaving the court ¹¹² .
In case the case brought before a court or a non-judicial mechanism – the following questions would also need to be answered		
7	What was the decision of the case (summarize briefly and indicate reference details of the case)? How did media report on the decision?	<p>On 3 March 2020, the jury court issued its decision¹¹³. The woman was convicted with an overall sentence of 25 years' imprisonment, the maximum prison sentence in Portugal, for the crimes of aggravated murder, desecration of a corpse and possession of a prohibited weapon. Furthermore, she had to pay €42,000 of compensation to her son for non-pecuniary damages and was convicted with an additional penalty of debarment from succession and, therefore, is unable to receive the inheritance resulting from her husband's death. The man was only convicted to a 2-year suspended sentence for the possession of a prohibited weapon. He was acquitted of the charges of aggravated murder and desecration of a corpse on the basis of the <i>in dubio pro reo</i> principle, as well as the additional penalty of suspension of duties as a court clerk and from the payment of the compensation. According to the jury court, the evidence produced in the trial does not make it possible to conclude with the necessary certainty that another person was involved besides the woman in committing the crime. Currently, this decision is under appeal at the Court of Appeal of Lisbon and, therefore, is not final.</p> <p>When reporting the decision, some media outlets pointed out the relaxed behaviour of the woman in the court during the reading of the sentence, saying that she was smiling, speaking to her lawyer, sending kisses to her family and never showed any signs of weakness¹¹⁴. On the other hand, the man was reportedly quiet, sad and never looked other people in the eyes¹¹⁵. The media placed particular emphasis on the coldness, insensitivity and indifference of the woman to the life of her husband, pointing out that she adopted strange behaviours after her husband's death, as stated in the decision¹¹⁶. The media also</p>

¹¹² Jornal de Notícias (2018), "Viúva de triatleta e amante vaiados à chegada ao tribunal" ("Widow of the triathlete and lover booed when arriving to court"), 28 September 2018; SIC Notícias (2020), "A morte de Luís Grilo" ("The death of Luís Grilo"), TV report of the programme "Police cases", 3 March 2020.

¹¹³ Portugal, Loures Central Criminal Court, Judgment of the Jury Court, Case no. 186/18.8GFVFX, 3 March 2020.

¹¹⁴ TVI 24 (2020), "Os pormenores que marcaram a sentença de Rosa Grilo" ("The details that decided the sentence of Rosa Grilo"), 4 March 2020.

¹¹⁵ TVI 24 (2020), "Juíza diz que Rosa Grilo mostrou uma frieza de ânimo "que nunca tinha visto"" ("Judge says that Rosa Grilo showed a coldness "that she had never before witnessed""), 3 March 2020.

¹¹⁶ Expresso (2020), "Rosa Grilo condenada a 25 anos de prisão pelo homicídio de Luís Grilo, amante absolvido" ("Rosa Grilo was convicted to 25 years in prison for the murder of Luís Grilo, lover acquitted"), 3 March 2020; Correio da manhã (2020), "Rosa Grilo condenada a 25 anos de prisão pela morte do marido Luís Grilo" ("Rosa Grilo convicted

	underlined that, according to the jury court, the version of events presented by the woman to explain her husband’s death was not credible and was devoid of logic and coherence and that she acted deliberately, freely, consciously and with a premeditated plan to murder her husband to benefit from advantageous financial circumstances ¹¹⁷ . With regard to the man, the media reported that he was acquitted due to the <i>in dubio pro reo</i> principle and that, even though the court recognised that he behaved strangely after the crime, particularly through his uninhibited closeness to the woman, there were significant doubts regarding his possible role in the murder and, therefore, he was acquitted ¹¹⁸ .
--	---

Member State case study/ media coverage #2	
1	Reference details/Name/Title (please indicate here how the case has been publicly referred to)
	The case has been publicly referred to as the “Ana Saltão case”.
2	Brief description of the case
	A woman, who is a Criminal Police inspector, was accused of stealing a co-worker’s gun and murdering the grandmother of her husband for financial reasons. This case also was judged by a jury court, which is not very usual in Portugal. On 8 September 2014, she was acquitted of the charges by the court based on the <i>in dubio pro reo</i> principle by a jury court. However, in 27 May 2015, the Coimbra Court of Appeal issued a completely different decision, and convicted Ana Saltão to 17 years’ imprisonment for the crimes of aggravated murder and embezzlement, as well as to the additional penalty of suspension of

to 25 years’ imprisonment for the death of her husband Luís Grilo”), 3 March 2020; Diário de Notícias (2020), “Rosa Grilo condenada a 25 anos de prisão pela morte do marido. António Joaquim absolvido do homicídio” (“Rosa Grilo convicted to 25 years’ imprisonment for the death of her husband. António Joaquim acquitted from the murder”), 3 March 2020; TVI 24 (2020), “Juíza diz que Rosa Grilo mostrou uma frieza de ânimo “que nunca tinha visto”” (“Judge says that Rosa Grilo showed a coldness “that she had never before witnessed””), 3 March 2020.

