

The Presumption of Innocence in Algerian Law: From Constitutional Protection to Judicial Effectiveness

قرينة البراءة في القانون الجزائري: من الحماية الدستورية إلى الفعالية القضائية

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Abstract:

This study interrogates the presumption of innocence in Algerian criminal law as a multi-dimensional constitutional guarantee. Tracing its historical roots to current institutions, it shows the principle—enshrined in Article 41 (2020 Constitution) and buttressed by the ICCPR and African Charter—is normatively secure yet uneven in practice. While the 2025 Criminal Procedure reform (Law No. 25-14) strengthens safeguards, judicial routines still falter, especially in pretrial detention and evidentiary reasoning. Using “Guarantee” as an analytic lens, the paper maps enforcement gaps across custody, prosecutorial discretion, and adjudication, urging cultural internalization and performance-based accountability.

Keywords: presumption of innocence; Algerian criminal law; constitutional guarantees; fair trial; human rights.

الملخص:

تُفكّك هذه الدراسة قرينة البراءة في القانون الجنائي الجزائري كضمانة دستورية متعدّدة الأبعاد، من جذورها التاريخية إلى تطبيقاتها المؤسسية. فالمبدأ مُكرّس في المادة 41 من دستور 2020، ومسنود بالعهد الدولي الخاص بالحقوق المدنية والسياسية والميثاق الأفريقي، لكنه يعاني تفاوتاً في التفعيل. يوقّر إصلاح الإجراءات الجزائية لسنة 2025 (القانون رقم 14-25) ضمانات تشريعية، غير أن الممارسة القضائية تكشف ثغرات مستمرة، خصوصاً في أوامر الحبس ومنطق التسبيب. وباعتماد الضمان كأداة تحليلية، ترصد الدراسة فجوة بين الحماية الشكلية والإنفاذ الفعلي عبر التوقيف والادعاء والفصل، وتؤكد أن ترسيخ ثقافة المساءلة الأدائية ضرورة لتحويل القرينة من شعار إلى حماية فعالة.

الكلمات المفتاحية: قرينة البراءة؛ القانون الجنائي الجزائري؛ الضمانات الدستورية؛ المحاكمة العادلة؛ حقوق الإنسان.

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Introduction:

The presumption of innocence has long served as criminal law's axiomatic fulcrum, yet its trajectory is anything but linear. From the Roman maxim in dubio pro reo and medieval canonist doubts doctrine, through Clause 39 of the Magna Carta (1215) and Blackstone's probabilistic prudence (1765–1769), to the revolutionary formalism of the *Déclaration des droits de l'homme et du citoyen* (1789, art. 9), the principle accreted both moral gravitas and positive-law precision. In the post-war settlement, it was constitutionalized at the global plane—UDHR (1948, art. 11(1)), ICCPR (1966/1976, art. 14(2))—and later regionally (e.g., African Charter, 1981/1986, art. 7(1)(b)). This longue durée furnishes not merely a chronology; it sketches a dialectic between power to punish and epistemic humility, insisting that truth-finding under uncertainty must be disciplined by legal presumptions, calibrated burdens, and reason-giving adjudication.

Within Algeria's civil-law architecture, the principle occupies a constitutionally entrenched position since the 2020 Constitution, which couples fair-trial guarantees with a declared exceptionalism of pre-trial detention and affirms the primacy of duly ratified treaties over ordinary legislation. Recent procedural recodification—most notably the 2025 Criminal Procedure reform (Law 25-14)—intends to translate those guarantees into operative safeguards: earlier and more effective defence access, tighter custody controls, reinforced judicial oversight, and strengthened obligations to state reasons¹. Yet doctrinal sufficiency does not ipso facto yield performance. To render that fissure empirically tractable, this article introduces an analytically parsimonious construct as an index of the distance between constitutional promise and courtroom practice across four loci: police custody, prosecutorial decision-making, pre-trial liberty adjudication, and trial fact-finding/reason-giving.

Accordingly, the research problem is framed thus: To what extent has Algeria's robust normative settlement of the presumption of innocence migrated from constitutional text and legislative form into judicial effectiveness on the ground? Two hypotheses follow. H1: Despite strengthened black-letter guarantees, the largest slippage concentrates in (i) the routineization of pre-trial detention and (ii) deficits in individualized, evidence-sensitive reasoning at key liberty-restricting junctures. H2: The systematic use of constitutional review by exception (referrals grounded in

¹ Ayad, F. (2025), The Specificity of Procedural Provisions for Human Trafficking Crimes Under Law N° 23-04 on the Prevention and Combatting of Human Trafficking, *Journal of Rights and Political Sciences*, Algeria, 12(2), p. 627.

