



15 > 16 June 2017 – Hôtel de Ville – Paris

THE JUDICIAL RESPONSE TO TERRORISM AND THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EU

Media Treatment of Terrorism Cases

POLITICAL, MEDIA AND JUDICIAL DISCOURSE IN THE FACE OF TERRORISM: WHAT IS AT STAKE WITH REGARD TO RESPECT FOR FUNDAMENTAL FREEDOMS?

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With the financial support of
the European Union Justice programme



SUMMARY

The purpose of this third report is to put counter-terrorism practices into perspective with the dynamics of the way this contemporary phenomenon of political violence is treated by the media. **Through the influence of images, access to information and the role of the media in the management of the "terrorist scene", media coverage is not without raising some questions of a judicial nature for European legal systems.** More generally, the last twenty years have seen a **transformation in the way the media are used by the many actors connected with terrorist violence (violent groups, political authorities, law enforcement authorities and public opinion).** Today, the trivialisation and globalisation of our relationship to the media has led to a new configuration resulting from a dual interpenetration: media/terrorist groups and media/institutional authorities. Terrorists no longer operate in the hope of generating media coverage, as this is now automatic and immediate. At the same time, the interaction between media players and counter-terrorism authorities has also evolved into a relationship of more sustained collaboration.

In this context, and in the face of a profound questioning of political discourse in European democracies, judicial and media discourse have taken on a particular dimension. The Belgian and French terrorism cases since 2015 largely illustrate this. **Although these professionals have spoken out more and more often over this period, it is nevertheless relatively rare to be able to compare their experiences and practices in concrete terms. Furthermore, there is often an element of mistrust between these parties whose professional interests and realities can be so different and even antagonistic.**

The call by the different actors to assert a greater degree of professionalisation on these issues constitutes a first shared line of force that clearly emerged from the discussions. For many of the speakers, this professionalisation will involve, in particular, a reinforcement of the links and sharing of experiences between journalists and members of the judiciary, in particular thanks to the organisation of joint training sessions and sharing of the practices of the different actors. **The second joint line of force resides in the necessary respect for the legal rules governing freedom of speech.** These rules constitute necessary points of reference that will help to find a balance between the differing interests of the right to information or the need to protect the effectiveness of ongoing investigations. **If the public has a right to know, that right - and this is certainly even more the case in counter-terrorism - has to be reconciled with guaranteeing the secrecy of the investigation, but also with the protection of the presumption of innocence of suspects, all of this without intruding on the privacy and dignity of the victims.**

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EUROPEAN PROJECT AND PARTNERS

The balance between security and fundamental freedoms is an issue faced by the European authorities on a daily basis. This balance implies a surge in the judicial handling of terrorism, placing the judiciary at the centre of this exercise in their role as guardians of individual freedoms.

The Member States of the European Union have become the guarantors of fundamental rights by signing a joint charter.

Faced with the alarm generated by terrorist attacks carried out with the aim of spreading fear, judges must manage to reconcile the security issues raised by the violence of terrorist attacks and the protection of fundamental rights for all European citizens.

With financial support from the European Commission Justice Programme, the "Judicial response to terrorism in the light of the EU Charter of Fundamental Rights" project aims to reinforce practitioners' knowledge in the area of fundamental rights so that they can handle terrorism-related cases in accordance with the requirements of the Charter.

Dates of implementation: 1 July 2016 – 31 May 2018

Activities - It includes 4 seminars and 1 final conference:

- Seminar 1: Fight against violent radicalisation and protection of fundamental freedoms (*Strasbourg, Council of Europe – 8 and 9 December 2016*)
- Seminar 2: Terrorism and fundamental rights: the investigation and intelligence phase (*Brussels, Institut de formation judiciaire – 23 and 24 February 2017*)
- Seminar 3: The media coverage of terrorism cases (*Paris, Hôtel de Ville – 15 and 16 June 2017*)
- Seminar 4: Terrorism and fundamental rights: the trial and implementation of sentences (*Sofia, National Institute of Justice – 12 and 13 October 2017*)
- Closing conference: protecting fundamental rights in the judicial response to terrorism (*planned in Paris in March 2018*)

Partnership – the ENM is the coordinator of the following consortium:

- The judicial training institutes of Sweden, Bulgaria and Belgium;
- The Council of Europe;
- The European Judicial Training Network (EJTN);
- The Academy of European Law (ERA);
- Justice International Cooperation JCI).

Target audience - The intention is to train approximately 270 members of the judiciary in 10 European countries. Furthermore, 40 participants from prison administrations, the police and journalism will also be taking part in the sessions.

Type and number of deliverables produced - 5 scientific reports available in French and English

Members	Duties
<p>1 scientific advisor – Cyril ROTH, Auxiliary Judge at the Court of Cassation, France</p>	<ul style="list-style-type: none"> - Overall scientific design of the project - Identifies the contributors - Supervises the seminar leaders and rapporteurs - Takes part in the seminars - Validates the reports on the seminars
<p>1 project director – judge at the ENM Nathalie MALET, Judge, International Department, ENM Replaced by Marie COMPERE, Judge, International Department, ENM</p>	<ul style="list-style-type: none"> - Responsible for instructional engineering - Identifies and validates the contributors - Supervises the entire project team - Validates the reports on the seminars
<p>1 ENM project coordinator, Ségolène POYETON, International Department, ENM</p>	<ul style="list-style-type: none"> - Responsible for the day-to-day management of the project - Coordinates the partners in the consortium - Point of contact with the European Commission for contract-related, administrative and financial issues
<p>The scientific committee will be reinforced for each seminar by:</p> <ul style="list-style-type: none"> - A seminar director - A rapporteur <p>Seminar 1: Vanessa PERREE, Deputy Public Prosecutor, Court of Appeal, Aix-en-Provence, France</p> <p><u>Seminar 2:</u> Anne KOSTOMAROFF, Prosecutor General, Court of Appeal of Paris, France</p> <p><u>Seminar 3:</u> Nicolas BONNAL, Judge, Court of Cassation, France</p> <p><u>Seminar 4:</u> Sabine FAIVRE, First Vice-President, Paris Regional Court, France</p> <p><u>Rapporteur:</u> Antoine MEGIE, Associate Professor at the University of Rouen, director of the journal <i>Politique européenne</i> - Member of the editorial committee of the journal <i>Cultures et Conflits</i>, France</p>	<ul style="list-style-type: none"> - Prepare the detailed programme for the seminar - Identify the contributors or contributor profiles to ask of the partners - Moderate the seminar - Draw up the report on the seminar

Scientific committee – The project will be led by a restricted team who are members of the scientific committee

SEMINAR PROGRAMME

15 June 2017

8.30 **Arrival and registration of participants**

9.00 **Opening speeches**

The Mayor of Paris or her representative, France

Olivier LEURENT, Director of the French National School for the Judiciary, France

9.15 **Presentation of the seminar programme**

Nicolas BONNAL, Deputy Judge at the Court of Cassation, France

Cyril ROTH, Trial Judge at the Court of Cassation, project coordinator, France

I. CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS: FREEDOM OF EXPRESSION AND ITS LIMITS

9.45 **Case Law of the ECHR: Freedom of Expression and its Limits**

Radoslav DIMOV, Senior Lawyer at the Registry of the European Court of Human Rights

10.30 *Coffee break*

II. THE STATE AND CONTROL OF INFORMATION: THE RIGHT TO KNOW VERSUS SECRECY

10.45 **The Role of Communication after the Train Bombings in Madrid on 11 March 2004: Information or Manipulation?**

Antonio ELORZA, Professor Political Science at the University of Madrid, Spain

11.30 *Discussion*

12.15 *Lunch break*

13.45 **Judicial Communication in the Heat of the Action: Between the Presumption of Innocence, the Public's Right to Know and the Efficiency of the Investigation**

François MOLINS, Public Prosecutor of Paris, France

15.00 *Discussion*

15.15 *Coffee break*

15.30 **Can we Prohibit the Press from Reporting on a Terrorist Trial? The Incedal Case in the UK**

Anthony HUDSON, QC, United Kingdom

Ian COBAIN, journalist at *The Guardian*, United Kingdom

16.15 *Discussion*

16.30 **Informing the Public despite the Authorities' Silence: Secret Prisons for Terrorists on US Soil?**

Will POTTER, Independent journalist, United States

17.15 *Discussion*

17.30 **End of Day 1**

16 June 2017

8.30 Arrival and registration of participants

III. THE ADMISSIBLE LIMITS OF FREEDOM OF EXPRESSION AND RESPONSIBLE JOURNALISM

9.00 **A Review of Media Ethics after the Terror Attacks of 2015 and 2016**

Patrick EVENO, President of the French Observatory of News Media Ethics (ODI), France

Pierre GANZ, Vice-President of the French Observatory of News Media Ethics (ODI), France

Laure SACCONI, Project manager at the Programmes Division of the French Broadcast Authority (CSA), France

10.15 *Discussion*

10.45 *Coffee break*

11.00 **Does our own Communication Provide a Weapon for Terrorists?**

Haroro INGRAM, Australian National University in Canberra and the International Centre for Counter-Terrorism, The Hague, Australia

12.00 *Discussion*

12.15 *Lunch break*

14.00 **Victims: The Right to Privacy or New Media Heroes?**

Stéphane GICQUEL, Secretary General of the National Federation of Victims of Terrorist Attacks and Collective Accidents (FENVAC), France

Serge LAURAINI, Member of the Bureau of the Association Life for Paris, France

14.45 *Discussion*

15.00 *Coffee break*

15.15 **The "Traditional" Media, between Official Communication and Social Media**

Christophe LAMFALUSSY, Journalist at *La Libre Belgique*, Belgium

Nicolas VANDERBIEST, Researcher at Leuven University, Belgium

16.00 *Discussion*

16.15 Closing remarks

16.30 End of Day 2

INTRODUCTION

The aim of this third conference was to put counter-terrorism into perspective with the dynamics of the way this contemporary phenomenon of political violence is treated by the media. **Through the influence of images, access to information and the role of the media in the management of the "terrorist scene", media coverage is not without raising some questions of a judicial nature.** As Olivier Leurent emphasised in his introductory address: *"The particular nature of terrorism cases brings some specific constraints to bear on the public's fundamental right to information. This seminar seeks to question that balance between security of the investigation and freedom of the press, national security and the public's right to information"*.

