

The presumption of innocence across national borders

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Abstract

The principle of the presumption of innocence is already an important principle in modern democracies, which have included the principle in their legal systems. Many international instruments also sanction this important principle. The presumption of innocence protects not only the defendant but also the suspect before filing charges against him.¹

Human rights are never fully and completely protected. The obligation that state institutions have to respect them does not necessarily mean and in any case guarantee them. For this reason, the material and procedural means envisaged in the legislation of a country are intended to protect the rights of the fundamental rights when the individual has no other way to enjoy them. Violation of fundamental rights can be claimed at every stage of ordinary trial because courts are also obliged to enforce and respect human rights.²

The practice of the Court in conjunction with Article 6 of the ECHR is basically stated that it has consistently been in the line of the fact that the right to a fair trial occupies an important place in a democratic society in the sense of the European Convention on Human Rights.

The right to a fair trial³ is a very broad right and in any case should be carefully scrutinized by the national courts, analyzing in detail all the facts that, in one form or another, would affect the material or procedural rights of the accused." (Nowicki, 2003). The right to a fair trial is implemented from the moment of the court's investment and until the execution of its final decision.⁴

The ECHR has emphasized that the principle of the presumption of innocence is considered to be overturned if a judicial decision belonging to a person charged with a criminal offense reflects an opinion that he is guilty before his guilt has been proven by law.

Keywords: ECHR, UDHR, ECHR, presumption of innocence, fundamental rights, "green paper".

Introduction

The principle of the presumption of innocence is found in all the most important international texts as a fundamental human right, inevitably related to the "fair process." Warrantones referred to documents that after World War II attempted to reaffirm the power of some rights and security in those fundamental freedoms that were "tortured" during the war.

¹ Although the original text in English and French uses the word "accused" Strasbourg practice has extended the protection of the principle of the presumption of innocence even to persons suspected but still untouched by prosecution (Frowein, Peukert, 1996, 164).

² Article 15.2 of the Constitution.

³ See *Apeh Uldozotteinek Szovetesege and Others v. Hungary*, Application No.32367 / 97, *Pellegrin v. France*, no. 28541/95.

⁴ See *Qufaf Case. Sh.K against Albania*, decision of 18 November 2004.

⁵ Decisions in the case of *John Murray v. The United Kingdom*, 8 February 1996; *Telfner v. Austria*, 20 March 2001.

Article 11 of the Universal Declaration of Human Rights of 1948, adopted by the United Nations, states that “every person charged with a crime is presumed innocent until his guilt has not been legally established during a public trial in which all the guarantees necessary for his protection have been provided.”⁶

The concept was repeated later, again on an interstate scale, under Article 6 paragraph 2 of the European Convention on Human Rights, which states that “every person charged with a crime is presumed innocent until his guilt is established on the basis of the Law”, and article 14 paragraph 2 of the International Covenant on Civil and Political Rights, adopted on 16 December 1966 by the United Nations, sets forth a similar formula: “Everyone charged with a crime is presumed innocent until his guilt has not been legally certified.”

Article 48 of the Charter of Fundamental Rights of the European Union,⁷(The Charter of Nice,⁸ in force since 1 February 2003), and Article 108 of the European Constitution project,⁹ determine that “Every defendant shall be deemed innocent until his guilt has been legally established”. And from this point of view, it might be interesting to note the “green document” on the presumption of innocence, presented by the Commission of the European Communities on 26 April 2006, and aims to verify, in a perspective of the harmonization of Criminal Procedure Approved Individually by Member States, if the principle is understood and applied uniformly throughout the European Union area. Under a more general profile, it should be noted that the International Criminal Court’s Institutional Statute states that “all are presumed innocent until their guilt has been proven before the Court”, and “the prosecutor has the burden of proving the guilt of the accused “and, moreover, that” to convict the accused, The court must find its fault beyond a reasonable doubt”.¹⁰ Not only does the accused know the right to “not be obliged to testify against himself or to testify of his guilt and to remain silent, where silence is not considered to be guilty of guilt or innocence” and the right to “non-execution imposition of reversal of the burden of proof or burden of rejection of the test.”¹¹ Neither should we forget that a direct reference to the “presumption of innocence” and the obvious standards beyond

⁶ The supposition was already mentioned in the Declaration of Witnesses and Witnesses of 26 August 1789 in the article. 9 in the form of a kind of premise taken to give and more to be called to provide the basis for the recognition of other fundamental rights. The text of this Declaration of ‘89 is part of the “constitutional bloc”, in force in the French Republic under the Paragraph of the Constitution of 1958 and which has the same force with the provisions directly introduced in the text of the latter.

