

Innocent until Proven Guilty

The Presentation of Suspects in Criminal Proceedings

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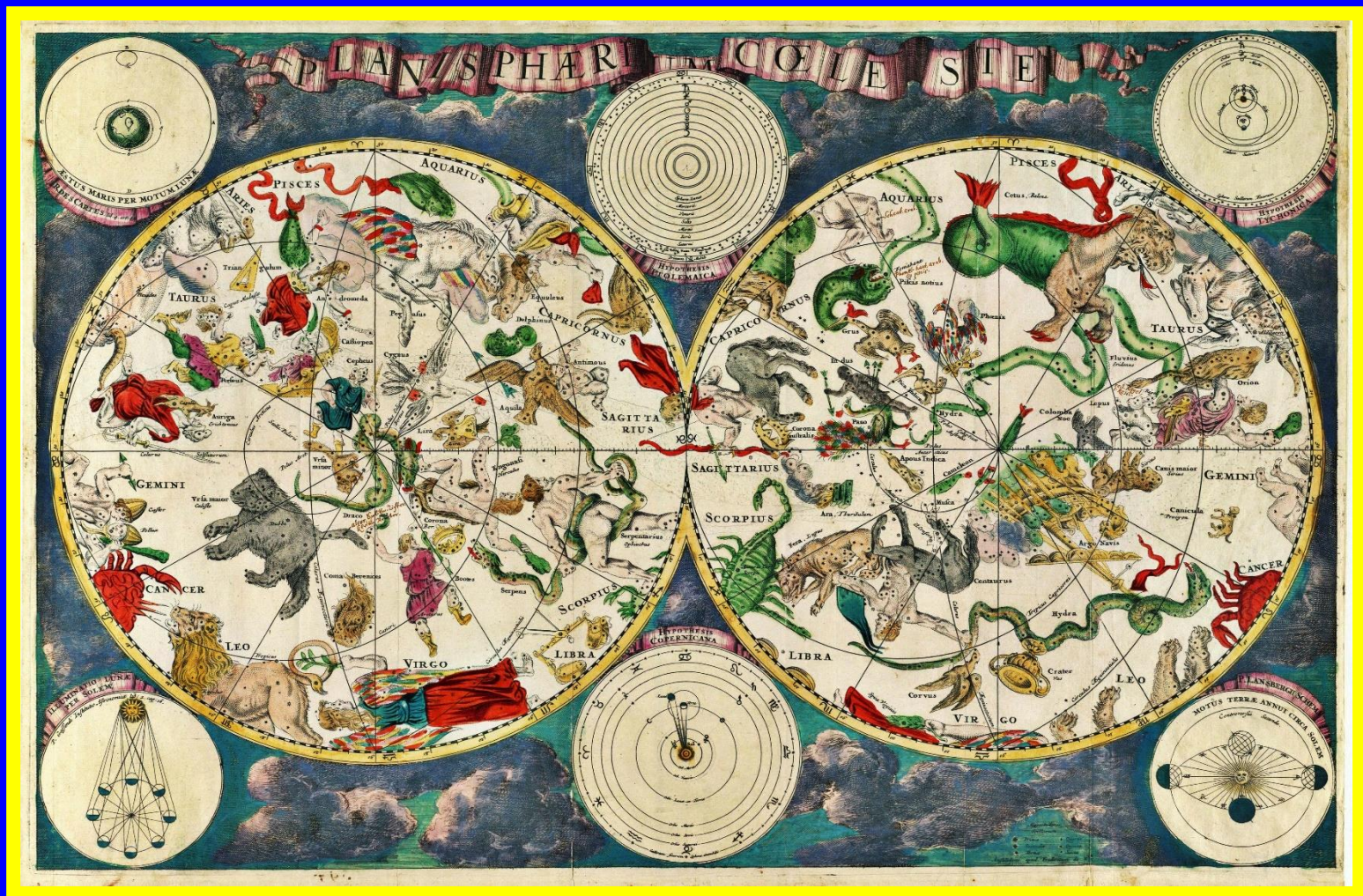


**Astraea:
Goddess of Innocence**

I. Introduction:

i. Orientation

- **Astraea: Daughter of the Titans:**
 - **Astraeus: god of dusk, and**
 - **Eos: goddess of dawn.**
- **Her name meant "star-maiden".**
- **During the Golden Age of Man: she lived on earth alongside humans.**
- **During the Iron Age of Man:**
 - **This was an age of misery and wickedness.**
 - **She left and went to the skies.**



The Skies:
Dutch cartographer Frederik de Wit:
Celestial Map

I. Introduction: (Contd.)

i. Orientation (Contd.)

