Layering Rights: The Case of Disability Policies in France (2006-2016)

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In France, public policies in the field of disability was transformed by the law in 11 February 2005 on 'Equal Rights and Opportunities, Participation, and Citizenship of People with Disabilities'. The law was framed as the introduction in France of the international 'social model of disability', in order to combat discrimination. Yet international references in parliamentary debates leading to the adoption of this law were all but absent. How do we explain this paradox? This article aims to answer this question by showing how the newly introduced measures reflected the needs of different stakeholders involved in this public policy to maintain their positions and reform their mutual agreements. This transfer was not characterised by a thorough rethinking of the public policy subsystem, but rather resulted in layering of new rights on top of old frameworks. How then did the organisations promoting these measures manage to implement public policies despite clear contradictions between old and new goals? This article suggests that the organisational regulation of political conflict (conflict avoidance and circumvention of obstacles) and the safeguarding of embedded interests (by limiting possibilities for compromise and administrative obstruction of legal disputes) played a decisive role in this process.

Keywords: Disability policies, layering, rights, organisations, implementation.

Introduction

In a March 2013 interview[1], Marie-Anne Montchamp, former secretary of state for people with disabilities, whose role was important in the adoption of the French law in 11 February 2005 on Equal Rights and Opportunities, Participation, and Citizenship of People with Disabilities, shared the following thoughts on the paradoxical absence of references to the EU in parliamentary debate carried out between 2003 and 2005:

> The reflections of associations at the European level left a deep impression, they were quite present, not in the debates, but in collective thinking ... What I know is that the debate was truly perceived of as a public debate, as a debate over French society, internalized as an exemplification of the sometimes very discriminatory nature of ordinary practices in France. With these Chirac-like discussions over equal opportunities, over a peaceful French society, was the idea that this text was indeed very French, with the aim to help society progress in its ability to tolerate difference.

If, on the one hand, the law of 2005 can be described as a 'European law' (Mohanu and Hassenteufel, 2010), parliamentary debate on the other hand makes almost no mention

of the necessary transposal of the 2000 EU directive on non-discrimination into national law (Guiraudon, 2004).

Through the importation of US standards (Burke, 2004; Mabbett, 2005; Kelemen and Vanhala, 2010; Kelemen, 2011), the EU now has established disability policies – no longer as employment policies, but as non-discriminatory policies. The shift in 'disability' jurisdiction from the Directorate General (DG) for Employment to the DG for Justice is a good reflection of this (Rowell, 2016). Debate at the European level is linked to the activity of the Commission which has endeavoured to develop a unified representation of disability in the form of the European Disability Forum (EDF) (Mohanu, 2008) and to produce scientific expertise through the creation of the Academic Network of European Disability Experts (ANED). It is certainly this infusion of non-discrimination discourse in the claims of associations that Marie-Anne Montchamp refers to in mentioning 'the reflections of associations'. Representative associations of people with disabilities and directors of care institutions and services in France were heavily involved (within the framework of a neo-corporatist type of relationship (Schmitter, 1989) upon which this sector of public action has been structured (Chauvière, 1980)), in the production of the law of 11 February 2005. Its promotors presented this law as a true paradigmatic shift (Milano, 2005), through the institutionalisation of a 'social model of disability' in French law in response to the mostly administrative and medical definition contained in the earlier laws of 30 June 1975 (Baudot, 2016). Yet this paradigmatic revolution began in the American activist networks of the Disability Rights Movement (Scotch, 2001; Fleischer and Zames, 2011), and was introduced into law with the 'Americans with Disabilities Act of 1990'. It has been progressively imported into the EU. How then are we to understand the absence of any reference to the European texts with a debate mostly revolving around French society itself?

It is possible to formulate the following hypothesis: the lack of reference to Europe, and more broadly to the paradigm shifts that have taken place across the Atlantic, do not prevent the transposition into national law of a variety of measures relative to the fight against discrimination. It does, however, suggest that this transposition was carried out referring essentially to the domestic positions of stakeholders shaping this public policy. The transposition thus aims less to radically transform public policy for people with disabilities than to reinforce the positions stakeholders held by updating discourse, procedures and provisions in light of the new rhetoric and norms. The transfer of public policies is not an obligation imposed on the group as a whole. That said, each of these stakeholders – local authorities, administrators, NGOs, elected officials – experienced partly independent change (e.g. state reform for administrative actors, decentralisation for local politicians, political polarisation for elected officials, marketisation of the third sector for NGOs, etc.). But they together have to proceed towards the conflictual establishment of a new agreement based on these changed positions. The terms of this new agreement can borrow from the rhetoric and objectives of the new European and international provisions, but only as long as they respect two preconditions: they should not threaten the acquired positions of actors and they should open for a compromise between these different stakeholders.