⁷ Even before the Nice Charter, the Court of Justice had included the presumption of innocence in the area of fundamental rights protected by the Community’s legal system (C. Only 8/7/1999, C-235/92, Montecatini S.p.A).

⁸ The Charter of Fundamental Rights of the European Union, or the Charter of Nice, recognizes the same legal value of the Treaties thanks to the article. 6 par. 1 TEU, and together constitute what is called “the Union’s primary right”. The Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) are part of the Lisbon Treaty 2007, which, by not proposing a constitution, includes many of the profiles that characterized the draft destruction of the constitution.

⁹ “No” of the citizens of France (29 May 2005) and Holland (June 1, 2005) raised the process of ratification of the European constitution project. the denial of proof >> (Article 67).

¹⁰ Statute of the Establishment of the International Criminal Court, art. 66.

¹¹ Approved by the United Nations Diplomatic Conference in Rome on 17 July 1998.

reasonable doubt is also found in the conclusions of the 10th UN Crime Prevention and Criminality Treatment Convention.

Turning our attention to foreign jurisdictions, it may be interesting to note that in France, the guarantee in question is a commitment expressed at the highest level of the hierarchy, based on the reference to the preamble to the Constitution 1958 Article 9 of the Declaration of Human Rights and Citizens of August 26, 1789, which states that "every person is deemed innocent until convicted." But article 24 paragraph 2 of the Spanish Constitution also declares the same principle. In other countries, the principle is not formally and explicitly recognized, but that does not mean that it does not play a role of primary importance in defending the accused.

The adoption of the principle of a system such as that laid down in the Rome Convention allows "not only to presume innocence an unquestioned pedestal to recognize you as a key principle in the construction and development of procedural safeguards",¹² but also to take advantage of the European Court of Human Rights as an ad hoc judicial instrument to prove its current impact. Also, in the Statute for the Establishment of the International Criminal Court,¹³ as well as in the conclusions of the 10th United Nations Convention on the Prevention and Treatment of Violators,¹⁴ it is spoken of the presumption of innocence and of the probation standard beyond reasonable doubt. Turning to foreign orders, we have seen that in France the guarantee is consecrated to the highest degree in the hierarchy of resources and also in the Spanish Constitution the presumption of innocence is one of the forms of protection enjoyed by the subject to criminal proceedings, while in others the principle is not formally and explicitly recognized, but that does not mean that it does not play a role of primary importance in defending the accused. In German law, for example: the presumption of innocence is a natural consequence of the rule of law rule proclaimed in Article 28 of the Basic Law (Grundgesetz), while the canon of *dubio pro reo* decision derives from Article 6 p. 2 of the European Convention on Human Rights, as referred to in the same article in Belgium to affirm the full value of the guarantee in the context of national law.¹⁵

In Belgium the presumption of innocence is not codified, but in this case the doctrine and the law directly lead to the European Convention to affirm the full importance in the context of national law.

In Great Britain, as has already been reported, is the announcement of Lord Woolmington's *House v. DPP* "(Director of Public Prosecutions) of 1935,¹⁶ based on

¹² M. Chiavario, Assumption of innocence in the jurisprudence of the European Court of Human Rights, at *Giur. It.*, 2000, p. 1089.

¹³ Approved by the United Nations Diplomatic Conference in Rome on 17 July 1998, it stipulates that "anyone who is deemed innocent until proven guilty before the Court" that "the prosecutor has the defendant's guilty plea" and , moreover, that "to punish the accused, the Court must ascertain its guilt beyond a reasonable doubt" (Article 66). In addition, the accused is recognized as having the right not to be guilty of guilty of guilt and silent, without silence being assessed in determining guilt or innocence, and the right not to "impose the annulment of the burden of proof.

