

## THE EUROPEAN COURT OF HUMAN RIGHTS AND THE APPLICATION OF THE PRESUMPTION OF INNOCENCE PRINCIPLE IN RUSSIA

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The relevance of the studied problem is determined by the modernization of the national legislation in the field of protection of human rights where the principle of the presumption of innocence plays an important role. The research objective is to define the role and meaning of the influence of judgments of the European Court of Human Rights on the formation of case law practice of the presumption of innocence principle application in Russia, to define its contents and sense in the context of the formed model of enforcement of the right. The leading research methods are the historical and legal method, comparative and legal method, the system analysis and comparative and legal analysis. The article presents the results of research of the influence of the European Court of Human Rights on the concept of case law practice on affairs with the application of the presumption of innocence principle in modern Russia. The paper defines the near-term outlook of influence of case law practice of the European Court of Human Rights on the development and modernization of the contents of the presumption of innocence principle and the quality of its application in Russia. A new criminal and legal model of the presumption of innocence principle is presented. The materials of this article can be useful to students of higher education institutions and universities of law, privately practicing lawyers, counsels, to the community of researchers of the theory and history of the right and the state, representatives of the scientific community who are interested in the issues of integration of Russia into the legal framework of modern Europe.

**Keywords:** Russia, the European Court of Human Rights, the principle of the presumption of innocence in Russia.

### INTRODUCTION

#### The Relevance of the Issue

The principle of the presumption of innocence (Article 49 of the Constitution of the Russian Federation) is the most important guarantee of enforcement and protection of the rights and freedoms of the person. It is one of the fundamental principles for a democratic society organization and the state in general, but not just for modern criminal proceedings of Russia.

The Constitution of Russia does not use the term “presumption of innocence” or “principle of the presumption of innocence” as such. However, it is said about indirectly in Chapter 2 which is titled “The rights and freedoms of the person and

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the citizen". Thus, in spite of the fact that the Constitution of the Russian Federation does not use such a term, this does not mean that this fundamental principle, peculiar to the majority of the civilized democratic states, isn't paid due attention to in modern research literature. Meanwhile, the general review of research publications, examples of the European law-enforcement practice, the Russian regulatory legal acts stated in this paper doesn't mean that the situation with the realization of the presumption of innocence principle protecting the rights and freedoms of the person and the citizen in modern Russia does not have problems.

### **Status of the Issue**

The judgments of the European court concerning Russia are not always executed. However, according to the Statute of the Council of Europe, a refusal to execute such a judgment can lead to the suspension of the state's membership in the Council of Europe, and, according to the decision of the Committee of Ministers, even to the expulsion of the state from the structure of the Council of Europe. On the contrary, the state sometimes confirms that at the existing statutory regulation and the developed jurisprudence, the situation considered by the European court can occur again; and, as a rule, in this case it introduces necessary innovations. Over the last two decades the Russian scientific community has paid special attention to consistent and precise execution of the European Convention on Human Rights and realization and direct execution of judgments of the European Court of Human Rights with the application of the provisions of the presumption of innocence principle on the human rights activity of the Russian courts of different levels. The statistics of the Russians' legal recourses is indicative. For instance, in 2014 the European Court processed 15 792 complaints against Russia, 15 574 of which were declared unacceptable, or their procedure was terminated. The court adopted only 129 resolutions (with reference to 218 complaints), in 122 of which violation of at least one of the Convention articles was found. The scientific activity indexes of the Russian scientists show the existence of a particular interest. For example, monitoring which is based on 65 research papers, 7 monographs, including 3 reviews of the federal legislation and four textbooks, confirms the research attention to the specified issue.

The works by B.A. Bulaevsky (2012), M.V. Voronin (2012) and other scientists who promoted studying and understanding of issues within the studied problem are the theoretical basis of the research. Nevertheless, it should be pointed out that the level of research activity on this subject is insufficient.

We will identify the main issues considered in the modern research literature which require further describing and studying:

1. The essential criminal orientation of the form of the presumption of innocence principle expressed in the Constitution of the Russian Federation.

