

The principle of the presumption of innocence

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Abstract

Procedural principles are the basic rules that determine the character and content of the manner of criminal proceedings. The character and the content of the proceedings must be in accordance with these principles. The basic principles provided for in national and international legislation serve as the basis and reference point for all institutes and procedural provisions. Recognizing and respecting them is a basic condition for further democratization of the activity of the judiciary. The principle of the Presumption of Innocence is one of the principles that has aroused a lot of interest and debate.

Almost all international conventions on human rights, all constitutions of the democratic countries of the world, as well as the criminal legislation of the modern world, recognize and respect it as a fundamental and vital principle for a fair trial, the principle of the presumption of innocence. So what is the principle of the presumption of innocence? "Everyone is presumed innocent until convicted by a competent court." In other words, the individual is considered innocent until the Court of Appeals rules on a final decision, even if he/she has been found guilty by the Court of First Instance. In my opinion, this is one of the points where the humanism of the law stands out the most. The law is humane, it has been created and it continues to be created so that it can serve the people. It was the Universal Declaration of Human Rights, which decades ago sanctioned this principle, specifically in Article 11 thereof. Necessarily, our country was obliged to implement it in the Constitution, criminal and procedural criminal legislation. Yet the question remains, is that enough? In this sense main objective of this article is the analysis of the principle of presumption of innocence.

Keywords: Analysis, principle of presumption of innocence, Universal Declaration of Human Rights.

Introduction

The principle of the presumption of innocence was first recognized in France, as a principle of democratic character directed against arbitrariness and guaranteeing the real protection of the defendant from unfounded allegations in evidence and law, and is found sanctioned in legal instruments of democratic states, but was first proclaimed in the Declaration of the Rights of Man and of the Citizen in 1789, at the beginning of the French Revolution. This principle is in fact a legal instrument in favor of the accused, created by the cardinal and French jurist Jean Lemoine, in the late eighteenth century, based on the conclusion that most people are not criminals.¹ Its implementation is a legal right of the accused in the criminal process. Its essence lies in the fact that the burden of proof belongs to the prosecuting authorities, which must gather and present sufficient and convincing evidence to prove that the fact is true and that the accused is guilty beyond any reasonable doubt. *"The purpose of the presumption of innocence is to protect one's rights, to secure the constitutional right of*

¹ University of Tirana, Faculty of Law, "Legal Writing 2", Tirana, December 2013, p. 171.

the accused to self-defense, and to protect innocent people from liabilities and unlawful and unfounded criminal punishment. Like any other presumption, the presumption of innocence may not be accepted, but only in the manner prescribed by procedural law and only with the help of evidence that is relevant to the case and accepted by law. The court may impose restrictions on the person until the prosecution has the opportunity to present evidence to prove the charge. If the charge is not proven in time or if the prosecuting authorities fail in any way to prove it, then the presumption of innocence takes precedence.”²

The first things that come to my mind, when it comes to the principle of presumption of innocence, are the sensational arrests which end with the verdict of innocence for the accused persons. Arrest itself constitutes a very serious security measure, which the law orders us to take only as a last and extreme measure, when necessary and when no other measure coincides with the social danger of the criminal offense. Cases in which a person is to be held under arrest are explicitly defined by law. What has been randomly noticed lately is that the justice authorities are misinterpreting the law by using this security measure whenever it comes to a person against whom an accusation has been made. All of these forget something, that the life of all these individuals is divided into two phases; before and after the arrest. A person arrested for no reason can never be the same person he/she was before, because the arrest is a great shock and there can no longer be a price or a procedure that compensates it and here, I am not talking about legal rehabilitation or for compensating damages. The damage caused to a person's integrity by these arrests is enormous. I prefer to call it criminal. Just like me, you can also think that the presumption of innocence is not respected even in countries with consolidated democracy. The reform in the justice system and its implementation in practice make it even more necessary to respect the constitutional principle of the presumption of innocence.

1.2 A Brief History

To clearly understand the principle of the presumption of innocence, it is important to understand its origin. A historical look shows that: "Actor incumbit probatio", is the principle according to which the burden of proving the guilt of the accused falls on the accuser, has its deep roots in antiquity in one of the oldest codes in history, that of Hammurabi (Quintard –Morenas, 2010, 58). According to it, anyone presenting a criminal charge was obliged to prove that the accused person was guilty. In cases of false accusations against which the sentence was capital, the accuser was sentenced to death. In cases where the plaintiffs claimed that the accused possessed stolen property, according to the Code, they had to call witnesses, who had to be able to identify them as the property of the accused; otherwise they would be sentenced to death.

