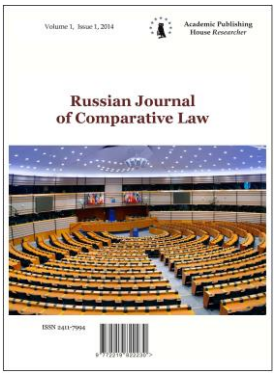

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The Principle of the Presumption of Innocence in Britain and France: Towards a "European Model" of Protection

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Abstract

This article undertakes a comparative legal study of the principle of the presumption of innocence in Britain and in France. The author attempts to answer the following questions: What are the differences of implementing this principle in the United Kingdom in comparison with the French system of criminal trial? What are the consequences of implementing this principle for the status of a defendant? How does the European Convention of Human Rights protect this principle and how does it strive towards harmonizing national standards of presumption of innocence, if at all? Taking into account the differences in approaching this principle in the said jurisdictions, the author ponders around the future prospects of the European model of fair trial, set up by the European Convention of Human Rights.

Keywords: presumption of innocence, fair trial4 European Convention of Human Rights, the United Kingdom, France.

1. Introduction

The Latin adage "*in dubio pro reo*" ascribed to Aristote "[when] in doubt, for the accused" signifies that a defendant may not be convicted by the court when doubts about his or her guilt remain. By the early Antiquity, the principle that we now commonly known as the "presumption of innocence" was already deemed substantial in the way the trials were handled.

Why is the presumption of innocence so important? Is it because people are uncomfortable believing that suffering is random and that sometimes unfortunate events happen for no reason at all? The approach of law is to not to believe that people must have done something to deserve what they get but to exclude the possibility that an innocent person is accused of a crime.

The concept of presumption of innocence is one of the oldest principles embodied in criminal justice systems around the world. The right to be presumed innocent until proved guilty is one of those fundamentals that influence the treatment to which an accused person is subjected from the criminal investigations through the trial proceedings up to and including the end of the final appeal. This principle is fundamental for the protection of human rights and should guide the prosecution as well as the defence lawyers. The attention paid to the presumption of innocence gives rise to the question of the exact meaning of this principle. it is significant to not overlook that the principles doesn't refer to an actual presumption. Indeed, the suspect is not actually presumed to be innocent but it is rather a legal adage; "Presumption", in the context of the presumption of innocence, means that the burden of proof of the charge is on the state. This guarantees that guilt

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cannot be declared until the charge has been proven by the state. The presumption of innocence guarantees the benefit of the doubt for the accused. The fact finder, namely the judge(s), must ignore all pre-trial evidence of guilt and determine the guilt or innocence evaluating only the evidence presented at the trial.

2. Methods and materials

The presumption of innocence is enshrined beyond the sole Europe by Article 11 (1) of the Universal Declaration of Human Rights and by Article 14 of the United Nations Covenant on Civil and Political Rights. We will focus our analysis on the way this right is protected by the distinct national mechanisms of two countries belonging to this same European regional organizations. While sharing some common features, legal orders of Britain and France possess very different characteristics.

The choice of these two countries systems is worthwhile insofar as it involves two countries belonging to a same regional system, but also two different existing methods of exposing evidence in the legal process of the criminal trial; the adversary and the inquisitorial procedures. A relevant comparison between these three different safeguarding forms of protection of a fundamental Human Right (The overall European stage, and the specifics in United Kingdom and France) helps to understand the current real issues in stake thereon. As a matter of fact, even if the presumption of innocence is a constant principle in the law of the countries of the Council of Europe, its implementation does not occupy the same place in the hierarchy of norms. While the main objective is for the European system the necessary harmonization of all the national rights in Europe, some questions arise on the issue of the presumption of innocence:

What are the different roles this principle plays in the United Kingdom in comparison with the French system of criminal trial?

What are the consequences of such a different system in the regulation means of the presumption of innocence and does it impact the trials and therefore the manner for the defendant to be considered?

How does the European system protect this principle and how does it manage to harmonize the national standard of presumption of innocence in the regional system?