2. Insufficiently exact reflection of all completeness of meaning and contents of the presumption of innocence principle.
3. The roots of problems with the realization of the presumption of innocence principle are not only those of legal character.
4. The problem of protection of the rights and freedoms of the person and the citizen in Russia is directly connected with the problem of implementation of norms of the international and European law.
5. The problem of protection of the rights and freedoms of the person and the citizen and implementation of provisions of the presumption of innocence principle is beyond national borders and has an outstanding international, global character, and concerns both developed and developing states.
6. The shortcomings of the Russian variant of the presumption of innocence principle have no national character. They mainly have a mark of heritage of the leadership and priority of criminal law among other branches of law, the shades of a police state which couldn't leave some vestiges of its past.
7. The realization of the presumption of innocence principle is slowed down not by the lag of the Russian legislation in system development, but by an essential inertia of the whole system capable of reacting adequately to new challenges of the present including those in the field of the rights and freedoms of the person and the citizen, financial crises, economic sanctions. The main legal matter goes back to the problem of the priority of the right and the law, as the main regulators of the public relations, but not momentary individual decisions, political policies, positions, state doctrines, or even ambitions.
8. Significant problems in the judicial and law-enforcement system.
9. The problem of the correct interpretation, understanding and realization of the presumption of innocence principle starts from the moment of its adoption as a new law and its ambiguity, inaccuracy of understanding, volitional and/or incorrect interpretation causes essential mistakes in law-enforcement practice and, as a result, violation of the rights and freedoms of the person and the citizen.
10. The ambiguity of the presumption of innocence must always work for the citizen pursued under the law by the court.
11. There are problems in the realization of the presumption of innocence principle connected with the insufficient level of preparation of lawyers as well as court officials and people administering justice.
12. The representatives and people administering justice don't know the jurisprudence of the European Court of Human Rights.

13. Representatives of law-enforcement authorities and controlling institutions are not informed of change of tendencies in the sphere of case law practice of the European Court of Human Rights.
14. The problems of improvement and modernization of the national legislation of Russia in the light of changes of international law and case law practice of the European Court of Human Rights.

1.3. Research Hypothesis. In 1996 the Russian Federation joined the Council of Europe; in 1998 Russia ratified the European Convention on Human Rights.

Effective training and dissemination of knowledge about the practice of the European Court of Human Rights is means of improvement and enhancement of the microclimate in the judicial system and the whole law-enforcement sphere, which cannot but affect the amendment of the legislation and modernization of the law-enforcement system in general.

The analysis of the presented modern research literature shows that most authors assume that there is a significant improvement of the real situation in the specified sphere, the whole current legislation, and the quality of judicial proceedings.

## **MATERIALS AND METHODS**

### **Objectives of the Research**

The study objectives are as follows:

- To identify the main problems and to present the dynamics of their legal regulation for the purpose of the positive solution of the problem of execution of judgments of the European Court of Human Rights concerning complaints against Russia with the application of the presumption of innocence principle and further restoration of rights of citizens, who have been victims of illegal decisions.
- To suggest new separate laws in the specified sphere for identification of gaps in the regulatory and legal framework of modern Russia, on the basis of monitoring of the functioning law-enforcement practice and the modern legislation of Russia, taking into account the positively developing case doctrine of the European Court of Human Rights including the application of the presumption of innocence principle.

For the purpose of hypothesis testing, the following general research methods applied in the theory of the right were used:

- formal and logical method of research, historical method, method of the system, comparative and legal analysis.

The regulatory and legal framework of the research consists of the Constitution of the Russian Federation, the Russian legislation regulating the aspects of protection of the personal rights and freedoms, judgments of the European Court of Human

Rights concerning complaints against Russia, including the application of the presumption of innocence principle, materials of domestic and foreign jurisprudence, published in various research publications.

The empirical base of the research includes a significant number of the European and international legal documents defining the character and features of interaction of the personal rights and freedoms and the presumption of innocence principle, and also the functioning of the mechanism of its realization and guaranteeing, Statutory documents and judgments of the European Court of Human Rights concerning complaints of citizens of other European states, besides the Russian Federation.

### **Research was conducted in three stages**

The first part of the research was the analysis of the state of the legislation in Russia in the field of protection of the personal rights and freedoms, character and quality of realization of the presumption of innocence principle, experience and the state of protection of the personal rights and freedoms in the European Court of Human Rights, problems of realization of the presumption of innocence principle with the use of its mechanisms.

The second research stage is devoted to the study of the concept and problems of application of experience of the European Court of Human Rights, aspects of realization of the presumption of innocence principle in other countries.

The third stage included the study of the problem of implementation of judgments of the European Court of Human Rights concerning the complaints of citizens against Russia, the consistent integration of Russia into the area of direct application of precedents of the European Court of Human Rights not only with reference to complaints connected with violation of the presumption of innocence principle, but also concerning other categories of affairs.

### **RESULTS**

1. When the state confirms that human rights violation under the Convention happened at the existing statutory regulation and the developed jurisprudence, the situation considered by the European court can occur again, and, as a rule, in this case the state must introduce necessary innovations into their legislation and law-enforcement practice.
2. Taking into account the fact that many norms in the Convention are very generally formulated and they find the exact sense only in precedents of the European Court, it is possible to understand the sense of the Convention only having studied the practice of the European Court in detail. Only studying the precedents of the Court it is possible to understand what is meant by “fair hearing”, “public hearing” and “hearing within a reasonable time”.

