

**Eliane Chemla**  
Conseil d'Etat

## **THE FRENCH SOCIAL SECURITY SYSTEM\***

### **I. The history of a pragmatic system**

Before outlining the French social security system, the difference between two complementary principles that together form social protection as a whole must be introduced: the principle of insurance and the principle of solidarity.

Throughout its history, the social security system has melded these two principles together unequally, due to both the circumstances under which it was founded and the changes that have taken place within the society that it is meant to protect. To summarize in broad terms how it came about, it may be said that it was founded with a view to achieving universal solidarity, leading to the creation of today's two-sided social protection system: insurance for those who are able to afford it and assistance for those who cannot. While this simplified presentation above all helps understand the structure of the system, in reality it is not as straightforward.

Generally speaking, the principle of insurance is based on professional solidarity among workers of the same category, for the most part financed by contributions from insured persons, covering risks and providing benefits when an insured risk occurs. Due to its nature of solidarity, this insurance is compulsory.

The principle of assistance is based on national solidarity and is aimed at providing coverage for everyone by relying on public financing. Assistance benefits are offered to those in need of them, regardless of whether they have contributed financially, and therefore are secondary in nature.

At the beginning of the nineteenth century, the economy developed in such a way that charities, mostly run by churches, became ineffective. Up to that point, they had provided aid to poor people and those in situations of need. Gradually, specific protection systems took root, believed to be the forerunners to today's social security, which combined elements of assistance and welfare. These professional associations, which were referred to as "mutual benefit societies", insured their members in exchange for modest contributions to cover sickness benefits, funeral costs and pay out a retirement pension if they had sufficient financial reserves. They did not have a regulatory framework until 1852 when they were recognized by a decree enacted by Louis Napoleon Bonaparte. In

---

\* This article has been previously published in *The Right to Social Security in the Constitutions of the World. Broadening the Moral and Legal Space for Social Justice* (ed. M. Wujczyk), Geneva 2016.

1898, risk coverage was extended to maternity and children. Following the birth of social security, these schemes became “mutual insurance companies”, forming part of insurance economics.

At the same time, national solidarity became established in society. Since 1893, a law had been in force that provided free medical assistance to all citizens who were sick but did not have sufficient resources. At the dawn of the twentieth century, a national social aid system for children and assistance measures for disabled and ill, elderly people were implemented.

Gradually, these mutual benefit societies were absorbed into the public domain, having before been private, independent and voluntary: subjective and individual social aid measures, enacted by law, supported the principle of national solidarity. The Act of 5 April 1910 therefore established compulsory insurance for trade and industry workers; the Acts of 5 April 1928 and 30 April 1930 established an insurance scheme against the risk of sickness, maternity, disability, old age and death for employees with work contracts. The Act of 30 April 1928 created a special scheme for agricultural workers and the Act of 11 March 1932 established benefits covering family dependants that were financed by employers.

However, it was not until the end of the Second World War that social security, which was universally popular, became a government social protection project.<sup>1</sup> The National Resistance Council incorporated in its programme “a comprehensive social security programme aimed at ensuring the livelihoods of all citizens, whenever they are not able to do so through work, managed by the representatives of the interested parties and of the State”. Pierre Laroque, the father of social security, attempted to implement this project, however it did not take off because of the will of the *mutualistes* in certain professions and his choice of financing. The difficulties he encountered because of this choice subsequently limited his ambitions.

The two-fold nature of the project may be attributed to the combined influence of the 1942 Beveridge Report and the Bismarckian system. Beveridge, whose aim was to expand welfare to all citizens and increase social justice, proposed the three-U rule which would guarantee total national solidarity: universality of social protection by covering all citizens and risks; uniform benefits based on individual needs and not risk occurrence; unity of state management of all social protection schemes financed by taxes. The Bismarckian system, which is mainly concerned with preventing trade union and socialist rebellions by improving working conditions, is based on the concept of insurance (compulsory coverage for eligible workers that is financed by social contributions from workers and employers and managed by the workers and employers).

