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FEATURES OF THE PRESUMPTION OF INNOCENCE IN THE CONCERN OF THE EUROPEAN COURT OF HUMAN RIGHTS

В статті висвітлюються питання щодо особливостей реалізації принципу презумпції невинуватості в світлі практики Європейського суду з прав людини. На підставі проведеного системного аналізу практики Європейського суду з прав людини, автором статті визначено випадки порушення принципу презумпції невинуватості.

Ключові слова: *принцип; презумпція невинуватості; кримінальне провадження; порушення; кримінальне судочинство.*

В статье освещаются вопросы относительно особенностей реализации принципа презумпции невиновности в свете практики Европейского суда по правам человека. На основании проведенного системного анализа практики Европейского суда по правам человека, автором статьи определены случаи нарушения принципа презумпции невиновности.

Ключевые слова: *принцип; презумпция невиновности; уголовное производство; нарушения; уголовное судопроизводство.*

It is important by ensuring proper protection of the rights, freedoms and legitimate interests of the criminal proceedings parties, plays a presumption of innocence as one of the major democratic principles characterizing the constitutional state and its criminal justice system. The efficiency of its operation and use in criminal proceedings, of course, depends on the creation of appropriate mechanisms for its implementation based on certain theoretical positions doctrines of criminal procedural law and international standards and practice of the European Court of Human Rights (hereinafter – ECHR). Therefore, there is a need to study the details of the presumption of innocence in the light of the European Court of Human Rights.

The features of the principle of presumption of innocence in criminal proceedings have been the subject of research in the writings of the legal profession as J. Alenin, V. Voloshina, V. Goncharenko, Y. Groshevyi, O. Kaplina, V. Kryzhanivskyi, O. Kuchynska, L. Loboyko, O. Mikhaylenko, V. Nor, M. Pogoretskyi, V. Popelushko, V. Shybiko, O. Shilo, M. Shumilo, G. Yudkivska, O. Yanovska and other scientists.

The article aims to study the implementation details of the presumption of innocence in the light of the ECHR practice.

Regulations that a person accused of a criminal offense shall be presumed innocent until his guilt is established by law in order, as reflected in the most important in-

ternational instruments, including: Universal Declaration of Human Rights (p. 1, Art. 11) [1]; International Covenant on Civil and Political Rights (p. 2, art. 14) [2]; European Convention on Human Rights (p. 2, art. 6) [3]. Organization for Security and Cooperation in Europe also gained such standards, recognizing that a number of key elements of justice full protection of the inherent dignity and of the equal and inalienable rights serves entitled «considered innocent until guilt is not installed in accordance with the law» (Document of the Copenhagen Dimension of the CSCE, § 5 (19) [4].

Despite the fact that the said imperative provision is contained in the above –mentioned international legal acts and identified in the majority of European countries, including in Ukraine [5; 6], the results ECHR case law indicates that the presumption of innocence, often not fully implemented and strictly violated, including in Ukraine. This is confirmed by a number of judgments of the ECHR concerning infringement p. 2, art. 6 European Convention on Human Rights (hereinafter – the Convention), whose analysis provided an opportunity to identify violations of the presumption of innocence. These cases are: 1) commenting employees of public authorities and the media of criminal proceedings against a person's guilt in a criminal offense long before trial criminal proceedings and in accordance with the court's judgment of conviction; 2) during the implementation of some measures to ensure the criminal proceedings; 3) remand the suspect, accused at trial criminal proceedings in the «cage». Try a more elaborate on these cases.

