Francesco Biondo / Gevisa La Rocca /
Viviana Trapani (eds.)

Information Disorder

Learning to Recognize Fake News

PETER LANG

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The Fake News project was developed as a social project to suggest an idea of a plural, open, and dialectical society. One product of social action is public opinion, which directly and indirectly influences policy decisions, including those concerning the control and prospects of social innovation, thus exerting pressure on any kind of democratic regime. Disinformation hinders the free process of public opinion building by using various means to negatively influence public opinion with the effect of widening the chasm between decision-making power and active citizenry, who in turn needs to be properly informed to usefully contribute to achieving publicly shared goals in a transparent manner.

The Editors
Francesco Biondo is an associate professor of Legal Philosophy at the Department of Law, University of Palermo.

Gevisa La Rocca is an associate professor of Sociology of Communication at the Kore University of Enna.

Viviana Trapani is an associate professor of Industrial Design at the University of Palermo and coordinator of the Master's Degree Course in *Design and Culture of the Territory*.

ISBN 978-3-631-88556-7

www.peterlang.com

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Bibliographic Information published by the Deutsche Nationalbibliothek
The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data is available in the internet at http://dnb.d-nb.de.

Library of Congress Cataloging-in-Publication Data
A CIP catalog record for this book has been applied for at the Library of Congress

This volume has been made possible by the co-funding of ERDF to the "FAKE NEWS" project, through Regione Siciliana (Italy) - Assessorato delle Attività Produttive - CUP G79J18000630007 under the call entitled: "Programma Operativo FESR 2014-2020 della Regione Siciliana, Avviso pubblico per l'attuazione dell'Azione 1.1.5 Sostegno all'avanzamento tecnologico delle imprese attraverso il finanziamento di linee pilota e azioni di validazione precoce dei prodotti e di dimostrazione su larga scala".

Partnership:

- IT HUB S.R.L Milan | *leader of project – ICT know how*
- University of Palermo | *partner*
  Dipartimento di Architettura | *coordination of social and scientific activities*
  Dipartimento di Giurisprudenza | *scientific support in law disciplines*

With collaboration of:

- University of Salerno | *research support*
  Dipartimento di Informatica | *scientific support in informatics*

Cover illustration: © Cinzia Ferrara

ISSN 2511-9753
ISBN 978-3-631-88556-7 (Print) · E-ISBN 978-3-631-88557-4 (E-PDF)
E-ISBN 978-3-631-88558-1 (EPUB) · DOI 10.3726/b19996

Peter Lang – Berlin · Bruxelles · Lausanne · New York · Oxford
This publication has been peer reviewed.

www.peterlang.com

Contents

Part III Justice and Misinformation

Part IV Information and Misinformation Design

Preface

by Ferdinando Trapani[1]

The Smart Specialisation Strategy (RIS3), namely the national or regional innovation strategies for smart, sustainable and inclusive growth in the European Union, co-funded by the European Commission, with the general objective of concentrating European resources on emerging technology areas that can be developed in the region by focusing on building local knowledge rather than transferring external technological resources.

The Sicily Region, with the ERDF Operational Programme 2014–2020, Action 1.1.5 for "Support for the technological advancement of companies through the financing of pilot lines and early product validation and large-scale demonstration actions", has selected the Fake News project in the effort to support the technological development of tools to control information exchange on the Web to counter the phenomenon of disinformation.

The "Fake News" initiative was implemented by the University of Palermo as a partner in support of the lead partner It.Hub/Blasting News (Milan-Lugano) and was generally articulated in six different phases. The partners were involved in different ways: the university for expertise in the humanities (sociology of communication, law and information design) and the lead partner for advanced technology (ICT). This publication is part of the dissemination of the project and is in many ways its conclusion in terms of the outcome of the academic research carried out by Sicilian faculty with the contribution of other scholars who participated in the project and supported it in terms of transdisciplinary critical analysis.

The Fake News project was developed as a social project to suggest an idea of a plural, open, and dialectical society. One product of social action is public opinion, which directly and indirectly influences policy decisions, including those concerning the control and prospects of social innovation, thus exerting pressure on any kind of democratic regime. In non-democratic regimes, public opinion is strongly influenced by the ruling power. Disinformation hinders the free process of public opinion building by using various means to negatively influence public opinion with the effect of widening the chasm between decision-making power and active citizenry, who in turn needs to be properly

1 Scientific responsible of the Fake News project, Department of Architecture, University of Palermo.

informed in order to usefully contribute to achieving publicly shared goals in a transparent manner.

