Intervention Marthe Corpet, Londres

In France we have been facing these past couple of years a lot of attacks on our labour law and legislation. I will focus my presentation on two recent reforms, the El-Khomri Law by the name of the minister of labour Myriam EK, and the Macron ordinances which were presented in the beginning of September.

Before going into the central and technical points that we denounce in these texts and which will weaken union rights and workers' conditions, I would like to stress the democratic issues raised by the way these texts were discussed and implemented.

- Firstly, the hypocrisy that characterizes the social dialogue in France. Both governments were very proud to announce that a lot of consultations were handled and that all the views were taken into account at the end of these. The reality is of course way different. Instead of having a real negotiation, where a text is presented and discussed, we've learned the major content of the propositions of both governments through newspaper articles, because information was being leaked by the government to the press.
- Secondly, collective expression of workers was at no point listened to. Mobilisations against the El Khomri law were quite strong from march to july 2016; young workers and students started it, and 4 of the main unions declared their disagreement with the proposal. The government only stepped back on a few points, but the main measures and particularly the inversion of hierarchy of standards stayed.
- Third, the last reform was taken by ordinances, under the pretext of efficiency – but more so in order to reduce to nil any in-depth discussion and restrict protests – this pro-employer reform has been adopted through a fast-track process, i.e. with Parliamentary action reduced to mere rubberstamping.
- Finally, the mobilizations that started just after the adoption of the ordinances, were deeply scorned by our president, who used violent words to qualify the workers in strike , calling them « lazy, cynics, extremists » or "fouteurs de bordel" This means mess makers" in a very vulgar way !

Now, what is the content of these reforms :

If I may synthetize, they are totally enshrined in what we are seeing in all Europe: the individualization of the employment relationship, and the consequent reinforcement of the power of the employer and the weakening of unions' strength and power.

I / First attack : the slow but progressive change into the hierarchy of standards in Labor Law.

Through 2015, several reports were commissioned by the government and reflect on how to reform labor laws, arguing that this needed to be modernized and simplified. Among other focuses, these reports dealt with the role of company-level collective bargaining, the hierarchy of standards, the quantity and quality of social dialogue, as well as working time issues.

Maybe I should remind everybody here on the role of statutory law and collective bargaining in the French Labour Laws

Labour laws in France came from the Roman law tradition where primacy was given to the Law (Labour code), ruling over labour and employment relationships in a rather exhaustive way. This confers homogeneity of Law across the country.

Besides the Law, cross-branch national collective bargaining covers many sectors of the industry – though not all of them. Some issues are quasi-exclusively dealt with through collective bargaining as professional trainings. And is completed by the branch collective bargaining. The law decides where the subjects must be discussed, and the union, weather they are representative or not in the branch have the possibility to negotiate.

The principle of labour laws in France is a combination of:

- **On the one hand, a hierarchy of standards (the Constitution, the Law, collective bargaining, company agreement and work contract), in which the higher norm prevails over the lowest;**

- On the other hand, the favourability principle provide to workers that when there is a contradiction between two standard the most favourable is the one which must be retained.

The **favourability principle is fundamental, and was gradually integrated into Labour laws. It is the fruit of the workers' successive struggles. It is an essential principle, the foundation of salaried work status and the corner stone of social public order.**

The EL KOMHRI reform has substantially influenced the collective bargaining process.

1) The reforms introduced that a new agreement shall be fixed term and come with a systematic end-of-validity date, when before it was running until the employer cancel it and replace it by a new one. Subsequently, the retention of acquired individual benefits would no longer be guaranteed on the long run, and that put a lot of pressure on the union to renegotiate an agreement before it turns out.
2) Employers would no longer have to cancel an ongoing agreement in order to renegotiate a new one. A new agreement would invalidate the prior agreement
3) With this reform, collective bargaining would be more decentralised and company agreements would gain increased impact. In parallel, the favorability principle also disappears on certain subjects (XXX) as local company agreements may waive, even unfavorably, the higher norms.

Ordinances :

As I just showed, The El-Khomri Law is a clear attack on our traditional labour law and social dialogue system and the new reform by ordinances is a follow-up and an amplification of that.

This reform opens to large field of areas (bonuses, allowances, maternity leave…), company agreements will take precedence over branch agreement, even if they are less favourable to

workers. For instance, a company agreement may provide for less bonuses or longer working time.

