DOI: https://doi.org/10.34069/AI/2024.74.02.31
How to Cite:
Bobechko, N., & Fihurskyi, V. (2024). Presumptions as means of proof in criminal procedure law of states with continental and Anglo-American legal systems. *Amazonia Investiga*, *13*(74), 373-380. https://doi.org/10.34069/AI/2024.74.02.31

Presumptions as means of proof in criminal procedure law of states with continental and Anglo-American legal systems

Презумпції як засоби доказування у кримінальному процесуальному праві держав континентальної та англо-американської систем права

Received: January 4, 2024 Accepted: February 21, 2024

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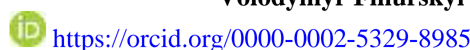
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Abstract

The aim of this article is to study legal regulation, doctrinal approaches on understanding and using presumptions in criminal procedure proof of the states with continental and Anglo-American legal systems. The methodological basis of this research consists of general scientific and special legal methods, namely dialectical, analysis, generalization, structural and functional, hermeneutic, dogmatic and comparative legal methods. The article analyzes one of the means of criminal procedure proof – presumption. By analyzing the corresponding norms of CPC of Ukraine, legal positions of the European Court of Human Rights, Supreme Court of the USA and the views of fellow researchers, the authors present their vision of issues within the scope of the study. The significance of presumptions as means of proof in criminal proceedings is clarified and their types which are distinguished in the doctrine of criminal procedure of continental and Anglo-American legal systems are characterized.

Keywords: criminal procedure law, process of proof, means of criminal procedural proof, legal presumptions, factual presumptions.

Анотація

Метою статті є вивчення правового регулювання, доктринальних підходів щодо розуміння та використання презумпцій у кримінальному процесуальному доказуванні держав континентальної та англо-американської систем права. Методологічну основу дослідження становлять загальнонаукові та спеціально-правові методи, зокрема діалектичний, аналізу, узагальнення, структурно-функціональний, герменевтичний, догматичний, порівняльно-правовий. У статті проаналізовано один із засобів кримінального процесуального доказування – презумпції. Аналізуючи відповідні норми КПК України, правові позиції Європейського Суду з прав людини, Верховного Суду США, погляди дослідників, автори подають своє бачення питань, що входять до предмета дослідження. З'ясовано значення презумпцій як засобів доказування у кримінальному провадженні та охарактеризовано їх види, виокремлені у доктрині кримінального процесу континентальної та англо-американської систем права.

Ключові слова: кримінальне процесуальне право, процес доказування, засоби кримінального процесуального доказування, правові презумпції, фактичні презумпції.

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Introduction

An indispensable tool of cognition in criminal proceedings is the use of knowledge that certain facts are *prima facie* proof of other facts. This refers to the conclusion to which the law directs the subject of proof when a certain set of facts is established, namely presumption.

When the word 'presumption' (from Latin. *praesumptio* – assumption) is used in everyday speech, it is considered that a certain phenomenon, state or event can exist and arise but not certainly or not necessarily. It may happen that the assumption will be rebutted; however, checking it each time would not be economical both in financial and temporal dimensions. In other words, something may or may not happen but it will not necessarily take place.

Presumption as a legal category was widely used back in ancient Roman law. Later, a lot of presumptions were introduced into the national legal systems of different states. Without them, the process of proof would have been complicated and lengthy, and the completion of criminal proceedings would have been impossible within a reasonable time frame.

To form presumptions several factors must interact simultaneously: there must be a possibility to form the most probable conclusion from the observed facts, events, phenomena and their individual properties, the importance and significance of which in the regulation of social relationships are recognized by the majority of people. This must occur at the most favorable moment and in the most favorable environment which will formalize this conclusion and obtain its consolidation in the existing system of legal norms. Thus, presumption is a general assumption, based on the laws of logic, which reflects some general tendency (fact, event, etc.) (Rudzkis & Panomariovas, 2016). Therefore, not every assumption may be regarded as a presumption.

Although a presumption is a result of certain reasoning, it is erroneous to equate a presumption and a logical conclusion. Reasoning is a 'way' which leads to a 'goal' – logical conclusion. Nevertheless, the presumption as well as the logical conclusion are the results of reasoning; though it differs from the latter in the various consequences it entails (for example, it allocates the burden of proof between parties) and its obligatory nature. Unlike a logical conclusion, a presumption enshrined in law is always obligatory and does not lose its force, even if the existence of the presumed fact is disputed in a specific case (Rudzkis & Panomariovas, 2016).

