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International standards for the application of the presumption of innocence in criminal proceedings

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■ **Abstract.** The presumption of innocence is an internationally recognized standard of criminal justice. However, law enforcement practice shows a lack of legal certainty regarding the understanding and implementation of certain provisions of this principle of criminal proceedings. The purpose of the publication is to identify and systematize the internationally recognized standards of guaranteeing the right to the presumption of innocence. The study used such methods of cognition as comparison, analysis, generalization, and a systematic approach, which made it possible to describe the results and substantiate the conclusions drawn. It is determined that, according to the case law of the European Court of Human Rights, the purpose of the presumption of innocence is to: ensure a fair trial by preventing accusatory judicial bias; prevent the formation of premature public opinion regarding the guilt/innocence of the accused, which may adversely affect the impartiality of the court; and protect persons who have been acquitted or whose proceedings have been closed on rehabilitative grounds. Ensuring the presumption of innocence requires ensuring that this right is real, not imaginary. It is established that when determining whether the principle of presumption was violated by public officials when informing the public about the progress of criminal proceedings, the European Court of Human Rights takes into account whether the officials' statement prompted the public to believe in the guilt of the person before the court passed a verdict and whether these statements could have influenced the assessment of the facts when making a court decision. When assessing statements made by public officials, it is necessary to distinguish between a statement of suspicion of committing a criminal offence and a statement that a person has committed a criminal offence in the absence of a conviction; to consider the context in which the statement was made and to take into account the actual content of the statements. The author substantiates the rules of the presumption of innocence in time: it is valid until the court verdict enters into force; a guilty verdict does not cancel a person's right to the presumption of innocence until it enters into force; the adoption of an acquittal or the closure of criminal proceedings on rehabilitative grounds requires that a person be found innocent and treated accordingly. The study will ensure unified law enforcement practice of pre-trial investigation bodies, prosecutors, and courts in respect of compliance with the rules of the presumption of innocence, which will contribute to the rule of law

■ **Keywords:** publicity of the case; bias; guilty verdict; acquittal; fairness of the court decision; European Court of Human Rights

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■ Introduction

The presumption of innocence is a fundamental right declared by both national legislation and the European Convention on Human Rights¹ (ECHR) or the International Covenant on Civil and Political Rights. Respect for the right to presumption of innocence guarantees a fair trial, which is the most popular demand of society. Legislation in all rule-of-law states pays due attention to the regulation of provisions that ensure the implementation of the presumption of innocence. However, an analysis of the case law of the European Court of Human Rights (ECHR) shows that there are numerous cases of violations of this fundamental right. Violation of the rules of presumption of innocence is caused by both the lack of legal certainty in the regulation of certain aspects of it and the need to find an adequate way of behaving when determining the balance between the public interest in bringing perpetrators to justice and the legitimate interests of the suspect or accused to be treated as innocent. After all, according to the rules of presumption of innocence, a person is presumed innocent until the court verdict enters into force. This problem becomes especially acute in cases of serious high-profile crimes, when society needs information concerning identifying the perpetrators of these crimes, but at the same time, the disclosure of certain information should not violate the requirements of the principle of presumption of innocence.

The presumption of innocence in criminal proceedings has been the subject of research by many scholars. For example, one group of scholars studied the general theoretical provisions of the presumption of innocence. In particular, F. Yu (2022) examined the legal nature of the presumption of innocence and concluded that the presumption of innocence is a special type of presumption that involves a duty to recognize the innocence of the accused and a policy of acting on the basis of the accused's innocence, all in order to avoid greater harm from wrongful convictions (false acquittals are less harmful). G. Mamka (2018), studying the principles of criminal proceedings in general, concluded that the presumption of innocence is an unconditional, but open to refutation, assertion that a person is not guilty of a criminal offence. This statement has a substantive, logical and methodological connection with the obligation to prove guilt by presenting arguments. T. Svoboda (2023) focused on the historical development of the presumption of innocence and concluded that the presumption of innocence is one of the most important and ancient legal principles. Another group of scholars has studied the presumption of innocence in the context of the conventional right to a fair trial. In particular, O. Boyko (2021) expressed the opinion that the principle of presumption of innocence is a necessary component of the right to a fair

trial and ensures the realization of this right. The author argues that although the principle of presumption of innocence does not limit the authorities in disclosing information about investigations, it is important that they do so carefully and with respect for the principle of presumption of innocence. In her study, M. Forejtová (2022) draws attention to the presumption of innocence in court decisions and the need to comply with the rules of judicial impartiality, arguing that the guilty verdicts that approved plea agreements with all co-defendants raise serious doubts about the impartiality of the court.

Studies of the presumption of innocence in terms of the problems of proving guilt are quite relevant – J. Rozenbergs (2022), R. Stoykova (2021), which also draws attention to the peculiarities of collecting digital evidence. M. Coleman (2021) explores the problems of the presumption of innocence through the exercise of the right to defence. V.M. Tertyshnyk (2018) points out the need to develop an integrative model and improve the legal definition of the presumption of innocence, taking into account the constitutional principles of justice, international instruments, legal positions of the ECHR and modern case law and scientific doctrine.

