



UNIVERSITATEA DIN BUCURESTI
FACULTATEA DE DREPT
FONDATA IN ANOCCCLIX



LAW, COMMUNITY AND JUSTICE

Coordinators: **Radu Rizoiu, Artiom Radu**



Editura
Hamangiu

Extension and the Role of Presumption of Innocence in (Social) Media

Ceren ÖZBEK

Eberhard Karls Universität Tübingen

§1. Introduction

On Facebook groups, Instagram feeds, or X accounts, individuals can share their experiences with wide audiences without undergoing any editorial filtering or verification mechanisms¹. Media has evolved far beyond a mere conduit for information, becoming an influential actor in shaping social reality. Decisions regarding news selection, presentation style, linguistic framing, and timing directly shape public perception². While journalists and media practitioners exercise their right to freedom of expression, they may simultaneously infringe upon defendants' rights, including the right to a fair trial. Balancing these competing interests remains an ongoing challenge in the protection of human rights and in the media's reporting on criminal proceedings³. The rise of social media has further blurred the boundaries between professional journalists and ordinary users, raising the question of whether social media users should also bear a comparable duty of care.

The #MeToo⁴ movement illustrates this tension. It has encouraged many individuals to disclose allegations of harassment or assault, some-

¹ G. ZACCHIA, M. CORSI, F. BORSI, *The complexity of #MeToo: the evolution of the Twitter campaign*, in M. CORSI, L. THISSEN, G. ZACCHIA (eds), *The #Metoo Social Media Effect and Its Potentials for Social Change*, 2019, 12.

² C. NEUBERGER, S. LANGENOHL, C. NUERNBERGK, *Social Media und Journalismus*, LfM-Dokumentation Band 50 (LfM NRW 2015)15, <https://www.medienanstalt-nrw.de/fileadmin/lfm-nrw/Publikationen-Download/Social-Media-und-Journalismus-LfM-Doku-Bd-50-web.pdf> (accessed 11.09.2023).

³ M. STOYANOVA, *The Impact of Media Publicity on the Presumption of Innocence*, in L. GIES (ed.), *Trial by Media: Participatory Justice in a Networked World* (2017).

⁴ Alyssa Milano became known to a wider audience as a young actress in the sitcom "Who's the Boss?". In the long run, however, her name will probably be more closely associated with a debate she initiated, which goes by the hashtag #MeToo. On October 15, 2017, she took to Twitter to urge her followers to tweet "#me too" if

times by identifying alleged perpetrators, providing contextual details, or sharing experiences anonymously or semi-anonymously. These disclosures often bypass editorial review and legal scrutiny, yet they can rapidly gain traction and reach vast audiences. At the same time, #MeToo has prompted significant debate concerning the presumption of innocence. Allegations made on social media may be accepted as fact in the public sphere without judicial validation, exposing the accused to serious social, economic, and professional consequences. The movement thus demonstrates both the value of exposure culture in empowering victims and the risks posed by unverified accusations to a core legal guarantee⁵.

The presumption of innocence is a foundational principle of modern legal systems, ensuring that criminal proceedings are conducted fairly, impartially, and in accordance with human rights standards. It requires that individuals be treated as innocent until proven guilty by a competent judicial authority⁶. In this context, the aim of this paper is to demonstrate why the presumption of innocence needs to be revisited in the age of social media, where digital interaction is accelerated, information circulation is largely uncontrollable, and users simultaneously assume the role of content producers. The paper argues that the unregulated, and rapid nature of social media platforms undermines the presumption of innocence more profoundly and systematically than traditional media. Therefore, it advocates for the redefinition and reinforcement of this principle to align with the conditions of the digital era. First, the paper will examine the evolving relationship between media and the judiciary in the age of social media. Next, it will outline the legal foundations of the presumption of innocence. Finally, potential solutions and policy recommendations will be discussed.

they had ever been sexually harassed or assaulted. Alyssa Milano's tweet triggered an avalanche of public discourse, the first alleged victim of which was Hollywood mogul Harvey Weinstein: Zeit Magazin, 'Im Zwielflicht' (3 January 2018) <http://www.zeit.de/zeit-magazin/2018/02/dieter-wedel-regisseur-sexuelle-uebergreif-vorwurfe> (accessed 29.05.2025).

