

The future of the welfare state: paths of social policy innovation between constraints and opportunities

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Europeanization as an opportunity to change the French Welfare State?

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My recent research on '*Europeanization of social policy*' shows rapid diffusion in France of an '*open model of governance*', which is going to challenge the traditional central role of the State. New actors are emerging and the role of traditional actors is changing. I will briefly present some results of the ongoing research in three domains: industrial relations, employment policy and social inclusion policy.

I. Changes in industrial relations.

By law 31 January 2007 on modernization of social dialogue, a preliminary chapter on "Social Dialogue" has been introduced into the Labor Code. It contains only three articles, L.1, L.2 and L.3, each article providing for a different procedure.

Article L.1. Government has to submit to the social partners each envisaged legal proposal in the field of individual and collective labor relations, employment and professional training. This procedure is named in French '*concertation*'. Government has to pass on to the social partners a document on the possible directions of action containing diagnosis, objectives and main options. Social partners have the possibility to inform the Government of their wish to initiate a negotiation and of the time they need to get results. In case of urgency, Government may act without this *concertation* procedure, but urgency must be motivated.

Article L.2. Government has to consult the National Commission of collective bargaining, the National Council for employment and the National Council for professional training and lifelong learning on the legal proposals drawn up after the results of the previous *concertation* procedure. This procedure, which involves tripartite bodies, is named in French '*consultation*'.

Article L.3. Each year, Government has to present to the social partners the possible directions of its policy in the field of individual and collective labor relations, employment and professional training, as well as the calendar to achieve its objectives for the current year. Social partners have to present a progress report on their ongoing negotiations and a calendar of the negotiations, which they intend to start during the current year. Last but not least, Government has to inform Parliament on the different procedures related to articles L.1 and L.2 of the Labor Code. This procedure is named in French "*information*".

Social dialogue includes at once *concertation*, *consultation* and *information*.

This law is the result of a process that started in the 90^{ties} on European level and that went on in France, on national level, at the beginning of the XXIst century. On European level, social partners agreed, during the discussions on the Maastricht Treaty, on a new procedure, which has been introduced into EC Treaty – articles 38 and 39 – by the Treaty of Amsterdam. Commission has to consult the social partners before presenting any proposal in the social policy matters (orientation, content). Social partners may inform the Commission that they are willing to initiate a negotiation (article 138 EC). This procedure gives them real autonomy. If they reach an agreement, this framework agreement may either become a directive transposed by the EC Member States into their legislation or be implemented 'in accordance with the procedures and practices specific to management and labor in the Member States' (article 139 EC). In the second case, social partners on national level are

responsible for the transposition (see under II) and European social partners will encourage and monitor the negotiations.

In 2001, French social partners signed a common position paper (*'position commune'*), in which they showed their willingness 'to create a new dynamic in order to complement the role of legislation and the role of bargaining'. They asked for 'sufficient space', in which they could exercise full responsibility, and suggested a clarification of the matters, which fall into the competence of the State and into their competence. They also suggested that, on national cross-sectoral level, a procedure similar to European social dialogue would apply. If an agreement, signed by the social partners, conflicted with legal dispositions, law had to be changed in order to permit the application of the agreement. Government and Parliament would have to respect the balance of the agreement.

In 2004, Government committed itself to consult the social partners before preparing a proposal regarding labor law. It has been registered in the statement of motives (*'exposé des motifs'*) of the law on lifelong learning and social dialogue. This commitment had no legal value and therefore did not guarantee the autonomy of the social partners, who rejected it. In 2006, Government asked experts to make proposals in order to undertake a major reform. Social partners expressed their opinion through an advice published by the Economic and Social Committee (ESC). On the basis of the reports of the experts and the advice of ESC, Government started the reform of social dialogue that means the introduction of articles L.1, L.2 and L.3 into the Labor Code.