Even according to the Constitution of Emperor Antonine 212 p.e.s it was foreseen that he who wished to raise charges had to have evidence.⁵ The inability of the accuser to prove his allegations led to the acquittal of the accused (actore non probante, reus absolvitur), regardless of whether the accused was silent or denied the allegations raised, as the burden of proof fell on those who claimed and not those who denied.

² University of Tirana, Faculty of Law, "Legal Writing 2", Tirana, December 2013, p. 172.

Only if the guilt was proven by sufficient facts, then the accused had the right to intervene to prove his innocence.⁶ "In criminal cases, proving one's guilt had a binding character, especially in cases where the life of the accused was endangered. It was more appropriate to acquit the guilty than to risk the death penalty for an innocent person (*satius enim esse impunitum reliqui facinus nocentis quam innocentem domnori*)" (Bara, 2013, 124).

The constitution of the Gratian, Valentinian, and Theodhose Emperors, 382 BCE, provided that prosecutors could only bring charges if they relied on credible witnesses, written evidence, or indisputable facts. If the evidence was incomplete or not final, the accused was given the benefit of the doubt (*in dubio pro reo*). Demosthenes said that until the guilt is established through convincing evidence, society has no right to treat a defendant as a criminal, as no one is considered as such unless convicted and declared guilty. Punishment should be given only after a fair trial, as "consciousness allows us to give punishment after discovering the circumstances and facts of the case and not before." Even the Emperors Honorius and Theodhose in their Constitutions had provided that the consuls and senators did not immediately find the accused guilty.

In the Common Law countries, incarceration without a trial had become a common phenomenon which was abused by monarchs, but this ended at the time of the signing of the Magna Carta, which limited the king's power and gave the accused more rights. Magna Carta is one of the most important documents that pays a lot of attention to the principle of the presumption of innocence.

1.3. At the core of the principle of the presumption of innocence

The principle of the presumption of innocence constitutes a fundamental right to a due process of law in modern democracies, constitutional monarchies, and republics that have clearly included it in their constitutions and legal codes. The essence of this principle consists in the existence of evidence proving the accusation and not the lack of evidence to prove innocence on the part of the defendant. Based on this principle, the refusal of the defendant to give explanations to the court or the fact that the defendant does not present evidence for the proof of innocence cannot serve as evidence of guilt. This principle frees the defendant from the burden of proving his innocence, entitles him/her not to respond to the charge, and not to hold him/her accountable for the statements he/she makes, to request from procedural bodies the receipt of evidence justifying him/her, and to defend himself/herself in any appropriate means permitted by law. Failure to comply with even one of these aspects of the principle of presumption of innocence constitutes a violation of a person's right to due process. At the same time, the principle of presumption of innocence comes from the interpretation of suspicions in favor of the defendant.³ The order of taking evidence in the main trial is also related to this principle. At the beginning, the evidence is presented by the prosecutor or the accusing injured party who have the burden of proving the guilt and later on the evidence is required by the defendant

³ Kreshnik Myftari, Savada Guço, "Presumption of Innocence - Important Constitutional Principle", "Legal Studies 2", December 2013, p.174.

and the civil defendant, by which they oppose the guilt. This principle defines the inviolable right of the individual not to be found guilty without a final court decision. Seen in this light, this principle also obliges the public authorities to take measures to guarantee it. This principle is also provided in the Constitution of the Republic of Albania in Chapter 2 entitled "Freedoms and personal rights"⁴ and the importance is so great that our constitution explicitly stipulates in its Article 175/1⁵ that it can not be limited to war or in a state of emergency.

