

Brief Analysis of the Importance given to the Presumption of Innocence at International and National Level

*By Oana Elena Iacob**

The aim of this study is to analyse some aspects related to the presumption of innocence - one of the fundamental principles of the criminal trial, also emphasizing the importance given to it at international level, highlighted by the numerous documents with such a(n) (international) character. Among them are those we referred to in the study. Our research aims at highlighting whether this important presumption is given due attention internationally, as well as at the level of the national legislations of various European states and beyond. At the same time, we have also followed the way in which, in concrete terms, this presumption is really observed. In this regard, we referred to some examples from the judicial practice of Romania, as well as of other states. At the end of the study, we presented the conclusions we reached regarding the scope of this presumption. At the same time, we have also exemplified the fact that there are also areas of social life where the presumption is not applicable, although it would be desirable.

Keywords: *Presumption of innocence; Principle; Criminal trial; Individual*

Introduction

The legal rules outlined in the Roman Empire in the name of law and morality included the rule that it is better to leave a crime unpunished than to punish an innocent person¹.

The presumption of innocence finds its origin in this rudimentary rule.

Concepts supporting the rights of people not to be persecuted and not to be abused in the activity of combating crime appear later in the works of Montesquieu and Cesare Beccaria. The latter advocated for the publicity of the criminal procedure and the inclusion of the presumption of innocence until the judge pronounces a sentence of conviction, emphasizing in the treatise *On Crimes and Punishments* that a person cannot call himself/herself guilty before the judge's decision and asking what is that right, if not that of force, that empowers a judge to apply a punishment to a citizen, while there are doubts as to whether he/she is guilty or innocent?²

*Associate Professor, Faculty of Law and Administrative Sciences, "Dunărea de Jos" University of Galati, Romania.

Email: Oana.Galateanu@ugal.ro

¹See Budişan (2017).

²See Beccaria (2001) at 68.

Regulating the Presumption of Innocence Principle at International Level

The French Revolution of 1789 generated the great transformation of criminal law and criminal procedural law, also influencing the legislation of all European states. Thus, in the Declaration of the Rights of Man and of the Citizen of 26th August 1789, adopted by the National Assembly composed of representatives of the French population, through the procedural rules-guarantees established for the defence, especially of rights frequently violated in absolutist regimes, the principle is enshrined according to which “*As every man is presumed innocent until he has been declared guilty, [...], any undue harshness that is not required to secure his person must be severely curbed by Law.*” This provision included in art. 9 of the Declaration is considered to be “*the first legal recognition of the presumption of innocence.*”³

Subsequently, in time, until the 20th century, it had not been fully recognised, but on the contrary, various schools and currents supported its removal on the grounds that it would be surpassed by the stage of evolution of the legal system.⁴

The return of the presumption of innocence began as a result of ending World War II, when several legal documents were signed - at regional and international levels – documents defending it, as a way of recognizing and defending human dignity and fundamental rights, including the presumption of innocence. This attitude came as a response to the severe abuses and violations of this principle. It was appreciated at that time that the observance and defence of human rights constitutes an absolute requirement to be fulfilled in order to ensure international peace and social security. It was appreciated that in this way, a balance would be achieved in the relations between the state and individuals, a protection of the judicial process and a protection of fundamental values seriously affected by illegal convictions.⁵

In fact, the progress on the presumption of innocence is closely linked to the progress of human rights. Consequently, on 10th December 1948, the UN General Assembly proclaimed the Universal Declaration of Human Rights, supporting the objective of the Council of Europe to create the closest possible union between the members of the organisation and considering that its fulfillment is possible through the protection and development of human rights and freedoms, provided in Article 11 of the Declaration that “*everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law, in a public trial, at which he/she has had all the guarantees necessary for his/her defence.*”

Subsequently, on 16th December 1966, The UN General Assembly adopted the International Covenant on Civil and Political Rights, which entered into force on 23rd March 1976. Through this Covenant, the parties committed themselves to observe the civil and political rights of people, including the right to life, freedom of association, freedom of expression, and the rights to a fair and just trial.⁶ Article 14(2) of the Covenant states: “*Everyone charged with a criminal offence shall be*

³Talbure (1996) at 18, 22-23.

