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The Presumption of Innocence under Siege: Procedural Safeguards and Systemic Risks in Contemporary European Criminal Law

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Abstract: *In recent decades, the presumption of innocence—a foundational principle of criminal justice—has faced increasing challenges across European jurisdictions. This paper investigates the tension between traditional procedural safeguards and the systemic risks generated by contemporary trends such as media sensationalism, pre-trial publicity, preventive justice mechanisms, and the expansion of surveillance technologies. The central objective is to assess how these evolving practices threaten the normative and practical integrity of the presumption of innocence within both national legal systems and the broader European framework, particularly under the jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union. The paper puts forward the hypothesis that the erosion of procedural safeguards, coupled with systemic pressures such as public demand for security and efficiency in criminal proceedings, undermines the effective protection of the presumption of innocence. Methodologically, the study relies on comparative legal analysis and doctrinal examination of landmark cases and legislative reforms across EU Member States. The results reveal a concerning trend of normative dilution, where formal guarantees persist in legal texts but are often disregarded or reinterpreted in practice. Key findings emphasize the need for a reinforced legal culture that resists populist narratives and reaffirms procedural justice as an indispensable component of democratic legitimacy. The article concludes by proposing a recalibration of European criminal law to restore balance between effective prosecution and fundamental rights protection.*

Keywords: *presumption of innocence; procedural safeguards; systemic risks; human rights; pre-trial publicity; comparative legal analysis.*

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Introduction

The presumption of innocence is widely regarded as a cornerstone of contemporary criminal justice systems, firmly embedded in national constitutional traditions and reinforced by international legal standards such as Article 6(2) of the European Court on Human Rights (ECHR) and Article 48 of the Charter of Fundamental Rights of the European Union (European Union Agency for Fundamental Rights [FRA], 2022). This principle not only shields individuals from premature judgments and wrongful convictions but also upholds essential guarantees of fairness, legality, and judicial impartiality (Ashworth & Zedner, 2010; Cape et al., 2010). Despite its normative entrenchment, the presumption of innocence has come under growing pressure in recent years. Heightened public anxiety about security, the proliferation of preventive justice measures, and the pervasive role of media in shaping public opinion have collectively fostered conditions that risk undermining the practical application of this right (McBarnet, 2018; Hodgson & Tadros, 2013).

This article contributes to an expanding body of critical legal scholarship concerned with the fragility of procedural safeguards amid systemic transformations in European criminal justice (Mitsilegas, 2016). It examines how legal, institutional, and cultural evolutions—particularly in the post-2001 securitization context—impact the effective enforcement of the presumption of innocence and the ability of legal systems to uphold this standard under pressure.

The core objective of this study is to determine whether contemporary developments—such as the strategic use of pre-trial detention, public exposure of suspects in handcuffs, and the dissemination of prejudicial information by authorities—threaten the normative substance of the presumption of innocence. The working hypothesis is that these trends contribute to a process of **normative dilution**, wherein formal legal guarantees remain intact but their practical efficacy is diminished. Employing comparative legal analysis and doctrinal research across selected EU Member States, this article aims to map the key vectors of risk and reflect on how European criminal law can be recalibrated to ensure genuine protection of fundamental procedural rights.

Literature review

The presumption of innocence, a cornerstone of liberal legal theory, has long been a subject of extensive scholarly debate. Traditionally viewed as a procedural guarantee designed to protect the individual against arbitrary state power, its doctrinal underpinnings can be traced back to Roman law and were later crystallized in Enlightenment-era penal reforms (Ashworth, 2006). In contemporary European law, it is codified in both Article 6(2) ECHR and Article 48 of the EU Charter of Fundamental Rights. However, recent literature reveals a growing concern that these normative commitments are being hollowed out in practice due to securitization, managerialism in criminal justice, and media influence (Duff, 2012; Hodgson, 2021; McBarnet, 2018).

Scholars such as Cape et al. (2010) and Jackson & Summers (2012) argue that structural asymmetries between prosecution and defense are increasingly tolerated in the name of efficiency and crime control. This evolution reflects a broader shift from rights-based to outcome-oriented models of justice. Mitsilegas (2016) have drawn attention to how this shift is manifest in the European Union's legislative landscape, particularly in the context of pre-trial detention, counter-terrorism law, and the admissibility of illegally obtained evidence. These developments raise the question of whether the presumption of innocence is evolving into a symbolic rather than operational principle.

