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Current Aspects of the Principle of Presumption of Innocence, and Some Problems in the Field of Human Rights and Freedoms and Civil Rights in Russia

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This article attempts to address urgent problems of the principle of presumption of innocence. The basic approaches and trends in the interpretation of the principle of the test in the context of rights and freedoms of man and citizen.

Keywords: principle of the presumption of innocence, interpretation of law, national law, national legal system, legal doctrine, the rights and freedoms.

For improvement and further development of the principle of presumption of innocence, let us turn to the form of its expression in paragraph 1 of Art. 49 Russian Constitution, which states that: «Everyone charged with a crime is presumed innocent until his guilt is proved as provided by federal law and established by a valid court verdict.»

First of all, I would like to remind you that the presumption is a hypothesis about the existence (or any) of any facts, events, circumstances and consequences «, but their depth is based on the repeated recurrence of life situations or events,» ie, if something happened and happens regularly when appropriate circumstances, it would be a legitimate assumption that this will happen under similar circumstances again. “

It should also be noted that many authors agree with the opinion of V.K. Babaev, which defines a presumption as «... the rule of law enshrined in the assumption of the presence or absence of legal facts, based on the connection between them and the facts in cash and confirmed previous experience '.» In this regard, it is fair to conclude, and that the presumptions are estimated probabilistic, prognostic, and not the true, natural character. “

Despite the presumptions of this feature, including the presumption of innocence, they are not only an important additional tool for learning about the world and reality, but also a means of establishing the truth. As rightly observed, V.K. Babaev, “these assumptions are based on a real connection with the ongoing processes and confirmed prior experience”, what is their

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main scientific and practical significance, since "... how, by what means and in what sequence will be expressed by assuming the presence of legal facts will depend on the effectiveness of the legal presumption and its place among other presumptions ... «. However, for the general characteristics of the presumptions of the legal admission as a technology, not less important is not only the first interpretation of the Latin word «praesumptio» – a guess, but the second interpretation of the dictionary, «a finding of legally significant until proven otherwise.»

For example, the fact of publication of the regulation allows state agencies and other law-presume that after a certain law, all citizens of the state knows it, and, therefore, they should be sure to perform it. In this regard, I would like to refer to a number of issues that arise when considering the concept of "presumption of innocence," the legislator used in the formulation of the presumption of innocence of the formula, the key of which, in our opinion, is the concept of "presumption" and "innocent."

This need is long overdue, as dictated by the ongoing legal reform in Russia, and, therefore, is to formulate the current and correct, in fact, a provision in the Constitution and the criminal-procedural legislation of the principle of presumption of innocence (in Article 14 of the Code of Criminal Procedure) . Assessing, given a complete formulation of the principle of presumption of innocence in the Constitution and Code of Criminal Procedure, from the standpoint of international and European procedural law should solve many issues related to disclosure of the contents of this concept. Disagreements on these issues rise to the existence of different definitions of the presumption of innocence in the international instruments in the Constitution (Article 49), the CPC number of countries, the Model Code of Criminal Procedure states – participants of CIS on February 17, 1996 (Article 23) in the works of various scholars and dictionaries.

A comparison of the sources listed in the wording of various authors show that in some cases, the presumption of innocence applies only to the accused, while in others – as a defendant, and the suspect, and sometimes to any person, each person brought to justice, in some cases, the person «is» or «supposed» to be innocent, while others – «not considered» guilty, in some cases, the defendant is considered innocent until proven otherwise, while in other cases – before the court of conviction, before the entry judgment into legal force, etc. For such a seemingly terminological differences are hidden issues that are not formal, and of great theoretical and practical importance. To understand the nature and importance of the presumption of innocence is important to accurately determine who is innocent – the accused (defendant), the suspect or any citizen. A number of authors, referring to the term "accused" only a person of criminal responsibility as a defendant, it is believed that the definition of the presumption of innocence must include not only the accused but also a suspect.