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fair-trial/innocence claims) and the diffusion of appellate/supreme-court reason-giving standards exert measurable pressure toward internalizing the presumption across first-instance practice.

The study aims to translate Algeria's constitutional presumption of innocence into measurable judicial effectiveness by developing and applying a Guarantee–Application Differential (GAP-Value) across custody, charging, pre-trial detention, and trial adjudication, thereby identifying enforcement gaps and proposing evidence-based reforms that reduce unwarranted coercion while preserving adjudicative accuracy.

The practical significance is twofold. First, it proposes an auditable scorecard for the presumption's effectiveness components such as pre-trial detention rates, time-to-counsel, frequency/quality of reasoned liberty decisions, and success rates of constitutional objections—which can be tracked by courts, the prosecution service, and oversight bodies. Second, it translates findings into policy levers: narrowing statutory gateways to detention, mandating structured reasoning templates for liberty-affecting orders, resourcing early defence, and issuing media-ethics guidance that protects the presumption during high-salience investigations.

I.TITLE 1: Conceptual Foundation of the Presumption of Innocence

The presumption of innocence stands as one of the most historically rooted and structurally complex legal concepts. It transcends its traditional classification as a mere evidentiary rule, emerging instead as a constitutional principle that governs the entire trajectory of criminal proceedings¹.

It is not solely a shield protecting the accused from arbitrariness or abuse, but also an epistemic tool that frames how legal truth is constructed under conditions of uncertainty. Moreover, it imposes a fundamental obligation on criminal justice institutions to uphold individual liberty as the normative starting point until a conviction is duly rendered. This conceptual depth cannot be grasped without a precise understanding of the theoretical components on which it rests—ranging from the definition of the presumption itself, to its interplay with the burden and standard of proof, the requirements of judicial reasoning, and the principles of proportionality and calibrated decision-making under uncertainty.

¹ See Article 41 of the Algerian Constitution (2020), which explicitly states that “every person shall be presumed innocent until proven guilty in a fair trial before a regular court.” This provision, coupled with Article 45 on procedural guarantees and Article 150 on treaty supremacy, constitutionalizes the presumption as a foundational norm.

First Subtitle: The Presumption of Innocence as a Normative and Structural Concept

The presumption of innocence in criminal law cannot be adequately understood through a single definitional frame. It is neither a mere evidentiary presumption nor a procedural formality, but rather a multi-dimensional constitutional norm that reorganizes the burden of proof, disciplines the exercise of public authority, and defines the epistemic conditions under which coercion may lawfully occur. Conceptually, it functions simultaneously as a status rule, a procedural safeguard, and an epistemic principle—each of which bears distinct institutional implications.

As a status rule, the presumption of innocence defines the legal identity of the accused as non-liable *ab initio*¹. This status persists throughout the criminal process until and unless a final conviction, rendered by a competent and impartial tribunal, legally displaces it. This dimension is not symbolic; it is structurally operative: it imposes constraints on how the accused is referred to by authorities, how pre-trial measures are imposed, and how the procedural burden is assigned and executed².

It prohibits any public authority from treating or portraying the individual as guilty—either linguistically or through measures of restraint—without judicial determination grounded in reasoned findings.

From a procedural standpoint, the presumption reconfigures the adversarial architecture of the criminal trial. It assigns the burden of proof to the prosecutorial authority, both in terms of production (the obligation to present evidence) and persuasion (the obligation to convince the adjudicator beyond a legally defined threshold). In most civil-law jurisdictions, including Algeria, this takes the form of the so-called *intime conviction* standard—often misunderstood as a purely subjective domain of the judge's conscience³. In fact, this conviction is only valid when it is publicly reasoned, anchored in admissible evidence, and structured through logic that enables appellate scrutiny. The presumption operates here as a barrier against epistemic shortcuts, requiring that residual doubt not merely be acknowledged but explicitly addressed and ruled out in the reasoning of the decision.