A presumption is based on certain social patterns, formulated on the basis of life experience (from Latin *praesumptio ex eo quod plerumque fit* – a presumption arises from what usually happens). That is why a presumption contains some part of truth.

The article provides answers to questions regarding the essence of presumption as a means of criminal procedural proof, the types of presumptions in criminal procedural law as classified by researchers, and the legal provisions and doctrinal positions regarding the application of presumptions in proof in criminal proceedings of continental and Anglo-American legal systems.

Literature review

The use of presumptions in the process of proof in criminal proceedings have been studied by Michael H. Graham, Piotr Hofmański, Shari L. Jacobson, Laird Kirkpatrick, Kabore Sandrine Marie, Mustapha Mekki, Christopher B. Mueller, Artūras Panomariovas, Liesa Richter, Tomas Rudzkis, Stanisław Waltoś, Worku Yaze Wodage. The scientific ideas, theoretical positions and recommendations formulated by these researchers are particularly important for the improvement of criminal procedure law of the respective states and for the application of its regulations.

Waltoś & Hofmański (2020) define presumptions as judgements about high credibility of a certain fact arising from another fact or facts and does not arouse any doubts. The researchers classify presumptions as surrogates of proof.

Explaining the significance of this means of proof, Mustapha Mekki (s.f), Kabore (2017) argue that a presumption makes it possible to exempt from proof, if it is established by law. This is evidential argumentation, when presented to a judge, which helps to establish a certain fact based on indirect evidence. Thus, it constitutes a shift of the subject of proof.

In turn, Rudzkis & Panomariovas (2016) drew attention to the fact that variety and prevalence of presumptions is based on three elements: social

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policy of the state, aspiration to optimize the law and aspiration to provide flexibility, consistency and clarity in legal relations.

Mueller, Kirkpatrick & Richter (2018) considering the issue of presumptions, noted that to help the prosecutor carry the heavy burden imposed on the state in criminal cases, courts and legislatures have created what are often called "presumptions," but which, because of constitutional constraints, can only operate as inferences. Many jurisdictions have recognized a "presumption" inviting an inference of intent on the basis of proven behavior.

Instead, Shari L. Jacobson (1987) concluded that theoretical distinction between permissive and mandatory presumptions has resulted in much confusion and serves no practical purpose. Because mandatory presumptions confuse the jury and jeopardize the rights of the accused without serving any purpose that cannot be accomplished through other evidentiary devices, such as affirmative defenses, they should be eliminated.

Michael H. Graham (2009) argued that a mandatory presumption may affect not only the strength of the "no reasonable doubt" burden but also the placement of that burden; it tells the trier that they must find the elemental fact upon proof of the basic fact, at least unless the defendant has come forward with some evidence to rebut the presumed connection between the two facts. Meanwhile, a mandatory presumption is not mandatory at all, i.e., the burden of production may not as a matter of law be shifted to the defendant.

Wodage (2014) expressed the opinion that endorsing persuasive presumptions against accused persons cannot stand valid in the face of the fundamental human right to, and principle of, the presumption of innocence. The risk of convicting and punishing innocent individuals requires society to prefer erring on acquitting criminal persons rather than erring on the conviction of innocent persons.

Methodology

The methodological basis of the article is a dialectical approach to the scientific understanding of social phenomena. In writing this article, general scientific and specialized legal methods of cognition were also used: analysis (applied to identify shortcomings in the legal regulation of the use of presumptions in criminal procedural proof); generalization (used to characterize the legal positions of the European Court of Human Rights and the Supreme Court of the United States regarding the conditions of using presumptions in criminal procedural proof); structural-functional method (made it possible to elucidate the significance of presumption as a means of criminal procedural proof); hermeneutic method (applied to interpret the essence of legal and factual presumptions); doctrinal or specialized legal method (used in studying scientific approaches to understanding presumption as a means of criminal procedural proof); comparative legal method (provided the opportunity to compare the legal regulation of the use of presumptions in criminal proceedings of continental and Anglo-American legal systems).

Results and discussion

In procedural law ***presumption*** is a means of proof which allows drawing a conclusion about the existence or or non-existence of a fact (a presumed one) based on another already established fact (a basic one). In order to draw a specific conclusion about the existence or nonexistence, accurateness or falsity of a fact, such presumptions necessitate the prior establishment of a basic or underlying fact.