Following an historical overview of the different foundations on which the protection was established, we will first consider the implementation of the principle in the three systems, and its different places with regards to the two different existing methods of exposing evidence: the inquisitorial and the adversarial procedures respectively in France and in the United Kingdom. Notably, through this study we raise the delicate relations between freedom of expression, the need for security and the right to be presumed innocent which represent a very challenging issue. Some cases illustrations will then, help to truly understand the impacts in stake in the daily life at each step of the different criminal procedures, underlying in particular the rule and exceptions of the burden of proof. Regulating those interactions at a wider scale, the European protective framework of the presumption of innocence shed lights on the issues in stake regarding the preservation of member states' sovereign rights and a need for common regional standards. Finally, after considering all the remaining divergences and the global convergence factors of the two systems across the Channel, it is worth noting that the current globalizing context of the World today give rise naturally to common responses addressing shared concerns in criminal law. The respect of the accused rights and especially of his presumption of innocence is central to this analysis.

This is a comparative law study. The choice of jurisdictions for comparison was undertaken taking into account the following considerations. In France and in United Kingdom, the successive reforms on criminal justice that have been occurring for thirty years try to meet the need of efficiency and procedural equity. Those same objectives come through different ideology and techniques in each side of the Sea.

It is true that the variations between procedural traditions in the said both jurisdictions are such that they are frequently regarded as antagonistic models. Even though they come from a common European template characterized by the use of the “Judgement of God”, the judiciary practices radically diverged from the XII century. In the United Kingdom, a panel of judges has been established to determine the truth while in France, the Romano-Canonical enquiry was build up which raise d the judge has the “sovereign master of facts and law”. Therefore, the two systems of crimina l justice seems to be opposable in every manner. Tough their intrinsic differences, a new

proximity can be observed between the judiciary organisations and the procedures today. One could ask on this preference of focusing of this two state parties and not for example on other European system such as in Italy, or Germany. But the reason is that is all countries share common features with each other's in their proceedings, the United Kingdom and France are traditionally seen as the most "opposite" models.

The purpose of this analysis is to compare this movements and confront the English and French mechanisms in the light of the European context when concerning the principle of innocence, which is in the core of the systems. Yet, this fundamental principle is greatly affected by the structural systems and reflects an excellent and concrete example of the resultant consequences. In England, the procedural rules are scattered in numerous legal texts, for some of these really old, and in an abundant case-law. On the contrary, they are in France only governed by a single Criminal Code and few Constitutional Principles such as the presumption of innocence.

Beyond these formal differences, the practice settings are, as well, very distinct. As in the UK the judges who are deciding guilt or innocence of a suspect are non-professional, the criminal jurisdiction in France are essentially composed of career judges, civil servant, recruited through a competitive process. They work in collaboration with the public prosecutor who is hierarchically subordinate to the Minister of Justice.

The administration of criminal justice, one of the major sovereign functions of the States, has been from the Second World War, subject to international regulation with the aim of fundamental rights protection. France and the United Kingdom therefore both ratified several treaties dedicated to Equity in the implementation of criminal repression and confer legal rights to the defendants.

Among them, the Convention for the Protection of Human Rights and Fundamental Freedoms holds a central place in the system. The dynamic interpretation by the European Court has especially strengthened the "Right for a fair trial", giving to the concept an autonomous definition. The presumption of innocence is considered as crucial and the emphasis is given to the respect for the rights of the defence and in particular the "equality of arms" and the adversarial character o f the trial. If the guarantees defined by the European model appear to be more familiar to the common law tradition, it has to be recognized that both the United Kingdom and France have been repeatedly condemned for non-compliance with the procedural rights protected by the Convention.

Revealing the subtleties of each legal framework and their imbrication with the overseeing european provisions provide insights into the reasons why the presumption of innocence is a key feature of any criminal proceedings analysis. The compared analysis of the criminal justice dynamics and the fundamental protections of the presumption of innocence prevent a generalization too simplistic but unfortunately common that the judicial mind-set in the United Kingdom and in France are radically opposite.