All the companies agreements which are taken within the objective to protect or develop employment (that means almost all the companies agreements) will induce the modification of the individual work contract without the agreement of the workers. If workers refuse changes to their employment contract, they will automatically be laid-off on “compelling grounds”. Employers might be tempted to use this kind of blackmail to avoid any opposition.

(*Ultimately, the purpose is for employers to be able to negotiate the retrenchments that suit them best. In France, over 50% of workers are employed "firms with less than 10 or less than 50 employees"– with weak union representation – but they come under branch collective agreements. With these reforms, workers will be faced with possible company agreements that are below branch agreements.)*

This will increase social dumping among French firms.

II/ Devaluation of trade union activities:

1) Introduction of the principle of the referendum which induce depreciation of the role of unions in firm-level bargaining.

The El Khomri Law introduced that for agreements which do not reach the 50% signatories threshold, a new term is provisioned by the law: company referendum. Minority unions which are nevertheless signatories, (in addition to the employer signatories) may demand to set up a referendum (on points that are defined by the law) among workers. If a draft agreement wins a majority of votes, it is then validated and enforced. The principle of opposition by the majority of representative unions disappears.

(This provision is very much debated among French trade unions, as on the one hand, referenda do not exist in the current Labour Code (even though a certain form of –informal- worker consultation exists) and on the other hand, the French Constitution provides that: «

any worker participates, through his/her representatives, to the collective determination of labour conditions as well as the companies' management ».) Referenda are thought to question the role and position of unions, whilst allowing, especially at company level, many blackmailing opportunities for employers.

When the previous law opened the possibility of referendum to certain subjects, the ordinances have settle that It will now be possible for bargaining to take place in small firms (under 11 workers) through referendum, without staff or union representatives, and on every subjects. In those cases **the question asked to the workers is settled by the employer**. And we know how secret of votes can be respected in those little structure !

In other firms, rules will differ according to size, but basically, the result remains the same: any firm management can convene a referendum unilaterally. Such a referendum is therefore a major tool against workers, and will impose agreements that would have been rejected by majority unions.

2) The ordinances open the right to negotiate without representatives

In very small firms (under 11 workers) the law introduces the right by the employer to negotiate directly with the workers on all the subjects. Before it was existing but only on certain points.

III / Merger of the current three workers' representative bodies into a single entity, "the Social and Economic Committee".

To remind every body here, in French company, workers are represented through three bodies, the first is the Comité d'Entreprise, which I could translate with Enterprise comity (which is different from the supervisory board), the workers delegate and the health and safety body (CHSCT). Each has particular prerogative and rights but none can negotiate. The union are the one in capacity to handle collective bargaining regarding their level of representation, and so the participation they gather during the social elections.

The merger of the three bodies will mean more remote representatives, as they will have to deal with affairs at higher levels, thus spending less time with workers facing difficulties in the workplace. DP and CHSCT were closeness bodies to workers, not only at a national level but also in the production site. The government is quite obviously trying to restrain any opposition, thus curtailing social democracy in our country.

(Thus, deleting the health and safety body, the government weaken the workers' working conditions. The CHSCT, has the possibility to organise the right of alert and withdraw in front an imminent danger for the safety of the workers, and to open an investigation. This right was originally hold only by the CHSCT, but has been extended to all the workers. In the reality, it is very hard for an individual to stand in front of the employer refusing to work because of a danger, and it is in major cases the CHSCT which play this key and essential role. The CHSCT has also the capacity to be a party in legal proceedings against the employer. Which is also a right that will be lost with a merger.)

CGT strategy in front of these attacks :

These law breach a lots of international convention from ILO and United nations.

- The reform introduces different rules about firing in fonction of the size of the firm, and that is in opposition with the ILO 158 convention on this subjet.
- The organization of referundum is also against the traditional ILO jurisprudence which considers, refering the application of the 87 convention about the unions liberties, that when criterias exits in order to determine the representatitivity, the organization of a referundum is a way to by pass representatives unions.

So the context was not really easy for unions, in the first case with an authoritative response by the government, in the second case with a president who was just elected. Yet we managed to organize a mobilization in both cases. Of course, the contestation exists within the workers. The approval rating of the president has never been as low as it is today.
But clearly the magnitude of the attacks is not really clear for workers, since july, even before the last presentations of the ordinances we started an information campaign in the differents firms to mobilize the workers. Now it is our objective to have them take the

streets more numerously. The next step will be on Thursday the 16th, and we are working hard to have a large mobilization.

These decrees marginalise workers' counter-powers and jeopardise the values and foundations of our social system.