

Labour and Environmental Sustainability

Literature Review – French Texts

By
**Alexis Bugada, with Véronique Cohen-Donsimoni,
Vanessa Monteillet, Caroline Vanuls**

Translation by Kim Parry

agreement!

A Green Mentality for Collective Bargaining

A EU research project led by



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Agreement – A Green Mentality for Collective Bargaining aims at investigating how and why collective bargaining can contribute to embed the principle of environmental sustainability into labour relations, without abandoning but reinvigorating the ideals of justice, equality and democracy that justify the traditional and selective goals of the EU social model and collective bargaining regulation. The research project is based on the idea that there is no contradiction between environmental sustainability and the fundamental ideals and functions of labour law and industrial relations. The project covers 6 EU countries: France, Hungary, Italy, the Netherlands, Spain and the UK.

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Beginnings

The Work-Environment theme is a founding one. It concerns the professional activity of men and the relationships they have with nature. This question is not new. Some think that it has always been enshrined in the great bodies of doctrine (meta-doctrines). Two recent examples attest to a renewed interest in this subject. Thus H. Pena-Ruiz tries to demonstrate that Marx is at the heart of socialist ecology (*Karl Marx, Thinker of ecology*)¹. Human work is a natural and social power in its own right. The original thought of Marx is based on a triptych: materialism/humanism/“naturism” (in the sense of ecology). We do not intend to discuss this point of view here, rather an observation can be made through this literary update. In the perspective of a Marxist economic policy, the ecological question is opportunely reinvested. The ethical perspective of the social doctrine of the Church sheds a different light. A. Bugada analyzed, in a multidisciplinary work², the encyclical letter *Laudato si'*, subtitled *On the safeguarding of the common house*. This papal letter is dedicated to the environmental challenge. The author reads this letter through the prism of labor laws and the environment. The text was proclaimed shortly before COP 21 (Paris Agreement) also to support its adoption. He reinterprets the famous *Let Man have Dominion over the Earth* present in Genesis. The alliance between work and the environment would therefore be a call to an “integral ecology with a social and human dimension”.

The evolution of meta-doctrines reveals a contemporary trend. But it is not easy to establish a link with the study of French positive law. For 50 years, some French law specialists have examined the Labor-Environment question. The analysis of collective bargaining remains in its infancy. From the years 1970-1990, ways proposed a convergence. These first linked the “working environment” to “working conditions”. They then emphasized the issues of health and safety at work. Finally, normative interactions between labor law and environmental law have been proposed, notably through the soft law of Corporate Social Responsibility (CSR).

¹ H. PENA-RUIZ, *Karl Marx penseur de l'écologie*, éd. Seuil 2018.

² A. BUGADA, *Dominer la terre – Travail et environnement dans Laudato si'*, in D. AUGÉY, S. SCHWEITZER (eds.), *De l'économie politique à l'économie éthique. Mélanges offerts à Jean-Yves Naudet*, PUAM, 2016, 89.

Thus J.C. Cavalier observed that the improvement of working conditions also depended on the external environment (housing, transport, etc.)³. G. Gollot added in 1977 that the development of environmental law was historically comparable to that of social law in response to a collective awareness of the social aggression of environmental damage⁴. In the same year, A. Kiss emphasized the close relationship between the two rights. One quote sums up his thinking: «social law is largely aimed at the same goals as environmental law even if the means are different; the quality of life cannot be entirely separated from a minimum level of working or living conditions»⁵. But it was the work of Mr. Despax that was a significant first step (1993-1994). This academic organized a symposium published on the subject and then wrote a chapter in a treaty of environmental law⁶. The problem was still addressed prospectively. It aimed at integrating the protection of the environment into labor law⁷, with regard to the company⁸, employees⁹ and administrations¹⁰. When he died (1997), the question was abandoned. But his work and that of the academics (including A. Supiot and I. Vacarie) involved in the 1993 conference was a land mark. A. Mazeaud paid homage to him in an article published in a book dedicated to a specialist in Environmental Law (Michel Prieur). The article¹¹ is still noted for its ambitious views. A. Mazeaud noted that environmental concerns were still not very present

³ J.C. CAVALIER in Vv.Aa., *La protection du voisinage et de l'environnement*, Travaux des journées françaises de l'association Henri Capitant, 1979, 328: «improvement of working conditions cannot be separated from others themes, such as quality of life. Is it not artificial to separate work from its external environment, humanize working conditions without concern for habitat or transportation?».

