Presumption of Innocence in Criminal Procedure

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Abstract: Presumption of innocence appears as a rule hardly in modern penal trial. For first time was noted in legislation from the end of the XVIIIth century (United States of America legislation and Declaration of Human Rights and Citizens in 1789). This constituted a reaction compared to inquisitional report, which practically the one involved into a penal case was presumed always guilty, reverting the obligation of proving own innocence. According to the U.S. Supreme Court, the presumption of the innocence of a criminal defendant is best described as an assumption of innocence that is indulged in the absence of contrary evidence. It is not considered evidence of the defendant's innocence, and it does not require that a mandatory inference favorable to the defendant be drawn from any facts in evidence.

Presumption of innocence is a principle that requires the government to prove the guilt of a criminal defendant and relieves the defendant of any burden to prove his or her innocence. This presumption should be understood as a rule of regulation of charge of probatorium, as a warrantee for innocent citizens against legal errors.

In this way, according to article 8 of Criminal Procedure Code of the Republic of Moldova, the accused and the defendant is not obliged to prove his innocence. In case when exist proves of guiltiness, the accused or the defendant has the right to prove their groundless. Law presumes that in a case is innocent as long wasn't brought proof of guiltiness.

This thesis is absolute and should be in the way that the defendant never has the obligation to prove his innocence, neither when the proof of guiltiness is made by the one who accuses.

However, when legal authorities had formulated the accusation and develop an intensive activity for proving it, the accused or the defendant is not interested to be impassive and to wait the result of investigation and judging, but is interested that his innocence to be established as fast as possible.

Presumption of innocence appears as a rule hardly in modern penal trial. For first time was noted in legislation from the end of the XVIIIth century (United States of America legislation and Declaration of Human Rights and Citizens in 1789). This constituted a reaction compared to inquisitional report, which practically the one involved into a penal case was presumed always guilty, reverting the obligation of proving own innocence. According to the U.S. Supreme Court, the presumption of the innocence of a criminal defendant is best described as an assumption of innocence that is indulged in the absence of contrary evidence (Taylor v. Kentucky, 436 U.S. 478, 98 S. Ct. 1930, 56 L. Ed. 2d 468 [1978]). It is not considered evidence of the defendant's innocence, and it does not require that a mandatory inference favorable to the defendant be drawn from any facts in evidence.

In contemporary period on international plan should be mentioned the Universal Declaration of Human Rights adopted by O.U.N. in 1948, that stipulates "the presumption of innocence" in article 11 under following formulation: "Any accused person of committing a crime is presumed innocent so long as his guiltiness wasn't established in a public trial, by assuring necessary warranties of defense". Likewise, presumption of innocence is stipulated in article 6 paragraphs 2 from European Convention of Human Rights (1959) and in article 14 paragraphs 2 of International Treaty of civil and public rights (1966), as well as in many other international acts. The

fundamental law of the Republic of Moldova stipulates in article 23 paragraphs 8 that till judge decision of conviction remains definitive, person is considered innocent.

In legal thinking from the last century were manifest conceptions that contravene to presumption of innocence. For example, anthropological school and later positivist school had emitted opinions which practically constrain this presumption in connection to so called "borne" perpetrators and from "custom". These conceptions were criticized in contemporary doctrine, showing the risk of introduction of such dangerous arbitrary, because the distinction between perpetrators by criteria proposed by these schools is impossible to do. Likewise, totalitarian legislations as forms of manifestation of reaction of the most extremist didn't scruple in many cases to eliminate completely the presumption of innocence as in legal dispositions, well as in legal practice.

Presumption of innocence represents a certain dynamic during penal trial. It is manifest with all strength in missing of proves of guiltiness and step by step pays by measure of administration, proves which contradict it. Its last effects are vanished only by detention of guiltiness by court by conviction decision. To presume such way means that from the moments that the prosecutor sent somebody in court basing on proves of guiltiness, the court presumes the defendant automatically as a guilty and to convict it. The court doesn't have the right to start a judging from such pre-conceived idea having the obligation to inform his persuasion only after the judging.

As a basing rule of penal trial presumption of innocence must be in absolute application, meaning is not admitted no deviation from precisely realization. Under the aspect of legal effects, it brings to relative presumption of innocence, meaning that all presumed by legal norms admit the opposite by contrary proof. Thus, by such conception is basing the entire procedural mechanism of accusation and holding for criminal liability of guilty person.