---

<sup>1</sup> The Ordinance of 4 October 1945 provided for a coordinated network of funds instead of multiple organizations, however it has never become an administrative entity.

The Ordinance of 15 October 1945 related to sickness, maternity, disability, old-age and death risks.

The Act of 22 August 1946 extended family benefits to the majority of the population.

The Act of 30 October 1946 incorporated compensation for occupational accidents with social security.

The Act of May 22 1946 suggested the principle of universal coverage for the entire population but self-employed and non-agricultural professions were against it.

*The French social security system and the Beveridge report*

Despite declarations made by the National Resistance Council, the French system moved away from the model that it had wanted to adopt, not only for political reasons but also due to existing professional companies.

1) Unity was not achieved. While the division into branches was not made official until 1967, social coverage was divided from its inception, with each branch corresponding to a risk, meaning that the concept of insurance was given more importance than “insuring the livelihoods of all citizens”. It was managed by several specialized funds, each covering a risk (for example old age, illness, maternity).

The organization of social security into *schemes based on professional affiliation* reinforced this approach. The special schemes that existed before the war (including mining, the railway company SNCF and civil servant schemes) were retained. An agricultural scheme was added, along with other independent schemes (including for traders, craft trade workers and liberal professions) based on profession, because of their resistance to the widespread introduction of the scheme set up in 1946.

2) The universality called for by the National Resistance Council differed from its original intention, moving away from the Beveridge model. The concept based on professional affiliation prevailed over one based on citizenship. However, the instigators of the scheme believed in its universality, and considered that the professional schemes would in time provide the entire population with insurance, since they were convinced that economic development would gradually create jobs for everyone.

This particular form of universality remains only partially true, however:

– Parts of the schemes based on professional affiliation still exist. The result is that employees have different benefits because they are not affiliated with the same scheme (the debate on the differences between pension schemes continues today).

– Risk coverage for the unemployed is identical, provided by an assistance scheme (either at the local or national level) that is financed by taxes. The economic crisis that took place at the end of the 1970s caused the assistance scheme to expand. Nowadays it forms an integral part of social protection along with the minimum income benefit established in 1988, the income of active solidarity established in 1999, and universal health coverage implemented in 2000, all much more in line with the Beveridge concept of covering needs.

– Not all risks are covered. The risk of unemployment, which was not an issue when the system was created as there was a workforce shortage, was not incorporated in social security. Unemployment insurance was established later in 1958 and to this day, its financing and management remain independent of social security.

All in all, there is universal coverage, from the perspective of both the population and social risks, but this came to be via several successive stages based on different concepts. These are the elements of this universal approach with French characteristics.

3) The principle of uniformity was abandoned by the founders of the French social security programme because they wanted the benefits, referred to as “replacement income”, to ensure the same standard of living as that prior to the risk occurring, which is why they remain separate, like individual resources. Social contributions and benefits are

therefore dependent on prior earnings, which is why they are referred to as “replacement income”. Inequality is, however, reduced by the wide range of contributions and benefits.

While none of the three U-rules have been fully embodied, the French model has retained parts of all Beveridge’s main principles.

### *The French system and the Bismarckian model*

As we have just seen, where the system diverges from Beveridge’s recommendations, it moves closer to the Bismarckian model:

- Social contributions from both employees and employers represent the point of entry, whereas taxes finance the solidarity and minimum social benefits. During the course of history, salary contributions have dropped below what is required to cover expenses during periods of increased unemployment, which in turn increases the proportion of taxes needed to finance social protection. Despite this, social contributions still cover more than 60 per cent of revenues: social security continues to be more insurance-oriented than assistance-related and is still based more on mutualizing risks than national solidarity.

- The various social security schemes are not directly managed by the State but by social partners, highlighting their professional and statutory nature.