⁴ G. GOLLOT, *L'environnement et le droit – le droit et l'analyse systémique*, 1977, n. 134-1. Fondation universitaire Luxembourgeoise.

⁵ A. KISS, *La place de l'environnement dans les différents systèmes juridiques*, in *The law and the protection of the environment*, Hungary Academy of Sciences, Budapest, 1977, 67-68.

⁶ M. DESPAX, *Environnement et droit du travail*, in *J-Cl. Environnement Traité*, 1994, n. 982.

⁷ *Droit du travail et droit de l'environnement*, colloque SFDE Toulouse 1993, in *Droit et ville*, 1994, n. 37, 4.

⁸ Partie 1 de l'ouvrage – *L'organisation de l'entreprise et la prise en compte de l'environnement*, D. GAUTHIER, *Les politiques et les fonctions environnement dans l'entreprise*; P. BOBE, *Du bilan social au bilan écologique*; P. LASCOUMES, *L'assurance des risques environnementaux*.

⁹ Partie 2 de l'ouvrage – *Les salariés et la protection de l'environnement*, G. BARATHIEU, *La formation écologique dans l'entreprise*; A. SUPIOT, *L'alerte écologique dans l'entreprise*; I. VACARIE, *L'implication écologique du salarié*.

¹⁰ Partie 3 de l'ouvrage – *Administration du travail et administration de l'environnement*, S. CHARBONNEAU, *Analyse comparée des polices de la sécurité du travail et de l'environnement*.

¹¹ A. MAZEAUD, *Environnement et travail*, in *Pour un droit commun de l'environnement. Mélanges en l'honneur de Michel Prieur*, Dalloz, 2007, 297.

in labor law. However, he raised the issue of environmental risks in collective disputes, the termination of employment contracts for force majeure in the event of a natural or industrial disaster, the requisition power of prefects, the unions' right to act for major environmental causes, and as starting point, the development of corporate social responsibility (CSR) with the development of a *soft law* in this area.

Meanwhile, an industrial disaster (AZF plant in Toulouse) provoked reflections on *health and safety in companies*. The legislator passed an important law (Law n. 2003-699) on the prevention of technological and natural risks and the repair of damages. The doctrine then reinvests environmental social law, particularly with regard to companies classified as *Seveso*. A. Bugada developed in several communications¹² personnel protection measures, particularly with regard to collective labor relations in the field of health and safety (staff representation), but also with regard to subcontractors who intervene in high risk companies (supervisory obligation of the head of the user company).

In a feature article, published at the Lamy Social Week, he developed the theme of *the influence of environmental law on labor law*. The aim was to highlight the integration of environmental law into labor regulation (intensification of health standards in the enterprise and regulation of major risks). It also dealt with its influence on economic and social freedoms, particularly with regard to the adoption of the Environmental Charter incorporated in the French Constitution in 2005 (free enterprise, the right to strike, individual freedoms, etc.). The finding took into account the dedication of *the obligation of security of result of the employer*. This obligation was developed by the case law concerning occupational diseases derived from asbestos (occupational hazards).

Developments

The students of Despax (Toulouse) continued the path traced in 1993. Mrs. M.P. Blin-Franchomme and I. Desbarats made an updated synthesis on the subject¹³. The chapter contains a bibliography and the state of work on the subject in which they participated. From now on, the disciplines (Work/Environment) are no longer necessarily antagonistic. Under the influence of the concept of *sustainable*

¹² V. not. A. BUGADA, *Hygiène et sécurité du travail – La loi Bachelot du 30 juillet 2003 et la protection du personnel dans les entreprises à risque*, in *JCP E*, 2005, 30.

