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THE PRESUMPTION OF INNOCENCE AS A CONSTITUTIONAL PHENOMENON

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Report. The presumption of innocence is a legal phenomenon that constantly attracts the attention of researchers. It is considered in legal science from the point of view of its origin, legal formalization, content and meaning. The interest in this problem is caused, on the one hand, by the multidimensional nature of this presumption, and, on the other, by its practical significance not only for society and the state, but, first of all, for a specific individual. The presumption of innocence is usually considered by specialists in the field of criminal law and criminal procedure, since, in their opinion, it belongs to the criminal sphere, the sphere of judicial proceedings, evidence. Meanwhile, such a view of the problem, it seems, limits the true essence of the phenomenon and reduces its significance.

The purpose of this study is to substantiate the constitutional nature of the principle of the presumption of innocence.

Research methodology. In this work, general scientific and private scientific research methods were used, such as analysis, synthesis, abstraction, and the case method.

The results of the conducted research. As a result of the analysis, the author comes to the conclusion that the presumption of innocence is a constitutional principle. The constitutional nature of this phenomenon is inherent in its nature, sources, content, meaning.

Conclusions. The presumption of innocence is a constitutional principle. Considering it exclusively through the prism of criminal law and criminal procedure, as an element of judicial proceedings related to the theory of evidence and the adversarial nature of the parties, greatly limits its role and significance, leads to too narrow an understanding of its content. The presumption of innocence is a legal phenomenon that affects various social relations, including those related to the electoral process, to administrative proceedings, to tax relations, etc. As a constitutional principle, the presumption of innocence interacts with other constitutional principles: the principle of the rule of law, the social state, the democratic state, freedom, equality, justice, legality, etc. The presumption of innocence expresses the balance of the public and private interests of a state-organized society. The existence of this one of the most important constitutional phenomenon shows the value of the individual in the legal system.

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1. Introduction.

In the conditions of modern post-Soviet states, the problem of the presumption of innocence is not only not losing its relevance, but is also becoming increasingly important. The reasons for this process are different. This is the predominance of state bodies over a person in the system of relations between the individual and the state, and the priority of public interests over private ones in the conditions of modern post-Soviet states, and the imperfection of judicial systems. In this regard, the appeal to the study of the presumption of innocence in the conditions of modern post-Soviet states, and, both from the point of view of historical and substantive, as well as practical, seems very correct and necessary.

The purpose of this work is to consider the issue of legislative (normative) consolidation of the principle of presumption of innocence, analyze its content, reveal its essence, investigate the relationship with other constitutional principles, and prove that this legal phenomenon has a constitutional character, the significance of which goes far beyond the relations associated with the commission of crimes.

The presumption of innocence is a topic of interest to researchers of various historical eras, national legal systems, and branches of law. The contribution to the analysis of this problem was made by J.Locke [1], C.Beccaria [2], G. Jellinek [3], etc. Among the Soviet scientists who investigated the presumption of innocence are M.S. Strogovich [4], N.N. Polyansky [5], A.I.Trusov [6], Ya.O.Motovilovker [7], L.S.Yakub [8], I.L.Petrukhin [9]. It is noteworthy that I.L.Petrukhin considered the presumption of innocence as a constitutional principle. Modern researchers of this issue are researchers from the post–Soviet states V.P. Abdrashitov[10: 11], T.T. Aliyev [12], V.K. Babayev [13], V.M.Savitsky [14], as well as representatives of foreign legal science J.Fletcher [15], S.Baradaryan [16], V.Tadros [17], J.Whitman [18], P. Ferguson [19], L.Loden [20]. Meanwhile, the presumption of innocence remains an issue, not all aspects of which have been studied with sufficient completeness. One of these aspects is the nature of this presumption, i.e. a question on the solution of which not only theoretical conclusions depend, but also quite practical problems associated with the application of the presumption of innocence.

2. Formation of the presumption of innocence as a constitutional principle.

The question of the presumption of innocence is a complex issue from the point of view of law. Meanwhile, in the Soviet and post-Soviet legal science, as well as in foreign studies, it was mostly considered (and is being considered) by specialists in the field of criminal law and criminal procedure. This approach is a consequence of the perception of the presumption of innocence exclusively as a criminal phenomenon. It is also characteristic of individuals, more precisely, for their sense of justice. Unfortunately, sometimes even for a professional.