It seems that the scope of this institution should not be limited indication of the specific procedural shapes (the defendant, the defendant, a suspect) (Article 49 of the Constitution, Art. 14 Code of Criminal Procedure, Article 16 of the Criminal Procedure Code of the Republic of Belarus, Article 23 of the Code of Criminal Procedure, Article 15 of the Code of Criminal Procedure CD). It seems that the presumption of integrity of every citizen is transformed into a presumption of innocence from the moment of appearance in the criminal justice those who doubt the innocence of the law enforcement agencies. These individuals may not serve as a suspect or an accused. This kind of a person on the CPC called for – in different ways: «a person against

whom criminal proceedings terminated» (Article 213 part 4) «person brought to justice» (Article 318 Part 5, paragraph 4); «a person against whom an application is made» (Article 319 ch.ch.3, 4), «a person who has made a voluntary reporting a crime committed by him» (Article 142 Part 1) «person to whom were applied compulsory medical measures «(Part 2 st.133 p.5),» a person subjected to the measures of procedural coercion «(Article 133 § 3),» the witness, interrogated about the circumstances that could be used against him «(Article 56 Part 4, item 1).

It seems that the presumption of innocence must fully apply to all persons, as the term «accused» must be understood in accordance with the Convention on Human Rights. This term seems to be more succinct. The Court also declined in the consideration of specific cases to the choice in favor of "meaningful" rather than "formal" concept "accused" in the text of paragraph 2 of Article 6.

In light of the purpose of paragraph 2 and Art. 6 of the Convention on Human Rights, «the accused» could be defined as each person brought to criminal responsibility, ie any person whose innocence of the crime in question, as this matter is regulated in the IASC (§ § 1.2 item. 23), and the Code of Criminal Procedure (Article 19 § § 1.2). It is also necessary to decide what is meant by the terms "statutory order", "in accordance with the requirements of the criminal justice system." The wording of this element of the presumption of innocence in the Constitution (Article 49, Part 1), Code of Criminal Procedure (Article 14 of p.1), Code of Criminal Procedure Code (Article 16 of p.1), Code of Criminal Procedure (Article 23 of p.1) , Code of Criminal Procedure (Article 19 of p.1), Code of Criminal Procedure (Article 15 of p.1), IPPC (Article 23 of p.1) more specific than the International Covenant on Civil and Political Rights and the European Convention on Human Rights Rights and Fundamental Freedoms, which says just about legally recognizing a person guilty.

At first glance, it might seem that this principle articulated in international instruments, contrary to the rules of the Constitution (Article 49 of p.1), Code of Criminal Procedure (Article 14, Part 1), and other laws and regulations relating the possibility of face recognition guilty of mandatory holding of the trial – the stage where the focus is the maximum guarantees of rights and lawful interests of individuals. "However, the Court, interpreting the term" lawful order "in the wording of the presumption of innocence, of the Convention (" Everyone charged with a criminal offense shall be presumed innocent until proved guilty according to law "(Article 6 of Part 2) indicated that the presumption of innocence embodied in paragraph 2 of Article 6, as well as various rights, non-exhaustive list is given in Section 3 Article 6, are the constituent elements of the concept of a fair trial in criminal cases.

The annex protocol number 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms «Titles of articles to be included in the text of the Convention on the Protection of Human Rights and Fundamental Freedoms and its Protocols,» pointed out that Article 6 should be titled «The right to a fair trial «. The above means that the question of where the person guilty of the Code of Criminal Procedure is not contrary to paragraph 2 of Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms. Moreover, the stated in article 11 of the Universal Declaration of Human Rights, adopted by the UN in 1948, expressly stated that a person's guilt is established only by trial.

The practice of the Court, as evidenced by the fact that a person is found guilty by an independent and impartial tribunal in a fair and public trial (in this respect typical solutions for Adolf v. Austria, Minelli v. Switzerland,

etc.). There is also the question of whether the presumption of innocence is an objective legal status, which expresses the ratio of the law to the question of the guilt of the involved individuals to criminal liability, or the subjective opinion of individual actors on the issue. "

Immediately necessary to dispel doubt, the presumption of innocence is not an expression of subjective views of either the subject of criminal procedure, it is expressed in the law of objective legal status as does not prohibit inquiry officer, investigator, prosecutor to expose the accused to prove his guilt, but does not allow to declare the defendant, any other person brought to trial, convicted, and receive him as a criminal.