¹³ *Environnement et droit du travail*, in *J-Cl. Environnement*, 2008, n. 2330.

development, they can converge towards the same objective: the protection of people and the global management of risks. The collaboration of the actors of the prevention is essential to the realization of this common goal. The company is at the heart of health risk management policies. Beyond the objective of protecting people, the issue of environmental responsibility is taken into account. By moving from *the work environment* to *the corporate environment*, this allows employees to be involved in the protection of the environment as such. Three areas of convergence are identified:

1) Enhanced management of risks in the workplace environment: the notion of environment is understood as covering both the physical and social environment. Labor law enshrines the legal treatment of occupational risks, which is part of a comprehensive policy to protect health and safety in the workplace (work accidents and occupational diseases). The employer owes a *security obligation* that requires him to implement a real *prevention policy* on health and safety at work. But, the employees (obligation of security and right of alert) and their representatives (information/consultation) are also actors of this internal prevention.

2) The global management of the protection of the environment and workers in the companies presenting risks: *the safety of the employees becomes an essential condition of environmental safety* and the reinforcement of the prevention of industrial risks became a necessity. The law of 2003 (Law n. 2003-699 mentioned above) provides inter alia the articulation of external rules of administrative police classified facilities for the environment (ICPE) and internal rules of protection of workers.

3) Increased awareness of the workplace to the business environment: in a social responsibility approach related to the concept of sustainable development, the company is positioning itself as an *ecological actor*. This awareness is concretized first of all by *the articulation between the professional environment and the prevention of the environment* by taking into account the environment in the social policies of company: charters of enterprise; creation of green jobs; employees' *right of alert* in matters of public health and the environment (art. L. 4133-1 c. then by *the articulation between the workplace and the degradation of the environment*, which takes into account the role of the workplace (actor or victim) with regard to ecological risks.

In December 2008, these same authors organize a conference at the University of Toulouse. It is entitled *Labor Law and Environmental Law: Meeting Points and*

Inflection. It will be the first publication in 2009¹⁴, then in an augmented version in 2010 to Lamy¹⁵. The subject is treated in a multidisciplinary way. Initially, work and environmental prevention are discussed (chemical risks, mixed risks, ecological risks). In a second time is treated the work and the environmental degradation (the repair of the occupational risks and the repair of the environmental damage). This book provides a panoramic view without exhausting all aspects. But already, it reveals that a community of French law specialists focusing on a subject still to be deepened.

Further information

Attention is intensifying with doctoral research programs. In the French-speaking world, a Belgian thesis (Université Catholique de Louvain) is noted: D. Jans devotes his study to industrial negative outcomes in a perspective compared to Belgian labor law¹⁶. He is mainly interested in health risks. It assumes that the health concern is common to both rights that have developed in parallel. We are now witnessing a global recomposition of the law on industrial risks. His doctoral dissertation opens the way to a theory on *the interdependence of occupational risks and environmental risks related to industrial development*.

The thesis by C. Vanuls presented at the University of Aix-Marseille¹⁷ follows this perspective. The author draws the links between the prevention of occupational risks and environmental risks. It demonstrates their interdependence in a global and normativist perspective (*hard law* and *soft law*). She shows that the environment (in and outside of the company) necessarily involves multiple interactions and influences. She goes on to explore the *notion of risk diversity* identified by A. Supiot, which he defined as “a professional risk with an

¹⁴ *Droit et Ville*, Revue de l'institut des Etudes Juridiques de l'Urbanisme et de la Construction, 2009, n. 68.

¹⁵ *Droit du travail et droit de l'environnement, Regards croisés sur le développement durable*, Lamy coll. Axe Droit, 2010.