⁴See also Pavlovici (2016).

⁵See Pușcașu (2010) at 11-14.

⁶<https://ro.wikipedia.org>

presumed innocent until proved guilty according to law.”

At international level, the International Criminal Court expressly establishes the presumption of innocence in Article 66 of its Charter, according to which: *“Everyone shall be presumed innocent until proven guilty before the Court, according to the applicable law.”*

And the African Charter on Human and Peoples’ Rights, adopted on 27th June 1981 in Nairobi-Kenya, regulated in art. 7 that: *“Everyone has the right to a fair trial. This right includes: [...] b. The right to the presumption of innocence until proven guilty by a competent court.”*

The European Convention on Human Rights (signed in Rome on 4th November 1950) includes the presumption of innocence in art.6 para (2) according to which: *“Everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law.”*

From the practice of the European Court of Human Rights it results that, in all cases, the presumption of innocence remains among the principles of law and becomes applicable when human rights are at risk.⁷

In international doctrine, the presumption of innocence has been interpreted as representing a human right⁸ and a fundamental rule of *“procedural fairness in criminal law.”*⁹

The European Court of Human Rights has ruled that *“the provisions of the ECHR Convention must be effective, not theoretical and illusory, the rule being applicable also to the presumption of innocence.”*¹⁰

The Charter of Fundamental Rights of the European Union (adopted in Nice on 7th December 2000) provides in Article 48 that *“everyone charged with a crime shall be presumed innocent until proven guilty according to law.”*

Directive (EU) 2016/343 of the European Parliament and of the Council of 9th 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 proceedings¹¹ was adopted with the aim of strengthening the right to a fair trial in criminal proceedings, by establishing common minimum rules on certain aspects of the presumption of innocence and *“the right to be present at trial in criminal proceedings”* (according to Article 1 of the Directive).

Article 3 of the Directive establishes the obligation for Member States to ensure that suspects and accused persons benefit from the presumption of innocence until proven guilty according to law. The Directive should be applicable to individuals who are suspects or accused in criminal proceedings. It should apply from the moment a person is suspected or accused of having committed a criminal offence or an alleged criminal offence and, therefore, even before that person is informed by the competent authorities of a Member State, by notification or otherwise, that he/she is a suspect

⁷See ECHR Decision in the case of Wemhoff v. Germany, 27th October 1968.

⁸Roberts & Hunter (2013).

⁹Ashworth & Horder (2013).

¹⁰ECHR Decision in the case of Allevet de Ribemont v. France, 10th February 1995. Arădan (2024) at 53.

¹¹With a due date for transposing, it into the internal legislations of the EU member states up to 1st April 2018

or accused. At the same time, the Directive “*should apply to all stages of criminal proceedings until the decision establishing the guilt or innocence of the person suspected or accused of having committed the criminal offence has become final.*” (Point (12) of the Directive).

This EU legislative act includes new rules to ensure the presumption of innocence of those whom the Police or judicial authorities suspect or accuse of having committed a criminal offence, and to guarantee the observance of fundamental rights. In this regard, the Directive refers to:

