Presumption of Innocence: procedural rights in criminal proceedings

Social Fieldwork Research (FRANET)

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PART A. EXECUTIVE SUMMARY

The right to be presumed innocent in general:

The presumption of innocence is protected by the Constitution and the criminal procedure law, the study however located implementation gaps. Infringements of the rights encompassed in this principle have often resulted in acquittals, primarily because of violations during police interrogation and collection of evidence. Public references to accused persons' guilt before the verdict is delivered and media attributions to guilt are also frequent, however they do not invariably lead to acquittals, because the courts do not readily admit being susceptible to external influences.

The presumption of innocence does not apply equally to all; accused persons who are poor, marginalised and excluded do not enjoy the same level of protection, as the wealthy and privileged, who can avail themselves to specialised lawyers and can pursue costly libel actions. In addition to social class, the study identified the following factors as likely to impact protection of the presumption of innocence: Gender, ethnic background (e.g. Turkish-Cypriots and Roma communities), nationality and immigrant status (e.g. black African, Arabic, Asian and eastern Europeans); sexual orientation and identity and previous convictions given the small size of Cypriot society. Additional factors which can affect the implementation of the rights derived from the presumption of innocence include:

- The extent to which there is public and political pressure to secure a conviction.
- The role of the police officer in charge of the investigation and whether there is a human rights culture prevalent at the police station where investigations are carried out.
- The judges' attitudes and their view on the type of offences under trial.

Public references to guilt:

Protection against public references to guilt is inadequate, as there is no particular authority in the criminal justice system to monitor compliance with this prohibition. Protecting an accused person from public statements by public figures, such as the Government Ministers, the police press officer, mayors and other politicians appears to be particularly cumbersome even after the transposition of the Directive, as these statements are quickly reproduced in the media and carry credibility.

The presentation of suspects and accused persons:

There are rules prohibiting the presentation of the accused persons as guilty, e.g. handcuffs are taken off before the accused person enters the court and the accused may cover their faces. The media are also not allowed to film or take pictures of accused persons in the court or the courtyard; this prohibition however offers little deterrent to media outlets which regularly present accused persons in police van with handcuffs, as the sanctions of media watchdogs are not dissuasive enough, whilst media self-regulation and journalistic ethics have not proven effective in this respect. Connections between police and the media as well as between lawyers and the media have also contributed to leakages about criminal trials. In the absence of effective monitoring and dissuasive sanctions, media misconduct in this field is expanding, particularly with the rise of social and electronic media.

Burden of proof:

The burden of proof is on the prosecution who must prove its case beyond reasonable doubt. The burden shifts on the defence in exceptional and narrowly defined circumstances; in those cases, the standard of proof is the balance of probabilities. All interviewees were duly aware of the legal principles governing the burden of proof. The recent Covid-19 restriction measures generated a new scope for exceptions that implicitly reverse the burden of proof towards the accused.

Police investigation procedures are not adequately monitored and sometimes lead to abuses of rights in order to obtain confessions. This is especially the case with vulnerable defendants who undergo police interrogation without having a lawyer present. There are inconsistencies in the way courts treat confessions; sometimes confessions alone suffice for the court to convict the accused whilst in other cases a confession in the absence of other evidence is not sufficient. Better safeguards for confessions are called for, requiring corroborative evidence to secure conviction as well as video-recording of interrogation.

The right to remain silent and not to incriminate oneself:

The study found that divergent views between the police, prosecutors and defence lawyers about how the right to silence and the rules against self-incrimination must be implemented and the extent to which these safeguards are duly observed in Cyprus. The courts in Cyprus provide some protection against abuses and infringements of the of the right to remain silent and not to incriminate oneself by excluding evidence obtained unlawfully. This is however a matter for the court to decide. The procedural rules that govern the police is the framework provided by the outdated Judges Rules, established by the British colonialists in Britain of the early 20th century. The infringement of these rules does not automatically render the evidence obtained inadmissible. In several cases these rules are infringed upon. The study found that, whilst the Directive 2016/343 has been transposed, the standards required are not met. The current system seems to be inadequately protecting these rights. Better safeguards are called for, including measures to enhance the provision of information, access to advice and better access to legal aid.

The right to be present at the trial and to have a new trial:

Cypriot law provides that all persons charged with an offence are entitled to defend themselves in person or through a lawyer of their own choice and to conduct their defence in court. In practice, the right to a proper defence is not equally accessible to all. The study has located gaps in the defendants' effective participation in the legal proceedings, particularly for vulnerable defendants, such as persons with disabilities, young persons, poor and uneducated persons, women and migrants.

PART B. INTRODUCTION

In total, **12 eligible interviews** were carried out in the timeframe of 18 February 2020 to 19 May 2020. There were additional interviews with a member of the Media Complaints Commission and a media expert on 20 May 2020.

The first three interviews were conducted in person in February and early March 2020. After that and because of the Covid-19 restrictions, the remaining interviews were conducted via telephone and electronic means of communication. The interviews were recorded with the interviewees' permission. Four lawyers, four public prosecutors and four police officers were interviewed. Additional interviews were conducted to clarify matters: with the member of the Cyprus Media Complaints Commission (20 May 2020) and a media expert (20 May 2020). Further consultations were conducted with experts from Universities and research organisations, lawyers, police officers, government officials and NGOs.

B.1 PREPARATION OF FIELDWORK

All interviews were conducted by the senior expert who authored the report. The interviews were transcribed and translated into English language to complete the interview reporting templates. The anonymity of the interviewees, the privacy and data collection and retention requirements were strictly complied with. All interviewees were served with the Privacy notice and signed the necessary consent forms, as provided by FRA rules in line with Directive 2018/1725.

All relevant legal and policy documents were identified and studied.

B.2 IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS

The author obtained written permission from the competent authorities to conduct interviews with prosecutors and police officers, namely the Attorney General and the Police Chief respectively. The lawyers to be interviewed were identified following team consultation, using criminal justice experience as the main selection criterion. Despite the fact that four criminal court judges were contacted for the purpose of being interviewed, following permission from the Supreme Court, there was no response. In lieu, we interviewed public prosecutors from the Attorney General's office, specialising in criminal justice. The head of the Media Complaints Commission and the media expert are both well-known academics; they were contacted by the lead expert and agreed to be interviewed.

The criteria used to select interviewees were the following:

- Experience and expertise in criminal proceedings.
- National geographical coverage.
- Gender and age balance, where possible.

For the prosecutors and defence lawyers, criminal justice experience, gender and age balance was achieved. Most were from Nicosia but with experience from criminal courts in other cities too. In the case of the police, the persons to be interviewed were designated by the Chief of Police according to standard police practice; gender balance was not achieved in this category as the persons designated by the Chief of Police were all men.

B.3 SAMPLE AND DESCRIPTION OF FIELDWORK

Police officers:

Requested: 4, completed: 4

Judges/prosecutors:
Requested: 8, completed: 4

Defence lawyers:
Requested: 7, completed: 4

Table 2: Sample professionals

Group	Operational expertise on criminal investigations and trials	Experience with media	Gender
Police officer	Yes	Yes	M
Police officer	Yes	Yes	M
Police officer	Yes	Yes	M
Police officer	Yes	No	M
Lawyer	Yes	Yes	M
Lawyer	Yes	Yes	M
Lawyer	Yes	Yes	M
Lawyer	Yes	Yes	F
Prosecutor	Yes	Yes	F
Prosecutor	Yes	No	M
Prosecutor	Yes	Yes	F
Prosecutor	Yes	No	F

The interviews went very smoothly. The police officers were all forthcoming, polite and candid in their responses; the atmosphere was positive, there was a good level of trust and the interviews lasted for about one hour. The prosecutors and the defence lawyers were more open and forthcoming in expressing their personal views; the atmosphere was also positive, with a good level of trust, lasting from one and half to just over two hours.

B.4 DATA ANALYSIS

The following documentary data were located and analysed:

- Relevant laws, case-law and policies.
- Legal textbooks, articles, and case notes were located.
- Media reports on criminal court cases.

At the same time, two pilot interviews were conducted in February 2020, with a prosecutor and with a defence lawyer. These were transcribed, translated and the interview templates were completed and sent to FRA. FRA's feedback on these two interviews was considered for next interviews.

Overall, interviews were conducted with four prosecutors, four lawyers and four police officers, the member of the Media Complaints Commission and a media expert. The data analysis was used to compare/contrast the answers offered by the interviewees. A comparative analysis was used at three levels:

- There is a comparison within each group (i.e. the answers amongst the Police officers, amongst the prosecution lawyers and amongst the defence lawyers) to locate any trends, consistencies, inconsistencies and contradictions as well the patterns of opinions within each group.
- Then we compared between the groups to locate patterns of agreement and disagreement.
- The third level of comparison was to read the interview responses in the light of the desktop research into laws, case-law, policies and media reporting, contrasted to the interview data obtained.

Overcoming the problems encountered

The problems encountered with the lockdown and having access to public authorities due to the measures taken to contain the spread of Covid19 resulted in some delay, but interviews were all eventually completed and analysed as required. Initial difficulties with regard to access to state services, particularly the Police, were eventually resolved. No response has been received from judges whom the research team had requested and hoped to interview. Given that the role of judges in the Cypriot legal system is not investigative, this gap was filled with interviews with public prosecutors from the Attorney General's office who offered valuable insights into courtroom practices.

B.5 LEGAL FRAMEWORK

The Constitution provides that every person charged with an offence shall be presumed innocent until proven guilty according to the law.[1] The law on criminal procedure provides that all persons suspected of or charged with the commission of a crime are considered innocent until proven guilty in accordance with the law. This applies to natural persons during the criminal procedure, from the moment they become and are classified as suspects or they are charged with the commission of a crime, until the completion of the judicial procedure and the delivery of the verdict.[2]

Jurisprudence[3] established that the presumption of innocence is the cornerstone of the Cypriot legal system[4] and is the means for safeguarding the right to a fair trial, as provided in the national constitution[5] and in the ECHR.[6]

[1] Cyprus, Constitution of the Republic of Cyprus (*Σύνταγμα της Κυπριακής Δημοκρατίας*) article 12(5).
[2] Cyprus, Law on Criminal Procedure, Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος, Κεφ. 155*), article 3A.
[3] Clerides, C. (2018), *Κυπριακό Δίκαιο της Απόδειξης*, Nomiki Vivliothiki, Athens; Cacoyiannis (1983) *Η Απόδειξη, Το Δίκαιο της απόδειξης όπως εφαρμόζεται στη Κύπρο*, Libra Chambers, Limassol; Eliades, T. and Santis, N. (2014) *Το Δίκαιο της Απόδειξης: Δικονομικές και Ουσιαστικές Πτυχές*, HIPPASUS; Eliades, T. (1994) *Το Δίκαιο της Απόδειξης, Μια πρακτική προσέγγιση*, Zavallis, Nicosia.
[4] Cyprus, Supreme Court (Ανώτατο Δικαστήριο), *Papadopoulos v Republic* (1980) 2 CLR 10, p. 47. AC 462, p. 481.
[5] Cyprus, Constitution of the Republic of Cyprus (*Σύνταγμα της Κυπριακής Δημοκρατίας*) article 12(5).
[6] Council of Europe, European Convention on Human Rights, article 6(4). Cyprus. Law ratifying the European convention of Human rights and Fundamental Freedoms plus the Protocol) (*Νόμος επικυρών την Ευρωπαϊκή Σύμβαση για τα Δικαιώματα του Ανθρώπου και Θεμελιωδών Ελευθεριών μετά προσθέτου Πρωτοκόλλου*), 6 November 1962. Tornaritis, G. (1983) *The Operation of the European convention for the Protection of Human rights in the Republic of Cyprus*, Republic of Cyprus Publications, Nicosia.

Cypriot evidence law[7] provides that the applicable law in Cyprus is the English Evidence law of 1914[8] and therefore the Cypriot evidence law must be read in combination with that.[9] The police investigative process is governed by the 'Judges rules', originally issued in England in 1912, completed in 1918 and amended later, which were incorporated into the Cypriot criminal.[10] The courts do not recognise the Judges Rules as 'rules of law' but as 'rules of practice'. The significance of the distinction between these two concepts is that evidence extracted by the police in violation of the Judges' Rules is not automatically excluded from court examination, however the court may refuse to consider evidence extracted in a manner that infringed the voluntariness of the testimony or the rules against self-incrimination.[11] A derogation or deviation from the Judges Rules vests the trial court judge with discretion to decide whether the non-compliance in question affects the voluntariness of the testimony.[12] The fact that the Judges Rules are not binding in a manner that a contravention would render the evidence automatically inadmissible makes the 'soft' devices that undermines them as legally binding rule that operate as an effective legally enforceable mechanism and frame to protect the rights of defendants.

The courts' mandate to protect the presumption of innocence extends throughout the criminal investigation, commencing from the pre-trial investigation until the verdict is issued. The presumption of innocence is a protected constitutional right and an important element of the right to personal and private life.[13] Until 2011, the court's mandate to safeguard the presumption of innocence spanned even earlier, from the pre-interrogation stage until the conclusion of the trial.[14] However, in 2011 amending legislation removed the references to the pre-interrogation stage.

The Cypriot legal system follows the tradition of the English legal system which leans more towards restoring the tarnished reputation of individuals, particularly those with some societal standing, if there is a violation of the civil wrong on defamation.[15] Simultaneously, the courts are called upon to strike a balance between protecting reputations and safeguarding media freedom and freedom of expression in general.[16] In the absence of legal aid, accessing the courts is easier for wealthy persons who can afford specialised defamation lawyers. The courts themselves are set to award higher compensation to persons of a certain societal standing, whose reputation and dignity is valued more

[7] Cyprus, Law on Evidence, Cap. 9 (*Ο περί Αποδείξεως Νόμος, Κεφ. 9*), article 3.
[8] As applied in England on 5 November 1914.
[9] Cyprus, Law on Courts, 14/60 (*Ο περί Δικαστηρίων Νόμος, 14/60*), article 29.
[10] Cyprus, Law on Criminal Procedure, Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος, Κεφ. 155*), article 8.
[11] Cyprus, Assize Court of Paphos, *Rex v. Hadjiyanni Hadjisava Synchoremeno et al*, 22 September 1908 (V8) 1 CLR 80.
[12] Cyprus, Supreme Court, Appeal Jurisdiction, (*Ανώτατο Δικαστήριο, αναθεωρητική δικαιοδοσία*), *Σωτήρης Χριστοδούλου Ονήσιλλου ν. Δημοκρατίας*, Ποινική Έφεση Αρ. 5239, 2 AAD 556, 26 November 1991. Also, Clerides, C. (2018), *Κυπριακό Δίκαιο της Απόδειξης*, Nomiki Vivliothiki, Athens, 398-399.
[13] European Convention of Human Rights (ECHR), Art. 8 and Cyprus, Constitution of the Republic of Cyprus (*Σύνταγμα της Κυπριακής Δημοκρατίας*), Art. 15.
[14] Cyprus, Law on Criminal Procedure Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος Κεφ. 155*), Art. 175 as amended by Law 165(I)/2011.
[15] Cyprus, Law on Civil wrongs Cap. 148 (*Ο περί Αστικών Αδικημάτων Νόμος ΚΕΦ.148*), Art. 17.
[16] [16] Polyviou P. (2013) *Το σύγχρονο δίκαιο της δυσφήμισης*, Nicosia, Chrysafinis and Polyviou Publishers, pp. 442-445; Markou, C. (2016) 'The "freedom of journalism" in Cypriot legal order: balancing between the freedom of expression and the right of reputation ', Aktypis, S.H., Jougleux, Ph., Synodinou, T-E. (eds.) *Freedom of expression of journalists and caricaturists, Protection and restrictions in Greek and Cypriot law*, Sakkoulas, pp. 121-165. Demetriou, C. (2017) *Protecting media professionals and on incitement to hatred*, Report for Information request Fundamental Rights Agency, FRANET SR 28.

in the measurement of damages than other persons.[17] The hefty damages often awarded in libel cases may in theory be forcing journalists and media outlets to demonstrate the necessary professionalism in order to comply with the law, but access to the courts is in practice reserved for those defamed persons who can afford the high legal costs involved and who have the necessary technical expertise at their disposal to fight the judicial case and win.[18] Libel actions rest on the initiative of the person defamed and must be pursued in a civil court; they cannot be part of the criminal procedure nor can in practice be accessed by persons in the course of a criminal justice procedure, especially if the accused does not have the necessary economic means to fight such a legal battle.

There are media regulations safeguarding the fair presentation of events and the rights of the accused in criminal investigations which are, however, of limited impact. Subsidiary legislation[19] and guidelines of codes of conduct for journalists explicitly refer to the duty to protect the presumption of innocence.[20] The code of journalistic ethics is appended to the main legislation on TV broadcasting, which covers also the electronic media outlets. These apply for TV and radio, print and electronic publications.

The Cyprus Radio Television Authority[21] has a supervisory role over all radio and television media outlets, both public and private. Its powers include the investigation of complaints submitted by members of the public and the ex officio investigation of potential infringements of the Code of Journalistic Ethics; if an infringement is established, the Authority can issue administrative fines or warnings.[22] The Supreme Court has ruled that the Cyprus Radio Television Authority' s administrative fines are effective means to control abuse, to ensure standards and respect the rights to privacy of the accused, including vulnerable groups.[23] In practice, however, the Authority's impact in safeguarding the presumption of innocence is minimal. Although the Authority is theoretically an independent body, its board is appointed by the executive; its chair and vice-chair are appointed by the Council of Ministers following a recommendation of the President of the Republic and its five members are appointed by the Council of Ministers. The appointment lasts for six years. The only guidelines in the law as regards the qualifications for appointment is that the board chair and members must originate from the sector of arts, science or technology or have special media expertise; there is no requirement for persons with criminal justice expertise. The broad categories under which complaints can be examined do not specifically include the presumption of innocence; the only relevant category is a vague reference to 'human rights', which was never utilized in order to

[17] Demetriou, C. (2017), *Protecting media professionals and on incitement to hatred*, Report for Information request Fundamental Rights Agency, FRANET SR 28.

[18] Kouros K. (2008) *Το δίκαιο των μέσων μαζικής ενημέρωσης στη Δημοκρατίας της Κύπρου,* Nicosia 2008, Vivliekdotiki Publications, pp. 313-315. Markou, C. (2016) 'The "freedom of journalism" in Cypriot legal order: balancing between the freedom of expression and the right of reputation ', Aktypis, S.H., Jougleux, Ph., Synodinou, T-E. (eds.) *Freedom of expression of journalists and caricaturists, Protection and restrictions in Greek and Cypriot law*, Sakkoulas, pp. 121-165.

[19] Cyprus, Regulations under article 51 of the Law on radio and television stations, (*Οι περί Ραδιοφωνικών και τηλεοπτικών σταθμών νόμοι, Κανονισμοί δυνάμει του άρθρου 51*), Κ.Δ.Π. 10/2000, Appendix III, Cyprus Gazette no. 3383, 28 January 2000.

[20] Cyprus, Code of Practice for Electronic Media (*Κώδικας Δημοσιογραφικής Δεοντολογίας για τα ηλεκτρονικά ΜΜΕ*), Appendix VIII, Regulation 27(4) and 49, Art. 10.

[21] For more information on its role and mission, see the Authority's webpage.

[22] Cyprus, Laws on radio and television organisations of 1998 until 2012 (*Οι περί Ραδιοφωνικών και Τηλεοπτικών Οργανισμών Νόμοι του 1998 μέχρι 2012*), Art. 41A(1).

[23] Cyprus, Supreme Court, Appeal Jurisdiction, (*Ανώτατο Δικαστήριο, αναθεωρητική δικαιοδοσία*), *Sigma Radio T.V. Ltd v. Αρχής Ραδιοτηλεόρασης Κύπρου*, (2004) 3 Α.Α.Δ. 134, 24 February 2004; Cyprus, Supreme Court, Appeal Jurisdiction, (*Ανώτατο Δικαστήριο, αναθεωρητική δικαιοδοσία*), *Αρχή Ραδιοτηλεόρασης Κύπρου v Αντέννα Τ.V. Λτδ* (2005) 3 Α.Α.Δ. 583, Αναθεωρητική Έφεση Αρ. 3520, 16 December 2005.

investigate an infringement of the right to be presumed innocent. In addition to its rather general and 'quality control' oriented mandate, the structural arrangement of this body is such that it cannot have a significant impact in safeguarding the presumption of innocence: Its decisions cannot impact the outcome of the judicial verdict, nor can it award compensation to the accused person wronged by a media broadcast.

The presumption of innocence is also protected in the context of the right to privacy. There have been several defamation cases against media groups, mostly against newspapers. There has not been any case yet against a TV channel pertaining to violations of the right to the presumption of innocence using the law on broadcasting. [24]

The leading English case often cited in Cypriot judgements established that the prosecution must prove the guilt of the accused.[25] The general principle is that the right to silence forms the basis of the presumption of innocence and that it is for the prosecution to prove its case beyond reasonable doubt.[26] Exceptionally the burden of proof is transferred to the accused, in which case the level becomes the balance of probabilities. The exceptions are listed below:

- When the defence of insanity is invoked by the accused, the burden shifts to the accused. This derives from the British caselaw principles.[27] However, this has been codified in the Cypriot Penal code, as persons are presumed to be sane,[28] unless they rebut the presumption.[29] When accused persons claim the defence of diminished responsibility due to reasons pertaining to their state of mind, it is still relevant.[30]
- Situations where the accused has special knowledge, for instance where persons are accused of being in possession of a firearm and argue that they have special permit to carry firearms, in which case they must present this permit.[31]
- The Penal Code prohibits "carrying a gun with the aim to terrorise". For this offence, to be acquitted, the accused is obliged to prove that he or she had legal use of the gun.[32]
- If there is reasonable suspicion of being in possession of stolen goods,[33] there is a presumption of "guilty knowledge."[34] To be acquitted, the accused must provide an explanation that discharges such presumption, by raising to the court reasonable doubt.[35]

[24] Cyprus, Law on Cyprus Broadcasting Cooperation (*Ο περί Ραδιοφωνικού Ιδρύματος Κύπρου Νόμος ΚΕΦ. 300Α*), Articles 17A, 17B, 17C, 17D, 19 (3) and (5), 19A, 19B, 19C and 19D.
[25] United Kingdom, (Appeal Court) *Woolmington v DPP* [1935] AC 462, p. 481.
[26] Cyprus, Supreme Court (Ανώτατο Δικαστήριο), *Papadopoulos v Republic* (1980) 2 CLR 10, p. 47. AC 462, p. 481; Cyprus, Supreme Court (Ανώτατο Δικαστήριο), *Anastasi v Police* (1975) 2 CLR 143; Cyprus, Supreme Court (Ανώτατο Δικαστήριο), *Χρυστοφορου ν Αστυνομία* (1990) 2 ΑΑΔ 250.
[27] United Kingdom, (House of Lords) *M'Naghten's Case* (1843) 10 Cl & F 2000, HL.
[28] Cyprus, Law on Penal code, Cap. 154 (*Ο περί Ποινικού Κώδικα Νόμος Κεφ. 154*), Art. 11.
[29] Cyprus, Law on Penal code, Cap. 154 (*Ο περί Ποινικού Κώδικα Νόμος Κεφ. 154*), Art. 12.
[30] Cyprus, *Παναγή Καυκαρή Αρ. 3*, (2004) 1 Α.Α.Δ. 1425, 20 July 2004.
[31] Cyprus, Law on Fire Guns 38/74 (*Ο περί Πυροβόλων Όπλων*).
[32] Cyprus, Law on Penal code, Cap. 154 (*Ο περί Ποινικού Κώδικα Νόμος Κεφ. 154*), Art. 80
[33] Cyprus, Law on Penal code, Cap. 154 (*Ο περί Ποινικού Κώδικα Νόμος Κεφ. 154*), Art. 80
[34] Cacoyiannis (1983) *Η Απόδειξη, Το Δίκαιο της απόδειξης όπως εφαρμόζεται στη Κύπρο*, Libra Chambers, Limassol, 4-25.
[35] Cyprus, *Kyprianou v Police*, 1976 2 CLR 75, 924 CRI CC. Cacoyiannis (1983) *Η Απόδειξη, Το Δίκαιο της απόδειξης όπως εφαρμόζεται στη Κύπρο*, Libra Chambers, Limassol, p. 58.

- There are further instances where the burden of proof shifts to the accused: Offences pertaining to gambling;[36] offences pertaining to violence in sporting grounds; [37] the offence of conducting fundraising without permit.[38]

For strict liability offences, such as offences of order like traffic offences, conviction does not depend on the state of mind of the alleged offender. Cypriot courts tend to follow the approach of the English courts, which are cautious in accepting the logic of strict liability, i.e. objective liability without any consideration of the state of mind of the accused.[39]

A major issue remains how to properly monitor and implement the basic provisions of the presumption of innocent, which require that the burden of proof properly rests with the prosecution. According to legal practitioners, the key is to tighten up the regulatory framework in order to ensure that the police properly comply with the principles protected under the presumption of innocence frame.

- **Legal remedies in case the right to remain silent and not to incriminate oneself is violated**

The following remedies are available:

  - During criminal proceedings, the Supreme Court is empowered to impose the punishment of contempt.[40] If any publication amounts to disrespect, obstruction or disturbance, including the possibility that the publication may prejudice a fair trial, it is a criminal offence which carries the penalty of imprisonment for up to six months.[41] This has never been used against the media.[42] If a publication against a defendant is deemed to be obscene, then the law on obscene publications may be invoked;[43] this was never used against the media either.[44] The test to be met in order for such an offence to be established is rather high. In a case where the charges were brought against the owner and editor of a porn-like quasi political publication which routinely depicted nude women in subordinated sexual positions to men, the district court ruled that the relevant publications were not obscene. The judge reasoned that the intention of the relevant law is not the criminalization of libel, nor the prohibition of public speech and opinion but "to protect morals from extortion and corruption." This, according to judge, must be weighed in practice and graded. The test is not whether a view is 'extreme' or expressed in a caustic

[36] Cyprus, Law on Betting houses, Gambling houses and prevention of Gambling (*Ο περί Οίκων Στοιχημάτων, Οίκων Κυβείας και Παρεμπόδισης της Κυβείας Νόμος, Κεφ. 151*), article 12.
[37] Cyprus, Law on the Prevention and Suppression of Violence in Sports Venues, 48(I)/2008 (*Ο περί Πρόληψης και Καταστολής Βίας στους Αθλητικούς Χώρους Νόμος του 2008*), Art. 54A.
[38]Cyprus, Law on conducting fundraising, 68(I)/2014 (Ο *περί Διενέργειας Εράνων Νόμος του 2014*), Art. 8.
[39] Papacharalambous, C. (2014) *Κυπριακό Ποινικό δίκαιο, Διάγραμμα Γενικού Μέρους*, Nomiki Vivliothiki, Athens, pp. 138-140.
[40] Cyprus, Constitution of the Republic of Cyprus (*Σύνταγμα της Κυπριακής Δημοκρατίας*) Art. 162.
[41] Cyprus, Law on Courts 14/60, (*Ο περί Δικαστηρίων Νόμος του 1960*), Art. 44.
[42] Markou, C. (2016) 'The "freedom of journalism" in Cypriot legal order: balancing between the freedom of expression and the right of reputation ', Aktypis, S.H., Jougleux, Ph., Synodinou, T-E. (eds.) *Freedom of expression of journalists and caricaturists, Protection and restrictions in Greek and Cypriot law*, Sakkoulas, pp. 121-165.
[43] Cyprus, Law on Obscene Publications of 1963 (*Ο περί Δημοσιεύσεως Αισχρών Θεμάτων Νόμος του 1963*), N.35/1963.
[44] Papantoniou, M. (2016) 'The Criminal aspects of of freedom of expression under Cypriot criminal law', Aktypis, S.H., Jougleux, Ph., Synodinou, T-E. (eds.) *Freedom of expression of journalists and caricaturists, Protection and restrictions in Greek and Cypriot law*, Sakkoulas, pp. 203-224.

style, but whether the publication corrupts or devalues the political life of the place in the eyes of its readers.[45] The Cypriot Union of Journalists is opposed to the use of laws that restrict free speech, and it is particularly opposed to penal sanctions.[46]

- Any act that may have the effect of influencing judicial proceedings or obstruct police investigations is a criminal offence.[47] This provision was used against a media organisation for a news item relating to a criminal court case in 1980. Although the media group was convicted at the trial court stage, the conviction was quashed upon appeal, where the court held that this prohibition must be read in conjunction with article 10 of the ECHR, which is also reflected in article 19 of the Cypriot Constitution, to the effect that the "restriction of the right of expressions must be applied in each particular case in a manner as favourable as possible to the freedom of the press". The appeal court decision further held that "it was not safe to hold beyond any reasonable doubt that the news item, in relation to which the appellants were convicted, was calculated or was likely to obstruct or to influence either the proceedings in the District Court or before the Commission of Inquiry", thus rebutting the presumption that media reports are self-evidently affecting the judgement of the court.[48] The paradigm in favour of press freedom is visible in judicial traditions evolving after this decision. In recent years, the closest to a criminal case against the media unfolded with the *Georgiades* decision,[49] a criminal case against a famous musician for sexual offences against minors. The accused had his own recording studio where the complainants, who were minors and music students at the time, visited him for auditions. The incidents were alleged to have taken place between 1988 and 1998. In 2001, the complainants filed complaints of sexual abuse against him. The accused pleaded not guilty but was convicted at the trial court stage. Upon appeal, his conviction was quashed as the appeal court concluded that the volume of the negative media coverage was such that the court could not have remained impartial and objective. The Attorney General at the time had issued a press statement on 14 August 2001, asking the media to stop reporting on the case as this is likely to compromise the delivery of justice and warned that he will prosecute those media outlets who infringe the right of the accused to be treated innocent until proven guilty. This was one of the rare cases where a criminal conviction was quashed for reasons including the infringement of the presumption of innocence, although it is not possible to predict the outcome if the other reasons were not present at the same time. One cannot ignore the fact the role played in this case by the identity of the accused as a public figure, which permeated the preoccupation of the media, the negative frames of guilt presented by public persons in response to the media and finally the acquittal from the court which was essentially debating on whether the complainants had consented to the acts complained of, ignoring the fact that they were minors at the time.

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[45] Cyprus, Nicosia District Court, (Επαρχιακό Δικαστήριο Λευκωσίας), Police Chief v. Vasos Ftochopoulos, *Αστυνομικός Διευθυντής Λευκωσίας Εναντίον Βάσου Φτωχόπουλου*, ECLI:CY:EDLEF:2010:B58, case number 14809/08, 29 April 2010.

[46] Stratilatis, C. and Emilianides, A. (2015) *Media Law in Cyprus*, Kluwer Law International, pp. 82-85

[47] Cyprus, Law on Penal code, Cap. 154 (*Ο περί Ποινικού Κώδικα Νόμος Κεφ. 154*), Art. 122.

[48] Cyprus, Supreme Court, Appeal Jurisdiction, (*Ανώτατο Δικαστήριο, αναθεωρητική δικαιοδοσία*) *Cosmos Press v The Police*, (1985) 2 CLR 73.

[49] Cyprus, Supreme Court, Appeal Jurisdiction, (*Ανώτατο Δικαστήριο, αναθεωρητική δικαιοδοσία*) Doros Georgiades v The Republic (*Δώρος Γεωργιάδης ν. Δημοκρατίας*), Criminal Appeal No. 7243, 14 January 2003.

- There is a general right to a civil remedy against any individual or the state for any infringement of a fundamental right, including the rights to dignity or privacy or the presumption of innocence.[50] Academic studies[51] refer to this is as a possible remedy: the principle in the *Γιάλλουρος ν Νικολάου case* is that that any constitutionally or legally granted right is actionable and is protected by the courts. The principle provides for potential civil lawsuits seeking compensation and redress for persons whose constitutional right was infringed, including the publication of a declaration to restore the injustice suffered. There may be some evidential, cost, and other technical difficulties involved in applying this principle to the right to be presumed innocent. This principle has never been used in media-related cases.

- The Law on the Rights of Suspected Persons, Arrested Persons and Detained Persons Law provides for criminal[52] and disciplinary sanctions[53] against police officers who infringe by failing to inform the accused about their rights. There are criminal sanctions violations which amount to torture or degrading treatment.[54] The same law makes available compensation in civil action for infringements of the rights of the accused.[55] These are seldom used, if at all. Private prosecutions are available but at some point, these require the consent of the attorney general. Prosecutions against the police are exceedingly rare. Civil action against the police is not developed in Cyprus.
- In cases of infringement of the rights of an accused person, the accused may submit a complaint against the individual officers to the Independent Authority for Police Misconduct.[56] The investigation is carried out by a member of the Authority and collects evidence and manes recommendations to the Attorney General who decides whether a criminal prosecution is necessary or not against the police officers investigated. The evidence and the recommendations are also submitted to the chief of the police who will

[50] Cyprus, Supreme Court, Appeal Jurisdiction, (*Ανώτατο Δικαστήριο, αναθεωρητική δικαιοδοσία*) *Γιάλλουρος ν Νικολάου* (2001) 1 ΑΑΔ 558, Πολιτική Έφεση Αρ. 9931, 8 May 2001.
[51] Stratilatis, C. and Emilianides, A. (2015) *Media Law in Cyprus*, Kluwer Law International, pp. 153-154.
[52] Cyprus, Rights of persons under arrest / detention, Police Form 129, provided in line with Cyprus, Law on the Rights of Suspected Persons, Arrested Persons and Detained Persons Law of 2005, 163 (I)/2005 (*Ο περί των Δικαιωμάτων Ύποπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005, 163(I)/2005*), Art. 31 and 32.
[53] Cyprus, Rights of persons under arrest / detention, Police Form 129, provided in line with the main law: Cyprus, Law on the Rights of Suspected Persons, Arrested Persons and Detained Persons Law of 2005, 163 (I)/2005 (*Ο περί των Δικαιωμάτων Ύποπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005, 163(I)/2005*), Art. 34.
[54] Cyprus, Rights of persons under arrest / detention, Police Form 129, provided in line with Cyprus, Law on the Rights of Suspected Persons, Arrested Persons and Detained Persons Law of 2005, 163 (I)/2005 (*Ο περί των Δικαιωμάτων Ύποπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005, 163(I)/2005*), Art. 35.
[55] Cyprus, Rights of persons under arrest / detention, Police Form 129, provided in line with Cyprus, Law on the Rights of Suspected Persons, Arrested Persons and Detained Persons Law of 2005, 163 (I)/2005 (*Ο περί των Δικαιωμάτων Ύποπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005, 163(I)/2005*), Art. 36.
[56] Cyprus, The Police Law (Independent Authority for the Investigation of Allegations and Complaints) Law of 2006, 9 (I) / 2006, (Ο περί Αστυνομίας (Ανεξάρτητη Αρχή Διερεύνησης Ισχυρισμών και Παραπόνων) Νόμος του 2006, 9(I)/2006), Art. 5(2)(b).

decide on possible disciplinary action.[57] It is a rather ineffective procedure as the investigators are former, often retired police officers.

- A law regulating the operation of the press provides for the right of persons named or implied in any newspaper article to reply to the article and to have the reply printed in the newspaper.[58] Failure of the newspaper to print the reply can lead to a fine and/or a prison sentence. The right to reply also features in subsidiary legislation covering TV and radio stations.[59] Even though studies refer to this right is as a possible remedy,[60] it is in practice of limited use, given the inequality of power between the media organisation and the individual. A media expert interviewed noted that newspapers and media outlets do not give the same prominence to the reply.[61]

- Members of the public may apply to a self-regulatory body of journalists, known as the Cyprus Media Complaints Commission,[62] for any media publication which infringes the Code of Journalistic Ethics.[63] The Code expressly covers the presumption of innocence and the Commission has dealt with complaints regarding infringements of this provision. The Commission cannot impose penalties or award compensation, but it can publish its findings following its investigation of a complaint and the media outlet concerned has an obligation to publish the decision**.** The Cypriot Union of Journalists is opposed to the use of laws that restrict free speech, and it is particularly opposed to penal sanctions.[64]

- The civil remedy of defamation is primarily available *after* the damage is caused to a person's reputation. Defamation is a civil wrong for which compensation may be sought at a civil court.[65] Prior constraint of a publication or broadcasting is exceptionally possible by seeking an interim order, but this procedure is provided in exceedingly rare circumstances.[66] Often, defamation actions are filed against media organisations in order to act as deterrents for further publicity but this does not always work in practice as the media group may decide to ignore the unofficial warning. As defence lawyers interviewed note, Courts tend to be reluctant to interfere with drastic measures on free speech based on a libel action. There must be a substantive risk of grave injustice and there must be

[57] Cyprus, The Police Law (Independent Authority for the Investigation of Allegations and Complaints) Law of 2006, 9 (I) / 2006, (Ο περί Αστυνομίας (Ανεξάρτητη Αρχή Διερεύνησης Ισχυρισμών και Παραπόνων) Νόμος του 2006, 9(I)/2006), Art. 14(1).
[58] Cyprus, Law on the Press 145/89 (ο περί Τύπου Νόμος του 1989), Art. 39.
[59]Cyprus, Regulations under article 51 of the Law on radio and television stations, (*Οι περί Ραδιοφωνικών και τηλεοπτικών σταθμών νόμοι, Κανονισμοί δυνάμει του άρθρου 51*), Κ.Δ.Π. 10/2000, Appendix III, Cyprus Gazette no. 3383, 28 January 2000.
[60] Stratilatis, C. and Emilianides, A. (2015) *Media Law in Cyprus*, Kluwer Law International, pp. 153-154.
[61] Interview with media expert, 30 May 2020.
[62] For more details about this body, please see its webpage.
[63] Cypriot Union of Journalists, Code of Journalistic Ethics (*Κώδικας Δημοσιογραφικής Δεοντολογίας*).
[64] Stratilatis, C. and Emilianides, A. (2015) *Media Law in Cyprus*, Kluwer Law International, pp. 82-85
[65] Cyprus, Law on Civil wrongs (Cap. 148) (Ο περί Αστικών Αδικημάτων Νόμος ΚΕΦ.148), section 17.
[66] Polyviou P. (2013) *Το σύγχρονο δίκαιο της δυσφήμισης*, Nicosia, Chrysafinis and Polyviou Publishers, pp. 442-445; Markou, C. (2016) 'The "freedom of journalism" in Cypriot legal order: balancing between the freedom of expression and the right of reputation ', Aktypis, S.H., Jougleux, Ph., Synodinou, T-E. (eds.) *Freedom of expression of journalists and caricaturists, Protection and restrictions in Greek and Cypriot law*, Sakkoulas, pp. 121-165. Demetriou, C. (2017) *Protecting media professionals and on incitement to hatred*, Report for Information request Fundamental Rights Agency, FRANET SR 28.

knowledge that the statement to be made is untrue; usually malice is required.[67] After the publication any person whose reputation is damaged may take libel action against damage to one's reputation, proven through evidence of having been 'lowered in the eyes of the community'. Rectification of the damage can take the form of a publication of a statement of apology and/or compensation and/or possible loss of earnings because of the damage suffered. The use of civil defamation laws against the media is more often made by persons with social standing, power, and wealth rather than the average member of the community because of the considerable cost, time and public exposure involved in the lawsuit. Defamation is covered partly by the law on civil offences,[68] by the English common law to the extent that it does not conflict with the provisions of the Cypriot law,[69] by the ECHR and by the Cypriot Constitution, which renders freedom of expression subject to "such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the reputation or rights of others or for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary".[70] Since 2003, defamation is no longer a crime, however certain specific acts may, subject to authorisation from the Attorney General, still lead to criminal prosecutions, such as insulting one's religion,[71] insulting the army[72] and defaming foreign leaders.[73] Judicial discretion and inconsistencies between various court decisions do not allow for concrete conclusions regarding judicial trends. The concept that, the higher the reputation the higher the compensation, appears to have survived as a measure for calculating damages, in spite of the fact that freedom of expression has finally begun to emerge as hierarchically more important than the protection of reputation, in line with ECtHR jurisprudence.[74] According all the persons interviewed and based on our research, there has never been a case were the Supreme Court took measures to protect the accused from adverse media publicity in the course of a criminal trial. The general perception, as expressed in judgements and in the interviews of most public prosecutors, is that judges are not influenced by the media, save for very exceptional circumstances. The courts are obliged to balance any right to reputation and privacy against the freedom of the press and the right to information of the public.[75]

[67] Cyprus, Supreme Court, Appeal Jurisdiction, (*Ανώτατο Δικαστήριο, αναθεωρητική δικαιοδοσία*) *T C Tobacco Ltd v ΑΡΚΤΙΝΟΣ ΛΤΔ* [2003) 1 CLR 853; Cyprus, Supreme Court, Appeal Jurisdiction, (*Ανώτατο Δικαστήριο, αναθεωρητική δικαιοδοσία*) *Παναγιώτου v Μουλαζίμη* (2007) 1 Α.Α.Δ. 78, Πολιτική Έφεση Αρ. 198/2005, 26 January 2007.

[68] Cyprus, Law on civil offences (Ο περί αστικών αδικημάτων νόμος) Cap. 148, articles 17-25.

[69] Cyprus, Law on civil offences (Ο περί αστικών αδικημάτων νόμος) Cap. 148, article 2(1).

[70] Cyprus, The Constitution of the Republic of Cyprus (*Το Σύνταγμα της Κυπριακής Δημοκρατίας*), Art. 19.

[71] Cyprus, The criminal code (*(Ο ποινικός κώδικας*) Cap. 154, Art. 142.

[72] Cyprus, The criminal code (*Ο ποινικός κώδικας*) Cap. 154, Art. 50D.

[73] Cyprus, The criminal code (*(Ο ποινικός κώδικας)*) Cap. 154, Art. 68.

[74] European Court of Human Rights (1979), *Case of the Sunday Times v. The United Kingdom*, No. 6538/74, 26 April 1979.

[75] Stratilatis, C. and Emilianides, A. (2015) *Media Law in Cyprus*, Kluwer Law International, pp. 48-52.

The Georgiades case

The leading decision on the subject is *Georgiades*,[76] which was a criminal case against a famous musician accused of sexually abusing minors, convicted at the trial stage but acquitted upon appeal because the volume of the negative publicity was such that it was impossible to have a fair trial. Following the acquittal, all pre-trial media reports were removed from the internet. Only one article concerning the case was still available online, written after the acquittal, where the journalist was apologising to the musician for having contributed to his defaming in the media. The article highlighted the fact that the musician was finally acquitted, which was not sufficiently presented in the media.

On the trail of the *Georgiades* decision, numerous civil court decisions were issued, as a result of libel lawsuits pursued by the musician against media outlets. In one of these cases, the appeal court reversed a trial court decision against a media outlet, which had been found guilty of libel at the trial court and had been ordered to pay compensation of €170,000 to the musician. The Appeal Court found that the reports contained facts and comments which are classified as personal opinions regard the conduct attributed to the musician, but the facts analysed were real. According to the Appeal Court, the media reports did not suggest that the musician was guilty but that the police had child abuse complaints in their hands and had secured an arrest warrant. The Appeal Court concluded that the issue at stake was of public interest because the musician was a public person, adding that there is no legal principle that the publication of details which appear to support the complaints about criminal conduct investigated by the police is not in the public interest. The Appeal Court referred to judicial trends at the ECHR which favour the liberal interpretations of personal opinions and comments when the subject is a public person, adding that even if the newspaper had used strong language, it did not exceed the acceptable boundaries of a fair comment made in good faith. To the extent that the Appellant could not prove that the comments were made in bad faith, and the real basis of the media reports were essentially true, the articles could not be termed as libel.

Along the same lines, in October 2009 the District Court issued a decision in favour of the musician in a libel lawsuit against the TV Channel Sigma, belonging to the same media group as the above case, awarding the Appellant compensation of €130,000. The statements made by the journalist which were considered to contain libel referred to a network of paedophiles who were allegedly sexually abusing young girls for years. The journalist had stated that, following his first report on the incident, tens of mothers had called the TV station to report that the musician had also abused their daughters and had demanded of the mothers to stop complaining like little women so as not to jeopardize the future of their daughters in the music industry. The journalist further claimed that he had information that the Appellant had tried via his connections to the President of the Republic to secure a cover up the case. The journalist reported extensively on the suicide of a man who knew two of the complainants and who had allegedly killed himself to ensure that the case would not be covered up.

The media channel showed the President of the Republic stating: "We cannot be characterized as a society of paedophiles because we have two paedophiles. In other societies there are many more paedophiles and worse things are happening. The law will be implemented, and it is up to the court to impose the penalty and this must be such to act as a deterrent." When the government representative was questioned about the President's statement and how this may impact on the presumption of innocence, he responded that the President had referred to suspects and not to paedophiles. The leader of the opposition at the time also made statements about 'rotten values' accusing the government of not taking sufficient measures to address the problem. The musician told

[76] Cyprus, Supreme Court, Appeal Jurisdiction, (*Ανώτατο Δικαστήριο, αναθεωρητική δικαιοδοσία*) Doros Georgiades v The Republic (*Δώρος Γεωργιάδης ν. Δημοκρατίας*), Criminal Appeal No. 7243, 14 January 2003.

the Court that because of the above media coverage of the case, he was deprived of his freedom, humiliated, discredited, and defamed. He told the court that even after his acquittal the TV channel did not proceed to rectify their previous reporting. He added that the channel was constantly applying pressure on public persons to make statements about his case, leading to the negative statement made by the President of the Republic. The Court concluded that the repeated use of the word 'paedophilia', the type of music at the background, the connection with the suicide of a man who knew two of the complainants, suggested to the average audience that the appellant was guilty and as such it was defamatory.

The musician sued additional media outlets for libel and although he secured trial court decisions in his favour, this was often reversed upon appeal. One of these concerned the newspaper *Politis* which printed headlines "Offences from May 2001-acccused of crimes-penalties up to 20 years are foreseen", "Sins from 1989 until this year". The Appellant argued that his constitutional rights including his right to the presumption of innocence were infringed because of the media coverage. The trial court accepted his claim for libel, but this was reversed at the Supreme Court, where the Court found the media reports as fair comments made in good faith. The Court stated that the criterion is not whether the reader may perceive a media report as accurate or not or how the report was perceived by the appellant or other persons; for libel the criterion is the natural and habitual meaning of the words used, based on the understanding of the reasonable person.

Relying upon the above precedent, another libel action which had succeeded at trial court level was reversed upon appeal, as the court found that the newspaper merely reported the facts at the time and fair comments made in good faith. The titles used by the newspaper were "25 charges 'burn' Doros", with frequent use of the words such as "paedophilia" and "suspect".

The case is cited extensively as the leading case that set the framework for protecting the accused from media attributing quilt on them. It was regularly referred to by the interviewees and is cited throughout this report.

- **The right to remain silent**

In law, if the prosecution fails to persuade the court about the guilt of the accused and the accused invokes the right to remain silent, then the accused must be acquitted. If the right to remain silent is infringed, the defence can seek immediate action to remedy the infringement within the criminal procedure in the form of a 'trial within a trial', also referred to as 'Newton trial'. According to the prosecutors and lawyers interviewed for this study, this is extensively used in practice and is often successful, leading to the exclusion of evidence which could otherwise connect the accused with the crime. It is also most effectively used on appeal, since the infringement of the right to remain silent can be invoked as a strong legal ground of appeal, which can lead to the acquittal of the accused.

Legal textbooks authored by acting judges take the position that the protection offered by the legal framework is more than adequate in safeguarding the rights of the accused, arguing that the right to silence in fact offers unwarranted protection to the accused.[77] By contrast, legal textbooks authored by lawyers take the position that the right to silence is embedded in the Cypriot criminal justice system

[77] Eliades, T. and Santis, N. (2014) *Το Δίκαιο της Απόδειξης: Δικονομικές και Ουσιαστικές Πτυχές*, HIPPASUS, p. 831-831. Eliades, T. (1994) *Το Δίκαιο της Απόδειξης, Μια πρακτική προσέγγιση*, Zavallis, Nicosia.

albeit with some inconsistencies, but refrain from expressing an opinion as to its effectiveness in safeguarding the rights of the accused.[78] The police investigation procedure is governed by the Judges Rules which include the right to silence and protection from self-incrimination, also foreseen in the Criminal Procedure Law.[79] The protection from self-incrimination was strengthened, at least in law, with the amendment of the main law on the rights of suspected, arrested and detained persons, [80] which explicitly refers to the accused right not to incriminate oneself.[81] The amendment purports to transpose Directive 2016/343.

Failure of the police to comply with these principles may lead to the exclusion of such evidence from the courtroom,[82] albeit it is for the court to decide whether or not to exclude such evidence,[83] which means they have already become aware of the information they must refrain from considering. Other defence lawyers are more critical of the protection offered by the framework, arguing in favour of an automatic exclusion of evidence obtained in violation of the right to silence and of the self-incrimination principle.[84] Defence lawyers interviewed for this study consider that the effectiveness of the remedies in is questionable before the courts in Cyprus. The fact that the procedure of 'the trial within a trial' takes place before the same judge, who will in end adjudicate on both law and facts makes the matter rather artificial and problematic.

Normally evidence obtained in violation of the principle of self-incrimination is excluded.[85] However, it is for the Court to decide whether evidence improperly obtained must be excluded. It is not an automatically excluded evidence, but it is likely to be excluded. The conviction would be quashed unless there is other independent corroborative evidence that renders the conviction safe.

- **The right to be present at the trial (Article 8 of the Directive 2016/343) and the right to a new trial (Article 9 of the Directive 2016/343) and Legal remedies**

The Constitution provides that all persons charged with an offence are entitled to defend themselves in person or through a lawyer of their own choice, to examine and cross examine witnesses and to have the free assistance of an interpreter if needed, to present their case before the court and to have sufficient time necessary for its preparation.[86] According to the criminal procedure law, however, the accused persons' right to be present at their trial depends on behaving 'decently'. The court has

[78] Clerides, C. (2018), *Κυπριακό Δίκαιο της Απόδειξης*, Nomiki Vivliothiki, Athens, p. 386-389.
[79] Cyprus, Law on Criminal Procedure, Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος, Κεφ. 155*), article 8.
[80] Cyprus, Rights of persons under arrest / detention, Police Form 129, provided in line with Cyprus, Law on the Rights of Suspected Persons, Arrested Persons and Detained Persons Law of 2005, 163 (I)/2005 (*Ο περί των Δικαιωμάτων Ύποπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005, 163(I)/2005*), article ε1.
[81] Cyprus, Law on the Rights of Persons Arrested and Detained (Amendment) of 2018 , 111(I)/2018 (*Ο περί των Δικαιωμάτων Προσώπων που Συλλαμβάνονται και Τελούν υπό Κράτηση (Τροποποιητικός) Νόμος του 2018),* article 3.
[82] Cyprus, Supreme Court, Appeal Jurisdiction, (*Ανώτατο Δικαστήριο, αναθεωρητική δικαιοδοσία*), *Ahmad Ahmad Al v Δημοκρατίας*, (2010) 2 Α.Α.Δ. 256, 17 June 2010.
[83] Clerides, C. (2018), *Κυπριακό Δίκαιο της Απόδειξης*, Nomiki Vivliothiki, Athens, p. 397-411.
[84] Cacoyiannis (1983) *Η Απόδειξη, Το Δίκαιο της απόδειξης όπως εφαρμόζεται στη Κύπρο*, Libra Chambers, Limassol, p. 664-665.
[85] Cyprus, Supreme Court, Appeal Jurisdiction, (*Ανώτατο Δικαστήριο, αναθεωρητική δικαιοδοσία*), *Ahmad Ahmad Al v Δημοκρατίας*, (2010) 2 Α.Α.Δ. 256, 17 June 2010.
[86] Cyprus, Constitution of the Republic of Cyprus (*Σύνταγμα της Κυπριακής Δημοκρατίας*) Art. 12(5) and 30(3).

discretion to order 'indecently' behaved accused persons to remain outside the courtroom and continue the trial in their absence and to make arrangements for the accused persons' information regarding the proceedings to enable them to prepare their defence.[87]The term 'decently' is not defined and inevitably carries a considerable degree of judicial discretion.

In criminal prosecutions, the Court orders all accused person to be present at a time and place specified in the summons. In some cases, the Courts Registrar may exempt accused persons from the duty to be present in person and permit appearance from their lawyers instead or permit the dispatch of written plea of guilty.[88] At summary trials, where the accused persons have not been exempted from the duty to be present as described above, and the accused persons fail to turn up even though the summons were duly served upon them, the court may decide either to adjourn the case and issue a warrant for their arrest or try the case in their absence.[89]

There is no explicit provision in the law about the right to a new trial in case the right to be present at the trial is infringed. However, this is invariably the case and in practice a case does not continue, unless the accused is present. Judges are likely to adjourn the case if the accused is not present. Given the established principle that a violation of a constitutional right must lead to a remedy,[90] if a case is tried in the absence of the accused person in violation of the right to be present at one's trial, this will almost certainly lead to a new trial. Persons convicted in absentia can appeal their conviction using the prerogatives orders available at the Supreme Court, namely:

- Habeas Corpus for their release from detention; [91]
- Certiorari to quash the decision of the lower court for failing or exceeding its jurisdictions;[92]
- Mandamus to order the lower court to fulfil the public duty as imposed by the law;[93]
- Other prerogative orders including a Prohibition and Quo Warranto.

[87] Cyprus, Law on Criminal Procedure Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος Κεφ. 155*), Art. 63.
[88] Cyprus, Law on Criminal Procedure Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος Κεφ. 155*), Art. 45.
[89] Cyprus, Law on Criminal Procedure Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος Κεφ. 155*), Art. 89(1).
[90] Cyprus, Supreme Court, *Yiallouros v Nicolaou* (Γιάλλουρος ν. Νικολάου), Civil Appeal No. 9931, 8 May 2001.
[91] Pikis, G. (2013) *Ποινική Δικονομία στη Κύπρο*, Nicosia, p. 350-352.
[92] Pikis, G. (2013) *Ποινική Δικονομία στη Κύπρο*, Nicosia, p. 354-357.
[93] Pikis, G. (2013) *Ποινική Δικονομία στη Κύπρο*, Nicosia, p. 353-354.

PART C. MAIN REPORT

C.1 The right to be presumed innocent in general

The principle that every person charged with an offence shall be presumed innocent until proven guilty is protected by the Constitution[94] and clarified in the criminal procedure law.[95] It is also reinforced by the Law on Evidence[96] and jurisprudence.[97] The national law on evidence remains, however, the obsolete English Evidence law of 1914[98] as modified since.[99] Similarly, the police investigation procedure is governed by the 100-year old 'Judges rules' incorporated into the criminal procedure through the Criminal Procedure Law.[100] In 2018, Directive 2016/343 was transposed through an amendment of the criminal procedure law.[101]

The interviewees of each category of the three professions perceived the presumption of innocence rather differently, drawing on their own perspective of and experience in the operation of the criminal justice system. A common thread shared by all three professions was their appreciation that the rights of accused persons impose **duties on the authorities and public figures** and **restrictions on the prosecution and police**.

Interviewees from different professions had different perceptions about the mandate and role of the police in ensuring that the presumption of innocence is fully implemented, about the duties of the prosecuting authorities and whether these are discharged in practice. The police officers believed that the police diligently follow the rules and discharge their duties in safeguarding the presumption of innocence, raising concerns about the role of the media in this context and noting a deterioration in the protection of the presumption of innocence with the emergence of social media. The police officers interviewed did not see a role for the police in addressing media conduct and violations of the presumption of innocence, even where this takes place in or around the courtroom.

The prosecutors took the view that the courts and the prosecution fully respect the presumption of innocence and that where the right to be presumed innocent is infringed, the court will acquit the accused, even though there was only one such example in Cyprus. Prosecutors consider that where there are violations, these occur because of the failures and the attitudes of specific police officers, who lack training and a human rights culture. The prosecutors convened that the media does not always respect the presumption of innocence, but do not consider that this may adversely affect the criminal procedure and the rights of the accused because judges are sufficiently trained to ignore the atmosphere created by the media. Prosecutors consider that there was an improvement of the framework regarding media regulation after the case of *Georgiades* who was acquitted on appeal following the public attribution of guilt by the media. Some prosecutors found that the situation as regards media interference has recently deteriorated because of the competition between mainstream and social media, the malpractices of journalists who do not have the necessary training, skills or interest to accurately and fairly report on court cases.

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[94] Cyprus, Constitution of the Republic of Cyprus (*Σύνταγμα της Κυπριακής Δημοκρατίας*), Art. 12(5).
[95] Cyprus, Law on Criminal Procedure, Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος, Κεφ. 155*), article 3A.
[96] Cyprus, Law on Evidence, Cap. 9 (*Ο περί Αποδείξεως Νόμος, Κεφ. 9*), Art. 3.
[97] Clerides, C. (2018), *Κυπριακό Δίκαιο της Απόδειξης*, Nomiki Vivliothiki, Athens; Cacoyiannis (1983) *Η Απόδειξη, Το Δίκαιο της απόδειξης όπως εφαρμόζεται στη Κύπρο*, Libra Chambers, Limassol; Eliades, T. and Santis, N. (2014) *Το Δίκαιο της Απόδειξης: Δικονομικές και Ουσιαστικές Πτυχές*, HIPPASUS; Eliades, T. (1994) *Το Δίκαιο της Απόδειξης, Μια πρακτική προσέγγιση*, Zavallis, Nicosia.
[98] As applied in England on 5 November 1914.
[99] Cyprus, Law on Courts, 14/60 (*Ο περί Δικαστηρίων Νόμος, 14/60*), Art. 29.
[100] Cyprus, Law on Criminal Procedure, Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος, Κεφ. 155*), article 8.
[101] Cyprus, Law (Amendment) on Criminal Procedure of 2018 (*Ο περί Ποινικής Δικονομίας (Τροποποιητικός) Νόμος του 2018*) N. 110(I)/2018, No. 4668, 25 July 2018.

Defence lawyers interviewed consider that whilst the Cypriot legal system offers important tools and there is a judicial tradition in respecting the presumption of innocence, there are serious problems with the implementation of the principle in practice, mostly by the police and the media. The lawyers stated that the police routinely violate the presumption of innocence and that the Courts do not duly provide the necessary remedies to redress these violations. Despite admitting a general deterioration in the negative role played by the media, most of the lawyers interviewed took the position that the media interference does not adversely affect the outcome of the criminal procedure, although the media can have a negative impact on the reputation of the accused in society.

There is an additional level of disagreement which pertains to the conception about the nature and content of the presumption of innocence. This relates to the two interconnected elements of the presumption of innocence, as the interviewees from the three professions perceive these from rather different vantage points:

- **The narrow conception of the presumption of innocence: Rights and duties in the criminal and juridical process**

There is, broadly speaking, an **agreement** between the interviewees about **the narrow reading of the legal conception of the presumption of innocence**, which contains rights and duties within criminal process and juridical process. The disagreement here is about the practice and implementation. The police officers interviewed were adamant that there is full implementation of these, except in a few cases, which are eventually spotted and corrected during the trial, either at first instance, or on appeal. The prosecutors interviewed were also of the view that overall, there is compliance with and respect for the presumption of innocence and, where there are abuses, these are the result of police malpractice, prejudice and culture that does not respect human rights. The lawyers interviewed raised serious concerns about police practices as regards the presumption of innocence during the pre-trial investigation.

- **The broader conception of the presumption of innocence: Rights and duties for public attributions of guilt by the media and at societal level**

There is **a conceptual difference about the broader conception of the presumption of innocence**, with reference to the rights and duties in the realm of public knowledge, discourses and beliefs which prohibit public attributions to guilt. For the police officers and most of the prosecutors interviewed, the presumption of innocence is the extent to which judges are influenced by the media or public opinion. All the police officers and most prosecutors do not consider that portraying defendants as guilty at the pre-verdict stage is problematic because the courts are not influenced by the media coverage.

