

ARISA 2

Assessing the Risk of Isolation of Suspects and Accused: The Impact of the Media

Media Coverage of Criminal Cases

ITALIA

Case study 1: The murder of Pamela Mastropietro

1. Key facts of the case

In the night between January 30 and 31, 2018, was reported to the local company of Carabinieri the presence of two trolleys abandoned in a ditch along a road connecting the locality Casette Verdini and Pollenza, near the town of Macerata. The next morning law enforcement discovered the contents of them: the mutilated body of 18-year-old Pamela Mastropietro (from here on PM). The girl had recently moved away from the recovery community for drug addicts in which she was. Cameras from a local drugstore caught her being followed by a man.

On the evening of January 31, the local Carabinieri stopped Innocent Oseghale (from here on IO), of Nigerian nationality with a regular (but expired) residence permit, with criminal record for drug dealing.

Here is the criminal trial's reconstruction of the evening: PM asked IO for heroin, which he does not have but he said he could find. Then, he called a compatriot, Desmond Lucky (from here on DL), who procured it. Before going to IO's house, they stopped at the drugstore to buy a syringe. After PM injected herself with heroin, she was sexually approached by DM, whom she rejected. She was hit by a slap and passed out. Lucky walked away, leaving her only with Oseghale. He tried to wake her up with water and he raped her. Following the rape, PM wanted to leave and return to her home. But she got assaulted by IO, who hit her at least twice with an edged weapon. After that, he began to dismember the body. He finished the job washing the body parts with bleach, to remove every traces. He then locked the body in the victim's trolleys and abandoned them along the road.

She got into a fight with IO, who hit her at least twice with an edged weapon. After that, he began the dismemberment of the corpse, which ended with washing the body parts with a chlorine solution to remove every traces. He then locked the corpse in trolleys belonging to the victim and abandoned them along the road.



2. Applicable law

IO is convicted to life sentence for:

- Voluntary homicide (ex art.575 Penal Code (CP)) aggravated by sexual assault.
- Contempt of a corpse (ex art.410 CP): Whoever commits acts of vilification over a corpse, or its ashes shall be punished by imprisonment from one to three years. If the offender disfigures or mutilates the corpse, or commits, in any case, acts of brutality or obscenity on the corpse, he shall be punished by imprisonment from three to six years.
- Concealment of a corpse (ex art.412 CP): anyone who conceals a corpse, or part of a corpse, or hides the ashes of a corpse, shall be punished by imprisonment of up to three years.

For the same fact DL and Lucky Awelima (from here on LA) were also investigated, later acquitted of the charge of complicity in the abovementioned crimes but convicted for:

- Production, trafficking, and illicit possession of narcotic or psychotropic substances (ex at.73 D.P.R. no. 309 of October 9, 1990)

3. Criminal proceedings

Around 7 p.m. on January 31, following investigations launched by the military of the Macerata Carabinieri Provincial Command and the R.O.S. (Special Operations Group), under the guidance of the prosecutor Stefania Ciccioli, IO was stopped on the stairs of his building in Via Spalato. He was taken to the police station, and interrogated the same night, in the presence of his lawyer and an interpreter, and then arrested. Two days later, on February 3, Giovanni Manzoni, the judge for the preliminary investigation (GIP) of Macerata, validated the arrest and ordered precautionary detention in prison. At first it seems that IO was accused of murder, contempt and concealment of a corpse. At that date, the autopsy had not yet clarified the cause of PM's death. Later, on [February 6](#), it was made known that the validation of the arrest excludes the charge of murder. The case immediately gained wide media coverage. On [February 10](#), the Chief Prosecutor of Macerata, Giovanni Giorgio, told the press that following the arrests of DL e LA he considered "the investigation concluded", alleging the crimes of murder, contempt and concealment of a corpse and drug dealing. The [following day](#), the same prosecutor stated in a note how the investigations "cannot be considered concluded" and how the Prosecutor's Office of Macerata does not intend "to follow or consent to summary justice procedures". On [February 14](#), the same GIP Giovanni Manzoni validates the arrest of DL and LA. On [March 12](#), the Court that carries out the judicial review of a person's deprivation of liberty denied the request for release for DL e LA. On [April 23](#), IO received a new precautionary detention order for facts unrelated to the murder of PM. On [May 4](#), the Prosecutor's Office asks and obtains from the GIP a pre-trial detention order for murder. However, the GIP excludes the existence of serious evidence of guilt for the charge of rape. On [June 1](#), DL and LA's attorneys petitioned the Macerata Prosecutor's Office for immediate trial for the crime of possession and distribution of drugs. On June 6, the Court that carries out the judicial review rejects the appeal of the Macerata Prosecutor's Office, which requested that IO be kept in prison also for the charge of sexual assault. On the [same days](#), the GIP of Macerata, Giovanni Manzoni, revokes pre-trial detention on charges of murder, contempt, destruction and concealment of a corpse against LA and DL. On [June 12](#), the Prosecutor's Office closed the investigation against IO. He is charged with the crimes of voluntary murder aggravated by sexual assault, contempt and concealment of corpse, sexual assault against a person in conditions of



mental or physical inferiority. On [July 31](#), during a prison interrogation, IO confesses to have cut PM's body into pieces, but he claims he did not kill her. On [September 18](#), a collaborator of justice (*collaboratore di giustizia*), and former cellmate of IO, accuses him of confessing to the commission of the murder; IO denies. On [September 26](#), all three are indicted for possession and distribution of drugs by the GUP (judge for the pre-trial hearings) of the Court of Macerata, Andrea Bonifazi. On [October 17](#), DL e LA are sentenced for drug dealing, respectively to 6 and 8 years of prison; for the trial concerning the murder of PM, IO remains the only defendant. [On the same day](#), the Prosecutor of Macerata, Giovanni Giorgio, submit the indictment request for IO. On [November 26](#), the pre-trial hearing took place in front of the GUP, Claudio Bonifazi; the defendant's lawyers ask for the abbreviated trial, that is not accepted. [On February 13, 2019](#), the first hearing against IO takes place before the Court of Macerata. The Municipality of Macerata is a plaintiff in civil proceedings. On [May 8](#), the Prosecutor's Office of Macerata asks to the Macerata Court for life sentence for IO. In addition to life imprisonment, prosecutor Giovanni Giorgio urged an aggravated sentence of nine years and three months for the concealment of the corpse, the application of solitary confinement for 18 months and expulsion from the national territory after the expiration of the sentence. IO's [lawyers](#) maintains his innocence of the crimes of murder and sexual assault, requesting an acquittal. They ask for the minimum sentence to be applied for the charges of contempt and concealment of a corpse. They also highlight the unreliability of the declarations of the collaborator of justice, on which part of the prosecutor's theory is based. On [May 29](#), the Court of Macerata issues a life sentence with daytime isolation for 18 months for IO, convicting him of murder and concealment of a corpse - while sexual assault is absorbed by the aggravating factors. On [September 16](#), 2020, start the appeal process. On [October 14](#), the Prosecutor of Ancona, Sergio Sottani, requests confirmation of life sentence with daytime isolation, without mitigation for IO. The defense continues to argue IO's innocence of the charge of murder. On [October 16](#), the Appeal Court of Ancona confirms the life sentence with daytime isolation for 18 months for IO. The charges remain of voluntary murder aggravated by sexual assault, contempt, and concealment of a corpse.

4. Disclosure of information

4.1 Overview on investigation secrecy and communication

It can be affirmed that the right to judicial reporting in the Italian legal system has a double constitutional anchorage: to ex art. 21 and ex art. 101. The former guarantees freedom of the press and of thought, while the latter establishes that justice is administered on behalf of the people. It follows from their combined provisions that society has the right to be informed both ways in which justice is administered and of facts that might disturb the quiet continuation of community life.

However, this right is subject to a conflict: between it and the postulate of paragraph two of ex art. 27 Cost. It states that "The defendant shall not be considered guilty until final conviction".

Given this juxtaposition of constitutionally guaranteed rights, a balance seems both necessary and dutiful. Thus, precise limits have been identified to the publicity of a court document and, consequently, to the right of judicial reporting.

Two rules establish precise provisions on the secrecy of penal documents: ex art. 114 and ex art. 329 of the Penal Procedure Code (CPP).

