

The Quest for a Decent Minimum Income in France

Linxin He

I. Introduction: Poverty in France	72
1. Developments in the Fight Against Poverty in France	72
2. Understanding Poverty in France	75
a) Quantified Assessment of Poverty Using Indicators	75
b) Participatory Evaluation: The Multiple Dimensions of Poverty	76
3. The State of Poverty in France	77
II. Overview	78
1. Normative Background	78
a) International Commitments	78
b) Constitutional Standards	78
aa) Constitutional Social Rights	78
bb) Constitutional Protection of Dignity	80
c) Legislative Standards	82
2. Social Benefits	84
a) General Benefit: The Active Solidarity Income (RSA)	85
aa) Entitlement to the RSA	86
bb) Amount of RSA	89
cc) The Activity Allowance	89
dd) The Rights and Obligations of RSA Recipients	90
b) Benefits Linked to Specific Circumstances	92
aa) Disabled Adults Allowance (AAH)	92
bb) Solidarity Allowance for the Elderly (ASPA)	94
cc) Specific Solidarity Allowance (ASS)	94
dd) Asylum Seeker's Allowance (ADA)	95
III. Analysis	96
1. Different Levels of Benefit	96
2. Identifying Needs: The Adequacy of Social Assistance in Question	97
a) Factual Finding of Inadequacy	97
b) Return of the Absolute Concept of Poverty: The Reference Budget	98
c) The Judge's Marginal Control over the Amounts Set	99
3. Activation: Difficult to Achieve	100
a) Limited Impact	101
b) A New Reform is Underway	102
4. Non-Economic Conditions	103
IV. Conclusions	104

I. Introduction: Poverty in France

“I am not, gentlemen, one of those who believes that suffering can be eliminated from this world; suffering is a divine law; but I am one of those who believes and affirms that misery can be eliminated (...). These are not only wrongs against man, they are crimes against God”.¹ With these words, Victor Hugo addressed the National Assembly on 9 July 1849 in support of Armand de Melun’s proposal to establish a committee to “prepare laws relating to providence and public assistance”. His declaration strongly echoed a commitment to defending human dignity in the face of poverty. The concept of a minimum income has long been a recurring utopian vision, resurfacing throughout history in various forms. First introduced in Thomas More’s *Utopia* in the 16th century and picked up by Thomas Paine in the 18th century, the concept has had many variants in France since the 19th century: the Saint-Simonians², for example linked the concept of minimum income to employment, while others, such as André Gorz³, viewed it as a means to eliminate alienation. This chapter revisits France’s social assistance laws to fight poverty, with a particular focus on how human dignity is embedded in the overall framework of these laws. While poverty remains a pressing social and economic issue, contemporary approaches increasingly emphasise the need for a more refined understanding of human dignity and its protection in the face of destitution.

1. Developments in the Fight Against Poverty in France

The fight against poverty in France has a long history, and shares common characteristics with its European neighbours. During the Middle Ages⁴, poverty relief was largely managed by the Catholic Church in the name of charity. Over time, this responsibility was gradually passed on to secular authorities: efforts to alleviate poverty were first provided through local social services with the establishment of the *Grand Bureau des Pauvres* in Paris in 1545, and later through increased royal interventions, driven by concerns

1 V. Hugo, *Actes et paroles, I: Avant l'exil* (Albin Michel 1937) p. 162.

2 P.-Y. Verkindt, ‘Le revenu universel, une question de et pour la Philosophie sociale’ *Revue de droit sanitaire et social* (2020), p. 229.

3 P. Martin, ‘Le revenu universel à nouveau : de quoi parle-t-on?’ *Droit social* (2020), p. 770.

4 E. Alfandari and F. Tourette, *Action et aide sociales* (5th ed. Dalloz 2011), p. 5.

over public health and the threat of social unrest.⁵ A range of measures was introduced, including the establishment of general hospitals in 1662 to house the poor. Poverty was perceived as an unfortunate condition, but one that was self-inflicted, with the State assuming no obligation for the poor beyond preventing them from becoming a public nuisance. Instead of acknowledging an intrinsic human dignity of the poor, society viewed their dignity as being exclusively derived from divine revelation.⁶

The French Revolution marked a decisive break with the *Ancien Régime*. Influenced by the Philosophers, poverty was no longer perceived as the individual's own fault, but as "a state contrary to that of opulence; one lacks the comforts of life; one is not in control of one's own life" and "it is not a vice in itself".⁷ Montesquieu asserted that "some alms offered [...] in the streets do not fulfil the obligations of the State, which owes all citizens an assured subsistence, food, suitable clothing and a way of life that is not harmful to health".⁸ Hence, if the poor (or at least some of them) had not fallen into destitution through any fault of their own, then it was the State's duty to provide support and lift them out of poverty. It is therefore not surprising that the revolutionaries initially prioritised assistance for children and disabled persons living in poverty, whose hardship could not be attributed to their own actions. The Constitution of 3 September 1791 therefore declared that "a general establishment for public relief shall be created and organised to raise foundlings, relieve the infirm poor and furnish work for the able-bodied poor who have been unable to procure it for themselves".⁹ Article 21 of the Declaration of the Rights of Man and of the Citizen of the Constitution of 24 June 1793 was even more symbolic, proclaiming that "Public relief is a sacred debt. Society owes sustenance to unfortunate citizens, either procuring work for them, or in providing the means of existence for those who are unable to work".¹⁰ Two key obser-

5 D. Roman, *Le droit public face à la pauvreté* (LGDJ 2002), p. 31.

6 J.-B. Bossuet, *De l'éminente dignité des pauvres* (presented by A. Supiot, Mille et une nuits, 2015).

7 D. Diderot and J. Le Rond de l'Alembert, *Encyclopédie vol. II* (1752, text available at < <http://enccre.academie-sciences.fr/encyclopedie/article/v2-1093-1/?query=pauvret%C3%A9> > accessed 25.11.2024), p. 213.

8 Quoted by C. Larrère, 'Montesquieu and the poor' *Cahiers d'économie Politique* 59 (2010), p. 24 (author's translation).

9 Constitution de 1791, text available at < <https://www.conseil-constitutionnel.fr/les-constitutions-dans-l-histoire/constitution-de-1791> > accessed 25.11.2024.

10 Constitution du 24 juin 1793, text available at < <https://www.conseil-constitutionnel.fr/les-constitutions-dans-l-histoire/constitution-du-24-juin-1793> > accessed 25.11.2024.

vations can be made about the Declaration: first, the notion of society's responsibility towards the poor, as established by virtue of the Social Pact, was expanded to cover "every unfortunate citizen"; second, assistance was provided through two means, namely job opportunities for able-bodied persons and sufficient means of subsistence for those unable to work. These principles were also reflected in the work of the Beggars' Committee established by the Constituent Assembly in 1790. The committee proposed several reforms to the welfare system, placing emphasis on the principle of compulsory work for the able-bodied poor: "Every human being has the right to demand from society: *Give me sustenance*, just as society has the right to reply: *Give me your labour*."¹¹

With its emphasis on work, social assistance measures in France remained focused on specific categories of marginalised groups, such as children, the elderly, disabled persons, etc.¹² Able-bodied adults were largely left in a legislative void, apart from unemployment assistance introduced by the Law of 22 April 1905.¹³ Specific forms of assistance were introduced throughout the 20th century, including personalised housing assistance in 1977 and the expansion of family allowances in 1978. However, the end of the "Thirty Glorious Years" and the emergence of structural unemployment exacerbated poverty in France. According to Julien Damon, "poverty has not exploded in recent decades but has undergone a fivefold transformation: it increasingly affects younger people and women, has become more urbanised and concentrated, is marked by greater dependence on social benefits, and is more prevalent among the workforce. At the same time, a series of initiatives has been introduced: *Revenu minimum d'insertion* (minimum inclusion income) (1988), *Samu sociaux* to assist the homeless (1993), *Loi d'orientation pour la lutte contre les exclusions* (anti-exclusion law) (1998), *Couverture maladie universelle* (universal health care) (1999), *Plan de cohésion sociale* (social cohesion programme) (2004), and *Droit au logement opposable* (right to housing) (2007). The most recent initiative to fight poverty, *Revenu de solidarité active* (RSA) (active solidarity income), was introduced in 2008. The introduction and implementation of the RSA,

11 S. Paugam, 'La société française et ses pauvres' Presses universitaires de France (2002) p. 85.

12 Cf. Decree of 8 July 1793 on the organisation of assistance to be granted annually to children, the elderly and the needy.