More generally, the last twenty years have seen a **transformation in the way the media are used by the many actors connected with the terrorism scene (violent groups, political authorities, law enforcement authorities and public opinion)**. In the 1970s and 80s, the situation regarding the media was characterised by a relatively closed relationship between the different groups and the media, which in particular took the form of self-control on both sides.¹ Today, however, the trivialisation and globalisation of our relationship to the media has led to a new configuration resulting from a dual interpenetration: media/terrorist groups and media/institutional authorities. Terrorists no longer operate in the hope of generating media coverage as this is now automatic and immediate. At the same time, the interaction between media players and counter-terrorism authorities has also evolved into a relationship of more sustained collaboration. It is against this background that Cyril Roth was able to identify a part of the issues around which the debates at this conference have been organised: *"To what extent do the media serve as a weapon for terrorists? What should be kept secret: the investigation, the aims, the way of working? What is the public's right to know? How can we protect the dignity of the victims exposed in the media? Should we restrict the right to know?"*.

Faced with these questions, it seems important to emphasise that the **contemporary ultra-sensitivity of public opinion in our European democracies is to a certain degree tending to change the paradigm of political violence on a more general level**. In societies that have been marked since the end of the Second World War by the idea that political conflicts must be resolved by compromise and be pacified by processes of diplomatic and judicial negotiation, terrorist phenomena take on a singular and spectacular quality. In this respect, civil societies appear with two faces, that of target and victim, but also as a reservoir of support for violence that presents itself either as a "terrorising and even totalitarian act" or as an "act of political combat". **These different messages, the way they are put together and received are undeniably a central issue on the contemporary terrorism scene. The competing accusatory or justifying political discourses concerning terrorist attacks show directly how porous the boundary is between expertise and passionate feeling,² or between information and propaganda (Cf. Summary report on Seminar 1 "Fight against violent radicalisation and protection of fundamental freedoms", and the European "Judicial response to terrorism in the light of the EU Charter of Fundamental Rights" project).**

¹ Michel Wieviorka and Dominique Wolton. 1987. *Terrorisme à la une : média, terrorisme et démocratie*. Paris, Gallimard.

² Sommier, Isabelle. 2006. "La menace terroriste : entre logiques expertes et mobilisation des passions politiques". In *La peur. Emotion, passion, raison*. dir. Anne-Marie Dillens. Brussels: Facultés Universitaires de Saint-Louis.

This is also what François Molins is stressing when he considers: "*that the war on terror is also a media war. There is ample evidence of this in the professionalism shown by the IS terrorist organisation in the dissemination of its propaganda, through glossy magazines containing shock photographs, very professionally edited videos of decapitations with sound tracks of nasheeds or, IS's ultimate media actions, when it claims responsibility for terrorist attack*". The phenomena and risks of glorification of the perpetrators of terrorist attacks are, from this point of view, very concrete examples for the justice system but also for the media. If these issues are often confined in the public debate to the choice between using various photos or administrative ID photos, certain members of the judiciary and journalists have pointed out, during such debates, that such readings of the issues are now very often obsolete. The attacks carried out in Europe since 2015 have, due to the effect they have had on the media, judicial and political treatment of the terrorist phenomenon, made it even more urgent to embark upon a global reflection on the dynamics of media coverage their dangers. **Although these professionals have spoken out more and more often, it is nevertheless relatively rare to be able to concretely compare the experiences and practices of the judicial actors and journalists. Furthermore, there is often an element of mistrust between these parties whose professional interests and realities can be so different and even antagonistic.**

The call by the different actors to assert a greater degree of professionalisation on these issues constitutes from this point of view a first shared line of force that clearly emerged from the discussions. For many of the speakers, this professionalisation will involve, in particular, a reinforcement of the links and sharing of experiences between journalists and members of the judiciary, in particular thanks to the organisation of joint training sessions and sharing of the practices of the different actors. From this angle, training judges and prosecutors in judicial communication appears as an essential step: "*Judicial communication is better if it is done by trained magistrates who are familiar with the subject and the procedural requirements than if it is done by people who are not members of the judiciary*" (François Molins, Public Prosecutor for Paris).

The second joint line of force present in the different discussions resides in the respect for the legal rules governing freedom of speech. These rules constitute necessary points of reference that will help to find a balance between the differing interests of the right to information or the need to protect the effectiveness of ongoing investigations. If the public has a right to know, that right - and this is certainly even more the case in counter-terrorism - has to be reconciled with guaranteeing the secrecy of the investigation, but also with the protection of the presumption of innocence of suspects, all of this without intruding on the privacy and dignity of the victims. Given the subject matter of the press laws and their very concrete dimension, the issue of balances to be struck is part of a wide area of legal theory and case law within which Article 10 of the ECHR de la CEDH and the precedents set by the Court in Strasbourg offer some important pointers. Opinions that are all the more relevant as they are part of a long historical trend, that is to say outside of the immediate context of terrorist attacks and the emotional public response.

Whilst clearly falling within the general scope of the press laws, it has to be acknowledged that contemporary terrorism is, at the same time, tending to raise issues that were hitherto relatively unheard of in relation to the right to information. As summed up by Nicolas Bonnal: "*the particular nature of terrorist violence since 2001 and more recently the advent of IS, renders these trade-offs more and more delicate (...) the greater psychological impact and media coverage, in which social media play a role, are at the heart of this. This blanket media coverage can be a hindrance to the public authorities. Under these conditions, the release of information to the public about terrorist attacks raises specific and previously unthought-of questions that have to be tackled whilst bearing in mind, for example, the way IS's communication can exploit our own media treatment of these attacks*".

In order to open up some avenues for concrete responses to these different questions, this report contains the accounts and experiences of the actors involved in this issue, who are faced in their day-to-day practice with this tension between the right to information and respect for individual rights (the judiciary, journalists, representatives of victims' associations, supervisory bodies). It is, moreover, with the aim of examining very directly situations where the risk of an imbalance is the most blatant that the cases quoted were chosen. Thus, whether we are talking about **political discourse** (Part 1), **judicial discourse** (Part 2) or **media discourse** (Part 3), each of them contributing in their own way to the media coverage of the terrorist scene, we can see how differing, even opposing, interests and strategies can sometimes lead to individual and collective rights and freedoms being challenged.

PART 1. POLITICAL DISCOURSE: REACTIONS, DIVISIONS AND SECRECY

Taken against the background of urgency and the risks faced by civilian populations, the political authorities and the things they say in the face of terrorism stem from a wide spectrum of motivations ranging from emotion³ to ideology and taking in the desire to take public and legislative action, most often with a view to strengthening security measures.

In the days after the 11 September 2001 attacks, the US administration decided to define its political reaction in terms of a "war on terror", framing this doctrine as part of a long political and institutional history.⁴ This political commitment to the "global war on terror" then took concrete form in the mobilisation of the military forces, leading to a multiplication of new practices and a redefining of a part of the architecture of the national counter-terrorism arsenal. At the same time, the European States, whilst supporting the action of the United States in the name of an international coalition against terrorism, were defending, for a large majority of them, an alternative posture that placed the emphasis on the judicial arsenal, drawing on longstanding experiences of combating terrorist groups defending revolutionary ideas and independence struggles. Nevertheless, the 2004-2005 terrorist attacks in Europe and, to an even greater extent, those of 2015-2016, have seen European political discourses move closer to adopting the paradigm of the "war on terror".

Thus, France, mainly hit by the most recent attacks in the name of IS, has recently been governed under a state of emergency declared on 13 November 2015. This assertion of the prerogatives of the administrative authorities⁵ has stoked the political and media debate on the issue of tightening up the legislation and more particularly on the use of "warlike" rhetoric and an "exceptional" situation.⁶ In the context of the terrorist attacks perpetrated in France between January 2015 and Spring 2017, the fight against terrorism defined in terms of a political, military and technological "war" will constitute the main register used to legitimise new measures from in terms of the discourse employed and more widely of the content of the new security regime introduced. Generally speaking, if we examine most of the post-terrorist attack periods from a historical and geographical perspective (in Europe, North America or internationally in particular), the dominant political approach to dealing with violent terrorist actions has been part of a political "action-reaction" dynamic. The examples presented in this report are mainly focused on specific cases where the political reaction has put pressure on rights relating to access to information and more globally respect for fundamental freedoms.

³ Boussaguet, Let Faucher, F, "The Politics of Symbols: Reflections on the French Government's Framing of the 2015 Terrorist Attacks", Parliamentary Affairs, 2017, p 1–27.

⁴ Bonditti P, "*L'antiterrorisme aux États-Unis : de la contre-insurrection des années 1960 à la « guerre globale au terrorisme »*", in Bigo, Bonnelli Deltombe, *Au nom du 11 septembre*, La découverte, 2008.

⁵ Special report : Les Cahiers de la Justice, "A L'épreuve du terrorisme", June 2017.

⁶ Codaccioni Vanessa, *Justice d'exception. L'État face aux crimes politiques et terroristes*, Paris, CNRS Éditions, 2015.

1.1. Political "post-truths": The treatment of the Madrid attacks of 11 March 2004

The terrorist attacks of 11 March 2004 in Madrid gave rise to deep political and social divisions in Spain. The reaction of the political authorities led to the defeat of the ruling People's Party in the general election a few days later. Nevertheless, beyond this unexpected change in the party in power, which no doubt constituted the most visible consequence of this particular political treatment of the terrorist attacks, other, even more far-reaching effects deserve to be highlighted, according to Professor Antonio ELORZA.

