

## **PRESUMPTION OF INNOCENCE - A CRITERION FOR THE IMPLEMENTATION OF LEGAL INSTITUTIONS**

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**Abstract:** This article focuses on the presumption of innocence as a yardstick for measuring legal system institutions' maturity. The purpose of the research is not only analysis of practical implementation mechanisms of this principle in the system of law applied in the Republic of Uzbekistan but also discovering its influence at all stages of realization process – from pre-trial stage and before revisional instance as well. Special emphasis is placed on the new provision (as of 2023) 94 concerning the presumption of innocence, which has been re-formulated with three different forms: as a procedural principle, an evidentiary rule and a rule against public communication. The research verifies the direct connection of the legal phenomenon “the admissibility of evidence” to such a publicly significant institution as the presumption of innocence and describes its impact on extraprocedural institutions (administrative detention, operative-search activities, punishment). The author believes that the complete implementation of the presumption of innocence is determined by not only a normative side but also by professional legal consciousness of law enforcement officers.

**Keywords:** presumption of innocence, criminal procedure, constitutional reform, admissibility of evidence, habeas corpus, revisional instance, legal consciousness, Republic of Uzbekistan, judicial reform, burden of proof.

### **Introduction.**

The prima facie rule is not a mere dry text of the code, but “the very core and essence” of judicial justice or legality – it is nothing less than an aspect or dimension that expresses, to its fullest extent, the content exemplified by the concept of legal interaction between state and individual. A detached man is innocent till the state (its jurisdiction) within its competency (sphere), proves such person's guilt in manner as provided by law. We are not merely speaking of red tape in the courtroom; we are also addressing the inviolability of human dignity when confronted with state power. According to E. Narbutayev, the purpose of introduction of institute of the investigating judge is "preventing the exacerbation of tendency to conversion prokurorskaktually on a predesign stage," i.e., in fact, it's an institutional reflection terribly accordingly [1].

The process of shaping the principle in Uzbekistan was intricate and multifaceted. During the early years of independence it was more a de cartee political statement and not yet fully realised in practice. Throughout 1990s up until late criminal authorities tended to believe, while prosecuting so to speak, that the defendant was guilty and thus it was necessary for the defense to prove their innocence. M.S. Strogovich wrote that "the principle of the innocence presumption is a point-of-departure of the criminal process, and below this nothing can be done procedurally" [2]. As a bottoms-up result of reforms in 2017 and the constitutional changes adopted in 2023, this principle has now acquired explicit normative status. As B.Kh. Pulatov and Yu. S. Pulatov, in his criminal procedural researches, the nature of proof and a system of it's evaluation were fundamentally altered [3].

The legal content of the presumption of innocence in Uzbekistan is well structured on the hierarchical basis. At the summit of the pyramid we have Article 28 of the Constitution, in the version I suggest be adopted: "A suspect shall not be deemed guilty until his guilt is established by a court verdict that has entered into legal force in accordance with law. The defendant is under no onus to prove their innocence and may exercise his/her right to silence at any time" [4]. The importance of this constitutional norm is that already on the stage of preliminary investigation, inquiry and even pre-trial investigation it fixes the legal status of the accused and a suspect along with the court.

As it follows from the studies of R. Matkhalikov and Yu. Pulatov According to Article 28 paragraph 5 of the Constitution, moreover, "[n]o-one shall be obliged to testify against himself or his family" which has together with the right to silence, become part of the normative implication of the presumption (5). That's how this rule would operate in practice: should the alleged wife of a defendant have been compelled to give evidence against her husband during investigations, such evidence would ipso facto be unreliable.

Example: citizen A. is indicted for commercial fraud. The investigation arsenal of the investigating authorities with which they have been "fobbing" against him is known, however most of are indirect. Under Article 28 of the Constitution, A. is presumed innocent until sentence in a court with legal jurisdiction becomes final and does not bear any responsibility to prove his innocence. This persons guilt must be established by irrefutable proofs on the part of investigation agencies and prosecutors, otherwise the court must acquit.

The constitutional norm follows through in article 23 of the Code of Criminal Procedure: "For all doubts concerning the guilt, which after examining all the evidence, cannot be solved and leave place for a pure assumption must be taken into consideration defensively to suspect, accused or defendant" [6]. It was a well-known fact at the time that "unproven guilt is as good as innocence" (Tashkent city court) [7]. That doubts which may exist in the application of the law are to be resolved in favor of the accused is imperatively required by law. This is precisely why this 'otherwise' defense life preserver is the strongest of them all because it forces a prosecution to be at its best.

The procedural use of the presumption of innocence starts even before the trial, in pre-trial (pre-court) proceedings: investigation and preliminary investigation. In Uzbekistan, the "Habeas Corps" is tied with this irremediably. According to E. Narbutayev, the investigating judge "fulfills functions of a body with jurisdiction in pre-trial order and authorized to solve questions concerning approval procedural resolution on criminal case by investigative and inquiry bodies"[1]. Any limitation of the rights of a citizen - depriving liberty for more than 48 hours, arrest, house arrest and dismissal, is implemented exclusively under the decision of a court [8]. By introducing investigating judges in district and city criminal courts from January 1, 2025 onwards this institution was further amplified [8].