Attention should also be drawn to the works of scholars who have studied the presumption of innocence in the context of its individual aspects. Thus, M.L. Villamarín Lopez (2021) studied the issue of the presumption of innocence during pre-trial detention and draws attention to the contradictions in this aspect of the EU Presumption of Innocence Directive 2016. W.C. Itheme (2020), in his research, focuses on the role of the media in the failure to comply with the rules of the presumption of innocence during the era of slavery and in the modern period, which led to the trend of mass incarceration of black people.

The above analysis of scholarly works suggests that scholars have not addressed the problem of a comprehensive study of law enforcement practice regarding the implementation of the right to the presumption of innocence with the definition and systematization of standards developed by the ECHR case law on the application of the right to the presumption of innocence in criminal proceedings.

The purpose of the study is to define and systematize international standards for the application of the presumption of innocence in criminal proceedings, which will help to avoid law enforcement errors and contribute to the formation of a well-established practice of unifying the rules for the application of this principle of criminal procedure.

In order to achieve the stated goal and ensure the reliability of the results obtained, a combination of general scientific and special methods of cognition was used. In particular, the author used such gen-

¹ European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

■ Materials and Methods

eral theoretical research methods as description, comparison, analysis, synthesis, generalization, and a systematic approach, which made it possible to identify the subject of research, describe the results of the observations made, compare the provisions of criminal procedure legislation with the provisions of international law, and substantiate the conclusions of the study. In particular, to determine the European standards for the application of the presumption of innocence in criminal proceedings, the author summarized the case law of the ECHR. The author also used special methods of scientific research of jurisprudence phenomena, namely, comparative legal, systemic, and structural, and formal legal methods. The comparative legal method was used in analysing the provisions of criminal procedure legislation and the provisions of the European Convention on Human Rights, and in formulating conclusions on the main approaches to the interpretation of the presumption of innocence. The formal legal method was used to analyse the legal acts regulating the content of the presumption of innocence in criminal proceedings. The systemic-structural method was used to determine the main approaches of the ECHR to the interpretation of the rules of application of the presumption of innocence in criminal proceedings. These methods were used in conjunction with each other, which made it possible to conduct a complete and comprehensive study and substantiate the scientific conclusions and proposals made.

The normative basis of the study is the norms of international law – the European Convention on Human Rights¹, the International Covenant on Civil and Political Rights², which guarantee the right of a suspect (accused) to the presumption of innocence. The author analyses the provisions of the Constitution of Ukraine³, the Criminal Procedure Code (CPC) of Ukraine⁴, and the Criminal Code of Ukraine⁵ which define the rules for the implementation of the presumption of innocence in criminal proceedings. The study focused on the analysis of judgements of the European Court of Human Rights, which developed international standards for guaranteeing the right to the presumption of innocence, in particular, the following

judgements: “*Alenet de Ribemont v. France*” in 1995, “*Lavents v. Lettonie*” in 2003, “*Grabchuk v. Ukraine*” in 2006, “*Panteleyenکو v. Ukraine*” in 2006, “*Nešťák v. Slovakia*” in 2007, “*Shagin v. Ukraine*” in 2009, “*Konstas v. Greece*” in 2011, “*Dovzhenko v. Ukraine*” in 2012, “*Allen v. The United Kingdom*” in 2013, “*Krivolapov v. Ukraine*” in 2018. These judgments contain important legal conclusions, precedents, and interpretations that form the standards and norms in guaranteeing the presumption of innocence at the international level. The study of such judgments provides an in-depth understanding of the factors that influence the determination of innocence and how this is practically implemented in court decisions.

■ Results and Discussion

The presumption of innocence is enshrined in Ukrainian legislation in the following provisions: Article 62 of the Constitution of Ukraine⁶, Article 2(2) of the Criminal Code of Ukraine⁷, Article 17 of the CPC of Ukraine⁸. These provisions of law enshrine the presumption of innocence as a constitutional principle of criminal proceedings and define the following rule: a person is presumed innocent of a criminal offence and cannot be subjected to criminal punishment until his or her guilt is proved in accordance with the law and established by a court verdict that has entered into force. In addition, it is worth noting that the presumption of innocence is an internationally recognized principle of criminal proceedings. This requirement is enshrined in both Article 14(2) of the International Covenant on Civil and Political Rights⁹ and Article 6(2) of the ECHR¹⁰, which states that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law^{11,12}.

Complaints about non-compliance with Article 6(2) of the ECHR are often the subject of applications to the ECHR. In this regard, the case law has developed generally accepted standards for guaranteeing the right to the presumption of innocence in criminal proceedings, emphasizing that this right is a structural component of the right guaranteed by Article 6 ECHR¹³ – the right to a fair trial.

¹ European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

² International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch_iv_04.pdf.

³ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

⁴ Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-1775>.

⁵ Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

⁶ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

⁷ Criminal Code of Ukraine. (2001, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

⁸ *Ibidem*, 2001.

⁹ International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch_iv_04.pdf.

¹⁰ European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

¹¹ International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch_iv_04.pdf.

¹² European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

¹³ *Ibidem*, 1950.