The designation of the perpetrators as a political issue: In the minds of the public and the political class, the bombings carried out by ETA constituted, at the beginning of the 2000, the sole image of political violence in Spain. After the attacks of 11 March 2004, *"it was not radical Islamism that took centre stage, but ETA's Basque terrorism"* according to Antonio ELORZA. *"Why not think that this time ETA had decided to hit as hard as it could? This theory, however, soon came up against a simple observation of the victims. ETA might have caused the deaths of people of all ages and professional levels in several of its ekintzak (actions), but the death of hundreds of working people did not fit in with its strategy of defending the proletariat"*.

The "untruth" as political resource: *"The conservative government of José María Aznar saw in attributing [the attack] to ETA a decisive advantage that would help it to win the elections due to be held on 14 March and decided to focus exclusively on the Basque lead, even after the discovery of a van near Madrid containing Islamist documents should have obliged them to change direction. I remember how I was put under pressure during a television programme on the evening of 11 March, when I tried to raise questions on this possibility. The government-backed interviewer cut me off: "It's ETA! No doubt about it! (...) The lies and the attempt to manipulate media by the People's Party played a decisive role in its losing the election on 14 March and the arrival of the Socialist party in the government. This did not end the myth of "ETA, perpetrators of the 11 March attacks". The job of perpetuating this idea was taken over by a newspaper close to the People's Party"*. This discourse thus became an important part of the rhetoric of right-wing national political groups and networks, more widely forming part of the various contemporary conspiracy-theory approaches.

A division in political discourse: The tragedy became intensely politicised during the work of the parliamentary committee devoted to the attacks and over the years that followed. The particular nature of the Spanish political system constitutes an important context which played on this strong polarisation between conservatives in the People's Party and representatives of the Socialist Party. More globally, *"this is due to a lack of political consensus in the fields of foreign affairs, defence and counter-terrorism*. In addition to that, according to Antonio ELORZA, *"there was a failure of public opinion to take on board the existence of terrorism with Islamic roots, which had been present in the country since ten years before 11 March 2004"*.

Social division: *"An even stronger division took hold with the response of the left-wing organisations. This discourse was developed immediately, with an undeniable logic, even though it did not correspond to the truth"*. In this narrative, the decision of the conservative prime minister, José María Aznar, to involve Spain in the invasion of Iraq, was the main

reason for the attack on Madrid. *"The reference to the misdeeds of American imperialism and the negative symbol of Guantanamo, contributed to a verdict with only one culprit, Aznar and the People's Party. (...) The statements issued by the associations and in particular the president of one of them, Pilar Manjón, mother of a son killed at Atocha station, added even more weight to the denunciation of the "criminal" responsibility of the Aznar government with their emotional rhetoric. Her speech to the Congressional Commission in December 2004 was a masterpiece of pleading against the political establishment and against Aznar first and foremost. Terrorism was becoming the effect of the criminal responsibilities of imperialism, without being a problem in its own right. Over time, her attacks began to target the "black man" (President Obama) and his wife, who were considered guilty of concerning themselves with the female teenage victims of Boko Haram and not the girls being bombed in Gaza. This extreme radicalism led to accusations and threats against Cristina Manjón, who was becoming ever more exasperated, until eventually she resigned. (She has become the symbol of this ideological conflict)."*

A place for the victims challenged: *"This political division has had serious consequences on the solidarity movement and the 11 March attack victims' organisations (...). Forgotten by everyone, the monument put up to the victims of the terrorist attacks of 11 March 2004 has been virtually in ruins for some time. This is the symbolic expression of a phenomenon whose extent was recently stressed by political analyst, Fernando Reinares: "Unlike the reaction of British society after the terrorist attacks in London on 7 July 2005, those of 11 March 2004 in Madrid deeply divided the Spanish population. The after-effects of this lack of unity persist to this day, even if they are less visible due to the passage of time".*

The judicial discourse: In this tense social and political climate, an approach devoid of all ideological strategy, was, it seems, possible in the judicial sphere: *"Judge Javier Gómez Bermúdez, at the trial of the alleged perpetrators of the attacks, constructed an essential judicial discourse thanks to its rigour, in particular in the management of the evidence and the sobriety of the explanations given in the face of public opinion. The work he did was a very important judicial exercise for the construction of remembrance and the pacification of certain political discourses. The people responsible for the deaths of 200 citizens and the injury of two thousand others were found guilty in 2007 as members of an Al Qaeda cell, with no links whatsoever to ETA!"*

1.2. "Silence and lies": Communication Management Units (CMUs) in the United States

Political discourse can also be part of strategies of silence and lies, which, depending on the registers, are connected to specific types of political discourse, as Hannah Arendt emphasised when she was studying the strategies of justification and lying used by the US authorities during the Vietnam War. Drawing on archives and classified reports, the philosopher revealed the repertoires of political discourse used in a war context and in particular that of lying, demonstrating its importance, but also the danger it posed to democratic rules.⁷ From an investigative journalism perspective, Will Potter has also taken an interest in secrecy and lying in the "war on terror" programmes, in particular emphasising the

⁷ Hannah Arendt, *Du mensonge à la violence*, Poche – 5 September 2002, 1st edition 1972.

implications of these measures for all those categorised as terrorists.⁸

The position of the journalist: *"The stories that are kept out of sight of citizens are precisely the stories that we journalists should be covering and telling in the media (...) Taking an interest in the dynamics of criminalisation of political opponents in the name of the rhetoric of the "War on terrorism" was also about showing the restrictions that have been placed on journalists when they decide to work and publish information on measures like illegal surveillance, the use of agents provocateurs or the secret prisons on American soil".*

Legitimising a special prison system: *"For people accused of terrorism, a special detention programme was set up by the American administration in 2005. Following a great deal of criticism of the Supermax prison system and its ineffectiveness. A system that the prisoners and members of the prison security staff call "Little Guantanamo". (...) If an audit by the general inspectorate revealed that the staff were poorly trained, the Department of Justice used it as an opportunity to propose a new programme called "UMC programs" which introduced limitations on communications for prisoners in terrorism cases (...). This extreme proposal led to a general outcry. Religious and human rights associations protested, officially causing the government to backtrack. At least that is what it seemed to do, for a few months later, the Department of Justice transferred 17 prisoners to a new unit at Illinois prison. A former death row was converted for the occasion. The opening of this unit took place in secret, with no information and no legal review process. This was therefore a secret and illegal opening".*

CMUs: *"These special sites, unlike Guantanamo, are on US territory, situated within larger federal prisons (two units, one in Indiana, the other in Illinois). These special prisons are not listed on the general register of prisons and the government conceals the names of the prisoners held. Neither of these units underwent the legal review process required by American legislation. The limitation on the prisoners' communications consist of a limit of one fifteen-minute phone call and one one-hour visit per month".*

CMU prisoners: *"The government will not say who is imprisoned here. Given that the prisoners' communications are limited to levels equal to or exceeding those of the most extreme prisons in the United States, you would expect the prisoners to be the worst of the worst. You would expect them to be responsible for suicide attacks or mass murderers. But in fact, these CMUs are for people the government calls "second-tier" terrorists. (...) There are about 60-70 prisoners in these CMUs and they are overwhelmingly Muslim (...). There are a few non-Muslim prisoners that the guards refer to as "balancers". That means they help to balance out the majority of Jihadist suspects. So, one of them is animal rights activist Daniel McGowan who was convicted of participating in two arson attacks in the name of defending the environment as part of the Earth Liberation Front".*

Restrictions on fundamental rights: *"The prison authorities describe the CMUs as "independent units". "But that is an Orwellian way of describing black holes. Every prisoner I've interviewed has said there are three flecks of light in the darkness of prison: phone calls, letters and visits from family. CMUs radically restrict prisoners' rights, far beyond any other programmes that may exist in the country. (...) Their phone calls can be limited to 45 minutes per month, compared to the 300 minutes other prisoners receive. Their letters can be limited to six pieces of paper. Their visits can be restricted to 4 hours per month, compared to the Supermax where Olympic Park bomber Eric Rudolph can receive 35 hours. On top of that,*

⁸ Will Potter, *Green is the New Red: An Insider's Account of a Social Movement Under Siege*, 2011.

CMU visits are non-contact, meaning prisoners aren't allowed to hug their family (...). As one CMU prisoner has said: "We are not being tortured here, except psychologically". When a CMU prisoner has a visit, the rest of the prison is on lockdown. The visit is live-monitored by the Counter-Terrorism Unit and all visits must be in English, which is an additional hardship for many of the Muslim families".

Conclusion: Challenging political discourse

Today we are seeing a profound and global challenging of political discourse within the European democracies. Election results in European States illustrate a part of the deep mistrust of political elites associated with what some have called "*dégagisme*", the urge to kick out the political old guard. Against such a background, the specific framework of the fight against terrorism, seen as a fight against an "enemy" political violence, reinforces such distrust. Seen from this perspective, the place of judicial discourse seems to take on a singular dimension. As its aims include qualification, the judicial register is becoming more and more legitimate, for both public opinion and the media: "*We explain why we have taken up the case; the way we express ourselves is nuanced according to the degree of certainty we have (...). I do not have the feeling that I am taking a political approach, but a legal one (...). We are involved in an exercise that I believe few of the other actors could do in our place: politicians are in a position that does not allow it, they would be suspected of having ulterior motives*". (François MOLINS, Public Prosecutor of Paris)

PART 2. JUDICIAL DISCOURSE: LEGITIMACY AND THE NEED FOR PROFESSIONALISATION

The management of the different terrorist attacks in Europe has confirmed the more and more visible and expected presence of the judicial authorities. The fact that the judicial authorities speak out most often in crisis situations raises major issues concerning the content of this judicial discourse, but also its form. It seems then, as the French and Belgian examples will show that we are seeing a more and more assumed acceptance of the integration of this public speaking out into the work of the judicial authorities.