13 M. Borgetto and R. Lafore, *Droit de l'aide et de l'action sociales* (11th ed. LGDJ 2021), p. 530.

which established a measurable target for reducing poverty, marked a turning point in France”.¹⁴ More recently, the debate over a universal income project (the *Revenu universel d'activité*) gained momentum during and after the 2017 presidential election. While the proposal did not materialise, it heightened the government's awareness of the need to guarantee a decent standard of living for all, placing the issue of living in dignity at the centre of public discourse.

2. Understanding Poverty in France

Understanding poverty is intrinsically linked to understanding the concept of living in dignity. As highlighted in the Introduction of the current volume, measuring poverty is a prerequisite for formulating policies that effectively address poverty. France has taken measures to incorporate poverty reduction targets into law. According to Article L115-4-1 of the *Code de l'action sociale et des familles* (CASF), “the Government defines, for each five-year period (...) quantifiable poverty reduction targets, measured in line with conditions determined by decree by the *Conseil d'Etat*”. Article R115-5 CASF outlines several indicators, including monetary poverty, difficult living conditions, poverty among children, young people and the elderly, in-work poverty, barriers to access to housing and healthcare, etc. Poverty has traditionally been assessed using quantitative indicators, but a new participatory approach is gradually emerging.

a) Quantified Assessment of Poverty Using Indicators

France applies a relative threshold to measure poverty (in contrast to approaches using the absolute threshold). The French National Institute for Statistics and Economic Studies (INSEE) used the 50 per cent threshold for many years, but aligned this threshold with Eurostat's at the end of the 2000s.¹⁵ Other institutions, such as the *Observatoire des inégalités*, continue to apply the 50 per cent threshold—including the Organisation for Economic Co-operation and Development (OECD)—on the grounds that the 60 per cent threshold groups together populations that are too heterogeneous.

14 J. Damon, *Éliminer la pauvreté* (Presses Universitaires de France 2010), p. 16.

15 A. Lambert, ‘Quelle mesure officielle pour la pauvreté?’ *Regards croisés sur l'économie* (2008), p. 30.

This divergence underscores the subjective nature of defining the relative poverty line. Rather than directly measuring need, the relative threshold is more indicative of economic inequalities within society.

Whether absolute or relative, monetary indicators are often criticised for failing to capture the more complex realities of people's living conditions: the quality of public services, the gap between the living standards of the poor and the general population, etc. Alternative methods have been proposed to address these shortcomings, such as measuring the intensity of poverty and poverty in terms of living conditions. According to INSEE, the intensity of poverty gauges how far the standard of living of poor populations is from the poverty line. Similar to Eurostat, INSEE measures this indicator as the relative gap between the median standard of living of the poor and the poverty threshold.

b) Participatory Evaluation: The Multiple Dimensions of Poverty

More recently, a new “systemic” approach has emerged to replace purely material indicators of poverty. In a 2019 *ATD Quart Monde* report in France, produced in collaboration with international partners, the authors identified eight dimensions of poverty: material deprivation and denial of rights; fear and suffering; deterioration of physical and mental health; social abuse; institutional abuse; isolation; constraints of time and space; and acquired skills that are not recognised.¹⁶

The research team consisted of four individuals with personal experience of poverty, four professionals working in associations or for individual and collective support structures, and four experts engaged in the field of poverty research.¹⁷ This cross-fertilisation of perspectives helps avoid a one-sided approach, ensuring that poverty is defined in a more balanced way.

16 A. Bendjaballah, C. Consolini-Thiébaud, et al., *Comprendre les dimensions de la pauvreté en croisant les savoirs: “Tout est lié, rien n'est figé”* (ATD Fourth World 2019).

17 Ibid, p. 7.

3. The State of Poverty in France

According to INSEE estimates, 9.2 million people in France live below the poverty line, which is defined as 60 per cent of the median standard of living (around EUR 1,102 per month).¹⁸ The poverty rate in the country is 14.6 per cent, which is lower than the EU average of around 17 per cent. France fares better than its neighbours Germany (14.8 per cent poverty rate), Belgium (14.8 per cent), Italy (20.1 per cent) and Spain (20.7 per cent). The poverty rate has remained relatively stable since the financial crisis of 2008.¹⁹ The only significant rise in poverty was observed in 2018 (up by 0.8 per cent) due to the reduction in the housing benefit.

When reviewing other monetary indicators, we find that the intensity of poverty also remained stable between 2014 and 2019: the median standard of living for those below the poverty line lies at around 80 per cent of the poverty threshold.²⁰ However, the rate of poverty in living conditions rose slightly by 0.4 per cent in 2019, reaching 12.3 per cent, just below the EU average, trailing behind Germany, Belgium and Italy. The COVID-19 pandemic has made it more difficult to measure poverty, but INSEE expects the poverty rate to have remained stable in 2020 and 2021 as well.²¹

As regards budgetary expenditure in the fight against poverty, benefits amounted to EUR 34.7 billion in 2021, or 4.1 per cent of total social benefits. This amount increased again in 2021 (+6.7 per cent following a rise of +13.2 per cent in 2020 due to the exceptional assistance provided during the health crisis). This increase is due to anti-inflation measures introduced by the government, such as the inflation allowance, which consists of ex-

18 Institut national de la statistique et des études économiques, 'France, portrait social Édition 2021: pauvreté monétaire', < <https://www.insee.fr/fr/statistiques/5431755?soommaire=5435421#consulter> > accessed 25.11.2024.

19 However, according to a recent INSEE study of July 2025 (<<https://www.insee.fr/fr/statistiques/8600989#titre-bloc-13>> accessed 14.7.2025), the poverty rate in France rose sharply to 15.4% in 2023, reaching its highest level since the beginning of the measurements in 1996.

20 Institut national de la statistique et des études économiques, 'Intensité de la pauvreté, Données annuelles de 1996 à 2022, < <https://www.insee.fr/fr/statistiques/3564980#tableau-figure1>> accessed 25.11.2024.

21 Institut national de la statistique et des études économiques, 'En 2020, une mesure de la pauvreté compliquée par la crise sanitaire' < <https://www.insee.fr/fr/statistiques/6542073>> accessed 25.11.2024.

ceptional, individual payments of EUR 100 for recipients with a monthly income of less than EUR 2,000 net.²²

II. Overview

1. Normative Background

a) International Commitments

At the international level, France is bound by the International Covenant on Economic, Social and Cultural Rights, which under Article 9 guarantees the right to social security, and Convention 102 of the International Labour Organisation on Social Security of 1952, which provides for non-contributory benefits for the elderly (Article 26) and their surviving spouses (Article 60). France has ratified the revised European Social Charter. Its Article 13 states that “With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake: 1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition.” Article 34 of the EU Charter of Fundamental Rights provides for a right to social and housing assistance. However, these international commitments have a limited effect in France (usually non-discrimination). Next, we turn to French domestic law.

b) Constitutional Standards

aa) Constitutional Social Rights

The French Constitution of 4 October 1958, which remains in force today, in its preamble explicitly refers to both the Declaration of the Rights of Man and of the Citizen of 26 August 1789 and to the preamble of the Constitution of 1946. From this reference, the Constitutional Court deduces the

22 DREES, *Social protection in France and Europe in 2021* (DREES 2022) p. 101.

constitutional value of these two declarations of rights within French law.²³ While the Declaration of 1789 enshrines civil and political rights only, the Declaration of Rights contained in the preamble to the 1946 Constitution has a strong social dimension. In the context of social welfare, paragraphs 10 and 11 of the Preamble of the Constitution are particularly noteworthy.

Paragraph 10 states that “the nation shall ensure to the individual and to the family the conditions necessary for their development”. While the wording suggests equal concern for both individuals and families, its interpretation has largely centred on the constitutional protection of the family. The Constitutional Council exercises minimal control over this paragraph, leaving the legislator significant discretion. For example, it has ruled that the introduction of a means test for the payment of family allowances does not violate paragraph 10.²⁴ The decision to impose such a test lies entirely at the discretion of the legislator and does not affect the allowances’ conformity with constitutional requirements. The legislator has broad discretion in social policy.²⁵ This also applies to paragraph 11.

