



## Ensuring The Presumption Of Innocence By Respecting The Suspect's Rights

Mavlanov Kamoliddin Tuyiyevich

Teacher At Tashkent State University Of Law, Uzbekistan

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### ABSTRACT

The article studies into reassessment of the status of a suspect and his rights in criminal process, provision of the rights of suspects in developed countries, the presumption of innocence and its importance in ensuring rights and legal interests of suspect.

### KEYWORDS

Suspect, accused, presumption, the presumption of innocence, process of proving, proof.

### INTRODUCTION

The presumption of innocence, being a common legal principle, is an important priority at all stages of the criminal justice process. Article 26 of the Constitution of the Republic of Uzbekistan establishes that no one may be adjudged guilty of a crime except by the sentence of a court and in conformity with the law. Accused persons are provided all the

necessary conditions for self-defense at the trial. Article 23 of the Criminal Procedure Code of the Republic of Uzbekistan the suspect, accused or defendant shall be considered innocent unless his guilt of committing a crime is proved in accordance with the procedure established by law and is established by the court judgment that came into legal force. Any

doubt about guilt, if the possibilities to eliminate them were exhausted, shall be counted in favor of the suspect, accused or defendant. Such rule is established in Articles 84 and 454 of the Criminal Procedure Code, Article 10 of the Law of the Republic of Uzbekistan "On courts", Paragraph 1 of the Resolution of the Plenum of the Supreme Court No. 07 dated May 23, 2014 "On the Judgement" as well as Paragraph 5 Resolution of the Plenum of the Supreme Court No. 07 dated December 19, 2003 "On judicial practice on implementation of suspect's and accused's right for defense".

The presumption of innocence is ensured when:

- 1) Suspect is considered innocent unless the guilt is proved in legally established order;
- 2) The suspect, the accused, the defendant shall have their right to defense ensured [1]. At any stage of judicial proceedings, the right to legal assistance is guaranteed. The suspect is considered innocent unless his guilt is proved in accordance with the procedure stipulated by the law and the court entered judgment so innocent. No one can be arrested without a court's decision. No one can be tortured or be subjected to violence, cruel or humiliating dignity and other harassment;
- 3) This principle is paid basic attention in fighting against crimes in justice theory and practice. Thus, everybody accused of committing a crime is considered innocent until the guilt is according proved in the order established by law and the appropriate court decision entered into force.

The European Convention on Human Rights determines that a person cannot be

considered guilty unless his guilt is proven in the order established by law [2]. Similarly, such warranty is stipulated in the Universal Declaration of Human Rights. It is also recognized as "human rights" [3], "undisputable rule" [4] and "fundamental principle of justice in criminal proceedings". The aim of this principle is considered to provide "correct and real results" through protection of an accused person [5]. In addition, this presumption serves as an important element of the suspect's right to access to justice. That is why the obligation to prove the guilt of a person is assigned to the state [6] and its essence imposes that a person is not obliged to testify against himself or to admit own guilt and his guilt must be proven by the state, not the person himself. "Ei incumbit, probatio qui dicit, non qui negat" [7] - a Latin phrase meaning that "the guilt should be proven by the claimant, not the defendant". In other words, the phrase expresses the content of the presumption of innocence.

"Presumption" means to perceive any rule as truth. The "innocent until guilt is proven" rule was used by an English barrister William Garrow in 1700s. Garrow supposed that the issue of guilt should be thoroughly studied at the trial. Participants of proving process have to prove that the case had really took place and the suspect did commit this crime. For this reason, the suspect's testimony cannot be used as evidence against him. Before sentencing, the state must prove the guilt of the person [8].

According to Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal

proceedings [9] , if government agencies and courts give any information to the public regarding the guilt of a suspect in a criminal case being this issue still unresolved, this act shall be considered violation of the principle. Statements of state agencies and court should not provide information about a person's guilt and shouldn't affect the process of investigation or trial.