The different contributions from judges and prosecutors at this conference have largely confirmed this more and more central mission. Thus, for one Italian judge: *"it is interesting to define the provision of judicial information as an obligation, which is a change compared to the days when the judiciary were focused on their duty of discretion rather than a positive obligation to contribute to providing quality information. This shows that the judge can and must be an actor providing quality information of societal issues. This is part of a democratic and horizontal approach"*. From this perspective, François MOLINS goes on to emphasise the necessary professionalisation of this communication, whilst asserting that this job is not core to the action of the judiciary: *"as closer connections and cross-professionalisation are clearly becoming essential objectives (...), it is necessary that members of the judiciary be in charge of day-to-day communication with the press, it is not all I do for my part. We are organising more institutional exercises, encouraging reflection and a rapprochement between the judiciary and journalists. There have to be regular meetings enabling them to work together (...) as nature abhors a vacuum - if you don't do it, others will and not necessarily with the same ethics and reliable information"*.

2.1. Defining and disseminating judicial discourse in "the heat of the moment"

In a context where media coverage has been profoundly transformed by the appearance of new media (24-hour news channels, social media), the media world as a whole has undergone radical changes that obviously have consequences for the treatment of political violence cases (on this point, see also the report on Seminar 1 "Fight against violent radicalisation and protection of fundamental freedoms" and the question of propaganda and how it is dealt with on the internet). In this constant flow of information processed and expected by the public, judicial discourse is seeing its place redefined. This is stressed by François Molins: *"The media have a constant, pressing, sometimes unthinking need not to inform but to "break" news (...). More than a duty to inform our fellow citizens, it is sometimes a quest for a journalistic scoop, in a situation of overheated competition between the media, with the financial stakes you are all aware of. The time when only the continuous news channels could be accused of this are gone. The provision of a continual flow of news is now practised by all, or nearly all the media. All the newspapers have websites that they are continually updating. In addition, there are the social media. We, the judicial authorities, are therefore faced with this principle of reality: the media are, like us, engaged in a race against*

time in the attempt to track down the terrorists. They also want to investigate, they want to go out to where events take place, find witnesses, question those close to the terrorists, follow the propaganda". In the *Alenet de Ribemont v. France* case (no. 15157/89, 10 February 1995), the "live" handling of a criminal event gave rise to an ECHR opinion on the balance between communication and respect for the presumption of innocence. At a press conference following the arrest of several suspects in connection with the murder of a member of parliament, the French Minister of Justice publicly mentioned the name of one of the instigators of the murder, accusing him *ad nomen*. This case was referred to the Court of Justice in Strasbourg in order to define the scope of the presumption of innocence (Article 6-2). The Strasbourg Court took a wider view of the concept than the French government. If for the latter the presumption applies until the judgment, for the judges in Strasbourg the presumption of innocence applies to judges handing down a judgment, but also to politicians. *"The Court has found that naming the petitioner without any precautions did in fact infringe his right to benefit from the presumption of innocence and that his trial was ongoing. In addition, he was later found to be innocent and benefited from and the charges were dropped (...). The lessons of this case have not been very well learnt, especially in Eastern Europe. Particular attention must be paid to statements made in the media by politicians in a terrorism context - this is even more important. There will be strong demand from the public, and it will therefore be necessary to inform and reassure whilst taking all the necessary precautions"*.

However, in the current context in which judicial actors make public statements, the temporality of the case law of the European Court of Human Rights appears as "singular" to some, and even *"out of phase"* for others. Taking a long-term approach, the aim of the opinions of the ECHR is to establish the boundaries of the decisions and the precedents set by national decisions. To do this, the Court relies, in the case of media treatment and the right to information, on its interpretation and the application of Article 10 of the European Convention on Human Rights. Relying on case law made most often outside the context of terrorist attacks and their treatment raises questions about the contextual effects weighing on the decisions of the Strasbourg Court, as Cyril Roth points out: *"To what extent can the decisions of the ECHR be in keeping with the times? The preparation of the case and the reflection pass through legal and linguistic filters, making the formulation of judgments a long and complex process. Can we see a modicum of change in the frame of mind of the Strasbourg judges since the 2015 terrorist attacks and those of Berlin, Manchester and London? For example, on the protection of the terrorist's privacy, the French case concerning 13 November, and the fact that the only person who has been charged is filmed in his cell at all times in order to prevent a possible suicide attempt, raises questions for the European Court of Human Rights"*.

Such a time delay between the events and the decisions of the ECHR appears as a singular situation to the members of the Court: *"The people working in Strasbourg are aware of it; it allows a detached view whilst it is always difficult to judge in the heat of the moment; but it is also a great responsibility. Terrorism cases pose many problems (...). Most of the Strasbourg judgments are handed down in a context that has nothing to do with the terrorist context. But to answer your question, about ten cases. (...). Most of the cases are non-infringements today. Where are the limits of freedom of speech in this very particular context?"* (Radoslav DIMOV, auxiliary judge, ECHR).

Judicial communication in the heat of the action: between the presumption of innocence, the public's right to know and the efficiency of the investigation

By François MOLINS, Public Prosecutor of Paris

The aims: *"In France, communication is one of the duties of the prosecutor's office in its own right and is essential in times of crisis, both to inform our fellow citizens of the event, progress in the investigation and to provide a framework for the media (...). In this type of situation (terrorist attack) there is an extremely strong need, a legitimate expectation on the part of citizens, who want to know what is going on. There is a requirement for communication, which from my point of view must meet several imperatives:*

- *To inform, providing objective information, information drawn from the procedure whilst adhering to the principles. We expect the prosecutor's office to give accurate information:*
- *To explain what can be and what can't, saying why;*
- *To give an objective account of things and avoid false controversies;*
- *Never to lie, of course.*

(...) What rules must be followed by the public prosecutor in this communication in the heat of the action? What limits must be imposed on the right to information and the communication? What ethics of communication apply? What responsibility should be given to journalists? (...)"

In view of all this, it is essential to include in one's considerations: "the audiovisual communication services, but also the websites of these media, the print media and the social media. This very wide prism is necessary, I believe, to encompass the issues that can arise".

The content of the information: *"Press briefings are always a difficult exercise that take place in situations of urgency and tension, when you have to say as much and as little as possible. This is the choice we have made in Paris, to feed the press precise details that can be reported in the news without revealing anything that could compromise the dignity of the victims or needlessly worry the public. It is also necessary to give figures we are sure of and to explain the progress of the investigation without breaching the confidentiality of the examining magistrate's investigation or hindering the ongoing or future investigation (...). It is also indispensable to speak reassuringly, whilst remembering that we are neither the lord chancellor, the minister of justice or the minister of the interior. We will not say how many terrorist attacks have been prevented over a given period. Our job is not to frighten the public. Our credibility is at stake: we must say why the threat is particularly high, in a context where terrorists can attack anywhere, at any time, and by any means".*

Unforeseen aspects of communicating in the "heat of the action": *"And yet we are not in control of everything, not by a long way: during my press briefings, I regularly appeal to the responsibility of the media, with a consistent common thread: protecting the ongoing investigations; controlling journalists - as far as possible - in order to prevent them publishing or broadcasting information that would interfere with leads in the investigation. For instance,*

the virtually instant broadcasting of the identity or simple indications of the identity of a terrorist, whether dead or alive, can turn out to be extremely prejudicial to the successful course of the investigation. (...)".

"When I say ongoing investigations, I also mean, beyond the police investigation in the strictest sense, crime scenes and hostage taking. I find it inconceivable that the press should come and interfere with the handling of a hostage situation. Only the RAID or GIGN negotiator or any other person designated by them is authorised to enter into contact with a terrorist who is holding hostages. How could we accept that the media interfere with ongoing negotiations? What for? What is the interest in terms of information in broadcasting - including after the event - a conversation between a journalist and a terrorist? If you'll permit me the expression, every man to his own trade. And that of dealing with a hostage taking should not be that of the press".

European comparisons and the place of the ECHR

By François MOLINS, Public Prosecutor of Paris

The ECHR: *"The question of "live" judicial communication in such circumstances is therefore an essential one with regard to the requirements to adhere to the main principles of the Charter of Fundamental Rights of the European Union and the need to reconcile principles as different as the public's right to information, the presumption of innocence, respect for the dignity of the victims and respect for the rights of the defence. It is essential because it arises in exceptional circumstances where reconciling these contradictory principles is all the more difficult to achieve".*

European comparisons: *"The issue is all the trickier as relations between public prosecutors and the media are governed in Europe by the national constitution and/or legislation of each country, and by internal legislative or regulatory instruments. It is, furthermore, the diversity of the legal systems existing within the Member States that explains the variety in the ways public prosecutors communicate with the media, these prosecutors being vested with different tasks and roles, whilst always being bound by a duty to respect human rights and fundamental freedoms. The public's right to information must also be met (Inter alia, Arrigo and Vella v. Malta, no. 6569/04, 10 May 2005, Yordanova and Toshev v. Bulgaria, no. 5125/05, 2 October 2012), but the way this right is applied may be influenced by and depend on the specific circumstances of the case and it may, of course, be subject restrictions in order to ensure the basic principles are met"(...).*

"Concerning the terrorist attacks of 13 November in Paris, there is a strong Franco-Belgian dimension. We have progress to make to align our communication, we realised this after the attacks. Cooperation is excellent with certain countries, especially Belgium. The risk of leaks during investigations in one country is already high, so when there are two, there are so many leaks in both directions that this can be very damaging to the cooperation as each side will tend to believe it is the other that has leaked the information. We became aware that we needed to communicate more. On 20 March 2016, I went to meet the Belgian federal prosecutor with my colleague in charge of communication to get to know each other better and cooperate better on this point. It would be useful to be able to exchange certain items, but it is not easy because the systems are not the same. I don't have the same relations with my Minister of Justice as the Belgian federal prosecutor has with his Minister of Justice".

