

JACEK KOSONOGA

PRESUMPTION OF INNOCENCE  
AS AN ELEMENT OF A FAIR TRIAL**1. Essence and legal character of the presumption of innocence**

Presumption of innocence is one of the fundamental rules regarding the procedural situation of the accused and constitutes the canon of the contemporary criminal procedure. Its procedural essence consists in the assumption that the accused is considered to be innocent unless his guilt is proved and confirmed in a valid court judgement (Article 5 § 1 of the CPC). In comparison with the former code, the principle laid down in this provision has been reformulated in order to strengthen the position of the accused. As it was raised in the justification for the Criminal Procedure Code of 1997, the aim was to formulate the principle in the most positive way (the accused is considered to be innocent) unlike in the CPC of 1969, which specified the presumption of innocence in a weaker, negative way (the accused is not considered to be guilty)<sup>1</sup>.

The principle of the presumption of innocence is a fundamental human right. It was also laid down in Article 6 (2) of the European Convention on Human Rights (ECHR), under which every person accused of committing a punishable crime is considered to be innocent unless his guilt is proved in accordance with the statute. It was also formulated in Article 14 (2) of the International Covenant on Civil and Political Rights (ICCPR)<sup>2</sup>. Presumption of innocence

<sup>1</sup> *Nowe kodeksy karne – z 1997 r. z uzasadnieniami* [New criminal codes of 1997 with justification], Warszawa 1997, pp. 396–397.

<sup>2</sup> On the principle of the presumption of innocence in the Strasbourg judicial decisions see P. Hofmański, A. Wróbel, [in:] L. Garlicki (ed.), *Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności* [Convention on the Protection of human Rights and Fundamental Freedoms], Warszawa 2010, vol. ???, pp. 385–406; C. Nowak, *Prawo do rzetelnego procesu sądowego w świetle EKPC i orzecznictwa ETPC* [Right to a fair trial in the light of the ECHR and the judgements of the ECtHR], [in:] P. Wiliński (ed.), *Rzetelny proces karny* [Fair criminal trial], Warszawa 2009, pp. 118–122; P. Kruszyński, *Zasada domniemania niewinności w świetle najnowszego orzecznictwa Europejskiego Trybunału Praw człowieka w Strasburgu* [Principle of the presumption of innocence in the light of the latest judgments of the European Court of Human Rights in Strasbourg], [in:] M. Plachta (ed.), *Aktualne problemy prawa i procesu karnego. Księga ofiarowana Profesorowi Janowi Grajewskiemu* [Current issues of criminal law and procedure – Book presented to Professor Jan Grajewski], GSP 2003, vol. XI, pp. 119–124.

is also a constitutional principle regulated in Article 42 (3) of the Constitution of the Republic of Poland, under which everybody is considered to be innocent unless his guilt is pronounced in a valid court judgement. Thus, the Constitution treats presumption of innocence in a little broader way, not only as an objective principle in criminal proceeding but also as a guarantee of rights that ‘every’ person is entitled to being accused of committing a crime carrying a repressive penalty. Under the Constitution, the principle of innocence is not applied only to persons who have the formal status of the accused, which means that the legislator did not narrow it to the criminal proceeding (the so-called external aspect of the principle of innocence)<sup>3</sup>.

The broad understanding of the principle of innocence is commonly adopted in judicial decisions of the Constitutional Tribunal. It has been highlighted many times that because of the function to provide a guarantee, the principle of innocence is formulated in a special way; from the constitutional perspective it is not just a rule of proving guilt but a manifestation of one of the general assumptions that are the basis of legal order. This is why it is necessary to be particularly responsible when establishing limits for the application of this presumption. The principle constitutes one of the fundamental and commonly accepted principles of a democratic state; it is one of the essential elements determining the position of a citizen in the society and in relation to the authorities, guaranteeing appropriate treatment, especially in case of suspicion of committing a crime. This presumption is strictly connected with personal immunity and the protection of human dignity and freedom, which are considered to be inherent and inalienable goods (Article 30 of the Constitution)<sup>4</sup>.

The principle of innocence in the internal meaning (Article 5 § 1 of the CPC), however, represents the statutory assumption of innocence of the accused that is in force in a given trial until his guilt is proved and pronounced in a valid court judgement. It is a legal assumption that is rebuttable (*praesumptio iuris tantum*), which means that it stops working when it is proved to be wrong. Otherwise the accused should be considered innocent. Thus, the acquittal must be pronounced both when the accused is proved innocent and when his guilt is not proved<sup>5</sup>.

---

<sup>3</sup> For more see: W. Wróbel, *O dwóch aspektach konstytucyjnej zasady domniemania niewinności* [On two aspects of the constitutional principle of the presumption of innocence], [in:] K. Krajewski (ed.), *Nauki penalne wobec problemów współczesnej przestępczości. Księga jubileuszowa z okazji 70 rocznicy urodzin Prof. A. Gaberle* [Penal science towards the problems of contemporary criminality – Professor A. Geberle’s 70<sup>th</sup> birthday jubilee book], Warszawa 2007, p. 332.

<sup>4</sup> Judgement of the Constitutional Tribunal of 16 May 2000, P 1/99, OTK 2000, no. 4, item 11; also see judgement of the Constitutional Tribunal of 27 February 2001, K 22/00, OTK 2001, no. 3, item 48, judgement of the Constitutional Tribunal of 3 November 2004, K 18/03, OTK-A 2004, no. 10, item 103, judgement of the Constitutional Tribunal of 29 January 2002, K 19/01, OTK-A 2002, no. 1, item 1.

<sup>5</sup> For more see: A. Murzynowski, *Istota i zasady procesu karnego* [Essence and principles of the criminal proceeding], Warszawa 1994, p. 247 and the following; also see: P. Kruszyński, *Zasada domniemania niewinności w polskim procesie karnym* [Principle of the presumption of innocence in the Polish criminal proceeding], Warszawa 1983, pp. 43–48; J. Nelken, *Domniemania w procesie karnym* [Presumptions in the

The doctrine distinguishes three basic theoretical conceptions of the discussed principle. The first one, the so-called subjective one, expresses the obligation imposed on the proceeding organs to assume – until a valid judicial decision is issued – that the accused is innocent and to treat him according to this assumption. It emphasises the assessment made by the proceeding organ. According to the second conception, the accused shall be treated as an innocent person regardless of personal opinions of the officer of the proceeding organ. The objective expression of the principle of innocence results from the statutory obligation to regard the accused to be innocent even if the proceeding organ were convinced of his guilt. On the other hand, the third conception – the so-called humanistic scepticism – is based on two assumptions. Firstly, it assumes the obligation to treat the accused as an innocent person, i.e. treating him in such a way that would emphasise that he has not been found guilty. But this results from the statutory obligation, not the organ's internal conviction. Secondly, it is necessary to meet a requirement of critical attitude to the accusation against him. The proceeding organ should be critical enough to doubt – until guilt is proved – if the accused is guilty; it should be open to the possibility of accepting the conception that is favourable for the accused<sup>6</sup>.

