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Domestication of the CEDAW in France: from paradoxes to ambivalences and back again

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1 Introduction

Who knows about the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in France? Very few people.[1] Who uses the CEDAW in France? Even fewer. And yet France has been a party to the Convention for almost thirty years, after a rather smooth ratification process involving both Houses of Parliament and the executive branch. During the Parliamentary discussion of the draft legislation to authorize the ratification of the Convention by the president,[2] a member of the National Assembly in strong support of the ratification even firmly stated that the time had indeed come for France, home country of human rights, to also become the home country of women's rights. The double meaning of this seemingly positive statement is revealed when considered in its original French,[3] where the notion of 'human rights' translates into 'droits de l'homme' and where 'homme' means in general 'human', but also and more commonly 'man'. The French language, including that of human rights, thus uncovers the first and original bias against women. French grammar and vocabulary are indeed strongly gendered, and it remains common that job titles for most positions of power are

[1] Quite significantly, both on the notoriety of the Convention and present-day vectors of communication, see the Facebook group 'Savez-vous ce qu'est la CEDAW?' ('Do you know what the CEDAW is?') – which counted one member. See www.facebook.com/topic.php?uid=122179016387&topic=9918 (last accessed 30 August 2011).

[2] These Acts of Parliament do not amount in themselves to ratification acts of international instruments, but authorize the executive branch to ratify (president) or approve (government) the relevant instrument.

[3] '... pour que la France, après avoir été le pays des droits de l'homme, devienne aussi, enfin, celui des droits de la femme'. See Yvette Roudy, Minister Delegate for Women's Rights, Assemblée nationale, 1st meeting of 27 June 1983, at 3257.

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expressed in their masculine versions, even when a woman occupies the position. Opting for the feminine wording of professional titles very often provokes reactions and comments on the lack of elegance or the strangeness these feminized titles supposedly carry. This original bias is so deeply entrenched in minds and mentalities that it takes not only legislation and other policy measures, but also no less than a soft revolution of mindsets to overrule or erase ancient stereotypes and to succeed in conceiving a truly equal notion of equality.

However, assessing the CEDAW's formal and real status in French law and practice raises methodological questions. Putting the issue into context indeed requires taking into account what is often referred to as French 'exceptionalism' or 'specificity', understood as the influence of republicanism, universalism and even anti-Americanism.[4] The claim of specificity should not and must not become a systematic explanation in order to justify being exempted from providing any kind of argument, but, at the same time, one cannot ignore and disregard that this specificity does indeed exist and must therefore be adequately acknowledged as part and parcel of the dominant French legal culture.

This specificity is one of the multiple sources of the equally multiple layers of paradoxes and ambivalences that characterize the French perception and understanding of and dealing with the issue of women's rights, which inevitably reverberates on the perception and understanding of and dealing with (i.e. domesticating) the CEDAW.

It is therefore useful to begin by reflecting on the general context – social, cultural, political and legal – in France, in order to grasp more comprehensively the paradoxes and ambivalences at stake, and to perceive the slow process of persuasion that is at work in order to impose the legitimacy of a gendered discourse on the domestic scene (section 2). This more fine-tuned perception and assessment will in turn provide useful guidance in understanding the current status of the domestication of the CEDAW in France. First, it sheds a tinted light on a complete and smooth ratification process, coupled with long-standing and sometimes puzzling reservations (section 3). Moreover, even if the theme of equality between women and men is increasingly present on the political and legal scene,

[4] Significantly, even in academia the common and widespread reaction when feminist approaches to law are mentioned is to consider these to be typically Anglo-Saxon themes and concerns, thereby conveying the impression that France is shielded against these issues. For comments from the French side, see H. Ruiz Fabri and E. Jouannet (eds.), *Féminisme et droit international* (Paris: Collection de l'UMR de droit comparé, Edn. SLC, forthcoming).

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regarding domestic implementation the overriding observation is, quite simply, that of a quasi-invisibility of the instrument in the domestic legal sphere (section 4). It goes without saying that the invisibility of an international instrument strongly suggests that the provisions it contains do not reach the individuals it is designed for, and thus points to a general lack of direct effect in the domestic legal order.

2 Contextualization: a troubled process of 'persuasion'

France is a developed Western country whose global social context is not necessarily one of the most problematic towards the CEDAW, a factual observation from which one should nevertheless be careful not to deduce that the situation regarding women and their equal rights is satisfactory in general. But whatever is done – or not done – is not only difficult to connect to the CEDAW, whose implementation tracks require a rather voluntaristic investigation (see below), but is also difficult to place in a common framework. This is to say, that if and when policies aimed at dealing with women's rights are designed and implemented, they nevertheless do not belong to any kind of policy conceived in a unified way, and especially not to an approach based on the idea of gender mainstreaming.[5]

It is noteworthy in this regard that gender mainstreaming is absent from the discourse in France and, probably even more significantly, that the very notion does not translate into French.[6] This is not to say, however,

[5] As understood, for instance, by the UN Economic and Social Council: 'Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies and programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral part of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality' (*Report of the UN Economic and Social Council for 1997*, A/52/3, 18 September 1997, Chapter IV). See also Council of Europe, *Gender Mainstreaming: Conceptual Framework, Methodology and Presentation of Good Practices*, Final Report of the Group of Specialists on Mainstreaming 1998 EG-S-MS (98) 2 rev., available at: www.coe.int/t/dghl/standardsetting/equality/03themes/gender-mainstreaming/EG_S_MS_98_2_rev_En.pdf (last accessed 19 February 2013). Article 8 of the Treaty on the Functioning of the European Union provides that 'In all its activities, the Union shall eliminate inequalities, and promote equality, between men and women.'

[6] The most common translation is through a long expression: 'intégration des politiques d'égalité entre hommes et femmes' or 'intégration de la dimension de genre'. These expressions are not very meaningful at first sight and require further explanation. They have not reached everyday language. Significantly, *Eurovoc*, the Multilingual Thesaurus of Europe, does not provide any proper translation.

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that gender mainstreaming does not occur or is not implemented. At the very least, it is sometimes referred to by government officials when justifying certain policies, especially at the international level where the notion operates as a buzzword and an inescapable part of its vocabulary. But from there to deducing that it might have become a leading idea or a clear political and policy-building choice is a very big step, and currently still too big a step. Therefore, depending on the issue at stake, there can be discrepancies and interferences. It is for this reason that we focus so insistently on paradoxes and ambivalences, neither pretending that a similar situation does not exist elsewhere but simply that it is distinctly perceivable in France, nor providing a full and exhaustive account of this situation, but rather some revealing insights.