Article 329 CPP provides that "acts of investigation carried out by the Prosecutor and the judicial police, requests done by the Prosecutor for authorization to carry out investigative acts and the acts of the judge ruling on such requests shall be covered by the obligation of secrecy until the accused becomes aware of it and, in any event, not later than the close of the pre-trial investigation"



There are certain exceptions, both regarding the publication of secret documents and to the secrecy of public documents.

Article 144 CPP establishes the prohibition of “publication, even in part or in summary, in the press or by other medium, of the documents covered by the obligation of secrecy or even of their content”; the scope of the case is broadened by the second paragraph, that concerns the publishability of the documents not covered by investigation secrecy, until the end of the pre-trial investigation or the preliminary hearing. However, the disclosure of the contents in summary form is not prohibited.

The cases in which secrecy remains during the hearing are included in the third, fourth and fifth paragraph. The sixth paragraph prohibits to “publish the names and images of minors, persons harmed by the offence until they have come of age”.

The paragraph 6-bis prohibits to “publish the image of a person deprived of his liberty taken while being handcuffed or subjected to other means of physical coercion”. The publishability of document not covered by secret is always permitted, as specified by the seventh paragraph.

Article 684 CP sanctions the violations of the above-mentioned article, establishing that “anyone who publishes [addressing an indeterminate number of persons, *ndr*], in whole or in part, even in summary form, acts or documents of criminal proceedings, the publication of which is prohibited by law, shall be punished with imprisonment of up to 30 days or with a fine ranging from € 51 to € 258”.

In addition to this sanction, there is the possibility of disciplinary sanctions by the holder of the disciplinary power against the professional figure involved (ex art. 115 CPP).

Regarding the disclosure of information, the relevant rules have a threefold rationale: in the preliminary phase and from the prosecutors’ point of view, the legislator ought to ensure investigative secrecy, and aspire to avoid that some leak could jeopardize a good investigation performance. On the suspect’s side, the legislator wants to guarantee the individual’s right to privacy, understood as his right to control his personal information projected to the outside world. During the hearing, the legislator intends to safeguard the serenity of the judge, free as far as possible from external influences, to allow the full operation of the principle of equality in the parties’ adversarial.

Investigative secrecy lapses the moment the prosecutor notifies the accusation. Therefore, from the moment the suspect becomes aware of the proceedings against him, the act is no longer secret and can be disclosed to the public.

It is not an infringement to publish warrant notice, interrogation reports and search orders at the time when the suspect has knowledge of them. However, violations can be found in the preceding phase, i.e. the strictly investigative phase, especially regarding cases of considerable public interest. At this stage, a lot of space is often - and improperly - given by the media to information still covered by secrecy.

The current legal system makes a distinction between the act as such and its content: on one hand, it allows the communication of content in a summarized form and, on the other hand, it recognizes that the investigation is sometimes, by its very nature, perceptible to the community. The prohibition does not therefore cover information on the conduct of procedural activities visible to the outside world and documents of extra-trial provenance, such as those originating from factual events outside the trial. Given the various constitutionally guaranteed interests at stake and the sensitivity of the information resulting from a criminal action, the legislator considered that it was necessary to formalize the communication methods of the judicial offices. An example of that could be found in the article 5 of decree 106/2006, which establishes that “the Chief Prosecutor is the sole holder of relations with the media, unless he has been expressly delegated others to do so”. The aim is to put a stop to the practice of preferential channels between reporters and prosecutors. A further purpose is to avoid the personalization of investigations through impersonal communication, shifting responsibility for one prosecutor to the office. This theme has often been subject to a



debate inside the National Magistrates Association (ANM) and the self-government body of the magistrates (CSM). The latter has recently set out guidelines regarding the communication, recommending the creation of a Court's or Prosecutor's Office press office. They also advise to pursue information's objectiveness, impartiality (with particular regards when referring the content of a charge to the media), fairness and balance.

2. *The communication in Mastropietro's case*

Several of the abovementioned rules have been violated in the present case. Following the murder, no official statement was issued by any law enforcement agency. However, the day before the family was scheduled to recognize the corpse, that should have happened on February first, there was already some press news that links the body to Pamela Mastropietro.

On February first, 24 hours later IO's arrest, on Carabinieri's [social media](#) platform appears the message: "#1febbraio, Carabinieri provincial command of Macerata and #ROS, by collecting testimonies and video images, were able to identify the last person 18-year-old Pamela #Mastropietro, who disappeared on 29 January, had contact with".

The news is therefore given in an aseptic and impartial manner, respecting the rights of the accused.

On May 3, 2018, a [press conference](#) took place. All Chief Prosecutor of Macerata, [Giovanni Giorgio](#), Carabinieri's provincial commander, Michele Roberti and ROS' commander, Walter Fava were present. The room was presented in an aseptic manner, no images of the suspects were projected. In accordance with the legal provisions, the conference was led exclusively by Chief Prosecutor Giorgio; he consistently used the conditional in assigning conduct to suspects, respecting the presumption of innocence.

Only on two occasions he appeals to a suspect with ethnic qualifications, specifically: "this Nigerian". After an overview of the investigations carried out up to that point, he acknowledged and condemned the fact that there had been leaks to the press, claiming that information that had been passed was not even in his possession at that time. The prosecutor states that he reserves the right to "ask for some explanations from those in charge". After accepting as physiological a divergence of views with the GIP, he described IO's house as a "seaport", i.e in other words, a place of transit for various subjects, again affirming that they belonged to the Nigerian community, who had left Macerata after the events. However, the prosecutor did not name them. He ends the press conference stating that: "at the end of these activities we will draw the final conclusions. We are not looking for scapegoats, we are not going to prosecute someone just because they are black or Nigerian. We will request the indictment only of those whom we believe to be objectively involved in the murder and in what was done afterwards on Pamela's body".

The then [Ministry of Justice](#), Andrea Orlando, in the days following the events, visited the President of the Court and the Chief Prosecutor Giovanni Giorgio: officially "a sign of solidarity", with an invitation to "let the magistrates work". The press also speculates that the visit contained an attempt to contain indiscretions about the investigation, often with scabrous details "offending pity". Overall, the official tone used by the police and the magistracy reflects, to a considerable extent, a climate of respect for the rights of the persons under investigation.



5. Media coverage

5.1 Overview on judicial reporting

As mentioned above, the right of journalistic reporting, like the communication of judicial offices, should take several interests into account. In particular, the right to privacy is the dividing line between the public interest in knowing a fact and the interest of individuals in not seeing personal events disclosed which third persons have no interest in knowing.

Not all cases of disclosure of information concerning judicial documents are punishable.

Thus, the Court of Cassation (judgment 5259/84) ruled that “for the publication in the press of news injurious to honor to be considered a lawful expression of the right to report and not give rise to civil liability for violation of the right to honor, three conditions must be fulfilled: 1) social utility of information; 2) objective truth, or even only putative truth, if the result of diligent research work; 3) civil form of presentation of the facts and their assessment, which does not exceed the informative purpose to be achieved and is characterized by fair clarity, avoiding forms of indirect offence”.

The limit of continence in presentation is understood not in a formal but in a substantive manner: namely in not exceeding what is strictly necessary - i.e. essential - to satisfy the public interest.

A protection for journalistic work is provided by Article 51 CP, which excludes punishability where a right is lawfully exercised. In case the abovementioned principles were respected, even in the event of a damage caused to the honor of third parties, the journalist could not be punished. A judge decides on its validity.

In addition to the primary legislation on the issue, the Order of Journalists has established its own code of conduct. Among the obligations identified for journalists, the first article mentions the observance of the duties of loyalty and good faith. In this regard, Article 9 prescribes the obligation to rectify news that is proven to be inaccurate and correct any errors made, by subsequent publications. This principle requires the writer of the article to draft a new text in which any error is corrected, in agreement with the editor-in-chief, who bears the burden of control.

Article 8 of the “Testo unico dei obblighi del giornalista” (Journalists’ code of conduct) highlights certain aspects of judicial reporting: journalists must always and in any case respect the presumption of innocence of the accused; in the event of an acquittal, they must report it with adequate prominence, correcting and rectifying what may have been written *ex ante*, with particular attention to online publications. In addition, “the highest caution should be exercised in releasing names and images of persons convicted of minor offences or sentenced to very light penalties, except in cases of particular social relevance”. The text also calls for a clear distinction to be made between facts and hypotheses, reality and journalistic commentary, and for the various stages of criminal proceedings to be differentiated. Thus, accusatory hypotheses should not be presented as hypothetical sentences.