The first interpretation may raise some doubts. It does not seem to be possible to regulate the proceeding organ's sphere of psychical feelings<sup>7</sup>. Moreover, such a solution would limit the possibility of analysing the issue of guilt and the proceeding organ's conviction of the guilt of the accused – although not equivalent to proving it – accompanies many proceeding-related decisions that are prior to the valid court judgement, as e.g. temporary arrest. This is why the last conception, which is an extension of the objective attitude, seems to be most appropriate. It best expresses the essence of the principle because – simplified – requires that the presumption of innocence should be treated relatively not only

---

criminal proceeding], NP 1970, no. 11, p. 1590 and the following; L. Schaff, *Problematyka domniemanie niewinności w postępowaniu przygotowawczym* [Presumption of innocence in the preparatory proceeding], NP 1954, no. 9, p. 16 and the following.

<sup>6</sup> S. Waltoś, *Proces karny. Zarys systemu* [Criminal proceeding. System outline], Warszawa 2005, p. 244; Ł. Woźniak, *Zasada domniemanie niewinności – zagadnienia podstawowe* [Principle of innocence – basic issues], [in:] J. Czapska, A. Gaberle, A. Światłowski, A. Zoll (ed.), *Zasady procesu karnego wobec wyzwań współczesności. Księga ku czci Profesora Stanisława Waltośa* [Principles of the criminal proceeding vs. challenges of our Times. Book in honour of Professor Stanisław Waltoś], Warszawa 2000, p. 357; for more see P. Kruszyński, *Zasada domniemanie niewinności w polskim...* [Principle of the presumption of innocence in the Polish...], p. 11 and the following; A. Tęcza-Paciorek, *Zasada domniemanie...* [Principle of the presumption...], p. 63 and the following; also see M. Cieślak, *O „zasadzie domniemanie winy”, czyli splot nieporozumień* [On the 'principle of the presumption of guilt', i.e. conjunction of misunderstandings], NP 1955, no. 3, p. 64 and the following; L. Schaff, *Problematyka domniemanie niewinności w postępowaniu przygotowawczym* [Issue of the presumption of innocence in the preparatory proceeding], NP 1954, no. 9, p. 16 and the following; *ibid.*, *W obronie domniemanie niewinności* [In defence of the presumption of innocence], NP 1955, no. 7–8, p. 89 and the following; M. Szerer, *O niepotrzebie domniemanie niewinności. Uwagi w związku z artykułem prof. Schaffa* [On the unnecessary of the presumption of innocence – Comments in connection with Professor Schaff's article], NP 1955, no. 3, p. 69 and the following.

<sup>7</sup> See S. Waltoś, *Proces karny...* [Criminal proceeding...], p. 243.

towards the accused but also towards the act that is subject to the accusation. The objective conception is also adopted in court decisions<sup>8</sup>.

## 2. Scope of the principle of innocence

The presumption of innocence is applied with the start of the proceeding against a given person. Otherwise, it is conducted in connection with a certain act, which means that no person has become subject to the presumption. In other words, there must be a perpetrator between an act and guilt. In Article 5 § 1 of the CPC, a term ‘the accused’ is used, in a broad sense (Article 71 § 3 of the CPC), which means that the term refers to a suspect in the preparatory proceeding. However, the specification made by the legislator in Article 5 § 1 of the CPC is of secondary importance in the context of the broad formulation of the principle of innocence in Article 42 (1) of the Constitution. This provision lays down that the principle of innocence is applied to “everyone”, regardless of his proceeding-related status, which makes it possible to assume that it is also applied to a suspect.

The moment at which the presumption of innocence stops being applied raises fewer doubts. Both Article 42 (3) of the Constitution and Article 5 § 1 of the CPC require that the guilt be pronounced in a valid judgement. This means that the presumption of innocence is also applied in the appeal proceeding. However, it is justifiable to notice that the presumption of innocence protects the accused at this stage only when guilt is under discussion. In case the criminal proceeding concerns only the issue of punishment, the judgement pronouncing guilt is already in force, thus the presumption has already been rebutted<sup>9</sup>.

The protection resulting from the presumption of innocence expires in the proceedings taking place when the judgement in which the guilt was pronounced comes into force; however, it is applied again in case the judgement is annulled as a result of a special appeal or resumption of the proceeding until the new valid pronouncement of guilt<sup>10</sup>. The moment of the annulment of the valid judgement is taken into account, not the fact that a special appeal was filed<sup>11</sup>.

---

<sup>8</sup> Judgment of the Supreme Court of 18 March 2009, IV KK 380/08, OSN Prokuratura i Prawo 2009, no. 10, item 14.

<sup>9</sup> P. Hofmański, E. Sadzik, K. Zgryzek, *Kodeks postępowania karnego. Komentarz* [Criminal Procedure Code – Commentary], vol. I, Warszawa 2011, p. 65; also see judgement of the Supreme Court of 13 November 2007, IV KK 359/07, Legalis, judgement of the Supreme Court of 26 September 2000, V KKN 325/00, Legalis.

<sup>10</sup> W. Grzeszczyk, *Kodeks karny. Komentarz* [Criminal Code – Commentary], Warszawa 2012, p. 24; P. Hofmański, E. Sadzik, K. Zgryzek, *Kodeks postępowania karnego...* [Criminal Procedure Code...], pp. 65–66; P. Kruszyński, *Zasada domniemania niewinności w polskim...* [Principle of the presumption of innocence in the Polish...], p. 191.

<sup>11</sup> See Z. Gostyński, S. Zablocki, [in:] R. Stefański, S. Zablocki (ed.), *Kodeks postępowania karnego. Komentarz* [Criminal Procedure Code – Commentary], vol. I, Warszawa 2003, pp. 210–211; Ł. Woźniak, *Zasada domniemania niewinności...* [Principle of the presumption of innocence...], p. 358.

### 3. Presumption of innocence from the proceeding perspective

#### 3.1. Presumption of innocence functions

The presumption of innocence principle has several functions in the criminal proceeding, including guaranteeing, protective, compensational and activating ones<sup>12</sup>. The presumption of innocence principle results especially in, inter alia:

- the obligation to treat the accused as an innocent person until the valid judgement is made;
- the obligation to make an effort to prove the guilt of the accused and acquire evidence;
- letting the accused be passive in the proceeding with no negative legal consequences for him;
- the obligation to issue an acquittal in case insufficient evidence confirming guilt of the accused or doubtful evidence;
- a requirement to limit the indispensable minimum of restrictions on the rights and freedoms of the accused at trial;
- the obligation to respect the good reputation of the accused<sup>13</sup>.

It is also assumed that the presumption of innocence principle imposes on the proceeding organ an obligation to examine all possible circumstances of the case connected with the accountability of the accused in an objective way, regardless of the evidence incriminating him, and the subjective conviction of his guilt<sup>14</sup>. Although the relation between the presumption of innocence and the principle of objectivism is evident, the rules cannot be identified with one another. The obligation to take into account circumstances that are and are not to the advantage of the accused results directly from Article 4 of the CPC.