- The advantage of the presumption of innocence until proven guilty (art. 3) - Any public statement or manifestation by public authorities which might suggest guilt before the court has heard the judgment shall be prohibited, as it is considered to be in breach of the presumption of innocence;
- Public references to guilt (art. 4) - The Directive obliges Member States to take the necessary measures to ensure that, as long as the guilt of a suspected or accused person has not been proven according to law, public statements by public authorities and judicial decisions, other than those relating to guilt, do not refer to that person as being guilty;
- Presentation of suspected and accused persons (art. 5) - It requires Member States to take appropriate measures to ensure that suspects and accused persons are not presented before a court or in public as if they were guilty by means of physical restraint, except in cases where physical restraint is required by the specific circumstances of the case, for reasons of security or to prevent suspects or accused persons from absconding or from contacting third parties (paragraph (2) of Article 5), such as victims or witnesses, for example.
- The burden of proof lies with the prosecuting authorities - Article 6 of the Directive requires Member States to ensure that this burden of proving the guilt of suspects and accused persons lies with the prosecuting authorities and to ensure that any doubt regarding the guilt is in favour of the suspect or accused person.
- The right to remain silent and the right not to incriminate oneself, provided for in Article 7 of the Directive, must also be defended, without being held against suspects or accused persons as providing evidence of their having committed the relevant offence and leading to their conviction.
- The right to be present at the trial is also required to be observed by Member States under Article 8 of the Directive, which provides in paragraph (1) that they shall ensure that suspects and accused persons have the right to be present at their own trial. However, the legal pronouncement of a court decision on the guilt or innocence of the suspect or accused person is also permitted in his/her absence, under certain conditions expressly provided for in paragraph (2) of the same article.

At state’s level, making a comparison, it can be noted that in the Romano-Germanic legal systems, this presumption of innocence is expressly provided for in the criminal legal norms and in the constitutional ones, such as the example of

Italy, France, Romania, Russia and Spain, while in the common law systems there is no express provision of it, but it is rigorously respected.¹²

In Romania, from a historical perspective, this principle was included in the national legislation in 1974 by enacting Decree no. 212/1974 adopting the International Covenant on Civil and Political Rights. Subsequently, by Law no. 30/18th May 1994 whereby the Convention for the Protection of Human Rights and Fundamental Freedoms and the protocols thereto is ratified by Romania, this presumption was reiterated. Currently in Romania this presumption of innocence is enshrined in the Constitution and in the Romanian Criminal Procedure Code. The country's Constitution provides in Article 23, point 11 that "*a person is considered innocent up to the final judgment of conviction.*" The Criminal Procedure Code expressly provides in Article 4, entitled "*Presumption of innocence*", in paragraph (1), that "*any person is considered innocent until his/her guilt is established by a final court decision.*"

Presumption of Innocence and its Role in the Achievement of the Justice Act

As it has been emphasised many times in the doctrine, the greatest value in a state is the individual, and the state has the obligation to defend his/her rights and freedoms recognised at international and national level. In this sense, closely linked to the policy of a state is its criminal policy, which aims to prevent and sanction crime, practically defending the rights and freedoms of people and thus achieving, in concrete terms, the fulfillment of this aforementioned duty of the state.

Criminal norms defend the interests of all members of society. As an instrument for the implementation of criminal policy, one of the duties of criminal law is to defend the values and social relations important for the state, which also include fundamental human rights (as provided for in art. 1 para (3) of the Romanian Constitution).

Referring to the criminal process as a way of implementing criminal law, we note that one of its basic rules is the compliance with the presumption of innocence in the conduct of this process and that this, through its effects, is one of the fundamental human rights.¹³

The presumption of innocence is a logical premise that a person is considered innocent until proven guilty. This presumption has been elevated to the rank of principle - as we have seen, both internationally and nationally - and according to it, any person is considered innocent until the moment when, through a final criminal court decision, their guilt is established. The doctrine emphasised that by including this presumption in the national legislations of the states, a success was achieved against the ideas of the anthropological and positivist schools that supported the existence of inborn criminals and people with a tendency to commit crimes.¹⁴

By elevating this presumption to the rank of a fundamental principle and apart

¹²See Pușcașu (2010) at 17-22.

¹³Iancu (2019).

¹⁴Barbu (2011) at 359.

from other rights that ensure the freedom of the person (such as the right to observe the human dignity, the right to defence, and the right to be informed), a reorganisdefennsation of the criminal trial and a change in the vision of the judicial bodies were achieved, which is necessary to respond to requirements such as:

1. Guilt is decided in the context of a legal judicial process, where procedural guarantees are respected, accusation not being equivalent to establishing guilt;
2. From pronouncing a court decision of conviction and up to the date when it remains final, the defendant is considered guilty;
3. The task of proving guilt lies with the judicial bodies, which is why the analysis of the evidence is done in each phase of the criminal trial, the interpretations of a judicial body not having a mandatory character in the next procedural phase;
4. The court decision to convict must be based on clear evidence of guilt, and in cases where there are doubts that cannot be eliminated by the evidence administered, it is necessary to pronounce a decision to acquit the person.