First, it is noteworthy that the early 1980s saw the creation of a Ministry specifically devoted to women's rights.[7] This was a spectacular initiative; however, it did not take place in a vacuum since, especially since the mid 1970s, several structures dedicated to policies concerning women had already been set up. However, the permanency of such structures goes together with the instability of their status and the variability of their prominence on the political agenda. In this regard, a major aspect of context lies in the observation that structures and policies strongly depend on the political majority in power and, if it is obvious that the right wing cannot repudiate a cause such as the advancement of women's rights, it is also just as obvious that their enthusiasm for and commitment to this issue is less than that of the left wing,[8] and that the approach taken is much more conservative.

More generally speaking, however, the cultural environment is not particularly favourable for, on the one hand, an approach centred around issues regarding women – there has been long-standing resistance to such issues and the acknowledgment of the legitimacy of the related discourse

[7] Until May 2012 it was to be compared to a situation where, among the institutional mechanisms in charge of promoting women's rights and equality was the Minister delegated to Social Cohesion and Parity, attached to the Ministry of Employment, Social Cohesion and Housing. In order to fulfil her mission, the Minister has at her disposal a Service of Women's Rights and Equality. This Service was the only (amputated) remainder of the former Ministry of Women's Rights. This Ministry was set up again in May 2012.

[8] It has been observed that out of the twelve major reforms implemented between 1967 (legislation on birth control, which can be taken as a starting point) and 2001, eleven were supported by the left wing while the right wing only supported two. See J. Mossuz-Lavau, *Les lois de l'amour: les politiques de la sexualité en France 1950–2002* (Paris: Payot, 2002) at 409. Also see G. Allwood and K. Wadia (eds.), *Gender and Policy in France* (Basingstoke: Palgrave Macmillan, 2010) at 16.

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is only very recent – and, on the other hand, an approach centred around the issue of non-discrimination or discrimination. There is indeed strong resistance in France to any notion of affirmative action as well as of positive discrimination, which is to be linked to the French idea of equality, an idea that, incidentally, does not necessarily match the sociology of a society that continues to dwell on a logic of privileges.

The French legal and political culture is indeed not spontaneously favourable to pushing to the foreground specific issues related to women, especially when these issues are raised in terms of rights. This is intrinsically related or even due to the French approach to universalism, which has led to the construction of a 'universal subject', regardless of gender or any other factor marking a specific social identity. The result of this approach is a strongly anchored resistance to any notion of affirmative action.[9] This does not mean that affirmative action does not exist. It means, however, that the very idea struggles to impose and establish its legitimacy. This might account for the somewhat original path chosen in France and consisting of translating equality into parity, as the meeting point between the necessity to develop the presence of women in powerful or decision-making positions in particular and the French understanding of equality. This path might even appear as being more radical than many affirmative action devices, unless one pays attention to how it is actually implemented. Thus, one must perforce acknowledge that the French discourse on parity promises much more than what the implementation of the parity devices brings about concretely. For instance, as regards political representation, parity concerns candidacy but not the actual positions after election. To this must be added that the sanctions for non-compliance seem not to be particularly dissuasive, especially for big political factions. In any event, the idea of parity – like that of affirmative action – provokes deaf resistance focused on the view that gender should be irrelevant. The reason is not only that the notions of affirmative

[9] Compare this to the situation in Germany, where the positions regarding affirmative action remain contrasted due to the unclear interpretation of Article 3 of the Basic Law, as amended in 1994 (some arguing that this Article allows for affirmative action, others arguing against this view). For an insightful presentation of the German approach to affirmative action (notably the private sector/public sector divide), see A. J. Stock, 'Affirmative action: a German perspective on the promotion of women's rights with regard to employment', *Journal of Law and Society* 33:1 (2006) 59–73; and M. Zuleeg, 'Gender equality and affirmative action under the law of the European Union', *Columbia Journal of European Law* 5 (1998–1999) 319–28. Also see the two European Court of Justice cases *Kalanke* v. *Freie Hansestadt Bremen* 17 October 1995, C-450/93, 1995 ECR I-3051 and *Marschall* v. *Land Nordrhein-Westphalen* 11 November 1997, C-409/95, 1997 ECR I-6363.

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action or parity conflict with the alleged neutrality of universalism in terms of gender, but also the fact, largely and easily demonstrated, that this neutrality is biased, if only because women remain very largely underrepresented in decision-making spheres and processes. Suffice it to mention that despite the legislation on parity, for which, spectacularly, a constitutional amendment was necessary,[10] France remains at the 63rd rank regarding the proportion of women in Parliament (18.9 per cent in the House of Representatives and 21.9 per cent in the Senate).[11]

Moreover, the reactions are split into two major trends. On the one hand, some try to accommodate the French political culture with a gendered approach by promoting the idea that the gender-based difference is different from other differences and would be the only one compatible with the traditional universalism. But others denounce this kind of thought as being based on essentialism and, more practically, as leading to a victimizing approach on women's issues. In fact, depending on the issue at stake, the approach could vary deeply, or at least there can be two competing approaches. For instance, abortion could be analyzed from the angle of the right of women over their bodies (in other words, women's right to choose), but could also be presented as a necessary answer to an important and costly social need due to the still-high number of unwanted pregnancies. Multiple, simultaneous and overlapping approaches are not necessarily incompatible, but at the same time they do not imply the same degree of involvement in the given answer. The approach to domestic violence, for example, can differ greatly depending on whether the aim is to reduce such violence on the basis of the human and social cost it generates, or whether the aim is not only to eradicate domestic violence to the largest extent possible but to purely and simply render it inconceivable. In all these regards, France appears to stand on the minimalistic side, although this does not mean to say that nothing is being done.

Indeed, a feminist influence definitely does exist. But, then again, it is important to grasp its springs and specificities. Although there have been feminist actions or claims with wide media coverage in order to boost or achieve certain reforms, media action remains overall relatively rare and occurs only in waves. The common perception tends to associate

[10] See Constitutional Act No. 99–569 of 8 July 1999 on equality between men and women, which adds a paragraph to Article 3 of the 1958 Constitution according to which the law promotes equal access of women and men to electoral mandates and elective functions.

[11] See Inter-Parliamentary Union (2011), *Women in National Parliaments: Situation as of 31 January 2011*, available at: www.ipu.org/wmn-e/classif.htm (last accessed 19 February 2013).

