

# Considerations Regarding the Observance of the Presumption of Innocence in the Media

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**Key words:** the presumption of innocence, the right of privacy, of an intimate and a family life, the freedom of speech, officials, the deontological code of the journalist  
**Abstract:** In the context of the Rule of Law, a modern governing guarantees to anyone the presumption of innocence until is delivered an unappealable criminal decision. Nevertheless, in almost all the cases, the media, by virtue of freedom of speech, brings prejudices to the dignity, the honor and image of the officials, investigated in criminal cases, having as a unique argument the fact that a media campaign, searching the sensational, does nothing else than reproducing hostile manifestations - public servant - thus influencing the public opinion. They affect the principle of presumption of innocence, inducing unfortunate effects above the default of justice. Thus, the media takes the information from prosecutors that operate within the courts, shading them by the depreciating allegations addressed to the public persons as defendants in criminal cases, creating to the public opinion a distorted image of reality, before the justice has passed through a final criminal decision on guilt or their innocence.

The presumption of innocence has been established for the first time as the rule of law in the 18th century legislation in the U.S. and then in the Declaration of the human rights and of the citizen, since 1789, adopted by the French National Assembly. [Mateut, Gh, 2007, p. 155]

The European Convention of Human Rights in Strasbourg, issued as an expression of common will of European states to ensure compliance with the principles set forth in the Universal Declaration of the Human Rights, contains a similar provision, including in art. 6, paragraph 2 that "any person accused of a crime is presumed innocent until the guilt will be legally established.

In accordance with the European Convention and the ECHR decision of February 10, 1995, regarding the case *Allenet of Ribemont* against France, it is recognized that the presumption of innocence does not prevent the authorities to inform the public about criminal investigations in progress, but claims that it should be done with all discretion and all reserves which requires the respect of this principle.

As a consequence, this EU principle that we hereby have talked about, requires compliance with rules such as the observance of the presumption of innocence in the impartation to the media and ban of the judicial bodies to disclose their opinions or beliefs about the facts reproached to the defendant.

Regarding the application of the European standards concerning this principle in our country, the analysis made by the experts of the Organization "So Just", of the Monitoring Association Press of 20.02.2008 and of the PRO Institute in August 2005, indicates that "although the presumption of innocence forms a basic principle of the fair trial, it is often violated in Romania". The obligation to comply with the requirements of the presumption of innocence lies with both the judicial and other officials, including politicians and the press. Thus, the conclusions of these studies are:

- in Romania, the principle is only legislatively established;

- in the press releases, the persons referred to are identified by their capacity to pursue the proceedings, respectively, the accused or defendant;
- the defendant's nuisance is described using the expressions that denote the certainty of its commission by the person concerned;
- the same certainty is displayed regarding the guilt, too;
- there are not specified the mitigating circumstances in no event monitored.

The approach becomes relevant, especially in the current context, where the access to a public office, as well as its exercise are strongly marked by the media.

Moreover, the media competes in the law enforcement through the influence it has on some governmental measures [Danisor, D.C, 2007, p.516], in our opinion, implicitly and on the career of the civil servants.

Relating us to the latter, their whole activity is subject to Law no. 188/1999 republished regarding their special status.

In the context of the judicial reform, it seems necessary the report of the results by the judicial bodies, regarding the settlement of some major cases concerning the corruption in the public administration area, this is why it increases the interest of the media too on criminal cases involving public officials. In these circumstances, objectively informing of the public opinion is no longer a priority, but sometimes seeks the sensational to the detriment of accurate and complete presentation of the factual situation, the consuming citizen of media is being exposed to the direct influence of the means of diffusion.

Relating us to the provisions of art. 86 para. 2 of law no. 188/1999 updated, on the status of the civil servants, we see that when they are sent to court by the prosecution it is involved the suspension from their job.

In such conditions, we think that the media cannot any longer rely on the so-called public interest, because the public servant is not in the exercise of the service, being suspended temporarily, and loosing temporarily this quality, for which reason we consider that a distorted presentation of facts for the purposes stated above would violate his right to privacy, intimate and family life in the terms of art. 8 of the European Convention.

It is noted too that the practice of the European Court of Human Rights within the meaning of conviction of the states for the fencing of the right of free speech, it seeks only the civil servants in the performance of their duties and shows that not respecting the presumption of innocence still persists in Romania.

Thus, in the case Notary against Romania, the Romanian state has paid 50,000 euros after the person concerned has been presented as a defendant on a television channel. Is found by the Court that "in the meaning of art. 6, para. 2 of the Convention it has been violated the right of the person to respect the presumption of innocence, arguing this by the fact that his identity was disclosed during a TV show, during which he was identified as the author of a crime, although his guilt was not established yet lawfully. "

Also, by means of the decision from 27.06.2000 in the Case Constantinescu against Romania, the ECHR has stated that "in the hypostasis in which the appreciations of the claimant have concerned a public interest, there are certain limits in exercising his right to freedom of

expression. The claimant should have, therefore, work within certain limits, especially with the purpose of "protecting the reputation or rights of other persons, including the right to the presumption of innocence." Furthermore, it is shown that "in the Court's opinion," a "waster" "means those who were convicted for the offense of peculation and they were liable to offense the victims because they were not convicted by any court. "

Thus, throughout a criminal process, the media monitors the cause, often presenting the actual fact, so that it affects the image of the person both personal and professional as well.