The presumption of innocence established by art. 6 para 2 of the ECHR Convention generates mainly two types of effects: some relating to the behavior of the judicial bodies - in the sense that they have the duty to protect the procedural rights of the accused, and others regarding the accused - who, as a result of this presumption, is recognised as having the rights to bring evidence for his/her own defence and not to testify against him/her.

From this principle of the presumption of innocence and the consequent right to silence, certain rights for the accused persons result: the burden of proof lies with the judicial bodies; any doubt is in favour of the accused; he/she has the right to have a passive behavior; the prohibition of resorting to the measure of preventive detention in relation to him/her, in order to achieve a quick punishment.

In Romanian doctrine, some specialists¹⁵ have emphasised that the presumption of innocence is fundamental to all procedural guarantees aimed at protecting the person throughout the criminal process, including the right to his/her image, up to the date when, as a result of the correct proof of the concrete circumstances and the fair application of the criminal norms, his/her guilt is definitely established.

The Romanian Criminal Procedure Code (CPC) provides in art.1 paragraph (2) that the rules of criminal procedure aim to ensure the best exercise of awarding judicial bodies, ensuring “*the compliance with the rights of the parties and of other participants in the criminal trial, so that the constitutional provisions, the provisions of the constitutive treaties of the EU, of the other EU regulations in the criminal procedure sphere, as well as of the pacts and treaties on fundamental human rights, to which Romania is a party, are complied with.*” Corroborating these provisions with those contained in art.4 of the Criminal Procedure Code, we conclude that the presumption of innocence stems from the purpose of the criminal trial and represents the foundation of the procedural rights recognised to the suspect or defendant. Thus, the judicial bodies must respect the reality that the mere accusation

¹⁵See Dănilă (2014) at 73-82.

does not lead, with certainty, to the establishment of the guilt of a person.

In fact, the objective of the presumption of innocence is to defend the subject of law - object of criminal investigation, from any arbitrary and abusive measures, by ensuring individual freedom, encouraging the investigation of the truth and by removing the belief that the person against whom a criminal action is being taken is guilty.¹⁶

The role of the presumption of innocence is, on one hand, to ensure the protection of the person under criminal investigation against arbitrariness, in the action to hold him/her criminally liable, and, on the other hand, to ensure that from a legal perspective no one will be accused and penalised unjustly, but the procedure established by law will be followed, through which indubitable evidence is gathered based on which the person's guilt can be established. Otherwise, as provided in art.4 para (2) CPC, *“after the administration of all evidence, any doubt in establishing the conviction of the judicial bodies is interpreted in favour of the suspect or defendant.”*

Some Romanian specialists have also emphasised the important aspect that the presumption of innocence is the procedural basis of the right to defence and the procedural rights given to the accused and that *“only by accepting the thesis derived from the presumption of innocence that the mere accusation does not mean the establishment of guilt (...) regulating the position of the accused is explained as a subject of the criminal procedure, of the defendant as a party in the criminal trial, a position that implies the recognition of procedural rights, up to a procedural position equal to that of the other parties, but also to that of the representative of the Public Prosecutor during the trial, who is a public authority.”*¹⁷

Therefore, the presumption of innocence is reciprocally linked to the principles of lawfulness, equality in rights before the law and the right to a fair trial. This link helps to guarantee that a person will not be the object of abuse of rights and that criminal decisions regarding him/her will be taken not on the basis of subjective interpretations or assumptions, but on the basis of evidence proving concrete facts, administered in compliance with legal norms.