3. Discussion

Let's start with an historical overview of the principle of presumption of innocence implementation: The tenet was, according to researchers, born in the late XIII century, and was preserved in the universal jurisprudence of ancient time s. Later it survived in the early modern period and the notion of "presumption of innocence" arose in two civilisations, Rome and England, were it evolved independently. However the theory officially entered the European legislation in the beginning of the 18th century.

In France, a country of written law it was Article 9 of the 1789 Declaration of the Rights of Man that served the first foundation of the presumption of innocence appeared clearly claiming that: "Every man is presumed innocent until convicted ". This text has a constitutional value.

The common law however didn't provide at the time such precise enactment and the judges had to interpret the law in the light of sources. The fundamental texts to which they still refer today are, first of all, the great 1215 Charter (Magna Carta) which provides that: "No free man shall be arrested or imprisoned or dispossessed of his property ... without a loyal judgement of his peers in accordance with the law of Countries ". Moreover, the Bill of Rights and the Habeas Corpus Act, which contain principles relating to the rights of the defence.

Following the World War II, the European Convention of Human Rights the international treaty signed by the member states of the Council of Europe entered into force in 1953 in the framework of an individual liberties protection mind-set. Its Article 6, para. 2 states that:

"Everyone charged with a criminal offense shall be presumed innocent until proved guilty according to law."

In addition to its former protection, the French system established then an Alina 1 to the article 9 I/ of the Civil Code in January 1993 which states that "Everyone has the right to respect for the presumption of innocence which is an aspect of the right of the personality". The princip le was therefore elevate to a personality right.

It was still not until 1998 when the UK Human Rights Act finally incorporated the European Convention of Human Rights into its domestic legal system. From now on under Section 6 of the Human Rights Act, the decisions of the judicia l authority have to be compatible with the ECHR and therefore with the protection of the presumption of innocence. It is indeed a far narrower view of the presumption of innocence than a "rule of proof". Yet it has to be said that the English jurisprudence provides a significant contribution for the embedment of the principle in common law. The most significant decision is the landmark 1935 House of Lords case of Woolmington v. Director of Public Prosecutions (Woolmington v DPP, 1935) where the presumption of innocence was first articulated in the Commonwealth. The Court stated this formula repeatedly: "Throughout the web of English criminal law, one golden thread is always to be seen: it is the duty of the prosecution to prove the guilt ". However, a significant limit to this appliance occurs in case of a contradictory "statutory law" the Convention may be set aside.

Eventually, both the civil law and the common law recognized the two main aspects of the presumption of innocence: a shield that prevents the infliction of punishment prior to conviction and also a rule of proof casting on the prosecution the burden of proving guilt. But while France reinforced the presumption of innocence by elevating it to a personality right, and more recently, solemnly repeated the Constitutional principle again in an organic law from 2000 and in the French Code of Criminal Procedure, the jurisdictions of United-Kingdom tend to view the doctrine as a mere rule of proof without effect before trial. In order to harmonize the systems in all the European national states, the Charter of Fundamental Rights signed by the fifteen countries on 7 December 2000 bounds in its Article 48, the presumption of innocence with the rights of the defence.

To fully understand the ins and outs of the comparison between the United Kingdom and France and their issues in stake, it is first crucial to understand the two different existing methods of exposing evidence they adopt in court and which divide the European countries in general.

The adversary, or accusatory procedure, endorsed in the Anglo-American legal system and therefore in the United Kingdom emphasises the role of the parties. The trial is conceived as a contradictory, public and largely oral confrontation between the prosecution and the defence. Each party must prove the facts in support of his case. The power of the judge is there fore solely to arbitrate, rather than to instruct: on the one hand, to ensure the fairness of the trial, and on the other hand to divide the litigants according to their claims, arguments and evidence.

The inquisitorial procedure, typical of countries that base their legal systems on civil or Roman law, such as precisely in France, in contrast, accentuates the difference between criminal and civil law. The position of the judge is meant to represent the general interest and he is charged with directing the investigation in order to discover the truth. In this system, the judge is a professional magistrate with significant powers to enable him to carry out the investigations for the prosecution and for his own defence. The parties are therefore not directly obliged to carry out the investigation in support of their claims. This model supports its legitimacy on the idea that repressive justice is not limited to arbitrating litigation between litigants but is of interest to society itself. Consequently, the inquisitorial procedure is generally written, often secret, and rather not contradictory, the place left to the parties is then naturally reduced.