Article 8 of the code of conduct requires journalists, except the case the information is essential, not to provide news or publish images or photographs of persons involved in events that violate personal dignity, and not to dwell on details of violence, unless they are socially relevant.

The Order of Journalists imposes certain forms of disciplinary sanction (ranging from a warning to expulsion) for those who fail to comply with the provisions.

Law 47/1948, in Article 15, deals with “Publications with shocking or gruesome content”. It orders that the penalties provided for in Article 528 CP will be applied in the case of “publications describing or illustrating, in striking or horrifying detail, events which have actually occurred or merely imaginary, in a way likely to upset the common sense of morality or the family order or to provoke the propagation of suicide or crimes”.

Although it is acknowledged that the formulation of the text imposes loose limits, it was decided to quote this rule because of its relevance to the case to be discussed below.



5.2 Role of the media in Mastropietro's case.

The case, given the cruelty of the crime, the sensitive nature of the offences and the presence - in the role of designated perpetrator - of a man belonging to a marginalized group, received extensive media coverage. For a long time, newspapers covered the case, sometimes stirring up xenophobic feelings. A wide variety of theories have been put forward, ranging from Oseghale membership of cults dedicated to voodoo rituals to the concretization of such rituals by Oseghale eating of PM's heart.

This generated daily and close public attention to the case, in a clear example of *moral panic's* creation. This psycho-social phenomenon is linked both to the dissemination of moral indignation due to journalistic sensationalism and to an aim of consensus manipulation by politicians, consequently invoking more stringent public order measures. Moral panic is a condition or event in which a person or group of people becomes identified as a threat to society's values and interests¹.

Media coverage of the case was almost total. On the evening that the body was found, a very popular TV show ("Chi l'ha visto?") on the case was aired on state TV. It should be emphasized once again that the body, although not yet recognized by the family, had already been attributed by the newspapers to PM, who had been missing until then. The first press reports came out a few hours before the show was broadcasted. The show, which historically involves the local population in a reconstruction of the events, readily receives the testimony of the pharmacist: she recognizes PM and IO, describing the latter as a "black man". As mentioned above, this - being part of an extra-trial reconstruction - is not subject to investigative secrecy, so there is no wrongdoing in publishing or, in this case, broadcasting it. However, an atmosphere of strong emotional tension was present, exacerbated by the presence of PM's family in the TV studio. During the transmission, reporters are sent to the places of interest, specifically the ditch where the suitcases containing PM's body were found and IO's flat. Again, since the presence of law enforcement officers in the area is visible and perceptible, the transmission of such images is not illegal. A violation of the law could only be assumed if the police had alerted the press to the location of the search or arrest of the suspect. In any case, local reporters found themselves in a position to pick up some images - promptly broadcast on national television - of a handcuffed IO, with his trousers unbuttoned and lowered. They are undoubtedly degrading to IO, depicting it in a manifest state of inferiority, immediately portraying him as guilty. It has already been mentioned how Article 114, paragraph 6-bis of the Criminal Code decrees the unlawfulness of the transmission of this type of images. This behavior is also stigmatized by the article 8, paragraph 3 of Journalists' code of conducts, which state that "persons may not be presented with handcuffs on their wrists, unless it is necessary to report abuse". Both the legal norm and the ethical indication by the professional association are often empty prescriptions, given the continuous and unsanctioned use of this kind of practice by the media. There is a strong discrepancy between the norm and established practice. In the case of photographs of an arrest, it is common practice for the media to publish the picture with the wrists of the individual slightly obscured (pixels enlarged) so that the handcuffs are not clearly visible. However, they remain clearly recognizable. It could be said that this practice denotes an adherence to the rule that is at most exclusively formalistic.

In the following days, the news was reported in all national newspapers. On 1 February, the newspaper with the largest circulation in the country - and a reputation as a balanced newspaper - the "*Corriere della sera*" reported the news on its front page with the headline: "The mystery of the girl cut into pieces", promptly pointing out that the arrested man is of Nigerian origin and has a criminal record. The next day the title becomes definitive and labelling: "Pamela, the pusher

¹ See S. Cohen, *Folks Devils and Moral Panic*, Routledge, 1972.



charged with murder”, giving all IO’s personal details. As previously reported, IO’s arrest on that date was not for murder, but for other offences. Extensive excerpts of interrogations by carabinieri are also reported. If the defendant had knowledge of them on that date, this would not constitute an offence. An offence could, however, be found in the method, i.e. the channel through which the reporters came into possession. Article 116 CPP regulates this case, providing that “any person having an interest may obtain copies of the documents”, excluding cases of secrecy of the proceedings. The competent magistrate decides on the legitimate interest. In practice, the time taken to obtain these documents is long, not in line with the hectic pace of the news. Thus, informal channels are often used, based on personal contacts and direct relations between the reporter and the legal worker.

One of the main right fielded newspapers, “*Libero*”, known for its polarizing opinions, broke the news on page 16 on February 1 in this way: “Pamela, 18 years old and a life on the run. Cut into pieces and packed in two bags”. The following day, when IO’s arrest had not yet been validated, the newspaper changed its editorial line and headlined on its front page: “The Nigerian who tore the girl apart was not allowed to stay here” and continues by saying that IO “is a murderer, very murderous: he literally tore the girl to pieces and hid her body in two trolleys”. From that moment on, the newspaper embarked on a crusade against the suspects, with headlines like this: “[Pamela Mastropietro](#), the horror of the second autopsy: “The Nigerians made her suffer, then flayed her” or “[Pamela Mastropietro](#), how she was killed: Journey into African horror, a “cold and inhuman” slaughter”.

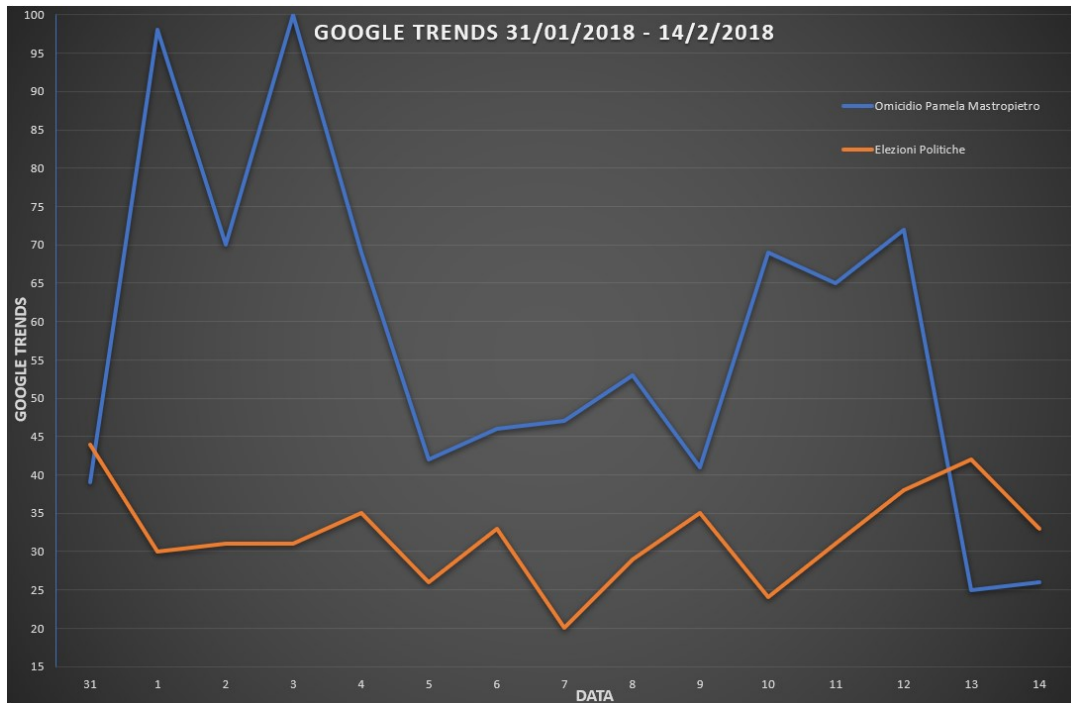
Given the periodic and uninterrupted emergence of hypotheses of voodoo rites and cannibalism, the investigators produced fast denials. The conjectures, perhaps suggestive to the reader, did not stop, and were continually reiterated, until the ruling. In consideration of the events that followed the incident, which will be explained later, it seems appropriate to refer to Article 15 of Law 47/1948, which prescribes sanctions for those who “publish, describe or illustrate, in striking or horrifying detail, events which have actually occurred or merely imaginary, in a way likely to upset the common sense of morality or the family order or to provoke the propagation of suicide or crimes”. It is not possible to determine the genesis of these suppositions but, given the prompt and constant rebuttal of these theses by the investigators, it cannot be said with reasonable certainty that the work of reporting was guided by the canons of objective truth and continence of exposition.