- **The police perspective**

For the Police officers interviewed, the principle of the presumption of innocence is understood within a highly restrictive framework which must be complied with, placing specific duties on the police, and granting rights to the accused. In practice, the narrow conception of the presumption of innocence operates as an imposition of merely certain procedural obligations on the police. This starts from the moment of investigating, questioning, arresting, detaining and collecting evidence from the accused and others, such as providing the suspects with information about their rights, including the right to silence and have access to a lawyer. The Police officers interviewed stressed the importance of changes in the procedures resulting from the transposition of the EU Directive 2016/343. As a senior police officer stated:

"The right to presumption of innocence is respected by the Police, ensuring the implementation of provisions in the legislation on the rights of suspects that any suspect who comes to the police for interrogation not only suspects but also witnesses. We are obliged to inform them about all their rights, and most importantly the right of silence; in fact we provide a document which they sign and which refers to all their rights, including the right to have his lawyer present during the proceedings. There are also in other laws such as the law on criminal procedure introduced recently based on the EU directive that provide protection of the presumption of innocence and this have been incorporated into the criminal proceedings law. We implement the legislation about the rights of suspects. We inform them about the rights anyone who comes to the police for interrogation, not only suspects, but also witnesses. We are obliged to inform them about all their rights, and most importantly the right of silence; in fact we prove a document which they sign and which refers to all their rights, including the right to have his lawyer present during the procedure."

"Το δικαίωμα στο τεκμήριο αθωότητας τηρείται από την Αστυνομία διασφαλίζοντας την εφαρμογή των διατάξεων της νομοθεσίας σχετικά με τα δικαιώματα των υπόπτων που κάθε ύποπτος που έρχεται στην αστυνομία για ανάκριση έχει· όχι μόνο σαν ύποπτος αλλά και μάρτυρας. Είμαστε υποχρεωμένοι να τους ενημερώσουμε για όλα τα δικαιώματά τους, και κυρίως το δικαίωμα σιωπής. Στην πραγματικότητα, επιδεικνύουμε ένα έγγραφο το οποίο υπογράφουν και το οποίο αναφέρεται σε όλα τα δικαιώματά τους, συμπεριλαμβανομένου του δικαιώματος παρουσίας του δικηγόρου του κατά τη διάρκεια της διαδικασίας. Αναφέρονται και κάποιοι άλλοι νόμοι, όπως ο νόμος περί ποινικής δικονομίας που θεσπίστηκε πολύ πρόσφατα και βασίζεται στην Ευρωπαϊκή οδηγία, ο οποίος προβλέπει την προστασία [του τεκμηρίου] της αθωότητας και έχει ενσωματωθεί στην ποινική δικονομία. Εφαρμόζουμε την νομοθεσία για τα δικαιώματα των υπόπτων που πρέπει να έχει όποιος ύποπτος έρθει στην αστυνομία για ανάκριση, όχι μόνο στους ύποπτους αλλά και για μάρτυρες. Είμαστε υποχρεωμένοι να τον ενημερώσουμε για όλα του τα δικαιώματα και το κυριότερο του δικαίωμα είναι να εξασκήσει το δικαίωμα της σιωπής; μάλιστα του δίνεται και ένα έγγραφο το οποίο υπογράφει και στο οποίο αναφέρονται όλα του τα δικαιώματα, συμπεριλαμβανομένου του δικαιώματος να έχει τον δικηγόρο του παρόντα κατά τη διαδικασία."

The police understood the broader conception of the presumption of innocence to mean that police officers are merely obliged not to name the accused or publicly depict the suspects as guilty. The police officers interviewed consider that the police operate within this framework fully respecting the principle. As a senior police officer noted:

"The work of the Police is fully in line with the concept of the right to the presumption of innocence, which is practically implemented with the procedures in place. The presumption of innocence restricts us as authorities from making statements that name a person as guilty or accused, but merely as suspect."

"Το έργο της Αστυνομίας είναι απόλυτα σύμφωνο με την έννοια του δικαιώματος στο τεκμήριο της αθωότητας, η οποία εφαρμόζεται πρακτικά με τις ισχύουσες διαδικασίες. Το τεκμήριο αθωότητας μας περιορίζει ως αρχές από το να κάνουμε δηλώσεις που αναφέρουν ένα άτομο ως ένοχο ή κατηγορούμενο, αλλά απλώς ως ύποπτο."

The understanding of the police as regards the **presumption of innocence is primarily about imposing a set of procedural rules**, which restrict the police methods of interrogation, the discovery of documents and extracting information from a suspect. As a senior police officer stated:

"*The Police will report in public that a certain crime has been committed, but the name of the suspect is not mentioned, especially in the case of minors. The right to presumption of*

innocence is respected by the Police ensuring the implementation of provisions in the legislation on the rights of suspects that any suspect who comes to the police for interrogation has."

"Η Αστυνομία θα αναφέρει δημοσίως ότι έχει διαπραχθεί κάποιο έγκλημα, αλλά δεν αναφέρεται το όνομα του υπόπτου, ειδικά στην περίπτωση ανηλίκων. Το δικαίωμα στο τεκμήριο αθωότητας τηρείται από την Αστυνομία, διασφαλίζοντας την εφαρμογή των διατάξεων της νομοθεσίας σχετικά με τα δικαιώματα των υπόπτων που κάθε ύποπτος που έρχεται στην αστυνομία για ανάκριση έχει".

The conceptualisation of this right as a ***procedural one***, in other words as a 'technicality' and *hurdle* rather than a *substantive* right may impact the way the police understand the discharging of their duty. The perception that the primary duty of the police is the prevention of crime leads to the perception that the criminal investigation process aims at locating and punishing the offenders rather than protecting the rights of all persons. The presumption of innocence is therefore understood as a necessary hurdle and as a *negative duty* that both restricts and muzzles the police in discharging their primary function which is fighting and preventing crime.

For both the police and the prosecution, the presumption of innocence is part of the criminal process, which contains robust safeguards for the rights of the accused person. This approach ignores the second limb of the requirement of the EU Directive about the duties of states in protection of the presumption of innocence, by refraining from public statements about the suspects' guilt before the court convicts them."[102] It also approaches the basic elements of the presumption of innocence, such as the right to remain silent, as procedural rather than substantive rights which carry legal value per se.

- **The perspective of prosecutors**

Prosecutors view the presumption of innocence as a set of rights granted to accused persons which the prosecution must overcome to prove their case and secure a conviction. Through this lens, the presumption of innocence becomes a *barrier* they must overcome. They concur that in general the courts ensure that the presumption of innocence is complied with and respected and that this applies to all equally, at least at the judicial level. A senior prosecutor described the presumption of innocence as a **procedural safeguard against abuse to ensure that there is evidence against persons charged before they are convicted**, which operates as **a hurdle and burden on the prosecution** to be overcome so as to prove their case. Another experienced public prosecutor stated that in his/her many years of experience s/he had never felt that the presumption of innocence was infringed, but was aware of cases where this happened outside the courtroom, citing the case of *Georgiades*.[103] The same prosecutor noted that the media can often play a negative role in safeguarding the presumption of innocence, adding that although judges tend to believe that *they are sufficiently experienced so as not to be influenced by media attributions of guilt, in actual fact they might be influenced*.

Another senior prosecutor stated emphatically that the presumption of innocence is respected for all:

"The right to exercise the presumption of innocence is constitutionally guaranteed. In our daily work, we use it to prove the criminal responsibility of each defendant, our work has to do with overturning the presumption of innocence to prove that someone is guilty. More drastically,

[102]European Union, *Directive 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings*, 9 March 2016, Preamble, para. (16).

[103] Cyprus, Supreme Court, Appeal Jurisdiction, (*Ανώτατο Δικαστήριο, αναθεωρητική δικαιοδοσία*) *Δώρος Γεωργιάδης ν Δημοκρατίας* (2003) 2 Α.Α.Δ. 1, Ποινική Έφεση Αρ. 7243, 14 January 2003.

we must always reveal to defence attorneys all the evidence that this is in favour of the prosecution, or against the Prosecution. If there is evidence available that is in the interest of the defendant, the prosecution is obliged to reveal it. Invariably, we do so, including testimonies that the Prosecution will not use but which may assist the case of the defence. The burden of proof lies with prosecution to prove beyond reasonable doubt before the criminal court. The presumption of innocence puts an extra burden on the prosecution to prove its case by dispelling the presumption of innocence applies. Often in our daily work, we need to ensure that the rights of the accused are protected, including the presumption of innocence. We see this regularly in court, particularly in the procedure of 'a trial within a trial', where the voluntariness of a confession for instance or the admissibility of evidence are in issue."

"Το δικαίωμα να ασκείται το τεκμήριο της αθωότητας είναι συνταγματικά κατοχυρωμένο. Στην καθημερινή μας δουλειά, το χρησιμοποιούμε για να αποδείξουμε την ποινική ευθύνη του κάθε κατηγορούμενου, η δουλειά μας έχει να κάνει με την ανατροπή του τεκμηρίου αθωότητας, δηλαδή το να αποδείξουμε ότι κάποιος είναι ένοχος. Τώρα πιο δραστικά, πρέπει να αποκαλύπτουμε πάντα στους δικηγόρους υπεράσπισης, όλα τα στοιχεία, που είναι υπέρ της κατηγορούσας αρχής, ή εναντίον της. Καθ΄ότι αν υπάρχουν στοιχεία υπέρ του κατηγορούμενου πρέπει να τα δώσουμε και το κάνουμε κάθε φορά, συμπεριλαμβάνοντας καταθέσεις ανθρώπων που εμείς δεν θα χρησιμοποιήσουμε στην κατηγορία αλλά μπορεί να βοηθούν στην υπεράσπιση. Το βάρος της απόδειξης βαραίνει την Κατηγορούσα Αρχή να αποδείξει πέραν πάσης εύλογης αμφιβολίας ενώπιον του ποινικού δικαστηρίου. Αυτό βάζει ένα έξτρα βάρος στην κατηγορούσα αρχή να αποδείξει την υπόθεση της που δεν ισχύει το τεκμήριο της αθωότητας. Συχνά στην καθημερινή μας εργασία, πρέπει να διασφαλίσουμε ότι προστατεύονται τα δικαιώματα των κατηγορουμένων, συμπεριλαμβανομένου του τεκμηρίου αθωότητας. Αυτό το βλέπουμε τακτικά στο δικαστήριο, ιδίως στη διαδικασία «μιας δίκης σε μια δίκη», όπου αμφισβητείται η θεληματικότητα της κατάθεσης ή ομολογίας."

A senior male public prosecutor said the presumption of innocence was developed so that no one would be convicted based merely on information about that person. Some prosecutors identified problems with police practices at the pre-trial stage which may infringe the presumption of innocence and lead to acquittals. Such practices include the conducting of investigations without informing the suspects that they are under investigation or without informing them of their rights. If such practices are proven in court, the accused person will most likely be acquitted.

- **The defence lawyers' perspective**

The lawyers interviewed took a rather broader perspective on the substance of the right to be presumed innocent, in the sense that they conceptualise it as a system of rights for the accused which imposes obligations on the police and on the prosecution. Some of the lawyers took a rather operational approach by raising the matter before the court wherever they deem appropriate. Others took a more analytical approach but all lawyers interviewed considered it their duty to ensure that they advise their clients on their right to be presumed innocent and explain what this right entails, as a matter of priority and top significance. They all agreed that despite the fact that the principle is protected by the Constitution and the Judges' Rules and it is deeply ingrained in the practice, there are many instances where it is violated by the police and the media. As an experienced lawyer noted:

"The presumption of innocence is implemented daily through the procedure and personally as a law firm we are dealing with criminal cases every day, also disciplinary cases which are quasi-judicial. The presumption of innocence is the principal right we are called upon to invoke to defend our client."

"Το τεκμήριο αθωότητας εφαρμόζεται καθημερινά μέσω της διαδικασίας και προσωπικά ως δικηγορικό γραφείο αντιμετωπίζουμε ποινικές υποθέσεις κάθε μέρα, καθώς και πειθαρχικές υποθέσεις που είναι οιονεί δικαστικές. Το τεκμήριο αθωότητας είναι το μείζον δικαίωμα που καλούμαστε να επικαλεστούμε για να υπερασπιστούμε τον πελάτη μας."

All the lawyers interviewed, consider that **in practice, there are numerous violations of the presumption of innocence** by the police, but only a fraction of these are recognized by the judges, who generally assume that police officers are credible witnesses and accept their testimony, without serious questioning. As an experienced defence lawyer stated:

"The presumption of innocence is not a simple matter and in practice it is not implemented. This is more acute when the accused person has the state as an adversary. Today a policeman told me about my client "he must plead guilty". I said he will not plead guilty. He said, "but he has four police officers testifying against him, how can he not plead guilty?" In other words, they start on the premise that they are guilty because the police say so. … Wherever there is a testimony from a police officer the starting point is "they are guilty". The testimony of the police officers is, by definition, of greater force and the accused person must prove his innocence and this is precisely where the burden of proof is reversed."

"Το τεκμήριο της αθωότητας δεν είναι απλή υπόθεση και στην πράξη δεν εφαρμόζεται. Πιο έντονα ισχύει αυτό όταν ο κατηγορούμενος έχει ως αντίπαλο του το κράτος. Σήμερα μου είπε αστυνομικός για τον πελάτη μου «να παραδεχτεί την ενοχή του». [Απάντησα ότι] δε θα παραδεχτεί. Μου λέει «μα έχει τέσσερις μάρτυρες αστυνομικούς εναντίον του, πώς να μην παραδεχτεί;». Με άλλα λόγια ξεκινούν με το ότι είναι ένοχοι επειδή το λένε οι αστυνομικοί. … Όπου υπάρχει η μαρτυρία αστυνομικού ξεκινούμε με το «είναι ένοχοι». Η μαρτυρία των αστυνομικών είναι εκ προοιμίου βαρύνουσας ισχύος, ο κατηγορούμενος πρέπει να αποδείξει ότι είναι αθώος και εδώ ακριβώς αντιστρέφεται το βάρος της απόδειξης."

a. Potential factors that can impact the presumption of innocence

All interviewees conceded that there is stigma and prejudice in society leading to discrimination against particular groups. The following factors were mentioned in the interviews:

- Gender is an important factor. Women may get the sympathy of the court for some offences (e.g. partner violence) and the lack of sympathy for others (economic crime).
- Ethnic background: Turkish-Cypriots and the Roma tend to be negatively viewed upon.
- Nationality and immigrant status: black Africans, Arabs, Asians and eastern Europeans are particularly racialised groups.
- Social class: poorer persons are likely to be treated less favourably than those from the higher echelons of society, who enjoy better protection and treatment from the criminal justice system.
- LGBTI persons who are accused and appear before conservative judges.
- Previous convictions matter. Although most interviewees from all three professions believed that previous convictions only played a role in sentencing, the media expert was of the view that in a small society where everyone knows everyone the judges already know a lot about the suspect before them.[104]

[104] Interview with media expert, 30 May 2020.

- How much public and political pressure there is to find the suspects or to punish the suspect.
- The role of the police officer in charge of the investigation is an important factor determining whether the presumption of innocence will be respected.
- Police culture and practice in general pertaining to respect or otherwise of procedural rights.
- Judges attitudes and their views on the type of offences tried.

b. The role of prejudices and stigma

The police officers interviewed were categorical that no factor can influence the presumption of innocence at the level of the police investigation or during the judicial proceedings. The police officers took a similar position on the issue of stigma and prejudice, arguing that the presumption of innocence applies equally to all without exception, irrespective of what structures and margins exist in society. The police press officer in fact complained that only police and other security officers do not enjoy the same level of protection as all others. This position was strongly disputed by the defence lawyers interviewed and by human rights groups, who pointed out that a legal action against the police for misconduct has little chance of success in Cypriot courts.

Most of the persons interviewed agree that in theory the presumption of innocence applies equally to all, the disagreement was about its practical implementation. All interviewees, except the police officers, concurred that there are factors which in practice undermine the presumption of innocence. Two out of the four prosecutors interviewed also considered that overall, the presumption of innocence is equally implemented without any social, cultural, political, or economic factors at the judicial level because the justice system is sealed from media or public discourse debate. As an experienced male prosecutor noted:

> "The presumption of innocence applies in practice equally to everyone. The Cypriot court is not influenced: the judge may be influenced by various factors, but certainly not in his final decision. A good judge can distinguish these factors and will warn himself or herself against this. Even though statistically it possible that some innocent persons may have been convicted, I have not experienced a situation in Cyprus where I felt that an innocent person has been convicted. Sometimes, you just realise that the judge is strict during the process and tends to approach things wrongly."
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> *"Το τεκμήριο της αθωότητας ισχύει το ίδιο για όλους. Το δικαστήριο της Κύπρου στη τελική του απόφαση δεν επηρεάζεται από άλλους παράγοντες και το τεκμήριο ισχύει για όλους το ίδιο. Μπορεί ο/η δικαστής να [διαχωρίσει τέτοιους παράγοντες]αλλά σίγουρα στην τελική του/της απόφαση δεν θα επηρεαστεί... Εγώ προσωπικά, παρόλο που στατιστικά είναι αποδεκτό ότι κάποιοι αθώοι καταδικάζονται, στην Κύπρο δεν έχω ζήσει να καταδικαστεί κάποιος αθώος. Λίγο, στην διαδικασία, μπορεί να είναι πιο αυστηρός ο δικαστής, τον καταλαβαίνεις από την έδρα ότι προσεγγίζει κάποτε τα πράγματα κάπως λανθασμένα."*

One of the prosecutors expressed at several points the opinion that problems with respecting the presumption of innocence and generally the due process of investigation are located mainly at the level of the police. The prosecutor attributed them to personal idiosyncrasies of police officers, the mentalities and personal ambitions of police officers to climb up the professional ladder by 'scoring' in the field of securing convictions, even at the cost of the rights of the accused. The same prosecutor located fewer problems at the level of the judicial procedure, due to the long experience of the judges, although s/he did locate instances of surmounting social pressure from public opinion that can

interfere with the personal judgement of the judges. The same prosecutor expressed the view that, in cases of undue influence or other violation of the principle of the presumption of innocence, the accused will, as a rule, be acquitted. The prosecutor located problems with the way in which the media present court cases, owing mainly to the absence of legal training of the journalists, which renders it impossible for them to conduct a proper analysis and scrutiny of the decisions. S/He pointed out that society is finally ready to depart from the decades' old notion that criticising court decisions is evidence of disrespect towards the court. S/He placed particular emphasis on gaps located in recent years in the judicial system which have shaken the trust of society in the justice system, which s/he attributed to the non-transparent and arbitrary system of appointment of judges, which is permeated by phenomena of nepotism.

Some prosecutors conceded that the presumption of innocence is respected in the judicial process which must be distinguished from society where a number of excesses and abuses can take place, particularly at the level of police investigations, where 'deeply rooted social stereotypes and racist attitudes' can be located. As an experienced female prosecutor noted:

> *"At the level of the judiciary, the presumption of innocence is generally respected for all. However, the problem is mainly at the police stations who engage in practices to extract evidence from the accused. These are intimately connected to the predominant culture of the police which is different, in terms of its (educational/cultural) level to that of lawyers and deeply rooted social stereotypes and racist attitudes in the treatment of aliens. The seriousness of the case is also an important factor. Another factor is the personality of the inspector in charge and his ambitions: In other words, there are instances in serious cases where investigators in their attempt to resolve these cases by any means, if their successful resolution would provide impetus for their promotion, during the interrogation process they engage in serious deviations from Judges rules and other rules contained within the presumption of innocence. On numerous occasions we have the phenomenon of undue pressure on the accused."*
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> *"Σε επίπεδο δικαστικής διαδικασίας το τεκμήριο της αθωότητας ισχύει το ίδιο για όλους. Φαίνεται να εμφιλοχωρούν προβλήματα στις πρακτικές που χρησιμοποιούνται στους αστυνομικούς σταθμούς αναφορικά με την εκμαίευση μαρτυρικού υλικού. Αυτά είναι άρρηκτα συνυφασμένα με την κουλτούρα εκεί, όπου είναι πολύ διαφορετικό το επίπεδο από τους δικηγόρους, και με κάποια παγιωμένα κοινωνικά στερεότυπα και/ή ρατσιστικ;α στοιχεία που τείνουν να διαφοροποιήσουν την μεταχείριση των αλλοδαπών. Επίσης, η βαρύτητα της υπόθεσης είναι πολλές φορές σημαντικός παράγοντας. Πολλές φορές έχει να κάνει με την προσωπικότητα του ανακριτή που χειρίζεται την υπόθεση και τις βασικές του φιλοδοξίες: Δηλαδή τυχαίνει να υπάρχουν παραδείγματα σε σοβαρές υποθέσεις όπου ανακριτές στην απόπειρα τους να εξιχνιάσουν τις υποθέσεις αυτές με οποιοδήποτε τρόπο, εφόσον η εξιχνίαση τους θα δώσει βασική ώθηση στην ανέλιξη τους, να έχουμε σοβαρές παρακάμψεις από τους δικαστικούς κανόνες και άλλους κανόνες που περιλαμβάνονται στο τεκμήριο της αθωότητας κατά την ανακριτική διαδικασία. Πολλές φορές έχουμε το φαινόμενο να ασκούνται αθέμιτες πιέσεις."*

Such views were strongly disputed by all the defence lawyers interviewed who insisted that all the judges they came across in their long career have the same prejudices as they exist in society, even to a higher degree, as they are predominantly male, conservative and mostly come from privileged social classes. A senior lawyer noted:

"In criminal cases the judges have no education in respecting human rights. The presumption of innocence is a great achievement in human rights history. However, because of the lack of training of judges, when they come across an accused person, they are predisposed that the accused person has committed the offence charged. If a woman looks poor and is accused of theft, in the mind of the judges the chances of guilt are extremely high.

"Πιστεύω ότι στις ποινικές υποθέσεις οι δικαστές δεν έχουν καμία εκπαίδευση στο σεβασμό των ανθρωπίνων δικαιωμάτων. Το τεκμήριο της αθωότητας είναι μια πολύ σημαντική κατάκτηση στον αγώνα των ανθρωπίνων δικαιωμάτων. Λόγω της χαμηλής εκπαίδευσης των δικαστών όταν συναντήσουν ένα κατηγορούμενο είναι προϊδεασμένοι από την εμφάνιση αν είναι ένοχος ή όχι. Αν μια κατηγορούμενη μοιάζει φτωχή και ταλαιπωρημένη και κατηγορείται για κλοπή, στο μυαλό τους είναι ήδη ενοχή."

Another crucial factor is a judicial tendency to take for granted the credibility of the police witnesses, when contrasted with conflicting testimony from defence witnesses. As an experienced lawyer suggested:

"In practice the presumption of innocence is not implemented. When the accused person is standing against the state and there are four police officers testifying against the accused, the judges are predisposed that the police officers are right, and the accused is lying. If there is police testimony against the accused, the judges have already decided in their minds that the accused persons are guilty."

"*Στην πράξη το τεκμήριο της αθωότητας δεν εφαρμόζεται. Όταν ο κατηγορούμενος στέκεται ενάντια στο κράτος και υπάρχουν τέσσερις αστυνομικοί που καταθέτουν εναντίον του, οι δικαστές είναι προκατειλημμένοι και θεωρούν ότι οι αστυνομικοί έχουν δίκιο και ο κατηγορούμενος ψεύδεται. Εάν υπάρχει μαρτυρία της αστυνομίας εναντίον των κατηγορουμένων, οι δικαστές έχουν ήδη αποφασίσει ότι οι κατηγορούμενοι είναι ένοχοι*."

The defence lawyer explained that if there are four police officers testifying against the accused the accused, often with identical testimony, the prosecution testimony is so much weightier that it operates overwhelming pressure on the accused to plead guilty:

"In a recent case where I was the defence lawyer, when I informed the police officer that my client will plead not guilty, he looked at me with surprise and asked me: 'But the accused has four police officers testifying against him, how can he not plead guilty?' In other words, they start on the premise that they are guilty because the police officers say so. Wherever there is a testimony from a police officer the starting point is 'they are guilty'. The testimony of the police officers is, by definition, of greater force, the accused person must prove his innocence and this is precisely where the burden of proof is reversed."

"Σε μια πρόσφατη υπόθεση όπου ήμουν δικηγόρος υπεράσπισης, όταν ενημέρωσα τον αστυνομικό ότι ο πελάτης μου θα ισχυριστεί ότι δεν είναι ένοχος, με κοίταξε με έκπληξη και με ρώτησε: «μα έχει τέσσερις μάρτυρες αστυνομικούς εναντίον του, πώς να μην παραδεχτεί την ενοχή του;». Με άλλα λόγια ξεκινούν με το ότι είναι ένοχοι επειδή το λένε οι αστυνομικοί. Όπου υπάρχει η μαρτυρία αστυνομικού ξεκινούμε με το «είναι ένοχοι». Η μαρτυρία των αστυνομικών είναι εκ προοιμίου βαρύνουσας ισχύος, ο κατηγορούμενος πρέπει να αποδείξει ότι είναι αθώος και εδώ ακριβώς αντιστρέφεται το βάρος της απόδειξης."

An experienced defence lawyer pointed out that judges are prone to outside pressure, particularly media pressure:

"Judges are prone to outside pressure, such as media pressure, and issues like previous convictions and cases whose nature of the alleged crime is such that draws attention. This adversely influences the presumption of innocence. When a high-profile case reaches the front pages of the newspapers, my feeling is that the courts are influenced. My feeling is that many judges are influenced by satisfying public opinion, and by doing so, they are not upholding the law, the basic human right called the presumption of innocence. No, the presumption of innocence doesn't apply as it should."

"Οι δικαστές είναι επιρρεπείς σε εξωτερικές πιέσεις, όπως η πίεση από τα μέσα ενημέρωσης, και δεδομένα όπως προηγούμενες καταδίκες και υποθέσεις των οποίων η φύση του φερόμενου εγκλήματος είναι τέτοια που προσελκύει την προσοχή. Αυτό επηρεάζει αρνητικά το τεκμήριο της αθωότητας. Όταν μια υπόθεση υψηλού προφίλ εμφανίζεται στα πρωτοσέλιδα των εφημερίδων, πιστεύω ότι τα δικαστήρια επηρεάζονται. Η αίσθηση μου είναι ότι πολλοί δικαστές επηρεάζονται από την ανάγκη ικανοποίησης της κοινής γνώμης, και με αυτόν τον τρόπο, παραβαίνουν το βασικό ανθρώπινο δικαίωμα που ονομάζεται τεκμήριο αθωότητας. Όχι, το τεκμήριο της αθωότητας δεν ισχύει όπως θα έπρεπε. "

Another defence lawyer suggested that individual prejudices and attitudes of judges matter:

"The presumption of innocence depends on who is judging the accused person. Judges are not machines; they are people with daily needs, they may have their personal problems, sensitivities, enmities or political affiliations that can affect their judgement. They may dislike certain lawyers because they talk rudely to them or they may like lawyers because they are their friends, or they are friends of their friends. This is the reason why some accused persons receive favourable treatment. A typical example was the murder of a Bulgarian man by a Greek Cypriot police officer, who was acquitted. Would the outcome be the same if the victim were a Greek Cypriot? Sometimes we are faced with corrupt judges. I am aware of a case where the judge literally copied in his decision the lawyer's written submissions, […], without facing any consequences. These are known facts and have been published. The main issue is personal friendships with the accused, or with the defence lawyer, which explains why some lawyers have great successes in their cases whilst others do not."

«Το τεκμήριο αθωότητας εξαρτάται από το ποιος κρίνει τον κατηγορούμενο. Οι δικαστές δεν είναι μηχανές. Είναι άτομα με καθημερινές ανάγκες, μπορεί να έχουν τα προσωπικά τους προβλήματα, ευαισθησίες, εχθρότητες ή πολιτικές σχέσεις που μπορούν να επηρεάσουν την κρίση τους. Μπορεί να αντιπαθούν ορισμένους δικηγόρους επειδή τους μιλούν με αγένεια ή μπορεί να συμπαθούν κάποιους δικηγόρους επειδή είναι φίλοι τους ή είναι φίλοι των φίλων τους. Αυτός είναι ο λόγος για τον οποίο ορισμένοι κατηγορούμενοι τυγχάνουν πιο ευνοϊκής μεταχείρισης από άλλους. Χαρακτηριστικό παράδειγμα ήταν η δολοφονία ενός Βούλγαρου από έναν Ελληνοκύπριο αστυνομικό, ο οποίος αθωώθηκε. Θα ήταν το ίδιο αποτέλεσμα εάν το θύμα ήταν Ελληνοκύπριος; Μερικές φορές συναντούμε δικαστές διεφθαρμένους. Γνωρίζω μια υπόθεση όπου ο δικαστής αντέγραψε κυριολεκτικά στην απόφασή του την αγόρευση του δικηγόρου, χωρίς να αντιμετωπίσει οποιεσδήποτε συνέπειες. Αυτά είναι γνωστά γεγονότα και έχουν δημοσιευτεί. Το κύριο ζήτημα είναι οι προσωπικές φιλίες με τον κατηγορούμενο ή με τον δικηγόρο υπεράσπισης, το οποίο εξηγεί γιατί ορισμένοι δικηγόροι έχουν μεγάλες επιτυχίες στις υποθέσεις τους, ενώ άλλοι όχι.»

Prosecutors also agree that there are factors which undermine the presumption of innocence. An experienced prosecutor from Nicosia noted:

> *"Many factors impact the judgement and the conduct of the investigating authorities and the presumption of innocence does not apply equally to all and to the same extent. The factors are subjective. I handled a case where the social status of the suspect influenced the judgment of the interrogator, because the suspect was reputable person and above suspicion. Such factors include the social status of the suspect, which will influence the judgement of the investigator, as the police appears to believe that well-to-do people are above suspicion whilst poorer people are always suspect. In some cases, the innocence of a suspect was taken for granted because the suspect was a member of a disciplinary committee. The opposite applies for people who look poor and for migrants."*
>
> *"Πολλοί παράγοντες επηρεάζουν την κρίση και τη συμπεριφορά των ανακριτικών αρχών και θεωρώ ότι δεν ισχύει το τεκμήριο της αθωότητας για όλους και στον ίδιο βαθμό. Οι παράγοντες είναι υποκειμενικοί. Χειρίστηκα μια υπόθεση όπου το κοινωνικό στάτους του διερευνώμενου επηρέασε την κρίση του ανακριτή, επειδή ήταν ευυπόληπτος πολίτης και στο μυαλό του ανακριτή πέραν πάσης υποψίας Τέτοιοι παράγοντες περιλαμβάνουν την κοινωνική κατάσταση του υπόπτου, η οποία θα επηρεάσει την κρίση του ανακριτή, καθώς η αστυνομία φαίνεται να πιστεύει ότι οι εύποροι άνθρωποι είναι πάνω από την υποψία, ενώ οι φτωχότεροι άνθρωποι είναι πάντα ύποπτοι Σε μια περίπτωση το τεκμήριο ήταν πολύ ισχυρό, επειδή ήταν μέλος πειθαρχικής επιτροπής. Αντίθετα ένας ρακένδυτος ή ένας αλλοδαπός και γενικά μια εξωτερική όψη επηρεάζει αρνητικά το τεκμήριο της αθωότητας."*

c. Discussion of findings

The police officers interviewed consider that the police duly respect the presumption of innocence and that the main problem is with the way media report court cases. The interviews with senior prosecutors and lawyers experienced in interacting with the police at the stage of the investigation point to a major problem with the police. The lack of training of the police emerged at several points throughout the interviews, with vivid examples of police misconduct. A systemic approach generated by police attitudes essentially results in the accused person having to disprove police allegations rather than the police having to prove its case. This suggests that there are similar problems of presumed police credibility in the courtroom, as the final decision on the credibility rests with the judge.

All prosecutors consider that in many cases the defendant's acquittal results from the police failure to observe the rules of evidence and due process pertaining to the presumption of innocence. Prosecutors consider the role of media lies somehow anything outside of the ambit of the judicial and criminal process as exogeneous to the process. They tend to have a narrow approach following the outdated traditional English law, which approaches the principle on the question of whether the public utterances about the guilt of the defendant operate as an influence on the judge's mind. They did however acknowledge that there are exceptional instances, particularly if there is social or political pressure from public opinion, where one can observe the influence on the personal judgement of the judges. The prosecutors considered that in cases of undue influence or other violation of the principle of the presumption of innocence in the questioning or other related process, the accused as a rule will be acquitted. Prosecutors suggested that the main problems with respecting the presumption of innocence as well as the principles of due process of investigation are found at the level of the police. They noted that these depend on personal idiosyncrasies of police officers in charge of investigations, their mentalities, and their personal ambitions. In general, the prosecutors consider that the courts

would, as a rule, enforce the principle and are sensitive to any violations. The prosecutors noted that there are possible abuses at the level of Police practice, where there are 'deeply rooted social stereotypes and racist attitudes.'

All interviewees agreed that there is wide-spread prejudice and stigma in Cypriot society but disagreed over the extent to which this affects the treatment of accused persons in criminal proceedings. The police officers interviewed consider that criminal justice is not affected by any of the above factors and that, although prejudices exist, they have no impact on the presumption of innocence. The defence lawyers interviewed, as well as human rights groups, strongly dispute this view. The prosecutors and lawyers concurred that many factors undermine the presumption of innocence; two out of the four prosecutors took the position that justice prevails over societal prejudices, whilst one prosecutor pointed out that judicial prejudice is even worse than societal because judges tend to be male, conservative and from a privileged background.

C.2 Public references to guilt

The police perspectives

The police make regular announcements in the media. A special police press office issues daily announcements about the cases under investigation without mentioning names. All police officers interviewed consider that names of suspects are regularly leaked through various sources, which may include a police officer sometimes, in which case disciplinary measures are taken. Once the case is presented in court, the media has access to the identity of the suspect and thereafter the identity of the suspect is often leaked through no fault of the police. A senior police officer stated:

> *"Names are leaked through various sources that so and so has been arrested, who is named in the media. Or maybe a journalist has some information from a source, without excluding the police, but this is not official. In such cases of police officers, who leak information, the police investigate and start a case against the officer who has leaked the information because it is not allowed to do so. From my practice and experience, a journalist can get information that we are investigating a case and ask us about it. The police make every effort not to reveal to media, especially in serious cases because such revelations will damage the case. Evidence may be lost or be hidden. Therefore, the police chief has given specific instructions on the subject, beyond the standing Police Orders which explicitly prohibit this. However, there are cases where a journalist may be informed and ask the police if we are really investigating something about a case, then the press office is obliged to answer without mentioning the names. The Press office deny it because it cannot lie. Article 3B of the penal code, which is based on the EU directive, refers to public statements by a public authority and prohibits public figures, including the police from making statements implying guilt. It explicitly states that until the issuance of the final decision on the guilt of the suspect or the accused by the court, public statements of a public authority are prohibited. The provision does not mention the journalists and media here, but we can assume that the code of ethics covers this issue."*

> *"Τα ονόματα διαρρέουν από διάφορες πηγές ότι ο τάδε συνελήφθη, οι οποίος ονομάζεται στα μέσα ενημέρωσης. Ή ίσως ένας δημοσιογράφος να έχει κάποιες πληροφορίες από μια πηγή, χωρίς να αποκλείεται η αστυνομία, αλλά δεν είναι επίσημες. Όταν αστυνομικοί διαρρέουν πληροφορίες, η αστυνομία το διερευνά και ανοίγει υπόθεση εναντίον του*

αστυνομικού που έχει διαρρεύσει τις πληροφορίες επειδή απαγορεύεται. Από την πρακτική και την εμπειρία μου, ένας δημοσιογράφος μπορεί να λάβει πληροφορίες από μια υπόθεση που ερευνούμε και να μας ρωτήσει σχετικά. Η αστυνομία καταβάλλει κάθε προσπάθεια να μην αποκαλύψει στοιχεία στα μέσα ενημέρωσης, ειδικά σε σοβαρές περιπτώσεις, επειδή τέτοιες αποκαλύψεις θα βλάψουν την υπόθεση. Τα αποδεικτικά στοιχεία μπορεί να χαθούν ή να κρυφτούν. Ως εκ τούτου, ο αρχηγός της αστυνομίας θα εκδώσει συγκεκριμένες οδηγίες σχετικά με το θέμα, πέρα από τις ισχύουσες αστυνομικές διατάξεις που το απαγορεύουν ρητά. Ωστόσο, υπάρχουν περιπτώσεις όπου ένας δημοσιογράφος μπορεί να ενημερωθεί και να ρωτήσει την αστυνομία εάν πραγματικά ερευνούμε κάτι για μια υπόθεση και τότε το γραφείο Τύπου υποχρεούται να απαντήσει χωρίς να αναφέρει ονόματα. Το γραφείο Τύπου το αρνείται επειδή δεν μπορεί να πει ψέματα. Το άρθρο 3Β του ποινικού κώδικα, το οποίο βασίζεται στην οδηγία της ΕΕ, αναφέρεται σε δημόσιες δηλώσεις μιας δημόσιας αρχής και απαγορεύει σε δημόσια πρόσωπα, συμπεριλαμβανομένης της αστυνομίας να προβεί σε δηλώσεις που συνεπάγονται ενοχή. Αναφέρει ρητά ότι μέχρι την έκδοση της τελικής απόφασης σχετικά με την ενοχή του υπόπτου ή του κατηγορουμένου από το δικαστήριο, απαγορεύονται οι δηλώσεις δημόσιας αρχής.. Η διάταξη δεν αναφέρει εδώ τους δημοσιογράφους και τα μέσα ενημέρωσης, αλλά μπορούμε να υποθέσουμε ότι ο κώδικας δεοντολογίας καλύπτει και αυτό το ζήτημα."

The police officer in charge of press matters stated:

"The job of the Police Press Office is to inform journalists about cases before the police. We ensure that we do not post personal information that would reveal the identities of individuals. We only refer to issues that are relevant and need to be made public, namely the offenses being investigated, his age, gender, and the details of the offense he committed, which should of course come out naturally. One case that saw a lot of publicity and journalists became extremely interested was the case we are now investigating, the murder of a young man by a family member. Unfortunately, in the course of the judicial proceedings for the purpose of securing a pre-trial detention order, some details regarding the suspect were mentioned in the courtroom in order for the judge to be aware of information which is crucial in assessing the request for pre-trial detention. Because the hearing was open, the details were leaked to the media and became public."

«Το Γραφείο Τύπου της Αστυνομίας είναι επιφορτισμένο με την ενημέρωση των ΜΜΕ για υποθέσεις που διερευνά η αστυνομία. Διασφαλίζουμε ότι δεν δημοσιεύουμε προσωπικά στοιχεία που θα αποκαλύπτουν τις ταυτότητες των ατόμων. Αναφερόμαστε μόνο σε ζητήματα που είναι συναφή και πρέπει να δημοσιοποιούνται, δηλαδή τα αδικήματα που ερευνώνται, την ηλικία, το φύλο του υπόπτου και τις λεπτομέρειες του αδικήματος που διέπραξε, τα οποία φυσικά θα πρέπει να δημοσιοποιηθούν. Μια υπόθεση που έτυχε μεγάλης δημοσιότητας και οι δημοσιογράφοι έδειξαν τεράστιο ενδιαφέρον είναι μια υπόθεση που διερευνούμε τώρα, η δολοφονία ενός νέου άνδρα από ένα μέλος της οικογένειας του. Δυστυχώς, κατά τη διάρκεια της δικαστικής διαδικασίας με σκοπό την εξασφάλιση διατάγματος κράτησης, ορισμένες λεπτομέρειες σχετικά με τον ύποπτο αναφέρθηκαν στην αίθουσα του δικαστηρίου, προκειμένου ο δικαστής να γνωρίζει πληροφορίες που είναι ζωτικής σημασίας για την αξιολόγηση της αίτησης για το διάταγμα κράτησης. Επειδή η ακρόαση ήταν ανοιχτή, οι πληροφορίες διέρρευσαν στα ΜΜΕ και δημοσιοποιήθηκαν."

A police officer pointed out that there are guidelines that the police adhere to:

"There are guidelines about how to liaise with the media process. There is a protocol of actions for the members of the police and, to speak specifically about my department, the way we liaise with the journalists. There is a representative of the police headquarters who coordinates on a national level all the press representatives of the provinces. There are specialised departments such as the anti-crime unit, the anti-trafficking unit, the department of the Chief of Police, the domestic violence department, the anti-hooliganism office. These offices have press representatives who are authorised to speak to journalists. Each of these departments are coordinated by the Police Spokesperson who issues recommendations and monitors what will be revealed to the public. This is always guided by the existing protocol about what we reveal to the journalists."

«Υπάρχουν πρωτόκολλα για το πώς να διαχειριζόμαστε τη διαδικασία με τα μέσα ενημέρωσης. Υπάρχει ένα πρωτόκολλο δράσεων για τα μέλη της αστυνομίας και, για να μιλήσω προσωπικά για το τμήμα μου, για το πώς λειτουργούμε με τους δημοσιογράφους. Υπάρχει ένας εκπρόσωπος του αρχηγείου της αστυνομίας, ο οποίος συντονίζει σε Παγκύπρια βάση, όλους τους εκπροσώπους τύπου των επαρχιών που έχουμε στις επαρχίες όσον αφορά τις αστυνομικές υπηρεσίες. Υπάρχουν εξειδικευμένα τμήματα όπως το γραφείο κατά του εγκλήματος, το αρχηγείο, το τμήμα κατά της σωματεμπορίας, το τμήμα για την ενδοοικογενειακή βία, το γραφείο κατά του χουλιγκανισμού. Αυτά τα γραφεία διαθέτουν εκπροσώπους τύπου που είναι εξουσιοδοτημένοι να μιλούν σε δημοσιογράφους. Όλα συντονίζονται από τον εκπρόσωπο της αστυνομίας ο οποίος καθορίζει και ελέγχει τι θα αποκαλυφθεί στο κοινό. Αυτό καθοδηγείται πάντα από το υπάρχον πρωτόκολλο του τι αποκαλύπτουμε στους δημοσιογράφους."

The police consider that they discharge this general duty in the statements the Police make. The senior police officer in charge of the press office noted:

"We implement and respect the presumption of innocence when we issue a statement about an offense, our announcements do not picture the suspect, who is innocent until the contrary is decided by the court. We refer only the age and gender. We do not refer to the area where the crime takes place, for example if it takes place in a village in the regional district of Larnaca we only mention the regional district but do not even mention the village. If probed by journalists, we also say if the person is α foreigner or a Cypriot citizen."

"Εφαρμόζουμε και σεβόμαστε το τεκμήριο της αθωότητας όταν εκδίδουμε μια ανακοίνωση για κάποιο αδίκημα, οι ανακοινώσεις μας δε φωτογραφίζουν τον ύποπτο, ο οποίος είναι αθώος μέχρι να αποκαλυφθεί το αντίθετο από το αρμόδιο δικαστήριο. Αναφέρουμε μόνο την ηλικία και το φύλο. Δε αναφέρουμε την περιοχή που γίνεται το αδίκημα, για παράδειγμα αν γίνεται σε ένα χωρίο της επαρχίας Λάρνακας αναφέρουμε μόνο την περιφέρεια , δεν λέμε ούτε το χωριό. Αν ρωτηθούμε από δημοσιογράφους λέμε αν είναι αλλοδαπός ή Κύπριος πολίτης."

The fact that Cyprus is small close-kin society is alluded to as one of the reasons for the leaking of names and the difficulty in monitoring and keeping information confidential to protect the presumption of innocence of the accused:

"Every day the police are in contact with the media with press releases and announcements. These are guided by the relevant regulations and in the press releases that require that we do not mention names, nor do we refer to them as culprits but as suspects or defendants. The media are not allowed to reveal the names or details. There is a code of journalistic ethics that regulates these issues. There have been many complaints from members of the public against certain media for violating the code of ethics. Cyprus is a small country and we know each

other, but all we can do as Police is to ensure that the Police respect the anonymity of the suspect, we do not divulge names. If the media publishes names, it is a matter of the media. The Police will say if the suspect is a man or a woman, which does not affect personal data or anything else."

"Καθημερινά η αστυνομία είναι σε επαφή με τα μέσα μαζικής ενημέρωσης, με τα δελτία τύπου και ανακοινώσεις που εκδίδονται στη βάση σχετικών κανονισμών. Στα δελτία τύπου που δεν αναφερόμαστε σε ονόματα, ούτε μιλούμε ενόχους, αλλά σε ύποπτα πρόσωπα ή κατηγορούμενα. Τα μέσα ενημέρωσης δεν επιτρέπεται να αποκαλύπτουν όνομα ή άλλα στοιχεία. Υπάρχει ο κώδικας δημοσιογραφικής δεοντολογίας που τα ρυθμίζει αυτά τα θέματα. Υπήρχαν πολλές φορές παράπονα και από το κοινό εναντίον συγκεκριμένων μέσων για παραβίαση του κώδικα δεοντολογίας. Η Κύπρος είναι μια μικρή χώρα που ο ένας ξέρει τον άλλο, αλλά από την πλευρά της αστυνομίας δεν δίνουμε ονόματα. Αν ένα μέσο ενημέρωσης δώσει το όνομα, είναι θέμα του μέσου. Η αστυνομία δηλώνει αν είναι άντρας ή γυναίκα ο ύποπτος, διότι δεν επηρεάζει προσωπικά δεδομένα ή κάτι άλλο."

- **Comparing the perspectives prosecutors and defence lawyers**

Two defence lawyers and all the prosecutors interviewed categorically stated that they do not liaise with the media at all either for commenting on a case or for divulging any information about an ongoing case. The prosecutors stated that that they would make press statements if and when specifically sanctioned by the Attorney General, which is rare. All prosecutors and three out of the four defence lawyers consider that the liaison with the media is a problem in Cyprus, a small country where, almost, everyone knows everyone. They all agree that there is a problem with the regulation of this relationship. Defence lawyers who are practitioners, registered with Cyprus Bar Association, are not allowed to advertise. However, many have close liaison and their economic, political career and personal interests are intertwined. Many lawyers have a close relationship not only with individual journalists, but more importantly they have liaisons and business arrangements with the media outlets. Some big lawyer firms are often owners or major shareholders in media groups and outlets, or control via control directly or through third parties, who for formal reasons are not transparent. As one media expert explained,[105]

"Some of the big lawyer firms control the share capital of a media group therefore have direct access to the media and indirectly and immediately to journalists."

"Μερικά δικηγορικά γραφεία ελέγχουν το μετοχικό κεφάλαιο ενός ΜΜΕ, έτσι έχουν άμεση πρόσβαση στα μέσα και έμμεσα και άμεσα και στους δημοσιογράφους."

Large law firms, either themselves or through third parties, control the share capital of mass communication. According to the law of radio and television, a natural or legal person cannot own more than 25% of shares in an electronic medium, radio, or television. However, there are other indirect means, which allow one person to completely control a media group, via the distribution of shares to people acting as nominee shareholders. Some of the largest law firms in Cyprus control 25% share in media groups and the remaining 75% is distributed to trusted or dependent persons or companies.

Beyond the question of ownership and control of media groups, there are issues of the way in which self-regulating bodies monitor compliance with media ethics and regulations. Both the Bar Association and the Journalists Union are self-regulating bodies. They have guidelines about relations, reporting,

[105] Interview with media expert, 30 May 2020.

expressing opinions in public about an ongoing criminal case, which are not implemented closely or correctly, or there is administrative laxity. As one prosecutor stated:

> *"In Cyprus we have a serious problem with the lawyers and prosecutor liaise with the media pertaining to investigations, concerning information on suspects or accused. We are seriously behind in the way the media covers cases. They do not cover both sides equally. Defence lawyers, who are keen to appear in the media, would provide to the media certain texts. The journalists, who cannot be bothered to do their job properly just publish them without further investigation. This has happened to me. They allege things that are false and that were never said in court. Normally, a permission by the Attorney General is required for any officer from the prosecution to give a press interview. It is a serious mistake for the attorney general to appear every three days on television. You will not find this in other European countries. I had suggested that the Attorney General's office has a press officer."*

> *"Στην Κύπρο έχουμε πολύ σοβαρό πρόβλημα με το τρόπο που δικηγόροι και εισαγγελείς έρχονται σε επαφή με τα ΜΜΕ και αποκαλύπτουν στοιχεία σχετικά με υποθέσεις σχετικά με τους κατηγορούμενους. Πιστεύω πως σε αυτό το κομμάτι υστερούμε. Δεν καλύπτονται και οι δύο πλευρές ισότιμα στα μέσα. [Οι δικηγόροι της υπεράσπισης, οι οποίοι θέλουν να προβληθούν, δίνουν κάποια κείμενα, έτοιμα στα μέσα. Οι δημοσιογράφοι, που δεν κάνουν τη δουλειά τους σωστά τα δημοσιεύουν χωρίς να τα διερευνούν.Μου έτυχε και αυτό,να κάνουν ισχυρισμούς και να λένε πράγματα που δεν έχουν καμία σχέση με την πραγματικότητα και δεν ειπώθηκαν καν. Κανονικά, για να δώσει κάποιος συνέντευξη, όχι μόνο για εμάς, και δημόσιος υπάλληλος πρέπει να πάρει άδεια από τον γενικό εισαγγελέα. Θεωρώ το να είναι ο γενικός εισαγγελέας κάθε 3 μέρες στην τηλεόραση ότι είναι μεγάλο λάθος. Δεν θα δεις σε καμία χώρα του κόσμου εισαγγελέα να μιλά στα τηλεοπτικά μέσα, στον ευρωπαϊκό χώρο για να μην είμαι απόλυτος. Είχα εισηγηθεί να έχουμε ένα λειτουργό τύπου."*

The same prosecutor questioned the liaisons between lawyers and journalists on ethical and professional grounds wondering how it is possible for the same lawyers to appear on the same TV channels all the time for all kinds of subjects:

> *"The TV channels constantly inviting the same people. There are lawyers with criminal law experience on TV panels commenting pending criminal cases. Most of them do not even know the facts of the case, which is essential before one can take on the legal aspects of the case. What is happening in Cyprus where someone would designate himself as a 'penologist' is wrong. In fact, the Lawyers' Association should take a position on this. In Cypriot Law Lawyers are not allowed to advertise. I believe that these lawyers have a contact in the media to be regularly invited there."*

> «*Τα τηλεοπτικά κανάλια προσκαλούν συνεχώς τους ίδιους ανθρώπους. Υπάρχουν δικηγόροι με εμπειρία ποινικού δικαίου σε τηλεοπτικά πάνελ που σχολιάζουν ποινικές υποθέσεις ενώ ακόμα εκκρεμούν. Οι περισσότεροι από αυτούς δεν γνωρίζουν καν τα πραγματικά περιστατικά της υπόθεσης, τα οποία είναι απαραίτητα για να μπορέσει κανείς να αναλάβει τις νομικές πτυχές της υπόθεσης. Αυτό που συμβαίνει στην Κύπρο όπου κάποιος θα ορίσει τον εαυτό του ως «ποινικολόγο» είναι λάθος. Στην πραγματικότητα, ο Δικηγορικός Σύλλογος πρέπει να λάβει θέση επί του θέματος. Στην κυπριακή νομοθεσία δεν επιτρέπεται οι δικηγόροι να διαφημίζουν τις υπηρεσίες τους. Πιστεύω ότι αυτοί οι δικηγόροι διατηρούν μια επαφή με τα μέσα ενημέρωσης για να προσκαλούνται τακτικά εκεί.»*

The lawyers interviewed consider that the turning point was the case of *Georgiades* (see case studies, Annex 6), who was tried and convicted for child sexual abuse but then acquitted on appeal because of the huge media coverage of this case. One defence lawyer stated:

«I never discuss my cases with the media. My feeling is that most media respect anonymity to the extent necessary for the protection of the rights of the suspect. Things got out of hand in 2001 in the Georgiades case where the media unleashed an unprecedented attack on the suspect and then accused, Doros Georgiades. Following his acquittal things changed dramatically. In general, I could say that we have never seen such cannibalistic approach ever since. However, the media do have duty to inform people about what is happening in our society and therefore there is a proper check and balance today."

«Δεν συζητώ ποτέ τις υποθέσεις μου με τα μέσα ενημέρωσης. Η αίσθησή μου είναι ότι τα περισσότερα μέσα ενημέρωσης σέβονται την ανωνυμία στο βαθμό που απαιτείται για την προστασία των δικαιωμάτων του υπόπτου. Τα πράγματα ξέφυγαν το 2001 στην υπόθεση Γεωργιάδη, όπου τα μέσα ενημέρωσης εξαπέλυσαν μια άνευ προηγουμένου επίθεση εναντίον του υπόπτου και στη συνέχεια κατηγορούμενου. Μετά την απαλλαγή του τα πράγματα άλλαξαν δραματικά. Σε γενικές γραμμές, θα μπορούσα να πω ότι από τότε δεν έχουμε δει τέτοια κανιβαλιστική προσέγγιση. Ωστόσο, τα μέσα ενημέρωσης έχουν καθήκον να ενημερώνουν τους ανθρώπους για το τι συμβαίνει στην κοινωνία μας και επομένως υπάρχει ένας σωστός έλεγχος και ισορροπία σήμερα.»

Other defence lawyers consider that not much has changed towards a more restrained and positive approach on the subject. Most consider that matters have deteriorated with the competition and the expansion of social media outlets. The media are chasing lawyers for a statement. As one defence lawyer noted:

"Often the media ask us to express our position. Very rarely were we forced to make a media statement without being invited by the media outlet and we only do so when we feel a media outlet was completely out of order. In recent years, the Radio Television Authority has become stricter with media outlets, but problems persist. The most common practice is for the media to depict a suspect as guilty and then add a paragraph at the bottom to say, 'of course we respect the presumption of innocence'. Even where we have explained and clarified an issue, we see the same media outlets repeating their false claims or taking our statements out of context in order to ridicule them. When they call me in a television panel and they invite four other persons who have the opposite opinions than myself and the journalist says 'I will give each of you equal time to answer' this is not objective coverage and no respect for the opposite view."

"*Συχνά τα μέσα μαζικής ενημέρωσης μας ζητούν να εκφράσουμε τη θέση μας. Πολύ σπάνια αναγκαζόμαστε να προβούμε σε δηλώσεις στα μέσα ενημέρωσης χωρίς να προσκληθούμε από τα ίδια τα μέσα ενημέρωσης και το πράττουμε μόνο όταν αισθανόμαστε ότι ένα μέσο ξέφυγε εντελώς. Τα τελευταία χρόνια, η Αρχή Ραδιοτηλεόρασης έγινε πιο αυστηρή με τα μέσα ενημέρωσης, αλλά τα προβλήματα παραμένουν. Η πιο συνηθισμένη πρακτική είναι τα μέσα μαζικής ενημέρωσης να απεικονίζουν έναν ύποπτο ως ένοχο και, στη συνέχεια, να προσθέσουν μια παράγραφο στο κάτω μέρος για να πουν, «φυσικά, σεβόμαστε το τεκμήριο της αθωότητας». Ακόμα και όπου έχουμε εξηγήσει και αποσαφηνίσει ένα ζήτημα, βλέπουμε τα ίδια μέσα ενημέρωσης να επαναλαμβάνουν τους ψευδείς ισχυρισμούς τους ή να βγάζουν τις δηλώσεις μας εκτός πλαισίου για να τις γελοιοποιήσουν. Όταν με καλούν σε μια τηλεοπτική συζήτηση και προσκαλούν τέσσερα άλλα άτομα που έχουν τις αντίθετες απόψεις από εμένα και ο δημοσιογράφος λέει «θα σας δώσω ίσο χρόνο να απαντήσετε», αυτό δεν είναι αντικειμενική κάλυψη και δεν σέβεται την αντίθετη άποψη."*

An example cited by two lawyers was the recent arrest of a peace demonstrator, who was alleged to have attacked a member of the national guard who was assisting the police in preventing the

demonstrations from crossing to the northern part of the de facto divided country within the buffer zone. At the end of February 2020, the government closed the checkpoints through which Greek Cypriots could visit the Turkish occupied north and Turkish Cypriot could visit the south of the island. The checkpoints had been opened since 2003 when the Turkish army permitted passage for the first time since the 1974 war. The closure of the checkpoints led to repeated protests and demonstrations. Even though the government announced that the reason for the closure was to stop the spreading of the coronavirus, at the time Cyprus still had its airports opened and there were no Covid-19 incidents reported either in the north or the south. The closure of the checkpoints was criticized as being part of an effort to stop Greek Cypriots from buying cheaper petrol and medicines from the north, which had been at the centre of government policies for months before the pandemic. In one of the demonstrations, a demonstrator pushed a soldier who was pushing the crowds back. The incident was amplified by the media who repeatedly screened a montage video. The demonstrator was charged with a series of offences, whilst his name and photo paraded in the headlines of many newspapers for weeks. His trial is still pending. An experienced defence lawyer pointed out the following:

> *"There is a pattern where, once the media outlet forms an opinion, it disseminates it daily. In the latest example*
> *before charges were pressed, there were formal public statements by the Ministry of Interior, the Ministry of Defence, Ministry of Justice, the government spokesman, the police, three political parties, and all these before he had even presented himself to the police station. They ignored and silenced the fact that the accused person voluntarily showed up at the police station where he was charged; no media mentioned that because it does not fit the profile of the dangerous wanted criminal.*
>
> «*Υπάρχει ένα μοτίβο όπου, όταν το μέσο ενημέρωσης σχηματίσει μια γνώμη, τη διαδίδει καθημερινά. Στο τελευταίο παράδειγμα προτού να απαγγελθούν κατηγορίες, υπήρξαν επίσημες δημόσιες δηλώσεις από το Υπουργείο Εσωτερικών, το Υπουργείο Άμυνας, το Υπουργείο Δικαιοσύνης, τον κυβερνητικό εκπρόσωπο, την αστυνομία, τρία πολιτικά κόμματα και όλα αυτά πριν καν παρουσιαστεί ο διαδηλωτής στο αστυνομικό τμήμα. Αγνόησαν και αποσιώπησαν το γεγονός ότι ο κατηγορούμενος εμφανίστηκε εθελοντικά στο αστυνομικό τμήμα όπου κατηγορήθηκε. Κανένα μέσο δεν το ανέφερε επειδή δεν ταιριάζει με το προφίλ του επικίνδυνου καταζητούμενου εγκληματία.»*

Another defence lawyer is also negative about being too close to the media but added that sometimes there is no other way to counter public references to guilt, often leaked or officially announced by the police, than to release data about the case to present to the public the accused person's version of event:

> *"I do not often liaise with the media as I am not always convinced that this will benefit my clients. The police announcement about persons arrested, suspected, or charged sounds like they have already been convicted. If you pay attention to the wording used in police announcements, it sounds like a court verdict. Out of respect for the criminal procedure which follows, they should stick to their role as investigators. Today the announcement of the police regarding the incident on the beach with the youths accused of violating the Covid-19 measures was very much like a guilty verdict. I chose not to make a public statement in response to the police statement, as I do not think it will benefit my client. We did circulate thevideo, however, to show that the police version of the events is not true, to increase sensitisation of society that the police version of events is not necessarily truthful. There is a law that prohibits the mentioning of names and this is, to a great extent, complied with by the police*."

"*Δεν έρχομαι συχνά σε επαφή με τα μέσα ενημέρωσης καθώς δεν [πιστευω] πάνταότι αυτό θα ωφελήσει τους πελάτες μου. Οι ανακοινώσεις της αστυνομίας σχετικά με άτομα που συνελήφθησαν, που είναι ύποπτα ή κατηγορήθηκαν ακούγονται σαν να έχουν ήδη καταδικαστεί. Εάν δώσετε προσοχή στη διατύπωση που χρησιμοποιείται στις ανακοινώσεις της αστυνομίας, ακούγεται σαν δικαστική απόφαση. Από σεβασμό στην ποινική διαδικασία που ακολουθεί, έπρεπε να εμείνουν στο ρόλο τους ως ανακριτές. Η σημερινή ανακοίνωση της αστυνομίας σχετικά με το περιστατικό στην παραλία με τους νέους που κατηγορούνται ότι παραβίασαν τα μέτρα κατά του Covid-19 ήταν σαν μια καταδικαστική απόφαση. Επέλεξα να μην κάνω δημόσια δήλωση ως απάντηση στη δήλωση της αστυνομίας, καθώς δεν πιστεύω ότι θα ωφελήσει τον πελάτη μου. Κυκλοφόρησε το βίντεο, ωστόσο, για να δείξουμε ότι η αστυνομική εκδοχή των γεγονότων δεν είναι αληθινή, για να αυξήσουμε την ευαισθητοποίηση της κοινωνίας ότι η αστυνομική εκδοχή των γεγονότων δεν είναι απαραίτητα αληθινή. Υπάρχει ένας νόμος που απαγορεύει την αναφορά των ονομάτων και αυτό σε μεγάλο βαθμό τυγχάνει σεβασμού από την αστυνομία."*

Some of the lawyers interviewed were forthcoming about liaising with the media and do not consider that there are any ethical or regulatory issues at stake. A defence lawyer was categorical that "*there are no laws or guidelines regarding cooperation with the media"* suggesting that often it is important to liaise with the media in order to publicise information:

"I contact the media to give them information. Sometimes journalists call me and ask me if I have some news, which they can report on to fill up their pages. I do this regularly but never to influence the outcome of the case."