The volume is divided into four parts that in some ways reflect the cognitive path that the project followed: from technological (ICT) to social instances, reflections highlighting the impact of disinformation on law and the safeguarding of public information to considerations on the implications for visual communication, architecture and urban planning.

Based on these studies, we believe it is possible to open a new field of study in which social studies can find a way to engage with other crucial disciplines to build connections between society, justice and quality of communication in the transformation of the places and spaces of the physical and virtual city.

Part I Technology and News on Web

Caterina Scaccianoce

Correctness of judicial information and impartiality of the judge: The distortions of the media criminal trial

Abstract: This analysis, which focuses on the difficult relationship between criminal justice and judicial information, examines only some of the most controversial aspects, starting with an undisputed premise, namely that over time the function of communication in judicial matters has changed, evolving from informative to formative. I will reflect on the hiatus between the real justice as exercised in courtrooms and justice perceived by the public through media narratives, paying particular attention to the distortions of the so-called media trial and the resulting bias in the exercise of judicial power. Finally, we will consider possible solutions, which, in a perspective of striking a balance between the values at stake, may preserve the dignity of the individual, starting with the innovations introduced by Italian Legislative Decree No. 188 of 2021, implementing Directive 2016/343/EU on the presumption of innocence.

Keywords: Fair trial, judicial misinformation, fake news, judicial reporting, media criminal trial, presumption of innocence, judicial impartiality

The criminal trial and information: Constitutional values and procedural rules

Just as information is the most valuable asset for a liberal democracy, provided that it is reliable and plural, so too jurisdiction is an exercise of democracy only if it is known and understood.

In the folds of the complex relationship between criminal justice and judicial information there are many controversial aspects that deserve closer scrutiny. The terms "criminal justice" and "information" seem to have undergone, over time, profound changes in the way in which they interact: communication in judicial matters today has taken on a different function from the traditional one, i.e., it is no longer only "informative", but also "formative"[1]. It is an increasingly cumbersome function, which is expressed in full in the so-called media

1 "From a perspective ennobled by representing a form, albeit embryonic, of control by the people over the administration of justice we have slipped into the ambition of the people themselves to judge" (Iacoviello, 2016, p. 220). The most blatant deformation occurs when the media trial steals the scene from professional justice (Amodio, 2016).

trial. A direct consequence of this change is the progressively growing distance between real justice, exercised in the courtroom, and justice perceived by the public through the media narrative. Disinformation, dissemination of fake news that arouses anxiety and alarm, and increasing loss of credibility of the justice system are the possible effects, in addition to the risk, closely related to the loss of confidence in the justice system, of opening the way to that form of degenerate democracy called ochlocracy, i.e., government by the mob, the people, their drives and their instincts (Giostra, 2018b), in which the feelings, moods and resentments of the so-called people's court take control.

At the root of these phenomena, as I said, is the media trial, which, set up in parallel to the investigation and aimed to present – as well as to reconstruct – the facts based on the prosecution's thesis shaped from the material put together unilaterally by the investigators and inputs mercilessly found by the journalists, gives the masses an anticipated truth and verdict, which is inevitably summary, different from reality, and above all packaged with rules foreign to those that govern a fair criminal trial (cross-examination for the formation of evidence, criteria for evaluating evidence, the rule of beyond reasonable doubt). The public trial will end several years after the initial uproar with a judgement bound in any case to disappoint the people, whether the actual trial fails to meet the media representation or when, on the contrary, it does.