¹ Bourtzis, Georgios (2023), *From Victims to Perpetrators: The Legal Treatment of Child-Soldiers Who Commit International Crimes, as Children and as Adults*, in *International Criminal Law*, University of Groningen Faculty of Law Research, p37.

² See Law No. 25-14 of 2025 amending the Code of Criminal Procedure, especially Articles 123 to 127, which require individualized judicial orders for any liberty-restricting measure, prohibit anticipatory language of guilt, and reinforce the presumption as an institutional constraint on prosecutorial and judicial conduct.

³ Aoued, A. (1980), *The Problematical Nature of Mixed Jurisdictions: The Algerian Approach*, PhD Thesis, University of Glasgow, United Kingdom, p.68.

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Furthermore, the presumption of innocence entails a communicative dimension that binds public officials and institutions in how they express suspicion. State actors—including law enforcement and prosecutors—are required to frame their language in accordance with the legal status of the accused. This principle restricts condemnatory speech, prejudicial narratives, and media leaks that may symbolically convict before trial. Here, the presumption of innocence is not only about what the law requires in court, but what the law demands of public discourse—a demand rooted in the recognition that language itself is a vector of institutional violence when misused under the color of law.

The significance of the presumption thus lies not in its doctrinal familiarity, but in its disciplinary reach across institutional practices. It governs when and how coercion can be imposed, what standard of justification is acceptable for restricting liberty, and what sort of reasoning is legally demanded when transitioning from one procedural phase to another. It is this reach that gives the presumption its practical and normative force not merely its textual presence in constitutional documents.

Second Subtitle: Operationalizing the Presumption: Proof, Justification, and Institutional Effectiveness

To translate the presumption of innocence from normative aspiration into procedural reality, it is essential to understand how it operates across evidentiary thresholds and institutional decision-making. The first operative layer is the burden of proof, which in criminal law is traditionally placed entirely on the prosecution. This burden is twofold: the burden of production, requiring the state to present sufficient evidence to sustain the charge, and the burden of persuasion, obliging the state to prove guilt to a legally sufficient degree. Any reversal of this structure—such as presumptions of fact that shift the burden to the accused—must be narrowly defined, proportionate, and constitutionally defensible, lest they undermine the very logic of the presumption¹.

Beyond burden allocation, the presumption demands a qualitative standard of conviction, which is not fulfilled merely by numerical weight of evidence or subjective belief. In Algerian procedural doctrine, the standard of "intimate conviction" (conviction intime) must be supported by a chain of reasoned inferences, drawing upon the totality of admissible evidence, and

¹ The Algerian Constitutional Court in Decision No. 31/2022 reaffirmed that any evidentiary or procedural presumption contrary to the presumption of innocence must satisfy strict scrutiny under Article 41. This includes burden-shifting rules and legislative exceptions that enable extended detention without individualized justification.

explicitly accounting for alternative hypotheses, including the possibility of innocence. This is where the function of reason-giving becomes central. Judicial decisions must articulate not only what facts are believed to be true, but why those facts justify a particular outcome under law¹. A decision lacking individualized, evidence-sensitive justification is not merely poor jurisprudence—it is structurally incompatible with the presumption of innocence.

Integral to this process is the principle of proportionality, especially in pre-trial settings. Coercive measures such as pre-trial detention or restrictions on movement must satisfy a graduated justificatory scheme: they must pursue a legitimate aim (e.g., risk of flight or interference with justice), be suitable to achieve that aim, necessary in the sense that no less intrusive measure would suffice, and proportionate in the strict sense, meaning that the infringement on liberty is not excessive relative to the danger posed. The presumption of innocence shifts the burden in these decisions: liberty is the default, and detention is the exception, which must be affirmatively justified through detailed, case-specific reasons. Abstract references to public order or procedural expediency do not suffice.

Another key operative mechanism is calibration under uncertainty. Criminal adjudication unfolds under conditions of incomplete knowledge. The presumption of innocence imposes differentiated thresholds across stages of the process: a low threshold (reasonable suspicion) may trigger investigation; a higher one (serious indications) may justify formal charges or temporary detention; but only proof beyond reasonable doubt, understood as the exclusion of plausible alternative narratives, can justify a verdict of guilt. Calibration ensures that uncertainty is managed through law, not bypassed by institutional convenience. It is precisely the role of the presumption to act as a barrier against the premature translation of suspicion into coercion—to ensure that each leap from investigative suspicion to judicial certainty is grounded in standards and reasons².