- The concept of replacement income remains, despite solidarity income still existing due to the creation of minimum social benefits. Furthermore, the statutory and professional concept maintains social hierarchy more than it offsets it, even if compensation is partly included in it. In this way, the desire for a welfare state is apparent in the choice of benefits themselves in proportion with the risk, not the salary.

### *The uniqueness of the French system*

The resulting French social security system mirrors more closely the Bismarck model than the Beveridge model, despite the fact that the latter’s principles remain. The Bismarckian insurance concept has, however, been adapted in order to retain the general principles of solidarity:

- by extending coverage to people who are not contributing, such as students (considered to be pre-working age), retired people, and members of the workforce who are unemployed, and by passing laws that grant rights to people who are outside of the traditional family circle (partners, common-law spouses);

- by maintaining the principle that social aid should be for all those who do not have sufficient resources in order to enjoy an adequate livelihood;

- by extending (in 1975) the advantages of certain social security benefits based on place of residence through public financing, achieved in 1999 through the implementation of universal health coverage which depended on resource conditions, irrespective of professional activity and contributions.

The unique and pragmatic approach of the French social security system can be characterized by its attempt to attain Beveridge’s principles through essentially Bismarckian means, all the while adapting to social change.

The basic founding principle of social security was mentioned above, as defined by the National Resistance Council. Quotes from the Ordinance of 1945 provide a clearer picture of how these principles were meant to be implemented:

“Social security is the promise made to each person that no matter the circumstances, he will have the necessary means so that he and his family can live with decency. Justified by a fundamental lack of social justice, social security is in response to the concern of eliminating the uncertainty that workers face in relation to their future, a constant uncertainty that creates in them a feeling of inferiority and which is the real and profound basis of class distinction between those who are sure of themselves and their future and those workers who are constantly tormented by the threat of poverty.”

“Seen in this light, social security calls for an extensive national organization of compulsory mutual assistance to be established that can only reach its full potential if it is very general in terms of the people and risks it covers. The overall objective is to provide coverage for the entire population of the country against all elements of uncertainty; this goal will only be achieved after many long years of persistent effort. What is possible today is to organize the framework within which this plan will be gradually implemented.”

## II. The organization of social protection

The Ordinance of 4 October 1945 provides for a coordinated network of funds instead of the existing multiple organizations. Still today they are not unified, however.

The result is that agricultural occupations have retained their “agricultural social mutual insurance” which is managed by various organizations. Employees covered by special schemes (those that existed before the creation of the general scheme) refused to join in the new scheme, and by doing so preserved, for what was supposed to be a transitional period but still exists today, special schemes (such as for civil servants, seafarers and railway and mine workers) with different benefits. Even today regulations are trying to harmonize these benefits, particularly as regards pensions.

The Ordinance of 19 October 1945 addressed illness, maternity, disability, old-age and death risks, and the Acts of 22 August and 30 October 1946 provided for occupational accident compensation and family allowances which extended to the majority of the population, without affecting existing principles. The Law of 22 May 1946 established the principle of extending social security to the population as a whole. However, self-employed, non-agricultural employees were opposed to it, and therefore a specific compulsory scheme was developed under the name “*no-no scheme*”, which has become the social scheme for self-employed workers.

Similarly, while administrative unity for social security has yet to be attained, demographic and economic changes have worked towards this goal by forcing a number of small insurance funds to close and by introducing a compensation mechanism between schemes in order to balance the demographic relationship between contributors and pensioners, causing smaller schemes to lose their assets to the general scheme.

The successive reforms of the social security system have always stayed true to the main principles put forth when it was established, as well as enabling it to survive by keeping it balanced. Over time, the objective of justice was complemented by an objective of fairness, resulting especially in the differences in benefits and contributions among the various schemes being slated for elimination.

This is how over time, and not without a number of difficult updates, the French social security system attempted to move towards achieving its principles and preserve, despite financial difficulties, the essence of the concept of generosity that had led to its creation.<sup>2</sup>

*The composite structure of the French social protection system*

France's traditional approach to social security means that it only deals with social protection that is covered by the contributions that members are obliged to make, and offers core benefits when one of the risks it covers occurs.

