

The Legal Status of Animals in the French Civil Code

The recognition by the French Civil Code that animals are living and sentient beings: symbolic move, evolution or revolution?

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Non Peer Reviewed Article

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1. Introduction

France is a country that almost four centuries later is still under the philosophical influence of René Descartes who considered animals as complex machines without

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capacity of suffering and under the profound influence of powerful lobbies (mainly Agriculture and Hunting). It is therefore no surprise that France is not considered as a pioneer country in animal protection. Moreover several traditions which are still very popular (such as hunting, foie gras or bullfighting) and an important agriculture business make it extremely difficult to build a better or more compassionate world for animals.

France does not have a specific law on animal protection like Switzerland for example. Under French law, rules relating to "animals" are scattered in several codes as well as in many other texts (decrees, ordinances circulars). The principal French Codes – out of a total of more than 60 codes – are the Civil Code which deals with civil matters; the Penal Code which deals with criminal matters; the Rural and Marine Fishing Code which mainly deals with the management of land and fishing, public health matters and use of animals; and the Environmental Code which, among others, deals with hunting. In short, it is a real patchwork of provisions that do not constitute a comprehensive and consistent legal framework.

Numerous provisions govern the relationship between humans and animals. These are mainly animal protection laws with provisions regarding the responsibility of humans in the event of damage to or caused by an animal, laws about the custody, use, rent or sale of animals. Sometimes these rules provide punishments (up to 2 years in jail in case of acts of cruelty) if humans cause harm to animals (excepted wildlife) and sometimes, in the name of religion or traditions, there are rules allowing cruel practices (ritual slaughter, bull or cock fighting), which are clearly incompatible with the welfare of animals.

French "animal law" is mainly a law which sets limits and establishes various requirements for the protection of animals. In short most provisions determine what is allowed and what is forbidden. However, even in case where activities harming animals are allowed – as for example hunting, experimentation and slaughter – the applicable provisions do impose limits to these practices in order to avoid unethically behaviors. Furthermore in some cases, French "animal law" protects humans against animals e.g. provisions relating to public health to protect humans against diseases or pests which may damage human activities.

In French context, law provisions pertaining to animals, under the pressure of a changing world and of the animal protection organizations, have evolved over the time (since the Civil Code also known as Napoleonic Code of 1804) and are even now, in some respects, at the cutting edge of animal protection laws worldwide.

2. Animals under French Law

2.1 Civil Code (before 2015)

In short we can say that pets, tamed and wild animals held in captivity are protected as individuals where at the opposite animals living free (wild animals) have no protection at all as individuals unless they belong to some species which are protected by the law and then only as member of said protected species. Depending on the kind of animals, some fall under the provisions of the Civil, Penal and Rural Codes where others fall under the provisions of the Environmental Code.

Before the historical move and recognition through a change introduced into the Civil Code on 28th January 2015 that animal are living and sentient beings, animals (excluding animal living free in the wild) were, since 1804 when the Civil Code was enacted, considered as property. The status of animals in the Civil Code already changed slightly in 1999. A distinction had been made by the law of January 6, 1999 between "animals" and "objects" (former Section 528 of the Civil Code). Animals however still remained as "property". Thanks to this change, animals were no more considered as mere "objects" like a chair or a table.

Before 2015, animals were either considered as chattel or, in some cases, as real property. Former Section 528 of the Civil Code made a clear distinction between "animals" and "inert" bodies both however being considered as "movable property by nature" because they either can move by themselves, or they can be moved by the efforts of an external force. Former Sections 522 and 524 considered that, in certain circumstances, animals could also be considered as real property, that is to say, property that cannot be moved (for example where animals are not separable from the place where they are used). Wildlife (i.e. animals neither tamed nor living free) was considered as *res nullius*, meaning things belonging to no one (Section 714 of the Civil Code).

2.2 Rural and Marine Fishing Code (Code Rural et de la Pêche Maritime)

Rural and Marine Fishing Code is the one and only French Code which, before the historical move of the Civil Code in 2015, expressly recognized animals as sentient beings. Since 1976, section L.214-1 of the Rural and Marine Fishing Code stipulates that:

"Every animal, being a sentient being, must be placed by its owner in conditions compatible with its biological requirements."²

² Translation to English by the author.

The Rural and Marine Fishing Code can be considered in fact as the one and only really comprehensive and consistent set of animal legal provisions in French Law. However, it only applies to pets, tamed animals or wild animals held in captivity. Said code includes many provisions regarding breeding, possession, animal use for scientific purposes, transportation and killing of animals, mistreatment of animals in relation with activities concerning pets (for example breeding, sale, transit, guard, education and training of dogs and cats).