The principle of the presumption of innocence does not mean that the court believes that the person is innocent, but the treatment of the defendant until a final decision is made is the same as that of a free person even when he is a detainee. Seen this way, this principle is purely symbolic, as what the court believes is that the person is guilty, because one party has filed a claim in order for the court to make the connection between the evidence and the request, giving importance to the presumption of innocence. Based on this, the person without proving his guilt with a final court decision, retains the quality of the defendant, until the end of the process, which means that he will enjoy constitutional guarantees that ensure the real protection of the defendant in criminal proceedings.⁶ Regarding the burden of proof, although the Strasbourg Court has not considered it admissible,⁷ in the proceedings conducted for the detection of organized crime it is allowed that the burden of proof be changed according to the decision of the court and is usually exercised in those cases when the prosecutor has presented some evidence for suspicions that the property belonging to the suspects is of criminal origin

According to the doctrine, constitutional jurisprudence and the ECtHR, it turns out that the principle of the presumption of innocence carries with it the sub-principle "in dubio pro reo", so that any doubt goes in favor of the defendant and the burden of proof falls on the prosecution. The meaning of this principle is oriented towards the general interpretation that procedural acts should not be drafted and express in their spirit the conviction that the defendant has committed the crime for which he is accused, that the burden of proof belongs to the accusing party, that every suspicion must go in favor of the defendant, that the court must support the decision in direct and indirect evidence that must be proved by the charge".⁸ The right to be presumed innocent is used not only for treatment in court and for the evaluation of evidence, but also for treatment before trial. It is used against the defendants before criminal charges are brought to trial and is kept in use until proving guilt after the final appeal is confirmed.⁹ The presumption of innocence is a relative presumption, with a special regime. It is neither theoretical nor illusory, as it can be verified through evidence and dismissed by the court. The phrase "innocent until the moment of having been

⁴ Law no. 8417/1998 "The Constitution of the Republic of Albania", as amended, Article 30.

⁵ Article 175/1 of the Constitution of the Republic of Albania, "During the state of war or state of emergency, the rights and freedoms provided for in Articles 15, 18, 19, 20, 21, 24, 24, 25, 29, 31, 32, 34, 39 paragraph 1, 41 paragraphs 1, 2, 3 and 5, 42, 43, 48, 54, 55 cannot be restricted."

⁶ Article 31 Constitution of the Republic of Albania.

⁷ ECtHR decision *Salabiaku* against France, 7 October 1988.

⁸ Decisions No. 23, dated 23.07.2009 and Decision No. 9, dated 28.04.2004, the Constitutional Court.

⁹ Agron Bajri, Dissertation for the protection of the degree of Doctor, "The regular legal process, the rights and obligations of the subjects in function of the regular legal process (Comparative Overview), Tirana 2016.

proved guilty” seems to have become a cliché. Nevertheless, the importance of the concept is great. This principle provides a procedural guarantee for the conduct of the trial. It is also key to the trial process. So it has a wide range but its goal is one, not allowing the state bodies to treat a defendant as guilty.

This principle is not absolute and does not apply at any stage of the proceedings, as if it would do so the accused would not have been imprisoned until the verdict was handed down. It aims to protect the accused from punishment and not from arrest. It shall take effect at the time the trial starts and shall continue until the judgment is rendered. This principle is closely related to a number of other important constitutional principles, such as freedom from compulsion not to blame oneself, the right to be heard before being tried, and so on. Hence it starts the obligation of the state to prove the accusation attributed to the defendant, but on the other hand it regulates the distribution of the burden of proof in the criminal trial. The prosecution is obliged to inform the accused of the allegations made, in order for the latter to have sufficient time available to prepare his defense. However, this principle does not preclude the rules that transfer the burden of proof to the accused to determine his defense, if the burden of determining the guilt remains with the prosecution.

The determination of this principle in Article 4 of the Code of Criminal Procedure is the same as that given by the Constitutional Court¹⁰ and the Court of Strasbourg.¹¹ *“The meaning of the principle of innocence is given in Article 4 of the Code of Criminal Procedure¹² according to which the defendant or the suspected person is presumed innocent until proven guilty by a final court decision. Any suspicion of the charge is deemed to be in favor of the defendant. Adherence to this principle constitutes a condition for the regularity of a judicial process. Based on this principle, the courts should not start the process with the conviction that the defendant has committed the crime for which he is accused. Any suspicion should go in favor of the defendant and this principle would be considered violated if the burden of proof would pass from the charge to the defendant. The task of the court reviewing the criminal case is to enable the defendant to defend himself or herself through the defense counsel and to give its decision based on direct and indirect evidence, which must be proven by the prosecution and administered in the file. In addition to the rights of the person who has been taken as a defendant during all stages of the trial, until he has been found guilty by a final decision, this principle, indirectly, derives from the obligation of the body of procedure, especially the court, that the main trial cannot and is not allowed to focus only on the examination of the circumstances that are to the detriment of the defendant and should mainly extend the examination of the circumstances that may be or are in favor of the defendant. Especially if these are claimed by the defendant or his defense counsel.”¹³*

As a principle in itself, it protects individuals charged with criminal charges or those who are in the process of being treated by officials and authorities as if they were in fact guilty of the offense for which they have been charged. What is at stake after

¹⁰ Decision of the Constitutional Court no. 9 dt. 28.04.2004.