Paragraph 11 further states that the nation “guarantees everyone, in particular children, mothers and elderly workers, protection of health, material security, rest and leisure. Every human being who, by reason of his age, physical or mental condition or economic situation, is unable to work, has the right to obtain from the community an adequate means of subsistence”. The reference to adequate means of subsistence may imply the need for a minimum income. Yet before drawing such a conclusion, it should be noted that the paragraph is a condensed provision that encompasses several rights related to social protection. The Constitutional Council applies it to justify the need for various social security schemes. For example, as regards old-age pensions, the Council examines whether a given legislative measure undermines the system’s fundamental principle or structure. If it does not, the measure will usually be accepted.²⁶ The Council has frequently reiterated that there is considerable room for manoeuvre in the implementation of these principles, stating for example that it “does not have a general power of assessment and decision of the same nature as that

23 Constitutional Council, 16 July 1971, No. 71-44 DC.

24 Constitutional Council, 18 December 1997, No. 97-393 DC.

25 O. Dutheillet de Lamothe, ‘Les normes constitutionnelles en matière sociale’ *Les Nouveaux Cahiers du Conseil constitutionnel* 29 (2010), p. 193.

26 Constitutional Council, 20 March 1997, No. 97-388 DC, § 4.

of Parliament”.²⁷ In other words, this does not establish a direct protection of subjective rights. In the fight against poverty, the Constitutional Council often combines paragraphs 10 and 11. When assessing an extension of the minimum income (RSA) for certain population groups under the age of 25, the Council declared that “the constitutional requirements resulting from the aforementioned provisions imply the implementation of a policy of national solidarity in favour of disadvantaged persons; that the legislator retains discretion to determine the concrete arrangements it deems appropriate to meet this requirement; that, in particular, the legislature retains full discretion within the scope of Article 34 of the Constitution to amend or repeal previous enactments and replace them with new provisions where appropriate; that it retains discretion to adopt new procedures aimed at achieving or reconciling constitutional objectives, assessing their appropriateness as necessary, and which may entail amending or deleting provisions deemed excessive or unnecessary; that, however, the exercise of this power may not undermine the constitutional requirements of legal guarantees”.²⁸ This statement by the Council affirms that paragraphs 10 and 11 do not confer direct subjective rights to individuals, but establish “constitutional requirements”, the implementation of which lies at the discretion of the legislature. It therefore does not come as a surprise that the Council has never scrutinised the interpretation of “adequate means of subsistence” referred to in paragraph 11. In short, the Council’s current case law provides little guidance in determining the appropriate level of social assistance to effectively fight poverty and exclusion.

bb) Constitutional Protection of Dignity

Can the notion of “adequate means of existence” be constructed through the protection of dignity? This approach does not seem any more straightforward. In fact, the protection of human dignity in French constitutional law in itself raises several questions.

Despite the many declarations of human rights that have been issued throughout France’s constitutional history, no constitutional provision explicitly enshrines the protection of human dignity. The draft constitution of 19 April 1946 provides some insights. Article 22 of this draft stipulated

27 Constitutional Council, 16 May 2012, No. 2012-249 QPC.

28 Constitutional Council, 29 December 2009, No. 2009-599 DC.

that “every human being within society is entitled to rights that guarantee the integrity and dignity of his person, his full physical, intellectual and moral development. The law organises the exercise of these rights”. In the economic and social sphere, Article 27 of the same draft stated that “the duration and conditions of work must not be prejudicial to the health, dignity or family life of the worker”. Similarly, Article 28 of the draft asserted that “men and women have the right to just remuneration commensurate with the quality and quantity of their work, and in any event to the resources necessary for them and their families to live in dignity”. The strongest recognition of the protection of a dignified life is found in Article 38 of the draft: “No one shall be placed in a position of economic, social or political inferiority that is contrary to his or her dignity and exploitative of others by reason of gender, age, colour, nationality, religion, opinions, ethnic or other origins”.

This draft Constitution was unfortunately rejected, and the social rights that were outlined in the Constitution’s preamble adopted that same year ultimately remained principles with little binding force. In positive law, the only explicit mention of the term “dignity” is made in Article 6 of the Declaration of the Rights of Man and of the Citizen of 1789, which states that “All citizens, being equal in its eyes, shall be equally eligible to all ‘dignities’, public positions and employments, according to their ability, and without other distinction than that of their virtues and talents”. “Dignities” in this context refers to “membership of a civil or military order”, which is relatively far removed from the dignity of the individual.

Nevertheless, the absence of explicit references to human dignity in the French Constitution as found in European and other international legal instruments has not prevented the Constitutional Council from recognising the protection of human dignity as a principle of constitutional value. However, such recognition is confined to the biomedical field, more specifically, the field of medically assisted procreation. In its “Bioethics” decision of 27 July 1994, the Constitutional Council²⁹ derived the constitutional principle of safeguarding human dignity against all forms of enslavement and degradation from the first sentence of the preamble to the 1946 Constitution, which reads as follows: “In the wake of the victory won by the free peoples over the regimes that attempted to enslave and degrade the human person, the French people once again proclaim that every human being, without

29 Constitutional Council, 27 July 1994, No. 94-343/344 DC.

distinction of race, religion or belief, possesses inalienable and sacred rights". This reading is quite surprising³⁰, given the proposal of the "Vedel Committee", which had been tasked with refining the French Constitution, and in 1993, proposed the protection of human dignity to be more explicitly represented in the Constitution. As Paul Cassia notes, this recognition implies that human dignity does not hold a foundational or central role in French law, as is the case in other legal systems such as Germany's.³¹ While the principle of human dignity can be derived from the preamble to the 1946 Constitution, which incorporates a strong social dimension, it is framed more as a defensive principle that may not be undermined by the legislature. In other words, in positive law, this principle is rarely invoked in the context of social rights. At best, it surfaces in decisions concerning conditions of detention, where the requirement for dignified conditions reflects that for decent housing.³² According to the Constitutional Council, inmates should have the possibility to request the administrative judge to reverse any undignified conditions of detention. Yet the comparison ends there – although the Constitutional Council recognises access to decent housing as "an objective of constitutional principles" in decisions on the right to decent housing, this objective is far from representing a constitutional right for individuals. The Council again leaves legislators considerable room for manoeuvre.³³

c) Legislative Standards

Social assistance primarily falls within the competence of the French legislator. While Article 34 of the French Constitution grants the legislature authority over "the fundamental principles of social security", both constitutional and administrative judges have interpreted "social security" as referred to in this article to encompass non-contributory benefits as well.³⁴ Consequently, the executive's role is limited to the practical implementation of the principles established by the legislator.

30 P. Cassia, *Dignité(s)* (Dalloz 2016), p. 76.

31 Ibid, p. 79.

32 Constitutional Council, 2 October 2020, No. 2020-858/859 QPC.

33 Constitutional Council, 19 January 1995, No. 94-359 DC.

34 M. Borgetto and R. Lafore (n 13), p. 83.

Despite this division of powers, social welfare law has grown increasingly complex over time, involving multiple levels of government and intersecting with different branches of law (education, health, labour, social security, etc.). In response, the legislature has made several attempts to simplify existing laws, for example by overhauling the former Family and Social Welfare Code of 1905. The new *Code de l'action sociale et des familles* (CASF) was introduced by Ordinance No. 2000-1249 of 21 December 2000. Several new laws were introduced prior to the publication of the CASF, such as the Law of 30 June 1975 on guidance for persons with disabilities and on social and medico-social institutions; the Law of 1 December 1988 on the minimum integration income; the Law of 24 January 1997 on specific dependency benefits; the Law of 29 July 1998 on the fight against exclusion, and the Law of 27 July 1999 on universal health coverage.³⁵ The CASF incorporates laws on families, the elderly, disabled persons, healthcare and social inclusion. It opens with a book on fundamental principles.

Fundamental principles in relation to poverty are outlined in Article L115-1. Accordingly, “The fight against poverty and exclusion is a national imperative based on respect for the equal dignity of all human beings and a priority for all of the nation’s public policies. It aims to guarantee effective access for all to fundamental rights in the areas of employment, housing, health protection, justice, education, training and culture, and family and child protection. (...)”. The foundation of this article lies in “the equal dignity of all human beings”, which might suggest a link with the constitutional principle of safeguarding human dignity. However, we must be very cautious about the normative value of this statement. Notably, the fight against poverty is framed as “a national objective” rather than an enforceable right of individuals. Initially, this article was preceded by a provision closely aligned with paragraph 11 of the preamble of the 1946 Constitution. Some authors claim that the deletion of this former provision represents a shift “from an approach in terms of ‘rights to assistance’ to one that places greater emphasis on an obligation to integrate based on a duty on the part of the community to contribute”.³⁶

Somewhat surprisingly, Article L115-3 of the Code places particular emphasis on housing conditions and the basic needs associated with it. The ar-

35 G. Dubreuil, “Le Code de l’action sociale et des familles” *Revue de droit sanitaire et social* (2001), p. 794.

36 M. Borgetto and R. Lafore, *Code de l’action sociale et des familles annoté et commenté* (18th ed. Dalloz 2022), p. 40.

ticle states that “any person or family experiencing difficulties, particularly in terms of assets, resources or living conditions, has the right to assistance from the community in obtaining access to water, energy, a telephone landline and internet connection (...)”. Access to the internet was added by Law 2016-1321 of 7 October 2016 for a Digital Republic. The article also provides for other measures to ensure the continued provision of fundamental services, even in the event of non-payment by the tenant. While it does not explicitly mention the principle of human dignity, this article implicitly recognises that certain services are indispensable to contemporary life.

