
Amnesty International Response to the European Commission Green Paper on The Presumption of Innocence, COM(2006) 174 final

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Amnesty International welcomes the Commission's stated intent to develop equivalent standards throughout the EU on the presumption of innocence, which is a fundamental principle of human rights and criminal law. Amnesty International considers that the standards protecting individuals should have the same weight and binding force as judicial cooperation measures that enhance the powers of law enforcement officials in the course of the creation of an "Area of Freedom Security and Justice".

The presumption of innocence has been identified by the Commission as a right in respect of which increased visibility at EU level could promote a higher degree of mutual trust between the member states and therefore strengthen judicial cooperation between Member States, as well as enhance the protection of individual rights throughout the EU. While Amnesty International supports these objectives, we would insist that any harmonisation of rules as regards criminal procedure should never be to the detriment of the existing obligations of Member States under international law, and if anything should lead to a higher level of human rights protection in the European Union. Amnesty International's response to this Green Paper will seek to highlight its understanding of the presumption of innocence in accordance with this objective.

Regarding the Commission's intention to now focus on evidence-based safeguards and follow-up this new consultation with a Green paper on gathering/ handling evidence and criteria for admissibility, Amnesty International would like to reiterate its call to the Commission to address as a matter of urgency the issue of the use of evidence extracted through torture or other ill-treatment to ensure the full respect by EU Member States of their obligation under Article 3 of the ECHR, Article 7 of the ICCPR and Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which prohibit the use of information adduced as a result of torture or other ill-treatment in proceedings except as evidence in proceedings against the persons alleged to be responsible for such treatment.¹

The presumption of innocence

Everyone has the right to be presumed innocent, and treated as innocent, until and unless they are convicted according to law in the course of proceedings which meet at least the minimum prescribed requirements of fairness. All member states are obliged, under international law, to respect and protect human rights of suspects and accused persons, including the right to the presumption of innocence.²

Introductory remarks

Because the respect for the right to the presumption of innocence is a fundamental component of the right to a fair trial, Amnesty International had listed the presumption of innocence as one of the rights that should be contained in the EU wide letter of Rights foreseen in the initial Commission proposal for a framework decision on certain procedural rights in criminal proceedings throughout the European Union. We are concerned that the provision on the Letter of Rights will be deleted from the final text and

¹ See AI report *Human rights dissolving at the borders? Counter-terrorism and EU criminal law*, May 2005, pages 22-24 [AI Index: IOR61:013/2005]; The EU Network of Independent Experts in Fundamental Rights, Synthesis Report 2005, pages 271-272 [CFR-CFD/conclusions2005]

² See inter alia: Article 11 of the Universal Declaration, Article 14(2) of the ICCPR, Article 6(2) ECHR, Article 48 CFREU, Article 21(3) of the Yugoslavia Statute, Article 20(3) of the Rwanda Statute, Article 66 of the ICC Statute.

we believe that this is inconsistent with the EU's objective to build up a coherent set of measures in the field of criminal justice.³

Compliance by EU Member States with their obligations to protect fair trial rights, including the right to the presumption of innocence, is an essential component of mutual trust and is necessary to ensure European citizens that they can rightly expect equivalent standards of protection throughout the EU. Redress for the failure to respect the right to the presumption of innocence must be available at the national level. Recourse at the international level, following exhaustion of domestic remedies, is available through the European Court of Human Rights, as well as through the Human Rights Committee in relation to those countries that have ratified the Optional Protocol to the ICCPR. However, Amnesty International is also advocating for specific regulatory mechanisms to be put in place at EU level to systematically assess and correct the existing gaps in law and practice in each member state. In particular, Amnesty International has welcomed the work of the EU Network of Independent Experts and addressed this issue in the debate over the foreseen Fundamental Rights Agency. We are therefore particularly concerned that the Council is still to decide whether to include or not third pillar police and justice matters from the future agency's remit. We believe that to exclude matters such as fair trial rights, would further discredit an agency whose power to address human rights problems is already limited by the scope of EU law itself.

