

## The presumption of innocence and its requirements in Algerian law

قرينة البراءة ومقتضياتها في القانون الجزائري

Dr. Mohcine Chedadi<sup>(1)</sup>

Dr. Adel Bouomrane<sup>(2)</sup>

(1) Mohamed-Cherif Messaadia University - Souk Ahras, (Algeria)  
m.chedadi@univ-soukahras.dz

(2) Mohamed-Cherif Messaadia University - Souk Ahras, (Algeria)  
bouamrane.adel@yahoo.fr

RECEIVED  
15 - 04 - 2020

ACCEPTED  
08 - 09 - 2020

PUBLISHED  
30 - 09 - 2020

### Abstract:

The presumption of innocence is the result of a bitter struggle between the ruler and the ruled over various successive periods of time .the prosecution was originally in the accused in the light of primitive culture which did not follow what is known as the principle of lawfulness. He is charged with the offences conversely, our true Islamic religion recognized more than fourteen centuries ago the origin of innocence. considering it a fundamental basis on which this great Sharia is based.After that, the role comes after the successive statutory laws that these principles have moved to and adopted according to Binding legal rules,as the origin of innocence has become a pillar of constitutional legitimacy of a laws in comparative penal procedures and a general rule in the various contemporary criminal justice systems, especially accusatory ones, and guarantees have been established to protect and preserve them from Any aggression, whether by the monitoring and investigation bodies or even the judge.

**key words:** presumption of innocence, accused, personal freedom, burden of proof, suspicion explained in favor of the accused.

### المخلص:

قرينة البراءة ثمره صراع مرير بين الحاكم والمحكوم عبر مختلف المراحل الزمنية المتعاقبة، ففي ظل المجتمعات البدائية التي لم تتبنى ما يعرف بمبدأ الشرعية كانت الإدانة أصلا في المتهم، فمتى وجه الاتهام لشخص معين بارتكابه أفعال إجرامية ما فإنه يقع عليه عبء الإتيان بدليل براءته وما يدحض الادعاءات والتهم المنسوبة إليه. على نقبض من ذلك أقر ديننا الإسلامي الحنيف منذ أكثر من أربعة عشر قرنا من الزمن أصل البراءة معتبرا إياها قاعدة جوهريه يقوم عليها هذا الشرع العظيم. ليأتي الدور بعد ذلك على القوانين الوضعية المتعاقبة التي انتقلت إليها هذه المبادئ وتبنتها بموجب قواعد قانونية ملزمة، حيث أصبح أصل البراءة ركيزه للشرعية الدستورية في القوانين الإجراءات الجزائية المقارنة وقاعد عامة في مختلف نظم العدالة الجنائية المعاصرة خاصة الاتهامية منها، كما تقررت لها ضمانات تحميها وتصونها من أي اعتداء سواء من طرف أجهزة المتابعة والتحقيق أو حتى جهة الحكم.

**الكلمات المفتاحية:** قرينة البراءة، المتهم، الحرية الشخصية، عبء الإثبات، الشك يفسر لصالح المتهم.

(1) Corresponding author: Dr. Mohcine Chedadi, e-mail: mohcheddadi@yahoo.fr

### **Introduction:**

It is obvious that most contemporary criminal laws that a person is born innocent and free from any responsibility towards others and it is feature a that is attached to him and cannot be removed from him regardless the circumstances. Therefore, when he credited with allegations of criminal acts are prescribed and punishable by the Penal Code and related laws, the original or presumption of innocence remains valid to him until it is refuted by a final judicial ruling issued by a competent judicial authority<sup>1</sup>. The importance of studying this issue becomes clear through that it examines the contemporary procedural criminal legislation in general and the Algerian law in particular, in trying to create a kind of balance between two opposing interests, if true. The first is the interest of society in curtailing the perpetrator and repairing the harm that has occurred, and the second is the interest of the accused in treating the treatment of the innocent through the various stages of the public lawsuit, according to what the presumption of innocence requires. Trying to answer that to the problem he poses: **What are the requirements of the presumption of innocence in Algerian law?** Two approaches in his study of the descriptive analytical approach, which corresponds to its nature, through researching the nature of the presumption of innocence and the legal basis upon which it is based first, and then the results of its implementation in a second element. This is because the principle that modern countries followed and embodied in their positivist laws is that many criminals escape from prosecution and punishment much better than condemning an innocent person<sup>2</sup>.

### **I - Essence of the presumption of innocence**

The well-known legal doctrine of an accused person is presumed innocent until proven guilty according to a final judicial ruling in which the fair trial controls are taken into account from established principles in contemporary criminal laws, and therefore the follow-up, investigation and even ruling authorities must observe this principle in facing the accused through the various stages of the public lawsuit<sup>3</sup>. Criminal jurisprudence differed in setting a term containing the rule or principle that we are studying, but despite this the word innocence remained the common denominator in this difference, where some call it the origin of innocence while another side calls it the principle of innocence and others call it the presumption of innocence, while most jurists tend to To designate this original by presumption with innocence<sup>4</sup>.