"*Επικοινωνώ με τα μέσα ενημέρωσης για να τους δώσω πληροφορίες. Μερικές φορές οι δημοσιογράφοι με καλούν και με ρωτούν αν έχω κάποια νέα, τα οποία μπορούν να αναφέρουν για να γεμίσουν τις σελίδες τους. Το κάνω αυτό τακτικά αλλά ποτέ για να επηρεάσω την έκβαση της υπόθεσης."*

This particular lawyer found that anonymity of the accused person was a highly problematic concept*:*

"I am against anonymity and I disagree with the view that the suspect must be kept away from the public eye. The meaning of a public trial is for the world to follow the case and to develop an outcry against the accused, for the purpose of preventing crime; I have nothing against this tactic. If a person has committed a crime and is imprisoned, the world must know as the criminal conduct of a person has an impact on society. Anonymity might be necessary for a person who has not been convicted but even so, I do not think that a suspect should not be named at all. There can be cases of persons being falsely accused, not by the public prosecutor but from private individuals, who can launch a private criminal case and in those cases the court might be inclined to treat them as guilty until they prove their innocence. If there is such a case of malicious prosecution, then the person falsely accused can sue them and claim compensation."

"Είμαι κατά της ανωνυμίας και διαφωνώ με την άποψη ότι ο ύποπτος πρέπει να κρατηθεί μακριά από την κοινωνία. Το νόημα μιας δημόσιας δίκης είναι ότι ο κόσμος παρακολουθεί την υπόθεση και αναπτύσσεται μια κατακραυγή εναντίον του κατηγορουμένου, με σκοπό την πρόληψη του εγκλήματος. Δεν έχω τίποτα εναντίον αυτής της τακτικής. Εάν ένα άτομο έχει διαπράξει έγκλημα και φυλακιστεί, ο κόσμος πρέπει να γνωρίζει ότι η εγκληματική συμπεριφορά ενός ατόμου έχει αντίκτυπο στην κοινωνία. Η ανωνυμία μπορεί να είναι απαραίτητη για ένα άτομο που δεν έχει καταδικαστεί, αλλά παρόλα αυτά, δεν πιστεύω ότι ένας ύποπτος δεν πρέπει να κατονομάζεται καθόλου. Μπορεί να υπάρχουν περιπτώσεις ατόμων που κατηγορήθηκαν με ψευδείς κατηγορίες, όχι από τον εισαγγελέα αλλά από ιδιώτες, οι οποίοι μπορούν να κινήσουν ιδιωτική ποινική υπόθεση και σε αυτές τις περιπτώσεις το δικαστήριο μπορεί να έχει την τάση να τους θεωρεί ένοχους έως ότου αποδείξουν την αθωότητά τους. Εάν υπάρχει τέτοια περίπτωση κακόβουλης

δίωξης, τότε το άτομο που κατηγορείται ψευδώς μπορεί να τον μηνύσει και να ζητήσει αποζημίωση."

This view was not shared by any of the other interviewees.

a. Mapping of laws and guidelines

Laws relating to prohibiting public references to guilt

The basic principle underlying criminal law and procedure is presumption of innocence, therefore suspects or accused persons cannot be referred to as guilty in any public statement of any public or judicial authority before the issue of a final court decision regarding their guilt. This is a common law principle that has been codified in the constitution, criminal law, and criminal procedure. In criminal law procedure, the prosecution always starts the case because the onus is on them to prove.[106]

In 2018 there was an amendment[107] of the basic Criminal Procedure Law inserting three new articles[108] adopting the wording of the Directive 2016/343. 'Public authorities' includes the police and other persons conducting investigations, the courts, any state officials,[109] including the President of the Republic and the Attorney General, the Assistant Attorney General, the Chief of Police, the President of the Supreme Court, judges of the Supreme Court, the Auditor General, the Assistant Auditor General, the Governor of the Central Bank of Cyprus, the General Accountant, the Assistant General Accountant, Cabinet Ministers, Undersecretaries, the Government Spokesman, any person working under an employment contract for purchase government services, any person holding the position of Commissioner or Superintendent or President or Member of the Authority or another House or another official whose function or office or position is provided or power is established under the constitution. [110]

The Directive's provision regarding remedies was not specifically transposed here, presumably because of the impression of the legislator that there are general remedies available to persons whose rights were infringed because of public statements.[111] The prohibition of public references to guilt by public authorities, as provided by Article 4 of the Directive to ensure that, for as long as a suspect or an accused person has not been proved guilty according to law, is restrictively interpreted the sort of 'public statements made by public authorities', which in essence merely means not naming the individual. Moreover, the police, the prosecution and the courts, see their role as essentially one of guarding and protecting the criminal and juridical procedure. From the interviews with the Police and prosecutors, we can safely conclude that the they do not see much of a role in taking measures in protecting the accused from media or other public references to guilt, in what can be seen as

[106] Clerides, C. (2018), *Κυπριακό Δίκαιο της Απόδειξης*, Nomiki Vivliothiki, Athens; Cacoyiannis (1983) *Η Απόδειξη, Το Δίκαιο της απόδειξης όπως εφαρμόζεται στη Κύπρο*, Libra Chambers, Limassol; Eliades, T. and Santis, N. (2014) *Το Δίκαιο της Απόδειξης: Δικονομικές και Ουσιαστικές Πτυχές*, HIPPASUS; Eliades, T. (1994) *Το Δίκαιο της Απόδειξης, Μια πρακτική προσέγγιση*, Zavallis, Nicosia.

[107] Cyprus, Law (Amendment) on Criminal Procedure of 2018 (*Ο περί Ποινικής Δικονομίας (Τροποποιητικός) Νόμος του 2018*) N. 110(I)/2018, No. 4668, 25 July 2018.

[108] Cyprus, Law on Criminal Procedure Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος Κεφ. 155*), Art. 3A, 3B and 3C.

[109] Cyprus, Law on Criminal Procedure Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος Κεφ. 155*), article 3B(3).

[110] Cyprus, Law on Criminal Procedure Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος Κεφ. 155*), article 3B(3).

[111] The interviews conducted with Lawyers, Police and Prosecutors confirm that this a consensus in the Cypriot legal profession that this is the established practice in Cyprus.

criminalisation at societal level, which is seen as a matter to be taken up by the individual in pursuing his or her rights in public or private law and as a matter of correct regulation of the media.

Overall, Cypriot courts would assume that judges are not influenced by media or other inferences of guilt, except for incredibly special or exceptional circumstances, as discussed above.

The other important element pertains to media reporting of criminal matters. Given popular fears and calls for crime prevention and containment, there is increasing competition for exaggerating and elements of crime, often inferring guilt to persons who are accused prior to being tied. This is neither novel, nor is it confined to Cyprus.[112] Often, the popular media tends to amplify assumed 'common sense' approaches, ripe with prejudices about 'deviant' groups (such as migrants, youth those who come from poor social background etc), often depicted as prone to criminality.[113] The assumptions about the alleged criminality of certain categories persons accused, who have certain characteristics, is often at the expense of the presumption of innocence of the accused. In Greek-Cypriot public debates, major issues pertain to the adequacy of legal protection and the most effective ways to regulate both, the protection and the public inferences relating to the presumption of innocence.

Media regulation and guidelines

There are various laws regulating the media and there is legislation that covers TV broadcasting.[114] Also subsidiary legislation[115] and guidelines of codes of journalist practice refer to the protection of the presumption of innocence.[116] The code of journalistic ethics is appended to the main legislation on the TV broadcasting, which covering also the electronic media outlets. These apply for TV and radio, print and electronic publications. [117] Despite their potential use for the imposition of administrative fines, there is little use of these as binding instruments. Authorities prefer to use them as declaratory instruments of advisory character professing to respect for the personality, the honour and reputation, as well as the presumption of innocence in criminal procedure. The guidelines are mostly not legally binding as they are in the form of a soft law of voluntary codes.[118] The law also covers electronic media.[119] However, electronic publications and the social media, which are becoming more

[112] Hall, S., Critcher, C., Jefferson, T., Clarke, J. and Roberts, B. (1978) *Policing the Crisis: Mugging, the State, and Law and Order*, Routledge, London; Sitas, A., Trimikliniotis, N., Damodaran, S., Keim, W. and Garba, F. (2014) *Gauging and engaging deviance 1600-2000*, Tulika Academic Press, India.

[113] Trimikliniotis, N. (2013) "Migration and free Movement of Workers: EU Law, Crisis and the Cypriot States of Exception." *Laws* 2, no. 4: 440-468, 2013 http://www.mdpi.com/2075-471X/2/4/440 ; Trimikliniotis, N., Demetriou, C. (2012) "Cyprus", Ricard Zapata-Barrero and Anna Triandafyllidou (eds.) *Addressing tolerance and diversity discourses in Europe, A Comparative Overview of 16 European Countries*, CIDOB. Barcelona Centre for International Affairs, pp. 275-293.

[114] Cyprus, Law on Cyprus Broadcasting Cooperation (*Ο περί Ραδιοφωνικού Ιδρύματος Κύπρου Νόμος ΚΕΦ. 300Α*).

[115]Cyprus, Regulations under article 51 of the Law on radio and television stations, (*Οι περί Ραδιοφωνικών και τηλεοπτικών σταθμών νόμοι, Κανονισμοί δυνάμει του άρθρου 51*), Κ.Δ.Π. 10/2000, Appendix III, Cyprus Gazette no. 3383, 28 January 2000.

[116] Cyprus, Code of Practice for Electronic Media, Appendix VIII (*ΚΩΔΙΚΑΣ ΔΗΜΟΣΙΟΓΡΑΦΙΚΗΣ ΔΕΟΝΤΟΛΟΓΙΑΣ ΓΙΑ ΤΑ ΗΛΕΚΤΡΟΝΙΚΑ ΜΜΕ, ΠΑΡΑΡΤΗΜΑ VIII*), Regulation 27(4) and 49, Art. 10.

[117] Cyprus, Code of Practice for Electronic Media, Appendix VIII (*ΚΩΔΙΚΑΣ ΔΗΜΟΣΙΟΓΡΑΦΙΚΗΣ ΔΕΟΝΤΟΛΟΓΙΑΣ ΓΙΑ ΤΑ ΗΛΕΚΤΡΟΝΙΚΑ ΜΜΕ, ΠΑΡΑΡΤΗΜΑ VIII*), Regulation 27(4) and 49, Art. 10.

[118] Stratilatis, C. and Emilianides, A. (2015) *Media Law in Cyprus*, Kluwer Law International, pp. 153-154.

[119] Cyprus, Code of Practice for Electronic Media, Appendix VIII (*ΚΩΔΙΚΑΣ ΔΗΜΟΣΙΟΓΡΑΦΙΚΗΣ ΔΕΟΝΤΟΛΟΓΙΑΣ ΓΙΑ ΤΑ ΗΛΕΚΤΡΟΝΙΚΑ ΜΜΕ, ΠΑΡΑΡΤΗΜΑ VIII*), Regulation 27(4) and 49, Art. 10.

influential, viral and are often the most invasive and damaging are not effectively monitored, the media expert explained.[120] The regulation framework and the implementation mechanism for this matter seems to be the least satisfactory.[121]

Complaints against the media are often interpreted as efforts to interfere with media freedom and freedom of speech, when media owners and journalists respond to the decisions of the Cyprus Media Complaints Commission.[122] The Union of Journalists opposes any restrictions as 'preventive censorship', taking offence with press articles criticising them, and instructs lawyers to send warning letters threatening journalists with lawsuits if they continue to write about them.[123] Since 1997, the Union of Cypriot Journalists[124] has established a voluntary Code of Journalists Conduct.[125] The Journalistic Ethics Commission or Cyprus Media Complaints Commission[126] is a 17-member body appointed by the Union of Cypriot Journalists.

The reference in the Journalists Code of Practice is positively worded calling for the protection of the presumption of innocence. The relevant provision, which is the same contained covering in the law covering the electronic media,[127] notes: "Journalists fully respect the principle that the suspect or accused of committing an offense is innocent until proven otherwise by lawful procedure and thus refrain from disclosing anything which may lead to conclusions as to the guilt or innocence or guilt of the suspect or accused person tends to defame or publicly humiliate him or her." [128]

The interpretive guidelines published with the Code are more explicit. They refer in detail as to how the media must treat the accused in a manner that respects the presumption of innocence in the context of presentation and transfer of the accused to courts. The Media Complaints Commission recommends to media professionals, both printed and electronic, the following:

- Journalistic coverage of such cases should not infringe the presumption of innocence and should not contribute to the defamation or public humiliation of citizens. [129]
- When covering cases of judicial and police reporting, exaggeration and over-coverage of minor cases should be avoided.[130]
- The publication of photographs in cases of suspects not yet indicted should be carried out with the utmost care and restraint and only when deemed professionally necessary. [131]

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[120] Interview with media expert, 30 May 2020.
[121] Interview with member of the Media Complaints Commission .
[122] For more details see the website of the Cyprus Media Complaints Commission.
[123] Cyprus, Union of Journalists (2016), 'Καταγγέλλουμε την προληπτική λογοκρισία', Press release, 10 August 2016.
[124] Union of Cypriot Journalists
[125] Cyprus, Code of Journalistic Conduct (*ΚΩΔΙΚΑΣ ΔΗΜΟΣΙΟΓΡΑΦΙΚΗΣ ΔΕΟΝΤΟΛΟΓΙΑΣ*), as amended in 2008 and 2015.
[126] Cyprus Media Complaints Commission established on 21 May 1997**.**
[127] Cyprus, Code of Practice for Electronic Media, Appendix VIII (*ΚΩΔΙΚΑΣ ΔΗΜΟΣΙΟΓΡΑΦΙΚΗΣ ΔΕΟΝΤΟΛΟΓΙΑΣ ΓΙΑ ΤΑ ΗΛΕΚΤΡΟΝΙΚΑ ΜΜΕ, ΠΑΡΑΡΤΗΜΑ VIII*), Regulation 27(4) and 49, Art. 10.
[128] Cyprus, Code of Journalistic Conduct (*ΚΩΔΙΚΑΣ ΔΗΜΟΣΙΟΓΡΑΦΙΚΗΣ ΔΕΟΝΤΟΛΟΓΙΑΣ*), Art. 9.
[129] Cyprus, Code of Journalistic Conduct (*ΚΩΔΙΚΑΣ ΔΗΜΟΣΙΟΓΡΑΦΙΚΗΣ ΔΕΟΝΤΟΛΟΓΙΑΣ*), ΕΡΜΗΝΕΥΤΙΚΕΣ-ΚΑΘΟΔΗΓΗΤΙΚΕΣ ΓΡΑΜΜΕΣ, Art. 2.1.
[130] Cyprus, Code of Journalistic Conduct (*ΚΩΔΙΚΑΣ ΔΗΜΟΣΙΟΓΡΑΦΙΚΗΣ ΔΕΟΝΤΟΛΟΓΙΑΣ*), ΕΡΜΗΝΕΥΤΙΚΕΣ-ΚΑΘΟΔΗΓΗΤΙΚΕΣ ΓΡΑΜΜΕΣ, Art.2.2.
[131] Cyprus, Code of Journalistic Conduct (*ΚΩΔΙΚΑΣ ΔΗΜΟΣΙΟΓΡΑΦΙΚΗΣ ΔΕΟΝΤΟΛΟΓΙΑΣ*), ΕΡΜΗΝΕΥΤΙΚΕΣ-ΚΑΘΟΔΗΓΗΤΙΚΕΣ ΓΡΑΜΜΕΣ, Art. 2.3.

- The media and their officials must fully respect the presumption of innocence of persons arrested on suspicion of committing a crime. On the basis of the principle of law that the suspect is innocent until proven otherwise by a final court decision, the media professionals do not infer guilt of the accused directly or indirectly and avoid phrases and descriptions that imply guilt.[132]

The main problem is that this Code is by and large ignored, as there is no effective mechanism for implementation. The only legally binding method to utilise the Code of Practice is in the case of TV programs, where the Broadcasting Authority may impose administrative fines. However, even there, it is questionable if these fines operate as deterrent to observe the presumption of innocence and other standards as the Code of Practice requires.

Journalistic opposition to a legally binding mechanism regulating the content of media coverage and commentary is based on the concern that this would compromise free speech.[133] Despite the general trend towards establishing legally binding mechanisms for monitoring and implementing standards of the media, journalism scholars had invested public demand for better standards would lead to improvement of self-regulation standards.[134] However, the media seem to show little respect for the presumption of innocence. One suggestion is to tighten and provide a detailed legislative guideline to media watchdogs like the Broadcasting Authority.[135] Human rights, migrant-support and gender-based NGOS however call for a more effective and binding system of monitoring and regulation pertaining to media reporting. Overall, we are witnessing a viral spread of the social media, private and informal groups. There is fierce competition for faster and more sensational news. This has made the situation for those accused of crimes much more adverse. The regulating law and the old watchdogs seem unable to cope with the new viral social media landscape situation.

Several court cases have examined the role of the media in creating a general sense of guilt of an accused person. The Media Complaints Commission, addressing the Minister of Justice and Public Order and the Police, has criticised the Police use of handcuffs during the transferring suspects or defendants to court, except in exceptional cases. The Commission notes that the practice has been abandoned in many countries and suggested that "it is high time for the competent authorities to study this development seriously because the phenomenon is certainly not in line with respect for human dignity in a modern society." [136]

Recently the Media Complaints Commission proposed that the model move from self-regulation towards a system of 'co-regulation'.[137] The member of the Media Complaints Commission suggested that there is a new framework under consideration which will change the current system of self-regulation as it will allow for sanctions. However, as this is still in draft form it is subject to discussion and agreement.

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[132] Cyprus, Code of Journalistic Conduct (*ΚΩΔΙΚΑΣ ΔΗΜΟΣΙΟΓΡΑΦΙΚΗΣ ΔΕΟΝΤΟΛΟΓΙΑΣ*), ΕΡΜΗΝΕΥΤΙΚΕΣ-ΚΑΘΟΔΗΓΗΤΙΚΕΣ ΓΡΑΜΜΕΣ, Art. 2.4.

[133] Pavlides, G. (2009) *Δημοσιογραφική Δεοντολογία, Αυτορρύθμιση ή Επιβολή*, IMME, Nicosia.

[134] Pavlides, G. (2009) *Δημοσιογραφική Δεοντολογία, Αυτορρύθμιση ή Επιβολή*, IMME, Nicosia, pp. 183-184.

[135] Stratilatis, C. and Emilianides, A. (2015) *Media Law in Cyprus*, Kluwer Law International, pp. 159

[136] Cyprus, Code of Journalistic Conduct (*Κώδικας Δημοσιογραφικής Δεοντολογίας*), article 2.4.

[137] Zoumidou, M. (2020) 'Εγκληματίες και ανθρώπινα δικαιώματα στο αστυνομικό/δικαστικό ρεπορτάζ', Φιλελεύθερος, 28 June 2020; Oxygono (2020), 'Αστυνομικό & Δικαστικό Ρεπορτάζ – Νομικές & Κοινωνικές Προεκτάσεις', 27 June 2020.

b. Effects media has on presumption of innocence

aa. Positive effects

Potentially, the media can play a positive role in covering cases in providing public information about case unfolding in court. As one prosecutor noted, the media perform a vital public scrutiny of the criminal justice system, which may be beneficial for the overall fairness of the proceedings, and the presumption of innocence can be beneficial to justice, if done properly. There was no public criticism of court decision prior to the establishment of universities in Cyprus. Lawyers would not dare to write such articles. Scrutiny on the court system in this sense is positive. S/He expressed his doubt about some other practices in reporting and commenting on on-going cases before the trial is decided.
As one experienced lawyer pointed out:

> *"Media scrutiny can be both positive and negative. In order to be positive, the media outlets have to be staffed with legally trained people and not just reporters. The commenting and analysis of the court judgements and the scrutiny both on television and in print media is necessary and society is now ready for it. We have escaped from the predicament of previous years that judgments should not be commented or scrutinised. In the past few years there have been such revelations of gaps and weaknesses in the judicial system, that there is a general feeling in society that the delivery of justice must subjected to criticism not only from the media but also from lawyers who dare write their views on decisions. This is the result of the low quality of court decisions owing to serious inadequacies in the system of appointment of judges, which is arbitrary, non-transparent and permeated with phenomena of family nepotism and connections."*

> *«Ο έλεγχος των μέσων ενημέρωσης μπορεί να είναι και θετικός και αρνητικός. Για να είναι θετικός, τα μέσα ενημέρωσης πρέπει να στελεχωθούν με νομικά εκπαιδευμένα άτομα και όχι μόνο με δημοσιογράφους. Ο σχολιασμός και η ανάλυση των δικαστικών αποφάσεων και ο έλεγχος τόσο στην τηλεόραση όσο και στα έντυπα μέσα είναι αναγκαίος και η κοινωνία είναι τώρα έτοιμη για αυτό. Έχουμε ξεφύγει από την κατάσταση των προηγούμενων ετών όπου οι αποφάσεις δεν έπρεπε να σχολιάζονται ή να ελέγχονται. Τα τελευταία χρόνια υπήρξαν τέτοιες αποκαλύψεις κενών και αδυναμιών στο δικαστικό σύστημα, ώστε σήμερα να υπάρχει μια γενική αίσθηση στην κοινωνία ότι η απονομή δικαιοσύνης πρέπει να υπόκειται σε κριτική όχι μόνο από τα μέσα ενημέρωσης αλλά και από δικηγόρους που τολμούν να γράψουν τις απόψεις τους σχετικά με τις δικαστικές αποφάσεις. Αυτό είναι επακόλουθο της χαμηλής ποιότητας των δικαστικών αποφάσεων λόγω σοβαρών ανεπαρκειών στο σύστημα διορισμού δικαστών, το οποίο είναι αυθαίρετο, αδιαφανές και διαποτίζεται με φαινόμενα οικογενειακού νεποτισμού και διασυνδέσεων."*

One defence lawyer stressed that scrutiny of the justice system can be beneficial for a democratic society:

> *"Since Court decisions are made public, we ought to be able to able to assess and criticize them. There is a certain mentality in Cyprus that we have no right to criticize court decisions. Here there is a gap of academic scrutiny of court decisions; it is very rare to find academic literature criticizing court decisions. It is hard for lawyers to criticize decisions because judges do not accept criticism. The higher the position in the hierarchy, starting from the Supreme Court, the following day the lawyer will receive a negative comment either from the judge himself or from a person close to the judge. Judges are unwilling to enter a public debate on their decisions. Recently, a senior lawyer stated that judges must finally be ready to accept criticism because once they issue a decision, it no longer belongs to them, and it belongs to justice. If a senior lawyer was forced to say this, it means something."*

«Δεδομένου ότι οι αποφάσεις του Δικαστηρίου δημοσιοποιούνται, πρέπει να είμαστε σε θέση να τις αξιολογούμε και να τις επικρίνουμε. Υπάρχει μια συγκεκριμένη νοοτροπία στην Κύπρο ότι δεν έχουμε κανένα δικαίωμα να επικρίνουμε τις δικαστικές αποφάσεις. Εδώ υπάρχει ένα κενό ακαδημαϊκού ελέγχου των δικαστικών αποφάσεων. Είναι πολύ σπάνιο να βρεθεί ακαδημαϊκό σύγγραμμα που να επικρίνει δικαστικές αποφάσεις. Είναι δύσκολο για τους δικηγόρους να επικρίνουν τις αποφάσεις, επειδή οι δικαστές δεν δέχονται κριτική. Όσο υψηλότερη είναι η θέση στην ιεραρχία, ξεκινώντας από το Ανώτατο Δικαστήριο, τόσο περισσότερες οι πιθανότητες την επόμενη μέρα ο δικηγόρος να λάβει αρνητικό σχόλιο είτε από τον ίδιο τον δικαστή είτε από ένα πρόσωπο κοντά στον δικαστή. Οι δικαστές δεν θέλουν να συμμετάσχουν σε δημόσια συζήτηση σχετικά με τις αποφάσεις τους. Πρόσφατα, , ένας ανώτερος δικηγόρος δήλωσε ότι οι δικαστές πρέπει επιτέλους να είναι έτοιμοι να δεχτούν κριτική επειδή μόλις εκδώσουν μια απόφαση, δεν ανήκει πλέον σε αυτούς και ανήκει στη δικαιοσύνη. Αν ένας έμπειρος δικηγόρος αναγκάστηκε να ασκήσει κριτική, αυτό λέει κάτι. "

Even those lawyers and prosecutors who are critical of the media, insist that public scrutiny is necessary particularly in criminal justice. It is important for judges to know that a wrong decision will be negatively discussed in the social media. Media scrutiny is an effective way for checking public authority.

bb. Negative effects

Most of the interviewees consider that, on balance, the negative effects that media coverage can have in the outcome of the court decision in a pending case are more serious than the potential positive effects they have. The key in this is the extent to which the Police and the judges are influenced by media coverage. The Police line is that there is no influence, neither on the Police, nor on the judge: the court will not be affected by anything that the media has printed or posted but decides strictly on the evidence presented. Some prosecutors take the same line as they believe that judges are not influenced by the media.

Most of the lawyers and prosecutors interviewed however claim that there can be a negative effect, and in general they all saw a great deal more harm than good in the media coverage of the case. As one experienced prosecutor said:

"Judges are people, and no one can ever know the degree to which they may be influenced. Even though they are legally trained and strictly speaking they should be impartial, I believe they are influenced."

"Οι δικαστές είναι άνθρωποι και κανένας δε μπορεί να ξέρει το βαθμό στον οποίο επηρεάζονται. Παρόλο που είναι εκπαιδευμένοι και αυστηρά ομιλούντες πρέπει να είναι αμερόληπτοι, πιστεύω πως επηρεάζονται."

Another prosecutor who starts with a general statement that judges are not influenced by what the media say about case, discusses how this can be damaging to the course of justice:

"Media coverage has no effect on the presumption of innocence at judicial level. I believe that judges are not influenced by the media; the influence is minimal. In general, judges are of good standard and would not convict someone only because of the pressure they felt from the media. They adjudicate based on what they hear in evidence in court. I remember a case where there was a public outcry with the acquittal of the police officers because there was a video circulating showing their guilt.. However, at the time the video could not be presented in court

as evidence. The judges' position was that they adjudicated on the basis of the evidence before them and not what was shown on television. However, had the prosecution chosen to make use of the other Police officers' present as prosecution witnesses, the decision would have been different.. I believe that it was mistake that was done on purpose. This was a blow to justice and the Legal Service."

"Η κάλυψη από τα μέσα ενημέρωσης δεν επηρεάζει το τεκμήριο αθωότητας σε δικαστικό επίπεδο. Πιστεύω ότι οι δικαστές δεν επηρεάζονται από τα μέσα ενημέρωσης· η επίδραση είναι ελάχιστη. Σε γενικές γραμμές, οι δικαστές είναι ψηλού επιπέδου και δεν θα καταδικάσουν κάποιον μόνο λόγω της πίεσης που ένιωσαν από τα μέσα ενημέρωσης. Αποφασίζουν με βάση αυτά που ακούν με τη μορφή αποδεικτικών στοιχείων στο δικαστήριο. Θυμάμαι μία περίπτωση.όπου υπήρξε δημόσια κατακραυγή με την απαλλαγή των αστυνομικών επειδή υπήρχε ένα βίντεο που κυκλοφόρησε που έδειχνεενοχή των αστυνομικών.. Ωστόσο, τότε το βίντεο δεν μπορούσε να παρουσιαστεί στο δικαστήριο ως αποδεικτικό στοιχείο. Η θέση των δικαστών ήταν ότι έκριναν με βάση τα αποδεικτικά στοιχεία που είχαν ενώπιον τους και όχι αυτά που προβλήθηκαν στην τηλεόραση. Ωστόσο, εάν η εισαγγελία είχε επιλέξει να κάνει χρήση των άλλων αστυνομικών που ήταν παρόντες ως μάρτυρες εισαγγελίας, η απόφαση θα ήταν διαφορετική. Πιστεύω ότι ήταν λάθος που έγινε σκόπιμα. Αυτό ήταν ένα πλήγμα για τη δικαιοσύνη και τη νομική υπηρεσία. "

One experienced defence lawyer disagrees and was adamant about how many judges are strongly influenced by the media, particularly the social media:

"The media coverage of a suspect has a significant impact on the presumption of innocence. I am aware that judges follow social media and they do get influenced about the conduct of accused persons. The media presentation creates a disposition of guilt in the mind of the judge. This is inevitable, especially in a small society. The only way to address this is by introducing safeguards at the stage of investigation, requiring police officers to investigate the alibi and the claims of the accused as a matter of rule. Often the police refuse to investigate the claims and the alibi of a suspect as this contradicts their version of events. The police story is often wrong, but they don't care to check the truth."

"Η κάλυψη των υπόπτων από τα μέσα ενημέρωσης έχει σημαντικό αντίκτυπο στο τεκμήριο της αθωότητας. Γνωρίζω ότι οι δικαστές ακολουθούν τα μέσα κοινωνικής δικτύωσης και επηρεάζονται από τη συμπεριφορά των κατηγορουμένων. Η παρουσίαση των μέσων δημιουργεί μια διάθεση ενοχής στο μυαλό του δικαστή. Αυτό είναι αναπόφευκτο, ειδικά σε μια μικρή κοινωνία. Ο μόνος τρόπος για να αντιμετωπιστεί αυτό είναι με την καθιέρωση διασφαλίσεων στο στάδιο της έρευνας, απαιτώντας από τους αστυνομικούς να διερευνήσουν το άλλοθι και τους ισχυρισμούς των κατηγορουμένων κατά κανόνα. Συχνά η αστυνομία αρνείται να διερευνήσει τους ισχυρισμούς και το άλλοθι ενός υπόπτου, καθώς αυτό έρχεται σε αντίθεση με την εκδοχή των γεγονότων. Η ιστορία της αστυνομίας είναι συχνά λάθος, αλλά δεν ενδιαφέρονται να ελέγξουν την αλήθεια."

A senior prosecutor was also extremely critical of the dangerous liaisons between lawyers and media:

"Some lawyers collaborate closely with specific journalists. I am aware of a certain journalist who was always writing articles praising a lawyer. Finally, the journalist gave up his job at the

newspaper and went to work for the lawyer. Many journalists relate to lawyers who regularly supply them with information and in return, the journalists report the lawyer's performance in the case in a favourable light, offering indirect advertising. I also have friend journalists who are my clients. If I give them information about a case to fill up their pages, it follows that they will refer clients to me. Media reports about court cases are often indirect advertising for the lawyer but it is the type of advertising that no-one can challenge as unlawful. So, what kind of media scrutiny are we talking about? Media scrutiny would make sense if the journalist were able to objectively assess a court decision. As a rule, journalists have no legal training, they can only transmit information about the judgement given to them by a lawyer and often they transmit it wrongly because they do not understand it. Sometimes they deliberately write inaccurate descriptions to sell newspapers."

"*Ορισμένοι δικηγόροι συνεργάζονται στενά με συγκεκριμένους δημοσιογράφους. Γνωρίζω έναν συγκεκριμένο δημοσιογράφο που πάντα έγραφε άρθρα επαινώντας έναν δικηγόρο. Στο τέλος, ο δημοσιογράφος εγκατέλειψε τη δουλειά του στην εφημερίδα και πήγε να εργαστεί για τον δικηγόρο. Πολλοί δημοσιογράφοι σχετίζονται με δικηγόρους που τους παρέχουν τακτικά πληροφορίες και, σε αντάλλαγμα, οι δημοσιογράφοι καταγράφουν το χειρισμό της υπόθεσης από το δικηγόρο με ευνοϊκό τρόπο, προσφέροντας έμμεση διαφήμιση. Έχω και εγώ φίλους δημοσιογράφους που είναι πελάτες μου. Εάν τους δώσω πληροφορίες σχετικά με μια υπόθεση για να γεμίσουν τις σελίδες τους, σε αντάλλαγμα θα παραπέμπουν πελάτες σε εμένα. Οι αναφορές στα ΜΜΕ σχετικά με τις δικαστικές υποθέσεις είναι συχνά έμμεση διαφήμιση για τον δικηγόρο, αλλά είναι το είδος της διαφήμισης που κανείς δεν μπορεί να αμφισβητήσει ως παράνομη. Άρα για ποιο έλεγχο από τα ΜΜΕ μιλάμε; Ο έλεγχος των μέσων ενημέρωσης θα είχε νόημα εάν ο δημοσιογράφος ήταν σε θέση να αξιολογήσει αντικειμενικά μια δικαστική απόφαση. Κατά κανόνα, οι δημοσιογράφοι δεν έχουν νομική κατάρτιση, μπορούν να διαβιβάζουν μόνο πληροφορίες σχετικά με την απόφαση που τους έχει δοθεί από δικηγόρο και συχνά τις διαβιβάζουν λανθασμένα επειδή δεν την καταλαβαίνουν. Μερικές φορές γράφουν σκόπιμα ανακριβείς περιγραφές για να πουλήσουν εφημερίδες. "*

The crucial issue is how the courts cover in terms of fairness, even-handedness, and accuracy, as one prosecutor noted:

"The media do not cover accurately and fairly the cases. There are court decisions about this. In the Georgiades case, it was decided that articles and reporting in the media may have influenced the judges view and the presumption of innocence. However, more recent decisions have decided that judges who are professionally trained and accustomed are not influenced by what the media says. I do not think that media coverage influences judges. This is because if you are involved in a case your case and you know how distorted the facts and data in the media are. I had a personal experience where the media insisted on misreporting the facts, whereas they knew were wrong. Even when they come to the court to report on a case many times, journalists will just turn up and go back report whatever they understood, and often they simply do not understand."

"Τα μέσα δεν καλύπτουν με ακρίβεια και δίκαια τις περιπτώσεις. Υπάρχουν δικαστικές αποφάσεις σχετικά με αυτό. Στην υπόθεση Γεωργιάδης, αποφασίστηκε ότι άρθρα και αναφορές στα ΜΜΕ ενδέχεται να έχουν επηρεάσει την άποψη των δικαστών και το τεκμήριο της αθωότητας. Ωστόσο, πιο πρόσφατες αποφάσεις έχουν αποφασίσει ότι οι δικαστές που είναι επαγγελματικά εκπαιδευμένοι και συνηθισμένοι δεν επηρεάζονται από αυτά που λένε

τα ΜΜΕ. Δεν νομίζω ότι η κάλυψη των μέσων ενημέρωσης επηρεάζει τους δικαστές. Αυτό συμβαίνει επειδή εάν εμπλέκεστε σε μια υπόθεση, γνωρίζετε πόσο παραμορφωμένα είναι τα γεγονότα και τα δεδομένα στα μέσα ενημέρωσης. Είχα μια προσωπική εμπειρία όπου τα μέσα ενημέρωσης επέμεναν να μην αναφέρουν σωστά τα γεγονότα, ενώ ήξεραν ότι ήταν λάθος. Ακόμα και όταν έρχονται δημοσιογράφοι στο δικαστήριο, θα εμφανιστούν εκεί και θα γράψουν τα από ό,τι καταλαβαίνει, και συχνά απλά δεν καταλαβαίνουν."

Another key subject is the extent that the media coverage and pressure can have on the court's impartiality, which is, in theory at least, the cornerstone of justice. However, as one defence lawyer stressed:

"The presumption of innocence itself imposes the duty of anonymity. I am not sure if this duty persists after the accused persons' appearance in court, where their identity is inevitably revealed. But it is the persistence of the media focus on a case that might lead to the infringement of the presumption of innocence and eventually to an acquittal because of that, and not the mere mention of his name. We did have cases where there was such a persistence in presenting the case by the media that the court concluded that it was not possible to have a fair trial after that. Such was the case of Georgiades who was acquitted because of the extensive media coverage. If the media coverage is such that applies pressure rendering the judges vulnerable to a public opinion on how a crime is to be handled, this carries risks to the impartiality of the judge. Although we like to believe that the court is impartial, a persistent promotion in the media can impact the court's impartiality."

«*Το ίδιο το τεκμήριο της αθωότητας επιβάλλει το καθήκον της ανωνυμίας. Δεν είμαι σίγουρος αν το καθήκον αυτό εμμένει μετά την εμφάνιση των κατηγορουμένων στο δικαστήριο, όπου η ταυτότητά τους αποκαλύπτεται αναπόφευκτα. Αλλά είναι η εμμονή της εστίασης των μέσων μαζικής ενημέρωσης σε μια υπόθεση, που μπορεί να οδηγήσει στην παραβίαση του τεκμηρίου αθωότητας και τελικά σε αθώωση λόγω αυτού, και όχι η απλή αναφορά του ονόματός του. Είχαμε περιπτώσεις όπου υπήρχε τόση επιμονή από τα ΜΜΕ στην παρουσίαση της υπόθεσης, ώστε το δικαστήριο να καταλήξει στο συμπέρασμα ότι δεν ήταν δυνατό να υπάρξει δίκαιη δίκη μετά από αυτό. Αυτή ήταν η υπόθεση του Γεωργιάδη που αθωώθηκε λόγω της εκτεταμένης κάλυψης των μέσων ενημέρωσης. Εάν η κάλυψη των μέσων ενημέρωσης είναι τέτοια που ασκεί πίεση σε βαθμό που καθιστά τους δικαστές ευάλωτους στην κοινή γνώμη σχετικά με τον τρόπο χειρισμού ενός εγκλήματος, αυτό ενέχει κινδύνους για την αμεροληψία του δικαστή. Παρόλο που θέλουμε να πιστεύουμε ότι το δικαστήριο είναι αμερόληπτο, μια συνεχής προώθηση στα μέσα ενημέρωσης μπορεί να επηρεάσει την αμεροληψία του δικαστηρίου.* "

Some defence lawyers see a failure of media to scrutinise in their function as 'the fourth estate' in liberal democratic theory that underlie the constitutions:

"The media does not scrutinise anything. I strongly believe that the media are afraid of scrutinising the courts because they know that at some point, somehow, they will end before those same courts, in either libel or similar proceedings. Therefore, I believe that they are afraid of courts; they are afraid to exercise their freedom of speech against court decisions and especially high-profile cases, they do sometimes, especially when a decision acquits somebody, they do raise suspicions as to the correctness of the acquittal, but not enough. I believe that nobody is a fan of the court that is why we rarely see criticism of the courts and their decisions."

«Τα μέσα ενημέρωσης δεν ελέγχουν τίποτα. Πιστεύω ακράδαντα ότι τα μέσα μαζικής ενημέρωσης φοβούνται να ασκήσουν κριτική στα δικαστήρια επειδή γνωρίζουν ότι κάποια στιγμή, κατά κάποιο τρόπο, θα καταλήξουν ως κατηγορούμενοι στα ίδια δικαστήρια, είτε για δυσφήμιση είτε σε παρόμοιες διαδικασίες. Επομένως, πιστεύω ότι φοβούνται τα δικαστήρια. φοβούνται να ασκήσουν την ελευθερία έκφρασης τους κατά δικαστικών αποφάσεων και ιδιαίτερα υποθέσεων υψηλού προφίλ. Μερικές φορές το πράττουν, ειδικά όταν μια απόφαση αθωώνει τον κατηγορούμενο, όπου εγείρουν υποψίες ως προς την ορθότητα της αθωώσεως, αλλά όχι αρκετά. Πιστεύω ότι κανείς δεν είναι οπαδός του δικαστηρίου, γι' αυτό σπάνια βλέπουμε κριτική κατά των δικαστηρίων και των αποφάσεων τους. "

Many prosecutors and lawyers complained about the quality of journalism. One prosecutor noted

"Journalism in Cyprus is of very low quality. Most journalists do not understand what the presumption of innocence entails. They think it means that they cannot say the accused is guilty yet and nothing else. They are not aware of the wide spectrum of application of this principle. Many of the large media outlets belong to large law firms in a non-transparent way, which hinders media scrutiny."

«Η δημοσιογραφία στην Κύπρο είναι πολύ χαμηλής ποιότητας. Οι περισσότεροι δημοσιογράφοι δεν καταλαβαίνουν τι συνεπάγεται το τεκμήριο αθωότητας. Νομίζουν ότι σημαίνει ότι δεν μπορούν να πουν ότι ο κατηγορούμενος είναι ακόμη ένοχος και τίποτα άλλο. Δεν γνωρίζουν το ευρύ φάσμα εφαρμογής αυτής της αρχής. Πολλά από τα μεγάλα μέσα ενημέρωσης ανήκουν σε μεγάλες δικηγορικές εταιρείες με έναν μη διαφανή τρόπο, γεγονός που εμποδίζει τον έλεγχο των μέσων ενημέρωσης. "

Media coverage of a case may cause serious harm and devastation:

"The role of the media can sometimes be devastating. A recent example is the media coverage of the investigation regarding the economic collapse and closure of the Co-operative Banks. The Attorney General had promised that he would bring all those involved in the economic collapse of the bank before justice and there were police investigations against many people working in the Co-operative banking sector. I strongly believe that the media coverage against them has played a negative role in the approach taken against them in court. Some of these people were tried and acquitted. Nevertheless, in an attempt to prove their guilt, the Attorney General is currently pressing for more trials against some of these people, despite the fact they were acquitted in one set of criminal proceedings. Negative media coverage operates as a pressure mechanism on the prosecution and probably the courts as well, which so far have sanctioned these multiple proceedings. In a similar case, the proceedings were suspended. I do not understand why one should apply different standards to one case and different standards to another."

«*Ο ρόλος των μέσων ενημέρωσης μπορεί μερικές φορές να είναι καταστροφικός. Ένα πρόσφατο παράδειγμα είναι η κάλυψη από τα μέσα ενημέρωσης της έρευνας σχετικά με την οικονομική κατάρρευση και το κλείσιμο των Συνεργατικών Τραπεζών. Ο Γενικός Εισαγγελέας είχε υποσχεθεί ότι θα φέρει όλους τους εμπλεκόμενους στην οικονομική κατάρρευση της τράπεζας ενώπιον της δικαιοσύνης και υπήρχαν αστυνομικές έρευνες εναντίον πολλών. Πιστεύω ακράδαντα ότι η κάλυψη των μέσων ενημέρωσης για τα άτομα αυτά διαδραμάτισε*

αρνητικό ρόλο στην προσέγγιση που ακολουθείται εναντίον τους στο δικαστήριο. Μερικοί από αυτούς τους ανθρώπους δικάστηκαν και αθωώθηκαν. Ωστόσο, σε μια προσπάθεια να αποδείξει την ενοχή τους, ο Γενικός Εισαγγελέας πιέζει για νέες διώξεις εναντίον ορισμένων από αυτούς τους ανθρώπους, παρά το γεγονός ότι αθωώθηκαν σε ένα σύνολο ποινικών διαδικασιών. Η αρνητική κάλυψη από τα μέσα ενημέρωσης λειτουργεί ως μηχανισμός πίεσης επί του Γενικού Εισαγγελέα για τη δίωξη και πιθανώς επί των δικαστηρίων, τα οποία μέχρι στιγμής έχουν κυρώσει αυτές τις πολλαπλές διαδικασίες. Σε μια άλλη παρόμοια υπόθεση η διαδικασία αναστάλθηκε. Δεν καταλαβαίνω γιατί πρέπει να εφαρμόζουμε διαφορετικά πρότυπα σε μια περίπτωση και διαφορετικά πρότυπα σε άλλη. "

The member of the Media Complaints Commission considers that much of the public confusion and distortion about public perceptions of the presumption of innocence derives from the information nexus that operates in a crooked manner leading to misinformation and violation of the presumption of innocence. When asked about how the presumption of innocence is implemented in Cyprus and whether it is respected by the media, his response was rather ambivalent and equivocal: in cases which are not controversial, as in routine and everyday cases, the media seem to observe the rules of fair reporting and respect for the presumption of innocence. However, in those which the stakes are high, there is media and public interest, therefore likely that the tele-audience and readership to high, it is not always adhered to.

"The answer to the question of whether the presumption of innocence is implemented in practice in Cyprus and whether the media respect it is not simple; it depends on the case. Especially in cases of minor importance, I consider that it is largely observed. However, in cases where they have a great impact on the public opinion, which is serious, there, unfortunately, the media take a position, and not only that, they often guide public opinion. Even in those cases where it is obvious who committed a crime, such as a case of a serial killer, the way in which the issue is covered by the media is such that the media essentially predetermine the outcome directing public opinion that the accused is guilty. The court decides on facts that the public does not consider and there is no reason to have them because they are details. Many times, in the past, the court acquitted someone because they considered that the public opinion had turned against them in such a way as to determine their guilt, and so the court considered that the trial was not fair."[138]

"Η απάντηση στο κατά πόσον εφαρμόζεται το τεκμήριο της αθωότητας στην Κύπρο και αν το σέβονται τα μέσα μαζικής ενημέρωσης δεν είναι απλή: Εξαρτάται από την υπόθεση. Κυρίως σε περιπτώσεις ήσσονος σημασίας θεωρώ ότι σε μεγάλο βαθμό τηρείται. Σε περιπτώσεις όμως, οι οποίες έχουν μεγάλη απήχηση στην κοινή γνώμη που είναι πολύ σοβαρές, εκεί δυστυχώς τα μέσα ενημέρωσης τοποθετούνται, και όχι μόνο αυτό, πολλές φορές, καθοδηγούν και την κοινή γνώμη. Ακόμα και στις περιπτώσεις εκείνες που είναι εξόφθαλμο ποιος έκανε ένα έγκλημα, όπως ήταν για παράδειγμα σε μία υπόθεση ενός κατά συρροή δολοφόνου, ο τρόπος με τον οποίο καλύπτεται το θέμα από τα μέσα μαζικής επικοινωνίας, ουσιαστικά προκαθορίζουν το αποτέλεσμα, κατευθύνοντας τη κοινή γνώμη προς τη κατεύθυνση της ενοχής του υπόπτου. Το δικαστήριο αποφασίζει με στοιχεία, τα οποία η κοινή γνώμη δεν έχει υπόψη της και δεν υπάρχει λόγος να τα έχει διότι είναι λεπτομέρειες. Πολλές φορές, έγινε στο παρελθόν το δικαστήριο να αθωώσει κάποιον διότι θεώρησε ότι η κοινή

[138] Interview with member of the Journalists Complaints Commission, 20 May 2020.

γνώμη είχε στραφεί εις βάρος του με τέτοιο τρόπο, ώστε να προκαθοριστεί η ενοχή του, κι έτσι το δικαστήριο θεώρησε ότι δεν ήταν δίκαιη η δίκη."[139]

The issue of media coverage of crime and criminals and how this affects the presumption of innocence is currently a public issue debated between lawyers, journalists and media experts.[140] The member of the Journalists Complaints Commission noted:

> *"The presumption of innocence does not apply equally to everyone. Many factors can influence the presumption of innocence such as gender, nationality, immigration or social background, previous convictions, if he is a foreigner. If the suspect is not a native and in fact a Greek Cypriot, then the media, not all of them, treat him or her in a very suspicious way. Also, women, vulnerable groups, people who are young etc, the media tend not to respect their presumption of innocence. The persons who are well-known public figures are treated differently, but how each is treated depends on who this person is and what political position the media outlet has. There are well-known public figures victimised because of who they are, Such an example is the a former minister, , who was treated negatively by most media based on criteria that were purely political or they were acquitted by the media because they had the same ideology. Or we have other cases such as [a] former assistant prosecutor, ,*[141] *who was prosecuted and convicted, or [a] former Commander of the Central Bank who was also convicted and imprisoned. As far as 'anonymous' people are concerned, however, it depends on you according to your origin, religion and gender. Young women are treated particularly negatively."*
>
> *"Το τεκμήριο της αθωότητας δεν ισχύει εξίσου για όλους. Πολλοί παράγοντες μπορεί να επηρεάσουν το τεκμήριο της αθωότητας όπως το φύλο, η εθνικότητα, το μεταναστευτικό ή κοινωνικό υπόβαθρο, προηγούμενες καταδίκες, αν είναι αλλοδαπός. Εάν ο ύποπτος δεν είναι ιθαγενής και μάλιστα ελληνοκύπριος τότε τα μέσα όχι όλα, μια μερίδα τον αντιμετωπίζουν με τρόπο πολύ καχύποπτο. Επίσης, γυναίκες, ευάλωτες ομάδες, άτομα τα οποία είναι νεαρής ηλικίας επίσης υπάρχει τάση να μην σέβεται το μέσο το τεκμήριο της αθωότητας. Οι «επώνυμοι» είναι διαφορετική κατάσταση, εξαρτάται ποιος είναι ο επώνυμος, δηλαδή υπάρχουν επώνυμοι που επίσης θυματοποιούνται για ακριβώς του ποιοι είναι, όπως ήταν για παράδειγμα [ένας] πρώην υπουργός, , ήταν καθαρά πολιτικά τα κριτήρια ή αθωώθηκαν από τα μέσα επειδή είχαν την ίδια ιδεολογική βάση. όπως ήταν η περίπτωση [ενός]βοηθού εισαγγελέα, ή [ενός] τέως Διοικητή της Κεντρικής Τράπεζας, που επίσης καταδικάστηκε και φυλακίστηκε. Σε ότι αφορά τους επώνυμους, η τοποθέτηση των μέσων ενημέρωσης εξαρτάται από την πολιτική τους τοποθέτηση. Σε ότι όμως αφορά ανώνυμους εξαρτάται σύμφωνα μαζί σου από την καταγωγή, από το θρήσκευμα και από το φύλο. Ιδιαίτερα οι νεαρές κοπέλες, αντιμετωπίζονται αρνητικά*."

[139] Interview with member of the Media Complaints Commission, 20 May 2020.

[140] Zoumidou, M. (2020) 'Εγκληματίες και ανθρώπινα δικαιώματα στο αστυνομικό/δικαστικό ρεπορτάζ', Φιλελεύθερος, 28 June 2020 and Oxygono, 'Αστυνομικό & Δικαστικό Ρεπορτάζ – Νομικές & Κοινωνικές Προεκτάσεις', *Oxygono* 27 June 2020.

c. Differences in media coverage concerning certain groups

aa. Men and women

There are differences in the treatment between men and women, as most of the persons interviewed have noted:

- All four lawyers have agreed that there is a difference in the treatment between men and women by the media, but in different ways.
- Two out of the four prosecutors were adamant
- Two Police officers acknowledged that the media bias against women
- The journalist interviewed and the member of the Media Complaints Commission were positive that there is gender bias.

As the Press officer of the Police noted:

> *"There are differences in the way the media covers cases of male and female suspects that affect the presumption of innocence in the way people think about cases. For example, in cases of sexual violence where the perpetrator is a man accused of violence against women, he receives a terrible war from the media, especially with the attitudes that have been circulating lately against sexual violence. In these cases, the right and the presumption of innocence are often violated. For offenses of domestic violence, men are treated more adversely than women. This is because women are treated as victims in all cases and the man as a monster without any, speaking clearly about the presumption of innocence and not about sexual orientation. In the case of the English woman tourist, in the beginning when the twelve men were suspects, the media had reported vehemently against them. afterwards, when the situation changed and the girl became the accused, the attitude of the media changed with the most of media against her. I believe that in both cases, the presumption of innocence was violated. And especially when some media outlets tried in one way or another to show pictures of the faces, from the point where the crime was allegedly committed."*
>
> *"Υπάρχουν διαφορές στον τρόπο με τον οποίο τα μέσα ενημέρωσης καλύπτουν υποθέσεις ανδρών και γυναικών υπόπτων που επηρεάζουν το τεκμήριο. Για παράδειγμα σε περιπτώσεις έμφυλης βίας όπου ο δράστης είναι άντρας που κατηγορείται για βία εναντίον γυναικών δέχεται τρομερό πόλεμο από τα μέσα μαζικής ενημέρωσης ειδικά με τις στάσεις που κυκλοφορούν το τελευταίο χρονικό διάστημα κατά της έμφυλης βίας. Σε αυτές τις περιπτώσεις πολλές φορές καταπατούν το δικαίωμα και το τεκμήριο της αθωότητας. Σε ορισμένα αδικήματα όπως η έμφυλη βία, βία στην οικογένεια οι άντρες αντιμετωπίζονται με δυσμενέστερο τρόπο από τις γυναίκες. Αυτό συμβαίνει γιατί αντιμετωπίζονται οι γυναίκες σαν θύματα σε όλες τις περιπτώσεις και ο άντρας σαν τέρας χωρίς να έχω κανένα, μιλώντας καθαρά για το θέμα του τεκμηρίου της αθωότητας και όχι για θέματα σεξουαλικού προσανατολισμού. Στην περίπτωση της Αγγλίδας της τουρίστριας υπήρχε ένα θέμα το οποίο όταν ξεκίνησε και κατηγορούμενοι ήταν οι 12 συγκεκριμένοι άντρες, τα ΜΜΕ είχε αναφερθεί κάθετα εναντίον τους. Στην συνέχεια, όταν αλλάξαν τα δεδομένα και κατηγορούμενη έγινε η συγκεκριμένη κοπέλα, άλλαξε η στάση των ΜΜΕ με τα πιο πολλά εναντίον της. Πιστεύω ότι και στις δύο περιπτώσεις, παραβιάστηκε το τεκμήριο της αθωότητας. Και ειδικά όταν κάποια μέσα μαζικής ενημέρωσης προσπάθησαν με τον ένα ή τον άλλο τρόπο να δείξουν εικόνες από τα πρόσωπα, από το σημείο που υποτίθεται ότι διαπράχτηκε το έγκλημα*."

The prosecutor interviewed denies that there is any difference in the treatment of men and women in judicial proceedings and the conventional media; s/he conceded however that in the social media there may be such a difference:

"In my experience there are no differences in the way the conventional media covers cases of male and female suspects that may affect the presumption of innocence. At the judicial level there is no discrimination in the treatment between men and women. The media is careful on this subject. This is the case with the conventional media, but I cannot exclude this happening in the social media. I insist that the judges are not influenced by such matters, but public opinion is influenced."

"Σύμφωνα με την εμπειρία μου, δεν υπάρχουν διαφορές στον τρόπο με τον οποίο τα συμβατικά μέσα καλύπτουν υποθέσεις ανδρών και γυναικών υπόπτων που μπορεί να επηρεάσουν το τεκμήριο αθωότητας. Δεν πιστεύω ότι έχουμε τέτοιου είδους διακρίσεις στην Κύπρο. Σε αυτό το θέμα τα μέσα μαζικής ενημέρωσης είναι προσεκτικά. Στα μέσα μαζικής ενημέρωσης δεν νομίζω ότι έχουμε τέτοια ζητήματα, στα κοινωνικά δίκτυα εκεί μπορεί. Επιμένω ότι οι δικαστές όμως δεν επηρεάζονται από αυτό το πράγμα, η κοινή γνώμη επηρεάζεται."

Save for the above, all other persons interviewed consider that gender is an important factor. Gender is a key factor that influences the understanding of and the implementation of the presumption of innocence. They all recognised gender is also combined with the other markers of social differentiation, discrimination, or stigma such as ethnicity, migration status and social class. To a large extent the existence of such factors is seen as playing a crucial role in society at large. The disagreement is the extent and how exactly these factors are operative and affect the application of the justice and judicial process pertaining to the presumption of innocence and procedural rights. This was illustrated in the case reported as L.F,[142] which was hotly debated in the Cypriot media and was referred to by the interviewees. The case received international attention attracted considerable publicity in 2019 and early 2020. A 19-year old woman complained to the police about having been gang raped by a group of Israelis, when she was in a hotel room having consensual sex with one of them. The Israelis disputed her allegations and argued that sex was consensual. Videos were circulating in social media allegedly showing her having consensual sex with all of them. Activists discovered that the videos were fake as they had been posted on a porn site several years ago. The local society including the mayor of the tourist resort used strong language in the media to argue that the victim was lying. She was arrested and taken into police custody for several weeks, during which she retracted her allegations of rape and withdrew her complaint, without having a lawyer present. She was charged for public harm because of her complaint and she was convicted by the court, who imposed a suspended prison sentence because she had already spent months in police custody. The Israelis were never prosecuted and were left to leave Cyprus and return to Israel, where they received a hero's welcome. As one defence lawyer commented:

"Women's societal position in Cyprus is inferior and this is reflected also in the criminal justice system. Women do not have the same possibilities to defend themselves as men, because they are not as well connected and networked as men. This in turn makes it difficult for them to seek and locate evidence or testimony to support their case. The young British tourist woman who was forced last year to withdraw her complaint of gang rape, suffered a backlash from the media and from the justice system because she did not have networks in Cyprus and a supportive environment around her. Her own mother did not even know of the events taking place during the first few days. The young woman was in a state of shock because she had been gang raped and at first, she was afraid to tell her family; she had everything working against her. By contrast, the Israelis had everything working for them, they only had to tell their parents they were accused of rape and ask that they come to their rescue. Women are in

[142] Cyprus, District Criminal Court (*Επαρχιακό Δικαστήριο*) *Αστυνομικός Διευθυντής Αμμοχώστου v L.F*, case no 2466/19, reported 30 December 2020, ECLI:CY:EDAMM:2019:B30

an exceedingly difficult position when having to face at the same time the court, public opinion, the media and their own families."

"Η κοινωνική θέση της γυναίκας στην Κύπρο είναι κατώτερη και αυτό αντανακλάται και στο σύστημα ποινικής δικαιοσύνης. Οι γυναίκες δεν έχουν τις ίδιες δυνατότητες να υπερασπιστούν τους εαυτούς τους όπως οι άντρες. Αυτό το καθιστά δύσκολο γι' αυτές να ψάξουν και να εντοπίσουν μαρτυρία κα αποδείξεις που να στηρίζουν την υπόθεση τους. Η νεαρή Βρετανίδα τουρίστρια που υποχρεώθηκε να αποσύρει το παράπονο της για ομαδικό βιασμό και υπέστηκε επίθεση και θυματοποίηση από τα ΜΜΕ και από τη δικαιοσύνη επειδή δεν ήταν δικτυωμένη στην Κύπρο και δεν είχε ένα υποστηρικτικό περιβάλλον γύρω της. Ακόμα και η μητέρα της δεν ήταν ενήμερη τις πρώτες μέρες. Η νεαρή ήταν σε κατάσταση σοκ λόγω του ομαδικού βιασμού και αρχικά φοβήθηκε να ενημερώσει την οικογένεια της. Όλα ήταν εναντίον της. Σε αντίθεση, οι Ισραηλινοί είχαν όλα τα δεδομένα υπέρ τους. Το μόνο που είχαν να κάμουν ήταν να ειδοποιήσουν τους γονείς τους ότι κατηγορούνταν για βιασμό για να έρθουν να τους σώσουν. Οι γυναίκες βρίσκονται σε ιδιαίτερα ευάλωτη θέση όταν έχουν να αντιμετωπίσουν ταυτόχρονα το δικαστήριο, την κοινή γνώμη, τα ΜΜΕ και τις οικογένειες τους."

Gender discrimination is based on stereotypical assumptions which can affect both women and men in different ways, although women are more adversely affected given the power-balance in Cypriot society. As an experienced male lawyer pointed out:

"Gender does not weaken so much the presumption of innocence, except in the case of domestic violence. In those cases, when a woman reports her husband for violence, the police considers him to be guilty but if a man reports his wife for violence the police does not believe him unless the woman is a migrant. I dealt with such a case once and the police considered the man's testimony as the absolute truth."

