


CONDEMNED BY THE MEDIA: INFLUENCE AND PERSPECTIVES OF CIVIL LIABILITY OF THE MEDIA FOR "PRE-CONVICTION" IN HIGH-PROFILE CRIMINAL CASES

 <https://doi.org/10.56238/sevened2024.031-050>

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ABSTRACT

The objective of this article is to explore the influence of the media on public opinion in crimes of great repercussion, leading to the possible pre-conviction of the subject reported. Possible perspectives for holding the press accountable in the sphere of civil law will be addressed, after analysis and consideration of legal principles. The role of the media in the formation of public opinion will be analyzed, in addition to its influence on the perception of the guilt of the accused before a formal trial. To this end, concrete cases will be discussed, in order to illustrate how sensationalist and premature narratives, combined with the emphasis on emotions, can compromise the right to the presumption of innocence and the impartiality of the judicial process.

Keywords: Civil liability. Pre-conviction. Media. Cases of great repercussion.

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INTRODUCTION

The word "media" originates from the Latin term *medium*, adopted in the English language at the end of the nineteenth century and can be conceptualized as "the set of means of communication used by a society for the exchange of information" (LOPES *et al*, 2018).

With technological development over the years, the media has expanded and started to encompass any form of dissemination of information, whether oral, written, television, through social networks or other platforms that reach wide audiences. In this way, it has consolidated itself as a tool with significant influence in the formation and manipulation of opinions of large population groups.

In this regard, Lafer (1991, p. 201) states that "the right to information is a democratic freedom intended to allow an autonomous and equal participation of individuals in the public sphere". In fact, freedom of expression and the right to information are fundamental to modern democracy, especially in light of the restrictions imposed in historical periods marked by censorship and repression, such as the military dictatorship in Brazil between 1964 and 1985.

Over the years, the performance of the media has raised debates about the limits of this freedom, especially when its exercise, supported by article 5, item IV, of the Federal Constitution, clashes with other fundamental rights, such as the presumption of innocence, the right to an adversarial hearing and a full defense.

Frequently, news is broadcast in a fragmented or sensationalist way, decontextualizing facts, with the aim of attracting an audience and causing popular commotion. In high-profile criminal cases, these practices have the potential to directly influence public opinion, generating commotion and popular revolt and promoting "pre-convictions" that not only compromise the impartiality of the trials, but also generate irreparable damage to the image of those involved.

The growing demand for an audience in a society that is increasingly connected and eager for immediate novelties has intensified this practice, especially in intentional crimes against life, in which sensationalist coverage tends to induce hasty and distorted conclusions about events. In these cases, the press, by ignoring the right to an adversarial hearing and to a full defense, often offers the public a partial and biased version of the facts, without ensuring the multiplicity of perspectives and respect for the presumption of innocence, even generating the expectation of conviction of the accused regardless of the legal process.



The main consequence of this absence of guarantee is the limitation of people's ability to form their own judgments, since they are exposed only to a single version of the facts - chosen by the media - which facilitates adherence to the position conveyed by the media, forming a biased and biased opinion.

This article will address the impact of media action on the formation of public opinion and the social and legal consequences of a pre-conviction of accused individuals in high-profile criminal cases. Initially, the power of the influence of the media on the opinion of viewers will be analyzed, with emphasis on sensationalist coverage and preconceived narratives.

In addition, the expectation of condemnation generated by the media will be examined, preceding the due process of law, compromising the impartiality of the trial and affecting the right to image of the accused. Subsequently, legal principles that converge with each other will be exposed and debated, analyzing their prevalence in situations of pre-convictions.

Finally, the perspectives and legal bases for the civil liability of the media will be addressed, with the presentation of concrete cases, generating reflection on the limits and consequences of abusive practices by the media.

THE INFLUENCE OF THE MEDIA IN THE FORMATION OF PUBLIC OPINION

In this topic, one of the main forms of influence exerted by the media will be analyzed, which occurs through the construction of discourses and narratives. The media disseminates different worldviews, ideologies, values and stereotypes. These discourses and narratives have the potential to shape people's perception of reality, as well as to influence their thinking and behavior (ALVES, 2023, p. 4).

In this context, much of the media has been inserted in the legal sphere, especially with regard to judgments of great repercussion, that is, cases with greater gravity. In this regard, in the view of Sérgio Salomão Shecaira (SHECAIRA, 1995), the aforementioned fascination exerted by crime has two functions for the human being: firstly, it differentiates the "good man" from the criminal⁵ and secondly, it manifests the factual incomprehensibility naturally inherent to the human person.

⁵ According to Louk Hulsman and Jacqueline Bernati de Celis (1997, p. 56) the "traditional dramatic productions and part of the media tend to perpetuate the simple - and simplistic - idea that there are the good on one side and the bad on the other", evidencing a separation between good and evil.



Thus, considering that violence attracts the public, boosting the sale of newspapers and raising audience ratings, most of the information conveyed by the media focuses on the phenomenon of crime⁶.