In Romanian doctrine, a definition of the presumption of innocence has been given as representing both a constitutional principle based on which a person is considered innocent as long as a final court decision of conviction has not been pronounced against him/her, and one of the important guarantees of observing the freedom and dignity of persons.¹⁸

Aspects of Comparative Law regarding the Application Domain of Presumption of Innocence

In Romania, the Constitutional Court has ruled that the presumption of innocence is the foundation of the right to defence and, indirectly, of the procedural rights recognised to the accused/defendant.¹⁹

¹⁶Latino (2022).

¹⁷Theodoru (2008) at 99

¹⁸See also Pavlovici (2016).

¹⁹See Decision no. 474 dated 12th April 2011 of CCR, published in the Official Gazette no. 422/ 16th

The establishment of the presumption of innocence in the Romanian Constitution proves that this presumption produces effects *erga omnes*. Therefore, the presumption of innocence through its effects represents the starting point for recognizing the right of the incriminated/accused person, in the context of any kind of legal liability, of not incriminating himself/herself.

Art. 6 para (2) and (3) of the ECHR highlights that it is desired at international level that in criminal proceedings, the presumption of innocence should exist and operate in all phases and at all jurisdictional levels, its observance being mandatory throughout the criminal procedure, until the final and irrevocable court decision is given.

The observance of this rule has also been established at the level of national legislation. In Romania, the Criminal Procedure Code includes express provisions regarding the recognition and observance of the presumption of innocence. For example, in art. 99 para (2) of the Criminal Procedure Code, it is stipulated that the defendant is not obliged to prove his/her innocence, and in art. 103 para (2) of the Criminal Procedure Code, it is highlighted that “*conviction shall be ordered only when the Court is convinced that the accusation has been proven beyond any reasonable doubt.*” Art. 83, letter a) of the Criminal Procedure Code refers to the defendant’s right not to make any statements during the criminal procedure, “*alerting him/her that if he/she refuses to make statements, he/she will not suffer any unfavourable consequences, and if he/she makes them, these may be used as evidence against him/her.*” From all the norms of the Romanian Criminal Procedure Code, we conclude that accusations must be proven beyond doubt, that the pieces of evidence do not have a value decided in advance by law and that they are subject to the free assessment of the judicial bodies as a result of the analysis of all the evidence administered in specific cases and that any doubt of the judicial body in forming its own conviction will be interpreted to the benefit of the suspect/defendant.

In Portugal, in art. 32 para (2) of the Portuguese Constitution, the presumption of innocence rule is sanctioned within the framework of fundamental rights, stipulating that “*every defendant is presumed innocent up to the moment when the sentence has the authority of res judicata and is brought before the Court as soon as possible, within the limits imposed by guaranteeing his/her defence.*” Under Portuguese law, the presumption of innocence is respected and implemented both in criminal proceedings and in those concerning administrative offenses and in all proceedings in which sanctions may be imposed.²⁰

The Spanish Constitution also provides in Article 24, Section 2, that “*everyone has the right (...) not to testify against themselves, not to plead guilty, and to be presumed innocent.*”

In Germany, this presumption of innocence principle is not expressly provided for in either the Constitution or the Criminal Procedure Code. However, the Federal Constitutional Court has established that it is included in the principle of the rule of law, according to art. 20 para (30), in conjunction with art. 28, para

June 2011.

²⁰Arădan (2024) at 43-44.

(1) of the German Fundamental Law.²¹

In Belgium, there are no provisions regarding this presumption in either the Constitution or the Criminal Procedure Code. However, the Belgian Court of Cassation has ruled that the presumption of innocence is a general legal principle that must be taken into account when analyzing the provisions of the Criminal Procedure Code.²² Another example concerns the right of the defence lawyer and the Public Prosecutor to have a dialogue with the media in order to present them with information on the specific case, but without this being disclosed during the criminal investigation, in order to protect the presumption of innocence.²³