¹¹ The case of Barbara, Messengue and Jabordo against Spain, dt. 06/12/1988.

¹² Article 4 of this Code prescribes the presumption of innocence as follows: a) The defendant is presumed innocent until proven guilty by a final court decision. Any suspicion of a charge is assessed in favor of the defendant. b) The court gives a guilty verdict when the defendant is found guilty of the criminal fact attributed to him beyond any reasonable doubt.

¹³ Legal article of the law office "Primis", Ergin Nallbani, May 2019.

the criminal proceedings have been concluded is the reputation of the person and the way in which that person is perceived by the public. Violation of this principle can be done not only by the Court and judges but also by other public authorities. Article 6/2 prohibits statements by public officials regarding suspended criminal investigations, which encourage the public to believe the alleged guilt and to prejudice the assessment of the facts by the competent authority.¹⁴ This principle does not prevent the authorities from informing the public about criminal investigations in progress but requires them to do so with all freedom of action and prudence as if the presumption of innocence would be respected.¹⁵ The court has stressed the importance of the choice of words by public officials in their statements before a person is tried and found guilty of a violation. The presumption of innocence does not stop from being applied even after the first instance proceedings result in the prosecution of the accused and when the proceedings continue until the appeal. The principle of presumption of innocence was also accepted in the Code of Criminal Procedure of 1953, Article 12 of which states: "The defendant is considered innocent until proven guilty. In the 1979 Code, this principle was removed on the grounds that it was bourgeois, ie unacceptable to socialist justice. It was reinstated by law no. 753, dated 17.12.1991, "On some changes in the Code of Criminal Procedure".¹⁶

1.4. The principle of the presumption of innocence in the international context

Article 6, paragraph 2, of the European Convention on Human Rights stipulates that anyone who is charged with a criminal offense shall be treated as innocent until proved guilty according to law. However, it applies to all types of civil matters that the Convention considers criminal, such as specialized disciplinary hearings. The European Court of Human Rights stipulates that anyone who is charged with a criminal offense shall be treated as innocent until proved guilty according to law. According to this court, the suspicion that someone is guilty should go in favor of the accused.¹⁷

But what criminal offenses can counteract the presumption of innocence? The court ruled in the case of *Barbera, Messegue and Jabardo* against Spain that the principle of the presumption of innocence ... requires, inter alia, that members of the judiciary, when performing their duties, should not start with the prejudiced idea that the accused has committed the criminal offense for which he was accused of: the burden of proof belongs to the prosecution and the accused will benefit from every suspicion. However, Article 6/2 does not prohibit the rules that transfer the burden of proof to the accused to determine his / her defense if the general burden of determining the guilt remains with the prosecution. Also, Article 6/2 does not necessarily prohibit the presumption of right or fact, but any rule that shifts the burden of proof or applies to an presumption that operates against the accused must be confined within reasonable limits that take into account the importance of what is at risk and respect the right to

¹⁴ The case of *Ismailov and others* against Russia, dated 24.04.2008.

¹⁵ The case of *Fatullayev* against Azerbaijan, dt. 22.04.2010.

¹⁶ *Islami, Hoxha, Panda*, "Criminal Procedure", Tirana 2012, p. 50.

¹⁷ The case *Barbera, Meseg and Jabardo* against Spain, Application no. 10590/83, Strasbourg, 6 December 1988, para.77

protection.¹⁸

The principle of presumption of innocence is binding not only on the courts but also on state bodies. In the case of *Allenet de Ribemont* against France, the applicant, while under arrest by the police, was mentioned at a press conference by a police officer as the instigator of a murder. The court ruled that Article 6/2 also applied to other public authorities other than the courts when an applicant was charged with a criminal offense. Moreover, the presumption of innocence had to be upheld in the same way as before or after the trial. European Court of Human Rights ruled that it was no longer admissible for the domestic court to rely on suspicions as to the guilt of an applicant when his release was final.¹⁹ The guarantees provided for in Article 6 apply not only to litigation but also to the stages that precede and follow them.