The thesis of the author of this study: the history of the formation of the presumption of innocence as a legal principle and its functioning in legal systems is the history of the formation and functioning of the constitutional phenomenon.

The following speaks in favor of considering the presumption of innocence as a constitutional principle. The Anglo-American legal system, under which the presumption of innocence was formed, is based on the understanding of constitutional law as a system of norms and principles that determine, first of all, the relationship between an individual and state bodies. In this regard, the presumption of innocence in these systems was formed and formulated as a way to protect the rights and freedoms of the individual. The rights and freedoms of the individual, their content, conditions of restriction, methods of ensuring – issues of a constitutional legal nature.

Proponents of considering the presumption of innocence solely as a criminal law principle point, among other arguments, to the absence of its regulation at the level of sources of constitutional law. This argument seems untenable. The presumption of innocence as a principle of law appeared in the English legal system. The British Constitution includes constitutional principles and constitutional norms that are contained in various sources of law, ranging from legal customs to regulatory legal acts. Among the sources of constitutional law in Great Britain are also the Magna Carta of 1215 and the Habeas Corpus Act of

1679 – legal acts that regulated the presumption of innocence.

In accordance with the norms of the Magna Carta, the arrest, detention and punishment ("personal and property punishment") of a person was prohibited without following a certain procedure ("on the basis of the law and by the verdict of their "peers"). The Habeas Corpus Act, adopted in the XVII century, ordered any person who keeps another person under guard, at a fixed time – three days, but not more than twenty days – after receiving a writ of habeas corpus, to deliver the arrested or detained person to the person to whom this order was issued. The Lord Chancellor, the Lord Keeper of the Seal of England, the judge or the baron of the court had to check the reasons for the detention or imprisonment. The analyzed legal document provided for the possibility of applying with a corresponding petition or complaint for the receipt of a "habeas corpus" order not only of the detained or arrested person, but also of persons acting in his or their interests. Within two days, the petition or complaint was considered by the judge alone in the presence of the detainee or the arrested person. The case was considered in the form of a shortened trial. The judge found out all the circumstances of the case and made a decision: whether the detainee or the arrested person should be released, or he should be sent to prison; or he can be released temporarily with the use of a cash bail and be obliged to appear for consideration of the case on the merits at the next court session. According to article VI of the Act, no person or persons released or released under any "habeas corpus" could henceforth be imprisoned or arrested for the same crime except by order of a court.

It is obvious that the above-mentioned provisions of the Magna Carta and the Habeas Corpus Act did not directly establish the presumption of innocence. But they represented a definite step towards its formulation. The provisions of the Habeas Corpus Act also established the need for judicial control over the detention of a subject suspected of committing a crime. Judicial control is the most important element of the presumption of innocence. The emergence of the presumption of innocence, thus, in English law, which traditionally pays great attention to legal procedures, allows us to assert that the presumption of innocence is a form of personal protection.

Another example of securing the presumption of innocence by acts of the constitutional level is the Statutes of the Grand Duchy of Lithuania (hereinafter – ON), which included the Belarusian lands, according to V.N.Bibilo, which were constitutions of a feudal state, more precisely proto–constitutions [21]. Attempts to formulate this principle were made during the preparation of the Statutes of 1529 and 1566, According to the norm enshrined in the Statute of the Grand Duchy of Lithuania of 1529, no one should be punished if his guilt was not established by the court. The Statute of the Grand Duchy of Lithuania of 1566 extended the analyzed principle to the nobility class. The Statute of 1588 pointed to the need to use the presumption of innocence in relation to ordinary people.

For the first time, in a form close to the current one, the presumption of innocence was formulated in the French Declaration of Human and Civil Rights of 1789[1]. Paragraph 9 of this legal act read: "Since everyone is presumed innocent until the opposite is established, in the case of detention of a person, any excessive severity not caused by necessity in order to ensure his detention must be severely punished by law."[2]

The first written constitutions – the US Constitution of 1787 and the Constitution of the Polish–Lithuanian Commonwealth of 1791 - did not contain indications of the presumption of innocence. Researchers explain this by the unwillingness of the authors of these constitutional acts to consolidate it due to the fact that the presumption of innocence, in their opinion, is natural, belongs to a person from birth, and therefore is absolute. Meanwhile, in the

[1] Declaration of Human and Civil Rights [Electronic resource]: Access mode: http://www.agitclub.ru/museum/revolution1/1789/declaration.htm

[2] Declaration of Human and Civil Rights [Electronic resource]: Access mode: http://www.agitclub.ru/museum/revolution1/1789/declaration.htm

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later Constitutions of various states, it still found its consolidation.