2.3 Penal Code (Code Pénal)

The first time where criminal law provisions protected animals was by the Act of July 2, 1850 called Loi Grammont or Grammont Law. The Grammont Law punished the mistreatment of domestic animals (mainly horses) in public. However, these provisions were enacted to hide the sometimes bloody spectacle of animals being mistreated from the sight of humans (protection of public morality) and not to protect the animals themselves. Once in backyards, animals were mistreated as before.

By a decision rendered by the Chambre criminelle (the Criminal Chamber) of the Cour de Cassation (which is the highest jurisdiction in France for civil matters) of 16 February 1895, bulls – those used for bullfighting – were categorized as "domestic animals" and, therefore, as a matter of fact, bullfighting was forbidden because these animals were mistreated in public. Bullfighting however survived and was practiced in many places in the south of France although domestic animals were mistreated in public. It is only by the law of 24 April 1951 that bulls used for bullfighting were excluded from the protection of the Grammont Law in places where "uninterrupted local tradition" could be invoked.

A couple of years later, the Michelet Decree number 59-1059 of 7 September 1959 repealed the Grammont Law.³ The Michelet Decree removed the publicity condition of animal abuse and also extended the protection to wild animals either tamed or held in captivity. A further important step in the criminal protection of animals resulted from the Act of 12 November 1963 introducing a "cruelty offense" in the Penal Code.

Then, in the course of the next decades, various changes were made to the Penal Code, always improving the protection of animals:

- in 1994: a new Section R655-1 was added to the Penal Code creating a new offense, the act of intentionally killing a domestic animal or tamed animal or wild animal held in captivity;

³ The decree was named after Edmond Michelet, former French Minister of Justice from January 1959 to August 1961.

- by the law of January 6, 1999, penalties for acts of cruelty became much stronger (2 years of imprisonment and a fine up to € 30,000);
- by the Act of 9 March 2004, an offense for "abuse of a sexual nature" (bestiality) was introduced and added to the acts of cruelty;
- by order of 5 October 2006 new provisions and penalties were added which the judge may order against someone who is convicted of an act of cruelty against an animal: the judge may order the convicted person a) to surrender the animal to an animal protection organization b) to prohibit exercising a professional or social activity for a period of 5 years if the facilities used for such professional or social activity were knowingly used to prepare or commit the offense. The order also raised substantially the sanctions against legal persons.⁴

Today, the Penal Code still does not recognize explicitly animals as sentient beings. This, however, is implicitly recognized through the aforesaid provisions since an act of cruelty can only be committed against a living being. Nevertheless, crimes and offenses against animals are not classified under Offenses Against Property, but fall under a separate category called Other Crimes and Offenses. An act of cruelty can only be committed against a sentient being and not against a chair or a table. Thereby, lawmakers have implicitly recognized the uniqueness of the animals and their sensitivity in the Penal Code.

2.4 Environmental code

The Environmental Code is considered by many as a tool that is more focused on protecting humans against animals rather than a corpus of legal provisions protecting animals. Referring to Section L420-1 of the Environment Code, the well-known French Law Professor Jean-Pierre Marguénaud⁵ considered it as a "hymn to the glory of hunters".

Many sections of this code may illustrate the above assertion of Professor Marguénaud: Chapter VII of Title II (Hunting) of Book IV (natural heritage) contains a set of provisions regarding the destruction of pests. Thus Section L427-8 states that "A decree of the State Council shall designate the competent administrative authority to determine the species of animals evil or harmful that the owner, possessor or farmer can, at any time, to destroy its land and the conditions for exercising this right."⁶ Depending on the departments of France where wild animals live, they may be considered or not as pests.

⁴ Five times the fine for a natural person; prohibition of any professional activity for a 5 years term; closure for a 5 years term of the facilities used to commit the offense; ban for issuing bank checks during a maximum term of 5 years; confiscation of the tools or facilities which were used; publicity of the judgment.

⁵ Jean-Pierre Marguénaud is considered in France as the most influential scholar in animal law and can even be considered as the "Father" of animal law as an academic field of study and research in France.

⁶ The State Council or "Conseil d'Etat" is the highest jurisdiction for administrative matters, the equivalent of the Cour de Cassation for civil and criminal matters.

All depends on the pressure exercised by said animals on human activities, mainly agriculture and hunting.