The ECHR has repeatedly stressed the infringement p. 2, art. 6 of the Convention by commenting employees of public authorities (investigators, prosecutors, judges, etc.) and media guilt of criminal proceedings against a person with a criminal offense long before trial criminal proceedings and in accordance with a court conviction. Thus, in the case of Khuzhin and Others v.s Russia on October 23, 2008 states that the presumption of innocence prohibits the formation of premature court positions, which would appear the idea that a person charged with committing a crime is guilty before when her fault kennel proven according to law. However, this requirement applies to statements of other officials on the progress of the investigation of the criminal proceedings if such statements encourage the public to believe in the guilt of the accused and affect the assessment of the facts of the case by a competent court. [7] This presumption of innocence according to the position of the ECHR in the case «where Allenet de Ribemont v. France on February 10, 1995, does not deny the right of the public to be informed, including the government, for criminal proceedings or fact of its investigation on suspicion of arrest certain individuals, the recognition of the fault. The ECHR has repeatedly emphasized that p. 2, art. 6 of the Convention cannot prevent the relevant authorities to inform the public about the progress of the investigation of criminal proceedings, as this would be contrary to the right to freedom of expression proclaimed art. 10 of the Convention. However, it is wise to oblige work with due care and caution, "as required to respect the presumption of innocence"» [8].

In the case of Daktaras v. Lithuania on October 10, 2000, the ECHR draws attention to the fact that public officials adopt important words, bringing their applications before the trial case against the person and the recognition of its guilty of a particular crime. [9] Thus, we should fundamentally distinguish the message that only someone suspected of a crime and a clear declaration made in the absence of a final judgment that a person has committed a crime. [10]

In repeated violations of p. 2, art. 6 of the Convention by commenting by the public authorities of criminal proceedings ECHR turns his attention to other solutions:

– judgment in the case Lavents v. Lithuania of 28 November 2002: judges interview that she does not know whether the verdict is guilty, acquittal or in part, and so her interview which contained a proposal to the accused to prove his innocence [11];

– judgment in the case Butkevičius v. Lithuania of 26 March 2002: allegations in the press of the Attorney General have «enough solid evidence against» the Minister of Defence of Lithuania, and statements Speaker that he had «no doubt "to obtain bribes minister for" promise illegal services, "and that the Minister" bribes» [12];

– judgment in the case Kouzmin v. Russia on March 18, 2010: allegations of the applicant's guilt of a crime, as reflected in the order of the Prosecutor General of the applicant's release from office immediately after the criminal case and to solve it Court [13];

– judgment in the case Khuzhin and Others v. Russia on 23 October 2008: participate investigator and other prosecutors in the TV program and their description of actions committed by the applicant as a «crime» and that they are guilty of the commission [7];

– judgment in the case Minelli v. Switzerland on 25 March 1983: statements of officials of public authorities blame on the person against acquittal [14];

– judgment in the case Shagin v. Ukraine of 10 December 2009: first deputy prosecutor m. Kyiv, which was placed in 3 different newspapers and what was done long before the drafting of the indictment against the applicant, that the applicant was a «de facto leader» of a group of killers and «his orders were to kill systematic» [15];

– judgment in the case Dovzhenko v. Ukraine on 12 January 2012: statements city department heads and Regional Police Department who provided comments to the media regarding the applicant had committed a criminal offense. However, published information contained explicit statements about the guilt of having committed criminal offenses alleged by the applicant before making judgment [16].

It should be noted that the ECHR does not in all cases finds a violation of the presumption of innocence by commenting by the public authorities of criminal proceedings. Does the statement violates public official presumption of innocence should be determined in the context of the specific circumstances under which such statement is made [9]. For example, in the case of Shuvalov v. Estonia on May 29, 2012, the ECHR did not see a violation of the presumption of innocence. Press releases prosecutors, the message on the website and the statements of officials contained the phrase: «the judge suspected of taking bribes», «case the judge submitted to the court», «judge accused of taking bribes from a person whose case was in its proceedings» «he made a statement during the preliminary investigation, I cannot comment not to violate his right to defense» and the like. ECHR finds no violation p. 2, art. 6 of the Convention in view of the fact that all the wording create a clear picture only charges and not blame the person and press releases contained very little information – only those facts (for example, charge or refer the case to the court) that intended to inform the public, but did not violate the rights of the accused [17].