This type of change leads us to reflect on how new methods, new services, and new rights can be recognised while older ones are still in use. Building on the idea put forward by Thomas Burke, that 'old rights rarely die' (Burke, 2001), I show that the introduction of international norms under the conditions described above has been achieved by stacking onto pre-existing measures, resulting in the creation of an additional layer of rights whose capacity to protect individuals is not guaranteed.

This model of public policy change draws on conceptual work by Mahoney and Thelen (2009). Building on historical neo-institutionalism, these authors show that the alternative is not between rupture and continuity, but that a range of incremental change is possible: drifting, layering, conversion and revision (Hacker, 2004; Thelen, 2004; Streeck and Thelen, 2005). The progressive formalisation of this model of change leads them to identify two variables which determine the appearance of a specific type of incremental change: the extent of key actors' room to manoeuvre and the presence of stronger or weaker actor veto points. In a 'configuration of public policy' (Bezes, 2009: 49), where there is strong interdependence and where even the smallest change is not possible without the unanimous agreement of the other stakeholders, the weaker stakeholders may add 'new institutions rather than dismantling the old' (Schickler, 2001:13). However, this idea of incremental change, particularly the notion of 'layering' raises two issues (for a broader discussion, see van der Heijden, 2011) to which this article will respond empirically.

The first concerns whether such layering results in superposition or entanglement. Does layering occur, as suggested by Mahoney and Thelen, 'when new rules are added to existing ones, thereby changing the ways in which the original rules structure behaviour'? (Mahoney and Thelen, 2009: 13) Or, conversely, does layering occur without compromising older norms which may in fact be renewed by adjustment to the new discourse and policies? The second issue regards the effects of layering on the administrative institutions responsible for implementing such policies. How do they make sense of practices that in reality refer to different normative orders?

This article aims to provide responses to these questions through an analysis of the effects of the introduction of core standards into domestic law. There is consequently no further discussion of the production process of these standards based on the Americans with Disability Act (ADA) of 1990, nor of the conditions of their importation into French law. While they may in part explain why these core standards have been introduced into French public policies for people with disabilities by means of layering, the focus here is on the effects produced by this type of change on the existing standards and on the organisations that implement them.

Results presented in this article derive from a decade-long study (2006-2016) of disability policies and administration in France, based on a long-term survey consisting of open-ended interviews with public actors, politicians, administrators, community leaders, and activists in the disability sector, and at different levels of public action (central and local administration, local and national associations), as well as the monitoring of reforms undertaken since 2005 through the analysis of parliamentary debates and associated administrative documents. In total, six 'départements' were covered (four between 2011 and 2013 and two in 2014) as part of two collective projects I coordinated (Baudot *et al.*, 2013). Nearly seventy interviews, often repeated with the same actors over this time period, were conducted, focussing on 'street level organizations' (SLO) (Brodkin, 2011) responsible for the implementation of public policies, their organisational arrangements and political struggles to define their scope of action.

Layering or entanglement?

The importation of the social model of disability into France through supranational (UN) and European institutions (Kelemen, 2011; Mabbett, 2005) has not led to a replacement of

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previous policies with a completely new regime, but rather to their addition to prevalent norms. This process has taken the form of layering by alignment; a fresh coat painted over old measures, without infringing upon them. But such supplementation has also resulted in entanglement, in that this extra layer simultaneously shifts not only pre-existing institutions but also the meaning of the imported provisions.

Layering by alignment

The provisions added in 2005 were not completely different nor absent from the public action instruments that we found in France before 2005. Modernisation paradoxically reinforced the legitimacy of the old provisions, with innovation supporting the positions of the oldest stakeholders in the sector (1). The simultaneous delivery of state reform programs opened a window of opportunity for rights-based policies while also deeply transforming the scope of such policies (2).

Alignment with the old. Two elements, imported in a quasi-clandestine manner, are particularly significant in the convergence of the new rights model, with the existing structure of this sector of public action in France.