Legal regulation of the presumption of innocence. Having a natural nature, the presumption of innocence is enshrined in the most important international legal acts regulating the legal status of an individual, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention for the Protection of Rights and Fundamental Freedoms.

In the post-Soviet countries, the presumption of innocence is currently formulated in Constitutions, as a rule. "A person is considered innocent until his guilt is proved in accordance with the procedure established by law and recognized by a court verdict that has entered into legal force," reads part 1 of Article 31 of the Constitution of the Republic of Lithuania[3]. According to paragraph 1 of part 3 of Article 77 of the Basic Law of the Republic of Kazakhstan, "a person is considered innocent of committing a crime until his guilt is recognized by a court verdict that has entered into force."[4] In accordance with article 49 of the Constitution of the Russian Federation[5], the guilt of the accused must be proved and established by a court verdict. Moreover, "the accused is not obliged to prove his innocence." The analyzed principle is formulated in Article 26 of the Constitution of the Republic of Belarus[6] .

The presumption of innocence in the conditions of modern states is also fixed by the most important legal acts of sectoral legislation – criminal, criminal procedure, administrative procedure. For example, in accordance with part 2 of Article 3 of the Criminal Code of the Republic of Belarus, "no one can be found guilty of committing a crime and be criminally liable except by a court verdict and in accordance with the law."[7] According to article 16 of the Criminal Procedure Code of the Republic of Belarus, a person is declared innocent until his guilt is established by a court verdict[8]. Part 1 of Article 2.7 of the Procedural and Executive Code of the Republic of Belarus states: "A person cannot be brought to administrative responsibility until his guilt in committing an offense provided for by the Code of the Republic of Belarus on Administrative Offenses is established in accordance with the procedure established by this Code."[9] In accordance with part 2 of the said article, "the obligation to prove the guilt of a person against whom an administrative process is being conducted is assigned to an official of the body conducting the administrative process ...".

Analyzing the legislative consolidation of the presumption of innocence in the post-Soviet states, thus, it is necessary to point out several features of such regulation. Firstly, following the international legal acts that consolidate the foundations of the

[3] Constitution of the Republic of Lithuania [Electronic resource]: © 1997-2021 Universal Popular Science Encyclopedia Circumnavigation. Access mode: https://www.krugosvet.ru/enc/gosudarstvo-i-politika/litva-konstituciya

[4] The Constitution of the Republic of Kazakhstan of 1995 (with amendments and additions. As of 23.03.2019) [Electronic resource]: Access mode: https://online .zakon.kz/Document/?doc_id=1005029

[5] The Constitution of the Russian Soviet Federative Socialist Republic (adopted by popular vote on 12.12. 1993, with amendments approved during the all-Russian vote on 01.07.2020) [Electronic resource]: © 1997-2021 ConsultantPlus. Access mode: http://www.consultant.ru/document/cons_doc_LAW_28399/

[6] Constitution of the Republic of Belarus The Constitution of the Republic of Belarus of 1994: with amendments and additions adopted at the republican referendums of November 24, 1996 and October 17, 2004. [Electronic resource] //THE STANDARD. Legislation of the Republic of Belarus / National Center for Legal Information. Rep. Belarus. Minsk, 2021

[7] Criminal Code of the Republic of Belarus: Law of the Republic of Belarus No. 275-Z of 09.07.199 (with amendments and additions) [Electronic resource] //THE STANDARD. Legislation of the Republic of Belarus / National Center for Legal Information. Rep. Belarus. Minsk, 2021

[8] Criminal Procedure Code of the Republic of Belarus: Law of the Republic of Belarus No. 295-Z of 16.07.1999 (with amendments and additions) [Electronic resource] //THE STANDARD. Legislation of the Republic of Belarus / National Center for Legal Information. Rep. Belarus. Minsk, 2021

[9] Procedural and Executive Code of the Republic of Belarus on Administrative Offenses: Law of the Republic of Belarus No. 92-Z of 06.01.2021 [Electronic resource] // ETALON. Legislation of the Republic of Belarus / National Center for Legal Information. Rep. Belarus. Minsk, 2021

legal status of an individual in a modern state, the Constitutions of the former Soviet Republics indicate in their texts the presumption of innocence directly. This testifies to its constitutional nature. The consolidation of this presumption in procedural codes is secondary to constitutions.

