REVIEW OF HUMAN RIGHTS
Vol. 7, No. 1, Winter 2021, 89-119
DOI: 10.35994/rhr.v7i1.198

EXCEPTIONALITY OF THE PRINCIPLE OF PRESUMPTION OF INNOCENCE

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Abstract

The Principle of Presumption of Innocence (PPI) is one of the constitutional pillars of modern democratic state system. However, various theories and justifications have been developed for its inalienability to be reconsidered, especially based on the local context and needs of each country. This research highlights and critically analyzes the question of its reconsideration, the exceptions so far created, and its impact on the continental human rights jurisdictional system.

Key words: Presumption of innocence, justice, human rights, jurisdiction.

"A man cannot be called guilty before the judge's sentence,
nor can society take away his public protection until
it has been decided that he violated the covenants
with which that protection was granted to him".[1]
Cesar Beccaria

Introduction

In these days much is being discussed about the abuse of the Principle of Presumption of Innocence (PPI). However, what has little been observed is the fact of matter that this space has already

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Published Online: February 20, 2022.
ISSN (Print): 2520-7024; ISSN (Online): 2520-7032.
https://reviewhumanrights.com

been reduced by various policies, which argue different motives and justify gibberish, especially so that this principle is relativized in each case, like what has undermined its validity, and even, questioning whether it should continue to exist. The PPI as a normative principle was born as a benefit for the justiciable, in which a person was sentenced (with minimal evidence, such as confessional), and that it could be deduced that the proceedings were conducted under the principle of guilt, in that the burden of proof was shifted to the accused, seeking to prove his guilt. In that the accuser held an advantage over the defendant, leaving the right of arms of the parties in imbalance.

The legal figure of the PPI can be observed in a modern way with the shift from absolutism to the modern state (in countries like Mexico, Colombia, USA, etc.).[2] In these countries every citizen is already guaranteed a presumption of not having committed the crime of which he was accused, was a brake on the counterweight of the abuse of authority so that the accused would no longer be charged with defending his guilt.[3] Responsibility was now shifted to the effect that the prosecutor or the prosecuting party had to prove that the person was not innocent, contrary to what was happening. For this reason, this transformation has already generated a properly balanced process to assess the claims of the affected party, in addition to establishing the rational exercise of the judge and to duly evaluate the evidence exhibited during the trial, turning these into the elements considering whether the person was innocent. The evolution of the legal sciences has taken place over time, which has made it possible to reassess the usefulness of institutions and, where appropriate, to improve them for the benefit of society. In the case of the PPI, the political groups in power have come to believe that this principle is a very difficult standard to demerit, and that there are certain crimes, which by their very nature must be considered and treated differently, even if it means that the PPI is reduced, and its substantive value is relativized.

There is now a catalogue of crimes (which in the doctrine are considered as part of the criminal law of the enemy), which they consider to overcome the social good over the PPI, because the accused was considered absolutely innocent, so this figure has been questioned by relativizing this principle (depending on the crime and the person who committed it, variables that were not previously

considered, generating exceptions that question the PPI). This study will try to find out what is the context and justification of the exceptions to the PPI, and if they corrupt their own nature or if, on the contrary, they are explained and validated by their social utility.[4]

The methodology of this research will first present a descriptive study of the PPI. Later, it will be studied how this principle has established like law, and the existence of certain cases of exceptionality for this principle, annotating because it was considered that there should be these normative limits to this one. In the next section, the nature of human rights will un raveledled, to review this principle from the perspective of the European Court of Human Rights (ECtHR). Finally, a set of conclusions and proposals will be presented that aim not only to summarize the fundamental and vital points of the PPI but also to question the validity and existence of a system of exceptions.

This research aims to make a general deconstruction of the Principle of Presumption of Innocence; because recognizing its components, will understand its functions and objectives, in order to notice how the regulatory and jurisdictional exceptions to the PPI have emerged and validated. However, these exceptions make it possible to observe that the PPI is not a dogma, but that the relativity of the use of exceptions is directly related to the context of each State. The evolution and dynamism of legal science must go hand in hand with what society requires. However, that also means that we must question and re-evaluate certain institutions. But it will be worthwhile if the principles that form the guarantees and rights are limited by the general good or utility of the political group in power. It is clear that the PPI has changed over time, but how close we are to it being beneficial or how far we will be moving away, and perhaps in the future, no one will enjoy this presumption.

1. DECONSTRUCTION OF THE PRINCIPLE OF PRESUMPTION OF INNOCENCE

In *Shannon Nelson vs Colorado*, was explained the PPI: "The presumption of innocence can definitively be traced back to antiquity and the ancient Roman maxim, *de quolibet homine presumitur quod sit bonus homo donec probetur in contrarium*, meaning: each person may be presumed to be a good man, until the

contrary is proved". So, that its value in the delivery of justice and in the democratic system can be understood.

A. THE CONCEPT

The first thing to discover is the meaning of the concept of Innocence. The classic Black`s Law dictionary considers that: "Innocence, The absence of guilt; esp., freedom from guilt for a particular offense."[5] So, it points out that one is innocent in the case of absence of guilt, he also warns that if there must be a process that determines that he is free of guilt. But which is understood by guilt, the same text states that: "Guilty, n. 1. A plea of a criminal defendant who does not contest the charges. 2. A jury verdict convicting the defendant of the crime charged."[6] Thus, it is a statement by the defendant of the case against him, and on the other hand, as the result of a trial and a jury verdict.[7]

But beyond the legal conception, the term innocence should not be equated with "not guilty." Interpretations can be in different areas such as moral or religious. Now, one sense in which a person is considered to be innocent is that the prosecution could not distort the PPI.

Innocent A term that is often mistakenly equated to a plea of "not guilty." Innocence is not a legal term, but rather a philosophical, moral, or religious expression of nonresponsibility. By contrast, a not guilty plea simply means that the defendant is demanding that the prosecutor prove every part of the charged crime beyond a reasonable doubt. Many defendants who plead (and are found by the jury to be) not guilty are probably not innocent under any reasonable understanding of that term. Instead, the prosecutor may have simply failed to produce enough compelling evidence, failing to convince the jury beyond a reasonable doubt.[8]

But beyond these meanings, the concept of "innocence" must be analyzed from the legal sense.

Legal innocence. Criminal law. The absence of one or more procedural or legal bases to support the sentence given to a defendant. - In the context of a petition for writ of habeas corpus or other attack on the sentence, legal innocence is often contrasted with actual innocence. Actual innocence, which focuses on the facts underlying the sentence, can sometimesbe used to obtain relief from the death penalty basedon trial-court errors that were not objected to at trial, even if the petitioner cannot meet the elements of the cause-and-prejudice rule.

But legal innocence, which focuses on the applicable law and procedure, is not asreadily available. Inadvertence or a poor trial strategy resulting in the defendant's failure to assert an established legal principle will not ordinarily be sufficient to satisfy the cause-and-prejudice rule or to establish the right to an exception from that rule.[9]

Other issues such as having a fair trial, and errors or abuses in the process may declare a person not innocent, are already on the table. Here it is important to mention that a poor or poorly achieved strategy does not satisfy that the person can be considered innocent. With regard to the presumption of innocence, the Black Law states: "*Presumption of innocence. Criminal law. The fundamental principle that a person may not be convicted of a crime unless the government proves guilt beyond a reasonable doubt, without any burden placed on the accused to prove innocence".*[10] In that the guilt of the accused must be fully proved, leaving no trace of doubt on the part of the authority, otherwise there is room for his not guilty to be considered, and his presumption of innocence preserved. Thus, an individual will only be innocent until there is a judicial determination, meaning that the work of the prosecution was not sufficient for the authority to agree on the approach that the person was guilty.[11]

Presumption of innocence n. A basic tenet of criminal law that a person is to be presumed to be innocent until he is proven guilty beyond a reasonable doubt. The burden of proving the person guilty falls completely on the justice system, with the accused bearing no burden of proving his or her innocence. The presumption of innocence is not a determination of innocence, but rather a placing of the burden of proof entirely upon the justice system. [12]