Since 2007, law on modernization of social dialogue has been implemented. On basis of article L.1, Government initiated a *concertation* on an envisaged legal proposal on modernization of labor market. Social partners informed the Government of their wish to enter into negotiation and a national cross-sectoral agreement has been signed on 21 January 2008 (CGT did not sign it). It has been followed by a law in June 2008. On basis of article L.3, a Conference under the leadership of the French President was organized with the social partners in November 2007. It set up a '*Social Agenda for 2008*' on domains like flexicurity, lifelong learning, fight against poverty....The idea of a '*Social Agenda*' reminds us of the '*Social Agenda for social policy*' from the European Commission. But the French one is an annual Agenda, while the European one is a long-term Agenda (2006 to 2010, for example).

Social dialogue has changed the role of social partners in France. It is the first step of a wider reform, *a small revolution*, on the representation of trade-unions, but also on the articulation between social democracy and representative democracy, which will need some changes in the French Constitution.

II. Changes in employment policy.

Since the origins of the European Employment Strategy, European social partners have been asked by the Member States to participate in the implementation of the European guidelines, on European level and on national level².

² KERSCHEN N., ROUSSEL-VERRET I.(2006), 'Stratégie européenne pour l'emploi et dialogue social. Vers la construction d'un modèle européen de relations professionnelles' *in Le lien social et Politiques (Québec)*, N°56

On European level, social partners signed several framework agreements in line with the objectives of the Essen strategy, which preceded the European Employment Strategy, and with the guidelines of the new strategy. Moreover, they acted as actors of the new strategy³ by mentioning the objectives and the guidelines of the new strategy explicitly in the framework agreements on parental leave (1995), on part-time work (1997), on fixed-term contract (1999) and on telework (2002). Moreover, framework agreement on telework, in line with the guidelines on modernization of work organization and forms of work (*Pillar III. Encouraging adaptability of business and their employees*), has been implemented as a 'voluntary agreement', that means that national social partners had to transpose it into national legislation by collective bargaining. According to the European procedure, French social partners have signed an agreement on telework, on 19 July 2005, which has been agreed by the Minister of Labor and which entered the French legislation in May 2006. As a consequence, telework is based on rules established exclusively by the social partners.

French social partners implemented two 'frameworks of actions' developed under the work program 2003-2005 of the European social partners: one for the lifelong development of competencies and qualifications (2002) and one for gender equality (2005). In the field of lifelong learning, they signed a cross-sectoral agreement on December 2003 on the access of employees to lifelong learning, which became the basis of a law in May 2004. In the field of gender equality, they signed a national cross-sectoral agreement on 1 March 2004 that means before the setting-up of the European framework of actions. But they took in account the four priorities of the European framework of actions. In March 2006, a law has been set up with the objective of equal pay for women and men by 2010.

According to article 128 EC, Member States have to present, each year, a National Action Plan on Employment (NAPE) based on the European guidelines adopted by the Council. In order to associate the social partners in the drawing up of this plan, French Ministry of Labor and Employment created the Social Dialogue Committee on European and International Issues (CDSEI) in November 1998. One of the missions of this tripartite body is to involve 'the social partners in all stages of the procedure to coordinate the employment policies initiated by the Luxembourg European Council of 21 November 1997'. At the beginning, the involvement of the social partners took the form of a consultation prior to the elaboration of the national action plan. In 2000, social partners have written one chapter of the national action plan, in which they presented their contributions. In 2001, the CDSEI created working groups on topics defined in common by its members, like lifelong learning, active ageing, quality of employment and job security... At this occasion, a large consensus has been

Le fédéralisme social. Les défis de la gouvernance à niveaux multiples, p. 165. KERSCHEN N. (2005), 'The social partners in European Employment Strategy. Specific guidelines and national action plans for employment' in De Schutter O., Deakin S. (ed), *Social rights and market forces: Is the open coordination of employment and social policies the future of social Europe?* Collection du Centre des droits de l'homme de l'Université Catholique de Louvain, Bruylant, p. 165.

³ KERSCHEN N., OMARJEE I. (2009) La stratégie européenne pour l'emploi : un exemple de rencontre entre une politique européenne et le droit communautaire. IRERP et CEJEC, Université Paris Ouest Nanterre La Défense.

reached among the social partners on the concept of '*quality of employment*', which has been included in the French national action plan 2001.