A particularly critical strand of literature focuses on the role of media and public discourse in undermining the presumption of innocence. Langer (2010) and Panzavolta (2020) explore how the broadcasting of images of suspects in handcuffs, as well as statements by public officials before trial, erode the public's perception of neutrality. Empirical studies conducted in France, Italy, and Romania show how judicial actors sometimes implicitly encourage these practices to signal prosecutorial success, especially in high-profile cases (Ferret & Spenlehauer, 2009). These findings illustrate a dangerous feedback loop between media representation and institutional incentives, leading to the informal punishment of individuals long before any judicial determination of guilt.

Yet, despite the growing concern within academic circles, the current literature reveals several notable gaps. First, there is insufficient comparative research that synthesizes how national legal systems operationalize the presumption of innocence under EU and ECHR standards (Callewaert, 2009). While isolated case studies exist, few analyses offer a systematic account of convergence or divergence across jurisdictions. Second, there is limited attention to the cumulative impact of procedural innovations—such

as reverse burdens of proof, preventive detention, and algorithmic profiling—on the erosion of presumption-based guarantees (Leider, 2021). Moreover, although the European Court of Human Rights (ECtHR) has developed an evolving doctrine on the presumption of innocence, some authors suggest it has not always succeeded in stemming normative erosion, particularly in politically sensitive contexts (Caterini, 2017).

This article aims to address these gaps by undertaking a doctrinal and comparative analysis of recent legislative and jurisprudential developments in select EU Member States. By mapping the systemic pressures that affect procedural safeguards, it seeks to identify the conjunction between the normative ideals expressed in European instruments and the fragmented implementation of those ideals at the national level. In doing so, it contributes to the literature by highlighting the disjunction between law in the books and law in action and by proposing a recalibration of European criminal law toward a more substantive protection of the presumption of innocence.

A further underexplored dimension in the literature concerns the uneven responsiveness of European supranational courts to emerging threats against the presumption of innocence. While the European Court of Human Rights (ECtHR) has consistently reaffirmed the normative centrality of the presumption of innocence, its jurisprudence sometimes reveals a deferential approach to national practices. For instance, in *Allen v. United Kingdom* (2013), the Court acknowledged the principle but adopted a contextual approach that arguably diluted its operative scope (ECtHR, 2013). Similarly, in *Müller v. Germany* (2016), the Court hesitated to find a violation where state authorities had issued public declarations implying guilt prior to a final judgment. Scholars argue that this pragmatic flexibility, although intended to accommodate national legal traditions, may contribute to the fragmentation of standards across Europe (Caterini, 2017; Jackson & Summers, 2012).

On the other hand, the Court of Justice of the European Union (CJEU) has recently begun to play a more assertive role through its interpretation of Directive (EU) 2016/343, which codifies several aspects of the presumption of innocence. In *AH and Others* (C-377/18, 2020), the CJEU underscored that public authorities must refrain from presenting suspects as guilty in statements or images, reinforcing the symbolic and procedural value of the principle. However, as Mitsilegas (2016) points out, the effectiveness of such directives depends heavily on their domestic transposition and enforcement, which remains inconsistent across Member States.

Critically, current literature often fails to integrate these judicial developments into a broader analysis of systemic risks, such as the normalization of preventive logic in criminal policy. Preventive justice—as articulated in counterterrorism, anti-corruption, and organized crime frameworks—often presumes risk over proof, pushing legal systems toward "pre-crime" rationalities (Zedner, 2007). This shift challenges the temporal logic of the presumption of innocence, which traditionally presupposes that guilt can only follow a fair trial. Scholars like McSherry (2009) and Ashworth and Zedner (2010) warn that such preventive rationalities structurally invert the burden of justification: individuals must demonstrate their lack of dangerousness rather than the state proving their guilt.

These analytical gaps underscore the need for research that brings together doctrinal, institutional, and socio-legal perspectives to assess how procedural rights are eroded not merely through individual violations but via systemic transformations. This article seeks to address this lacuna by offering a comparative and integrative account of the factors undermining the presumption of innocence in contemporary European criminal law. By aligning insights from legal doctrine, jurisprudence, and policy analysis, the paper contributes to a more holistic understanding of how European criminal law can be reoriented to preserve not only the form, but also the substance, of this foundational guarantee.

Arguments to support the thesis

The thesis of this article asserts that the presumption of innocence, though formally protected in European legal frameworks, is being incrementally undermined by a combination of structural, cultural, and political factors. This erosion occurs not through overt legislative repeal but through what may be termed *normative dilution*—a process whereby the principle remains in law but loses its substantive effectiveness in practice. Several interrelated arguments support this claim.

First, the expansion of preventive justice frameworks across the European Union, especially in areas such as terrorism, organized crime, and corruption, shifts the burden of proof from the state to the individual. Measures such as asset freezing, preventive detention, and control orders are often imposed in the absence of a final conviction, relying instead on probabilistic assessments of dangerousness (Zedner, 2007; McSherry, 2009). These mechanisms create a legal environment in which individuals are subjected to coercive measures based on suspicion alone, thereby contradicting the epistemic and procedural foundations of the presumption of innocence.