In the overall structure of the right to a fair trial, the presumption of innocence plays an important role, as it pursues a specific goal – to prevent the formation of a biased opinion of both the court and society regarding the guilt of a person. Scholars who have studied the presumption of innocence have paid attention to this issue. In particular, V.T. Nor (2011) argues that the presumption of innocence prohibits the court from forming a premature opinion about the guilt of a person in committing a criminal offence. This approach to determining the purpose of the presumption of innocence is fully consistent with the decisions of the ECHR. Thus, in the 2021 case of “Dovzhenko v. Ukraine”, it was stated that the presumption of innocence enshrined in Article 6(2) of the ECHR, in its relevant aspect, prevents the negative impact of biased statements made in connection with the consideration of certain criminal cases on the fairness of the trial (paragraph 47)¹.

In the 2018 case of “Krivolapov v. Ukraine”, the applicant claimed that state officials had been involved in a media campaign around his criminal conviction before the court’s verdict of guilty. Such activities of the officials, according to the applicant, influenced public opinion, which led to an accusatory bias in the resolution of his criminal proceedings. Although the Government of Ukraine argued that the authorities only informed the public about the course of the investigation in the high-profile criminal proceedings, the ECHR concluded that the statements of the investigators and SBU officials in the media did not meet the requirements of prudence and care. As such statements undoubtedly pointed to the guilt of the person making the statement. In particular, all information about the person was made public, and he was called a falsifier and a murderer. These allegations were voiced in a documentary film created with the support of the state authorities. Based on the above facts, the ECHR concluded that the statements of state officials caused the public to believe that Krivolapov was guilty even before the court’s guilty verdict and influenced the assessment of the facts by the relevant court. And such actions are a violation of the requirements of paragraph 2 of Article 6 of the ECHR (paragraphs 127-132²).

The judgment in the 2013 case of “Allen v. The United Kingdom” specifies the purpose of the presumption of innocence in case of acquittal. In particular, the judgment states that the general purpose

of the presumption of innocence is to protect persons who have been acquitted in criminal proceedings and persons in respect of whom a decision to close criminal proceedings has been made, from being treated by state officials as persons guilty of a criminal offence. After all, without a defence that would guarantee the recognition of an acquittal or a decision to close criminal proceedings, the guarantees of a fair trial may become theoretical and illusory³. That is, when a court acquits a person or decides to close criminal proceedings on rehabilitative grounds, no government official should express doubts about the acquittal that has entered into force.

Thus, the above allows stating that the case law of the ECHR has developed the following rules for determining the purpose of the presumption of innocence:

- ensuring the fairness of the trial by preventing accusatory judicial bias;
- preventing the formation of premature (before the verdict is passed) public opinion on the guilt/innocence of the accused, which may also negatively affect the impartiality of the trial;
- protection of persons who have been acquitted or whose proceedings have been closed on rehabilitative grounds from being treated as perpetrators of a criminal offence.

Analysis of law enforcement practice shows that violations of the presumption of innocence most often occur when state officials comment on the course of investigations in high-profile criminal proceedings. Despite the fact that media coverage of criminal investigations in some cases leads to violations of the presumption of innocence, at the same time, it is impossible to prohibit informing citizens about the circumstances of criminal proceedings in which a court verdict has not yet been delivered. After all, civil society is interested in knowing how the investigation or trial is going, which allows it to exercise the right of the public to control the fairness of court decisions.

This right is guaranteed both by the CPC of Ukraine, in particular, Article 27 of the CPC of Ukraine⁴ enshrines the principle of publicity and openness of court proceedings, and by the provisions of Article 6(1) of the ECHR⁵, which declares that everyone has the right to a public hearing. Para. 38 of the ECHR judgment in the case of “Allenet de Ribemont v. France” of 1995 states that freedom of

¹ Judgment of the European Court of Human Rights in the case of No. 36650/03 “Dovzhenko v. Ukraine”. (2012, January). Retrieved from <https://hudoc.echr.coe.int/?i=001-174579>.

² Judgment of the European Court of Human Rights in the Case of No. 5406/07 “Krivolapov v. Ukraine”. (2018, October). Retrieved from <https://hudoc.echr.coe.int/?i=001-191985>.

³ Judgment of the European Court of Human Rights in the case of No. 25424/09 “Allen v. The United Kingdom”. (2013, July). Retrieved from <http://hudoc.echr.coe.int/eng?i=001-122859>.

⁴ Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-1775>.

⁵ European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

expression guaranteed by Article 10 of the Convention¹ also includes the right to freedom of receipt and dissemination of information. Therefore, the provision of paragraph 2 of Article 6 of the Convention² cannot prevent the authorities from informing the public about an ongoing criminal investigation, but requires that the authorities do so reasonably and prudently, in accordance with the requirements of the presumption of innocence³. A similar requirement is enshrined in the Recommendation of the Committee of Ministers of the Council of Europe on the provision of information on criminal proceedings through the media, which states that views and information on proceedings before the courts should be transmitted or disseminated through the media ⁴where this does not prejudice the principle of the presumption of innocence. Thus, as a general rule, the media may cover information about court proceedings. At the same time, the question arises: where is the line that determines whether the presumption of innocence is violated or not as a result of commenting on court proceedings or covering the course of pre-trial investigation in the media?