### **A- definition of the presumption of innocence :**

Presumption means in the language: indicate for something without use in it, as well as the comparison and accompanying. It is said that so and so is friend so and so. Allah said: "and his copanion (the angel), will say: Here is (his Record) ready with me!"<sup>5</sup>, The consort is the companion, the wife is called the man's consort to compare it to, and everything that is attached to another is called companion for him, and his feminine is presumptuous and collecte as evidance or clues<sup>6</sup>.

Professor Mustafa Sadiq Al-Marsafawi defined her by saying: "An individual shall not be rewarded for an act assigned to him unless a sentence is issued against him from a body with legal jurisdiction." What is noticed on this definition is a deficiency in the meaning, because it confines the concept of innocence to not be rewarded for a person with an act in reward, while the presumption of innocence is much more comprehensive than this meaning, as it includes alongside the penalty the action taken, and includes all judicial bodies with follow-up, investigation and judgment. The original principle of innocence requires that individual freedom not be restricted in all stages of a public lawsuit, and that a person is not convicted and a criminal sanction is imposed on him only after a final judgment has been issued by a competent judicial authority<sup>7</sup>.

While Professor Ahmed Fathi Sorour defines her as: "The innocence requires that every person accused of a crime, no matter how serious, must be treated as an innocent person until proven guilty by a final judicial ruling"<sup>8</sup>. What is noticed on this definition is that it is wider than the above definition, especially since it used the term treatment instead of remunition, which - treatment - extends to all stages of the public case of inferences, investigation, and even judgment, but what is wrong with it is that the presumption of innocence is confined to the accused person only and no other Members of the Society<sup>9</sup>.

As Muhammad Salim al-Awa defines it: "The origin of the innocence means that the judge and all state authorities must treat the accused, and consider him on the basis that he did not commit the crime in question, unless it is proven that by a judicial ruling that cannot be appealed by ordinary means"<sup>10</sup>. What can be said about this definition is that its expressions are not coherent. If the judge and the various authorities responsible for investigating and investigating the perpetrator looked like someone who had not committed it, he would not have been able to accuse and pursue him at all, but the fact of the matter is that, from the very first moment when the person was accused, his legal statut was shaken,

but he has not proven with certainty that it happened, so it is treated like innocent people. From there and the perception of him differs from that of other innocent people.<sup>11</sup>

Some also defined it as: "The original presumption of innocence means that the accused person has the right to be innocent until the prove for his conviction is based, and this prove has several consequences, the most important of which is in relation to evidence, the first of which is the burden of proof on the Public Prosecution, The second is the interpretation of doubt in the interest of the accused"<sup>12</sup>. This definition included in fact the most important consequences of the implementation of the original presumption of innocence in the field of criminal proof, while it is wrong for him to link it and limit it to the person of the accused, but the truth requires that this principle be dispensed to all people without exception, and it is also taken that it is confining the presumption The innocence in the person of the accused until the evidence for his conviction is based, except that this fact inherently accompanies the human being and does not negate him upon his conviction, but rather with the issuance of a final ruling that holds the power of the thing ruled in it<sup>13</sup>.

For there are two meanings too the presumption of innocence: objective significance and personal significance. The objective significance, it means that "this principle is not directed only to the burden of proof, but also to those in charge of the public lawsuit and imposes on them the treatment of the accused person is presumed as innocent as long as his conviction has not yet been proven by a court ruling", and therefore the personal significance limits the accusatory position it takes These bodies and makes them overcome the idea of mistake in pardoning the wrong in punishment, and by bringing together the meaners we get the legal meaning of the presumption of innocence<sup>14</sup> Therefore, many agree that the comprehensive definition of the origin of innocence is as follows: "It means treating the person - suspect or accused - at all stages of the procedures, and whatever the gravity of the crime attributed to him, that he is presumed innocent until proven guilty by a final judicial ruling, according to the guarantees Decided by the law for the person in all its stages"<sup>15</sup>.

It is worth noting that there is a divergence of opinions regarding whether the presumption of innocence in a person is a simple legal presumption that can be rebutted and proven to be reversed, or that it is an inherent principle of the person. According to the first opinion, he believes that the presumption of innocence in a person is a simple legal presumption that can be rebutted and

proven reversible according to a final ruling that condemns the accused. While those of the second opinion, who are the dominant and most likely opinion, see that the innocence can not be considered in any way a simple legal presumption, not even from its forms, the innocence is an asset in a person once he is born and remains attached to it, and the criminal ruling that acquits the accused does not create a new legal center that was It is unknown before the verdict. Rather, the verdict of the conviction establishes a new center because it will transfer it from the circle of permissibility to criminalization<sup>16</sup>.