The latest developments in the field of counter-terrorism, including in cross border situations and international cooperation, have shown disturbing trends which involve unlawful detention, torture or other ill-treatment of persons and disappearances. Reports of extraordinary renditions and the operation of "black sites" in Europe, which involve the extra-judicial detention and transfer of persons through and in some instances with the involvement of EU Member States to third countries, contain within them the spectre of multiple human rights violations.⁴ In these cases, fair trial rights, including the right to the presumption of innocence, are being violated outside any legal framework that would make it possible to challenge this violation. We urge the EU to exercise all its political, diplomatic and legal competence and powers to put an end to these practices. Adopting measures to ensure that the principle of the presumption of innocence is consistently respected at all stages of criminal proceedings in the Member States, including when terrorism offences are suspected, would be one step in this direction. (See also Q. 7)

Do you agree with the list of what constitutes the presumption of innocence given in the Green Paper? Are there any other aspects not covered? (Q.1)

The Green Paper notes that the presumption of innocence 'can only benefit a person who is "subjected to a criminal charge"'. Given the differing legal systems, codes and procedures, Amnesty International considers that any future EU legislation should incorporate the internationally accepted definition of the term "charge" and the internationally accepted criteria for determining whether a matter is "criminal".⁵

Amnesty International would also like to add that during the trial, particular attention should be paid that no attributes of guilt are borne by the accused which might impact on the presumption of their innocence. Such attributes could include holding the accused in a cell within the courtroom, requiring the accused to wear handcuffs, shackles or prison uniform in the courtroom.

³ Amnesty International has grown increasingly concerned about the way the negotiations on the proposal for a framework decision on procedural safeguards in criminal proceedings have developed, especially about what appears to be the intention of the Council to limit the number and scope of the rights covered and adopt only very general minimum standards. See JHA 1-2 June, draft conclusions (9409/06 Press 144) and *Joint letter of Amnesty International and Justice to the Justice and Home Affairs Council*, 26 April 2006.

⁴ See AI reports, *USA: Below the radar – Secret flight to torture and disappearances*, April 2006 (AI Index: AMR 51/051/2006); *Partners in Crime: Europe's role in US renditions*, June 2006 (AI Index: EUR 01/008/2006)

⁵ A person should be determined to be charged when "the situation of the person has been substantially affected, they have been deprived of their liberty, they have been publicly named or they have been given official notification by the competent authority that they have committed an offence, which ever comes first (Human Rights Committee General Comment 13, para 8; *Deweere v. Belgium*, Judgement of the European Court of Human Rights, 27 February 1980, para 44 and 46); in international law, the determination of whether a matter is "criminal" depends on both the nature of the act and the nature and severity and consequences of the possible penalties. While the classification of an act under national law is a consideration, it is not decisive (*Engle and Others v. Netherlands*, (No.1), Judgement of the European Court of Human Rights, 15 July 1982).

As stated in the Green Paper, the right to presumption of innocence requires that judges (and juries) refrain from prejudging any case. It also applies to all other public officials and beyond the strict remit of the criminal trial.⁶

The right to presumption of innocence applies not only to treatment in court and the evaluation of evidence, but also to treatment before trial. It applies to suspects at the interrogation stage, before charges are filed prior to trial and carries out through until a conviction is confirmed following a final appeal. The right also applies after acquittal when public authorities should refrain from implying that the person may have been guilty (please see also below & Q.8 on duration).

At all stages, persons should have a right to remedy in case of violation of his/her right to presumption of innocence.