"Το φύλο δεν αποδυναμώνει τόσο το τεκμήριο της αθωότητας εκτός εκεί όπου υπάρχει ενδοοικογενειακή βία. Σε ζητήματα ενδοοικογενειακής βίας, όταν μια γυναίκα καταγγέλλει τον άντρα για βία, η αστυνομία τον θεωρεί ένοχο, όμως όταν ο άντρας καταγγείλει τη γυναίκα του για βία, η αστυνομία δεν θα τον πιστέψει, εκτός αν η γυναίκα είναι αλλοδαπή. Μου έτυχε μια ακριβώς τέτοια περίπτωση και η μαρτυρία του άντρα θεωρήθηκε ως η μοναδική αλήθεια."

Two of the three women prosecutors interviewed expressed their concern and agreed that prejudices against women was a factor in the *L.F.* court decision.[143] As one prosecutor put it:

"In the past the media used to support men. This seemed to have changed in recent years. However, when I read the terrible comments about the young British tourist woman who complained about her gang rape, mostly in social media, I realised that that public opinion amongst men is still extremely prejudiced against women."

"Στο παρελθόν τα μέσα ενημέρωσης υποστήριζαν τους άντρες. Στη πορεία, αυτό φαινόταν να έχει αλλάξει τα τελευταία χρόνια. Όταν όμως διάβασα τα τρομερά σχόλια για τη νεαρή βρετανική τουρίστρια που παραπονέθηκε για τον μαζικό βιασμό της, κυρίως στα κοινωνικά μέσα με κατάλαβα ότι η κοινή γνώμη ανάμεσα στους άνδρες εξακολουθεί να είναι εξαιρετικά προκατειλημμένη κατά των γυναικών."

Most of the persons interviewed, including the police press officer, consider that the public references to guilt violated the presumption of innocence.

[143] Cyprus, District Criminal Court (*Επαρχιακό Δικαστήριο*) *Αστυνομικός Διευθυντής Αμμοχώστου v L.F*, case no 2466/19, reported 30 December 2020, ECLI:CY:EDAMM:2019:B30

One of the prosecutors interviewed recognised that in the *L.F.* court decision there was an infringement of basic rights pertaining to the presumption of innocence:

> *"In the recent case of the British 19 year old tourist woman,[144] who had complained to the police that she had been gang raped by a group of Israeli youths, a case directly falling under the ambit of the Istanbul Convention, there was perhaps an infringement of the presumption of innocence and violation of her rights as a result of her sex. The Istanbul Convention is one of my areas of expertise. I believe that the release of the Israeli youths whom the British woman named as her rapists and who have certainly committed crimes was a failure of the police to conduct the necessary criminal investigation, amounted to a violation of the Convention. The British woman had given testimony to the police under a state of fear and I would say that most probably the presumption of innocence was infringed."*
>
> *«Στην πρόσφατη περίπτωση της 19χρονης Βρετανίδας τουρίστριας που είχε καταγγείλει ομαδικό βιασμό από μια ομάδα ισραηλινών νεαρών, μια υπόθεση που εμπίπτει άμεσα στο πεδίο εφαρμογής της Σύμβασης της Κωνσταντινούπολης, ίσως υπήρξε παραβίαση του τεκμηρίου αθωότητας των δικαιωμάτων της ως αποτέλεσμα του φύλου της. Η Σύμβαση της Κωνσταντινούπολης είναι ένας από τους τομείς εμπειρογνωμοσύνης μου. Πιστεύω ότι η αποφυλάκιση των νεαρών Ισραηλινών, τους οποίους η Βρετανίδα κατονόμασε ως βιαστές της και οι οποίοι σίγουρα διέπραξαν εγκλήματα, ήταν αποτυχία της αστυνομίας να διεξαγάγει την αναγκαία ποινική έρευνα, αποτελεί παραβίαση της Σύμβασης. Η Βρετανίδα είχε δώσει μαρτυρία στην αστυνομία υπό το καθεστώς του φόβου και θα έλεγα ότι πιθανότατα παραβιάστηκε το τεκμήριο αθωότητας.'*

The two other prosecutors interviewed disagreed; they believed that gender did not play a role in the *L.F* case. A senior male prosecutor denied that there is any difference in the treatment of men and women in judicial proceedings and the conventional media:

> *"In the case of the British woman who was convicted of perjury, I do not think that the judge was influenced by the media. I think it was, from the outset, a problem of the investigation. I do not want to take a position because I have not studied the case and I am not aware of the details. But my general view is that the judge was not affected. The problem was with the interrogation and not with the judicial process. We do not know what the judge heard in court. Most people know what the journalist said or what we read in the media but not what was submitted in court."*
>
> *"Στη περίπτωσης της Βρετανίδας που καταδικάστηκε για ψευδή κατάθεση, δεν νομίζω ότι είναι ο δικαστής που επηρεάστηκε, νομίζω είναι από την διερεύνηση που ξεκίνησε το πρόβλημα. Δεν θέλω να τοποθετηθώ γιατί δεν έχω μελετήσει την υπόθεση, δεν έτυχε να ξέρω τα γεγονότα. Αλλά η γενική μου άποψη είναι ότι ο δικαστής δεν επηρεάστηκε. Είναι στην ανάκριση που εντοπίζω το πρόβλημα και όχι στη δικαστική διαδικασία. Δεν ξέρουμε τι άκουσε ο δικαστής. Οι περισσότεροι ξέρουμε τι είπε ο δημοσιογράφος ή τι διαβάζουμε στα μέσα αλλά όχι τι υποβλήθηκε στο δικαστήριο."*

A woman prosecutor considered that there was no issue of violation of the presumption of innocence due to gender reasons:

> *"In the case of the young tourist woman from England, who was convicted in 2019 for making false allegations about being raped, I have a different view from the average person. I believe that if there was evidence that the woman herself had admitted to falsely accusing people of rape, then the prosecution rightly decided to go ahead to prosecute her. Such serious false accusations must be prosecuted as they are a criminal offense, irrespective of how matters*

[144] Cyprus, District Criminal Court (*Επαρχιακό Δικαστήριο*) *Αστυνομικός Διευθυντής Αμμοχώστου v L.F*, case no 2466/19, reported 30 December 2020, ECLI:CY:EDAMM:2019:B30

were presented in the media, before or after the trial. I do not believe that the media coverage had any influence on the presumption of innocence and I do not think that a judge decides a case relying on media publications."

"Στην περίπτωση της νεαρής Αγγλίδας τουρίστριας που καταδικάστηκε το 2019 για ψευδείς ισχυρισμούς για βιασμό, έχω διαφορετική άποψη από το μέσο άτομο. Πιστεύω ότι εάν υπήρχαν αποδείξεις ότι η γυναίκα είχε παραδεχθεί ότι κατηγόρησε ψευδώς τους ανθρώπους για βιασμό, τότε σωστά προχωρήσαν στη δίωξη της. Τέτοιες σοβαρές ψευδείς κατηγορίες πρέπει να διωχθούν, διότι αποτελούν ποινικό αδίκημα, ανεξάρτητα από τον τρόπο με τον οποίο έπαιξαν τα θέματα στα μέσα ενημέρωσης, πριν ή μετά τη δίκη. Δεν πιστεύω ότι η κάλυψη των μέσων ενημέρωσης επηρέασε το τεκμήριο της αθωότητας και δεν νομίζω ότι ο δικαστής έχει κρίνει βάσει των όποιων δημοσιεύσεων."

The same prosecutor however did note that gender was an operative factor in another case:

"There are differences in the way the media covers cases of male and female suspects. The case that comes to mind where gender did negatively affect the presumption of innocence is a casewhere one newspaper tore the [accused person]apart. But I do not consider that the media coverage affected the decision in court. I think that the case was decided for other political reasons. The fact that it was a woman, was used against her."

"Υπάρχουν διαφορές στον τρόπο με τον οποίο τα μέσα ενημέρωσης καλύπτουν υποθέσεις ανδρών και γυναικών υπόπτων. Η υπόθεση που έρχεται στο μυαλό που επηρέασε αρνητικά το τεκμήριο αθωότητας είναι μία περίπτωση όπουμια εφημερίδα «ξέσκισε» αυτή [την κατηγορούμενη] . Αλλά δεν θεωρώ ότι επηρέασαν την απόφαση στο δικαστήριο. Νομίζω ότι οι υποθέσεις αποφασίστηκαν για άλλους πολιτικούς λόγους. Το γεγονός ότι ήταν γυναίκα χρησιμοποιήθηκε εναντίον της."

For some of the interviewees gender mattered but they claimed it may operate against men or in favour of women in a stereotypical manner. One lawyer stated that, as a rule, crime is seen as a 'male privilege' and that judges are more lenient towards women and reluctant to convict or impose a prison sentence on a woman.

Sexuality was also identified as a reason for stigmatisation by conservative judges. A prosecutor noted that LGBTI persons are seen in a negative light:

"Probably members of the LGBTI community are seen in a negative light by judges because most of them are of a certain age and tend to be conservative. They are therefore more likely to be affected by the public humiliation printed in the media."

"Πιθανόν οι δικαστές να βλέπουν τα μέλη της ΛΟΑΤΚΙ αρνητικά διότι οι πλείστοι είναι μιας κάποιας ηλικίας και τείνουν να είναι συντηρητικοί. Γι' αυτό και είναι πιο πιθανόν να επηρεαστούν από τη δημόσια διαπόμπευση στα ΜΜΕ."

bb. Children and adults

Cyprus still lacks a comprehensive system of juvenile justice. There are no specialised juvenile courts and little expertise in dealing with children as accused persons, who are essentially tried as adults.[145] Special safeguards are in place for accused persons deemed to be vulnerable. As one prosecutor said,

[145] Demetriou, C. (2013) *Study on children's involvement in judicial proceedings – contextual overview for the criminal justice phase – Cyprus*, National Report, JUST/2011/CHIL/PR/0147/A4, Milieu in partnership with ICFGHK for DG Justice, European Commission, June 2013.

for juvenile defendants, the court will order that the trial is conducted behind closed doors, however, the absence of a juvenile court to deal with young offenders remains an unresolved problem for young persons.

An experienced lawyer noted that judges have a negative attitude towards young defendants:

> *'The disposition of the Courts towards young people is of two types- negative and positive, depending on the type of the offence. Where the offence relates to violence or breach of peace in the football pitch- in these cases they are almost always deemed to be guilty, particularly if their physique is strongly built. The other case is the drug offences. In that case, there is a sensitivity and sympathy from the court. If he is a migrant youth involved in drugs, he will be given a prison sentence to enable to escape the predicament of addition and get therapy. This is where an experienced lawyer can make a difference. An experienced lawyer can suggest alternative sentences for drug users. A legal aid lawyer is unlikely to be aware of these issues, to raise them in court. There are judges who will recommend to a lawyer a certain way of arguing so as to help them, but there are other judges who will not, they will leave the argumentation up to the lawyer, but if the lawyer does not raise it they will not suggest it themselves.'*
>
> «*Η στάση των δικαστηρίων έναντι των νέων είναι δύο τύπων - αρνητική και θετική, ανάλογα με τον τύπο της παράβασης. Όταν το αδίκημα σχετίζεται με βία ή παραβίαση της ειρήνης στο γήπεδο ποδοσφαίρου - σε αυτές τις περιπτώσεις, θεωρείται πάντα ένοχος, ειδικά εάν η σωματική τους διάπλαση είναι έντονα κατασκευασμένη. Η άλλη περίπτωση είναι τα αδικήματα ναρκωτικών. Σε αυτήν την περίπτωση, υπάρχει ευαισθησία και συμπάθεια από το δικαστήριο. Εάν είναι μετανάστριας νεολαίας που ασχολείται με ναρκωτικά, θα του επιβληθεί ποινή φυλάκισης για να μπορέσει να ξεφύγει από την κατάσταση της προσθήκης και να λάβει θεραπεία. Αυτό είναι όπου ένας έμπειρος δικηγόρος μπορεί να κάνει τη διαφορά. Ένας έμπειρος δικηγόρος μπορεί να προτείνει εναλλακτικές προτάσεις για χρήστες ναρκωτικών. Ένας δικηγόρος νομικής βοήθειας είναι απίθανο να γνωρίζει αυτά τα ζητήματα, να τα θέσει στο δικαστήριο. Υπάρχουν δικαστές που θα συστήσουν σε έναν δικηγόρο έναν ορισμένο τρόπο επιχειρηματολογίας για να τους βοηθήσουν, αλλά υπάρχουν και άλλοι δικαστές που δεν θα το εγείρουν, που θα αφήσουν το δικηγόρο να αποφασίσει τη γραμμή υπεράσπισης, αλλά εάν ο δικηγόρος δεν το εγείρει, δεν θα προτείνουν οι ίδιοι.*»

The Journalists Code of Ethics contains specific regulations about how media must cover children, requiring the media treat children with respect and care in line with the Convention of the rights of the Child[146] However, when it comes to criminal offences, these are not always observed. The member of Media Complaints Commission referred to a murder case which received a great deal of media attention, where the media had named the underage adopted son as the culprit of the couple's murder, before the case went to court, which devastated his life, in addition to the loss of his parents. In the end another person was convicted.

> *"In particularly important cases, Journalists, unfortunately, would express an opinion taking a position on the particular crime, often on the wrong side. A good example for which there is a decision of a Media Complaints Commission is an dual murder. In this case, the media had predetermined with incorrect information given to them by the police, that the culprit was the*

[146] Cyprus, Code of Journalistic Conduct (*ΚΩΔΙΚΑΣ ΔΗΜΟΣΙΟΓΡΑΦΙΚΗΣ ΔΕΟΝΤΟΛΟΓΙΑΣ*), article 11 and ΕΡΜΗΝΕΥΤΙΚΕΣ-ΚΑΘΟΔΗΓΗΤΙΚΕΣ ΓΡΑΜΜΕΣ and Cyprus, Code of Practice for Electronic Media, Appendix VIII (*ΚΩΔΙΚΑΣ ΔΗΜΟΣΙΟΓΡΑΦΙΚΗΣ ΔΕΟΝΤΟΛΟΓΙΑΣ ΓΙΑ ΤΑ ΗΛΕΚΤΡΟΝΙΚΑ ΜΜΕ, ΠΑΡΑΡΤΗΜΑ VIII*), Regulation 27(4) and 49, Art. 10.

adopted son of the family, which was unacceptable and later it turned out that all the media were wrong. So, I answer your question yes, unfortunately there are several serious cases where the media do not respect the presumption of innocence of the suspect."[147]

"Σε σοβαρές υποθέσεις με εγκλήματα, πολλοί δημοσιογράφοι δυστυχώς, παίρνουν ξεκάθαρη θέση, πολλές φορές εσφαλμένη θέση. Ένα καλό παράδειγμα για το οποίο υπάρχει και απόφαση επιτροπής δημοσιογραφικής δεοντολογίας είναι έναδιπλό φονικό. Σε αυτή την περίπτωση, τα μέσα ενημέρωσης είχαν προαποφασίσει με λανθασμένα βέβαια στοιχεία που τους έδωσε και η αστυνομία, ότι ο ένοχος ήταν ο θετός γιος της οικογένειας, κάτι το οποίο ήταν απαράδεκτο και αργότερα αποδείχτηκε ότι είχαν άδικο όλα τα μέσα. Άρα στην ερώτηση σου απαντώ ναι δυστυχώς υπάρχουν αρκετές σοβαρές περιπτώσεις όπου τα μέσα δεν σέβονται το τεκμήριο αθωότητας του υπόπτου."

The member of the Media Complaints Commission reported that it was the Press officer of the Police at the time who leaked the information to journalists, when briefing them "off the record", as he was misled by what the inspectors thought at the beginning.[148]

Special rules regarding vulnerable persons such as young persons and children are required. For instance, the establishment of juvenile courts which would have the expertise when dealing with children and young persons would be a positive development. The special vulnerability of children is not shared by all. One of the lawyers interviewed said:

"*The only exceptions I have seen pertain to children, whether girls or boys. There is a general misconception that when children make a complaint alleging that they were sexually assaulted or that they were victims of a sexual offense, they are incapable of lying. There have been many scientifically proven instances showing not only that children are capable of lying but also that they are easily manipulated to do so. The striking thing is that when children become the recipients of such manipulation, they feel as if they are truly victims of an offense. For example, try talking to a child about Santa Claus and you will see my point. Coming back to your question I believe that there is a sensitivity in the media about children which may sometimes interfere with the limits of the presumption of innocence.*"

«Οι μόνες εξαιρέσεις που έχω δει αφορούν τα παιδιά, είτε κορίτσια είτε αγόρια. Υπάρχει μια γενική παρανόηση ότι όταν τα παιδιά κάνουν μια καταγγελία ισχυριζόμενα ότι είχαν υποστεί σεξουαλική επίθεση ή ότι ήταν θύματα σεξουαλικού αδικήματος, αποκλείεται να ψεύδονται. Υπήρξαν πολλές επιστημονικά αποδεδειγμένες περιπτώσεις που δείχνουν όχι μόνο ότι τα παιδιά είναι σε θέση να ψεύδονται, αλλά και ότι εύκολα μπορεί να τύχουν χειραγώγησης για να πουν ψέματα. Το εντυπωσιακό είναι ότι όταν ένα παιδί γίνεται ο παραλήπτης μιας τέτοιας χειραγώγησης, το παιδί αισθάνεται σαν να ήταν το πραγματικό θύμα ενός αδικήματος. Για παράδειγμα, δοκιμάστε να μιλήσετε με ένα παιδί για τον Άγιο Βασίλη και θα δείτε τι εννοώ. Επιστρέφοντας στην ερώτησή σας, πιστεύω ότι υπάρχει ευαισθησία στα μέσα ενημέρωσης σχετικά με τις δυνατότητες των παιδιών που μερικές φορές μπορεί να επηρεάσει το τεκμήριο της αθωότητας.»

One of the public prosecutors interviewed was not aware of any special safeguards about vulnerable suspects and yet concluded that the existing measures were sufficient. The interview did not have a clear definition in her mind about who is vulnerable and applied this term only in the case of persons in detention and children. Less obvious forms of vulnerability do not draw attention or attract special

[147] Interview with member of the Media Complaints Commission, 20 May 2020.
[148] Interview with member of the Media Complaints Commission, 20 May 2020.

measures. In the case of asylum seekers, the interviewee was of the view that access to legal aid will suffice to prevent discrimination against them. S/He was not aware of problems in accessing legal aid.

cc. Nationals and non-nationals (including ethnic minorities, e.g. Roma)

Whilst some of the interviewees denied that non-nationals, members of ethnic groups and minorities were treated differently in the criminal justice system, few would deny the existence of widespread prejudice against them at a societal level.

The police officers interviewed considered that nationality and migrant status is not a relevant factor. This is also supported by a senior prosecutor, who recognised that there is racism in society but disputed the fact that this could be found in criminal justice:

> *"Migrant or ethnic background is not a common ground for discrimination in the criminal procedure, even though there is a general impression that that might be the case. As a prosecutor I have never come across cases of ethnic or racial discrimination in the criminal justice system. There may be racism in all of us but there may also be a certain degree of exploitation of the system by asylum seekers who are really economic migrants and claim to be in danger only to secure the right to remain in the country. But because they are entitled to legal aid, which is at a great cost to the state, it is not common to locate patterns of discrimination against them."*
>
> *"Ίσως να υπάρχει ρατσισμός σε όλους μας ως ένα βαθμό αλλά επίσης υπάρχει και ένας βαθμός εκμετάλλευσης του συστήματος από αιτητές ασύλου που στην πραγματικότητα είναι οικονομικοί μετανάστες και ισχυρίζονται ότι βρίσκονται σε κίνδυνο για να μπορέσουν να εξασφαλίσουν τη διαμονή τους στη χώρα. Αλλά επειδή δικαιούνται νομική αρωγή, κάτι που επιφέρει τεράστιο κόστος στο κράτος, δεν είναι σύνηθες να εντοπίζονται πρακτικές διακρίσεων εναντίον τους.*

Experienced Prosecutors do not see discrimination against non-Cypriot nationals in the criminal law and process itself, who has *"not found any difference based on the ethnic group factor."* However, the very example cited is often a sign about the existence of such discrimination:

> *"I have seen many cases of Indians and Bulgarians, where I have not seen different treatment between a Cypriot defendant and a foreigner, except for one factor: whether the defendant will be remanded in custody or be released on bail. There is a difference here as the Cypriot defendant will probably have a family, young children and a job, so he is considered to have ties to Cyprus, while a foreigner who does not have a stable address or job is considered to have no special ties to Cyprus. This is a determining factor when the court decides whether to grant bail or continue with pre-trial detention. Someone who has nothing to do with Cyprus, based on case law, is more likely to try to escape and not appear in court to escape punishment for the offenses he or she faces. This is a crucial condition that the court will consider but has nothing to do with the presumption of innocence."*
>
> «*Έχω δει πολλές δίκες Ινδών και Βούλγαρων, όπου δεν έχω δει διαφορετική μεταχείριση μεταξύ Κύπριου κατηγορούμενου και αλλοδαπού, εκτός από έναν παράγοντα: εάν ο κατηγορούμενος θα παραμείνει υπό κράτηση ή θα αφεθεί ελεύθερος με εγγύηση. Υπάρχει μια διαφορά εδώ, καθώς ο Κύπριος κατηγορούμενος θα έχει πιθανώς οικογένεια, μικρά παιδιά και δουλειά, οπότε θεωρείται ότι έχει δεσμούς με την Κύπρο, ενώ ένας αλλοδαπός*

που δεν έχει σταθερή διεύθυνση ή δουλειά θεωρείται ότι δεν έχει ειδικούς δεσμούς με την Κύπρο. Αυτός είναι καθοριστικός παράγοντας όταν το δικαστήριο αποφασίσει εάν θα δεχτεί να αφεθεί ελεύθερος με ή αν θα παραμείνει υπό κράτηση. Κάποιος που δεν έχει καμία σχέση με την Κύπρο, βάσει της νομολογίας, είναι πιο πιθανό να προσπαθήσει να δραπετεύσει και να μην εμφανιστεί στο δικαστήριο για να αποφύγει την τιμωρία για τα αδικήματα που αντιμετωπίζει. Αυτή είναι μια κρίσιμη προϋπόθεση που το δικαστήριο θα εξετάσει, αλλά δεν έχει καμία σχέση με το τεκμήριο της αθωότητας.»

Another prosecutor interviewed also concluded that neither ethnicity nor previous convictions play any role in the judicial process:

"Previous convictions do not affect the presumption of innocence. Previous convictions only matter for the purposes of passing a sentence. At the sentencing stage, the court will decide based on the mitigating or aggravating circumstances of the particular case. It does not matter if the defendant is Cypriot or Bulgarian or Indian. I do not think that courts treat foreigners differently to Cypriots, but the media may well do so. As far as the prosecution is concerned, our colleagues never refer to previous convictions of the defendant until that person is convicted."

«*Οι προηγούμενες καταδίκες δεν επηρεάζουν το τεκμήριο αθωότητας. Οι προηγούμενες καταδίκες έχουν σημασία μόνο για την προσμέτρηση της ποινής. Στο στάδιο της καταδίκης, το δικαστήριο θα αποφασίσει με βάση τις ελαφρυντικές ή επιβαρυντικές περιστάσεις της συγκεκριμένης υπόθεσης. Δεν έχει σημασία αν ο εναγόμενος είναι Κύπριος ή Βούλγαρος ή Ινδός. Δεν νομίζω ότι τα δικαστήρια αντιμετωπίζουν τους ξένους διαφορετικά από ότι τους Κύπριους, αλλά τα μέσα ενημέρωσης μπορεί να το πράξουν. Όσον αφορά τη δίωξη, οι συνάδελφοί μας δεν αναφέρονται ποτέ σε προηγούμενες καταδίκες του κατηγορούμενου έως ότου καταδικαστεί αυτό το άτομο*»

Three out of the four defence lawyers, two out of the four prosecutors suggested that nationality and migrant status does impact not only perceptions in wider society, but on the criminal-juridical process itself. An experienced defence lawyer pointed out the following:

"Nationality significantly impacts the way an incident is reported. If the suspect is a foreigner, the media headlines will say 'Syrian man was accused…' whilst if the suspect is a Cypriot they will merely state his age, "a 45-year old man …'. The non-Cypriot starts with a baggage."

«*Η εθνικότητα επηρεάζει σημαντικά τον τρόπο αναφοράς ενός περιστατικού. Εάν ο ύποπτος είναι αλλοδαπός, οι τίτλοι των μέσων ενημέρωσης θα αναφέρουν ότι 'ο άντρας από τη Συρία κατηγορήθηκε…», ενώ εάν ο ύποπτος είναι Κύπριος, θα γράψουν απλώς την ηλικία του, 'ένας 45χρονος άνδρας…'. Οι μη Κύπριοι ξεκινούν με αρνητικό πρόσημο.*»

Poor migrants and women do not enjoy the same protection, as an experienced lawyer suggests:

"Poor people, migrants and persons of a different ethnicity are treated differently. For women, the situation is complex. For some offences, there is a certain sympathy from the court who views women as being weak and fragile. Women who issue cheques that bounce are seen with sympathy by the court. The court tends to be sympathetic towards women in the imposition of the penalty, but not as regards their innocence. Women who are accused of committing 'male' offences are seen with even less sympathy. Previous convictions do play a role because we are a small society, and everyone knows if the suspect has committed the same offence before. It is not of utmost significance, but it does play some role."

«*Οι φτωχοί, οι μετανάστες και τα άτομα διαφορετικής εθνικότητας αντιμετωπίζονται διαφορετικά. Για τις γυναίκες, η κατάσταση είναι περίπλοκη. Για ορισμένα αδικήματα, υπάρχει κάποια συμπάθεια από το δικαστήριο που θεωρεί τις γυναίκες αδύναμες και εύθραυστες. Οι γυναίκες που εκδίδουν ακάλυπτες επιταγές αντιμετωπίζονται με συμπάθεια από το δικαστήριο. Το δικαστήριο τείνει να βλέπει με συμπάθεια τις γυναίκες κυρίως κατά την επιβολή της ποινής, και λιγότερο όσον αφορά την αθωότητά τους. Οι γυναίκες που κατηγορούνται ότι διαπράττουν «ανδρικά» αδικήματα αντιμετωπίζονται με ακόμη λιγότερη συμπάθεια. Οι προηγούμενες καταδίκες διαδραματίζουν ρόλο επειδή είμαστε μια μικρή κοινωνία και όλοι γνωρίζουν εάν ο ύποπτος έχει διαπράξει το ίδιο αδίκημα στο παρελθόν. Δεν είναι ζωτικής σημασίας, αλλά παίζουν κάποιο ρόλο*».

A prosecution lawyer noted that previous convictions matter for the media:

> *"Previous criminal record affects how the media is judging the suspects. But previous records do not affect the courts anymore. The character of the accused person is shown through the long judicial procedure does play a role. The ironic tone of an accused person, a behaviour showing non-repentance is likely to influence judicial judgement well beyond previous convictions. A non-repentant accused person is seen by the judge as non-credible. The character projected by the accused person during his defence may yield dislikes amongst judges which can affect the outcome of the case. An overly aggressive line of defence, where the witnesses are children for instance or otherwise vulnerable, can also yield dislikes in the court room that can impact the outcome of the case."*
>
> "Το ποινικό μητρώο επηρεάζει τον τρόπο με τον οποίο τα μέσα ενημέρωσης κρίνουν τους υπόπτους, αλλά οι προηγούμενες καταδίκες δεν επηρεάζουν πλέον τα δικαστήρια. Ο χαρακτήρας του κατηγορουμένου εμφανίζεται μέσω της μακράς δικαστικής διαδικασίας και αυτό είναι που παίζει ρόλο. Ο ειρωνικός τόνος ενός κατηγορουμένου, μια συμπεριφορά που δείχνει τη μη μεταμέλεια του είναι πιθανό να επηρεάσει τη δικαστική απόφαση πολύ περισσότερο από τη μια προηγούμενη καταδίκη. Ένας κατηγορούμενος που δε μεταμελήθηκε θεωρείται από τον δικαστή ως αναξιόπιστος. Ο χαρακτήρας που προβάλλει ο κατηγορούμενος κατά τη διάρκεια της υπεράσπισής του μπορεί να δημιουργήσει αντιπάθειες στους δικαστές που μπορεί να επηρεάσουν την έκβαση της υπόθεσης. Μια υπερβολικά επιθετική γραμμή άμυνας, όπου οι μάρτυρες είναι παιδιά, για παράδειγμα, ή άλλα ευάλωτα, μπορεί επίσης να δημιουργήσει αντιπάθειες στην αίθουσα του δικαστηρίου που μπορούν να επηρεάσουν την έκβαση της υπόθεση".

As a defence lawyer explained, the only safeguard to ensure that accused persons are not presented as guilty is their access to justice and their right to choose their lawyers even if they are poor. The legal aid system, as it currently stands, leaves no option for accused persons other than to choose from the list of lawyers in the legal aid catalogue who might not have the necessary specialisation or experience. The legal aid lawyers are primarily dealing with issues affecting migrants, whilst persons accused in criminal proceedings need specialised criminal lawyers. The lack of access to a lawyer of their choice amounts to a breach of their right to a fair trial. This adversely affects the vast majority of migrants who are poor third country nationals:

> *'Migrants involved in offences relating to property are seen by the court as highly likely to be guilty. When a migrant brings a claim to court, such as a complaint for domestic violence, there is always a presumption that they are doing so to secure their stay in Cyprus and avoid deportation. These comments are also heard by the judges who must be very well trained to retain their impartiality and objectivity, to be able to side-step suspicions and prejudices from*

their environment. If judges emanate from a political spectrum that has anti-migrant ideologies, they are unlikely to be able to be impartial towards migrant accused persons. The situation is different for foreigners like those to whom the government has issued golden passports.

«*Οι μετανάστες που εμπλέκονται σε αδικήματα που σχετίζονται με περιουσία θεωρούνται από το δικαστήριο ως πιθανότητα ένοχοι. Όταν ένας μετανάστης υποβάλλει αξίωση στο δικαστήριο, όπως μια καταγγελία για ενδοοικογενειακή βία, υπάρχει πάντα ένα τεκμήριο ότι το κάνουν για να εξασφαλίσουν τη διαμονή τους στην Κύπρο και να αποφύγουν την απέλαση. Αυτά τα σχόλια ακούγονται επίσης από τους δικαστές που πρέπει να είναι πολύ καλά εκπαιδευμένοι για να διατηρήσουν την αμεροληψία και την αντικειμενικότητά τους, ώστε να είναι σε θέση να παρακάμπτουν τις υποψίες και τις προκαταλήψεις από το περιβάλλον τους. Εάν οι δικαστές προέρχονται από ένα πολιτικό φάσμα που έχει αντι-μεταναστευτικές ιδεολογίες, είναι απίθανο να είναι σε θέση να είναι αμερόληπτοι έναντι κατηγορουμένων μεταναστών. Η κατάσταση είναι διαφορετική για τους αλλοδαπούς εκείνους στους οποίους η κυβέρνηση έχει εκδώσει χρυσά διαβατήρια.»*

dd. Persons with disabilities

None of the interviews recorded prejudice against persons with disabilities. A prosecutor noted that, if anything, "*the courts are gracious and understanding that someone has a disability, whether physical or mental." S/*He also stated that persons with disabilities are assisted in giving testimony and deaf persons will be provided with sign interpretation. In general, the court would make the necessary accommodations for persons with disability. However, s/he said that there are problems in terms of having the facilities and capacity, for instance whether the court would provide a blind defendant with documents in braille:

"In certain circumstances, the court can make the necessary arrangements to enable defendants with physical, mental or intellectual disabilities to hear and follow the conduct of the trial. For instance, the court would make the necessary accommodations, if the venue is located not on the ground floor and there is no lift, and the defendant or a witness is a person with kinetic disability. In such circumstances, the court would reschedule the venue for the trial to convene in a room on the ground floor. However, there may be issues with blind people, as I do not recall dealing with such issues in a criminal case in Cyprus. I recall a civil case, not a criminal one, but I believe that the same thing would probably happen in a criminal case: A blind woman who gave a testimony could not read her testimony. The judge instructed a court official to read to the testimony to her. Had I been in the woman's position, I would have demanded that the document be produced in braille. I do not know if the court would order that the document be produced in braille."

"Σε ορισμένες περιπτώσεις, μπορούν να γίνουν ρυθμίσεις για να επιτρέψουν στους κατηγορούμενους με σωματική, διανοητική ή διανοητική αναπηρία να ακούσουν και να παρακολουθήσουν τη διεξαγωγή της δίκης. Για παράδειγμα, το δικαστήριο θα έκανε τα απαραίτητες διευθετήσεις αν ένα άτομο με κινητική αναπηρία πρέπει να παραστεί σε δίκη σε αίθουσα σε όροφο δικαστηρίου όπου πρέπει να βγει με σκάλα και δεν υπάρχει ανελκυστήρας. Τότε το δικαστήριο το δικαστήριο θα συνέχιζε τη δίκη σε αίθουσα στο ισόγειο. Ωστόσο, μπορεί να υπάρχουν προβλήματα με τυφλούς - δεν έχω υπόψη μου μας έχει τύχει στην Κύπρο. Μου έτυχε σε αστική περίπτωση όχι ποινική αλλά πιστεύω και σε ποινική

υπόθεση το ίδιο θα γίνει. Στην υπόθεση αυτή είχαν πάρει κατάθεση από μια τυφλή γυναίκα που δεν μπορούσε να διαβάσει την κατάθεση της. Το δικαστήριο έδωσε οδηγία σε ένα λειτουργό του δικαστηρίου να διαβάσει στη γυναίκα. Εγώ αν φανταζόμουν τον εαυτό μου σε αυτή τη θέση θα απαιτούσα αυτό το έγγραφο σε braille. Δε ξέρω αν θα μου το έδιναν σε braille. Δεν μας έτυχε."

Overall, prosecutors note the fact that there is a lack of facilities and proper investigation as to how the lack of access may affect persons with disabilities: As an experienced senior prosecutor noted:

> "The issues faced persons with disabilities have not yet been raised to see how our courts will react. We certainly do not have the facilities. These matters are not institutionalised in our system. But the judge can say that a translator must be found for a deaf person, so that he or she can effectively participate in the trial. I do not know what the police are doing if they catch a deaf person, for example."

> "Στα θέματα ατόμων με αναπηρίες, δεν τεθήκαν ακόμα για να δούμε πως θα αντιδράσουν τα δικαστήρια μας. Σίγουρα δεν έχουμε τις διευκολυνσεις, αυτό είναι δεδομένο. Δεν είναι θεσμοθετημένα αυτά τα πράγματα στο σύστημα μας. Μπορεί όμως ο δικαστής να πει ότι πρέπει να βρεθεί ένας μεταφραστής για ένα κωφό άτομο ώστε να συμμετάσχει ουσιαστικά στην δίκη του. Δεν ξέρω η αστυνομία τι κάνει σε περίπτωση που συλλαμβάνει για παράδειγμα ένα κωφό άτομο."

None of the interviewees has seen any negative portrayal of persons with disabilities in court or in the media.

ee. Other groups

Peace, anti-racist and human rights demonstrators

Many media outlets overall depict in a negative manner peace, anti-racist and human rights demonstrators when there are clashes with the police. Two of the lawyers interviewed referred to demonstrations against the closure of the checkpoints in February 2020, when four demonstrators were arrested and charged with public order offences and another was hit by a police officer on camera. The demonstrators were protesting against the closure of the checkpoints separating north from south of the island, which had been opened since 2003. Even though the government argued that the checkpoints were closed in order to stop the spreading of Covid-19, this argument did not convince the peace activists because there were no other Covid-19 measures in place at the time and the airports were still open to passengers from all countries. In one of the demonstrations, a demonstrator pushed a soldier who was pushing the crowds back. The incident was amplified by the media who repeatedly screened a montage video. The demonstrator was charged with a series of offences, whilst his name and photo paraded in the headlines of many newspapers for weeks. His trial was pending at the time of writing. As a lawyer pointed out:

> *"The latest example of the pattern was that concerning the demonstrator who had pushed a soldier during a protest the closure of the checkpoints a few months ago. This public presentation involved, additionally, a line of government officials who rushed to make public statements in an unprecedented move. Even before the demonstrator was charged, we had an official announcement from the Ministry of Defence, an official announcement from the Ministry of Justice, an official announcement from the Ministry of Interior, an official*

announcement from a government spokesman, even before this person was charged. The fact that the accused voluntarily presented himself to the police station was deliberately silenced; instead, the media concentrated on the legal word 'arrest'. In the ears of the common man, "he voluntarily appeared at the police station and was arrested" sounds quite different from just "he was arrested." The first is inconsistent with the image of the dangerous criminal. And an almost unreal atmosphere was created. This is the first time we have seen official announcements referring to "threats to the state", "insulting the security forces", as if this is the first time that someone has allegedly obstructed or pushed a policeman during protest marches. Almost all the anti-occupation marches ended in violence, breaking the police block to march towards the occupied territories, but this is the first time we have seen these official interventions for an incident of such minor importance. The difference here of course what that the accused bore some political characteristics which they wanted to portray as 'criminal', so they inflated the incident in such a way that it reached the suitable audience which was willing to isolate and side-step the rest of the information that was spreading its true extent. Even when it was confirmed that the accused had immediately repented his act and apologised to the soldier on the spot, no one heard this information. When the apology is mentioned with delay, nobody listens. At first, they framed the apology as fake news and then as an excuse and it was not given its appropriate dimension."

"Το τελευταίο παράδειγμα του μοτίβου ήταν αυτό με το διαδηλωτή που έσπρωξε στρατιώτη στην πορεία διαμαρτυρίας για το κλείσιμο των οδοφραγμάτων πριν λίγους μήνες, με την εμπλοκή κρατικών αξιωματούχων σε δημόσιες καταδικαστικές δηλώσεις, που ήταν κάτι πρωτόγνωρο. Πριν ακόμα του απαγγελθούν κατηγορίες, είχαμε επίσημη ανακοίνωσή του Υπουργείου Άμυνας, επίσημη ανακοίνωσή του Υπουργείου Δικαιοσύνης, επίσημη ανακοίνωσή του Υπουργείου Εσωτερικών, επίσημη ανακοίνωσή κυβερνητικού εκπροσώπου, πριν ακόμα παρουσιαστεί για να του απαγγείλουν τις κατηγορίες. Ακόμα και το γεγονός ότι ο κατηγορούμενος αυτοβούλως παρουσιάστηκε στον αστυνομικό σταθμό το απέβλεψαν και το παρασιωπήσαν σκόπιμα και πιάστηκαν από τη νομική λέξη 'σύλληψη'. Στα αυτιά του απλού ανθρώπου, το «προσήλθα και συνελήφθη» ηχεί πολύ διαφορετικά από το απλώς «συνελήφθη». Το πρώτο δε συνάδει με την εικόνα του επικίνδυνου εγκληματία. Και έτσι δημιουργήθηκε μια περιέχουσα ατμόσφαιρα σχεδόν εξωπραγματική. Πρώτη φορά βλέπουμε επίσημες ανακοινώσεις να θέτουν θέμα «απειλής της κρατικής υπόστασης», «προσβολής των σωμάτων ασφαλείας», λες και είναι πρώτη φορά που κάποιος κατ' ισχυρισμό παρεμπόδισε ή κτύπησε όργανο της τάξης σε πορείες διαμαρτυρίας. Όλες σχεδόν οι αντικατοχικές πορείες κατέληξαν σε βία, σπάζοντας τον αστυνομικό κλοιό για να πορευτούν προς τα κατεχόμενα, αλλά είναι η πρώτη φορά που βλέπουμε αυτές τις δημόσιες επίσημες παρεμβάσεις για ένα περιστατικό τόσο ήσσονος σημασίας. Και η διαφορά εδώ είναι το ότι ο κατηγορούμενος είχε κάποια πολιτικά χαρακτηριστικά τα οποία θέλησαν να καταδείξουν ως 'εγκληματικά', έτσι διόγκωσαν το περιστατικό αρνητικά με τρόπο που να έχει καλό ακροατήριο πρόθυμο να απομονώσει τις υπόλοιπες πληροφορίες που κατέδιναν την πραγματική του έκταση. Ακόμα και όταν επιβεβαιώθηκε το γεγονός ότι ο κατηγορούμενος είχε μεταμεληθεί άμεσα για την πράξη του και απολογήθηκε στον στρατιώτη επί τόπου, κανένας δεν το άκουσε. Όταν ακούσεις την μεταμέλεια ετεροχρονισμένα, δεν την ακούς. Αρχικά την άκουσαν ως fake news μετά ως δικαιολογία και δεν της δόθηκε η σωστή διάσταση."

The experienced defence lawyer contrasted how differently the government, the police and most of the media treated the issue, as an instance of a recent but serious violation of the presumption of innocence.

"The police, violating every principle of presumption of innocence, and because their purpose was not served by the fact that the accused apologised and come voluntarily to the police

station, they added charges which do exist in the criminal code but were never used before in legal history. Typical case of manufacturing charges to serve its purpose; it subsequently makes a plea bargaining to remove some of the charges and admit to one charge and then the media will announce 'guilty'. The offence to which he will plead guilty and be convicted will be a very minor one, but the media will simply write "guilty" and this is what people will remember. They kept him in the police station for hours, they charged him at the beginning and then they added charges after several hours. They kept him under remand, which is only justified in certain conditions which did not exist here. He accepted to remain in custody as a matter of goodwill to help the police find the truth, but this does not justify the measure. They asked to detain him allegedly in order not to influence witnesses. However, in another case where the accused, a public figure and president of a [sports] team, was detained to protect the testimony of others and he was at the same time visited by persons whilst in detention."

«*Η αστυνομία, παραβιάζοντας κάθε αρχή του τεκμηρίου αθωότητας, και επειδή ο σκοπός τους δεν εξυπηρετήθηκε από το γεγονός ότι ο κατηγορούμενος ζήτησε συγγνώμη και ήρθε οικειοθελώς στο αστυνομικό τμήμα, πρόσθεσε στο κατηγορητήριο κατηγορίες που υπάρχουν στον ποινικό κώδικα αλλά δεν χρησιμοποιήθηκαν ποτέ πριν στην ιστορία. Κλασσική περίπτωση καταχρηστικών κατηγοριών για την εξυπηρέτηση σκοπιμότητας. Στη συνέχεια κάνει μια διαπραγμάτευση για να αποσύρει τις επιπλέον κατηγορίες με αντάλλαγμα να δεχτεί ο κατηγορούμενος να παραδεχτεί σε μία κατηγορία. Ακολουθεί ανακοίνωση ενοχής στα μέσα ενημέρωσης. Το αδίκημα στο οποίο θα ομολογήσει ενοχή και θα καταδικαστεί θα είναι πολύ μικρό, αλλά τα μέσα μαζικής ενημέρωσης θα γράψουν απλώς «ένοχος» και αυτό θα θυμάται ο κόσμος. Τον κράτησαν στο αστυνομικό τμήμα για ώρες, τον κατηγόρησαν και ύστερα πρόσθεσαν κατηγορίες μετά από αρκετές ώρες. Τον είχαν υπό κράτηση, κάτι που δικαιολογείται μόνο σε ορισμένες συνθήκες που δεν υπήρχαν εδώ. Αποδέχθηκε να παραμείνει υπό κράτηση ως ζήτημα καλής θέλησης για να βοηθήσει την αστυνομία να βρει την αλήθεια, αλλά αυτό δεν δικαιολογεί το μέτρο. Ζήτησαν να τον κρατήσουν υποτίθεται για να μην επηρεάσει μάρτυρες. Ωστόσο, σε μια άλλη περίπτωση όπου ο κατηγορούμενος, δημόσιο πρόσωπο και πρόεδρος μιας ομάδας (σπορ), συνελήφθη για να προστατεύσει τη μαρτυρία άλλων, τον επισκέφτηκαν ταυτόχρονα άτομα ενώ ήταν υπό κράτηση.»*

An experienced defence lawyer noted that there was violation of the presumption of innocence in the case of a demonstrator who had been hit by a police officer, recorded on camera and circulated widely on the social and mainstream media.

"In the same protest against the closure of the checkpoints, there was another incident, where a police officer was shown on camera to hit a demonstrator. In this case, the police left insinuations that something had preceded the assault of the policeman and the media demanded that videos are presented to show what has preceded and essentially what has allegedly provoked the policeman to hit the demonstrator. In the case of the accused, however, the media did not demand to see videos to show what happened before and after the assault against the soldier. Even after it became known that the soldier had been violently pushing demonstrators, the accused pushed him once and then apologized and embraced him. In the case of the policeman hitting a demonstrator, the presumption worked in favour of the policeman. In the case of the demonstrator hitting a solder, the presumption worked against the demonstrator."

"Στην ίδια διαμαρτυρία ενάντια στο κλείσιμο των οδοφραγμάτων, υπήρχε ένα άλλο περιστατικό, όπου ένας αστυνομικός εμφανίστηκε στην κάμερα να χτυπά έναν διαδηλωτή. Σε αυτήν την περίπτωση, η αστυνομία άφησε υπαινιγμούς ότι κάτι είχε προηγηθεί της επίθεσης του αστυνομικού και τα μέσα ενημέρωσης ζήτησαν να παρουσιαστεί ολόκληρο το βίντεο για

να διαφανεί τι έχει προηγηθεί και τι ήταν αυτό που φέρεται να προκάλεσε τον αστυνομικό να χτυπήσει τον διαδηλωτή. Στην περίπτωση των κατηγορουμένων, ωστόσο, τα μέσα ενημέρωσης δεν ζήτησαν να δουν βίντεο για να δείξουν τι συνέβη πριν και μετά την επίθεση εναντίον του στρατιώτη. Ακόμη και μετά που έγινε γνωστό ότι ο στρατιώτης έσπρωχνε βίαια τους διαδηλωτές και ότι ο κατηγορούμενος τον έσπρωξε μόνο μια φορά, μετά του ζήτησε συγγνώμη και τον αγκάλιασε. Στην περίπτωση που ο αστυνομικός χτύπησε τον διαδηλωτή, το τεκμήριο λειτούργησε υπέρ του αστυνομικού. Στην περίπτωση που ο διαδηλωτής χτύπησε τον εθνοφρουρό, το τεκμήριο λειτούργησε εναντίον του διαδηλωτή.»

Turkish-Cypriots and Roma

Turkish-Cypriots and Roma are the other two groups who have been referred to. Some media provide negative representation of Turkish-Cypriots. A recent example of this is the way the media depicted the use of tear-gas by the police against Turkish-Cypriot demonstrators who were falsely presented as having surrounded the Police. As an experienced lawyer noted:

"The coverage by the media about the clashes of the police with Turkish Cypriot demonstrators who were also demonstrating against the closure of the checkpoints was also problematic. The newspapers referred to Turkish Cypriots having 'surrounded' the police and that the police 'were forced' to use teargas."

"*Η κάλυψη από τα ΜΜΕ σχετικά με τις συγκρούσεις μεταξύ της αστυνομίας και των Τουρκοκύπριων διαδηλωτών που επίσης διαμαρτύρονταν κατά του κλεισίματος των οδοφραγμάτων ήταν επίσης προβληματική. Οι εφημερίδες αναφέρθηκαν σε Τουρκοκύπριους που 'περικύκλωσαν' την αστυνομία και ότι η αστυνομία 'αναγκάστηκε' να χρησιμοποιήσει δακρυγόνα*."

d. Discussion of findings

Overall, the findings provide further support for many studies and reports about the nature of social stigma, prejudice, stereotypical generalisations, and discrimination against certain groups in society on the grounds of gender, ethnicity, and political conviction in particular. All the police officers interviewed insisted throughout that even if there is prejudice at the level of the media and society, these prejudices or biases have no bearing on the criminal process, which is solely based on the evidence collected through the investigation. Except for one prosecutor, who agreed with the above position, all other prosecutors and defence lawyers, as well as the media experts interviewed took a different position on the matter.

Gender matters. The interviews illustrated the importance of gender in the context of the implementation of the presumption of innocence in Cyprus. There was no consensus between the interviewees about the extent, the mechanisms and processes through which gender differentiation is manifested. However, there was agreement that gender is a powerful factor and with its own particularities in the context of power-relations, institutions, and social attitudes in Cypriot society.[149]

The police officers interviewed, all of whom were men, conceded that there is widespread gender prejudice in society but not in the criminal investigation process or at the juridical level, although police press officer recognised that exceptionally there are some violations at the police investigation

[149] Hadjipavlou, M. (2010) *Women and Change in Cyprus. Feminisms and Gender in Conflict*, I. B. Tauris Bloomsbury, London.

level. The police press officer took the position that in the *L.F.* case where a young tourist woman was convicted for causing public harm when she complained of having been gang raped and then withdrew her complaint,[150] the media had violated the presumption of innocence. The *L.F.* case was the source of major controversy in Cyprus. At the time, public figures such as the mayor of the tourist resort where the incident occurred, made public statements to condemn the woman as a liar before she was even charged. The national media coverage of the case was hostile and centred around her sexual behaviour, with many media reports exonerating the young Israelis whom the woman accused of gang rape. The case, which attracted international media coverage, highlighted once again systemic failures in media coverage, the public figures making statements attributing guilt even before the woman was charged and a gender based bias against women in both the media and the criminal justice system.[151]

Further research is required to highlight the problems of accessing justice in the context of discrimination on the various grounds protected by the EU equality acquis and how the institutional, social, political, and economic settings in the country mediate in order to facilitate or obstruct access to justice and protection of rights.[152]

Nationality and ethnicity are important factors in the context of the presumption of innocence**.** All the interviewees accept that there is widespread prejudice against migrants and non-nationals and that the media plays a rather negative role in the dissemination of xenophobia and racism. The disagreement is, once again, whether and the extent to which this feed into the criminal justice process and how this may affect the presumption of innocence. The police deny that there is any difference in treatment based on the national, ethnic or migration factors. Three lawyers and two prosecutors exemplified how these factors affected the presumption of innocence, both in the criminal justice process and in the broader societal level. Nationality and ethnicity often interact with class/social status creating multiple levels of vulnerability, obstructing access to rights as against powerful institutions such as the media and the police.

Gender becomes an even more powerful vector of **social differentiation, when combined with the other markers of social differentiation, discrimination, or stigma such as ethnicity, migration status and social class.**[153] The findings from the interviews largely confirm existing and related research conducted for the last twenty-five years: non-Cypriot nationals, particularly poor and other racialised migrants, ethnic groups, such as the Turkish-Cypriots and the Roma, do not enjoy the same level of protection of rights and their criminalisation is an ongoing phenomenon.[154] Several national and

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[150] Cyprus, District Criminal Court (*Επαρχιακό Δικαστήριο*) *Αστυνομικός Διευθυντής Αμμοχώστου v L.F*, case no 2466/19, reported 30 December 2020, ECLI:CY:EDAMM:2019:B30

[151] Trimikliniotis, N., Demetriou, C., Fishscer, L., Hajioannou, Sofroniou, C. (2020) 'Στον απόηχο μιας άδικης καταδίκης: Μισογυνισμός και θεσμικός ρατσισμός στην Κυπριακή Δικαιοσύνη', *Διάλογος*, 12 January 2020.

[152] Pavlou, V. (2019) *Gender equality Cyprus Country report: How are EU rules transposed into national law?*, European network of legal experts in gender and non-discrimination, Directorate-General for Justice and Consumers; Demetriou, C. (2020), *Non-discrimination country report: Cyprus 2019*, European network of legal experts in gender and non-discrimination, Directorate-General for Justice and Consumers.

[153] Anthias, F. and Yuval-Davis, N. (1993) *Racialized Boundaries: Race, Nation, Gender, Colour and Class and the Anti-Racist Struggle*, Routledge, London; Anthias, F. (2020) *Translocational Belongings, Intersectional Dilemmas and Social-Inequalities*, Routledge, London.

[154]Trimikliniotis, N. (1999) 'Racism and New Migration to Cyprus: The Racialisation of Migrant Workers.' Anthias, F. and Lazarides. G. In *Into the Margins: Exclusion and Migration in Southern Europe*. Aldershot: Avebury; Charakis, K. (ed.) (2005) *Αντικοινωνική Συμπεριφορά των Νέων της Κύπρου - Ρατσιστικές Τάσεις*, Athens: Sakoulas. Charakis, K, Sitas, A. (2004) 'Racist Tendencies Among Cypriot Youth 1999-2001', *The Cyprus Journal of Science and Technology*, No. 2, 2004, Frederick Research centre, Nicosia.' Trimikliniotis, N. and Corina Demetriou, C. (2012) ,The interaction between racist discourse and the rise in racial violence: The far-right attack

international monitoring body reports[155] expressed concern about the problem stereotyping and labelling migrants as having a 'predisposition to criminality' or blaming them for the 'rise of crime' in Cypriot society. Also, the hostility towards migrants is accentuated by police practices of racial profiling, collective arrest and deportations.[156] The effects of such practices is the danger of xenophobia, racism, and intolerance, which feeds into public perceptions on assumptions about the likelihood of committing an offence. Despite the recommendations by the Antidiscrimination Authority that the police refrain from making generalisations that connect 'aliens' and 'migrants' to the rise of crime,[157] as these discursive practices have not changed, and follow patterns noted in numerous European countries.[158] If anything, these practices have recently intensified. ECRI noted with concern how the media stereotyping and connecting migrants to crime, as "*migrants, particularly Muslims, are frequently presented in the media in a negative light and associated with problems such as rising unemployment and criminality*".

Turkish-Cypriots and Roma are the other two groups who are also been identified as potentially stigmatised.

Social class and social status matters. The interviews also revealed the importance of social class and social status in the criminal justice process. This has a bearing on the extent to which the presumption of innocence is respected and who has access to the various rights it contains. Social standing was identified as a key issue in the protection of the presumption of innocence The interviewees illustrated with examples how persons in the higher echelons of society enjoy better protection of the rights derived from the presumption of innocence when compared to those at the lower echelons, marginalised and discriminated. Wealth, power, access to the media, and fame matters. Overall, the media coverage has, by and large, reflected the inequality in income, property, power and status in Cypriot society.[159] Interviewees who were versed with social issues pointed out that the various media

against a multicultural Rainbow Festival in 2010 in Cyprus', Work Package 1, Overview of National Discourses on Tolerance and Cultural Diversity, European University Institute Robert Schuman Centre for Advanced Studies, ACCEPT PLURALISM; Milioni, D. L., Spyridou, L., Vadratsikas, K. (2015) 'Framing Immigration in Online Media and Television News in Crisis-stricken Cyprus', The Cyprus Review, Vol. 27:1 Spring 2015), pp. 155-189.

[155] Council of Europe (2016), 'ECRI Report on Cyprus, Fifth monitoring cycle'. Adopted on 17 March 2016, Published on 7 June 2016.

[156] Cyprus, Anti-Racism and Anti-Discrimination Authority (*Αρχή κατά του Ρατσισμού και των Διακρίσεων*) 'Έκθεση της Αρχής κατά του Ρατσισμού και των Διακρίσεων αναφορικά με τις επιχειρήσεις της Αστυνομίας για έλεγχο, σύλληψη, κράτηση και απέλαση μεταναστών με συνοπτικές διαδικασίες,' Report No. AKP 127/2007, AKP 128/2007, AKP 123/2009, 7 June 2010. Nicosia: Anti-discrimination Body, 2011.

[157] Cyprus, Anti-Racism and Anti-Discrimination Authority (*Αρχή κατά του Ρατσισμού και των Διακρίσεων*) Έκθεση Αρχής κατά του Ρατσισμού και των Διακρίσεων, αναφορικά (Α) με δηλώσεις του Αρχηγού Αστυνομίας και (Β) με την ανάλυση δεδομένων που αφορούν ρατσιστικά περιστατικά, A.K.P. 12/2004, 22 June 2005. Nicosia: Anti-discrimination Body.

[158] Hall, S., Critcher, C., Jefferson, T., Clarke, J. and Roberts, B. (1978) *Policing the Crisis: Mugging, the State, and Law and Order*, Routledge, London; Sitas, A., Trimikliniotis, N., Damodaran, S., Keim, W. and Garba, F. (2014) *Gauging and engaging deviance 1600-2000*, Tulika Academic Press, India.

[159] Panayiotou, A. (2012) 'Business group strategies vis-à-vis political power: invisible dimensions of linkage', Charalambous, G., Christophorou, C. (eds.) *Party-Society Relations in the Republic of Cyprus, Political and Societal Strategies*, Routledge, London; Sakellaropoulos, S. (2017) 'The Class Structure of Society in the Republic of Cyprus', *The Cyprus Review*, Vol. 29, pp. 159-182. Hajispyrou, S. and Nicolaidou, N. (2007) 'Income Inequality in Cyprus', *Cyprus Economic Policy Review*. 1. 81-94; Pasiardis, P. Hajispyrou, S. and Nicolaidou, N. (2006) 'Η Οικονομική Ανισότητα στη Κύπρο 1985-2003', *Δοκίμια Οικονομικής Πολιτικής*, Αρ. 04-06, May 2006; Ioannou, G. and Charalambous, G. (2017) *Ο κοινωνικός και πολιτικός αντίκτυπος της κυπριακής οικονομικής κρίσης*, Report for Friedrich-Ebert-Stiftung;

outlets, journalists and commentators positioned themselves differently, depending on factors such as the political, ideological or economic standing, connections, networks and interests.

The interviews highlighted important issues that connect processes in the criminal law and procedure pertaining to the treatment of **children**. They also illustrated the systemic problems and gaps (e.g. absence of specialisation on children, outdated laws on children, the absence of a juvenile court etc). Also, some of the views expressed illustrate that practitioners project on children some of the general stereotypical views about children as unreliable and less credible witnesses.

The provisions for **juvenile defendants** (e.g. the court hearing may be held in camera to provide additional protection), does not protect them from negative media publicity that undermines the presumption of innocence and may have devastating effect on the lives of children who may be suspects, or relatives of suspects, defendants, victims or witnesses. This was illustrated in a double murder Nicosia back in 2018, when the media widely circulated the leaked news by the police press officer that the murderer was the adopted 15-year-old son of the murdered couple. There is also a broader problem concerning public discourses about **young offenders** and justice for children and young persons in general. The issue of crime by children is one of the favourite media subjects connected to outmoded perceptions branded as "juvenile delinquency".[160] The way media reports crime by children is often highly problematic in branding and labelling certain young persons as "criminals", which accentuate and reproduce in a stereotypical the problem.[161] Also, the role of the police in combating what is branded as "juvenile deviancy" and " delinquency", using a "tough line" and "zero tolerance" methods, result according to one empirical study, in unfair and "unlawful violence" against offenders which may have the opposite effect in combating crime.[162] The insecurity experienced by young persons during police investigations and the vulnerability which this generates is sometimes taken advantage of by police officers in order to secure confessions, in violation of a number of rights derived from the presumption of innocence.

Peace activists and anti-racist demonstrators are amongst groups framed by the media as violent and troublemaking, in violation of the presumption of innocence. The lawyers interviewed located the negative media portrayals of demonstrators in the trailing of public statements made by government officials inclined to justify police violence and frame protests as unjustifiable and violent. The police officers interviewed did not consider that there is any issue or wrongdoing in either the police response to street protests or in the public statements of government officials about demonstrators.

All the interviewees acknowledged that there has been an improvement in terms of institutional clarity with the explicit reference to procedural rights contained in the Directive and transposed in the Cypriot legal framework. However, as prosecutors and defence lawyers pointed out, many of the practices of interrogation and questioning seem to be deeply rooted in a certain **police culture** which has little regard for human rights. Lawyers contended that respect for the presumption of innocence also depends on the personality and training of the **individual police officer** in charge of a particular investigation, **the attitudes of judges**, the extent to which **media and journalists press for 'news'** but the operative factor is always **political pressure**, as evidenced by the several examples put forward by the lawyers interviewed. Prosecutors and lawyers argued that the improvement in the institutional

[160] Kapardis , A. (2013) "Juvenile delinquency and justice in Cyprus", Costanza, A. B. and Kapardis , A. (eds.) *Risk Assessment for Juvenile Violent Offending*, Routledge, p. 43-57.
[161] Stylianou, S. (2007) *Νεανική Παραβατικότητα και Κυπριακή Κοινωνία*, University of Nicosia publications p. 294-296.
[162] Stylianou, S. (2007) *Νεανική Παραβατικότητα και Κυπριακή Κοινωνία*, University of Nicosia publications p. 291-294.

and legal framework does not lead to automatic improvement in the treatment of the accused, as this depends on implementation, monitoring, access to lawyers and claiming rights from the outset. Judges are not detached from society, nor are they without their own values, prejudices, political views, and attitudes which are products of their social background, upbringing, education, training and socialisation.[163] This issue is not confined to Cyprus,[164] but small states have their own specificities and processes that must be recognised in their own dynamics and context.[165] The police officers interviewed all stressed the contents of the legal framework as a guarantee for the implementation of rights, without considering implementation issues connected with police culture and training, which were raised by the lawyers and prosecutors.