### **B- sources of presumption of innocence:**

It is established by law and legally that the presumption of innocence is a source in the human being, a right of the accused and a presumption of the judge, according to which a balance between two opposing rights is the interest of society and his right to pursue the perpetrators and punish them for what they commit of crimes affecting his entity and public order on the one hand, and the right of the accused to treat the innocent through various The stages of a public lawsuit on the other hand<sup>17</sup>. The learner for the development of procedural criminal legislation stands for the Romanian legal system of public oral trials adopting the principle of origin in the accused person of innocence, by placing the burden of proof in criminal matters on the charge. With the transformation of the legal law into a system of written procedures, it is the prerogative of the ruling party to ask the accused to provide clarifications on the charges and innocence of the charges brought against him, if any. In the sense that the burden of proof of innocence has shifted from the point of the accusation and it has become a reality on the accused for the hypothesis of criminality, in contrast to what was the case in the previous system. Accordingly, it can be said that during the period between the fifteenth century and until the mid-seventeenth century the principle of origin in the accused continued to fluctuate between Sometimes the two previous approaches, sometimes the principle shows that the accused person has the right to be innocent until proven guilty, and sometimes the opposite prevails by considering the accused guilty until proven otherwise by providing evidence of his innocence . However, this situation did not last long, as criticism directed at the legal systems in general and procedural ones in particular escalated in the second half of the seventeenth century, as it was called for the need to give more protection to the accused as the weak party in the public lawsuit by approving the original patent in his favor. Where these requirements were embodied in the issuance of the French Declaration of Human Rights for the year

1789, which affirmed that the principle in the human being is innocent until a conviction is decided in accordance with the provisions of Article 9 thereof<sup>18</sup>.

It should be noted that the principle of presumption of innocence was not known as the present except with the advent of our true Islamic religion, which made it a general principle applied to all acts of worship and transactions and various duties and costs, as other principles derive from it, similar to what is known to Shariah scholars with certainty that does not disappear with suspicion and fend off Border suspicion and the original clearance, There is no doubt that a person is born on the basis of quits, Allah says: "O you who have believed, if there comes to you a disobedient one with information, investigate, lest you harm a people out of ignorance and become, over what you have done, regretful"<sup>19</sup>. At a time when the Islamic community was working on this principle and the resulting guarantees that protect the rights and freedoms of individuals, Europe suffered underdevelopment and degradation under the grip of the feudal system and the injustice of the clergy from the church to the end of the intellectual revolution led by senior jurists and thinkers who studied and taught science at the hands of Muslim scholars, This reflected positively on the consolidation of the idea that the accused person is presumed innocent until proven guilty. And since its acquisition of the mandatory legal value can only be achieved by codifying it in legal texts<sup>20</sup>, this idea - the presumption of innocence - has received widespread welcome and interest on the part of the various organizations for which international and regional conferences have been held, and countries have guaranteed them under explicit rules, whether in their constitutions or Its procedural laws consider it a fundamental human right that cannot be violated under any circumstances<sup>21</sup>.

### **1- declarations and international agreements :**

The European Renaissance was considered by unanimous a decisive turning point in human history and its march towards the best in the field of individual and collective rights and freedoms, as ideas spread in the era calling for respect and avoiding abuse. This is what the scholar Cesar Beccaria advocated in his 1764 book *Crimes and Penalties* as: "It is not permissible to describe a person as guilty before the issuance of the court's ruling, and that society may not withdraw his protection from him before completing his trial for the crime attributed to him". Montesquieu had a famous saying in his book "Spirit of laws": "When the innocence of the citizens is not secure, neither is liberty"

The declaration of human rights and the French citizen issued in 1789 in the wake of the French Revolution was a product and a result of what the scholars and thinkers in this country called for the first document at the international level that stressed the need to respect the rights of the citizen in general by putting an end to the severely worded violations practiced by the previous monarchy; The person has the right to be innocent until proven guilty by virtue of a specific ruling in particular, and he has put the texts to protect him from the infringement, as this presumption was expressly stipulated in accordance with Article IX (09) of the declaration, but its content was not materialized in practice and application<sup>22</sup>.

### **First: The Universal Declaration of Human Rights**

The text of the presumption of innocence came in accordance with Article 11 of this declaration, saying: "Every one charged with a penal offence has the right to be presumed innocent until proved guilty according to law in public trial at which he has had all the guarantees necessary for his defense<sup>23</sup>." Sub-rights also contained in this principle, as Article Five (05) of it stipulated the prohibition of torture or cruel, brutal or degrading treatment of human dignity, while Article Seven (07) stipulated that arbitrary arrest or detention of persons was not permitted as stated in the text The right of the accused to a fair trial under Article X (10) thereof<sup>24</sup>.

### **Second: European Convention for Human Rights and Fundamental Freedoms**

It was ratified by the member states of the Council of Europe in March 1950 and entered into force in 1953, which included most of the rights and guarantees stipulated in the Universal Declaration of Human Rights, especially Article Six (06) of which stipulated: "Everyone charged with a criminal offence shall be presumed innocent until proven guilty" according to law" It also recognized the right of the accused to know the reasons for his accusation as soon as possible and to be given sufficient time to prepare his defense<sup>25</sup>.

### **Third: International Covenant on Civil and Political Rights**

It was ratified by the United Nations General Assembly on December 16, 1966 and entered into force on March 23, 1976, where it addressed many of the rights stipulated in the Universal Declaration of Human Rights, including that the human person is innocent under Article 14, paragraph 02, which states: "Everyone charged with a criminal offence shall be presumed innocent until proven guilty" according to law<sup>26</sup>.