Are there special measures (in your Member State) during the pre-trial stage in order to safeguard the presumption of innocence? (Q.2)

Beyond national laws and practices, Amnesty International takes this opportunity to elaborate on the rights during the interrogation and pre-trial phases, which among other things safeguard the right to the presumption of innocence.⁷

- Rights during interrogation

There are several rights which aim to safeguard the presumption of innocence of people suspected or accused of crimes during the investigation of an offence. These include, the right to access to counsel, the prohibition against torture and other cruel, inhuman and degrading treatment or punishment, the prohibition against compelling people to confess guilt or testify against themselves, the right to remain silent, the right to be informed of the reasons of the detention, and the right to access to a court to challenge the legality of detention.

There are additional safeguards during interrogation. Among other things, international standards require the authorities not to take undue advantage of the situation of a detained person during interrogation (Principle 21 of the Body of Principles).⁸ A key safeguard is the right to the presence of a lawyer during interrogation. Amnesty International calls on the European Commission to ensure that the right to access to and presence of counsel during questioning by the police, including of people arrested or detained but not yet charged with a criminal offence, is included within the EU's set of safeguards to protect the right to presumption of innocence.

- Additional safeguards for people in pre-trial custody

Anyone suspected of, charged with, arrested or detained in connection with a criminal offence who has not yet been tried is to be treated in accordance with the presumption of innocence. International standards require that the treatment of people held in pre-trial custody should be different from that of people who have been convicted.⁹ According to the European Prison Rules¹⁰ : "the regime for untried prisoners may not be influenced by the possibility that they may be convicted of an offence in the future".¹¹ The rules further provide special safeguards for prisoners held before trial, regarding

⁶ See for instance a decision from the European Commission for Human Rights, in the case "Petra Krause vs. Switzerland" , 3 October 1978, Application no. 7986/77, D.R. 13, 73, which stated that no state representative can declare a person guilty or make a declaration presuming guilt before the guilt has been legally determined.

⁷ See also Amnesty International Response to the European Commission Green Paper on mutual recognition of non-custodial pre-trial supervision measures, COM(2004)562 final, December 2004

⁸ See Human Rights Committee General Comment 20, para 11 and Principle 23 of the Body of Principles; Article 15 of the Convention against Torture, Article 12 of the Declaration against Torture.

⁹ Article 10(2)(a) of the ICCPR, Rule 84(2) of the Standard Minimum Rules, Article 5(4) of the American Convention.

¹⁰ Rec.(2006)2 of the Committee of Ministers to Member States on the European Prison Rules, Part VII

¹¹ See Article 95.1, Part VII, *Approach to untried prisoners*, of the amended European Prison Rules. In the commentary of the Rules, one reads: "This rule describes the basic approach regarding untried prisoners in positive terms. It emphasizes that they should be treated well because their rights have not yet been restricted by a criminal sentence. The ECtHR has stressed that this presumption applies also to the legal regime governing the rights of such persons and the manner in which they should be

accommodation clothing, legal advice, contact with the outside world, work and access to the regime of sentenced prisoners.¹²

In what circumstances is it acceptable for the burden of proof to be reversed or altered in some way? Have you experienced cross border cooperation situations in which the burden of proof created a problem (Q. 3)?

In some countries, the law requires the accused (rather than the prosecution) to explain elements of certain offences. For example, the accused may be required to explain their presence in a given location (at or near the place where a crime occurred), or their possession of certain things (such as stolen property or contraband). Such requirements, when incorporated into law, are known as statutory presumptions. These have been challenged on the grounds that they impermissibly shift the burden of proof from the prosecution to the accused, in violation of the presumption of innocence.

The European Court of Human Rights has found that, in view of the presumption of innocence, which among other things requires that the state proves the charge beyond a reasonable doubt, statutory presumptions must be defined by law and reasonably limited. They must also preserve the right of the accused to a defence. In other words they must be capable of rebuttal by the accused.¹³

One notes that the Inter-American Commission considers that the definition of a criminal offence based on mere suspicion or association should be eliminated as it shifts the burden of proof and violates the presumption of innocence.¹⁴ Vague definitions of criminal offences can also affect the right to the presumption of innocence and create particular problems in cross-border cases.