In determining the violation of the principle of presumption of innocence, the ECHR in its judgments has repeatedly drawn attention to the inadmissibility of commenting by authorized officials on the course of investigation of criminal proceedings against persons against whom there has not yet been a court verdict. T.I. Fuley (2012), summarizing the ECHR decisions, correctly notes that the presumption of innocence is usually violated in the following cases: when the prosecution or politicians comment on the circumstances of criminal proceedings, asserting the guilt of a person before the trial is completed; when an interim court decision is made asserting the guilt of a person; when a person suspected of committing a crime is detained and a decision is made to apply a preventive measure to him/her.

An analysis of the judgments concerning Ukraine reveals a number of violations of the presumption of innocence that occurred in statements by public figures and led the public to believe in the guilt of the person even before the court's verdict. In the 2012

judgment in the case of “Dovzhenko v. Ukraine”, statements by senior police officials, which were repeatedly quoted in newspaper articles, clearly referred to the applicant, although his name was not mentioned in these articles. The clear indication of the applicant's name is not necessary to fall within the scope of the presumption of innocence. In assessing the content of the statements, it is sufficient that one of the newspaper articles referred to the detainee as a “criminal” without any qualification. Such an assessment of the statement by high-ranking law enforcement officials was perceived by the public as a proven fact and therefore should be equated with a statement of guilt of a person in committing a criminal offence of which he was only suspected (paragraphs 51-52⁵). In the 2009 judgment in “Shagin v. Ukraine”, the Court limited itself to assessing a statement by the First Deputy Prosecutor of the city of Kyiv, which was quoted in the same way by three different publications. The statement read as follows: “According to our calculations, the killers received about 100 thousand dollars from Shagin for the execution of the “orders”... The actual leader of this group was Shagin. His orders (to kill) were of a systematic nature”. In assessing this statement, the Court concluded that such wording indicated that the prosecutor considered it proven that Shagin had ordered and paid for the killings, and that the prosecutor had doubts only about the exact amount paid for the killings. This statement was made long before the guilty verdict was delivered (paragraphs 85-86⁶). In the 2018 case of “Krivolapov v. Ukraine”, the statements of the investigators and SBU officials regarding the proceedings against Krivolapov were an obvious statement of his guilt, as the information about the applicant's identity was disclosed to the public, and he was called a falsifier and a murderer. Such allegations were repeatedly voiced in a documentary film produced with the support of the State authorities and contained a video recording of the applicant's confession to the police (paragraphs 130-131⁷).

Analysing the above facts, the ECHR concludes that the violation/compliance with the requirements of Article 6 paragraph 2 ECHR depends on positive or

¹ European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

² Ibidem, 1950.

³ Judgment of the European Court of Human Rights in the Case No. 15175/89 “Allenet de Ribemont v. France”. (1995, February). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57914%22%7D>.

⁴ Recommendation of the Committee of Ministers of the Council of Europe to Member States No. REC (2003)13 “On the Procedure for Providing Information on Criminal Proceedings Through the Media”. (2003, July). Retrieved from <https://cedem.org.ua/library/rekomendatsiya-rec-2003-13-shhodo-nadannya-informatsiyi-cherez-zasoby-masovoyi-informatsiyi-stosovno-kryminalnogo-sudochynstva/>.

⁵ Judgment of the European Court of Human Rights in the Case No. 36650/03 “Dovzhenko v. Ukraine”. (2012, January). Retrieved from <https://hudoc.echr.coe.int/?i=001-174579>.

⁶ Judgment of the European Court of Human Rights in the Case No. 20437/05 “Shagin v. Ukraine” (2009, December). Retrieved from <https://hudoc.echr.coe.int/?i=001-96112>.

⁷ Judgment of the European Court of Human Rights in the Case No. 5406/07 “Krivolapov v. Ukraine”. (2018, October). Rights. from <https://hudoc.echr.coe.int/?i=001-191985>.

negative answers to the following questions: did the public statement by the authorities prompt the opinion of the guilt of the person, and could this statement influence the assessment of the facts by the relevant judicial authority? In addition, in the judgment of the ECHR in the case of “Krivolapov v. Ukraine” 2018, the Court draws attention to its well-established principle that Article 6(2) of the ECHR prohibits officials from declaring a person guilty before a court verdict¹ is delivered. Officials may only inform the public about the progress of criminal proceedings, in particular, by highlighting the facts of serving notices of suspicion, detention or confession, provided that such statements are reasonable and prudent. At the same time, important attention should be paid to the choice of words used by officials to comment on the course of investigation of high-profile criminal proceedings (paragraph 129²).

In accordance with the ECHR case-law, a number of standards have been developed for assessing reports and comments on criminal proceedings by public officials. In particular, in the case of “Dovzhenko v. Ukraine” in 2012, it is stated that it is important to fundamentally distinguish between a statement of suspicion of a person of committing a criminal offence and a statement of a criminal offence, which is announced in the absence of a court verdict. Particular attention is paid to the choice of words in the statements of officials if they are made public before the trial and conviction of a person of a criminal offence (paragraph 48³). In addition, it is necessary to draw a conclusion about the violation of the presumption of innocence by a certain statement of a public official in the context of the specific circumstances under which this statement was made (paragraph 48⁴). The actual content of the statement, rather than its literal form, is also important. For example, the Government of Latvia in the case of “Lavents v. Lettonie” argued that its representatives had never officially called the applicant guilty. However, the Court noted that in an interview, the judge stated that she did not know whether the verdict would be partially acquittal or guilty. According to the ECHR, such a statement indicates that the judge is already convinced of the applicant’s guilt, if not in full, then at least on one of the charges. This wording excludes the possibility of finding the applicant completely

innocent. In another interview, the judge expressed her great surprise at the fact that the defendant persisted in pleading not guilty to all charges. In addition, the judge suggested in the interview that the defendant should prove his innocence to the court, which is a gross violation of the rules of presumption of innocence (paragraphs 126-127⁵).