SENSATIONALIST COVERAGE AND THE FORMATION OF PRECONCEIVED NARRATIVES

Sensationalism, widely present in various media outlets and in Brazilian journalism, essentially consists of the exploration of themes capable of impacting and impressing the public, without any commitment to the authenticity of the facts (PEDROSO, 2001). In essence, it is about converting the truth into a "spectacle" (FILHO *et al*, 2022).

Thus, sensationalism is a set of communication tactics that seeks to create information capable of arousing the interest of the recipients (AGUIAR *et al*, 2016). In the same vein, in a sensationalist piece of news, its emotional and appealing charge is extracted so that they can be magnified, fabricating a new piece of news that after that starts to be sold by itself (FILHO, 1986).

Based on this, it is understood that, through strategic mechanisms, when conveying information, the press transforms viewers into targets to be reached, while the objective is to reach a larger audience through the impact and emotions caused by what is reported.

Thus, for this objective to be achieved, it is feasible to corrupt the authenticity of the facts, since the news is treated as a commodity, in order to transform a common fact into a flashy appearance, to generate a product and attract the attention of a large audience (FILHO *et al*, 2022).

Although freedom of the press is a fundamental prerequisite for any state that aspires to constitutionality and democracy, its use cannot occur indiscriminately, irresponsibly or recklessly. In so doing, several rights and guarantees guaranteed by the Brazilian Constitution will be violated.

That said, the press itself – with a few exceptions – that proclaims the need to respect the Constitution, is the first to disregard it, mistakenly making use of freedom of expression and the duty-right to inform in order to disseminate the most diverse news, without any prior verification of the veracity and credibility of the sources. In the context of sensationalist journalism, everything seems to be valid, as long as the story conquers an audience and generates profits. For Cláudio José Bahia (2008, p. 84), accepting this type of abuse of rights is "going back to the distant medieval time in which the figure of accuser, defender, judge and executioner was concentrated in a single person".

⁶ Called, for a long time, as "brown press".



Sensationalist coverage, which is done selectively, therefore, by emphasizing certain aspects of a crime and omitting others, manipulates society's perception and directly influences legal decisions (OLIVEIRA *et al*, 2024). This makes the criminal process be transformed into a "spectacle", while it comes to be seen as an instrument of social control and immediate response to crimes that gain media notoriety.

In this way, the search for the truth, an essential characteristic of the criminal process, becomes challenging, which contributes to the expansion of factors that lead to misunderstandings and injustices in decision-making (PEREIRA, 2015), since, through appealing characteristics, the media shapes the opinion of the receiver, in order to create, with the support of sensationalism, stereotypes of criminality and violence (FILHO *et al*, 2022).

MEDIA NARRATIVE STRATEGIES AND THEIR INFLUENCE ON "SOCIAL PRE-CONDEMNATION"

The legal system is incumbent on the accusing State to demonstrate the guilt of the defendant, ensuring the right to an adversarial hearing and a full defense. The exclusion of individual rights and guarantees, as well as the imposition of sanctions without due process of law, is not admissible. This is the safeguard that no individual will be subjected to the consequences of a judicial decision without having been given the opportunity to participate effectively in the formation of the sentence (SOUZA *et al*, 2019).

Thus, the influence of the media is alarming, establishing a paradigm of criminality, punishment and judgment preceded by revenge, disregarding the analysis of the fundamental rights of individuals. This is because, with the increase in violence, issues related to public security and the judicial system began to be widely discussed in the social sphere, becoming one of the main topics addressed by the press.

However, the dissemination of violent and distorted images and news, which generate a significant impact, impresses viewers and intensifies feelings of insecurity and fear, resulting in the famous "culture of fear", which, fostered by the media, exerts a significant contribution to stereotyping, being intrinsically linked to the media criminology formulated by Zaffaroni⁷ (2012). It is in times when society, already impacted by insecurity, such as the current one, that this culture gains space.

The intense coverage of certain cases, especially the emblematic ones, engenders a social demand for quick and rigorous responses, putting pressure on the legislator and the

⁷ According to Zaffaroni, media communication about criminal facts is a kind of media criminology. He considers that the media is responsible for creating a stereotype of the criminal, associating physical, psychological and economic characteristics with the practice of a crime.



justice system - the so-called "criminal populism".⁸ In this way, the media is not limited to reflecting, but also to reinforcing the idea that more severe punishments represent a synonym for increased security.

By sanctioning certain conducts, the State not only seeks to repress crimes, but also to signal to society that it adopts actions to maintain order and security. In this context, the media plays a crucial role in intensifying this symbolism, promoting a perception of justice that does not always match the reality of the facts.

Once the information is disseminated through the media, which are unaware of the structure and *modus faciendi* of the jurisdictional activity, society, stimulated and seduced by the information disseminated, positions itself in favor of the media, judging the case even before its due appreciation by the Judiciary (PEREIRA, 2013).

On the subject, Márcio Thomaz Bastos (1999, p. 115) states:

(...) Judge hardly resists: there are decisions in which public order is made by pressure from the press. With the jurors it is worse: involved by public opinion, massively built by orchestrated and frenzied media campaigns, it is difficult to demand from them any other conduct than to follow the flow.