Given that the criminal trial is a place of ascertainment where an exploratory path is developed, making it possible to pass from the *res judicanda* (the prosecution hypothesis) to the *res judicata*, i.e., the sentence that definitively concludes the trial and that the community is prepared to accept as true because it has been achieved by the method considered most reliable for pronouncing a fair judgement, it should be borne in mind that the criminal trial is also a place of guarantee and is based on various cardinal principles, including those of cross-examination, separation of the phases, presumption of innocence, and publicity. In order for the final result to be accepted by the people, it is necessary for the people to be put in a position to know the way in which justice is served (Giostra, 2020, p 27). That is why the principle of publicity is invoked: a principle (article 101 of the Italian Constitution: Justice is administered in the name of the people) that alludes to the administration of justice in a visible form (Mantovani, 2020, p. 141), becoming an instrument of control over the proper exercise of judicial power, and, at the same time, an instrument to prevent and repress inappropriate conduct[2]. The principle of publicity is closely related to the trust that citizens

2 "Where it does not prevent you from carrying them out, it calls to answer for it".

must place in justice. Today, however, immediate publicity, i.e., the public going to the hearing to personally attend the trial, is replaced by mediated publicity, i.e., the narration of the trial by journalists, which, compared to immediate publicity, is qualitatively poorer. The media give us a distorted, incomplete image, they tell us only about some pieces of the trial, helping to widen the gap between justice that unfolds in the courtroom and justice perceived by the people. What is more, mediated publicity interferes with actual justice, with the risk of affecting the outcome of legal proceedings.

The criminal trial and information come into contact both when there is judicial reporting, i.e., the community is informed about a trial in progress, and when the trial is held in the media through the so-called media trial.

Dissemination in the mass media of information about the course of a criminal trial is a narrative that has significant value on a democratic level: it allows the people to see how justice is administered, reporting what justice does, endorsing it, criticising it, pressing it[3]. Of course, all this must take place by following the rules. What rules? Those rules that should be the result of balancing multiple values. First of all, articles 21 and 101 of the Italian Constitution, which clearly sanction the inalienable right to judicial information, and then, articles 2, 24, 27, and 111 of the Italian Constitution, which provide us with guidance on how to exercise this right in criminal law (Giostra, 2018a, p. 12).

The interests at stake are of paramount importance: the efficiency of investigations, the honour, reputation and image of those involved in the trial, the mental neutrality of the judge, the authenticity of testimony, the trust of citizens in justice, the presumption of innocence and cognitive integrity of the judge of the hearing. In short, it is a complex of value coordinates that lawmakers should have upheld in outlining the rules of the Code of Criminal Procedure that govern the relationship between the right to report news and the secrecy of investigations. In reality, legislation gives us an unclear and inadequate set of rules[4]. The code of criminal procedure distinguishes between internal secrecy and external secrecy. Internal secrecy is put in place to protect the outcome of the investigation. Article 329 of the Italian Code of Criminal

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(Mantovani, 2020, p. 142).

3 The metaphor used by the European Court of Human Rights to allude to the noble function of the press is well-known, namely the "watchdog of democracy" (ECHR, 27 March 1996, *Goodwin v. United Kingdom*; resumed most recently by ECHR, 7 March 2021, *Sallusti v. Italy*).

4 For a complete overview of the rules governing secrecy and the limits of publishing court documents, see Orlandi (2017, p. 48) and Voena (2017, p. 1113).

Procedure establishes that the act of investigation is covered by secrecy until the defence becomes aware of it and, in any case, not beyond the end of the investigation. This means that there is an absolute ban on publication, except in exceptional cases where the Public Prosecutor has the power to lift secrecy on certain acts when strictly necessary to continue the investigation. Now that internal secrecy has been lifted, the need is to ensure, first of all, the cognitive integrity of the trial judge, who, due to the principle of separation of the phases, cannot know the acts carried out without cross-examination in the phase of preliminary investigations; it is also necessary to protect the correct formation of evidence during the trial, children and vulnerable persons. Well, the system of external secrecy opted for by lawmakers is the result of a compromise, criticised by many: once internal secrecy has been lifted, it is forbidden to publish the act; however, a journalist can disseminate its content, by means of a summary or a paraphrase (art. 114, paragraph 7, of the Italian Code of Criminal Procedure). The choice is a clear expression of the lawmakers' preference for the freedom of the press. Clearly, silence on the progress of investigations cannot be prolonged for long: the community must be informed about the course of criminal justice also in the non-public phase. The prohibition to publish photographs depicting a person under arrest *in vinculis* remains in place in order to counter the spectacle of police operations and specially to safeguard the presumption of innocence, since, as we know, a person in handcuffs evokes an idea of guilt. The prohibition of publishing investigation documents does not include documents containing judicial acts such as the order of precautionary custody adopted in the preliminary phase. These documents, however, almost always contain statements or wiretapped dialogues so that, if disclosed, they end up bypassing the prohibition to publish the document. Article 116 of the Italian Code of Criminal Procedure, which governs access to records, should be mentioned in this regulatory framework: records that are no longer covered by internal secrecy may be acquired by anyone who is interested. The most controversial problem of the relationship between the press and the criminal trial lies in this particular aspect. The execution of the request to gain access to the records is, in fact, left to the discretion of the judicial authority, determining a substantially non-uniform application of the rule, which leaves space for favouritism and instrumental use: sometimes access to the documents is granted, others it is not, or it is granted only to some "privileged" persons. Hence the phenomenon of so-called judicial indiscretion, namely leaks.