¹⁶ D. JANS, *Droit de l'environnement et nuisances industrielles, Approche comparée avec le droit du travail*, La charte, 2007.

¹⁷ C. VANULS, *Travail et environnement – Regards sur une dynamique préventive et normative à la lumière de l'interdépendance des risques professionnels et environnementaux*, PUAM, 2014, préf. A. BUGADA.

ecological dimension”¹⁸. She also relies on the employer’s and the operator’s safety requirements to rethink prevention. As such, it is in line with the precautionary principle that deserves, according to her, a deployment in a professional environment. The thesis emphasizes the convergence of the two rights that could benefit the emergence of a common law of “risk”. C. Vanuls then developed two aspects in other communications. These are particular focuses. First, she developed, in the wake of A. Mazeaud¹⁹, the notion of *collective conflicts of work with an environmental dimension*²⁰, which brings her thoughts closer to social dialogue in an environmental perspective. Industrial risk strikes are mentioned, as well as the right to alert and the role of staff representatives and unions. Then, she supports her wish for a *precautionary principle in labor law*²¹. She justifies her approach as follows: the extension of the precautionary principle in the field of public health questions its potential in the professional field. French case law on occupational risks pushes the prevention requirement very far; it could go even further in the face of uncertain industrial risks. Finally, her research led her to relevant sectoral studies in two high-risk sectors. The question of *the exposure of workers to ionizing radiation in nuclear installations is considered*²². The finding (2013) is based on the influence of the guiding principles governing nuclear law (Radiation Protection, Safety and Justification) on the protection of the health of workers in nuclear power plants. We highlight here the conclusion of the thesis of J. Delamotte (2016) at the University of Nantes on the subject (unpublished) which develops the idea that the law of the radiation protection of the workers is at the same time a right sui generis and hybrid. Then there is the chemical risk and in particular *the exposure of agricultural workers to plant protection products*²³. According to C. Vanuls, the under-evaluation of the exposed populations, the inefficiency of the means of protection or the difficult recognition of occupational diseases reveal the inertia of

¹⁸ A. SUPLOT, *L’alerte écologique dans l’entreprise*, in *Droit du travail et droit de l’environnement*, Colloque SFDE Toulouse 1993, paru dans *Droit et Ville* 1994, n. 37, 91.

¹⁹ A. MAZEAUD, *op. cit.*

²⁰ C. VANULS, *Les conflits collectifs à dimension environnementale*, *Énergie – Environnement – Infrastructures*, LexisNexis, 2015, n. 7, étude 14, 15-20.

²¹ C. VANULS, *Regards sur la précaution en droit du travail*, in *RDT*, 2016, n. 1, 16-26.

²² C. VANULS, *Les principes de protection des travailleurs contre les risques d’exposition aux rayonnements ionisants dans les centrales nucléaires de production d’électricité*, in A. BUGADA (ed.), *Énergies, environnement et développement durable*, PUAM, coll. Espace et développement durable, 2013, 53-67.

²³ *La protection des travailleurs agricoles et les maladies phytosanitaires*, in M.L. DEMEESTER, V. MERCIER (eds.), *Agriculture durable. Tome II. De la production agricole à une alimentation responsable*, PUAM, coll. Institut droit des affaires, 2018.

the public authorities in this area. This is explained by the fact that the causal link between pesticide exposure and the onset of certain diseases remains controversial.

CSR and contracting

Most of the above studies emphasize CSR. The literature is voluminous and cannot be exhaustively described here. In this regard, CSR has the advantage of a holistic approach for setting sustainable development goals. In this perspective, two approaches to CSR are relevant to the “work and environment” relationship. On the one hand, there is a *functional approach* whose objective is to make CSR operational: what legal tools to implement CSR? On the other hand, a *normative approach*: which actors, which norms to determine the rules of CSR?