The first concerns the participation of people with disabilities or their representatives in the production of policies affecting them. This right has been forcefully asserted by American activists and even enshrined in Article 4 of the Convention on the Rights of Persons with Disabilities (CRPD, adopted by the UN in 2006 and ratified by France in 2010). Here the right to participation refers as much to civic participation through election as to the representation of associations of disabled persons on boards attributing rights or services to those with disabilities. Their representation must be ensured in all bodies taking decisions relative to those with disabilities. Since the end of the First World War, and given the political and moral weight of veterans in European societies bled and marred by the war, former combatants obtained representation rights in these different bodies, notably in France (Omnès, 2015; Viet, 2015), the UK (Cohen, 2001) and the USA (Skocpol, 1992). The study of the history of disability related policies, particularly in France, highlights the continuous representation of these veterans, and then by extension of people with disabilities (de Blic, 2008), in instances in charge of disability benefits. What distinguishes this sector from others (particularly old age) is the fact that it relies on a commission system to distribute disability benefits, so as to allow the participation of representative associations. The claim of the right to participate is thus already a historically established fundamental right in France. When the most radical aspects of the new provision – such as opening the right to vote or the eligibility of disabled persons under guardianship – did not resonate with historically well-established conditions, they faced strong resistance (Carey, 2009) and have been only very partially implemented (Lopez, 2013).

The claim of this right to participation, included in the title of the 2005 Law, thus met favourable pre-existing conditions. This claim also raises the question of the representativeness of disabled persons associations. While international standards focus on 'self-representation', French associations of persons with disability succeeded in translating in a different way this injunction.[2] If the spokespersons of people with disabilities become 'peer-representatives' and are not any more associations of professionals, the latter still have an important role alongside associations of parents

of disabled children, or disabled people themselves). Considerable weight is given to associations managing sheltered and specialised institutions. This sector has, in fact, been structured around associations of parents of disabled children who have obtained, within a neo-corporatist management framework, state subsidies to create and manage their own institutions (Chauvière, 1980). In 2005, debate over the terms of the law focused on the representativeness of associations. A parliamentary amendment, quickly rejected, proposed that an association also responsible for institutional management could not be considered representative.[3] Discussion over the oligopoly of historical associations continued with an amendment tabled by Nicolas About, a senator from the presidential majority party (UMP) and chairman of the Senate Social Affairs Committee, which played a decisive role in this process. The amendment proposed that associations not involved in managing care institutions should make up one half of the representation, so as to allow for diversification and for the professionalisation of associations. However, Bernard Cazeau (PS, Dordogne, President of the Departmental Council), recalled the historical role of the two main managing associations (Association des Paralysés de France (APF) and Unapei), stressing that:

> it has been the main associations of parents of disabled children that have made possible, for years, the establishment of great institutions, while the State has often lagged behind. It is thanks to these parents that today, 80 per cent of people with disabilities – some say 90 per cent – are currently assisted by establishments managed by these main associations.

The amendment was eventually rejected and the question of representativeness disappeared altogether from parliamentary debate.

The right to participate was thus introduced within a historical context that shaped the practical modalities of this participation and led to a specific response to the question: 'who participates'? There is, however, another element that has equally effected the translation of the new provisions of the disability rights model and EU law into French domestic law.

Alignment with the context. The disability policy reform introduced as of 2005 borrows much of its terminology from a much larger agenda of State and social security reform. It is important to observe how the formalisation of rights is carried out through this larger lens.

One of the tools used to convert objectives into administrative practices is the individualisation of disability benefits. This individualisation of treatment meant the end of the fixed-amount logic which had thus far characterised the allocation of disability benefits. The previous system (*Allocation Compensatrice Tierce Personne*/Human Aid Compensatory Benefit), which had been based on flat-rate and income qualifications, was thus progressively replaced by personalised and universal allocation, managed through the Disability Compensatory Benefit (*Prestation de Compensation du Handicap*). This benefit is awarded – in theory – based on an individual assessment of the difficulties experienced by individuals in their daily lives, as well as of their 'life project' and responses to an administrative survey where people describe their situations, their desires, and their needs. This is seen in political-administrative arenas as a way of transcribing the shift from a paternalistic logic of protection to one of accomplishment of individual projects. The rationale that governs the realisation of this benefit corresponds to the expectations of

social movements that define disability using the social model (Oliver, 1996). If disability is the product of obstacles within society, then society must do what is necessary to make itself accessible, and do so for every individual. The Law of 11 February 2005 intends 'to place the individual at the heart of the plan' (Perrier, 2013).