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feminism with hysteria, and the very notion of 'feminism' is not promoted in France.[12] In truth, it even has a negative connotation. This state of things cannot but provide a feedback on the modes of action embraced by feminist movements. Several tendencies need to be signalled in this respect. The first is that, in order to allow the cause to gain ground, French feminist movements have not necessarily deemed it efficient to formulate questions in properly feminist terms; as if it were more operative, in certain situations, to proceed in a manner, if not exactly concealed, at least not openly admitted by incorporating the issue into a more global perspective[13] or a different approach (see above). The result is the absence of a felt need to point out and deal with the issue in 'feminist' terms. This can at least partly explain why there are so few shadow reports on the CEDAW in France.[14] Another tendency is that of a State-centred feminism or even a 'State feminism'. Two factors nurture this trend: one is that, although it is well known that legal changes largely depend on changes in mindsets, feminist movements partly turn their claims towards the State and law-making processes. The other is that it is for the State to face and bear the commitments resulting from European and international law and to implement them at the domestic level. But one could easily get the impression that the pressure is generated more by a necessity not to lose face at the international level rather than by internal pressures to confront and abide by international obligations.[15]

Ultimately, these observations point back to the initial and overarching one, that is that the CEDAW is little known, if at all. One last contextual aspect relating to the legal culture and system must nevertheless be emphasized, considering that it largely contributes to accounting for the lack of visibility or recourse to the Convention in France. Indeed, the openness of the French legal culture and system to international law in general, and especially to a 'global' law, is very limited, although the situation has evolved progressively. The priority is systematically given to domestic law and to the French Constitution, which are thus the primary

[12] In 'Quel féminisme aujourd'hui?', *Le Monde*, 16 July 2011, Joy Sorman states: 'le mot "féminisme" sent désormais la naphtaline ou … est assimilé à un mot d'ordre agressif', meaning that the word is felt either to be outdated or aggressive. See also the Introduction in C. Guionnet and E. Neveu, *Féminins/masculins, sociologie du genre*, 2nd edn (Paris: Armand Colin, 2009) at 12–30.

[13] Allwood and Wadia, *Gender and Policy in France* at 15.

[14] The only one available online is: *Coordination française pour le Lobby européen des femmes*, *Rapport alternatif 2007 sur la France*, available at: www2.ohchr.org/english/bodies/cedaw/docs/ngos/CLEF_fr.pdf (last accessed 26 February 2013).

[15] See section 4 below.

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legal tools used by a domestic court. And although the legal system has progressively opened up to international law – a recent phenomenon qualified very positively as *Völkerrechtsfreundlichkeit* in Germany (i.e. friendliness to international law) and more neutrally as 'openness to international law' in France – preference and priority are given to general instruments. This, in turn, must also be related to the phenomenon of European law, which plays a predominant role and gives an important impetus in all European Union (EU) countries, and which explains the priority of European texts over global instruments. European law thus creates a 'shield' against general international law, which has to be related to the relative efficiency and accessibility of safeguard mechanisms. Moreover, considering specifically international law instruments, the purpose of a specific instrument targeting specific issues falls short because of the preference given to more general but better-known instruments. The added efficiency in human rights protection that the CEDAW could bring about is clearly not obvious, although the CEDAW could be considered as providing a more extended protection – at least in normative terms – in fields such as protection against violence, gender stereotyping or family name.

In this context, one cannot but notice several discrepancies. The first can be observed between what is officially presented and how it is presented to the CEDAW Committee,[16] and the actual visibility of the CEDAW on the domestic political and legal scene. In this regard, it is for instance noteworthy that there has never been a Committee decision against France based on the communications procedure provided for by Article 2 of the 1999 Optional Protocol, which speaks to the absence of transparency of the CEDAW as an accessible legal tool in France,[17] although this is not a major specificity if one notices the very low number of cases submitted to the Committee in general. But, more importantly, there is a sharp discrepancy between the highly developed and ample legal arsenal in France and its (lack of) practical efficiency, which might generally be accounted for by the lack of means allocated to the adopted policies.

[16] See periodical reports to the Committee and auditions of France before the Committee (see section 4 below).

[17] There has been one case against France, which has been considered inadmissible. See Communication 12/2007, *SOS Sexisme c/ France*, CEDAW/C/44/D/12/2007 about the legal impossibility for married women to transmit their name to their children.

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3 Ratification and reservations: wavering between 'sense and sensibility'

The ratification of the CEDAW by France occurred relatively soon after its adoption and entry into force, which, significantly, coincided with a political shift bringing the Socialist Party to the forefront. In this new political context, historical in the trajectory of the Fifth Republic, the ratification of the CEDAW in itself has not raised any difficulties, but must, at the same time, be put into perspective to take due note of the underlying sensibilities. Assessing the smooth ratification of the CEDAW is indeed not an easy task and reveals ambivalent postures vis-à-vis the Convention. On the one hand, the most positive interpretation of the fluent ratification process is the general lack of reluctance towards the Convention. On the other hand, another plausible path is the relative indifference of France towards the instrument. This relative indifference can be explained on several grounds, one being the general perception that the Convention does not impose any direct obligations on France other than that of submitting periodical reports to the CEDAW Committee, and another being the fact that the overall context in France is certainly not hostile towards the issue of women's rights. However, amidst this relative indifference, the perception is that the main interest of being a party to the Convention lies in the pull effect the CEDAW could trigger for future policy measures even if, ultimately, the general understanding remains that the instrument is first and foremost directed at developing countries.[18] And yet it is also precisely this understanding that prompts an almost virtuous cycle, the underlying idea being that of exemplarity, of a duty for developed countries to participate in the system in order to give the necessary impulses and keep it alive.

A new layer of paradoxes, a wavering between making sense and protecting domestic sensibilities, thus reveals itself when one examines

[18] The debates in the French Parliament in relation to the ratification by France of the CEDAW exemplify perfectly this perception. See Draft Legislation No. 1514 authorizing the ratification of the Convention on the Elimination of All Forms of Discrimination against Women – Senate (1st reading), No. 225 (1982–1983), submitted on 12 April 1983 by M. Pierre Mauroy, Prime Minister, Return to the Commission of Foreign Affairs, Defense and Armed Forces, Rapporteur: M. Gérard Gaud, Report No. 254 (1982–1983) (20 April 1983), Discussion on 17 May 1983, Adoption on 17 May 1983; and Draft Legislation No. 104 (1982–1983) – Assemblée nationale (1st reading), No. 1514, submitted on 18 May 1983, Return to the Commission of Foreign Affairs, Rapporteur: Mme Paulette Nevoux (19 May 1983), Report No. 1565 (9 June 1983), Discussion on 27 June 1983, Adoption on 27 June 1983.

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France's ratification of the CEDAW. The ratification process, indeed, appears to have been quick, fluent and smooth, but the attached reservations already shed a tinted light on the approach to and the perception of the Convention.