⁵ M. HARRADINE, *Defamation Law and Epistemic Harm in the #MeToo Era*, (2022) 48(1) *Australian Feminist Law Journal* 35.

⁶ V. TADROS, *Rethinking the presumption of innocence*, (2007) 1 *Criminal Law and Philosophy* 193.

§2. Trial by media and the transformative impact of social media

The term “*trial by media*” refers to the phenomenon in which an individual is publicly declared guilty by the media before any judicial determination has been made⁷. News reports, commentary programs, social media posts, and sensational headlines can lead the public to form premature judgments regarding a person’s culpability. Through the framing of news, the choice of language, the use of particular headlines, and the intensity of coverage, the media can generate a perception of guilt even before any legal verdict is rendered⁸. Therefore, trial by media exerts substantial public pressure on judicial actors, undermines the presumption of innocence, and often results in the social sanctioning of individuals prior to formal adjudication⁹.

Media is no longer limited to television, radio, and printed publications. Journalists now include bloggers and selfpublishing authors on the internet, and traditional media have turned to social media to widen their reach. Not only has this development facilitated access to information, but also allowed individuals to become “active publishers of information”¹⁰. In contemporary digital media environments, content is no longer produced solely by professional journalists, but also by ordinary users. User-generated content (UGC)¹¹ may take the form of witness accounts, videos, claims, or commentary. The accuracy of such content is frequently unchecked, allowing unverified allegations to circulate widely. This dynamic generates an echo chamber, wherein users predominantly encounter content that

⁷ N. SURESH, L.S. GEORGE, *Trial by Media: An Overview*, (2020) 4(2) International Journal of Law Management & Humanities 267.

⁸ L. GIES, *Introduction: Understanding Trial by Media and Participatory Justice in a Networked World*, in L. GIES (ed.), *Trial by Media: Participatory Justice in a Networked World* (2017), 11.

⁹ M. STOYANOVA, *op. cit.*, n. 3.

¹⁰ UNESCO, *Maputo Declaration: A Media and Governance Conference on Freedom of Expression, Access to Information and Empowerment of People* (8 May 2008) <https://unesdoc.unesco.org/ark:/48223/pf0000180312.locale=en> (accessed 2.11.2025).

¹¹ All media web content that can be created by any Internet user is referred to as “user-generated content”, although this is not a legal term. C.A. BAUER, *User Generated Content: Urheberrechtliche Zulässigkeit nutzergenerierter Medieninhalte*, Springer, Berlin Heidelberg, 2011, 26.

reinforces their preexisting beliefs and are more readily persuaded of the veracity of allegations¹².

Such dynamics contribute to the formation of echo chambers, in which users predominantly engage with content that confirms their existing beliefs and are therefore more easily convinced of the credibility of allegations. The speed and interactivity of digital platforms facilitate – and at times incentivize – the formation of pre-judicial opinions regarding guilt. This challenge is intensified by the democratization of content production¹³, which allows ordinary citizens to assume the functional role of journalists and freely disseminate information related to criminal cases¹⁴. As a result, accusations become entrenched in the digital space, weakening an individual's ability to mount an effective defense in the court of public opinion.

§3. The legal foundations of the presumption of innocence

The presumption of innocence is a fundamental principle in criminal proceedings and is firmly established and justified in both national and international law. Article 6(2) of the ECHR defines the presumption of innocence as follows: “*Everyone charged with a criminal offense shall be presumed innocent until proved guilty according to law*”. In this sense, the presumption of innocence is part of the “*old substance of human rights guarantees*” and is of fundamental importance for the administration of criminal justice based on the principle of guilt¹⁵. According to article 48(1) of the EU Charter of Fundamental Rights, the presumption of innocence is one of the fundamental principles of the rule of law in all democracies¹⁶.

The presumption of innocence was initially conceived as a legal principle assigning the burden of proof to the prosecution and prohibiting the punishment of defendants unless their guilt is established in accordance

¹² L. GIES, *op. cit.*, n. 8, 1.

¹³ See further research F. PILATI, P.L. SACCO, M. SCIANNA, O. ARTIME, *The Broadcasting Trap: Tiktok and the “Democratization” Of Digital Content Production*, (2023) 12 Humanities and Social Sciences Communications 496.