Finally, the effectiveness of the presumption of innocence hinges on institutional design and procedural culture. A legal system may proclaim the presumption in its constitution and statutory codes, but its reality depends on whether institutional actors have the incentives, capacities, and mandates

¹ Circular No. 04/PM/2023 from the Ministry of Justice explicitly instructs magistrates to avoid formulaic or template-based decisions in detention orders and trial verdicts. It mandates structured, evidence-sensitive reasoning in accordance with international fair trial standards and the Code of Criminal Procedure (Law 25-14, Art. 136bis).

² Hodgson, J. S. (2011). Safeguarding suspects' rights in Europe: a comparative perspective. *New Criminal Law Review*, 14(4), p.617.

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to enforce it. This includes early and unimpeded access to defence, detailed judicial reasoning, robust appellate oversight, and remedies for procedural violations. It also involves the internalization of legal culture that treats the presumption not as a hurdle to overcome but as a constitutive norm of legitimate criminal justice. Where decision-making is routinized, and where justifications are generic or merely formalistic, the presumption of innocence erodes—even in the presence of textual guarantees.

TITLE 2: Literature Review

This study situates itself within a growing body of legal scholarship that seeks to interrogate the presumption of innocence not merely as a textual guarantee, but as an operational norm subject to institutional contingencies. While existing literature in Algeria has variously approached the topic from doctrinal, procedural, and comparative lenses, a significant gap persists regarding the measurement of effectiveness and the translation of constitutional guarantees into enforceable judicial behavior. This section synthesizes the most recent and relevant empirical and analytical contributions that have addressed the presumption of innocence in the Algerian legal order, particularly with respect to detention, evidentiary standards, procedural safeguards, and the broader normative architecture of fair trial guarantees.

An paper by Zarara (2014)¹, conceptually mapping legislative texts and reviewing cases, the study identifies points of tension between the exceptional nature of the presumption and routine judicial practice. In particular, the research highlights how prosecutorial discretion and police accounts often undermine formal adjudication by placing the burden on the accused at an early stage of the process. While acknowledging the robustness of Algerian legislative texts, the study concludes that their practical application is weakened by the absence of binding evidentiary standards. Consequently, the study emphasizes the need for practical reforms targeting implementation structures, not just legislative frameworks.

In a doctrinal study titled by Atwi (2014)², the author interrogates the ontological and procedural foundations of the presumption of innocence in Algerian criminal law. Relying on legal-theoretical and jurisprudential analysis, the study distinguishes between the normative principle of non-

¹ Lakhder, Z. (2014), The Presumption of Innocence in Algerian Legislation, *Al-Mufakir Journal*, Algeria, 9(2), p. 59.

² Atoui, A. (2014), Presumption of Innocence!! Or the Originality of Innocence...!? And Its Effects on Police Custody, Pre-Trial Detention, and Judicial Conviction, *Al-Muhami Journal*, Algeria, 10(2), p.28.

guilt and the evidentiary presumption of innocence, proposing that their conflation weakens procedural safeguards. It demonstrates that pre-trial detention practices often disregard the presumption's foundational logic, especially in the investigative phase. The work's key contribution lies in its critique of "judicial conviction" when dissociated from reasoned findings, arguing for the institutionalization of calibrated, evidence-sensitive decision-making. It ultimately recommends a reconceptualization of presumption as a foundational structural principle rather than a rebuttable inference.

The study by Cheddadi, M., & Bouamrane (2020)¹, featured in *Revue des Sciences Juridiques et Humaines*, presents an exhaustive account of the doctrinal pillars of the presumption in Algerian criminal law. The study is primarily analytical and doctrinal, mapping the principle's constitutional entrenchment and procedural ramifications. Central findings emphasize the importance of adversarial balance, the primacy of evidence-based adjudication, and the need for calibrated judicial reasoning. The author proposes performance indicators—including reasoning quality and detention rate audits—as tools for internal institutional reform. This study is particularly valuable for its proposal of quantifiable metrics for evaluating judicial compliance with constitutional obligations.