During the negotiations of the Framework Decision on combating terrorism, a number of Member States, as well as NGOs including Amnesty International¹⁵, raised concerns that the definition contained in the Commission proposal was not sufficiently precise as to guarantee legal certainty and that the breadth of the proposed definition could threaten the right to freedom of association and legitimate protest. Requiring criminalisation of “terrorist” acts, it allowed for prosecution for offences such as “unlawful seizure of or damage to state or government facilities, means of public transport, infrastructure facilities, places of public use, and property”¹⁶, and “promoting of, supporting of or participating in a terrorist organisation”¹⁷. Amnesty International believes that not clearly defining such terms could lead to criminalisation of activities unrelated in any way to acts of violence. Moreover, the fact that the EU Framework decision only sets minimum standards regarding substantive criminal law means that Member States are free to diverge from those standards. While it was the case that some Member States already had their own national legislation that went further than the Framework Decision and therefore implementation required little change to the law, some of those Member States that did not previously have a definition of terrorism in their national law have transposed the Framework Decision almost exactly into their national legislation thus failing to remedy the problem of the vague definition. The EU cannot legitimately base mutual recognition instruments for judicial cooperation on mutual trust where it is unclear whether national definitions of terrorism which, due to the erosion of the principle of double criminality, now may be applied across the whole EU territory, are

treated by prison hoards (*Iwanczuk v. Poland* (applic 25196/94), para 53). They deserve the special protection of the State. All untried prisoners must be presumed innocent of a crime.”

¹² “Rule 95.2 provides additional safeguards for [untried prisoners]. Rule 95.3 emphasises that the prisoners can enjoy all the safeguards of part II and also take part in activities such as work, education, exercise and recreation as described in that part. Part VII as a whole is designed to assist untried prisoners by spelling out more fully to what their status entitles them additionally.” (commentary to recommendation rec(2006)2 of the Committee of Ministers to Member States on the European prison Rules cont.)

¹³ See *Pham Hoang v. France*, (66/1991/318/390), 25 September 1992, finding that a French customs law which created refutable assumptions did not violate the presumption of innocence.

¹⁴ Annual Report of the Inter-American Commission, 1996, OEA/Ser.L/V/II.95, doc. 7, para.4 p.745, Peru

¹⁵ Comments by Amnesty International on a proposal by the Commission for a Council Framework Decision on combating terrorism, 19 October 2001.

¹⁶ COM(2001)521 final, Article 3.1(f).

¹⁷ *Ibid*, Article 3.1(m)

in compliance with international human rights obligations, including the obligation to respect the presumption of innocence.¹⁸ (See also below Q.7)

The right to silence (Q. 4)

Amnesty International believes that no one charged with a criminal offence may be compelled to testify against him or herself or to confess guilt. This prohibition is in line with the presumption of innocence, which places the burden of proof on the prosecution, and with the prohibition against torture and other cruel, inhuman or degrading treatment.¹⁹

Whereas the Green Paper mentions the case-law of the European Court of Human Rights - *John Murray v. United Kingdom*, 8 February 1996 - which allows for limitations of the right to silence²⁰, we note that it fails to mention that the European Court did find that the failure to grant the accused access to counsel for the first 48 hours of his detention, when he was being questioned by police and had to decide whether to exercise his right to silence, was a violation of Article 6 ECHR. In some EU Member States like the United Kingdom, the right to assistance of a counsel during questioning is of particular importance given the fact that a person's silence during questioning may be the basis of the drawing of adverse inferences against the person in decisions to charge and during trial. (See also Q.2 above)

In absentia proceedings (Q. 6)

Amnesty International believes that the accused should be present in court during a trial to hear the full prosecution case, to put forward a defence or assist their counsel in doing so, to refute or provide information to enable their counsel to refute evidence and to examine witnesses or advise their counsel in the examination of witnesses. The organisation believes that the sole exceptions to this should be if the accused has deliberately absented themselves from the proceedings after they have begun or has been so disruptive that they have had to be removed temporarily. In such cases video or audio links should be employed to allow the accused to follow proceedings. Amnesty International believes that, if an accused is apprehended following a trial in which he or she was convicted in absentia for other than these reasons, the verdict rendered in absentia should be quashed and a completely new trial held before a different trial court.