The Brussels attacks

By **Christophe LAMFALUSSY**, Journalist at *La Libre Belgique*

Demand for information: *"The demand for information was phenomenal in the hours following the attacks. The reader or listener's thirst for information is inversely proportional to that available. That is the first difficulty. The public authorities, from the emergency services to the police, and including judges and prosecutors, have very little to say in the immediate aftermath of the events. (...) This explains why the television channels broadcasting live are particularly short on information and rich in speculation. This is when in live television broadcasts, you hear expressions like: "We have learned that ...", "We are checking whether...", "It is being said on social media that..." (...). The paradox is that the more information becomes available, the more the reader's interest dwindles as the event is further in the past. In theory this should force journalists to observe an enormous amount of restraint, but the media pressure is such that they do everything they can to be, as the expression goes, "the first to break the news".*

The place of the media in judicial investigations: *"When Salah Abdeslam was captured, in Rue des Quatre-Vents in Molenbeek, an outside broadcasting car belonging to the private Flemish television station was on the scene before the police turned up. The arrest itself was brought forward because a French magazine revealed on its website that Salah Abdeslam's DNA had been found in the Forest hideout. (...) The role of the media was "catastrophic", a Belgian judge quoted in our book "Molenbeek-sur-Djihad" told us. (...) We had spent as much time dealing with the leaks as the danger. The news announced in Paris that we had found Salah Abdeslam's DNA forced us to bring the operation to catch him in Molenbeek forward by a day. We had to do it on a Friday, between two schools, in the middle of the street".*

(...) A Belgian media outlet was in possession of the same information, but kept it to itself so as not to interfere with the course of the operations. Accused of leaking the information, the French weekly retorted that "it sometimes happens that the police or investigators ask us to delay the publication of a piece of information so as not to jeopardise an ongoing investigation or operation. This was not the case. And if it had been, we would no doubt have heeded that request, as we have done on several occasions since the attacks of 13 November 2015".

Belgium-France cooperation: *"The second difficulty stems from the differences in procedure between Belgium and France. The French journalists sent to Brussels after the 13 November attacks were very surprised to find that the Belgian federal prosecutor's office only gives the press minimal information on the investigation. For weeks, the editorial offices received press releases from the Belgian judicial authorities that confirmed facts revealed elsewhere and often ended with this phrase intended to discourage any phone calls: "No further information or details will be given, in the interests of the investigation" (...).*

"In Belgium, the investigating judge, independent of the political authorities, maintains virtually total secrecy about his investigation for fear of his procedure being challenged in court. In France, the public prosecutor may provide the press with certain factual items of information. He may "publicise objective matters related to the procedure that convey no judgement as to whether or the charges brought against the defendants are well founded"

according to the French Code of Criminal Procedure. This gave rise to this ludicrous situation: when Brussels was silent, Paris was talking. The French journalists ended up abandoning Molenbeek to return to Paris where they obtained much more information on the joint investigation being carried out by the Belgian and French judges. The affair ended up annoying the Belgian judges and for a time they restricted the sharing of information with Paris. There is certainly room for some harmonisation of the European rules".

The judicial discourse confronted with the media's aims: *"In a world with such a thirst for information – and it is understandable when it comes to terrorist attacks -, the journalist wants to know everything while the judge or prosecutor wants to say as little as possible. This where two professional cultures collide. The best way of checking that media pressure – and here I am speaking as a former spokesman for a European law mission in Kosovo - is to provide enough information "on the record" enable a journalist to write a few paragraphs and "off the record" to journalists you trust implicitly. If the judge or prosecutor retreats into silence and does not give enough information, he runs the risk of seeing the journalists besiege the investigators, the victims and later the lawyers to try and find out more. When this happens, the information process escapes him completely, with the risk of the investigation being seriously jeopardised by the media's revelations. This is what happened in Brussels".*

2.3. When judicial discourse goes "incomunicado"

The judicial discourse that is today tending to become the rule in the short and long-term management of the fight against terrorism, corresponds to a desire for controlled transparency in order to respond to both the expectations of public opinion, but also attempts to hijack and over-interpret the facts. However, some contemporary examples show that a risk of the judicial discourse being silenced still exists in Europe. Conflicting with the different rules inherent in freedom of speech and information, such example put pressure on rules as central to the functioning of the rule of law as its publicising and transparency ("*Open Justice*").⁹

The trial held in secret of Erol Incedal and Mounir Rarmoul-Bouhadjar in Great Britain constitutes from this point of view a particularly important example:

The "AB and CD case": In October 2013, two men were arrested by police in their car near Tower Bridge in London. Erol Incedal, from South-East London and Mounir Rarmoul-Bouhadjar are said to have been planning to assassinate several famous people including the former Prime Minister, Tony Blair. The search for and possession of the addresses of these politicians as well as documents how to make a bomb constituted the main items of evidence presented officially by the British authorities. This case quickly took an exceptional turn following the prosecution's decision to deal with the judgement phase of this case in total secrecy. In concrete terms, this involved the anonymity of the accused and the absence of the media or public during the hearings. The main argument put forward to justify such a position lay in the fact that possible unidentified accomplices could still be at large. In the face of this position of "silencing" the judicial discourse, the British media and their lawyers took different decisions.

⁹ For a presentation of some other examples, see Report 2.

A trial held in total secrecy

By Ian COBAIN, journalist at *The Guardian*

"The story begins by chance thanks to the discovery by a fellow journalist of a legal decision announcing full restrictions in the coverage of the trial of two men had been arrested, who would only be able to be identified by their initials CD".

"Faced with this exceptional situation, several media outlets decided to appeal against this decision. Following the decision of the Court of Appeal ordered, it was then decided that the trial would be divided up into three parts: the first part was open to the public and the press, which was therefore entirely free to report the facts. The second part was only open to about ten journalists, who could not under any circumstances report what they had heard. Finally, the third part during which no journalist could be present in the courtroom, making the trial totally secret".

"Such a situation placed the media and journalists in a dilemma. Should they attend such a trial and accept the reporting restrictions knowing that, during the second phase of the trial, the journalists present could not report the evidence and the arguments put forward by the prosecution and the defence. (...) A few journalists then argued that under these conditions, the media should not collaborate with such secrecy and should therefore refuse to legitimise by their presence this choice to hold the trial behind closed doors (...). In the end seven journalists were able to attend the hearings. We were obliged to hand over our mobile phones, which were placed in soundproof boxes. At the end of each day, we were obliged to hand over our notebooks to the police so that they could place them in safes inside the court".

"This handing over of notebooks is not merely anecdotal for a journalist. These are extremely precious to us, they are the main tool of our trade containing the report of what we have seen and heard. They are very important to us: I have been a journalist for over 30 years and I have never lost a single one of these notebooks. I still cannot use these notebooks today and anything I say that goes against this principle of silence could lead to serious legal problems for me and my newspaper".

Challenging the principle of Open Justice

By Anthony HUDSON, QC

Concentrating on the legal and procedural issues confronting the court, the Erol Incedal and Mounir Rarmoul-Bouhadjar case shows how the law can be modified in the name of the fight against terrorism.

Legal arguments: *"The trial judge ordered an unprecedented arrangement: He ordered, among other things, (i) that the entire criminal trial of the defendants must take place in private (with the public and the media excluded) basing his arguments on an interpretation of customary law; (ii) that the publication of the trial reports must be prohibited in spite of the Criminal Justice Act 1981; and (iii) that the names and identities of the defendants must be kept from the public (...). The media - including The Guardian newspaper - quite correctly thought that this was not only unprecedented, but also that this silencing was needless and unjustified with respect to the fundamental principle of Open Justice. The media therefore appealed to the Court of Appeal (S.159 of the Criminal Justice Act 1988). This appeal was raised in Parliament in anticipation of proceedings against the United Kingdom at the European Court of Human Rights" (...). The argument of the media was that the decision of the British court did not demonstrate the "necessity" for the trial to keep the identities of the accused secret. The media relied on the principle of Open Justice, which is established in English customary law via Articles 6 and 10 of the European Convention on Human Rights".*

The principle of Open Justice in English customary law:
"The principle of Open Justice is a fundamental principle in English customary law. The Court described it as a safeguard of the rule of law. This opinion was later confirmed, adding the idea that Open Justice was also a fundamental principle for democratic responsibility. This principle has existed for over 100 years, since the Scott v. Scott case in 1913 judged by Viscount Haldane LC and Lord Shaw of Dunfermline (...). In English customary law, it is therefore well established that legal proceedings must be conducted in public and must be fully and freely reported. Viscount Haldane pointed out that the right of public access to the courts is one of principle, turning not on convenience, but on necessity (p.463)".

Exceptions: *"The ordinary rule is that press is an observer for the public and can report all that takes place in a criminal court. In European case law and in British practice this is a strong rule. It may only be overridden by unusual or exceptional circumstances (...). The court has no power to order such silencing, except in the most exceptional circumstances".
"Open Justice may be set aside in some very precise cases, which must be, according to the terms used, "convincingly established". This therefore does not rest on the judge's discretion, but on a question of principle and necessity. This is a strict test that must prove that a hearing in camera is "strictly necessary" and that "the exclusion of the public is necessary for justice to be done"."*

Scott v. Scott [1913] AC 417.

In re S (A Child) (Identification: Restrictions on Publication) [2005] 1 AC 593

In re Guardian News & Media Ltd [2015] 1 Cr. App. R 4, per Gross LJ at [10].

PART 3. MEDIA DISCOURSE: PRACTICES, LEARNING AND ETHICS

The terrorist attacks that have occurred in Europe since the beginning of the 2010s, and which have intensified since 2015, have led the media to re-examine their practices. These reflections include: (1) the relationship to the immediacy of the treatment of information, (2) relations with the political authorities and security institutions, and (3) their relation with groups and individuals involved in terrorism. In the many public debates on this topic, the question of the identity of the terrorists has become one of the leitmotifs of the opinion columns, television studio discussions and social media. Beyond the often-omnipresent question of the anonymisation of those involved in terrorism, other areas of reflection have come up in the discussions between members of the judiciary and journalists.