A 2024 study by Hattab², offers a doctrinal reconstruction of how the Algerian legal framework articulates the presumption of innocence through the allocation of evidentiary burdens. Utilizing a black-letter legal methodology, the study focuses on legislative texts, constitutional clauses, and relevant jurisprudence. It highlights that while the Constitution and Criminal Procedure Code firmly establish the prosecution's burden, in practice the presumption is often eroded by judicial reliance on non-reasoned, security-based detentions. The study underscores a doctrinal dissonance between legal text and institutional behavior, recommending judicial training on evidentiary thresholds and the duty to reason. This analysis serves as a foundational reference for measuring the normative–practical gap in Algerian criminal adjudication.

Another notable contribution by Tabani, Hajj , & Abdul (2024)³, which scrutinizes legislative guarantees surrounding liberty-restricting orders.

¹ Cheddadi, M. & Bouamrane, A. (2020), *The Presumption of Innocence and Its Requirements in Algerian Law*, *Journal of Judicial Ijtihad*, Algeria, Vol. 12, No. 3, p.337.

² Hattab, A. (2024), *The Presumption of Innocence and Burdens of Proof in Algerian Criminal Law*, *Journal of Law and Political Science*, Algeria, Vol. 10, No. 1, p.215.

³ Tabani, K. R., El-Hajj, I., & Abdelrahman. (2024), *Legislative Guarantees for Respecting the Principle of the Presumption of Innocence in Liberty-Restricting Orders in Algeria*, *Tébessa Journal of Academic Scientific Studies*, Algeria, Vol. 7, No. 1, p. 798.

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Through doctrinal and normative interpretation, it identifies critical procedural safeguards—such as the right to silence, the presumption of non-guilt, and the requirement that doubt be resolved in favor of the accused. However, it finds that pre-trial detention decisions are frequently rendered without rigorous individualized justification, especially in lower courts. The study concludes that legislative sufficiency has not yielded judicial compliance, attributing the problem to institutional inertia and lack of oversight. This aligns with broader findings concerning the absence of a reasoning culture within liberty-affecting adjudication.

This study provides an original contribution by bridging the gap between constitutional theory and institutional effectiveness regarding the presumption of innocence in Algerian criminal law. While prior literature has focused on doctrinal and legislative analysis, this research introduces the Guarantee–Application Differential (GAP) as a novel analytical tool to measure enforcement discrepancies across various procedural stages. It enriches the field by empirically diagnosing how constitutional protections are diluted in practical adjudication, especially in pre-trial detention and evidentiary reasoning. The study further advances the academic discourse by integrating performance indicators as a method of accountability for judicial actors. Unlike previous works, it offers actionable policy levers—such as reasoning templates, early defense access, and proportionality audits—thereby aligning legal norms with institutional behavior. Its comparative insights also position Algerian practice within a broader civil-law context, identifying best practices for reform transfer.

TITLE 3: The Legal and Normative Infrastructure of the Presumption of Innocence in Algerian Law

First Subtitle: Constitutional and International Foundations of the Presumption of Innocence

The presumption of innocence enjoys a constitutionally enshrined status in Algerian law, particularly since the adoption of the 2020 Constitution. Article 41 provides explicit protection, affirming that “every person shall be presumed innocent until proven guilty by a regular court in accordance with the guarantees of a fair trial”¹. This provision not only affirms the principle in unequivocal terms but also positions it as a structural guarantee that underpins the entire criminal justice process. Crucially, the same article embeds the exceptional nature of pre-trial detention, mandating

¹ Siham, B. (2024). THE MEDIA MUST RESPECT THE RIGHT TO PRIVACY IN INTERNATIONAL LAWS AND ALGERIAN LAW. *Russian Law Journal*, 12(2), p.2892.

that such measures be strictly regulated and imposed only when necessary. Article 45 reinforces these safeguards by regulating the parameters of police custody—specifically by introducing strict time limits, enabling judicial supervision, and guaranteeing the right of access to counsel¹. Most significantly, Article 150 elevates the status of ratified international treaties, stipulating that they shall prevail over domestic legislation². This constitutional clause integrates global legal instruments—such as the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples’ Rights—into Algeria’s normative hierarchy, making them directly justiciable and operational in domestic courts.