Nothing is clearer than the description of the protection of the presumption at each step of the proceedings in Court. Contrary to the English tradition, the principle of separation of the Public Prosecutor and the "Juge d'instruction" (that could be translated as "investigating magistrate") entail in France, a major role assigned to this specific magistrate "Juge d'instruction". Indeed, he combines the investigative power and the jurisdiction. In response to criticism generated by people's fear of an excessive authority, the 15 June 2000 Law withdraw from this institution the power to decide the pre-trial detention of a suspect in favour of a separate judge known as the "liberty and custody judge".

Nowadays, once an action is brought against someone, the French law provides that the "Juge d'instruction" must gather evidence "of innocence as well as guilt" and is under a duty

to inform the accused person of his or her right to remain silent. Then, sometimes in parallel, the pre-trial detention of the individual concerned is ordered by only the "liberty and custody judge". However, this practice must remain the exception and cannot exceed a reasonable time. During the trial, when Jurors are involved (in the event of serious crimes), they must swear "to betray neither the interests of the accused nor those of society" and "to remember that the accused is presumed innocent." The procedure before the trial judge is oral and public. The prosecution has to prove all the elements of the alleged offense but judges freely assess the evidence and decide according to their inner conviction. The police, under the subordination of the Public Prosecutor take part in the investigation. Moreover, and that is far more true in France than in the Common law systems, (especially in the USA but slightly also in the United Kingdom), a ll necessary measures must be taken to prevent a person handcuffed or shackled from being photographed or filmed. In a 2009 case from France (1ère Civ, 30 avril 2009, N° pourvoi: 07-19.879) the Court asserted that if the defendant feel like his or her right to be presumed innocent has been infringed by the press, an ac tion is possible but subject to a specific limitation period of three months after the publication involve.

The common law world presents a very different picture. The presumption of innocence is merely an evidentiary rule in common law jurisdictions. The UK system tend to simply consider the principle as another way of expressing the traditional rule putting the burden of proving guilt beyond a reasonable doubt on the prosecution. In contrast with Roman law in France, in the United Kingdom common law, there is an organic detachment between the police that has a functional autonomy and the Crown Prosecution Service (the equivalent of the French Public Prosecutor). Then, once an action is brought against an individual, the police has the full responsibility for the research for evidences of the guiltiness and is free to initiate the proceedings. Then, during the trial in Court, is the questioning of witnesses in the core of Common law. The Counsel for the prosecution will then try to reverse the burden of p roof from which benefit the accused individual by attacking the opposing party testimonies. The system is based on the balance of probabilities (of the guilt) and on reasonable doubt to approve a conviction instead of a basis on the search for the exact truth as in the French system. The idea is that a truth should emerge at the end of the confrontation and it has to be considered as such even if a small and acceptable doubt remains. Therefore, the "day in court" in United Kingdom is far more decisive than in a French trial, where the hearing is often nothing more than a repetition of what has already been analysed for a long time. Such as in Roman law, no one should ever arbitrarily be arrested and placed in detention before the trial but on the contrary of the French ones, the Courts in the United Kingdom are really few to proclaim that the presumption of innocence is more than merely procedural, and the principle has no such substantive scope and no such practical consequences for the defendants as in France before the trial. A relevant example is the 2011 Rebecca Leighton case involving a nurse who had been arrested in connection with the contamination of bags of saline with insulin, and faced charges of criminal damage with intent to endanger life after unexplained deaths at Stepping Hill hospital, Stockport, England. She was held in prison but released after all charges were dropped. Her full name and photo had however already been published all over the news by the media, including the famous newspaper "The Guardian".