Example: citizen B. was arrested for 48 hours, with an allegation of illegal drug trafficking. Prosecutors are asking the court to remand him in custody. The investigating judge must not be limited to examining whether there are official documents but checked: "Are there facts that can convince the reasonable man with regard to the existence of a suspicion as to the perpetration of an offence by this person?" If the probe is based only on verbal evidence of an anonymous informer, the magistrate has to deny the imprisonment. This threshold is equivalent to the IPC "reasonable suspicion" test in the case Fox, Campbell and Hartley against Great Britain [9].

Presumption is also expressed in the provision that testimony shall not be elicited during investigation by torture or other cruel treatment. Under article 95 of the Criminal Procedural Code, "Obtained through violation of the law evidence is not accepted by Court and cannot be used as a ground for accusation" [6]. In particular, it was suggested in the Resolution of the Plenum of the Supreme Court No. 24 dated August 24, 2018 that "if close relatives are heard as witnesses or victims without their consent, such evidence shall be deemed unacceptable" [10].

For instance, suspect V. admitted to the charges himself, but in a subsequent court appearance claimed that he testified under psychological pressure from the investigative team. If the

registration data general information, it a pressure the results of the medical examination and issuance time and conditions An I postponed drugs are applicable as drop as evidence. Accordingly, if no other evidence of the charge be available for the accused's convicting if there cannot be insufficient accusing.

The burden of proof in judge hereinafter persecution will be a neutral judge for the case for the trial. Article 25 of the CCP: "The court is not on the side of prosecution or defense and does not represent their interests. The court, in observing its position of neutrality and impartiality, establishes the prerequisites for parties to be able to meet their procedural obligations and exercise rights" [9]. The prosecutor argues for the state and takes upon himself the onus of proof - not so the court.

According to the Decision of the Plenum of the Supreme Court No. 07 from May 23, 2014 "On Conviction by Criminal Courts", "Conviction based on assumptions, hypotheses and indirect evidence does not form a logical chain is inadmissible" [11]. Example: Citizen G. was summoned to stand trial on theft charges. Proof: victim's testimony, fingerprints on evidence and video surveillance. We learned in court that the examination of prints resulted in a 60 percent match (it should be at least 85-90 percent for identification to stand), as well, the face of the man on a video image shown by now is not clear and the "victim" initially pointed out somebody else as her thief. The court is under the onus of presumption to give an acquittal.

The acquittal proves a thing to the utmost point of presumption in the first degree. This is not a failure of the court system, but an affirmation of its robustness and impartiality. The Institute of Legislation and Legal Policy reports that the court in recent years acquitted more than 2,300 citizens who were unjustly accused and sentenced to lighter penalties (to some child /young person or woman is retained "home" instead prison) — above 3.5 thousand people [12]. That, if in trying the evidence the Judge cannot say to himself, "I feel an abiding conviction to a moral certainty of the truth of the charge", this proves that he has much doubt either way and by his verdict of not guilty we have concluded that doubt was enough to prevent his finding guilt. Per V.A. Lazarev, level of reliability for "reasonable doubt" is 95-99% [13].

In the court of appeal, the presumption of innocence still serves as a safeguard against judicial mistakes. The appellant in Uzbekistan, the appeal is re-trial of the whole-case (legal and factual). In any case the appeal court, if the judgement of first instance does not match with the reality of things, can cancel or acquit by renvoi. "The test of the correctness of a lower court's evaluation of evidence should be doubt in favor of convict" - this is the yardstick used by the modern regimes.

Example: citizen D., convicted of commercial fraud, was sentenced for 5y. Upon reviewing the case, the appeal court concluded that the opinion of financial expertise was not completely checked, some witnesses were not called at hearing and defense evidence was not taken into account when giving sentence. (2) This is inconsistent with the principle of "thorough, full and objective investigation" set forth in Article 26 of the Code of Criminal Procedure [6]. In this case the appellate court will set aside the order and either remand it for further consideration or, in some situations, acquit him.

In addition, the appeal is confined by the "prohibition of sophistry" (*reformatio in peius* rule): it is inadmissible to worsen punishment if a complaint was filed only by the defense. If D. has appealed a 5 year sentence, and the prosecutor didn't complain about it, then an appellate court has absolutely no business raising the sentence to 7 or 10 years, - he can only lower that term or let it stay as is.

The court of cassation certifies the legality of rulings which became official. Example: citizen E. was found guilty of causing serious bodily harm. In the cassation instance, it was found that no DNA test had been performed, and serious deficiencies in the examination of the crime scene report and an arbitrary refusal to conduct a check at the request of defense were present. The court of cassation found that, taken as a whole, these various deficiencies constituted a gross infringement of the presumption and set aside the conviction.

The instance of revision, which took effect from the beginning of 2024 under the "one court - one instance" reform, is viewed as an emergency right protection mechanism [15]. The trial of causes on

appeal which have been perfected to the Supreme Court is the operation of the presumption as one part of a process for correcting system error.

