

Implications and application of the principle of the presumption of innocence in French law

Aurélie Bergeaud-Wetterwald,
Professor at Bordeaux University, France

« When the subject has no fence to secure his innocence, he has none for his liberty»
(Montesquieu, *The Spirit of Law*)

A strong recognition

- A historical foundation : The Declaration of the Rights of Man and of the Citizen, 1789
- A constitutional value
 - ➤ European protection (European Convention on Human Rights, Charter of Fundamental Rights of the European Union)
- A fundamental principle inscribed at the head of the Code of Criminal Procedure :
 - « *Anyone suspected or prosecuted is presumed innocent until their guilt has been established* ».

A contrasted
reality

Beyond declarations, what practical
application?

- Invoking the presumption of innocence is not enough to guarantee compliance
- French law proclaims the presumption of innocence but gives no precise definition
- What is the legal significance of the principle?

General meaning = A person criminally implicated is considered innocent until proof of his guilt has been definitively established by a court



Double implication:

- 1) A person should not be treated legally as a culprit during the trial ---> Protection of procedural status

The presumption of innocence is a procedural principle

- 2) A person should not be treated publicly as a culprit in the eyes of public opinion ---> Protection of honor

The presumption of innocence is a personality right

Procedural implications Presumption of innocence and burden of proof

- Principle: the accused person does not have to prove his innocence. The prosecution must demonstrate all the elements of the offense. If the demonstration is imperfect, the doubt benefits the accused.
- Some exceptions :
 - The person sued must prove certain liberating facts (example: the person sued for defamation who invokes the truth of the alleged facts must himself prove the veracity of these facts).
 - Very exceptionally, admission of "presumptions of guilt". We consider a situation to be established on the condition that the accused prove the contrary (example: the fact of living with a prostitute without being able to justify resources is equated with procuring).

Procedural implications Presumption of innocence and pre-trial custodial measures

The accused person must in principle remain free. The existence of suspicion does not in itself justify deprivation of liberty.

Subsidiarity and strict necessity of coercive measures:

- Placement in police custody must be justified by one of the objectives listed by the Code of Criminal Procedure (example: to allow investigative measures involving the person)
- Placement in pre-trial detention must be the only way to achieve one of the objectives listed by the Code of Criminal Procedure (example: preventing pressure on witnesses, avoiding fraudulent consultation)

But the objectives justifying the measure are sometimes very broad (example: "to guarantee the maintenance of the person at the disposal of justice")

Procedural implications Presumption of innocence and reasons for court decisions

➤ Principle = decisions other than the judgment on guilt must not contain an affirmation of guilt in their motivation (example: decision to place in pre-trial detention, decision on civil interests only)

➤ Application difficult to implement.

Example: Placement in pre-trial detention may be motivated by the need to "prevent the recurrence of the offense"

This legally intended objective implicitly contains an admission of guilt.

Substantial implications: Consecration of the right to respect for the presumption of innocence

Art. 9-1 of the civil code:

"Everyone has the right to respect for the presumption of innocence"

Prohibition on "publicly presenting a person as guilty of an offense before any conviction"

→ Protection outside the procedural framework. Protection of the honor and reputation of all individuals in the public and media spheres.

→ Protection against statements from the media, individuals using a means of advertising (book, film, social networks, etc.), public authorities.

Substantial implications

Application of the right to respect for the presumption of innocence

➤ What reconciliation with freedom of expression and the right to information?

Answer given by case law:

Possibility of publishing the identity of an accused person

Possibility of stating probable guilt with regard to the objective elements of the procedure
(example: "he is being prosecuted for rape")

Possibility of stating a potential guilt if reservations and precautions in the speech
(example: "he would have committed a rape")

Only are prohibited: "the final conclusions showing a prejudice taking for granted the guilt"
(example: repeatedly presenting the person as "the murderer" or the "murderer" without any nuance)

= Low protection. It is possible to reveal the identity of an individual, the charges and present him as the "alleged rapist"

Substantial implications

Sanction for breaches of the right to respect for the presumption of innocence

➤ Civil sanctions:

Action for compensation

Action to stop the infringement: dissemination of a press release recalling the principle of the presumption of innocence (low impact)

Very rarely pronounced publication or dissemination ban (considered a disproportionate restriction on freedom of expression)

➤ Criminal sanctions:

Lack of specific criminalization of infringement of the presumption of innocence

Indirect and limited protection: criminalization of the dissemination of the image of a handcuffed person (rarely applied in practice)