A remark should be added about the place reserved to the accused in both countries and in many countries in Europe; the defendant sits apart from his attorney and is isolated in the courtroom, sometimes even handcuffed. The enclosed dock has always been used in criminal trials when dealing with high-profile cases. This practice could be therefore seen as an infringement of the principle of presumption of innocence. However, in each system, the need to keep the balance between Human Rights and security is a recurrent issue in stake. However a control needs to be made to avoid any abuses. Recently, three Members of Parliament, i.e., Jim Devine, David Chaytor and Elliot Morley, appeared in a glass cage at Westminster Magistrates Court in London, whilst they were only charged with fiddling their expenses (MPs in the dock, 2010). Reports of this case published in two newspapers –the Guardian and The Times – served to turn attention towards the neglected issue of the appearance of the accused at trial. The issue of those people confronted with this humiliating experience provided the opportunity to expose this question to public debate. The limitations of the rights of expression and the freedoms of the press are likewise very difficult to define with regards to possible violations of the presumption of innocence.

4. Results

Following the analysis of the importance given to the principle in each system, through the organization supervising the opposing parties in Court, it seems no w essential to go deeper in the comprehension and apprehend the exceptions to the “burden of proof” principle. As we said in the introduction, the principle in Europe is that the burden of proof belongs exclusively to the accusing parties pursuant to Article 6, para. 2 of the ECHR. The exceptions should therefore not be accepted by the European Court of Human Rights. But they are. On this point, the jurisprudence of the Constitutional Courts are not identical.

The French system has been built on the universal principles for a fair trial applicable to all types of contentious litigations as a guarantee of civil liberties. This gave rise to theoretical modelling and on the contrary of the Common law system, “fundamental principles” emerged through the French doctrine before defining detailed rules. According to the French system, the prosecution bear the burden of proof, requiring him to offer sufficient evidence to base its statement. By means of the role of the investigating magistrate, due account is taken of both prosecution and defence evidence and ensure the balance of each side interest.

A derogation from the rule may appear however in very exceptional cases, when the judge admit the reversals of the burden of proof leading to presumptions of guilt: "such presumptions may be established in particular as regards to contraventions, since they are not irrebuttable, and as far as the respect for the rights of the defense is ensured, and that the facts reasonably justify the likelihood of accountability ". Since 2004 though with the introduction of the “Perben” law (The “Perben” law), the “plaider coupable” (which could be translated by “guilty plea”) was also introduced in France. A new procedure was created in order to avoid cumbersome examination in court when an investigation is not useful. This way, the Public Prosecutor can propose, directly and without trial, one or more sentences to a person who already recognizes the charges against him or her. It is nevertheless strongly criticize by practitioners as an infringement of the proper rights of the defense.

Common law does not prioritize “universal principles” but the Gold -thread is that “the prosecution must prove the guilt of the prisoner”. One first issue in stake here is that the way the burden of proof is shared should protect effectively the innocent and respect the rights of the indicted person. Yet, the loopholes of this criminal system have been illustrated in the numerous miscarriages of justice in 1980's, shedding light on the tremendous inequalit y between the excessive powers of the police in comparison with the limited capacities of the accused. A striking example is the Guildford Four case in October 1974 where four defendants confessed to the bombing of a pub they did not commit recognized subsequently due to coercion by the police, ranging from intimidation to torture. The decision was reversed only in 1989 after they had served up to 16 years in prison.

As a matter of facts, the lack of duty-bound for the state to investigate both incriminating and exonerating evidence entail the risk of confession extracted under duress and does not lead to finding the truth. In order to counteract this concern, the Police and evidence Criminal Act 1984 and later the Criminal Procedure Rules from 2005, instituted new guarantees among which the access of legal counsel from the time of the arrest in a police station, or the recording of the police interviews. Furthermore, imitating France, the United Kingdom recognized a new rule whereby the prosecution shall provide the defence with all the information that may help him (disclosure of evidence). This is a major milestone is the traditional common law system fo r which the “surprise effect” was a legitimate weapon in a criminal case. This evolution reveal an attenuation of the accusatory strategy in the United Kingdom.