The presumption of innocence has long been regarded as a natural right of the individual. That is why it is not always fixed in legal acts that determine the legal status of an individual. In this case, the following position of the legislator finds expression: natural rights and freedoms do not need their normative formalization in legal acts, since they belong to a person from birth, are of an integral nature regardless of the form of their expression.

The content of this principle also speaks about the fallacy of considering the presumption of innocence solely as a principle related only to the sphere of criminal or administrative law. There are also ongoing debates about this issue in science. This is pointed out, in particular, by Larry Loden, arguing that there is no consensus on what exactly the presumption of innocence means, and pointing out that there are heated debates about who and when it is applied to, and that courts and legal scholars disagree on whether it stands doctrinally on its own legs or just an obvious, though nontrivial consequence of the standard of proof [20]. The presumption of innocence, currently enshrined in legal acts, includes two aspects. On the one hand, it is a provision according to which no one can be found guilty of a crime unless his guilt is proved in accordance with the procedure provided for by law and established by a court verdict that has entered into legal force. The second aspect of the constitutional principle under study is that a person is not obliged to prove his innocence.

The Constitution of the Russian Federation, when formulating the presumption of innocence, uses the category "accused". Taken literally, this term refers us to the criminal-legal sphere. The accused is a participant in the criminal process, in respect of which a decision has been made to involve him as an accused. Another argument in favor of the criminal-legal characteristics of this principle is the use of the term "crime" in the Constitution of the Russian Federation. The Belarusian legislator uses two terms when formulating the presumption of innocence: "nobody" and "accused". Speaking about the impossibility of finding a person guilty of committing a crime except on the basis of a court verdict, the concept of "nobody" is used. Pointing out the absence of the obligation to prove his innocence, the legislator uses the category "accused". It seems that the term "accused", as well as the concept of "crime" in this case cannot be understood literally. Here we must talk about their broad interpretation. The accused in the above context is a person suspected of involvement in the commission of an unlawful offense. A misdemeanor is an act that does not correspond to the norm of law: a tort, an offense, a crime. Hence, no one should prove their innocence in communicating with officials and (or) state bodies performing any functions: law enforcement, tax, customs, functions related to the implementation of electoral procedures, etc., unless otherwise provided by the relevant regulations.

Innocence is not proven at all stages of the law enforcement process – from the initial to the final. Except in cases expressly provided for by the relevant procedural acts. Both the Constitutional Court of the Russian Federation and the Constitutional Court of the Republic of Belarus pointed to this feature of the implementation of the principle of presumption of innocence. In its ruling of April 27, 2001, the Constitutional Court of the Russian Federation formulated a legal position according to which the Constitution of the Russian Federation establishes the presumption of innocence "in relation to the sphere of criminal responsibility."[10] In other words, the obligation to

[10] Resolution of the Constitutional Court of the Russian Federation of April 27 , 2001 N 7-P "In the case of checking the constitutionality of a number of provisions of the Customs Code of the Russian Federation in connection with the request of the Arbitration Court of the City of St. Petersburg and the Leningrad Region, complaints of open joint Stock companies AvtoVAZ and Severonikel Combine, limited liability companies Fidelity, Vita-Plus and Nevsko-Baltic Transport Company", limited liability partnerships "Joint Russian-South African enterprise "Econt" and citizen A.D.Chulkov" [Electronic resource]: © 1997-2021 ConsultantPlus. Access mode:

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prove guilt in the commission of a crime is imposed on state bodies. In other areas where legal liability is applied, the legislator has the right to decide on the distribution of the burden of proving guilt in a different way, taking into account the peculiarities of the relevant relations and their subjects (in particular, enterprises, institutions, organizations and persons engaged in entrepreneurial activity without forming a legal entity), as well as the requirements of the inevitability of responsibility and the interests of protecting the foundations constitutional order, morality, health, rights and freedoms of other persons, ensuring the defense of the country and the security of the state (Article 15, part 2; Article 55, part 3, of the Constitution of the Russian Federation) [11]. In accordance with the decision of the Constitutional Court of the Republic of Belarus No. R-515/2010 of November 22, 2010, which recognized Part 2 of Article 2 of the Law of the Republic of Belarus "On Amendments and Additions to the Code of the Republic of Belarus on Administrative Offenses and the Procedural and Executive Code of the Republic of Belarus on Administrative Offenses", the presumption of innocence is not applied in in the following case[12]. The official of the body conducting the administrative process is not obliged to prove the guilt of a person in exceeding the speed of movement of a vehicle, recorded by special technical means operating in automatic mode, having the functions of photography and filming, video recording, or by means of photography and filming, video recording. In the opinion of the Constitutional Court of the Republic of Belarus, the legislator has thus made an exception to the principle of presumption of innocence in relation to the administrative process in respect of only a certain category of cases of administrative offenses, the commission of which is confirmed by these methods.