- Was transformed into the constellation *Virgo*.
 - Closely linked to the goddess Dike, the protector of *Fair Judgment*.
 - Dike: is symbolically represented as *Libra*.
 - These constellations lie near each other.
 - Myth:
 - Astraea will one day return to Earth.
 - She:
 - ❖ Will then once again bring the utopia that existed during the Golden Age.
 - ❖ Brings an end to human suffering.



I. Introduction: (Contd.)

ii. Presumption of Innocence

- The person charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- This is NOT a:
 - Simple stand-alone provision, or a
 - Presumption that stands in a *vacuum*.
- It really finds its proper meaning in:
 - The actual judicial process, and
 - The events leading towards that process.
- Ultimately: it finds full expression and protection under the broad general umbrella of “*Fair Hearing*” or “*Due Process*”.

II. Definition:

Minelli Case: (25.III. 1983).

“... without the accused’s having previously been guilty according to law and, notably, without his having had the opportunity of exercising his rights of defence, a judicial decision concerning him reflects an opinion that he is guilty.”

II. Definition: (Contd.)

- **Merely suggesting that the person in question is guilty is already sufficient to crystallize such a violation.**
- **Who may exercise this violation:**
 - **Public authorities:**
 - **The courts.**
 - **Public officials.**
 - **Legislators.**
 - **And:**
 - ❖ **The Media.**

II. Definition: (Contd.)

Barbera`, Messegue' and Jabardo: (6. XII. 1988)

“It, (presumption of innocence), requires, *inter alia*, that when carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused. It also follows that it is for the prosecution to inform the accused of the case that will be made against him, so that he may prepare and present his defence accordingly...”

II. Definition: (Contd.)

- **Therefore:**
 - **Even evidence acquired from previous statements falls within this broad definition.**
- **As a result:**
 - **Local law was changed to ensure legal assistance even during the interrogation stage.**
 - **But only after several judgements in this regard from the ECrtHR.**

II. Definition: (Contd.)

- **Reflects Malta's preferred option:**
 - **First:**
 - **As introduced during British Rule in Malta.**
 - **Criminal Process was moved from the *Inquisitorial System* to the *Accusatorial System*.**
 - **This was first introduced in 1854 with the promulgation of the Criminal Code.**
 - **Subsequently following:**
 - **The adoption of the European Convention of Fundamental Human Rights, and**
 - **The introduction of the right of redress to the European Court of Human Rights in 1987.**

III. Extent of Protection:

- The presumption of innocence of the accused must exist without any prejudice.
- Even Extends to the:
 - Pre-trial stage.
 - Manner in which an accused is presented before the court.
 - Not allowed to be presented in handcuffs.
 - Not allowed to be accompanied by police conspicuously brandishing fire-arms or other means of restraint.
- Judgement must solely be based on lawfully submitted evidence as gathered during court proceedings.

IV. Dual Protection:

- **Today this principle is:**
 - **Enshrined in two important legislative documents, and**
 - **Buttressed by the case-law of the European Court of Human Rights.**

IV. Dual Protection: (Contd.)

- **The Constitution of Malta: (Article 39)**
 - **Provisions securing the protection of the law.**
 - **Specifically Article 39(5):**

“Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty.”

IV. Dual Protection: (Contd.)

- **The European Convention for the Protection of Human Rights and Fundamental Freedoms of the Individual: (Article 6 (2))**
“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

V. Effect

- Prosecution: must prove its case.
- Defendant:
 - Need not prove his innocence.
 - Is already “*presumed*” to be INNOCENT.
 - Until:
 - ❖ Proven guilty, or
 - ❖ Upon admission of guilt.
- Presumption must be respected:
 - Both: During court proceedings, and
 - Also: Prior to such proceedings , i.e. during the investigative stage.

V. Effect (Contd.)

- **Hence: the defendant has the right to:**
 - **Remain silent.**
 - **Is protected by the rule against self-incrimination.**
 - **No person may be forced to give evidence at his trial [CM Article 39(10)].**
 - **Defence has the right to cross-examine witnesses.**

V. Effect (Contd.)

- **Furthermore if detained on remand:**
 - **Not treated as if one's guilt were already established.**
 - **Detention here is based on different criteria: [Article 575 Chapter 9]**
 - **Necessity to hear witnesses.**
 - **Necessity to ensure that accused does not meddle with witnesses.**
 - **Not observing the conditions of bail.**
 - **Contacts abroad - no ties locally - absconding.**
 - **No fixed abode.**
 - **Real danger of not appearing in court when so ordered.**

VI. Ancillary Guarantees:

- **Secure the protection of the law to those facing criminal proceedings.**
- **But how is this protection given in practice?**
 - **Fair Hearing:** [CM Article 39(1); ECFHR Article 6(1)].
 - **Within a Reasonable Time:** [CM Article 39(1); ECFHR Article 6(1)].
 - **By an Independent and Impartial Tribunal:** [CM Article 39(1) (2); ECFHR Article 6(1)].
 - **Proceedings to be held in Public:** [CM Article 39(3); ECFHR Article 6(1)].