The consequences, according to the author, are disastrous (BASTOS, 1999): "Dozens of criminal cases, distorted and scrambled by this symbiosis, which destroys the possibility of reaching the truth or of doing justice".

In this regard, the author Ignacio Ramonet (2001, p. 45) argues that:

In our intellectual environment, the truth that counts is the media truth. What is this truth? If, in connection with an event, the press, radio and television say that something is true, it will be established that it is true. Even if it's fake. Because from now on what the media as a whole believes as such is true. Now, the only means available to a citizen to verify whether information is true is to compare the discourses of the different media. So, if everyone says the same thing, there is nothing left but to admit this single discourse.

The media, in this sense, is not limited to informing, but also to influencing the social perception of what should be criminalized. Such a role becomes even more evident when news coverage turns defendants into guilty even before the verdict, imposing intense pressure on the judicial system.

Thus, the wide judicial media exposure results in the stigmatization of those involved, since it builds a narrative around the accused, presenting him as a villain in the eyes of society and compromising the principle of the presumption of innocence. In this way, the

⁸ This concept refers to the implementation of criminal policies guided by popular appeal, often stimulated by sensationalist media coverage. The pressure exerted by the media can give rise to a legislative populism, in which the focus falls on quick and punitive responses, often to the detriment of essential principles of Criminal Law, such as proportionality and effectiveness of penalties.



dissemination of information alienates individuals, conditioning their reflections to what is exposed to them by the media, which present ideas and conceptions previously elaborated and concluded (NUNES, 2008, p. 53):

The ideas, reflections and concepts of most people are supported, or rather, they are the result of a relationship between the ideologies present in society and personal convictions. People communicate and, increasingly, organize their points of view, with this they often form their opinions and make their choices based on what is informed to them through the media.

The media, by selecting certain cases for greater prominence, construct figures of enemies who need to be punished, creating pressure for the Law and the State to act in an exemplary manner, regardless of the complexity of the case, the reality of the facts and the analysis of the body of evidence.

Therefore, media influence can create an environment in which the defendant has already been convicted by public opinion and any judicial decision that does not follow this narrative is seen as unfair or insufficient. In other words, the power of the media can undermine trust in the judicial system and the fundamental rights of citizens.

THE EXPECTATION OF CONVICTION INDEPENDENT OF THE LEGAL PROCESS

Two of the basic principles of the Brazilian legal system are the principle of due process of law and full defense, essential when there is any legal discussion about convictions. Provided for in the Federal Constitution of 1988, in its article 5, item LIV, the principle of due process of law carries the title of a stony clause. In the context of criminal proceedings, both are extremely essential, since due process of law and full defense are the guarantee that all evidence is properly analyzed so that there is a fair conviction or, in the absence of these, the application of in *dubio pro reo* and the acquittal of the defendant.

In addition to these principles, another that proves to be very important is the principle of the presumption of innocence, which is defined by the famous phrase "everyone is innocent until proven guilty", taken directly from the Universal Declaration of Human Rights proclaimed by the United Nations General Assembly in 1948 (UNITED NATIONS, 1948), through its article 11⁹. This provision was mirrored in our Magna Carta, again in its article 5, item LVII, which defines that "no one shall be considered guilty until the final and unappealable criminal sentence of conviction".

⁹Article 11. Every human being accused of a criminal act has the right to be presumed innocent until his guilt has been proven in accordance with the law, in a public trial in which he has been assured all the guarantees necessary for his defense.



However, in practice, as already seen in the previous topics of this article, such principles are not always effective, in view of the media's lack of knowledge about the jurisdictional activity of the Judiciary and its nuances. Often one sees several reports reported by the media with titles such as "so-and-so committed homicide" on the same day that the alleged crime would have occurred, without even any legal process duly initiated, being still in the police investigation phase.

Such absence of due process prior to the publication of reports and news can seriously harm the defense of the defendants, demonstrating traces of bias, inducing the reader to understand that, regardless of the innocence or not of the individual, there is already the imputation and typification of the crime, a "pre-conviction". There is, in fact, an inversion of principles by the media, as if "innocent until proven guilty" now becomes "guilty until proven guilty", revealing a certain inquisitorialism in the media view. It is important to always emphasize that the influence of the media on the social perception of what should be criminalized is evident.

Such an expectation of conviction prior to any legal process is very harmful, directly influencing the public's understanding of the case. Even if the accused is acquitted in the future, the public view of the individual caused by the news will hardly be altered, since his opinions are rooted. Álvaro Felipe Oxley da Rocha (2008, p. 147) argues in relation to prior condemnation by the media "However, under the shield of "freedom of the press", the journalistic habitus in obsessive search for scandal produces many actions of collective and individual irresponsibility, extremely harmful to citizenship".

As it turned out, the media condemnation of cases harms a lot, causing several principled violations and even violations of fundamental and universal rights in criminal cases of great repercussion. The discussion about the conflict of essential constitutional principles caused by the media, however, is very deep, even related to civil liability, as will be seen in the next topic of this article.