¹⁴ M. STOYANOVA, *op. cit.*, n. 3.

¹⁵ E. ELIBOL, *Die Vermutung der Unschuld im deutschen und türkischen Strafverfahren* (Diss Tübingen, 1965), 23.

¹⁶ R.J. KÖSTER, *Die Rechtsvermutung der Unschuld* (Diss Bonn, 1979), 94.

with the law¹⁷. First, when accusations are made by private individuals (e.g., journalists) during a criminal trial or when the trial has not yet begun or has ended, some legal scholars argue that it is meaningless to speak of the presumption of innocence in its strict sense, as this guarantee may only apply against the state and its representatives¹⁸. Other authors, on the contrary, prefer to adopt a broad interpretation of this principle. The implementation of this principle should generally apply to all citizens and, consequently, to private media outlets as well¹⁹.

In modern human rights jurisprudence, however, its meaning has expanded to encompass the public presentation of defendants. According to the European Union Agency for Fundamental Rights (FRA), the presumption of innocence encompasses two interconnected dimensions: one internal and one external. The internal dimension pertains to the operation of criminal justice itself, focusing on how judges, prosecutors, police officers, and defence lawyers engage with the defendant and uphold procedural fairness throughout the proceedings. The external dimension concerns the defendant's image in the public sphere, which is largely shaped by the way media outlets present and narrate the case. These two dimensions cannot be viewed in isolation. Public narratives – especially those amplified by traditional and social media – have the potential to shape not only societal attitudes but also the perceptions and implicit biases of the very judicial actors tasked with delivering an impartial verdict²⁰.

The European Court of Human Rights (ECtHR) has further clarified the scope of the presumption of innocence through its extensive case law interpreting article 6(2) of the European Convention on Human Rights (ECHR). The ECtHR's case law provides us with a deeper understanding of the scope and meaning of the presumption of innocence in practice. In the case of *Allen v. The United Kingdom*, the ECtHR made a distinction between two aspects of the presumption of innocence: firstly, as a procedural right

¹⁷ M. STOYANOVA, *op. cit.*, n. 3.

¹⁸ M. DE HOYOS SANCHO, *Efectos ad extra del derecho a la presunción de Inocencia*, Tirant lo Blanch, 2020, 112.

¹⁹ S. OROMÍ VALL-LLOVERA, *El respeto al derecho a la presunción de inocencia por parte de los poderes públicos y de los medios de comunicación: de la sanción a la prevención*, (2017) 1 *Justicia: Revista de Derecho Procesal* 355, 365.

²⁰ European Union Agency for Fundamental Rights, *Presumption of innocence and related rights* (Publications Office of the European Union 2021).

within the trial, and secondly, as a protection for the personal reputation of the defendant. Specifically, the ECtHR assessed that the first aspect concerns the manifestation of the presumption of innocence as a procedural right in the context of a criminal trial, which is linked to issues such as the allocation of the burden of proof, the right to remain silent and prevent self-incrimination, rules of pretrial publicity, and premature expressions about the defendant's guilt made by the court or by other public officials. The second aspect concerns "*the person's reputation and how that person is perceived by the public*"²¹.

The applicability of the presumption of innocence, as discussed so far in the context of media boundaries, to private relationships on social media warrants careful consideration. In German doctrine, it is a debated issue whether the presumption of innocence can be applied directly in private law relationships²². The prevailing view holds that fundamental rights do not have a direct (unmittelbare Drittwirkung), but rather an indirect effect (mittelbare Drittwirkung) in private law. Within the framework of the indirect effect, courts do not decide private law disputes solely on the basis of the presumption of innocence; rather, they are obligated to interpret private law rules in a manner consistent with the spirit of the principle. For example, if an individual is subjected to wrongful accusations on social media, German law would address the harmful conduct under the framework of tort law or infringement of personal rights, while taking into account the need to protect the presumption of innocence. The principle establishes an indirect but effective protective scope in private relationships²³. In the era of social media, where accusations between private individuals are increasingly prevalent, it becomes even more important that private law be interpreted in a manner that safeguards the presumption of innocence.