¹¹⁷ Expresso (2020), “Rosa Grilo condenada a 25 anos de prisão pelo homicídio de Luís Grilo, amante absolvido” (“Rosa Grilo was convicted to 25 years in prison for the murder of Luís Grilo, lover acquitted”), 3 March 2020; Diário de Notícias (2020), “Rosa Grilo condenada a 25 anos de prisão pela morte do marido. António Joaquim absolvido do homicídio” (“Rosa Grilo convicted to 25 years’ imprisonment for the death of her husband. António Joaquim acquitted of the murder”), 3 March 2020.

¹¹⁸ Expresso (2020), “Rosa Grilo condenada a 25 anos de prisão pelo homicídio de Luís Grilo, amante absolvido” (“Rosa Grilo was convicted to 25 years in prison for the murder of Luís Grilo, lover acquitted”), 3 March 2020; Diário de Notícias (2020), “Rosa Grilo condenada a 25 anos de prisão pela morte do marido. António Joaquim absolvido do homicídio” (“Rosa Grilo convicted to 25 years’ imprisonment for the death of her husband. António Joaquim acquitted of the murder”), 3 March 2020; TVI 24 (2020), “Os pormenores que marcaram a sentença de Rosa Grilo” (“The details that decided the sentence of Rosa Grilo”), 4 March 2020; Expresso (2020), “A dúvida foi a chave: Rosa Grilo é que ficou com a culpa toda” (“Doubt was key: Rosa Grilo got all the blame”), 8 March 2020.

		<p>duties as a Criminal Police inspector and the payment of a compensation to the State of €319,12 (the value of the missing gun and ammunitions). This decision was later overturned by the Supreme Court of Justice on 17 March 2016, according to which the facts were insufficient to prove that the defendant was guilty, contrary to the decision of the Coimbra Court of Appeal, but instead of confirming the acquittal, ordered a re-trial of the case by the court of first instance. On 29 September 2017, the woman was acquitted again by a jury court based on the <i>in dubio pro reo</i> principle. This decision was confirmed by the Coimbra Court of Appeal in 9 January 2019 and the case was, finally, settled. The high media coverage of the case was intensified considering the circumstances of the crime due to the fact that she was a Criminal Police inspector. This case raised important issues regarding the protocols for collecting, recording and storing evidence, due to how some of the evidence was handled.</p>
3	<p>Timeline of events (briefly outline major events in order to capture the nature of the case)</p>	<p>On 21 November 2012, the victim was murdered in her house with several gunshots. The body was found by family members the same day. On 22 November 2012, the woman and her husband, the victim's grandson, who were both Criminal Police inspectors, were asked to go to the Northern Directorate of the Criminal Police (where they worked) to be heard regarding the case. On 25 November 2012, the Criminal Police went to the woman house and demanded that she handed over the clothes she was wearing the day the victim was murdered. On the next day, the Criminal Police noticed that the defendant had a burn mark on her hand that could have been caused by a firearm. The woman was detained a few days after the crime was committed. At first, she was subject to pre-trial detention, but was later released before the trial. On 8 September 2014, a jury court acquitted the defendant from all the charges on the basis of the <i>in dubio pro reo</i> principle. However, on 27 May 2015, the Coimbra Court of Appeal issued a completely different decision and convicted the defendant to 17 years' imprisonment for the crimes of aggravated murder and embezzlement, as well as to the additional penalty of suspension of duties as an inspector of the Criminal Police and to the payment of a compensation. The Coimbra Court of Appeal considered proved that the defendant had stolen a gun from her co-worker, travelled from the place she lived to the city where the victim was killed (around 100 km of distance) and used it to murder the victim. On 17 March 2016, the Supreme Court of Justice order the re-trial of the case arguing that the decision of the Coimbra Court of Appeal draw deductions from the facts and that facts were insufficient to prove that the defendant was guilty. On 29 September 2017 a jury court acquitted the defendant, again, on the basis of the <i>in dubio pro reo</i> principle. Finally, the Coimbra Court of Appeal, on 9 January 2019, confirmed the decision of the jury court and the defendant was, once and for all, acquitted.</p>