Obviously, the attention of judicial reporting cannot dwell on a trial for too long. That is why the press is used to turn the spotlight on the first steps, the initial phases, even though they are covered by secrecy and practice shows that

journalists can still gain access to the news of the initial, and the most appealing, documents of an investigation[5]. This is evidence of the inadequacy of the current legislation, which therefore deserves fine-tuning.

The favour shown for the right of judicial reporting must not and cannot become a way to bypass the rules[6]. Relationships between prosecutors and the press are not always transparent, and favours bestowed by one side are often repaid by giving only one side of the story, the prosecution's. Degenerations such as the guilty rhetoric of which the press is the herald when it spreads sensational news of the successes of investigators are commonplace. For the press, news of a warrant or individuals being included in the list of suspects is sufficient to arouse the interest of public opinion, but if the news is not explained, public opinion is led to reach the wrong conclusions, without any regard for the principles and rules on which the Italian criminal trial is based. Therefore, the notice of pending inquiry becomes an indictment, an indictment becomes a conviction, and a pre-trial detention order becomes the execution of a sentence of conviction. The media end up attributing to the first steps of an investigation incorrect and inappropriate probative value, thus attaching to these a reliability that they should not have. Since these are investigative findings that come from the prosecutor, and not evidence, if disclosed without being duly set in context, they contribute to making public opinion tend towards believing in the guilt of the defendants. One should focus on the professionalism and impartiality of journalists, so that they can fit for the institutional task that they have been attributed. First and foremost, journalists should know the rules of the criminal trial, and, as judicial reporters, follow them.

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5 The journalist-cum-sleuth is no longer a "watchdog of democracy" but a "lapdog of the public prosecutor's office". (Giostra, 1994, p. 59).

6 The criterion that should guide journalists is to consider all relevant records of investigations as worthy of being published and, among those that are not relevant, to consider only those informations that are actually of public interest to be worthy of being published. This is the stance expressed by Strasbourg in the leading case of the European Court of Human Rights, Third Section, 7 June 2007, *Dupuis v. France*: to divulge news of public interest even if still covered by secrecy is equivalent to exercising the right to inform the public. Basically, for the supranational court, the criterion of public interest underlying the freedom of the expression must prevail over the need to protect the secrecy of investigations.

The media criminal trial and its distortions

In trials held in the media, the distortions of the media narrative are greatly amplified: the distortion of reality takes on more worrying dimensions, as the line between journalistic documentation and dramatized reconstruction is blurred. From reality-TV as a mirror of reality, we pass to a style of TV that produces reality, which gives people a mere illusion of absolute transparency, which is the result of the firm belief that we are eyewitnesses to events. This anticipates the long wait for the trial to satisfy the cognitive impatience of public opinion, setting up an informal and rapid alternative forum to reconstruct the dynamics of the case with the aim of ascertaining responsibilities. It is a speedy trial out of phase with the ordinary sequence of the proceedings, focused on the first steps of the investigation, without a third-party judge, without limits to the admission of evidence, without an effective cross-examination, and without a judgement that comes at the conclusion of a criminal proceeding that provides the defendant with guarantees and protections. The people's verdict is, in fact, immediate, the trial is held before entering the courtroom, while the judge's sentence comes years later, when the people's court has already made its own, with the paradox that if the judgement differs from the media verdict it is looked upon with distrust, while if the two verdicts do match, then it is perceived as evidence that judicial action follows a path that is too slow, complicated and uneconomical. Public opinion does not have the tools to critically evaluate what is represented by the media, confusing what is true from what is a fanciful reconstruction of events.