- cross border situation: European Arrest Warrant (EAW)

Existing safeguards on the use of *in absentia* judgements in extradition procedures have been criticised in the case of the European Arrest Warrant. As argued by Nico Keijzer, while the EAW does provide for safeguards against the reliance upon in absentia judgements, it fails to offer a level of protection which gives full effect to the principle of presumption of innocence.²¹ Article 5.1 of the Framework Decision (FD) guarantees against the reliance upon judgements following from a hearing of which the suspect was not informed, but fails to clearly specify that the person has to be made aware of the hearing in person, in addition to other methods of formal notification, e.g. informing the person of his/her last known address.²² Even when Article 5.1 is invoked, it only provides that the person sought through a EAW has the possibility to apply for re-trial following surrender, falling short of guaranteeing re-trial in all cases as required by the case law of the European Court of Human Rights.²³ The instrument is additionally criticised for failing to guarantee that any re-trial will fully conform to Article 6 ECHR.²⁴

¹⁸ AI report *Human rights dissolving at the borders? Counter-terrorism and EU criminal law*, May 2005 [AI Index: IOR61:013/2005]

¹⁹ Article 14(3)(g) of the ICCPR, Articles 8(2)(g) and 8(3) of the American Convention, Principle 21 of the Body of Principles, Article 21(4)(g) of the Yugoslavia Statute, Article 20(4)(g) of the Rwanda Statute, Article 67(1)(g) of the ICC Statute.

²⁰ Green Paper on the Presumption of Innocence, page 8

²¹ Nico Keijzer (2006) *The EAW Framework Decision between Past and Future*, presentation at conference on the European Arrest Warrant, Centre for European Policy Studies, Brussels, February 2006.

²² *ibid*

²³ *ibid*

²⁴ *ibid*

Terrorism: do special rules apply? (Q. 7)

While the Council of Europe Guidelines on human rights and the fight against terrorism²⁵ indicate that some more severe yet necessary and proportionate restrictions may be placed on persons deprived of their liberty in relation to terrorism related offences (Guideline XI (2)), Amnesty International notes that the Presumption of Innocence is considered one of the rights not subject to restriction of any kind and that the Human Rights Committee (HRC), in its General Comment 29 noted that the presumption of innocence is one of the fundamental fair trial rights that is non-derogable and must be respected at all times. In order to ensure this right, individuals deprived of their liberty, including in connection with terrorism related offences must be granted access to a court to challenge the legality of their detention.²⁶ Amnesty International believes that there should be no special restrictions of rights of persons deprived of their liberty in connection with terrorism.

The international community as a whole has recognized that even people suspected of the most heinous crimes, such as war crimes, genocide and other crimes against humanity have a fundamental and inalienable right to enjoy respect for the highest procedural rights precisely because of the nature and gravity of the crimes of which they stand accused and the severity of the penalties they may face if convicted.²⁷

Amnesty International is concerned that legislation related to terrorism may lead to violations of a person's right to a fair trial. In a recent report on UK anti-terrorism measures²⁸, Amnesty International discloses how under new legislation adopted in March 2005 – the Prevention of Terrorism Act 2005 (PTA) – the practice of indefinite detention without charge which had been declared illegal in a December 2004 ruling of the Law Lords has come to be replaced with a regime of “control orders” which nevertheless continues to deny the right to liberty and to a fair trial. The PTA gives a government minister unprecedented powers to issue so-called control orders to restrict the liberty, movement and activities of people purportedly suspected of involvement in terrorism, again on the basis of secret intelligence. Amnesty International considers that the PTA 2005 allows the stripping of a person's right to a fair trial, including:

- the right to be informed promptly and in detail, of the nature and cause of the accusations against oneself;
- the right to trial within a reasonable time or to release pending trial;
- the right to the presumption of innocence which applies to all persons charged with a criminal offence, including during times of emergency, and requires the state to prove the charge “beyond reasonable doubt”;
- the right to equality before the law and equal protection of the law without any discrimination;
- the right to have a criminal charge against oneself determined by an independent tribunal which has the quality of finality and determinativeness; and
- the right to defend oneself in person or through legal assistance of one's own choosing.

Amnesty International is also concerned that inclusion on terrorist lists may lead to a violation of the right to the presumption of innocence. Considering the serious implications of being identified as a “terrorist”, which include the deprivation of basic individual, social and economic rights (in particular the right to freedom of assembly, freedom of expression, the right to respect of private and family life, the right to basic public services and the right to liberty and to a fair trial), it is crucial that such identification is based on clear evidence that is capable of being challenged.²⁹ However, in the EU, it is not at all clear what effective remedy a person or organisation has to challenge their publication in the official journal of the European Communities as a “terrorist” and to seek reparation for the damages that they may suffer as a consequence of that inclusion.³⁰

²⁵ Guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers on 11 July 2002 at the 804th meeting of the Ministers' Deputies

²⁶ Article 9(3) of the ICCPR and Article 5(3) HRC General Comment 29 at para 16

²⁷ See for example Article 55 of the Rome Statute of the International Criminal Court

²⁸ See AI Report, *Human Rights: A Broken Promise*, AI Index: EUR 45/004/2006; see also EU Network of Independent Experts Synthesis Report 2005

²⁹ See article 13 ECHR on the right to an effective remedy and similar provision in Article 47 CFREU

³⁰ The system of implementing terrorist blacklists as required by UN Security Council resolutions has led to a situation where the persons included on EU terrorist lists are deprived of an effective remedy to challenge their inclusion. The EU

In its thematic report of 2003 on "The balance between freedom and security in the response by the European Union and its member states to the terrorist threat", the EU Network of Independent Experts in Fundamental Rights has examined in detail the EU's "terrorist lists" and the application of the EU legislation by the member states. Among the key points of its analysis, one reads that:

-[The asset-freezing provisions] affect the presumption of innocence because the freezing of assets prejudices the guilt of persons who have not been convicted of a crime.

- At this time, in fact, there is no judicial control of the measures adopted in the context of Title V of the Treaty on European Union in the legal order of the European Union. This situation cannot be reconciled with Articles 6 and 13 of the European Convention of Human Rights nor, a fortiori, with Article 47 of the Charter of Fundamental Rights.

-The fundamental rights of the persons include the right to be protected against damage to his/her honour and reputation and the right to be presumed innocent until guilt is established. But these two rights may be threatened, or violated, by the positions of the Council.

The case of the Philippine national Mr Jose-Maria Sison illustrates how the decision and procedure to include an individual in the list of terrorist organisations can violate elementary basic rights, including the right to presumption of innocence, the right to due process and the right to defence. Mr Sison was included in the list adopted in the decision 2002/848/EC of October 28, 2002.³¹ He contests his inclusion in the list and any link to terrorism. The lawyers of Mr Sison have lodged several requests for access to the documents which could give the material reasons and elements which led the Council of the European Union to describe him as a terrorist. Their requests were refused each time, with the Council claiming that their disclosure could endanger public safety and the international relations of the EU³². The impact of inclusion on the list was among other things that the joint account Mr. Sison had with his wife was frozen and his social benefits terminated. Such measures are described by the Council of the European Union as merely preventive administrative measures to stop the financing of terrorism and combat terrorism. With the support of the Netherlands, the Council holds the view that the traditional guarantees of the ECHR do not apply as the making of the list is a purely administrative procedure. The proceedings for annulment against the inclusion of Mr Sison in the list introduced in February 2003 are still being examined by the Court of First Instance of the EU³³. A Belgian couple who are also struggling to be effectively removed from a terrorist list³⁴, have actually given up to bring their case before the EU Courts since the Court of First Instance has ruled³⁵ that it is not competent. Despite successful challenges before the Belgian courts, the couple need a decision at UN level to effectively be removed from the list. They have lodged a complaint before the UN Human Rights Committee.³⁶