The media have a crucial role in protecting the presumption of innocence. All interviewees expressed concerns about public attributions of guilt and other malpractices and inadequacies of the media in reporting crime and presenting accused persons, attributed partly to the journalists' lack of legal training, partly to the journalists' lack of concern about the accuracy and objectivity of their reporting and partly to political pressure on the media. The interviewees noted that the spread of the social media, private and informal groups and the fierce competition for faster and more sensational news have had a negative impact for those accused of crimes. The lack of effective mechanisms in monitoring, scrutinising and sanctioning media misconduct were also identified as gaps in the protection of the presumption of innocence.

Stigmatisation of and **prejudice** against certain groups also have their toll on the presumption of innocence. Markers of social differentiation such as gender, ethnicity, migration status and social class have a significant bearing on the implementation of the presumption of innocence. With the exception of the police officers, who were of the view that none of these factors played any role, all interviewees identified the following factors as most likely to impact the presumption of innocence:

- Public references to guilt disseminated through the media.
- Previous convictions, although some prosecutors claimed that they play no role in at the judicial level.
- Gender, although again some of the lawyers and prosecutors believed that this played no role at the judicial level. Most interviewees, however, consider that gender plays a role as a stereotypical assumption based on prejudice generalised as 'banal knowledge' which can impact the outcome in different ways.
- Sexuality, sexual behaviour, and gender identity can play a significant role in proceedings presided by a conservative judge.
- Young age of the accused persons, which yields conditions of vulnerability both at the police station and in the courtroom.
- Nationality and migrant status often combined with poverty. Gender can be an aggravating factor where migrant status and poverty are present.
- Disability to the extent that special measures are needed to enable the accused person to participate in the judicial proceedings as the absence of such facilities often lead to discrimination.
- Political protests opposing particular government policies, such as peace, anti-racist and human rights activists are likely to receive negative media coverage by pro-government media

[163] Pikis, G. M. (2012) *Justice and the Judiciary*, Law Specials VOLUME 80, MARTINUS NIJHOFF PUBLISHERS.
[164] Annison, H. (2014) 'Interpreting the Politics of the Judiciary: The British Senior Judicial Tradition and the Pre-emptive Turn in Criminal Justice', *Journal of Law and Society*, Vol. 41, Issue 3, September 2014, pp. 339-366.
[165] Ragonesi, I. C. (2020) *Democracy is Southern Europe. Colonialism, International Relations and Europeanisation from Malta to Cyprus*, I. B. Tauris, London.

and attract public statements by government officials pre-determining the result of a court case.

In order to address the gaps, systematic training is needed for police and media actors and more effective practices to monitor the implementation of regulations safeguarding the presumption of innocence. The current media regulation system does not yield adequate protection: one of the two media watchdogs is appointed by the executive and the other is a self-regulating body without sanction powers, neither of which have addressed the violation of the presumption of innocence in the media. There is currently a proposal under discussion for co-regulation of the media to replace the current self-regulation system.[166]

Better regulation is also needed for the relations and unofficial interactions between the police, defence lawyers and journalists which offer corridors for unofficial exchange of information and favours. These dealings were described by the lawyers interviewed as highly problematic in protecting the presumption of innocence and inadequately monitored. Defence lawyers consider that the police often violate the presumption of innocence by exposing details or implying the accused person is guilty through press releases which sound like guilty verdicts by the court.

Prosecutors and judges do not interact with the media, save in exceptional circumstances where there is a need to inform the public and this is specifically sanctioned by the attorney general.

Some defence lawyers strictly avoid liaising with the media as unethical, because it leads to dependencies and practices that may affect justice. Others consider liaising with media as a necessary method of airing the views of the defendant to counterbalance the police statements which may be misleading or infer guilt on the accused. Almost all prosecutors and lawyers interviewed, however, questioned the independence and impartiality of the media, expressing concern about connections, ownership and power of big law firms and politicians over media groups. Empirical research confirms this finding, illustrating flaws in media pluralism in Cyprus.[167]

C.3 The presentation of suspects and accused persons

a. Measures used to present the accused and its impact on their presumption of innocence

Article 5 of Directive 2016/343 prohibits the presentation of suspects and accused persons as guilty. In Cyprus there is considerable discretion granted to the police in the national legal provisions and guidelines as to how a suspect or accused person is to be presented in Court, but what happens in the courtroom falls under the power of the court.[168] In this process the Court is obliged to determine and safeguard the fairness of the procedure as required by the Constitution, the ECHR and the principles of justice, to ensure a fair trial. The criminal procedure law provides for the right of suspects to be present throughout their trial provided they behave 'decently'.[169] This has occasionally been

[166] Zoumidou, M. (2020) 'Εγκληματίες και ανθρώπινα δικαιώματα στο αστυνομικό/δικαστικό ρεπορτάζ', Φιλελεύθερος, 28 June 2020 and Oxygono, 'Αστυνομικό & Δικαστικό Ρεπορτάζ – Νομικές & Κοινωνικές Προεκτάσεις', Oxygono 27 June 2020.
[167] Trimithiotis, D. (2014) 'Why is the category of "pluralism" insufficient to describe the media sphere?', *French Journal For Media Research*, 1/2014, ISSN 2264-4733.
[168] Cyprus, Law on Criminal Procedure Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος Κεφ. 155*), Art. 171.
[169] Cyprus, Law on Criminal Procedure Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος Κεφ. 155*), Art. 63(1).

interpreted by the Courts to mean that accused persons must be 'dressed decently' with no particular dress code being imposed. Persons in detention or in jail do not have to wear any special clothing; they wear their own clothes in detention or prison and in the courtroom as well.

According to police regulations, accused persons or suspects must be escorted from their place of detention to any other location in accordance with a set of guidelines which are not necessarily premised upon preserving the public image of the suspect as innocent until proven guilty. [170] The guidelines provide that the police escorts must behave "decently", avoid transporting men together with women, avoid transporting one woman escorted only by one police officer, guard the suspect to avoid escape, supervise the suspect at all times, in the case of non-serious crimes police escorts must not carry firearms and the number of police escorts depends on the nature of the offence, the personality of the detainee and the number of detainees to be transported.[171]

The use of handcuffs is regulated by a special police regulation which permits their use for the following categories of suspects:

a) Convicts or pre-trial detainees.
b) Persons detained by the police as suspects for serious offenses.
c) Persons detained by the police as suspects in the commission of any other offenses and who are deemed to be dangerous.[172]

When Directive 2016/343 was transposed, the relevant Police Order was amended to add a provision citing the Directive. However, the Police Order retains the same practice as before and reads as follows: 'It is understood that, in accordance with Article 5 of Directive (EU) 2016/343, members of the police are required to take appropriate measures to ensure that suspects and defendants are not presented as guilty, in court or in public, through the use of physical restraint measures, unless physical restraint measures are required for specific security or safety reasons. preventing suspects or defendants from escaping or encountering third parties".

Handcuffs must not be used on:

- children, women, wounded or persons with disabilities unless they are deemed dangerous and having in mind their bodily size and the possibilities of escaping and
- Detainees or prisoners whilst in the courtroom unless the court otherwise requires.[173]

Similar provisions can be found in the Prison Regulations.[174]

Police orders provide that members shall not use handcuffs: [175]

- to minors, the elderly, the injured or the disabled, unless deemed strictly necessary, taking into account the aggressive behaviour of the arrested person, the seriousness of the offense and his or her body.
- to convicts transported by ship or aircraft unless they are dangerously violent, or their guard is inadequate.

[170] Cyprus, Police Regulations (*ΑΣΤΥΝΟΜΙΚΗ ΔΙΑΤΑΞΗ*), No. A.D. 5-4.
[171] Cyprus, Police Regulations (*ΑΣΤΥΝΟΜΙΚΗ ΔΙΑΤΑΞΗ*), No. A.D. 5-4.
[172] Cyprus, Police Regulation (*ΑΣΤΥΝΟΜΙΚΗ ΔΙΑΤΑΞΗ*), No. A.D. ΑΡ. 5/39, 23 February, 2018
[173] Cyprus, Police Regulation (*ΑΣΤΥΝΟΜΙΚΗ ΔΙΑΤΑΞΗ*), No. A.D. 5-39, 23 February 2018.
[174] Cyprus, Prison Regulations, (*Οι περί Φυλακών (Γενικοί) Κανονισμοί του 1997*) Cyprus Gazette, Αρ. 3143 της 18 April 1997, ΚΔΠ 121/97, Art. 11.
[175] Cyprus, Police Order (*ΑΣΤΥΝΟΜΙΚΗ ΔΙΑΤΑΞΗ*), no. 5/39.

- in frenzied, other than under some circumstances.
- to persons convicted, sentenced, or detained in the courtroom, unless the Court orders otherwise.

The Law on Police empowers the Chief of police to issue police orders to ensure orderly and sound administration for the purposes of guidance to police officers in the performance of their duties. [176] Courts do not consider these to be rules of law but as guidance given to members of the police in relation to the performance of specific tasks. [177] Courts nonetheless allow discretion to the police to determine how a certain accused person will be presented in Court.[178] Important aspects governing police procedure are governed by the Judges Rules, issued in 1912, as amended in 2018 and integrated into the Criminal Procedure Law.[179] Caselaw has clarified that the Judges Rules are not rules of law but rules of practice,[180] therefore if the police do not comply with these, there is no automatic exclusion of the evidence obtained in violation of these rules.

The interviewees noted that in Cyprus handcuffs are taken off before the accused person enters the court. Police officers and prosecutors interviewed argued that the need to avoid an image of guilt must be balanced against the possibility of an accused escaping, pointing out to cases where the accused persons escaped as soon as the handcuffs were removed. They noted that if accused persons escape, the police officer in charge of escorting them will be liable, adding that some defendants are dangerous and safety measures must be taken. As an experienced prosecutor noted:

> *"In my experience the measures used to physically restrain defendants during their transportation to a courtroom, and once they are in the courtroom follow the guidelines provided by the Judges rules. If the accused is in custody and is to be transported by police car, then the handcuffs are removed when he or she arrives at the court, unless there is a serious the risk that he or she will escape."*

> *"Σύμφωνα με την εμπειρία μου, τα μέτρα που χρησιμοποιούνται για τον περιορισμό των κατηγορουμένων κατά τη μεταφορά τους σε μια δικαστική αίθουσα, και όταν βρίσκονται στο δικαστήριο ακολουθούν τις οδηγίες που προβλέπονται από τους δικαστικούς κανόνες. Αν είναι υπό κράτηση ο κατηγορούμενος και θα μεταφερθεί με αυτοκίνητο της αστυνομίας, με χειροπέδες και οι χειροπέδες αφαιρούνται ανάλογα με το πόσο σοβαρός είναι ο κίνδυνος απόδρασης."*

There is recognition by prosecutors that public view with handcuffs do influence public opinions:

> *"Public opinion is certainly influenced by the image of what the accused is wearing it."*

> *"Η κοινή γνώμη σίγουρα επηρεάζεται από την εικόνα που δημιουργεί στον τηλεθεατή από το τί φορεί ο κατηγορούμενος."*

[176] Cyprus, Police Law 73(I)/2004, Art. 12(1).
[177] Cyprus, Supreme Court, Appeal Jurisdiction, (*Ανώτατο Δικαστήριο, αναθεωρητική δικαιοδοσία*) *Ανδρέας Σπάταλος και Κυπριακή Δημοκρατία*, Case no. 277/99, 278/99 και 279/99, 3 July 2001.
[178] Cyprus, Limassol Assize Court (Επαρχιακό Δικαστήριο Λεμεσού) *Ηλία Κονναρή και Κυπριακής Δημοκρατίας μέσω του Γενικού Εισαγγελέως*, Case no. 5717/11, 30 April 2018.
[179] Cyprus, Law on Criminal Procedure, Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος, Κεφ. 155*), Art. 8.
[180] Cyprus, Supreme Court, Appeal Jurisdiction, (*Ανώτατο Δικαστήριο, αναθεωρητική δικαιοδοσία*), *Ahmad Ahmad Al v Δημοκρατίας*, (2010) 2 Α.Α.Δ. 256, 17 June 2010.

A senior prosecutor stated that there are obvious cases where there is no risk of the accused persons escaping and yet handcuffs are still used, adding that "*perhaps handcuffs could be removed so that the image of guilt is not there*".

Accused persons may cover their face whilst entering the court building if they want. Prosecutors noted that particularly in cases of parental abuse, it is necessary to protect the identity of the accused parent because the parent's identity can lead to the identity of the child. In cases of domestic violence, the identity of both the victim and the perpetrator must be hidden as the identification of the one lead to the identification of the other.

b. Clothing

There are no special clothes for the accused or prisoners in Cyprus. The only requirement is that they are decently dressed. Judges do not allow into the court room accused persons who are improperly dressed.

Most prosecutors and defence lawyers did not think that clothes matter to such an extent that they can seriously undermine the presumption of innocence. However, some of them consider that the image of the defendant in court has a definite effect on the impression the judge has and in the way the media depicts the defendant. As one prosecutor stated:

> *"The type of clothing definitely plays a role. It is one of the details that judges use to compose an image of the person that they will compare afterwards with what the persons says to draw a conclusion. But I think the outfit has a small impact. Once the defence lawyer tried to suggest to the court that the complainant's clothing indicated that she was of a certain moral standard showing a tendency to lie. The court rejected this line and ruled that the appearance could not be considered against her given the dress code of the age group to which the woman belonged. There is a tendency for the court to make a dialectic with the current conditions and not to make an issue out of it."*

> *"Το είδος των ρούχων σίγουρα επηρεάζει. Είναι μία από τις λεπτομέρειες που χρησιμοποιούν οι δικαστές για να συνθέσουν μια εικόνα για το άτομο την οποία θα συγκρίνουν εκ των υστέρων με τα λεγόμενα του για να αντλήσουν συμπέρασμα. Πιστεύω όμως ότι το ντύσιμο επηρεάζει σε μικρό βαθμό. Έτυχε να προβληθεί από την υπεράσπιση ότι ο τρόπος με τον οποίον ήταν ντυμένη η παραποιουμένη είναι συγκεκριμένης ηθικής, γεγονός που καταδείκνυε την τάση και συνεπώς το ψεύδος της. Το δικαστήριο απέρριψε τη γραμμή αυτή και αποφάσισε ότι η εμφάνιση δεν μπορούσε να ληφθεί υπόψη εναντίον της με δεδομένο τον τρόπο ντυσίματος της ηλικιακής ομάδας στην οποία ανήκει η κατηγορουμένη. Υπάρχει η τάση το δικαστήριο να κάμνει διαλεκτική με τις εκάστοτε ισχύουσες συνθήκες και να μην το αναγάγει δε μέιζον θέμα."*

Clothing matters as it affects the impressions a defendant makes on the judge. As one senior defence lawyer noted:

> *"The court itself is also affected by the accused person's attire, not just the media or the audience. A person accused of theft who comes into the court in poor clothes will be tried differently than a person accused of thief who comes in wearing expensive clothes because the strong impression is 'why would they need to steal'."*

"Το δικαστήριο επηρεάζεται από την ενδυμασία του κατηγορούμενου, όχι μόνο τα ΜΜΕ ή το ακροατήριο. Διαφορετικά δικάζεται ένας ρακένδυτος κατηγορούμενος για κλέφτης από έναν κλέφτη που έρχεται με ακριβά ρούχα, διότι η πρώτη εντύπωση είναι «τι ανάγκη έχει αυτός να κλέψει»."

c. Presentation of vulnerable groups

The following categories were classified by the interviewees as vulnerable: young persons, persons with mental or physical condition or disabilities, women, and migrants.

Prosecutors referred to the basic safeguards to ensure that defendants are not presented as guilty in court, but there is a problem in the way the media influences public opinion. A prosecutor added that it is up to the defence lawyers to ask the judge to make any special arrangements and the court will indeed order the adoption of the necessary accommodation measures. For instance, if there is a person with disability and there is no lift, then the court would be convened in a room on the ground floor. For juvenile defendants, the court will order that the proceedings take place behind closed doors to provide additional protection.

Lawyers noted that there is minimal regulation for the needs of vulnerable persons and unless there is effective legal representation for the accused, which is not always the case, the vulnerable accused person is unlikely to be granted the necessary accommodation measures, adding that this is a serious flaw in the criminal justice system.

d. Reactions to presenting accused persons as guilty

The presentation of the accused as guilty is not effectively challenged by legal or non-legal means in Cyprus. Defence lawyers may raise the issue of a remedy in court and, at any stage of the proceedings, argue that a certain treatment undermines the presumption of innocence. It is questionable whether this will be successful because it will be decided by the same judge who is adjudicating the case, who as a matter of prestige is unlikely to admit being susceptible to external pressure. There are no jury trials in the Cypriot legal system. The judge will be inclined to listen to the case and decide on the basis of the admissible evidence. One of the prosecutors interviewed suggested that this motion has more chances of success if it is raised on appeal, where the case will be held by a different court composition. Another prosecutor took the view that the means of restraining a defendant do not have an impact on the defendant's presentation of guilt, nor does it affect the trial. A third prosecutor argued that the possibility of impacting the presumption of innocence depends on the intensity of the restraining measure and that it is hard to conceive of measures so restrictive that they could impact the outcome of the trial:

"It is rather extreme to think of a case where the restraining is so disproportionate that it would amount to a violation of the presumption of innocence. The issue of the defendant being denied the right to a fair trial, such as when confession being extracted inappropriately, could be raised at any point of the procedure. If I were confronted with such case, and depending if the circumstances were such, I would request disciplinary proceedings against the police officers involved."

"Είναι μάλλον ακραίο να σκεφτούμε μια περίπτωση όπου η κράτηση είναι τόσο δυσανάλογη που θα ισοδυναμούσε με παραβίαση του τεκμηρίου αθωότητας. Η στέρηση του δικαιώματος σε δίκαιη δίκη, όπως συμβαίνει όταν η ομολογία εξάγεται με παράνομα μέσα, θα μπορούσε να τεθεί σε οποιοδήποτε σημείο της διαδικασίας. Εάν ήμουν αντιμέτωπος με μια τέτοια υπόθεση, και ανάλογα με το εάν οι περιστάσεις ήταν τέτοιες, θα ζητούσα πειθαρχική διαδικασία κατά των εμπλεκόμενων αστυνομικών."

One of the defence lawyers argued that the remedies available are inadequate when the media violate the presumption of innocence:

"We can complain to the Radio Television Authority, but it is not particularly effective. Its procedure takes a long time and its decisions are hardly ever effective or prompt. The other solution is for the accused person to sue for defamation, but this requires financial means and takes even longer time. The mere exposure of an image of a suspect wearing handcuffs does not meet the prerequisites of defamation.'

"*Μπορούμε να παραπονεθούμε στην Αρχή Ραδιοτηλεόρασης, αλλά δεν είναι ιδιαίτερα αποτελεσματική. Η διαδικασία είναι χρονοβόρα και οι αποφάσεις της δεν είναι σχεδόν ποτέ αποτελεσματικές ή γρήγορες. Η άλλη λύση είναι να κινήσει αγωγή για δυσφήμιση ο κατηγορούμενος, αλλά αυτό απαιτεί οικονομικά μέσα και χρειάζεται ακόμη περισσότερο χρόνο. Η απλή δημοσιοποίηση της εικόνας ενός υπόπτου που φοράει χειροπέδες δεν πληροί τις προϋποθέσεις της δυσφήμισης*."

The possibility of a civil suit was also raised, but there are restrictions and problems:

«Accused persons have a civil right to sue if the presumption of innocence is infringed but in the absence of legal aid this is impossible. This is something that NGOs must claim. Someone without money cannot apply to court, it is hard enough for them to find money to pay their lawyers in the criminal case against them. A person may be entitled to compensation for the tainting of his reputation, but a separate lawsuit must be filed for this case, the criminal court cannot award damages for this claim."

«*Οι κατηγορούμενοι έχουν αστικό αγώγιμο δικαίωμα εάν παραβιαστεί το τεκμήριο αθωότητας τους, αλλά χωρίς νομική αρωγή αυτό είναι αδύνατο. Αυτό είναι κάτι που οι ΜΚΟ πρέπει να διεκδικήσουν. Κατηγορούμενοι που δεν διαθέτουν τους απαραίτητους πόρους δε μπορούν να αιτηθούν στο δικαστήριο για θεραπεία, τους είναι ήδη αρκετά δύσκολο να εξασφαλίσουν τα χρήματα για να πληρώσουν τους δικηγόρους τους στην ποινική υπόθεση εναντίον τους. Ένα άτομο μπορεί να δικαιούται αποζημίωση για δυσφήμηση, αλλά πρέπει να υποβάλει ξεχωριστή αγωγή για αυτήν την υπόθεση, το ποινικό δικαστήριο δεν μπορεί να του επιδικάσει αποζημιώσεις*.»

e. Discussion of findings

There are no rules requiring that defendants wear any special clothing. The only requirement bis that defendants are 'decently' dressed in court. Clothing however matters as a marker of social and

economic status, which can have an impact on the image of the accused conveyed to the judge, the prosecution, and the media.

Regulations for the use of handcuffs require that these are removed before the defendant enters the courtroom, save in exceptional circumstances. As the court allows some police discretion in determining whether handcuffs are necessary either before or after entering the courtroom, police officers escorting accused persons will take the safe option of leaving the handcuffs on, if the police fear that defendant is likely to escape, even if the chances are slim. There is no regulation prohibiting accused persons from hiding their faces, if they choose to and often they do so.

Children, persons with mental or physical condition or any disabilities and migrants are classified as vulnerable and no handcuffs are used for them. The police officers interviewed claim that rules regarding vulnerable persons are observed. The prosecutors confirmed that both the police and the judges are sensitive to the need of protecting children and persons with disabilities. If however the police infringe the rules of presenting accused persons to court, it is up to the defence lawyer to raise it and request for the special provisions to be activated. As defence lawyers noted, this means the rights of those with no legal representation or those with inadequate representation are not always respected.

The Journalists Code of Ethics explicitly refers to the taking of pictures of suspects in courtyard without their permission as a violation of the presumption of innocence[181] and their right to private life. [182] The presumption of innocence is explicitly protected by law, given that the Journalists Code of Ethics is legally binding on all media outlets as it is appended to subsidiary legislation regulating the media.[183] The media are not allowed to film or take pictures in the court or the courtyard, but they nevertheless routinely film and take pictures, and often present accused persons with handcuffs, as there is no monitoring body to stop them. Any criticism of their abuse of power is depicted as a threat to press freedom. According to the defence lawyers, the sanctions, and remedies available when the media present accused persons as guilty are inadequate. Accused persons can raise this issue in the courtroom at any stage of the proceedings, or upon appeal, file complaints to one of the two media watchdogs or file a civil action for libel. All these recourses however are post-festum remedies which cannot effectively undo the harm done. The libel action is costly and time consuming and is not likely to lead to an award of compensation because the presentation of an accused person as guilty is unlikely to meet the prerequisites of libel. In the *Georgiades* case, the defendant's trial court conviction was quashed upon appeal because of the negative media coverage, however the libel actions which the defendant filed against the media outlets took several years and were not all successful, even though the media reports were deemed to be sufficiently negative so as to affect his chances of having a fair trial.

C.4 Burden of proof

The burden of proof is on the prosecution who must prove on the standard of beyond reasonable all the elements of the offence to secure a conviction. All interviewees had good knowledge of the legal provisions and standards as regards the burden of proof. When there is a shifting of the burden of proof, the defendants must prove their claim but only on the balance of probabilities.

[181] Cypriot Union of Journalists, Code of Journalistic Ethics (*Κώδικας Δημοσιογραφικής Δεοντολογίας*), Art.7.
[182] Cypriot Union of Journalists, Code of Journalistic Ethics (*Κώδικας Δημοσιογραφικής Δεοντολογίας*), Art.3.
[183] Cyprus, Regulations under article 51 of the Law on radio and television stations, (*Οι περί Ραδιοφωνικών και τηλεοπτικών σταθμών νόμοι, Κανονισμοί δυνάμει του άρθρου 51*), Κ.Δ.Π. 10/2000, Appendix III, Cyprus Gazette no. 3383, 28 January 2000, Art.10.

Exceptions to the burden of proof

- In some cases, only the accused person can easily offer an explanation and therefore the burden of proof shifts on the accused person. For example, it is up to the accused person to show that they were in possession of a license to carry firearms or that the goods in his possession were not stolen.

- If a defendant is accused of possessing illegal drugs for the purpose of dealing with them, it is up to the defendant to prove that the drugs were intended for his personal use.
- When the defendants claim as defence a health or other condition which only they can prove by submitting medical or other evidence.

- In strict liability offences it is for the defendants to disprove their guilt or present mitigating factors.

A police officer noted:

> *"As a rule, the burden of proving a person's guilt should rest with the prosecution. However, there are specific offenses that are individual, very few where the burden of proof is borne by the accused himself, e.g. illegal possession of property, the accused himself must prove and not the prosecuting authority must prove his guilt. Regarding the recent decrees restricting free movement due to the pandemic, where police collected fines for violations, this does not affect the burden of proof because the fine was an administrative fine. The burden of proof is legally a different matter. The law says that one can pay the out-of-court settlement, and if one disagrees, one can go to court to present the mitigating circumstances and it is up to the court to decide."*
>
> *"Κανονικά, το βάρος της απόδειξης της ενοχής ενός ατόμου πρέπει να εναπόκειται στη δίωξη. Ωστόσο, υπάρχουν συγκεκριμένα αδικήματα που είναι μεμονωμένα, πολύ λίγα όπου το βάρος της απόδειξης το φέρει ο ίδιος ο κατηγορούμενος, πχ παράνομη κατοχή περιουσίας, ο ίδιος ο κατηγορούμενος πρέπει να αποδείξει και όχι η κατηγορούσα αρχή να αποδείξει την ενοχή του. Αναφορικά με τα πρόσφατα διατάγματα που απαγόρευαν την κυκλοφορία λόγω της πανδημίας, όπου η αστυνομία είσπραττε πρόστιμο για τις παραβιάσεις, αυτό δεν επηρεάζει το βάρος της απόδειξης διότι το πρόστιμο ήταν διοικητικό πρόστιμο. Το βάρος απόδειξης νομικά είναι διαφορετικό ζήτημα. Η νομοθεσία λέει ότι μπορεί κάποιος να πληρώσει το εξώδικο, κι αν διαφωνεί μπορεί να πάει ενώπιον του δικαστηρίου για να παρουσιάσει τα ελαφρυντικά και επαφίεται στο δικαστήριο να αποφασίσει."*

A senior prosecutor referred to some of the exceptions:

> *"There are exceptions to this rule that burden of proving a person's guilt should rest with the prosecution. If a defendant is accused of possession of illegal substances and possession for the purpose of supplying drugs, given that he or she is found with more than 30 grams of cannabis. In this case, if the accused claims that the drugs were intended for his personal use, then they must provide evidence that he or she is in possession of more than 30 grams of cannabis for his own use. Another example is when the defendant claims as defence something relating to his mental state; again, here it is the defendant who has onus of proving this."*
>
> *"Υπάρχουν εξαιρέσεις σε αυτόν τον κανόνα ότι το βάρος της απόδειξης της ενοχής βαραίνει την κατηγορούσα αρχή. Ας πάρουμε την περίπτωση όπου κάποιος κατηγορείται για κατοχή*

παράνομων ουσιών και κατοχή με σκοπό την προμήθεια ναρκωτικών, δεδομένου ότι κατέχει περισσότερα από 30 γραμμάρια κάνναβης. Σε αυτήν την περίπτωση, εάν ο κατηγορούμενος ισχυρίζεται ότι τα ναρκωτικά προορίζονταν για προσωπική του χρήση, τότε πρέπει να αποδείξει ότι έχει στην κατοχή του περισσότερα από 30 γραμμάρια κάνναβης για δική του χρήση. Ένα άλλο παράδειγμα είναι όταν ο κατηγορούμενος επικαλείται ως υπεράσπιση κάτι που σχετίζεται με την ψυχική του κατάσταση. Εδώ ο κατηγορούμενος που έχει την ευθύνη να το αποδείξει."

Some of the defence lawyers referred to the problems generated by the Covid-19 measures where the burden of proof was essentially reversed onto the accused persons to prove that they were not violating the measures. The police officers and two out of the four prosecutors did not see any legal problems with the measures. One of the defence lawyers noted the following example:

"There was recently a case of minors charged with violations of the restriction measures related to Covid-19, because they were at the beach when the relevant ministerial orders required that persons could only swim but not sunbath or play at the beach. Three minors refused to show their IDs to the police and were charged and taken to the police station. One of the three boys was swimming when the police arrived at the beach; they signalled to him to get out of the water and then charged him with violating the order, claiming that before he had gone into the sea he had been seen sunbathing. The boy disputed that and refused to give his details to the police because he had not violated the restriction measures. A second boy was charged by the same group of police officers on the same beach because he had refused to show his ID to the police after a group of police officers approached him on the beach without wearing anti Covid-19 masks. A third boy on the scene was prosecuted for videotaping the incident showing the police using violence to force the other two boys into the car. The accused persons arrested at the beach were kept in a cell at the police station with just their swimsuits, they were not even allowed to change clothes and were treated by the police in the detention centre with great disrespect. They had to wait for several hours in a cell without their clothes or even shoes in order for the competent police officer to come and charge them. The police showed no consideration for their rights as accused persons. The police station chief was sure they were going to be charged even before hearing the testimony of his colleagues; he told me personally that he was waiting for the testimonies to be submitted in order to charge them, in other words he was sure that the testimonies would lead to prosecution even before reading them. They were charged with several offences, like kicking and insulting police officers, etc even though there is a video that completely disputes the allegations of the police. The police investigators noted that the police officers had seized the mobile phones of the accused persons and was not concerned that the police officers might erase content that would incriminate the police or contradict the testimony of the police. The investigator had no consideration for the version of the accused. Testimonies disappear from police stations and accused persons have to prove in court that the police officers are lying rather than the police having to prove their case beyond reasonable doubt. If an accused person is detained before being charged, it is hard for them to retain evidence that proves their innocence. When I ask the accused persons if, whilst in detention, their testimonies were taken, they responded to me that nobody took testimony from them. The version of events of the accused persons was of no interest to the investigating police officer, who obviously decided the police had a strong case since there were four police officers testifying against a group of youths. All three were presented to Court. The general impression in the courtroom was that the boys had to prove their innocence and not the other way round. If the police alleges that the accused person

assaulted a police officer, it is up to the accused person to prove that he did not, by introducing evidence for instance that he was not there at the time, i.e. the burden of proof is essentially reversed. If a policeman argues that you hit him, it is up to you to present testimony that you did not or that you were not there. If the police officer testifies in a certain way, the burden of proof essentially shifts and the scale balances in favour of the police."

"Υπήρξε πρόσφατα μια περίπτωση ανηλίκων που κατηγορήθηκαν για παραβίαση των περιοριστικών μέτρων που σχετίζονται με το Covid-19, επειδή βρίσκονταν στην παραλία όταν τα σχετικά υπουργικά διατάγματά απαιτούσαν από το κοινό να κολυμπούν μόνο, χωρίς να κάνουν ηλιοθεραπεία ή να παίζουν στην παραλία. Τρεις ανήλικοι αρνήθηκαν να παρουσιάσουν τις ταυτότητες τους στην αστυνομία, κατηγορήθηκαν και μεταφέρθηκαν στο αστυνομικό τμήμα. Ένας από τους τρεις νεαρούς κολυμπούσε όταν η αστυνομία έφτασε στην παραλία. Του έκαναν νόημα να βγει από το νερό και στη συνέχεια τον κατηγόρησαν για παραβίαση του σχετικού διατάγματος, ισχυριζόμενοι ότι πριν βγει στη θάλασσα τον είχαν δει να κάνει ηλιοθεραπεία. Ο νεαρός το αμφισβήτησε και αρνήθηκε να δώσει τα στοιχεία του στην αστυνομία επειδή δεν είχε παραβιάσει τα περιοριστικά μέτρα. Ένας δεύτερος νεαρός κατηγορήθηκε από την ίδια ομάδα αστυνομικών στην ίδια παραλία επειδή είχε αρνηθεί να δείξει την ταυτότητά του στην αστυνομία αφού μια ομάδα αστυνομικών τον πλησίασε στην παραλία, χωρίς να φοράει μάσκες για τον Covid-19. Ένας τρίτος νεαρός στη σκηνή διώχθηκε ποινικά για βιντεοσκόπηση του περιστατικού που έδειχνε την αστυνομία να χρησιμοποιεί βία για να εξαναγκάσει τους άλλους δύο νεαρούς να μπουν στο αστυνομικό αυτοκίνητο. Οι κατηγορούμενοι που συνελήφθησαν στην παραλία κρατήθηκαν σε ένα κελί στο αστυνομικό τμήμα με τα μαγιό τους, δεν τους επέτρεπαν καν να αλλάξουν ρούχα και αντιμετωπίστηκαν χωρίς κανένα σεβασμό από την αστυνομία. Έπρεπε να περιμένουν αρκετές ώρες σε ένα κελί χωρίς ρούχα ή ακόμη και παπούτσια για να έρθει ο αρμόδιος αστυνομικός να τους κατηγορήσει γραπτώς. Η αστυνομία δεν έλαβε καθόλου υπόψη τα δικαιώματά τους ως κατηγορούμενοι. Ο δε αξιωματικός υπηρεσίας του αστυνομικού τμήματος ήταν σίγουρος ότι επρόκειτο να κατηγορηθούν πριν ακόμα ακούσει την κατάθεση των συναδέλφων του. Μου είπε προσωπικά ότι περίμενε να κατατεθούν οι μαρτυρίες για να τους κατηγορήσουν. Με άλλα λόγια ήταν σίγουρος ότι οι μαρτυρίες θα οδηγούσαν σε ποινική δίωξη ακόμη και πριν τις διαβάσει. Κατηγορήθηκαν για διάφορα αδικήματα, όπως ότι κλώτσησαν και προσέβαλαν αστυνομικούς κ.λπ. παρόλο που υπάρχει βίντεο που αμφισβητεί πλήρως τους ισχυρισμούς της αστυνομίας. Οι ανακριτές της αστυνομίας σημείωσαν ότι οι αστυνομικοί είχαν κατάσχει τα κινητά τηλέφωνα των κατηγορουμένων και δεν ανησύχησαν ότι οι αστυνομικοί θα μπορούσαν να διαγράψουν περιεχόμενο που θα ενοχλούσε την αστυνομία ή θα μπορούσε αυτή η μαρτυρία να αντικρούσει τις μαρτυρίες των αστυνομικών. Ο ανακριτής δεν έδειξε κανένα ενδιαφέρον για την εκδοχή των κατηγορουμένων. Οι μαρτυρίες συχνά εξαφανίζονται από τα αστυνομικά τμήματα και οι κατηγορούμενοι πρέπει να αποδείξουν στο δικαστήριο ότι οι αστυνομικοί ψεύδονται και όχι η αστυνομία να αποδείξει την υπόθεσή της πέρα πάσης αμφιβολίας. Εάν οι κατηγορούμενοι βρίσκονται υπό κράτηση πριν κατηγορηθούν, είναι δύσκολο για αυτούς να εξασφαλίσουν στοιχεία που να αποδεικνύουν την αθωότητά τους. Όταν ρωτώ τους κατηγορούμενους εάν έδωσαν κατάθεση ενώ βρίσκονταν υπό κράτηση, μου απαντούν ότι κανείς δεν τους πήρε κατάθεση. Η εκδοχή των κατηγορουμένων για τα γεγονότα στην παραλία δεν ενδιέφερε καθόλου τον αστυνομικό ανακριτή, ο οποίος προφανώς αποφάσισε ότι η αστυνομία είχε ισχυρή υπόθεση, καθώς υπήρχαν τέσσερις αστυνομικοί που καταθέσαν εναντίον των νεαρών. Και οι τρεις παρουσιάστηκαν στο Δικαστήριο. Η γενική εντύπωση στην αίθουσα ήταν ότι οι νεαροί έπρεπε να αποδείξουν την αθωότητά τους και όχι το αντίστροφο. Εάν η αστυνομία ισχυριστεί ότι ο κατηγορούμενος επιτέθηκε σε αστυνομικό,

εναπόκειται στον κατηγορούμενο να αποδείξει ότι δεν το έπραξε, εισάγοντας αποδεικτικά στοιχεία για παράδειγμα ότι δεν βρισκόταν εκεί, δηλαδή το βάρος της απόδειξης ουσιαστικά αντιστρέφεται. Εάν ένας αστυνομικός ισχυριστεί ότι τον χτυπήσατε, εναπόκειται σε εσάς να παρουσιάσετε μαρτυρία ότι δεν ήσασταν εκεί. Εάν το αστυνομικό όργανο καταθέσει κάτι , το βάρος της απόδειξης αλλάζει ουσιαστικά και η πλάστιγγα γέρνει υπέρ της αστυνομίας.»

The interviewee suggested that the police practices in relation to the Covid-19 measures were not new, nor were they recently introduced to stop the spreading of the Coronavirus. Rather, they are practices extending and building on existing police tactics which often disregard the rights of the accused. The measures to contain the virus however have widened the scope for potential violation of the presumption of innocence, and particularly the right to silence. The defence lawyer noted:

"I also had a similar experience with the police, personally. Once I was driving without wearing a seat belt and I was stopped by the police. There were two policemen standing with a few metres' space between them. The first police officers signalled to me to stop. When I saw him, I pulled my seatbelt and put it on. The police officer claimed I was talking on the phone – I was not. I was only reaching for my seat belt. I responded that I was not. He told me to shut up and fined me. I insisted he ought to check my phone to see if I was talking. He refused. The other policeman approached, and the first policeman told him not to talk to me. I asked the other policeman if he saw me talking on the phone and he refused to answer. I did not pay the fine and I was summoned to appear in court. I explained in court that I was there for matters of principle and that I did not have time to waste to appear in court for a 50 euro fine, nevertheless the police officers testified that I had told them "who are you to tell me I should not speak on the phone?". The judge believed the testimony of the police. Both policemen had admitted that I offered my phone to the police to check if I was talking on the phone and they refused to check it. This however did not prompt the judge to think that the police officers might be lying, and he believed the police officers instead. The judge did not apply his mind to the fact that a busy lawyer would not appear in Court for a fine of 50 euros unless she is innocent and he simply believed the testimony of the police, even if the police version of events was not plausible."

"*Είχα επίσης μια παρόμοια εμπειρία με την αστυνομία, προσωπικά. Οδηγούσα χωρίς να φοράω ζώνη ασφαλείας και με σταμάτησε η αστυνομία. Υπήρχαν δύο αστυνομικοί που στέκονταν με απόσταση λίγων μέτρων μεταξύ τους. Οι πρώτοι αστυνομικοί μου σήμαναν να σταματήσω. Όταν τον είδα, τράβηξα τη ζώνη ασφαλείας και το έβαλα. Ο αστυνομικός ισχυρίστηκε ότι μιλούσα στο κινητό τηλέφωνο – όμως δεν μιλούσα. Άπλωνα μόνο το χέρι μου για τη ζώνη ασφαλείας. Απάντησα ότι δεν μιλούσα στο κινητό τηλέφωνο. Μου είπε να σκάσω και μου επέβαλε εξώδικο πρόστιμο. Επέμεινε ότι να έπρεπε να ελέγξει το τηλέφωνό μου για να δει αν μιλούσα. Αρνήθηκα. Ο άλλος αστυνομικός πλησίασε και ο πρώτος αστυνομικός του είπε να μην μου μιλήσει. Ρώτησα τον άλλο αστυνομικό αν με είδε να μιλάω στο τηλέφωνο και αρνήθηκε να απαντήσει. Δεν πλήρωσα το πρόστιμο και κλήθηκα να εμφανισθώ στο δικαστήριο. Εξήγησα στο δικαστήριο ότι αρνήθηκα να πληρώσω και άφησα το πράγμα να πάει στο δικαστήριο για λόγους αρχής και ότι δεν είχα χρόνο να σπαταλήσω για να εμφανιστώ στο δικαστήριο για πρόστιμο 50 ευρώ, ωστόσο οι αστυνομικοί κατέθεσαν ότι τους είπα 'ποιοι είστε εσείς που πείτε ότι δεν πρέπει να μιλώ στο κινητό;'. Ο δικαστής πίστεψε την κατάθεση της αστυνομίας. Και οι δύο αστυνομικοί είχαν παραδεχτεί ότι πρόσφερα το τηλέφωνό μου στην αστυνομία για να ελέγξουν αν μιλούσα στο τηλέφωνο και αρνήθηκαν να το ελέγξουν. Αυτό, ωστόσο, δεν ώθησε τον δικαστή να πιστεύει ότι οι αστυνομικοί ενδέχεται*

να ψεύδονται και πίστεψε τους αστυνομικούς. Δεν απασχόλησε το μυαλό του δικαστή το γεγονός ότι ένας πολυάσχολος δικηγόρος δεν θα εμφανιζόταν στο Δικαστήριο για πρόστιμο 50 ευρώ, εκτός εάν είναι αθώος και απλώς πίστεψε την κατάθεση της αστυνομίας, ακόμη και αν η εκδοχή της αστυνομικής εκδοχή των γεγονότων δεν ήταν εύλογη."

A defence lawyer referred to another incident where the police had faced abuse and police violence herself, denying her of any rights, and then proceeded to charge her with for interfering with the course of justice and obstructing the work of the police. This in effect reversed the burden of proof. An experience defence lawyer noted:

"Five years ago, a friend and colleague called me at midnight to say she had been arrested by the police herself and she was at the police station. She had been stopped by the police for playing the horn of her car and was brought to the police station to have an alcohol test. I rushed to the police station to find out what was happening. The police officer was screaming in front of both of us, threatening to arrest me too for interfering with the police investigation. I responded that I was appearing as a lawyer and he continued to ignore me, shout, and threaten me. The law on alcohol test says that if you have a medical issue you can refuse to take the test. My colleague had a health issue and had just had an MRI, so I informed the police that because of that she should not do the alcohol test. When the police officer heard me saying that, he got up, started pushing me out of the door, hit me and screamed that he was going to arrest me for interfering with the investigation. He tried to frighten me by saying he was going to check if I had unpaid traffic fines. As I was leaving the police station, I told him I would seek justice and he later claimed I threatened him because of that. I am not saying all policemen are like him, but the average police officer is. The following day they called me to tell me I was being charged for interfering with the course of justice and obstructing the work of the police. They charged me without even hearing my version of the events. I sent a letter to the Attorney General and told him that I had submitted a complaint to the Independent Authority for Police Misconduct and he should adjourn the case until the Authority examined my complaint; his response was negative. The Independent Authority is also a problematic institution; it is very pro-police and the investigating officers are retired police officers. During the incident at the police station which I had complained of, the cameras had been switched off and the investigator of the Independent Authority did not even notice that."

"*Πριν από πέντε χρόνια, ένας φίλος και συνάδελφος μου τηλεφώνησε τα μεσάνυχτα για να μου πει ότι είχε συλληφθεί η ίδια από την αστυνομία και ότι ήταν στο αστυνομικό τμήμα. Την είχε σταματήσει η αστυνομία επειδή έπαιζε την κόρνα του αυτοκινήτου της και τη μετέφεραν στο αστυνομικό τμήμα για να κάνειαλκοτέστ. Έτρεξα στο αστυνομικό τμήμα για να μάθω τι συνέβαινε. Ο αστυνομικός ουρλιάζει μπροστά και στους δυο μας, απειλώντας να με συλλάβει και για παρέμβαση στην αστυνομική έρευνα. Απάντησα ότι εμφανίζομαι ως δικηγόρος και συνέχισε να με αγνοεί, να φωνάζει και να με απειλεί. Ο νόμος για το αλκοτέστλέει ότι εάν έχετε ιατρικό ζήτημα, μπορείτε να αρνηθείτε να το κάνετε. Η συνάδελφός μου είχε ένα πρόβλημα υγείας και μόλις είχε μια μαγνητική τομογραφία, γι 'αυτό ενημέρωσα την αστυνομία ότι δεν έπρεπε να κάνει το τεστ. Όταν ο αστυνομικός με άκουσε να λέει ότι, σηκώθηκε, άρχισε να με πιέζει έξω από την πόρτα, με χτύπησε και φώναξε ότι επρόκειτο να με συλλάβει για παρέμβαση στην έρευνα. Προσπάθησε να με τρομάξει λέγοντας ότι επρόκειτο να ελέγξει αν είχα απλήρωτα πρόστιμα. Καθώς έφευγα από το αστυνομικό τμήμα, του είπα ότι θα ζητούσα δικαιοσύνη και αργότερα ισχυρίστηκε ότι τον απείλησα εξαιτίας αυτού. Δεν λέω ότι όλοι οι αστυνομικοί είναι σαν αυτόν, αλλά ο μέσος αστυνομικός είναι. Την*

επόμενη μέρα με κάλεσαν για να μου πουν ότι κατηγορήθηκα για παρέμβαση στην πορεία της δικαιοσύνης και παρεμπόδιση του έργου της αστυνομίας. Με κατηγόρησαν χωρίς να ακούσουν την εκδοχή μου για τα γεγονότα. Έστειλα επιστολή στον Γενικό Εισαγγελέα και του είπα ότι είχα υποβάλει καταγγελία στην Ανεξάρτητη Αρχή Διερεύνησης Παραπόνων κατά της Αστυνομίας και θα έπρεπε να αναβάλει την υπόθεση έως ότου η Αρχή εξετάσει την καταγγελία μου. Η απάντησή του ήταν αρνητική. Η Ανεξάρτητη Αρχή είναι επίσης προβληματικός θεσμός. Είναι πολύ υπέρ της αστυνομίας και οι ανακριτές είναι συνταξιούχοι αστυνομικοί. Κατά τη διάρκεια του συμβάντος στο αστυνομικό τμήμα για το οποίο είχα παραπονεθεί, οι κάμερες είχαν απενεργοποιηθεί και ο ανακριτής της Ανεξάρτητης Αρχής δεν το παρατήρησε."

a. Confession

Confessions before the court are not considered as exception to the burden of proof. The principle in law that the court will examine is whether the confession is voluntary, as testimony or evidence which is not extracted by violation or undue pressure.[184] Confessions are therefore a contested issue, as it is for the judge to decide whether non-compliance with the rules affect the voluntariness of the testimony.[185] There are important differences in the way the three professions consider confessions of accused.

For the police officers interviewed, a confession marks the end of the presumption of innocence and this is seen in a positive light, as the resolution of the case. As one Police officer stressed, claiming that the rules of procedure are fully complied with in cases of confessions: when an accused confesses, then the presumption of innocence is extinguished, unless the accused changes his or her mind. In such a case, the accused can change his/her plea into a non-guilty plea and proceed and present his/her testimony that the confession was not voluntary. If any rights are violated, they can bring it, and often do so, before the Court.

For the prosecutors, a confession puts an end to the presumption of innocence, providing it is voluntary and it resolved the case. If the accused confesses his or her guilt and this is admitted to the proceedings, for his or her confession to be accepted as evidence, the defence must also consent. If the defence disputes the voluntariness of the confession, the issue will be resolved through a trial within the trial, where the presumption of innocence is still operative: It is for the prosecution to prove that the confession is not a product of violence, promises and so on. If the prosecution proves this, then the confession is considered as part of the testimony. However, for other prosecutors, the fact that the accused person confesses is not sufficient to secure a conviction. All other elements must be present. The accused may have confessed because they were under pressure or because they may think that they are guilty whilst they are not, because certain elements of the crime are missing. If the court is convinced that the confession is the product of the defendant's free will, then it will issue a decision on that basis of that confession and of the other evidence before him, that is, the evidence put forward by the prosecution and not challenged by the accused. If the other elements contradict the confession of the accused, they are considered disputed. Here, too, the presumption of innocence

[184] Cyprus, Assize Court of Paphos, *REX v. HAJI YANNI HAJI SAVA SYNCHOREMENO AND ANOTHER* ,22 September 1908 (V8) 1 CLR 80.

[185] Cyprus, Appeal Court (*Εφετείο*) ΣΩΤΗΡΗΣ ΧΡΙΣΤΟΔΟΥΛΟΥ ΟΝΗΣΙΛΛΟΥ v. ΔΗΜΟΚΡΑΤΙΑΣ , (Ποινική Έφεση Αρ. 5239), (1991) 2 ΑΑΔ 556, 26 November 1991. Also, Clerides, C. (2018), *ΚΥΠΡΙΑΚΟ ΔΙΚΑΙΟ ΤΗΣ ΑΠΟΔΕΙΞΗΣ*, Nomiki Vivliothiki, Athens, 398-399.

is ensured, because there is the process of 'Newton hearing' through which the procedural assurance is secured.

For defence lawyers, the practice of extracting confessions is unsatisfactory and often fails to properly protect the defendants. They argue that a confession must be examined closely, as it may be the result of violence, duress, undue pressure, false promises and lies. As one defence lawyer noted:

> *"In most cases of persons confessing their guilt, this is done out of duress. There have been a few cases however where the voluntariness of that confession has been successfully contested and the accused was not actually convicted. There is an abundance of rules, like the Judges rules to prevent the application the conviction of a person who has admitted the commission of a crime involuntarily. When it comes to the law, I strongly believe that the system as it stands now is sufficient to safeguard rights and to prevent involuntary confessions."*

> *«Στις περισσότερες περιπτώσεις ατόμων που ομολογούν την ενοχή τους, αυτό γίνεται εξαναγκαστικά. Υπήρξαν μερικές περιπτώσεις, στις οποίες αμφισβητήθηκε με επιτυχία η εθελοντική αυτή ομολογία και ο κατηγορούμενος δεν καταδικάστηκε. Υπάρχει πληθώρα κανόνων, όπως οι Δικαστικοί κανόνες για την αποτροπή της εφαρμογής της καταδίκης ενός ατόμου που έχει παραδεχτεί ακούσια τη διάπραξη ενός εγκλήματος. Όσον αφορά το νόμο, πιστεύω ακράδαντα ότι το σύστημα όπως ισχύει τώρα είναι αρκετό για τη διαφύλαξη των δικαιωμάτων και την αποτροπή ακούσιων ομολογιών. "*

The same defence lawyer however, insisted that when it comes to confessions, practices must be closely scrutinised in practice. Another defence lawyer also stressed that the police and the prosecutors pin their case on the confession, which is often not voluntary:

> "*If the defence lawyer does not dispute the voluntary testimony given by the accused person, it is almost certain that the accused will be convicted by the court. The investigating authorities and the prosecution will cease all investigations once they secure a written admission from the suspect; they will not bother to find out why the suspect decided to admit to the offence. A textbook case where a father admits to a traffic offence when in fact his [child] was driving the car, where the investigator has a legal duty to ask why the father is admitting to the offence, does not apply in Cyprus. The police in Cyprus takes the testimony delivered by the suspect for granted, without asking themselves why the suspect admits to the offence. If they secure an admission, they will stop all investigations. In my view the presumption of innocent is infringed if the court takes for granted that the testimony is voluntarily. But the court needs a sign, a reason to challenge whether the admission of guilt was genuine. If the prosecution relies only on the admission and the defence lawyer does not raise the issue, then the conviction must be certain. Very rarely will the court question why the accused person admitted the offence if not raised by the defence lawyer."*

> "*Εάν ο δικηγόρος υπεράσπισης δεν αμφισβητήσει την εθελοντική κατάθεση του κατηγορουμένου, είναι σχεδόν βέβαιο ότι ο κατηγορούμενος θα καταδικαστεί από το δικαστήριο. Οι ανακριτικές αρχές και η εισαγγελία θα σταματήσουν όλες τις έρευνες μόλις εξασφαλίσουν τη γραπτή ομολογία από τον ύποπτο · δεν θα ενοχληθούν να μάθουν γιατί ο ύποπτος αποφάσισε να παραδεχτεί το αδίκημα. Μια κλασσική περίπτωση είναι αυτό όπου ένας πατέρας παραδέχεται ενοχή για τροχαίο αδίκημα όταν στην πραγματικότητα [το παιδί] του οδηγούσε το αυτοκίνητο. Ενώ σε άλλες χώρες ο αστυνομικός έχει νομική υποχρέωση να ρωτήσει γιατί ο πατέρας παραδέχεται το αδίκημα, αυτό δεν ισχύει στην Κύπρο. Η αστυνομία*

στην Κύπρο θεωρεί δεδομένη τη μαρτυρία του υπόπτου, χωρίς να αναρωτιέται γιατί ο ύποπτος παραδέχεται το αδίκημα. Μόλις εξασφαλίσουν την ομολογία, θα σταματήσουν όλες τις έρευνες. Κατά την άποψή μου, το τεκμήριο της αθωότητας παραβιάζεται εκεί που το δικαστήριο κρίνει ότι την κατάθεση ως θεληματική. Αλλά το δικαστήριο χρειάζεται ένα σημάδι, ένα λόγος για να αμφισβητήσει εάν η παραδοχή της ενοχής ήταν γνήσια. Εάν η εισαγγελία βασίζεται μόνο στην ομολογία και ο δικηγόρος υπεράσπισης δεν εγείρει το ζήτημα, τότε η καταδίκη θεωρείται σίγουρη. Πολύ σπάνια θα αναρωτηθεί το δικαστήριο γιατί ο κατηγορούμενος παραδέχτηκε το αδίκημα εάν δεν το εγείρει ο δικηγόρος υπεράσπισης."

As an experienced defence lawyer considers that "there are no safeguards for vulnerable defendants, except for non-Greek speakers, for whom interpretation is provided" and the "our system is inefficient":

"The court will take for granted the police testimony that they have read to the suspects their rights. Often the police will tell those suspects that they have the right to remain silent and then says, 'now let's move on to the questions' without explaining to suspects what the right to remain silent right entails."

«*Το δικαστήριο θα θεωρήσει δεδομένη την αστυνομική μαρτυρία ότι έχουν διαβάσει στους υπόπτους τα δικαιώματά τους. Συχνά η αστυνομία θα αναφέρει στους υπόπτους ότι έχουν το δικαίωμα να παραμείνουν σιωπηλοί και στη συνέχεια λέει, «τώρα ας προχωρήσουμε στις ερωτήσεις» χωρίς να εξηγήσει στους ύποπτους τι συνεπάγεται το δικαίωμα να παραμείνουν σιωπηλοί.*»

Another defence lawyer noted the inconsistencies on how the courts will sometimes convict solely based on a confession and in other cases they will say it is not sufficient. Another defence lawyer noted that reform is imperative to provide safeguards for confessions by requiring corroborative evidence to secure conviction:

"The court atmosphere becomes heavy after an accused person admits guilt. Corroborative evidence is needed only for very few crimes and they are the exception rather than the rule. Admission of guilt carries a special weight within the court. If the offence is a serious one, it is hard for accused persons to escape liability after they have admitted it. There are no safeguards for vulnerable accused persons. The system is particularly hard and unfair on young accused persons who find themselves in a very difficult position during police investigation and they may even be beaten up whilst in police detention by the police until their lawyer arrives, in order to admit the offence. Police officers tend to create a climate of harassment within the police station, as a result of which young people are ready to admit anything in order to go back home, especially if the police secures an eight-day detention order from the court. Often, a young man might accept liability for other offences to leave the police station and go home."

«*Η ατμόσφαιρα του δικαστηρίου γίνεται βαριά μετά που ο κατηγορούμενος παραδέχεται την ενοχή του. Τα επαληθευτικά στοιχεία απαιτούνται μόνο για πολύ λίγα εγκλήματα και αποτελούν την εξαίρεση παρά τον κανόνα. Η παραδοχή της ενοχής φέρει ιδιαίτερο βάρος στο δικαστήριο. Εάν το αδίκημα είναι σοβαρό, είναι δύσκολο για τους κατηγορούμενους να διαφύγουν της ευθύνης αφού το παραδεχτούν. Δεν υπάρχουν εγγυήσεις για ευάλωτους κατηγορούμενους. Το σύστημα είναι ιδιαίτερα σκληρό και άδικο για νεαρούς κατηγορούμενους που βρίσκονται σε πολύ δύσκολη θέση κατά τη διάρκεια της αστυνομικής έρευνας και μπορεί ακόμη και να ξυλοκοπηθούν ενώ βρίσκονται υπό αστυνομική κράτηση προκειμένου να παραδεχτούν το αδίκημα πριν την άφιξη του δικηγόρου τους. Οι αστυνομικοί τείνουν να δημιουργούν ένα κλίμα εκφοβισμού εντός του αστυνομικού τμήματος, με*

αποτέλεσμα οι νέοι να είναι έτοιμοι να παραδεχτούν οτιδήποτε για να επιστρέψουν στα σπίτια τους, ειδικά εάν η αστυνομία αποφασίζει να ζητήσει διάταγμα οκταήμερης κράτησης από το δικαστήριο. Συχνά, νεαροί αναλαμβάνουν την ευθύνη και για άλλα αδικήματα προκειμένου να μπορέσουν να φύγουν από το αστυνομικό τμήμα και να επιστρέψουν στο σπίτι.»

b. Discussion of findings

Overall, the police, prosecution and defence lawyers appear to be aware of the correct legal standards, as provided by the law on evidence and the law on criminal procedure. The burden of proof is on the prosecution who must prove on the standard of beyond reasonable doubt all the elements of the offence to secure a conviction. When there is a shifting of the burden of proof, the defendant must prove only on the balance of probabilities. Several exceptions to the principle of the presumption of innocence have been mentioned.

Between the three professions, there are different perspectives pertaining on how the principles are and should be implemented in practice.

There is also disagreement as to whether the recent measures taken to restrict the spread of the Coronavirus Covid19 have generated new scope for exceptions that reverse the burden of proof towards the accused. These measures are testing the implementation of the presumption of innocence. Defence lawyers claim that the measures taken to restrict the spread of the Coronavirus Covid19 have widened the scope for the exceptions. In this reading, the restriction of rights is such that the basic rule that requires that the prosecution proves the offence against the accused is reversed to shift the burden of proof on the accused. In practice, it is therefore for the accused to prove that he or she has a legitimate right to exercise their right. This is denied by the police and some prosecution lawyers.

For the **police officers** a confession marks the end of the presumption of innocence and this is seen in a positive light as the resolution of the case. For some **prosecutors**, a confession puts an end to the presumption of innocence, providing it is voluntary and it resolved the case. However, some prosecutors consider that the confession must make sense when placed in broader frame of all the evidence. Nonetheless, given that the court can convict solely on a confession results in a general acceptance that confessions are a positive feature, providing there are safeguards to protect against abuse to ensure that they are voluntary and to protect the vulnerable. The **defence lawyers** take a rather different view on the subject. They see the use of confession as by and large the result of abuse, oppressive police practices and tricks. Moreover, they argue invariably that it is the most vulnerable who confess and are convicted, often without being guilty. According defence lawyers, the way to safeguard against duress, pressure, abuse and tricking the accused by the Police and ensure that the confessions are voluntary, is to change the law, so that for securing a conviction, corroborative evidence is required.

Confessions before the court are not considered as exception to the burden of proof. There are however differences in the way three professions consider confessions of accused.

- For the **police officers** interviewed a confession is a positive result as it resolves the case which extinguishes the presumption of innocence with the admission of guilt by the offender. Whilst the police are adamant that the rules of procedure are fully complied with in cases of

confessions, they if any rights are contravened, the accused can present evidence of this, and they often do so, before the Court.