But what is most troubling is the interference that the media trial has on real justice. There is a real risk of jeopardising the outcome of the investigation and the entire trial. The media trial is first and foremost a spectacle. It does not matter if the ordinary course of the trial dynamics is distorted or if an allegedly innocent person is found guilty; it does not matter if values such as the judge's cognitive integrity and serenity are attacked.

It often happens that those who will be questioned as witnesses in the real trial are interviewed by reporters; that technicians or self-styled experts are invited to give their opinion on the dynamics of the case, while the assessments carried out by the experts appointed by the judge are in progress. The result is "street trials" that are detrimental to the defendant's constitutionally guaranteed rights, the proper dialectic between prosecution and defence, the proper formation of the evidence and the psychological serenity of judges (Conti, 2022, p. 30). The latter is a very delicate aspect, especially when the judging panel is made up of

the people's judges[7], whose status as non-professional judges, lacking technical knowledge of the law, and their natural social proximity to the case in question, risk resulting in a judgement tainted by an unconscious tendency to conform to the judgement shared by the community to which they belong (Montagna, 2012, p. 278).

The possible conditioning that mass communication can exert on the exercise of judicial power is a much debated topic. It is assumed, on the one hand, that a judge cannot be harmed in its integrity and impartiality by show trials conducted on TV (Liberati, 2018, p. 13)[8]. The Italian Court of Cassation[9] shares this opinion where it stated that "the press campaigns, however heated, bitter or hammering, or the pressure of public opinion are not per se suitable to affect the judge's freedom of judging, accustomed to being the subject of critical attention without that involving that a judge's impartiality can be damaged", since "the deplorable spilling over of so-called show justice, seeing newspaper headlines or watching entire talk shows that deal with judicial events still in progress in which every single argument, at times far-fetched, at times contradictory, is dissected [….] has ended up becoming such a normal phenomenon that no one pays attention to it anymore".

On the other hand, it is objected that the media inevitably ends up exerting a psycho-emotional pressure on judges, conditioning their judgement. It may happen, in fact, that the hammering by the media, in particular on television and on the web – through press conferences called by investigators, suggestive videos, targeted news leaks, publications of the content of trial documents point in one direction only – can affect the judge's sentence-making process. Judging with serenity requires not to see: that is the reason for the blindfold that covers the eyes of the goddess justice and that allows her to be impartial and unbiased. Yet, the media overwhelms us with images and videos, not always genuine, holding outside the courtrooms a parallel trial, which, with its own rules, timing and language, comes to a verdict that ends up in the courtroom inevitably influencing judges. And it is "[…] at the emotional and psychological level that media accusation theories risk becoming an undue key to interpreting and evaluating the available evidence" (Casiraghi, 2021, p. 8).

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7 See Council of Europe Recommendation Rec 2003(13), with particular regard to jury trials or trials with non-professional magistrates.

8 According to whom judges have by now acquired (or should strive to acquire) the culture of the unusability of evidence which they have come to learn of.

9 Cass., III section, 12 May 2015, no. 23962, Picardi, in *Mass. Uff.*, no. 245215.

Institutional communication and protection of the presumption of innocence: A good starting point?

A final consideration concerns the difficult balance between the right to report and the protection of personal dignity. The state of the art shows us a regulatory reality that is not perfect and should be rewritten through a meticulous balancing act of the multiple values involved. A first step in this direction can be found in Italian Legislative Decree No. 188 of 2021, adapting it to Directive 2016/343/EU on the presumption of innocence [Conti (2021, 6), Caneschi (2021,10)]. Lawmakers have provided for so-called institutional communication in two forms: proactive, i.e., functional to the dissemination of correct information that avoids presenting the suspect as guilty before the final sentence, and reactive, i.e., implying the duty of the judiciary to correct incorrect information disseminated by the press. Basically, only the Public Prosecutor or their delegate should have relations with the press, and the disclosure of news about the ongoing criminal proceeding can only take place by means of press releases or press conferences (in the latter case a motivated document indicating the relevance for the public is required). In any case, the external dissemination of information on criminal proceedings is permitted only when it is strictly necessary to continue the investigations or when other specific reasons of public interest apply. In addition, the manner and context of institutional communication should not give the impression of an anticipated guilty sentence, and information should be provided in a way that clarifies the stage at which criminal proceedings are, while respecting the presumption of innocence.