If a person's guilt has not been proven by law, public officials must still adhere to the principle of the presumption of innocence. Consequently, officials are not allowed to give public statements about the guilt of a suspect. The Commission (European Commission on Human Rights) [10] explains that this rule is also applied on state prosecutors. However, officials still should give information on the course of the criminal case and when informing the public they should just mention that there are suspected (accused) persons in the case or ones that admitted their guilt, but still these facts should be assessed at court and final decision should be made there. And in this case, paragraph 2 of Article 6 of European Convention on Human Rights and Fundamental Freedoms (the presumption of innocence) will not be violated. This analysis shows that paragraph 2 of Article 6 of the European Convention on Human Rights and Fundamental Freedoms ensures suspects charged with a crime not to be considered guilty by state officials until this condition is proved at court. This rule applies to the public prosecutor too that may accuse the defendant during judicial proceedings only.

**Swedish** Court Process Code does not provide certain rules to ensure the presumption of innocence. That's because according to Swedish doctrine this principle is considered

from the other hand, that is, from the point of view of the prosecutor's obligation to prove the guilt. [11] All these requirements are considered as an effective alternative to the presumption of innocence. Moreover, seeing that European Convention on Human Rights and Fundamental Freedoms is considered a part of Swedish legal system, the rule "a person cannot be considered guilty unless his guilt is proven in the order established by law" is obligatory for courts in Sweden. According to the presumption of innocence, a verdict of not guilty or when the case is dismissed suspects are considered innocent. Also, the case can be restored only when new evidence is evolved or identified. This presumption is primarily aimed at protecting the rights of suspects and accused [12] . The suspect is innocent during the entire process until the verdict is announced. The aim of this principle is to prevent wrong conviction and unjustified verdict. Uniqueness of the Swedish criminal proceeding is that the suspect formally charged when the **last phase of the preliminary investigation completed** [13] : the prosecutor submits a written indictment to the court. So, we can conclude that a person keeps a suspect status throughout entire process of preliminary investigation.

**Finland's** criminal procedure law, just as in Sweden, also does not provide certain rules to ensure the presumption of innocence but still considered a legal principles for many years [14] . For many centuries, obligation to prove has been entrusted on prosecutors and even official incrimination had very strict requirements. **This can be proved by the fact that official accuse of a person takes place only in last stages of criminal proceedings.** We have seen that similar legal order is established in laws of Sweden. The act of indictment

happens after two main stages of the criminal proceeding is finished by the police and the prosecutor and when all the evidence related to the suspect is collected. Such a procedural order indicates that the presumption of innocence is an important part of criminal process though it is not stated in the law and effectively used according to Finnish legislation during pre-trial proceedings. Compared to other countries, the UK for example, where the presumption of innocence is mostly paid attention during judicial proceedings and a suspect is indicted from the beginning stages of criminal procedure, legislation of Sweden and Finland have more advantages in this sphere.[15] The prosecutor bear the responsibility to carry out last stages of preliminary investigation and not to make indictment until the guilt of suspect is proven. Therefore, this principle is one of the most important rules of prosecutor's activity.

Finland, being a member of the European Union, accepts and follows to decisions of the European Court of Human Rights. According to them, two elements of the presumption of innocence are accepted: Burden of Proof is assigned to the prosecutor and lack of evidence or indefiniteness of case works in favor of the suspect ("in dubio pro reo" principle).

Analysis of the **Norwegian** Criminal Procedure Code also shows that the presumption of innocence is not clearly reflected in the procedural law of this country [16]. Article 82 of the Code, suspect obtains official status of the accused when prosecutor's indictment is announced. In addition, seizure and on-search of the suspect can mean that status of the accused is obtained but at the same time the fact of delivering the person to the police

department does not mean this. Norway, being a member of the European Union, also accepts and follows to decisions of the European Court of Human Rights.