A judgment of the Constitutional Court of Colombia considered that part of the doctrine discusses the presumption of innocence as a "fundamental principle of civility", or in any case, as the product of a guarantor option in favour of the protection of the immunity of the innocent, even at the cost of the impunity of a guilty party.[13]

In other words, it is a presumption iuris tantum, meaning that a fact is considered true, as long as the contrary is not proven.[14]

B. THE FUNCTIONS

The PPI has two primary functions. The first to inform the accused that there is a trial against him, and that until there is a trial, that classification will be retained.[15]

In the opinion of this First Chamber of the Supreme Court of Justice of the Nation (Mexico), the fundamental right to the presumption of innocence as a rule of treatment, in its extra-procedural aspect, it should be understood as the right to be considered and treated as a non-expert or non-participant in acts of a criminal nature or similar to such acts and thus determines the right not to have the consequences or legal effects attached to such acts. It should also be pointed out that the violation of this aspect of the presumption of innocence can come from any State agent, especially from the police authorities. Given the significance of a criminal charge, the Constitution grants the accused a number of fundamental rights in order to ensure a fair trial against him, However, these rights are of no use when the authorities responsible for investigating the crime carry out various actions aimed at publicly exposing someone as responsible for the criminal act. In the face of these actions, there is an enormous risk of condemning the accused prematurely, since the centre of gravity corresponding to the process as such can be shifted to the public accusation made by the police.[16]

Legal doctrine recognizes this presumption as a legal principle, which points out that the burden of proof will be on the authority, and as long as it does not effectively demonstrate such guilt, that person should be treated as innocent. "Presumption of innocence. The legal presumption that every person charged with a criminal offense is innocent until proved guilty. Althought this is a termed a "presumption" it is in fact a fundamental principle underlying the criminal law".[17]

On the other hand, the PPI as a principle will be observed as a guideline by the authorities, so its function is to present all the elements that destroy that innocence possessed by the accused:

> If all the circumstances and evidence in the criminal case give rise to firm charges and to sufficient evidence to rebut the presumption of innocence which, in favour of any accused, is inferred from the harmonious interpretation of articles 14, second paragraph, first paragraph, 16, first paragraph, 19, first paragraph, 21, first paragraph and 102, paragraph A, second paragraph, of the Political Constitution of the United Mexican States, and on the other hand, the defendant rejects the charges and denies the crime, or their guilty participation in its updating, it must necessarily prove the positive facts on which its exclusionary position rests, without sufficing its mere refusal, not

> corroborated with effective elements of conviction, because to admit as valid and sufficient by itself the unilateral manifesto of the accused, would destroy the whole mechanism of circumstantial evidence and ignore its effectiveness and demonstrative scope.[18]

C. THE OBJECTIVES

Three PPI targets can be located. As a protector of the rights of the people, as a mechanism so that there is no accusation of authority and full verification of the conduct.

In the first case, the PPI protects the human dignity, freedom, honor and good name of the subject who is under trial, because it is not until there is a sentence that the person must be violated or qualified by the social conglomerate. The second objective is to ensure that there is no abuse on the part of the authority, but that the authority adheres to and conducts the previously established rules, otherwise there would be an abuse of power, and this would undermine the PPI.

Abuse-of-rights doctrine. Civil law. The principle that a person may be liable for harm caused by doing something the person has a right to do, if the right is exercised (1) for the purpose or primary motive of causing harm, (2) without a serious and legitimate interest that is deserving of judicial protection, (3) against moral rules, good faith, or elementary fairness, or (4) for a purpose other than its intended legal purpose.[19]

D. THE ELEMENTS (SUSTANTIVES AND ADJECTIVES)

In this section, the components of the PPI will be analyzed. Undoubtedly, and as already mentioned, there are jurisdictional principles such as impartiality, legality, objectivity, publicity and publicity that must govern the actions of the authorities. The first thing to note is the guarantee that everyone has the right to justice:

> Although articles 1o. and 17 of the Constitution of the United Mexican States, as well as the various 25 of the American Convention on Human Rights, recognize the right of access to the administration of justice -access to effective judicial protection-, the truth is that such a circumstance does not have the scope to circumvent the procedural presuppositions necessary for the provenance of the juris diccionales that the governed have within their reach, because such a course of action would mean that the Courts would cease to observe the other constitutional and legal principles governing their jurisdictional function, thereby causing a state of uncertainty in the addressees of that function, because the way in which these bodies operate would

> not be known, as well as disrupting the procedural conditions of the parties to the trial.[20]

However, in order to protect the PPI before and during the jurisdictional process, a set of rights must be protected, such as due jurisdictional protection:

> The guarantee of jurisdictional protection can be defined as the subjective public right that every person has, within the time limits and terms laid down by law, to have access ex ante to independent and impartial courts, to raise or defend a claim, so that through a process in which certain formalities are complied with, the claim or defence is decided and, where appropriate, that decision is enforced. However, if it is borne in mind that the prevention of the courts being allowed to dispense justice in the periods and terms laid down by law, without hindrance, means that the public authority, in any of its manifestations: Executive, Legislative or Judicial- cannot make access to the courts subject to any condition, because if any were to be established, it would be an obstacle between the governed and the courts, therefore, the right to judicial protection can undoubtedly be infringed by rules imposing requirements that prevent or impede access to the courts, if such obstacles are unnecessary, unreasonableness or proportionality, in respect of the purposes lawfully pursued by the legislator. However, not all the requirements for access to the process may be considered unconstitutional, as is the case with those who, respecting the content of that fundamental right, are bound to preserve other rights, constitutionally protected goods or interests and are sufficiently proportionate to the intended purpose, such as compliance with legal deadlines, the exhaustion of prior ordinary resources before the exercise of certain types of shares or the prior provision of bonds or deposits.[21]

In the same canon, if a processor does not have an adequate defense, the PPI could not be safeguarded:

> The right to an adequate defence, contained in article 20, paragraph A, section IX, of the Political Constitution of the United Mexican States (in its text prior to the reform published in the Official Gazette of the Federation on 18 June 2008)means that the accused shall have the right to a defence, through his lawyer, and to have him appear at all stages of the proceedings, who shall be obliged to do so as often as he is wanted, which is updated since it is placed at the disposal of the Public Prosecutor's Office; that is, from the ministerial stage it must count on the effective assistance of the professional, understood as such, the physical presence and the effective help of the legal adviser, who shall ensure that the process is carried out in accordance with the principles of Due process, and this is not vitiated, ensuring in the end

> the issuance of a sentence that complies with the requirements, values and legal and constitutional principles that permeate the due process of law; what must be observed in all those proceedings or actions and stages of the proceedings in which the presence of the accused is eminently necessary, in which he actively, directly and physically participates or must participate, as well as in those in which he or she is not present, would seriously question or question legal certainty and due process. This is so, because the adequate defense represents an instrumental right whose purpose is to ensure that the punitive power of the State will be deployed through a fair process, which also seeks to ensure that he can have his fundamental rights fully guaranteed, such as not declaring, not incriminating himself, not being held incommunicado, not being subjected to torture or being arbitrarily detained, and being informed of the reasons for his detention, among others.[22]

It is essential to mention that there are two hypotheses regarding PPI and due process. There are those who consider it an element of due process of law, and colts who point out that it is one of the pillars of the justice system, such as due process.[23] But beyond this discussion, their position and value must be upheld. Within the mechanisms of due process there is a "hard core", which must be observed inexcusably in all jurisdictional proceedings, and another of which are applicable in proceedings involving an exercise of the punitive power of the State. Thus, with regard to the "hard core", the mechanisms of due process that apply to any procedure of jurisdictional nature are those that this Supreme Court of Justice of the Nation has identified as essential formalities of the procedure, the whole of which integrates the "guarantee of hearing", which allow the governed to exercise their defenses before the authorities modify their legal sphere definitively.[24]

I have seen substantive guarantees contained in the PPI, but we must also take care of the formalities of the process and the evaluation of the evidence, because not doing it in the right way would violate this principle.