Presumptions ensure the definitiveness of criminal procedural regulation, expedite criminal procedural activities, save resources and funds. Presumptions simplify the process of proof by relieving the need of some subjects to prove presumed facts (for example, the innocence of the defendant, the validity of a court decision that has acquired legal force), and placing this obligation on others. Besides, presumptions exempt these parties from the necessity to repeat the same legal procedural processes.

In search of truth, it is relevant to use presumptions as exceptions. If a "presumption" is something that is "more likely than not," then in a process of proving that focuses on the idea of seeking the truth, presumptions should be resorted to in rare cases. They should only be used when it is necessary to overcome a certain uncertainty that cannot be eliminated by other standard methods, and without disrupting the balance of data that have evidential significance. Presumptions are justified in situations where there is a lack of complete and reliable knowledge. However, when such knowledge exists or can be obtained through unbiased data, such reliance is at least irresponsible (Rudzkis & Panomariovas, 2016).

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Thus, being one of the methods of understanding objective reality, presumption shall be used when there is a need to act, to draw conclusions concerning certain facts, when the level of knowledge is limited.

In Polish doctrine of criminal procedure, presumption is understood as a judgment of the high credibility of a certain fact arising from another fact or facts which raise no doubts. They distinguish a presumed fact *(fakt domniemany)*, which and which arises from another, and the basis for presumption *(podstawa domniemania)* i.e., a fact that asserts the high probability of another fact (Waltoś & Hofmański, 2020).

Thus, the ground for presumption and presumed fact are linked by a cause and effect relationship.

A similar approach is also used in Anglo-American criminal procedure jurisprudence. Thus, presumption is defined as a rule which requires the establishment of a basic fact to consider the existence of a presumed fact. After proving the basic fact, which is a ground for the presumption, the presumed fact shall be considered established unless and until it is rebutted. Presumption expresses a legally recognized connection between facts (Jacobson, 1987).

Presumptions are divided into legal and factual ones based on the way they are established.

Legal presumptions *(praesumptiones iuris)* arise from legal regulations. In turn, depending on the way of their rebuttal, such presumptions are divided into rebuttable and irrebuttable.

Rebuttable *(praesumptiones iuris tantum)* or conditional presumptions consist of the presentation of evidence that, despite the proven circumstance belonging to the subject of proof, the legal consequences were different from those stipulated in the provision establishing the presumption. Striking examples of such presumptions include the presumption of innocence, the presumption of the truthfulness of a court decision that has acquired legal force.

On the other hand, irrebuttable *(praesumptiones iuris ac de iure)* or absolute presumptions cannot be challenged by evidence to the contrary. While not as common, such presumptions are established in a number of provisions of the criminal procedural law. For instance, an investigative judge, judge or the jury cannot take part in criminal proceedings if they personally, their close relatives or members of their family are interested in the outcome of the proceedings (Art. 75, Part 1, Cl. 3 of the CPC of Ukraine); in any case, testimony given by investigators, prosecutors, members of operational units, or any other person regarding statements made by individuals to investigators, prosecutors, or members of operational units during the conduct of criminal proceedings cannot be considered admissible evidence (Art. 97, Part 7 of the CPC of Ukraine); repeated failure to appear in court by a victim who has been duly summoned (particularly, when there is a confirmation of receipt of the summons or acknowledgment of its content by other means), without valid reasons or without notification of the reasons for non-attendance after the prosecutor's refusal to support public prosecution and with the victim's consent to support the prosecution, is equated to the victim's refusal to press charges and results in the closure of the criminal proceedings for the relevant charges (Art. 340, Part 6 of the CPC of Ukraine) (Law of Ukraine No. 4651-VI).

Factual presumptions *(praesumptiones homini)* judgments about facts that arise from life experience and observation of relevant patterns of life and relationships between events. They make it possible to assert the credibility of a specific fact based on its natural origin. Therefore, factual presumptions are not subject to criminal procedural regulation. On the other hand, they are considered rebuttable. An example of a factual presumption is the guilt of the accused and the absence of the need to prove it at every court hearing. However, if there are doubts about their guilt, the presumption ceases to be applied, and this circumstance must be proven (Art. 242, Part 2, Cl. 3 of the CPC of Ukraine) (Law of Ukraine No. 4651-VI). Factual presumption is used when a fact relevant to criminal proceedings cannot be directly proven with evidence, or it would be particularly difficult to obtain such evidence.

Factual presumptions do not exclude the presentation of evidence to the contrary.