This motto is not, however, specific to disability policies and thus cannot be described as the only transcription of change in definitions of disability at the international level. In other sectors (such as reform of employment policy and of the French national agency responsible for the placement and provision of benefits for the unemployed (*Pôle emploi*)), the *modus operandi* is quite identical. As in the area of disability, unemployment administrations merged to create a 'one-stop shop' (Bogdanor, 2005; Pillon and Vivès, 2016); an approach implemented in France at a time when the latter already existed in countries much keener on New Public Management (6, 2004). This 'one-stop shop' took on its own particular form within the French public policy sectors of employment and disability, the objectives of which were to reduce administrative 'duplication', decrease the number of civil servants and 'simplify' the organisation of public services (Bezes and Le Lidec, 2012).

Adjustment, between state reform policies and change in definitions of disability as influenced by international bodies (UN, EU), is reflected in the dual genealogy of the notion of a one-stop shop during the late 1990s. The first genealogy is associative. In 1998–1999, two of the most influential representative associations of disabled persons, the French Association for the Paralysed (APF) and the French Association against Muscular Dystrophy (*Association Française contre les Myopathies*; AFM) called for the creation of a 'unique space', allowing for the examination of requests for personal and technical assistance at the departmental level. Rapporteur of the bill in the Assembly, Jean-François Chossy (UMP, Loire), spoke of this 'long-awaited one-stop shop, able to avoid long, exhausting and demoralising uphill battles in the event of an always traumatic diagnosis of disability'.[4] The 'one-stop shop' was to combat administrative burdens and improve the service owed to its users. This associative genesis was complemented by a second, administrative genesis, linked to the rationalisation of public expenditure. In four reports (1993, 1995, 1998, 2003),[5] the 'Court of Auditors' asserted the need to rationalise public expenditure in the funding of technical assistance and individual aid:

> The objective of the proposed reform is to improve the level of support, simplify funding procedures, reduce delays, and better procedures for the prescription and delivery of technical aid. Funding must be made less precarious and compartmentalised, and better coordinated, and the means by which it is made available more satisfactory.[6]

The 'Court of Auditors' thus stressed the need for clarification of the roles of the State, the local and the regional authorities in the funding of nursing care. Following this report, Martine Aubry, then Minister of Social Affairs, commissioned two further reports. One from Maryvonne Lyazid, long-time director of the Departmental Health and Social affairs Service (DDASS), with experiences at the Council of Europe and at the Ministry of Social Affairs, followed by a position of assistant general manager of the Caisse d'Epargne Foundation for Solidarity; and another from Michel Fardeau, Director of Research at the CNRS, professor of biology, and Director of the Institute of Myology from 1996–2006. The first report examined the financing of compensatory benefits, with the aim of offering the means for persons with disabilities to 'autonomously define their

life plans'. The second report used a comparative approach to analyse care regimes and described foreign experiments to make administration more user-friendly, emphasising the advantages of a 'one-stop shop'.[7] The two reports were completed in 2001 and both concluded that there was a need to merge different services involved in the financing of disability benefits. The reports' proposals were included in a bill tabled by Senators Nicolas About (President of the Commission of Social Affairs) and Paul Blanc,[8] who played a decisive role in parliamentary adoption of the Law in 2005.

Individualisation was thus supported by different rationales – promoting individual rights and streamlining public spending – which despite their potential conflicts succeeded in adjusting and creating policy tools whose objectives are thus ambiguous.

The entanglement of rights policy and the policies of organisations

The different administrative translations of 'the politics of rights' (Scheingold, 1974; Baudot and Revillard, 2015) not only pile up onto existing norms, but they also shape hybrid policies.

Geometrically variable rights. Elements of the politics of rights present in legislative texts have been implemented in a disorderly manner, some too broadly, others too restrictively. Among the too broad ones has been the so-called 'life plan', initially meant to evaluate the amount of the Disability Compensatory Benefits (*Prestations de Compensation du Handicap* (PCH)). The PCH is, in fact, the only financial benefit based on the social definition of disability. The other benefits are always based on older definitions (Philip Wood's classification) and assessment tools, such as adult disability manuals written during the First World War (Viet, 2015; Baudot, 2016). Although the law prescribes that a life plan is only needed in cases of PCH claims, this administrative form is now used in all requests, including flat-rate benefits, such as those relative to the adult with disabilities allowance (*Allocation Adulte Handicapé*). Among the too restrictive was the way PCH was offered to people under eighteen years old. Instead of using the same policy tools taking into account the 'social model of disability' that were implemented to evaluate rights to compensatory benefits, the Government decided to subordinate eligibility to this rights-based benefits to a prior eligibility under the old-fashioned 'medical model', renewing in the process an obsolete form of evaluation.