## **2-: Internal legislation:**

The provisions of the international and regional agreements concerned with human rights, especially the 1948 Universal Declaration, contained provisions and principles guaranteeing the safeguarding of the collective and individual rights of persons along the lines of the origin of innocence, Extensive influence on the legislations of many countries in the world, and this was embodied by stipulating them, either implicitly or explicitly, in their procedural criminal laws and even in their basic laws, given the extreme importance that this principle holds for both of the highest authorities of the state and the constitutional founder<sup>27</sup>.

### **First: Constitutions**

Most Arab and Western constitutions have approved the presumption of innocence, and if they differ in its formulation, there are those who are satisfied with writing the same principle, and some of them from his century have guarantees that protect the accused as his right to defense and his right to a fair trial until the end of a final ruling in the public case<sup>28</sup>.

One of the examples of Arab constitutions that recognized the origin of innocence was the Egyptian constitution of 1971, which stipulated in Article 68 of it: "The accused is innocent until proven guilty in a legal trial that guarantees him the guarantees of his defense." It is the same text that was mentioned in Article 96 of the Egyptian Constitution for the year 2004<sup>29</sup>. Article 28/1 of the Syrian Constitution of 1973 stipulated the principle by saying: "Every citizen is presumed innocent until convicted by a final legal decision."<sup>30</sup> Article 26 of the Basic Law of Governance in the Kingdom of Saudi Arabia states: "The state shall protect human rights in accordance with the Sharia." Since the Kingdom's system adopts Islamic law as a constitution and a curriculum, and that the rule of origin in the accused of innocence is an Islamic jurisprudence rule that is also in the Saudi system<sup>31</sup>.

As for the Western constitutions, the presumption of innocence also stipulated the same way as stipulated in Article 27 of the Italian Constitution of 1947, saying: "Criminal responsibility is personal. The accused is not considered guilty until final sentence has been passed upon him."<sup>32</sup> As stated in the French Constitution of 1959 in its twelfth article, by saying: "Every person accused of a crime is considered innocent until proven guilty in a trial in which he guarantees the necessary guarantees to defend himself"<sup>33</sup>.



The Algerian legislator, too, has followed the same path as the aforementioned constitutions, where he adopted the presumption of innocence and enshrined it in various consecutive Algerian constitutions, whether explicitly, or through what he decided other guarantees to benefit the accused that reinforce this principle. The Algerian Constitution of 1963, even though it did not explicitly provide for presumption of innocence as a stand-alone principle, however, it endorsed some of its manifestations and the related guarantees closely with it, such as the prohibition of torture and every sensory or moral violation of the human being in Article 10/7, And the freedom of a person may not be restricted or suspended except in accordance with the law in Article 15<sup>34</sup>. Whereas the constitutions that followed it were more aggressive by stating expressly the presumption of innocence along the lines of Article 46 of the 1976 Constitution by saying: “None is guilty unless it is in accordance with a promulgated law prior to the incriminated action”<sup>35</sup> Likewise, Article 42 of the 1989 Constitution, by saying: “Any person is presumed not guilty until his culpability is established by a regular jurisdiction with all the guarantees required by the law.”<sup>36</sup> It is the same formulation of Article 45 of the 1996 Constitution <sup>37</sup>.

### **Second: Procedural laws**

Since crime is an accident in society, since that honorable people constitute the majority of society, this has led to the call of scholars and jurists to root and write down the presumption of innocence and given the close connection between it - the presumption of innocence - and substantive legitimacy, If the latter is a basis upon which punitive legislation is based, the origin of innocence is also a basis upon which the Code of Criminal Procedure is built, as the legislation that defines the procedures to be followed when undertaking any measures or procedures that affect the personal freedom of the accused, or the inviolability of his private life, or his right to physical and psychological integrity, unless the law stipulates that <sup>38</sup>.

Proceeding from this vision, the majority of countries did not stipulate in the procedural laws the presumption of innocence, and thus only what was stated in their basic laws <sup>39</sup>, and that there is no longer a need to stipulate it as inherent and firm in the conscience of nations and cannot be ignored and waived regardless of circumstances and conditions. And being the second pillar of rights and freedoms after the principle of legality. But this did not discourage countries from adopting the principle - the resumption of innocence - and expressly stipulating it in the law of its criminal procedures, similar to the law of criminal

procedures of the former Czechoslovakia state of 1961, which stipulated in Article Two (02) of it: "Any person charged with an offense shall be presumed innocent until proven guilty by a final sentencing judgment of a court." As stated by the Bulgarian legislator in Article 08/1 of the law issued on 05 February 1952 amended in 1961, saying: "people are innocent until the opposite is proved." <sup>40</sup>It also stipulated in Article Three (03) of the Sudanese Code of Criminal Procedure issued in 1974 by saying: "The application of this law shall take into account that every accused person has the right to a fair trial, and that every accused person is innocent until proven guilty without a reasonable doubt ..." <sup>41</sup>.

As for the Algerian legislator, it did not explicitly address the presumption of innocence under the Criminal Procedures Law issued No. 66/155 dated 06/08/1966 nor did it refer to it even implicitly, and perhaps this is due to the belief of the Algerian legislator that the holiness of the principle is too high to stipulate it and therefore it is not. There is a reason for its approval in the lower texts, especially since it has confirmed in Article 11 of the 1963 Constitution that Algeria agrees with what was stated in the Universal Declaration of Human Rights, which explicitly stated this principle <sup>42</sup>.