When it comes to the possibility of exceptions to burden of proof however, the United Kingdom system is more flexible than the French system. While the burden of proof rests in principle on the prosecution, as soon as the accused pleads guilty, "prosecution" is immediately relieved of its obligation to prove evidence and the Court is compelled to condemn the accused, even if a doubt subsist in his mind. He is not intimately convinced of the guilt. The presumption of innocence is then “undermined” by the “guilty plea”. This kind of limited scope vision of the presumption of innocence is clearly apparent in the daily work practice of British Courts. A recent scandal involving the British Ministry of Justice besides broke out in United Kingdom. Indeed, the department published a guide, official document aimed at people with learning difficulties facing trials. It explained to them what they can expect if they are accused of a crime and say they are not

guilty. The guide, completed with a drawing depicting such a scenario explained that the defendant has to “show” he is innocent if he doesn't want to go back to the second degree of the Court. Even if in this case the Ministry was obviously forced to withdraw the advice leaflet, this incident might be a hint as to understand the approach direction of the government on this question.

When it comes to the european safeguarding the protection scheme is more modest. The European case-law lead to the emergence of a new procedural model, characterized by its high degree of abstraction that transcend the domestic traditions. Until recently, the exercise of its control over the respect of the presumption of innocence was criticized to be very flexible while the objective of harmonization between all the countries' systems would require a more stringent supervision. Indeed, to go back on the above example of the delicate relations between freedom of expression and the right to be presumed innocent, the Court cannot directly sanction violations of the presumption of innocence by a journalist, whereas only the public authorities are liable for the obligation at international level. However, the strict control by the international court of compliance with positive obligations should give effect to Article 6, para. 2 of the Convention.

The European model of fair trial challenges some aspects of both certain attributes of the English and French criminal procedural system but enforce in different ways.

In France, Article 55 of the Constitution draw up a monist approach regarding the implementation of international law in the French national system. Consequently, Article 6, para. 1 and para. 2 can be directly invoked before domestic courts. In addition, the judges are empowered to preclude the application of a national law which is contrary to a provision of the Convention. This is based on the principle of primacy of ratified international treaties over law.

On the contrary, in the UK the dualistic approach adopted a separation of the two spheres and the litigants have to claim their rights through the use of the domestic 1998 Human Right Act. This legislation prohibits the jurisdiction facing a domestic law inconsistent with the Convention, to declare such legislation inapplicable. The judges can only issue a “forma l declaration of incompatibility” but it has no immediate effect on its validity.

However, despite those technical differences, one cannot overlook the growing stamp of the European standards on the domestic systems of the state parties. This has been the consequence of several condemnations for non-compliance by the United Kingdom and France with the procedural rights protected by the Convention.

According to the conception of the European Court, the core element of its reasoning remains the objective compliance with each procedural elements. Indeed, in practice, for the presumption of innocence to be meaningful, the judges focus on certain procedural safeguards to be in place. The Court reiterated in its decisions that the presumption of innocence was only “one of all the elements” of a fair trial. Yet, taking into account the weaknesses of its control, no later than last 12 February 2016 (Directive (EU) 2016/343), in Brussels, the Ministers from the EU Member States have adopted new rules that will guarantee the presumption of innocence of anyone accused or suspected of a crime by the police or justice authorities. In order to do so, the initiative focuses on the implementation of first of all, the right not to be presented as guilty by the authorit ies before final conviction. Moreover, the new rule clarify that the burden of proof for establishing guilt is on the prosecution, rather than on the accused person to prove that they are not guilt y. The suspect shall benefits from any doubt (in dubio pro reo). Finally, it underlines the right not to incriminate oneself, the right not to co-operate, the right to remain silent, and the right to be present at one’s trial. Therefore, the principle of “Innocence until proven guilty” should be enforced with this new rule which prohibits public authorities and judicial decisions from making any public references to guilt, before a person is proven guilty. It can be drawn now from the Court (ECtHR) case-law that “at the core of the principle is the requirement that the court or tribunal responsible for determining whether or not guilt has been proved must not prejudge the case. There is today a common definition across all Member States of what the presumption of innocence is. Using this standards, the European system protect the presumptio n of innocence in the regional system dealing with diversified domestic frameworks.

In the 2000 case of Rowe and Davis v. UK (Rowe & Davis v. UK, 2000) the British Government was found liable for violation of Article 5 of the Convention and the Court especially recalled that it requires that the offender should be able to challenge periodically the legality of their detention, from which he was deprived in this case.