Rights caught in 'the politics of organisations' (Bezes and Le Lidec, 2016). The politics of rights implies administrative implementation (Epp, 2009). The ability of organisations to implement rights depends in part on their own arrangements, their expertise, as well as the connections between such organisations and local political and administrative institutions.

Internal organisational politics may have an important impact on approaches for assessing disability. For example, faced with difficulties recruiting doctors to evaluate applications, some of the Departmental board for people with disabilities (*Maison Départementale des Personnes Handicapées*, MDPH) have chosen to renew disability benefits resorting to medical office assistants instead of doctors as part of an emergency plan to reduce backlog. In other MDPHs, applications are evaluated as soon as they are submitted, by a two-person team consisting of a social worker, a doctor, or an administrator. The composition of the team varies depending on the type of request (child or adult) and, importantly, does not necessary include a doctor. This change can

be justified ex post by the desire to privilege a 'social' approach to disability, although the determinants of this de-medicalisation are perhaps more likely to be found in the constraints of organisations faced with the challenges of multiple case management and the difficulty of recruiting health professionals.

The implementation of rights is equally affected by the capacity of organisations to provide independent expertise on each and every individual case. In this regard, extremely contrasting situations can arise. For example, in one MDPH visited in 2014, a multidisciplinary team was responsible for the evaluation of a case involving an adolescent reaching majority and thus moving from child to adult specialised institution. Professionals proposed an inclusive project within a mainstream environment whereas the family and care institutions favoured an orientation to a sheltered employment. The ability of the MDPH professionals to justify its position depended on its capacity to provide an independent evaluation. Conversely, in another MDPH visited during the same period, a 'partner line' (a hotline) dedicated to specialised institutions had been opened, allowing them to follow the processing of cases of the individuals they host. This hotline, quickly saturated, illustrates more broadly the role of external expertise in the production of assessments. Already mundane since 1975 at least, this integration of external evaluations was in fact institutionalised by the Law of 11 February 2005[9]. Again, recourse to external expertise compensates for the MDPH's lack of resources, or the strategies of these organisations to prioritise evaluation work over the costliest benefits, particularly those funded by the departmental council (e.g. Disability Compensatory Benefits (PCH)). Along these lines, in the two departments visited, home visits by professionals were carried out only for those cases concerning the award of PCH.

The social model was thus introduced in France partly as a rhetorical frame of reference, driving change in terminology (from 'handicap' to 'people with disabilities') but without any major transformation in the respective positions of the different stakeholders, who succeeded in introducing this new frame of reference without being threatened by its recommendations. The change it produced was, nevertheless, not entirely rhetorical. It served as a vehicle for a reform of the social policy model for people with disabilities, contributing to de-sectoring disability, aligning with existing practices and importing new public management reforms from other policy fields where they were already in use. This method of importing international catchwords has led to unstable equilibria, whereby administrative organisations are responsible for multiple and sometimes incompatible objectives. I now turn to how these organisations can be managed despite such diverging forces.

Managing divergences

The organisations in charge of implementing rights were created, generated around differing objectives. An analysis of their functioning aims to understand how tensions within these organisations are regulated and how, faced with possible failings due to the diversity of objectives, organisational and legal security mechanisms have been conceived to protect against administrative proceedings.

Organisational regulation of political conflict

MDPHs are bearers of different historically constituted layers of policies for persons with disabilities and of diverse public policy objectives (e.g. individualisation, rationalisation,

evaluation). The coexistence of these objectives generates tensions in the daily management of these organisations. How are these conflicts regulated? In what follows, I discuss three approaches: circumvention of obstacles, conflict avoidance, and making it invisible.