By establishing these principles, the new Social Action and Family Code offers a framework through which the principle of human dignity can be more effectively integrated into efforts to fight poverty and exclusion. However, for this principle to have a genuine impact, it must be accompanied by practical measures.

2. Social Benefits

As already mentioned (I.1), social assistance benefits in France were initially designed for specific population groups (persons with disabilities, the elderly, unemployed persons, etc.), before being extended to anyone in need with the introduction of the *Revenu Minimum d'Insertion* (RMI) in 1988. This trajectory reveals how complex France's system of minimum social benefits is. The 2016 Sirugue report, “*Repenser les minima sociaux. Vers une couverture socle commune*” (Rethinking minimum social benefits. Towards a common basic coverage), identified ten such benefits,³⁷ including assistance for specific needs such as housing. Since the introduction of the allowance for asylum seekers (ADA) in summer 2015, the French government has explored ways to simplify the system by creating a single basic benefit. This not only led to the aforementioned Sirugue report,³⁸ but also to intense debates during the 2017 presidential elections on universal

37 The Revenu de solidarité active (RSA), the Allocation de solidarité pour les personnes âgées (ASPA), the Allocation adultes handicapés (AAH), the Allocation supplémentaire d'invalidité (ASI), the Allocation de solidarité spécifique (ASS), the Allocation veuvage (AV), the Revenu de solidarité outre-mer (RSO), the Prime transitoire de solidarité (PTS), the Allocation temporaire d'attente (ATA) and the Allocation pour demandeur d'asile (ADA).

38 C. Sirugue, C. Cadoret and S. Grobon, *Repenser les minima sociaux. Vers une couverture socle commune* (Report to the Prime Minister 2016).

income.³⁹ While the idea of universal income was ultimately dismissed, the newly elected President Emmanuel Macron pledged in 2017 to introduce a universal activity income, aimed at refining and strengthening the active solidarity income initiative.⁴⁰

The *Revenu de solidarité active* (RSA), which is the most comprehensive benefit designed to ensure minimum income protection, is explored in detail in this chapter. Targeted benefits intended for specific population groups are analysed as well.

a) General Benefit: The Active Solidarity Income (RSA)

The 2008 RSA replaced the *Revenu minimum d'insertion* (RMI) introduced in 1988. As its name suggests, the RMI was designed to supplement financial assistance with an integration component to encourage people to return to work as a path out of poverty. This marked the first step towards activating social assistance policies. However, the integration objective ultimately fell short.⁴¹ Moreover, the system became increasingly complex over time, with a rising number of eligible beneficiaries not claiming benefits. A comprehensive reform of the scheme was therefore necessary, resulting in the establishment of the RSA through the Law of 1 December 2008. The RSA does not call the underlying idea behind the RMI into question, but refines, simplifies and harmonises it.

The RSA serves three primary objectives: i) providing a guaranteed minimum income to ensure a decent standard of living without a time limitation; ii) to incentivising recipients to return to work; and iii) facilitating social support for the return to work. As stated in Article L115-2 of the CASF: “The social and professional integration of individuals facing difficulties contributes to achieving the national imperative of fighting poverty and exclusion. The active solidarity income (...) supplements income from work or provides support to households whose members only earn a minimal income from work and from the rights they have acquired through work, or who are unemployed. It guarantees a minimum income for all, regardless of their capacity for work. RSA recipients are entitled to social

39 M. Borgetto and R. Lafore (n 13), p. 592.

40 J. Damon, ‘Le projet de RUA, c’est le projet de RSA’ *Revue de droit sanitaire et social* (2020), p. 238.

41 M. Lelièvre and E. Nauze-Fichet (ed.), *RMI, l’état des lieux (1988-2008)* (La Découverte 2008).

and professional support designed to facilitate their long-term integration into employment”. The function of incentivising people to return to work has been absorbed by the activity allowance introduced by the Act of 17 August 2015. However, the general structure has remained unchanged since 2008.

aa) Entitlement to the RSA

To qualify for the RSA, applicants must meet three conditions: i) continuous residency in France; ii) at least 25 years old (with some exceptions), and iii) earning an income that is below the threshold set by decree. According to Article L262-2 of the CASF, “any person residing in France on a continuous and effective basis, whose household income falls below a specified amount, is entitled to the active solidarity income under the conditions defined in this chapter”.

Continuous and effective residence means living and conducting business in France. The judge assesses this requirement based on a “bundle of evidence” method. If the recipient resides outside of France for a period exceeding three months, the RSA may be reduced to reflect only the full calendar months spent in France.⁴² This requirement does not a priori imply French nationality. Article L262-4 2° specifies an alternative condition: applicants must either “be French nationals or have held a residence permit for at least five years authorising them to work”. Exceptions apply to refugees, beneficiaries of subsidiary protection, stateless persons, foreigners with a residence permit or a residence permit granted under an international treaty or agreement that confers equivalent rights, and individuals eligible for the increased RSA. These provisions were challenged before the Constitutional Council. According to the applicant, the requirement for foreign applicants to have held a residence permit for at least five years authorising them to work was contrary to both the principle of equality and paragraph 11 of the preamble to the 1946 Constitution. In its ruling, the Council reiterated the legislature’s broad discretion in determining appropriate policy measures. According to the Council, “the legislature could reasonably consider continuous residence in the national territory as one of the key requirements for professional integration; by restricting

42 CE, 30 April 2014, No. 357900.

RSA eligibility to foreign nationals who have held a residence permit for at least five years authorising them to work, the legislature has introduced a difference in treatment between French and foreign nationals, on the one hand, and between foreign nationals, on the other, depending on whether or not they have continuously resided in France. This distinction is directly related to the purpose of the law; it establishes a criterion that is not manifestly inappropriate with reference to the intended objective”.⁴³ Hence, the Constitutional Council upheld the law.

Secondly, the beneficiary must be over 25 or must be the guardian of one or more children which have been born or are expected (Art. L262-4, 1°, CASF). The underlying notion is that young people under 25 should first rely on family support before applying for the RSA. In other words, this is one of the manifestations of the RSA’s subsidiary nature. One important exception to this condition is the increased accessibility of the RSA for working young people. A new scheme was introduced following issuance of the Law of 1 December 2008. A “pilot support fund for young people” aged 16 to 25 was established. Subsequently, the 2010 Finance Act expanded RSA eligibility to working young people under the age of 25, provided they were integrated into the labour force (Art. L262-7-1, CASF). That is, young people aged 18 to 25 must have worked full time for at least two years within the three years preceding the date of RSA application. Periods of work, regardless of professional activity, are taken into account, with the exception of civic or voluntary activities. As previously mentioned, the RSA’s expansion to include young people under the age of 25 was prompted by the Constitutional Council’s ruling on the constitutional requirement to implement a national solidarity policy in favour of disadvantaged persons, affirming that the legislature had discretion to determine the appropriate means for achieving this objective. The extension meets this objective and was therefore deemed to comply with the Constitution.⁴⁴ However, pupils, students and trainees remain excluded from the RSA (Art. L262-4, 3°, CASF).