On the other side of the Channel, France has also been condemned in the 2010 case of Medvedyev v. France for not immediately bringing the claimants before a judge or other magistrate authorized to exercise judicial power after having been arrested (Medvedyev v. France, 2010). The Court underlined that the French prosecutor's office cannot be regarded as a "judicial authority" within the meaning of the Convention "because it lacks in particular the independence of the executive power in order to be so qualified".

Limits to the principle of the presumption of innocence are envisaged as well at the European level of protection. In short, the European Convention protection comes closest to the French system inasmuch that it accepts three kinds of derogations from the rules governing the burden of proof; through statutory presumptions of guilt, when the accused raises affirmative defences such as duress, necessity or self-defence or finally some exceptions can also appear when the issue involves very minor infractions (such as a car badly parked).

Yet if the european legal framework takes a major part in overseeing and supervising at a regional scale the harmonization and compliance with the respect of the presumption of innocence, in France as well as in the United Kingdom, the new convergence towards a uniform protection is also explained by national autonomous developments lead by new common necessities. This is especially noticeable in the current context turned to the prevention and fighting against organised crime. The progression towards a new punitive mind set is enhanced in both countries. In today's world, characterized by a globalisation of the exchanges, the criminal networks are no borders. The growing convergence of both systems seems actually to be more the outcome of a factual adaptation to a common environment. This latter, defined by a need for balancing efficiency and respect of equity entail comparable legal responses. Rather than an harmonized project, this shifting is more the accumulation of successive measures aiming at addressing the shared modern issues.

A gradual and noticeable convergence is assessed broadly speaking through a turning point in the politic and therefore judicial reasoning toward punitive actions in each of the two countries. One can observe a clear trend leading to exaggerating the criminal risks in the current economic and social crisis context. A greater account is, in parallel taken concerning the individual as a victim with regards to an integral reparation of his or her prejudice. Such a change in the judicial system perspective entail regrettably a blurring of the rehabilitative aim. While emphasis is largely given to repression of criminal act, in the discourses in each side of the Channel, this is more about political institutionalization in order to get more votes than an actual seek for the truth and for justice. As a result, in the United Kingdom as well as in France, a hardening in the supervision of the suspect from the moment of the arrest, and a manifest correlated weakening of the principle of presumption of innocence.

To start, the policing competences are the first impacted by this new punitive mind-set as their empowerment appears more legitimate in responding to the society needs. In the United Kingdom, starting with the Police and Criminal Evidence Act 1984, the power of enquiry of the police increased significantly. As an illustration, one could mention the legalization of the sting operations, the interception of private communications, and the regulation framework regarding the arrests and searches have been facilitated. All those measures raise serious issues of balancing interest with the fundamental respect for one's private life (Article 8 of the ECHR) and therefore with the presumption of innocence before conviction. A similar shift can be observed in France, all the more in the very present time, characterized by a never-ending “state of emergency”. This form of exceptional measure is meant to allow the authority exceptiona l powers in matters of policing for a very limited period, in order to address an emergency threat. This has been set up following the terrorist attack on the country on 13 November 2015 and has been consistently extended until then, the new time-limit being July 2017 so far. It is thus referred by critics as the antithesis “permanent state of emergency”. On a practical level, this involves a multiplication of called residency, day and night searches, taking away some Judiciary's prerogatives. The Council of Europe's Commissioner for Human Rights shared his concern on this issue doubting the efficiency of the measure and regarding the risk for the democracy. In general terms however and especially since the Perben II law in 2004, the legal means allocated to police officers to fight against organized crime never stop growing. In either systems, inquisitorial or accusatory approach, the increase of the investigating power jeopardized the guarantees of the accused.

A second significant illustration is the generalization of "simplified procedures". The common thread shared by France and the UK is the search for gaining effectiveness. In this way, reforms in each side of the Channel introduced the concept of "negotiated justice".