Regarding communication with the media, the European Court of Human Rights (ECHR) has ruled - within its practice, even in cases against Romania - that in some cases where information is published in the media, the presumption of innocence may be violated, and that art. 6 para 2 of the European Convention on Human Rights cannot prohibit the authorities from informing the public about ongoing criminal procedures, but it obliges that the information be confidential and subject to the reservation that is challenged in such a way as to respect the presumption to which we refer.²⁴ In this regard, the ECHR has ruled in cases such as: *Panteleyenco v. Ukraine* by Judgment of 29th June 2006 and *Pavalache v. Romania* of 14th Oct. 2011. In the latter, the Court found that journalists were informed by the prosecutor about the arrest of a defendant, who made statements such as that all the evidence leads to the “*certain establishment*” of his guilt and that his conviction cannot be prevented, stating that “*no one and nothing can escape him from criminal liability.*” Finally, the Court established that such statements clearly incriminate the defendant for acts of corruption, thus leading the public to believe in his guilt and that, by such behavior, the prosecutor violated the presumption of innocence of the defendant.²⁵ Consequently, the spokespersons of the prosecutor’s office or of the courts are not allowed to make public statements while the case is under investigation, other than on the factual situation and the stage of the investigation, which can only result in the assumption that a criminal act has been committed.

In Bulgaria, based on procedural rules, investigators, prosecutors and judges are obliged to provide the public with “*useful, prompt, intelligent and relevant*”²⁶ information, without publicly stating prior opinions regarding specific situations.

In Italy, the Constitution provides in art.27 that “*the accused is not considered guilty until final conviction.*”

In Switzerland, the presumption of innocence is regulated both in the Constitution and in the Criminal Procedure Code. Thus, according to art.10 of the Swiss Procedure

²¹Ruling of the Federal Constitutional Court of Germany, Karlsruhe, which ruled that the presumption of innocence is applicable throughout the entire period of the procedure according to the principle of the rule of law, BVerfGE 116/77 of 13th Jan. 1981

²²Decisions of the Belgian Court of Cassation no. 438, AR P.03.1011 F, AC 2003 of 17th Sept. 2003, no. 119 AR P. 04. 0260.F, AC 2004, of 7th April 2004; no. 32, AR P.08.1860.F, AC 2009 of 14th January 2009

²³Art.28 quinquies and 57 Belgian Criminal Procedure Code, apud C-M Arădan, op.cit, p.45

²⁴<https://avocatcorogeanuana.ro/prezumptia-de-nevinovatie-perspectiva-juridica>

²⁵ECHR, Judgment of 14th October 2011 in the case of *Pavalache v. Romania*, paragraphs 120-122

²⁶Ethical Code of Conduct of Bulgarian Magistrates of 20th May 2019, sections 3.3 and 7.4

Code, “every person is presumed innocent until convicted by a final judgment”, and art.113 establishes that “the accused is not obliged to testify against himself/ herself (...), he/she has the right to refuse to testify and to refuse to cooperate in the procedure (...)”

In Lithuania, the Fundamental Law provides in art.31 para (1) the presumption of innocence. The Constitutional Court of Lithuania has recognised this presumption as one of the “most important guarantees of human rights and freedoms.”²⁷

This guarantee is an obligation pertaining to public institutions and civil servants of not publicly stating that a person is the perpetrator of a crime until he/she has been found guilty by a final judgment.²⁸

As we have mentioned, in common-law legal systems, this presumption is not expressly stated, but it is observed. The United Kingdom, for example, does not grant the ECHR the authority of an international treaty with direct effect in its domestic law, but within its Anglo-Saxon legal system based on judicial precedent, in criminal matters, the prosecution has the task of proving the guilt of the accused person. Testimony given under the influence of any form of coercion loses its effectiveness.

Within the American legal system, the presumption of innocence is individualised by the fact that only the State, through the prosecutor, has the obligation to prove the perpetration of the acts as certainly as possible, the accused person not being obliged to declare anything regarding them, and the jury will not be obliged to take into account the assumptions unfavourable to the accused solely on the grounds that he/she has been accused of committing a criminal act and is therefore represented by a lawyer before the Court.²⁹

Regarding the observance of the presumption of innocence, the ECHR has ruled in several cases, of which we will mention only a few below.