Finally, the most decisive condition concerns the applicant’s financial resources. First and foremost, it is essential to emphasise that the RSA is subsidiary in nature. According to Article L262-10 of the CASF, “entitlement to the *revenu de solidarité active* is subject to the household asserting its rights to statutory, regulatory and conventional social benefits, with the

43 Constitutional Council, 17 June 2011, No. 2011-137 QPC.

44 Constitutional Council, 29 December 2009, No. 2009-599 DC.

exception of monthly allowances [for home help]”. To determine whether the applicant’s own resources exceed the RSA threshold, Article R262-6 of the CASF outlines a wide range of sources of income to be considered: “the resources taken into consideration to determine the amount of the *revenu de solidarité active* include (...) all types of resources, regardless of their nature, of all individuals living in the household, and in particular benefits in kind as well as income from movable and immovable property and capital”. More specifically, these resources are categorised as follows:

- Income that is considered in full: this includes professional income (Art. R262-12, CASF; i.e. any income earned from paid employment or self-employment; income from participation in vocational training courses; legal or contractual assistance for employees in short-time work; compensation for statutory maternity, paternity or adoption leave; basic or supplementary social security daily allowances). Family allowances also fall under this category.
- Income that is fully excluded: Article R. 262-13 of the CASF outlines the resources that are excluded from the calculation to determine the applicant’s total resources. These include certain social benefits, such as the birth or adoption grant, childcare allowance for young children, back-to-school allowance, health insurance benefits in kind, etc.
- Income that is partially excluded: some benefits are only partially included in the calculation of the applicant’s resources. This primarily concerns resources linked to housing. For example, housing benefits in kind are included at a rate of 12 per cent of the flat-rate amount applicable to a single-person household; 16 per cent for a two-person household; and 16.5 per cent for households consisting of three or more people (Art. R262-9, CASF). More interestingly, if the applicant receives personalised housing assistance (social assistance for housing), the amount of RSA will be reduced by a flat rate under the same conditions as the housing benefits in kind (Art. R262-10, CASF). In other words, the personalised housing assistance (APL) can be combined with the RSA, provided that the automatic reduction in the amount of RSA is taken into account.
- Income that is excluded for a limited period: to encourage recipients to return to work, professional income earned during the first three months after rejoining the labour force is generally excluded.

bb) Amount of RSA

The maximum RSA amount is determined annually by government decree. The actual payment is calculated as the difference between the household's total resources and the flat-rate amount. This amount varies based on household composition: it increases by 50 per cent for a two-person household and by 30 per cent for each additional dependant in the household (child or other dependant). However, if the household includes more than two dependent children or persons under the age of 25, the RSA increases by 40 per cent from the 3rd dependant onwards (Art. R262-1, CASF).

From 1 April 2023, the RSA guarantees a monthly income of EUR 607.75 for a single person, EUR 911.63 for a two-person household (a couple or claimant with one child or dependant), EUR 1,093.96 for a three-person household, and EUR 1,276.29 for a couple with two children or dependants. The amount is increased by EUR 243.10 for each additional dependant.⁴⁵

As previously mentioned, the RSA serves two purposes: i) fighting poverty among the working class, and ii) incentivising unemployed persons to return to work. However, the notion of ensuring a dignified existence is not a central element in the fundamental design of the RSA. Its amount is determined in relation to the minimum wage: the RSA must remain low enough to incentivise recipients to return to work, but high enough to prevent them from falling too far below the minimum wage level, which serves as a benchmark for the country's poverty line. By way of comparison, the monthly minimum wage in France on 1 May 2023 was EUR 1,747.20 gross, or EUR 1,383.08 net for a 35-hour work week. We will later analyse whether the RSA amount is sufficient to guarantee a dignified life.

cc) The Activity Allowance

The activity allowance was established by the Law of 17 August 2015, in response to the initial RSA's failure to include an "activity" component. The activity bonus was therefore merged with the "*Prime pour l'emploi*" and replaced the previous "*RSA-activité*". This new single scheme aims to incentivise RSA recipients to enter and remain in employment rather than stay unemployed and consequently trapped in poverty. To achieve its

45 Decrees of 4 May 2023 increasing the flat-rate amount of the revenu de solidarité active, No. 2023-340 and No. 2023-341.

objective, the RSA introduced a relatively complex calculation based on the household's total resources, broadened the scope of beneficiaries, and introduced new bonuses for those who remain in employment.

According to Article L842-3 of the Social Security Code (CSS), “the activity allowance is calculated as the difference between: 1) a flat-rate amount, which varies depending on household composition and number of dependent children, increased by [62 per cent] of the household members’ professional income, and which may be subject to one or more bonuses; 2) the household’s total resources, which may not be lower than the flat-rate amount referred to in 1”. Total household resources are calculated under conditions similar to those applicable for the RSA (Art. R844-5, CSS). As the household’s professional income rises, the amount of benefit initially rises before gradually decreasing, with the final phase-out at approximately 1.4 times the monthly minimum wage for a single person.

The monthly flat-rate amount, which is adjusted annually, was set on 1 April 2023 at EUR 595.60 per month for a single-person household, and EUR 892.88 for a two-person household. This amount is increased depending on number of dependants. Additionally, a bonus is granted to each employed household member, which increases with the household’s professional income above a certain threshold, i.e. EUR 679.68 in 2023 (Art. D843-2, CSS). The maximum bonus amount is EUR 173.22.

Similar to the RSA, the activity allowance is available to anyone residing in France on a continuous and effective basis, and who earns income from a professional activity (Art. L842-1, CSS). However, unlike the RSA, the minimum age requirement is not 25, but 18 (Art. L842-2, CSS).

dd) The Rights and Obligations of RSA Recipients

Whether through integration under the RMI or activity under the RSA, access to a guaranteed minimum income has always been contingent on the beneficiary’s willingness to reintegrate into the labour market. Such reintegration is achieved by means of a contract that defines both the beneficiary’s rights to social and professional support (Art. L262-27, CASF) and their obligation to actively look for a job.

According to Article L262-28 of the CASF, “recipients of the *revenu de solidarité active* (RSA) are required, when unemployed or earning income from a professional activity below a threshold set by decree, to seek employ-

ment, take the necessary measures to establish their own business or to enhance their social or professional integration”. To this end, the legislator requires the president of the departmental council to refer the RSA beneficiary to either the *Pôle emploi* or to other organisations that assist in the provision of access to employment. If such referral to employment is not feasible, other social integration measures will be considered (Art. L262-29, CASF). As some authors have noted, “wherever possible, RSA beneficiaries should be guided towards mainstream structures”.⁴⁶

Consequently, RSA beneficiaries who are referred to the *Pôle emploi* (today “*France Travail*”, the institution responsible for unemployment services) must adhere to the provisions of the unemployment insurance scheme by drawing up a personalised employment access project (PPAE). This project, introduced by Law No. 2008-758 of 1 August 2008 on the rights and duties of jobseekers, is well-defined: drawn up jointly between the jobseeker and the *Pôle emploi* advisor (Art. R5411-14 of the Labour Code), the PPAE must specify the nature and characteristics of the desired jobs, the preferred geographical area, the expected salary level, and the personalised support measures provided by *Pôle emploi* (Art. L. 5411-6-1, Labour Code). The PPAE is used to determine what qualifies as a “reasonable job offer”. This project may be adjusted over time, depending on the jobseeker’s circumstances.

If the RSA beneficiary is referred to a public employment service organisation other than *Pôle emploi*, a contract must be concluded with the *Conseil Départemental*, represented by its president, within one month of the RSA beneficiary’s referral, which “sets out their mutual commitment in terms of professional integration” (Art. L262-35, CASF). Beneficiaries referred for social integration must also conclude an integration contract (Art. L262-36, CASF). The balance between “guaranteed resources and integration obligations” reaches its peak at this stage.

Following this logic, any beneficiary who does not respect this commitment (for example by rejecting a reasonable job offer) will face sanctions. Article L262-37 of the CASF stipulates that in the event of the beneficiary’s failure to draw up a PPAE or a contract within the period set by law and to comply with the agreed commitments, he or she is removed from the list of jobseekers (after rejecting two reasonable job offers). If a beneficiary refuses to submit to monitoring, the President of the *Conseil Départemental* may

46 M. Borgetto and R. Lafore (n 13), p. 614.

suspend payment of the RSA in full or in part, which is not merely a theoretical threat.

b) Benefits Linked to Specific Circumstances

The Sirugue report found that in 2014, the social benefits schemes with the highest number of recipients following the RSA (1.8 million) were the Disabled Adults Allowance (AAH) (1 million), the Solidarity Allowance for the Elderly (ASPA) (0.55 million) and the Special Solidarity Allowance (ASS) (0.47 million). Next, we will briefly examine these benefits, as well as the Allowance for Asylum Seekers (ATA), to provide an interesting perspective of a dignified standard of living.

aa) Disabled Adults Allowance (AAH)

The Disabled Adults Allowance (AAH), codified in the Social Security Code, is paid by the Family Allowance Funds (or the Agricultural Social Mutual Benefit Fund) (Art. L821-1, CSS). It is a subsidiary form of social assistance. To qualify for this benefit, recipients must be at least 20 years old⁴⁷ and have a degree of disability and incapacity for work of at least 50 per cent, representing a “substantial and lasting restriction to access to employment”, or of at least 80 per cent in other cases. The degree of disability and incapacity for work is assessed by the *Commission des droits et de l'autonomie des personnes handicapées* (Commission for the Rights and Independence of Disabled People) on the basis of the *guide-barème* for assessing disabilities and incapacities for work of disabled persons set out in Appendix 2-4 of the CASF (Art. D821-1, CSS). Residency in France is also a requirement, with the previous condition of French nationality having been deemed contrary to the European Convention on Human Rights.⁴⁸

The AAH is only paid if the recipient's own resources do not exceed a threshold set by decree. In 2023, this threshold was EUR 11,656.44 for a sin-

47 Disabled persons under the age of 20 are usually entitled to the Education Allowance for Disabled Children (Art. L541-1, CSS). Under certain circumstances (e.g. if the person is no longer dependent on his or her parents), the age of entitlement to the AAH may be reduced to 16.