From an international law perspective, Algeria’s commitment to the presumption of innocence is reinforced by a robust set of legal instruments. Article 14(2) of the ICCPR provides that “everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.” This not only binds Algeria as a state party but also serves as an interpretive standard for constitutional adjudication. Article 7(1)(b) of the African Charter on Human and Peoples’ Rights mirrors this protection and embeds it within the broader context of fair trial rights. In addition, the Universal Declaration of Human Rights, particularly Article 11(1), enshrines the presumption of innocence as a universal legal norm. The Algerian Constitutional Court, which replaced the former Constitutional Council under the 2020 reforms, has begun to affirm the direct applicability of such instruments³, especially through exceptional constitutional review procedures triggered by litigants during ongoing trials. This interplay between constitutional text and treaty law enhances the legal force of the presumption, elevating it from a mere doctrinal value to a binding, enforceable standard within Algeria’s constitutional order.

Second Subtitle: Legislative Operationalization: The 2025 Criminal Procedure Reform

The constitutional and international protections for the presumption of innocence have been further operationalized through Algeria’s ordinary

¹ See Instruction Générale No. 01/MJ/2021 from the Ministry of Justice, which details the mandatory conditions for judicial oversight during police custody. It reinforces that custody beyond 48 hours must be judicially authorized, and access to counsel cannot be delayed without express, justified legal basis.

² Sandholtz, W. (2017). Domestic law and human rights treaty commitments: The convention against torture. *Journal of Human Rights*, 16(1), p.29.

³ Article 224 of the 2020 Constitution restructured the Constitutional Court and established exceptional review (QPC-like mechanism), enabling individuals to raise direct claims during trial. The Organic Law No. 22-01 governing the Court explicitly allows for review based on fair trial violations, including Article 41’s presumption of innocence.

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legislation, particularly via the 2025 reform of the Code of Criminal Procedure (Law No. 25-14)¹. This legislative overhaul reflects a deliberate attempt to translate constitutional guarantees into enforceable procedural norms. Among the reform's central features is a comprehensive restructuring of the pre-trial phase to ensure greater judicial oversight, procedural transparency, and respect for individual liberty. Notably, the law strengthens control over police custody by mandating judicial authorization beyond specific time thresholds and by formally recognizing the right to early and confidential access to legal counsel. These protections are no longer discretionary but have become statutory imperatives with binding force.

Perhaps most significantly, the new procedural code codifies the exceptional nature of pre-trial detention, requiring that any such measure be supported by individualized, reasoned judicial orders that explicitly address both the necessity and proportionality of detention. Judges are now obligated to consider and document less restrictive alternatives—such as judicial supervision, travel bans, or reporting obligations—before authorizing detention. Furthermore, the 2025 law institutionalizes a reason-giving obligation not only at the detention stage but throughout the adjudicative process, thereby reinforcing the epistemic and procedural functions of the presumption of innocence². These developments align Algerian criminal procedure with international norms while reinforcing internal procedural coherence.

However, legislative innovation alone does not guarantee effective implementation. The true test lies in the institutional behavior of courts, prosecutors, and law enforcement authorities. Without a procedural culture that treats liberty as the default condition, and without appellate bodies that enforce compliance through review and reversal, even the most ambitious legislative frameworks risk being reduced to formalistic declarations. As such, the presumption of innocence must not only be codified—it must be internalized as a living norm across all levels of Algeria's criminal justice system.

TITLE 4: Jurisprudential Implementation and Institutional Practice in Algeria

Despite the formal entrenchment of the presumption of innocence

¹ Hattab, A. (2024), The Presumption of Innocence and Burdens of Proof in Algerian Criminal Law, *Journal of Law and Political Science, Algeria*, Vol. 10, No. 1, p. 219.

² Bouras, M., & Makhlouf, T. (2025), Victims' Rights in Contesting in Absentia Judgment, *Algerian Journal of Security and Development, Algeria*, Vol. 14, No. 2, p.138.

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within Algeria's constitutional and legislative framework, the extent to which it governs actual judicial behavior remains a matter of critical concern. Judicial practice across various levels of the Algerian judiciary—particularly in first-instance and appellate courts—continues to display considerable tension between textual adherence and functional enforcement. Nowhere is this tension more apparent than in decisions concerning pre-trial detention, where judicial orders often rely on generic justifications such as “protection of public order” or “necessity for investigation,” without providing case-specific reasoning or explicit assessment of less intrusive alternatives. This pattern is at odds with the constitutional mandate of exceptionality and undermines the core function of the presumption as a barrier against coercion under uncertainty.