3. Presumption of innocence as a constitutional principle.

The presumption of innocence is characterized by features inherent in constitutional principles, which are more or less indicated in the scientific literature on constitutional law by S.A.Avakian [22], N.S.Bondar [23], A.N.Kokotov [24], A.N.Kostyukov [25;26], A.A.Liverovsky [27;28], O.N.Shupitskaya [29;30;31]. The presumption of innocence shows the balance of public and private interests of the state and society. From the point of view of public interests – maintaining public order, preventing cases of its violation, restoring social justice in situations where illegal actions have been committed. The restoration of social justice is carried out through the punishment of the guilty, compensation for damage to the victim. On the side of protecting the public interest is the whole power of the state, the monopoly on the use of legal violence. Meanwhile, private interest is an individual's interest, much less protected than public interest, but no less significant. The presumption of innocence is designed to ensure, first of all, the interest of an individual.

The presumption of innocence as a constitutional principle exists in conjunction with other constitutional principles, which include the fundamental constitutional principles of the rule of law, social, democratic, republican state, and special constitutional principles – the principles of freedom,

http://www.consultant.ru/document/cons_doc_LAW_31170/

[11] Resolution of the Constitutional Court of the Russian Federation of April 27 , 2001 N 7-P "In the case of checking the constitutionality of a number of provisions of the Customs Code of the Russian Federation in connection with the request of the Arbitration Court of the City of St. Petersburg and the Leningrad Region, complaints of open joint Stock companies AvtoVAZ and Severonikel Combine, limited liability companies Fidelity, Vita-Plus and Nevsko-Baltic Transport Company", limited liability partnerships "Joint Russian-South African enterprise "Econt" and citizen A.D.Chulkov" [Electronic resource]: © 1997-2021 ConsultantPlus. Access mode: http://www.consultant.ru/document/cons_doc_LAW_31170/

[12] The decision of the Constitutional Court of the Republic of Belarus on November 22, 2010. No. Z-515/2010 On Compliance with the Constitution of the Republic of Belarus of the Law of the Republic of Belarus "On Amendments and Additions to the Code of the Republic of Belarus on Administrative Offenses and the Procedural and Executive Code of the Republic of Belarus on Administrative Offenses" [Electronic resource]: © 2009-2019 Constitutional Court of the Republic of Belarus. Access mode: http://www.kc.gov.by/document-21503 .

equality, justice, etc. Only in a state governed by the rule of law are the individual's rights and freedoms guaranteed, including the right to protection from prosecution by State bodies, as well as the right to a fair trial. An independent judicial system is an element of the system of separation of powers, a democratic rule of law state. It is in the judicial process that the effect of the presumption of innocence is directly manifested, taking into account which, the court evaluates the evidence presented and makes a final decision regarding the guilt of the subject in committing a crime.

The significance of the presumption of innocence does not allow us to consider this principle as a provision relating only to the sphere of criminal or administrative law. This is "the initial beginning of the criminal process," says V.N.Bibilo [21]. And it's hard not to agree with this opinion. The presumption of innocence is a constitutional phenomenon that has significance for the entire legal system. It shows respect for the individual, the importance of the individual in the state and society.

4. Conclusions.

The presumption of innocence is a constitutional principle. Considering it exclusively through the prism of criminal law and criminal procedure, as an element of judicial proceedings related to the theory of evidence and the adversarial nature of the parties, greatly limits its role and significance, leads to too narrow an understanding of its content. The presumption of innocence is a legal phenomenon affecting various social ties, including those related to the electoral process, administrative proceedings, tax relations, etc. As a constitutional principle, the presumption of innocence interacts with other constitutional principles: the principle of the rule of law, social, democratic state, freedom, equality, justice, legality, etc. The presumption of innocence shows the balance of public and private interests of a state-organized society. The existence of this most important constitutional phenomenon shows the importance of the individual in the legal system.

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