To better understand the ways in which the media (traditional and web-based) portrayed IO in the period between the discovery of PM’s body (31 January 2018) and his conviction in first instance (29 May 2019), a word cloud was generated. A large selection of titles was chosen, assuming that they were representative of the impact the newspaper wished to have with its audience.



6. Public reactions to the case

As pointed out above, the case enjoyed wide media coverage and had a strong impact on society. First of all, we would like to report the [Google trends](#)² regarding the case, compared to the main topic of the public debate, the general elections that would take place one month later.



Even at a quick look, queries associated with PM's murder were searched many more times than those concerning political elections. The data refer to the next two weeks after the body was found. From this it could reasonably be inferred that the population followed the case with great interest. PM's murder provoked two main effects in society as a whole: a xenophobic raid and an exploitative use of it in the election campaign.

On 3 February 2018, Luca Traini (hereafter LT) driving a car, fired several shots at several black individuals, injuring 6 of them. The [chronicles](#) report that, on seeing the officers, he made the fascist salute and escaped, throwing away some clothes and placing an Italian flag on his shoulders. The chronicles also report that in the days before, and therefore immediately after the murder, "many hateful posts against immigrants and black people, some of them calling for the death penalty" were written on PM's mother's Facebook page.

Although links between the PM and LT were initially suggested, partly due to the latter's conflicting statements, these were later denied by the police. LT, in the moments following his arrest, stated that his initial intentions were to go to court to kill IO, and that he only changed his mind later, deciding to carry out a shooting on [random black people](#).

² Trends show the total amount of query searches associated with the input topic. It assumes a maximum value of 100 on the date when the highest frequency of searches is detected. The reason for using this tool can be summarized in the postulate: if an individual searches for a topic on the web, it means they are interested in it.



The news was reported by all major international newspapers, generating a fierce internal debate. It was immediately reported that, the previous year, LT had been a candidate in a local election on the lists of the then Lega Nord - now exclusively Lega - right-wing party, the main actor in the politicization of the issue of immigration. Here, the first consequence can be linked to the second, namely the exploitative use in the political debate of the murder of PM.

The case was ineluctably linked to a stereotypical representation of the immigrant category: drug dealer, rapist and murderer.

As pointed out, the issue of immigration was the main topic in the political debate of the time. Following this case, a process of *securitization* of the issue emerged clearly, the characteristics of which will be briefly explained.

Securitization is structured around three main elements: the *speech act* with which the process begins and through which there is a discursive representation of a problem; the *actors of securitization*, i.e. those who perform the speech act, making the securitizing move; the *audience*, i.e. public opinion.

The objective of securitization is the adoption (sometimes even the proposal) of exceptional measures, moving away from the normal political administration of problems and overcoming otherwise existing constraints. In this case, the elements are presented in their completeness.

On the day of the validation of IO's arrest, the entire [political spectrum](#) expressed itself in these terms: Giorgia Meloni, president of the far right-wing party Fratelli d'Italia, says "Enough is enough! Get all illegal immigrants out of Italy!", Gasparri of liberal party Forza Italia calls for an "exemplary punishment". But it is above all Lega's leader Matteo Salvini who raises the tone, speaking of "another death of state" and how the left parties have "blood on their hands", calling for "expulsions, expulsions, controls and more expulsions! Will Boldrini [President of the Chamber of Deputies and left-wing politician, *ndr*] accuse me of racism? She is the racist (towards Italians). Laura Boldrini responded by stating that Salvini took "the opportunity to spread hate" and intended "to gain votes through cynical looting". In conclusion, in expressing his closeness to Pamela's family, she found no other words but: "the Nigerian drug dealer will have to pay for everything".

Given these claims, it appears that no political party felt a particular need to protect Oseghale's right to be presumed innocent.

The politician most vocal about the case is Matteo Salvini, leader of Lega. Among other posts dedicated to the case, one can read: on [February 2](#), 2018: "#Salvini: The Nigerian drug dealer, with a criminal record, without documents and without a permit SHOULD NOT BE IN ITALY. From 5 March I will feel like putting some LAW and ORDER. #onyourside". on [February 10](#), 2018: "Three immigrants have been arrested on charges of killing and dismembering our poor PAMELA. But today the left parties are demonstrating "against racism", Pamela and the Italians victims of the violence of illegal immigrants can wait... #stopimmigration". On the day of IO's [conviction](#) at first instance, he said: "I hope that it will be a real life sentence for this INFAMOUS person, that there will be certainty of penalty, it is the minimum. I remain against the death penalty, but those who show total disregard for human life must not leave their prison cells".

In the terms of the securitization process, the speech act is clear: the Nigerian drug dealer who dismember "poor PAMELA", who "SHOULD NOT HAVE BEEN IN ITALY" is logically juxtaposed to the illegal immigrants who commit violence against Italians, who - in the vision of the leader of Lega - inevitably wait for someone to restore "LAW AND ORDER".

The mandate that the securitization actor wants from the audience during the election campaign is clear and can be formulated in these terms: illegal immigrants and disorder are two existential threats to society, and the former are the cause for the latter. Extraordinary and arbitrary measures, such as the repatriation of "600,000 illegal immigrants", is promised, with the aim to restore order and security.

Without falling into determinism, a fact should be reported: in a context of overall growth at national level, the Lega obtained 146,000 more [votes](#) in the Marche region (the area of the murder and the



xenophobic raid) compared to the previous election, rising from 0.69% to 17.4% of the votes. Extraordinary measures, albeit less stringent than the original promises, were actually taken a few months later. We refer to the so-called "Decreto Sicurezza" or "Decreto Salvini". The Lega itself entitled in memory of PM a conference in the European Parliament on gender violence.

The case also generated many other public reactions: marches, demonstrations, public remembrances, prayers and similar events took place all over the country.

The public, in the atmosphere of high tension and ideological polarization described, also played a role in the development of the criminal trial.

A few days after the arrest, IO changed lawyer. Following the publication of the news in a [local newspaper](#), the lawyer's Facebook page was invaded - in the words of the Penal Chamber of Macerata - by "violent comments and unusual attacks" directed at the lawyer, one among many: "how can you defend such beasts".

Each public hearing was surrounded by the presence of many individuals, some intent on showing solidarity to the victim's family members, while others were busy making insulting and threatening remarks to the defendants' lawyers.

It seems like the debates were divided into two parts: inside the courtroom there were "[peaceful](#)" sessions, while outside the court there were protests with shouts and banners against IO, leading the [Penal Chamber](#) of Macerata to intervene again, given the "extremely serious verbal and physical aggression suffered by colleagues who had taken on the defence of the accused in the crime of poor Pamela Mastropietro".

The Penal Chamber therefore found itself carrying out actions that could be described as pedagogical, invoking Article 24 of the Constitution several times, which states in its second paragraph: "the defence is an inviolable right at every stage and level of proceedings".



Case study 2: the murder of Antonino Barbaro

1. Key facts of the case

On Monday November 3, 2014, the body of a man was found lying on the ground in contrada Squarcia, in the countryside around Francofonte, a town of around 12 000 inhabitants in the province of Syracuse, killed by 27 stab wounds. The victim, a 67-year-old pensioner, Antonino Barbaro (from here on AB), was stabbed several times in various body parts, but the fatal one probably cut his jugular vein. The victim was found by the owner of the vineyard where the murder took place.

The death was traced back to the previous day, 2 November, the day on which the Christian church celebrates its dead faithful.

For about two years, investigations were carried out by the Carabinieri of Francofonte. On September 20, 2016, in the presence of national TV cameras, two local fishermen, Antonino Giaccotto (from here on AG) and Giancarlo Giaccotto (from here on GG), owners of the building where AB lived, were arrested. The two were arrested on a pre-trial detention order. They were detained for 130 days. Following the arrest, local and national newspapers reported the case as solved.