The foregoing suggests that the principle of presumption of innocence is violated in cases where a statement by a public official has led the public to believe in the guilt of a person even before a court verdict is delivered and if these statements could have influenced the assessment of the facts in the court decision. When assessing statements made by the authorities to inform the public about the course of an investigation or trial in criminal proceedings that cause public outcry, it is necessary to distinguish between a statement of suspicion of a person of committing a criminal offence and information that a person has committed a criminal offence in the absence of a final court decision; to take into account the context in which the statement was made; and to take into account the actual content of the statements made by the authorities.

In addition to the above, it is necessary to pay attention to the issue of determining the rules of the principle of presumption of innocence in time. This issue is addressed both in the ECHR judgments and in national court practice. Thus, an analysis of the provisions of the CPC of Ukraine, the Criminal Code of Ukraine, the Constitution of Ukraine, and the ECHR leads to the conclusion that a person has the right to be presumed innocent of a criminal offence until his or her guilt is established by a court verdict that has entered into force. Thus, according to paragraph 2 of Article 6 of the ECHR⁶, everyone accused of a criminal offence is presumed innocent until proven guilty according to the procedure established by law. A similar provision is contained in part 1 of Article 17 of the CPC of Ukraine⁷, which specifies that until a person’s guilt is proved in accordance with the procedure established by the Criminal Procedure Code of Ukraine and a court decision of guilt is delivered that has entered into force, that person cannot be subjected to criminal punishment. The CPC of Ukraine defines the moment when the verdict of the court of first instance comes into force: 1) if no appeal has been filed, then

¹ European Convention on Human Rights. (1950). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

² Judgment of the European Court of Human Rights in the case No. 5406/07 “Krivolapov v. Ukraine”. (2018, October). Retrieved from <https://hudoc.echr.coe.int/?i=001-191985>.

³ Judgment of the European Court of Human Rights in the Case No. 36650/03 “Dovzhenko v. Ukraine”. (2012, January). Retrieved from <https://hudoc.echr.coe.int/?i=001-174579>.

⁴ *Ibidem*, 2012.

⁵ Judgment of the European Court of Human Rights in the Case No. 58442/00 “Lavents v. Lettonie”. (2002, November). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-65362%22%7D>.

⁶ European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

⁷ Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-1775>.

after the deadline for filing an appeal (thirty days) has expired; 2) if an appeal has been filed against a court decision, and it has not been cancelled, then the verdict of the court of first instance comes into force after the relevant decision has been made by the court of appeal (parts 1, 2 of Article 532 of the CPC of Ukraine¹).

This indicates that the right to the presumption of innocence is valid until the verdict enters into force. In other words, the principle of presumption of innocence applies to the following stages of criminal proceedings: pre-trial investigation, preparatory proceedings, trial, and appeal proceedings (if the parties file an appeal). The ECHR has drawn attention to this issue, in particular, in the case of “Konstas v. Greece” of 2011, which stated that the presumption of innocence cannot cease to apply at the appeal stage because the accused was convicted in the first instance. To conclude otherwise would contradict the purpose of the appellate stage, where the appellate court is obliged to review the decision of the first instance court on issues of fact and law. In such cases, the presumption of innocence will not apply to proceedings aimed at reviewing and setting aside a court judgement that has not yet entered into force (paragraph 36 of the judgement²). However, the rules of presumption of innocence no longer apply to the stage of cassation review of a court decision. After all, unlike the appellate procedure, cassation appeals are subject to court decisions that have already entered into force.

At the same time, it should be noted that finding a person guilty by a court verdict that has entered into force does not cancel the right to be treated as an innocent person, which he or she had before the entry into force of this court verdict. Thus, the ECHR judgement in the case of “Nešťák v. Slovakia” emphasizes that the fact that the applicant was eventually found guilty and sentenced to a certain term of imprisonment cannot deprive him of his original right to be presumed innocent until proven guilty according to law (paragraph 90³). In this case, it is noted that the presumption of innocence under Article 6(2) will be violated if a court decision or a statement by a public official regarding a person accused of a criminal offence reflects the opinion that he or she is guilty before his or her guilt has been proved in accordance with the procedure established by law. In the absence of a formal conclusion, it is sufficient that there

is some justification indicating that the court or the relevant official considers the accused guilty, while the premature expression of such an opinion by the court itself inevitably contradicts the presumption of innocence. Thus, in the case at bar, the regional court in its interim decision asserted that the applicant had proved the commission of the criminal offence charged against him and noted that the motive for the crime was financial needs, and the manner of its commission indicated the degree of corruption of the applicant. According to the ECHR, such allegations, which are set out not in the verdict, but in the interim court decision, imply the applicant's guilt before it has been proved in accordance with the procedure established by law (paragraphs 88, 89⁴).