Heroisation of the perpetrators of terrorist attacks: As reported by journalist Pierre GANZ (Vice-president of the French Observatory of News Media Ethics (ODI)): *"The problem is not so much the anonymisation as the de-heroisation of the terrorists. Some media have opted to stop showing images of the perpetrators of terrorist attacks. This commitment not to 'create a rogues' gallery of terrorists' has not stayed the distance. Others have chosen to limit themselves to ID photos or photos that are not of an emotional or positive nature. Several have taken measures to stop them being repeatedly shown or used in news tickers or teasers on television.*

After discussion, the great majority of editors have chosen to name the attackers, to tell their life stories, because the actors in news stories are generally named and in order to avoid conspiracy theories, and because these people's past histories are one of the elements that can help us to get a better grasp of reality. (...) Propaganda documents are, even more than before 2015, used with precaution, placed in context and subjected to critical analysis: one editorial office considers for example that these are self-glorifying devices not to be used just like any other material. (...) Several other editorial offices have reiterated the rule on not participating in the broadcasting of calls to violence and hatred and not to fuel tensions (in all codes of ethics)".

In this perspective, journalist Matthieu Suc (*Médiapart*, France) points out: *"that it is necessary to be aware that although the terrorists use us to propagate their horror, they- are not seeking to become famous through our media. They no longer need us, the media, to become 'stars'".*

Information vs Propaganda: Under these conditions, the boundary between information and propaganda constitutes a fundamental issue, whether for the practices of the public authorities, media players or researchers:¹⁰

(Christophe LAMFALUSSY, journalist at *La Libre Belgique*) *"For some, journalists should not report on all the propaganda, but on the other hand, should they not explain that propaganda?"*.

(Haroro INGRAM research fellow at the *Australian National University*, Canberra): *"I agree with you entirely. I would suggest that that this propaganda should not be broadcast in a non-*

¹⁰ For a comprehensive presentation of this theme, see the Report of Seminar 1 "Fight against violent radicalisation and protection of fundamental freedoms".

critical way without any analysis, that it should not be disseminated as it is. When IS disseminates its propaganda, it increases its reach and journalists can do the same! What is the difference between a fan of Daesh sending the latest video to his followers and a journalist sending it to thousands of journalists?! We must engage critically with these sources. For example, the terrorists make out that the war on terror is a war on Muslims, in particular via the story of a little girl who got killed ... they explain that Trump was doing what he said that he would do during his campaign, i.e. killing families. This story has served them well. (...) The propaganda has changed, subtly. Before the emphasis was on the caliphate and the Islamic state, on travelling as a foreign fighter. Now it is no longer that battle, they want to incite people to carry out what they call "just terror". It is an ideological question, but not merely that - when you are winning military victories, it is easier to sell the choice to come and fight abroad. Now they are saying "as Muslims, we are testing you to see what you are worth". The story of the IS organisation is the story of a group that started from nowhere, then had a lot of success, and is now falling back again. Commentators were wrong to say that IS was ashamed of its failures - it seems to me that it's not true. To show that they are not ashamed, they are broadcasting the speeches of the terrorist leaders to say that it is not all over, they say they have god on their side".

Media discourse under the pressure of immediacy: In the same way as for judicial discourse, media discourse is subject to many different timescales. Confronted with immediacy becoming more and more central to our societies, the moment when terrorist attacks take place and the "live" media coverage that ensues undeniably represent the environment in which the risks of challenges to the rules on the right to information and respect for victims and even possible suspects are at their highest. Following the 2015-2016 terrorist attacks in Europe, most of the media and their practices were accused of misconduct and challenged. In editorial offices, the treatment of these events led to many discussions and much collective reflection on the errors committed or to be avoided. It seems that the main disputed points concerned a lack of rigour, the endangering of people's lives and the failure to respect people's dignity. *"Working in a continuous flow, amidst constant competition, editors have to organise measures to counter the slippage in accuracy. A lack of rigour is often linked to haste. It is also linked to a lack of experience and sheer incompetence"*. Pierre Ganz (Vice-President of the French Observatory of News Media Ethics (ODI)).

3.1. The media faced with new responsibilities: the media coverage of the 2015-2016 terrorist attacks in France

In France, the opinions of the *Conseil Supérieur de l'Audiovisuel* (CSA, the French audiovisual council) and the debates that accompanied them following the media coverage of the terrorist attacks of 2015 and 2016 can help us to understand a large part of the issues now faced by the media in European countries. As a preamble, it should be noted that the CSA only intervenes after programmes have been broadcast on TV or radio; it never gives an opinion, in principle on any programme – whatever it may be – before it is broadcast.

"Law of 30 September 1986 on freedom of communication" in France: Article 1 of the Law of 30 September 1986 confers in particular upon the CSA the task of ensuring respect for human dignity and the safeguarding of public order in audiovisual programmes. Article 15 of the Law of 30 September 1986 confers upon the CSA the task of ensuring the welfare of

children and adolescents and respect for human dignity in the programmes made available to the public by an audiovisual communication service.

Recommendation no. 2013-04 of 20 November 2013 on the treatment of international conflicts, civil wars and terrorism by audiovisual communication services completes these measures".

The Conseil Supérieur de l'Audiovisuel (CSA): As the CSA itself points out: "*The Council recommends to editors, for every programme that deals with such events, that they ensure the following principles are met:*

1. Respect for human dignity

- *By abstaining from presenting in a manifestly complacent way violence or human suffering when images of people who have been killed or injured or the reactions of their families are shown;*

- *By protecting the dignity of hostages, (...);*

- *By scrupulously respecting the stipulations of the Geneva Conventions and their Additional Protocols relating to the protection of prisoners of war and civilians in wartime.*

2. Law and order and honesty of information

- *By treating with the indispensable moderation and rigour international conflicts liable to fuel tensions and antagonisms within the population (...);*

- *By checking the accuracy of the information broadcast and where there is any uncertainty, accompanying it with reservations, (...) subject to the protection of sources guaranteed in particular by Law no. 2010-1 of 4 January 2010 on the protection of the confidentiality of journalists' sources;*

- *If inaccurate information has been broadcast, by rectifying it at the earliest opportunity (...);*

3. Protection of persons

- *By ensuring that the broadcasting of sounds and/or images that are difficult to bear is systematically preceded by an explicit warning given to viewers in order to protect the most vulnerable people from their potential impact. (...)"*

The CSA's policy of intervention after the event: It should be emphasised that the Council only intervenes after programmes have been broadcast on TV or radio; it never gives an opinion, in principle on any programme – whatever it may be – before it is broadcast. *January 2015 led to the Council organising, very rapidly, a meeting with the directors of the main audiovisual media outlets to review what happened and reflect on how the events had been treated. This meeting, which took place on 15 January 2015, therefore enabled "a joint reflection on the issues and difficulties that were raised by the accomplishment of their mission" (CSA press release)"*.

The management of information flows: "*Most of the editors present emphasised their great sense of their responsibilities and compliance with the existing code of practice, pointing out that they had been torn between respecting the rules applicable (human dignity, law and order, code of practice) and the need to inform the public as well as possible. They considered that, with a few exceptions, the code of practice has been generally adhered to and that many positive points had come out of this experience. (...) Most stated that they had kept secret, for a significant length of time, information whose dissemination could have been damaging to the investigation (discovery of the ID card of one of the terrorists by the police, identity of the suspects being sought, etc.). They considered that the bond of trust with the*

public could be broken if they failed to broadcast news that was broken by other media (social media, for example)".

The role of social media: *"Most of the editors pointed up difficulties caused by the large amount of information put out instantly on social media. The question therefore arose of when to broadcast a piece of information that had already been massively spread on other media and in particular on social media. Indeed, concealing or delaying broadcasting a piece of information that the public has already seen on social media could, according to them, disrupt the relationship of trust with the public".*

Communication with the law enforcement agencies: *"The great majority of the editors lamented a lack of communication with the law enforcement agencies. They complained that they had no specific interlocutor as well as the fact that no command post or security perimeters were set up, as, it would seem, was the case during the operations of the security forces around the apartment of Mohamed Merah in 2012. They thought it indispensable that the public authorities adapt to this type of situation so that editors can work more methodically. They stated that it is important to coordinate better with the police in order to avoid risks".*

The CSA's proposals: "Guide to good practice"

The CSA published a "code of conduct" on 20 October 2016, in which, following the reflections on the treatment of the terrorist attacks of 2015 and 2016, it invites, within a typically "soft law" legal framework, the media players to integrate into their working practices a certain number of "precautions", in particular during the treatment of terrorism-related events:

- Generally, they should propose to set up reliable internal procedures in order to secure the information delivered thanks to a process of permanent control and validation.
- Integrate precautions with regard to judicial investigations and the actions of the security forces. This means, for example, not broadcasting images or sounds that could put people's security at risk.
- As regards relations with terrorists, it is requested/recommended that the media refrain from making contact with them during the events.

Also concerning this issue of the relations with terrorists, the CSA recommends precautions concerning the way terrorists are presented and the treatment of images from their propaganda. This is to avoid any showcasing or glorification liable to encourage copycat behaviour.

- Finally, precautions regarding victims, in order to avoid broadcasting images that violate their dignity.

The CSA's opinions: "failings" and "formal warnings"

Official statement, summary

Following a plenary meeting held on Wednesday 11 February 2015, the CSA identified 36 failings, 15 of which led to cautions and 21, more serious, justified the issuing of formal warnings.

1- Disclosure of information enabling the identification of the terrorists: The Council considered that the disclosure by i>Télé and LCI of information concerning the identification of Saïd and Chérif Kouachi, before the broadcasting of the appeal for witnesses by the police, in spite of precise and insistent requests being made by the public prosecutor, made it evident that they had been identified and that they were actively being sought, which risked interfering with the operations of the authorities.

As a result, it was decided that these channels should be given a formal warning that they must comply with their obligations relating to law and order.

2- The announcement that confrontations with the terrorists had taken place at Dammartin-en-Goële whilst the other terrorist was still holding out at Porte de Vincennes.

The Council found that BFM TV, Euronews, France 2, France 24, i>Télé, LCI, TF1, Europe 1, France info, France inter, RFI, RMC and RTL announced live that a confrontation has begun between the law enforcement agencies and the terrorists in Dammartin-en-Goële. It considered that the disclosure of this information could have had dramatic consequences for the hostages in the Hyper Cacher store at Porte de Vincennes, insofar as Amedy Coulibaly had threatened to shoot them in the event of an assault at Dammartin-en-Goële.