48 ECHR, 30 September 2003, *Koua Poirrez v France*, No. 40892/98.

gle-person household, and EUR 21,098.16 for a couple. These amounts are increased by EUR 5,828.22 for each dependent child. Income deductions often apply when a household's total resources are taken into account.⁴⁹ For many years, a disabled person's resources were assessed together with their spouse's if the disabled person was part of a couple. Since 1 October 2023, only the disabled person's personal resources are considered in the calculation.⁵⁰ The former calculation based on "conjugalisation" was abolished to address the decline in purchasing power and demands for individualised payment of the AAH.

If all the eligibility criteria are met, the organisation responsible for paying the AAH (often, the family allowance offices) is informed of the Commission for the Rights and Independence of Disabled People's decision to provide the AAH for a period of between one and ten years, depending on the beneficiary's degree of disability. The AAH recipient is entitled to a monthly allowance equal to one-twelfth of the difference between the amount of the applicable threshold and his or her total annual resources (Art. D821-2, CSS). The maximum monthly AAH amount has been set at EUR 971.37 since 1 April 2023. While additional supplements and higher rates can be provided under certain circumstances, these will not be discussed here.

It is well-known that people with disabilities face challenges in accessing certain social services, such as healthcare. Such barriers may be financial, logistical (e.g. mobility difficulties), or structural (e.g. accessing medical facilities) in nature. The AAH helps mitigate these challenges to some extent. A beneficiary can receive both the RSA and the AAH if he or she meets the eligibility criteria. However, while receiving the AAH, the beneficiary will not be entitled to the full RSA amount, which is reduced by the AAH amount received.

49 Following an exemption period of six months, professional income is subject to a deduction equal to: a) 80 per cent for the portion of income that, on a monthly average, is less than 30 per cent of the monthly minimum wage calculated based on 151.67 hours at rate in effect on the last day of the reference period; b) 40 per cent for the portion of income that, on a monthly average, exceeds 30 per cent of the monthly minimum wage calculated based on 151.67 hours at the rate in effect on the last day of the reference period (D821-9, CSS).

50 Decree No. 2022-1694 of 28 December 2022 on the deconjugalisation of the disabled adults allowance.

bb) Solidarity Allowance for the Elderly (ASPA)

The Solidarity Allowance for the Elderly (ASPA) traces its origins to the Law of 14 March 1941, which established a minimum old-age pension to provide a minimum income for elderly people with a low income. Over time, however, the system became increasingly complex, consisting of both a basic and a supplementary allowance. The Ordinance of 24 June 2004 merged these allowances to create the ASPA (Art. L815-1, CSS).

To qualify for this allowance, applicants must be 65 or older or must have reached retirement age if they are unable to work. They must also have regularly and effectively resided in France, and their income may not exceed a given threshold. When assessing the applicant's total resources, "all disability and old-age benefits, professional and other income, including income from movable and immovable property and assets donated by the applicant in the ten years preceding the application" (Art. R815-22, CSS) are considered. Certain exclusions (such as the applicant's premises, namely his or her principal residence) are specified in the same article. In 2023, the threshold was set at EUR 961.08 for a single-person household and EUR 1,492.08 for a couple. The actual ASPA amount is therefore equal to the difference between household income and the applicable threshold.

The ASPA can be combined with the RSA which will be subject to a reduction.

cc) Specific Solidarity Allowance (ASS)

The Specific Solidarity Allowance (ASS) is a form of social assistance provided to unemployed persons who have exhausted their entitlement to unemployment insurance (Art. L5423-1, Code du travail). Recipients of unemployment insurance benefits aged 50 or older may opt to receive ASS (Art. L5423-2, Code du travail). However, this is relatively uncommon, as the ASS is generally less advantageous than the standard unemployment insurance benefit, the *allocation d'aide au retour à l'emploi*.

Three conditions must be met to qualify for the ASS (Art. R5423-1, Code du travail):

- First, the applicant must provide proof of at least five years of paid employment within the ten years preceding the end of the employment contract that gave rise to the entitlement to unemployment insurance benefits (for individuals who interrupted their (paid) employment to

care for a child, this period is reduced by one year for each dependent child, up to a maximum of three years);

- Secondly, they must demonstrate that they are actively looking for work;
- Finally, as with other social assistance benefits, the applicant's income may not exceed a certain threshold. This limit was set at EUR 1271.90 for a single-person household in 2023 and at EUR 1998.79 for a couple. In addition, the income of the applicant's spouse, civil union partner or cohabiting partner is taken into account (C. trav., Art. R5423-2, Code du travail).

If all these conditions are met, the individual can request *Pôle emploi* to pay him or her the ASS, which amounted to EUR 18.17 euros per day in 2023. If the applicant's total resources—including the ASS—exceed the established threshold, the ASS will be reduced accordingly. Once awarded, the ASS is provided for a renewable six-month period, with no restriction on the number of renewals, provided the eligibility criteria continue to be met.

As with other benefits, the ASS can be combined with the RSA which will be reduced accordingly.

dd) Asylum Seeker's Allowance (ADA)

The asylum seeker's allowance (ADA) was established by the Law of 29 July 2015, based on the "insertion allowance" (Art. D533-1, *Code de l'entrée et du séjour des étrangers et du droit d'asile*). To qualify for the ADA, applicants must possess an asylum application certificate. The asylum seeker must be at least 18 years old. Unaccompanied minors are placed under the care of child welfare services. The applicant's monthly income must be lower than the amount of the RSA. The resources taken into consideration to determine eligibility include the applicant's and, where applicable, his or her spouse's, civil union or cohabitating partner's.

When these conditions are met, the allowance is paid by the French Office for Immigration and Integration (OFII). The amount is a fixed daily rate that varies depending on household size, ranging from EUR 6.80 per day for a single-person household to EUR 37.40 for a family of ten. An additional housing allowance may be added to this daily rate, if the asylum seeker has not been provided accommodation, despite requesting it. Initially set at EUR 4.20 per day, this additional amount has been the subject of two rulings by the *Conseil d'État*, which twice ruled against the administrative determination on the grounds that the amount was insuffi-

cient. We will review these decisions in the following section. The ADA cannot be combined with the RSA.

III. Analysis

1. Different Levels of Benefit

Depending on the respective benefit, the maximum monthly amount of benefits for a single-person household in 2023 varied from around EUR 204 per month (ADA for a 30-day period) to EUR 971.37 (AAH). The amount of ASS was set at EUR 545.10 per month (for a 30-day month), the RSA at EUR 607.75 per month, and the ASPA at EUR 961.08 per month. While the amounts of the AAH and ASPA are similar to that of the minimum monthly wage, other benefits fall below this threshold.

The different benefits are calculated using distinct means-testing methods: the RSA considers all of the applicant's sources of income, including all family allowances, while the ADA generally excludes family allowances from the calculation of the applicant's total resources (Art. D553-4, *Code de l'entrée et du séjour des étrangers et du droit d'asile*). The AAH only considers professional income after applying an allowance, while the calculation of the ASPA also includes donations of movable and immovable property made by the applicant within the ten years prior to the application.

The applicant's family situation also influences the benefit amount. The RSA, ASS and ASPA include the spouse or partner's income in the calculation; the amount of the RSA and ASPA increases in proportion to household size. The AAH has been "deconjugalised" (it is now only based on the disabled individual's income to enhance his or her autonomy), though the income threshold is still influenced by the recipient's family situation. For the calculation of the ADA, the partner's resources are also considered, but an increase in household size only leads to a minimal increase in social assistance.