The relevant statement is also contained in the decision of the Supreme Court of 2018 in case No. 461/3797/17⁵, which notes that before the official court findings on the guilt of a person are made, it is sufficient to announce the assumption of guilt of a person in committing a criminal offence to violate the principle of presumption of innocence. This rule is quite relevant for such court decisions as a preventive measure or a search warrant. All court decisions are published in the State Register of Court Decisions, and erroneous judgements made in them about the guilt of a person in committing a criminal offence would contradict the principle of presumption of innocence.

Particular attention should be paid to determining the effect of the rules of presumption of innocence for persons in respect of whom an acquittal was delivered or proceedings were closed on rehabilitative grounds. Thus, in the judgment in the case of “Grabchuk v. Ukraine” of 2006, it is noted that the rules of the presumption of innocence apply to cases of closure of criminal proceedings. In particular, the said judgment of the ECHR states that the limits of paragraph 2 of Article 6 of the Convention also apply to court decisions made after the termination of criminal prosecution or acquittal (paragraph 42⁶). And in the case of *Allen v. The United Kingdom* of 2013, it is stated that the presumption of innocence protects persons who have been acquitted by a court or against whom criminal proceedings have been closed from being treated as guilty of the alleged crime. After all, without a defence that would ensure respect for an acquittal or a decision to close criminal

¹ Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-1775>.

² Judgment of the European Court of Human Rights in the Case No. 53466/07 “Konstas v. Greece” (2011, May). Retrieved from <http://hudoc.echr.coe.int/eng?i=001-104858>.

³ Judgment of the European Court of Human Rights in the Case No. 65559/01 “Nešťák v. Slovakia”. (2007, February). Retrieved from <http://hudoc.echr.coe.int/eng?i=001-79608>.

⁴ *Ibidem*, 2007.

⁵ Resolution of the Supreme Court of Ukraine in the case No. 461/3797/17. (2018, May). Retrieved from <https://reyestr.court.gov.ua/Review/74021985>.

⁶ Judgment of the European Court of Human Rights in the case No. 8599/02 “Grabchuk v. Ukraine”. (2006, September). Retrieved from <https://hudoc.echr.coe.int/?i=001-76950>.

proceedings, the guarantees of a fair trial will be imaginary, not real. After the criminal proceedings are completed, the reputation of the person and the way this person is perceived by society is also at stake¹.

Therefore, the above allows identifying the following rules of the presumption of innocence in time: this guarantee is valid until the court verdict enters into force (it is valid at the stage of pre-trial investigation, preparatory court proceedings, trial, and appeal proceedings); finding a person guilty in accordance with the procedure established by law does not cancel his/her original right to the presumption of innocence, which he/she had at the time when the verdict was not yet passed; the adoption of an acquittal or dismissal of criminal proceedings on rehabilitative grounds requires respect for the lawful decision to find a person not guilty and the appropriate treatment of the person.

Violations of the principle of presumption of innocence are quite common in other European countries. Thus, T.I. Fuley (2012), having analysed the practice of the ECHR, identifies the following violations of paragraph 6 ECHR, which were committed by the authorities when informing the public about the course of criminal proceedings: the message that the applicant is an instigator of murder, which the police commissioner announced at a press conference in the presence of other high-ranking police officers; the statement of the Prosecutor General in the media that there is sufficient evidence of the guilt of the Minister of Defence, and the statement of the Speaker of the Parliament that he is confident that the Minister of Defence received a bribe for the promise of illegal services; information set out in the order of the Prosecutor General on dismissal from office in connection with the commission of a criminal offence by the applicant, which was issued immediately after the commencement of criminal proceedings and before the court's guilty verdict; statements by high-ranking officials about the guilt of the person, despite the existence of an acquittal.

When studying the presumption of innocence, scholars have often paid attention to the standards of implementation of this rule in the case law of the ECHR (Syza, 2018). Such studies have been conducted in the context of proving the circumstances of a criminal offence (Myroshnychenko, 2016), in the context of ensuring the rule of law (Mykhaylenko, 2019) or guaranteeing the right to a fair trial (Zelenskyi, 2017). At the same time, the problem of publishing information about a criminal offence

in compliance with the rules of presumption of innocence is only addressed in some studies (Khablo & Boyko, 2022). In particular, this issue is raised in the works of W.C. Itheme (2020), F. Seoane Pérez & L. Valera-Ordaz (2021) and O.Yu. Khablo (2022). The research of these scholars focuses on the problem of determining the limits of admissibility of disclosure in the media of information about a person suspected of committing a criminal offence and information about the progress of criminal proceedings. After all, in this case, there is a problem of maintaining the balance between the right of a suspect or accused person to the presumption of innocence and the right guaranteed by Article 27 of the CPC of Ukraine² and Article 6(1) of the ECHR³, which states that everyone has the right to a public hearing.