The arrest was, however, vitiated by a circumstantial and cursory investigation, as revealed later in the case. When the investigations were transferred from the local carabinieri to the carabinieri of Augusta and to the RIS (Scientific Investigations Department) of Messina, the accusatory framework deteriorated quickly, leading first to the release of the suspects and then to the request for dismissal by the Prosecutor.

The murder remains without a culprit to this day.

2. Applicable law

Antonino e Giancarlo Giaccotto were investigated and detained in pre-trial detention, for:

- Voluntary murder (ex art. 575 CP) aggravated by futile motives and cruelty.

The Prosecutor Vincenzo Nitti later requested the case to be dismissed by the competent GIP. No trial was therefore held.



3. Criminal proceedings

The investigation, which began on November 3, 2014, was initially carried out by the carabinieri of Francofonte, coordinated by Prosecutor Caterina Aloisi.

In this first phase, the investigators worked by collecting summary testimonies from several subjects. Among them, AG and GG were interrogated on 10 and 11 December 2014. They made statements about their relationship with the victim and their movements around the time of the murder. For two years, the investigations were conducted without any news; until 13 September 2016, when the GIP of the Court of Syracuse, Giuseppe Tripi, issued an order for pre-trial detention for AG and GG, which was executed - in the presence of the cameras of a national channel - on 20 September 2016. On October 6, 2016, the suspects filed an application to Court that carries out the judicial review of a person's deprivation of liberty, that denied the request for release on October 11, 2016. Following more in-depth investigations, carried out with the involvement of scientific police departments, the suspects requested to be interrogated, which took place on November 7, 2016. On November 14, 2016, were notified to the suspects the order to replace pre-trial detention with house arrest.

On January 27, 2017, the house arrest was replaced by a ban on expatriation, which was subsequently lifted on May 16, 2017. On December 11, 2017, Prosecutor Vincenzo Nitti requested the case to be dismissed. Request accepted by the GIP on July 5, 2019.

From the very first moment, the evidence framework against the suspects was particularly weak, since it was based solely on the correspondence between some tyre tracks found at the scene of the crime and the tyres mounted on the suspects' car, and on some discordant testimonies and ambiguous environmental interceptions.

When the investigation was transferred from the local Carabinieri to the Augusta (SR) company and, above all, following their delegation to carry out more detailed investigations to the RIS of Messina, the evidence framework which had been supported up to that moment was discarded.

The RIS did not find any traces of blood in the suspects' car and established that the DNA found under AB's fingernails did not match the sample taken by the suspects. Further investigations revealed the brothers' alibi: they claimed to have gone to the Francofonte's cemetery to visit their dead relatives (as it was the day of the celebration) and to have continued their journey to Vizzini (CT). The alibi was confirmed not only by the cells tapped by the suspects' telephones (which are compatible with both Francofonte's cemetery and the place of the crime) but also by the deposition of a witness (who claims to have seen them at the cemetery) and by the GPS installed in the suspects' car (which shows that the brothers went immediately to Vizzini).

Despite that, the cursory investigation against them cost AG and GG 130 days of detention.

4. Disclosure of information

No official information has been released on this case. No official press release has been made on police's social channels. No press conference has been called by the Prosecutor's Office of Syracuse, which was responsible for the case.



5. Media coverage

The case was not widely covered at national level. However, it is examined because it condenses many of the problems of the mediatization of the trial, of the anticipation of the trial, even in a case that is not destined to go to trial.

Therefore, it could represent an *ideltypus*, the measuring stick of how superficiality in reporting some news – long away from the right to information – has a huge impact on the lives of some individuals.

In this case, a double information track can be observed: only one television show reported the news at national level and many local newspapers gave the information in the same definitive and accusatory tone.

The Giaccotto brothers' media exposure began and culminated at the same time: their arrest. No articles were written, or reports filmed before it, no rectification by any TV program took place after the case was dismissed.

To examine the case with analytical precision, we would like to start with an element that might appear marginal in the complex of the “media trial”, but which intersects inextricably with the theme of the right to be forgotten, which will be discussed later. We are talking about the publication, mostly on internet sites, of the mugshots of the suspects.

The internal rules governing this issue are constantly evolving, given the changing nature of the concept of privacy in contemporary societies and the relevant European regulations.

In this respect, we would like to recall the GDPR's first paragraph: “The protection of natural persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the Charter of Fundamental Rights of the European Union (the ‘Charter’) and Article 16(1) of the Treaty on the Functioning of the European Union (TFEU) provide that everyone has the right to the protection of personal data concerning him or her”.

The ECHR has also expressed its views on this matter, in Judgment No 50774/99 of January 11, 2005 (*Sciacca vs Italy*). On that occasion, the Court wondered about a possible violation of Article 8 of the Convention, which requires that: “Everyone has the right to respect for his private and family life” and “there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”.

Then, the Court identified a violation of Convention's Article 8 in the disclosure of a mugshot by the police to the press as an unjustified interference with the right to respect for private life, since it was not necessary for the development of the investigation.

In addition to that, the Article 8 of the Journalist code of conduct prescribes not to provide “images or photographs of persons involved in incidents that are damaging to the dignity of the portrayed person” that are not strictly essential for the purpose of reporting. In case of mugshot that are instrumental to police investigation, the disclosure is allowed.

The issue is recognized as a concern at all levels and has been the subject of several circulars, for instance from the Ministry of the Interior, the Italian Data Protection Authority, even the Naples Prosecutor's Office. In particular, the Italian Data Protection Authority has repeatedly stated that the “disclosure of mugshots, not justified by proven police's need, constitutes an illicit processing of personal data”. Furthermore, the Ministry of the Interior pointed out that the practice of police offices publishing mugshots is aggravated by the circulation of the pictures on the web, ultimately leading to a sort of “[permanent filing](#)”, recommending strict compliance with the legislation.

In Giaccotto brothers' case, we can reasonably speak of *permanent filing*, since many websites - including that of the most widely circulated local newspaper, “[La Sicilia](#)” - still show mugshots of the two brothers.



Focusing on the articles, one can see a homogeneous culpability bias in their redaction. Just two headlines, among many others, are worth mentioning: the local edition of the newspaper [La Repubblica](#) headlined: "Syracuse, they killed defaulting tenant with 27 stab wounds, two brothers arrested"; or [SiracusaNews](#): "Francofonte, they killed a 67-year-old man with 27 stab wounds for 700 euro: Carabinieri arrest the perpetrators of the murder".

The various articles were published simultaneously on September 21, 2016, the day after the brothers' arrest.

On September 23, 2016, a report on the murder of AB was aired on the show "[Quarto Grado](#)", which had 1172000 [average viewers](#) that evening. The presenter introduces the show with this question: "can one be killed for unpaid rent?". The report lasts just under ten minutes and is dominated by a dichotomous and antagonistic construction of the protagonists: on the one hand, the human victim, an elderly man who, given the meagerness of his pension, did what he could to supplement his income by selling sultanas and small objects; on the other hand, the inhuman perpetrators, stingy landlords, never satisfied with vile money.

The show underlines how it was an anonymous e-mail that gave impetus to their investigation, in which the case was described in great detail; Without ignoring the importance of the right to reporting and the anonymity of journalistic sources, one could hypothesize - considering the events that will be described below - that this e-mail might have come from "institutional" environments in the broadest sense or as sometimes happens, from local newspapers.

The report goes on indicating the brothers' personal details and photographs and claiming how "suspicion immediately fell on the landlords". Their reconstruction appears to be conclusive, and one wonders how they could be aware of the following information³: the brothers, who are fishermen, with the boat's engine in need of repair, allegedly asked AB to pay the rent arrears; for a total of €700. They would go to AB's home where they would find the companion who, when asked where AB was, suddenly became "frightened" and could do no more than "give in and confess". The report continues in convulsive manner, with the sentence: "When heard by the carabinieri, the two brothers deny, scream and shout, contradicted by at least two people and other witnesses, and the phone records that tell a different story". The portrayal of class conflict, the construction of a clash of identities - the brothers' bossy obnoxiousness opposed to AB's docile nature as a common man - immediately becomes clear: the brothers would leave the flat to go and "confront AB and *talk like men* for those 700 euros. *A treasure they don't want to give up for anything in the world*". It can be seen that this dualism arbitrarily assigns to the brothers the luciferous sin of *cupiditas*, that is, "greed, avarice, the intense desire for wealth and power over another person"⁴.