Duration (Q. 9)

- See also questions 1&2.

instruments³⁰ that give effect to UN Security Council Resolution 1373 create an impenetrable level of secrecy around inclusion on the lists by excessively limiting parliamentary scrutiny of the measures and by effectively removing the possibility of judicial scrutiny of individual decisions. See AI report *Human rights dissolving at the borders? Counter-terrorism and EU criminal law*, May 2005 [AI Index: IOR61:013/2005]

³¹ Mr Sison was included as an individual related to the New Peoples' Army (NPA) identified as a "terrorist" organisation. The decision of the EU followed the decisions from The Netherlands and the United States who had listed Mr Sison and the NPA in August 2002.

³² See judgement of the Court of First Instance in joined cases T-110/03, T-150/03 and T-405/03 *Jose Maria Sison v Council of the European Union*, 26 April 2005.

³³ See "Sison blacklisting case heard in EU-Court on May 30, 2006 – case T:47/03" by Jan Fermon and Mathieu Beys, Lawyers at the bar of Brussels; see also AI report *Human rights dissolving at the borders? Counter-terrorism and EU criminal law*, May 2005 [AI Index: IOR61:013/2005] and Statewatch, "terrorist" lists website.

³⁴ The couple were listed for being members of European branch of Global relief Foundation, declared a terrorist organisation by the USA.

³⁵ See the judgement of the Court of First Instance of 21 September 2005 in Case T-306/01, *Yusuf and Al Barakaat International Foundation v Council and Commission*

³⁶ See articles in *Le Monde* on line, 2 June 2006 (www.lemonde.fr) and in *La Libre Belgique*, 1 June 2006 (www.lalibre.be)

The right to appeal is fundamental to guarantee the presumption of innocence throughout all stages of a trial. The right for everyone convicted of a criminal offence to have the conviction and sentence reviewed by a higher tribunal is enshrined in several international instruments³⁷.

The right to presumption of innocence also applies after acquittal when public authorities should refrain from implying that the person may have been guilty. If a person is acquitted of a criminal offence by final judgement of a court, the judgement is binding on all state authorities. Therefore, the public authorities, particularly prosecutors and the police, should refrain from implying that the person may have been guilty, so as not to undermine the presumption of innocence, respect for the judgements of a court and the rule of law. A recent Swiss case provides an illustration of this situation. The Minister of Justice publicly stated that he could not understand why two men accused by the Albanian government of a series of crimes had been given refugee status. He referred to the two men as two “criminals” despite the fact that the Swiss Courts had recognised their innocence. A complaint has been filed against the Justice Minister for breaching of the presumption of innocence.³⁸

³⁷ See Article 14(5) of the ICCPR, Article 8(2)(h) of the American Convention, Article 2 of Protocol 7 to the European Convention, Article 24 of the Yugoslavia Statute, Article 23 of the Rwanda Statute, Article 81(b) of the ICC Statute; see Article 7(a) of the African Charter.

³⁸ The Minister failed to point out that the Swiss Asylum Appeal Commission had concluded that the charges against the two men were politically motivated. The Swiss federal Court later agreed, stating that the evidence against the two men supplied by the Albanian authorities was most likely fabricated. The Senate’s control committee is now considering whether there was a breach of the presumption of innocence; Swissinfo, May 29, 2006, <http://swissinfo.org/eng/swissinfo.html>