

**Conference - Opening of the Judicial Year of the Italian Criminal Lawyers
Defending liberty of the criminal defender in order to guarantee the
independence of the judge**

12.02.2022

Panel: A MANIFESTO ON LIBERAL CRIMINAL LAW AND FAIR TRIAL

Dear Colleagues of the Union of Italian Criminal Sections (UCPI),

Dear Colleagues of the Criminal Section of Catanzaro,

Dear Members of the Panel,

Firstly, let me thank you for inviting me to take part in this important conference of the opening of the judicial year. This speech is made in my individual capacity, but I also thank you for the opportunity to speak on behalf of the European Criminal Bar Association and the Portuguese Criminal Lawyers Association (*Forum Penal*).

Each new year, we make new year's resolutions. Decisions to change our life, to improve it.

The Manifesto on Liberal Criminal Law and Fair Trial is also a collective new year's resolution. A resolution to make change.

As you state in your document, we live in time of crisis. The risk of erosion of the fundamental rights and principles of criminal law and procedure is real.

Your Manifesto is an important "call to arms". A call to recall and strengthen the traditional principles of criminal law and procedure.

But recalling principles is not enough. One needs to revamp such principles, in a way that they remain *practical and effective* and not *theoretical and illusory* in a world which has dramatically changes since their inception.

How can these fundamental principles, collected in a systematic manner in the 18th century by *Beccaria*, and then others, adapt to the new world?

A world where populism and justicialism is growing and using criminal law and procedure as an instrument to meet populist ends.

Taking the example of the presumption of innocence - referred to in your Manifesto:

You state that

“The most evident factor concerning criminal law is the end of the presumption of innocence, i.e. the cornerstone of the criminal law system inspired by the concept of liberal democracy, given form in Italy by enlightened philosophers (Beccaria)”

As proposed in Principle no. 19 (the principles of liberal criminal justice - within the limits of constitution):

“A liberal criminal justice system is based on the presumption of innocence of the accused person.”

The presumption of innocence was built to function in a world where media attention, and media outreach in the realm of criminal justice, was much less than today.

This does not mean that in older times, media did not look into criminal justice, especially in most prominent cases. But it did certainly not look into every little criminal case, as it does today. And it did not reach everyone's homes and *screens*. And it did not remain virtually *forever accessible*.

There is no point in proclaiming the presumption of innocence in the courtroom when - by the time a person is brought to trial they have already been exposed and convicted to public pillorying on the *web* and *media*. The public pressure to get a conviction is massive. What prosecutor, what judge can do but to put an official stamp of guilt on the person already proven guilty?

In this scenario, we, criminal lawyers (at least in Portugal), often feel as if judges in the courtroom (there being notable exceptions, of course) are constantly pressuring and criticizing our work, as if we were just throwing a spanner in the works of a trial which end has already been pre-decided.

Instead of the prosecution fighting to prove guilt, it is the defence fighting to prove innocence.

A while ago, Forum Penal (the Portuguese Criminal Lawyers Association), commenting on Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, said precisely that

“[...] the main problem is that nowadays the presentation of the accused is ultimately intermediated by media outlets. These do not abstain from filming the accused and reporting about the case in a way that often gives an impression of guilt before the public, for example recounting partial details of the investigations which point in the direction of guilt, or describing investigation conclusions leading to the same result.

This is aggravated in the cases in which the defendant or the accused is held in pre-trial detention.”

So, how can this problem be tackled?

You propose, in Principle no. 30 (the principles of liberal criminal justice - within the limits of constitution):

“Before the final conviction, the media must respect the presumption of innocence. They must provide information about the trial instead of holding a parallel one for their own benefit.”

This is an important step which should definitely form part of this *new world liberal criminal trial principles*.

Media cannot just use criminal justice as an instrument to get *cheap news* and to make profit at the expense of the people facing the system.

I believe this has to be tackled at least in two ways:

- Imposing rules upon the media.
- Changing the paradigm of the public intervention of lawyers about cases.

As a Colleague of the Board of Forum Penal suggested (João Barroso Neto), some ideas could be:

- The presumption of innocence based on the EU directive is too narrow, since it is only directed at the police and public bodies. There should also be rules imposed upon the media and appropriate sanctions.
- There needs to be a code of conduct/ ethics for journalists that also entails effective sanctions and allows to hold the media accountable for violations of justice secrecy and non-objective reporting of criminal cases, which results in public pillorying of the accused. This cannot be considered as a situation where the press is exerting a “public interest” role.
- Instead of limiting in a very strong manner the declarations of lawyers to the media, the Bar Associations (this is the case in Portugal) should create a communication office that could be used by the lawyers to provide objective information countering the attacks on the presumption of innocence outside of the Court.
- To this, we could also add: the Bar Associations should intervene and defend people’s rights in a collective manner, taking resolute action (if needed before courts) to defend the presumption of innocence in the public realm.

These are just minor contributions to the debate (I know there are always difficulties in imposing rules on the media which can contribute with other

fundamental freedoms, and there are many public interventions that are done not by media but also by persons and entities whom we don't even know who they are, using the internet).

I hope the debate is triggered by your manifesto, not only in Europe but around the world.

Hopefully, as Beccaria did in his time, you will be able to export these ideals and turn them into reality.

In the EU context, as I said elsewhere (<https://journals.sagepub.com/doi/full/10.1177/20322844211061548#:~:text=https%3A//doi.org/10.1177/20322844211061548>):

“My view is that we should never let out of our sight the vision of what the EU is all about: a process to create ‘an ever closer union among the peoples of Europe’ (Article 1, para 2, Treaty on European Union), founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights (Article 2 Treaty on European Union). Some will say this is a rather oneiric statement - and maybe they are right. But for me this is what the EU is about and we, as European Union citizens, and our governments, should be clear about it and establish a fully-fledged Union. Hesitation leaves room for ambivalence which is in turn exploited by those who want to undermine the dream of a true Union.”

This Union should be strengthened, and your Manifesto is a good example of an effort to bring about this union.

Thank you for your attention.

Vânia Costa Ramos