Thus, the Court in the case of Minelli v. Switzerland, agreed: «The presumption of innocence is violated if the guilt of the accused previously has not been proven according to law and, above all, if he had no opportunity to exercise their right to protection ...». This Court has also often stated that the pre-trial detention should not be used as a pre-sentence (judgment Letellier on June 26, 1991, judgment Tomasi from August 27, 1992).

Thus, the presumption of innocence as an objective legal status means that the law considers a person liable to criminal charges, not guilty, while those who believe him guilty, they prove that he really is guilty, and his guilt is established by a valid decision Court.

Therefore, a comparative analysis of the new national criminal procedure law in terms of international norms and standards allows us to offer the following wording for the criminal justice model for determining the presumption of innocence:

Each person brought to justice, to be presumed innocent until his guilt is proved in the period limited by law in the prescribed manner and installed by a valid judicial act accordingly (ie, a sentence, the decision of the appellate, cassation, supervising instances, Court in the proceedings to resume production because of new or newly discovered facts), where the main emphasis is on the concept of «innocent.»

Summing up the intermediate conclusion we can conclude that the presumption of innocence,

First, should the law require strict limitations period charges;

secondly, it must necessarily refer to the alternative nature of the withdrawal of the court of the guilt (not guilty) defendant, emphasizing and focusing attention on the concept of «innocent», or else lose the very meaning and essence of the «presumption of innocence»;

Third, must not link this conclusion with the entry into force of the sentence.

Having considered the theoretical problem of the formula and method of formulation of the presumption of innocence, let us consider the application and implementation of the principle of presumption of innocence on the basis of how it is presented and formulated in the Constitution.

Before we examine the current content of the principle of presumption of innocence in the national law and the circumstances that caused the need for improvement and further development of this principle, let us recall that the form of the expression of which is in Section 1, Art. 49 of the Constitution of the Russian Federation is the following: «Everyone charged with a crime is presumed innocent until his guilt is proved as provided by federal law and established by a valid court verdict.» Proper expression of the principle of the model and provide the international legal acts. Thus, under paragraph 1 of Art. 11 of the Universal Declaration of Human Rights: "Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense."

Paragraph 2 of Art. 14 of the International Covenant on Civil and Political Rights states: «Everyone charged with a criminal offense has the right to be presumed innocent until his guilt is proved according to law.» Likewise, this principle is set out in paragraph 2 of Art. 6 of the European Convention on Human Rights and Fundamental Freedoms. Differences in the wording of the presumption of innocence contained in the Declaration and the Covenant, and involve differences in the methods or procedures of its rebuttal. According to the Declaration of the presumption of innocence may be rebutted only by trial. From the definition of the presumption of innocence contained in the Covenant and the Convention, that it can be disproved, and others, established by law. Interpreting the term "by law", the European Convention clarifies that the order may vary rebut the presumption "in view of the importance of what is at stake," and with the additional guarantees of the right to protection.

The wording of the presumption of innocence of the accused in the Russian Constitution and the Code of Criminal Procedure is significantly different from both the definitions provided in the Covenant and the Convention and the Declaration. Under Russian law, the defendant is presumed innocent until his guilt is proved in the manner prescribed by law and established by a valid court sentence.

The essence of the difference lies in the fact that the right to be tried in accordance with the principle of presumption of innocence becomes a duty to be tried, because this presumption may be rebutted only by a court sentence. Practically, this means that after the statute of limitations for criminal liability, amnesty, and other legal grounds, allowing release of a citizen from criminal responsibility before trial, and without making his address to the indictment, this is not possible.