As a result, the Council decided that these television and radio stations should be given a formal warning that they must comply with the imperative of safeguarding law and order.

3- The broadcasting of pictures and information concerning the progress of ongoing operations, whilst the terrorists were still holding out at Dammartin-en-Goële and the Hyper Cacher store at Porte de Vincennes.

The Council considered that the broadcasting by BFM TV, Canal +, Euronews, France 2, France 24, LCI and TF1 of information and pictures showing in particular the deployment of the law enforcement agencies, the precise positioning of some of them or the strategy decided, could have been prejudicial to the implementation of the operations as well as to the safety of the hostages and members of the law enforcement agencies, insofar as the terrorists could have access to them.

The Council cautioned the television stations concerned, in view of the need to reconcile the safeguarding of law and order with freedom of communication.

4- The broadcasting of information concerning the presence of people who were hiding in the places where the terrorists were entrenched, whilst the law enforcement agencies had not yet gone in and there was therefore still a risk to their lives.

The Council found that France 2, TF1 and RMC had reported the presence of a person who had managed to hide at the print works where Saïd and Chérif Kouachi were entrenched. It also found that BFM TV and LCI had raised the possibility that one or more people could be hiding in a cold store or storeroom in the Hyper Cacher store where Amedy Coulibaly was holding his hostages.

The Council considered that the broadcasting of this information, at a time when the terrorists were still able to act, was liable to pose a grave threat to the safety of the people being held in these places.

It was decided to issue the audiovisual media concerned with formal warning not to repeat such failings on law and order.

5- The broadcasting of pictures of the attack carried out by the law enforcement agencies on the Hyper Cacher store at Porte de Vincennes

The Council examined the complete broadcasting, by France 3 and Canal +, of a video showing the attack on the Hyper Cacher, including the shots that killed the terrorist while he was confronting the police. It considered that these sustained images, liable to fuel tensions and antagonisms, could contribute to a breakdown in law and order. It therefore cautioned the television channels against repeating such a failing.

3.2. Journalistic practices in the face of political violence

"Professionalism and ethics"

BY Pierre GANZ, Vice-President of the French Observatory of News Media Ethics (ODI)

A reflection by the media on their practices: *"Journalists did not wait for the terrorist attacks to happen to reconsider their professional practices. But they did not anticipate, any more than other professions did, what has happened in France since 2015. They have had to work in the "heat of the moment" in line with the rules of their profession. With varying numbers of ethical mistakes and, it must be said, in the end not very many compared to the mass of information collected and broadcast, often in real time.*

Most of the media, generally accused of misconduct after the events of January 2015, reconsidered their practices. In editorial offices, the treatment of the events led to what is normally a rare occurrence, debriefings, discussions, collective reflections on the mistakes to be avoided in the future.

The main disputed points concerned a lack of rigour, the endangering of people's lives and the failure to respect people's dignity.

A lack of rigour is often linked to haste. It is also linked to a lack of experience and sheer incompetence".

Working in a continuous flow, amidst constant competition, editors have to organise measures to counter the slippage in accuracy. (...)

"Journalists have to ensure that there is some form of balance between the exposure represented by the publication of people's image, especially when they are not involved in public life and when they are in a state of vulnerability, and the public's interest in being informed. But they must also hear what an often-saturated public is saying, in particular in the context of continuous news, with the broadcasting ad nauseam of images of terrorist attacks or their perpetrators. (...) It should also be noted that the media which did commit errors relating to the respecting of people have made the effort to apologise and explain how the error could happen. The question of the role of journalists on the ground, and of photographers in particular, has also been much debated. The conclusion has been that a photographer's role was to show what was happening".

The decisions: *"Development of "terrorist attack" procedures which set out who must do what in editorial departments and when to call in experienced managers placed on call.*

- A ban on broadcasting information concerning an ongoing terrorism case that has not been validated by the specialist "police/justice/investigations" department, and even by the head of the department in person;*
- Identification of official information circuits by these departments;*
- Need to keep a critical distance from one's sources, including the law enforcement agencies and the justice system. Journalists are not auxiliaries of the public authorities;*
- Not passing on rumours;*
- Guarding against the risk of a certain fascination with the event one is reporting;*
- Being more demanding as regards the competence of "experts";*
- Reflection on the management of teams on the ground (numbers, number of interventions, relief);*
- Cooperation between the Belgian, Canadian, French and Swiss public media on terrorism-related subjects. A closed, secure Facebook thread allows exchanges of sources, names of specialists, information, documents, videos;*
- Training to enable people to work serenely with the social media;*
- Tools and procedures to be able to check information circulating on the web;*
- Recruitment of young journalists with experience of these techniques;*
- Procedure for placing the media's social media accounts in "emergency configuration", blocking out all automatic insertions of misplaced and superficial information".*

The timescales of the news: *"It is all about being the fastest and the most reliable," says the Director of Le Monde, Jérôme Fenoglio, which implies three obligations: you don't rush information out without checking it; you don't pack out information or stage things to fill a vacuum; you are not afraid to say you don't know".*

The endangering of people is often a consequence of excessive haste in publishing information.

The response does not only lie with editorial departments, from the moment when the presence of journalists on or near scenes of intervention is happily tolerated by the authorities.

Editors have reactivated the notion of the timeliness of publication. Two cases in particular gave them pause for thought: the allusion to the presence of people hiding in the basement at the Hyper Cacher store and the broadcasting of the interview with people hiding at the Bardo Museum in Tunis. The journalist involved in the first case has acknowledged the mistake and a moment that he "would like to wipe out of his professional career". Concerning the second case, the editors reiterated that broadcasting with a slight time delay is a necessary precautionary rule, allowing time to edit if necessary and ensure the safety of the witness.

It should be emphasised also that in January 2015 and since then, on several occasions, information has been held back by the media, either at their own initiative or at the request of the authorities".

The effects of the 2015-2016 terrorist attacks on journalistic practices: *"First of all, they provided an opportunity for a renewed examination of ethical considerations, re-credibilising them in certain sectors where it was considered pointless to discuss professional ethics (certain directors of media outlets thought it was no longer necessary).*

Secondly, the social media are accepted in the information production chain because "the ratio of advantages to disadvantages of the social media is positive overall, as long as all the appropriate journalistic filters are applied: checking, cross-checking, weighing the timeliness of broadcasting.

Thirdly, the rule according to which it is possible to take one's time and hold back information when dealing with continuous news is no longer only mentioned by critics of non-stop news, but also by its promoters, such as the director of one television channel who states that his priority is no longer "live news", but "verified news" delivered "with a conscience". Finally, and above all, the main lesson is that these ethical issues must be reflected on in editorial departments, decided collectively, on a case-by-case basis, among professionals who listen to and serve the public."

3.3. "New" vs "old" media: what is the reality?

A divide that is less and less relevant: In the media reality, this divide between old and new media is becoming less and less evident. Thus, according to Christophe LAMFALUSSY (journalist at La Libre Belgique): *"On 22 March 2016, date of the Brussels terrorist attacks, over 4 million Belgians consulted the websites of the French language Belgian press. If we add the readers of these news sites who live abroad, we arrive at a total of 7 million unique visitors. La Libre Belgique recorded 770,000 unique visitors that day, compared to about 200,000 on a normal day. These figures are only for the French language press and not the Dutch language press, which reaches an even wider public. The Belgian population is about 11 million. What this tells us is that the traditional press remains - by far - people's main source of information, including and perhaps especially in times of crisis. The main difficulty facing the conventional is not readership, but profitability".*

According to the same author, two dominant trends emerge in the present-day media landscape: *"The first is the end of the news monopolies. The ORTF (the original French state radio and television body) is long gone, as is the primacy of the world press agencies. Today there is a multitude of sources of news and multitude of channels for disseminating it. This is good news, but it makes communicators' jobs even more difficult because the audience is fragmented and difficult to reach when you want to sell a message. And that reduces the profitability of the media as the advertising market is becoming dispersed, whereas before it was concentrated in just a few media. The latter then had the financial means to hire journalists and produce good quality news, and good investigative journalism (...). The second major trend is the speed at which we receive news now. In 1982, Syrian President Hafez Al-Assad sent his army to crush a rebellion by the Muslim brotherhood in Hama. The city was encircled. The siege lasted three weeks. And one British journalist was only able to go there, in the Syria of the time which was closed to the media, after the carnage had taken place. Today, thanks to social media, we are kept informed within the minute. We receive videos of the bombing of Alep or Mosul online. We know when something is happening. But, in most cases, we cannot be certain of the either information or its provider. Which "goes to show how important the role of the journalist still is".*

Far from appearing to oppose the new media channels, the traditional media seem also to be putting together new strategies in order to adapt to the change in the economy: *"The traditional media are quietly implementing a technological revolution, in line with the developments in the market, income from advertising and consumer habits. The transition is hard. It is taking place at the costs of repeated restructuring plans in editorial departments, but it is happening. The watchword in many a newspaper now is "web first, print later". It is not applied by all of them yet, but it is gradually gaining ground. A well-trained, journalist who is correctly paid and therefore exempt from commercial pressures, with no political agenda, is equipped to find his or her way through the jungle of information. It would be presumptuous to say that journalists are the only ones able to do it. But they have the tools to do it. Their tools are diverse: the relating and checking of facts, reporting, interviews, analysis, placing different elements in perspective. It is these tools that enable the media to keep some distance from the culture of emotion and the distortion of the facts that dominate the news world at the moment".*

Twitter, Facebook and the media coverage of the terrorist attacks in Europe: For Christophe LAMFALUSSY (journalist at *La Libre Belgique*): *"At the current time, Twitter is more an instrument of communication than a real producer of news. Its messages are limited to 140 characters. Its audience is limited, often pre-informed, sometimes complacent. On the other hand, Facebook is growing in popularity in Belgium and is obliging us to re-examine our news offer. Facebook is digital communitarianism. Birds of a feather stick together. These are modern society's clans, who exchange subjects that interest them, but sometimes remain hermetically closed to other issues. Sharing an article on Facebook multiplies the readership, but you have to be able to get into different Facebook communities. That is our challenge today. This is why the group has just hired a digital marketing manager. On 22 March 2016, on the Twitter thread, witnesses put out photos of the inside of the carriages in Maelbeek station, without any filter being applied. We published a photo, but after blurring the dismembered bodies. On the same day, also on Twitter, a web user put out images supposedly from Bruxelles-National Airport. In actual fact they were pictures of Domodevo Airport in Moscow, where there was a terrorist attack in 2011. The Muscovite images, which were terrifying and touching, were viewed thousands of times by people who thought they were of Brussels airport (...). The Twitter platform fills in the need for news. We see that people who are never on Twitter access it at these times. Treating social media and the general media as conflicting entities is wrong because 80% of the material on social media is put there by journalists".*

Similarly, we see that institutional accounts are becoming more and more active. This is underscored by researcher Nicolas VANDERBIEST (researcher at the University of Leuven): *"Indeed, a logic of restructuring. An example with the Berlin police: a police force that is hyper-present on social media, but it committed a grave error when it said there were still two armed terrorists at large, which was false and likely to put the city in a state of panic. Everybody said it was good. When a terrorist attack happens, the media are also in shock, they refer to foreign media. (...) A journalist is occupied for an hour with a piece of news. In France, information is power. It took four terrorist attacks to get it right, but last time with the attack on the Champs Elysées was very good, the Paris police managed it very well"*.