In the UK, the diversion process has always been part of the system. When it comes to juvenile contentious for example, the police officers makes massive use of simply "police cautioning" and since 2003, operate as well through "conditional caution". This latter process engages the suggestion by the Crown Prosecution Service an alternative measure to the penal proceedings such as reparation or rehabilitation. The cornerstone of the negotiated justice however remains the "guilty plea" in common law in exchange of a promise of lesser sentence.

In France, in contrast, the said represents a recent phenomenon. Reminder of the law, conditio na l dismissal of a case, compel therapeutic intervention or mediation as alternatives were of an exceptional nature at first. Since 1990, they extended significantly aiming to further facilit ate the immediate access to reparation for the victim. If this evolution has the advantage of preventing slow and cumbersome traditional procedures, there is another side of the coin however. Indeed, a too radical simplification entails the risk of overlooking the merit of the case. Especially when it comes to the "guilty plea" or "plaider coupable" in France, the removal of the prosecution based on a thorough investigation call into question whether the decision is actually well founded. The less costly measures seem, as a matter of fact, to prioritize rapidity over the defence. Yet it is essential to the inform consent of the accused and prevent all possible risk of tendency towards a too prompt acceptance. This could be solely founded on pressure from the authority and mistaken belief that innocence will not be proven.

5. Conclusion

Answering the questions raised at the beginning it is isignificant to eventually define if legal protection of the presumption of innocence is progressing towards a European common legislation. Knowing whether the European system did actually manage to harmonize the national standard of presumption of innocence in between all the countries remains unclear. What is known for sure is the current tendency of the Strasbourgh Court to increase the degree of protection of the presumption of innocence. In this way, the last directive will complement the legal framework provided by the European Convention of Human Rights and the Charter of Fundamental Rights and strengthen mutual trust and confidence between the judicial authorities of the member states and will facilitate the mutual recognition of decisions in criminal matters. A real stringent supervision by a "European model" is not yet to be achieved however. The different places the presumption of innocence occupies in the United Kingdom in comparison with the French system is part of the entire operational logic of their respective system and belongs to the thought pattern, the "mentalit y" of each state which arises from their distinctive history.

Nevertheless, it is worth noting that for now a new alignment can be observed that doesn't appear to be directly the consequence of the European regulation but a natural convergence due to a shared objective. Both rooted in the current globalisation processes, the United Kingdom and France gradually face the same difficulties and challenges, including the economic context or the fight against organized criminality. This situation comes down to an approximation of both procedural regimes impacting the way the accused is handled.

The trend has been since the 1980's towards more protection of the defendant and a increasing protection of the presumption of innocence principle through a variety of safeguards, progress slowed recently with the new punitive mind set of the countries. Indeed, the shared determination to reduce costs and to meet the demands of the society in line with a political logic undermine in some extent a genuine quest for the truth and jeopardized the fundamental principle of presumption of innocence.

References

Magna Carta – UK, Magna Carta "The Great Charter" 1215. URL: http://www.constitution.org/eng/magnacar.pdf.

Woolmington v DPP, 1935 – UK, House of Lords, Woolmington v. the Director of Public Prosecutions, 1935, AC 462. URL: http://www.bailii.org/uk/cases/UKHL/1935/1.html.

1ère Civ, 30 avril 2009, N° pourvoi : 07-19.879 – France, Cort of Cassation, case No. 07-19.879. URL: https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000020576 296

MPs in the dock, 2010 – "MPs in the dock: from kings of the castle to a glass cage", publication in the Guardian, Thursday 11 March 2010. URL: https://www.theguardian.com/politics/2010/mar/11/mps-dock-expenses-westminster.

The "Perben" law – France, Law No. 2004-204 «portant sur l'adaptation de la justice aux évolutions de la criminalité». URL: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000249995&dateTexte=20040310

Directive (EU) 2016/343 – Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings. URL: https://www.db.eurocrim.org/db/en/vorgang/315.

Rowe & Davis v. UK, 2000 – European Court of Human Rights, Rawe & Davis v. UK, Application No. 28901/95, Judgment of 16 February 2000.

Medvedyev v. France, 2010 – European Court of Human Rights, Medvedyev and others v. France, Application No. 3394/03, Judgment of 29 March 2010.