Presumption serves as a tool of evidence. Presumption, especially irrebuttable, corresponds partially to relative truth that cannot be rebutted. Legal presumptions express a certain normality, a certain probability. The stronger the presumption, the higher the probability. Truth, particularly through legal presumptions, is true provided that it either embodies a certain amount of values or transmits a certain probability (Mekki, s.f). Presumptions are facts that rather establish the likelihood of true evidence. It is a situational argument (Kabore, 2017).

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The study of foreign legal regulations confirms that national legislation of states may establish legal or factual presumptions that shift the burden of proof from certain issues to the suspect or accused. The European Court of Human Rights (hereinafter – ECtHR) has repeatedly expressed its legal position regarding their compliance with Article 6 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter – ECHR).

In the following way, a man from the Republic of Zaire was arrested at the Roissy Airport while he was picking up his luggage, in which they had found a large quantity of cannabis. The applicant claimed that he was unaware of the presence of cannabis and mistakenly took the luggage, thinking it was his own. He was charged with both the criminal offense of illegal importation of drugs and the customs offense of smuggling prohibited goods. The court found him guilty and sentenced him to two years in prison, banned him from residing in France, and imposed a fine. The Paris Court of Appeals overturned the verdict regarding the criminal offense related to the illegal importation of drugs but upheld the lower court's decision regarding the customs offense of smuggling prohibited goods. The Court of Cassation rejected the appeal, stating that Article 392(1) of the Customs Code was correctly applied in the case, according to which "a person who possesses smuggled goods is considered responsible for committing an offense."

The ECtHR noted that the Convention does not prohibit presumptions of fact or law in general. However, it obliges member states to stay within certain limits in this regard in criminal law.

From the point of view of the ECtHR the Paris Court of Appeals made a clear distinction between the criminal offense of illegal drug importation and the customs offense of smuggling prohibited goods. Under the first point, the court acquitted Mr. Salabiaku, applying the presumption of innocence and thereby demonstrating meticulous respect for the presumption of innocence. On the other hand, under the second point, it upheld the verdict issued by the lower court, without contradicting itself, as the facts and actions incriminated under this point were different. Specifically, it noted that Mr. Salabiaku "went through customs with the luggage and declared to the customs officers that it was his property." It added that he could not "claim an inevitable mistake since he had been warned by an Air Zaïre official... not to take possession of a suitcase unless he was sure it was his, notably because he would have to open it at customs." Therefore, before declaring himself the owner of the suitcase and confirming his possession in the eyes of the law, he could have checked it to ensure it did not contain any prohibited goods. The court noted that "by not doing so and having in his possession luggage containing 10 kilograms of herbal and seed cannabis, he committed a customs offense in the form of smuggling prohibited goods".

As a result, the ECtHR concluded that in this case, the French courts did not apply Article 392(1) of the Customs Code in a manner which contradicts the presumption of innocence (Case of Salabiaku v. France, 1988).

In turn, in the case of *Phillips v. The United Kingdom*, the ECtHR noted that Article 2 of the 1994 Act provides that the Crown Court must issue a confiscation order where there is a defendant who the court is to sentence for one or two drug trafficking offenses, and with respect to whom the court has found that he received at some point a payment or other reward connected with drug trafficking. In determining whether the defendant obtained a benefit from drug trafficking and to what extent, Article 4(2) and (3) of the 1994 Act requires courts to presume that any property apparently belonging to the defendant at some time since his conviction, or property acquired by him within six years before the commencement of criminal proceedings as payment or reward connected with drug trafficking, as well as to presume that any expenses incurred by him during this same period were paid for from proceeds of drug trafficking. This statutory presumption may be rebutted by the defendant regarding any property or expenses if its falsity is proved or if its application could risk an unjust decision (Article 4(4)).

Returning to the relevant second and third criteria – the nature of the proceedings in the case, as well as the type and severity of the punishment facing the applicant – the ECtHR noted that the presumption required by the 1994 Act that all property owned by the applicant during the previous six years is proceeds from drug trafficking imposes on the national court a requirement to consider its involvement in other drug-related unlawful activities prior to the commission of the offense for which he was convicted. Contrary to the usual burden on the prosecution to prove the elements of the allegations made against the accused, the burden of proof was placed on the applicant: through a weighing of probabilities, he had to prove that he acquired the property in question through means other than drug trafficking.