Among the provisions of the Code of Criminal Procedure, which proves that the Algerian legislator adopted the original principle of innocence, even if that was indirectly and explicitly as we have said, is stipulated in Article 127 of the above law, saying: "The accused or his lawyer may request the release of the investigation judge at all time. .... The investigating judge must decide on the request with a special reasoned decision within a period not exceeding eight (08) days at the most from the file being sent to the public prosecutor..... Otherwise, the defendant must be automatically released ..." <sup>43</sup>What is drawn from this legal text is that the temporary detention procedure ordered by the investigating judge against the accused is nothing but an exceptional judicial action that he takes in the event that the judicial oversight obligations submitted by the accused are insufficient, and given the legislator's implicit adoption of the origin or presumption of innocence, he has confessed. According to the above-mentioned article, the accused has the right to request the release and the resumption of all investigation orders <sup>44</sup>. Article 309 of the same law stipulates: "The members of the criminal court deliberate and then take votes on secret papers, by ballot separately for each of the questions asked about the mitigating circumstances that the president is obligated to ask, when the accused has been proven guilty, and is considered in favor of The accused is white ballot papers, or

the majority of the members decide to nullify them ...<sup>45</sup>. What transpires from this legal text is that as long as the legislator has considered the white voting papers in the criminal court session or that the majority of the members decide to nullify them in the interest of the accused, he will have implicitly recognized the origin of innocence in the persons <sup>46</sup>.

## **II - The consequences of the presumption of innocence**

The majority of the comparative procedural criminal legislation stipulated the presumption of innocence as a guarantee for all persons without exception, therefore, if anyone appeared before the judiciary and this presumption was not taken into consideration for him to be treated as innocent until the evidence that refutes this fact is established, this will undoubtedly be accompanied by excessive violations and serious judicial errors, which would undermine public trust in the justice system <sup>47</sup>.

The presumption of innocence as a basic pillar of the principle of criminal legitimacy requires that a person be treated, whether he is a suspect or even accused as an acquittal of whatever criminal charges were attributed to him, and whatever suspicions or evidence against him have committed against him, it is - the presumption of innocence - as we have already said it is a fixed origin in a person it can only be denied by court order that has been issued by a competent judicial authority, and that the criminal judiciary has a duty to abide by it and the important consequences for the accused of protecting personal freedoms, and that the burden of proof is on the accusation authority as a general principle, and that suspicion is always explained For the benefit of the accused <sup>48</sup>.

### **A- protection of personal freedom :**

Most state constitutions were concerned to stipulate the most important guarantees that safeguard the rights of judicial followers, and their procedural laws included details of these guarantees, which constituted a strong bulwark that prevents prejudice to the rights and personal freedoms of individuals and their human dignity <sup>49</sup>. Accordingly, the accused must be treated as innocent until proven guilty by virtue of a final criminal court ruling, which presupposes that the actions that may be taken against him and at any stage of the public action are within the narrowest scope of it, according to what the research, investigation and investigation procedures truly require and what is preserved for the accused is his personal freedom. This right - personal freedom - is one of the most important and long-term public freedoms in the legal system of civilized countries whose

various organs and powers are bound to respect the prevailing legal texts and the principles and provisions it contains<sup>50</sup>.

The protection of the personal liberty of the accused person appears theoretically easy, but its practical embodiment may collide with the right of society to pursue the perpetrators of the various crimes. Restricting a defendant's freedom under the pretext of ensuring an investigation with him may be a violation of his right to enjoy his personal freedom, especially if he is innocent on the one hand. Likewise, leaving him free will also enable him to evade follow-up and punishment if he is involved in the crime committed. Which wastes with him the right of society to retract from it on the other hand<sup>51</sup>. This is what actually causes the investigation party to stand an unenviable stance to reconcile two contradictory rights, the right of the person to enjoy his personal freedom and the right of society to take away from the offender, so the various judicial authorities, whether it is an accusation or investigation, strives so that an innocent is not brought to trial or a criminal escapes. Because of the punishment, there is neither excess nor excessive enforcement of procedural legal texts<sup>52</sup>.

In this context, the Algerian legislator stated in Section VII of Law No. 01/08 of 26/07/2001 amending the Law of Criminal Procedures: "Temporary detention is an exceptional measure, and temporary detention cannot be ordered or will remain on it unless the supervision obligations are Judicial is not enough ..... "<sup>53</sup>. Consequently, the investigating judge must observe the exceptional characteristic of measures affecting personal freedom, by not taking any measures that restrict them except to the extent necessary to reveal the truth, taking into account the origin of innocence in the accused.

Personal freedom is a realistic interest and a legal right that the legislator targets to criminalize any behavior that represents aggression against it<sup>54</sup>. Consequently, it derives from a set of rights, such as the inability to harm the accused physically or morally and to treat him in a manner that preserves his humanity and dignity, and the need to respect his private life in all its aspects, which is evident in the controls and restrictions that govern the conduct of home inspection and the inviolability of correspondence and phone calls, which truly reflect the extent of the work of the legislator for the presumption of innocence and the treatment it imposes on the accused on the basis that he is innocent, as long as the purpose of the public case is to reach the truth only<sup>55</sup>.

