

# **Presumption of Innocence: Possible Limitation and Obstacles to Fulfillment**

## **Abstract**

The presumption of innocence is one of the oldest legal principles, a guarantee of an objective approach to the accused in criminal proceedings and a human right. This thesis deals with the concept, content and history of the presumption of innocence and its embodiment in law and nature, not only from a legal point of view. The author comes to the conclusion that the presumption is not of absolute nature and it is possible to limit it in order to preserve other values.

The main topic of the thesis is the issue of the possibility of limiting the presumption of innocence. Based on the analysis of ECtHR and Constitutional Court jurisprudence and opinions of experts, the author comes to the conclusion that the presumption of innocence can, under certain conditions, be limited in a permitted manner firstly by placing the burden of proof on the accused, secondly as a result of the statutory regulation of proceedings on extraordinary remedies filed in favor of a deceased convict and thirdly as a result of the accused pleading guilty. On the contrary, in the case of pretrial detention, the author came to the conclusion that the imposition of pretrial detention is not a limitation of the presumption of innocence. However, the presumption of innocence is often violated when deciding on the imposition of pretrial detention.

Furthermore, the author deals with the question of what constitutes factual obstacles to the fulfillment of the presumption of innocence. He finds these obstacles in the activities of some persons involved in criminal proceedings, and also of some persons standing outside of its scope. A significant obstacle to fulfilling the presumption of innocence is the presentation of the accused in public as guilty as a result of the use of non-verbal means, such as measures of physical restraint and the accused's participation in the trial in prison clothes. Another obstacle to fulfilling the presumption of innocence is the activity of the media. The author also points out that especially when providing information about criminal proceedings via social networks, due to the use of means of expression that are traditionally inherent to the media, the difference between law enforcement authorities and the media is effectively blurred. The author finds another obstacle to the fulfillment of the presumption in the circumstance that the judge is familiar with the accused's criminal history before deciding on his guilt. This information may influence his decision.

A comparison of the concept of the presumption of innocence in continental legal system with selected countries of the common law system helps to reach the conclusions presented.

**Key words: presumption of innocence; criminal proceedings; limitations of fundamental rights**