In light of the things above, we believe that should be sanctioned the abuse of rights, and the exercise of freedom in the press domain implies that the one who writes for the public to be able to take upon himself his action.

He must ensure that the expression of his thoughts does not mislead the organizations or the individuals.

In this respect, the provisions of Article 30 para. 6 of the Romanian Constitution provide: "Freedom of expression shall not be prejudicial to the dignity, honor, privacy of the person, and no" right to his own image "and, under art. 54 of the Basic Law, "The Romanian citizens, foreign citizens and stateless persons shall exercise their constitutional rights and liberties in good faith, without infringing the rights and freedoms of the others".

These limits of the right to the free speech were devoted by the Convention on Human Rights and the Additional Protocols too, as part of our domestic law, adopted by Romania.

According to art. 10 section 1 of the Convention: "Everyone has the right to freedom of expression", and according to art. 10 section 2, "The exercise of these freedoms that behave liabilities and responsibilities may be the subject of formalities, conditions, restriction or some sanctions provided by law, which represent necessary measures, in a democratic society, concerning the protection of the reputation or the rights of others.

More than that, resolution no. 1003 (1993) of the Parliamentary Assembly of the Council of Europe, of which Romania has noted by means of the decision no. 25 of September 12, 1994 of the Chamber of Deputies, which includes a synthesis of principles of ethics and deontology of the journalists, provides, inter alia, that "the news should be disseminated with respect to the truth, after it had been done the checkings of thoroughness, presentation, description or the story being made in an impartial manner.

The rumors should not be confused with the news "[...];" journalism should not distort the true information, impartial, and honest opinions, not to exploit it in their own purpose, in an attempt to create or shape the public opinion "[ ...] "In journalism the objective does not excuse the means; the information must be obtained through ethical means."

Also, in shaping the rules of the professional activity of the journalist, the Romanian Press Club has adopted the Deontological Code of the journalist, act which facilitates the interpretation and application of the constitutional and legal norms mentioned above.

Under art. 2 of this Code, "the journalist can only publish information whose truthfulness is certain in advance after he has verified, usually, from several credible sources." and according to art. 9, "the journalists who intentionally distorts the information, or brings unfounded accusations commits professional misconducts of maximum gravity."

From the interpretation of the rules outlined, follows that the journalist who publishes information, photos or insulting statements, calumnious, defamatory about a person, he is obligated to repair completely all the damage caused, regardless of their nature, patrimonial or non-patrimonial.

In such circumstances we think it is necessary for an objective presentation, the insertion in the text, with legible characters, that the person enjoys of the presumption of innocence until the pronouncement of a final criminal decision, such a statement is not likely to restrict the freedom of expression.

We bring as an argument in the support of the allegations above the cause Sunday Times v United Kingdom of 26.04.1979, which is speaking about a total ban to publish articles on a controversial law on the role of the UK instances, in which it was totally limited the right to free expression. And the measure proposed by us, that means to incorporate in the meaning of the published texts, the fact that a court did not ruled on the guilt or the innocence by a final decision, does not hinder in any way the right to free expression.

This paper aims to draw attention on the fact that, although it is allowed a certain exaggeration in the manner of presentation of certain criminal cases involving public officials, the manner of addressing of the media must not violate the presumption of innocence.

Thus, in the recalled case is shown that it must not be harmed the freedom of expression when it comes to the public interest, while can't be lost of sight the fact that it is about an undue restriction that which was ordered by the UK instances through a decision to totally prohibit any items relating to a civil proceeding. Also, the Court's ruling is considering the principle of non-discrimination too, in that there have not been similar situations elsewhere, the only one who received the ban being the Sunday Times newspaper.

Thus, our proposal is founded on the right to the presumption of innocence as enshrined by the Universal Declaration of Human Rights in the art. 11 ( "Any person accused in a criminal trial has the right to be presumed as innocent until guilt has been established by law in a public trial, in which has all guarantees that it can exercise its defense"), in the European Convention Human Rights Article. 6, para. 2 and the Romanian Constitution Article. 23, para. 11 ( "until it remains a definitive court decision of conviction, the person is considered innocent).

From those presented above, it has an overwhelming importance art. 8 of the European Convention of Human Rights relating to the intimate life, private and family life, which we quote in support of our measure on tendencious publication of articles, pamphlets, photos, images of the preventive arrest, which would prejudice the honor, reputation and dignity of any person.

In such circumstances it seems relevant the decision of Pfeifer against Austria on 15.11.2007 which has been ordered to pay the plaintiff 5,000 euros for moral damages, as the Court stated that "although it is true that the shocking or offensive statements are protected by freedom of expression, the statement in question has exceeded the acceptable limits by the fact that they accused the plaintiff of criminal behavior. " "The Court was not therefore convinced that the reasons advanced by the internal instances excess weight the right of the plaintiff to his reputation protection", "art. 8 is just as applicable because even in the context of a public debate, the reputation of a person is part of personal identity and his psychological integrity, and therefore, part of that person's private life."

It is noteworthy that, as regards the impending loss, it could not be repaired the appearance of such materials, as the officials' image is irreparably damaged in the eyes of public opinion. Thus, even if subsequent pronouncement of a judicial decision of discharge, much of the public would not be concerned with the truth, and morality of the persons concerned, being practically compromised.

We appreciate, therefore, that the media role is only that of presenting equally to the public, information on the means of developing of the criminal trials, or about what the law provides and not to judge, an attribute only of the court.

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