- Similarly, **prosecutors** consider that providing it is voluntary, a confession puts an end to the presumption of innocence, resolving the case. During the court proceedings, the defendant may dispute the voluntariness of the confession, the issue will be resolved through a trial within the trial, as the presumption of innocence is still operative. The burden of proof is on the prosecution to prove that the confession is not a product of violence, duress, undue pressure and promises. The court will decide whether prosecution proves this beyond reasonable doubt, which will place the confession as part of the testimony. There are different views among the prosecutors interviewed. Two prosecutors interviewed consider stressed the confession of the defendant is insufficient to secure a conviction, given that all other elements must be present. There are many reasons why a defendant may confess to a crime he or she did not commit, such as duress, or pressure or because they may think that they are guilty whilst they are not, or the defendant may confess to a crime committed by a loved one or by someone else in return for money or favour. Therefore, all other elements of the crime must be present. It is for the court to decide that the confession is the product of the defendant's free will. When other elements of the crime appear to contradict the confession, the court will consider them as disputed, as the presumption of innocence is still operative. The procedure of 'a trial within a trial' or 'Newton hearing' is the procedural device used to decide whether the confession is to admissible as evidence or not.
- For **defence lawyers**, confessions ae a major problem in the Cypriot criminal system, as they see highly unsatisfactory the way the police extract confessions. Confessions may be the result of violence, duress, undue pressure, false promises and lies. They stressed that the confessions are often not voluntary and that there are no adequate safeguards for vulnerable defendants, except for non-Greek speakers, for whom interpretation is provided.

Overall, the system requires further safeguards for the protection of the defendants. The defence lawyers' concern of the predisposition of court to take for granted the police testimony when the police allege respect of the suspects rights, whilst insufficiently considering the testimony of the accused is a serious matter. Courts seem to be inconsistent about the sufficiency of convicting the accused solely on a confession. Reform to provide further safeguards for confessions by requiring corroborative evidence to secure conviction is warranted.

C.5 The right to remain silent and not to incriminate oneself

a. The right to remain silent in practice

The police officers interviewed maintain that the police implement the right to silence, even before someone is arrested. Whether a suspect is brought to the police station for questioning after being arrested, or as an interrogated person who may be a suspect without being arrested, the police officers maintain that the standard practice is to caution the accused or interrogated person that he or she has the right to remain silent. The police officers maintain that the accused or interrogated person is entitled to remain silent and not answer anything. All the police officers also note that before starting any questioning or interrogation, the police are obliged to give him or her the relevant form to sign. Therefore, everyone who comes in or brought to the police station for questioning is warned to be careful not to say anything that will incriminate them, and this is also in the form the authorities give them.

One senior police officer noted that the right to silence is fully enforced, as defined in the amendment of 2018, which provides that the suspect's right to remain silent and the right against self-incrimination is protected.[186] The accused has the right not to say anything. The police will try to secure any other testimony and evidence to be presented in front of the court. The accused will be informed of his or her right to remain silent immediately after his/her arrest, in a language that is understood as well as under protection of other rights. The police officer referred to the different procedural rights contained in the Directive: the right to access to a lawyer, legal action, the right to remain silent, the right not to self-incriminate, the right to access to persons of choice. The police officer also noted there is a written of the rights of the accused/ detained persons, which the police make available to the accused at the detention centres and the police stations.[187] This is available in about 8 languages.

Prosecutors consider that in most cases the caution pertaining to the right to silence and the rules against incrimination are observed by the police. If there are any police violations, the defence lawyers will bring the matter to the court's attention during the trial. If the necessary information is not given to the accused person, then the testimony given to the police is deemed to be unlawfully obtained and the Court may deem such testimony inadmissible. In such a case, the accused person is acquitted, unless there is independent testimony or other evidence that incriminates him or her. The prosecutors interviewed stressed that the prosecuting authorities are obliged to respect the right to silence from the stage of interrogation to the court. It settled law in Cypriot jurisprudence that the judge cannot take into account the silence of the accused to infer guilt. As one prosecutor noted, it is in the interest of the prosecution who want to secure conviction that the rules regarding the caution, the right to silence and the rules against self-incrimination are fully observed at all stages, otherwise they risk acquittal at trial or on appeal:

> *"If the investigators do not tell the suspect that they have the right to remain silent and do not give him the information related to it, then the accused will be acquitted."*
>
> *"Αν οι ανακριτές δεν πουν στον ύποπτο ότι έχει το δικαίωμα στη σιωπή και δεν του δώσουν τις πληροφορίες που σχετίζονται με αυτό, τότε θα έχει ως συνέπεια την αθώωση του κατηγορούμενου."*

Another prosecutor stated that the right to silence at each stage also has a different impact, as the accused may use the right to silence when he or she is giving a statement. However, it is rare that the accused will make full use of the right to silence to say nothing at every stage of the proceedings:

> *"Most defendants, if they are 'coached' by lawyers correctly, will say, 'whatever I have to say, I will say it to the court'. They will not answer to anything. This is one aspect of that right. Procedurally, during the court proceedings, an accused, if the prosecution overcomes the prima facie stage of the case (i.e. that there is a case to be answered), the accused is called to apologise. At that stage, the court must read the rights of the accused again. The accused has*

[186] Cyprus, Law on Criminal Procedure, Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος, Κεφ. 155*), article 3A and Cyprus, Law on the Rights of Persons Arrested and Detained (Amendment) of 2018 , 111(I)/2018 (*Ο περί των Δικαιωμάτων Προσώπων που Συλλαμβάνονται και Τελούν υπό Κράτηση (Τροποποιητικός) Νόμος του 2018),* Art. 3.

[187] Cyprus, Rights of persons under arrest / detention, Police Form 129, provided in line with Cyprus, Law on the Rights of Suspected Persons, Arrested Persons and Detained Persons Law of 2005, 163 (I)/2005 (*Ο περί των Δικαιωμάτων Ύποπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005, 163(I)/2005*).

the right either to give a sworn testimony or to call defence witnesses, who will be questioned by the prosecuting authority. Alternatively, he or she has the right to make an unsworn statement, i.e. to testify without an oath that will not be cross-examined, which does not carry much weight as a testimony, and then the defendant has the right to remain silent again. In my experience of almost two decades of practice, I have not seen any accused to invoke the right to remain silent. Most make unsworn statements and the rest give sworn evidence and agree to be cross-examined."

"*Οι περισσότεροι κατηγορούμενοι, εάν 'καθοδηγούνται' σωστά από τους δικηγόρους, θα πουν, ό,τι έχω να πω, θα το πω στο δικαστήριο'. Δεν θα απαντήσουν σε τίποτα. Αυτή είναι μια πτυχή αυτού του δικαιώματος. Διαδικαστικά, κατά τη διάρκεια της δικαστικής διαδικασίας, εάν η εισαγγελία ξεπεράσει το εκ πρώτης όψεως στάδιο της υπόθεσης (δηλαδή ότι υπάρχει υπόθεση που πρέπει να εξεταστεί), ο κατηγορούμενος καλείται σε απολογία. Σε αυτό το στάδιο, το δικαστήριο πρέπει να διαβάσει ξανά τα δικαιώματα των κατηγορουμένων. Ο κατηγορούμενος έχει το δικαίωμα είτε να δώσει ένορκη μαρτυρία είτε να καλέσει μάρτυρες υπεράσπισης, οι οποίοι θα εξεταστούν από την εισαγγελία. Εναλλακτικά, έχουν το δικαίωμα να προβούν σε ανόμοτη δήλωση, δηλαδή να καταθέσουν χωρίς όρκο που δεν θα αντεξεταστεί, η οποία δεν έχει πολύ βάρος ως μαρτυρία. Στη συνέχεια, ο εναγόμενος έχει το δικαίωμα να παραμείνει σιωπηλός και πάλι. Από την εμπειρία μου σχεδόν δύο δεκαετιών πρακτικής, δεν έχω δει κανέναν κατηγορούμενο να επικαλεστεί το δικαίωμα να παραμείνει σιωπηλός. Οι περισσότεροι κάνουν ανόμοτες δηλώσεις και οι υπόλοιποι δίνουν ενόρκως αποδεικτικά στοιχεία και συμφωνούν να αντεξεταστούν*."

Defence lawyers in general advice the accused to exercise their right to silence during Police questioning. As an experienced lawyer noted it is always advisable for defendants to take advantage of the right to remain silent. By law, the accused should be informed of that right as soon as they are treated by the police as suspects. The consequences of a defendant not being provided with this information is that anything they say becomes inadmissible and the judge will reject it. An experienced defence lawyer explains that the Court will generally respect the right to remain silent, but the problems are often at police stations where there is pressure of the accused to make a statement:

"The practice at the police station is to try to secure an admission before reading their rights to the suspects. In my opinion, the right to remain silent is the first thing that the police must explain to the suspect. They must explain that there is nothing wrong if the suspects do not want to talk. And secondly that the right to silence can be used everywhere and always. Even at the time of the alcohol test."

«Η πρακτική στο αστυνομικό τμήμα είναι να προσπαθήσουν να εξασφαλίσουν την παραδοχή πριν διαβάσουν τα δικαιώματά τους στους υπόπτους. Κατά τη γνώμη μου, το δικαίωμα παραμονής σε σιωπή είναι το πρώτο πράγμα που πρέπει να εξηγήσει η αστυνομία στον ύποπτο. Πρέπει να εξηγήσουν ότι δεν υπάρχει τίποτα λάθος εάν οι ύποπτοι δεν θέλουν να μιλήσουν. Και δεύτερον ότι το δικαίωμα σιωπής μπορεί να χρησιμοποιηθεί παντού και πάντα. Ακόμα και κατά τη στιγμή του αλκοτέστ. "

In law, the court can reject a testimony delivered in the context of a trial within a trial if the right to remain silent was not complied with, even though this is hard to prove. But there are cases where the right to remain silent needs to be safeguarded beyond the criminal procedure.

A defence lawyer suggested that the police will inform the suspect about the right to remain silent but only when the interrogation formally begins and after the initial questions are put to the suspect. The police are unlikely to inform suspects of their right to remain silent immediately upon apprehension. As soon as a person is identified as a suspect, the police will start asking questions without mentioning the right to silence, to establish whether the person is involved or not to launch the investigation. The police will let the person speak without informing him/her of his/her right not to say anything and, at that point, the person is not aware of his or her rights and is scared. Unfortunately, when the police present the testimony in court, it is no longer possible to distinguish between the testimony that was extracted before informing the subject of the right to remain silent and the testimony delivered after he/she was informed of his or her rights. If the issue is raised in court as to whether the suspect was explained his or her rights before he or she started talking, the police will claim that the suspect started talking on his or her own accord and the court will usually accept this.

Another experienced lawyer suggested that when the accused is brought to the Police station for questioning, there is strong pressure on the accused to forgo his or her right to silence , under the fear that he or she may continue to remain in detention:

> *"We lawyers don't know exactly what the police say to accused persons as soon as they arrest them because we are not there. In theory, if the police do not inform suspects of their right to remain silent then the testimony can be challenged, but this is going to be difficult to prove. If at the stage of the interrogation the accused persons tells the investigator 'I have nothing to say to you and whatever I have to say I will tell the court", this can lead to four consecutive eight-day detention orders from the court on the justification that the accused persons does not cooperate with the police."*

> *«Εμείς οι δικηγόροι δεν ξέρουμε ακριβώς τι λέει η αστυνομία στους κατηγορούμενους μόλις τους συλλάβουν επειδή δεν είμαστε εκεί. Θεωρητικά, εάν η αστυνομία δεν ενημερώσει τους ύποπτους για το δικαίωμά τους να παραμείνουν σιωπηλοί, τότε η κατάθεση μπορεί να αμφισβητηθεί, αλλά αυτό θα είναι δύσκολο να αποδειχθεί. Εάν στο στάδιο της ανάκρισης οι κατηγορούμενοι λένε στον ανακριτή, 'δεν έχω τίποτα να σας πω και ό, τι πρέπει να πω, θα το πω στο δικαστήριο', αυτό μπορεί να οδηγήσει σε τέσσερις διαδοχικές οκταήμερες εντολές κράτησης από το δικαστήριο στο αιτιολόγηση ότι οι κατηγορούμενοι δεν συνεργάζονται με την αστυνομία. "*

b. How is information on the right to remain silent and not to incriminate oneself shared with the accused?

The principles under Article 7 of the Directive 2016/343 are already part of the Criminal law of the country. The principle of not incriminating oneself and the right to remain silent are "a manifestation" of the presumption of innocence,[188] and they are implicitly contained in the presumption of innocence

[188] Paraskeva, C. (2015) *Κυπριακό Συνταγματικό Δίκαιο, Θεμελιώδη Δικαιώματα και Ελευθερίες*, Nomiki Vivliothiki, Athens, p. 201.

and the right to a fair trial.[189] The Supreme Court has noted that these principles are foundational in the Cypriot Criminal law system.[190]

The right to remain silent is connected to the right to be cautioned that anything that the accused may say, can be used in evidence against him or her. The officer in charge of an investigation is required to provide the relevant caution. A crucial issue is at which stage of the procedure. This is something rather vague in the Criminal procedure rules.[191] The Court is empowered to issue detailed provisions of the rights of the accused.[192] Procedural rules [193] do not prohibit questioning without being first cautioned.[194] This follows the line of some British precedent in Common law, which has stated that the police obligation to caution someone arises at a later stage, when the police have in their hands evidence which connects the suspect with the commission of a crime.[195] Even if the Police suspect a person, who is later charged, but have no evidence to justify it, the police are not obliged to caution the accused until there is such evidence.[196] Cypriot courts have partly followed this line. In some cases, the Cypriot Supreme Court[197] has insisted that the accused should be cautioned straight away,[198] on the grounds that the presumption of innocence is of paramount importance. The police practice on the subject seems to vary, given the discretion afforded by the rule. [199] It is up to the Court to decide whether the caution of the suspect was given at the first opportunity once there is evidence to incriminate him or her. Also, it is for the Court to decide whether this has had detrimental effect on the provision of justice to annul the testimony and evidence that flows from there onwards.

The police officers interviewed claim that it is standard procedure to fully communicate with any person who enters the police station for questioning of their rights. A senior police officer noted that there is a standard leaflet in different languages, which is given to the person who is to be interviewed which contains the caution with the rights of suspects:

> *"As stated in the leaflet, the first thing the police say to the suspect or accused is that he or she has the right not to say anything so as not to be self-incriminated. We tell this person: 'During your investigation with the police or other competent authorities you are not obliged to answer questions about the crime, also when you are called to make a statement or answer questions you are not obliged to provide any evidence or documents. or provide information that may lead to your self-incrimination, you can seek advice from your attorney.' There are various other rights that we have in writing and the accused is informed about these rights, who must understand his or her rights and sign, otherwise we cannot move forward. There are measures for vulnerable defendants such as young people, people with disabilities, immigrants who may face language barriers and understand the right to remain silent. It depends on each case. If it is about Cypriots who speak Greek and if the police officer understands that he or she has not understood some of the questions asked, the police will try to assist so that the accused*

[189] Clerides, C. (2018), *ΚΥΠΡΙΑΚΟ ΔΙΚΑΙΟ ΤΗΣ ΑΠΟΔΕΙΞΗΣ*, Nomiki Vivliothiki, Athens, 386-387.
[190] Cyprus, Supreme Court (*Ανώτατο Δικαστήριο*) *Πρόεδρος της Δημοκρατίας ν Βουλής (αρ. 1)* 1994 3 ΑΑΔ1.
[191] Cyprus, Judges Rules, Rule 1, Pikis, G. (2013) *Ποινική Δικονομία στη Κύπρο*, Nicosia, p. 261.
[192] Cyprus, Law on Criminal Procedure Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος Κεφ. 155*), Art. 173.
[193] Cyprus , Criminal Procedure Rules, (*Ο περί Ποινικής Δικονομίας Διαδικαστικός Κανονισμός 249/1953*)
[194] Pikis, G. (2013) *Ποινική Δικονομία στη Κύπρο*, Nicosia, p. 261-262.
[195] England, (Court of Appeal) *R v White and others* (1964) Crim. L. R. 720 (CA).
[196] England, (Court of Appeal) *R v Osborne* (1973) All ER 649 (CA).
[197] Cyprus, Supreme Court, Appeal Jurisdiction, (*Ανώτατο Δικαστήριο, αναθεωρητική δικαιοδοσία*), *Petri v The Police*, (1968) 2CLR 40.
[198] Contrary to Rule 1. Cyprus, Regulations of the Court, Rule 1, Pikis, G. (2013) *Ποινική Δικονομία στη Κύπρο*, Nicosia, p. 261.
[199] Pikis, G. (2013) *Ποινική Δικονομία στη Κύπρο*, Nicosia, p. 263.

understand or the accused or suspect is given the opportunity to call a lawyer. For foreigners, there must be a translator because they always understand their mother tongue. For minors, someone from the welfare office or the parents or guardians are called in. For persons with mental or other problem, the police will seek a doctor's advice after examining the person to inform whether the person is fit to interrogated or give a testimony what condition he or she is in. If the doctor says the person is unable to give a statement and adequate explanations, then the case stops there, and cannot proceed."

"Όπως αναγράφεται και στο έντυπο, το πρώτο πράγμα που λέμε στον ύποπτο ή κατηγορούμενο είναι ότι δικαιούται να μην πει τίποτα για να μην αυτοενοχοποιηθεί. Του λέμε: «κατά την εξέταση σας με την αστυνομία ή τις άλλες αρμόδιες αρχές δεν έχετε την υποχρέωση να απαντήσετε σε ερωτήσεις για το αδίκημα, επίσης όταν καλείστε να κάνετε δήλωση ή να απαντήσετε σε ερωτήσεις δεν έχετε την υποχρέωση να προσκομίσετε οποιανδήποτε αποδεικτικά στοιχεία ή έγγραφα ή να παρέχετε πληροφορίες που μπορεί να οδηγήσουν στην αυτοενοχοποίησή σας, μπορείτε να λάβετε συμβουλή από το δικηγόρο σας για το θέμα αυτό». Υπάρχουν και διάφορα άλλα δικαιώματα που τα έχουμε γραπτώς, και ενημερώνεται. Πρέπει να καταλάβει τα δικαιώματά του και να υπογράψει, αλλιώς δεν μπορούμε να προχωρήσουμε. Υπάρχουν μέτρα για ευάλωτους κατηγορούμενους όπως νέοι, άτομα με αναπηρία, μετανάστες που ενδέχεται να αντιμετωπίσουν γλωσσικά εμπόδια κατανοούν το δικαίωμα να παραμένουν σιωπηλοί. Εξαρτάται από την κάθε περίπτωση ξεχωριστά. Αν είναι για Κύπριους, που μιλούν την ελληνική γλώσσα και εάν καταλάβει ο αστυνομικός ότι κάποια ερωτήματα που του υποβάλλονται δεν τα έχει καταλάβει, προσπαθεί να τον κάνει να τα καταλάβει ή του δίνεται η ευκαιρία να του φέρουμε δικηγόρο να του εξηγήσει. Για αλλοδαπούς σίγουρα πρέπει να υπάρχει μεταφραστής γιατί πάντα καταλαβαίνουν στην μητρική τους γλώσσα. Αν μιλούμε για ανήλικους, μπορούν να έχουν κάποιον από το γραφείο ευημερίας κοντά τους, είναι οι γονείς. Αν κάποιος έχει πρόβλημα νοητικό ή κάποιο άλλο, σίγουρα θα τον πάμε πρώτα στον γιατρό και θα ζητήσουμε να μας πει σε ποια κατάσταση βρίσκεται. Αν ο γιατρός πει ότι δεν είναι σε θέση να δώσει κατάθεση και επαρκείς εξηγήσεις, τότε σταματά εκεί, η υπόθεση δεν μπορεί να προχωρήσει."

The police officers interviewed claim that provisions are made for vulnerable persons. A senior police officer mentioned that no interview will take place, if a police officer realises that the person interrogated is of "low intelligence", or is a "mentally retarded person" – a term used during the interview which is highly problematic and has been abandoned both from the legislation and in public discourse. In such circumstances, the police officer would call the social welfare services or a doctor:

"If a police officer realises that the person interrogated is of low intelligence, is mentally retarded, he will not interrogate [him/her]. [He/She] will call the social welfare services or call a doctor. If a police officer insists on interrogating a person who does not communicate, it will not stand in court. The aim is for the testimony to stand in court. If the person is young, by law we are obliged to take testimony in the presence of their guardians or lawyers, otherwise the testimony will not appear in court. It applies equally to Cypriots and foreigners."

"Εάν ένας αστυνομικός αντιληφθεί ότι το άτομο που ρωτήθηκε είναι χαμηλής νοημοσύνης, είναι διανοητικά καθυστερημένο, δεν θα [τον/την] ανακρίνει. Θα καλέσει τις υπηρεσίες κοινωνικής πρόνοιας ή θα καλέσει έναν γιατρό. Εάν [ένας/μία] αστυνομικός επιμένει να ανακρίνει ένα άτομο που δεν επικοινωνεί, αυτό δεν μπορεί να σταθεί στο δικαστήριο. Ο στόχος μας είναι η μαρτυρία να στέκει στο δικαστήριο. Εάν το άτομο είναι νεαρό, σύμφωνα με το νόμο, είμαστε υποχρεωμένοι να πάρουμε μαρτυρία παρουσία των κηδεμόνων ή των

δικηγόρων τους, διαφορετικά η κατάθεση δεν θα σταθεί στο δικαστήριο. Αυτό ισχύει εξίσου για Κύπριους και ξένους."

Similar statements were made by the prosecutors interviewed, except that the prosecutors recognized that there is prejudice against non-Cypriots.

A prosecutor interviewed stated that where there are abuses, these are due to the prevailing culture of the police which disregards human rights. Defence lawyers interviewed dispute that the procedures regarding cautioning the accused before interrogation are always followed by the police. Defence lawyers consider that the police is undergoing change and that many new police officers seem more aware of the importance of sharing information about the rights of the accused, but the old mentality and culture of the police which does not respect rights is still quite strong in the police.

"The situation with new police officers is gradually changing now but problems still persist. I lived through the generation where the police would use all kinds of means to extract an admission. There was a period where they used to hang suspects from a hook, or they used to place them inside barrels with cold water. The young people who were taken into police custody recently for having violated the Covid-19 restrictions, were actually beaten whilst in police custody but they are afraid to admit it. When I later complained about this to the police officers, their response was that nothing happened to my client. I know for a fact that the other suspects who did not have a lawyer were beaten up. This is how they treat young suspects; they beat them up as an interrogation method to secure an admission before the lawyer appears and after that it becomes extremely difficult to build a defence. So long as this interrogation method is in place, suspects are at the mercy of the police."

"Η κατάσταση με τους νέους αστυνομικούς αλλάζει σταδιακά τώρα, αλλά εξακολουθούν να υπάρχουν προβλήματα. Έζησα τη γενιά όπου η αστυνομία θα χρησιμοποιούσε κάθε είδους μέσα για να εξαγάγει μια παραδοχή. Υπήρχε μια περίοδος όπου κρεμούσαν υπόπτους από ένα γάντζο ή τους έβαζαν μέσα σε βαρέλια με κρύο νερό. Οι νέοι που τέθηκαν υπό κράτηση στην αστυνομία πρόσφατα επειδή παραβίασαν τους περιορισμούς του Covid-19, στην πραγματικότητα χτυπήθηκαν ενώ βρίσκονταν υπό κράτηση, αλλά φοβούνται να το παραδεχτούνΌταν αργότερα παραπονέθηκα για αυτό στους αστυνομικούς, η απάντησή τους ήταν ότι δεν συνέβη τίποτα στον πελάτη μου. Γνωρίζω για το γεγονός ότι οι άλλοι ύποπτοι που δεν είχαν δικηγόρο ξυλοκοπήθηκαν. Έτσι αντιμετωπίζουν τους νεαρούς υπόπτους, τους δέρνουν ως μέθοδο ανάκρισης για να διασφαλίσουν παραδοχή πριν εμφανιστεί ο δικηγόρος και μετά από αυτό καθίσταται εξαιρετικά δύσκολο να κτιστεί υπεράσπιση. Εφόσον υπάρχει αυτή η μέθοδος ανάκρισης, οι ύποπτοι βρίσκονται στο έλεος της αστυνομίας."

c. Self-incrimination

The general principle is that the right to silence forms the basis of the presumption of innocence and that it is for the prosecution to prove beyond reasonable doubt. Cypriot caselaw stresses that the Prosecution bears the onus of the burden of proof, therefore the right to silence is the core of this.[200] Accused persons have the right to silence as regards the offence for which they are suspected of or

[200] Cyprus, Supreme Court (Ανώτατο Δικαστήριο), *Papadopoulos v Republic* (1980) 2 CLR 10, p. 47. AC 462, p. 481; Cyprus, Supreme Court (Ανώτατο Δικαστήριο), *Anastasi v Police* (1975) 2 CLR 143; Cyprus, Supreme Court (Ανώτατο Δικαστήριο), *Χρυστοφορου ν Αστυνομία* (1990) 2 ΑΑΔ 250.

charged with. They also have the right to non-self-incrimination which is defined as the absence of a legal duty to provide evidence or information which may lead to their self-incrimination when asked to answer questions.[201] This provision is without prejudice to the right of the competent authorities to gather evidence which may be lawfully obtained using legal powers of compulsion irrespective of the will of the suspects or accused persons. The exercise of the right to remain silent and of the right to non-self-incrimination cannot be used against the suspect of accused person nor can it be evidence of commission of the offence charged.[202] Also, this provision does not prejudice the provisions of the Law on evidence, which allow the courts to assess and evaluate the evidential material.[203]

Where accused persons plead guilty and the Court is satisfied that they understood the nature of their plea, then the Court proceeds as if the accused persons had been convicted by the Court. If an accused person pleads not guilty, then the Court orders a hearing. If an accused person refuses to answer or does not answer immediately or due to a bodily disability is incapable of answering to the charge, the Court proceeds as if the person pleaded not guilty. [204]

According to Cypriot law, drawing here from English caselaw, under certain limited circumstances, remaining silent may be construed as *corroborative* evidence: failing to actively deny an allegation may imply acceptance of that allegation. Cypriot legal authors cite the old British caselaw[205] which suggests that, where there is equality of arms (i.e. there is parity between the parties in terms of power) and one party fails to dispute an allegation by being silent, it may be corroboration that the party accepts the truthfulness of the allegation.[206] Court decisions and evidence textbooks often cite old English case,[207] where the defendant's failure to respond to allegations against him amounts to admission of the accusation. [208] However, there is another line of thinking that Cypriot caselaw also follows, based on a more recent line of English case law:[209] In *Anastasiades v Republic*[210] the defendant's refusal to respond or his silence to additional police questions does not amount to admission of guilt.[211]

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[201] Cyprus, Law on Criminal Procedure Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος Κεφ. 155*), Art. 3C and Cyprus, Rights of persons under arrest / detention, Police Form 129, provided in line with Cyprus, Law on the Rights of Suspected Persons, Arrested Persons and Detained Persons Law of 2005, 163 (I)/2005 (*Ο περί των Δικαιωμάτων Ύποπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005, 163(I)/2005*), article ε1, Clerides, C. (2018), *Κυπριακό Δίκαιο της Απόδειξης*, Nomiki Vivliothiki, Athens; Cacoyiannis (1983) *Η Απόδειξη, Το Δίκαιο της απόδειξης όπως εφαρμόζεται στη Κύπρο*, Libra Chambers, Limassol.

[202] Cyprus, Law on Criminal Procedure Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος Κεφ. 155*), Art. 3C and Cyprus, Rights of persons under arrest / detention, Police Form 129, provided in line with Cyprus, Law on the Rights of Suspected Persons, Arrested Persons and Detained Persons Law of 2005, 163 (I)/2005 (*Ο περί των Δικαιωμάτων Ύποπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005, 163(I)/2005*), article ε1, as amended by Cyprus, Law on the Rights of Persons Arrested and Detained (Amendment) of 2018 , 111(I)/2018 (*Ο περί των Δικαιωμάτων Προσώπων που Συλλαμβάνονται και Τελούν υπό Κράτηση (Τροποποιητικός) Νόμος του 2018).*

[203] Cyprus, Law on Criminal Procedure Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος Κεφ. 155*), Art. 3C.

[204] Cyprus, Law on Criminal Procedure Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος Κεφ. 155*), Art. 68.

[205] United Kingdom, Privy Council, 17 Cox, 503, *R v Mitchell,* 1892.

[206] Eliades, T. (1994) *Το Δίκαιο της Απόδειξης, Μια πρακτική προσέγγιση*, Zavallis, Nicosia, p. 161.

[207] United Kingdom, Chancery Division, 2 Ch D 205, *Bessella v Stern,* 1877.

[208] Eliades, T. (1994) *Το Δίκαιο της Απόδειξης, Μια πρακτική προσέγγιση*, Zavallis, Nicosia, p. 161-162.

[209] United Kingdom, House of Lords, 3 All ER 380, *Parkes v R.,* 1976 and United Kingdom, House of Lords, All ER 105, *R. v Chandler*, 1976.

[210] (1977) 2 Α.Α.Δ. 97, 26 March 1977.

[211] Eliades, T. (1994) *Το Δίκαιο της Απόδειξης, Μια πρακτική προσέγγιση*, Zavallis, Nicosia, p. 162-163)

An aspect regarding the rules against self-incrimination pertains to the suspect's consent or otherwise to provide DNA and other sample that would connect him or her to a crime. The amendment of the Police Law allows the police to obtain measurements, photographs, fingerprints, palm and footprints, graphic specimens, nail clippings, hair samples, saliva, remnants of foreign matter in the body of detained persons or subject to police surveillance, for purposes of registration, comparison, recognition and generally for purposes of investigation of any offense. If the person refuses to give consent, then the police may seek a court order obliging him or her to do so. Refusal to comply with the court order is a criminal offence, carrying six-month imprisonment and/or a fine.[212]

In Cyprus, the rule against self-incrimination is confined to oral evidence, not to real evidence, which is distinguished in the case of Avraamidou.[213] The Court had previously ruled that the police cannot use cigarette stubs left behind by him to obtain the DNA sample of a suspect who had not consented to giving them DNA sample.[214] After the case of Avraamidou,[215] the rule was reduced to oral evidence, which widens the scope of the court's discretion for ruling admissible improperly and illegal obtained evidence.[216]

In a recent case in the context of a trial within a trial, the district court judge ruled that the saliva sample obtained without the consent of the accused to the purposes of a narcotest was inadmissible as evidence, because the police totally disregarded the procedural safeguards to protect the rights to the defendant's self-incrimination. [217] The judge noted that according to Cypriot law the court has the discretion to admit or reject unlawfully obtained evidence.[218] The judge referred to the application of the right to non-incrimination in relation to the taking of samples of substances normally produced by the body, such as saliva and cited the European Convention on Human Rights, stating that for the ECtHR it is permissible to take samples of exhalation, blood or urine to the extent that it involves a limited intervention in the physical integrity of the accused, and concerns substances that are normally produced by the body, citing relevant cases.[219] The judge also quoted the Saunders judgment:[220]

> *"The right not to incriminate oneself is primarily concerned, however, with respecting the will of an accused person to remain silent. As commonly understood in the legal systems of the Contracting Parties to the Convention and elsewhere, it does not extend to the use in criminal proceedings of material which may be obtained from the accused through the use of compulsory powers but which has an independent existence of the will of the suspect such as, inter alia, documents acquired pursuant to a warrant, breath, blood and urine samples and bodily tissue for the purpose of DNA testing."*

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[212] Cyprus, Law on Police (*Ο περί Αστυνομίας Νόμος του 2004*), 73(I)/2004, Art. 25.
[213] Cyprus, Supreme Court (Ανώτατο Δικαστήριο), *Δημοκρατία ν Αβραμίδου κ.α.* 2004 2 ΑΑΔ 51.
[214] Cyprus, Supreme Court (Ανώτατο Δικαστήριο), *Ψύλλας* (2003) ΑΑΔ 353.
[215] Cyprus, Supreme Court (Ανώτατο Δικαστήριο), *Δημοκρατία ν Αβραμίδου κ.α.* 2004 2 ΑΑΔ 51.
[216] Charalambous, C. (2015) 'Η Παρανόμως ληφθείσα μαρτυρία στο Κυπριακό νομικό σύστημα', Papacharalambous, C. (ed.) *Αποδεικτικές απαγορεύσεις στη ποινική δίκη,* Sakkoulas, Athens, pp. 92-95.
[217] Cyprus, District Court, (*Επαρχιακό Δικαστήριο*), *Αστυνομικού Διευθυντή Λευκωσίας ν. XXXXX Μουζακίτη*, case no. 23825 /1826, June 2020.
[218] Cyprus, Supreme Court, Appeal Jurisdiction, (*Ανώτατο Δικαστήριο, αναθεωρητική δικαιοδοσία*), *Parris v. Δημοκρατίας,* (1999) 2 ΑΑΔ 186, 5 May 1999.
[219] European Court of Human Rights (1991) *Saunders v. U.K., application* 19187/91, 17.12.1996, paragraph 69 and European Court of Human Rights (2006) Jallon v. Germany (G.C), application 54810/00, dated 11.7.2006, paragraph 104.
[220] European Court of Human Rights (1991) *Saunders v. U.K., application* 19187/91, 17.12.1996, paragraph 69.

"Το δικαίωμα να μην ενοχοποιεί τον εαυτό του, ωστόσο, αφορά πρωτίστως το σεβασμό της θέλησης ενός κατηγορουμένου να παραμείνει σιωπηλός. Όπως είναι κοινώς κατανοητό στα νομικά συστήματα των Συμβαλλομένων Μερών της Σύμβασης και αλλού, δεν επεκτείνεται στη χρήση σε ποινικές διαδικασίες υλικού που μπορεί να αποκτηθεί από τον κατηγορούμενο μέσω της χρήσης υποχρεωτικών εξουσιών αλλά έχει ανεξάρτητη ύπαρξη στη βούληση του υπόπτου, όπως, μεταξύ άλλων, έγγραφα που αποκτήθηκαν σύμφωνα με ένταλμα, δείγματα αναπνοής, αίματος και ούρων και σωματικού ιστού με σκοπό την εξέταση DNA"

The interviews provide important insights into the implementation of the rules and law in practice.

- *The police officers' perspective*

Overall, the police officers interviewed consider that they fully comply and implement with the rules that protect the accused from incriminating themselves. A senior police officer stated:

"The police implement the right to silence from the moment someone is arrested. There are two possibilities, someone who comes in as a suspect or as an interrogated person without being arrested who may be a suspect but is not to be arrested. If he or she comes to the police station to be questioned, he or she will be informed according to the law what the police are asking for and why he or she is at the police station and is given the relevant leaflet which contains with the rights of the accused. The first thing that the police mention is that the accused or interrogated person has the right to remain silent, that is, whatever asked, he or she is entitled to say 'I do not answer', or 'I want my lawyer' and even during the interrogation he or she can ask to be interrupted and to consult his/her lawyer. In some cases, he or she may ask for his lawyer to be present. From the first moment, before the interrogation begins, the police officer warns whoever is to testify that he or she has the right to remain silent. Before starting any questioning or interrogation, we are obliged to give him or her the relevant form to sign. Everyone who comes in is warned to be careful not to say anything that will incriminate them, and this is also in the form we give them."

"Το δικαίωμα στη σιωπή εφαρμόζεται από την πρώτη στιγμή, εάν συλληφθεί. Είναι δύο τα ενδεχόμενα, κάποιος που έρχεται μέσα ως ύποπτος είτε ως ανακρινόμενος χωρίς να συλληφθεί, μπορεί να είναι ύποπτος αλλά να μην είναι προς σύλληψη. Αν έρθει στην αστυνομία για να ανακριθεί, θα πληροφορηθεί με βάση των νόμων το τι ζητά η αστυνομία και για ποιο λόγο είναι στο αστυνομικό τμήμα και του δίνεται το σχετικό έντυπο με τα δικαιώματα. Το πρώτο πράγμα που αναφέρεται είναι ότι έχει το δικαίωμα της σιωπής, δηλαδή οτιδήποτε ρωτηθεί δικαιούται να πει "δεν απαντώ", ή "θέλω τον δικηγόρο μου" και ακόμα και κατά την διάρκεια της ανάκρισης μπορεί να ζητήσει να διακόψει και να συμβουλευτεί τον δικηγόρο του. Σε κάποιες περιπτώσεις μπορεί να ζητήσει να είναι παρών ο δικηγόρος του. Από την πρώτη στιγμή, πριν να ξεκινήσει η ανάκριση, σε όποιο έρχεται να δώσει κατάθεση, ο αστυνομικός του παρέχει την προειδοποίηση ότι έχει το δικαίωμα στη σιωπή. Πριν ξεκινήσει η οποιανδήποτε ερώτηση είμαστε υποχρεωμένοι να του δώσουμε το έντυπο που υπογράφει. Όλοι όσοι έρχονται μέσα προειδοποιούνται για να είναι προσεκτικοί έτσι να μην πουν κάτι το οποίο θα τους ενοχοποιήσει, κι αυτά είναι επίσης στο έντυπο που τους δίνουμε."

The police officers interviewed concur that the Cypriot criminal justice system provides for adequate protection of the accused from being forced to provide bodily sample, information, or personal data

as a part of the rules against self-incrimination. However, there are differing views within the police on the subject:

> *"In general, defendants are not obliged to provide information or evidence that could incriminate them. The defendant has the right not to submit any documents. If the police know and have evidence that the defendant is in possession of some documents relevant to the case we are investigating, then the Police will seek a court order to investigate the defendant's home, or anywhere else to discover the document or the object or weapon used to commit a murder. The police may also use Article 6.1 of the Criminal Procedure Code, which empowers the inspector to issue an order that obliging the defendant to produce and submit a document in his possession.*[221] *According to the law, if the defendant does not produce the document, then the defendant is violating the law.*[222] *However, when questioned, the police inform the defendant that he/she has no obligation to hand over anything at that time. All matters pertaining to the computer password, phone number, email password etc are protected by the right to confidentiality of telephone and other communication. The police need a court order to examine the content of these types of communication. After the Police have a court order and if the defendant refuses to submit these, then the police have the right to take the information."*

> *"Οι κατηγορούμενοι δεν υποχρεούνται να παρέχουν πληροφορίες ή αποδεικτικά στοιχεία που θα μπορούσαν να τους ενοχοποιήσουν. Έχει το δικαίωμα να μην παραδώσει ούτε καν έγγραφα. Εμείς ως αστυνομία λειτουργούμε με άλλο τρόπο, αν ξέρουμε και έχουμε μαρτυρία ότι έχει στην κατοχή του κάποια έγγραφα θα ενεργήσουμε με κάποιον άλλον τρόπο, που μας δίνει το δικαίωμα, είτε θα βγάλουμε διάταγμα από το δικαστήριο για να κάνουμε έρευνα στο σπίτι, ή οπουδήποτε αλλού υπάρχει έγγραφο που θέλουμε ή αντικείμενο ή φονικό όπλο. Μπορούμε να χρησιμοποιήσουμε το άρθρο 6.1 της ποινικής δικονομίας, το οποίο είναι μια διαταγή η οποία υποχρεώνει κάποιον, εάν έχει κάποιο έγγραφο, να το παραδώσει.*[223] *Σύμφωνα με το νόμο, αν δεν παραδώσει τα έγραφα, παραβιάζει τον νόμο.*[224] *Όμως, την ώρα της ανάκρισης που ο κατηγορούμενος είναι υπό σύλληψη, η αστυνομία τον πληροφορεί ότι δεν έχει υποχρέωση να παραδώσει το οτιδήποτε. Σε σχέση με τον κωδικό πρόσβασης του υπολογιστή, τον αριθμό τηλεφώνου, τον κωδικό πρόσβασης email υπάρχουν ειδικές ρυθμίσεις. Για θέματα τηλεφώνων, αυτά καλύπτονται από το δικαίωμα στο απόρρητο της τηλεφωνικής επικοινωνίας και απαιτείται όπως η αστυνομία έχει διάταγμα του δικαστηρίου για να εξετάσει το περιεχόμενο, χωρίς την άδεια του. Εάν μετά το διάταγμα δεν τα παραδώσει, τότε η αστυνομία έχει το δικαίωμα να παραβιάσει τον χώρο του και να τα πάρει."*

The police officers' response on the right of the accused to refuse to provide blood, urine or DNA samples or other data that may lead to self-incrimination illustrates a different emphasis amongst them, a contradiction even. One senior police officer considers that the right against self-incrimination does not prevent the police from getting vital information which require the accused's collaboration with the police, such as blood or urine samples or codes or pin codes. Interestingly, the senior Police

[221] Cyprus, Law on Criminal Procedure, Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος, Κεφ. 155*), Art. 6(1).
[222] Cyprus, Law on Criminal Procedure, Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος, Κεφ. 155*), Art. 6(3). If the person does not submit the document in his possession, he or she is liable to be sentenced up to 3 years imprisonment or 1500 Cyprus pounds (2607.21 euro) or both.
[223] Cyprus, Law on Criminal Procedure, Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος, Κεφ. 155*), article 6(1).
[224] Cyprus, Law on Criminal Procedure, Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος, Κεφ. 155*), article 6(3). If the person does not submit the document in his possession, he or she is liable to be sentenced up to 3 years imprisonment or 1500 Cyprus pounds (2607.21 euro) or both.

officer considers the refusal to collaborate to provide such samples and data implies guilt, which seems to contradict the right to silence and the protection against self-incrimination:

> "*Accused persons are not forced to give blood or urine samples or codes or pin codes, but if they do not collaborate with the police the impression that will be drawn by the court is that they are guilty. Only guilty persons will refuse to collaborate with the police."*
>
> "*Οι κατηγορούμενοι δεν είναι υποχρεωμένοι να δώσουν είτε αίμα είτε ούρα είτε κωδικούς αλλά αν δεν συνεργάζονται με την αστυνομία τότε η εντύπωση που δίδεται στο δικαστήριο είναι ότι είναι ένοχοι. Μόνο οι ένοχοι δε συνεργάζονται με την αστυνομία".*

The same senior officer notes that the law on evidence and the Judges Rules contain safeguards which provide that any infringements of the rights of the accused would lead to the acquittal of the accused.

> *"If an accused person gives self-incriminating evidence, the police officer must caution him that it is self-incriminating and ask him if the evidence should be written down or not."*
>
> *"Εάν ένας κατηγορούμενος κατά τη διάρκεια της ανάκρισης δώσει πληροφορία που τον ενοχοποιεί, τότε ο ανακρίνων αστυνομικός πρέπει να του το υποδείξει και να τον ρωτήσει αν όντως θέλει να καταγραφεί."*

Another senior police officer underscored that there are no instances when defendants are obliged to provide information or evidence that could incriminate them:

> *"There are no instances when defendants are obliged to provide information or evidence that could incriminate them or that might be obliged to provide evidence that implies guilt. It is impossible to oblige someone to present any document or information that may incriminate him or her. If a computer is confiscated, it is not possible to force the owner to provide the police with a password; however, the password can be broken with a court order. With the DNA, it is possible, under certain conditions, to get a court order to oblige the defendant to prove the police with DNA sample."*
>
> "Δεν υπάρχουν περιπτώσεις κατά τις οποίες οι κατηγορούμενοι υποχρεούνται να παρέχουν πληροφορίες ή αποδεικτικά στοιχεία που θα μπορούσαν να τους ενοχοποιήσουν ή που ενδέχεται να υποχρεωθούν να παρέχουν αποδεικτικά στοιχεία που συνεπάγονται ενοχή. Είναι αδύνατο να υποχρεωθεί κάποιος να παρουσιάσει οποιοδήποτε έγγραφο ή πληροφορία που μπορεί να τον ενοχλήσει. Εάν ένας υπολογιστής έχει κατασχεθεί, δεν είναι δυνατόν να αναγκάσει τον ιδιοκτήτη να παράσχει στην Αστυνομία έναν κωδικό πρόσβασης. Ωστόσο, ο κωδικός πρόσβασης μπορεί να σπάσει με δικαστική απόφαση. Με το DNA, είναι δυνατόν, υπό ορισμένες προϋποθέσεις, να ληφθεί δικαστική απόφαση για να υποχρεωθεί ο εναγόμενος να αποδείξει την Αστυνομία με δείγμα DNA."

The fourth senior police officer interviewed was emphatic that under no circumstances the police use any unlawful means of extracting information or testimony which are undermining the right to silence to secure co-operation from the accused. The police officer nonetheless noted that there are other means of getting such data from the accused:

> *"The police do not use any unlawful means of extracting information or testimony which are undermining the right to silence to secure co-operation from the accused. Those who use the right to silence are well-read because they know their rights very well. The police use neither blackmail, nor any other method that undermines the right to silence. Defendants are not required to provide information, or evidence, that could incriminate them. The right to non-*

self-incrimination does not prevent the police from gathering evidence to use the suspect's DNA or fingerprints. We get his/her fingerprints, without their permission, if they are suspects. Regardless of whether the suspect choses to exercise the right to silence, if he/she was identified on the crime scene, then we will use the evidential material gathered. However, all the evidence legally obtained. If we deceive the suspect to obtain evidence, then it is evidence illegally obtained. For example, we cannot treat the suspect to coffee and then without his or her consent use his or her saliva, as this would be illegally obtained evidence."

"Η αστυνομία δε χρησιμοποιεί οποιουσδήποτε αθέμιτους τρόπους να αποσπάσει πληροφορίες ή μαρτυρία για να εξασφαλίσει συνεργασία μαζί της από τους κατηγορούμενους που να υπονομεύει το δικαίωμα της σιωπής. Εκείνοι που χρησιμοποιούν το δικαίωμα της σιωπής είναι καλά διαβασμένοι διότι γνωρίζουν πολύ καλά τα δικαιώματα τους. Ούτε εκβιάζουμε, ούτε τίποτα, είναι δικαίωμά τους. Οι κατηγορούμενοι δεν είναι υποχρεωμένοι να παρέχουν πληροφόρηση, ή αποδεικτικά στοιχεία, μαρτυρικό υλικό που θα μπορούσαν να τον ενοχοποιήσουν. Το δικαίωμα στη μη αυτοενοχοποίηση δεν εμποδίζει την αστυνομία από τη συγκέντρωση αποδεικτικών στοιχείων από έρευνα που έκανε όπως το DNA ή αποτυπώματα. Παίρνουμε τα αποτυπώματά του, χωρίς την άδειά του αν είναι ύποπτος. Άσχετα αν επέλεξε το δικαίωμα της σιωπής, αν ταυτοποιήθηκε στη σκήνη, τότε θα χρησιμοποιήσουμε το τεκμήριο. Πρέπει όμως να πάρουμε τα τεκμήρια νόμιμα. Αν τον ξεγελάσουμε τότε είναι παράνομος τρόπος. Δεν μπορούμε για παράδειγμα να του κεράσουμε καφέ και αν χρησιμοποιήσουμε το σάλιο του διότι είναι παράνομος τρόπος που πήραμε το μαρτυρικό υλικό."

The same senior police officer interviewed gave a contradictory account about the accused person's obligation to provide the code of his or her computer, or mobile phone, or email password and blood and breath-test sample:

"In some cases, for example, the accused is obliged to give the code of his or her computer, or mobile phone, or email password. If the accused refuses, then we must find other ways to check the content of the accused's computer, when for example we are investigating a case of child pornography, the police will confiscate his computer or mobile phone. If the accused does not provide us with this information, the police will try to get a warrant. If we have a case where the accused is accused of driving under the influence of alcohol, and the accused refuses to blow on the breathalyser machine, then we will try to prove using other evidence. If someone is going to have an alcohol test and is injured in the hospital, we have the right to take his blood to do a blood test to examine whether this person was under the influence of alcohol or drugs."

"Σε κάποιες περιπτώσεις, για παράδειγμα ο κατηγορούμενος υποχρεούται να δώσει τον κωδικό του υπολογιστή του, του κινητού του, τον κωδικό του ηλεκτρονικού ταχυδρομείου του. Αν αρνηθεί τότε πρέπει να βρούμε άλλους τρόπους να ελέγξουμε το περιεχόμενο του υπολογιστή του κατηγορούμενου, όταν για παράδειγμα εξετάζουμε υπόθεση παιδικής πορνογραφίας ναι θα του κατάσχω τον υπολογιστή του ή το κινητό του. Τον κωδικό θα μας τον πει, αν δεν μας τον πει, θα δούμε πως μπορούμε να τον πάρουμε με ένταλμα. Αν έχουμε περίπτωση όπου ο κατηγορούμενους κατηγορείται ότι οδηγούσε υπό την επήρεια αλκοόλ, και αυτός αρνείται να φυσήξει στο μηχάνημα του αλκοτέστ, τότε αυτός διαπράττει άλλο αδίκημα. Αν κάποιος θα του κάνουμε αλκοτέστ και είναι τραυματίας στο νοσοκομείο, έχουμε το δικαίωμα να του πάρουμε αίμα για να του κάνουμε ανάλυση αίματος να δούμε κατά πόσο ήταν κάτω από την επήρεια αλκοόλ ή ουσιών."

- *Prosecuting lawyers' perspectives*

The prosecuting lawyers consider that, in general, there is compliance by the police on the subject and that there are effective safeguards, given that that if there are any violations of the rules against self-incrimination, the court at first instance, or on appeal must acquit the defendant. As a senior prosecutor pointed out, the defendants are not obliged to provide information or evidence that could incriminate them. The inspector who is in change must warn him about any information the defendant volunteers may incriminate him or her before noting them down. It is for the court to decide if any questions asked are such which if answered by the defendant, may incriminate him. The same applies during the court procedure, if the defendant takes the stand in the witness box: the defendant may ask for permission not to answer based on the argument that if they do so they may incriminate themselves. If the court refuses such permission, the defendant may still refuse to answer, but may risk his or her credibility before the judge. The defendant is not obliged to provide information or evidence that could incriminate them. They are obliged to provide fingerprints but cannot be forced to do so. Aside from lawful production upon request of blood, breath, or urine samples and bodily tissues or other material obtained pursuant to a warrant or retained under a legal obligation, they are not obliged to give their computer password, phone's pin number, email password.

As an experienced prosecutor suggested, a defendant is not obliged to provide information or evidence that could incriminate them, but there are special provisions for child pornography for instance. In cases of child pornography, the police will get a court warrant and go to the suspect's house and take his or her computer. No password is needed as the police laboratory can break any code or password. There is a procedure where the defendant is obliged to provide their fingerprints and DNA. In these cases, the suspect fills out and signs the relevant forms that gives his or her consent to get fingerprints and so on. If the suspect does not give his/her consent, the police have the right to issue a decree, genetic material with saliva. If he or she does not want to, they can force him/her if there is a court order. The same applies for fingerprints.

- *Defence lawyers' perspectives*

Defence lawyers interviewed were critical of the methods used by the police to extract information, including threat of violence, misleading information and promises, even physical force in order to extract a confession out of a suspect. They noted that the accused are not obliged by law to provide passwords or pin numbers to the police, as this information can either be handed consensually or be sanctioned by the Court. As one experienced defence lawyer started:

> *"You understand that the police use different methods to extract a confession. We did have cases in the past, where a person for example admitted to committing an armed robbery. I believe he was prosecuted and tried and then it transpired that the robbery was committed by someone else. However, these instances are rare."*
>
> *«Καταλαβαίνετε ότι η αστυνομία χρησιμοποιεί διαφορετικές μεθόδους για να εξαγάγει ομολογία. Είχαμε υποθέσεις στο παρελθόν, όπου ένα άτομο παραδέχθηκε για παράδειγμα ότι διέπραξε ένοπλη ληστεία. Πιστεύω ότι διώχθηκε και δικάστηκε και στη συνέχεια*

αποδείχθηκε ότι η ληστεία διαπράχθηκε από κάποιον άλλο. Ωστόσο, αυτές οι περιπτώσεις είναι σπάνιες."

There are procedural safeguards regarding the use of search warrants, for instance for an accused persons' obligation to surrender to the police their server, or documents that can incriminate them. As one experienced defence lawyer suggested, if there is a search warrant, accused persons may be obliged to surrender to the police their server, or documents that can incriminate them. They are not obliged to give pin number of password but, to be honest nowadays, the police can still decodify and access them without a pin or a password. The search warrants must be specific to include all the equipment which the police seek to search.[225]

The law is clear, according to a defence lawyer that the accused are not forced to give blood or urine samples or codes or pin codes, but the police consider this as a refusal to collaborate, something which implies guilt in the police officers mind.

Another experienced defence lawyer stated that the accused are not obliged to provide any incriminating data. Accused persons are not obliged to give any evidence that can incriminate them. In some cases, it may be possible to secure a court order to force an accused person to give such evidence*:*

"The evidence is usually a confession or sometimes real evidence. 'Let me show you the gun', 'let me show where the money is' and things like that. In most cases I have dealt with the defendants who provided the evidence consensually."

"*Τα αποδεικτικά στοιχεία είναι συνήθως μια ομολογία ή μερικές φορές πραγματικά αποδεικτικά στοιχεία. 'Επιτρέψτε μου να σας δείξω το όπλο', 'επιτρέψτε μου να δείξω πού είναι τα χρήματα' και τέτοια πράγματα. Στις περισσότερες περιπτώσεις έχω ασχοληθεί με τους κατηγορούμενους που παρείχαν τα αποδεικτικά στοιχεία συναινετικά. "*

One experienced defence lawyer stated that whilst the accused are not obliged to provide any incriminating data, the police often use crooked methods to obtain such data:

"I cannot think of any instances where they have to provide anything to the police. Accused persons are under no duty to surrender anything including objects or blood or even an object they have touched unless they do so voluntarily. The police however find way to sidestep this without being seen, for instance they can take a cigarette end and send it for DNA testing and then claim that the accused person voluntarily gave it to them. In their effort to get to the truth, they become overwhelmed by a police mentality that the accused is guilty, and they think they must find ways to convict him, exercising pressure which is either borderline or infringes rights."

"Δεν μπορώ να σκεφτώ περιπτώσεις όπου πρέπει να παρέχουν τίποτα στην αστυνομία. Οι κατηγορούμενοι δεν έχουν καμία υποχρέωση να παραδώσουν οτιδήποτε, συμπεριλαμβανομένων αντικειμένων ή αίματος ή ακόμη και ενός αντικειμένου που έχουν αγγίξει, εκτός εάν το κάνουν οικειοθελώς. Ωστόσο, η αστυνομία βρίσκει τρόπο να το παρακάμψει χωρίς να τους πιάσουν, για παράδειγμα μπορεί να πιάσουν το τσιγάρο και να το στείλουν για εξέταση DNA και στη συνέχεια να ισχυριστούν ότι ο κατηγορούμενος το έδωσε οικειοθελώς. Στην προσπάθειά τους να φτάσουν στην αλήθεια, συνεπαρμένοι από την αστυνομική νοοτροπία ότι ο κατηγορούμενος είναι ένοχος και πιστεύουν ότι πρέπει να βρουν

[225] Interview with experienced defence lawyer, 9 March 2020.

τρόπους να τον καταδικάσουν, ασκώντας πίεση που είναι είτε οριακή είτε παραβιάζει δικαιώματα."

Whilst the accused person is under no obligation to provide any of these, the police can secure an order to lift the confidentiality of personal data under conditions and subject to permission from the Attorney General.[226] There are new challenges with Covid19, as an experienced defence lawyer mentioned.[227] The alcotest is obligatory, because drinking and driving is a threat to other drivers too and this weighs more heavily, but "blood and urine samples may be an issue if we have a law setting mass anti-Covid 19 vaccinations obligatory and I am not sure if the obligatory vaccination will be lawful." [228]

d. Right to remain silent

The police officers interviewed claim that the police fully respect the right to remain silent and when exercised this has no negative impact on the accused, as it is for the prosecution to prove guilt. As a senior police officer stated:

"*If an accused person chooses to remain silent, this will not be held against him. Nowadays it is common for lawyers to advise their clients not to talk and there is nothing we can do. It is unlawful for police officers to try and put pressure on an accused person that silence will count against him. Police officers are professionals and experienced and they know better than to put pressure on accused persons to give testimony if they do not want to. There are police officers who do not do their job well. It is a tiny percentage but there are such cases. 99% of police officers do know their job but we cannot say that 100% of them know their job."*

«Εάν ένας κατηγορούμενος επιλέξει να παραμείνει σιωπηλός, δε θα έχει καμία συνέπεια εναντίον του. Σήμερα είναι σύνηθες για τους δικηγόρους να συμβουλεύουν τους πελάτες τους να μην πουν τίποτε και δεν μπορούμε να κάνουμε τίποτα για αυτό. Είναι παράνομο για τους αστυνομικούς να προσπαθήσουν να ασκήσουν οποιαδήποτε πίεση πάνω σε έναν κατηγορούμενο για να μαρτυρήσει ή να πει οτιδήποτε λέγοντας του ότι η σιωπή του θα λειτουργήσει εναντίον του. Οι αστυνομικοί διαθέτουν τον επαγγελματισμό και είναι έμπειροι για να γνωρίζουν καλύτερα από το να ασκήσουν πίεση στους κατηγορούμενους για να καταθέσουν εάν δεν το θέλουν. Μπορεί να υπάρχουν βέβαια ορισμένοι αστυνομικοί που δεν κάνουν τη δουλειά τους καλά. Είναι ένα ελάχιστο ποσοστό, αλλά υπάρχουν και τέτοιες περιπτώσεις. Το 99% των αστυνομικών γνωρίζουν τη δουλειά τους, αλλά δεν μπορούμε να πούμε ότι το 100% από αυτούς γνωρίζουν τη δουλειά τους."

As another senior police officer noted:

"The right to silence is fully enforced, as defined in the amendment that took place in 2018, which provides that the suspect's right to remain silent and the right against self- incrimination is protected. The accused has the right not to say anything. As a police force, we fully implement it: If someone comes in for questioning and tells us that they want to exercise their right to silence, this is perfectly respectable. The police will try to secure any other testimony and evidence to be presented in front of the court. The accused will be informed of his right to remain silent immediately after his or her arrest in a language that is understood as well as

[226] Interview with experienced defence lawyer, 18 May 2020.
[227] Interview with experienced defence lawyer, 18 May 2020.
[228] Interview with experienced defence lawyer, 18 May 2020.

other rights that are protected: The accused has the right to access to a lawyer, legal action, the right to remain silent, the right not to self-incriminate, the right to access to persons of choice. We also have a list of the rights of the accused, which the police make available to them at the detention centres and the police stations. This is available in about 8 languages."

"Το δικαίωμα της σιωπής εφαρμόζεται πλήρως, όπως ορίζεται και μέσα στην τροποποίηση που υπήρξε το 2018, το δικαίωμα της σιωπής και το δικαίωμα της μη αυτοενοχοποίησης διασφαλίζεται στον ύποπτο ή στον κατηγορούμενο. Έχει το δικαίωμα να μην πει οτιδήποτε. Ως αστυνομία το εφαρμόζουμε απόλυτα. Αν έρθει κάποιος για ανάκριση και μας πει ότι θέλει να εφαρμόσει το δικαίωμα της σιωπής, αυτό είναι απόλυτα σεβαστό. Η αστυνομία θα προσπαθήσει να εξασφαλίσει οποιεσδήποτε άλλες μαρτυρίες έχει, οι οποίες θα τεθούν στο δικαστήριο. Ο κατηγορούμενος θα ενημερωθεί για το δικαίωμα του στη σιωπή αμέσως μετά την σύλληψη του σε γλώσσα που είναι κατανοητή, όπως και για άλλα δικαιώματα. Θα του εξηγηθεί ότι έχει δικαίωμα πρόσβασης σε δικηγόρο του, νομική αγωγή, το δικαίωμα της σιωπής, το δικαίωμα της μη ενοχοποίησης, το δικαίωμα της πρόσβασης σε πρόσωπα της επιλογής του. Επίσης έχουμε ένα κατάλογο με τα δικαιώματα των κατηγορούμενων, τον οποίο τους δίνουμε και ενημερώνονται, που υπάρχουν στα κρατητήρια και στους αστυνομικούς σταθμούς. Ο κατάλογος διατίθεται σε 8 γλώσσες περίπου."

Prosecutors noted that invoking the right to silence is a matter that is often in issue in court cases. As one prosecution lawyer noted:

"The right to remain silent is not something we encounter often in the course of the judicial procedure. Usually the accused will either plead guilty or will give evidence to prove their innocence. The possibility that they will remain silent and not offer evidence to support their not-guilty plea is rather remote. The prosecution carries the burden to introduce evidence to prove its allegations. After the prosecution completes the presentation of its case, the court will decide on the evidence before it. Silence does not create a presumption of guilt, but it could mean that the accused person misses an opportunity to explain his innocence in the court."