3. Without knowledge of precedents of the European Court it is impossible to competently seek protection there. Citizens of Russia, as well as citizens of other member countries of the Council of Europe, have the right to take legal recourse in the European Court of Human Rights, and, therefore, for high-quality protection of their rights they must know the case law practice of the Court.
4. Precedents of the European Court have already become part of the legal system of the Russian Federation. In 1998-1999 the Constitutional Court of the Russian Federation generally mentioned the position of the European Court of Human Rights, for example, with reference to the complaint of the citizen Maslov V.I. of June 27, 2000, and recently in the Resolutions of the Constitutional Court we have found direct references to concrete judgments of the European Court. However, this activity must be conducted consistently and constantly.
5. The scope of application of the presumption of innocence principle and its precedents is much wider: it is obligatory not only for the criminal court which resolves the issue of validity of charge, but also for all other bodies of the state.
6. The information about the Convention and its controlling mechanism must be disseminated among judges, prosecutors, officials of internal affairs and law-enforcement institutions, bailiffs, etc. Otherwise it turns out that the Convention functions in the Russian Federation, but its contents are vague to the majority of those who must apply it and it remains unclear which rights it protects.
7. The greatest number of cases considered by the European Court concerned Article 6 which affirmed the right for fair judicial proceedings and being in close proximity with the presumption of innocence principle. Some member countries (for example, Italy) as a result of decision-making of the Court had to amend the legislation for the purpose of reduction of terms of hearing of criminal and civil cases. The judgments concerning the complaints of Russians often contain the same recommendations for improvement of the national substantive and procedural law.
8. The standard content of conventional regulations concerning the presumption of innocence is formed gradually, as a result of decisions made by the European Court during hearing of concrete cases. For this reason, one of the main objectives facing the member countries of the European Convention is the control of compliance of the national legislation, both existing and being adopted, and also the law-enforcement practice with its standards recorded not only in the text of the European Convention, but also in the decisions of the European Court.
9. For solution of the problems mentioned above we suggest amendment of the laws regulating aspects of protection of the rights and freedoms of the person

and the citizen in Russia taking into account the case law practice of the European Court of Human Rights. Thus, there is necessity to agree with A. Demeneva (2012) who points out that it is necessary for Russia to take individual measures concerning the executing of judgments of the European Court of Human Rights in the national legislation of Russia, reasoning her position with examples.

10. We suggest creating departments of case law practice concerning the complaints of citizens of Russia at the Supreme Court of the Russian Federation, the Constitutional Court of the Russian Federation in which work on generalization and systematization of practice of the European Court of Human Rights would be conducted, with the right to present an initiative at the State Duma of the Federal Assembly of the Russian Federation, for the purpose of adjustment of the developed, supplemented, adopted acts being amended and new adopted acts, according to the results of the analysis of the human rights violations recorded by the European Court, concerning the cases of complaints of citizens of Russia.

## DISCUSSIONS

On the basis of the conducted research, the authors prepared a state-of-the-art review of modern research knowledge in the field of protection of human rights with the application of procedures of the European Court of Human Rights and realization of the presumption of innocence principle, which had never been done before on this issue.

The emphasis was placed on the procedure of the European Court of Human Rights, and also on the list of researchers who made the significant contribution into the subject study.

The relevance of in-depth theoretical study of interrelation of the right of the personality for judicial protection and the specified principle is directly caused also by increase in volume of scientific knowledge of their essence, value, social and legal nature, influence on practical activities (Azmi, 2010).

A number of researches of such experts as B.A. Bulaevsky (2012), M.V. Voronina (2012) are devoted to various problems of the presumption of innocence.

The question of necessity for the wide use of the presumption of innocence principle was brought up in the works by N.S. Karanina (2006) and F.G. Shakhkeldov (2008).

The problem of revision of approach to the constitutional principle of the presumption of innocence is considered by M.V. Voronin (2012).

The fact that the presumption of innocence principle is beyond the standard branch representations was proved by N.S. Karanina F.E. Cooper (1999).

The shortcomings of exclusively civil approach to understanding of the principle of the presumption of innocence were studied by B.A. Bulaevsky (2012) and other researchers.

The theoretical aspects of the presumptions were covered in the works by Karanina N.S. (2006).

Ignoring of the presumption of innocence principle by representatives of judicial system causes many miscarriages of justice and development of corruption in the judicial system (Shakhkeldov, 2008).

The question of interrelation of legal aspects of presumptions of various branches in connection with fictions was brought up in the works by M.V. Voronin (2012) and R.R. Watson (2000).