In a rare display of guarantism, the journalist reports that Francofonte's carabinieri operated 'without scientific evidence'; but it would be illusory to claim that this was designed to defend the rights of the suspects. The assertion is meant to be an exaltation of investigative inventiveness and creativity: the carabinieri allegedly invented a ruse to "break" a witness by telling him that they had found a tyre track compatible with his car at the scene of the crime. This witness, a cousin of AG and GG, intercepted, expresses himself in these terms with his mother: "Giancarlo told me that they killed him; they killed him, and I had nothing to do with it!". Thus, the accusatory framework of the media trial is re-established.

There was a pause in the investigations, which were resumed - according to the presenter - without the knowledge of the TV program; and it is not clear why they should be aware of this, if not through communications from persons or institutions directly involved in the affair.

³ In the reconstruction that will be proposed - in order not to fall into the same fallacy of "Quarto Grado" - the writer proposes to express himself in the conditional tense. In the show, as predicted, the tones used are of definitive guilt.

⁴ See P. Zimbardo, *The Lucifer Effect*, Italian edition, Raffaello Cortina Editore, 2008, p. 662.



The climax of the report is reached at the end of the first part: "Quarto Grado" witnesses - obviously, by chance - the brothers' arrest live.

The reporter claims to have searched for the fishermen in order to talk to them, and to have found them after "days of observation" in Augusta. Continuing with a rhetorical reference to the soon to be denied freedom, we move from images of boat's docking in the harbor, followed by the words: "the last trip out to sea, because on the way back they are arrested in front of our eyes". And it really seems an incredible coincidence; an arrest made live on TV, executed a week after the GIP had issued the pre-trial detention order. The first part of the report ends with the crew following the police cars, which are travelling with their sirens blaring, towards the station.

The cameras cut to the presenter who, before showing the second part of the report, asserts with moralizing intent: "AB was killed for €700, it's really outrageous".

The second part of the report is the interview that took place a few minutes before the arrest. AG initially responds very calmly, stating what has subsequently been proven to be the judicial truth. The interviewer presses AG with tendentious and conjectural questions, aimed at describing the suspect as violent and unscrupulous; we can mention: "and that two other people claim that they were beaten by you because they did not pay the rent is a coincidence?" or: "everybody says: they were looking for him and wanted to beat him up"; and again: "is everybody's conscience OK?". Despite the empathy towards the victim shown by AG during the interview, the provocation of the interviewer knowingly rages. It is necessary to underline that all the reporter's assumptions turned out not to correspond to the reality of the facts. The cameras move to the studio for the last time, where the presenter concludes by saying: "let me express my appreciation to the Sicilian investigators who did not let this story fall into silence, which concerned an old, simple person who *was killed for €700 of unpaid rents*".

The doubts about the presence of the cameras at the time of the arrest are also raised by the prosecutor who, during some of the brothers' interrogations, dwells at length on those moments, asking numerous questions and stating that it seemed rather strange to him that journalists were "randomly" present.

It is not clear, and it has not been established if and who informed the journalists, but one fact can be reported: immediately after the interrogation, the prosecutor shifted the responsibility for the investigation from Francofonte's Carabinieri to Augusta's.

The case encompasses many of the common defects of judicial reporting in our country: the first, and the main one, is the substantial failure to comply with the precept of paragraph 2 of Article 27 of the Constitution ("the accused is not considered guilty until final conviction") and all the subordinate normative sources already mentioned.

Not only that, but there is a lack of certain requirements indicated by the Court of Cassation (judgment 5259/84) as exemptions from the offence of defamation, in particular the civil form of the statement of facts and their assessment. The Court held that a particularly strict assessment of the requirement of presumption of innocence is required to consider the cause of justification to be operative. Specific attention is also paid by the jurisprudence on television journalism, which considers the journalistic continence requirement satisfied where, during a television report, the presenter merely listens and asks questions without adding personal comments and opinions. As has been attempted to show, this is not the case.

Not only jurisprudence addressed this issue, but also the abovementioned Journalists' code of conduct. In paragraph 4 of Article 8, it prescribes to the journalists in television broadcasts to "respect the adversarial principle, ensuring the presence and equal opportunity in the dialectical confrontation between the subjects who support them - in any case different from the parties confronting each other in the trial - guaranteeing the principle of good faith and continence in the correct reconstruction of events".



This precept is far from being applied in this case: the various procedural stages have been confused, the adversarial principle has not been respected, and the presumption of innocence of the suspects has been disregarded.

As mentioned above, the case was dismissed without a hearing. After a change in the legal position of a person, a rectification of information is required by law. The paragraph 1 of Article 8 of Journalists' code of conduct prescribes: "In the event of an acquittal, the journalist always gives appropriate prominence and updates previous news, in particular for online publications". This is reaffirmed by the first paragraph of Article 9, that claims that the journalist should "rectify, even in the absence of a specific request, with timely and appropriate emphasis, information which after its disclosure has proved to be inaccurate or erroneous".

No newspaper or TV show considered necessary to correct the information, even after the Giaccotto brothers had requested it. A complaint for defamation by the press is pending, so we do not intend to replace the competent judges.

It can be assumed that the analytical interest of the case does not lie in media overexposure, but in an idealtypical representation of reality: because one can well imagine that there may exist many cases similar to the one reported.

Ultimately, it can be said that the mechanism of the absence of the presumption of innocence in relation to suspects (whatever the underlying reason), added to a failure to rectify a changed legal status (or a partial, incomplete rectification or rectification with a different emphasis from an arrest or conviction), generates what has been defined as a *permanent filing*; a stigma that an individual who finds himself, perhaps by chance, perhaps by mistake, involved in a criminal case must carry with him for the rest of his life.

6. Public reactions to the case

Given the relative "normality" of the case, i.e. a murder that took place in a remote province, the victim being an elderly man with no particular characteristics, and the alleged perpetrators being men who were well integrated into the community - or at least not marginalized - there was no social mobilization or obvious signs of popular indignation.

Here, however, we want to shift the focus on the social subtext, in other words on the small events that may be overlooked by most, but which have an enormous influence on an individual's life.

As previously mentioned, there has been no rectification of the information by the media; although one can probably assume that in the Giaccotto brothers' close family or community circle a factual truth has been re-established, the same cannot be said for society as a whole.

The brothers themselves, in their request for compensation for unjust pre-trial detention, state how: "This sad judicial incident has blocked [the brothers'] every prospect and has thrown all members of [their] families into the deepest prostration, who, in addition to the suffering caused by the unjust detention of their relative, have suffered the mockery of being marginalized by the social body".

In the context of this work, it is not possible to analyze the social reasons of marginalization; however, it is possible to indicate another fundamental problem of general order: the non-respect of the right to be forgotten.

Whether it is more appropriate to [define](#) it as "the right of an individual to be forgotten, or rather, not to be remembered for facts that have been reported in the past" or as "the right not to be indefinitely exposed to further damage that the repeated publication of a news item may cause to honor and reputation" remains an open question.

The Court of Cassation has expressed its opinion on the right to be forgotten, saying that "the disclosure of personal vicissitudes now forgotten by the public is justified by the right to report only if recently occurred events' that are directly connected with those facts, renewing their topicality".

The contraction of this right afflicts many individuals subjected even to criminal proceedings, the media echo of which continues to resound due to the search engines' indexing. Recently,



[jurisprudence](#) has established the duty of a search engine to remove from its results links to sites that are considered by the interested parties to infringe their right to be forgotten.

Despite that, even today, if you want to search for Giaccotto brothers on a search engine, you will still find newspaper headlines about their arrest as the first results.

One might wonder why legislation concerning the presumption of innocence, rectification of information and the right to be forgotten is systematically infringed.

As this is a sensitive, controversial, and urgent issue, a number of proposals have been made: some considered undesirable, such as the tightening of penalties or the introduction of new offences; others linked to disciplinary sanctions but considered difficult to implement.

Several commentators have recommended effective "reputational sanctions" for those who violate these rules. [Luigi Ferrarella](#) proposed the obligatory publication in a prominent place of criminal convictions, judgments of civil damages, disciplinary sanctions and measures of the Italian Data Protection Authority resulting from unlawful treatment of the news.