Important in understanding the presumption of innocence is also the question of whether the means of media and journalists, in particular in its publications, violate the presumption of innocence. In the case of Tourancheau and July v. France on November 24, 2005, the ECHR has been established: The newspaper Liberation, in which Patricia Turansho works as a journalist and Sergio Julie – editor, published an article about the murder of a young girl by task multiple stab wounds. At the time of publication criminal investigation was ongoing. In the investigation had two main suspects, aged guy in «19 and a girl aged» 17 both blamed each other, but the guy was on the outside, while she was in prison. The article described the circumstances of the murder and the relationship between the two suspects in the murder. It was reproduced extracts from statements that she had suspected the police and before the investigating judge and comment suspect the boy who kept in the file or recorded during the interview he gave Mr. Turansho. The applicants were prosecuted under French law to criminal liability for reprint documents were in the file. Although applicants do not dispute that the quotes that

appeared in the newspaper, identical to the case file, they claimed that they had never seen the case, and based solely on an interview with the suspect. The trial court ordered the journalist and editor to pay 10 000 French francs (about 1,500 euros), but the appellate court postponed the payment of a fine. Meanwhile, the girl was sentenced to 8 years in prison for murder, and the boy was 5 years for leaving the person in danger. The applicants alleged in Strasbourg that their criminal penalty violated art. 10 of the Convention. The ECHR found that freedom of speech was provided by law and pursued a legitimate aim of protecting «the reputation and rights of others» and «maintaining the authority and impartiality of justice». Next ECHR assessed whether the restrictions necessary in a democratic society. ECHR stated: if the investigation has not made any findings of guilt suspects article based on the version of events presented by the suspect guy interviewed journalist. This version was opposite versions minor girl who was in custody. According to the ECHR, study that gave the French courts to justify interference with freedom of speech, were «appropriate and relevant» for the purposes p. 2, art. 10 of the Convention. The courts drew attention to the harmful effects of the release of the publication to protect the reputation and rights of suspects and for their right to be presumed innocent [18].

It should be noted that since the presumption of innocence is part of a broader individual rights – the right to a fair trial, it is considered that they spread information on the progress of the criminal investigation and fault suspected or accused is able to undermine the right to a fair trial [19, c. 11]. It is no accident that the Recommendation of the Committee of Ministers of the Council of 10 July 2003 (Recommendation REC (2003) 13 «for information on criminal proceedings through the media,» declared a separate principle number 2 «presumption of innocence» as follows: «Respect for the presumption of innocence is an integral part of the right to a fair trial. Accordingly, views and information about court processes that occur are communicated or disseminated through the media when it does not prejudice the presumption of innocence of the suspect, accused or defendant» [20].

In this context, we note that certain provisions of the current legislation of Ukraine is very limited determine legal safeguards to ensure compliance with the presumption of innocence. Since only art. 59 of the Law of Ukraine «On Television and Radio» stipulates that broadcasting organizations are obliged to «distribute material that would violate the presumption of innocence of the defendant or the court decision» [21]. In view of the above, we consider it appropriate to distribute a duty on all media.

In their decisions ECHR, regarding the issue of disclosure in the media of information on criminal offenses and persons who committed them, finds no violation of the presumption of innocence based on the following: 1) if the person is not in respect of a criminal proceeding, the information of socially dangerous acts and those who committed them, can not violate the presumption of innocence, as it is part of the right to a fair trial, and about him not talking. In this case, the legal situation can be located and dealt with from the perspective of the protection of honor and dignity by civil law in civil proceedings; 2) If a person against a criminal investigation and preliminary inquiry is whether the case went to court for its consideration and resolution, the «journalists who cover criminal proceedings which had not ended, have to make sure that they do not cross certain limits established for the benefit of justice, and that they respect the right of the accused to be presumed innocent [22].

In this regard, it is reasonably considered position V. Nor, who notes that the media means and journalists exercise, and as «guardians of democracy» are obliged to inform the public about committed crimes and persons against whom criminal cases and conducted preliminary investigations as well as the course of the trial, but they should avoid statements and language that would set up public opinion that the person

is a criminal, she deserves severe punishment is to review and resolve the case by the trial court and expect it this sentence. It is under these conditions will be maintained balance between the right of society to be informed about the socially dangerous act, and those who committed them, on the one hand, and the right of people to whom applying these actions, the presumption of innocence and a fair trial [19, c. 13].