VI. Ancillary Guarantees: (Contd.)

- **Exceptions:**
 - **Constitution of Malta:**
 - **If publicity prejudices the interests of: [CM Article 39(4) (c) (i) (ii)]**

❖ Justice.	❖ Public Morality.	❖ Public Safety.
❖ Public Decency and Morality.	❖ Welfare of persons under the age of 18 years.	❖ Protection of the private lives of persons effected.

VI. Ancillary Guarantees: (Contd.)

- **European Convention for the Protection of Human Rights and Fundamental Freedoms of the Individual:**
 - **Press and public may be excluded in the interests of:**
[ECFHR Article 6(1)]

❖ Morals.	❖ Public Order.	❖ National Security
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VII. Further Rights afforded to the Accused:

- **Language of Proceedings: [ECFHR Article 6(3)(a-e)]**
 - **Accused to be promptly informed of the offence:**
 - In writing, and
 - In a language he/she understands.
 - **Entitled to interpretation services.**
 - **Given adequate time and facilities to prepare defence.**
 - **Defend himself in person or through legal assistance - (Lawyer/Legal Procurator, as the case may be).**
 - **If indigent, free legal assistance is to be provided.**
 - **May cross-examine witnesses:**
 - Personally, or
 - Through legal representation.

VIII. Burden of Proof:

- Criminal Law: must be “Beyond Reasonable Doubt.”
- Civil Law: must be on the “Basis of Probability.”
 - The burden of proof is stricter in Criminal Law proceedings.
 - In case of reasonable, (not any), doubt, one has to acquit - “*In Dubio pro Reo.*”

VIII. Burden of Proof (Contd.)

- “*Onus Probandi*:”
 - **Possibility:** is not accepted as proof in any branch of the law.
 - **Probability:** is only admitted in Civil Law cases.
 - **Beyond Reasonable Doubt:** is what is required at Criminal Law - Gives moral certainty.

IX. Terms of Detention:

[Article 575 (5 and 6) of Chapter 9]

- **Detention cannot exceed the periods reproduced below.**
- **If exceeded the accused will have to be released.**
- **This will automatically occur when the Attorney General has not:**
 - **Filed an indictment for trial before a jury, or**
 - **Sent the case for trial before the Court of Magistrates.**

IX. Terms of Detention: (Contd.)

[Article 575 (5 and 6) of Chapter 9]

- **Time Frames:**
 - **Crimes liable to imprisonment for less than 4 years: 12 months.**
 - **Crimes liable to imprisonment for a period between 4 and 9 years: 16 months.**
 - **Crimes liable to imprisonment for a period of 9 years and more: 20 months.**

X. Adverse Publicity:

- May have a devastating effect of the presumption of innocence.
- Accused has to prove that this was a determining factor leading to one's conviction.
- Basic Principles:
 - *"Onus probandi incumbit ei qui dicit."*
 - *"Actore non probante, reus absolvitur."*
- In trial proceedings the criminal record is only referred to:
 - After the jury returns with its guilty verdict, and
 - The jury has been dismissed.
 - But: prior to the pronouncement of judgement.



X. Adverse Publicity: (Contd.)

- **Case-Law:**
 - **Vincent Spiteri vs. Prime Minister: (CC 31. VIII.1977).**
 - **Dr. Laurence Pullicino vs. Prime Minister: (CC 18. VIII. 1998, Kollezgjoni LXXXII. I. 159).**
 - **Police vs. Dr. Noel Arrigo et: (CC 29. X. 2003).**

X. Adverse Publicity: (Contd.)

- **Vincent Spiteri vs. Prime Minister: (CC 31. VIII.1977)**
 - **Complainant was already previously condemned of a crime.**
 - **Subsequently, he had another criminal trial for another offence that he had committed.**
 - **As he was already serving a prison term for the previous offence he was brought to court for the subsequent offence wearing the prison uniform that had been adopted during that period.**
 - **Obviously, the jurors saw him attired in this way.**
 - **As it happened, some of the jurors had also decided the previous trial of the same accused.**

X. Adverse Publicity: (Contd.)

- **Constitutional Court held:**
 - That one could support the conclusion that the accused did not have a fair trial.
 - Yet:
 - ❖ The accused did not raise this issue.
 - ❖ Neither: During the trial.
 - ❖ Nor: at the Appeal stage.
 - Case was rejected as he had not exhausted ordinary remedies.

X. Adverse Publicity: (Contd.)

- The legal position today:
 - This impediment has been overcome through the case-law of the ECrtHR.
 - The ECrtHR has consistently determined that when initiating the constitutional remedy this in itself includes the domestic civil remedy.
 - So, the constitutional procedure is enough.
 - In this way:
 - Precious time and
 - Expenses
- } are saved.