"Το δικαίωμα στη σιωπή δεν είναι κάτι που συναντάμε συχνά κατά τη διάρκεια της δικαστικής διαδικασίας. Συνήθως ο κατηγορούμενος είτε θα παραδεχθεί ενοχή είτε θα θελήσει να δώσει μαρτυρία για να αποδείξει την αθωότητά του. Η πιθανότητα να παραμείνει σιωπηλός και να μην προσφέρει αποδεικτικά στοιχεία για να υποστηρίξει την έννομη ένσταση του είναι μάλλον απομακρυσμένη. Η εισαγγελία φέρει το βάρος να εισαγάγει αποδεικτικά στοιχεία για να αποδείξει τους ισχυρισμούς της. Αφού η κατηγορούσα αρχή ολοκληρώσει την παρουσίαση της υπόθεσής της, το δικαστήριο θα αποφασίσει στη βάση των αποδεικτικών στοιχείων που έχει ενώπιον του. Η σιωπή δεν δημιουργεί τεκμήριο ενοχής, αλλά θα μπορούσε να σημαίνει ότι ο κατηγορούμενος χάνει την ευκαιρία να επεξηγήσει την αθωότητα του στο δικαστήριο."

Prosecutors note that the law clarifies that the right to silence must be respected at every stage of interrogation until the court, and that in general, both the prosecution and the judges respect this principle. As a senior prosecutor noted:

"We, as prosecuting authorities, must respect the right to silence from the stage of interrogation to the court. The jurisprudence tells us that we cannot take it into account. The judge is not entitled to take this into account and infer guilt from the fact that the defendant exercised his right to silence. There is a case law that it is his right, the judge cannot even comment on it."

"Εμείς ως διωκτικές αρχές οφείλουμε να σεβόμαστε το δικαίωμα στη σιωπή από το στάδιο της ανάκρισης μέχρι το δικαστήριο. Η νομολογία μας λέει ότι δεν μπορείς να το λάβεις υπόψη σου, δεν δικαιούται ο δικαστής να λάβει υπόψη του αυτό το πράγμα και να πει ότι για να μείνει σιωπηλός, φταίει. Υπάρχει νομολογία ότι είναι δικαίωμά του, δεν μπορεί ο δικαστής ούτε καν να το σχολιάσει."

Prosecutors stated that they know various cases where there had been a violation of the principle and resulted in the eventual acquittal of the defendant. As a senior prosecutor mentioned:

"The Police must warn the suspect that he or she has the right to remain silent from the moment they will ask him or her to give testimony. I know of an arson, where the accused said something before testifying and from what he said, the prosecution concluded that he was the one who did the arson. He was sentenced at first instance but was acquitted on appeal. The appeal court stated that they could not use what he had said before he was warned about his right to remain silent. This is well respected in Cyprus."

"Η αστυνομία οφείλει να προειδοποιήσει τον ύποπτο ότι έχει το δικαίωμα στη σιωπή από τη στιγμή που θα του πάρουν κατάθεση. Ξέρω μία υπόθεση εμπρησμού, όπου πριν να του πάρουν κατάθεση κάτι είπε, από αυτό το κάτι που είπε συμπεράναν ότι εκείνος είναι που έκανε τον εμπρησμό. Ενώ πρωτόδικα καταδικάστηκε, το εφετείο τον απάλλαξε και είπε πως δεν μπορούν να χρησιμοποιήσουν αυτό που είπε χωρίς να τον προειδοποιήσουν ότι έχει δικαίωμα στη σιωπή. Αυτό το εφαρμόζουμε καλά στην Κύπρο."

Prosecutors recognise that what happens in practice and what is said orally, which is not recorded and is difficult to evidence, may be quite different from what statute books and the law require. One senior prosecutor stated that s/he was told by an accused that he was severely beaten by the police:

"*It is not lawful to give warning a defendant that their silence will be taken into account during proceedings, it amounts to putting pressure on him/her to give evidence. However, what is said orally is another story; often the police would tell the accused that their cooperation would certainly help their case. In one case, I was told by an accused who was accused of drug use, that he was severely beaten by the police."*

"Δεν είναι νόμιμο η αστυνομία να λέει στον κατηγορούμενο ότι η σιωπή του θα ληφθεί υπόψη κατά τη διάρκεια της διαδικασίας, ισοδυναμεί με πίεση στο να δώσει μαρτυρία. Προφορικά τα λένε, λένε πολλά, όπως το ότι η συνεργασία με τις αρχές θα σε διευκολύνει, τους πιέζουν σίγουρα. Στα ναρκωτικά ξέρω ότι υπάρχει και ξύλο. Μου είπε ένας κατηγορούμενος για ναρκωτικά ότι ξύλοκοπήθηκε άγρια από την αστυνομία. ."

Defence lawyers claim that in most cases silence is not seen as admission of guilt, but this is not equally applied to all. One defence lawyer substantiated this by comparing two cases. On the on hand s/he referred to a case of an accused with migrant background and on the other to a case of a high-profile accountant; both claimed the right to silence before the same police inspector. In the case of the former, the police inspector reasoned that the right to silence invoked was indication of guilt, whilst in the case of the latter he considered it to be reasonable:

"Silence is not seen as admission of guilt and this is largely complied with in most cases. But again, it has to do with who you are and what you are up against. I once had a client who was a migrant. He had been accused of assaulting his wife and he claimed his right to remain silent during police investigation. Another client of mine, who was a high-profile accountant charged with money laundering, also claimed the right to remain silent. The investigating police officer was the same in both cases. In the case of the migrant accused person, the police officer argued

that the accused refused to give testimony because he was guilty. In the second case, the police found it is reasonable for the accused not to say anything because the matters at stake were complicated".

«Η σιωπή δεν θεωρείται ομολογία ενοχής και αυτό σε μεγάλο βαθμό τηρείται στις περισσότερες περιπτώσεις. Αλλά και πάλι, αυτό έχει να κάνει με το ποιος είσαι και με ποιον είσαι αντιμέτωπος. Κάποτε είχα έναν πελάτη που ήταν μετανάστης. Είχε κατηγορηθεί για επίθεση στη γυναίκα του και ισχυρίστηκε το δικαίωμά του στη σιωπή κατά τη διάρκεια της αστυνομικής έρευνας. Ένας άλλος πελάτης μου, ο οποίος ήταν ένας γνωστός λογιστής που κατηγορείτο για νομιμοποίηση εσόδων από παράνομες δραστηριότητες, ισχυρίστηκε επίσης το δικαίωμα να παραμείνει σιωπηλός. Ο ανακριτής αστυνομικός ήταν ο ίδιος και στις δύο περιπτώσεις. Στην περίπτωση του κατηγορούμενου μετανάστη, ο αστυνομικός υποστήριξε ότι ο κατηγορούμενος αρνήθηκε να καταθέσει επειδή ήταν ένοχος. Στη δεύτερη υπόθεση, η αστυνομία έκρινε ότι είναι λογικό για τους κατηγορούμενους να μην πουν τίποτα επειδή τα ζητήματα που διακυβεύονταν ήταν περίπλοκα».

Irrespective of any disputes about possible factors that distinguish one case from the other, in law there must never be inference of guilt when the accused invokes the right to silence before conviction by the court.

Defence lawyers suggest that the way the police ask the questions is problematic. They claim the police often would ask questions without providing the necessary context or providing the proper warning about whether the persons questioned are suspects or the potentially incriminating implications of the accused's answers. As one experienced defence lawyer stated:

"The police often tell suspects "what have you got to say?" without explaining that in fact they do not have to say anything. The non-legal person facing a police officer feels that he or she has to say something, and the police will write down everything they say and can use it against them. The police need to explain that silence does not mean guilt. We as lawyers must have time and means to speak to our clients before the police has the chance to take testimony. The right to remain silent is only explained to suspects once the police has secured all the testimony it required and has completed its investigation."

"Η αστυνομία συχνά λέει στους υπόπτους «τι έχετε να πείτε;» χωρίς να τους εξηγήσει ότι στην πραγματικότητα δεν χρειάζεται να πουν τίποτα. Άτομο χωρίς νομική κατάρτιση που έχει να αντιμετωπίσει έναν αστυνομικό πιστεύει ότι πρέπει να πει κάτι. Και βεβαίως η αστυνομία θα γράψει όλα όσα πουν και μπορούν να χρησιμοποιηθούν εναντίον τους. Η αστυνομία πρέπει να εξηγήσει ότι η σιωπή δεν σημαίνει ενοχή. Εμείς ως δικηγόροι πρέπει να έχουμε χρόνο και μέσα για να μιλήσουμε με τους πελάτες μας προτού η αστυνομία έχει την ευκαιρία να καταθέσει. Το δικαίωμα να παραμείνει σιωπηλός εξηγείται μόνο στους υπόπτους μόλις η αστυνομία εξασφαλίσει όλες τις μαρτυρίες που απαιτούνται και ολοκληρώσει την έρευνά της".

- *Leakages to the Media*

The position of the police is that there are no deliberate leakages to the press, but they do admit that there are instances where there are police leakages. As one senior police officer stated:

"We do not deny the possibility of a police officer leaking something, but in my experience from my position, most of the time the issues revealed are wrong. In any case, the presumption of innocence is not affected as far as the course of justice is concerned: the court will decide based on the facts and on what the evidence contained in the file before it. In theory, this applies to all. However, when it comes to members of the security forces and especially the police, there is a negative approach, as illustrated in σ case of αserial killer, - the media and the public consider them guilty without even going to court."

"Δεν αρνούμαστε το ενδεχόμενο κάποιος αστυνομικός, να διαρρεύσει κάτι, όμως εγώ έχω διαπιστώσει από την θέση μου εδώ ότι τις περισσότερες φορές ζητήματα που βλέπουν το φως της δημοσιότητας είναι λανθασμένα. Αλλά αν μιλούμε για το τεκμήριο της αθωότητας, ενώπιον του δικαστηρίου παρουσιάζονται τα δεδομένα, τα οποία υπάρχουν μέσα στον φάκελο. Δηλαδή η μαρτυρική του ανάκριση και η μαρτυρία που υπάρχει εναντίον του κάθε προσώπου. Το ίδιο ισχύει και για τους αστυνομικούς όταν βρίσκονται κατηγορούμενοι. Έχω την εντύπωση πως υπάρχει μια αρνητική μεταχείριση όταν πρόκειται για μέλη των δυνάμεων ασφαλείας, για παράδειγμα σε μία υπόθεση ενός κατά συρροή δολοφόνου, – εφόσον τα ΜΜΕ και το κοινό θεωρούν ότι είναι ένοχοι χωρίς καν να πάνε δικαστήριο."

The police officers deny that the police deliberately leak information to the media. Defence lawyers however maintain that it is standard police practice to catch the accused in good spirits, and then try to gain their trust to trick them to provide information that may incriminate them. The police officers interviewed concede that there may be occasional police leaks, but these are not officially sanctioned. A senior police officer interviewed stated that the police implement its own regulations which prohibit any leaks to the media, and it is under a strict duty to do its job properly. He considers that "the police have nothing to do with what the media presents". As far as the police is concerned, the regulations are complied with, so that the case can stand in court and "whatever else is happening has nothing to do with the police."[229]

A senior police officer underlined the difficulties in keeping information confidential in a small-knit and rather closed society whose small size means that there are family and social networks which disclose information that is meant to be confidential. Information about the accused inevitably circulates informally and this cannot be controlled by the police:

"The biggest challenge in a society which is small and rather closed is for the Police to do our job as quietly as possible. We try not to make statements. However, because our society is rather closed, the mainstream media and the social media may circulate news that we as police have not heard from the police investigating the cases. For example, something happens in the region of Famagusta which is on the websites and the police find out much later. You must not assume that it is the police who leak or make revelations. There are so many people around, it is not just the police. There are relatives, friends, some neighbour, or a passer-by who may call a media outlet; it is not always the police. Our society is small, and one can easily see that a neighbour was arrested, and he or she will call a journalist he or she knows to ask about the matter. The journalist will then ask the police to verify. This is happening all the times, and these are things the police cannot control."

"Η μεγαλύτερη πρόκληση είναι ότι επειδή η κοινωνία μας είναι πολύ μικρή και κλειστή, να κάνουμε την δουλειά μας όσο πιο αθόρυβα γίνεται για να μην δημιουργούμε οποιονδήποτε πρόβλημα στον οποιονδήποτε. Προσπαθούμε να μην κάνουμε δηλώσεις. Αλλά επειδή είναι

[229] Interview with senior Police officer, 19 May 2020.

κλειστή η κοινωνία μας, τα μέσα μαζικής επικοινωνίας και τα μέσα μαζικής δικτύωσης, ήδη κυκλοφορούν ειδήσεις που εμείς οι ίδιοι οι αστυνομικοί δεν ακούσαμε από τους αστυνομικούς που διερευνούν την υπόθεση. Για παράδειγμα μπορεί να έγινε κάτι στην Αμμόχωστο και να τα βάλουν στις ιστοσελίδες και εμείς πολύ αργότερα να το μάθουμε. Μην το θεωρείτε ότι είναι η αστυνομία που αποκαλύπτει ότι γίνεται. Υπάρχει τόσος κόσμος γύρω, δεν είναι μόνο η αστυνομία. Υπάρχουν συγγενείς, φίλοι, ή ένας γείτονας ή περαστικός· δεν είναι η αστυνομία πάντα που κάνει τέτοιες αποκαλύψεις. Είναι μικρή η κοινωνία μας και μπορεί εύκολα κάποιος να δει ένα γείτονα που έχει συλληφθεί και θα τηλεφωνήσει σε ένα γνωστό του δημοσιογράφο. Στη συνέχεια ο δημοσιογράφος θα ζητήσει επιβεβαίωση από την αστυνομία. Αυτά όλα γίνονται και η αστυνομία δεν μπορεί να τα ελέγξει αυτά τα πράγματα."

Prosecutors consider that the role of the media adversely affect the presumption of innocence by the way they defame and bully the accused even before they are charged and convicted. However, they do not consider that this affects the criminal procedure itself. As a senior prosecutor noted:

> "One of the biggest challenges in relation to the presumption of innocence, particularly in social media is media bullying. At a societal level, we have a problem here, but I think our judicial system does not have serious problems in this area."
>
> "Μια από τις μεγαλύτερες προκλήσεις σε σχέση με το τεκμήριο της αθωότητας είναι η διαπόμπευση από μέσα μαζικής ενημέρωσης, κυρίως από τα μέσα κοινωνικής δικτύωσης. Σε επίπεδο κοινωνίας έχουμε πρόβλημα, αλλά νομίζω ότι το δικαστικό μας σύστημα δεν αντιμετωπίζει σοβαρά προβλήματα σε αυτόν τον τομέα".

Defence lawyers dispute that the police do not deliberately leak such information. They claim that the press announcements are usually such that they confirm what its already in the public domain about the accused, therefore they are sanctioning and reinforcing what is, in many occasions, a public utterance of guilt before the trial is over. As two experienced defence lawyers noted,[230] during a recent case, where a peace demonstrator was arrested, the media initiated a vicious attack on the accused, alleging violence against a soldier. The Minister of Justice, the Minister of Defence and the police then affirmed and proceeded to give public assurances via the media that the culprit is arrested and will be "punished in an exemplary manner", which amounts to a violation of the presumption of innocence.[231]

A defence lawyer aptly noted that we live in the age of the social media and leaks are very much part of the flow of news which reproduce news over and over again. This process creates a spiral of dependencies, reproductions of news and various influencers, who are in practice legally unaccountable:

> "In the age of the social media, a post can be sponsored with very little money and remain at the top of the newsfeed. You can reproduce it, promote it, and share it thousands of times. It can be recruited by an influencer and made to last longer. It used to be said that a scandal lasts for three days. Not anymore. This was true when we had one newspaper and one radio. On the Internet and on social media, there is no right to be forgotten. Next year, Facebook will remind us of what we did last year. So, when influencers in 2020 see the action from 2019, they will wonder where this case lies. And because our justice system takes five years to issue a decision, and the accused will not have been tried by the

[230] Interview with defence lawyer, 9 March 2020; Interview with defence lawyer, 18 May 2020.
[231] Interview with defence lawyer, 9 March 2020; Interview with defence lawyer, 18 May 2020.

following, the influencer will think, 'Let me put this back into the public eye,' and the title will start running and playing again."

"Στην εποχή των μέσων κοινωνικής δικτύωσης, μια είδηση μπορεί να προωθηθεί με ένα πολύ μικρό αντίτιμο και να βρίσκεται πάντα ως πρώτη είδηση στην ροή των ειδήσεων. Μπορεί κάποιος να την αναπαράγει, να την προωθήσει και να την μοιραστεί χιλιάδες φορές. Μπορεί να την επιστρατεύσει ένας ινφλουένσερ και να της δώσει διάρκεια. Παλιά έλεγαν ότι ένα σκάνδαλο διαρκεί τρεις μέρες. Όχι πλέον. Αυτό ίσχυε όταν είχαμε μόνο μια εφημερίδα και ένα ραδιόφωνο. Στο ίντερνετ και στα μέσα κοινωνικής δικτύωσης δεν υπάρχει ούτε το δικαίωμα στη λήθη. Τον επόμενο χρόνο το Facebook θα μας θυμίσει τι κάναμε τον προηγούμενο χρόνο. Έτσι όταν ο ινφλουένσερ το 2020 δει την δράση του από το 2019, θα αναρωτηθεί πού βρίσκεται αυτή η υπόθεση. Και επειδή το σύστημα δικαιοσύνης μας χρειάζεται πέντε χρόνια για να εκδώσει μια απόφαση, και ο κατηγορούμενος δεν θα προλάβει να δικαστεί μέχρι τον επόμενο χρόνο, ο ινφλουένσερ θα σκεφτεί 'ας το θέσω και πάλι στην δημοσιότητα' και ξαναρχίζει ο τίτλος να τρέχει και να αναπαράγεται."

e. Discussion of findings

The right to remain silent

- The police officers interviewed maintain that the police respect and fully implement the right to silence and that it is standard police practice is to caution the accused or interrogated persons and to inform them that they have the right to remain silent. All the police officers also note that before starting any questioning or interrogation, the police are obliged to give the accused the relevant form which contains the list of their rights and this is signed by the accused.

- Prosecutors consider that in most cases the caution pertaining to the right to silence and the rules against self-incrimination are observed by the police. The defence lawyers can bring any police violations to the court's attention during the trial. They consider that that there are safeguards to ensure that if the necessary information is not given to the accused person, then the testimony given to the police is likely to be deemed unlawfully obtained and the Court may render such testimony inadmissible. In such a case, the accused person is acquitted, unless there is independent testimony or other evidence that incriminates him or her. The prosecutors stressed that the prosecuting authorities are obliged to respect the right to silence from the stage of interrogation to the court. In Cypriot law the judge cannot take into account the silence of the accused to infer guilt, therefore it is in the interest of the prosecution that the rules regarding the caution, the right to silence and the rules against self-incrimination are fully observed at all stages, otherwise they risk acquittal at trial or on appeal. Prosecutors however recognise that there are numerous instances where the rights of the accused are infringed, and this is apparent by the cases where the defendants are acquitted as a result. They consider that this is largely the result police practices and attitudes which do not always respect human rights. Prosecutors, whilst expressing that they always respect the presumption of innocence, they seem to think that they have a limited role in enforcing the presumption of innocence. They see their primary task to secure conviction based on the evidence before them.

- Defence lawyers advise the accused to exercise their right to silence during police questioning. Whilst the Court will generally respect the right to remain silent, there are problems often at

police stations where there is pressure of the accused to make a statement. Defence lawyers consider that the police would often delay in informing the accused as to whether they are a suspect or fully explaining their rights. They note that the police will inform the suspect about the right to remain silent but only when the interrogation formally begins and after the initial questions are put to the suspect. The police are unlikely to inform suspects of their right to remain silent immediately upon apprehension.

The right to remain silent and not to incriminate oneself shared with the accused

The Directive 2016/343 is transposed of the Cypriot law, but it is uncertain whether this has drastically changed the police practices on the ground. The police claim that it is now a standard police practice, which is fully properly implemented, to inform the accused of the right to silence and not to incriminate oneself, but defence lawyers strongly dispute it as whether the information is properly shared. Recent cases in court suggest that there are still violations. There is ample room for improvement.

Self-incrimination

In general, the right to silence forms the basis of the presumption of innocence, along with the rule that it is for the prosecution to prove beyond reasonable doubt. This is affirmed by Cypriot caselaw which stresses that the Prosecution bears the onus of the burden of proof, therefore the right to silence is the core of this. The police officers interviewed consider that they fully comply with and implement the rules that protect the accused from incriminating themselves. The answers of the police officers however interviewed suggest that in practice there is confusion and there are inconsistencies in the application of the principle in practice. Some police officers state that the accused are not obliged to provide any data or bodily samples which may incriminate them, whilst others claim that they are obliged to do so. The police officers interviewed gave a contradictory account about the accused person's obligation to provide the code of his or her computer, or mobile phone, or email password and blood and breath-test sample.

The prosecuting lawyers consider that in general there is police compliance and that there are effective safeguards, given that that if there are any violations of the rules against self-incrimination, the court at first instance, or on appeal, must acquit the defendant. The prosecuting lawyers however do recognise that there may be infringements, but these are the result of police established attitudes and culture which are difficult and slow to change.

Defence lawyers interviewed provided a different perspective. They were critical of the methods used by the police to extract information, including threat of violence, misleading information and promises, even physical force to extract a confession out of a suspect. They noted that the accused are not obliged by law to provide passwords or pin numbers to the police, as this information can either be handed consensually or be sanctioned by the Court.

On the right to remain silent, the police were again adamant that there is full compliance but admitted that there may be exceptional cases where mistakes may be made. These cases according to the police, are rather exceptional and are described as isolated incidents which are, in any case, remedied in Court. Similar approaches are held by some prosecutors. However, two out of four prosecutors recognise that what happens in practice and what is said orally, often not recorded, and therefore difficult to evidence, may be quite different from what statute books and the law require. Defence lawyers claim that silence is not automatically seen as admission of guilt, but this is not equally applied

to all. In numerous cases the prevailing police attitude is that silence may well mean that the defendant has something to hide which implies guilt. Defence lawyers suggest that the way the police ask the questions is problematic: often the police would ask questions without providing the necessary context or provide proper warning about whether the persons asked are suspects, or about the potentially incriminating implications of the accused's answers. This is done to get the accused off-guard and trap them to make admissions to use against them.

All persons interviewed recognised that the information leaked to the media and the way the media present the accused are a serious problem in Cyprus. The police deny that they are responsible for deliberate leakages to the media, but they admit that there are instances of police leakages. The police point to the difficulties in containing information in a small and close-knit society, but they consider that the police have nothing to do with what the media present. Prosecutors consider that the role of the media adversely affects the presumption of innocence in defaming and bullying the accused even before convicted. They are critical primarily because they are primarily concerned about how such leaks may adversely affect the possibility of securing conviction of the criminals. However, overall, they do not consider that this affects the criminal procedure itself. This may well be a view of convenience, as it allows the prosecutors to function as prosecutors in the belief that the court process is somehow sealed-off and secure from outside influences to concentrate purely on the evidence before the court. Defence lawyers on the other hand, dispute that the police do not deliberately leak information about the accused. Defence lawyers claim that the press announcements are usually such that they confirm what its already in the public domain about the accused, therefore they are sanctioning and reinforcing what is, in many occasions, a public utterance of guilt before the trial is over.

In evaluating the implementation of the right to silence and the right against self-incrimination, it seems that strengthening safeguards for all persons accused is warranted. This becomes even more pertinent for vulnerable persons who need additional safeguards. Whilst the law provides for criminal and disciplinary sanctions[232] against police officers who infringe by failing to inform the accused about their rights,[233] criminal sanctions violations which amount to torture or degrading treatment[234] and makes available compensation in civil action for infringements of the rights of the accused,[235] these have not been effectively used. No conviction of a police officer has ever been recorded for any of the above offences. The procedure that provides for complaints to the Independent Authority for Police

[232] Cyprus, Rights of persons under arrest / detention, Police Form 129, provided in line with Cyprus, Law on the Rights of Suspected Persons, Arrested Persons and Detained Persons Law of 2005, 163 (I)/2005 (*Ο περί των Δικαιωμάτων Ύποπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005, 163(I)/2005*), Art. 34.

[233] Cyprus, Rights of persons under arrest / detention, Police Form 129, provided in line with Cyprus, Law on the Rights of Suspected Persons, Arrested Persons and Detained Persons Law of 2005, 163 (I)/2005 (*Ο περί των Δικαιωμάτων Ύποπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005, 163(I)/2005*), Art.31 and 32.

[234] Cyprus, Rights of persons under arrest / detention, Police Form 129, provided in line with Cyprus, Law on the Rights of Suspected Persons, Arrested Persons and Detained Persons Law of 2005, 163 (I)/2005 (*Ο περί των Δικαιωμάτων Ύποπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005, 163(I)/2005*), Art. 35.

[235] Cyprus, Rights of persons under arrest / detention, Police Form 129, provided in line with Cyprus, Law on the Rights of Suspected Persons, Arrested Persons and Detained Persons Law of 2005, 163 (I)/2005 (*Ο περί των Δικαιωμάτων Ύποπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005, 163(I)/2005*), Art. 36.

Misconduct for infringement of the rights of an accused person[236] is rather ineffective and unsatisfactory.

Further dissemination of information about rights and remedies, further training for the police and strengthening safeguards, mechanisms for monitoring and implementation and dissuasive sanctions are required.

It is also evident that there are problems with the regulation of the media and leakage of information that adversely affect the rights of the accused which warrant close monitoring and mechanism for enforcement.

C.6 The right to be present at the trial and to have a new trial

a. Consequences of non-appearance

The Constitution provides that all persons charged with an offence are entitled to defend themselves in person or through a lawyer of their own choice.[237] Defendants have a right to examine and cross examine witnesses and to have the free assistance of an interpreter if needed, to present their case before the court and to have sufficient time necessary for its preparation.[238] The criminal procedure law provides that accused persons are entitled to be present in court throughout the duration of their trial provided they behave 'decently'. No explanation is given as to what amounts to 'decent behaviour' according to the law. The court has discretion to order 'indecently' behaved accused persons to remain outside the courtroom and continue the trial in their absence and to make arrangements for the accused persons' information regarding the proceedings to enable them to prepare their defence.[239]

In criminal prosecutions, the Court orders all accused persons to be present at a specified time and a court place as ordered in the summons. In some cases, the Courts Registrar may exempt an accused person from the duty to be present in person and permit appearance from their lawyer instead or permit the dispatch of written plea of guilty.[240] At summary trials, where the accused persons have not been exempted from the duty to be present and the accused persons fail to turn up even though the summons were duly served upon them, the court may decide either to adjourn the case and issue a warrant for their arrest or to decide the case in their absentia.[241] This is done in very exceptional cases. None of the persons interviewed has ever encountered a case which was dealt with in absentia.

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[236] Cyprus, The Police Law (Independent Authority for the Investigation of Allegations and Complaints) Law of 2006, 9 (I) / 2006, (Ο περί Αστυνομίας (Ανεξάρτητη Αρχή Διερεύνησης Ισχυρισμών και Παραπόνων) Νόμος του 2006, 9(I)/2006), Art. 5(2)(b).

[237] Cyprus, Constitution of the Republic of Cyprus (*Σύνταγμα της Κυπριακής Δημοκρατίας*) Art. 12(5) and 30(3); Cyprus, Rights of persons under arrest / detention, Police Form 129, provided in line with Cyprus, Law on the Rights of Suspected Persons, Arrested Persons and Detained Persons Law of 2005, 163 (I)/2005 (*Ο περί των Δικαιωμάτων Ύποπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005, 163(I)/2005*).

[238] Cyprus, Constitution of the Republic of Cyprus (*Σύνταγμα της Κυπριακής Δημοκρατίας*) Art. 12(5) and 30(3).

[239] Cyprus, Law on Criminal Procedure Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος Κεφ. 155*), Art. 63.

[240] Cyprus, Law on Criminal Procedure Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος Κεφ. 155*), Art. 45.

[241] Cyprus, Law on Criminal Procedure Cap 155 (*Ο περί Ποινικής Δικονομίας Νόμος Κεφ. 155*), Art. 89(1).

There is no explicit provision in the law about the right to a new trial in case the right to be present at the trial is infringed. This is however invariably the case and in practice a case does not continue unless the accused is present. Judges do not allow for cases to continue unless the accused is present. There is legal precedent that any violation of a constitutional right must lead to a remedy.[242] Not being present in one's trial will almost certainly lead to a right to a new trial. The accused has the right to appeal against a decision where he or she was not present using the prerogatives orders available to the Supreme Court to quash the decision.

Defendants are usually aware about the trial and of the consequences of non-appearance. The Courts demand that the defendants are present. It is possible in certain exceptional cases that the defendant is authorises his or her lawyer, but the Courts normally insist that the defendant needs to be present. If the defendant does not turn up, then a warrant for his/her arrest is issued. Accused persons may be convicted in their absence from the courtroom if there is no serious justification for such absence. Accused persons cannot be convicted in absentia but there are exceptions. If it is confirmed that an accused person was notified and that he or she was aware of the consequences, then he or she can be convicted in absentia. None of the persons interviewed have ever experienced themselves of a judgment in absentia, but some lawyers and prosecutors interviewed stated that they had read other court decisions where it happened. As one senior prosecutor stated:

> *"The notice to appear in court informs the accused that he or she is notified about the charges he or she is faced with and the date, time and venue of the hearing that will take place. There are instances where the presence of the defendant is obligatory and those which are not. For those which are obligatory, the specific form of notice sent to defendants informs about the trial and of the consequences of non-appearance, i.e. that should they not attend a warrant for their arrest issued to ensure that they are present. There is a right to attend one's trial."*

> *"Η ειδοποίηση για εμφάνιση στο δικαστήριο ενημερώνει τον κατηγορούμενο ότι ειδοποιείται για τις κατηγορίες που αντιμετωπίζει και για την ημερομηνία, ώρα και τόπο διεξαγωγής της ακρόασης. Υπάρχουν περιπτώσεις όπου η παρουσία του καθ'ου είναι υποχρεωτική και εκείνες που δεν είναι. Για όσους είναι υποχρεωτική, η συγκεκριμένη μορφή ειδοποίησης που αποστέλλεται στους κατηγορούμενους ενημερώνει σχετικά με τη δίκη και τις συνέπειες της μη εμφάνισης, δηλαδή εάν δεν παρίστανται σε ένταλμα σύλληψης που εκδόθηκε για να διασφαλιστεί ότι είναι παρόντες. Υπάρχει δικαίωμα συμμετοχής στη δίκη."*

A senior prosecutor noted that the defendants are informed and are aware about the trial and of the consequences of non-appearance. An experienced defence lawyer however provided an answer which contradicts the above:

> *"It is a duty of their lawyers to inform defendants of their rights and their obligations and the consequences of any non-appearance. It is not often that accused persons do not appear in hearing sessions, because from the first time that a defendant is brought before the court, the court imposes conditions on the defendants to secure their presence at the next hearing. It is only on very rare occasions and pertaining only to very minor offences that accused persons do not necessarily need to be present. Officially, defendants are not informed of the consequences of not showing up. The judge will not explain to each and every defendant, 'if*

[242] Cyprus, Supreme Court, Yiallouros v Nicolaou (*Γιάλλουρος ν. Νικολάου*), Civil Appeal No. 9931, 8 May 2001.

you don't appear I would either order your arrest or minimize your chances in the exercise of your right to bail' and so on. However, lawyers do that."

«Είναι καθήκον των δικηγόρων τους να ενημερώνουν τους κατηγορούμενους για τα δικαιώματά τους και τις υποχρεώσεις τους και τις συνέπειες τυχόν μη εμφάνισης. Δεν είναι συχνό οι κατηγορούμενοι να μην εμφανίζονται στην ακρόαση, διότι από την πρώτη φορά που ο κατηγορούμενος παραπέμπεται ενώπιον του δικαστηρίου, το δικαστήριο επιβάλλει όρους στους κατηγορούμενους για να εξασφαλίσουν την παρουσία τους στην επόμενη ακρόαση. Μόνο σε πολύ σπάνιες περιπτώσεις και που αφορούν μόνο πολύ μικρά αδικήματα, οι κατηγορούμενοι δεν χρειάζεται απαραίτητα να είναι παρόντες. Επισήμως, οι κατηγορούμενοι δεν ενημερώνονται για τις συνέπειες της μη εμφάνισης. Ο δικαστής δεν θα εξηγήσει σε κάθε κατηγορούμενο, "αν δεν εμφανιστείς, θα διατάξω τη σύλληψή σου ή θα μειωθεί η δυνατότητα σου να αφεθείς ελεύθερος με εγγύηση" και ούτω καθεξής. Ωστόσο, οι δικηγόροι το κάνουν.»

If there is evidence that the defendant was duly notified of the hearing date and place and willingly decided not to appear, the defendant will be tried in absentia. But this is an extremely rare occurrence. Accused persons who appear with a lawyer are duly informed of their duty to be present at the trial and the consequences of not being present.[243] If the accused does not have a lawyer, the court as a rule will explain to them their duty to appear at the trial and the consequences of not appearing. As an experienced defence lawyer mentioned: [244]

"I do not recall of any case where the accused appeared without a lawyer and the judge did not inform him. If the accused person is not present, the trial will not commence; instead, an arrest warrant will be issued, and the accused person will be brought to court at the next hearing date. Only in the case of legal persons will the trial proceed in their absence, provided they have been duly served."

"*Δεν θυμάμαι καμία περίπτωση όπου ο κατηγορούμενος εμφανίστηκε χωρίς δικηγόρο και ο δικαστής δεν τον ενημέρωσε. Εάν ο κατηγορούμενος δεν είναι παρών, η δίκη δεν θα ξεκινήσει. Αντ' αυτού, θα εκδοθεί ένταλμα σύλληψης και ο κατηγορούμενος θα προσαχθεί στο δικαστήριο την επόμενη ημερομηνία ακρόασης. Μόνο στην περίπτωση νομικών προσώπων θα προχωρήσει η δίκη εν απουσία τους, υπό την προϋπόθεση ότι έχουν εκδοθεί δεόντως."*

A defence lawyer[245] considers that all accused persons must be present in all proceedings, despite the fact that "recent judicial precedent and EU Directive 343/2016 suggest that for less serious offences the presence of the accused in court is not necessary". The defence lawyer noted:

"The question should be whether the accused person runs the risk of imprisonment or not. An offence which only carries a fine as a penalty may easily lead to imprisonment if the fine is not paid. The criminal procedure law is incredibly old, dating back to 1972, and does not contain adequate safeguards in the serving of decisions ordering an accused person to pay a fine. It often happens that the service of the order to pay a fine is not conducted properly, the unpaid fines accumulate and the police is then instructed to arrest the person for unpaid fines,

[243] Interview with defence Lawyer, 9 March 2020.
[244] Interview with defence Lawyer, 9 March 2020.
[245] Interview with defence Lawyer, 23 April 2020.

following an order for imprisonment signed by the bailiff and co-signed by the Attorney General. This practice has the result that persons pile up in the prison costing the state 80 euros per day each, whilst the Attorney General could easily order the suspension of the imprisonment orders."

"Το ερώτημα πρέπει να είναι εάν ο κατηγορούμενος διατρέχει τον κίνδυνο φυλάκισης ή όχι. Ένα αδίκημα που φέρει πρόστιμο μόνο ως ποινή μπορεί εύκολα να οδηγήσει σε φυλάκιση εάν το πρόστιμο δεν καταβληθεί. Ο νόμος περί ποινικής διαδικασίας είναι απίστευτα παλιός, χρονολογείται από το 1972, και δεν περιέχει επαρκείς εγγυήσεις για την έκδοση αποφάσεων με τις οποίες διατάσσεται σε κατηγορούμενο να πληρώσει πρόστιμο. Συχνά συμβαίνει ότι η εκτέλεση διατάγματος για την καταβολή προστίμου δεν εκτελείται σωστά, τα απλήρωτα πρόστιμα συσσωρεύονται και στη συνέχεια η αστυνομία έχει εντολή να συλλάβει το άτομο για απλήρωτα πρόστιμα, μετά από εντολή φυλάκισης που υπογράφηκε από τον bailiff (δικαστικό επιμελητή) και συνυπέγραψε ο γενικός εισαγγελέας. Αυτή η πρακτική έχει ως αποτέλεσμα τα άτομα να συσσωρεύονται στη φυλακή με κόστος 80 ευρώ την ημέρα το καθένα, ενώ ο Γενικός Εισαγγελέας θα μπορούσε εύκολα να διατάξει την αναστολή των αποφάσεων φυλάκισης."

A defence lawyer suggested that defendants are not informed in practice of the consequences of not appearing in court.[246] The notice handed to them merely states that they are summoned to appear in court on a specified day without mentioning potential consequences if they do not turn up.

The accused person's presence in the criminal court is obligatory, as criminal courts will issue an arrest warrant if the accused person does not show up at the trial. As a criminal defence lawyer noted "only in very minor offences they may let them off". Usually suspects for serious crimes, such as murder or rape remain in custody until the hearing.

b. What has been understood as "effective participation"?

The Law on the Rights of Suspected Persons, Arrested Persons and Detained Persons that the special needs of a suspect or accused person who is a vulnerable person must be taken into account.[247] It defines as "vulnerable person" a suspect or accused person who is unable to understand or participate in the criminal proceedings due to his or her age, mental or physical condition or due to disability. [248] These provisions however have not been developed and specialised to address in practice the needs of specific groups by facilitating and making accommodations in terms of practices and facilities. There are no protocols are available to deal with vulnerable persons.

Some prosecutors seem to adopt a rather minimalist understanding of effective participation. This understanding of effective participation differs from that offered by some other prosecution and

[246] Interview with defence Lawyer, 23 April 2020.

[247] Cyprus, Law on the Rights of Suspected Persons, Arrested Persons and Detained Persons Law of 2005, 163 (I)/2005 (*Ο περί των Δικαιωμάτων Ύποπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005, 163(I)/2005*), Art. 38.

[248] Cyprus, Law on the Rights of Suspected Persons, Arrested Persons and Detained Persons Law of 2005, 163 (I)/2005 (*Ο περί των Δικαιωμάτων Ύποπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005, 163(I)/2005*), Art. 38(2).

defence lawyers. The minimalist understanding is that the defendant must be present during the proceedings, capable of following and that he or she understands the charges and what the trial is about. Prosecutors expressed sensitivity about this issue but noted that there are limitations because of pressure for time and lack of facilities to support all defendants. As a senior prosecutor noted:

> *"Accused persons have the right to a lawyer and if they cannot afford one then a lawyer will be paid by the state to defend them. Accused persons have the right to be present during the trial, to call witnesses and to have an open trial, unless there are rights of minors or vulnerable persons at stake. If an accused person admits the charge and gives evidence to mitigate but subsequently demonstrates that he or she did not understand the charges or it emerges that he or she had no intention of pleading guilty to the charge, the court does not accept the guilty plea and orders a hearing to give the accused person a chance to defend himself/herself and be acquitted."*
>
> *"Οι κατηγορούμενοι έχουν το δικαίωμα σε δικηγόρο και εάν δεν έχουν τη δυνατότητα, τότε το κράτος θα πληρώσει έναν δικηγόρο για την υπεράσπισή τους. Οι κατηγορούμενοι έχουν το δικαίωμα να παρίστανται κατά τη διάρκεια της δίκης, να καλούν μάρτυρες και να έχουν ανοιχτή δίκη, εκτός εάν διακυβεύονται δικαιώματα ανηλίκων ή ευάλωτων ατόμων. Εάν ένας κατηγορούμενος παραδεχθεί την κατηγορία και δώσει μαρτυρία για μετριασμό της ποινής του αλλά στη συνέχεια αποδείξει ότι δεν κατάλαβε τις κατηγορίες ή προέκυψε ότι δεν είχε πρόθεση να δηλώσει ενοχή για την κατηγορία, το δικαστήριο δεν αποδέχεται την αρχική παραδοχή ενοχής και διατάζει ακρόαση για να δώσει στον κατηγορούμενο την ευκαιρία να υπερασπιστεί τον εαυτό του και να αθωωθεί."*

Another senior prosecutor with long experience stated:

> *"Effective participation means that the accused is present at his or her trial; the accused has the right to be represented by a lawyer and the whole process is conducted in a language the defendant understands. These are guaranteed in our system. When there is a person, for example, who is under the influence of drugs and does not understand what is happening, then the judge will adjourn the hearing. Similarly, if there is a vulnerable defendant, for example someone with mental and psychiatric issues and is unable to participate effectively, then the judge will adjourn the hearing to instruct a medical examination, in order to examine whether the defendant can effectively participate in the trial."*
>
> "*Ουσιαστική συμμετοχή σημαίνει ο κατηγορούμενος να είναι παρών στην δίκη του, να έχει δικαίωμα να εκπροσωπηθεί από δικηγόρο και η όλη διαδικασία να γίνεται σε γλώσσα κατανοητή από αυτόν. Αυτά είναι διασφαλισμένα στο σύστημα μας. Όταν υπάρχει κάποιο άτομο για παράδειγμα που είναι υπό την επήρεια ναρκωτικών και δεν καταλαβαίνει τι γίνεται, τότε πρέπει να το διαπιστώσει ο δικαστής και να διακόψει την διαδικασία. Επίσης άλλο παράδειγμα είναι όταν τεθεί στο δικαστήριο η εξέταση από γιατρό, σε περιπτώσεις ειδικά ψυχιατρικών ζητημάτων, τότε ο δικαστής δίνει οδηγίες να εξεταστεί για να δουν αν πράγματι είναι σε θέση να παρακολουθήσει την δίκη του."*

Αποτηερ experienced prosecutor defined effective participation as follows:

> *"Effective participation of the accused in a criminal proceeding means that the accused is capable to represent, either himself or through a lawyer, his rights properly, to be decent and to be the master of himself in the courtroom. There are cases where the accused swears,*

threatens, whether guilty or innocent. The main thing is to have a fair legal representation, and by this, I mean capable, a defendant may have a lawyer but not a good representation."

"Αποτελεσματική συμμετοχή του κατηγορούμενου σε μια ποινική διαδικασία είναι να μπορεί να εκπροσωπήσει, είτε ο ίδιος, είτε μέσω δικηγόρου τα δικαιώματα του σωστά, να είναι κόσμιος και κύριος στην αίθουσα του δικαστηρίου. Υπάρχουν περιπτώσεις που βρίζουν, απειλούν, είτε ένοχοι ή αθώοι. Το κύριο είναι να έχει μια δίκαιη νομική εκπροσώπηση, εννοώ ικανή, μπορεί ένας κατηγορούμενος να έχει δικηγόρο αλλά να μην είναι καλή η εκπροσώπηση."

Some prosecutors have a broader perspective on effective participation defining effective participation as follows:

"Effective participation means presence of the accused person in court and the chance to deliver his or her defence. If an accused person cannot understand what is happening in the courtroom, the court must assume its coordinating role and assist the accused person. If the accused cannot follow the procedure at all, it might lead to an acquittal because of diminished responsibility. If the accused is without a lawyer, the court is under a duty to 'step down from the bench" in order to assist the accused."

"*Αποτελεσματική συμμετοχή σημαίνει παρουσία του κατηγορουμένου στο δικαστήριο και ευκαιρία να παρουσιάσει την υπεράσπισή του. Εάν ένας κατηγορούμενος δεν μπορεί να καταλάβει τι συμβαίνει στην αίθουσα του δικαστηρίου, το δικαστήριο πρέπει να αναλάβει τον συντονιστικό του ρόλο και να βοηθήσει τον κατηγορούμενο. Εάν ο κατηγορούμενος δεν μπορεί να ακολουθήσει καθόλου τη διαδικασία, αυτό μπορεί να οδηγήσει σε αθώωση ως αποτέλεσμα μειωμένης ευθύνης. Εάν ο κατηγορούμενος είναι χωρίς δικηγόρο, το δικαστήριο είναι υποχρεωμένο να «κατεβεί από την έδρα» προκειμένου να βοηθήσει τον κατηγορούμενο*."

For the defence lawyers however, effective participation has an even broader understanding of the defendant being capable of presenting an effective defence. This is an important difference that changes the meaning of how to treat the accused, particularly for persons with different kinds of vulnerability. The defence lawyers interviewed emphasised the right to prepare the defence, which means that the defendants have access to a right to an adequately specialised and professional defence. They criticised the current legal aid system as inadequate, as it entitles only accused persons who are means-tested and in some cases subject to a merit test, while in certain cases it is excluded (e.g. libel).

An experienced criminal defence lawyer noted that effective participation "starts with full disclosure by the prosecution of worthy available material in the case". The lawyer is then obliged to communicate that material and discuss it with his/her client and ask the client for instructions. The defence lawyer stressed that "proper participation is a complex process which requires a very close cooperation and above all trust between the lawyer and the client". The same defence lawyer noted:

"I have seen more than one cases where the defendant was present but unable to follow. The lawyer's work becomes much more complicated. I have seen people being so stressed due to the trial against them, that they do not even understand what is being said in court. Nowadays, in most proceedings, we can access the transcripts in quite a short period of time and if a lawyer feels that his client did not follow the proceedings we can either give him or her a copy

of that transcript or explain to him or her what was said in order to facilitate his/her understanding of the elements. Unfortunately, you cannot stop the proceedings all the time and ask the client if he or she understood what was said but I have seen this happen."

"Έχω δει περισσότερες από μία περιπτώσεις όπου ο εναγόμενος ήταν παρών αλλά δεν μπόρεσε να παρακολουθήσει. Το έργο του δικηγόρου γίνεται πολύ πιο περίπλοκο. Έχω δει ανθρώπους να είναι τόσο αγχωμένοι λόγω της δίκης, που δεν καταλαβαίνουν καν τι λέγεται στο δικαστήριο. Σήμερα, στις περισσότερες διαδικασίες, μπορούμε να έχουμε πρόσβαση στα πρακτικά σε πολύ σύντομο χρονικό διάστημα και εάν ένας δικηγόρος πιστεύει ότι ο πελάτης του δεν ακολούθησε τη διαδικασία, μπορούμε είτε να του δώσουμε ένα αντίγραφο των πρακτικών είτε να του εξηγήσουμε τι ειπώθηκε με τη σειρά για να διευκολύνει την κατανόησή του για τα στοιχεία. Δυστυχώς, δεν μπορείς όλη την ώρα να σταματάς τη διαδικασία για να ρωτήσεις τον πελάτη εάν κατάλαβε τι είπε, αλλά το έχω δει να συμβαίνει»

Another defence lawyer suggested:

"As far as I am concerned, effective participation means access to an experienced lawyer specialized for the specific offence; sufficient time for the lawyer and the client to examine the case before being charged and before pleading guilty or not guilty; access to testimonies, because in Cyprus testimonies of other witnesses is made available to the defence only if the suspect pleads not guilty and only very rarely and under special circumstances does it become available before the suspect pleads. Even in those cases where the police give to the defence a copy of the testimonies, there is no way to ascertain whether what they give to the defence is the entire testimony at the disposal of the police. If the defence challenges the police on that, the police respond by claiming that what they have handed to the defence is what they are going to use in court."

"*Αποτελεσματική συμμετοχή για μένα σημαίνει πρόσβαση σε δικηγόρο έμπειρο για το αδίκημα που δικάζεσαι, παροχή χρόνου στο κατηγορούμενο και το δικηγόρο του να εξετάσουν την υπόθεση πριν παρουσιαστεί στο δικαστήριο και ακόμα πριν κατηγορηθεί, επειδή στην Κύπρο η παραδοχή ή μη παραδοχή είναι μετριαστικός παράγοντας. Επίσης πρόσβαση στο μαρτυρικό υλικό, επειδή στην Κύπρο το παίρνουμε μόνο αν δηλώσουμε μη παραδοχή και μόνο σε ειδικές περιστάσεις μπορεί κάποιος να πάρει το μαρτυρικό υλικό πριν απαντήσει. Ένα επιπλέον πρόβλημα είναι το ότι δεν υπάρχει τρόπος να ελέγξει ο δικηγόρος υπεράσπισης αν η αστυνομία του παραχώρησε όλο το μαρτυρικό υλικό που έχει στη διάθεση της. Συχνά, όταν τεθεί το ερώτημα, η αστυνομία, ισχυρίζεται ότι μόνο αυτό θα χρησιμοποιήσει στη δίκη και ότι επομένως δεν υποχρεούται να παραδώσει άλλο υλικό. Αυτό είναι προβληματικό διότι το υπόλοιπο υλικό μπορεί να περιέχει μαρτυρία βοηθητική προς τον κατηγορούμενο."*

Prosecutors referred to special arrangements that can be made for vulnerable groups. A senior prosecutor noted that "in certain circumstances, the court can make the necessary arrangements to enable defendants with physical, mental or intellectual disabilities to hear and follow the conduct of

the trial". Despite legislation which provides for rights of vulnerable defendants,[249] there are however serious limitations and there are no protocols for these.

A senior prosecutor also added that it is possible to attend the trial through teleconference; this is foreseen in the evidence law. The court may also move to other premises if necessary.

An experienced defence lawyer placed his/her emphasis on what the defence lawyer is able to request as "each case depends on its own facts", depending "on the nature of the disability" but believes "it is up to the lawyer": "when it comes those kinds of facilities, I believe that we are high standard". This illustrates that there are no established systems in place.

An experienced defence lawyer stated that on numerous cases where effective participation of the defendant was an issue and the defence lawyers put that before the judge, the judge decided that the defendant could follow the proceedings:

> *"We put it before the court in several cases that the defendant could not follow the proceedings. In all cases the court always decided that the accused could follow the proceedings. We had a case of a defendant who was feeling dizzy because of an accident. The accused person was hospitalised in the state hospital and the hearing was taking place inside the hospital. He was accused of homicide, after a bomb exploded in his car. We argued that he was injured and could not follow the proceedings, but the court rejected our argument. The judge asked for a medical opinion and then decided that the accused could follow. Since the court hearing was taking place within the hospital and the defence requested an adjournment for the defendant to recover, I do not see that harm would come if the case is adjourned for a week. That is where our system fails. The question should be 'can the accused person follow or not'? What would happen if the case was adjourned for a week? There are cases where time is of the essence and irreparable damage can be caused, but it was not the case here."*
>
> "*Το θέσαμε ενώπιον του δικαστηρίου σε αρκετές περιπτώσεις ότι ο κατηγορούμενος δεν μπορούσε να παρακολουθήσει τη διαδικασία. Σε όλες τις περιπτώσεις, το δικαστήριο αποφάσισε πάντοτε ότι ο κατηγορούμενος θα μπορούσε να παρακολουθήσει τη διαδικασία. Είχαμε μια υπόθεση κατηγορουμένου που αισθανόταν ζάλη λόγω ενός ατυχήματος. Ο κατηγορούμενος νοσηλεύτηκε στο κρατικό νοσοκομείο και η ακρόαση πραγματοποιήθηκε μέσα στο νοσοκομείο. Κατηγορήθηκε για ανθρωποκτονία, μετά από έκρηξη βόμβας στο αυτοκίνητό του. Υποστηρίξαμε ότι τραυματίστηκε και δεν μπορούσε να παρακολουθήσει τη διαδικασία, αλλά το δικαστήριο απέρριψε το επιχείρημά μας. Ο δικαστής ζήτησε ιατρική γνώμη και στη συνέχεια αποφάσισε ότι ο κατηγορούμενος θα μπορούσε να ακολουθήσει. Δεδομένου ότι η ακροαματική διαδικασία διεξήχθη στο νοσοκομείο και η υπεράσπιση ζήτησε αναβολή για να ανακάμψει ο κατηγορούμενος, δεν βλέπω ότι θα προκληθεί βλάβη εάν η υπόθεση αναβληθεί για μια εβδομάδα. Εκεί αποτυγχάνει το σύστημά μας. Η ερώτηση πρέπει να είναι 'μπορεί ο κατηγορούμενος να ακολουθήσει ή όχι'; Τι θα συνέβαινε εάν η υπόθεση αναβληθεί για μια εβδομάδα; Υπάρχουν περιπτώσεις όπου ο χρόνος είναι ουσιαστικής σημασίας και μπορεί να προκληθεί ανεπανόρθωτη ζημιά, αλλά δεν συνέβη εδώ."*

The same experienced defence lawyer noted that "there is no middle way", either the defendant can follow, or he or she cannot follow the court proceedings:

[249] Cyprus, Law on the Rights of Suspected Persons, Arrested Persons and Detained Persons Law of 2005, 163 (I)/2005 (*Ο περί των Δικαιωμάτων Ύποπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005, 163(I)/2005*), Art. 38.

"There are arrangements for persons with kinetic disabilities but not for mental disabilities. The criterion is 'can you follow the case, yes or no'. There is no middle way, there is no procedure 'yes, but help is needed'. Only with the intervention and persistence of the lawyer can the court give time to the accused. If the accused is delivering testimony, the court will give them time. But if they are merely following the hearing without testifying, no time will be given to the accused to understand."

"Υπάρχουν ρυθμίσεις για άτομα με κινητική αναπηρία αλλά όχι για ψυχικές αναπηρίες. Το κριτήριο είναι 'μπορείτε να ακολουθήσετε την υπόθεση, ναι ή όχι'. Δεν υπάρχει μεσαίος δρόμος, δεν υπάρχει διαδικασία 'ναι, αλλά απαιτείται βοήθεια'. Μόνο με την παρέμβαση και την επιμονή του δικηγόρου μπορεί το δικαστήριο να δώσει χρόνο στον κατηγορούμενο. Εάν ο κατηγορούμενος δίνει μαρτυρία, το δικαστήριο θα τους δώσει χρόνο. Αλλά αν παρακολουθούν απλώς την ακρόαση χωρίς να καταθέσουν, δεν θα δοθεί χρόνος στον κατηγορούμενο να καταλάβει."

Other defence lawyers complained that there are extremely limited facilities, for example there are some for deaf people but little else. A defence lawyer stated:

"If the defendant is deaf, then everything will be interpreted for him. That is the only available arrangement, there is nothing else that can be done".

"Έχει, αν είναι κωφάλαλος ο άλλος θα είναι όλα μεταφρασμένα για αυτόν. Στην ουσία είναι το μόνο διαθέσιμο, δεν έχει κάτι άλλο που μπορεί να γίνει."

Defence lawyers note that extremely limited arrangements are available for vulnerable persons. As a defence lawyer suggested, "there are persons of low education who do not understand the trial proceedings and in that case their lawyer must explain to them". There are some arrangements for vulnerable persons, such as arrangements for deaf accused persons where the court permits sign interpretation and interpreters for immigrants who do not understand the language.

There are few safeguards as such for vulnerable groups. There are no protocol procedures and arrangements in place to assist young persons, poor persons, women, and migrants.

d. Discussion of findings

Whilst prosecutors seem sensitive about the defendant's "effective participation", they noted that there are limitations because of pressure for time and lack of facilities to support all defendants. Some prosecutors seem to have a minimalist understanding of effective participation. The minimalist understanding is that the defendant must be present and capable of following and understanding what the trial is about. Police officers interviewed referred to the importance of the accused being in a position to understand what he or she is being accused and follow the procedure, as provided by the standard Police order, which purports implements the relevant law on the rights of detained persons.[250] Police officers also adopt the minimalist understanding of "effective participation".

[250] Cyprus, Rights of persons under arrest / detention, Police Form 129, provided in line with Cyprus, Law on the Rights of Suspected Persons, Arrested Persons and Detained Persons Law of 2005, 163 (I)/2005 (*Ο περί των*

Defence lawyers referred to numerous cases they dealt with where the court failed to make accommodation for defendants who could not follow the proceedings during trial. For defence lawyers, the meaning of effective participation is construed as containing a broad set of rights so that the defendant can mount an effective defence. This is an important difference that changes the meaning of how to treat the accused, particularly for persons with different forms of vulnerability. The defence lawyers interviewed emphasised the right to prepare the defence, which means that they must have a right to access to an adequately specialised and professional defence counsel. The defence lawyers interviewed pointed out that current legal aid system is inadequate, as it entitles only accused persons who are means-tested and in some cases subject to a merit test, while in certain cases it is excluded.

Protocols, procedures and facilities available for persons with vulnerabilities are not readily available. They largely depend on their defence lawyers to put these matters before the court, but it is for the court to decide. Some arrangements can be made for persons with disabilities, but there are few arrangements for vulnerable persons. Persons who are not educated and who do not understand the trial proceedings often are not able to follow the proceedings, particularly when they do not have legal representation. There are few arrangements for vulnerable persons, such as in the case of deaf accused persons, where the court permits sign interpretation, and interpreters for migrants who do not understand the language.

In general, there are no safeguards as such for persons or groups with vulnerabilities. There are very few procedures and systems in place to assist persons with disabilities, young persons, poor persons, women, and migrants.

C.7 Challenges and improvements

a. Challenges

There are several challenges in relation to the presumption of innocence.

- Outdated Judges rules

Defence lawyers stressed that the rules governing the questioning, arrest and criminal investigation are outdated, as they were conceived and developed in an era vastly different to contemporary realities and well before the advent of the digital era. The 'Judges' Rules', which is the main regulatory framework, were conceived and introduced in 1912 and, despite their regular updating, remain outdated, archaic and problematic. Cypriot lawmakers do not regularly update the law of evidence to keep up with societal changes in technology and communication in the crime world. The courts have been reluctant to rule as admissible evidence and testimony of communication recorded via technologies not provided for in the legislation. The challenge here is to ensure that the rights of the accused are protected whilst keeping up with societal and technological transformation. New intrusive surveillance technologies and practices are emerging as well as new domains for criminal activities that need to be checked and regulated in a manner that ensures that the balance of the regime of rights contained within the presumption of innocence is maintained.

- Effective participation

Δικαιωμάτων Ύποπτων Προσώπων, Προσώπων που Συλλαμβάνονται και Προσώπων που Τελούν υπό Κράτηση Νόμος του 2005, 163(I)/2005), Art. 31 and 32.

There are no established procedures and facilities to ensure effective participation, particularly for vulnerable defendants.

- Checks and balances and monitoring on the role of the media

The system of regulation, monitoring and accountability of the media needs to be reviewed, as the function, intrusiveness and impact of the media has grown immensely in the digital era. The competition between media outlets on who reports news first to curious audiences and the use of sensationalism and exaggeration as key market drivers have undermined standards. As an experienced prosecutor noted, the media present a major challenge for justice:

> *"There is no bigger challenge than journalists who can write whatever they want before a judicial process is completed. Journalists just want to sell news and I think that is a major challenge for the presumption of innocence."*

> *"Εκτός από τους δημοσιογράφους που μπορεί ο καθένας να γράψει ότι θέλει πριν να ολοκληρωθεί μια διαδικασία, δεν νομίζω να υπάρχει πιο μεγάλη πρόκληση. Οι δημοσιογράφοι θέλουν απλώς να πουλήσουν ειδήσεις και αυτό πιστεύω ότι είναι μεγάλο πρόβλημα για το τεκμήριο της αθωότητας."*

- Citizen-journalists and non-professional opinion-influencers

An additional challenge is how to regulate and monitor the writing activity of persons who are not media professionals but make extensive use of social media with a huge impact on public opinion including judges, whilst ensuring the necessary balance in a democratic society that allows free speech. Whilst the presumption of innocence and dignity of the accused must be preserved, critical scrutiny and societal involvement in the public sphere must be encouraged. Private individuals, groups and enterprises who are not media professionals, but use social media, such as Twitter, Facebook, Instagram, blogs, YouTube, Tik-Tok and other applications, produce, communicate and reproduce information, sometimes false, that affects the presumption of innocence.