4	<p>Media coverage (how did the media refer to the suspects? How were the suspects presented, e.g. handcuffed, in prison clothes? Did law enforcement authorities or other actors inform about the case, e.g. in a press conference? Please include references, including links where possible)</p>	<p>The Ana Saltão case was highly covered by the media from when it started, in 2012, and until it ended, in 2019. The high-profile nature of this case is linked with the violent nature of the crime and the profession of the defendant, who is a Criminal Police inspector. In fact, the media always reported on the defendant referring to her profession¹¹⁹. The media also mentioned the defendant's assertiveness when giving statements to the court, explaining, in great detail, all the aspects described in the indictment with the aim of proving her innocence¹²⁰. The defendant was not presented by the media with handcuffs. With regard to clothes, as already mentioned, in Portugal the defendants are able to choose what they wear. The woman was always photographed well dressed, with elegant clothes¹²¹. The lawyer for the defendant talked with the media about the public details of the case, heavily criticising how the investigation was conducted and reinforcing the justice of the acquittal decision¹²². The woman did not give statements to the media. Finally, we highlight that the presiding judge of the Coimbra Court of Appeal gave a statement to the media in December 2018, explaining the postponement of the decision of the Court of Appeal, due to the need for further debate¹²³.</p>
5	<p>Key issues (e.g. major allegations of guilt in the media; where the presumption of innocence was concerned, reactions of persons involved and the media)</p>	<p>When reporting the case, the media generally focused on the doubts of the court regarding the guilt or innocence of the defendant, which led to her acquittal on the basis of the <i>in dubio pro reo</i> principle, pointing out several issues that raised doubts, namely the fact that her phone was turned off or the fact that her coat, which had gunpowder residues, was inexplicably contaminated, which could result from her work experience or help from colleagues¹²⁴. There were more sensationalist headlines that stated</p>

¹¹⁹ Público (2017), “Inspetora da PJ Ana Saltão absolvida pelo Tribunal de Coimbra” (“Criminal Police inspector acquitted by Court of Coimbra”), 29 September 2017; SIC Notícias (2019), “Chegou ao fim processo de inspetora da PJ absolvida, condenada e de novo absolvida” (“The case of the Criminal Police inspector acquitted, convicted and acquitted again ended”), 9 January 2019.

¹²⁰ Diário as Beiras (2017), “Ana Saltão repete inocência em tribunal” (“Ana Saltão reaffirms innocence in court”), 23 May 2017.

¹²¹ Expresso (2014), “Por que motivo foi absolvida a inspetora da PJ acusada de matar a avó do marido?” (“Why was the Criminal Police inspector accused of killing the grandma of her husband was acquitted?”), 9 September 2014; Correio da manhã (2019), “Inspetora da PJ Ana Saltão novamente absolvida da morte da avó do marido” (“Criminal Police inspector acquitted again of the death of her husband’s grandmother”), 9 January 2019;

¹²² Público (2017), “Inspetora da PJ Ana Saltão absolvida pelo Tribunal de Coimbra” (“Criminal Police inspector acquitted by Court of Coimbra”), 29 September 2017; Jornal de Notícias (2019), “Defesa diz que absolvição de Ana Saltão é um “triumfo da justiça”” (“Defence says that acquittal of Ana Saltão is a “triumph of justice”), 9 January 2019.

¹²³ SIC Notícias (2019) “Relação de Coimbra confirma absolvição de Ana Saltão” (Coimbra Court of Appeal confirms the acquittal of Ana Saltão), 9 January 2019.

¹²⁴ For e.g. Expresso (2014), “Por que motivo foi absolvida a inspetora da PJ acusada de matar a avó do marido?” (“Why was the Criminal Police inspector accused of killing the grandma of her husband was acquitted?”), 9 September 2014; Público (2019), “Relação de Coimbra confirma absolvição da inspetora da PJ Ana Saltão” (“Coimbra Court of Appeal confirms the acquittal of the Criminal Police inspector Ana Saltão”), 9 January 2019.