²¹ ECtHR, *Allen v United Kingdom*, App no 48539/99, Judgement of 12 July 2002.

²² BVerfGE 35, 202 (232); BVerfG, NJW 2009, 350 (351); Kaprensten and Mayer-Meyer, EMRK (2012) Art 6 Rn 164; Bornkamm, (1983) NSTZ 102 (104).

²³ F. SALIGER, *Aushöhlung der Unschuldsvermutung durch gezielte Öffentlichkeit?*, (2013) 96 KritV 173, 179; Carl-Friedrich Stuckenberg, 200 Jahre Code d'instruction criminelle – Le Bicentenaire du Code d'instruction criminelle (2010) 61, 70.

§4. Protection of the presumption of innocence

Although legislation provides for the liability of (social) media practitioners for causing moral damages – enabling defendants to seek compensation in civil proceedings – and although criminal proceedings may be initiated for offences such as insult, defamation, libel, breaches of confidentiality, and violations of data protection laws, these remedies are rarely pursued in practice²⁴. Defendants rarely bring civil or criminal claims for violations of their presumption of innocence or for reputational harm caused by media coverage, except in cases involving public figures such as politicians or celebrities²⁵.

To ensure a more effective protection of the presumption of innocence in the age of social media, it is essential to develop a framework that accommodates the structural dynamics of digital platforms without undermining the substantive character of the presumption itself. Firstly, concept such as “disinformation” should be precisely defined in law in order to protect individuals and to ensure the reliability of the information ecosystem. The role of criminal law as *ultima ratio* in protecting legal interests raises the question of whether criminal sanctions are necessary at all in the fight against fake news²⁶ and which legal interests are violated by

²⁴ M. STOYANOVA, *op. cit.*, n. 3, 275.

²⁵ The case of on Hannover P. Germany' involved the question of whether the life of a member of a reigning (or royal) family' is a matter of general interest. Princess Caroline of Monaco complained that she was being constantly accosted by paparazzi.' She argued that the term “secluded place” was narrowly defined in German law and that the German definition circumvented her agreement with the French press. According to Princess Caroline, her agreement with the French press allowed her to choose which of her photos could be published. The court ruled in her favor, confirming that the photographs in question were not matters of general interest because they only appealed to a particular readership and did not contribute to democratic dialogue. The ECtHR thus concluded that the complainant's right to privacy was violated, see *Von Hannover v Germany* (No 1) (2004) 40 EHRR 1.

²⁶ Der Begriff "Fake News" hat in letzter Zeit weite Verbreitung gefunden. Der ehemalige US-Präsident Donald Trump verwendete den Begriff während des US-Präsidentenwahlkampfes 2016, um Medien wie die New York Times zu kritisieren, weil sie angeblich nicht seine (politischen) Ansichten widerspiegeln und somit den politischen Gegner begünstigen (You are Fake News!, auf Deutsch: Sie sind Fake News!). “Fake News,, kann einfach mit Falschnachrichten übersetzt werden, was jedoch von falschen Nachrichten (Fehlinformationen, Zeitungssente)

the creation and dissemination of such reports. Both in some countries, such as Turkey²⁷, Singapore²⁸ and Brazil²⁹, at the national level, and at the EU level, there is already a corresponding law in place that aims to criminalize such behavior³⁰. While the criminalization of disinformation on social media may contribute to the protection of the presumption of innocence, such measures must not impose disproportionate restrictions on freedom of expression.

Furthermore, platform operators regulate in so-called “code of conduct” or “community guidelines” which forms of expression or content are permitted on the platform and how violations can be sanctioned³¹. The guidelines are part of the terms and conditions that are incorporated into the contract for platform use, which the platform operator and users conclude when they register. They are interpreted according to the principle of objective interpretation, i.e., they are to be interpreted uniformly according to their objective content and typical meaning as understood by reasonable and honest contractual partners, taking into account the interests of the parties normally involved. Violations of the guidelines are sanctioned in particular by the deletion of the post and/or the (temporary) blocking of the user account. In order to determine a violation and be contractually entitled to deletion, the user’s statement must be subsumed under the respective guidelines for conduct.