Since this core social protection does not guarantee that all expenses resulting from a risk (such as sickness) or from the situation of the insured person (such as old-age pension) will be reimbursed, complementary social protection is needed. In practice, this tends to come from personal savings, a mutual insurance system or complementary social insurance.

General guidelines are provided by the State through acts or regulations, based on the position that the standard to be adopted holds by virtue of the constitutional principles that determine the division between act and regulation. While the overall scheme is in theory managed by the social partners, the State decides the level of resources and content of the benefits offered by the general scheme. Certain special schemes continue to enjoy more independence, but this is being phased out.

A number of changes, both in sickness and old-age pension coverage, have brought the parameters of different schemes closer together in an attempt at harmonization, but also due to the financial difficulties faced by these schemes.

Regarding sickness, following the 1996 constitutional reform, the Act on financing social security (LFSS) was established. This new financial law category was aimed at keeping social and health expenditure under control by determining, on a yearly basis,

---

<sup>2</sup> Interprofessional collective agreement of 14 March 1947 establishing the supplementary retirement scheme for managers

Act of 9 April 1947 extending social security to civil servants

Act of 17 January 1948 establishing three retirement pension insurance schemes for self-employed, non-agricultural occupations (craft trade workers, industrial and trade occupations, licensed professions)

Act of 12 April 1949: creation of a mandatory health insurance scheme for farmers, managed by the Agricultural Social Mutual Insurance Company (MSA)

Act of 25 January 1961: creation of a mandatory health insurance scheme for farmers, with free choice of insurer

Act of 12 July 1966: creation of an independent maternity health insurance scheme for people who are self-employed and not agricultural workers, managed by the National Health Insurance Fund for the Self-Employed (CANAM)

Act of 22 December 1966: creation of a compulsory complementary scheme for farmers covering accidents at work, occupational diseases and accidents that occur outside of work, with free choice of insurer

Act of 25 October 1972: institutionalization of social protection of farmers against accidents at work

Act of 4 July 1975: extension of compulsory old age pension insurance to entire workforce

Act of 28 July 1999: implementation of universal health insurance: basic protection solely based on place of residence and complementary protection for the most disadvantaged.

Act of 2008: implementation of principles intended to align remaining special schemes with the general scheme in relation to old age pension insurance parameters.

the conditions needed for the social security system to remain financially stable, which was achieved by setting expenditure objectives based on the revenue forecast. Parliament votes on this Act every autumn, in conjunction with the budget law which determines the State's budget. In this way, Parliament not only supervises the financial stability of social security but also has a say in the guidelines of health and social security policies, and the way in which they are financed.

This control is, however, limited. The LFSS does not provide for revenue to be collected, it only forecasts it. In addition, the expenditure objectives, which are voted on by Parliament, determine expenditure based on a level which is deemed to be sustainable, but do not limit it.

It has only been since the 1993 Act was passed that the Government has acted upon the different parameters of old-age pensions in order to improve the financial status of the general scheme related to pension insurance (mainly the duration of contributions, pension calculations and age of pension eligibility). A number of reforms followed that once again consolidated the conditions for calculating pensions in an attempt not only to adapt the scheme, as and when necessary, to economic difficulties which reduced resources, but also to the adjustment in life expectancy which significantly increased the duration of pension contributions as well as the costs of the scheme.

Initial reforms applied only to the general scheme, but were followed by reforms to the civil servant scheme. In 2008, a number of decrees aimed at aligning more rigidly the conditions imposed on members of special schemes with those in other schemes. While certain schemes retained a number of comparative advantages, it must be noted that the on-going controversy surrounding these "injustices" is mostly unsubstantiated, made up of the same empty claims used over and over again.