Example: Citizen J. was also found guilty for his involvement in an OCG and sentenced to 12 years. The verdict has become final and the cassation has been held. Three years later, the same members of the group testified for a project carried as part of this work and corroborated that J. did not belong to the organization and mentioned his name under coercion. It was further found that J.'s "confession was taken outside the presence of counsel. In the light of the Resolution of Plenum of the Supreme Court 17 of 19 December, 2003, evidence collected without attorney's participation should be recognized as improper [16]. It is at these points when the audit body serves as an apparatus for justice to be reclaimed.

"The presumption of innocence does not terminate in the abstract as soon as you have received a verdict valid under the law - it is translated into the right to rehabilitation and restoration of honor if through a legal error that has been corrected." The review would be made on appeals from the convict himself, his lawyer or close relatives and it will also broaden accessibility of justice to convicts in far flung regions.

Moreover, the presumptions power to instruct turns on the legal sophistication of police. Article 22 of the Criminal Procedure Code defines the principle of establishment of truth, and Article 26 states that a "full, comprehensive and objective" investigation into all elements of the proceedings is necessary [6]. And it is impossible entirely to carry out this presupposition, without internal acceptance: we should be forced to regard any evidence for accusation as the only legitimate one; and that in favour of defence with extreme suspicion.

However, the first difficulty is "accusative tendency." Sometimes judges, having read preliminary investigation documents, have a negative opinion about the case even before it's heard in court. As proven by the I.B. Mikhailovskaya's study, this phenomenon is referred to as «a cognitive error» (confirmation bias) while judge pays more attention to evidence confirming a pre-fabricated opinion [17]. The appointment of the inquiry judge is aimed, as E.Narbutaev believes, at "avoiding the escalation of prejudgment tendency to persecute" [1].

Secondly, there is the public opinion factor. If through the media, the name, position and subject of an official in a corruption case is announced fully, it will allow people to feel as though this person has been declared guilty. As noted in General Comment No. 32 of the UN Human Rights Committee "state authorities and officials should not make or intervene in public statements of a defamatory nature that affect the rights to presumption of innocence (...) prior to an determination by the court" [18]. It is this issue that filters most distinctly in cases filed against senior officials.

The third problem is the quality of lawyers' work. Presumption will work alongside qualified defense. If the attorney does not challenge evidence, does not cross-examine witnesses, does not demand an expert inspection - there is danger that presumption will become a paper declaration. In 2019, the President of Uzbekistan met with UN Special Rapporteur on Independence of Judges and Lawyers Diego García-Sayán for talks about "steps to strengthen the independence of lawyers and enhance the role of their organisation -- the Bar" [19]. These reforms are continuing.

Articles 6.2 II Convention for the Protection of Human Rights and Fundamental Freedoms and 14.2 II International Covenant on Civil and Political Rights strongest the presumption of innocence worldwide [19]. In the Anglo-American law-world, you have the "beyond reasonable doubt", and all of the jury needs to be sure they did it. In Germany, the maxim of "in dubio pro reo" (suspicion – in favor of the accused") is similar to Article 23 of the Criminal Procedure Code of Uzbekistan.

The positive effects of these systems are embodied in Uzbekistan's current laws. The introduction the concept of invalid evidence in the Criminal Procedure Code ( Article 95) was taken from Anglo-Saxon law and bound to strict application by enforcement agencies. As a correlate of this system, the principle of free assessment of evidence exists in the continental procedure; and that allows the judge great liberty for an equitable adjudication.

Another key area for comparing evidence is the application of alternative models. In the British system, the jury considers evidence and their own “feeling” is what ultimately prevails. Whereas under the continent system a professional judge makes use of objective standards when examining evidence in a case. The Uzbek system is of a mixed nature: it allows the judge to appreciate the evidence as he sees fit, but at the same time limit his discretion by limiting certain types of evidence in article 95 of CPC. For instance, in the United States of America, a testimony procured without informing the circumstances on its basis is automatically considered null and void under the Miranda Rule while an analogous standard has been reflected in part 3 of Article 28 of the Constitution of Uzbekistan: "A person detained, arrested, suspected or accused of commission of a crime shall be immediately familiarized with his rights and foundation for detention (arrest) "[4].

The analysis allows to conclude that the presumption of innocent is actively evolving in Uzbekistan from being only an official slogan into a useful practical instrument. This maxim secures the harmonious relationship between public safety and inalienability of personal rights, while at the same time it warrants truth, due process of law, and justice.

But this is so far unfinished business. No efforts are spared to raise legal consciousness and enhance the work of the bar, as well as standardize criteria for evidence evaluation. A fourth problem is that what counts as reasonable suspicion can also be interpreted differently in courts of varying regions—a particular court may require 90 percent confidence, for example, while another demands 80 percent. While the recommendations of the Supreme Court and cassation practice ensure settlement of essentially this problem, full uniformity is not established yet. The reform seeks to make this a functional principle in every hearing, investigation and procedural decision.

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