Circumvention of obstacles. The 'one-stop shop' solution, placed under the authority of the Department Council but partially supported by funding from national solidarity and state allocations, ultimately called into question one of the major, if accidental, innovations of the law of 11 February 2005. The administrative design implemented (called in French *groupement d'intérêt* public, GIP) meant that these policies were neither entirely decentralised (local actors did not wish to take on the management of these policies) nor entirely centralised (state actors could largely disengage from evaluation bodies). This solution was adopted despite the absence of support from local actors who feared that they would be made accountable. It nevertheless did allow for the introduction of a divide between purchaser and evaluation, authorising eligibility for benefits independently of financial considerations. This institution in charge of evaluation also aimed to obfuscate the exact distribution of funding. Some institutions or services are co-funded by Social Security, the State and the Departmental Councils. It is sometimes hard work for political and administrative decision-makers to understand exactly who pays what. The impossibility of coinciding responsibility in decision-making with funding had led to the emergence of this administrative design – which, as mentioned, had the advantage of separating payer and appraiser. It thus allows a non-financial definition of rights, only based on the evaluation of the individual situation.[10]

Since then, stakeholders have however tried to limit the autonomy of the MDPHs. Several legal elements have allowed the movement of the GIP under the informal tutelage of leaders of the departments: appointment of the director of the department council who can, in certain cases, also be director of services for the elderly and persons with disabilities at this level, and provision of MDPH staff. Other more informal elements have equally allowed departmental councils to regain control of evaluation policies: assessment of PCH by territorialised teams of social workers placed under the direct authority of the departmental services and not that of the MDPH; recruitment of less qualified directors, at a lower qualification and status level, etc. Since the austerity turn in public policies in 2008, these different provisions have been accompanied by oral instructions – reflected in interviews conducted for this study – indicating the need to reduce disability benefits by 10 per cent. This informal takeover has allowed the maintainance of the advantages of apparent autonomy for this independent agency, which can serve to 'avoid the blame' (Weaver, 1986).

The avoidance of conflict. The second institutional approach is the avoidance of conflict. Two points can be made to illustrate this. The first concerns the ways of evaluating PCH. As described above, home visits by a small professional team to check on housing arrangements are only carried out for the allocation of PCH, in all of the MDPHs visited during the course of this study. However, home visits considerably delay the examination of benefits, and in doing so conflict with one of the key requirements imposed by national regulations, that is the reduction of claim processing time (Baudot, 2015). As intended by the president of the departmental council in one of the MDPHs visited in 2014, these evaluations are justified by the notion of guaranteeing the 'legitimate right' of citizens, by ensuring that the benefits awarded comply with the evaluation grids. This decision has

also had the effect of delaying the payment of benefits, shifting in time the effectiveness of payments and their burden, in the eyes of departmental council managers, on local public finances. The second point concerns voting procedures in the competent evaluation commission (the Rights and Autonomy of Disabled Persons Commissions (*Commissions des Droits et de l'Autonomie des Personnes Handicapées* (CDAPH)). Voting is actually extremely rare, whatever the subject. Decisions are not, however, obtained by consensus. As an outside observer of these commissions I was sometimes unable to identify any decision made following deliberation on a case. It is rather by the absence of opposition that decisions are made. One of the MDPHs visited in 2012 had, in this fashion, decided to no longer discuss cases, but rather to limit its activity to validating a whole list of decisions on individual situations as evaluated by the MDPH's multidisciplinary evaluation team (EPE). The CDAPH sessions thus consisted of deliberation over precedents that the CDAPH had asked the EPE to follow. This is especially true of cases brought up by the EPE in which a decision has not yet been made and the CDAPH is asked to establish 'local case law' (Weller, 1999). In an MDPH visited in 2012, the EPE withdrew cases from the CDAPH discussion when the latter's assessment proved contrary to their own recommendations, in the hopes of moving the case to another session with the benefit of additional information. This absence of vote can vary within the same CDAPH depending on the level of internal conflict.

Making conflict invisible. Benefiting from the 'rubberiness of rights' (Burke, 2001), rights implementation bodies can modify how they award benefits and their extent without calling into question the existence of the right as such. It is thus possible to change the time share attribution of classroom or personal assistants without challenging the provision of Disability Compensatory Benefits as a whole. It has been possible to apply oral instructions to reduce benefits without a clear awareness of this from the beneficiaries themselves. Disclosing those cuts is extremely difficult for beneficiaries or their representatives. It is in fact challenging to show that the reduction in benefits, once shown by reliable figures, cannot be attributed to the people's changing life situations. The individualisation of social policies complicates the emergence of collective demands that can challenge, with the help of objective tools, quiet changes in public policies. It was only when these objectives of better matching benefits to the needs of individuals were publicised and formalised in a new time scale of personal assistance provided under PCH that collective protests were able to emerge and force the *Caisse Nationale de Solidarité pour l'Autonomie* (French national funding agency for the elderly and disabled) to withdraw the project.[11]

These three strategies (circumvention, avoidance, invisibility) are used to avoid confronting institutions with their underlying tensions. They allow institutions to continue to function despite conflicting goals, allowing professionals to complete their work, elected officials to support their existence, and citizens to benefit from the rights guaranteed to them by law in a certainly reduced and delayed form.