Since the defendant is presumed innocent the prosecutor for sending him to judging must have gathered by criminal investigation bodies all proves, which certifies the existence of the crime and it commission with guilt, likewise the court cannot convict the defendant until were administrated proves from which results that the fact exists, constitutes a crime and was committed by the defendant. Presumption of innocence is not cancelled only by proved certainty of guiltiness of the defendant. If this certainty doesn't manifest, presumption of innocence triumphs and can be complete sometime by rule in dubio pro reo (any doubt is in favor of the defendant).

Application of this rule is conditioned by existence of two elements: the doubt and the impossibility to administrate other prove, as by the court, well as by criminal investigation body. According to rule in dubio pro reo, if during penal trail a circumstance provokes a doubt concerning its existence, if can be explained as inexistent well as existent, this circumstance is not kept when is against the defendant. The doubt is equivalent to the full missing of proves and should bring to acquaintance of the accused or of the defendant.

The impossibility to administrate proves must be complete and objective, not linked to absence of material possibilities, of lack of knowledge of an expert or of necessity framing for solving a cause in term.

The rule in dubio pro reo covers as constitutive elements of the crime, well as aggravating circumstances. On the consequence way, then when exists the doubt over the existence of the fact, of one constitutive element of the crime or that the accused or the defendant is the author of the fact, in phase of criminal investigation, application of the rule in dubio pro reo should bring to a solution of taking off criminal investigation, but after the judging to a solution of acquaintance. If after solving a cause, appears a situation of doubt concerning guiltiness and the accused is arrest, the doubt should get to his immediate releasing.

Concerning this aspect should be remarked, because in actual legislation doesn't exist an express ground for application the rule in dubio pro reo, was proposed to include this rule in future code for giving more clarity to obligation of the court to not take into consideration of the pronouncing of the decision, the fact or the circumstance that is not full and unchallenged proved if it is favorable for the defendant.

Concerning aggravating circumstances, in case of doubt, this will not be memorized. Concerning the domain of application the rule in dubio pro reo appeared the problem if the doubt over of point of law is effective when a fact of the participants is and then when is a fact of the magistrate.

In case of doubt of the participants over a point of law think we aren't into a situation of application the rule in dubio pro reo, because this is a rule of interpretation of some situation that result from proves evaluation and is prescribed to legal body.

Anyway, the doubt of participant over a point of penal law can be assimilate to error of law which in our law doesn't removes criminal liability, being applied the principle which is used by the majority of penal legislations, nemo ins ignorare censetur. In practice, the problem is, if some extra penal norms are unknowledgeable or knowledgeable, if this foresees a state, situation or circumstance that constitutes an element of the crime or an aggravating circumstance produces effects foreseen by dispositions of article 77 of Criminal Code of the Republic of Moldova concerning the fact error.

In example the defense was invocated, the defendant that was sent to judging and fro commission the crime of bribery foreseen by article 333 CC of RM, that was a fact error concerning the quality of the subject of crime of bribery, because has been wrong interpreted the normative act that regulates the Bar organization, meaning the lawyer doesn't fulfill a function in service of public organization and cannot be assimilate to "other employers".

Rejecting formulated defense, Supreme Court showed that, in principal, the error concerning extra penal norms--- then when these norms regulate a state, a situation or a circumstance that constitutes an element of the crime or an aggravating circumstance--- is assimilate, under the aspect of effects that produces, with fact error.

The fact error, for producing effects foreseen by article 77 of Criminal Code of the Republic of Moldova, should consist of full ignorance, complete or wrong knowledge of the state, situation or circumstance with penal relevance: "Doubt—which involves an uncertain representation of the reality and conscience of the incertitude—doesn't equals with error and doesn't produce none of the effects foreseen by article 77 of Criminal Code of the Republic of Moldova".

Concerning the doubt of a judge over an issue of law, neither that can be connected to application of mentioned rule, because it refers to evaluation of prove. A norm of law is an issue of fact only if it is a foreign norm and put the problem of double incrimination. In this case, the doubt eventually could put in application the source of demonstration a proof and in no way in connection to interpretation of the norm.

The ground of acquaintance in case of doubt concerning the realization of incrimination conditions of a penal fact could constitute the appreciation of inexistence of these conditions and not the effort of interpretation with no result.

Nevertheless, the presumption of innocence is essential to the criminal process. The mere mention of the phrase presumed innocent keeps judges focused on the ultimate issue at hand in a criminal case: whether the prosecution has proven beyond a reasonable doubt that the defendant committed the alleged acts. The people of the Republic of Moldova eager to join European Union have rejected the alternative to a presumption of innocence — a presumption of guilt — as being inquisitorial and contrary to the principles of a free society.

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