X. Adverse Publicity: (Contd.)

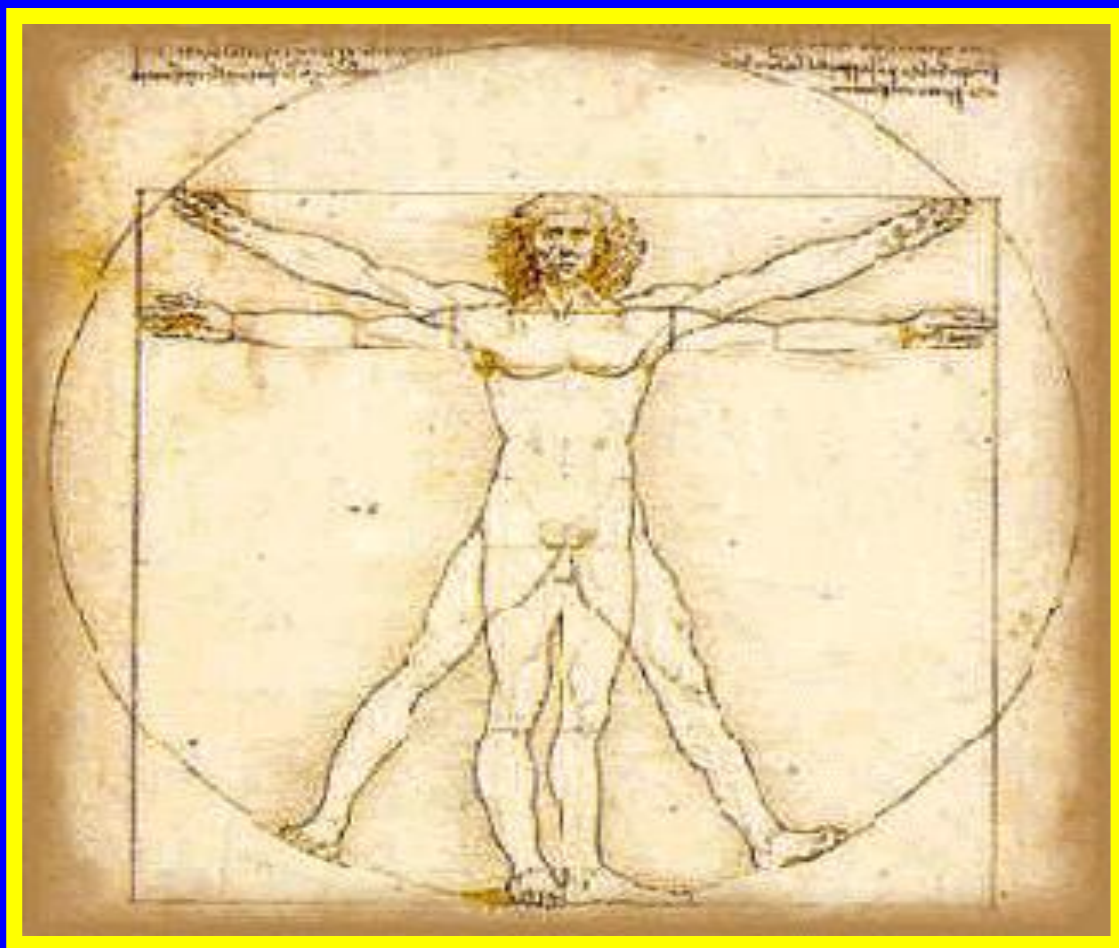
- **Dr. Laurence Pullicino vs. Prime Minister: (CC 18. VIII. 1998)**
 - **When a jury verdict may be appealed before professional judges.**
 - **Publicity is less likely to amount to a breach of the presumption of innocence.**

X. Adverse Publicity: (Contd.)

- **Police vs. Dr. Noel Arrigo *et* (CC 29. X. 2003)**
 - **Prime Minister held a televised press conference announcing that two judges were arrested on suspicion of bribery.**
 - **Emphasised that the final decision was in the hands of the courts.**

X. Adverse Publicity: (Contd.)

- **Constitutional Court held that:**
 - **There was a violation of the presumption of innocence.**
 - **Statement by a public official concerning a person charged with a criminal offence reflects an opinion that this person is guilty before he has been proved to be so according to law.**
 - **It is enough to deduce that there was a violation of this principle if there is a reason to suggest that the official regarded the accused as guilty.**



XI. Conclusion:

- The above can be said to be the **RULE of LAW in ACTION.**
- It is NOT:
 - The Defence that has to prove innocence.
- It IS:
 - The Prosecution that has the *onus* to prove that the person it is accusing is proved guilty of the offence addressed against him/her.



XI. Conclusion (Contd.)

- **Hopefully:**
 - **Justice is achieved.**

Thank
you