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Continuing further, the ECtHR concluded that the purpose of this procedure was not to convict or acquit the applicant of any other drug-related offense. Although the Crown Court assumed that he had profited from drug trafficking in the past, for instance, this was not reflected in his record, which included only the conviction for the offense committed in November 1995. Under such circumstances, it cannot be asserted that the applicant was "charged with the commission of a crime". Besides, the purpose of the procedure under the 1994 Act was to provide the national court with the opportunity to properly determine the amount for the confiscation order. The ECtHR considered this procedure analogous to the court determining the amount of a fine or the duration of a prison sentence to be imposed on an already convicted criminal. The ECtHR emphasized that although, despite the above conclusion, the issuance of a confiscation order did not lead to the bringing of any new "charge" within the meaning of Article 6(2) of the ECHR, this provision should still be applied to protect the applicant from assumptions made during the consideration of the confiscation of property issue. Although it is evident that Article 6(2) of the ECHR regulates criminal proceedings in general, not exclusively the consideration of the substance of the charge, the right to the presumption of innocence under Article 6(2) of the ECHR arises only in connection with a specific "charge" of committing a crime. In the event that the accused is found guilty of such a crime, the provisions of Article 6(2) of the ECHR cannot be applied to assertions regarding the character and behavior of the accused as part of the punishment determination procedure if such allegations do not have the character and degree to equal the bringing of a new "charge" in the autonomous sense of the ECHR. In conclusion, the ECtHR ruled that the provisions of Article 6(2) of the ECHR cannot be applied to proceedings in a case concerning the confiscation of property against the applicant (Case of Phillips v. United Kingdom, 2001).

The use of presumptions in the criminal process of the United States is characterized by its specificity. This issue is regulated by decisions of the Supreme Court of the USA, including *New York v. Allen* (1979), *Sandstrom v. Montana* (1979) та *Frances v. Franklin* (1985).

In American criminal procedural doctrine, the following provisions regarding presumptions correspond to the legal positions of the Supreme Court of the United States.

Firstly, an irrebuttable presumption directed against the defendant is unconstitutional because it relieves the state from the obligation to prove every element of the offense beyond a reasonable doubt. Secondly, the burden of proving an element of the crime through presumption cannot be placed on the defendant. Thirdly, since a presumption arises from a legal regulation requiring the existence of the presumed fact to be considered established in the absence of evidence to the contrary, presumptions operating against the defendant can never be applied in criminal cases. A rebuttable presumption cannot be used by the trial court to render a verdict against the defendant based on an element of the crime proven through it. Fourthly, the jury may receive instructions regarding the inference drawn from the underlying fact to the presumed fact provided there is a sufficient rational connection between them. Namely, a) if the presumed fact is more likely true than not, the jury may receive an instruction that if they find the underlying fact, they are entitled, but not obligated, to infer the presumed fact *(instructed factual inference)*; b) if the presumed fact is an element of the crime or is contested, and there is a sufficient rational connection, the jury may receive an instruction that if they find the underlying fact beyond a reasonable doubt, they may, but are not required to, conclude the derived fact. A sufficient rational connection exists if the court decides that the evidence of the underlying fact establishes that the presumed fact is more likely true than false *(instructed elemental inference)*; c) if the fact to be inferred is an element of the crime or is contested by the defense but there is a sufficient rational connection, the jury may receive an instruction that if they find the underlying fact beyond a reasonable doubt, they may, however, are not required to, consider the underlying fact as sufficient evidence of the presumed fact. The underlying fact is an obvious, foreseeable proof. A sufficient rational connection exists if the court determines that the jury could only infer from the underlying fact that the presumed fact was established beyond a reasonable doubt *prima facie (instructed prima facie inference)* (Graham, 2009; Mueller, Kirkpatrick & Richter, 2018).

The aforementioned provisions have been consolidated in Rule 303 of the Federal Rules of Evidence in the United States, which Congress rejected on the grounds that the issue of presumptions in criminal cases was under its consideration in the form of bills to revise the Federal Criminal Code. Nevertheless, the project of this rule has not lost its relevance. According to it, the judge is not authorized to instruct the jury regarding the establishment of a presumed

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fact that testifies against the defendant. If the presumed circumstance establishes guilt or is an element of the crime, or if it is contested by the defense, the judge may submit the question of guilt or the existence of the presumed circumstance to the jury for consideration, but only if the jury, who have a sufficient level of competence, can, based on the evidence as a whole, including evidence of underlying facts, find guilt or the presumed circumstance to be beyond reasonable doubt. If the presumed fact has lesser impact, its existence may be submitted to the jury for consideration, provided that the underlying facts are supported by substantial evidence or established in another way, if only the evidence as a whole does not refute the existence of the presumed fact. Whenever the jury is asked to consider the existence of a presumed fact against the defendant, the judge must instruct them that they may consider the underlying facts as sufficient evidence of the presumed fact, but they are not required to do so. Besides, if the presumed fact establishes guilt, is an element of the crime, or is contested by the defense, the judge must instruct the jury that its existence must be proven based on all the evidence beyond a reasonable doubt (Graham, 2009).