In one case³⁰, the ECHR ruled that a finding of a court of law that induces the guilt of a person is contrary to the presumption of innocence. In this case, the plaintiff, who was investigated for aggravated theft, was arrested on 24th September 1991. On 20th December 1991, the trial court acquitted him due to lack of sufficient evidence of guilt and ordered his release. The Appeal Court overturned the acquittal and sentenced him to two years in prison. The Supreme Court, which appealed, ordered the reversal of the conviction and the referral of the case to The Appeal Court. Following the retrial, the plaintiff was acquitted due to lack of sufficient evidence. As a result, the plaintiff requested pecuniary compensation for the detention he suffered and the payment of court costs. His requests were rejected on the grounds that several witnesses supported his guilt so that there were reasonable grounds to believe that he had committed a crime and, for this, his preventive arrest was lawfully ordered.

In another case concerning a solution of the Austrian courts, the ECHR

²⁷Constitutional Court Decisions No. K T3-N2/2017, 24th February 2017, No. KT13-N5/2019 of 18th April 2019

²⁸Arădan (2024) at 45-46.

²⁹See also Arădan (2024) at 187-195

³⁰ECHR, Hibbert v Netherlands decision, 26th January 1999, Art. 6 ECHR – The right to a fair trial.

established that it is not admissible to raise suspicions regarding the perpetration of a crime by a person, after it has been acquitted³¹. In the case, the plaintiff was arrested being suspected of attempted murder. He was subsequently acquitted by the jury by 7 votes to 1, due to the lack of sufficient evidence of his guilt. The plaintiff filed an action for damages for the detention to which he was subjected. The trial court dismissed the request in the council chamber on the grounds that the suspicions against him were well-founded. The ECHR ruled that, since the acquittal decision is final, even if based on a doubt about the defendant's guilt, raising suspicions on perpetrating the act in question, such as those exposed in the Court's decision of rejection, is not compatible with the presumption of innocence.

In another case filed against Austria³², the ECHR ruled that requiring an accused person to prove its innocence through evidence is contrary to the presumption of innocence, which is why the Austrian courts, which handed over the burden of proof to the defendant, violated its presumption of innocence.

Although the principle of the presumption of innocence must be respected and applied in criminal matters, however, as opinions have also been outlined in the doctrine, nothing limits the states, including the EU member states, to apply it in other sectors, whenever this is justified.³³

In Romanian law, even if this presumption we are referring to is recognised exclusively at the level of criminal law, this does not mean that it does not also exist in the sphere of civil law, for example, but under a different terminology, manifesting itself through its characteristic content elements. In civil law cases, the plaintiff has the burden of proof in the sense that it must immediately clarify the lawfulness of the claimed rights, to prove each head of claim or action formulated, with the objective of receiving the solution in its favour of those claimed.

It might be useful to re-evaluate the Romanian Constitution regarding the provisions regarding the presumption of innocence in the sense that it can be ensured in addition to the criminal sphere, also in labor, disciplinary and tort disputes, although we consider that this fact is achieved, however, as we mentioned, by using a different terminology specific to each of these branches of law. We consider that this presumption, elevated to the rank of principle, established at the constitutional level, needs to be applicable and produce legal effects every time procedural protection against abuses is required, without differentiating between the criminal, civil, contravention or tort fields of liability.

As for the presumption of innocence and EU law, it also exists in other branches of law. For example, it is confirmed that it is defended at the EU legislative level, especially with regard to the rules relating to commercial competition. Within them, this presumption is applicable to violations of competition rules targeting enterprises and which may result in the application of fines or periodic penalty payments. In such cases, the rule - according to which any doubt of the court will have to be analysed in favour of the enterprise against which the European Commission has issued a decision finding such a violation - is applied.³⁴

³¹ECHR, Section III, Judgment of *Asan Rushiti v Austria*, 21st March 2000

³²ECHR, Section III, Judgment of *Telfner v Austria*, 20th March 2001

³³Nehl (2014) at 1279-1301

³⁴See the Judgment of the CJEU of 8 July 1999, *Hüls A G v the Commission of the European*