#### 3.2. The material burden of proof

The presumption of innocence results in a series of procedural consequences. One of them is that the so-called material burden of proof is the obligation imposed on the public prosecutor<sup>15</sup>. Judicial decisions are right to emphasise

---

<sup>12</sup> For more see P. Kruszyński, *Zasada domniemania niewinności w polskim...* [Principle of the presumption of innocence in the Polish...], p. 31 and the following; A. Tęcza-Paciorek, *Zasada domniemania niewinności w polskim procesie karnym* [Principle of the presumption of innocence in the Polish criminal proceeding], Warszawa 2012, p. 74 and the following, p. 428.

<sup>13</sup> A. Tęcza-Paciorek, *Zasada domniemania niewinności...* [Principle of the presumption of innocence...], p. 428; also see A. Murzynowski, *Istota i zasady procesu karnego* [Essence and the principles of the criminal proceeding], Warszawa 1994, pp. 254–255; P. Kruszyński, *Zasada domniemania niewinności w polskim...* [Principle of the presumption of innocence in the Polish...], p. 29 and 102.

<sup>14</sup> A. Murzynowski, *Istota i zasady procesu karnego...* [Essence of the criminal proceeding...], p. 255.

<sup>15</sup> For more on the burden of proof see M. Klejnowska, *Wyjątki od reguł ciężaru dowodu w procesie karnym* [Exceptions to the rules of the burden of proof in the criminal proceeding], *Ius et Administratio*, 2004, no. 1, p. 45 and the following; J. Skorupka, *Ciężar dowodu i ciężar dowodzenia w procesie karnym* [Burden of proof and burden of proving in the criminal proceeding], [in:] T. Grzegorzczak (ed.), *Funkcje*

that it is not the accused that must prove his innocence, but it is the prosecutor who must prove that the accused is guilty. At the same time, to prove means to confirm by providing direct or indirect proofs in a way that does not raise doubts<sup>16</sup>. The proof of guilt must be complete, certain and undoubted<sup>17</sup>.

There is an exception, however. The material burden of proof is the obligation imposed on the accused in defamation cases. In order to be made exempt from punishment, the defamer must prove that the statement he has made is true. The burden of proof is not the obligation of the complainant who has been defamed<sup>18</sup>. The reversed burden of proof is also envisaged in Article 45 § 2 of the CC with respect to proving that the possessed property does not constitute income obtained as a result of crime<sup>19</sup>. However, there are justified doubts whether this solution is in compliance with Article 42 (3) of the Constitution of the Republic of Poland<sup>20</sup>.

Thus, the principle of innocence results in the necessity of proving a thesis that the accused is guilty of committing an act he was charged with in order to be approved of as a fact and constitute grounds for conviction. On the other hand,

---

*procesu karnego. Księga jubileuszowa Profesora Janusza Tylmana* [Functions of the criminal proceeding – Professor Janusz Tylman jubilee book], Warszawa 2011, p. 123 and the following; P. Girdwoyń, *Rozkład ciężaru dowodu w procesie karnym a taktyka obrony. Uwagi na tle polskiego i niemieckiego stanu prawnego* [Distribution of the burden of proof in the criminal proceeding vs. the defence tactics. Comments against the background of the Polish and German legal state], *Studia Iuridica* 2004, vol. XLIII, p. 25 and the following; J. Nelken, *Ciężar dowodowy w procesie karnym* [Burden of proof in the criminal proceeding], *NP* 1969, no. 6, p. 880 and the following.

<sup>16</sup> Judgement of the Court of Appeal in Lodz of 25 May 1995, II AKr 120/95, OSN Prokuratura i Prawo 1996, no. 7–8, item 20.

<sup>17</sup> Judgement of the Supreme Court of 24 February 1999, V KKN 362/97, OSN Prokuratura i Prawo 1999, no. 7–8, item 11.

<sup>18</sup> For more see inter alia M. Skwarzyński, *Charakter prawny przepisu art. 213 kodeksu karnego* [Legal character of the provision of Article 213 of the CC], *Prokuratura i Prawo* 2008, No. 7–8, p. 198 and the following; G. Artymiak, *Rozłożenie ciężaru dowodu w sprawach o zniesławienie* [Distribution of the burden of proof in cases of defamation], *Palestra* 1995, no. 1–2, p. 63 and the following; W. Kulesza, *Zniesławienie i zniewaga. Ochrona czci w polskim prawie karnym – zagadnienia podstawowe* [Defamation and insult – Protection of honour in the Polish criminal law – basic issues], Warszawa 1984, p. 86; P. Kruszyński, *Materiałny ciężar dowodu w procesach karnych o zniesławienie i oszczerstwo* [Material burden of proof in the criminal proceeding in cases of defamation and slander], *PIP* 1980, vol. 8, p. 77; also see K. Daszkiewicz, W. Daszkiewicz, *Nie ma wyjątku od zasady domniemania niewinności oskarżonego* [There is no exception to the principle of the presumption of innocence of the accused], *NP* 1976, no. 11, p. 1574 and the following; L. Gardocki, *Dowód prawdy czy dowód nieprawdy* [Proof of the truth or proof of untruth], *NP* 1975, no. 12, p. 1619 and the following.

<sup>19</sup> For more see inter alia M. Prengel, *Odwroćenie ciężaru dowodu z art. 45 k.k.* [Reverse of the burden of proof under Article 45 of the CC], *GS* 2003, no. 7–8, p. 39 and the following; A. Buśiewicz, *Domniemania z art. 45 k.k. przy zabezpieczeniu majątkowym w procesie karnym* [Presumptions under Article 45 of the CC with the security on property in the criminal proceeding], [in:] V. Konarska-Wrzošek, J. Lachowski, J. Wójcikiewicz (ed.), *Węzłowe problemy prawa karnego kryminologii i polityki kryminalnej. Księga pamiątkowa ofiarowana prof. A. Markowi* [Crucial issues of criminal law, criminology and criminal policy – Commemorative book presented to Professor A. Marek], Warszawa 2010, p. 559 and the following; C. Kulesza, P. Starzyński, *Powrót konfiskaty mienia?* [Return of the seizure of property?], *Prokuratura i Prawo* 2008, No. 3, p. 35 and the following.

<sup>20</sup> P. Hofmański, E. Sadzik, K. Zgryzek, *Kodeks postępowania karnego...* [Criminal Procedure Code...], p. 65.

the condition for acquittal is not proving the thesis of the accused's innocence. The acquittal should take place in the event the accused's innocence has been proved as well as in case, although it has not been proved, his guilt has not been proved either. Presumption of innocence does not require proving; this is the refutation of the presumption of innocence that requires proving<sup>21</sup>. It must be emphasised that for many reasons the legal virtue of acquittal is the same because Polish criminal procedure law does not envisage the so-called indirect sentences, i.e. retaining a person in a state of constant suspicion (*absolutio ab instantia*)<sup>22</sup>.