Beyond this complexity, which makes it difficult for recipients to navigate the benefits system, the justification for the difference in treatment is questionable. The Sirugue report of 2016 already highlighted that RSA and ASS recipients are significantly further from the poverty line than AAH or ASPA recipients.⁵¹ A 2021 study by the *Conseil d'Etat* also noted that "the overall

51 C. Sirugue, C. Cadoret, S. Grobon (n 38), pp. 36-37.

observation is that the rules are illegible and extremely complex to follow, despite the fact that the benefits in question are primarily aimed at our fellow citizens who are often the least equipped to navigate them (...). It is therefore necessary (...) to introduce major simplifications”.⁵²

Finally, it should be noted that the rules governing benefit increases were also unclear for a long time. Some benefits were subject to exceptional increases, for example the AAH and the ASPA in 2008 (an increase of 25 per cent). This inconsistency in how benefits were adjusted to new economic conditions was addressed by the 2016 Social Security Financing Act, which standardised the frequency and method of revaluation. Since then, the benefit amounts have been adjusted annually by the government on 1 April, based on inflation. However, it should also be noted that the revaluation does not apply to ADA, which remains at its initial level.

2. Identifying Needs: The Adequacy of Social Assistance in Question

a) Factual Finding of Inadequacy

Does social assistance provide a path out of poverty? We can answer this question by first reviewing the various monetary definitions discussed earlier (see I, 2). According to a recent report by the *Cour des Comptes*, nearly 65 per cent of RSA recipients remain below the poverty line. This figure has remained relatively stable since 2010. It seems that, regardless of household composition, the total income from social and family assistance (i.e. the RSA and family benefits) has never enabled recipients to rise above 86 per cent of the poverty threshold (*seuil de pauvreté*).⁵³ When looking at the indicator ‘poverty in living conditions’, the situation remains largely unchanged: over half of recipients are still considered poor.⁵⁴ ASPA and AAH recipients are in a slightly better situation due to the benefits’ higher amounts. However, poor living conditions still affect around 50 per cent of recipients of each of these benefits, according to a 2020 report.⁵⁵

In other words, while social assistance helps mitigate the effects of poverty, it does not lift people out of their state of need. One of the questions

52 Conseil d’Etat, *Les conditions de ressources dans les politiques sociales: plus de simplicité, plus de cohérence* (2021), p. 8.

53 Cour des Comptes, *Le revenu de solidarité active* (2022), pp. 77-78.

54 Ibid, p. 81.

55 DREES, *Minima sociaux et prestations sociales* (DREES 2020), p. 98.

put forward to the government is whether the amount of benefits should be reviewed, particularly in the light of the requirement to uphold human dignity.

b) Return of the Absolute Concept of Poverty: The Reference Budget

At present, ensuring a decent income is not directly addressed in legislation. Benefit amounts are determined based on historical contexts and specific, temporary circumstances. For example, the initial amount of the minimum integration income (RMI) when it was introduced in 1988 was simply the result of an election promise. An official at the time recalled that “we were bound by candidate François Mitterrand’s ‘Letter to the French’. He had set the amount at 2,000 francs for a single person. This reference was not justified by an analysis of the desired correlation between the RMI and the minimum wage or the RMI and the poverty line”.⁵⁶

Such an approach is no longer adequate today. An alternative, known as “reference budgeting”, has recently emerged. Inspired by British experiences, this reference budget is based on an innovative method that focuses on goods and services (an absolute approach aimed at identifying the criteria for a dignified life) and the involvement of those directly affected, as already seen in the definition of poverty’s different dimensions. In the version developed by the *Conseil national des politiques de lutte contre la pauvreté et l’exclusion*, the reference budget is defined as covering “the essential needs to meet the necessities of daily life (food, housing, healthcare, etc.) and to fully participate in social life”.⁵⁷ The determination of the reference budget also includes applicants’ geographical and family circumstances. When determining essential goods and services, the discussions with participating French residents do not focus on essential goods and services’ monetary value, which is determined by experts. This final determination is furthermore based on in-depth exchanges and negotiations with the residents. The budget prioritises needs such as housing, equipment (e.g. internet connection), transportation, participation in social life, childcare,

56 B. Fragonard, ‘Trente ans après : retour sur les arbitrages initiaux du RMI et leur évolution’ *Revue de droit sanitaire et social* (2020), p. 213.

57 M. Lelièvre, *Les budgets de référence en milieu rural, en ville moyenne et en métropole du grand Paris* (Conseil national des politiques de lutte contre la pauvreté et l’exclusion 2022), p. 78.

etc. For example, the lowest reference budget for Paris is EUR 1,691, rising to EUR 4,459 for a couple with two children.⁵⁸

This outcome stands in strong contrast to the current level of benefits. Advocates of the reference budget propose a twofold objective: “in the short term, to raise the level of minimum social benefits and in the medium term, to develop employment dynamics that offer better protection against job insecurity and very short-term employment”.⁵⁹ Interestingly, they also challenge the social perceptions of what constitutes essential needs. For example, in the context of environmental challenges, should “organic” products be considered a fundamental component of a decent diet? While there is no immediate answer, such questions deserve to be clearly articulated and openly debated within society.

c) The Judge’s Marginal Control over the Amounts Set

In the light of ongoing developments, what role should judges play? Currently, French judges rarely intervene in this debate. As already mentioned, the Constitutional Council grants the legislature significant discretion.⁶⁰ This flexibility is so extensive that as long as a solidarity benefit is not abolished, any modifications, regardless of their nature, are generally upheld by the Constitutional Court.

Nevertheless, the *Conseil d’Etat* has exercised a certain degree of control over the executive’s determination of the additional ADA amount. This additional amount is granted when the French Office for Immigration and Integration is unable to provide accommodation to applicants. Initially, the government set the additional amount at EUR 4.20 per day in a Decree of 21 October 2015. In an effort to annul this decree, several associations advocating for the protection of asylum seekers invoked Article 17 of EU Directive 2013/33, which mandates the guarantee of adequate material reception conditions.⁶¹ The *Conseil d’Etat* upheld the complaint, ruling that

58 Ibid, p. 137.

59 J. Vignon and M. Lelièvre, ‘Les budgets de référence, ou la pauvreté vécue comme un manque’ *Revue de droit sanitaire et social* (2020), pp. 269, 282.

60 See above, sec. II.1.b).

61 Article 17 of Directive 2013/33 specifically states that “Member States shall ensure that applicants have access to material reception conditions when they submit their application for international protection (...) and that measures relating to material reception conditions provide applicants with an adequate standard of living which

“the additional amount of EUR 4.20 provided for by the contested decree is clearly insufficient to enable an asylum seeker to obtain accommodation on the private rental market”.⁶² In response, the regulatory authority raised the additional daily amount to EUR 5.20 in a new decree dated 29 March 2017. However, on the same grounds, the Council annulled this decree as well at the request of several associations.⁶³ Finally, the government adopted a new decree on 31 May 2018, setting the additional daily amount at EUR 7.80. Not surprisingly, the decree was again contested in court. This time, however, the *Conseil d’Etat* upheld the amount, deeming it not manifestly insufficient.⁶⁴ Such a conclusion may leave observers sceptical. On the one hand, the three rulings of the *Conseil d’Etat* were based on the EU Reception Directive rather than on a domestic principle of human dignity. On the other hand, such control is exercised in a minimalist manner, which does not effectively address the inadequacy of protection. With domestic remedies now having been exhausted, one might expect change to come at the European level. In 2020, France was already condemned by the European Court of Human Rights under Article 3 of the Convention (which prohibits inhumane and degrading treatment) for leaving asylum seekers “for months on end, living in the street, without resources, without access to sanitary facilities, without any means of meeting their basic needs, and in constant fear of being attacked and robbed”.⁶⁵

3. Activation: Difficult to Achieve

The RSA (and its predecessor, the RMI) and the ASS prioritise integration and activation. Interestingly, recipients of the AAH also benefit from a six-month exemption of their professional income upon resuming work. In what follows, we use the RSA as an example to assess the various activation measures that have been implemented.

guarantees their subsistence and protects their physical and mental health" and that "where Member States grant material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be fixed in accordance with the level or levels established in the Member State concerned, either by law or in practice, to ensure an adequate standard of living for its nationals".

62 CE, 23 December 2016, No. 394819.

63 CE, 17 January 2018, No. 410280.

64 CE, 11 December 2019, No. 422857.

65 European Court of Human Rights, 2 July 2020, N. H. et al. vs. France, n° 28820/13.

a) Limited Impact

The RSA activation mechanism consists of two components: a traditional one, which makes eligibility to the RSA conditional on actively seeking employment; and a second, more incentive-based component, which takes the form of the activity allowance.