It has already been specified that these schemes retained their professional organizations, which manage contributions and benefits like the general scheme national funds, but the description of the conditions prevailing within the general scheme should include the conditions of all the other schemes, or at least of their near future.

#### *The general social security scheme:*

The general French social security system divides risks into three branches: Sickness/Accidents at work and occupational diseases, Family, Old Age.

Each branch is managed by a group of private local funds specialized in one of the risks, that share the national territory, and abide by the directives set out by a public national body:

– The *Caisse nationale d'assurance maladie des travailleurs salariés* (CNAMTS) – the National Health Insurance Fund for Salaried Employees) is a public institution made up of local funds (private entities) that dictates the direction of those funds. The local funds (CPAM), governed by the principle of equality (trade unions that represent employers and workers) but subject to a large extent to the policies decided at the national level, are in fact responsible for implementing this policy.

– The *Caisse Nationale d'Assurance Vieillesse des Travailleurs salariés* (CNAVTS) – National Old-Age Insurance Fund for Salaried Employees) centralizes all the resources

of old-age insurance and manages old-age and survivors' insurance through core organizations.

Since the 2010 reform, the core organizations that are responsible for managing pension schemes are also responsible for managing occupational accident prevention schemes. The CARSAT falls under the supervision of both the CNAV and the CNAM.

– Similarly, the *Caisse Nationale d'Allocation Familiale* (CNAF) – National Fund for Family Allowances finances all the family benefit schemes through its network of core funds (the CAF).

Acting in connection with all branches, the *Agence Centrale des Organismes de Sécurité Sociale* (ACOSS) – Central Agency of Social Security Organizations is tasked with managing the funds for the various risks related to the three national funds. These local organizations, known as the URSSAF, collect social security benefits and hold employers accountable for their social obligations.

#### *Unemployment insurance:*

While in theory unemployment insurance is based on the same principles as other branches, the risk of unemployment appeared after the other risks and was therefore not part of the social security organization that was defined in administrative terms. It was not until 1958 that the social partners, strongly encouraged by the Government, created an established unemployment insurance scheme. As a result of how it was initiated, this scheme benefits from more independence at the political level.

Operation of the public employment service was organized by the social partners, which finance the scheme, in two different bodies: the *Union Nationale interprofessionnelle pour l'Emploi Dans l'Industrie et le Commerce* (UNEDIC) – National Inter-professional Union for Employment in Industry and Trade managed by the social partners and tasked with administering the unemployment insurance scheme and setting up compensation through the *Association pour l'emploi dans l'industrie et le commerce* (ASSEDIC) – Association for Employment in Industry and Trade network which paid the compensation owed to the beneficiaries, and the *Agence Nationale pour l'Emploi* (ANPE) – National Employment Agency which is dependent on the State and is responsible for finding work for the unemployed. In 2008, the ANPE and the ASSEDIC network were administratively regrouped into a new body called “*Pôle-emploi*” – Employment Centre, which has the same responsibilities as the institutions it was created from, without, however, modifying the principles of equal management of the UNEDIC.

The aim, amount and duration of unemployment insurance benefits depend on the duration of contributions to the scheme and the amount paid in.

#### *Supplementary coverage:*

There are two categories of supplementary coverage: optional and traditional schemes (that apply to health insurance) and compulsory schemes (that apply to old-age employee schemes).



*Regarding sickness*, getting expenses reimbursed has become more and more restrictive since the first Act on social security funding was passed, in order to adjust spending to the available revenue which is decreasing due to increased unemployment. To compensate for this increase in the “excess”, insured persons can sign up for supplementary insurance, usually with a mutual insurance company, that belongs to them and is managed as a non-profit, covering all or part of the difference between expenses and the amount reimbursed under the general scheme. In many large enterprises, the employer signs up to supplementary group insurance. For both types of contracts, the *Union nationale des organismes complémentaires à l'assurance maladie* (UNOCAM) – National Union of Complementary Health Insurance Organizations – consolidates the various mutual health insurance companies. This body enables the mutual insurance companies to play a fully-fledged role in the health system by negotiating with health insurance companies and health professionals.