Thus, K. Chumak (2017) argues that journalists who report on high-profile crimes can always use the provisions of the Law of Ukraine "On Information"⁴ regarding socially important information. At the same time, the scholar emphasizes that a journalist should be prepared to defend his or her belief that the public's right to receive such information outweighs the right of another person to keep it secret. In contrast, V. Nor (2011) notes that the media and journalists have the right, and even the obligation, as "guardians of democracy" to inform the public about criminal offences and persons under pre-trial investigation, as well as the progress of the trial. However, this should be done without expressions or language that could lead the public to believe that a person is guilty or deserves severe punishment before the case is tried and without the expectation of such a verdict. F. Seoane Pérez & L. Valera-Ordaz (2021) also believe that published information from the media should not convince the public and jury of the guilt of a suspect. It is noted that although the press largely adheres to the presumption of innocence, insufficient attention is paid to oral statements, which leads to bias in the coverage of information.

It is worth noting that the opinion of scholars who believe that this problem should be solved from the point of view of maintaining a balance between the public interest, which involves informing about criminal proceedings, and the interests of the suspect or accused, who should be guaranteed the right to the presumption of innocence. It is in the context of finding a balance of public and private interests that compete in criminal proceedings that further scientific research on the presumption of innocence in criminal proceedings should be carried out.

¹ Judgment of the European Court of Human Rights in the case No. 25424/09 "Allen v. The United Kingdom". (2013, July). Retrieved from <http://hudoc.echr.coe.int/eng?i=001-122859>.

² Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-1775>.

³ European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

⁴ Law of Ukraine No. 2657-XII "On Information". (1992, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/2657-12#Text>.

■ Conclusions

The above study allows determining and summarizing internationally recognized standards of application of the presumption of innocence rules that guarantee the fairness of trials and the rule of law in criminal proceedings. In particular, ensuring the presumption of innocence in criminal proceedings requires ensuring that this right is effective, not theoretical or imaginary. The implementation of the presumption of innocence principle is a prerequisite for a fair court decision, as it prevents the formation of an accusatory judicial bias or premature public opinion on the guilt (innocence) of the accused, and ensures respect for the court decision. In deciding whether the principle of presumption of innocence was violated by public officials when informing the public about the progress of criminal proceedings, the ECHR is guided by the answers to the following questions: did the officials' statements prompt the public to believe in the guilt of the person before the court passed the sentence, and could these statements have influenced the assessment of the facts in the court decision? When assessing statements made by the authorities, it is necessary to distinguish between a notice of suspicion of a person of committing a criminal offence and a statement that a person has committed a criminal offence in the absence of a final court verdict, to consider the context in which such a statement was made and to consider the actual content of the statements. The presumption

of innocence has a certain time limit. Thus, it is valid until the court verdict enters into force. At the same time, the entry into force of a court verdict of guilty does not cancel the initial right of a person to the presumption of innocence that was in force before that moment. The adoption of an acquittal or the closure of criminal proceedings on rehabilitative grounds requires that the person be found not guilty and treated accordingly. Considering and adhering to these rules, developed by the case law of the ECHR, in law enforcement practice will ensure a well-established and unified application of the presumption of innocence as a principle of criminal proceedings, which will contribute to the adoption of a fair court decision and the establishment of the rule of law as a general legal value. At the same time, the above summary of international standards for the implementation of the presumption of innocence rules will not only help to ensure the unification of law enforcement practice, but will also serve as a basis for developing qualitative changes and additions to criminal procedure legislation. Determining the content of these amendments should be the task of further research in this area.

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■ Conflict of Interest

None.

■ References

- [1] Boyko, O.V. (2021). The presumption of innocence as a security of the right to a fair trial. *Law and Society*, 2(1), 171-177. doi: 10.32842/2078-3736/2021.2.25.
- [2] Chumak, K. (2017). [Presumption of innocence in national legislation and practice of the European Court of Human Rights](#). *Scientific Journal of the National Academy of the Prosecutor's Office of Ukraine*, 2(14), 177-183.
- [3] Coleman, M. (2021). Right without remedy? The development of the presumption of innocence at the International Criminal Court. *International Criminal Law Review*, 22(5-6), 875-894. doi: 10.1163/15718123-bja10107.
- [4] Forejtová, M. (2022). [The impartiality of judge and the principle of presumption of innocence in the light of recent ECTHR case law](#). *Czech Yearbook of Public and Private International Law*, 13, 144-158.
- [5] Fuley, T. (2012). [Presumption of innocence: Conceptual approaches](#). *Word of the National School of Judges of Ukraine*, 1(1), 39-53.
- [6] Theme, W.C. (2020). [Blackness in America and the presumption of innocence: How the American police and mass media poisoned everything](#). *The Journal of Human Rights, Semi-Annual*, 15(2), 153-174.
- [7] Khablo, O.Yu. (2022). [Ensuring the presumption of innocence when informing the public in mass media about criminal proceedings](#). In *Communication as a factor of transparency of social interaction: Psychological, historical, legal, economic and political dimensions* (pp. 227-234). Olsztyn: Elk. Printing Department UWM in Olsztyn.
- [8] Khablo, O.Yu., & Boyko, O.V. (2022). *The right to a fair trial in the criminal justice system of Ukraine*. Kyiv: Kafedra Publishing Center.
- [9] Mamka, G.M. (2018). *Fundamentals of criminal proceedings*. Kyiv: Greta.
- [10] Mykhalenko, V.V. (2019). [Implementation of the principle of the rule of law in criminal proceedings](#). Kyiv: Palivoda A.V.
- [11] Myroshnychenko, T.M. (2016). [Implementation of the principle of presumption of innocence in the process of criminal procedural evidence](#). *Scientific Bulletin of the Uzhhorod National University. Series: Law*, 40(2), 118-122.