The only provisions protecting animals which can be found in the Environmental Code are based on Provisions enacted by the European Union (EU) and which France is compelled to implement in its national law. More than often in the past France has been fined for not having implemented EU provisions in its national law in the prescribed timeframe or for not having properly enforced such provisions. French authorities are often encouraging or, at least, tolerating violations for purely political reasons or under the pressure of various lobbies, such as for example of the provisions resulting from Directive 2009/147 / EC of 30 November 2009 on the conservation of wild birds. In the South West of France illegal trapping of thousands of Ortolan birds is practised at the end of summer. The hunting of this species, protected under Annex I of the Directive, is tolerated by the French Authorities. No administrative measurements to stop this have been taken by the authorities. At the contrary, the local administration appointed by the government receives each year instructions from the ministry of interior to leave the hunters quiet and to make sure that the opposition between hunters and animal protection organizations does not end in a bloody war.

3. The story of an historical move in the Civil Code

3.1 The background of the reform

While, as mentioned before, the Rural and Marine Fishing Code recognizes expressly the sentience of animals and the Penal Code recognizes it implicitly, the Civil Code, which is the most important and symbolic French Code by ensuring the presence of the law in the collective consciousness and reflecting the state of mind of the French people, did not recognize the sentience of animals. Animals were still considered as property and to be more precise either as movable property by nature or in some cases as real property. The fact that animals (since 1999) were no longer considered as mere things did not change substantially the way they were considered and treated.

Many people, especially animal protection organizations and animal activists and lawyers, considered that, as long as the Civil Code did not formally recognize the sentience of animals, animals would still remain, for judges, secondary legal issues. The mismatch would continue to temper the audacity of interpretation and enforcement by judges of the applicable rules protecting animals contained in both the Rural and Marine Fishing and the Penal Codes. It was time, after more than two centuries, to shake the traditional and very conservative Civil Code and deeply reform the status of animals.

This was considered as the key step for ensuring the coherence and effectiveness of the legal status of animals in French Law.

In 2005, Suzanne Antoine, Honorary President of Chamber at the Court of Appeal of Paris and member of the board of Trustees of the LFDA La Fondation Droit Animal, Ethique et Sciences, was entrusted by the former Minister of Justice Dominique Perben to issue a report on the legal regime of animals in France. In her report, Suzanne Antoine pointed out the inconsistencies between the codes (civil, rural and marine fishing, environmental and penal) and analyzed the different civil code reform options closing her report by recommending either to extract the animals from the legal category of "things" (Catégorie des biens) which was her preferred option or to maintain animals in the category of things but then to consider animals as a particular category of things to be protected for their sensitivity. The report was soon forgotten and had not been followed by any action of the Ministry of Justice.

Yet, nothing being done by the government to change the legal status, several members of the chambers composing the Parliament⁷ filed several bills at the office of the two chambers. Six bills proposed to introduce the concept of "animal sentience" in the civil code and bring changes to the legal status of animals in the civil, penal and the environmental codes.⁸ None of them were examined and discussed in the respective chambers.

In October 2013, the Foundation 30 Millions d'amis launched a petition proposing to extract animals as things from the Book II of the Civil Code and to introduce into the Civil Code a new legal category: the category of *animals*. The petition was very rapidly successful with hundreds of thousands of people signing it. However, the president François Hollande did not see a need to add any new considerations to the existing texts currently applicable to animals.

3.2.The "Glavany" amendment

In April 2014, the former Minister of Agriculture and now member of the Assemblée Nationale Jean Glavany, submitted, to the general surprise, an amendment⁹ to the Bill on

⁷ The Parliament is consisting of the Assemblée Nationale which is the lower chamber and the Sénat which is the upper chamber.

⁸ These were filed in 2005 (No. 2634) by Muriel Marland Militello (Member of the Assemblée Nationale), in 2012 (No. 4495) by Jacques Remillier (Member of the Assemblée Nationale) and in 2011 (No. 575, No. 576, No. 670) and 2013 (No. 42) by Senator Roland Povinelli.

⁹ Amendment No. 59 presented by Mr Glavany, Ms. Capdevielle, Ms. Untermaier and other members of the Socialist Group.

the modernization and simplification of the law and procedures in the domains of Justice and Internal affairs.¹⁰ The amendment successfully passed the vote.

Mr. Glavany motivated the amendment as follows: (cf. summary)

"To achieve a coherent legal system for animals in order to harmonize our various codes and modernization of the law, the amendment provides a legal definition of animals that are living and sentient beings, and expressly submits animals to the legal regime of tangible property unless there are special laws protecting them."¹¹

Despite the merely symbolic change the powerful and very influential Federation of Agricultural Unions¹² immediately reacted. They considered that the amendment would open the door to animal rights' activists and would lead to an increase of court proceedings against breeders. The Agriculture Minister, Stéphane Le Foll, also declared that: "I am fully aware of the need for animal welfare but the rural code already states that animals are sentient." He concluded by saying that he would not be favorable to a change in the Civil Code.