3.1 Constitutional context and ratification process

Article 55 of the French Constitution draws rather clear lines regarding international treaties and traces a monist frame regarding their integration into the domestic legal order. According to this provision, and under the condition that they are introduced into the domestic legal order in accordance with the necessary formalities, international treaties and agreements acquire a normative force superior to that of Acts of Parliament. Despite the long-standing resistance of some courts, notably the Conseil d'État, Acts of Parliament can be subject to judicial review regarding their compatibility with international treaties, at any given time and during any given case.[19] The tricky issue, however, remains whether the judge considers the Convention to be directly invocable by individuals. In this regard, one cannot but be struck by the insistence, during the Parliamentary debates relating to the ratification of the CEDAW, on the absence of direct obligations imposed by the Convention,[20] which is another way to emphasize its non self-executing character. Obviously, this

[19] However, this applies only to civil and administrative jurisdictions (see for instance Conseil d'État, 5 January 2005, *Mlle Deprez et M. Baillard*). Indeed, the Constitutional Court has, in a famous 1975 decision, refused to review the compatibility of Acts of Parliament with international treaty provisions, passing over this task to civil and administrative courts (see Conseil constitutionnel, *Interruption volontaire de grossesse*, Decision No. 74–54 DC, 15 January 1975). The recent introduction of the procedure of priority preliminary rulings on the issue of constitutionality (*question prioritaire de constitutionnalité* – introduced by the constitutional reform of 23 July 2008, which entered into force on this particular aspect on 1 March 2010) provoked debates and hesitations on a possible change of attitude by the Constitutional Council, but the constitutional judges have strongly reaffirmed and confirmed their position of refusal to exercise a 'conventionality review' (*contrôle de conventionnalité*) in the case *Loi relative à l'ouverture à la concurrence et à la regulation du secteur des jeux d'argent et de hasard en ligne* (Conseil constitutionnel, Decision No. 2010–605 DC, 12 May 2010).

[20] This aspect was emphasized by both Houses during the discussions: see Assemblée nationale, 1st session of 27 June 1983, at 3256 ('certains ont pu regretter que la générosité de ses dispositions puisse être compromise par l'absence d'obligation directe pour les Etats membres' – some may regret that the generosity of its provisions might be compromised by the lack of direct obligations for States Parties); Sénat, session of 17 May 1983, at 837 ('les Etats n'ont pas d'obligations directes et immédiates du fait de la Convention' – States have no direct and immediate obligations imposed by the Convention).

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posture does not force the judge to refuse the invocation of CEDAW provisions by individuals. However, it does not contribute to encouraging the judge to accept such invocation easily. The resulting case law thus appears rather chaotic, inconsistent and, in some instances, even plainly open to criticism.[21]

France signed the Convention on 17 July 1980, but the subsequent ratification of international treaties and agreements is submitted to the rules laid out by Articles 52–5 of the Constitution. If the ratification in itself remains a presidential prerogative, certain treaties nevertheless require a prior authorization by the Parliament. Article 53 thus provides that certain categories of treaties, including those relating to the status of persons, may be ratified only by virtue of an Act of Parliament. A draft legislation was therefore elaborated and subsequently discussed in both Houses of Parliament, the National Assembly and the Senate.[22] Both Houses unproblematically approved the draft, although the approaches diverged and the discussions had different orientations. The Act of Parliament authorizing the president to ratify the CEDAW, adopted on 27 June 1983, was promulgated on 1 July 1983,[23] and the president subsequently ratified the Convention on 14 December 1983. Consistent with Article 27(2) of the Convention, the CEDAW entered into force for France on 13 January 1984, and consistent with Article 55 of the French Constitution, henceforth supersedes Acts of Parliament but is superseded by constitutional provisions.[24]

This smooth ratification process, all the more noticeable since France was the first EU country to ratify the CEDAW, must, however, not overshadow the fact that France took several precautions at the time of

[21] See below subsection 4.1.

[22] See Draft Legislation No. 1514 authorizing the ratification of the Convention on the Elimination of All Forms of Discrimination against Women – Senate (1st reading), No. 225 (1982–1983), submitted on 12 April 1983 by M. Pierre Mauroy, Prime Minister, Return to the Commission of Foreign Affairs, Defense and Armed Forces, Rapporteur: M. Gérard Gaud, Report No. 254 (1982–1983) (20 April 1983), Discussion on 17 May 1983, Adoption on 17 May 1983; and Draft Legislation No. 104 (1982–1983) – Assemblée nationale (1st reading), No. 1514, submitted on 18 May 1983, Return to the Commission of Foreign Affairs, Rapporteur: Mme Paulette Nevoux (19 May 1983), Report No. 1565 (9 June 1983), Discussion on 27 June 1983, Adoption on 27 June 1983.

[23] Act of Parliament No. 83–561 of 1 July 1983, published in the *Journal officiel de la République française* (*JORF*) on 2 July 1983 (at 2011).

[24] See for instance Conseil d'État, Assemblée, *Sarran, Levacher et autres*, 30 October 1998; Cour de cassation, Assemblée plénière, *Me Pauline Fraisse*, 2 June 2000. Both Courts laid down the now well-established and uncontested principle that the supremacy of international treaties and agreements in the domestic legal order does not extend to constitutional provisions.

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ratification, by introducing a certain number of declarations and reservations to the Convention. These declarations and reservations were smoothed over by the justification that the Convention should not be allowed to undo certain more favourable policy measures that were already in place in France. It is noteworthy in this respect that most reservations have since then been withdrawn, once the adjustment reforms were completed. In other words, certain reservations were unquestionably motivated by reasons of political opportunism, which, however and importantly, were not intended to cover up inaction.

3.2 Declarations and reservations

Although Article 28 of the Convention allows States to make reservations as long as they are compatible with the object and purpose of the instrument, a large number of States including France have made reservations going against the very object of the Convention, thereby depriving certain provisions of their intended efficiency. France's declarations and reservations nevertheless appear for the most part unproblematic – even if they can be puzzling – but they nevertheless require explanation and contextualization.

3.2.1 Declarations

The Government of France has, for instance, declared that 'the preamble to the Convention in particular the eleventh preambular paragraph contains debatable elements which are definitely out of place in this text'.[25] To understand this declaration, one must realize that this paragraph contains all the buzzwords (nuclear disarmament, colonial domination and so on)[26] that are likely to spark off strong reactions in the French political

[25] CEDAW, Meeting of States Parties to the CEDAW, 14th Meeting, 23 June 2006, Item 6 on the provisional agenda: 'Declarations, reservations, objections and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women', CEDAW/SP/2006/2 at 12–13. English version available at: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/309/97/PDF/N0630997.pdf?OpenElement (last accessed 26 February 2013).