LEGAL PRINCIPLES AND CIVIL LIABILITY OF THE MEDIA

The Federal Constitution of 1988 enshrines in its Title II (BRASIL, 1988) the fundamental rights and guarantees, subdividing them into five chapters that outline essential aspects of Brazilian democracy, acting as cornerstones of the modern legal system. Among these fundamental rights and guarantees are individual and collective rights; social rights; nationality; political rights and political parties.

In the doctrinal field, the evolution of the understanding of fundamental rights has led to their categorization into "generations", according to the order of historical recognition and



the nature of the interests protected by them. However, it is worth noting that the categorization of generations is nothing more than a historical organization, since the principles are indivisible and are not subordinated to each other.

The modern classification, widely accepted and debated, presents three major generations of fundamental rights, each of which represents a distinct stage in the development of legal guarantees and social requirements. As Manoel Gonçalves Ferreira Filho (1989) concludes, "the first generation would be that of the rights of freedom, the second, the rights of equality, the third, thus, would complement the motto of the French Revolution: liberty, equality and fraternity".

Thus, in this topic, a parallel will be drawn between the legal principles related to the right of personality and freedom of the press, how they relate to the concepts of civil liability, what are the perspectives of accountability of the media and the possibility of compensation, in addition to analyzing concrete cases, which interconnect and corroborate the factual exposition previously presented.

PRINCIPLE OF THE PRESUMPTION OF INNOCENCE *VERSUS* FREEDOM OF THE PRESS

As previously discussed, when it comes to the media's manifestation of criminal cases, there are often conflicts between various principles and fundamental rights. Freedom of the press is an extremely important and essential right for the good practice of democracy in society, being a very important aspect of the Democratic Rule of Law, as explained by the retired Minister of the Federal Supreme Court, Celso de Mello (n.d.):

At this historical moment in which Brazil is situated between its past and its future, it is essential to emphasize the need to protect freedom of the press, since this political-legal prerogative, which is also a fundamental right of citizenship, represents one of the legitimizing assumptions of the very notion of the democratic rule of law.

Isabela Alves (2022) explains the concept of freedom of the press:

Freedom of the press is fundamental to promote political and social change. The work of the press consists of producing information of interest to the whole society, such as denunciations in cases of corruption, the successes and failures of public policies and monitoring the work of the political groups that are in power. In addition, journalism also acts locally, that is, it updates citizens on the events in their region so that the population remains well informed and organizes itself in favor of changes for a better quality of life, when necessary.

As can be seen, freedom of the press is indispensable for the population to be properly informed of political issues and to monitor any issue on the subject. In addition, it is



important to mention the importance of updating citizens of regional and national events, keeping them well informed about events in the region where they live, as well as any relevant national and international event.

However, in the field of high-profile criminal cases, this principle clashes with another very important one: the principle of the presumption of innocence. Provided not only in the Federal Constitution but also in the Universal Declaration of Human Rights, the right to the presumption of innocence ends up being violated with several media statements, to the extent that the pre-convictions practiced by the press directly influence cases of, for example, Jury Trial. Considering that this Court discusses cases that involve human life, such as homicides, such cases generate extreme commotion, drawing the attention of the media.

However, when talking about a popular jury, we do not necessarily talk about jurists, since there is no need for any specific qualification for a person to appear on a jury (JURADOS, 2021). In this way, the jurors' understanding takes place, mostly, in facts presented to the jurors, either formally in a session of the Jury Court, or, previously, outside it, and the media can directly influence their view of the case analyzed.

Therefore, participating in a popular jury with an opinion formed about the case prior to the presentation of the accused's defense, brings up again the issue of media pre-conviction, not only by the press but also with its influence on the population. On this issue, Mendonça (2013, p. 377) says:

It so happens that, lately, stripping oneself of prejudices, pre-judgments and previous experiences has been a challenge in the face of the appealing news broadcast by the media about intentional crimes against life. Since the people of the people - in their vast majority unenlightened people, targets of the mass media - will decide on the freedom of their fellow men in cases where there is a decision by the People's Jury, all the information sold by the media can greatly influence the jury's decision, making him act much more with the emotion and preconceptions disseminated by the media than with reason and impartiality in the evaluation of the information that is passed on to them during the trial.

It is necessary to limit the right to freedom of the press, so that there is no type of pre-condemnation by the media. Sidney Cesar Silva Guerra (1999, p. 80) talks about the limits of the media:

(...) There is nothing to question about the role of the press. We do not dare here to raise the possibility of the non-existence of the press or of creating censorship of it. The question that must be asked consists exactly of the limits that the press can reach.

Thus, the media should not be censored, but limits should be imposed on freedom of the press. It is important to emphasize that there is no prevalence between one of the



fundamental principles and rights over another, there is no subordination, but rather the mutual coexistence between all in an equal way, that is, balancing the presumption of innocence and freedom of the press, making it clear through the media that the facts must be judicially ascertained so that any type of typified conduct can be carried out.

Freedom of the press is an essential principle for the Democratic Rule of Law, however there are several principled conflicts between this and the principle of the presumption of innocence, and the media can bring pre-convictions in reports, even affecting the trial of jurors in Jury Courts and the general understanding of the population about an individual prior to the legal process and any concrete conviction. With this, there should be a limitation of freedom of the press, not to cause censorship in the media, but to prevent such practice from violating fundamental principles, until there is a due final and unappealable judgment of the conviction.

