

THE PRESUMPTION OF INNOCENCE IN AZERBAIJAN

AN “EXECUTIVE SUMMARY” OF A REPORT BY
THE “TOLERANCE” PUBLIC ASSOCIATION FOR HUMAN RIGHTS PROTECTION
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A. INTRODUCTION

In November 2005, a group of Azerbaijani lawyers were commissioned by the Baku Office of the Organization for Security and Co-operation in Europe (OSCE) to produce a report assessing Azerbaijan’s adherence to the principle of presumption of innocence. The group’s members, composed of veteran Azerbaijani lawyers working in private practice, sought to evaluate the quality of presumption of innocence protections in Azerbaijan using a variety of methods, including researching Azerbaijani media records, interviewing former defendants in criminal cases, conducting surveys, and establishing a complaint hotline. Ultimately, their findings furnished little grounds for satisfaction about the state of presumption of innocence in Azerbaijan. As they discovered, journalists, police officers, prosecutors, and judges in Azerbaijan often treat suspicion of guilt and proof of criminal behaviour as though they are functionally equivalent. Reports from prosecutors’ offices and police departments combine with coverage by television and print news outlets to solidify public perceptions of guilt before some of those accused ever find themselves in court. To address these failings, the lawyers suggest that legislators create additional laws protecting due process, that state legal bodies undergo internal reform, and that speeches and reports concerning ongoing cases be more closely regulated, whether produced by public officials or media representatives.

B. THE PRESUMPTION OF INNOCENCE IN CONTEXT

The presumption of innocence is supported by a long legal tradition, and modern international law ensures adherence to this principle through a number of conventions.

I. The History of the Principle

The principle of presumption of innocence has been traced by some scholars to the Biblical book of Deuteronomy and the Qur’an,¹ with some looking as far back as the laws of Athens and Sparta in ancient Greece. Certainly, by the time of the Roman Empire, the principle had become an integral part of legal practice; Book 4 of the Roman Code declares, “Let all accusers understand that they are not to prefer charges unless they can be proven by proper witnesses or by conclusive documents, or by circumstantial evidence which amounts to indubitable proof and is clearer than day.”² Even in medieval Europe, the maxim “innocent until proven guilty” was given a place of priority, if not always respected in fact. The thirteenth-century *Ius Commune* provided that no individual could be coerced into giving self-incriminating testimony, and that no defendant, under any conditions, could be denied his right to a trial and a thorough, vigorous defence – the foundation of what we today recognise as the presumption of innocence.

As history has moved forward, the presumption of innocence has endured. In the mid-1700s, Blackstone, writing in England, could observe that “the law holds that it is better that ten guilty persons escape than that one innocent suffer.”³ A few decades later, during the French Revolution, Article 9 of the “Declaration of the Rights of Man and of the Citizen” would hold that “as all persons are held innocent until they shall have been declared guilty, if arrest shall be deemed indispensable, all harshness not essential to the securing of the prisoner’s person shall be severely repressed by law.” Similar phrases are found in abundance in the annals of legal history.

II. The Principle in International Law

In a modern legal universe strictly demarcated by narrow ideas of national sovereignty, presumption of innocence has nonetheless become an established international standard. Indeed, many of the international acts to which Azerbaijan is a party include language providing for the presumption of innocence, and these acts constitute an inalienable part of Azerbaijan’s body of legislation. Article 11 of the Universal Declaration of Human Rights declares that “everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.” Article 14 of the International Covenant on Civil and Political Rights continues in the same vein: “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.” And Article 6.2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms similarly mandates that “everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

C. THE PRESUMPTION OF INNOCENCE IN AZERBAIJANI LAW

By becoming a party to these international acts, the Republic of Azerbaijan has undertaken to implement them. In its Constitution and codes of law, this commitment is clearly reflected. The Constitution of 1995, in Article 63, provides that

1. Every person shall have the right to the presumption of innocence. Any person charged with a crime shall be considered innocent until he or she has been proven guilty as required by Law and a court decision to that effect has been issued.
2. Suspicions as to an individual’s guilt, however well-supported, do not constitute grounds for considering such individual guilty.
3. A person charged with a crime shall not be obliged to prove his or her innocence.
4. Evidence obtained by violating the law cannot be used in the exercise of justice.
5. Without a court decision, no one can be found guilty of committing a crime.

Azerbaijan’s Criminal Code of Procedure similarly protects the presumption of innocence in legal proceedings,⁴ as does the Code of Administrative Offences.⁵

In Azerbaijan, however, the presumption of innocence does not just make allowances for how trials must be conducted. Azerbaijan’s codes also guarantee that individuals accused of crimes cannot be deprived of their rights to housing, participation in elections, employment, education, or a variety of other goods while under suspicion. Moreover, the fact that an individual has been accused of a crime does not constitute grounds for publicly identifying him

or her as a criminal. These are the everyday, practical consequences of the presumption of innocence; together, they ensure that those accused of crimes can live normal lives and expect fair, unbiased trials. However, it is these everyday aspects of the presumption of innocence that have been most particularly abridged in Azerbaijani practice.