These publications could be included on a special page that would be linked to by a flashing pop-up on the newspapers' home pages. This mechanism, and we refer to the inclusion of a pop-up, could be fruitfully transposed to the correction of an outdated article.

Sources: Where not explicitly mentioned in the text, we refer to: Giaccotto brothers' request for compensation for unjust pre-trial detention, request for dismissal of the case by the Prosecutor's Office of Syracuse.



Case study 3: institutional communication in raids

1. Introduction

The third part of the report will not be devoted to a specific case, but to a more general category of law enforcement actions: the raid.

A *retata* (raid) is defined as the “arrest of several persons (suspected of a crime, or suspected or dangerous, or otherwise targeted) in the same environment or area by the police”.

The term has been adapted from the fishing language; the most important dictionary of the Italian Risorgimento, [Tommaseo](#), defined it as: “a throw of the net; or the catch of the fish enclosed in the net, each time it is thrown and pulled”.

And these images still permeate police action today: a trawl, operations with dozens, sometimes hundreds of arrests, with an excessive deployment of forces. It can be assumed that they are also demonstrative actions, since such an organization is rarely necessary; and in such situations even the most zealous magistrate may find it arduous to substantiate the deprivation of liberty; and how there is a risk that the police may be failing in their essential task of protecting the individual rights. The main focus of the raids is on two offences that generate particular social alarm. They may be linked to drug trafficking offences; or related to mafia-type organizations. Therefore, only cases of multiple arrests for crimes involving drug trafficking or mafia-type organizations have been selected. Therefore, in an attempt to understand – without any claim of universal generalizability – whether it was possible to find a pattern in this particular collective repression actions, a number of empirical cases were analyzed.

The focus will be on the institutional communication of law enforcement authorities. We considered this as an interesting topic, worthy of a particular attention in a broader discussion on the relationship between information, media, and suspects’ rights.

The main questions are: Does institutional communication - both through traditional and social media - respect the suspects’ rights? Are the used tones mostly neutral or emphatic?

To try to answer these questions, our attention was mainly directed to two stages: the arrest and its immediate knowledge through the publication of videos on law enforcement authorities’ social channels; written and verbal communication by law enforcement authorities, i.e. press releases and press conferences.

As far as the source is concerned, we have analyzed the two main bodies - Polizia di Stato and Arma dei Carabinieri - which form the Public Security Authority, and which therefore assume the status of Public Security Officers⁵. The public security authority is regulated by [Royal Decree](#) No. 773 of 18 June 1931 (and subsequent amendments), which defines its tasks in Article 1: “it oversees the maintenance of public order, the safety of citizens, their security and the protection of property; it ensures compliance with the laws and general and special regulations of the State [...]; it provides assistance in the event of public and private accidents. By means of its officers, and at the request of the parties, ensures the amicable settlement of private disputes”

The task at hand is to check whether, in the name of the requirements of public security and the protection of public order, other constitutionally guaranteed rights are being restricted, infringed or denied.

It is admitted that the analytical objective may lead to biased selection, to cherry picking. It could be argued that even just one deviant case, even just one situation in which the individual rights are not respected, is worthy of attention and is, generally speaking, a violation of the principle; and since it is not possible to violate a rule in a particular situation without undermining the legal system’s more complex framework, it might be reasonable to assert that even this single, and

⁵ However, it should be mentioned that not only they acquire this qualification.



perhaps unrepeatable and unrepeated event - and especially if perpetrated by those who are supposed to be the guarantors of rule of law - is a wider infringement of each individual's rights.

2. The arrest

Sometimes, following an arrest, law enforcement authorities produce a video on it. The videos do not follow a criterion of arrest's social relevance, as it is possible to find them either for seizures of small quantities of drugs or for the arrest of a fugitive who has been wanted for years.

To provide further support for the following assertions, which may at first seem apodictic, an analysis of the last ten videos of multiple arrests related to drug trafficking or mafia-type organizations on [Polizia's](#) and [Carabinieri's](#) YouTube channels was carried out.

In the sample of videos analyzed – that it cannot be said to be representative – it was possible to detect some common elements; some phases which, with minimal differences, are constantly present. The videos, sometimes accompanied by soundtracks and atmospheres that recall the thriller film genre, often start with the image of a few - or dozens of - cars driving out of the police station with their sirens blaring. Then, the cameras cut to an aerial shot from the helicopter, with the terrestrial reverse angle following the aircraft's confident movements. In cases where the raid is on individuals accused of drug trafficking, the field is left to K9 units, with the officer bringing the dog - used as a means of detection - out of the cages used for transport and leading it to the search site. The real action only begins after this "display of strength", the demonstration of security, of personal and social safety that the armed forces intend to guarantee. The camera immediately moves inside the searched buildings, frequently showing every part of the house. It could be argued that, in the absence of the owner's consent, the publication of these images may infringe the right to individual privacy. In this regard, the Supreme Court's judgment No 27613/2019 expresses in these terms: "the right to privacy is configured as a specification of the right to private intimacy, understood as man's need for full and exclusive enjoyment of the privacy of his person and of his actions, where the good that the subject intends to protect is not external to him but inherent in the person himself in his physical individuality or moral and social need". It could be said that indiscriminate transmission by law enforcement or television of images belonging to personal privacy, such as the bedroom or bathroom, is an arbitrary intrusion. and, even if it probably does not represent a violation, it is a practice, so to speak more broadly cultural, that does not befit properly liberal institutions. Sometimes the video is accompanied by clips of intercepted conversations or wiretaps, undoubtedly aimed at demonstrating to the viewer the relevance and the criminal status of the arrested. Therefore, it should be noticed that such a practice implies – or at least configure the possibility – that an anticipation of conviction could be created in the audience. And it is not only the wiretaps that can generate this effect; the very titles of the videos, using pompous expressions such as "[hard blow struck to the clan](#)", "[closed the circle on mafia murder](#)", "[carabinieri dismantle mafia organization](#)", denote the same anticipatory mechanism, almost as if an arrest made were equivalent to a final sentence, not contemplating the possibility that a judge might overturn the investigative evidence gathered. However, it is noticeable - to the relief of the rule of law - that in the sample of videos analyzed, any reference to personal identity, either of the arrested or of agents, is omitted: faces have been obscured, as have car number plates, and often, voices are camouflaged and altered. The videos tend to end with the image of the stolen goods, weapons, money or drugs (or a combination of them) lying on a table.

A hypothesis could be made although the cases analyzed show compliance with the law, the impression that can be gained from a close look is that - given the arrestee's and agents' depersonalization and collectivization - the videos only fulfil a need to publicize and promote the police forces.



And it is the final image of the videos that sublimates this intention: the weapons and drugs on a table, sentencing that the violated order has been re-established, the crime - intended as a general source of disorder - dismantled, the forces of order - the ultimate guarantors, the main actors of the work - present, always ready to intervene.

As for the research questions raised, the answers seem clear: notwithstanding possible violations of the right to privacy, the video communication of arrests largely respects the arrestee's rights. We have already mentioned the communicative methods: the tones are often grandiloquent, the demonstrations of force imperious - and one could say excessive - and one can notice a subtext of infallible judgement, of anticipatory conviction. However, there is a difference in the entitlement of the videos: more pompous headings - such as the ones mentioned above - frame more the videos of Carabinieri; while Polizia tend to use more neutral titles, putting only the number of arrests alongside the reason for the arrest.

3. Press release and press conference

The next step after the arrest is sometimes the emission of a press release and the calling of a press conference. In the most important cases, i.e. cases involving many suspects and therefore attracting more social attention, the issuing of a press release and a press conference take place frequently.

Using the scheme previously adopted, it was decided to analyze the textual content of the last ten press releases - related to arrests for drug trafficking or mafia-type organizations - of [Polizia di Stato](#)⁶ and [Carabinieri](#)⁷. The focus will be on two aspects: the use of the conditional verb tense in presenting the reasons for the arrest; the use of hyperbole in describing the offence for which the arrest was made.

To dwell on the use of the conditional tense in presenting the investigative theorem might appear an analytical quirk; but since this verbal tense is an expression of modality, i.e. indicating a hypothesis, it is reasonable to argue that it should be used to indicate a situation that only takes place if a certain condition is met. An example could be: if the accusation holds up during the trial, then the arrested persons would have committed the offences charged against them.