[26] In the eleventh paragraph of the Preamble, the States Parties '[affirm] that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will

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sphere and media, regardless of the substantial issue at the core of the Convention. These are, in general, sensitive issues for France, and their appearance in an international instrument is therefore highly likely to provoke reluctance. Furthermore, '[t]he Government of the French Republic declares that the term "family education" in Article 5(b) of the Convention must be interpreted as meaning public education concerning the family and that, in any event, Article 5 will be applied subject to respect for Article 17 of the International Covenant on Civil and Political Rights and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms',[27] and that 'no provision of the Convention must be interpreted as prevailing over provisions of French legislation which are more favourable to women than to men'.[28] This latter declaration particularly emphasizes the express wish of France to protect discriminations more favourable to women that had already been established by policy measures. However, several of these more favourable discriminations, especially those related to maternal status, have been progressively challenged under the impetus of European law.[29]

3.2.2 Reservations

Regarding reservations, these initially concerned a certain number of provisions but can, as at the time of writing, be separated into two categories given that a large number of these provisions have since then been

promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women'.

[27] CEDAW, Meeting of States Parties to the CEDAW, 14th Meeting at 12–13. Both Articles enshrine the right to respect for one's private and family life, home and correspondence. Article 17 of the International Covenant on Civil and Political Rights thus provides that:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation;
2. Everyone has the right to the protection of the law against such interference or attacks;

while Article 8 of the European Convention on Human Rights provides that:

1. Everyone has the right to respect for his private and family life, his home and his correspondence;
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

[28] *Ibid*.

[29] A particularly interesting investigation into the theme of maternal status has been carried out by Elisabeth Badinter, *Le conflit – La femme et la mère* (Paris: Flammarion, 2010).

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withdrawn. This withdrawal indicates that they were mainly introduced for conjuncture and policy adjustment reasons.[30] Most reservations were thus withdrawn very shortly after the ratification of the Convention.

The reservation to Article 7, for instance, was withdrawn only two months after the Convention entered into force for France,[31] and reservations to Articles 15(2) and (3) and 16(1)(c) and (h)[32] were withdrawn in 1986.[33] Finally, reservations to Articles 5(b) and 16(1)(d) were withdrawn in 2003,[34] and the withdrawal of the reservation to Article 14(2)(c)[35] was announced in 2008.[36]

[30] It was explained, during the Parliamentary debates prior to the adoption of the Act of Parliament authorizing the ratification of the CEDAW, that the reservations that were made by France at the time of signature of the Convention were generally due to the fact that an important number of the CEDAW's provisions are ill-adapted to industrialized countries and concern issues that are more characteristic to developing countries. However, the question was also raised – but not explicitly answered – whether all of these reservations truly resulted from positive discriminations more favourable to women. See Assemblée nationale, 1st meeting of 27 June 1983, at 3256.

[31] On 26 March 1984 the French government notified the Secretary-General of the decision to withdraw the reservation to Article 7, a withdrawal that was explained to have been rendered possible by the entry into force of Act of Parliament No. 83–1096 of 20 December 1983, which abrogates Article LO 128 of the Electoral Code, relating to the temporary disqualification of individuals who were granted French citizenship. In this particular case it is obvious that the reservation introduced at the time of ratification was purely short term: the legislation that would render French law consistent with the CEDAW had not yet entered into force, while elections were scheduled to take place during the intermediate time. Therefore, the reservation was necessary to cover an incompatibility, but was never intended to remain in place. As a matter of fact, the French notification was published in the *JORF* only on 31 January 1985, but the withdrawal of the reservation was effective as of 26 March 1984.

[32] Those Articles must not prevent application of the provisions contained in Book III, Title V, Chapter II of the Civil Code, which concern the matrimonial regime of community of property (*régime en communauté)*.

[33] On 21 July 1986 the French government notified the Secretary-General of the decision to withdraw these particular reservations, considering that Act of Parliament No. 85–1372 of 23 December 1985, relating to equality of spouses concerning property rights arising during marriage and equality of parents concerning property of underage children, which entered into force on 1st July 1986, had abrogated the previous discriminatory provisions governing these issues. Once again, the reservation had clearly been introduced pending a legislative reform that was already on the political agenda at the time of ratification.

[34] The Secretary-General was notified of this decision by the French government on 22 December 2003.

[35] 'The Government of the French Republic declares that Article 14, paragraph 2(c), should be interpreted as guaranteeing that women who fulfil the conditions relating to family or employment required by French legislation for personal participation shall acquire their own rights within the framework of social security.' CEDAW, Meeting of States Parties to the CEDAW, 14th Meeting at 13.

[36] Consistent with France's conception and implementation of the welfare system, the country has a strong and densely developed social security system, with the consequence

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Three reservations nevertheless subsist as at the time of writing, regarding Articles 14(2)(h), 16(1)(g)[37] and 29. The reservation to Article 29[38] is probably the most classical one since it concerns the almost traditional refusal of France to be subjected to the compulsory jurisdiction of the International Court of Justice.[39]

Concerning the reservation to Article 14(2)(h), which states that:

> States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
>
> …
>
> (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications[40]

the situation seems to be at a standstill. Following the 2008 audition, the Committee recommended to France to schedule, as soon as possible, the withdrawal of this particular reservation, which the Committee incidentally considers to be an interpretative declaration rather than a reservation. As of this date, however, the reservation has not yet been

that almost the entire population enjoys insurance coverage. Yet what was lacking and had justified the reservation in the first place was a specific provision concerning women in rural areas, especially farm workers, and their self-standing right to autonomous social security benefits. After implementation of important measures enacting the 1999 legislation (Act of Parliament No. 99–574), which has considerably extended the rights of farmers' spouses, the reservation withdrawal procedure was announced during France's 2008 audition before the CEDAW Committee.

[37] 'The Government of the French Republic enters a reservation concerning the right to choose a family name mentioned in Article 16, paragraph 1(g), of the Convention.' CEDAW, Meeting of States Parties to the CEDAW, 14th Meeting at 13.

[38] 'The Government of the French Republic declares, in pursuance of Article 29, paragraph 2, of the Convention, that it will not be bound by the provisions of Article 29, paragraph 1.' *Ibid*.

[39] Although France has looked for ways of getting back to the forum of the ICJ, including by accepting to be defendant on the basis of Article 38, para. 5 of the International Court of Justice (ICJ) Statute, its willingness has not yet reached the point of removing the various reservations made regarding compromissory clauses referring to the ICJ, and especially its compulsory jurisdiction, in international treaties.

[40] 'The Government of the French Republic declares that Article 14, paragraph 2(h), of the Convention should not be interpreted as implying the actual provision, free of charge, of the services mentioned in that paragraph.' CEDAW, Meeting of States Parties to the CEDAW, 14th Meeting at 13. As a matter of fact, France is the only country that made a reservation to Article 14(2)(h).