The publication of photos of the suspects does not in itself violate the presumption of innocence,²⁰ but the transmission of images of the suspect on television may in certain circumstances raise an issue under Article 6/2 of the Convention.²¹ This principle cannot be limited to a procedural guarantee, which would belong only to the judicial framework. The presumption of innocence requires that any representative of the state shall not plead a person guilty before the court has decided so. This is not to stop state authorities from keeping the public informed of the continuation of the criminal case, but to effectively fulfill their duties it would be more appropriate to state that instead of pleading guilty there were assumptions that the persons arrested could have committed a violation.

This principle is also sanctioned in the Statute of the International Criminal Court in Article 65.²² Once the court is convinced of the guilt of the accused and has no reasonable doubt, it can convict the accused.²³ Denying the accused of the intermediate process, between accusation and punishment, violates one of the basic principles of justice.²⁴ One of the cases highlighting the importance of the presumption of innocence is the case of *Coffin* against the United States, in which the Court stated: *“The principle of presumption of innocence in favor of the accused is a law of axiomatic and substantial doubt. Its implementation underlies the administration of our criminal justice system. This presumption is in favor of the accused and is protected by law. Reasonable doubt is that mental state that is created by the process of proving the evidence presented for the case. It is a result of proof, not proof itself, while the presumption of innocence is an instrument of proof, against which reasonable doubts arise. So one is purpose, while the other is consequence. To assert that one is equivalent to the other is to assert that the legal evidence may not have been disclosed to the jury and that this exception may be adjusted by instructing them (the jury) correctly as to the method they should apply to reach a conclusion on the evidence they have. In other words, the exclusion of important evidence can be justified by informing accurately of this*

¹⁸ The *Salabiaku* case against France, 7 October 1988, before 77.

¹⁹ Nuaha Male, Catharina Harby, “The right to a fair trial”, Human Rights Manuals no.3, p. 50.

²⁰ The *Y.B.* case and others v. Turkey, dt. 28.10.2004.

²¹ The *Rupa* case against Romania dated 16.12.2008.

²² Each person shall be presumed innocent until proved guilty according to law, where the burden of proof falls on the prosecutor.

²³ Article 66 ICC.

²⁴ François Quintard – Morenas, “The Presumption of Innocence in the French and Anglo-American Legal Tradition”, *The American Journal of Comparative Law* 58.1 (2010), fq 113.

evidence. The evolution of this principle and its result, the doctrine of reasonable doubt, make the correctness of these views more obvious and show the need to implement one so that others can continue to be executed."²⁵

According to the ECtHR jurisprudence: "The existence of a risk that the accused individual may obstruct the administration of justice simply by the fact that he has not pleaded guilty does not constitute sufficient justification for extending his detention period. Their reasoning in the decision shows a violation of the presumption of innocence and cannot, in any case, be considered lawful for deprivation of liberty."²⁶ A fundamental distinction must be made between the statement that someone is merely a suspect in the commission of a crime and a simple statement, in the absence of a final conviction that the individual has committed the crime in question.²⁷⁴⁰The latter undermines the presumption of innocence, while the former is considered non-objective in various situations examined by the ECtHR.²⁸⁴¹ If a statement from the court or public authority is in line with the principle of the presumption of innocence, it must be placed in the context of a particular circumstance in which the degrading statement has been made.²⁹⁴²From the jurisprudence of the ECtHR, statements by judges should be the subject of a more severe trial than those of the investigating authorities.³⁰⁴³ "The specific circumstances of the case should also be taken into account, weighing the interests, such as the legitimate interest of the public to be informed and the interest of the person presumed to have committed the violation, to have all the guarantees offered by the presumption of innocence. Adherence to this principle during the preliminary investigation of the criminal case pursues the goal: Not to incite public opinion and not to infect it with certain convictions, which at a later moment may turn into pressure on the court. In order not to prejudice the personality of a person, who can be declared innocent and thus harm his/her interests in the future. Furthermore, not to violate the authority and prestige of a court that can legally declare a person innocent."³¹⁴⁴ It has been accepted by the ECtHR practice that the formulation of provisions providing for the presumption of innocence and the manner of proving guilt is the right of the domestic legislature, while the ECtHR has the right to exercise control over acts and decisions in case of abuse of the legal space provided. The presumption of innocence protects not only the defendant but also the suspect before charges are brought against him/her.³²⁴⁵

The ECtHR has concluded that paragraph I 1 of Article 6 is the basic norm, while paragraph 2 and 3 represent its special applications, which at the same time express special rights. They give special guarantees to the person under a criminal charge,

²⁵ The case of Coffin against the United States, 156 US 432 (1895).