ECHR finds also a violation of the presumption of innocence in the case of an official statement about the person accused of a crime reflects the idea that a person is guilty when it was not established by law. That's enough, even in the absence of any formal conclusion that there is some reason to assume that the officer believes the offender [9; 23]. For example, in the case of Grabchuk v. Ukraine on September 21, 2006 the applicant's case was closed by investigators at the pre-trial stage in part because of the lack of evidence of a crime and part of a time limitation applicant liable for negligence. The decision was upheld investigator Vladimir-Volynskyi court. The ECHR noted that in this case the decision to close the criminal case against the applicant was formulated in terms that leave no doubt as to the view that the applicant has committed a crime. In particular, in the judgment of December 4, 2000 the investigator used the words «in the actions of the applicant is the crime» and «the moment when the applicant has committed a crime», and Vladimir-Volynskyi court noted that the applicant acts «are signs of a crime under art. 167 of the Criminal Code of Ukraine». «Proceedings of Vladimir-Volynskyi court, which resulted in the judgment of 26 April 2001, were not criminal in nature and lacked some key elements that usually characterize judicial proceedings. In these circumstances, the ECHR considers that the grounds used by the investigator and Vladimir-Volynskyi court constitute a violation of the presumption of innocence». [24]

Certain infringement p. 2, art. 6 of the Convention, observed in the application of measures to ensure the criminal proceedings, including in Ukraine. It should be noted that the effect of the presumption of innocence applies not only to criminal proceedings, but also other legal relations. Thus, charged with a criminal offense for entering conviction remain in force labor, housing and other rights (for example, p. 7, art. 36 of the Labour Code of Ukraine [25], p. 71 of the Housing Code of Ukraine [26]). Thus, p. 62 of the Constitution of Ukraine stipulates that it is prohibited to treat a person as guilty before the entry into force of conviction [5]. However, the presence of statutory grounds it may apply measures to criminal proceedings. Measures to ensure the criminal proceedings defined in article. 131 Code of Ukraine. Among them, a key place in the context of considering the implementation of the principle of the presumption of innocence, takes such action as removal from office. Thus, in accordance with art. 154 CCP Ukraine removal from office can be made against a person suspected or accused of a crime moderate, serious or particularly serious crime, and regardless of the severity of the crime – for a person who is an official law enforcement agency. Removal from office on the basis of investigative judge during the preliminary investigation or court during the proceedings for a period of two months. In the manner prescribed by Art. 158 Code of Ukraine specified period may be extended [6].

Note that often there are situations where the accused without sufficient justification dismiss from office, and in some cases dismissed at the commencement of criminal proceedings against a person, arguing that his actions discredit the position, rank or institution, organization or undertaking in which it operates. Such actions and motives that caused it may not be consistent with the principle of the presumption of innocence and the breach is strict on that in a number of its decisions indicating the ECHR. Thus, in the case Kouzmin v. Russia on March 18, 2010, it was found that the applicant – District Attorney – was accused of rape in his office underage girl. A few days after the initiation of criminal

proceedings and for two days before being sent to the applicant prosecution Prosecutor General of representation of the applicant's release from his office which stated that «it was found during the investigation … left alone with the girl, Kuzmin made about her rape and other sexual acts…». Based on the facts stated in the presentation, the Prosecutor General of the Russian Federation immediately issued the order following the applicant's release: «April 21, 1998 Motyhynskoho District Attorney, being drunk raped … and made her other sexual acts nature … In relation to A. Kuzmin instituted criminal proceedings, it is a preventive measure in custody. Since this behavior is a disgrace title Prosecutor, A. Kuzmin must be dismissed». The applicant complained that this wording in the order of dismissal violated the principle of presumption of innocence [13].

It should be noted that the verdict, which came into force is grounds for termination only in two cases: 1) the employee was denied by the court to hold certain positions or engage in certain activities; 2) when installed punishment virtually eliminates the possibility of extending the relevant work (p. 7, art. 36 of the Labor Code of Ukraine). In other words, the law does not allow an employee who is in custody, the court issues a final resolution of his guilt of a criminal offense.