Supplementary health insurance is not monopolized by mutual insurance companies; private insurance companies also offer coverage.

*Regarding old age*, while supplementary insurance is voluntary, it is compulsory for employees. The mutual and other insurance companies that manage the compulsory supplementary old age scheme are grouped in two federations: the AGIRC – ARRCO for private sector employees and IRCANTEC for public sector employees. Given the typically low pension payments made under the general scheme, supplementary pensions are essential within the employee pension system, except for civil servants and members of certain special schemes. It is up to them whether they sign up for supplementary pension insurance which in some cases may result in tax incentives.

#### *Assistance and solidarity: social aid and action*

As has been shown, social security benefits are based on contributions which are linked to employees' status. People who have not worked are therefore excluded because they have not contributed, or have not contributed enough, to the scheme, despite having the greatest need for social security benefits.

On the basis of national solidarity, assistance mechanisms were created to respond to this need. Tax contributions are made to the system and benefits or care are provided to those who are not affiliated with a social security scheme, regardless of prior contributions. The aim is to provide minimal resources for survival and sufficient care to enable all persons to remain in good health.

There are usually two types of assistance:

– “social aid”, whereby the public institution helps meet a need. This is in answer to an obligation that society has decided to implement, and a subjective right of the individual who has found himself in this situation of need. In theory, society is meant to find accommodation for those who are not able to secure it through the private market; minimum income (either referred to as “insertion” or “active solidarity”) is provided to all those who do not have sufficient resources; universal health insurance ensures that the medical care of the uninsured is covered by the State.

– “social action” may be required by a company or individual in order to make up for any shortcomings of social aid. For this reason, social security organizations put aside

part of their budget to cover more than just the statutory benefits for members who find themselves in a difficult situation. Similarly, local communities subsidize associations that provide support for those in need.

By filling in the gaps left by the social security system, or compensating for its shortcomings, these other branches of social protection, social aid and action, strive not to leave some of their citizens “by the wayside”. Due to the difficult situation that the country is currently experiencing, these additional types of protection have proven to be essential, so much so that more radical ideas of social assistance have been discussed, such as “subsistence income” which would be paid out to everyone, regardless of their situation, and would go hand in hand with the extension of social security to all. While of course not perfect, today’s coverage continues to be effective and is similar to other European systems.

### *The principles of social security and the justice system*

The legal principles of the social security system are contained in the Constitution and its Preamble, and have been enforced by constitutional and benefits courts: labour courts for labour matters, social security courts for members of the various schemes, and administrative courts for state official schemes.

#### *Main documents:*

##### Article 1 of the Ordinance of 10 October 1945

A social security system that insures workers and their families against all kinds of risks that may impair or take away their earning capacity and covers maternity costs or family costs is hereby established.

##### Articles 10 and 11 of the Preamble to the Constitution of 1946

The Nation shall provide individuals and families with the conditions necessary for their development. It shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure. All people who, by virtue of their age, physical or mental condition, or economic situation, are incapable of working shall have the right to receive suitable means of existence from society.

##### Article L111-1 of the social security code as amended by the Act of 21 December 2001

Social security is organized based on the principle of national solidarity. It guarantees workers and their families against risks of all kinds that may reduce or suspend their earning potential. It also covers maternity, paternity and family costs.

It provides, for all people and for all family members residing on French territory, coverage for sickness, maternity and paternity costs as well as family costs.

This coverage applies through membership of the concerned parties and their dependants to one (or more) compulsory scheme(s).

It guarantees benefits covering social insurance, occupational accidents and diseases, old-age allowances and family benefits within the framework of the provisions set out in this code.

Article 1 of the Act of 13 August 2004 on Health Insurance

The Nation affirms its commitment to the universal, compulsory and comprehensive nature of health insurance. Regardless of age and physical or mental condition, each insured person benefits from protection that he finances according to his resources against the risk and consequences of sickness.