²⁶ The case of Kauezor against Poland, (Application no.45219 / 06) pp 46.

²⁷ The case of Ismailov and others against Russia, dt. 24.04.2008, the case of Nestok against Slovakia, dt. 27.02.2007.

²⁸ The case of Garyeki against Poland, dt. 06.02.2007.

²⁹ The case of A.L against Germany, dt. 28.07.2005.

³⁰ The case of Pandy against Belgium, dt. 09/21/2006.

³¹ Ermira Kazazi, Dissertation for the defense of the degree of Doctor, "Principles of Criminal Judgment under the Optics of Jurisprudence of the Constitutional Court and the European Court of Justice", Tirana 2016, p.117.

³² Arta Vorpsi, "The regular legal process in the practice of the Constitutional Court of Albania", Tirana 2011, pp.101-102.

which are added to the general guarantees for a fair trial, which Article 6/1 recognizes to each accused person. The presumption of innocence is among the special rights. In introducing presumptions into criminal law, member states are required to find a balance between the importance of introducing presumptions into criminal law and the right to be protected, so the methods used must be reasonably proportionate to the legitimate aim required to be achieved.³³46

Conclusions

The principle of presumption of innocence should not be seen as closely related to the context of criminal proceedings. The special feature of this principle, among the most democratic, in terms of law and justice, is the obligation to implement it in all processes, even those of the judicial quasi type, such as investigative commissions, dismissal proceedings of local government bodies, or disciplinary proceedings. Despite the ease in the theoretical definition of the meaning of this principle in the framework of the regular legal process, its observance in practice is of particular importance, both in criminal and administrative proceedings, thus constituting guarantees for the protection of freedoms and fundamental human rights. The right of the individual not to be found guilty without a final court decision is considered an inviolable right, leading to the obligation of public authorities to take measures to guarantee and realize it. However, both the Albanian and the European jurisprudence have acknowledged that this principle may be violated not only in judicial proceedings by judges or courts, but also in administrative proceedings by public authorities. In these cases it should be borne in mind that the limitation of the principle of the presumption of innocence should be temporary and only in exceptional circumstances.

The right to a fair trial constitutes one of the rights stated in our Constitution and the European Convention, which relates to the guarantees provided to the parties during a trial in respect of those principles which constitute the essence of the proceedings. Such constitutional standards as the right to go to court, the right to defense, impartiality in trial, public trial, presumption of innocence, etc., constitute essential elements that the Constitutional Court has consolidated in its jurisprudence for the fullest possible understanding of the right to a fair trial. The purpose of every state is not only to prevent crimes, but at the same time to avoid the punishment of innocent people, thus increasing the sense of security in society, which is one of the main functions of criminal proceedings. The rules of criminal proceedings are aimed at finding the truth, an important condition in the administration of justice. The state must avoid the use of methods or means that infringe on the rights of individuals, although they may be effective in uncovering the truth, as this is the essence of a democratic society. In order to administer justice, the state and state institutions must respect fundamental rights and freedoms, including the rights of the accused.

The defendant's rights have an early history. They have been processed over the centuries, reaching the rights that the accused enjoys today. We come to understand clearly the importance of rights when we find ourselves in such situations where

³³ The case of Janosevic against Sweden, dt. July 23, 2002, the case of Falk against the Netherlands, dt. October 19, 2004.

we are wrongly accused. Nowadays, these rights are considered sacred and all democratic states are committed to their implementation. The criminal justice system is constantly changing. Some acts that were once prosecuted today are not prosecuted while others are included in the entirety of punishable offenses. For the criminal justice system to function properly, what is important to keep in mind is respect for the rights of the accused. Giving rights to accused individuals is very important for legal systems that base criminal justice on the presumption of innocence. From the various analyzes made for the criminal justice system, it is evident that the procedural position of the accused and the injured party from the criminal offense as well as the role of the prosecutor in guaranteeing the protection of the accused present significant weaknesses. Therefore, legal measures should be taken to review the legal position of this entity in the Code of Criminal Procedure, harmonizing it with international standards and the jurisprudence of the ECtHR.

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