The functional approach to CSR is largely relevant to individual working relationships, whereas the normative approach is more concerned with collective aspects. The first point was mentioned earlier (see above), particularly with regard to the prevention of occupational risks in the company (immediate issues), which are extended by environmental risk management (media issues). Occupational risk management tools are used to prevent environmental risks²⁴, whether it concerns the employer’s safety obligation, the employee’s duty to warn or the role of employee representatives²⁵ (information, consultation, alert). All the actors of the company can, potentially, be involved in the management of occupational risks with an environmental dimension. Many articles devoted, at least in part, to the environmental implications of working relationships have been the subject of an abundant literature especially in regular columns such as those of Professors F.G. Trebulle and P. Steichen²⁶.

²⁴ Pour les environmentalistes: P. STEICHEN, *Travail et environnement, le risque écologique causé par l’entreprise au plan communautaire et interne*, in *Droit et ville*, 2009, n. 68, 73. *Adde*. M. PRIEUR ET AL., *Droit de l’environnement*, 7^{ème} éd., Dalloz, coll. « Précis », 2016.

²⁵ *Adde* aux références déjà citées: *Dossier: Le droit de l’environnement et l’entreprise sont-ils miscibles?*, in A. CASADO (ed.), *Les Cahiers sociaux*, nov. 2017, n. 301, 549-552.

Spécialement sur l’alerte: F.G. TREBULLE, *De l’efficacité comparé du droit et de l’obligation de dénonciation en droit du travail et de l’environnement*, in M. BEHAR-TOUCHAIS (ed.), *La dénonciation en droit privé*, Economica, 2010, 31.

²⁶ F.G. TREBULLE, chronique *Entreprise et développement durable*, in *JCP E* (depuis 2006); chronique *Droit de l’environnement, D* (depuis 2008).

Adde, P. STEICHEN, *Droit du travail*, in *RJE*, 2014, n. 4, 716; *Droit privé et droit économique de l’environnement*, in *RJE* (chronique depuis 2014).

The normative approach of CSR, on the other hand, presents the interest of opening the reflection on the collective relations of work *lato sensu*. The so-called voluntary standards, which some companies have adopted, have developed: technical standards (ISO, AFNOR), ethical standards (*Global Compact*, OECD principles), certification system (EMAS), adoption of ethical charters or other codes of good conduct. The content of these standards includes principles relating to the health, safety and fundamental rights of employees as well as principles relating to environmental law²⁷. The doctrine has questioned the normative force of norms stemming from CSR. From the point of view of environmental law specialists, these CSR standards are a sign of renewing the sources of environmental law²⁸. Some argue that these are normative forms borrowing from labor law²⁹. Authors have worked on the legal qualification of these standards³⁰ by bringing them closer to the regulatory power of the employer (e.g. corporate rules of procedure) or unilateral decisions encouraged by law. The legislator sometimes goes in this direction by passing from the incentive to CSR to the constraint³¹. Thus, recently, it has devoted a duty of vigilance of parent companies and contractors³². The law imposes for some companies an obligation to publish a social and environmental risk prevention plan – annexed to the management report – for which the debtor company must ensure the execution at the risk of being held liable. The fulfillment of this new obligation could have implications for labor relations³³. But especially in an original way, elements of the doctoral

²⁷ M.C. CAILLET, *Le droit à l'épreuve de la responsabilité sociétale des entreprises*, I. DAUGAREILH (ed.), thèse de doctorat, Bordeaux, 2014, 216, n. 238.

²⁸ L. FONTAINE, *Les sources nouvelles en droit de l'environnement*, in *Le Droit et l'environnement*, [Actes du colloque *Le droit de l'environnement*, organisé le 6 avril 2006 par l'Association Henri Capitant des amis de la culture juridique française], Paris, Dalloz, coll. *Thèmes et commentaires*, 2010, 33.