### **B- removal of the accused from proving his innocence:**

The original of the patent requires that the accused not be required to present any evidence of his innocence even if the investigating judge is obliged to issue an order that there is no follow-up due to insufficient evidence, since the proof of conviction in the criminal field rests with the Public Prosecution as an accusation authority, and if it is not able to do so or, if the evidence presented is suspicious, it is necessary to refer to the person's found basis before the accusation as innocent <sup>56</sup>. And since the public prosecution, as the accuser, is legally required to prove the various facts of the crime and its attribution to the person of the accused, this does not mean that it strives to hunt the evidence that condemns it, but rather it must remain neutral and only seek to attain the truth by investigating the various means of proving the crime, whether was in the interest of, or against, the accused, by collecting evidence and verifying whether it is sufficient for the crime rate of the accused and refuting the presumed innocence of the accused, or that it does not rise to the peremptory evidence that condemns it, then it must issue an order that there is no face to follow-up <sup>57</sup>.

Since the burden of proof in criminal matters is a legal obligation of the Public Prosecution, it is thus a right established for the benefit of all accused without exception <sup>58</sup>. The claim of the accused to provide evidence of his innocence is totally inconsistent with the presumption of innocence, as it is an asset that does not require proof, because the criminal proof relates to the interest of the community in revealing the truth and that this obligation falls on the Public Prosecution as a representative of the public right, contrary to what governs civil proof based on the principle of equality between the two parties to the dispute, so that each opponent has to prove what he claims or denies, because the dispute is related to the private interests of individuals <sup>59</sup>.

The legislator may sometimes deviate from the general principle in bearing the burden of proof when stipulating legal evidences transferring the burden of proof and placing it on the person of the accused, in order to facilitate the task of the accused authority in proving the crime by assuming that the crime was committed against the accused whenever he was seized in a specific situation. For examples, include the proof provided by the legislator of legal evidence, whether related to the material or moral pillar of the crime <sup>60</sup>. It should be noted that the benefit of the Public Prosecution loading the burden of proof is evident in that it must provide evidence that refutes the original presumption of innocence in the accused on the one hand, and that it may not compel him to

provide evidence against himself on the other hand, as it is permissible for him to commit silence should not be considered evidence against him<sup>61</sup>.

### **C- interpretation of uncertainty for the accused:**

The rule of suspicion is explained in favor of the accused from the issues that are rooted in procedural criminal laws and is a principle separate from the original in the human innocence<sup>62</sup>, and it means that as long as there is a fluctuation in the evidence of proving the crime and the conviction of the accused of committing the crime between suspicion and certainty, the suspicion and judiciary must be weighted to the innocence of the accused<sup>63</sup>. When the conviction is based on assertion and certainty, the mere suspicion is sufficient for the ruling of innocence<sup>64</sup>, so long as the follow-up or investigation party is unable to provide conclusive evidence condemning the accused, it must declare his innocence, and the basis of the suspicion rule is explained in favor of the accused to the justifications applied to implement the presumption of innocence. When the accusation is a claim that violates the origin of the innocence, its proof - the accusation - must be firm, without any doubt, or the original remains the same. Doubting and elevating him to the level of assertion, if this certainty is not achieved, the doubt remains the same<sup>65</sup>. If the case is at the research and investigation stage, the Public Prosecution issues an order to preserve the case, but if it is at the level of the investigation, the investigating judge issues an order with no face to follow-up, and if it is at the level of the judgment, the judge issues a judgment of acquittal<sup>66</sup>.

It is worth noting that our glorious Islamic law had approved the principle of suspicion, which was explained in favor of the accused before being known by contemporary legal systems, as it was mentioned in the Sunnah of the Prophet, peace and blessings of God be upon him, saying: "Beware of borders with suspicions ...", The honorable Companions, may God be pleased with them, applied this principle to them, as it was narrated from the Commander of the Faithful Omar, may God be pleased with him, that he said: "Because I break the borders with suspicions, I love them to establish them with suspicions"<sup>67</sup>.

### **Conclusion:**

The presumption or origin of innocence in a human being, regardless of his legal status, whether he is suspected or even accused, is one of the fundamental guarantees approved by most comparative legislations as a basis for a fair trial. The Code of Criminal Procedure - takes the innocence of the human person as the basis of innocence. Consequently, he must be treated in this spirit

through the various stages of the public lawsuit, and this context is the shield that protects the accused from any arbitrary measure or measure that affects his physical and moral integrity or his personal freedom<sup>68</sup>.

Our study of the topic of presumption of innocence, as a basis for the theory of evidence in criminal matters, concluded with **conclusions** that can be summarized in:

-The presumption of innocence is the cornerstone of procedural criminal laws as the primary guarantee of a fair trial.

- The various international and regional agreements concluded and the majority of state constitutions expressly provide for presumption of innocence as a guarantee for the accused against the arbitrariness of the judicial authorities.

-The Algerian legislator has not explicitly stated the presumption of innocence in the Code of Criminal Procedure, perhaps due to his belief that it is a fixed origin of any person.