Legal safeguarding of organisations

These three tools are, however, insufficient to protect the institution from litigation. Rights policies have, in fact, the particularity of legally arming individuals so as to allow them to claim the full benefit of their rights in court. Since the adoption of the law in 2005, organisational regulatory mechanisms have been supplemented by two mechanisms of

legal securitisation. In what follows, I describe these mechanisms conceived during the process of implementing the law to limit its very possibilities of application.

Limiting litigation. The model promoted by the ADA is based on the possibility for persons with disabilities to claim, before a court, the implementation of rights by private or public organisations in terms of accessibility, employment, culture, etc. (Kelemen, 2011; Barnes and Burke, 2014). The recognition of fundamental rights in the law of 11 February 2005 (reiterated in the UN CRPD), such as the right to participation, right to compensation, and right to accessibility, assumes that individuals can rely on these rights to obtain justice.

The Law of 11 February effectively introduced mediation, conciliation and informal appeal procedures before appealing to courts. Two types of litigation are, in fact, foreseen in the area of disability: administrative appeals brought before an administrative tribunal, and disputes relating to the definition of the incidence of disability, brought before the Incapacity Dispute Court (*Tribunaux de contentieux de l'incapacité* (TCI)) and the National Court for Incapacity and Pricing of Insurance for Work Accidents (*Cour Nationale de l'Incapacité et de la Tarification de l'Assurance des Accidents du Travail* (CNITAAT)). In the MDPH activity reports produced annually by the CNSA (Caisse Nationale de Solidarite pour l'Autonomie), the number of appeals remained remarkably low compared to the activity of these organisations. The 2009 activity summary for MDPHs reported an average appeal rate of 2.4 per cent in 2008 (for the fifty-six MDPHs that responded to this question), with 50 per cent having an appeal rate (administrative or judicial) lower than 1.8 per cent. The 2015 activity summary (p.59) showed an average appeal rate of 2.1 per cent, with only 15 per cent of the appeals giving rise to a judicial appeal.[12] Along these lines, the 2011 summary of the 2010 activity reports lamented that MDPH directors cannot 'engage directly in legal proceedings due to their administrative status (GIP)', and clearly indicated that MDPHs use legal procedures to create case-law to 'confirm (their) correct interpretation of the text'.[12]

Administrative obstacles to legal disputes. More than one case has left its mark on legal developments in the area of disability over the last decade. The courts have repeatedly denounced the State for its failure to honour its obligations, that is not only an 'obligation of means' but an 'obligation of results', as much towards the integration of disabled children in schools as for individuals directed to specialised institutions by the MDPH. Indeed, the absence of a monitoring system meant that decisions made by the MDPH were not necessarily acted upon,[13] despite legislative exhortations that such decisions were to be imposed on 'all designated institutions or services, within their competence, as well as the authority responsible for its financing'.[14]

Previously, MDPHs could adjust their decisions to the 'local worlds of rights production' (Baudot and Revillard, 2015) through the selection and production of only those claims that had a chance of success given the available means, or by producing evaluations taking into account supply constraints (i.e. adjusted to the number of available places; allocating only the number of institutional spots available). In this way, the MDPH of a small department in France (Indre) boasted an 80 per cent satisfaction rate for requests for special needs classroom assistants (out of 156 applications). The MPDH of Côtes d'Armor had a satisfaction rate of 90.3 per cent in 2007 for such requests[15] while that of the MPDH of Pyrénées-Orientales in 2008 reached 95 per cent.[16] A decision made by the administrative tribunal of Cergy-Pontoise on 7 October 2013 called into

question, however, the routine functioning of MDPH decisions. In response to the family of Amélie – an autistic youth with Prader-Willi syndrome, whose case was supported by the UNAPEI (one of France's main associations for intellectually disabled persons) – the court ascertained an 'obligation of results' of the State in order to accommodate the person once notification to this effect had been made by the MDPH.