Twitter and its of dissemination phases

By Nicolas VANDERBIEST, Researcher at Leuven University

"Observation phase": *"This first phase is neutral, it is an information phase. The hashtag used is generally the name of the city or the name of the event. Then people gradually realise what is happening, and the emotion arrives. Once the emotion phase has passed, there comes the transition phase"*.

"Transition phase": *"This is a moment where people are not all equal when it comes to receiving news (some have smartphones and can access information more quickly). For example, on the day of the Bataclan attack, the Belgian team was also playing. Our Prime Minister and the Minister of Foreign Affairs congratulated our team, but then deleted their tweet when they heard what was happening in Paris. In this phase, the hashtags are constructed as follows: combination of the generic name of the event and the name of the city. Why? Because hashtag of the just the name of the city is simply being over-used"*.

The 24-hour news media have a set up a kind of partnership with the public: "you give us news, and we'll give you news back". We observe that in this phase, the first people on the scene did not give information to the police, but to the news channels".

"Organisation phase": *"People will adjust to the shock and start organising. Shared language: freedom of thought, French symbols, being able to go out and the organisation hashtag "pray for XX". In this phase we will see people starting to structure themselves, most of the time those who use the "pray for XX" are abroad. It is not simply a national organisational logic. During this phase, dissenting elements have the finger pointed at them: if you are not "in", you are stigmatised. For example, after the attacks on 7 January 2015, the most searched-for item for "charlie hebdo bien fait" (charlie hebdo serves them right) so that they could be stigmatised"*.

Between organisation hashtag and information hashtag: the information hashtag does not last long, while the organisation hashtag is built up little by little. We saw less organisation for the most recent terrorist attacks, but the Manchester attack was the subject once again of a large organisation phase, which shows that an attack with fewer victims arouses less emotion".

"Interest phase": *"Everyone is talking about nothing else but that: the press wants exclusive news. Sales of t-shirts are organised, people will try to put out the best tweet, spam videos in the hashtags, all those who take advantage as brands".*

"Disorganisation phase": *"This occurs earlier and earlier, people emerge from the homogeneity of the organisation ("I am not charlie", "'pray for" is too religious" etc.). This is also when the urban legends and rumours appear. One observation specific to France: the extreme right is rising in the trending topics on Twitter, we are seeing reactions from people outraged by what the extreme right are saying and in the end, they give them a bigger reach by talking about it: reactional paradox. In 24 hours, the phase is shorter and shorter. False rumour mechanism, repercussions and additions to the rumour, this rumour will be confirmed by external elements. Rumours need to change to survive on social media. The refutation of the rumour is always bigger than the rumour itself. Those issuing the refutation of the rumour (authorities in particular) are always the most visible, which is good news. First and second-hand witnesses also appear: the latter think they have seen something, but in fact the reality is different."*

CONCLUSION. WHEN VICTIMS SPEAK

Victims' associations and their place in relation to the media: For Stéphane GICQUEL (Secretary General of the National Federation of Victims of Terrorist Attacks and Collective Accidents (FENVAC), France) *"The association's task is to represent the victims, to carry their experiences at national and international (EU and UN) level. The aims are truth and Justice, but also prevention. A strong partnership exists with the Ministry of Justice, which will provide our association with the contact details of the victims within 24, 48 or 72 hours. As regards the criminal proceedings, the association can intervene as a "partie civile" (victim-plaintiff). (...) At first sight, you might think that the media are not a priority for the victims. Today, we know that in the chaotic aftermath of a terrorist act, the media are among, perhaps THE most intrusive actors and the quickest to show themselves and contact the victims, often even before a representative of the State does so. The journalist will have his own logic, his own timeframe. The media illustrate well the tension that exists between the individual and the collective. You are both subjects and spectators. The second illustration, is the person him or herself and those close to them. The victim dreads being an object of curiosity for the people around him or her. The media are one component in what the victims go through. The complexity resides in the victims' relationship with the media: at the same time, they want to be recognised as victims, but they feel a vital need not to be reduced to their status as victims. The equation is a complex one. (...) The issue of the relationship between the press and the victims resides in particular in reconciling press freedom with the indispensable respect for the human dignity of the victims of terrorism. A terrorist attack is by definition a test (values, societal model, social organisation) (...)."*

The consequences of media bad practice: Again, according to Stéphane GICQUEL: *"It is said that there is a second dehumanisation with the action of the media. This dehumanises the individual and turns him or her into an object of the action it wishes to carry out. There is also a process of de-humanisation in the failure to respect human dignity (as illustrated by the video of the man with the body of his dead wife killed in the Nice attack). Dehumanisation can also affect spectators: the Medusa myth, the hold of these images of absolute horror. These images freeze the spectator who becomes a voyeur, developing an obsessional vision of the terrorist act. These images can violate human dignity: in them we see people injured and stripped bare, and all the more so with social media, where these images persist and escape all control.*

We see that the judicial response is of limited effectiveness because there is an imbalance between the victims' interests, freedom of information and press freedom. Prior consent is a principle that is not respected. The media can only be fined 5 or 10,000 Euros, which is derisory when compared to the money made from the sale. From the point of view of the victims' associations, the response cannot be found in the judicial process".

Positive actions by the media: *"It is necessary to point out how the media can have a positive impact. The media can help to raise society and the State's awareness and keep the memory of the event alive. Thanks to the media, victims can win new rights; for example, after 13 November 2015, certain families were upset because they received tax notices for deceased persons; thanks to the media, we were able to obtain appointments with the Minister the Economy and Finance. The media and can also contribute to the search for the truth. The Le Monde victims' memorial is a genuine tribute and showed that behind the numbers, there are faces. The victims' association organises ceremonies every 19*

September, which are attended by politicians. This day is an opportunity to put messages across, and we see a communion of the entire nation in these moments of remembrance.

The FENVAC also provides "media learning support" for victims: it is not always easy for them to understand how and when to communicate. It is the role of our federation to help them to do this, and so we have become their "press attachés". If a terrorist attack is committed, the FENVAC responds in the media within hours. It will provide support for the first victims speaking in public, and will orient them to one journalist or another.

Journalists sometimes have biases, we receive some surprising requests: journalists ask for the "grieving family" then for "injured people, a man under 30" - this is unacceptable. The FENVAC helps to organise interviews of the victims under the best possible conditions. It is necessary to take the time to listen to the person and to make sure they feel safe and secure".

What is the place of the victims in the judicial procedure? According to one judge: *"There are two aspects: acknowledgment of the victim in the public space and in society, and the place of the victim in the judicial world. The fact that you have attracted media attention gives you an existence in the public space, which, to my mind, can become a millstone; but this existence in the public space has also placed pressure on the judicial world and given victims, year on year, a more effective place in the criminal procedure. The powers of the "partie civile" (victim-plaintiff) during the pre-trial phase when the examining judge is working on the case have changed a great deal. For us, the very term "victim" represents a truth. For the examining judge, acknowledging the plaintiff as a victim indicates that the events took place. The judicial world has evolved on all these issues. My feeling is that this is where the media's role is: by giving you exposure in public life they have enabled you to occupy a bigger place in the criminal proceedings".*

Stéphane GICQUEL (Secretary General of the National Federation of Victims of Terrorist Attacks and Collective Accidents (FENVAC), France) "The idea is that the media would enable us to influence the legislator. But we have to consider the question of the confidentiality of the examining magistrate's investigation: it is not normal that journalists are better informed than us during the criminal proceedings. We cannot have a long tunnel of silence for several years during the examining judge's investigation and learn the facts from the press. Concerning this place for the victims in the criminal procedure, our associations need to set up strategies".

"Life for Paris"

By Serge LAURINE, member of the "Life for Paris" association for victims of the attacks on 13 November 2015

"The way the event is treated is really important. We are in the immediate, in the sensational. In the case of the terrorist attacks of 13 November 2015, we saw a plethora of articles published on false victims (even by the New York Times and Le Monde), because the journalists did not check. This shows a lack of training among journalists. Traumatized people are not in any fit state to talk to the television, they are in a state of shock. Some will have a blockage when it comes to the press, others will need it, but the victims are in a different timescale to the media".

"Over the longer term, the media allow the social transmission of remembrance. The publication of articles about victims is a way of de-anonymising them". Commemorations enable a close relationship to be maintained with national remembrance and give a bigger role to victims and survivors".

"Victims receive requests to talk to the press as soon as a terrorist attack occurs. We are delighted that we are not forgotten, but at the same time we do not know what we can say concretely when an attack happens somewhere else. We need the media, but progress can still be made, in particular to give them a better explanation of what victims go through with a more pedagogical approach, so that they can put this across to the general public and legitimise the victims (the general public is also in a different timescale, for example 13 November may feel like a long time ago to the general public)".