We should fully approve of the opinion that, in the proceeding in connection with claims for damages and redress for undeserved temporary arrest, while establishing facts whether there are grounds for recognising arrest as undoubtedly undeserved, one cannot differentiate acquittal sentences that are bases for claims. Due to the principle of innocence, sentence validity and the liability of the State Treasury as a risk, it is unimportant whether the sentence resulted from the lack of commission or guilt, or is a result of indelible doubts or a lack of sufficient proofs to prove the liability of the accused<sup>23</sup>.

According to the principle *nemo se ipsum accusare tenetur*, the accused does not have to prove his innocence nor is he obliged to provide the proofs of his innocence (Article 74 § 1 of the CC). Thanks to the protection provided by the principle of innocence, the mode of defence and the level of activeness in this respect are subject to his choice. The accused must not be made to provide evidence incriminating him. Its detection and procedural protection is the responsibility of law enforcement agencies and the prosecutor. The principle results in the right to refuse to answer interrogation questions (Article 175 § 1 of the CPC) or ban on the use of means of control of unconscious organism reactions as well as force or unlawful threat in the course of interrogation (Article 171 § 4 of the CPC)<sup>24</sup>.

---

<sup>21</sup> Judgement of the Court of Appeal in Krakow of 29 December 2006, II AKa 234/06, KZS 2007, no. 2, item 32.

<sup>22</sup> Judgement of the Supreme Court of 28 March 2008, III KK 484/07, OSN Prokuratura i Prawo 2008, no. 9, item 10.

<sup>23</sup> Judgement of the Supreme Court of 13 June 200, V KKN 125/00, OSNKW 2002, no. 9–10, item 80, with a gloss by A. Bulsiewicz, OSP 2003, no. 5, item 63.

<sup>24</sup> T. Grzegorzczak, *Kodeks postępowania karnego. Komentarz* [Criminal Procedure Code – Commentary], vol. I, Warszawa 2014, p. 329; also see Z. Sobolewski, *Samooskarżenie w świetle prawa karnego (nemo se ipsum accusare tenetur)* [Self-incrimination in the light of criminal law (*nemo se ipsum accusare tenetur*)], Warszawa 1982; A. Lach, *Granice badań oskarżonego w celach dowodowych. Studium w świetle reguły nemo se ipsum accusare tenetur i prawa do prywatności* [Limit for the accused's examination for the purpose of evidence collection. A study in the light of the rule *nemo se ipsum accusare tenetur* and the right to privacy], Toruń 2010; P. Wiliński, *Zasada prawa do obrony w polskim procesie karnym* [Principle of the right to defence in the Polish criminal proceeding], Kraków 2006, p. 354 and the following; A. Wąsek, *O kilku aspektach reguły nemo se ipsum accusare tenetur de lege lata i de lege ferenda* [On a few aspects of the rule *nemo se ipsum accusare tenetur de lege lata* and *de lege ferenda*], [in:] J. Skupiński, J. Jakubowska-Hara, *Standardy praw człowieka a polskie prawo karne* [Human rights standards and the Polish criminal law],

If the accused, however, undertakes active defence, providing a version that is contrary to the prosecutor's, he accepts the burden of proving its credibility, or at least making his version relatively credible and thus, supporting it with evidence or information at least indirectly showing that it is possible that the actual course of events was like that<sup>25</sup>.

Since the assumption of innocence that is a binding principle in the area of criminal proceeding is to be undermined by the prosecutor proving the guilt of the accused, the court is not *ex officio* obliged to look for evidence supporting prosecution when that provided by the prosecutor is not sufficient to convict the accused, and he himself does not try to supplement that evidence<sup>26</sup>.

The distribution of the burden of proof does not influence, of course, general rules of evidence assessment. As a result, it is not possible to refer to the supposedly upset distribution of the burden of proof in the criminal proceeding (Article 5 § 1 of the CPC and Article 74 § 1 of the CPC) when the court's adoption of a version that is different from the one provided by the accused results from the fact that his version was not credible enough and other evidence provided in the case was in accordance with the so-called free assessment of evidence<sup>27</sup>. On no account can the court's statements providing critical assessment of the accused's explanations be interpreted as "a characteristic attempt to shift the obligation to provide evidence of his innocence onto the accused"<sup>28</sup>.

Taking into consideration the principle of the presumption of innocence and the rule *in dubio pro reo*, the adoption of a broader perspective is justified. Thus, such is the generalisation that not only the issue of guilt but all the other circumstances and adequate findings unfavourable for the accused must be proved, however, the fact that the evidence of unfavourable circumstances was not proved may constitute grounds for the recognition of circumstances favourable for the accused<sup>29</sup>. On the other hand, the judicial decisions indicate that deficiencies of incriminating evidence cannot be treated in the same way as the deficiencies of acquitting evidence. Due to the fact that the condition *sine qua non* of the conviction of the accused is the proof that he committed the crime,

---

Warszawa 1995, p. 239 and the following; B Nita, *Konstytucyjne zakorzenie zasady nemo tenetur se ipsum accusare* [Constitutional roots of the principle *nemo tenetur se ipsum accusare*], [in:] J. Skorupka (ed.), *Rzetelny proces karny. Księga jubileuszowa Profesora Zofii Świdry* [Fair trial – Professor Zofia Świda jubilee book], Warszawa 2009, p. 220 and the following.

<sup>25</sup> Judgement of the Court of Appeal in Warszawa of 28 May 2012, II AKa 122/12, KZS 2012, no. 10, item 63.

<sup>26</sup> Judgement of the Court of Appeal in Katowice of 8 March 2007, II AKa 33/07, OSN, Prokuratura i Prawo 1007, No. 11, item 23.

<sup>27</sup> Judgement of the Supreme Court of 24 March 2003, V KK 197/02, LEX no. 77450, decision of the Supreme Court of 20 September 2006, II KK 327/05, Lex no. 202149, decision of the Court of Appeal in Lublin of 29 April 2009, II AKa 63/09, KZS 2009, no. 7–8, item 90.

<sup>28</sup> Decision of the Supreme Court of 4 February 2002, IV KKN 430/01, Lex no. 53032.

<sup>29</sup> M. Cieślak, *Polska procedura karna. Podstawowe założenia teoretyczne* [Polish criminal procedure – Basic theoretical assumptions], Warszawa 1984, p. 351, also see decision of the Supreme Court of 18 December 2008, V KK 267/08, Lex no. 485030.

the discrepancies in the sphere of acquitting evidence is never balanced by the discrepancies in the scope of incriminating evidence. If the latter are internally contradictory, it is of basic and spontaneous importance whether, *in concreto*, the scope and character of these contradictions does not exclude the possibility of recognizing this evidence as grounds for conviction.<sup>30</sup>

### 3.3. Use of coercive measures towards a person who is subject to the principle of the presumption of innocence

The principle of the presumption of innocence cannot be identified with a ban on the use of whatever proceeding-related coercive measures before the court issues a valid judgement pronouncing guilt. Such an assumption would repeatedly paralyse the criminal proceeding. From a clearly pragmatic point of view, the proceeding entities cannot be deprived of legal measures enabling them to efficiently conduct the proceeding, especially if the accused unlawfully impedes its course. It concerns not only such preventive measures as temporary arrest but also other actions interfering in the sphere of the rights and freedoms of the accused, such as detention (Article 244 of the CPC), psychiatric observation (Article 203 § 2 of the CPC), supervision and recording of telephone conversations (Article 237i of the new CPC) or security on property (Article 291i of the new CPC)<sup>31</sup>.