**Denmark's** criminal procedural law also follows to the presumption of innocence applied in all countries of the European Union. In particular, every suspect is presumed innocent unless his guilt is proven in the order established by law and this proving obligation is imposed on the prosecutor's office. The presumption of innocence is aimed at protecting human rights according to which lack of evidence or indefiniteness of case works in favor of the suspect [17]. All state agencies do not have the right to predict the end of the trial (for example, give to the public information that indicates the guilt of the person on a criminal case).

**Austrian** Code of Criminal Procedure (The §8 StPO *Unschuldsvermutung* - Strafprozeßordnung 1975) is the main source that establishes rules of the presumption of innocence. According to it, no one is considered guilty until the final decision is made, that is, the suspect is considered innocent till his guilt is proved at court as the last instance. As assumptions may be a mistake, therefore, it is not recommended to give public statements on the issue of guilt before the judgement is made. Austria accepts and implement in int national legislation the Directive 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings. One of the peculiarities of the directive is that the presumption of innocence does not start with indictment or trial proceedings and end

with the judgment [18] because higher instance court proceedings are also possible.

**Dutch** criminal procedure law does not use the term “the accused” as well as there is no clear distinction between suspects and accused. The person who is suspected of committing a crime is referred to as “suspect” both in pre-trial proceedings and during the trial [19], i.e. the suspect status is kept even after official indictment is announced. The purpose of preliminary investigation is to collect information about the suspect and crime [20]. According to another source, the status of suspect is kept until prosecutor’s official indictment [21]. Though the Criminal Procedure Code of the Netherlands has no direct rules of the presumption of innocence, Article 6 Sub 2 of the European Convention, stating that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law, is still in force. Decision shall be based on the indictment. Only courts can make judgements based on legal facts and these decisions should be objective and fair. If there is any doubt about the guilt of the suspect, the court as to justify him (in dubio pro reo) [22]. There are minimum standards of proving process that should be complied by the court. For example, testimony of the suspect or the witness is not enough to make indicting judgement.

The theory of criminal procedural law of **Germany**[23] recognizes the presumption of innocence as assumption or legal fiction. It requires agents of the state to treat a suspect or defendant in the criminal process as if he were in fact innocent [24]. The presumption of innocence has a limited field of application. It applies only to agents of the state, and only during the criminal process. The presumption

of innocence as such does not determine the amount of evidence necessary to find a defendant guilty. In spite of these limits, the presumption of innocence protects suspects and defendants from specific dangers inherent in the criminal process. In contrast to the Anglo-Saxon legal system countries, Germany implements this principle not only during trial proceedings, but also in the preliminary investigation. The essence of a presumption of innocence is related to legal relations between the citizen and the state within criminal proceedings. Therefore, subjects of this principle are the participants of criminal proceedings as state employees: judges, prosecutors and police officers [25]. Summing up, implementation of the presumption of innocence in the spheres other than criminal procedure, turns out to be wrong, as well as towards the mass media. Journalists may prepare their own statements on a criminal case and this will not be a violation of the presumption of innocence. In the same way, application of arrest and detention during preliminary investigation does not mean that the suspect is guilty.

Mass media in Germany are regulated by the German Communication Code, according to Article 13 of which information related to the course of investigation of trial proceedings should not predict a person's guilt. The presumption of innocence also applies to mass media [26]. For this reason, journalists do not report on the suspect's name, using his initials instead. Not only journalists, but also other responsible state officials will violate the presumption of innocence if they make statements about the guilt before the judgement is made.



Everyone charged with a criminal offence, suspect or accused, shall be presumed innocent until proved guilty by the court according to law[27] and shall experience all appropriate guarantees. The presumption of innocence must be ensured both during preliminary investigation and at trial proceedings. Decisions on pretrial detention, rejection of bail and to impose civil liability should not have negative impact on the presumption of innocence. The right to be considered innocent unless the guilt is proved according to the law – is an absolute right that cannot be refused or limited.

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