OFFENSE TO THE PRINCIPLES OF HUMAN DIGNITY AND PROTECTION OF THE IMAGE OF THE ACCUSED

The Right to the Dignity of the Human Person stands out as one of the fundamental principles of the Brazilian Legal System, recognized as a second-generation right¹⁰, since it is a right that reflects the essence of equality policies, requiring the State to act in order to ensure that all individuals have access to the basic conditions for a dignified life.

The dignity of the human person, therefore, is not limited to an abstract norm. The protection of this fundamental right imposes on the State the duty to adopt effective measures to reduce inequalities, ensure the existential minimum and promote social justice, in a permanent commitment to the transformation of constitutional ideals into tangible realities.

To understand the application of this principle in cases in which the media anticipates criminal trials, it is necessary to evaluate its definition, since the Brazilian legal system does not offer a precise and unified conceptualization. Due to this absence, the legal doctrine is in charge of providing different interpretations and approaches to the concept, the best known interpretations being those of Alexandre de Moraes and André Ramos Tavares.

According to the Minister of the Federal Supreme Court (MORAES, 2017):

¹⁰ Second-generation rights, in turn, emerged at the beginning of the twentieth century as a response to the social demands arising from industrialization and growing economic inequalities, with the objective of seeking equality. Unlike the first-generation principles, these rights require positive action by the State, which must promote minimum material conditions for the realization of human dignity. This evolution deals with the inclusion of a new category of rights in the declarations of rights, addressing fundamental issues such as the right to work, health, education, social security, and protection against the adversities of life, such as illness and old age (CAVALCANTI, 1966, p. 202).



A spiritual and moral value inherent to the person, which manifests itself singularly in the conscious and responsible self-determination of one's own life and which brings with it the claim to respect on the part of other persons, constituting an invulnerable minimum that every juridical statute must ensure so that, only exceptionally, limitations can be made to the exercise of fundamental rights, but always without underestimating the necessary esteem that all people deserve as human beings and the search for the Right to Happiness

In the same sense, the Minister of the Superior Electoral Court (TAVARES, 2017) states:

Human dignity consists not only in the negative guarantee that the person will not be the target of offenses or humiliations, but also adds the positive affirmation of the full development of the personality of each individual. The full development of the personality presupposes, in turn, on the one hand, the recognition of the total self-availability, without interference or external impediments, of the possible actions proper to each man; on the other, self-determination (Selbstbestimmung des Menschen) that arises from the free historical projection of human reason, rather than from a predetermination given by nature.

According to the conceptions presented, human dignity transcends mere legal invulnerability, being, in fact, a spiritual and moral value almost intrinsic to man, which requires mutual respect and conscious self-determination (MORAES, 2017).

Thus, the legal system must ensure this "invulnerable minimum", without disregarding the importance of the free expression of human reason. With regard to the protection of the individual's image, Title II of the Federal Constitution, in its Chapter I (BRASIL, 1988), which deals with Individual and Collective Rights and Duties, as explained above, addresses the issue in a clear and forceful way:

Article 5. All are equal before the law, without distinction of any kind, guaranteeing to Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property, in the following terms: (...)
V – the right of reply is ensured, proportional to the grievance, in addition to compensation for material, moral or image damage; (...)
X – The intimacy, private life, honor and image of persons are inviolable, and the right to compensation for material or moral damage resulting from their violation is ensured; (...)
XXVIII – The following are ensured, under the terms of the law: a) the protection of individual participation in collective works and the reproduction of the human image and voice, including in sports activities.

Thus, it is possible to infer from the legal text that, under the Brazilian legal system, every individual, regardless of their origins or actions, should be treated equally and have access to the protection of their fundamental rights, including those of image and intimacy. However, this normative provision often diverges from everyday reality.

As mentioned earlier, the violation of these rights has become an increasingly common practice, with the media often anticipating judgments and exposing personal information such as name, age, place of work, or image, even before guilt is legally proven.



This exposure without due process of law not only compromises the presumption of innocence, but can also cause irreparable damage.

It should be noted that media pre-condemnation is a dangerous practice, as it involves the risk of destroying essential aspects of a person's life – whether in their professional sphere or in the family sphere – without due certainty of their responsibility or guilt. In other words, by pre-condemning someone, the media takes the risk of ruining the life of an innocent person.

In short, it is possible to state, unequivocally, that the legal provisions of the Constitution, by establishing principles that ensure the fundamental rights of all individuals – whether they are suspected of crimes or not – make the dissemination of information that pre-condemns them a direct affront to the rights to human dignity and the protection of their image.

Therefore, those who practice such actions must be held accountable, although, unfortunately, no form of reparation can truly reverse the damage caused to the victims of this excessive exposure.

PERSPECTIVES OF CIVIL LIABILITY AND COMPENSATION BY THE MEDIA FOR PRE-CONVICTIONS OF THE ACCUSED

Since the beginning, life in society has generated constant conflicts of interest, especially when there is a violation of rights. Such conflicts, common to community life, result in attacks on the property of others, whether of a material nature, such as tangible goods, or of an immaterial order, which may involve the honor, privacy and reputation of people.