-The implementation of the presumption of innocence entails a number of important results for the benefit of the accused similar to protecting his personal freedom.

#### **Recommendations:**

- The need for the legislator to adopt explicitly the presumption of innocence in the Code of Criminal Procedure and not be satisfied with its subsidiary rights.

- Activating outlines and mechanisms for controlling judicial measures and procedures that may prejudice and take away from the presumption of innocence, similar to the order to be placed in preventive detention.

#### **Bibliography:**

- 
- 1- Khaled Muhammad Ali al-Hammadi, *Pre-trial rights and guarantees of the accused*, Arab Renaissance House, Cairo, Egypt, 2009, p204.
  - 2- Hazem Atallah Al-Adinat, *The accused's right to silence during the preliminary investigation*, PhD thesis, Faculty of Law, Ain Shams University, 2015, p81.
  - 3- Muhammad Hammad Merhej Al-Hiti, *Principles of Research and Criminal Investigation, Subject of Persons and the Rules Governing it*, Legal Books House, Egypt, 2008, p197.
  - 4- Muhammad Raed Ahmad, *Al-Bara'ah in Criminal Law, a comparative study*, PhD thesis, College of Law, University of Baghdad, 2006, p40.
  - 5- Surah Qaf aya 23.
  - 6- Abu al-Fadl Jamal al-Din Makram bin Manzur, volume 12, Dar Sader, Beirut, first edition, 2000, p. 89. Quoted by: Mustafa Abdel Salam Al-Senussi, *Criminal Protection of Human Rights in the Pre-Trial Phase*, Master's Note, Institute of Arab Research and Studies, Cairo, 2011, p14.

- 7- Muhammad Mahdah, *Guarantees of the Accused during the Investigation, Part Three, Dar Al-Huda, Ain Melilla, First Edition, 1992, p223.*
- 8- Ahmad FathiSorour, *Mediator in the Code of Criminal Procedure, seventh edition, 1993, p53. Quoted by: Abd Al-RazzaqMasaadeh, Warranties of the Accused during the Investigation, Master's Note, Institute of Arab Research and Studies, Cairo, 2005, p30.*
- 9- Nasr Al-Din Marwak, *Lectures on Forensic Evidence, Part One, The General Theory of Forensic Evidence, Dar Houma, Algeria, 2003, p223.*
- 10- Muhammad Salim al-Awa, *The Origins of the Islamic Criminal System, Dar Al-Maarif, Cairo, Edition 02, DCT, p243. Quoted from: Muhammad Bin Mushaireh, The Right of the Accused to Refrain from Authorization, Master's Note, Faculty of Law, University of Constantine, 2009, p19.*
- 11- Muhammad Mahdah, *previous reference, p224.*
- 12- HodaZouzou, *Evidence by Evidence in Criminal and Civil Materials, a comparative study, PhD thesis, Faculty of Law, University of Biskra, 2011, p137.*
- 13- HodaZouzou, *same reference, same page.*
- 14- Abdel-Moneim Salem Sharaf Al-Shaibani, *Criminal Protection of the Defendant's Right to the Origin of Innocence, a Comparative Study, PhD Thesis, Faculty of Law, Ain Shams University, 2006, p25.*
- 15- Muhammad Mahdah, *previous reference, p225.*
- 16- Abdel Moneim Salem Sharaf Al-Shaibani, *Criminal Protection of the Defendant's Right to the Origin of the Innocence, A Comparative Study, Previous Reference, p42. Quoted from: Youssef bin Ibrahim Al-Hussain, The Principle of Origin in the Accused of Innocence between Sharia and Law, Master's Note, Naif Arab University for Security Sciences, Riyadh, 2007, p59.*
- 17- MajidKhidr Ahmad Abdullah, *Assuming the accused's innocence, Tikrit University Journal for Humanities, Iraq, Issue 09,2007, p429.*
- 18- TharwatMahjoub, *The Original in Human, Innocence, p. 01. Research published on the website: <http://www.4shared.com/dir/3606424/ec958298/sharing.html> visit on 04/07/2020.*
- 19- Sorat elhujurat aya 6.
- 20- Abdel Moneim Salem Sharaf Al-Shaibani, *previous reference, p102.*
- 21- Hakim Muhammad Othman, *The guarantees of the accused during the preliminary investigation stage in the light of human rights, PhD thesis, Faculty of Law, Ain Shams University, 2014. p198.*
- 22- Patrick Ferot, *The Presumption of Innocence: Essay on Historical Interpretation, University of Law and Health - Lille II, France, 2007, page 510. Abdel Moneim Salem Sharaf Al-Shaibani, previous reference, p105.*
- 23- Mustafa Abd al-Salam al-Sanusi, *Criminal Protection of Human Rights in Pre-Trial, A Comparative Study, Master's Note, Institute of Arab Research and Studies, League of Arab States, Cairo, 2011, p17. ShahiraBoulahia, The Right of the Accused to Defend before a Criminal Judiciary, Journal of the Legal Forum, Biskra University, Fifth Issue, 2008, p93.*
- 24- HodaZouzou, *previous reference, p141.*
- 25- Muhammad Bin Mushaireh, *Previous Reference, p24. Abdul-RazzaqMasaideh, Ibid, p33.*
- 26- Wadi Hamid Saber Ibrahim, *Criminal Procedural Legitimacy, a comparative study in Iraqi and Egyptian law, PhD thesis, Institute of Arab Research and Studies, Cairo, 2015, p161.*
- 27- Abdul-RazzaqMasaideh, *Ibid., p34. Muhammad Mahdah, Previous Reference, p223.*
- 28- Abdel Moneim Salem Sharaf Al-Shaibani, *previous reference, p126.*