Article 34 of the Constitution of 1958

Statutes shall also lay down the basic principles of:

[...]

– employment law, trade union law and social security.

[...] Social security financing laws shall lay down the general conditions for the financial stability thereof and, taking into account forecast revenue, shall determine expenditure targets on the conditions and with the reservations provided for by an institutional act.

*The Constitutional Court*

Drawing on these provisions, the Constitutional Court recognized the constitutional status of the right for every individual to obtain a job<sup>3</sup>, of the principle of workers' participation<sup>4</sup>, and of the right to social protection<sup>5</sup> or health protection<sup>6</sup>.

Pursuant to these principles, and the main constitutional principles of *equality before the law* and *equality in terms of public burdens*, the Constitutional Council implemented a rule related to social security that states that “the principle of equality shall neither conflict with what the legislator rules in different situations, nor with the fact that he derogates from equality for general interest reasons, as long as, in another case, the difference in the resulting treatment is in relation to the intention of the law that establishes it”, in line with the European Court of Justice and the European Court of Human Rights. As stated in a 1997 decision:

“Considering that, through this provision which has been criticized, the legislator, who is responsible for evaluating the conditions under which family rights must be reconciled with other general interest imperatives, attempted to restore financial stability within the family branch of the general social security scheme by suspending payment of family benefits to families that had a higher level of resources; by stating that family allowances and age restrictions “are allocated to a household or individual whose resources do not exceed the ceiling which varies

<sup>3</sup> Constitutional Council, Decision No. 98–401 of 10 June 1998, framework and incentive Act related to the reduction of working hours.

<sup>4</sup> Constitutional Council, Decision No. 77–83 of 20 July 1977, Act amending Article 4 of the Amending Finance Act of 1961 (service obligation of civil servants).

<sup>5</sup> Constitutional Council, Decision No. 86–225 of 23 January 1987, Act establishing various social order measures.

<sup>6</sup> Constitutional Council, Decision No. 80–117 of 22 July 1980, Act on the protection and control of nuclear materials.

according to the number of dependent children”; by avoiding certain threshold effects linked to the establishment of the ceiling by granting different family allowances when resources exceed the ceiling of an amount lower than the determined sum, which further highlights the transitional character of the measure, which applies “until all the family benefits and financial aid have been reformed”, the legislator has established the difference between cases based on objective and logical criteria in relation to the goals of the Act;

[...]

Considering that, even with the same income and number of children, the cost associated with having children at home is markedly different if there is only one person in the couple pursuing a gainful activity, or only one caretaker, or if both pursue a gainful activity, due to the specific constraints caused by the two previous situations. It is the duty of the regulatory authority to set the minimum occupational income that grants the right to an increase in a way that does not create unjustified discrimination.”

In this way, the principle of equality does not conflict with granting different benefits depending on needs, responding to a concern for equality that the Constitutional Council, while not explicitly stating it as a principle, still introduces it into its reasoning on social issues.

### *The Administrative Court*

Even though contentious social security issues fall within the competence of the Judicial Court, specifically the Social Security Court, and as a last resort the Court of Cassation, the Administrative Court can be called upon to rule either on conformity with the law and the principles set out in the regulations addressing this topic, or the disagreements on social benefits between an employer and his employees.

#### – Family benefits

In accordance with regulations, the State Council has had the opportunity to confirm that the principle contained in Article 11 of the Preamble to the Constitution constitutes a “general principle of law” through which families, and particularly mothers and children, must be guaranteed material security. A minimum level of income must be guaranteed through family benefits.

#### – Equality between men and women regarding old-age pensions

Taking the principle into account, which is particularly applicable to the right to social security in both the Administrative Court and the Constitutional Council, of prohibiting discrimination, particularly in relation to gender, the State Council also ruled, at the same time as a decision taken by the Court of Cassation, and eliminated the difference in retirement age between male and female flight attendants established by Air France’s internal rules.