The word "responsibility" originates from the Latin *respondere*, bringing the idea of a security or guarantee of compensation for an asset that has been harmed or sacrificed. For Venosa (2019, p. 444), the term liability "is used in any situation in which some person, natural or legal, must bear the consequences of a harmful act, fact or business". The principles of civil liability seek, therefore, to restore a violated patrimonial and moral balance, since an unrepaired loss or damage is a factor of social unrest.

Entering the Brazilian legislation, it is extracted from arts. 186 and 927, of the Civil Code, the foundations and essential elements inherent to civil liability. Article 186 of the Civil Code (BRASIL, 2002) establishes that "anyone who, by voluntary action or omission, negligence or imprudence, violates rights and causes damage to others, even if exclusively moral, commits an unlawful act". Based on this provision, the essential elements of civil liability stand out: the action or omission of the agent, the fault or willful misconduct, the



causal link and the damage suffered by the victim. Article 927 of the Civil Code (BRASIL, 2002) teaches that "anyone who, by an unlawful act, causes damage to another, is obliged to repair it".

The characterization of civil liability may result from the non-compliance with a previously existing obligation between two parties, or even from the non-compliance with a legal duty, without there being a prior legal link between the one who caused the damage and the one who suffered it. The civil law, despite regulating a large number of special cases of strict liability (the one in which proof of guilt is not required), has been affiliated, as a rule, to the subjective theory. This institute is based on the assumption of *latu sensu culpa*, that is, the assessment of the presence of intent or fault in the conduct of the agent, who caused damage. For Cavalieri Filho (2010, p. 73), "damage is the subtraction or reduction of a legal good, whatever its nature (...)".

It can be said that the institute of civil reparation has a threefold function, which is to compensate for the damage suffered by the victim, punish the person responsible for the harmful act and socially discourage the practice of harmful conduct. Thus, the civil liability of the media in cases of pre-conviction proves to be a subject of great legal complexity, as it involves the subsumption of the fact to the norm, along with the examination of the right to freedom of expression and information, as opposed to the fundamental rights of individuals, such as presumption of innocence, dignity of the human person, due process, and protection of image and honor.

Having his principles and rights violated, could the accused hold the media civilly liable for the abuse of rights and interference in the due process of law? The right to inform and the role of the media as a vehicle of public interest are undeniably essential to democracy. However, excessive or sensationalist use of media coverage can result in abuses that compromise not only the reputation of the accused, but also the very impartiality of the judicial process.

The media initiates public scrutiny on how a high-profile case is being handled in the criminal justice system, and can influence the case's trial procedure, which includes the process of gathering and presenting evidence, as well as witnesses and other important court elements in a trial.

In the words of Judge Victor Ferreira, in the judgment of Infringing Motions No. 2011.052587-4 (BRASIL, 2011), in Florianópolis, "civil liability arising from abuses perpetrated through the press encompasses the collision of two fundamental rights: freedom of information and the protection of personality rights".



At this point, in order to address the liability of journalists who produce and exploit content with sensationalist content, it is always necessary to observe one of the essential elements for the characterization of civil liability: conduct. In order to prove damage and the consequent duty to indemnify, it is essential to investigate the conduct of the journalist or disseminator of the fact, in addition to the existence or not of fault in his action or omission.

When the agent chooses to narrate, tell or disseminate such news of great relevance, it is up to him to decide which headline will be used or which information will be broadcast, that is, he is free to choose how a certain fact will be transmitted to the public, so that, choosing the vexatious and offensive way, violating the right, honor and image of others, Intentional intent would be characterized by the intention of causing commotion and affecting the rights of the accused, regardless of the reality of the facts or the existing body of evidence.

Furthermore, it is understood that the journalist is the one who decides what information is contained therein, its relevance, the language to be used, making any damages resulting from this choice fall directly on the media outlet responsible for the broadcast. From another perspective, when disseminating such vexatious news or headlines — often untrue — and realizing that they cause a feeling of revolt in the population, which starts to clamor for the conviction of the accused, the decision to keep them on the air may constitute an omission, and is also one of the requirements for civil liability.

As a result, when the spread of untrue and vexatious news begins, the population starts to focus exclusively on the reported facts, without paying attention to the veracity or filtering the information received. Often, what happens is the presentation of the accused as guilty, without respecting the principle of the presumption of innocence or *in dubio pro reo*. The public allows itself to be influenced solely by what is propagated by the media, so that they start to have a biased view of the case, regardless of whether the body of evidence would be sufficient to lead to a future conviction of the accused.

Moved by a common sense of justice, many clamor for conviction, which can hinder the formation of a totally impartial jury at the time of trial, compromising the final result and violating several legal principles provided for in the Magna Carta and previously cited in this article. In addition, it is common for the media to rescue old facts from the life of the accused in an attempt to reinforce the previously disclosed narratives, even when these facts have no connection with the crime allegedly committed, distorting his image. This informative bias, which sometimes influences public opinion and the progress of the trial,



stems directly from what is promoted by the media, generating the causal link between the conduct and the damage suffered by the accused.