The traditional component, often referred to as “conditionality”, takes the form of a contract. This “contractualisation” refers to the process of drafting a contract that “binds the recipient to the managing body (...), outlining all relevant information about the benefit, the recipient’s rights and duties and the commitments they must fulfil”.⁶⁶ Initially, the RMI provided for an “integration contract”. Despite its name, the benefit’s contractual nature was very ambiguous. Today, RSA recipients’ rights and duties are outlined in either a personalised employment access project or a reciprocal commitment contract. Despite the legal framework providing for a sophisticated support system, these contracts—particularly commitment contracts—are often treated as a formality in practice.⁶⁷ Moreover, the *Cour des Comptes* highlights that no figures are available to assess the application of sanctions, which demonstrates the lack of monitoring. The impact of activation measures on recipients therefore remains fairly limited.

The introduction of the activity allowance in 2015 was a direct response to the failure of the *RSA-activité* of 2008. According to a national report on the evaluation of the RSA published in 2011, 68 per cent of eligible individuals did not claim the *RSA-activité*.⁶⁸ Although the structure of the new scheme has been simplified, its calculation remains no less complicated,⁶⁹ and though it seems to be more favourably perceived by recipients,⁷⁰ access to employment remains just as challenging as before. According to the *Cour des Comptes*, “when they return to work, 68 per cent of non-RSA recipients find lasting employment (i.e. lasting more than six months), compared to only 56 per cent of RSA recipients”.⁷¹ People experience a high degree

66 C. Willmann, ‘Minima sociaux/RUA à l’épreuve de la contractualisation’ *Droit social* (2020), p. 796.

67 *Cour des Comptes, Le revenu de solidarité active* (2022), pp. 23, 127.

68 Comité national d’évaluation du RSA, *Rapport national d’évaluation du RSA - Rapport final* (2011), p. 52.

69 C. Magord, ‘Le revenu universel : une réponse aux freins à l’accès au(x) droit(s) et au non-recours?’ *Droit social* (2020), p. 781.

70 DREES, CNAF, *Rapport d’évaluation de la prime d’activité* (2017), p. 15.

71 *Cour des Comptes, Le revenu de solidarité active* (2022), p. 21.

of instability when exiting the RSA, with two-thirds of former recipients fluctuating between employment and unemployment at least twice within five years. Moreover, 41 per cent of former recipients eventually return to the RSA.⁷²

It therefore seems that a system based exclusively on sanctions and financial incentives is insufficient to address the challenge of reintegration into the labour market. As some authors have noted, this approach is based on several questionable assumptions: an economic calculation of the benefits of employment, a robust employment policy, and a simplistic conception of the labour market.⁷³ However, the government seems to overlook the fact that the activation policies' effectiveness depends more on social than on economic factors, such as vocational training or social integration. The most recent reform proposal aims to step up sanctions against RSA recipients.

b) A New Reform is Underway

The French government's objective to achieve full employment requires a more effective strategy for "remobilising" economically inactive persons. A report published in April 2023 criticises the fact that "only 40 per cent of RSA recipients are registered with *Pôle emploi* and many young unemployed persons, who are neither in education nor in training, are not identified by the public employment service".⁷⁴ Like the *Cour des comptes*, this report criticises the fact that RSA sanctions are largely ineffective.

Subsequently, a bill entitled "For Full Employment" was tabled in the Senate on 7 June 2023.⁷⁵ The Law on Full Employment was approved in December 2023,⁷⁶ to be implemented between 2024 and 2027. After an initial trial period, the new mechanism will be applied across France. Several measures stand out: Article 1 calls on all unemployed persons to be registered with the *France-Travail*, which will replace the *Pôle emploi*. Registration as a jobseeker with the relevant authorities will become automatic

⁷² Ibid.

⁷³ M. Borgetto and R. Lafore (n 13), p. 618.

⁷⁴ Thibaut Guilluy, *France Travail* (Report for the Ministry of Labour 2023), p. 52.

⁷⁵ < <https://travail-emploi.gouv.fr/objectif-plein-emploi-presentation-du-projet-de-loi> accessed 25.11.2024.

⁷⁶ Law No. 2023-1196 of 18 December 2023.

upon applying for the RSA (Art.3). Article 2 introduces a commitment contract, increasing recipients' obligations. It establishes the obligation to work at least 15 hours per week.⁷⁷ If the applicant refuses to conclude a commitment contract or fails to meet certain obligations defined in the contract, Article 3 introduces a measure of temporary suspension of benefits to enforce a more graduated system of sanctions. The duration and scope of suspension shall be set by assessing the beneficiary's circumstances, household size and nature and frequency of violations.⁷⁸

The bill clearly aims to generalise the status of jobseekers to the detriment of a more socially inclusive approach to individuals who find themselves in a difficult situation. The question of minimum income dominates the economic discourse, which should first and foremost guarantee decent living conditions.

4. Non-Economic Conditions

Apart from the conditions linked to specific groups of people (permanent disability rate for the AAH, and the old-age requirement for the ASPA), two non-economic criteria warrant a closer look: the age criterion and the residence criterion.

The RSA sets the minimum age of eligibility at 25, with some exceptions outlined in law. This condition was already adopted for the RMI, and the justification is twofold⁷⁹: on the one hand, young adults between the ages of 18 and 25 are still supported by the family solidarity benefit as stipulated in the Civil Code (for example, the obligation of parental maintenance as set out in Article 371-2 of the Civil Code); on the other hand, the circumstances of young adults are very heterogeneous, calling for a period of stabilisation. These reasons remain valid in the eyes of the legislature, which has not proposed any change to the age requirement in the reform

77 Art.2: Le contrat d'engagement définit "Un plan d'action, précisant les objectifs d'insertion sociale et professionnelle et, en fonction de la situation du demandeur d'emploi, le niveau d'intensité de l'accompagnement requis auquel correspond une durée hebdomadaire d'activité du demandeur d'emploi d'au moins quinze heures. Il comporte notamment des actions de formation, d'accompagnement et d'appui."

78 Art.3: "III.-La durée des décisions de suspension et de suppression et le montant concerné sont fixés en prenant en compte la situation du bénéficiaire, notamment la composition de son foyer, et en fonction de la nature et de la fréquence des manquements constatés."

79 R. Lafore, 'Les jeunes majeurs et le "revenu garanti": pas si simple!' *Revue de droit sanitaire et social* (2020), p. 245.

proposed in June 2023. In fact, this is more of a political than a legal issue. RSA eligibility from the age of 18 would reduce the share of family solidarity, elevating the role of social assistance beyond simply a form of subsidiary support. On the other hand, failure to recognise this requirement is an obstacle to the individualisation of young adults. The benefit is therefore still designed in relation to the family.

The residence criterion is required across all social assistance schemes examined. The importance of this criterion has grown over time. Residence was not initially a condition for entitlement to the predecessor of the ASPA, but this changed in 2004. The increasing importance of this criterion can be understood in relation to the scope of the solidarity community concerning minimum social benefits: they are designed for the national community, which includes all those who regularly and effectively reside on the country's territory. However, French law does not currently provide for a universal income that is applicable for all residents of France. Minimum social benefits remain a conditional form of assistance.

IV. Conclusions

France is often perceived as having a generous social protection system that addresses the different needs of vulnerable populations. This chapter demonstrates that while France does indeed offer a large range of social benefits, they are relatively heterogeneous. This heterogeneity can largely be attributed to the independent evolution of benefits and the lack of a unified legal approach that prioritises human dignity in the formulation of benefits. Despite some emerging practices within civil society (such as the reference budget), neither the legislator nor the judiciary have sought to determine or assess the appropriate benefit amount on the basis of a legal understanding of dignity. The issue has been left to political considerations, which continue to be shaped by an economic discourse centred on full employment. While stable employment is undoubtedly one of the most effective paths out of poverty, focussing exclusively on this option may be detrimental to particularly vulnerable individuals.

The current system's complexity gives rise to inconsistencies and even inequalities (for example the widely disparate effects of different benefits on poverty reduction), calling for a greater coherence of the social protection

system.⁸⁰ The scenarios presented here are still largely anchored in a bureaucratic (simplification) or an economic (full employment) perspective. Greater attention to dignified living conditions for all is therefore essential.

80 M. Badel, 'Demain, un revenu universel d'activité?' *Droit social* (2020), p. 791.