As regards the amount paid out in old-age pension, the State Council’s ruling of 29 July 2002, based on the Griesmar judgment of the Court of Justice of the European Communities of 29 November 2001, which was in response to a preliminary question raised by the State Council, confirms that “the principle of equality of compensation precludes that a bonus, used for calculating old-age pension, granted to those who have provided their children with an education, applies only to women, while men who provided their children with an education are exempt from this bonus”.

– Right to health

Regarding health, in its Charente-Maritime Departmental Assembly decision of 14 December 2007, the State Council interpreted, in view of paragraph 11 of the Preamble on the right to health, the legislative provisions that determine the funds that must be left, after payment, to elderly people who are living in a home financed by social aid. The State Council deemed that this was not in conformity with the principle of reducing funds below what is needed in order to acquire supplementary health insurance.

*The Judicial Court*

The Court of Cassation sets out the rules regarding social security, where disputes involve employees fighting their employer or their social security organization. The Court of Cassation's case law and that of the Administrative Court coincide even more than in related fields, particularly concerning labour rights and old-age pension rights. Regular meetings ensure that they follow the same reasoning and avoid interruptions to case law.

– Equality between men and women

In its 15 June 1999 judgment, the labour chamber of the Court of Cassation ruled that it was illegal to have an age difference, which dated back to the time of Louis XIV, between male dancers (45 years) and female dancers (40 years) at the Paris Opera Ballet. Following this ruling, the Paris Opera set the age of retirement at 42 years for all.

However, the Constitutional Council and the Court of Cassation at first disagreed on this highly disputed issue.

In 2003, the Constitutional Council ratified a legislative provision giving women, and not men, an increase of one year in old-age pension per child. It ruled:

“[...] that it was the responsibility of the legislator to take into account the inequality of treatment suffered to date by women; that in particular, they interrupted their professional activity much more than men in order to provide their children with an education; therefore, in 2001, the average duration of insurance was 11 years less than that of men; that women's pensions were on average over a third less than that of men; that due to the general interest surrounding this situation and to avoid the consequences resulting from abolishing the provisions of Article L. 351-4 of the social security code regarding pensions paid to future retirees, the legislator could implement provisions to compensate for the inequalities that in theory should disappear.”<sup>7</sup>

But in 2006, the Court of Cassation, ruling on the case of an insured man who had raised his child on his own, granted him an increase in the duration of his insurance, estimating that in his case, the discrimination was not in conflict with the French Constitution but with Article 14 of the Convention on Human Rights and Fundamental Freedoms, which prohibits any discrimination based on gender without objective and reasonable justification. Following this judgment, a legislative reform was established to align the benefits granted to fathers and mothers, as long as they can prove their professional activity was interrupted in order to raise a child.

As guardians of the principles, ultimately reaching a consensus in order to protect the rights of all in relation to social security, acknowledging the needs that the desire to

<sup>7</sup> Decision No. 2003-483 of 14 August 2003.

restore various schemes in difficulty can impose, national courts, in line with European courts, built a solid framework that should enable the French social security system, which is often struggling financially, to adapt to the conditions, including during times of crisis, without losing sight of the strong desire for national solidarity expressed in the Preambles to the Constitution and nurtured by case law.

The fragility of the French social security system is sometimes referred to, a system that is expensive, meaning that it sometimes struggles financially. However, it would be unfair to forget that the difficulties it encounters are the downside of having an ambitious programme that expresses not only national solidarity but also a concern not only to preserve the health and wellbeing of its citizens but also to bring the aid of the strongest to the weakest. While acknowledging that reform is needed, this system refuses to sacrifice the principles that it was built on. It should continue to follow this course despite the crises that it will undoubtedly encounter along the way.

### Summary

The paper describes social rights regulated by French constitutional provisions such as right to health, right to social assistance and right to housing

**Keywords:** France, social security rights, constitution