Therefore, the action or omission is translated by the dissemination of headlines that seek to treat the accused as guilty, or, in the case of omission, not to remove them from the air in the face of a negative result on the part of the public; the damage such as the destruction of the image and honor of the accused and his conviction in the face of the bias to which the jurors are subjected, regardless of the veracity of the facts and set of evidence; a causal link that connects the first two elements, since, if there were no disclosure by journalists, sensationalism and the treatment of the suspect as convicted, there would be no harmful result, since a fair trial could occur, without preconceived ideas and within what is prescribed by the fundamental legal principles, such as adversarial and ample defense and the presumption of innocence.

Thus, it is feasible that the defendant, when his image and dignity are compromised, seeks to hold the media responsible for the damages suffered, claiming compensation for moral damages. Such a request is justified by the direct impact on his honor and the extent of the damage, materialized in the losses arising from the public trial promoted by the media. Even if the accused is later acquitted, the stigma remains indelible, being continuously associated with the headlines and disclosures published, which, by propagating erroneous or distorted information, compromise his reputation and his life definitively.

In this regard, citing the original judgment of the appeal¹¹, the Honorable Minister Carmen Lúcia (BRASIL, 2013) states "in the presence of the violation of the right of personality, caused by abuse in the exercise of freedom of expression and information, the reparation of the corresponding damage is imperative". The media and journalists involved may even be held jointly and severally liable for the losses resulting from their performance, when they jointly contribute to the unleashing of the damage.

It is concluded, therefore, that when they meet the criteria of civil liability — willful misconduct, conduct, damage and causal link — based on the disclosure of sensationalist, untrue or biased information, with the intention of fueling public commotion and influencing the perception of the case, there is a configuration of the duty to indemnify, in view of the compromise not only of the right to honor and image of the accused, but also because it affects the right to a fair and impartial trial.

¹¹ Extraordinary Appeal, RE 646671/AL



FROM ACCUSATION TO CONVICTION: ANALYSIS OF CONCRETE CASES

In order to address the complex relationship between media action and the pre-conviction of defendants, it is essential to analyze concrete cases, which illustrate the effects of the public exposure of defendants before the final judgment of mainly criminal cases. The observation of practical examples allows us to verify how media openness can influence public opinion and, potentially, the judgment of a given case, putting in check the impartiality of the process and the rights and principles favorable to the accused, such as the presumption of innocence.

Through emblematic and widely reported cases, it is possible to identify patterns of media behavior and the legal consequences that arise from these practices. This topic, therefore, examines real-world examples in which sensationalist disclosure anticipated the outcome of trials before the public. The path from prosecution to conviction in cases of great media repercussion, whether national or international, shows how the public exposure of processes is a dangerous element and can take away the most precious asset of the accused: their freedom.

For Wermuth (2015, p. 15), "the media represent important mechanisms of the consumer society which, in turn, transforms the fear of crime into a commodity of the cultural industry". This time, the broadcasters and the media would be feeding the public's thirst for sensationalist news, transforming it into a cultural commodity, even aiming at financial results.

O Evandro case

In the Brazilian legal scenario, the Evandro Case, popularly known as the case of the "Witches of Guaratuba" that occurred in 1992, is a notorious example of the deleterious impacts that media sensationalism can cause in the procedural sphere and in the public perception of justice. On 04/06/1992, the minor Evandro Ramos Caetano disappeared in the city of Guaratuba, located on the coast of Paraná. From the beginning, the disappearance attracted wide media coverage, which intensified after the child's body was located in a thicket near his residence five days later, showing evident signs of violence and mutilation, with missing limbs and organs, which contributed to an immediate social commotion.

From the identification of the body, speculation arose about the involvement of Celina Abagge and Beatriz Abagge, respectively wife and daughter of the then mayor of Guaratuba/PR, Aldo Abagge, in the crime. Rumors circulated that the murder would have



occurred in the context of a "black magic ritual" offering the blood, organs and limbs of the minor as an offering, with the purpose of promoting the growth of the family in politics.

Based on assumptions and without concrete evidence, the media began to publicize them as "witches", imputing to them religious practices contrary to Catholic values, which would have motivated the alleged ritual of sacrifice. Along with them, five other men - pais de santo - would have participated in the crime, and would also be responsible for the death of the minor. Such a narrative quickly made headlines in several national media outlets, attributing value judgments and exploiting the case from a sensationalist perspective. The resulting social repercussions generated pressure on the justice system and the police forces which, without robust evidence, promoted the arrest of the seven suspects in July 1992.

Headlines with popular appeal were disseminated, with titles such as "Witches will be released in Praça Popular", which was on the cover of the newspaper Diário Popular¹², on 08/07/1992, in which the State Secretary at the time stated that he would release the accused so that the population could chase them in the public square. Another sensationalist headline was the cover of Manchete Magazine¹³, which had the title "This boy was the victim of a satanic crime".

The partial media treatment of the case fostered a climate of hysteria and moral panic in the population, consolidating a public opinion that presumed the guilt of the accused based solely on their beliefs, even before the trial began. As a result, the media not only distorted public perception of the facts, but also directly influenced judicial and police authorities, weakening the defendants' rights to an impartial and fair trial.