- Enforceability and implementation

There is no single effective mechanism for holding accountable those who violate the presumption of innocence. Victims can sue the perpetrator in a civil court and seek compensation for damage suffered, but this requires having sufficient funds and access to a specialised lawyer. A possible alleviating measure would be to mandate an authority to investigate the matter and to adopt specific rules and guidelines, so as to strengthen the position of the accused. One of the lawyers interviewed said:

> *"The state must take measures to prevent persons from making public statements about an ongoing trial, including police officers and the media. The measures must include both disciplinary and criminal procedures against persons who infringe the presumption of innocence. I recall a case of a double murder in Nicosia a couple of years ago where for a long time the entire country was assuming that the couple's son was the murderer. The state should have taken measures to stop this defamation of a child, but it did nothing to protect him. The Attorney General had made public statements at the time to say that those attributions should be avoided. Mere statements, however, are not enough."*

"Το κράτος οφείλει να λάβει μέτρα να εμποδίσει άτομα από το να προβαίνουν σε δημόσιες δηλώσεις σε σχέση με υποθέσεις που δικάζονται, συμπεριλαμβανομένων και της αστυνομίας και των ΜΜΕ. Τα μέτρα πρέπει να περιλαμβάνουν τόσο πειθαρχικές όσο και ποινικές διαδικασίες εναντίον ατόμων που παραβίασαν το τεκμήριο της αθωότητας. Θυμούμαι μια υπόθεση ενός διπλού φόνου στη Λευκωσία πριν δύο χρόνια, όπου για μεγάλο χρονικό διάστημα όλη η χώρα υπέθετε ότι ο δολοφόνος ήταν ο γιός της οικογένειας. Το κράτος όφειλε να λάβει μέτρα για να σταματήσει τη δυσφήμηση ενός ανήλικου αλλά δεν έκαμε τίποτε για να τον προστατεύσει. Ο Γενικός Εισαγγελέας τότε δήλωσε πως οι υποθέσεις θα έπρεπε να αποφεύγονταν. Αλλά οι απλές δηλώσεις δεν είναι αρκετές."

b. Improvements

There was no convergence of opinions amongst interviewees as to whether there has been an improvement in the implementation of the rights related to the presumption of innocence, concluding that there were improvements in some areas only.

The police officers stated that the rights of accused persons were considerably strengthened over the past few years, to the extent that the police is now severely restricted in discharging its duty to fight crime because of the expansion of procedural rights of defendants. The police stressed the importance of EU and international instruments that have resulted in changes in Police practices. The changes were also triggered by controversial police failures, such as the failure of the police to promptly investigate complaints for the disappearance of migrant women who were finally murdered by a serial killer.[251]

As noted by a police officer:

"Defendants' procedural rights have been strengthened in the last 2-3 years. As for the investigation and the perception on the issue of procedures, I think they have been strengthened. As far as the media and the public are concerned, the fact that there has been a growth of the media has weakened the presumption of innocence at the level of the public. Especially the online media, where a war is waged to publish news first, even if this is not verified as reliable, this is even more intense. With the media's attempt to make the news as fast as possible and to have more information (information, photographic material) that violates the protocols, in the eyes of the public, the presumption of innocence is negatively affected. The relevant EU Directives on criminal and procedural rights have changed for the better. Speaking of the police, we had some cases that received publicity: Some protocols have changed in order to address some mistakes, practices and omissions following investigation about Police failures in the case of serial killer in 2019. New protocol actions with instructions to the police have been introduced for the better. There are many examples of this, such as cases of gender-based violence, or in animal welfare law, all of which have changed for the better, especially for the police."

"Τα διαδικαστικά δικαιώματα των κατηγορουμένων έχουν ενισχυθεί τα τελευταία 2-3 χρόνια. Όσο αφορά την διερεύνηση και την αντίληψη στο θέμα διαδικασιών νομίζω έχουν δυναμώσει. Όσο αφορά στα μέσα μαζικής ενημέρωσης και στην αντίληψη του κοινού νομίζω έχουν αδυνατίσει για τον λόγο ότι έχουν μπει στην κατάσταση αυτή πολλά μέσα μαζικής

[251] Souli, S. (2019) 'Killing Spree, When migrant women disappeared on the island of Cyprus, no one went looking for them', *Air Mail*, 7 September 2019.

ενημέρωσης. Ειδικά τα διαδικτυακά ΜΜΕ με τα οποία γίνεται ένας πόλεμος όποιος βγάλει πιο γρήγορα την είδηση, όπου πολλές φορές ενδεχομένως να υπάρχουν και ασάφειες στις ειδήσεις αυτές, αυτό είναι ακόμα πιο έντονο. Στην προσπάθεια των ΜΜΕ να βγάλουν είδηση όσο πιο γρήγορα γίνεται και να έχουν και περισσότερα στοιχεία τοποθετούν (πληροφορίες, φωτογραφικό υλικό) τα οποία παραβιάζουν τα πρωτόκολλα, στα μάτια του κόσμου και στην αντίληψη που επικρατεί γενικότερα της δημόσιας σφαίρας, επηρεάζει αρνητικά το τεκμήριο της αθωότητας. Οι σχετικές Οδηγίες της ΕΕ σχετικά με τα ποινικά και δικονομικά δικαιώματα τα τελευταία δύο χρόνια έχω την εντύπωση ότι έχουν αλλάξει προς το καλύτερο. Μιλώντας για την αστυνομία, είχαμε κάποιες περιπτώσεις οι οποίες είδαν το φως της δημοσιότητας: κάποια λάθη, παραλήψεις, όπως για παράδειγμα τα θέματα του κατά συρροή δολοφόνου το 2019, έχουν αλλάξει κάποια πρωτόκολλα. Μπήκαν νέα δεδομένα, όσο αφορά τα θέματα των πρωτόκολλων ενεργειών, που δίνονται οδηγίες στους αστυνομικούς αλλά προς το καλύτερο. Σαν αυτό το παράδειγμα υπάρχουν πολλά, για παράδειγμα οι περιπτώσεις έμφυλης βίας, όσο αφορά τον νόμο για τα ζώα, αυτές όλες οι υποθέσεις ειδικά στην αστυνομία έχουν αλλάξει προς το θετικό.'

Two out of the four prosecutors interviewed believed that there is a strengthening of the regime of rights because of EU instruments and more knowledge and awareness in society. This 'march of progress' thesis is shared between the police and the four prosecutors, who claim that there has been an improvement of the situation resulting the implementation of the Directive as well as the growth of awareness of the rights of accused. A prosecutor said:

"The defendants' procedural rights become stronger in recent years due to European directives aimed at protecting the human rights of the defendant. Fifteen years ago, there was no form for the defendant's consent to give fingerprints to the evidence, you just took it from him or her without being told, and then the form was made or there was no access to a lawyer before 7- 8 years. The presumption of innocence has always been constitutionally guaranteed, as has the right to access an interpreter."

"Τα διαδικαστικά δικαιώματα των κατηγορουμένων έχουν γίνει ισχυρότερα τα τελευταία χρόνια λόγω ευρωπαϊκών οδηγιών, προς την κατεύθυνση της προστασίας των ανθρώπινων δικαιωμάτων του κατηγορουμένου. Πριν 15 χρόνια δεν υπήρχε το έντυπο για την συγκατάθεση του κατηγορούμενου για να δώσει δακτυλικά αποτυπώματα για το μαρτυρικό υλικό, απλά του έπαιρνες, χωρίς να του το πουν, και μετά έγινε το έντυπο, ή για το θέμα σε πρόσβαση σε δικηγόρο, δεν υπήρχε πριν 7-8 χρόνια. Το τεκμήριο της αθωότητας ήταν πάντα συνταγματικά κατοχυρωμένο, όπως και το δικαίωμα πρόσβασης σε διερμηνέα."

One prosecutor considers that the procedural rights have neither improved, nor worsened. Two other prosecutors do not see an overall improvement of the situation in practice as a matter of implementing these rights, despite the strengthening of the regime because of the EU Directive. The Directive has certainly strengthened the rights of the accused, but the real change in practice is yet to be seen, particularly in the more difficult and controversial cases where there is pressure from the media and political pressure to punish someone for an alleged crime. As a prosecutor noted:

"The defendants' procedural rights have neither been strengthened nor weakened over the past 2-3 years. We are at the same level of security, which has existed for at least the last 30 years. Nothing has changed in theory. The fluctuations have to do with social stereotypes and the temperament of either judges or investigators. The rights introduced by the EU Directive already existed in our system, I do not think there has been any change since transposition."

"Τα διαδικαστικά δικαιώματα των κατηγορουμένων ούτε ισχυροποιήθηκαν ούτε έχουν φθίνει τα τελευταία 2-3 χρόνια. Είμαστε στα ίδια επίπεδο διασφάλισης, που υπάρχουν τουλάχιστον τα τελευταία 30 χρόνια. Δεν έχει αλλάξει τίποτε στο θεωρητικό επίπεδο. Οι διακυμάνσεις έχουν να κάνουν με τα κοινωνικά στερεότυπα και την ιδιοσυγκρασία είτε των δικαστών είτε των ανακριτών. Τα δικαιώματα που εισήγαγε η Οδηγία της ΕΕ ήδη υπήρχαν στο σύστημά μας, δε θεωρώ πως επήλθε καμιά αλλαγή."

Defence lawyers interviewed are not convinced that there has been a genuine improvement in practice resulting from the legal and institutional innovations of the past few years. The presumption of innocence was not respected in a recent case, still pending before the court, as there were a series of violations by public officials, when a demonstrator was accused of hitting an army soldier officer during a street protest. As one senior defence lawyer stated:

"The rights of accused persons were strengthened in recent years as far as the letter of the law is concerned, through the transposition of EU directives, amendments to the criminal procedure, etc. In practice however, they were weakened. When the right to remain silent is not adequately explained to an accused person, then there is no way that it can be implemented. Or for example, if we establish that certain officials cannot make statements and at the same time, we allow other persons of influence to do it. I would refer again the example of a demonstrator who is alleged to have attacked a soldier during the protest for the closure of the checkpoints.A person of considerable influence wrote on social mediathat the government ought to have to let him cross the checkpoint for seven days and then arrest him and convict him by way of example so that no one else would dare cross. This person has a great influence,, is deemed to be of the utmost credibility as far as news is concerned, and is followed by several other news agencies. And this tweet was retweeted by the entire body of journalists in the institution [with only one exception]."

"Τα δικαιώματα των κατηγορουμένων τα τελευταία χρόνια ισχυροποιούνται στο γράμμα του νόμου, μέσω Οδηγιών της ΕΕ, μέσω τροποποίηση της ποινικής δικονομίας κλπ. Αλλά πρακτικά δεν ισχυροποιήθηκαν. Άμα δεν επεξηγείται επαρκώς σε ένα κατηγορούμενο το δικαίωμα στη σιωπή, τότε δεν υπάρχει περίπτωση να το εφαρμόσει. Ή όταν για παράδειγμα απαιτούμε να μην μπορούν να προβαίνουν σε δηλώσεις συγκεκριμένοι αξιωματούχοι και παραγνωρίζουμε όλους τους υπόλοιπους. Φέρνω ως παράδειγμα ξανά την περίπτωση ενός διαδηλωτή που φέρεται να επιτέθηκε σε στρατιώτη κατά τη διαμαρτυρία στο οδόφραγμα. . Άτομο με μεγάλη επιρροή έγραψε στα μέσα κοινωνικής δικτύωσης ότι έπρεπε να τον αφήσουν να περάσει για εφτά μέρες και μετά να τον συλλάβουν και να τον καταδικάσουν παραδειγματικά. Πρόκειται για άτομο με τεράστια επιρροή, που θεωρείται έγκυρος στην είδηση, και παρακολουθείται από ξένα ειδησιογραφικά πρακτορεία ως το επίσημο κρατικό μέσο. Και τη θέση αυτή την έκαμε retweet όλη η παραγωγή του ιδρύματος, [με μόνο μία εξαίρεση]."

One defence lawyer suggested that over the last years there has been a regression rather than progress and the safeguards for the procedural rights of the accused were undermined due to the huge volume of cases which has resulted in mass justice:

"The rights of defendants have been weakened because of the huge volume of cases which render the delivery of justice extremely slow. Because of the pressure on judges to clear the backlog of cases as quickly as possible, the result is that trials are accelerated, and less attention is paid where needed. Judges are sensitive on procedural rights which are observed. I do not know if they are specifically aware of the Directive on the presumption of innocence. The main problem is that the investigation is carried out by police officers. In other countries, investigation is a quasi-judicial procedure, handled by lawyers or judges."

"Τα δικαιώματα των κατηγορουμένων έχουν φθίνει, διότι υπάρχει τεράστιος όγκος υποθέσεων που καθιστούν πάρα πολύ αργή την απονομή της δικαιοσύνης. Και επειδή υπάρχει μια πίεση οι δικαστές των ποινικών να τελειώνουν με τις καθυστερημένες υποθέσεις, το αποτέλεσμα είναι να επιταχύνουν την εκδίκαση και να μην εναποθέτουν την προσοχή όπου χρειάζεται. Στα δικονομικά οι δικαστές είναι ευαίσθητοι και τα τηρούν. Δε ξέρω αν συγκεκριμένα γνωρίζουν για την οδηγία, πάντως τα διαδικαστικά τα τηρούν. Το κύριο πρόβλημα είναι ότι η έρευνα διεξάγεται από αστυνομικούς. Σε άλλες χώρες, η έρευνα είναι μια οιονεί δικαστική διαδικασία, την οποία χειρίζονται νομικοί ή δικαστές."

c. Suggestions

Several important suggestions were made by the interviewees. Others were alluded to in their analyses:

- Reform of the outdated 'Judges Rules'

As part of the pending reforms of justice currently under debate, the reform the outdated 'Judges Rules', which were created over one hundred years ago, is imperative. As one prosecutor noted:

"The updating of the judicial rules should be addressed as a matter of urgency, taking into account the current problems that have arisen in contemporary criminal trials. There is no coding of the provisions related to the investigative work and no special safeguards for vulnerable suspects. Currently the approach is fragmentary and deficient. We are dealing with rules issued in 1912, whilst nowadays there are other ways in which a suspect is forced to make involuntary confessions. There is an obvious need for updating the rules. Testimonies are not always videotaped. This is practiced only under certain conditions, when interrogating for minors for instance, and I think it should be done for everyone."

"Θα πρέπει άμεσα να δρομολογηθεί η επικαιροποίηση των δικαστικών κανόνων, ούτως ώστε να λαμβάνουν υπόψη τα επίκαιρα προβλήματα που έχουν προκύψει μέσα από τις ποινικές δίκες. Δεν υπάρχει κωδικοποίηση των προνοιών που έχουν να κάμουν με το ανακριτικό έργο και δεν υπάρχουν ρυθμίσεις για τις ευάλωτες ομάδες. Υπάρχει αποσπασματική και ελλειμματική οπτική του ζητήματος. Μιλούμε για κανόνες του 1912, πλέον έχουν ανακύψει άλλοι τρόποι με τους οποίους ένας ύποπτος πιέζεται να προβεί σε ομολογίες που δεν επιθυμεί. Υπάρχει πρόδηλη ανάγκη. Οπτικογραφημένες καταθέσεις δεν γίνονται πάντα. Μόνο κάτω από ορισμένες συνθήκες, γίνεται για τους ανηλίκους και νομίζω πως θα πρέπει να γίνεται για όλους."

- Human rights training for police, judges, and prosecutors

The importance of constant human rights training for police officers, judges and prosecutors could not be stressed enough. One prosecutor stated:

"The continuous training in the field of the rights of the accused, for persons involved in criminal justice, especially for those who carry out police investigative work, is of great importance. It is crucial for them to embed in their work a human rights perspective. I believe

in continuous training, which can compensate for the constant social pressure, sometimes unfair, to resolve criminal cases".

"Μεγάλη σημασία έχει η συνεχής εκπαίδευση των ατόμων, κυρίως αυτών που ασκούν ανακριτικό έργο, όσον αφορά τον τομέα των δικαιωμάτων των κατηγορουμένων, για να ασκήσουν το λειτούργημά τους μέσα από αυτή την οπτική των ανθρωπίνων δικαιωμάτων. Πιστεύω στη συνεχή επιμόρφωσή, η οποία έρχεται να αντισταθμίσει τη συνεχή κοινωνική πίεση, κάποιες φορές αθέμιτη, για την επίλυση ποινικών υποθέσεων."

- Compulsory video recording of all the testimonies

The video-recording of the police interrogation procedure should be made compulsory. This would partly resolve some of the aspects of abuse of confessions, many of which are challenged at the trial for being extracted involuntary. A defence lawyer noted:

"It would help if the testimony that follows the arrest is taped and the video is made available to us, so that we can see how it was conducted. Sometimes children give testimony before the police without their parents and without a lawyer and they often give evidence that incriminate themselves and I get the impression that their rights were not properly explained to them."

"Θα βοηθούσε αν η κατάθεση που ακολουθεί τη σύλληψη βιντεογραφείται και το βίντεο να είναι διαθέσιμο σε μας για να δούμε πώς λήφθηκε η κατάθεση. Κάποτε ανήλικοι δίνουν κατάθεση στην αστυνομία χωρίς την παρουσία των γονιών τους και χωρίς δικηγόρο και συχνά δίνουν μαρτυρία που τους ενοχοποιεί. Έχω την εντύπωση πως τα δικαιώματά τους δεν τους επεξηγούνται επαρκώς."

- Effective and dissuasive system to counter police abuse

An effective and dissuasive system to counter police abuse for persons in detention and under interrogation is called for. This could include establishing a robust system for civil actions against the police with dissuasive damages for the victims and disciplinary action for those found to have been abusive to produce involuntary confessions. The current system seems inadequate. The UN Committee against Torture has repeatedly raised concerns about legislative provisions which provide criminal sanctions for detainees who abuse the right to medical examination or treatment. The Committee also expressed concern over the lack of safeguards to ensure the confidentiality of detainees' complaints alleging torture or ill-treatment by officials and the lack of medical screening upon admission to a place of detention to detect signs of torture and ill-treatment.[252]

- Empowering those whose rights to be presumed innocent have been violated

Reform is needed to effectively enhance the court process and to enhance the rights of the suspects or accused persons to seek remedies during the criminal procedure and afterwards. Legal aid out to

[252] United Nations Committee against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (2019), 'Concluding observations on the fifth periodic report of Cyprus', 23 December 2019.

be available for all kinds of infringement of the presumption of innocence. Another measure would be to strengthen the enforcement mechanisms for public statements against the accused, introducing dissuasive sanctions against public officials, the media and others and compensation for victims. An effective system for monitoring the media is also needed, including the electronic and social media, and media regulation needs to be tightened.

- Reform of the juvenile and young persons' justice laws

Cyprus currently lacks a special Juvenile Court as well as a comprehensive juvenile justice system, which means that minors are essentially tried as adults. Specialised juvenile courts, with judges with expert knowledge in law and psychology are needed. In addition to major legislative improvements and public investment into infrastructures, the police investigation procedure needs to be enhanced with guidelines and safeguards, including cameras, to ensure that due process is always maintained. An additional improvement would be the strengthening of the institution of the Commissioner for the rights of the child through additional funding, resources and extension of mandate.

- Enhance the right to silence

The defence lawyers interviewed consider that the violation of the right to silence and of other procedural rights derived from the presumption of innocence are major problems that often lead to miscarriages of justice. Only a portion of these miscarriages of justice are remedied on appeal and only for those defendants who have access to lawyers, the means, the standing, and the knowledge to fight in the courts for their innocence. Additional procedural safeguards for the police investigation phase must be introduced and testimony obtained in violation of the regulations must be rendered automatically inadmissible in court.

- Enhance safeguards for the effective participation of defendants, including vulnerable persons

Further safeguards are needed to ensure that defendants are facilitated to effectively participate in their trials. Defence lawyers referred to several instances where the court failed to accommodate defendants who could not follow the proceedings during trial, especially where the defendants appeared without lawyers. Beyond the minimalist definition, which merely requires that the defendant must be present and capable of following and understanding what the trial is about, the meaning of "effective participation" requires that defendants have access to a set of rights to be able to prepare and present their defence effectively, including access to a lawyer specialised in the particular offences they are charged with. This is particularly important for persons with different forms of vulnerability. The current legal aid system is inadequate partly because it is means-tested but also because defendants who are granted legal aid by the court are forced to choose a lawyer from a list provided by the court, which does not necessarily contain the best lawyers in the particular field. The legal aid system should be reformed to enable all persons to have free access to a defence lawyer of their choice. Such a system could potentially be funded through taxation.

Established procedures and facilities must be made available for vulnerable persons that do not depend on their defence lawyers. Reasonable accommodation and special arrangements must be readily available for persons with disabilities, but there are few arrangements for vulnerable persons. Systems and procedures must be established and be readily available for vulnerable persons, such as

persons with disabilities, young persons, poor and uneducated persons, women, and migrants. In general, there must be a reform that enhances safeguards as such for vulnerable groups.

PART D. GENERAL ASSESSMENT

The following recurring themes emerged:

- The fact that the presumption of innocence is seen so differently from perspective of the police and the prosecution when compared to the perspective of the defence lawyers is a problem that is manifested in disagreement over the implementation of the rights that the presumption of innocence entails. For the prosecution lawyers, the presumption of innocence is mostly seen as a hurdle to be overcome, as they consider this as an extra burden on the prosecution to prove its case, in order to protect society from crime and criminals. For the defence lawyers, the presumption of innocence pertains to fundamental rights and contains an essential framework that must be guarded in practice, for justice to be delivered.

- The interviewees consider that the right to exercise the presumption of innocence is constitutionally guaranteed and that must be applied to all. In practice however, as most interviewees noted, those at the higher echelons of society enjoy a kind of immunity, whilst the vulnerable, the marginalised, the poor, and the excluded do not enjoy the same level of protection. The presumption of innocence does not apply equally to everyone.

- There are no protocols and procedures and few, if any, facilities exist in place for the effective participation of defendants, particularly for vulnerable defendants. Beyond the basic interpretations for persons who do not speak the Greek language or those who require sign language, the arrangements made are ad hoc. There are no established frameworks for the accommodations and no established safeguards to assist vulnerable persons such as persons with disabilities, young persons, poor and uneducated persons, women, and migrants.

- Whilst the media may play a positive role in scrutinising the authorities, accurately reporting and informing public opinion to avert miscarriages of justice as a result of errors, misconceptions or abuse of power, the role of Cypriot media has been rather negative, and in many cases devastating for justice and the rights and lives of those accused. There is a consensus amongst the interviewees that the media in Cyprus overall plays a negative role and that the stories reported are often exaggerated out of proportion, sensational and distorted. However, there is no agreement between the interviewees as to whether and to which extent such distorted media stories affect the judges mind and the court procedure. The police and some prosecutors consider that the negative media reporting does not affect the criminal procedure and the trial, and that judges are immune from influence. This is disputed by some prosecutors and defence lawyers: the judge live, like any other person, in the society and cannot be immune from public pressures, prejudices and influence. In any case, the fact that media amplify and exaggerate what is often public reference of guilt by public figures and the police is a violation of the presumption of innocence, as set out in the Directive.

- Prosecutors generally seem to trust that overall judges are fair and impartial. However, other than the police, none of the persons interviewed consider that judges are not prone to pressure from politicians and circles of political or economic power. The position that the presumption of innocence is fully respected because judges are trained so as to respect it and do not get influenced by the media therefore seems untenable.

- In general, the transposition of the Directive has strengthened the presumption of innocence by the explicit reference to procedural rights. This adds pressure on the prosecuting authorities (police and prosecution) to improve their practice of inform suspects of their rights, including the right to remain silent and the rules against self-incrimination. It also strengthens the position of the accused to invoke and violations in court. Where the Police fail to properly observe the procedural rules enjoyed by defendants, the likelihood of acquittal of defendants.

- The remedies available upon violation of the procedural rights and the presumption of innocence are inadequate. Such matters can be raised during the trial or on appeal, but they are not always effective. There are some remedies in civil law (e.g. libel) and human rights law, however they are slow, costly, and not accessible for all. The extra-judicial action against the media via the use of voluntary and soft law codes have proven ineffective.

- For confessions to stand during the trial, all procedural rights of the defendant must be respected. Otherwise the voluntariness of the confession will be questioned.

Overall, the safeguards for protecting the presumption of innocence need to be strengthened.

PART E. CONCLUSIONS

- The problem with different perspectives on understanding the presumption of innocence

The study showed that whilst in theory the presumption of innocence is protected, in practice there are obstacles and problems at the level of implementation. The presumption of innocence is seen differently from various perspectives; the police and the prosecutors converged at some points but not all, but the perspective of the defence lawyers was usually completely different. The different perspectives result in disagreement over whether implementation is adequately meeting the standards set by law. The three professions converge in that the presumption of innocence as a fundamental right, but the way they construe this in practice generates and reproduces problems in criminal proceedings and trials: for the police and largely for the prosecution, the procedural rights derived from the presumption of innocence are a barrier, a hurdle to be overcome and burden to be offloaded to protect society from criminals. For the police, abuses may derive from having such a perspective, as rights of the defendants are often perceived as mere 'technicalities' that come in the way of what they perceive as the 'broader good' of society and the 'public interest'. Prosecutors recognise that there might be abuses at the level of police investigation but are confident that these will be rectified by the court. Deference lawyers on the other hand have a broad perspective on the procedure, concluding that there are significant gaps at the police investigation level, fewer but still important gaps at the judicial level and judicial mentality issues negatively affecting the presumption of innocence.

- Different perspectives on how the presumption of innocence is implemented

The police consider that the police practices duly respect the presumption of innocence and only rarely and exceptionally do deviations occur, but in any case, these rare cases are, as a rule, remedied in court. The police believe that the media systematically violate the presumption of innocence but see little role for themselves in addressing this problem. The police also consider that the court safeguards the rights of the defendants and ensures that the principles of the presumption of innocence are fully adhered to.

The view that the court in general safeguards the rights of the defendants and duly ensures that the presumption of innocence is respected is largely shared by the prosecutors interviewed, who admit police abuses and attribute them to lack of human rights culture in the police, established norms, lack of human rights training, pressure from the media, as well as career ambitions of individual police officers. They concur that the way the media treat the accused persons many times does not respect the presumption of innocence. Prosecutors however consider that, in general, media coverage or reports do not influence the decisions of judges. Prosecutors nonetheless consider that judges may be prone to pressure from powerful persons of high standing in terms of their economic, political, and social power. Defence lawyers on the other hand consider that whilst the principle is well established in Cypriot law, in practice there are violations by the police, the public references to the accused's guilt and media bullying, that result in miscarriages of justice.

- The presumption of innocence does not apply equally to everyone.

The study showed that the presumption of innocence does not apply equally to all, as the privileged enjoy better protection, whilst the vulnerable, marginalised, poor, and excluded persons do not enjoy the same level of protection. The latter do not have the same access to lawyers, justice, and the media, given the inadequacies of the legal aid system in Cyprus. The following social factors were identified by the study as adversely affecting the access to the rights derived from the presumption of innocence:

- Gender is an important factor, mostly affecting women are stigmatised situations (e.g. in sexual offences).
- Ethnic background is an important factor that may lead to discriminations, such as the in the case of Turkish-Cypriots and Roma communities.
- Nationality and immigrant status are also an important factor, e.g. for persons of migrant descent, such as black African, Arabic, Asian and eastern Europeans.
- Social class is a crucial factor as well: Those of the lower classes are likely to be treated less favourably than those from the higher echelons of society, who enjoy better protection of their presumption of innocence and their procedural rights.
- LGBTI persons are stigmatised and discriminated against.
- Previous convictions seem to matter, particularly in a small society like Cyprus. In most cases accused persons are 'known' to the police and the judges or related to others they know.

There also other factors that affect how the accused are treated. These include the following:

- The extent to which there is public or political pressure to find or punish the suspect operates as pressure on the police to 'cut through corners' and infringe on procedural rights of the accused to find the criminal.
- The role of the police officer in charge of the investigation is a factor that affects whether it is respected.
- Police attitudes, culture and established practices pertaining to respect or otherwise of procedural rights.
- Judges attitudes and their view on the kind of offences.
- The more acute the inequality of power between the individual suspect and the police or the media, the more difficult it is for the presumption of innocence to be protected. The tendency of the court to assume that police testimony is prima facie credible often means that only a fraction of police violations will be established in court. The higher the social status of the accused, the more attribution of guilt by sensational media outlets and the more unacceptable in the eyes of the court the media conduct.

- Misconception and failures in safeguarding the prohibition of public references to guilt

There is a misconception about who is responsible for violation of the prohibition of public references to guilt. In general, the police consider that it is unfortunate, but not deliberate on the part of the police that the accused persons are often named as having committed an offence before trial. They

do not consider it to be their responsibility. Given their resources, capacity, and priorities, one can understand why the police would perceive matters in this way. The prosecutors have a similar approach on the subject, as they have a narrow approach that focuses on proving guilt in the criminal procedure and the trial. This entails the sealing off from other societal influences to concentrate on the criminal case and evidence before them. The prosecutors consider that judges are trained to adopt such a focused and narrow approach, which protects them from any undue and unlawful outside influence. This is in line with the traditional approach that is inherited from British common law and has been adopted in Cypriot jurisprudence.

Criminal defence lawyers point to the inadequacies of the system, whereby public figures, the police, or other persons who have access to the media outlets or social media, publicly criminalise the accused before conviction. Defence lawyers justifiably consider that the surrounding public mood and atmosphere creates a hostile environment which undermines the presumption of innocence. Even if there is acquittal in the end, either in the first instance or on appeal, this has devastating and lasting effect on the accused. The post-festum remedies in civil actions, after the trial is over for damages for defamation libel are not readily available to all. If available, the potential monetary damages that may be awarded seem inadequate to compensate for the damage done.

Whilst it was generally accepted that there was widespread prejudice against certain groups at the societal level, such as migrants and members of ethnic groups, the interviewees denied that this was also happening in the criminal justice system, essentially locating all members of the police and the judiciary in a vacuum which is sealed off from society. This presumption is not tested against the outcome of criminal cases but is premised only upon the presumption that judges are or ought to be sufficiently trained to ignore societal pressure.

In practice, no authority in the criminal justice system takes responsibility for ensuring implementation of the public references to the accused as guilty and how the media treat the accused. This is a serious gap in the implantation of the directive. From the perspective of the requirements of the Directive, this is an inadequate approach, that amounts effectively to an admission that aspects of the principle of the presumption of innocence are not implemented.

- Insufficient protection from public figures violating the presumption of innocence by public statements

The study has located numerous instances where the express provisions of the Directive protecting the accused from public statements by public figures, such as the Government Ministers, the police press officer, the chair of the state radio and television, mayors and other politicians etc. were infringed. These violations have happened after the transposition and the implementation of the Directive, illustrating the inadequacy of monitoring and the effective averting sanctions. When there is an infringement by the media and/or a public figure by making a statement that refer to the guilt of the accused, this often leads to a vicious cycle in leaked information about the case. In such circumstances, defence lawyers legitimately claim that there is no other way to counter public references to guilt, often leaked or officially announced by the police, than to present to the public the accused person's version of the events and avert a miscarriage of justice.

- Dangerous liaisons: Insufficient monitoring and implementing the regulations

The study found that there is a problematic relationship and liaisons between the media and the police, prosecutors, and lawyers. Whilst there are regulations of the Cypriot Bar Association about these matters, these are blurred by the fact that many big firms of lawyers are media tycoons or own significant shares in media groups which entail relations of dependence and undue influence. Also, there are relationships that derive from economic partnerships or joint business ventures, unofficial or other networks, kinship, and friendly relations in a small society, which may operate in a manner that obfuscate transparent relationships between the legal world and the media. These networks may operate in a manner that leaks or distort information, which enters the public domain and adversely affects the presumption of innocence of the accused in criminal cases. In the absence of effective monitoring and dissuasive sanctions, these tend to be perpetuated and expand, particularly with the rise of social networking, the social and electronic media.

- Media coverage and insufficient monitoring and regulation, particularly electronic media

The study revealed problems with media reporting of criminal investigations and trials. The role of the media to inform public opinion so as to avert miscarriages of justice is not adequately exercised, as the practice is to report news that will attract readers, viewers and clicks. The overall evaluation is that the role of the media is rather negative for the rights of the accused, with exaggerated, sensational and distorted information, disregarding the presumption of innocence. As a prosecutor noted, there is systematic “media bullying” and defamation of the accused. Media monitoring and regulation is ineffective and inadequate. The Journalists Code casts a duty on journalists to safeguard the presumption of innocence but, despite some positive decisions from the Media Complaints Commission, self-regulation has not managed to curtail media abuses, as the process does not provide either for sanctions to media outlets or for compensation to victims that could serve as deterrent.

- Inadequate safeguards to prohibit the presentation the accused persons as guilty

There are rules and guidelines prohibiting the presentation of accused persons as guilty: Handcuffs are taken off before the accused person enters the court, no special clothes are required to be worn by accused persons or prisoners who are also permitted to cover their faces whilst being transported to court.

Even though the videotaping or photographing of accused persons in the courtyard is not permitted, the media regularly infringe this and show pictures and videos of accused with handcuffs, whilst criticism against the media for these reports is often received as an attempt to interfere with press freedom, arguing that they have a duty to inform the public.

The legal remedies available when an accused is presented as being guilty are inadequate and are not accessible to all. Apart from raising matters in court or on appeal to be acquitted, the remedies are post-festum civil actions or complaints to watchdogs which have very few powers. The remedies cannot effectively undo the harm done, they are costly and take a long time.

- Burden of proof: Legal standards and exceptions

The burden of proof is on the prosecution who must prove on the standard of beyond reasonable doubt all the elements of the offence to secure a conviction. When there is a shifting of the burden of proof, the defendant must prove only on the balance of probabilities. Several exceptions to the principle of the presumption of innocence have been mentioned, such as the following:

- When the accused person can easily offer an explanation, or the accused has readily the information (e.g. provide certificate or permit).
- In cases of possession of illegal substances.
- When the defendant offers as defence something relating to his or her mental state.
- Strict liability cases in criminal proceedings.

There are different perspectives pertaining on how the principles are implemented in practice between the three groups interviewed. Overall, the police, prosecution and defence lawyers appear to be well conversed with the legal concepts and standards regarding the burden of proof.

- Restrictive measures to contain the spread of the Covid19: Broadening scope for exceptions?

There were disagreements amongst interviewees as to whether the recent Covid-19 measures generated new scope for exceptions that reverse the burden of proof towards the accused. Defence lawyers claimed that the measures widened the scope for the exceptions as it created new strict liability offences where the burden of proof on the accused, for instance to prove that they left their homes during lockdown for good reason and after having obtained the necessary permit. The police officers and two prosecution lawyers deny that there is any issue, or indeed a reversal of the burden of proof in these cases. One experienced prosecutor agreed with the lawyers that the measures were problematic, as they derived legality from various necessity-invoked provisions, which negatively impacted on fundamental rights resulting in the proliferation of states of exception. Defence lawyers claimed that the police practices preceded the restrictive Covid-19 measures, as they were extending police powers and legitimising practices and attitudes which disregard the rights of accused persons. The defence lawyers noted that the measures to contain the virus have widened the scope for potential violation of the presumption of innocence, particularly the right to silence.

- The disagreement over confessions: Need for corroborative evidence

The police handling of confessions by the accused is a contested issue. The study found that the three professions have different perspectives on the extraction of confessions from the defendants. Where the evidence is based on the confession of the accused, the judge must decide whether any non-compliance with the rules of evidence affect the voluntariness of the testimony. For the police, a confession marks the end of the presumption of innocence and this is seen in a positive light as the resolution of the case in fighting crime. They consider that the police observe the rules and only rarely are there infringements. For prosecutors, overall, there is observance of the rules on confession that safeguard against abuses by the police and, in any case, the court is the ultimate safeguard which will acquit the defendant, if it can be proved that the confession was involuntary. For the defence lawyers, the confessions are prone to abuse by the police and that abuses to obtain confession are common in

Cyprus; accused persons who appear in court without a lawyer will rarely be able to argue successfully that their testimony to the police was involuntary.

From the perspective of the police who consider it their primary task to fight crime and secure convictions, procedural and substantive rules for the protection of the accused may be perceived as mere technicalities and even hurdles. There are also inconsistencies in the way courts treat confessions: sometimes courts convict solely on the basis of a confession and in other cases they will say the confession does not suffice to secure a guilty verdict.

The lawyers agreed that an enhanced system of adequate safeguards, particularly for vulnerable defendants is needed, requiring corroborative evidence to secure conviction as well as video-recording of interrogation to guard against potential police abuses. Another important mechanism would be to establish civil society monitoring and consultation, regular auditing, and reporting, as well as effective systems of sanctions against police abuses and violence.

- Enhancing the right to silence and the rules against self-incrimination

The study found that there are divergent views between the three professions about how the right to silence and the rules against self-incrimination must be implemented and the extent to which these are observed in Cyprus. The study also provides insights into the implementation of the rules and law in practice. The courts in Cyprus often exclude evidence that is obtained in violation of the defendants' right to silence and the rules against self-incrimination, so some degree of protection is offered by the courts. The fact that the police investigation procedure is still governed by outdated Judges' Rules, which are not automatically legally binding, and evidence may or may not be excluded at the discretion of the court, extends the scope for potential abuses.

Whilst the principles under Article 7 of Directive 2016/343 are transposed in Cyprus, the research revealed implementation gaps. Contrary to the position expressed by the police, defence lawyers took the view that information is not adequately shared. There was variance between the four police officers about the right of the accused to refuse to give blood, urine or DNA samples or other data or codes or pin codes that may lead to self-incrimination, which suggests that the practice is not uniformly compliant with the rule against self-incrimination.

The current system appears unable to adequately respond to these challenges. Better safeguards are needed, including measures to enhance the provision of information, access to advice and better access to legal aid.

- Enhancing the right to be present and safeguards for the defendants' effective participation

The Constitution provides that all persons charged with an offence are entitled to defend themselves in person or through a lawyer of their choice. Police officers and most prosecutors seem to have a minimalist understanding of effective participation, amounting merely to being present at the trial and being in a position to follow and understanding what the trial is about. All prosecutors were highly sensitised about this issue but admitted that there are limitations because of time pressure and lack of infrastructure facilities to support all defendants. Lawyers, on the other hand, identified the problems in accessing a suitable lawyer as the main problem for effective participation; particularly

for vulnerable defendants; in this context, in the absence of a good legal aid system, the most vulnerable are the accused persons without financial means. Reform is needed to provide also for the necessary accommodation for persons with disabilities, young persons, persons of low education, women, and migrants.

- Necessity of reform to meet the challenges of the technological age

The study has found that despite numerous piecemeal reforms, the laws and regulations that govern the questioning, arrest and investigation remain outdated. The basic framework was conceived and developed during an era before the advent of the technological, networking, communication, and digital era. There is a need for a comprehensive reform and replacement of the 'Judges rules'. Cypriot lawmakers are called upon to establish a modern firework that fully codifies and takes the best of the best from the current rules and laws of procedure but also enhance and update it to meet societal changes in technology and communication in the crime world, but in a way that safeguards the rights of the accused, as provided by the Directive to protect the presumption of innocence.

- The implementation of the Directive: the gaps, inadequacies, and scope for improvement

The transposition of the Directive has strengthened the presumption of innocence by the explicit reference to procedural rights. This study has illustrated the important gaps and inadequacies of the Cypriot criminal justice system in protecting the presumption of innocence. The transposition of the Directive sets the necessary benchmarks on the police to improve their practice of informing suspects of their rights, including the right to remain silent and the rules against self-incrimination. It also strengthens the position of the accused to invoke this to challenge in court any infringements. Overall, the implementation of the EU Directive on the presumption of innocence illustrates both the strengths and weakness of the Cypriot criminal justice system in protecting the rights of the accused at the level of legal theory, sociolegal practice, and implementation on the ground. The Directive codifies important benchmarks to be utilised to enhance the implementation of the rights contained in presumption of innocence. The study found that the standards set in the Directive are only partially met in Cyprus. The following gaps and weaknesses were located:

- Not all groups have equal access to protection, as access is mediated by several factors, primarily class and race. Persons of lower economic and social status, youth, persons of migrant background were more likely to have limited access to rights during the investigative process, to be framed guilty and be stigmatised. This can be attributed to mentalities both at the level of the police as well as at the level of the judiciary, impacted by the negative role of the media.
- There are systemic gaps at the provision of legal aid, access to specialised lawyers, inadequate safeguards at the police investigation level and an outdated regulatory framework for the police.
- Establishing systemic and procedural safeguards for effective participation of the defendants in the proceedings and the trial for vulnerable groups.
- Systematic monitoring and measures for protection from public utterance of guilt by public officials, understood in the widest sense of the term, as provided for by the Directive 2016/343.

- Tightening up the regulatory framework for the media, taking into account that current media regulations are of limited impact and self-regulation has not yielded satisfactory results.
- The establishment of effective remedies to avert, deter and immediately detect and halt violations on behalf of both, traditional and new media, as well as social and digital networking platforms and tools.

The Directive on the presumption of innocence may act as a springboard that can potentially have a positive impact, a "justice cascade"[253] as result of mutual learning, better implementation of EU and international human rights laws and norms. Lessons can be drawn from the positive impact on human rights of the EU Equality Directives[254] that became key instruments and reshaped the institutional frames and the regime of rights.[255] At the same time, it is essential to promptly identify and address weaknesses and systemic failures as well as trends and practices that suggest backtracking and regression. Constant compulsory human rights training for both police and judges emerges as an imperative need.

- Further research

Further research is required on the subject, extending the findings of this study, as follows:

- Further research ought to include media practitioners and journalists, representatives, relevant NGOS from vulnerable groups, and persons accused and acquitted due to failure to protect the principles and rights of the presumption of innocence.
- Further sociolegal analysis ought to be carried out to examine empirically, classify and locate the trends by analysing all the cases where there was acquittal because of violations of the presumption of innocence. A comparative transnational perspective study needs to be made, to locate trends and processes over last decades and comparing these to the potential changes provided by the EU directive, EU law and international legal norms.
- Identification of transferable good practices from other national contexts that could potentially form the basis for legislative improvements at national and at EU level.

[253] Sikkink, K. (2011) *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics*, W. W. Norton & Company.
[254] The Employment Equality Directive (78/2000/EC and the Race Equality Directive (43/2000/EC).
[255] Chalmers, D (2001) 'The Mistakes of the Good European?', Fredman, S. (ed.) *Discrimination and Human Rights: The Case of Racism.* Oxford: Oxford University Press. Fredman, S. (2001) 'Discrimination and Human Rights', Fredman, S. (ed.) *Discrimination and Human Rights: The Case of Racism.* Oxford: Oxford University Press.

Annex 6 – SR 23 Presumption of innocence - Case study

Member State case study/ media coverage #1: Doros Georgiades v The Republic ('the Georgiades case')

Member State case study/ media coverage #1		
1	**Reference details/Name/Title**	Cyprus, Supreme Court, Appeal Jurisdiction, Doros Georgiades v The Republic (*Δώρος Γεωργιάδης ν. Δημοκρατίας*), Criminal Appeal No. 7243, 14 January 2003. The case is commonly referred to as 'the Georgiades case'.
2	**Brief description of the case**	The appellant was a well-known musician who had participated in an assessment committee of a TV show, which evaluated the chances of young musicians to succeed in the music industry. The complainants were girls who had visited the appellant in his studio for recordings and subsequently filed complaints against him for sexual abuse. The appellant was found guilty and was sentenced to imprisonment of two and a half years. He appealed his conviction on the grounds that the trial court did not pay due attention to the issues raised by the defence, the endorsement of the testimony of the complainants was wrong and the preoccupation of the media with the case led to the infringement of his right to a fair trial, in violation of article 30(2) of the Constitution. The appeal court decided that the trial court had indeed erred: • For not taking into consideration the position of the appellant at the first instance trial. • For not properly evaluating the issue raised by the time which elapsed between the incident and the complaint to the police, as the law expects a direct reaction and complaint from the victim of sexual abuse. • The trial court failed to take into consideration a letter published on the internet by one of the two complainants under the title "victims of a paedophile". • The court did not take into consideration the circumstances which led the judges to reject the charge of indecent assault against the appellant and convicted him only for sexual abuse of a

		minor. The circumstances had created such a negative climate that objectively speaking the conviction (for sexual abuse of a minor) was the only possible answer. Because the trial court had used the wrong criteria to determine whether it could impartially try the case given the extensive media coverage. As it emerged from the trial court decision, the criterion was subjective. The trial court was wrong to decide that there was no risk for the proceedings to be tainted by prejudice from the extensive media coverage because the trial was conducted by judges and not by jury. Even the Attorney General's office had referred to unprecedented media coverage, expressing concerns over the potential impact which this may have on the delivery of justice. In a statement to the press, the Attorney General at the time had raised the alarm about the impact which the huge volume of media reports could have on the appellant's presumption of innocence and warned the media that he will instruct criminal prosecutions against media outlets who publish reports that may potentially influence the correct delivery of justice. The trial court had failed to consider this important announcement.
3	**Timeline of events**	The appellant, a famous musician, had his own recording studio where the complainants, who were minors at the time visited him for a test regarding their singing abilities. The incidents were alleged to have taken place in 1995, 1996, 1998, and 1998 1988 and in 1989. In 2001, the complainants filed complaints against him that, during their visits to his studio, he sexually abused them. The appellant denied the charges. The trial court concluded that the complainants were truthful and the appellant dishonest. The conviction was reversed at the appeal court which concluded that the coverage of the complaints by the media was unprecedently huge and negative that the court could not have remained impartial and objective.
4	**Media coverage**	The pre-trial media reports were removed from the internet. Only one article concerning the case was still available online, written by a journalist after the Appellant was acquitted on appeal. The journalist was essentially apologising to the Appellant for having contributed to his defaming in the media, stating that the Appellant himself had contacted him and informed him of his acquittal, because this

		was not sufficiently presented in the media.[256] The article highlighted the fact that the Appellant was finally acquitted, which was not sufficiently presented in the media.[257] All other media reports referring to the Appellant were removed from the internet. Several court decisions are reported, however, where the Appellant sued specific media outlets for libel. In one of these cases, the appeal court reversed a trial court decision against a media outlet which had been found guilty of libel and ordered to pay compensation of €170,000 to the Appellant for 13 media reports, ten of which were headlines, during the period 2-17 August 2001 concerning the complaints and the police investigation against the Appellant. The Appeal Court found that the reports contained facts and comments which are classified as personal opinions regard the acts and conduct attributed to the Appellant, but the facts analysed were real. The media reports did not suggest that the Appellant was guilty but that the police had complaints in their hands forum young women who alleged indecent assaults from the Appellant and that the police had secured an arrest warrant. The Appeal Court concluded that the issue at stake was of public interest because the Appellant was a public person, adding that there is no legal principle that the publication of details which appear to support the complaints about criminal conduct investigated by the police is not in the public interest. The Appeal Court referred to judicial trends at the ECHR which favour the liberal interpretations of person opinions and comments when the subject is a public person, adding that even the newspaper had used strong language, it did not exceed the acceptable boundaries of a fair comment made in good faith. To the extent that the Appellant could not prove that the comments were made in bad faith, and the real basis of the media reports were essentially true, the articles could not be termed as libel.[258] The Attorney General at the time, issued a press statement on 14 August 2001, asking the media to stop publishing references to the case as this is likely to influence the delivery of justice and warning that he will prosecute those media outlets who infringe the right of the accused to be treated innocent until proven guilty.

[256] Constantaras D., ' Συγνώμη στο Δώρο Γεωργιάδη', undated.
[257] Constantaras D., ' Συγνώμη στο Δώρο Γεωργιάδη', undated.
[258] Cyprus Supreme Court, *Appeal Jurisdiction, Publishing house Dias Ltd v. XXX Georgiades* (Εκδοτικός Οικος Δίας Λτδ ν ΧΧΧ Γεωργιάδη, Appeal No. *339/2008,* 24 March 2020.

		In October 2009 the District Court issued a decision in favour of the Appellant in a libel lawsuit against the TV Channel Sigma, belonging the same media group as the above case, awarding the Appellant compensation of €130,000. The statements made by the journalist which were considered to contain libel referred to a network of paedophiles who were sexually abusing young girls for years. The journalist stated that following their first report, tens of mothers had called the TV station to report that the two "gentlemen" had also abused their daughters and demanded of the mothers to stop complaining like little women so as not to jeopardise the future of their daughters in the music industry. The journalist further claimed that he had information that the Appellant had tried via his connections to the President of the Republic to secure a cover up the case. The journalist reported extensively on the suicide of a man who knew two of the complainants and who had allegedly killed himself to ensure that the case would not be covered up. The media channel showed the President of the Republic stating: "we cannot be characterized as a society of paedophiles because we have two paedophiles. In other societies there are many more paedophiles and worse things are happening. The law will be implemented, and it is up to the court to impose the penalty and this must be such so as to act as a deterrent." When the government representative was questioned about the President's statement and how this impact on the presumption of innocence, he responded that the President had referred to suspects and not to paedophiles. The leader of the opposition at the time also made statements about 'rotten values' accusing the government of not taking sufficient measures to address the problem. The Appellant told the Court that because of the above media coverage of the case, he was deprived of his freedom, humiliated, discredited, and defamed. He told the court that even after his acquittal the TV channel did not proceed to rectify their previous reporting. He added that the channel was constantly applying pressure on public persons to make statements about his case, leading to the negative statement made by the President of the Republic.

		The Court concluded that the repeated use of the word 'paedophilia', the type of music at the background, the connection with the suicide of a man who knew two of the complainants, suggested to the average audience that the appellant was guilty and as such it was defamatory. [259] The Appellant sued additional media outlets and although he secured a trial court decision in his favour, this was often reversed upon appeal. One of these concerned the newspaper Politis which printed headlines "Offences from May 2001-acccused of crimes-penalties up to 20 years are foreseen", "Sins from 1989 until this year". The Appellant argued that his constitutional rights including his right to the presumption of innocence were infringed because of the media coverage. The trial court accepted his claim for libel, but this was reversed at the Supreme Court, where the Court found the media reports as fair comments made in good faith. The Court stated that the criterion is not whether the reader may perceive a media report as accurate or not or how the report was perceived by the appellant or other persons; for libel the criterion is the natural and habitual meaning of the words used, based on the understanding of the reasonable man.[260] Relying upon the above precedent, another libel action which had succeeded at trial court level was reversed upon appeal, as the court found that the newspaper merely reported the facts at the time and fair comments made in good faith. The titles used by the newspaper were "25 charges 'burn' Doros", with frequent use of the words 'paedophilia' and 'suspect'.[261]
5	**Key issues**	In the frame of another libel action, the Appellant appealed a trial court decision, which had turned down his request for legal aid to enable him to cover the costs of the libel lawsuit. Although the legal aid law does not cover libel actions, the appellant argued that the media reports under review had infringed his right to the presumption of innocence. The trial court rejected the legal aid application on the ground that the media reports did not infringe his right to the presumption of innocence and granted the Appellant compensation of €35,000. The Appellant appealed against the trial court findings regarding the grant of legal aid. The Appeal Court confirmed the trial court finding in rejecting the legal aid application, dismissing the arguments of the Appellant about ECHR case law which

[259] Cyprus, District Court of Limassol, *Doros Georgiades v. Sigma Radio Television Ltd et al (Δώρου Γεωργιάδη v. v. Sigma Radio Television Ltd et al)*, Action No. 919/03, 13 October 2009.
[260] Cyprus Supreme Court, Arktinos Publications v. Doros Georgiades (*Εκδόσεις Αρκτίνος v. Δώρου Γεωργιάδη*), Civil appeal 118/2008, 4 March 2011.
[261] Cyprus Supreme Court, Philelftheros v. Doros Georgiades et al (*Φιλελευθερος v Δωρου Γεωργιάδη et al*), Civil Appeal no. 335/2008, 17 July 2014.

		imposes a duty on states to grant legal aid where the right to a fair trial is challenged. The Appeal Court found that the ECHR rulings do not on their own grant a right to legal aid against the provisions of the law and that this would be possible only if the legal aid law was declared unconstitutional for violating the right to a fair trial. The courts could grant legal aid in spite of legislative provisions to the contrary only if the deprivation of legal aid would lead to the infringement of the right of a litigant to access justice, which was not the case here.[262] This decision combined with the reversal of several libel decisions suggests that the remedies available to persons whose presumption of innocence was infringed are even more limited than what the law suggests.
6	**Key consequences or implications of the case with regard to the presumption of innocence**	The appeal court upheld the appeal and quashed the appellant's conviction. This was one of the rare cases where a criminal conviction was quashed for reasons including the infringement of the presumption of innocence, although it is not possible to predict the outcome if the other reasons were not present at the same time. One cannot ignore the fact the role played in this case by the identity of the Appellant as a public figure, which permeated the preoccupation of the media, the negative frames of guilt presented by public persons in response to the media and finally the acquittal from the court which was essentially debating on whether the complainants had consented to the acts of complained of, ignoring the fact that they were minors at the time.
In case the case brought before a court or a non-judicial mechanism – the following questions would also need to be answered		
7	**Brief Summary of the case and media reporting on the decision**	The Court acquitted the Appellant for several reasons including the fact that the presumption of innocence had been infringed. There were no media reports on the acquittal available on the internet.

[262] Cyprus Supreme Court, Appeal Jurisdiction, Doros Georgiades v. Telegraphos Publishing House Ltd (*Δώρος Γεωργιάδης ν. Εκδοτική Εταιρεία Τηλέγραφος Λτδ*), Appeal No. 291/2008, 28 November 2017.

Member State case study/ media coverage #2: Andreas Kyprizoglou et al v the Republic (the Rikkos Erotokritou case)

Member State case study/ media coverage #2		
1	**Reference details/Name/Title**	Supreme Court, Appeal Jurisdiction, *Andreas Kyprizoglou et al v the Republic (Ανδρέας Κυπρίζογλου et al v. Δημοκρατίας),* Criminal Appeals Nos. 53/2017/64/2017, 66/2017, 68/2017, 15 December, 2017. The case is publicly referred to as 'the Rikkos Erotokritou case'.
2	**Brief description of the case**	This was a high-profile case where the Assistant Attorney General was accused, alongside with a large law firm and its officers, of corruption, conspiracy to divert the course of justice and conspiracy to defraud. The President of the Republic testified in Court in his favour, whilst the Attorney General, the former Chief of Police, an opposition MP, and other public persons testified as witnesses for the prosecution. The accused argued that the appearance of the Attorney General in a dual capacity, as a witness for the prosecution as well as the institutional prosecutor, alongside with the extensive media coverage resulting from the involvement of the Attorney General and the process of investigation, raised issues of lack of impartiality and infringement of the right to fair trial. The trial court convicted the accused, including the Assistant Attorney General, for bribery, accepting gifts, corruption, and abuse of power and imposed prison sentences. In the case of the Assistant Attorney General, the prison term was three and a half years; for the director of the law firm it was two and a half years. All convicted persons appealed their conviction on several grounds. The Appeal Court upheld the conviction.
3	**Timeline of events**	In August-November 2013, the accused law firm allegedly conspired with the Assistant Attorney General at the time to not enter an appearance at a case in which they were acting as lawyers so that a decision will be issued in the absence of the defendants in that case. In

		exchange the Assistant Attorney General allegedly agreed to promote the criminal prosecution of five natural persons and one legal person for a case involving a trust deed of several millions of Euros and ownership of a company of Russian interests named Providencia. The Attorney General appointed criminal investigators, including a former judge, to investigate the Providencia affair and then held a press conference to present the results. Subsequently the Attorney General prosecuted the Assistant Attorney General alongside with a law firm and its director for bribery and conspiracy to derail the course of justice. The accused were convicted at the trial court stage and their conviction was subsequently affirmed at the Appeal Court.
4	**Media coverage**	The media followed the case very closely with daily headlines and extensive media reports, but they were divided. Some major media outlets stood by the version of events as presented by the Assistant Attorney General and others supported the actions of the Attorney General. This was a highly politicised case that involved both public officials as high up the ladder as the President of the Republic himself. One of the most highly publicised phrases was the word "shame, Mr President" which the Attorney General told the President via the media, in response to the President's obvious stand in support of the Assistant Attorney General. Both the Attorney General and the Assistant Attorney General held press conferences on the case and subsequently made repeated statements to the media.
5	**Key issues**	The accused persons claimed that the investigation was unfair because it failed to take testimony from all persons involved in the case and did not take testimony from the Attorney General himself who received the result of the investigation and did not share this with the Assistant Attorney General, thus acquiring an advantage over the accused persons having in his hands the entire testimony and adjusting his own testimony accordingly. Instead, the Attorney General held a press conference announcing that according to the investigation's conclusion the Assistant Attorney General had committed the crime of bribery of a public official. The accused persons argued that the Attorney General's statements infringed the presumption of innocence and that given the status of the institution of the Attorney General his statements created a strong impression that the accused persons were guilty. The

		decision to appoint a criminal investigator who was a former judge and then two more criminal investigators to 'strengthen' the case against the accused carried the element of lack of objectivity, since the investigation was seeking only and exclusively evidence that would find the accused persons guilty, in violation of the principle of impartiality. No investigation was carried out into evidence that could potentially prove that the accused persons were innocent. The Attorney General was in contact with the private lawyers for the prosecution, in full knowledge of the fact that he himself was going to be an essential witness in the trial. In spite of being a witness himself, he assessed the credibility of the testimony and found his own testimony credible and found other witnesses non-credible without any justification. He then signed the indictment against the accused, acting in a dual capacity as both complainant and prosecutor against the Assistant Attorney General with whom there had been tensions for a long time. The accused claimed that the Attorney General abused his position, directing and orchestrating the testimony, infringing the presumption of innocence, the principle of impartiality, the principle of the equality of arms and in essence the principle of a fair trial. The Court found that the question as to whether a trial was fair must be addressed on the basis of an assessment of the trial in its entirety because only in this context is it possible to conclude whether or not the right to fair trial was infringed. Allegations for infringement of the right to a fair trial are not examined in abstract but in light of each case and the accused person carries the burden to prove that their defences was adversely affected. In response to the allegation made by the accused persons that the Attorney General's contact with other witnesses whilst being a witness himself infringed the principle of impartiality, the court found that there is a difference between witness coaching and training and witness familiarization, concluding that the a contact and an interview of a representative of the prosecution with a witness for the prosecution at the pre-trial stage is not prohibited. On the contrary, the prosecution has the right to such contact which may include the reading of the witness' testimony as given to the police, clarifying questions and locating additional evidence in the testimony, provided the contact with the witness is not aimed at strengthening the testimony of the latter in court. The Court found that the appointment of criminal investigators at the pre-trial stage, the signing of the indictment by the Attorney

		General whilst at the same time being a witness in the case was in fact in line with the powers granted to him by the Constitution. The Court admitted that the case at hand is unprecedented in Cypriot legal history, indicating that it is highly unusual for the Attorney General to appear as a witness in a case where he is also the prosecutor. It nevertheless went on to conclude that in light of the powers granted to the Attorney General by the Constitution, these actions do not necessarily lead to lack of impartiality, adding that one must not lose sight of the fact that the final determinator in the case is the court, which will decide on the basis of the testimony before it. The argument of the defence that the prosecution infringed the right to a fair trial due to its failure to call particular persons as witnesses who could have testified essential facts in favour of the accused was rejected by the court on the ground that the witnesses referred to did in fact testify as witnesses for the defence, which means that the essential testimony was in fact put before the court. The criminal investigators are not under a duty to pursue a particular testimony that the defence might consider necessary. The accused argued that there was extended media coverage of the case which relates to the intervention of the Attorney General which infringed his right to a fair trial. The Court responded that a trial cannot be invalidated because of media coverage, nor do the media reports automatically equate to an unfair trial, pointing out that the role of the Attorney General is distinct from the role of the Court; in order for the media reports to lead to an unfair trial, it must be shown that they had an impact on the trial.
6	**Key consequences or implications of the case with regard to the presumption of innocence**	The case received unprecedented media coverage and attention from public persons and monopolised the newspaper headlines for a long time. Although the prosecution repeatedly made public statements suggesting that they accused were guilty, the defendants who were also public figures with considerable influence also had considerable access to the media to present their arguments. The Court claimed for itself the privilege to decide whether it had been affected by the media reports and the public statements and in the absence of any evidence from the defence that their judgement had indeed been impaired, the found that the presumption of innocence and the accused persons' right to a fair trial had not been infringed.

In case the case brought before a court or a non-judicial mechanism – the following questions would also need to be answered		
7	**Brief Summary of and media report on the decision**	The Court concluded that the defence did not present any evidence to show any negative impact of the media reports on the trial. In any case, the judgement concludes, the final determination of whether the accused had a fair trial rests with the court. The appeal was rejected and the trial court decision was upheld.