Thus, the wording of the presumption of innocence in the Constitution, puts the accused in a less advantageous position than the wording of the Covenant and the Convention, which allows to establish the innocence of a person different procedures depending on «what is at stake,» ie, depending on the legal consequences arising from the determination of guilt. If the defendant can be released from criminal liability and penalties, the procedure to rebut the presumption of innocence may be different, with the defendant, of course, must be given full protection from prosecution. The presumption of innocence embodied in Art. 14 of the Code: "No person shall be guilty of an offense and subject to criminal punishment except by the verdict of the court and in accordance with law." In addition, various aspects of this principle is deeply and comprehensively specified in Art. 20, 208, 309UPK Russia and some others. However, in the legal literature, there is another point of view of the fact that the CCP is no presumption of innocence that has long been rejected, but without which it is impossible to reach a just, humane justice, protected the new Criminal Code. In this regard, it is proposed to play in the Code of Criminal Procedure to finalize the Constitutional formula, but in a slightly different wording:

«3. Fatal doubts about the guilt of the accused shall be interpreted in his favor.» Also, I think it would be useful to supplement the constitutional formula of an important provision, which follows from the principle of presumption of innocence:

«The duty to prove the prosecution rests only on the accuser,» and in the absence of the Constitution of this provision is explained in only one: art. 49 is in the chapter entitled «Human rights and freedoms of man and citizen,» and it certainly does not fit the definition of duties of the prosecutor, in a role which usually acts as an official of the state – the public prosecutor.

One can agree with the proposal to clarify and supplement the content of the principle of

presumption of innocence in the Constitution, but not with the denial of its presence in the criminal-procedural legislation of Russia, or a completely «non-working» state.

Given the presumption of innocence arising from the provision that the conviction may be imposed, provided indisputable proof charges (Part 2 of Art. 309 of the Code), and the unproven guilt of the legal equivalent of proven innocence, I think, be sure to add Art. 49 of the Constitution of the Russian Federation an important position, arising from this principle: «unproven guilt of the accused in its legal effects equivalent to proven innocent.» A detailed analysis of the normative material clearly shows that the consistent implementation of the new evidence in criminal proceedings the presumption of innocence has been securing it to the level of the Basic Law.

Article 49 of the Constitution proclaimed citizen of the presumption of innocence, and in Section 1, Art. 14, entitled «The presumption of innocence,» the draft Code of Criminal Procedure, adopted by the State Duma in first reading June 6, 1997, stated: «The defendant is presumed innocent until proved guilty of an offense is proved to the provisions of this Code and established by a legally by a final judgment of the court. " The analysis of the notion of the presumption of innocence contained in paragraph 1 of Art. 11 of the Universal Declaration of Human Rights and paragraph 1 of Art. 49 of the Constitution of the Russian Federation, allows comments to improve their drafts. Clarity and unambiguity establish the guilt of the accused according to law, a public trial at which he guaranteed the right to protection from the charge, does not allow legislators to ignore this principle and does not allow for the termination of criminal cases on grounds of non-rehabilitation inspector with the consent of the prosecutor, as provided by Art. 9.6 Code of Criminal Procedure, and the rules of these articles is clearly contrary to paragraph 1 of Art. 49 of the Constitution of the Russian Federation.

It should be added, and the fact that increasing the number of administrative and tax offenses, criminal offenses are not conducive to improving the quality of examination and investigation of the above types of misconduct that does not help improve the situation in the field of human rights and freedoms, but, as a constitutional principle, – the principle of presumption of innocence, through an integrated scientific research to find its rightful place in the system of effective legal instruments that affect the behavior of different types of legal entities, protecting and promoting human rights and freedoms in Russia, because that every legal presumption, including and innocence, which developed from the presumption of good faith, as a special legislative reception technology, has its individual specifics of the genesis, development and transformation, legal nature and essence, based on the probability of the alleged normativity and its provisions, conventionally taken as the truth.

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Актуальные аспекты содержания принципа презумпции невиновности и некоторые проблемы в области прав и свобод человека и гражданина в современной России

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В статье предпринята попытка рассмотреть актуальные проблемы содержания принципа презумпции невиновности. Рассмотрены основные подходы и тенденции толкования исследуемого принципа в контексте прав и свобод человека и гражданина

Ключевые слова: принцип презумпции невиновности, правопонимание, толкование права, национальное право, национальная правовая система, правовая доктрина, права и свободы человека.