¹⁴ Vienna, 10-17 April 2000, DPI / 2088 / A.

¹⁵ P.P. Paulesu, *Presumption.*, cit., p. 3.

¹⁶ This decision has had a considerable impact on American jurisprudence, so much that it constitutes the archeotype of the famous ruling in the United States Supreme Court of the United States Supreme Court, with which in 1970 the highest jurisdiction of the United States ruled that when a minor is accused of a behavior that would be a crime if committed by an adult, to be able to reach

the criterion under which the duty to provide full blame is the responsibility of the public prosecutor. By giving the principle a breadth that goes beyond the borders of our state, it is easier to read it by abandoning the interpretative options “trivializes”¹⁷ and giving him the “strong” ideological option, engaged ethically (Paulesu, 1995, 676), capable of imposing themselves beyond normative regulatory solutions. Certainly, the non-guilty presumption is an expression of the values of civilization and justice and refers to a kind of “political organization of society” who intended to favor the protection of innocents in relation to the collective interest in repression of the crimes. This represents a further confirmation of the symbiotic connection between the principle under consideration and the guarantor model of criminal jurisdiction (Ferrajoli, 1989, 83) confirmed by the European Court of Human Rights which has identified in this principle the fundamental requirement for a “fair trial”.¹⁸

Being the presumption of innocence constitutes one of the fundamental elements of the more general notion of “procedural justice” is confirmed in several judgments¹⁹ and complaints concerning its violation are often reviewed by the European Court, referring to the first and second paragraphs of Article 6 together.²⁰ The guilty of the accused, according to Article 6 par. 2 ECHR should be “legally established” and this means that recognizing the presumption of innocence is a fundamental condition of the legitimacy of the administration of justice. Of course, we must consider what are the natural differences because of another background, object and *modus operandi* - between the decisions of the Court of Justice in comparison with those of national bodies, as may be our Constitutional Court, to which we refer to when it comes to protecting and guaranteeing the principles of the person in the process. Also at the European level the presumption of innocence is emphasized not only as a rule of thumb but also as a rule of treatment. In its first sense, as we know, it means that the accusation of the accused must be established beyond reasonable doubt and that this evidence should be borne exclusively by the accusation.²¹

The Strasbourg Court has recognized the use of assumptions in *Malam Partem* if it is limited within reasonable limits, taking into account the seriousness and protection of the rights of the defense,²² allowing the accused to provide evidence of the opposite.

a conviction of conviction, every element of fact must be proven beyond reasonable doubt. In the pronouncement, therefore, we find the underlying assumption that “reasonable suspicion plays a role in the American criminal procedure scheme, which is the first instrument to reduce the risk of punishments based on factual errors.” The standard envisages the presumption of innocence - of the ‘axiomatic and elementary’ principle, whose implementation lies in the foundation of the administration of our criminal law >> (In *King winship* (1970) 397 358, 363).

¹⁷ The Supreme Court with a sentence (Cass., July 27, 1966, in *Cass Pen*, 1967, p.300) even came to attribute the presumption of non-guilt to the purpose of defining the position of the accused in a general manner in relation to the charge .

¹⁸ European Court, 25 March 1983, *Minelli c. Switzerland*, para. 1.

¹⁹ Among many remembering the European Court, May 24, 2011, *Konstas c. Grecia*.

²⁰ European Court, December 8, 2009, *Previti c. Italy*.

²¹ European Court, February 23, 2010, *Mangano c. Italy*.

²² European Court, October 20, 1988, *Salabiak c. France*, and from the development of the argument in support of the judgment given in the punishment, the inadmissibility of the automatic admission of criminal liability is solely taken on the basis of a material element - in this case the possession of a particular goods - from which deduct the knowledge and awareness on the fraudulent origin

However, as a rule of treatment, the presumption of innocence in the European context also prohibits the accused being assimilated with the offender during the course of the proceedings, until his liability is “legally established”.