That said, we should ask ourselves whether imposing institutional communication can be considered an adequate solution to resolve the distortions deriving from the media trial. Another question is whether working on communication strategy can prevent leaks, which are often steered and uncontrolled. Obviously, the decree has not resolved the regulatory shortcomings concerning access to documents, providing, for example, for direct access to all documents no longer covered by secrecy. This solution is considered by many to be suitable for triggering healthy competition among reporters, which could result in better quality journalism (Bartoli, 2017, p. 68). Of course, caution is needed: a document in the file may be still in raw form, not yet processed or verified. In the future it might turn out that it has no criminal relevance and is therefore not relevant to the proceedings, and, nevertheless, the journalist who comes into its possession could disclose it only because the news *prima facie* appears to be of public interest. However, since it is raw data, its knowledge by the journalist should be allowed on condition that he or she knows how to read the judicial

documents, how to select the information that can be published from news that cannot be published according to uniform ethical criteria established by the law not with vague and generic formulas, but with rigor and determination[10].

Certainly, the current legislation still seems inadequate.

Truthfulness of the information and objectivity in description must be paramount. Reality shows us, instead, how subjective truth prevails, the one constructed by the communicator to please readers. The correctness of communication depends on subjective ethics, but "communication must take inspiration in the way it is presented from criteria of clarity, conciseness and timeliness and it must concern information of real public interest" Canzio, 2021).

The media trial condemns without leave of appeal, distorting the ordinary dynamics of the criminal proceeding, presenting and describing something significantly different from what it actually is. The further risk is that of altering democratic dynamics, inducing the community to call for reforms or to refrain from doing so not on the basis of the actual phenomenon but on the basis of the phenomenon as it is presented to it. In practice, public opinion is shaped by the media and through the media it reaches lawmakers.

The only real antidote is free and plural information, but above all it should be responsible and professional: journalists should perform their institutional task, communicating the truth and respecting the roles and rules of the trial. The current ethical standards that protect correct information, such as the Testo Unico dei Doveri del Giornalisti (Consolidated Text on Journalists' Duties), which incorporated the 2009 Code of Ethics, have not been effective. Perhaps disciplinary sanctions for violating them should be tightened. The same can be said of the rules of ethics for judges and lawyers. In short, while there is a body of ethical rules, there is a tendency to ignore them[11].

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10 It is worth mentioning the proposal made by Ferrarella, p. 8: journalists should renounce the claim to write everything immediately, in exchange, however, for the fact that at certain time and procedural deadlines, as the events unfold and the individual stages of investigation are brought to the attention of the interested parties, they are put on a par with the parties involved in the proceedings solely in terms of being admitted to direct and legitimate access (not as a more or less worthy, more or less scrupulous beggar) to the documents of the proceedings in all the phases in which this circulation already occurs in fact, though to a dangerously incomplete and imprecise degree.

11 For example, the 2018 guidelines of the Italian Consiglio Superiore della Magistratura (CSM), High Council for the Judiciary, are basically neglected: to avoid distortions, they called for the judiciary to abide by the principles of objectivity, transparency and comprehensibility when directly communicating their actions, avoiding the dissemination

If the objective is balanced and measured judicial information, it is necessary to avoid fuelling prejudices that drive public opinion to believe in a defendant's guilt and that have the effect of widening the gap between applied justice and expected justice and thus exacerbating citizens' distrust in justice.

The hope is that journalists will return to the courtroom to tell the story of how justice is carried out in the cross-examination of the parties, to tell the story of the public trial, the heart of the criminal proceeding, the sacred space devoted to the formation of evidence, the only one that a judge can use to decide. In the investigation phase, on the other hand, there is a need for restrained information that aims to inform and not to arouse public opinion[12]. To this end, the new rules introduced to protect the presumption of innocence could blunt the distortions of a narrative that almost always sees the defendant guilty, focused exclusively on the results of a phase devoted only to collecting – and not shaping – evidence, which is usually presented as if it were real evidence[13].