The essential formalities of the procedure are: (i) the notification of the initiation of the procedure; (ii) the opportunity to offer and disallow the evidence in which the defence is fabricated; (iii) the opportunity to plead; and, (iv) a decision settling the issues under discussion and the challenge to which has been considered by this Court as part of this formality. However, the other core is identified jointly with the list of minimum guarantees that must be available to

any person whose legal sphere seeks to be modified by the punitive activity of the State, as is the case, for example, with criminal law, immigration, fiscal or administrative, requiring that guarantees be made compatible with the specific subject matter of the case. Therefore, within this category of due process guarantees, two species are identified: the first, which corresponds to all persons irrespective of their status, nationality, gender, age, etc., within which they are, for example, entitled to have a lawyer, not to testify against themselves or to know the cause of the sanctioning procedure; and the second, which is the combination of the minimum range of guarantees with the right to equality before the law, and which protects those persons who may be at a disadvantage compared to the legal system because they belong to a vulnerable group, for example, the right to consular notification and assistance, the right to have a translator or interpreter, the right of girls and boys to have their detention notified to those exercising their parental authority and guardianship, among others of the same nature.[25]

In order to verify the conduct or offence charged, the following tests must be presented and administered, in terms of their lawfulness,[26] validity and weight:

> Evidence of indictment is evidence intended to establish, directly or indirectly, the existence of the offence and/or the criminal responsibility of the accused. The relationship between the subject matter of the evidence and the facts to be proved in criminal proceedings must be considered in order to conclude whether a prosecution is direct or indirect. Evidence of indictment shall be direct if the evidence relates to the criminal act as a whole or to any aspect of it that may be observed (elements of the offence) and/or to the manner in which a person has intervened in those acts (criminal liability). In fact, the evidence against the accused shall be indirect if the evidence relates to a secondary act from which the existence of the offence, any of its elements and/or the responsibility of the accused may be inferred.[27]

In accordance with the foregoing, the authority must verify fully that the defendant has carried out the accused conduct, in order not to leave room for doubt or that the evidence is insufficient:[28]

> With regard to the assessment of evidence, by technique, it is clear that there is incompatibility between the concepts of insufficient evidence and absolute doubt, since the former prevents a relative situation when existing data are not suitable, sufficient, neither

> conclusive to arrive at full certainty about the crime or the responsibility of an accused, this insufficiency of incriminating elements justly obliges his acquittal for the lack of proof; whereas, the sub-jective state of doubt, is only relevant to the responsibility or irresponsibility of a defendant, and is updated when, far from being insufficient evidence, there is such a degree that it is sufficient to doubt about two or more different, affordable and consistent on the basis of the same context, since one argument and another could easily be sustained, and in which case, by legal criteria and in terms of article 247 of the Code of Criminal Procedure for the Federal District, the decision-maker of the instance is obliged, on the basis of the principle of the most favourable to the accused, to acquit him.[29]

It is essential to note that if the evidence is obtained unlawfully, it would result in the violation of the PPI:

> The normative force of the Constitution and the inviolability of fundamental rights are projected on all members of the community, in such a way that all the subjects of the system, without exception, they are obliged to respect the fundamental rights of the individual in all their actions, including the search for and offering of evidence, that is to say, of those elements or facts with which to be able to subsequently defend its claims before the courts. Thus, the evidence obtained, directly or indirectly violating fundamental rights, will have no effect. This statement affects both the evidence obtained by the public authorities and those obtained, at their own risk, by an individual. Furthermore, the ineffectiveness of evidence not only affects evidence obtained directly in the instrument constituting the violation of a fundamental right, but also evidence acquired from or as a result of the fundamental right, even if all the constitutional requirements have been met. Both have been achieved thanks to the violation of a fundamental right—the former directly and the latter indirectly—so that, in pure logic, according to the exclusion rule, they cannot be used in a judicial process.[30]

E. THE INSTRUMENTATION (SUBSTANTIVE AND ADJECTIVE)

The SCJN has determined how the instrumentation or use of PPI should be observed: The presumption of innocence is a right that can be qualified as a "polyhedron", in the sense that it has multiple manifestations or aspects related to guarantees aimed at regulating different aspects of the criminal process. One of its aspects manifests itself as a "rule of procedural treatment" or a "rule of treatment" of the accused, insofar as this right establishes the manner in which a person who is subject to criminal proceedings must be treated. In

this sense, the presumption of innocence entails the right of every person to be treated as innocent, provided that his or her guilt is not established by virtue of a conviction. This declaration of the presumption of innocence orders judges to prevent, to the greatest extent possible, the application of measures involving de facto equality between accused and guilty persons.[31]

In other words, it prohibits any type of judicial decision involving the anticipation of the penalty. In addition, the PPI remains in force until it is completely destroyed, with the legal actions of the authority. The presumption of innocence is a right that can be described as "polyhedral" in the sense that it has multiple manifestations or aspects related to guarantees aimed at regulating different aspects of the criminal process. One of these aspects manifests as "evidentiary rule", in so far as this right sets out the characteristics which the probationary authorities must meet and who must provide them in order to be able to consider that proof of a valid charge exists and thus to destroy the innocent status of every defendant.[32]

2. PRESUMPTION OF INNOCENCE IN THE CONTEXT OF THE CRIMINAL LAW OF THE ENEMY

A special point for the study of the criminal law of the enemy, is the considerable limitation of the procedural rights of the accused, the requirement of authenticity in the procedure, the contraction of the claims of legality and receipt of evidence,[33] Measures of intrusion of private communications, of covert or secret investigation, of confinement, of extending the periods of detention and the use of torture, place in question the Principle of Presumption of Innocence.

In 1999, Günther Jakobs highlighted the three axioms of the Criminal Law of the Enemy: 1. Anticipation of punishment (crimes of danger); 2. Excessive penalties; and, 3. Diminished rights. This author argues that there is a state of emergency and that it increases due to the depreciation of the social impulse: bringing as a result family disunity and multiculturalism as a result of the displacements of other societies, so that society will have enemies who pretend to be ordinary citizens.

Coercion is intended to be positive, not directed against the person, but against subjects that generate crimes that repudiate society as a whole, causing the criminal to die as an enemy of society. Jakobs identifies enemies according to their quality, in sexual

assaults and in certain frequent crimes; in financial offences and in organized crime:[34] according to their association with a criminal association, related to the trafficking and distribution and sale of narcotics, the machination to kill or terrorism. This author maintains that these individuals have been permanently and decisively placed in the rule of law, that is, they should not be considered as anyone else, because the contrary would violate the norms and security of other people, It must be protected from enemies, who in principle behave irregularly and therefore do not provide an ideal behaviour, so they cannot be blamed like any accused, but must be fought with them as enemies, as hostile to society itself.

Jakobs's position was similar to that of everyday criminal science, which differentiated individuals from those who could not interact, so that certain guidelines of security would be available; from those who can interact (distinguishing ineligible from accused).[35] In this group of people, those who work according to the law and those who transgress the norms are located, but that would not seriously disturb it since its contravention, could be seen as a reparable act, a not serious act. But, at the same time, also persons who enjoy all their faculties and who persistently do not wish to practice the laws of society (for example, traffickers); they, according to legalistic thinking, cannot be considered citizens, in such a way that they fall within the criminal law of the enemy, in which they will have to act in a manner equivalent to their operations, for they cannot govern the rule of law. Jakobs considers that the criminal law of the citizen is the right of all; the criminal law of the enemy is against the contrary of society, it is a physical coercion, from which it is a battle; It also warns that its postulates are more honest than what is contained in the rules, in which many legislations consider terrorists as citizens, combining rules of the criminal law of the enemy with those commonly used for criminal offences of individuals.

The criminal law of the enemy can be seen by a relativization of criminal rights (adjectives and nouns), and that is contrary to a common criminal law, exclusive to a liberal state. Today, modern criminal policy does not work for the decriminalization and reduction of punishments, but with the current criminalization and decline of them, it is grouped in the abusive creation of new criminal types, it invades areas that are risks for the State and the citizenry:

trafficking in persons, drug trafficking, terrorism, electoral crimes, financial crimes and crimes against the environment. So, the guarantee that is distinguished by the logic, coherence and proportionality in the management of the restrictive means towards the respect for the dignity of the people, consents to a criminal law directed towards the intervention of the State, for the protected good that is protected.[36]

Criminal law must respect the universal moral rights of every individual, dignity cannot depend on the affirmation of the State, otherwise it would be a criminal copyright in which human rights are relativized for a group of people. Freedom and dignity confer equality on all subjects without exception, it is not even permissible to regard alleged offenders as adverse in very serious conditions, however cruel the behaviour of the subject. No one is allowed to treat an individual as a citizen without his or her guarantees. It must be remembered that the norm must operate as what is and not as what is wanted by someone; otherwise the annihilation of society would arise.[37] For if such a breach is allowed with exceptional discharge, a compromised watershed will be opened, and there may be more prohibitions, under the pretext of the safety of all. That is why, in the face of the Criminal Law of the Enemy, the criminal law of the citizen is opposed, which is based on the unrestricted respect for the human rights of all governed, as a principle of a Democratic State based on the rule of law, and specifically involving the presumption of innocence in criminal proceedings.