Temporary arrest may raise most controversies because it consists in depriving a person of the right to freedom while the guilt has not been yet proved and pronounced in a valid court sentence, i.e. – in the light of the principle of the presumption of innocence – when the person is innocent. Court judgements justifiably state that the principle of the presumption of innocence does not contradict the use of temporary arrest towards the accused as its constitutional sense of recognizing everybody as innocent unless their guilt is pronounced in a valid court sentence is expressed in fact in the shift of the obligation to prove it onto the prosecutor in the course of the criminal proceeding, which is not the same as the requirement to show that there is a big probability of having committed a crime being a condition for the use of a particular preventive measure<sup>32</sup>. Thus, because of pragmatic reasons, the principle of the presumption of innocence is limited in connection with temporary arrest. Because if the measure were not used, the substantial issue for the proceeding – the substantiation of the indictment – would not be possible to get examined. The accused would have

---

<sup>30</sup> Decision of the Supreme Court of 1 March 2004, II KK 271/03, OSNwSK 2004, item 425, judgement of the Supreme Court of 28 September 1995, III KRN 88/95, OSNKW 1995, vol. 11–12, item 77.

<sup>31</sup> On this issue see judgement of the Constitutional Tribunal of 6 September 2004, SK 10/04, OTK – A 2004, no. 8, item 80.

<sup>32</sup> Decision of the Court of Appeal in Katowice of 2 April 2003, II AKz 268/03, OSN Prokuratura i Prawo 2004, no. 1, item 22.

opportunities to freely and without consequences hamper the proceeding, which is prevented with the use of temporary arrest<sup>33</sup>.

Temporary arrest cannot, however, constitute criminal penalty anticipation and should be used *ultima ratio*, and not as a repressive measure. The legislator unambiguously exposes the extraordinary character of isolation as a preventive measure and introduces the so-called directive of moderation (Article 257 § 1 of the CPC); defines negative rationale behind its use (see Article 259 of the CC, Article 264 of the CPC) and imposes on the proceeding entity an obligation to constantly revise the grounds for maintaining the measure (Article 253 § 3 of the CPC). Psychiatric observation was treated similarly, in which case the maximum detention period was determined and isolation when it concludes is inadmissible (Article 203 of the CPC). The decision to make courts competent to decide on the use of this measure as well as the constitutional requirement of supervision of other detention decisions by courts (Article 41 (1) of the Constitution of the Republic of Poland; see Article 246 of the CPC) are important guarantees in this field. These regulations take into consideration the need to minimise the interference of criminal procedures into the sphere of human rights and freedoms of the person who is subject to the presumption of innocence.

### **3.4. Cancellation of a probation measure because of crime commission vs. presumption of innocence**

In the context of the principle of the presumption of innocence, there can be some doubts in connection with the re-launch of the proceeding that was conditionally discontinued, the order to execute the conditionally suspended penalty or the cancellation of the former exemption from the execution of the rest of penalty. The situation when the grounds for the cancellation of further use of a probation measure are constituted by a violation of law that is a crime raises most controversies (Article 68 § 2 of the CC, Article 75 § 2 of the CC, Article 160 § 1 point 4 of the Penalty Execution Code – PEC). The controversies concern the issue whether the rationale for this decision requires a valid verdict on crime commission.

In the literature on criminal law, there is a polarisation of opinions on this matter. According to some experts, the commission of crime, as a type of manifestation of the violation of the legal order, must be stated in a valid verdict<sup>34</sup>.

---

<sup>33</sup> Decision of the Court of Appeal in Krakow of 23 July 2003, I AKz 300/03, KZS 2003, no 7–8, item 60, decision of the Court of Appeal in Katowice of 16 July 2008, II AKz 514/08, KZS 2008, no. 9, item 62, decision of the Court of Appeal in Katowice of 16 July 2008, II AKz 514/08 KZS 2008, no. 9, item 62, decision of the Supreme Court of 3 August 2011, III KK 79/11, Lex no. 955018.

<sup>34</sup> J. Skupiński, *Rażące naruszenie porządku prawnego jako podstawa odwołania środka probacyjnego* [Serious violation of legal order as grounds for cancellation of a probation measure], [in:] A. Michalska-

Other authors support the opposite thesis. This standpoint is mainly based on the linguistic interpretation. The discussed provisions – unlike other regulations of the CC (e.g. Article 68 § 1 of the CC, Article 75 § 1 of the CC, Article 148 § 3 of the CC) – do not lay down a requirement of validity. It is also mentioned that because the lengthiness of proceedings, it is unrealistic to obtain a valid sentence in case of crimes committed during the probation period. Another argument that is also quoted is jurisdictional independence that a criminal court has<sup>35</sup>.

These are serious and quite important arguments. However, it seems the guarantee role of the principle of the presumption of innocence, especially in its constitutional and international aspect, allows for going beyond the borders of the linguistic interpretation<sup>36</sup>. It is necessary to approve of the opinion that if a court wants to make use of the possibilities laid down in Article 68 § 2 of the CC, Article 75 § 2 of the CC and Article 160 § 1 point 4 of the PEC, it cannot classify an act as a crime on its own, however, it must determine on its own if that act constitutes a serious violation of the legal order. Otherwise, such a court would expose itself to an accusation of the violation of the principle of the presumption of innocence from the constitutional point of view (Article 42 (3) of the Constitution of the Republic of Poland). One cannot, however, speak about the infringement of the internal aspect of the principle of the presumption of innocence in such a case because the cancellation of the decision to use probation measures does not mean it is the proceeding aimed at proving the guilt of the perpetrator. That is not connected with the use of repressive measures but with the verification of the former forecast and a statement whether the administered measures were justified<sup>37</sup>. Another argument against the conception that the valid verdict is not necessary for the recognition of a crime is the fact that such an assumption can result in a valid acquittal verdict in the criminal case that made grounds for the cancellation of the probation measure. This would mean that penal consequences were administered towards a person who in the prospect criminal proceeding in connection with a crime committed at the time of probation was found innocent.

---

-Warias, J. Nowikowski, J. Piórkowska-Flieger (ed.), *Teoretyczne i praktyczne problemy współczesnego prawa karnego. Księga jubileuszowa dedykowana profesorowi Tadeuszowi Bojarskiemu* [Theoretical and practical problems of the contemporary criminal law – Jubilee book for Professor Tadeusz Bojarski], Lublin 2011, p. 316 and 319; T. Koziol, *Warunkowe umorzenie postępowania karnego* [Conditional termination of the criminal proceeding], Warszawa 2009, p. 231 and the following. A. Zoll, [in:] A. Zoll (ed.), *Kodeks karny. Część ogólna. Komentarz* [Criminal Code – General issues – Commentary], vol. I, Warszawa 2012, p. 973.