		<p>that Ana Saltão “got rid of murder”, implying that she was guilty even though she was acquitted¹²⁵. The media also frequently referred to the journey of the case, pointing out the existence of contradictory decisions, which can raise some doubts about whether she is innocent or guilty¹²⁶. The case was highly covered by the media, including by commentary segments of TV programmes, where criminal cases are often discussed. In at least one TV programme, a montage of the crime was made attributing the crime to her. The defendant filed a complaint against three persons for defamation in a commentary segment of a morning TV programmes, and asked for a compensation. According to the media, she had watched the commentary show from prison (at a time when she was detained) and felt embarrassed, humiliated and scorned with the commentaries. The media also points out that she had to be isolated and protected by prison guards¹²⁷. However, the commentators were not convicted.</p>
6	<p>Key consequences or implications of the case with regard to the presumption of innocence (with a focus on public reaction to publications in the media which might lead to a public debate)</p>	<p>The Ana Saltão case rekindled an important debate on the collection and preservation of evidence, pointing out the need for adequate protocols. For example, the coat used as evidence in the trial raised a number of relevant issues concerning the procedure for collecting, recording and storing evidence due to its possible contamination. It was argued that there was a break in the chain of custody of evidence, because the defendant delivered the clothes herself in a plastic bag and that the coat could have been contaminated because it was photographed on the floor of an office of the Coimbra Directorate of the Criminal Police, without proper care¹²⁸. Moreover, due to the high-profile nature of the case, the trial hearings were often attended by several people¹²⁹. For example, the media reported that during the reading of the second decision of the jury court (re-trial), it was necessary to move to a bigger courtroom due to the high number of persons that wanted to attend¹³⁰.</p>
<p>In case the case brought before a court or a non-judicial mechanism – the following questions would also need to be answered</p>		

¹²⁵ Correio da manhã (2019), “Inspetora da Judiciária livra-se de homicídio” (“Criminal Police inspector gets rid of murder”), 10 January 2019.

¹²⁶ Público (2019), “Relação de Coimbra confirma absolvição da inspetora da PJ Ana Saltão” (“Coimbra Court of Appeal confirms the acquittal of the inspector of the Criminal Police Ana Saltão”), 9 January 2019.

¹²⁷ Correio da manhã (2014), “Ana Saltão leva Júlia Pinheiro a julgamento” (“Ana Saltão takes Júlia Pinheiro to court”), 10 July 2014.

¹²⁸ Costa, S.; Santos, F. (2019), “The social life of forensic evidence and the epistemic sub-cultures in an inquisitorial justice system: Analysis of Saltão case”, *Science & Justice*, Vol. 59, Issue 5, pp. 471-479.

¹²⁹ See, for e.g., Expresso (2019), “Chegou ao fim processo de inspetora da PJ acusada de matar a tiro a avó do marido” (“The case of the Criminal Police inspector accused of shooting and murdering her husband’s grandmother ended”), 9 January 2019.

¹³⁰ Público (2017), “Inspetora da PJ Ana Saltão absolvida pelo Tribunal de Coimbra” (“Criminal Police inspector acquitted by Court of Coimbra”), 29 September 2017.

7	<p>What was the decision of the case (summarize briefly and indicate reference details of the case)? How did media report on the decision?</p>	<p>On 9 January 2019, the Coimbra Court of Appeal confirmed the decision of the jury court of 29 September 2017¹³¹. According to the Court of Appeal, the evidence presented did not allow the court jury to determine with certainty that the defendant committed the facts established in the indictment and, therefore, the defendant was acquitted on the basis of the <i>in dubio pro reo</i> principle. This decision is final. When reporting the decision, the majority of the media outlets stated that, after several years and some conflicting decisions, the defendant was acquitted due to the <i>in dubio pro reo principle</i>, explaining its meaning – when in doubt, the decision should favour the defendant¹³². The media also pointed out some of the doubts recognised by the court, namely regarding the alleged motivation of the crime and the flaws in the execution of the alleged murder plan¹³³. However, as mentioned above, there were some sensationalist headlines stating that the defendant “got rid of murder”, implying that she was guilty even though she was acquitted¹³⁴.</p>
---	---	---

¹³¹ Portugal, Court of Appeal of Coimbra, Case no. 849/12.1JACBR.C2, 9 January 2019.

¹³² TVI 24 (2019), “Antiga inspetora da PJ Ana Saltão absolvida pelo Tribunal da Relação” (“Former Criminal Police inspector Ana Saltão acquitted by the Court of Appeal”), 9 January 2019; Jornal de Notícias (2019), “Defesa diz que absolvição de Ana Saltão é um “triumfo da justiça”” (“Defence says that acquittal of Ana Saltão is a “triumph of justice”), 9 January 2019.

¹³³ Público (2019), “Relação de Coimbra confirma absolvição da inspetora da PJ Ana Saltão” (“Coimbra Court of Appeal confirms the acquittal of the Criminal Police inspector Ana Saltão”), 9 January 2019.

¹³⁴ Correio da manhã (2019), “Inspetora da Judicária livra-se de homicídio” (“Criminal Police inspector gets rid of murder”), 10 January 2019.