EXCEPTIONS TO THE PPI IN MEXICAN LAW

With the establishment of the new Code of Criminal Procedure, the way the justice system operated was transformed. From now on, a number of intractable problems were no longer addressed, but people who were affected and in need of urgent State protection.[38] In recent decades, the importance of creating a system of criminal procedure that will improve the quality of proceedings, guaranteeing greater rights to the parties, indicating the functionality of prosecutors, the performance of judges, but above all by recognizing various prerogatives to the victims, and to generate a procedural economy on the issues they would resolve.[39] In this way, several countries produced a revolution in their criminal jurisdictional systems, such as: Chile, Colombia, Peru, Republica Dominicna,

Paraguay, Mexico, among others (the case to be used as an example, will be Mexico).

In 2008, a new Code of Criminal Procedure (CNPP), which would be national, was established, withdrawing the possibility for the States of the Federation to have their own legislation on the subject, in order to make way for a single and uniform system, and thereby generate consensus for progress in its application, interpretation and validity. It was a question of responding to the needs of the society that demanded a change in the criminal proceedings, to establish a new paradigm, that contained a set of norms that will reflect the whole nation.[40] With regard to interim measures, it should be noted that their establishment and determination still creates certain obstacles, whether due to lack of knowledge, poor training, poor training, disabilities or undue prudence, which could be an omission on the part of the public prosecutor or prosecutor.[41]

The basis that gives its legitimacy to the rule is proportional to the protection of the values and assets of society, and that makes each judgment, she feels considered within them. In the case of so-called "protection measures". It can be observed that they are norms of public and social interest, which were designed to proceed at a certain time and under certain parameters, to ensure that the victim is adequately protected, ensuring that there is no violence to his or her integrity, while protecting his or her rights as a victim.[42] Violence that endangers the life and/or integrity of individuals deserves preventive and urgent treatment to stop or prevent harm to individuals. Even in the presence of slight indications of a situation of risk that compromises the right to life, health and physical and mental integrity of the persons involved in the trial, the judicial authority is obliged to issue measures for their protection. It is therefore necessary to identify and determine the existence of any potential gender-based risk.[43]

The Protection Order is a new legal instrument designed to protect the victim of domestic and/or gender-based violence from all types of assault. To this end, the protection order concentrates on a single and immediate judicial decision (an order) for the adoption of measures of a criminal and civil nature, while at the same time activating the social protection mechanisms established by the State in favour of the victim.[44]

THE CONCEPT

Protective measures are those imposed, substantiated and motivated under the strictest responsibility of the Public Prosecutor's Office when the accused is deemed to pose an imminent risk to the safety of the victim or injured party. Such measures shall be heard by the supervisory judge, who may cancel, amend or ratify them, within five days of their imposition.[45]

LEGAL DESCRIPTION OF THE PROTECTION MEASURES

Now that it has been placed, its origin, object and concept, it is essential to know what the protection measures are in the CNPP. Article 137 establishes the following protection measures:

> "The Public Prosecutor's Office, under its strictest responsibility, shall issue a reasoned order for the application of appropriate protection measures when it considers that the accused poses an imminent risk to the safety of the victim or victim.[46] The following are protective measures:
>
> I. Prohibition of approaching or communicating with the victim or injured party; II. Limitation to attend or approach the home of the victim or victim or the place where he or she is located; III. Immediate separation from the home; IV. The immediate handing over of objects for personal use and identity documents of the victim in the possession of the person likely to be responsible; V. The prohibition of acts of intimidation or discomfort to the victim or to persons connected with them; VI. Surveillance at the home of the victim or injured party; VII. Police protection of the victim or injured party; VIII. Immediate assistance by members of police institutions to the home where the victim is located or is present at the time of request; IX. Transfer of the victim or victim to temporary shelters or shelters, as well as their descendants, and X. Re-entry of the victim or victim to their home, once their safety is safeguarded".

As you can see, there are a set of rules for the operation of this procedural figure. The first thing is that authority can be exercised, being the Public Prosecutor's Office the only public servant to impose them, so here we can note a power additional to those generated by the organic code of attorney. The next rule is to found and motivate the administrative act so that it is considered that its competence and exercise is justified and validated, and the need for the act of inconvenience.

Under the assumption of an "imminent risk", which means objective consideration of the circumstances. This means that they operate under the discretion and prudence of the public prosecutor in charge, but these measures must be considered as affecting the

rights of third parties, such as not enjoying a hearing, due process, procedural equality, presumption of innocence or being disturbed in your property, without a court order.[47] However, it has been recognized by the judiciary that, in view of the urgency of the case,[48] the validity of provisional measures; therefore, the public act must have the good appearance of the right, reasonableness and proportionality, in order to be exercised optimally.[49]

These measures must be used as a measure of protection by the Public Prosecutor's Office to provide security for the victims, who, as the law indicates, must have conditions of real and imminent danger in order for their determination to be determined.[50] It is therefore essential for the person concerned to have the legal advice of a public defender, private lawyer, social worker or victim area adviser who can request or advise the victim of his or her right to security, by way of provisional measures.[51]

As it is an administrative act of the prosecutor, it must consider the reasons and circumstances of the case and must therefore take into account not only the purpose of the rule, but also that its implementation is justified and does not become an abuse of authority;[52] In this statement of reasons for the provisional measures, the reasoning behind their decision must be noted, and, if necessary, the use of force if necessary or the measures of constraint contained in the CNPP. [53] The key, however, is for the prosecutor to be willing to make this intervention, and to recognize the key elements for using and instrumentalizing interim measures. Similarly, the General Act on Women's Access to a Life Free from Violence determines what protection orders are (article 27):

They are acts of protection and of urgent application according to the best interests of the Victim and are fundamentally precautionary. They must be issued by the competent authority, immediately when they are aware of acts likely to constitute offences or offences involving violence against women.

In the same legal system, a catalogue of emergency protection orders is presented (article 29):

I. Immediate dismissal by the aggressor of the marital domicile or where the victim lives, regardless of the proof of ownership or possession of the property, even in the case of leasing;

II. Immediate prohibition of the person likely to be responsible for approaching the home, place of work, place of study, place of

residence of the ascendants and descendants or any other frequent by the victim;

III. Return of the victim to the home, once his or her safety is safeguarded; and,

IV. Prohibition of intimidating or disturbing the victim in his or her social environment, as well as any member of his or her family.[54]

The purpose of the catalog of protection measures is to ensure the safety of the victim and to ensure that he or she does not suffer from violence (physical or psychological), through physical separation from the accused or any kind of contact.[55]

The correct interpretation of the individual guarantee of legality, in respect of acts of nuisance, must be that, as essential requirements, they must be carried out by the competent authority and that the latter must substantiate and justify the legal cause of the procedure, which means that any act of authority must necessarily express, as a core part, the legal grounds on which the act is based, otherwise it is incorrectly substantiated by the failure to invoke the due normative provision, empowering the authority to do so.[56]

In the extinction of dominion we see another example, as in a criminal situation the appropriation of the confiscated goods in an administrative operation, in which first the confiscated goods are auctioned, and then inquire about the origin or possible involvement of the owner in the criminal acts under investigation, which have not yet been decided by the Judiciary.

Another example is in cases of political justice. In which the expulsion of a public servant depends on the accusation of a group of deputies, inviting senators as censor judges of certain conduct. It can be observed here that while due process must be followed, the decision will have a more political, rather than judicial, determination. The desafuero is a mechanism to strip a public official of his or her representativeness, but above all it aims to prevent him or her from taking refuge in his or her authority, and to make him or her available to the authorities of the justice system. However, the impeachment is predetermined as an operation to decontaminate the image of public power, since they consider someone as guilty, in an operation to separate and generate an idea of justice before the citizenry.