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withdrawn, although no obvious obstacle seems to stand in the way of such withdrawal.

The most problematic reservation still in place is probably the one to Article 16, but it might also be the least surprising one. Article 16 concerns marriage and family life and is undoubtedly the most controversial provision of the CEDAW, and therefore the one that has the highest number of reservations from States Parties.[41] The Committee has expressed a long-standing concern over reservations to Article 16,[42] and has recently once more emphatically expressed its doubts and concerns regarding the manner in which States Parties take into account and comply with this provision. Article 16 aims at guaranteeing equality between men and women in marriage and family relations, and the Committee has declared that '[n]either traditional, religious or cultural practice nor incompatible domestic laws and policies can justify violations of the Convention. The Committee also remains convinced that reservations to Article 16, whether lodged for national, traditional, religious or cultural reasons, are incompatible with the Convention and therefore impermissible and should be reviewed and modified or withdrawn.'[43] Concerning France in particular, the Committee has expressly requested the withdrawal of its reservation after the 2008 examination, during which the State Secretary for Solidarity and head of the inter-ministerial delegation indicated the issue would be submitted to the competent Ministries. The issue seems to be one of detail, but reveals surprising facets and intricacies of the French legislation. The law on family name remains firmly rooted in a Revolutionary legislation adopted in 1794,[44] whose cornerstone principles have over time become inconsistent with European and international law and with the 1958 French Constitution, but certain provisions of which are still in

[41] Fifty per cent of States that have made reservations have made one to Article 16.

[42] 'The Committee has noted with alarm the number of States parties which have entered reservations to the whole or part of Article 16, especially when a reservation has also been entered to Article 2, claiming that compliance may conflict with a commonly held vision of the family based, inter alia, on cultural or religious beliefs or on the country's economic or political status.' See CEDAW Committee, General Recommendation 21, 13th Session, 1994, available at: www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm (last accessed 19 February 2013).

[43] See www.un.org/womenwatch/daw/cedaw/reservations.htm (last accessed 19 February 2013).

[44] Loi du 6 Fructidor An II, according to the Republican calendar established during the French Revolution and used between 1792 and 1806 (23 August 1794 on the Gregorian calendar).

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force.[45] In order to bring it into conformity with those latter instruments, especially the principle of non-discrimination, the legislation was significantly amended in 2002,[46] and even further in 2005.[47] It is still not entirely consistent with Article 16(1)(g) in the sense that, in the case that maternal and paternal filiation are simultaneously established, absent explicit declaration by both parents, the child will automatically be given the sole name of the father. This reservation is therefore the only one made to a substantial provision and which, evidently, was not made to protect positive discriminations contained in the French law that are more favourable to women, nor was it made for incidental reasons pending a legislative adjustment already scheduled. On the contrary, this reservation simply mirrors a legal necessity, considering the discrimination – pertaining to one single hypothesis and therefore in a way almost 'minimal', but discrimination nonetheless – still anchored in the French legislation on family name, and that the French system, in spite of numerous amendments, has not yet succeeded to bring into conformity with the principle of non-discrimination dictated by the Constitution, and European and international law, including the CEDAW.[48]

4 Domestic implementation of the CEDAW: displaying 'pride and prejudice'

Formally, there is no doubt: France is party to the CEDAW and satisfies the formal requirements of the Convention in the sense that what has been presented during the Parliamentary debates as the sole direct obligation imposed on States by the Convention, that is producing periodical reports on implementation, is in fact realized with considerable care. This is, undoubtedly, an aspect concerning which France does not wish to

[45] For a general overview on the legal rules governing transmission of family name to a child in France, see N. Baillon-Wirtz *et al.*, *L'enfant sujet de droits* (Paris: Editions Lamy, 2010) 104–12.

[46] Act of Parliament No. 2002–304 of 4 March 2002 (as amended by Act of Parliament No. 2003–516 of 18 June 2003). Only by this legislation was the possibility introduced into French law for a mother to transmit her family name to her child, but it remains discriminatory considering that the father was given the right to veto such transmission of the mother's name.

[47] Ordinance No. 2005–759 of 4 July 2005 reforming the law on filiation, ratified by Act of Parliament No. 2009–61 of 16 January 2009.

[48] During its 2008 audition before the Committee, France indicated, however, that withdrawal, or at least reducing the scope, of the reservation seems possible.

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lose face, even less so considering that the CEDAW has been presented, again during the debates prior to its ratification, as an instrument mainly designed and intended for developing countries.

But the fact remains, precisely, that producing periodical reports also implies that they must be given concrete content and, henceforth, be linked to a certain number of actions and policy measures in the CEDAW. But do these actions and policy measures result from the CEDAW? Is it the Convention that provokes them? Providing an unequivocal answer to these questions is not an easy task, in light of the almost proud French State reports presented at the international level, which are tempered by the hesitant and prejudiced approach displayed at the domestic level.

Indeed, France is standing in a very paradoxical place as regards domestic implementation of the CEDAW. Paradoxical because, as has been shown in the previous section, on the one hand, while there has been and still is resistance, the context in France is no way hostile to tackling the issue of discrimination against women. But on the other hand, the fact remains that the CEDAW, although ratified by France almost thirty years ago, is still almost absent from the legal panorama. Upon closer scrutiny, the status of domestic implementation of the Convention can be approached from two different perspectives, the first being a 'defensive' one and the second an 'offensive' perspective. In both cases, however, the findings converge and lead back, in a seemingly closed circle, to the opening observations of invisibility, paradox and ambivalence.

4.1 'Defensive' perspective: timid recourse to the CEDAW before courts and by specialized agencies

From the defensive perspective, one could expect an international convention such as the CEDAW to be invoked as a legal tool during proceedings before domestic courts and referred to by various other bodies dealing with the issue of discrimination against women. Yet an inquiry into such use of the Convention reveals a quasi void, in the sense that there is almost no trace of recourse or reference to the CEDAW, whose use accordingly seems to remain in essence confined to an exceptionally small circle of specialists.[49]

[49] This circle involves the few NGOs specialized in the area, some academics – mainly sociologists and political scientists (for the first time in 2011, the Centre national de la recherche scientifique (CNRS) launched an inventory of the researchers working on gender) and the officials working for the *Observatoire de la parité* and the HALDE.