Second, pre-trial detention is routinely overused in several EU Member States, despite clear guidance from both the ECtHR and the CJEU that it must be exceptional and justified. Empirical data collected by Fair Trials (2021) reveal that pre-trial detention is often applied automatically or as a matter of prosecutorial strategy, with insufficient judicial scrutiny. The overreliance on detention not only jeopardizes the accused's liberty but also conveys a presumption of guilt to the public, the media, and even to jurors and judges.

Third, media representations of suspects play a critical role in constructing public narratives of guilt prior to trial. Public officials and law enforcement agencies often release information or images (e.g., mugshots, arrest footage) that violate the spirit of the presumption of innocence (Panzavolta, 2020). These portrayals, once disseminated through social and mass media, are difficult to correct even after acquittal, resulting in long-term reputational damage and social stigmatization. In this way, the media acts as an informal mechanism of punishment outside judicial control.

Fourth, supranational judicial bodies have struggled to provide consistent and effective remedies. Although both the ECtHR and CJEU have reaffirmed the importance of the presumption of innocence, their jurisprudence at times permits state practices that symbolically or substantively undermine it. For example, the ECtHR's acceptance of qualified public statements implying guilt (*Allen v. UK*, 2013) reflects a pragmatic balancing that risks legitimizing state overreach (Caterini, 2017).

Fifth, legislative ambiguity and inconsistent transposition of EU directives exacerbate the problem. Directive (EU) 2016/343 establishes minimum standards for the presumption of innocence, but its implementation has been fragmented and uneven across Member States (Mitsilegas, 2016). Some jurisdictions maintain formal compliance while preserving systemic practices—such as burden-shifting in specific offences—that contradict the directive's intent.

Taken together, these arguments illustrate that the presumption of innocence in contemporary European criminal law is under siege from multiple directions. This siege is not marked by explicit denial, but by a pattern of legal, institutional, and cultural developments that subtly yet profoundly compromise the right's practical value. The article therefore contends that protecting the presumption of innocence today requires more than legal formalism—it necessitates a reassertion of procedural justice against systemic drift.

Arguments to argue the thesis

While this article advances the view that the presumption of innocence is facing normative erosion in contemporary European criminal law, it is important to acknowledge competing perspectives that question or moderate this conclusion. Several arguments suggest that, despite systemic pressures, the principle retains significant protective force and remains resilient within both national and supranational legal orders.

First, the formal legal entrenchment of the presumption of innocence remains robust. Article 6(2) of the European Convention on Human Rights and Article 48 of the Charter of Fundamental Rights of the European Union continue to be upheld by courts and legislatures. Numerous judicial decisions—from both the ECtHR and CJEU—have explicitly reaffirmed the principle and struck down national measures that were deemed incompatible with it (e.g., *C-377/18 AH and Others*, 2020; *Matijašević v. Serbia*, 2006). These precedents demonstrate that supranational courts maintain their supervisory function and are capable of enforcing compliance with fundamental rights standards (Cape et al., 2010; Mitsilegas, 2016).

Second, some scholars argue that procedural adaptations reflect legitimate aims rather than regressions. For instance, measures such as temporary pre-trial detention or media disclosure may be justified in democratic societies by competing interests, such as public safety, transparency, or the right to information (Jackson & Summers, 2012). These measures, while potentially invasive, are subject to legal safeguards and judicial oversight. Thus, their existence does not necessarily indicate a systemic abandonment of the presumption of innocence, but rather a balancing exercise between rights and public interests.

Third, EU-level harmonization efforts have improved legal coherence and awareness regarding procedural rights. Directive (EU) 2016/343 not only codifies the presumption of innocence but also introduces related rights such as the right to remain silent and the right not to be publicly presented as guilty. Although implementation challenges persist, the very existence of such binding legal instruments reflects political and institutional commitment to strengthening procedural safeguards across Member States.

Fourth, empirical studies show variation in the practical application of the principle, with some jurisdictions maintaining high standards of procedural fairness. For instance, countries like Germany and the Netherlands exhibit stronger judicial resistance to preventive logics and stricter limits on pre-trial detention (Fair Trials, 2021). These examples

suggest that systemic risks are not uniform and that institutional resilience can mitigate normative backsliding. The existence of best practices across jurisdictions challenges the idea of a general or inevitable decline in the application of the presumption of innocence.