Contributions of the French social partners are in line with the objectives of the European Employment Strategy and the European guidelines. Active ageing is an interesting example⁴. In the 70ties and the 80ties, France has widely adopted pre-retirement measures in order to avoid mass redundancies. As a consequence, employment rate of people aged 55 to 64 fell dramatically. In 2003, it was only 36.8%. France got recommendations from the Council on this topic, because the European objective is to raise employment rate of this category to 50% in 2010 by introducing an '*active ageing*' policy. Therefore, French Government wanted to involve the social partners in its policy. Social partners committed themselves to negotiate on employment of older workers during the discussions on pension reform (2003). They signed a national cross-sectoral agreement on 13 October 2005 on active ageing, which was followed by a national action plan drawn up by the Government in order to develop employment of the '*seniors*' (2006-2010). Implementation of this national action plan showed weak results and Government decided, in May 2009, to sanction firms, which would not be covered by an agreement or an action plan on employment of the '*seniors*' after 1st January 2010.

European Employment Strategy has opened new space for negotiation for the social partners in France. They became members of a new tripartite body (CDSEI). They became actors of the national action plan by introducing their own contribution. They tackled new topics, like quality of employment, active ageing... They took new responsibilities in the field of telework, lifelong learning, gender equality, active ageing...

⁴ KERSCHEN N., MOURIER C. (2009), 'L'emploi des travailleurs âgés de 55 ans à 64 ans en France. De la négation du droit à l'emploi au vieillissement actif' *in Les seniors et l'emploi*. Bulletin du Centre de droit comparé du travail et de la sécurité sociale de l'Université de Bordeaux.

III. Changes in social inclusion policy.

Traditionally, fight against poverty in France is a topic under the responsibility of the State and local authorities. In the middle of the 80ties, social partners, who managed the unemployment insurance, decided to reserve it to the workers already included in the labor market. They rejected the coverage of the long-term unemployed and of the persons unable to enter the labor market. As a consequence, the State developed an '*inclusion sphere*', in which it created a guaranteed minimum income, named '*revenu minimum d'insertion*' (RMI). Social partners played no role in this sphere. Besides the State and local authorities, NGOs played an important role in the definition and the implementation of social inclusion policies.

Since the introduction, on the European level, of the 'Open Method of Coordination on social inclusion'⁵, French policy has been reoriented. Employment became an important topic through the European approach on active inclusion. Participation of social partners, together with NGOs, was highly recommended. As a consequence, French social partners became members of the National Council against poverty and exclusion in 2005. Inside this Council, the measures of the national action plan on active inclusion are discussed. Social partners have also played an important role in the '*Grenelle de l'insertion*' from December 2007 to May 2008. Its aim was to redefine the objectives and the methods of an inclusion policy. Three working groups were established. Each group had eight teams. Teams represented local authorities, customers, professionals of the social sector, NGOs, the State, trade-unions, employers and experts. In my ongoing research, I will analyze the role of the different actors in order to characterize the special role of the social partners in the field of social inclusion. It will also include a study on the '*revenu de solidarité active*' (RSA), which will replace the former RMI.

This part of the research will give me the opportunity to distinguish social democracy from participative democracy⁶.

What is at stake in France? Is the Welfare State changing? Are we dealing with a privatization of public utility matters or with the transformation of actors of the '*civil society*' into public actors? How could the European approach on the social dialogue, representative democracy and participative democracy help us to understand the ongoing changes?

⁵ KERSCHEN N., ROUSSEL-VERRET I. (in press), 'A la recherche de la société civile dans le cadre de l'Union européenne. Des discours à l'action' in *Actes du Colloque de Florence 2007* organisé par la Maison de l'Europe contemporaine de l'Université de Paris X.

⁶ Convention ANR 'EUROCIVIS' (2009-2011), La société civile et l'europeanisation des politiques sociales.