The questions concerning the improvement of approaches and methods of understanding of presumptions and their importance in the field of legal policy were raised by D.M. Azmi (2010) and B.T. Foley (2002).

The value of the presumption of innocence principle for evidentiary process in general and criminal trial in particular is completely vague, which was specified by P. Campbell (1993), W.-E.R. Atkinson (2004).

The authors defined and systematized the legal approaches to understanding and realization of the presumption of innocence principle. We used 85 statutory acts in the research, as well as some foreign ones.

The authors used some law-enforcement judicial acts, including resolutions and decisions of the national judicial authorities and the European Court of Human Rights. In this regard, we hope that the offered position will promote identification of weak points of the Russian approach both in regulations and in positions of investigating and judicial authorities, their law-enforcement acts and actions, which will allow to solve systematically and effectively one of the most important national problems – protection of the rights and freedoms of the person and the citizen in aspect of realization of the constitutional principle of the presumption of innocence.

## **CONCLUSION**

Qualitative procedures for amendment of the national legislation of Russia, implementation of norms of the international and European law into the existing Russian legislation slowly but surely take a due place among paramount problems of the state. Their consistent implementation can create a basis of further stability and security of Russia. Nevertheless, there is a number of problems which are negatively influencing the situation.

To address the issues mentioned above, we suggest amending the relevant codes and federal laws regulating aspects of ensuring the rights, freedoms and legitimate interests of citizens. We consider that it is absolutely necessary to amend the current legislation in the field of criminal law and procedure, administrative law and procedure, tax and labor law in order to prevent possible violations of the rights and freedoms of the person and the citizen.

It is also necessary to introduce a simplified procedure of bringing judges to disciplinary responsibility, in case of finding facts of incompetence (ignorance,



non-use, full or partial ignoring) which have caused serious violations of human rights.

The state-of-the-art review of research literature shows that the most effective mechanism of fight against violation of the personal rights and freedoms is a continuous improvement of the process of lawmaking, introduction of the corresponding new laws, application of the international and European human rights experience, modernization of procedures of law-enforcement, using the precedents of the international judicial authorities, namely the precedents of the European Court of Human Rights. In our opinion, this must become an integral part of modern Russian state legal policy in the sphere of enforcement and protection of the rights, freedoms and legitimate interests of the personality.

It has been proved that the activities for promoting of precedents of the European Court have to be carried out through the relevant departments of case law practice of complaints of Russian citizens at the Supreme Court of the Russian Federation, the Constitutional Court of the Russian Federation in which work on generalization and systematization of practice of the European Court of Human Rights has to be conducted, with the right to present an initiative to the State Duma of the Federal Assembly of the Russian Federation, for the purpose of adjustment of the developed, supplemented, adopted acts being amended and new adopted acts, according to the results of the analysis of human rights violations recorded by the European Court concerning the cases with application of the principle of the presumption of innocence.

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#### ***References***

- Atkinson, W.-E.R. (2004). 'The New Law of Evidence'. L.: Boston.
- Azmi, D.M. (2010). 'Factors and Variations of the Law Structuring'. *Sovremennoye pravo*, 9: 9-12.
- Bulaevsky, B.A. (2012). On the Question of Presumptions in the Law. *Journal of Russian Law*, 10: 11.
- Campbell, P. (1993). 'Presumptions and Justice'. N.Y.: New York University Press
- Cooper, F.E. (1999). 'Rules and Rights in International Law of Europe'. N.Y.: New York University Press
- Demeneva, A.V. (2012). 'The Realization of Individual Measures for Execution of Resolutions of the European Court of Human Rights by Russia: Rehearing of Cases According to the Criminal Procedure Code of the Russian Federation'. *Mezhdunarodnoye pravosudie*, 2: 91-103.
- Foley, B.T. (2002). 'The Effect of Modernization of Law System'. N.Y.: New York University Press.

- Karanina, N.S. (2006). 'Legal Presumptions in the Theory of the Right and the Russian Legislation'. Moscow. : Institute of State and Law of Russian Academy of Science.
- Kirin, A.V. (2011). 'Presumption of Innocence: Controversial Aspects of Use in Administrative-delictual Sphere'. *Administrative law and procedure*, 11: 29-30.
- Shakhkeldov, F.G. (2008). 'Without Reforming the Judicial System Corruption Cannot Be Solved'. *Russian Judge*, 12: 9-12.
- Voronin, M.V. (2012). 'Principles of Right and the Systematization of the Right'. *Yuridicheskiy Mir [Legal World]*, 11: 63-66.
- Watson, R.R. (2000). *The Near Future of Law: Theory and Practice*. N.Y.: New York University Press.