The Strasbourg Court has estimated the presumption of innocence even in a visible teleological perspective, censoring stigmatizing effects caused by statements made by public authorities²³ in informing the community about criminal proceedings. This also applies to public prosecutors, police officers, and judges, whose appearances appear to contradict the presumption of innocence and the principle of impartiality.

Conclusions

To create the gap between the process as it is and how it should be, the gaps and uncertainties that lie in those that are certainly the basic points of the procedural system: the prohibition of punishment, the burden of proof against the charge, the guarantee of contradictions. The inability of our system to ensure respect for the presumption of innocence and to fully give the defendant a close connection with it is just the direct consequence of an increasingly ineffective ineffectiveness attributed to the investigative instruments available to judicial authority. In this way, it is inevitable to think that the unbundling of the rights of the defense and the pursuit of exemplary punishment at all costs come from a weak criminal justice and self-determination. It is therefore legitimate to conclude by accepting that resistance to a full realization of the presumption of innocence is only one aspect of the fundamental weakness of the system, which is taking the first steps in the right direction, thanks to recent interventions in Europe, uniformity of safeguards and guarantees at the level of fundamental rights.

Given the above, it should be said immediately that, in general, those who would like to photograph today the state of our scientific speculation on the presumption of innocence would find a clear and clear picture. The presumption of innocence is a fundamental right, included in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union.

The presumption of innocence is mentioned in Article 6, paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, such as the right to a fair trial, which embodies the principle that any person charged with a crime be considered innocent until his guilty plea under the law and Article 48 of the Charter of Fundamental Rights of the European Union, which states that each

of goods; the presumption of innocence would not be harmed, on the other hand, if an accused were to be released to prove the opposite, or in the present case, evidence of a “force majeure” that prevented the holder from knowing the content of a data. This would allow the criminal courts to maintain the freedom of appraisal in the name of which they would be able to enforce the domination of *dubio pro reos*. With this in mind, the European Court has found compliance with Article 6 par. The ECHR assumes the presumption of the liability of a television sector director for defamation messages, to the extent afforded by the same opportunity to provide evidence of his good faith (Tirana, 30 March 2004, *Radio France v. France*).

²³ European Court, 28 October 2004, *Y.B. and others c. Turkey*. A. Balsamo, *The content of fundamental rights*, at R.E. Kostoris (ed.), *European Criminal Procedure Manual*, 2015, Milan, p. 125.

defendant is presumed innocent until his guilt is legally proven and that respect for the rights of the defense is guaranteed for each defendant. The jurisprudence of the European Court of Human Rights gives us an indication of the constituent elements of the presumption of innocence. Only a person charged with a criminal offense may benefit from it. The accused should be treated as if he did not commit the crime until the state, through prosecution authorities, provides sufficient evidence to convince his guilty to an independent and impartial tribunal.

The Universal Declaration of Human Rights in Article 9 sanctions:

“Every individual against whom a criminal charge has been filed has the right to be presumed innocent in a public hearing”.

ECHR

The European Convention on Human Rights Article 6.2 provides:

“Any person charged with a criminal offense shall be presumed innocent until proven guilty by a court decision”.

PNDPCP

Another important international pact is the International Covenant on Civil and Political Rights, which came into force on 23 March 1976 and ratified by our country in 1991. The Pact, like the Convention, defines all specific guarantees for protecting not only those who are subject to a criminal trial, but also those who are interested in solving even a civil dispute.

Thus article 14.2 stipulates that, “Everyone charged with a criminal offense has the right to be considered innocent while his guilt is proven in accordance with the law”. This principle is also incorporated in Article 48 of the EU Charter of Fundamental Human Rights, which is a reflection of the European Convention of the Council of Europe.

Canadian Charter of Human and Citizens Rights and Freedoms:²⁴

“Everyone charged with a criminal offense has the right to be considered innocent until proven guilty by law in a fair and public trial by an independent and impartial tribunal”.

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²⁴ Section 11 (d).