<sup>35</sup> K. Indeck, A. Liszeńska, *Prawo karne materialne. Nauka o przestępstwie, karze i środkach karnych*, [Criminal material law – The study of crime, penalty and penal measures], Warszawa 2002; R. Skarbek, [in:] M. Królikowski, R. Zawłocki (ed.), *Kodeks karny. Komentarz. Część ogólna* [Criminal Code, Commentary, General Issues], vol. II, 2010, p. 446 and p. 474; P. Hofmański, L.K. Paprzycki, [in:] M. Filar (ed.), *Kodeks karny. Komentarz* [Criminal Code – Commentary], Warszawa 2012, pp. 406–407; A. Marek, *Kodeks karny. Komentarz* [Criminal Code – Commentary], Warszawa 2010, p. 225, p. 240; A. Tęcza-Paciorek, *Zasada domniemania niewinności...* [Principle of the presumption of innocence...], pp. 284–285, p. 288.

<sup>36</sup> Compare resolution of the Supreme Court of 20 June 2000, I KZP 14/00, OSNKW 2000, no. 7–8, item 59.

<sup>37</sup> W. Wróbel, *O dwóch aspektach...* [On two aspects...], p. 330.

### 3.5. Infringement of the presumption of innocence

The infringement of the principle of the presumption of innocence may result in serious consequences for the criminal proceeding. It is justifiable to say that the statement made by the court issuing the sentence that the accused did not prove his claims, which in case they were sufficiently substantiated would quash criminality of his conduct, and thus the recognition of the version of circumstances unfavourable for the accused, constitute a serious infringement of criminal procedure provisions that have influence on the contents of the judgement as referred to in Article 463a of the former CPC and Article 523 of the CPC, because it means the shift of the burden of proof and proving innocence onto the accused, which is in contradiction to the principle of the presumption of innocence and the related principle of the burden of proof, which in the Polish criminal proceeding is the prosecutor's obligation<sup>38</sup>.

Another infringement of the principle of the presumption of innocence is the assumption that sentencing is also influenced by acts other than only those the accused was charged with and that were not the subject matter of the valid sentence. Although it is true that sentencing may be influenced by the circumstances that characterize the perpetrator and not only the act being the subject of the proceeding, attributing to the accused – with unfavourable consequences for sentencing – other acts with criminal features that are not the subject of the proceeding and were not pronounced in other verdicts constitutes an attempt to bypass the principle of the presumption of innocence<sup>39</sup>.

The infringement of the principle of the presumption of innocence may be also connected with the institution of peremptory challenge of judge for cause of bias (Article 41 § 1 of the CPC). Court judgements highlight that if in a particular case judges, against the principle of the presumption of innocence, adjudicated earlier in the separate proceeding carried out in accordance with Article 387 of the CPC that drugs had been trafficked in cooperation with the convict who definitely denied committing the acts he was accused of, the adjudicating judges should demand exclusion from the current case. As it did not happen, as well as it was not done *ex officio* – in the opinion of the Supreme Court – the judges' involvement in the first instance proceeding sentencing was a serious infringement of Article 41 § 1 of the CPC<sup>40</sup>.

---

<sup>38</sup> Judgement of the Supreme Court of 13 October 1999, II KKN 297/97, OSN Prokuratura i Prawo 2000, no. 3, item 15.

<sup>39</sup> Judgement of the Supreme Court of 23 July 2009, III KK 39/09, Lex no. 518144.

<sup>40</sup> Judgement of the Supreme Court of 16 January 2008, IV KK 392/07, OSN Prokuratura i Prawo 2008, no. 5, item 9.

#### 4. Presumption of innocence in a non-trial context

Taking into account general importance of the principle of the presumption of innocence for the legal system, especially its broad treatment in Article 42 (1) of the Constitution of the Republic of Poland, there are no grounds for narrowing the scope of its influence only to the proceeding-related aspects. There is no doubt that the principle of the presumption of innocence is addressed to the entities involved in the criminal proceeding. These include not only courts but also prosecutors, Police and other law enforcement officers conducting the preparatory proceeding. Guarantees resulting from the presumption of innocence should be understood, however, in a broader sense and be also applied at a non-trial level. From this point of view, the presumption of innocence should be applied to every person, institution, organisation and even broader – the whole society, which is obliged to treat the accused as innocent until his guilt is proved and pronounced in a valid sentence.

##### 4.1. Presumption of innocence in press laws

Broad treatment of the principle of the presumption of innocence is especially important in connection with press activities. Trial reporting is of key importance. It concerns compliance with the principle of the presumption of innocence in press reports, articles and columns as well as radio and television discussions concerning given trials. It is connected with the necessity to use adequate terminology (e.g. arrest, suspect, accused, convicted, not yet valid sentence etc.) and avoid terms that prejudice the guilt or are pejorative.

The provisions of Act of 26 January 1984 on the Press Laws<sup>41</sup> guarantee that to a certain extent. In accordance with Article 13 (1) of the PL, it is forbidden to express opinions on the adjudication in the criminal proceeding before the issue of the first instance sentence. This does not mean a ban on the provision of information about the trial but on the judgement, which – in accordance with the dictionary definition – should be understood as expressing conviction, opinion about something, speaking about a person's or an object's values, virtues<sup>42</sup>. Thus, it is inadmissible to speculate about the guilt of the accused in press texts before the first instance sentence is issued. It is rightly highlighted that the ban laid down in Article 13 (1) of the PL is not violated in case a trial report informs about serious defaults in the court proceeding, e.g. the lengthiness of the proceeding, the judge being unprepared, a lack of culture, an omission of some evidence, however under the condition that highlighting these and similar

<sup>41</sup> Journal of Laws No. 5 item 24 as amended.

<sup>42</sup> S. Dubisz, *Uniwersalny słownik języka polskiego* [Universal Dictionary of the Polish Language], Warszawa 2003, vol. III, pp. 237–238.

facts a journalist refrains from expressing his opinions concerning the result of the trial<sup>43</sup>.

The violation of the ban on expressing press opinions on the judgment in the criminal proceeding before the first instance court sentence is issued may constitute grounds for demanding that the journalist publish a correction notice under Article 31 of the PL. Apart from that, every accused is protected by civil law with respect to personality rights, including mainly such virtues as honour, a name or a pseudonym, or an image (Article 23 of the Civil Code)<sup>44</sup>.

Regardless of the above-mentioned issues, it is also inadmissible to publish personal data and the image of persons against whom a preparatory or court proceeding is carried out unless the persons give their consent to do that (Article 13 (2) of the PL) or the prosecutor or court give their consent to do that because of an important social reason (Article 13 (3) of the PL). There must be sufficiently important reasons for the consent to publish personal data and an image. These can e.g. include the need to prevent further criminal activity of the accused, the establishment of new fact by law enforcement agencies or obtaining evidence, as well as the implementation of the educational function of the criminal proceeding or warning and appeasement of public opinion<sup>45</sup>.