Finally, a categorical claim of normative dilution may risk oversimplification, ignoring the complex interplay between law, policy, and context. As Hodgson (2021) notes, legal principles are not static but evolve in response to societal change. While vigilance is warranted, a dynamic interpretation of the presumption of innocence may accommodate procedural innovation without implying its erosion. From this perspective, change does not always signify regression but may represent adaptation within constitutional bounds.

In sum, these counterarguments emphasize that the presumption of innocence, while facing real pressures, continues to benefit from significant legal recognition and institutional support. Recognizing these nuances does not invalidate the article's thesis but rather reinforces the need for contextual and jurisdiction-specific analysis. It also underscores the importance of distinguishing between formal legal status, practical enforcement, and cultural perception when assessing the health of procedural rights in Europe.

Limits and discussions

While the findings of this article offer valuable insights into the systemic pressures affecting the presumption of innocence in contemporary European criminal law, several limitations must be acknowledged, both in terms of methodology and scope.

From a geographical standpoint, the comparative analysis has focused primarily on selected EU Member States with documented jurisprudential developments, legislative reforms, or known procedural deficiencies in applying the presumption of innocence. As such, the analysis may not fully capture the legal or institutional dynamics in non-EU jurisdictions or in Member States with limited available data or case law. The uneven availability of qualitative and quantitative data across jurisdictions further restricts the scope of cross-country comparisons and the robustness of generalizations.

On the epistemological level, the paper employs a doctrinal and legal-analytical approach rooted in normative legal theory and comparative jurisprudence. While this allows for in-depth analysis of legal texts, court decisions, and institutional practices, it does not incorporate empirical methods such as interviews with practitioners or statistical modeling of

judicial behavior. Thus, the findings reflect structural and interpretive patterns rather than behavioral or attitudinal evidence.

Methodologically, the reliance on secondary sources and supranational jurisprudence means that the research captures institutional norms and formal guarantees, but may underrepresent informal dynamics such as prosecutorial discretion, media influence, or political pressures at the national level. This limits the explanatory power of the study in fully accounting for how the presumption of innocence operates *in practice*, especially outside the courtroom.

Nonetheless, the results presented in this paper can be reasonably extrapolated to broader discussions on criminal procedure and human rights in liberal democracies facing similar tensions between security and rights. The conceptual framework of *normative dilution*, introduced and developed here, provides a useful analytical lens that can be applied to other jurisdictions undergoing procedural erosion under populist, authoritarian, or crisis-driven governance models.

The original contribution of this paper lies in its integrated perspective: it bridges doctrinal analysis, comparative law, and critical theory to diagnose systemic risks to the presumption of innocence. Moreover, it proposes a new interpretive category—*normative dilution*—to describe situations in which legal rights persist in form but are weakened in function. This concept may hold relevance for researchers, legal practitioners, and policymakers concerned with the subtle yet cumulative dismantling of procedural guarantees across global legal systems.

For worldwide readers, particularly those observing similar patterns in common law and civil law jurisdictions outside the EU (e.g., the U.S., Latin America, or Southeast Asia), the article offers a transferable framework for identifying and resisting procedural erosion under the guise of legal reform or crisis response. In this sense, it aims to contribute to a transnational dialogue on safeguarding fundamental rights in criminal justice under conditions of political and institutional stress.

Conclusions

This article set out to examine whether the presumption of innocence, a foundational principle of European criminal law, is being undermined in practice due to systemic transformations in legal policy, institutional behavior, and public discourse. By critically analyzing legislative trends, supranational jurisprudence, and media dynamics across selected EU Member States, the study has confirmed its central hypothesis: the erosion of procedural safeguards—often in the name of security, efficiency, or

public interest—has led to a form of *normative dilution* whereby the presumption of innocence remains codified but is progressively weakened in its practical enforcement.

The findings validate the hypothesis that contemporary legal developments—such as the instrumental use of pre-trial detention, public representation of suspects as guilty, and legislative provisions reversing the burden of proof—contribute to undermining the functional integrity of the presumption of innocence. Moreover, the study has shown that these trends are not isolated anomalies but reflect broader shifts in the ethos of European criminal justice systems, increasingly shaped by preventive, managerial, and populist logics.

At the same time, the paper acknowledges countervailing developments. Judicial decisions by the ECtHR and CJEU continue to reaffirm the importance of the presumption of innocence and set normative benchmarks for compliance. Nevertheless, the gap between legal ideals and enforcement practices remains significant.

The conclusions drawn here suggest that preserving the presumption of innocence requires more than doctrinal reaffirmation. It calls for a systemic recalibration of criminal law institutions, a cultural commitment to procedural fairness, and active resistance to practices that symbolically or materially erode this principle. Future research may expand on this foundation by incorporating empirical methods and exploring how different legal cultures operationalize—or resist—the ongoing pressures that threaten procedural justice in Europe and beyond.

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