A. ENFORCEABILITY AND JUSTICIABILITY OF THE PPI AS A HUMAN RIGHT

Enforceability is a request to the authority to perform an act that protects, protects or respects a right.[57] It is an act in which the authority is excited to proceed, and in which it is revealed that some human right is being violated or breached. In the face of this act of enforceability, the legal operator will study the merits of the petition, issuing a decision to make, grant, allow, respect, among others; that validates and consents to the use and enjoyment of their Human Rights.[58]

In the 1948 declaration of the man of the United Nations, it is stipulated in its Article 11: "1. Everyone charged with an offence has the right to be presumed innocent until proved guilty, in accordance with the law and in a public trial in which he has been granted all the guarantees necessary for his defence". Here several points are seen, not as a principle per se but as a right of the person, but in a secondary way, it imposes a duty on the authority to prove reliably and without doubt that the person is guilty.[59] Article 14 of the 1966 Covenant on Civil and Political Rights states in its second paragraph: "Everyone accused of a crime has the right to be presumed innocent until proved guilty in accordance with the law". Here, unlike the UN statement, it imposes a duty to abide by the law in form and substance so that the guilt of the defendant is established. The article 8 of the 1966 American Convention on Human Rights, which refers to judicial guarantees, states in paragraph 2: "Everyone charged with a crime has the right to be presumed innocent until his guilt has been legally established". Here, it is specific that only in matters of crimes such presumption of innocence is presumed. However, it has also been stated that this principle can be considered in other legal areas, such as administrative. With regard to Europe, the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in Article 6 identifies the right to a fair trial:

> "1. Everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, which shall decide on disputes concerning its rights and obligations in civil matters or on the basis of any criminal charges brought against it. The sentence must be pronounced publicly, but access to the courtroom may be prohibited to the press and the public during all or part of the proceedings in the interest of morality, public order or national

> security in a democratic society, where the interests of minors or the protection of the private life of the parties to the proceedings so require or to the extent deemed necessary by the court, wherein special circumstances publicity may be prejudicial to the interests of justice. 2. Any person accused of an offense shall be presumed innocent until his guilt has been legally established".

Here we see how it refers to an infringement, but not only understood as an administrative violation, but as an enforceable right in any matter, as will be seen below. Also, in the European Charter of Human Rights of 2000, Article 48 declares the presumption of innocence: "1. All accused are presumed innocent until their guilt has been legally declared".

This enforceability, as noted, is accompanied by justiciability for it to be effective,[60] This implies the action of the public authority to determine whether there is a violation of the rights set forth by the complainant or to disqualify it for not having elements of form or substance of such a petition. Among the elements necessary to grant it, without prior substantive study, is irreparability for the damage caused, which gives effect to a precautionary measure, a suspension of the act or temporary protection while the merits of the case are resolved.[61]

It should be pointed out that the limitation on the fulfilment of a human right is not necessarily synonymous with a violation, since in order to determine whether a measure respects it it is necessary to analyse whether:[62] (i) the essential purpose of this reduction is to increase the level of protection of a human right; and (ii) to create a reasonable balance between the fundamental rights at stake, without unduly affecting the effectiveness of any of them, in this sense, to determine if the limitation to the exercise of a right violates the principle of progressivity of Human Rights.[63] The legal operator must carry out a joint analysis of the individual affectation of a right in relation to the collective implications of the measure in order to establish whether it is justified.[64]

3. PPI IN THE EXPERIENCE OF THE ECtHR

The jurisdiction of the European Court of Human Rights has decided in several cases the importance of the presumption of innocence. Thus, some precedent-setting issues on the nature and purpose of the principle in question are presented in a laconic manner.[65] [66] In the case of *Maslarova v. Bulgaria*, she filed a

complaint against Ms. Maslarova, who had been Minister of Labour and Labour Policy from 2005 to 2009. As for her dismissal, she argued that she was dismissed without taking into account the principle of presumption of innocence, and that the press information linked her to fraudulent management of public funds. Therefore, when his dismissal was required by the Parliament, she showed that in this process her presumption of innocence was not considered, but that she was removed with only the information of the media. The ECtHR also considered that there was no appeal against this decision of the Assembly, and that making it available directly to the Attorney-General's Office was a violation of his rights.

In *Melo Tadeu v. Portugal,* the defect was due to a tax case because the proceedings against him were never considered innocent, but his company and others in which he owned were seized. However, the authority did not listen to Mr. Melo's appeals, considering that the authority had acted in accordance with the rule. However, the European Court of Human Rights held that this intervention in the complainant's estate had violated his right to be presumed innocent, since an act was carried out without taking this principle into account, and that this act left him in a condition in which he had to prove the lawfulness of his companies.[67] In the business of *Peltereau-Villeneuve v. Switzerland,* there was sexual abuse and the prosecutor made the decision public. However, the defendant considered that the proceedings had not yet been completed, as there was an appeal and he should have been granted the benefit of this principle. The Swiss Court also found the prosecution to be correct, but the ECHR found that it was still on trial as a suspect, until there was no procedural remedy and that it was therefore entitled to the presumption of innocence.[68]

In the case of *Sismanidis and Sitaridis v. Greece*, smuggling was dealt with, for although the matter was confiscated[69] and then the legality of the goods was ascertained, but here beyond the origin, it was the time taken to resolve this alleged guilt (one year and ten months), which violated the principle of presumption of innocence. In the case of *G.I.E.M. S.r.l. and Others v. Italy,* a group of people who had invaded a property was arrested and arrested on the complaint of the affected party. However, the quality they had in relation to the property was never verified and they did not learn that there was a

trial, so the presumption of innocence was not respected and they were considered to be committing a crime with this land invasion.

The last expedient presented is *Demjanjuk v. Germany,* in which an alleged concentration camp guard was on trial, but died during the trial. As a result, the widow and her son sued the State for violations in the proceedings and for finding him guilty in his public statements. However, the ECHR did not assist them in their reasoning, as they considered that there was no longer any substance to the trial and to determine whether they were innocent or guilty of the acts for which they were being tried.[70]

CONCLUSIONS

The PPI is one of the pillars of the democratic system, which allows everyone to have a proper delivery of justice, as well as directs and controls the actions of the authorities, and monitors the lawful origin of evidence, because any action outside the regulatory parameter violates the PPI, and therefore the role of the authority is disqualified, placing the PPI as a protective element.[71] The PPI is a republican value, which allows all individuals, regardless of creed, sex, nationality, to be protected before and during the process, and that only if the crime or infraction is fully proven, the defendant can be blamed.[72]

This principle was born from the abuses committed in absolutism, in which people were tried as guilty most of the time with a single test (confessional evidence, often obtained by torture).[73] When the change is made to the modern State, it can be considered that this principle provoked a judicial republicanism, in which the process was established, with substantive and adjective guarantees for the accused, the working guidelines for the authorities, and a system of lawfulness and weighting for tests.

Should the principle of the presumption of innocence be regarded as a dogma, as is apparent from this investigation?[74] An irreducible value in judicial proceedings, which requires professional performance by the judiciary and the prosecution. However, the PPI should be regarded as an absolute duty or a relative application.[75] And here the context opens, in several normative systems a space is created to generate exceptions to this principle as in the impeachment, organized crime, crimes committed by the military, the extinction of domain and in some precautionary measures (such as arraigo, freezing of accounts or property, informal pre-trial

detention, interception of communications, etc.). where an exception is made for the delicacy of the subjects. However, in the continental jurisdictional systems of human rights, the conventionality of these administrative or procedural criminal determinations has been warned and disputed, in order to create precedents in the matter, but as noted, this is very casuistic, and each case is a story, to create general guidelines. What has been determined by national or international jurisdiction is that many of these measures do not violate the IPP. The principle neither determines nor states that there should be any substantive or adjective benefit for the accused. However, it was also shown that there can be excesses as it is in the matter of extinction of domain, in which the person is stripped of the movable good, and can even be finished off, and even if it is later found that this property did not have an illicit origin or that it was unknown for use, there is no simple and effective remedy with such a judicial determination.