- 29- Ahmad Fathi Abu Al-Enein, *Human Rights in Pre-Trial Criminal Procedures*, PhD Thesis, Faculty of Law, Mansoura University, Egypt, 2010, p. 23. Wadi Hamid Saber Ibrahim, *previous reference*, p163.
- 30- Muhammad Khidr Ahmad Abdullah, *previous reference*, p432.
- 31- Yousef bin Ibrahim Al-Hussain, *previous reference*, p64.
- 32- Wadi Hamid, Saber Ibrahim, *previous reference*, p164.
- 33- Ahmad Fathi Abu Al-Enein, *ibid.*, p24.
- 34- Muhammad Bin Mushaireh, *Previous Reference*, p26.
- 35- HodaZouzou, *previous reference*, p149.
- 36- Abdul-RazzaqMasaideh, *Ibid.*, p34. Muhammad Mahdah, *previous reference*, p234.
- 37- *As amended and supplemented by Law No 1/16 of 06/03/2016*, Muhammed bin Mushaireh, *op. Cit*, p27.
- 38- Muhammad Bin Mushaireh, *Previous Reference*, p29.
- 39- Abdul-RazzaqMasaideh, *Ibid*, p35.
- 40- Muhammad Bin Mushaireh, *Previous Reference*, P.29.
- 41- Muhammad Mahdah, *Previous Reference*, P 235
- 42- Muhammad Mahdah, *previous reference*, p. 236.
- 43- *Article 127 of Ordinance 66/155 of 06/08/1966 containing the amended and complemented Code of Criminal Procedure*
- 44- HodaZouzou, *previous reference*, p. 152.
- 45- *Article 309 of Ordinance 66/155 of 06/08/1966 containing the amended and completed penal procedures law*
- 46- Saadi Haidara, *Forensic Manual between Legitimacy and Legality*, Master's Note, Faculty of Law, University of Annaba, 2004, p35.
- 47- Hakim Muhammad Othman, *Previous Reference*, p205.
- 48- Abdelkader Amrousi, *Constitutional Protection of Personal Liberties*, Master's Note, Faculty of Law, Batna University, 2015, p148.
- 49- Abd al-ZaraqMasa`yah, *previous reference*, p. 37.
- 50- Ahmed Fathi Sorour, *Constitutional Legitimacy and Human Rights in Criminal Procedures*, Arab Renaissance House, 1994, p. 39. Quoted from: Muhammad bin Mushaireh, *previous reference*, p. 31.
- 51- LakhdarZarara, *The presumption of innocence in Algerian legislation*, *Journal of the Thinker*, University of Biskra, No. 11, 2014, p. 62.
- 52- Muhammad Mahdah, *previous reference*, p240.
- 53- *See Article 123 of Law 08/01 of 07/26/2001 amending the Criminal Procedure Code*
- 54- Muhammad bin Mushaireh, *Previous Reference*, p32.
- 55- Hakim Muhammad Othman, *Previous Reference*, p208.
- 56- Abdel Aziz Ramadan Samak, *the principle of the original innocence and the foundations on which it is based and its results in Islamic jurisprudence*, *Journal of Law and Economics*, Faculty of Law, Cairo University, No 77,2007, p45.
- 57- Muhammad Mahdah, *previous reference*, p240.
- 58- Ahmad Fathi Abu Al-Enein, *Previous Reference*, p28.
- 59- Majeed Khadr Ahmad Abdullah, *previous reference*, p440.

- 60- Hakim Muhammad Uthman, *previous reference*, p218.
- 61- Mostafa Youssef, *The Legal Protection of the Defendant in the Investigation Stage*, Dar Al-Kutub Al-Legal, Egypt, 2009, p91.
- 62- VirginiePrat, *The technical proof in the goofy computer*; *Gazette du Palais*, n ° 201, France, 2005, p30.
- 63- Hassan Mohamed Rabei, *Protection of Human Rights and the New Methods of Criminal Investigation*, PhD Thesis, Faculty of Law, University of Alexandria, 1975.p505.
- 64- Muhammad al-TahirRahal, *Legal Evidence and Its Impact on Evidence*, *Journal of Research and Humanities Studies*, University of Skikda, Issue 11,2015, p278.
- 65- Ahmad Fathi Abu Al-Enein, *op. Cit*, p38.
- 66- Muhammad Hammad Merhej Al-Hiti, *previous reference*, p205.
- 67- Hakim Muhammad Uthman, *previous reference*, p238.
- 68- Raed Ahmad Muhammad, *Al-Bara'ah in Criminal Law, a comparative study*, PhD thesis, University of Baghdad, Iraq, 2006, p. 34.