In order to avoid more disputes of this kind which would threaten the financial stability of MDPHs subject to penalties in cases of failure to meet this obligation, the Ministry of Health and Social Affairs initiated a process of administrative limitation of such legal threats. A solution was gradually tested then generalised in the spring of 2017: 'an accompanied response for all'. Supported by the CNSA and first tested in twenty-one departments, this measure is now generalising the 'critical case' commission system which since 2013 had met in emergency sessions to determine care solutions. The provision means a reinforcement of the interactions between administrative actors and specialised institutions, the former overtaking control over the latter. It also limits the possibilities of judicial appeal on the part of families when the administration can demonstrate that it made every possible effort to find a solution. The ability of representative associations for disabled people, which in France have the particularity of also managing specialised institutions funded by the State, to take judicial action is consequently restricted. Such associations have simultaneously been integrated into the process of this new 'accompanied response for all' procedure and placed before the alternative of a renewal of neo-corporatist types of relations (cultivated with the state since at least 1975) and a rise in conflict with public power. The fact that only a few legal disputes took place over the last ten years may then be an indication of the resilience of neo-corporatist arrangements.

Conclusion

A diffusion perspective applied to the adaptation of public polices to newly promoted international norms often focuses on delays and on the implementation gap. An analysis of implementation processes shows, however, that the diffusion of these norms can take much more complex forms than a simple opposition between adaptation and resistance. This close-up study of the French case and its intricacies demonstrates that, far from producing a replacement of actors and procedures, new norms have been able to reinforce the positions of some of the oldest players in the game. They were able to use the importation process itself to translate these norms to their advantage. Moreover, I have argued that this results in an unstable and entangled layering of old and new standards, making the definition of public policy objectives a challenging task. The present fuzziness is the result of the very conditions of importation and translation and has caused significant tensions at the implementation level. This problem can only be contained at the cost of organisational and administrative adjustments that lead to less transparent operating procedures and makes the evaluation of public policies increasingly difficult. It is also a challenge for citizens to grasp these policies and, if needed, oppose them. Finally, it triggers legal safeguarding on the part of public organisations to mitigate the increasingly evident flaws in their action. In this sense the politics of rights promoted at the international level paradoxically lead to an increase in the legal strengthening of public organisations, to the detriment of a better recognition of individual rights.

Acknowledgments

Notes

1 Interview with Marie-Anne Montchamp, carried out by the author on 13 March 2013.

2 'Self-representation' and 'peer-emulation' are now catchwords used by European institutions, reflecting the emergence of new associations, particularly in the case of autism.

3 Amendment no. 27 introduced by the Senate's Centrist Group, 19 October 2004.

4 National Assembly, verbatim record, 1 June 2004.

5 In a report entitled, '*Life with a Disability. Report to the President of the Republic*'. http://www.ladocumentationfrancaise.fr/rapports-publics/034000382/index.shtml#book_sommaire

6 'Court of Auditors' Report, 1998, 68.

7 Michel Fardeau's report to the Ministry of Employment and Solidarity: *Disabled Persons: Comparative Analysis and Prospective of the Care System*, January 2001, 18.

8 Information report no. 369 (2001-2002) by Paul Blanc, on behalf of the commission of social affairs, submitted on 24 July 2002, http://www.senat.fr/rap/r01-369/r01-369_mono.html.

9 'The multidisciplinary team solicits, when necessary and when the persons concerned or their legal representatives so request, the cooperation of institutions or services referred to in Article L312-1, I-11 or of centres designated as reference centres for a rare disease or group of rare diseases' (Art. 89 of the law of 11 February 2005, Art. L.146-8 of the Social Action and Family Code).

10 With the exception of a specific majority rule guaranteeing that the departmental council would always have a majority in commission votes relative to PCH: Article R 241- 26 of the Social Action and Family Code (Code de l'Action Sociale et des Familles; CASF) modified by Article 1 of Decree No. 2005-1589 of 19 December 2005 relative to the Commission on the Rights and Autonomy of the Disabled Person.

11 https://informations.handicap.fr/art-aide-humaine-CNSA-51-9531.php [accessed 24.05.17].

12 CNSA, '*MDPH : 5 ans déjà. Synthèse des rapports d'activité 2010 des MDPH*', 70.

13 This situation recently changed as the result of a set of instruments allowing the measurement of the effectiveness of the decisions made. The work (in progress) of Estelle Aragona will allow for a better understanding of the conditions of this takeover by the administration in terms of institutional admission.

14 Law of 11 February 2005, art. 21; Education Code, L351-2, art. 66-III; Social Action and Family Code, L241-6 III.

15 Activity Report, MPDH Côte d'Armor, 2007, 6.

16 Activity Report, MPDH Pyrénées-Orientales, 2008, 65.

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