

Abstract

Nowak, K 2003, Oskyldighetspresumtionen. Norstedts Juridik AB. 490 pp. Stockholm 2003. ISBN 91-39-00923-8. Swedish text with a summary in English.

The thesis addresses the scope of the so-called *presumption of innocence*. Two interests, apparently difficult to reconcile, are opposed to one another in the application of the presumption of innocence; securing efficient *administration of the law* and *the protection of the individual*. It is necessary to weigh up between the effect of the presumption of innocence with respect to procedural legal protection of the individual and an efficient criminal procedure.

The presumption's theoretical function as a legal principle is clarified in order to facilitate its application. The account also increases the understanding of why the presumption is necessary for a fair trial. The presumption of innocence has been put in definite form in order to function in the practical application of law, primarily through various legal rules. The thesis accordingly contains a description of these rules and the criteria on which their inclusion in the legal system is based.

The purpose of the thesis is to give precision to the tangible requirements which are made on the presumption of innocence as a general principle. The role of the presumption of innocence and its function in the penal process system are described, and the presumption is put in its various contexts. The systematic function of the presumption is described from abstract theoretical construction to practical application.

The thesis is divided into three parts. In part I the presumption's systematic importance for the penal process is examined. The presumption of innocence is defined primarily from a procedural theoretical perspective. In part II the presumption of innocence is described as defined primarily by various European organs with direct importance for Swedish application of law. The emphasis has been put on the practice of the European Court of Human Rights in its application of the European Convention.

The conclusions of the two introductory parts are then used in part III as a basis for the examination of application of the presumption of innocence in Sweden. The purpose of this part is to give a perspective to the application of the presumption in Sweden, to point out the merits of special Swedish solutions and to criticise them in appropriate cases. Part III shows the multitude of questions in which the presumption of innocence shall be observed. Its close connection with other Articles in the European Convention is also highlighted, however, mainly with the other points in Article 6. The method used in the survey of the effect of the presumption of innocence in the areas looked at can also be applied to other questions which affect the presumption.

Key Words: presumption of innocence, fair trial, procedure, procedural law, human rights, rule of law, legal principle.

Karol Nowak, Juridiska institutionen, Handelshögskolan, Göteborgs universitet. Box 650, SE 405 30 GÖTEBORG. www.law.gu.se