Competition law is a branch of public law that includes sanctions of a contravention nature that are applicable, at the Union and national level of the EU Member States, in situations of non-compliance with the rules contained in competition law and in the TFEU. At the Romanian level, the presumption of innocence is applied to this type of sanctions, as expressly provided for in the country's Constitution and confirmed by judicial practice. In this sense, the Constitution provides in art.15, paragraph 2 that *"the law only provides for the future, except for more favourable criminal or contravention law,"* from which it can be deduced that contravention law is generally similar to criminal law. In practice, the High Court of Cassation and Justice of Romania, in a decision from 2018 (Decision no. 3 of 19th February 2018), established *"the necessity of observing the presumption of innocence in contravention proceedings, the benefit of the doubt being given to the person accused of perpetrating the contravention."*³⁵

Applying the presumption of innocence in competition law has the effect that in the case of contraventions, the proving of the existence of the act and of the persons who committed them and of their guilt, must be carried out by the ascertaining body, with the removal of any doubts. The Constitutional Court of Romania ruled, in decision no. 317 / 9th Sept. 2003³⁶ that *"the mere designation of a person as an offender does not mean establishing his/her guilt (...)"*

We believe that Sports is a field where this principle of the presumption of innocence should be applied, whenever necessary. This is because, for example, in the situation of doping accusations, it was not applied. Consequently, the practice has resorted to the use of indirect evidence through which athletes who are accused strive to prove their innocence. International doctrine has argued³⁷ that *"today's anti-doping policy tends to reverse the innocent until proven guilty rule, since the presumption of innocence is replaced by the suspicion of doping for any extraordinary athletic achievement."*³⁸

Conclusions

Through this study, we aimed to analyse some aspects related to the presumption of innocence and the importance that this presumption receives at international and state level. In this regard, we analysed a series of international agreements and documents that included this presumption in their object and a series of legal provisions from Romania and other states related to the presumption of innocence. At the same time, we analysed a series of studies and opinions presented in the legal doctrine on the matter, and as a result of the study conducted, we reached the following conclusions:

Communities, Case C-235/92, paragraphs 175 and 176; Judgment of the General Court of 15 December 2010, E.ON Energie AG v European Commission, Case T-141/08.

³⁵<https://www.scj.ro/1093/detalii-jurisprudenta?customQuery%D.Key=id&custom query%5Bo%5D.Value=142113>.

³⁶Published in the Official Gazette no. 705/8 oct.2003.

³⁷See Kornbeck (2015) at 172-193.

³⁸Idem; Kayser (2011) at 84-99.

- The presumption of innocence is a truly important one that has a great influence on the image of any person within the society in which he/she lives, as well as on his/her professional, social, economic and implicitly personal evolution;
- This presumption is indeed given due attention at the level of international society, at least at the declarative and legislative level, national states concluding numerous international agreements and conventions that include in their object the obligation of its recognition and observance by all signatories of these conventions and agreements;
- At the national level, the legal norms absolutely necessary for the practical observance of the *erga omnes* presumption of innocence are also adopted;
- In practice, in the vast majority of cases this presumption is observed and elevated to the rank of principle, especially in the sphere of criminal law and criminal procedure; however, there are also cases where it is violated by state organs or individuals;
- We consider that the implementation of this presumption of innocence is useful to be applied also when considering the involvement of individuals and other forms of legal liability other than criminal. In the study, we highlighted that this fact is achieved, even if under a different terminology specific to the specific branch of law, given the fact that, in reality, it is about *guilt* only in the criminal sphere. In addition, in the study, we presented, as an example, branches of law where this presumption operates, such as civil law or commercial competition law.

However, we also presented a field where this presumption is not applicable, although it would be by right to be applicable. It is the field of sports where, as we mentioned in the study, in doping cases, instead of the presumption of innocence, a presumption of doping is manifested towards the investigated athlete for all the successes recorded by him/her and prior to the case where doping was identified. Basically, the suspicion operates that the person investigated had been incorrect throughout the period of his/her sports activity, instead of the presumption of innocence until proven otherwise.

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