With regard to the criticism of the PPI exceptions, one can see a guarantor position in which no matter, a valid or fair exception can be formed. But all exceptions to fundamental rights and guarantees are a set of repressive instruments that suspend, cancel or inhibit the rights of the accused. But looking at the other side of the coin, some justify the validity and usefulness of the exceptions to the PPI or due process, because crime is against society, which legitimizes these actions by means of certain appropriate regulations against the act that is repulsed.[76]

As for the future of the PPI, it will remain as valid as each regulatory order determines, and this will depend on its political, economic and social context and its criminal policy.[77] This article originated by reflecting on the exceptions to the PPI, which are made by the authorities based on a positive order, which contemplates the possibility of affecting the guarantees and human rights of the people, with the justification that their crimes are of such magnitude, and that, for the same reason, their rights cannot be safeguarded. There are a number of treaty systems containing the PPI, but there are some variations, such as guilt, applied law, infringement and the duty of the authority to prove guilt.[78] In the judgments of the continental human rights systems, the PPI is seen as an obligation of the authority to perform, and if it does not prove it fully, the person cannot be considered guilty.[79]

In the case of the European Court of Human Rights, the topics have diversified into administrative, political, and even government press and media.[80] In that way, human rights violations were recognized in many cases, but in several cases they denied such violations, regulating the limits to consider the cases of such instrumentation. • In the case presented and analysed of the provisional measures, there is a clear clash of rights between the parties (accused and victim). In which the accused is accused of violence and the victim requests the protection and protection of the State, in order to have conditions in an emergency situation. The point of conflict is the legal security of the rights of the administrator, in which acts of nuisance violate his fundamental and human rights. On the other hand, however, the question of physical and emotional integrity and protection as a victim are the elements that justify these interim measures, which, while they could generate an irreparable act for the one who endures them, are an exceptional act that must be justified the action of the prosecutor, so that there is no abuse of authority or an act that is revocable by means of a constitutional remedy or annulled by the supervisory judge, who will consider the appropriateness and proportionality of the provisional measure, and place it as a precautionary measure, already judicialized.

In the other examples presented (organized crime, extinction of power and political trial) it is based on what has been called the criminal law of the enemy in doctrine. In which the defense of certain public interests, places alleged criminals as enemies of society, and for that reason, they can be restricted from certain guarantees, such as the presumption of innocence. However, although it is an extraordinary measure, and against a certain group, it is no less true that the rights manipulated from the legislative branch create aporias in the system of delivery of justice. Security is one source of the existence of the State. It is undoubtedly the protection of our freedoms, rights and heritage that enables us to have a dignified life and the free development of our personality. The contribution of this research is to reflect on the value of the institution examined, as an instrument that is validated as long as it protects certain primary goods the security and life of people.

Notes:

[1] Beccaria, Cesar, *De los delitos y las penas*, Ediciones Folio, Barcelona, 2002, p.60.
[2] Bradley Thayer, James *The Presumption of Innocence in Criminal Cases*, 6 Yale L. J. 185, 190 (1897).
[3] *Coffin v. United States*, 156 U.S. 432, 454, 1895.
[4] *Vid,* Amnesty international, *Juicios justos, Manual de amnistía internacional,* Ed. Amnesty international publications, Madrid, 2014, capítulo XV.
[5] Black´s Law, Ed. West, USA, p.859.
[6] *Ídem,* p.776.
[7] Scurich, Nicholas, Jurors' Presumption of Innocence, *Journal of Legal Studies,* volume 46, USA, 2017, pp.187-206.
[8] Nolo´s plain dictionary, USA, 2002, p.220.
[9] Black´s Law, Ed. West, USA, p.859.
[10] Ídem, p.1306.
[11] Garrett, Brandon, The Myth of the Presumption of Innocence, *Texas Law Review,* Number 94, 2016, pp.179 y ss.
[12] Webster´s Law Dictionary, Ed. Wiley, USA, 2006, p.205.
[13] Sentencia T-331/07 de la Corte Constitucional de Colombia.
[14] *Vid,* Pérez Pedrero Enrique, *La presunción de inocencia,* Universidad de Castilla, España, 2016.
[15] Aguilar, Miguel Ángel, *Presunción de inocencia,* Ed. IJF, México, 2015, p.250.
[16] Presunción de inocencia como regla de trato en su vertiente extraprocesal. Su contenido y características. SCJN.
[17] *A dictionary of law,* Ed. Oxford University Press, United Kingdom, 2002, p.378.
[18] Inculpado. Le corresponde la carga de la prueba cuando la presunción de inocencia que en principio opera en su favor, aparece desvirtuada en la causa penal. SCJN.
[19] Black´s Law, Ed. West, USA, p.11.
[20] Derecho de acceso a la impartición de justicia. Su aplicación respecto de los presupuestos procesales que rigen la función jurisdiccional. SCJN.
[21] Garantía a la tutela jurisdiccional prevista en el artículo 17 de la Constitución política de los Estados Unidos Mexicanos. Sus alcances. SCJN.
[22] Defensa adecuada en materia penal. Alcances y momento a partir del cual se actualiza este derecho fundamental. SCJN.
[23] Waldron, Jeremy. *Law and disagreement*. Ed. Oxford University Press. USA. 2004, pp. 5, 21-48.
[24] Derecho al debido proceso. Su contenido. SCJN.
[25] Formalidades esenciales del procedimiento. son las que garantizan una adecuada y oportuna defensa previa al acto privativo. SCJN.
[26] *Taylor v. Kentucky*, 436 U.S., 478, 483 n.12, 1978.
[27] Prueba de cargo. Puede ser directa o indirecta. SCJN.
[28] *U.S. v. Gooding*, 12 Wheat. 460, 471, 1827.
[29] Duda y prueba suficiente, distinción entre los conceptos de. SCJN.
[30] Prueba ilícita. Las pruebas obtenidas, directa o indirectamente, violando derechos fundamentales, no surten efecto alguno. SCJN.
[31] Presunción de inocencia como regla de trato procesal. SCJN.
[32] Presunción de inocencia como regla probatoria. SCJN.

[33] *Commonwealth v. Russell*, 470 Mass. 464, 2015.
[34] Ferguson, Pamela, *The presumption of innocence and its role in the criminal process*, Criminal Law Forum, No.26, United Kingdom, 2016, pp.131–158.
[35] Jakobs, Gunther, *Derecho Penal del Enemigo*, Ed. Universidad Externado de Colombia, Colombia, 2005, pp.25-40.
[36] Bradley Thayer, James, *The Presumption of Innocence in Criminal Cases,* The Yale Law Journal, Volume 6, No 4, USA, 1897, pp.185-212.
[37] Pennington, Kenneth, Innocent Until Proven Guilty: The Origins of a Legal Maxim, *Review The jurist* 63, Columbus School of Law, USA, 2003, pp.106-124.
[38] Waller, Irvin, *Derechos para las víctimas de los delitos,* Ed. INACIPE, México, 2013, pp.63 y ss.
[39] Articles 7 and 8 of the General Victims Act of Mexico.
[40] Vanossi, Jorge Reinaldo, *El Estado de derecho en el constitucionalismo social*, Ed. EUDEBA, Argentina, 1987, p.146.
[41] Alexy, Robert, *La construcción de los derechos fundamentales,* Ed. Ad hoc, Buenos Aires, Argentina, 2010, pp.24 y 44.
[42] Article 109 of the CNPP. Section XVI: To be provided with protection when there is a risk to his life or personal integrity.
[43] https://equis.org.mx/juzgar-con-perspectiva-de-genero/#paso2
[44] http://archivos.diputados.gob.mx/Centros_Estudio/ceameg/ias/Doc_29.pdf
[45] http://proyectojusticia.org/preguntafrecuente-providencias-precautorias/
[46] *Cfr.,* Marchiori, Hilda *Criminología. La víctima del delito.* Ed. Porrúa. México, 1998.
[47] Article 113 of CNPP:
[48] Article 98 of the CNPP provides for the absolute nullity of acts that violate human rights: Any act done in violation of human rights shall be null and void and shall not be sane, or validated and shall be declared null and void by the court of its own motion at the time of warning or at the request of a party at any time. Acts performed in contravention of the formalities provided for in this Code may be declared null and void, unless the defect has been corrected or validated, in accordance with the provisions of this study.
[49] Artícle 67 of CNPP.
[50] http://reformapenalslp.gob.mx/uploads/revista/pdf/4.%20Revista%20NSJP%20VIII.pdf
[51] https://www.sijufor.org/uploads/1/2/0/5/120589378/la_prueba_libre_y_logica__libro_completo_-1__3_.pdf
[52] Artícle 131 of CNPP, incise XV.
[53] Artícle 104 of CNPP.
[54] https://www.gob.mx/cms/uploads/attachment/file/501428/Medidas_de_protecci_n.pdf