In the criminal process of the United States, a presumption typically operates as a rule allowing the inference of the existence of one fact based on evidence of the existence of another fact. It is construed specifically as an inference because it is permissive rather than obligatory, as it does not place the burden of proof on the prosecution, and the jury are not required to adhere to it. The purpose of such permissive presumptions is to guide the jury to a natural inference that they might not otherwise reach. On the other hand, mandatory presumptions require the person establishing the facts to draw conclusions in favor of the presumed fact. Mandatory presumptions pose problems when used in criminal cases because they have the effect of reducing the burden of proof on the prosecution. The use of mandatory presumptions, according to the position of the United States Supreme Court, may violate the defendant's rights to due process because a conviction is possible in the absence of evidence beyond a reasonable doubt of every element constituting the charged crime (Jacobson, 1987).

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In turn, the rebuttal of presumed facts occurs in one of three forms: provisional, evidential and persuasive presumptions (Wodage, 2014).

Provisional presumptions. The necessity to draw a conclusion from a proven underlying fact is determined in each specific case. The jury may exercise their discretionary power to draw or not to draw a conclusion about the existence or non-existence of a certain presumed fact. However, when such a conclusion has been drawn, the party, against which a certain presumed fact is exercised bears the burden of proving it. If such a party wants to challenge this provisional conclusion, they have to provide evidence to make a reasonable conclusion about the existence of the presumed fact (Wodage, 2014).

Evidential presumptions. The jury is required to draw a conclusion based on the proven underlying fact. After establishing the underlying fact the jury must draw a conclusion about the existence of a presumed fact unless the opposite is proven. The conclusion remains unchanged in the absence of contrary evidence. This means that the party against whom such a conclusion has been drawn, must provide sufficient evidence to cast doubt on the credibility of the presumed fact since, otherwise, the jury must uphold the conclusion made. The presumption ceases to operate only if such a party presents some rebutting evidence that casts doubt on the presumed fact (Wodage, 2014).

Persuasive presumption is a rule which shifts the burden of proof onto a party after certain underlying facts have been proven or recognized. The underlying facts give rise to a presumed fact, and the party must prove the opposite. The jury

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is required to draw a conclusion on the grounds of a proven underlying fact until such a conclusion is rebutted by the challenging party. In such cases the party, against whom such a conclusion has been drawn, bears the burden of proof only regarding the presumed fact. If such a party wants to avoid losing in this presumed fact or in the entire case, depending on the circumstances, they have to prove the absence of the presumed fact. It is not enough only to cast a doubt on the credibility of the presumed fact. The party has to persuade based on the balance of probabilities that their position regarding such a fact is credible. For such a party, it is not sufficient to merely cast doubt on the truth of the presumed fact. They must convince based on a balance of probabilities that their position regarding such a fact is true (Wodage, 2014).

Conclusions

A presumption as a means of proof is impossible without the presence of two facts – a basic (underlying) one and a presumed one, which are linked by a cause-and-effect relationship. Presumptions serve as a tool for procedural economy, as they relieve the parties involved in criminal proceedings from the necessity to prove certain (presumed) facts. On the other hand, legal presumptions complicate the search for truth in criminal proceedings.

Criminal procedure science of the European states distinguishes between legal and factual presumptions. In turn, the first ones can be rebutted and unrebutted. In national legislations of the states with continental legal systems the presumptions may be established which transfer the burden of proof on certain issues to the suspect or accused. According to the European Court of Human Rights (ECtHR), the European Convention on Human Rights does not prohibit the use of legal or factual presumptions, but within certain limits.

According to the doctrine of criminal procedure and judicial practice of the USA, a presumption is defined as a conclusion which does not place the burden of proof on the prosecution and the jury are not obliged to adhere to it. Particularly, the court is not entitled to instruct the jury on establishing a presumed fact that goes against the defendant. Two types of presumptions are distinguished – *permissive presumptions* and *mandatory presumptions*. The use of the latter in accordance with the legal positions of the Supreme Court of the USA may violate the rights of the defendant to due process.

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