Conversely, by using a different verb tense, one wants to indicate situations not affected by uncertainties.

Therefore, we proceeded to make this kind of analysis, i.e. to categorize the various verb tenses used in press releases' drafting. It is necessary to underline that not all of them are used to describe the operations and the facts of which those arrested are accused; but the introduction of the statement is usually brief, leaving much space for the actual operation, the narration of the events and the police's thesis. There is no significant stylistic difference between the two police forces: Polizia used 368 verbs in the press releases analyzed, of which only 2 in the conditional mood (0.5%). Carabinieri used 376 verbs, of which 6 in the conditional mood (1.6%).

One can therefore reasonably affirm that also in the written communication analyzed that anticipatory phenomenon of conviction mentioned above occurs - as we shall see.

Then, a reconstruction and evaluation of the tone of the language used was carried out. A preliminary step is the recognition of the most frequently used terms in the press releases.

To do this, it was decided to use the method of analyzing the specific language. In order to do this, it is necessary to have frequency lexicons, i.e. a particular resource aimed at constructing and representing the common language of a given community. In these lists - made up of millions of linguistic expressions derived from the most varied sources (press, spoken language, literature, etc.) - each word is associated with a frequency, which serves to indicate the expected use of each

⁶ February 24, 23, 17, 16, 15, 10, 9, 4, 2, 2021.

⁷ April 6, 3, 1, 1, March 24, 23, 22, 20, 10, February 20, 2021.



word in the linguistic community to which the lexicon refers. By comparing the lexicon of the text under examination (in this case, the sample of press releases) with that of the general community's frequency lexicon, a list of over-represented words can be drawn up, which ultimately correspond to the peculiar language of the text itself (see Figures 1 and 2).

In our case, this kind of analysis is not very meaningful since the topic was chosen in advance – drugs trafficking and mafia-type organizations. However, it seems interesting to introduce this kind of technique, also to check whether the reason for the arrest is openly highlighted in the press release.

Moving on to an illustration of tone, we have chosen to use a few exemplary phrases. We could find representations that seems a little too hagiographic, like: “The impeccable direction of the Judicial Authorities of the Anti-mafia Prosecutors' Office of Bari, however, supported by a continuous, very intense and profitable real time coordination of many Carabinieri divisions, through which it has been possible to realize a massive, penetrating and qualified info-investigative maneuver, has allowed the containment of the shooting actions of the clans which were fighting against each other”. On other occasions communiqués take on fictional tones, such as: “At the crack of dawn today”, “The theatre for this maxi operation is the densely populated neighborhood...” or the description of the act of selling drugs as a “routine that has become almost a ritual”.

Sometimes the press releases give the "honor of arms" to the arrestees, describing an organization as “a well-oiled system designed to circumvent law enforcement controls” or acknowledging the suspects' “skillful attempts to elude controls”. However, any effort to do so is, of course, not enough to avoid being “put in handcuffs”. At times, the language of the institution itself is completely supplanted by journalistic reconstruction: for example, expressions such as “A picture as disturbing as it is clear” or “The most alarming aspect had yet to emerge”.

However, there is a slight difference between Polizia's and [Carabinieri's](#) analyzed communiqués. From a stylistic point of view, the Carabinieri repeatedly use rhetorical flourishes, while some police communiqués appear more streamlined and, when it becomes necessary to use slang or sophisticated terms to facilitate a better understanding of the discourse, they are put in inverted commas. From a substantive point of view, there are no discrepancies: the personal details of the suspects are often given, the name or initial of the name, the State (region or province) of origin, the profession practiced (and if the arrested person is unemployed, this is underlined).

It was not possible to conduct an organic mapping of press conferences, as no official portal lists them according to any criteria. Some other platforms and archives report conferences in relation to more heavily covered cases, but it is not possible to deduce any extensible rule from them. We have therefore relied on common and shared representations among judicial operators.

In addition to the already described press conferences held by the prosecutor's office, autonomous police's conferences are also being carried out. On these occasions, violations of the right to personal identity of suspects or defendants are frequent: it is common practice to disclose the names, age, gender, nationality and profession of suspects (in the latter we could see continuity with press releases). In addition, mugshots or pictures of detainees being arrested and taken to prison are often projected, in contravention of current legislation. This practice is not usually followed by disciplinary measures.

An example of bad practice can be seen in a press conference organized by [Padova's](#) provincial command of Carabinieri. The latter, with the approaching release from prison of eight individuals detained for robbery, felt it was his duty to warn the population to keep “in mind the faces of these thieves, arrested by the carabinieri precisely because they had committed house burglaries. Once released, they may resume their illegal activities. They all have a record and set their targets in the early afternoon hours and work in the evening hours”. The Colonel, with a moralizing attitude, then gives some advice to the community, for example: “It is not the case to tell everyone when you are going on a trip, nor to say where you are going: it is clear that an exotic or expensive holiday destination leads one to think that in that family there is a particularly high availability of



4. Conclusions

The aim of this last part was to understand some characteristics of police institutional communication. In particular, the intention was to understand whether individual rights were respected and whether neutral tones - appropriate for institutional relations - were used in the disclosure of information, or whether the text was embellished with rhetorical figures and emphatic tones.

The aim of these research questions was to determine the broader relationship between information and the disclosure of certain news considered to be of social relevance and the institutions responsible for safeguarding security and public order, always bearing in mind the need for a balance between these same security needs and individual's personal freedom - postulated in the acquired rights.

It is worth mentioning that the European Parliament and the Council had already issued a directive on this subject, 343/2016. It is entitled "on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings" and acts with harmonizing intent between European legal systems, through common minimum rules.

It is immediately specified that the Directive is to be applied at every stage of criminal proceedings, including arrest. For what is of interest for the purposes of this discussion, i.e. institutional communication, it is established that "The presumption of innocence would be violated if public statements made by public authorities, or judicial decisions other than those on guilt, referred to a suspect or an accused person as being guilty, for as long as that person has not been proved guilty according to law". It is immediately made clear what is meant by public statements made by public authorities, namely "any statement which refers to a criminal offence and which emanates from an authority involved in the criminal proceedings concerning that criminal offence" including "judicial authorities, police and other law enforcement authorities, or from another public authority". The possibility of "publicly disseminating information on the criminal proceedings where this is strictly necessary for reasons relating to the criminal investigation" remains open, but whose use "should be confined to situations in which this would be reasonable and proportionate, taking all interests into account".

In any event, it is stipulated that the manner and context of disclosure should not give the impression of guilt of the person concerned before it has been legally proven. Thus, is established that public authorities are in breach of the Directive if they produce communications of any kind that present the suspect as guilty or give the impression of guilt.

At first glance, this might appear to be a duplication of the precept laid down in Article 27(2) of the Constitution, but the interpretation might be slightly different. In the directive there is an explicit reference to public communication of public authorities, to their official duties: and if for the communication of the judicial authority one could refer to the already mentioned CSM guidelines, for other public authorities no indication was found.

The principle affirmed seems clear: any public statement by a public authority is admissible only if it serves the needs of the trial or investigation, but it is not legitimate if it is guided by the intention of giving general information to the public. It can be argued that this is because the right to information is already ensured by the publicity, if it is allowed, of judicial documents.

To ensure that the requirements do not remain unimplemented, the European institutions indicate to the Member States the need to take the necessary measures to achieve the objective. To this purpose, Member States should inform "public authorities of the importance of having due regard to the presumption of innocence when providing or divulging information to the media. This should be without prejudice to national law protecting the freedom of press and other media".



This directive has been the subject of fierce debate - and constant postponement - in the relevant parliamentary committees. A delegation law (*legge delega*) to the government to receive the directive was recently approved⁸ in one chamber of the Parliament.

This was undoubtedly felt to be a step forward. Some [pundit](#), however, warn that the directive itself sets out a series of principles, which are destined to remain a solemn aspiration or mere hope if they are not incorporated into a legislative decree, which will have to establish both the normative precepts and the system of sanctions.

And if one takes the example of similar cases already regulated, it will show that the corresponding sanctions are notoriously ineffective and unenforced.

Given these normative precepts, it must be emphasized that reality is far different from them. Almost all the cases analyzed - be they videos, conferences or press releases - present the suspects with an anticipation of guilt. The information is conveyed without any investigative need, but with an intent that could be defined as eulogistic.

⁸ April 1, 2021.