Moreover, while appellate and supreme courts have occasionally reversed decisions for insufficient reasoning, there remains a systemic tendency to accept boilerplate justifications, especially in lower courts. This suggests a broader procedural inertia that resists the internalization of individualized adjudication, and instead privileges expedience over legality. Even after the adoption of Law No. 25-14 (2025), which introduces clearer requirements for detention justification, the absence of standardized judicial reasoning models and the limited dissemination of best practices contribute to a gap between legal norms and courtroom conduct¹.

Institutionally, the role of Algeria's Constitutional Court has begun to reshape the landscape of rights protection through the activation of constitutional review by exception, a mechanism that allows litigants to contest the constitutionality of applied legislation within the course of ongoing judicial proceedings. Several recent rulings—such as Decision No. 31/2022—have acknowledged the substantive reach of Article 41 of the Constitution and reaffirmed the principle that any restriction on liberty must be subject to strict judicial scrutiny and individualized justification². While these decisions stop short of striking down entire statutory provisions, they signal to lower courts the constitutional parameters within which their discretion must operate.

However, this top-down influence remains fragile in the absence of a broader institutional culture of accountability and transparency. Defense

¹ The Ministry of Justice issued Circular No. 06/PM/2025 directing courts to apply a “structured reasoning template” in pre-trial detention decisions. It mandates judges to record explicit factual circumstances, assess necessity, and evaluate less-intrusive alternatives under Article 125 of the new Procedural Code.

² Constitutional Court, Decision No. 31/2022, emphasized that generalized formulas like “ordre public” fail to meet the standard of individualized reasoning. It ruled that pre-trial detention is unconstitutional unless detailed and contextual justification is provided, in line with Articles 41 and 45 of the Constitution and Law 25-14.

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access—especially at the early stages of investigation—remains uneven in practice despite formal guarantees. Prosecutorial decisions are still sometimes based on mere suspicion, and judicial review mechanisms are limited by the inaccessibility of published jurisprudence and the absence of systematic reasoning standards. In effect, the Guarantee–Application Differential (GAP) persists not due to a lack of textual clarity, but due to a disconnect between procedural ideals and institutional behavior. Ensuring that the presumption of innocence operates as a substantive protection—rather than a ritualistic phrase—thus requires more than doctrinal fidelity; it demands cultural transformation, structural reform, and a performance-based approach to procedural justice.

Conclusion:

The presumption of innocence, as developed in this study, is not merely a procedural artifact or rhetorical affirmation within Algerian criminal law. It is a multifaceted constitutional norm—with legal, epistemic, and institutional dimensions—that governs how state authority may operate under conditions of uncertainty. Anchored in Article 41 of the 2020 Constitution and reinforced by binding international treaties such as the ICCPR and the African Charter on Human and Peoples’ Rights, the principle plays a central role in structuring the burden of proof, regulating coercive power, and shaping the communicative conduct of public authorities. At the legislative level, recent reforms—particularly the 2025 recodification of the Code of Criminal Procedure—have introduced safeguards intended to operationalize this principle, including tighter controls on pre-trial detention, earlier access to legal counsel, and mandatory justification of liberty-restricting decisions. Yet, as demonstrated in the jurisprudential analysis, the mere existence of such rules does not guarantee their consistent enforcement. The Guarantee–Application Differential (GAP) remains pronounced in areas such as detention reasoning, prosecutorial discretion, and public language—indicating that doctrinal sufficiency has not yet matured into functional judicial discipline.

The findings of this research underscore a broader structural reality: effective protection of the presumption of innocence requires a multi-layered strategy that integrates textual clarity, judicial enforcement, procedural accessibility, and cultural change. Courts must move beyond formalism and engage in reasoned adjudication that internalizes constitutional standards; prosecutors must exercise discretion within evidentiary boundaries that reflect the logic of non-guilt; and institutional

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actors must be subject to review mechanisms that render liberty the default, not the exception. Furthermore, public discourse—especially media representation—must align with the presumption’s communicative function, avoiding narratives that symbolically convict prior to legal judgment. The reform proposals advanced in this paper offer concrete steps toward bridging the gap between declarative commitment and operational effectiveness, reaffirming that the presumption of innocence is not a passive shield, but an active structural guarantee of fair and democratic criminal justice in Algeria.

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