D. THE PRESUMPTION OF INNOCENCE IN PRACTICE

In Azerbaijan, sensationalistic and unsubstantiated statements by the government and media combine with outmoded legal attitudes and practices to deprive many of those accused of crimes of their right to the presumption of innocence.

Without a final court decision, it should be unacceptable for public officials to make official statements and give media interviews testifying to the guilt of an individual under criminal suspicion; such statements and interviews damage the reputation and dignity of those accused, and make it difficult for judges and courts to independently rule on their cases. In Azerbaijan, though, such practices are common. The Prosecutor General, the Minister of Internal Affairs, representatives of the Presidential Apparatus, and the heads of other executive bodies often speak of suspects in high-profile cases as “criminals” and publicly discuss evidence that points to their guilt. Cooperation between the authorities and both government-controlled and private media outlets exacerbate the problem. Television and print media treat unproven allegations as facts in their coverage of criminal cases and broadcast accusatory speeches and interviews given by public officials. Perhaps most troublingly, videos and photos obtained by law enforcement authorities in the course of their investigations are routinely shared with media outlets for display on national television; such materials have even included footage of detainees being interrogated by police investigators.

Recent Azerbaijani history provides examples of such practices. When Haji Mammadov, former head of the Criminal Investigation Department at the Ministry of Internal Affairs, was placed under investigation in early 2005 for heading a criminal gang, government organs immediately began publicising evidence and allegations of his wrongdoing. When the preliminary investigation had only just begun, in March 2005, the official website of the Ministry of Internal Affairs was already charging that “Haji Mammadov has headed an organized criminal group which has committed murders, kidnappings, and other grave crimes for several years.” TV channels and newspapers began referring to Mammadov and his fellow suspects as “criminals,” “offenders,” and “murderers.” As the investigation continued, government officials funnelled information about alleged wrongdoing to media outlets; in a January 2006 report, the online newspaper Today.az, after noting that “the Ministry of National Security and General Prosecutor’s Office have released joint information revealing more crimes perpetrated by Haji Mammadov,” described specific details of several kidnappings and robberies allegedly planned by Mammadov. As the investigation has proceeded, such reports have remained common. Mammadov is currently standing trial, but his guilt seems generally treated as a foregone conclusion.

The criminal cases launched in October 2005 against Ali Insanov, former Minister of Health, Fikret Yusifov, former Minister of Finance, Farhad Aliyev, former Minister of Economic Development, and Rasul Guliyev, former Speaker of the Parliament, have been similarly marked

by abuse of the presumption of innocence. The website of the Ministry of Internal Affairs has carried reports authoritatively declaring that Yusifov, Insanov, and Guliyev were in contact to plot a November 2005 coup d'état⁶; that Aliyev, before his participation in the coup planning, had systematically abused his position to enrich himself⁷; and that Guliyev, as he prepared to forcibly seize power in late 2005, had committed a number of criminal acts.⁸ Such allegations were picked up and repeated by news outlets.

Insanov has attempted to seek legal redress for these violations of his rights. In early 2006, he sued the Azerbaijani television channels LiderTV and AzTV, arguing that they had “disseminated information of a slanderous nature, thus humiliating honour and dignity.” When Insanov’s case came up in District Court, however, AzTV successfully argued that it bore no responsibility for the reports it had aired, claiming that they were based on materials prepared by the press-services of the Prosecutor’s Office, Ministry of National Security, and Ministry of Internal Affairs. Subsequent appeals by Insanov failed to produce different results. Insanov has recently opened another suit, this time against *Yeni Yol* newspaper, for slander – but, in the meantime, the accused continue to await trial, and the government continues to produce reports attesting to their guilt. In May 2006, the Prosecutor General told reporters that the role of the defendants in the November 2005 coup plot had been “confirmed.”

If investigators, prosecutors, and media outlets have failed to uphold the presumption of innocence in Azerbaijan, so too have the courts. The European Court of Human Rights emphasizes that the right to presumption of innocence “embodies...that when carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused”⁹. In Azerbaijan, however, the Soviet mentality that “the police and prosecutor are never wrong” has yet to lapse. Detention by the police and police investigative activity are seen as indicators of guilt, and are advanced as such during court proceedings. Statements by executive officials confirming the guilt of the accused are admissible as evidence on behalf of the prosecution. And, in a fundamental challenge to the principle of presumption of innocence, those accused of crimes are treated as criminals by the court until they have been cleared of criminal charges. Western visitors to Azerbaijani courtrooms are particularly surprised to find that defendants are customarily seated in a “cage” as court proceedings unfold.

Disrespect for the presumption of innocence in Azerbaijan continues even after police investigations and legal proceedings conclude. For example, individuals that have been investigated or detained by the police can be denied equal opportunity to stake their claims in housing disputes. Detention and investigation are considered to indicate commission of a crime, and, as a result, are viewed as grounds for settling such disputes to the detriment of the accused.