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Concerning the 'appearance' of the CEDAW before domestic courts, a comprehensive examination of the case law distinctly reflects the paradoxes and ambivalences identified in the previous developments and, more generally, mirrors the hesitant approach to the notions of discrimination and women's rights. On one hand, the principle of equality is guaranteed by the Constitution in its Preamble,[50] a principle that thus has constitutional value and can be invoked before a domestic court. On the other hand, however, the principle is phrased in very broad and vague words, leaving ample room for additional measures to give it a specific content. This is precisely where the CEDAW could step in, with its detailed approach to the notion of discrimination and precise requests directed at States Parties. And yet, surprisingly, the case law relating to the CEDAW is substantially disappointing, and at the very best minimalistic and inconsistent. In fact, both the highest French judicial court, Cour de cassation, and the French constitutional court, Conseil constitutionnel, have to this date not decided a single case based on or even merely with reference to the CEDAW. The Conseil d'État, the highest French administrative court, is the only higher jurisdiction whose case law exhibits rare traces of the CEDAW. In fact, the Conseil d'État has to this date issued a total of five rulings where the CEDAW was used as the basis for the plaintiff's claim, or was at least referred to (of course among other international agreements, particularly the European Convention on Human Rights and EU Directives). A brief overview of the available case law sheds clearer light on the wavering, cautious but also inexperienced approach to the CEDAW by this Court.

The first case,[51] occurring almost 15 years after the ratification of the Convention by France, was unusual in the context of the discrimination against women in the sense that it mainly concerned the rights of unwed or divorced fathers regarding their children and, therefore, in fact, dealt with 'reverse discrimination'. In this case an association defending the rights of children attacked the governmental decree creating the Observatory on parity between women and men,[52] claiming the decree created an instance of discrimination and thus violated the equality principle enshrined in the French Constitution and several international

[50] The Preamble of the 1958 Constitution refers to the Preamble of 1946, which provides that the law guarantees, in all fields, equal rights to women (para. 3, 'La loi garantit à la femme, dans tous les domaines, des droits égaux à ceux de l'homme').

[51] Conseil d'État, case no. 176205, 30 April 1997.

[52] Decree no. 95–1114 of 18 October 1995, *JORF* 19 October 1995, at 15249.

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Table 19.1 *Reference to the CEDAW in French case law*

Jurisdiction	Date of issue	Reference to the CEDAW ('visa')	Articles	Findings
Conseil d'État	30 April 1997	x	Art. 23	Plaintiff's argument dismissed
Conseil d'État	27 Nov 2000	x	None	None involving the CEDAW
Conseil d'État	7 Nov 2001	x	Arts. 2(e), 3 and 15	CEDAW not directly invocable by individuals before domestic courts
Conseil d'État	15 Oct 2004	x	Arts. 9, 15(4) and 16(1)(c)	No discrimination found
Conseil d'État	20 April 2005	x	Arts. 2(d) and 11(1)(e)	No discrimination found

obligations undertaken by France, including the ECHR and the CEDAW. The Conseil d'État found that, contrary to what the plaintiff argued, the CEDAW does not prevent States Parties from adopting measures aiming at establishing a de facto equality between women and men, and that Article 23 provides that the Convention shall not affect 'any provisions that are more conducive to the achievement of equality between men and women' that may be contained in the legislation of a State Party, thus concluding that the plaintiff's argument was to be dismissed.

The second case[53] is minor for the purpose of this study in the sense that the CEDAW was merely mentioned by the plaintiff to back her argument while the actual case was decided exclusively on the basis of domestic legislation and therefore without any reference to the Convention. The actual argument of discrimination was indeed never brought before the Court.

The third case was decided less than a year later,[54] and the Conseil d'État seized the opportunity to make a significant statement on the status of the CEDAW in the French legal order and before domestic courts. This case dealt with the administrative decision to escort the plaintiff back to the border while she claimed that this expulsion violated Articles 2(e), 3 and 15 of the CEDAW. Article 2 concerns domestic policy measures, enjoining States Parties to condemn discrimination against women in all its forms and, more specifically regarding point (e), to 'take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise'. Article 3 enjoins States Parties to 'take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men'. And Article 15 provides that States Parties shall guarantee women equality with men before the law. Having assessed these articles, the Conseil d'État found that they could not usefully be invoked by the plaintiff before a domestic court considering their inter-State nature. The Court concluded that Articles 2(e), 3 and 15 of the CEDAW only create obligations between States Parties, but that they under no circumstance create rights for individuals that those individuals could henceforth claim before a court of law. In other terms, the Conseil d'État denied any direct effect to the provisions at stake in the

[53] Conseil d'État, case no. 219375, 27 November 2000.

[54] Conseil d'État, case no. 230324, 7 November 2001.

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case, a position which is in line with the overall case law regarding direct effect of international conventions.[55]

The fourth ruling[56] rejected the plaintiff's claim for annulment of the withdrawal of her residence permit, which was granted to her on the grounds of family reunification. The plaintiff invoked Articles 9, 15(4) and 16(1)(c). These provisions enjoin States Parties to respectively guarantee equality as regards the acquisition, change or conservation of nationality; equality before the law and, more specifically, equality with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile; and the same rights and responsibilities during the marriage and at its dissolution. The Court found that no discrimination such as that prohibited by these Articles was created by the withdrawal decision, which was taken on the basis of an Ordinance of 1945 whose Articles apply without any discrimination based on gender, and therefore no discrimination in the sense of the CEDAW either.

Finally, the last ruling to the time of writing[57] was a case of discrimination in the field of employment brought to the Court by a labour union, which ended with the plaintiff's withdrawal from the case. It is noticeable, however, that in this instance the CEDAW was invoked by the plaintiff as the main (international) foundation for his claim. The Court found that while the principle of equality entails equal treatment for individuals in the same situation, it does not provide for different treatment for individuals in different situations. Based on this statement the Court ruled that, even though women are in a different situation than men considering the necessity to cease their professional activity during maternity, the French agreement on unemployment insurance could, without violating the principle of equality, refrain from defining an accounting regime specific to women that would factor in their different situation. Thus, the Court found that the contentious agreement on unemployment insurance did not create an instance of discrimination such as that prohibited by Articles 2(d)[58] and 11(1)(e)[59] of the CEDAW.

[55] Although the case law has very recently evolved, relaxing the conditions under which a direct effect can be acknowledged. Conseil d'État, Assemblée, 11 avril 2012, *Gisti*, decision no. 322326.

[56] Conseil d'État, case no. 241661, 15 October 2004.

[57] Conseil d'État, case no. 264348, 20 April 2005.

[58] States Parties commit 'to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation'.