There were several factors that led to the process of mediatization of the Evandro Case, one of the main ones being the fact that suspicions fell on two women of high social position, something that shocked the society of the time and further fed the narrative of a barbaric crime in the name of a supposed subversive cause contrary to traditional values. The intense media coverage and sensationalist focus of the national press led to a series of procedural violations, including the torture of the accused to obtain confessions, in response to public pressure for a punitive resolution, even in the absence of conclusive evidence.

Media speculation, political disputes and spectacularization of the criminal process resulted in the conviction of the seven accused for the crime, after the longest jury in Brazil, with the principle of *in dubio pro reo* being completely ignored, since both society, the media

¹² <https://www.projetohumanos.com.br/wikipedia/episodio-02/>

¹³ <https://pipocamoderna.com.br/2019/06/diretor-de-ferrugem-prepara-serie-baseada-no-podcast-do-caso-evandro/1992-07-18-manchete-01/>



and the prosecution tirelessly sought the guilt of the suspects, despite the insufficiency of evidence.

It was only in 2023 that the Court of Justice of the State of Paraná recognized the irregularities in the investigations and trial, annulling the convictions imposed on those accused of the disappearance and death of Evandro Ramos Caetano. This case exemplifies in an emblematic way the harmful effects of media sensationalism, which compromises the presumption of innocence of the accused and contributes to the construction of harmful narratives of cases that have not yet been properly judged.

O Caso Amanda Knox

At the international level, the case of Amanda Knox can be cited, an example to demonstrate the harmful impacts of media exposure and sensationalism in the course of criminal proceedings. Accused of murdering her roommate, Meredith Kercher, during her exchange in Italy, in the city of Perugia, in 2007, Amanda and her boyfriend Raffaele Sollecito, were quickly arrested and charged with involvement in the crime. Her name emerged as a suspicion after a series of sensationalist articles were linked to her, placing her in a negative light, resulting from the lifestyle she had, attacking her nature, sex life and personality.

Amanda was constantly called a "*femme fatale*" (cold killer), as well as accused by the media of being a drug user and practicing that got out of control. In addition, the fact that the accused stayed for long periods of time at Raffaele's house, whom she had just met, was treated by the press as libertine and promiscuous acts.

Even without indications or conclusive evidence of involvement in the case, the media coverage and consequently the population did not rest until they saw Amanda and Raffaele sitting in the dock, tried for the crime of murder. As a result, in 2009, both defendants were convicted of the crime. Subsequently, in 2015, the former couple was acquitted and released, after finding flaws in the trial and insufficient evidence.

It can be seen, therefore, that the media actions, through penal populism, convey a Manichean idea in relation to the criminal and prison system, in which the victim is transformed into a hero and the suspects into villains with no chance of redemption. This perspective is opposed to democratic and constitutional principles, since it is not up to the press to formulate value judgments, and its primary role is in the dissemination of information. (FERNANDES; ROCHA, 2015, p. 120-121).



FINAL CONSIDERATIONS

From the present work, it was possible to show that the vast media power is capable of influencing the masses and can end up leading to the conviction of innocent people, even before their trial. Thus, it was observed that the incessant search for the hearing, combined with the sensationalist and selective approach to information, leads to the pre-conviction of the accused, compromising the fundamental principles and rights protected by the Federal Constitution, such as the presumption of innocence, the dignity of the human person and the impartiality of the trial.

The central role of media coverage in shaping collective perceptions was highlighted and how the media, by emphasizing certain aspects and omitting others, constructs stereotypes that modify the reality of the facts. In addition, the spectacle set up by the media transforms the figure of the accused into a villain, violating his dignity and generating moral damage that can be perpetuated even after acquittal. Through the pressure of the media, the exercise of due process becomes difficult.

From the analysis of Legal Principles and Civil Liability of the Media, it was concluded that the media, by infringing fundamental rights, can be held civilly liable for the damages caused. As explored, the legal principles of freedom of the press and the right to dignity must coexist in a balanced way, in order to ensure that the disclosure of information relevant to society does not violate the personality rights of the accused. The application of civil liability, in this sense, emerges as an important tool to repair any damage to the image and dignity of the accused and, at the same time, to encourage more ethical and respectful communication practices.

Finally, with the analysis of concrete cases, such as the Evandro case, in Brazil, and the Amanda Knox case, on the international scene, the irreparable damage that media pre-conviction can cause are exemplified. These cases show how much a narrative preconceived by the media can compromise the right to a fair trial and influence society's own verdict, regardless of the judicial decision.

Therefore, it is essential, although challenging, that the way in which the facts are addressed by the media be substantially modified, since, if on the one hand there is, unquestionably, the right and even the duty to inform society about relevant events, on the other hand, it is equally imperative that this exercise be conducted in order to preserve the dignity and life of the people mentioned in the reports. From another perspective, it is equally necessary that police authorities, lawyers, members of the Public Prosecutor's Office and magistrates do not allow themselves to be intimidated by media pressure and perform their functions with serenity and respect for the individual.



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