E. CONCLUSION

The presumption of innocence is a cornerstone of the due process protections that guarantee fair trial to those accused of crimes. Azerbaijan, as a liberal society, must do more to ensure that those citizens facing prosecution can expect to be tried in court on the merits of their case, not by public opinion on the basis of allegations and innuendoes produced by public officials and media outlets. To strengthen the presumption of innocence in Azerbaijan, legal

protections for the principle must be strengthened, but, at the same time, a campaign of awareness-raising must be combined with better regulation of official statements and media coverage. Only in this way can changing attitudes complement better legal regimes in order to guarantee presumption of innocence protections to all Azerbaijani citizens.

RECOMMENDATIONS

1. The right to presumption of innocence should not be regulated merely by single provisions in the Constitution and in the Criminal and Administrative Codes. Legislators should consider regulating the principle through a separate law.
2. State legal policy should be significantly reformed to promote respect for the presumption of innocence among state officials, mass media representatives, and citizens. Legal awareness-raising can play an important role here, and both governmental and non-governmental organizations should contribute to creating such programmes.
3. Materials obtained by law enforcement officials through investigations cannot continue to be shared with official and private press bodies; this practice must be stopped. Moreover, legislation must be created that prevents government officials from making speeches or circulating materials that violate the presumption of innocence.
4. Mass media outlets must be prohibited from spreading information that conflicts with the presumption of innocence. Legislation should create standards of financial responsibility in order to compensate individuals whose right to presumption of innocence has been violated without threatening the financial viability of media outlets.
5. The Constitutional Court, the Supreme Court, the Yeni Nesil Union of Journalists, the Media Rights Institute and the Azerbaijan Union of Journalists should be consulted before any new legislation is implemented to ensure that it respects the presumption of innocence provisions expressed in Article 63 of the Constitution. These bodies may also provide recommendations on how best to restore the status of citizens whose right to presumption of innocence has been violated.

Notes

¹ See Surahs 38:12 and 49:12.

² Code, L. IV, T. XX, 1, 1. 25.

³ Lord William Blackstone, Commentaries on the Laws of England, Book IV, Ch.27 (1765)

⁴ Article 21 of the Criminal Code of Procedure states that

Any person suspected of committing a crime shall be found innocent if his guilt is not proven in accordance with this Code and if the court has not delivered a final judgment to that effect. Even if there are reasonable suspicions as to the guilt of the person, this shall not cause the latter to be found guilty. The accused (the suspect) shall receive the benefit of any doubts which cannot be removed in the process of proving the charge in accordance with the provisions of this Code, within the appropriate legal proceedings. He shall likewise receive the benefit of any doubts which are not removed in the application of criminal law and criminal procedure legislation. The accused shall not be obliged to prove his innocence. It shall be for the prosecution to prove the charge or to refute the evidence given in defence of the suspect or the accused.

⁵ Article 8 of the Code on Administrative Offences provides that

Any person suspected of committing an administrative offence shall be found innocent if his guilt is not proved in accordance with this Code and if the judge dealing with the case has not delivered a decision to that effect. A person brought to administrative responsibility shall not be obliged to prove his innocence. Any doubts regarding the guilt of the person brought to administrative responsibility shall be resolved in his favour.

⁶ On 21 October 2005, the Ministry of National Security and Internal Affairs website stated that

Investigations have demonstrated that Fikret Yusifov, at the request of Rasul Guliyev, with whom he was in constant touch, met with Ali Insanov on several occasions and instructed him to be more active in their plans for a forcible seizure of power...in August 2005, Fikret Yusifov contacted Ali Insanov and met him at the 'Flaqman' restaurant on the Novxani-Sumqait highway. During their conversation, Insanov voiced support for Yusifov's plan to undermine state interests and promised to provide any required help, asking Yusifov to assure Rasul Guliyev on this point. By the end of August, in St. Petersburg, Yusifov called Guliyev and told him that Insanov was ready, without hesitation, to provide any financial means needed to forcibly seize power. Guliyev was then instructed that he would soon receive 100 000 US dollars from Insanov.

⁷ The same website further held that

On 15 October, Farhad Aliyev personally gave 100 000 euros to Fikret Yusifov to fund a forcible seizure of power. This money was found during a search of Fikret Yusifov's flat on 16 October 2005 and was taken as material evidence. During a search of Aliyev's houses, dachas, and various other establishments, a large amount of foreign currency, jewellery, works of art, and other valuables obtained by criminal means were found. It was also established during the operation that Aliyev had misused his official duties and seriously violated the law during the privatization of state property, documenting property for symbolic amounts and then registering them under the names of his relatives and those close to him.

⁸ According to the Ministry of Internal Affairs website,

With an aim to escape from justice and to come to power by unconstitutional means, Rasul Guliyev became more active before the [November 2005] parliamentary elections and resorted to further criminal acts, relying on his supporters in the country and certain destructive forces.

⁹ European Court of Human Rights, *Barberà, Messegué and Jabardo v. Spain*, A146 (1989) para 77.