[55] Medellín, Ximena, *Digesto de jurisprudencia latinoamericana sobre derechos de las víctimas,* Ed. Fundación para el Debido proceso, Washington, 2014, p.31 y ss.
[56] Actos de molestia. Deben ser efectuados por autoridad competente que los funde y motive. SCJN.
[57] *Vid*, Medellín, Ximena, *Principio Pro persona*, Ed. SCJN, México, 2013.
[58] Silva Henao, Juan Fernando. "Evolución y origen del concepto de 'Estado Social' incorporado en la Constitución Política Colombiana de 1991". En *Ratio Juris*. Vol. 7. Núm. 14. Enero-junio de 2012, pp. 141-158.
[59] *Cfr.,* Opinión Consultiva OC 16/99, 1 october of 1999. (Comisión Americana de DDHH) Case Barbani Duarte y otros vs. Uruguay. Sentencia del 13 october of 2011, párrafo 122. Case Yvon Neptune vs. Haití. Sentencia del 6 may of 2008, paragraph 79.
[60] Dalla Via, Alberto. "Los jueces frente a la política". En *Revista Isonomía*. No. 22. ITAM. México. 2005, p. 22.
[61] Available https://archivos.juridicas.unam.mx/www/bjv/libros/8/3977/29.pdf. Dworkin, Ronald, *Los derechos en serio*, Ariel, España, 1996, p.89.
[62] Esta misma interpretación se reitera en las SSTC 134/1989 y 140/1989, ambas del 20 de julio. En la jurisprudencia del Tribunal Constitucional Federal alemán también podemos encontrar un reconocimiento tácito del derecho a un mínimo vital, en opinión de Robert Alexy, sí se consideran conjuntamente dos sentencias de los años 1951 y 1975 (BverfGE 1, 97 y BverfGE 40, 121). *Vid, Teoría de los Derechos Fundamentales*. Centro de Estudios Constitucionales. España. 2007, pp.422-423.
[63] Dalla Via, Alberto. "Los jueces frente a la política". En *Revista Isonomía*. No. 22. ITAM. México. 2005, p. 22.
[64] Principio de progresividad de los derechos humanos. Criterios para determinar si la limitación al ejercicio de un derecho humano deriva en la violación de dicho principio. SCJN.
[65] Lorca Navarrete, Antonio Ma. Lorca, *La influencia de la jurisprudencia del Tribunal Europeo de los Humanos en la jurisprudencia del Tribunal Constitucional Español,* Nuevo Foro Penal, Número 55, 1992, pp.87-102.
[66] *Vid,* El trabajo de la Corte Interamericana de Derechos Humanos: Case Argüelles y otros Vs. Argentina. Corte IDH, Caso Ricardo Canese vs. Paraguay, párrafo, 74, inciso d. Case Acosta Calderón vs. Ecuador.
[67] *Varvara vs. Italy.*
[68] *Wanner vs. Germany.*
[69] *Vid, Speiser v. Randall*, 357 U.S. 513, 526, 1958.
[70] Lonneke Stevens, Pre-Trial Detention: The Presumption of Innocence and Article 5 of the European Convention on Human Rights Cannot and Does Not Limit its Increasing Use, *Criminal Law and Criminal Justice 17,* Vrije Universiteit Amsterdam, Netherlands*,* 2009, pp.165–180.
[71] *Vid, Geeraets, Vincent, The Presumption of Innocence,* University of Groningen, Netherlands, 2013.
[72] *Cfr,* Pérez Luño, Antonio Enrique, *La seguridad jurídica,* Ed. Ariel, Barcelona, 1991.

[73] *Hopt v. Utah, 120 U.S. 430, 439, 1887 (approving jury instruction adopted by lower court stating that "the law presumes the defendant innocent until proven guilty beyond a reasonable doubt").*
[74] *Leland v. Oregon, 343 U.S. 790, 802-03, 1952 ("[F]rom the time that the law which we have inherited has emerged from dark and barbaric times, the conception of justice which has dominated our criminal law has refused to put an accused at the hazard of punishment if he fails to remove every reasonable doubt of his innocence".*
[75] Tisnés Palacio, Juan Sebastián, Presunción de inocencia: Principio constitucional absoluto, Revista *Ratio juris,* volumen 7, número 14, Colombia, pp.53-71
[76] In a private opinion, Judge Frankfurter stated: "*basic in our law and rightly one of the boasts of a free society [and] a requirement and a safeguard of due process of law*" 397 U.S. 358, 362, 1970.
[77] *Washington v. Glucksberg*, 521 U.S. 702, 712, 1997.
[78] Nieva Fenoll. Jordi, *La razón de ser de la presunción de inocencia,* Revista InDret, Barcelona, 2016, pp.3 y ss.
[79] Bonilla, Karol, *La presunción de inocencia en cuestión,* Ed. Universidad Autónoma de Barcelona, España, 2018.
[80] Barata, Francesc, *La devaluación de la presunción de inocencia en el periodismo*, Revista Anàlisi 39, Barcelona, 2009, pp.217-236.

References:

Ackerman, Bruce. 1991. *We the people: Foundations.* Ed. Harvard University Press. USA.
Alexy, Robert, 2007. *Teoría de los Derechos Fundamentales*. Centro de Estudios Constitucionales. España.
Alexy, Robert. 2010. *La construcción de los Derechos Fundamentales*. Editorial Ad-hoc. Buenos Aires, Argentina.
Aguilar, Miguel Ángel, 2015. *Presunción de inocencia,* Ed. IJF, México.
Amnistía Internacional. 2014. *Juicios justos, Manual de amnistía internacional,* Ed. Amnesty international publications, Madrid.
Barata, Francesc. 2009. *La devaluación de la presunción de inocencia en el periodismo*, Revista Anàlisi 39, Barcelona.
Barrios-Miranda, Ángel, 2017. El principio de presunción de inocencia en la aplicación de la prisión preventiva, *Revista Dominio de las ciencias,* Vol. 3, número 2, Universidad de Guayaquil.
Beccaria, Cesar. 2002. *De los delitos y las penas*, Ediciones Folio, Barcelona.
Bonilla, Karol. 2018. *La presunción de inocencia en cuestión,* Ed. Universidad Autónoma de Barcelona, España.
Bradley Thayer, James. 1897. *The Presumption of Innocence in Criminal Cases,* The Yale Law Journal, Volume 6, No 4, USA,
Carmona, Encarna. 2006. "Los derechos sociales de prestación y el derecho a un mínimo vital". *Anuario multidisciplinar para la modernización de las Administraciones Públicas*. Número 2. España.
Dalla Via, Alberto. 2005. "Los jueces frente a la política". En *Revista Isonomía*. No. 22. ITAM. México.
Dorner Stephen & Lab, William, 2008. *Victimology,* Ed. Lexis Nexis, USA.
Dworkin, Ronald, 1996. *Los derechos en serio*, Ed. Ariel. España.

Ferguson, Pamela, 2016. *The presumption of innocence and its role in the criminal process*, Criminal Law Forum, No.26, United Kingdom.

Garrett, Brandon, 2016. The Myth of the Presumption of Innocence, *Texas Law Review,* Number 94.

Geeraets, Vincent, 2013. *The Presumption of Innocence,* University of Groningen, Netherlands.

Gómez, Yolanda. 2014. "Estado Constitucional y protección internacional". En *Presente, pasado y futuro de los DDHH*. CNDH. México.