²⁹ F.G. TREBULLE, *Les mutations de la norme en droit de l'environnement*, in N. MARTIAL-BRAZ, J.F. RIFFARD, M. BEHAR-TOUCHAIS (eds.), *Les mutations de la norme*, Economica, coll. *Etudes juridiques*, 2011, n. 43, 211.

³⁰ Ch. NEAU-LEDUC, *La responsabilité sociale de l'entreprise : quels enjeux juridiques*, in *Dr. soc.*, 2006, 955; F.G. TREBULLE, *Droit du développement durable*, in *Jurisclasseur Environnement et développement durable*, LexisNexis, fasc. 2400 (sept. 2010); F.G. TREBULLE, *Responsabilité sociale des entreprises. L'entreprise et l'éthique environnementales*, in *Répertoire Dalloz Sociétés*, 2003.

³¹ I. DESBARATS, *La RSE « à la française: où en est-on? »*, in *Droit social*, 2018, 525.

³² V. MONTEILLET, *Devoir de vigilance des sociétés mères et entreprises donneuses d'ordre*, in *Droit de l'environnement*, mai 2017, n. 256, 195-199.

³³ V. not. V. MONTEILLET, *Devoir de vigilance des sociétés mères et entreprises donneuses d'ordre*, cit.

thesis of V. Monteillet draw interesting contractual perspectives. It raises the question of whether environmental law can be the subject of contractual policies in private reports³⁴? Environmental agreements have been analyzed in comparison with collective labor agreements: the challenge is to determine the possibilities of emerging genuine collective environmental agreements. In a supranational perspective, other authors had already considered the integration of an environmental component into collective labor agreements³⁵. Some international framework agreements sometimes have an environmental component³⁶. Some authors, like J.E. Ray had already pleaded for an opening of social dialogue on CSR³⁷. In a column titled *Environment and Social Law* (2013)³⁸, A. Bugada³⁹ devoted part of the analysis of legal news to environmental social dialogue. Regretting with others⁴⁰, the deficit in this area, it nevertheless developed the contribution of two national collective bargaining agreements concluded in 2013. One focused on quality of life at work (QWL), the other on business competitiveness and job security. The first agreement advocates a comprehensive approach to QWL in the environment in which it is embedded. The second agreement asked the legislator to generalize the consultation of the works councils on the strategic orientations of the company also allowing to appreciate the environmental consequences of its activity. But as mentioned in the introduction, environmental collective bargaining has not really been the subject of a thorough study to date to assess its proven development or not.

³⁴ V. MONTEILLET, *La contractualisation du droit de l'environnement*, préf. A. PELISSIER, Dalloz, coll. *Nouvelle bibliothèque de thèses*, 2017, vol. 168.

³⁵ «Les accords collectifs qui portent sur les comités d'entreprises européens étendent parfois leur compétence aux politiques dans le domaine de l'environnement»: A. MAZEAUD, *op. cit.*, 297, spéc. 306 (l'auteur cite en référence: *Informations de la Commission*, 20 avril 2004).

³⁶ B. SAINCY, *La responsabilité sociale des entreprises: la position des acteurs sociaux*, I. DAUGAREILH (ed.), in *Responsabilité sociale de l'entreprise transnationale et globalisation de l'économie*, Bruylant, 2010, 179. M.C. CAILLET, *th. préc.*: l'auteur mentionne les mécanismes de contrôle prévus par les ACI et par les principes OCDE pour rendre effectif (il est noté que les syndicats ont «saisi» 9 fois le PNC pour le chapitre «environnement», 219).

³⁷ J.E. RAY, *De la négociation collective interne au dialogue sociétal externe*, in *Dr. social*, mars 2013, 261.

³⁸ *Rev. environnement*, Lexisnexis, 2014, chr. 3.

³⁹ A. BUGADA, *Environnement et droit social* (année 2013), in *Rev. Environnement*, Lexisnexis, 2014, 3.

⁴⁰ F. HEAS, *La protection de l'environnement en droit du travail*, in *RDT*, 2009, 565.