- [12] Nor, V.T. (2011). [Presumption of innocence as a constitutional basis of criminal proceedings and its application in the practice of the European Court of Human Rights](#). *Journal of the National University "Ostroh Academy". Series: Law*, 1(3), 1-24.
- [13] Rozenbergs, J. (2022). Permissibility of the reverse burden of proof and its limits in criminal proceedings in the context of the presumption of innocence. *Law: Journal of the University of Latvia*, 15, 266-281. [doi: 10.22364/jull.15.18](#).
- [14] Seoane Pérez, F., & Valera-Ordaz, L. (2021). [Stolen innocence? Observance of the EU directive on presumption of innocence by Spanish crime reporting](#). *Communication and Society*, 34(3), 15-30.
- [15] Stoykova, R. (2021). Digital evidence: Unaddressed threats to fairness and the presumption of innocence. *Computer Law and Security Review*, 42, article number 105575. [doi: 10.1016/j.clsr.2021.105575](#).
- [16] Svoboda, T. (2023). Historical development of the presumption of innocence. *Legal-Historical Studies*, 53(1), 149-163. [doi: 10.14712/2464689X.2023.10](#).
- [17] Syza, N.P., & Matohnyuk, O.D. (2018). [Presumption of innocence as a component of the right to a fair trial in the practice of the European Court of Human Rights](#). *Herald of Criminal Justice*, 3, 36-44.
- [18] Tertyshnyk, V.M. (2018). [Presumption of innocence: an integral legal principle and its application in the performance of the defense function](#). *Legal Position*, 1(20), 120-126.
- [19] Villamarín López, M.L. (2021). Recent European Court of Justice case-law on Directive 2016/343 on the presumption of innocence (Milev, RH & DK): Are pre-trial detentions covered by this instrument? *ERA Forum*, 22(1), 137-146. [doi: 10.1007/s12027-021-00657-7](#).
- [20] Yu, F. (2022). Putting the "presumption" back in the "presumption of innocence". *International Journal of Evidence and Proof*, 26(4), 342-358. [doi: 10.1177/13657127221124361](#).
- [21] Zelenskyi, S.M. (2017). [Presumption of innocence as a guarantee of justice in criminal proceedings](#). *Law and Society*, 5, 244-249.

Міжнародні стандарти застосування презумпції невинуватості в кримінальному процесі

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■ **Анотація.** Презумпція невинуватості є міжнародно визнаним стандартом кримінального судочинства. Утім правозастосовна практика засвідчує відсутність правової визначеності щодо розуміння та порядку реалізації окремих положень цієї засади кримінального провадження. Метою публікації є визначення та систематизація міжнародно визнаних стандартів гарантування права на презумпцію невинуватості. Під час дослідження застосовано такі методи пізнання, як порівняння, аналіз, узагальнення, системний підхід, що надали можливість описати результати й обґрунтувати отримані висновки. Визначено, що згідно з практикою Європейського суду з прав людини метою застосування презумпції невинуватості є: забезпечення справедливого суду шляхом недопущення обвинувального судового ухилу; запобігання формуванню передчасної громадської думки щодо винуватості/невинуватості обвинуваченого, що може негативно позначитися на неупередженості суду; захист осіб, щодо яких було ухвалено виправдувальний вирок або щодо яких провадження було закрито за реабілітуючими підставами. Забезпечення презумпції невинуватості передбачає необхідність гарантування того, що це право буде реальним, а не уявним. Встановлено, що під час з'ясування, чи було порушено принцип презумпції посадовими особами державних органів під час інформування суспільства про рух кримінальних проваджень, Європейський суд з прав людини враховує, чи спонукала заява посадових осіб громадськість повірити у винуватість особи до винесення судом вироку та чи могли ці твердження вплинути на оцінку фактів під час винесення судового рішення. Оцінюючи повідомлення представників влади, необхідно розрізняти заяву про підозру у вчиненні кримінального правопорушення та заяву про те, що особа здійснила кримінальне правопорушення за відсутності вироку; ураховувати, у контексті яких обставин було зроблено заяву, і зважати на реальний зміст висловлювань. Обґрунтовано правила дії презумпції невинуватості в часі: діє до моменту набрання вироком суду законної сили; обвинувальний вирок суду не відмінює право особи на презумпцію невинуватості до моменту набрання ним законної сили; ухвалення виправдувального вироку чи закриття кримінального провадження з реабілітуючих підстав вимагає визнання особи невинуватою та відповідного поведження з нею. Проведене дослідження забезпечить уніфіковану правозастосовну практику діяльності органів досудового розслідування, прокуратури та суду щодо дотримання правил дії презумпції невинуватості, що сприятиме утвердженню верховенства права

■ **Ключові слова:** публічність розгляду справи; упередженість; обвинувальний вирок; виправдувальний вирок; справедливість судового рішення; Європейський суд з прав людини