Jakobs, Gunther, (et al)., 2005. *Derecho Penal del Enemigo*, Ed. Universidad Externado de Colombia, Colombia.

Jong, Ferry. 2016. *The Presumption of Innocence as a Counterfactual Principle*, Utrecht Law Review, Volume 12, Issue 1.

Lonneke Stevens. 2009. Pre-Trial Detention: The Presumption of Innocence and Article 5 of the European Convention on Human Rights Cannot and Does Not Limit its Increasing Use, *Criminal Law and Criminal Justice 17,* Vrije Universiteit Amsterdam, Netherlands*.*

Lorca Navarrete, Antonio Ma. Lorca. 1992. *La influencia de la jurisprudencia del Tribunal Europeo de los Humanos en la jurisprudencia del Tribunal Constitucional Español,* Nuevo Foro Penal, Número 55.

Lozano Guerrero, Fidel, 2012. *La presunción de inocencia,* Comisión de Derechos Humanos de la Laguna, México.

Martínez Cisneros, Germán. 2008. *La presunción de inocencia*, Revista del IJF, México.

Marchiori, Hilda 1998. *Criminología. La víctima del delito.* Ed. Porrúa. México.

Medellín, Ximena, 2013. *Principio Pro persona*, Ed. SCJN, México.

Nieva Fenoll. Jordi, 2016. *La razón de ser de la presunción de inocencia,* Revista InDret, Barcelona.

Open Society, 2014. *Presumption of Guilt: The Global Overuse of Pretrial Detention,* Ed. Open Society Foundations, New York.

Pennington, Kenneth. 2003. Innocent Until Proven Guilty: The Origins of a Legal Maxim, *Review The jurist* 63, Columbus School of Law, USA.

Pérez Luño, Antonio Enrique, 1991. *La seguridad jurídica,* Ed. Ariel, Barcelona.

Pérez Pedrero Enrique, 2016. *La presunción de inocencia,* Universidad de Castilla, España.

Picard de Orsini, Marie y Useche, Judith. 2006. "Una nueva dimensión del Estado de Derecho: El Estado Social de Derecho". En *Provincia*. Número especial. Venezuela.

SCJN, *Dignidad humana*, Ed. PJF, México, 2013.

Scurich, Nicholas, 2017. Jurors' Presumption of Innocence, *Journal of Legal Studies,* volume 46, USA.

Silva Henao, Juan Fernando. 2012. "Evolución y origen del concepto de 'Estado Social' incorporado en la Constitución Política Colombiana de 1991". En *Ratio Juris*. Vol. 7. Núm. 14. Enero-junio de.

Villar Borda, Luis. 2007. "Estado de Derecho y Estado social de derecho". En *Revista Derecho del Estado*. Núm. 20, Colombia.

Tisnés Palacio, Juan Sebastián, 2014. Presunción de inocencia: Principio constitucional absoluto, Revista *Ratio juris,* volumen 7, número 14, Colombia.

Tribín Echeverry, Fernando, 2011. Crítica a la doctrina de la "degradación" de la presunción de inocencia en la jurisprudencia de la Corte Suprema de Justicia, *Justicia,* No. 20, Ed. Universidad Simón Bolívar, Barranquilla, Colombia.

Vanossi, Jorge Reinaldo, 1987. *El Estado de derecho en el constitucionalismo social*, Ed. EUDEBA, Argentina.

Waldron, Jeremy. 2004. *Law and disagreement*. Ed. Oxford University Press, USA.

Waller, Irvin, 2013. *Derechos para las víctimas de los delitos,* Ed. INACIPE, México.

Wolfgang Sarlet, Ingo. 2014. *Mínimo existencial y justicia constitucional.* En *Estado constitucional, derechos humanos, justicia y vida universitaria. Estudios en homenaje a Jorge Carpizo. Derechos humanos*. Carbonell Sánchez, Miguel; Fix Fierro, Héctor; Valadés, Diego (coord.). Tomo V. Vol. 2. UNAM, México.

Dictionaries:

Black´s Law, Ninth Edition, Ed. West, USA, 2006.

Nolo´s plain dictionary, USA, 2002.

Webster´s Law Dictionary, Ed. Wiley, USA, 2006.

A dictionary of law, Ed. Oxford University Press, United Kingdom, 2002.

Jurisprudence and cases:

Alemania:

BverfGE 1, 97 y BverfGE 40.

Colombia:

Sentencia T-331/07 de la Corte Constitucional de Colombia.

USA:

Shannon Nelson vs Colorado.

Coffin v. United States, 156 U.S. 432, 454 (1895).

Taylor v. Kentucky, 436 U.S., 478, 483 n.12 (1978).

U.S. v. Gooding, 12 Wheat. 460, 471 (1827).

Commonwealth v. Russell, 470 Mass. 464 (2015).

Lilienthal's Tobacco v. United States, 97 U.S. 237, 266 (1877).

Speiser v. Randall, 357 U.S. 513, 526 (1958).

Hopt v. Utah, 120 U.S. 430, 439 (1887).

Leland v. Oregon, 343 U.S. 790, 802-03 (1952).

Voto particular del Juez Frankfurter 397 U.S. 358, 362 (1970).

Washington v. Glucksberg, 521 U.S. 702, 712 (1997).

España:

SSTC 134/1989 y 140/1989.

Mexico:

Prueba de cargo. Puede ser directa o indirecta. SCJN.

Presunción de inocencia como regla de trato en su vertiente extraprocesal. Su contenido y características. SCJN.

Inculpado. Le corresponde la carga de la prueba cuando la presunción de inocencia que en principio opera en su favor, aparece desvirtuada en la causa penal. SCJN.

Presunción de inocencia. SCJN.
Derecho de acceso a la impartición de justicia. Su aplicación respecto de los presupuestos procesales que rigen la función jurisdiccional. SCJN.
Garantía a la tutela jurisdiccional prevista en el artículo 17 de la Constitución política de los Estados Unidos Mexicanos. Sus alcances. SCJN.
Defensa adecuada en materia penal. Alcances y momento a partir del cual se actualiza este derecho fundamental. SCJN.
Derecho al debido proceso. Su contenido. SCJN.
Formalidades esenciales del procedimiento. son las que garantizan una adecuada y oportuna defensa previa al acto privativo. SCJN.
Prueba ilícita. Valoración del principio de su prohibición o exclusión del proceso, bajo la óptica de la teoría del vínculo o nexo causal atenuado en la declaración del inculpado. SCJN.
Duda y prueba suficiente, distinción entre los conceptos de. SCJN.
Prueba ilícita. Las pruebas obtenidas, directa o indirectamente, violando derechos fundamentales, no surten efecto alguno. SCJN.
Presunción de inocencia como regla de trato procesal. SCJN.
Presunción de inocencia como regla probatoria. SCJN.
Derechos humanos. Naturaleza del concepto "garantías de protección", incorporado al artículo 1o. De la Constitución Federal, vigente desde el 11 de junio de 2011. SCJN.
Servicios registrales. Los ordenamientos legales que establecen las tarifas respectivas para el pago de derechos, sobre el monto del valor de la operación que da lugar a la inscripción, vulneran los principios de proporcionalidad y equidad tributaria. SCJN.
Principio de progresividad de los derechos humanos. Criterios para determinar si la limitación al ejercicio de un derecho humano deriva en la violación de dicho principio. SCJN.
Dignidad humana. Constituye una norma jurídica que consagra un derecho fundamental a favor de las personas y no una simple declaración ética. SCJN.
Principios de universalidad, interdependencia, indivisibilidad y progresividad de los derechos humanos. En qué consisten. SCJN.
Derecho al libre desarrollo de la personalidad. Aspectos que comprende. SCJN.

Sentences of the European Court of Human Rights:

Maslarova v. Bulgaria.
Melo Tadeu v. Portugal.
Peltereau-Villeneuve v. Switzerland.
Sismanidis and Sitaridis v. Greece
G.I.E.M. S.r.l. and Others v. Italy.
Demjanjuk v. Germany.
Varvara vs. Italy.
Wanner vs. Germany.

Page web consulted:

https://archivos.juridicas.unam.mx/www/bjv/libros/8/3977/29.pdf
(consulted 6 of march of 2022).