Institutional communication, in addition to reporting news in an official form, should also contribute to explaining it to the community, taking into account the stage at which the proceedings are and the probative value or otherwise of the document being reported, so as to compensate for the lack of adequate technical training of journalists. The important thing, however, is that the system of official communication should not operate under a monopoly regime, leaving reporters free to find the information independently, but also remembering that they have the duty to check its reliability, despite the official nature of the source, avoiding "prejudicial acquiescence to the prosecution's thesis, inadequate detachment from the judicial 'power', sometimes ideologically – as well as uncritically – considered a 'counter-power' of that absolute evil called 'politics' " (Borzone, 2016). Information must remain plural and democratic, and the decision as to whether or not the news is of public interest cannot be left to prosecutors. For its part, journalists should report the facts and not only the investigations of prosecutors. Pluralism is therefore of central importance to the information system, which is managed by companies with economic, political and ideological interests.

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of incomplete or inaccurate news and privileged relationships with certain members of the media community.

12 Unfortunately, the news is also a product, and as such it often follows economic criteria. In the justice sector, the product that sells the most is the one "that responds most to the expectations of the 'market', i.e., the citizens: the product of 'retributive' justice with a 'short supply chain', i.e., one that is not mediated", Varano (2022) points out.

13 Stella (2021) calls for this.

On the other hand, if justice is subject to social control, as a counterweight to the independence and autonomy of the judiciary, in order to make social control effective, it is necessary that justice be transparent and comprehensible, that it be able to speak to the citizen and, therefore, communicate. The public's right to be informed is matched by a duty of information on the part of the judicial authority from the earliest stages of the investigation[14].

Conclusions

To conclude, there are still some perplexities about the real effectiveness of the remedy introduced by Legislative Decree No. 188 of 2021 so that suspects and defendants have an effective remedy in case of violation of the rights conferred by Directive (EU) 2016/343 (Article 10). Lawmakers have provided that, in the event of violation of the right of the suspect and the defendant not to be represented as guilty, the interested party may, on penalty of forfeiture, within ten days of when they come to learn of the measure, request its correction, when necessary to safeguard the presumption of innocence in the trial, and on the request for correction the trying judge shall issue a reasoned ruling within forty eight hours from its filing. If the request for correction is not granted, there is an emergency appeal to the court, which may order publication of the correction. Clearly, there are several reasons to doubt the suitability of this remedy, beginning with how the relative procedure is to be initiated. The situation of weakness in which suspects or defendants may find themselves could likely encourage them to desist from initiating a request for correction. In this regard, it has been duly pointed out (Varano, 2022) that the decree limits the remedy to certain documents, leaving out many others that are often used to feed the media trial, such as, for example, the documents in which an acquittal is described as due to some procedural reason, indicating the person as certainly guilty, but not punishable, or the search and seizure decrees in which the alleged responsibilities are reconstructed, indicating the relative means of proof. It should also be noted that it is not very effective to entrust public authorities, politicians and the judiciary, with the protection of not being tried by the media, since it is,

14 Europe recommends this in Recommendation Rec 2003(13) of the Committee of Ministers of the Council of Europe; as well as Opinion (2013) No. 8 of the CCEP (Consultative Council of European Prosecutors) on "Relations between the Prosecutors and the Media", where it is suggested as a means of communication by the public prosecutor press releases and press conferences, also held with the cooperation of police authorities.

a form of protection against something that takes place in a space outside the investigations. It is preferable by far to entrust it to a "third" party, such as a guarantor of the rights of persons under investigation or under trial. A subject capable of protecting, even *ex officio*, the rights of those who are subject to a media trial and those who are potentially exposed to one by documents of the judiciary that violate European principles and national rules, but also by "extra-trial documents" spread in the *media* and *social networks*[15].

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15 The proposal was made by Varano (2022), according to whom "the media trial is a *virus* that affects not only the person directly concerned, but society as a whole, in which it spreads at an uncontrollable speed and has long-term effects that cannot be detected immediately. Competence, therefore, cannot be left to the individual judge even on the sole matter of legitimising the weak party tried in the *media*, nor to the sole space of the investigation or trial".

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