[59] 'States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and

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As already mentioned, what is striking in these rulings is the Court's obviously hesitant and even reluctant approach to the UN Convention. In all of them, the CEDAW is only incidentally referred to, European instruments being given clear priority (which is evident even when looking at the order in which the relevant legal texts are listed in the decisions). This is not surprising as such, considering that the fully integrated normative EU system takes obvious precedence over global legal instruments, but also, on the other hand (but related to this first aspect), considering that domestic judges are clearly more at ease with these already well-known and much-practiced European instruments. What is even more striking, though, is the manifest inconsistency that appears in the case law of the Conseil d'État, when confronting the three last CEDAW cases. In 2001 the Conseil d'État ruled that Articles 2(e), 3 and 15 of the CEDAW do not create rights for individuals and that individuals can therefore not invoke these provisions before a domestic court. However, the next CEDAW case before the Conseil d'État (2004) again concerned Article 15, and Article 2 was invoked in the 2005 case regarding its point (d).[60] Yet in both the 2004 and 2005 cases the Conseil d'État seems to have departed from its 2001 findings, that is that these Articles do not create rights for individuals: instead of dismissing the arguments on the same grounds as in the 2001 case, it carried out a substantial examination in order to determine whether the relevant measure did or did not create an instance of discrimination prohibited by these very CEDAW provisions. It is true that French courts, including the Conseil d'État, are not bound by a doctrine of precedent as it prevails in common law courts, but one could nevertheless expect it to be familiar with its own rulings and therefore to adopt a substantially consistent line of reasoning when confronted with provisions of a legal instrument on which it has already ruled. By the same token, there is nothing in the 2004 and 2005 decisions that would indicate that the Conseil d'État has deliberately decided to overrule its 2001 position regarding the invocability of CEDAW provisions by individuals. The most likely explanation for the observed inconsistencies is therefore also the least flattering one, namely that the wavering case law simply reflects the unease of French judges when confronted with the CEDAW, their lack

women, the same rights, in particular: the right to work as an inalienable right of all human beings.'

[60] The 2001 previous case concerned its point (e), which is nevertheless formulated in exactly the same way as point (d): 'State Parties undertake to refrain from …/State Parties undertake to take all appropriate measures …'

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of understanding of the instrument, but also, and probably most significantly, their lack of interest in it.

The same lack of interest or even lack of knowledge can also be observed when looking at other domestic (non-judicial) bodies dealing with women's rights or discrimination issues. In fact, the only bodies that refer to the CEDAW or even merely quote it are specialized agencies such as the Observatoire de la parité and non-governmental organizations, mainly because they investigate the issue for the purpose of establishing shadow reports. But apart from these rare exceptions, the CEDAW's notoriety hardly ever reaches beyond these specialized and closed circles. In other words, the CEDAW is and remains a matter for and of specialists. And even when these specialized agencies refer to the CEDAW, such reference seems to be, in most cases, a mere formality. The only body regularly referring to the UN Convention and remaining updated on the domestic status of the CEDAW is the Commission nationale consultative des droits de l'homme (CNCDH – National Advisory Commission on Human Rights). Even the Haute autorité de lutte contre les discriminations et pour l'égalité (HALDE – High Authority to Combat Discrimination and Promote Equality) does not refer to the CEDAW (which is only marginally mentioned on its website), although, significantly and paradoxically, the CEDAW Committee regards this agency as a crucial tool to ensuring that CEDAW obligations are implemented in France. In sum, the Convention is extensively and properly dealt with neither by the judiciary, who prefer to circumvent the instrument when possible, nor by the vast majority of organizations that are active in the field of discrimination against women. This 'default' attitude does not contribute to enhancing the visibility of the CEDAW in the domestic political and legal scene, and henceforth its effectiveness for those for whom it was designed.

4.2 'Offensive' perspective: the CEDAW as ex ante *impetus or* ex post *justification?*

From the 'offensive' perspective, again the findings are, if not exactly negative, at least nuanced. As was observed earlier, although there has been resistance to the notions tackled here, one cannot but be struck by the vast legal arsenal, and might therefore conclude that France has taken many measures in order to generally implement the Convention. But, upon closer scrutiny and especially when looking at the national reports submitted by France to the Committee, it becomes difficult to identify what prompts what, and what justifies what. In other words, does France's

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commitment to the CEDAW serve as an initial and genuine impetus for gender policies, or merely as a subsequent justification? The official discourse is obviously that the Convention contains certain obligations to which France is firmly committed, and that certain domestic measures were therefore taken to comply. However, this rather seems to be a discourse of *ex post* justification while the true chain of events seems more to be that these measures would have been taken anyway – simply because the evolving socio-political context (and European law) demands it – but that, since the CEDAW requires certain programmatic domestication steps, they are officially justified by precisely these requirements. In the end, it therefore seems difficult to consider that it is the Convention in itself that creates an incentive for French policy measures, or even that the CEDAW has a relevant effect of impetus on domestic policy measures at all. The reality seems more to be that gender-related domestic measures are linked to the Convention subsequently, rather than it being the Convention that inspires the measures in the first place. At best, the obligation under which France is, like all States Parties to the CEDAW, required to submit reports on the status of implementation to the CEDAW Committee at four-year intervals,[61] can have the effect of prompting certain reforms or emphasizing the necessary ones, and of encouraging the government to commit to achieve them.

5 Conclusion

The distinctive 'positive' feature of French policies on discrimination and women's rights is the extensiveness of legislative devices regarding issues of equality, notably since the 1980s but even more increasingly since 2000 (twenty-two new laws relating to women's rights have been adopted between 2002 and 2007). However, and without great surprise, the 'negative' feature of these same policies is their imperfect translation into social reality. The impact of a law inevitably depends on its application, but many of the adopted laws have suffered delays in their implementation, others have almost not been implemented at all, others yet need to be completed by

[61] The first two reports were submitted as a joint report in 1991, the 3rd and 4th reports were submitted in 1999, the 5th report in April 2002 and the 6th report in 2006. Following the 6th report, the audition for France before the CEDAW Committee was held on 18 January 2008 in Geneva. The 7th report was announced for the beginning of 2009 but the CEDAW Committee requested that both the 7th and 8th reports be submitted jointly in January 2013. The Committee therefore does not seem to consider the French reports to be urgent.

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regulatory or financial measures that are delayed, and others again are not followed up on, which prevents one making a realistic assessment. Furthermore, and this is one of the major concerns emphasized by NGOs in their shadow reports, in spite of a seemingly very complete legal arsenal, what is mainly lacking is transparent and accessible information on the CEDAW, and of course mainly and most notably transparent to and accessible by the individuals whom the Convention seeks to protect. In the end, the main flaw thus remains – and this is an almost trivial observation as far as human rights treaties are concerned – a distortion between the formal law and its effective implementation, and the major issue does not seem to be the actual domestication measures taken by France, but rather the transparency of and information about the CEDAW and about the legal tools created by French policies to comply with its obligations under the CEDAW.

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