Since February 17, 2024, the Digital Services Act (Regulation (EU) 2022/2065, DSA) has been fully applicable within the EU member states. The European Commission maintains that the new obligations imposed on

unterschieden wird, die von Zeitungen fälschlicherweise oder leichtfertig verbreitet werden.

²⁷ Mit dem Gesetz Nr. 7418 vom 13.10.2022 wurde durch Artikel 29 dem türkischen Strafgesetzbuch der Artikel 217A hinzugefügt, wodurch die öffentliche Verbreitung irreführender Informationen unter Strafe gestellt wurde. Für eine kritische Betrachtung dieser Regelung: Turhan, ZfiStw 2023, 35 ff.

²⁸ Singapur beschließt Gesetz gegen “Fake News”, Deutsche Welle <https://www.dw.com/de/singapur-verabschiedet-gesetz-gegen-fake-news/a-48668949> (accessed 17.09.2025).

²⁹ *Pereira*, Der rechtliche Kampf gegen Desinformation in Brasilien, <https://www.gtai.de/de/trade/brasilien/recht/der-rechtliche-kampf-gegen-desinformatio-n-in-brasilien-1867808>, zuletzt abgerufen am 17.09.2025.

³⁰ OSCE Representative on Freedom of the Media, Disinformation Laws and Their Impact (2021).

³¹ So z.B. Meta Platforms Ireland Ltd, ‘Terms of Service’ (Facebook) <https://www.facebook.com/terms> (accessed 25.07.2025).

online platforms under the DSA offer tangible benefits for users' fundamental rights. It also aims to unify the protection of fundamental rights across Europe. However, several authors argue that these measures remain insufficient, particularly with respect to the protection of personal data and the management of illegal content, and that a more stringent safeguarding framework is therefore required³². For the time being, the DSA cannot provide a higher level of protection for those affected by reputation damage campaigns. The regulatory framework does contain mechanisms for protection against abuse. However, these do not go beyond the procedures already imposed by the platforms themselves. This means that those who are familiar with the provisions of the right of expression will continue to find loopholes that allow them to carry out reputation-damaging activities in a legally compliant manner.

Freedom of expression finds its limits where the general right of personality of a person affected by the statement is unlawfully violated. This is the case when the interest of the affected person in protection outweighs the interests of the person making the statement that are worthy of protection. The interests of the affected party prevail, for example, when untrue facts about a person are disseminated. If the truthfulness of a statement is not certain, but it raises suspicion of criminal or morally reprehensible behavior, the principles of criminal and suspicion reporting apply. Additionally, processes for reviewing user complaints and removing harmful content should be made faster, more transparent, and more effective. Mechanisms that allow the rapid correction of false or misleading information should be developed to safeguard the public information sphere.

§5. Conclusion

In contemporary digital environments, the presumption of innocence faces unprecedented challenges that extend far beyond the traditional media-judiciary relationship. While the principle has deep roots in constitutional and international human rights law, its practical protection has become increasingly fragile in a communication ecosystem driven by speed, virality, and the unchecked circulation of user-generated content. As

³² A. TURILLAZZI, M. TADDEO, L. FLORIDI, F. CASOLARI, *The Digital Services Act: An Analysis of Its Ethical, Legal, and Social Implications*, (2023) 15(1) Law, Innovation and Technology, 83.

social media platforms facilitate the rapid dissemination of allegations – often without verification or editorial oversight – they effectively create parallel arenas of judgment in which individuals may be socially condemned long before any judicial determination of guilt or innocence.

In the digital age, however, the boundaries of journalism have dissolved, enabling ordinary users to act as publishers without assuming corresponding ethical or legal duties. This democratization of content production has broadened the potential for reputational harm, contributing to what may be described as a “digital penalisation” occurring outside formal legal channels. Therefore, the protection of the presumption of innocence must be reconceptualized in light of these transformations. Strengthened regulatory frameworks addressing platform responsibility, clearer legal definitions concerning the dissemination of misleading information, mandatory adherence to ethical reporting standards, and effective mechanisms for rapidly correcting false or harmful content are essential elements of this reconceptualization. Ultimately, safeguarding the presumption of innocence in the digital era requires a combination of doctrinal clarity, technological accountability, and societal awareness. Only through such a multifaceted approach can legal systems ensure that fundamental rights are not eroded by the dynamics of contemporary communication technologies.