Violation of the presumption of innocence is also holding the suspect, accused at trial criminal proceedings in the «cage». According to art. 5 of the Universal Declaration of Human Rights on December 10, 1948 no one shall be subjected to torture or rigid, inhuman or degrading treatment [1], «since all human beings are born free and equal in dignity and rights» (art. 2).

Thus, one of the requirements of the presumption of innocence relation to persons suspected or accused of a crime should be consistent with this presumption. «The suspect or the accused usually do not have to hold the bonds or» cage «during the trial or otherwise submit to the court in a manner that indicates that it can be a dangerous offender» (General Comment number 32, art. 14: Right to equality before courts and tribunals and to a fair trial, the UN Committee on Human Rights, § 30) [27].

«Organization for Security and Cooperation in Europe gained such standards, recognizing to anyone who is deprived of freedom must be treated humanely and with respect for the inalienable dignity and internationally recognized standards relating to the administration of justice and the rights of detainees» (Moscow Document Meeting of the Conference on the Human Dimension of the CSCE, § 23) [28].

In this regard, the ECHR also put the case against Piruzyan v. Armenia on June 26, 2012 In particular the ECHR, interpreting the presumption of innocence, concluded that the maintenance of the person in the «cage», «without specifying the particular reason "just because"» the fact that it is a place where the defendant sits in criminal proceedings «is considered inhuman and so degrading treatment [29]. In such cases, you should consider whether there was a danger that the person can escape injures someone or damage» [30].

Notwithstanding the foregoing, the existing national legislation Ukraine properly regulate the problem in question, only n. 21 Transitional Provisions Code of Ukraine states that the Cabinet of Ministers of Ukraine within one month from the date of publication CPC of Ukraine submit to the Verkhovna Rada of Ukraine on bringing legislative acts in accordance with this Code, including to provide financing «options in the courts of general jurisdiction metal barriers that separate the accused from the court and present citizens, barriers of glass or organic glass» [6]. It has been 2 years since the adoption of the current CPC of Ukraine, but this problem has not been solved.

In our view, even if the general jurisdiction courts replace the metal barriers, that separate the suspect or accused from the court and present citizens, into barriers of glass or organic glass, it does not solve the problem of violation of the presumption of

innocence, because retention of the person points the court directly to the view that the person can be criminal dangerous. Therefore, the construction of glass or organic glass, in our view, can only be made in exceptional cases where there is a reason to believe that the suspect or the accused may injure other present people or cause damage in other way.

In sum, we conclude that the adopted CPC of Ukraine in 2012 created an effective mechanism to ensure proper implementation of the legal principle of the presumption of innocence in criminal proceedings. This is confirmed by a number of its provisions which are removed violations and conflict of laws, about which the ECHR saw violations p. 2, art. 6 of the Convention. It is clear that some of its provisions, including those relating to compliance with the presumption of innocence, need further scientific research on the practice of their application, including the following: measures to ensure the application of the criminal proceedings (improvement issues of detention and the admissibility of evidence in the preparatory proceedings, limiting detention during the trial of criminal proceedings, etc.), holding the suspect, accused at trial criminal proceedings in the «cage».

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Starenkyi O. Features of the presumption of innocence in the light of the European Court of Human Rights.

The article highlights the issue of implementation details of the presumption of innocence in the light of the European Court of Human Rights. The list of international legal acts that define the position that a person accused of a criminal offense shall be presumed innocent until his guilt is established by law in order. Such acts are: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights. It is noted that the Organization for Security and Cooperation in Europe also gained such standards, recognizing that a number of key elements of justice full protection of the inherent dignity and of the equal and inalienable rights serves entitled "considered innocent until guilt is not installed in accordance with the law" .

Based on a systematic analysis of the European Court of Human Rights, the author of the article the incidents of violation of the presumption of innocence. These cases are: 1) commenting employees of public authorities and the media of criminal proceedings against a person's guilt in a criminal offense long before trial criminal proceedings and in accordance with the court's judgment of conviction; 2) during the implementation of some measures to ensure the criminal proceedings; 3) remand the suspect, accused at trial criminal proceedings in the «cage».

Keywords: *principle; presumption of innocence; criminal proceedings; violation; criminal justice.*

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