The evident strengthening of the position of the accused in this area resulted from Act of 19 August 2011 amending Act on the Press Laws<sup>46</sup>. The amendment to the Press Laws resulted from the judgement of the Constitutional Tribunal of 18 July 2011<sup>47</sup> and concerned the introduction of a possibility of filing a complaint to court about the prosecutor's consent to reveal personal data and an image of persons against whom a preparatory proceeding is carried out<sup>48</sup>.

---

<sup>43</sup> J. Sobczak, *Dziennikarz – sprawozdawca sądowy. Prawa i obowiązki* [Journalist – Court reporter – Rights and duties], Warszawa 2000, p. 184.

<sup>44</sup> For more see A. Szpunar, *Ochrona dóbr osobistych* [Protection of personality rights], Warszawa 1979, p. 162 and the following. Human honour and dignity are also subject under the protection of criminal law (see Article 212 of the CC and Article 216 of the CC).

<sup>45</sup> J. Sobczak, *Prawo prasowe. Komentarz* [Press Laws – Commentary], Warszawa 2008, pp. 525–526; A. Augustyniak, [in:] B. Kosmus, G. Kuczyński, *Prawo prasowe. Komentarz* [Press law – Commentary], Warszawa 2011, p. 228.

<sup>46</sup> Journal of Laws No. 205, item 1204.

<sup>47</sup> K 25/09, OTK-A 2011, no. 6, item 57.

<sup>48</sup> For more on the topic of the relations between the principle of the presumption of innocence and the media see J. Sobczak, *Dziennikarz – sprawozdawca sądowy. Prawa i obowiązki* [Journalist – Court reporter – Rights and Duties], Warszawa 2000; D. Dölling, K.H. Gössel, S. Waltoś (ed.), *Relacje o przestępstwach i procesach karnych w prasie codziennej w Niemczech i w Polsce* [Reports on crime and criminal proceedings in the daily press in Germany and in Poland], Kraków 1997; S. Waltoś, *Prasa a wstępne stadium procesu karnego* [Press and the indicial stage of the criminal proceeding], Zeszyty Prasoznawcze 1968, No. 1, p. 30 and the following; *ibid.*, *Domniemanie niewinności w świecie mediów* [Presumption of innocence in the world of media], [in:] C. Kulesza (ed.), *System wymiaru sprawiedliwości a media* [System of justice administration vs. the media], Białystok 2009, pp. 9–22; P.K. Sowiński, *Zasada domniemanie niewinności a wolność słowa* [Presumption of innocence vs. the freedom of speech], [in:] C. Kulesza (ed.), *System wymiaru sprawiedliwości...* [System of justice administration...], pp. 139–147; P. Starzyński, *Media a zasady procesowe i cele postępowania przygotowawczego* [Media vs. principles of proceeding and the aims of preparatory proceeding], [in:] C. Kulesza (ed.) *System wymiaru sprawiedliwości...*

#### 4.2. Presumption of innocence and employment relationship

The commission of a crime can influence employment relationship. Under Article 52 § 1 point 2 of the Employment Code, an employer may terminate an employment contract without notice by fault of an employee in case the employee within the period of employment commits a crime that precludes the continuation of his employment on the same post if the crime is obvious or was pronounced in a valid verdict. As the above information shows, a person who still has the right to the presumption of innocence may face employment consequences.

The grounds for the provision are challenged in the doctrine and there are suggestions that only a valid court sentence pronouncing the guilt shall constitute grounds for the termination of an employment contract. There are opinions that an employer should not have the freedom to assess whether a crime was committed and who committed it; there should not be such a possibility of bypassing the principle of the presumption of innocence<sup>49</sup>. However, the issue is probably more complicated. Firstly, the possibility of terminating an employment contract under Article 52 § 1 of the EC does not provide the employer with a freedom to take decisions. The commission of crime must be obvious, which is defined in a dictionary as without doubt, unquestionable, certain<sup>50</sup>. Thus, it is inadmissible to terminate employment relationship in ambiguous situations. Secondly, in the criminal proceeding, a much lower level of probability of committing a crime constitutes grounds for the use of much more painful measures, including arrest. For example, obviousness of crime commission is not required in order to apply temporary arrest; high probability is sufficient (Article 249 § 1 of the CPC in connection with Article 258 of the CPC). Thirdly, the introduction of the above-mentioned limitation would misrepresent *ratio legis* of the discussed institution. It is harmoniously emphasised in the doctrine that it concerns an accelerated mode of employment contract termination, which is not realistic in case of the requirement of a valid sentence pronouncing the commission of a crime<sup>51</sup>. It must also be noticed that in order to apply Article 52 § 1 point 2

---

[System of justice administration...], pp. 83–94; R. Broniecka, *Relacje prasowe a zasada obiektywizmu* [Press report and the principle of objectivism], [in:] C. Kulesza (ed.), *System wymiaru sprawiedliwości...* [System of justice administration...], pp. 237–246; M. Mozgawa, *Odpowiedzialność karna za przestępstwa prasowe* [Liability for press crimes], [in:] A. Siemaszko (ed.), *Prawo w działaniu* [Law in action], Instytut Wymiaru Sprawiedliwości, No. 5, Warszawa 2008, pp. 11–73; M. Bransztetel, *Zasada domniemania niewinności a media* [Principle of the presumption of innocence and the media], *Prokuratura i Prawo* 2006, no. 9, p. 54 and the following; P. Daniluk, *Konstytucyjność braku sądowej kontroli zezwolenia prokuratora na ujawnienie danych osobowych i wizerunku podejrzanego* [Constitutionality of the lack of court control over the prosecutor's consent to reveal personal data and the image of the accused], *Ius Novum* 2010, no. 3, p. 73 and the following.

<sup>49</sup> A. Tęcza-Paciorek, *Zasada domniemania niewinności...* [Principle of the presumption of innocence...], p. 73.

<sup>50</sup> S. Dubisz, *Uniwersalny słownik języka polskiego* [Universal Dictionary of the Polish Language], Warszawa 2003, vol. III, p. 76.

<sup>51</sup> See e.g. W. Muszalski, [in:] W. Muszalski (ed.), *Kodeks pracy. Komentarz* [Employment Code – Commentary], Warszawa 2009, s. 201; W. Sanetra, [in:] W. Sanetra, J. Iwulski, *Kodeks pracy. Komentarz*,

of the LC, a conjunction of two conditions is required. Apart from obviousness of a crime, it is necessary to determine that its commission precludes his employment on the same post. From the point of view of guarantees for employees, claims in connection with the employment contract termination are also an important issue (Article 56 of the LC).

The solution adopted in Article 52 § 1 point 2 of the EC does not mean the system is incoherent<sup>52</sup>. The consequences resulting from the obviousness of a crime commission originate also from other provisions. For example, under Article 135 (2) of Act of 20 June 1997 on Road Traffic Code<sup>53</sup>, a police officer seizes a driving licence in case of justified suspicion that the driver committed a crime or offence for which a court may ban him from driving. The document may also be seized in case of justified suspicion that the driver is under the influence of alcohol or another substance acting in a similar way (Article 135 (1) point 1 letter a) as well as in case of suspicion that the driving licence was falsified or altered (Article 135 (1) point 1 letter c). The procedure may be applied towards a person who has not been even charged with the commission of a crime. On the other hand, a series of legal acts regulating the system give grounds for suspending a police officer in case a proceeding is initiated against him<sup>54</sup>, that is when there is no sufficiently substantiated suspicion that a given person performed the act, which obviously is not the same as obviousness of a crime commission. Moreover, as a rule, the suspension of a police officer for a fixed period constitutes grounds for his dismissal unless the reasons for the suspension have disappeared (see e.g. Article 41 (1) point 9 Act on the Police). Based on Act on the Police, an opinion dominates administrative court decisions that Article 41 (2) point 9 does not make the initiation of the officer's dismissal proceeding depend on the result of the criminal proceeding against him, and the assessment of the organs and the court does not concern the crime he is charged with but statutory reasons for dismissal from the Police. Thus it is not possible to refer to the principle of the presumption of innocence in connection with the reasons and procedure of dismissing officers. The principle of the presumption of innocence cannot be identified with the ban on the use of whatever legal measures until a valid sentence in the criminal proceeding is issued<sup>55</sup>.

---

Warszawa 2012, s. 431 and the following; K.W. Baran, *Zatrzymanie pracownika* [Retaining an employee], PiZS 1986, no. 4, p. 48 and the following; for more see T.J. Rybicki, *Rozwiązanie umowy o pracę bez wypowiedzenia na skutek popełnienia przestępstwa przez pracownika* [Employment contract termination without notice as a result of a commission of a crime by the employee], Warszawa 1977.

<sup>52</sup> Sic! A. Tęcza-Paciorek, *Zasada domniemania niewinności...* [Principle of the presumption of innocence...], p. 73.

<sup>53</sup> Le. Journal of Laws of 2012 item 1137 as amended.

<sup>54</sup> E.g. Article 103 item 1 of Act of 27 August 2009 on the Customs Service (i.e. Journal of Laws of 2013, item 1404 as amended); Article 39 item 1 of Act of 6 April 1990 on the Police (Journal of Laws of 2011, No. 287 item 1687 as amended).

<sup>55</sup> Judgement of the Supreme Administrative Court of 16 February 2011, I OSK 1410/10, Lex no. 1070759, judgement of the Voivodeship Administrative Court in Kielce of 14 November 2007, II SA/

### **4.3. Presumption of innocence vs. infringement of personality right**

As it was already mentioned in the non-trial context of the principle of the presumption of innocence, the protection of personality rights become especially important. The issue is often connected with parallel proceedings: the criminal and the civil one. It is rightly noticed that a court conducting a civil proceeding in accordance with the Code of Civil Procedure is not competent to adjudicate whether the plaintiff is guilty of causing an accident in which a man was killed. Only a criminal court is competent to examine the case. Thus, until the plaintiff is pleaded guilty of causing that accident in the course of the criminal proceeding and that guilt is pronounced in a valid sentence issued by a criminal court, a civil court conducting a case in the infringement of personality rights, is obliged to treat the plaintiff as innocent under Article 42 (3) of the Constitution of the Republic of Poland<sup>56</sup>.

## **PRESUMPTION OF INNOCENCE AS AN ELEMENT OF A FAIR TRIAL**

### **Summary**

The article discusses the issue of the presumption of innocence in the context of a fair criminal proceeding. The issue is analysed from two perspectives: the proceeding-related one and the non-proceeding-related one. Within the former aspect, the role of the presumption of innocence in the criminal proceeding and the material burden of proof are discussed. The use of coercive measures towards a person who is subject to the presumption of innocence and the legal consequences of the violation of the presumption of innocence are analysed too. As far as the latter is concerned, the issues connected with the Press Laws, employment relationship and personality rights are under analysis.

## **DOMNIEMANIE NIEWINNOŚCI JAKO ELEMENT RZETELNEGO PROCESU KARNEGO**

### **Streszczenie**

W opracowaniu poruszono problematykę domniemania niewinności w kontekście rzetelnego procesu karnego. Zagadnienie to zostało przeanalizowane z dwóch perspektyw: procesowej oraz pozaprocessowej. W pierwszym aspekcie odniesiono się do

---

Ke 568/07, Lex no. 484944, judgement of the Voivodeship Administrative Court in Warszawa of 7 October 2009, II SA/Wa 746/09, Lex no. 573903.

<sup>56</sup> Decision of the Court of Appeal in Warszawa of 12 October 2011, I ACa 326/11, Lex no. 1120113.

funkcji domniemania niewinności w procesie karnym oraz problematyki materialnego ciężaru dowodu. Przeanalizowano także kwestię stosowania środków przymusu wobec osoby objętej domniemaniem niewinności oraz konsekwencji prawnych naruszenia domniemania niewinności. W ujęciu pozoprocесowym przedmiotem analizy była m.in. problematyka prawa prasowego, stosunku pracy oraz dóbr osobistych.

## **LA PRÉSUMPTION DE L'INNOCENCE COMME UN ÉLÉMENT DU PROCÈS PÉNAL HONNÊTE**

### **Résumé**

L'auteur touche à la problématique de la présomption de l'innocence dans le contexte du procès pénal honnête. Cette question a été analysée de deux perspectives: procédurale et extra procédurale. Dans ce premier aspect on a démontré la fonction de la présomption de l'innocence dans le procès pénal et la problématique du poids matériel de la preuve. On a analysé aussi la question d'appliquer les moyens de force auprès la personne sous la présomption de l'innocence ainsi que les conséquences juridiques de violer la présomption de l'innocence. Dans le cadre des éléments extra procéduraux on a analysé en autres la problématique du droit de presse, la relation du travail et des biens personnels.

## **ПРЕЗУМПЦИЯ НЕВИНОВНОСТИ КАК ЭЛЕМЕНТ ПРИНЦИПАЛЬНОГО УГОЛОВНОГО ПРОЦЕССА**

### **Резюме**

В исследовании затронута проблематика презумпции невиновности в контексте принципиального уголовного процесса. Данный вопрос проанализирован с двух точек зрения: процессуальной и внепроцессуальной. Первый аспект предполагает обращение к функции презумпции невиновности в уголовном процессе, а также проблематике отягчающего обстоятельства в виде вещественного доказательства. Проанализирован также вопрос о применении принудительных мер в отношении лица, на которое распространяется презумпция невиновности, а также правовых последствий нарушения презумпции невиновности. С внепроцессуальной точки зрения предметом анализа была, в частности, проблематика Закона о печати, трудовых отношений, а также личных благ.