As an experienced politician and skillful tactician, Mr. Glavany made the choice to change the legal status of animals in the Civil Code through an amendment to the Bill submitted to the Parliament by the government. Thereby the amendment would not be discussed in the Senate but had only to be validated by a Mixed Commission of the Parliament with members of both chambers.

3.3 The discussion in Parliament and the disagreements between the two chambers

The mixed commission of the Parliament met in the Senate in May 2014 but failed to find an agreement on a mutually acceptable text of the Bill. Senators opposed to Article 3 of the bill, which authorizes the Government to reform the law of obligations and contracts by way of ordinances. Furthermore senators opposed to Article 1a concerning the legal status of animals in the Civil Code. The text therefore had to be submitted again to the Assemblée Nationale.

A few days after the amendment was passed at the Assemblée Nationale, Geneviève Gaillard filed a more ambitious bill "to establish the consistency of texts by granting a special legal status to the animal." The "Gaillard" Bill was designed to bring amendments

¹⁰ Projet de loi relatif à la modernisation et à la simplification du droit et des procédures dans les domaines de la justice et des affaires intérieures.

¹¹ Translation to English by the author of this article.

¹² Better known under the acronym FNSEA which is a nationwide organization regrouping more than 60 % of the French farmers.

to the Civil Code and the Penal and Criminal Procedure Codes, meaning that nine articles modifying ten articles of the Civil Code, four articles of the Criminal Code and Article 1 of Code of Criminal Procedure.

At a press conference held at the Assemblée Nationale in June 2014 Ms. Gaillard stated, *inter alia*, that:

“I want to ensure that with this Bill, animals will no longer be considered as property but it will also extend the recognition of sentient beings to wild animals living free We also wanted to reassure hunters through this proposal law [...] hunting is recognized as a social fact and we do not want them to believe that hunting will be stopped. However, as the society evolves, hunting practices may changeYou can hunt with specific rules, as you can eat animals with specific rules when animals are slaughtered.”

Since, as already mentioned before, the mixed commission could not, during its meeting held on 13th May 2014, find a compromise on the text, the Senate had to examine the Bill and vote. During its session held in January 2015, senators massively rejected the changes introduced by the Glavany amendment.

The following reactions expressed by some senators are worth to be mentioned in order to illustrate the firm opposition of the Senate:

Senator Mohamed Thani Soilihi stated: “As concerns the legal status of animals, we asked ourselves: why passing a law so hastily on such a serious matter? The drafting is far from perfect, in addition it raises real questions. The text promoters claim that there must be a symbolic recognition of the specificity of the animals in the Civil Code. But this poses a serious question: can a symbolic act intended to be normative? Should the Civil Code be a code of symbols? Above all, in what respect may the statement "animals are living and sentient beings" have any normative value? The law does not say what is true or false; the law says what is just or unjust, permitted or prohibited.”

Senator Yves Détraigne said: “We also support the rejection of the new provisions relating to the legal status of animals. Indeed, the wording...is far from perfect, raises real questions. Its proponents believe that there must be a symbolic recognition of the specificity of the animals in the Civil Code. This has not its place in the Civil Code...It is also difficult to assess the real impact of this Article 1a of the law as well as to make sure it will not change the legal regime applicable to animals...Far from simplifying and clarifying the conditions of animals, the new provisions...could have disastrous economic consequences - everyone will see what I mean.”

Senator Jean-Jacques Hyst stressed: “The second point of difference between the two

chambers concerns the question of the legal status of animals. The proposed wording is very nice but there is fact that should not be forgotten: the fact that the animal is considered as property. Why is the animal property? Because you can sell it and we can rent it. That is why, in the Civil Code, it is considered as property. This does not preclude that other provisions of the Environmental Code and other laws may recognize that animals are sentient beings...but do we really want to mix everything. This will lead to a total misunderstanding of what civil law is. This confusion has certainly started for some time, you will say; but that is not a reason to persevere! Of course, the flexibility of the Senate was limited, but you must admit that this reflection on the animal's status deserved, a much deeper discussion, even if by passing the amendment you will please the person whose amendment will bear his name.”

The last noticeable comment was made by Senator Esther Benbassa: “We understand the reasons that led to the removal of this article, but we hope that the legal status of the animal, this 'living and sentient being' will be an ambitious reform conducive to bring a fresh perspective of our society on animals and to end some particularly cruel practices.”

After the rejection by the Senate of the proposed reform of the status of the animal in the Civil Code, the reactions in the press and the public were immediate and intense. For example Mr.Athanaze wrote in the newspaper *The Obs*: “[...] The senators, once again made a fool of themselves in the eyes of the public opinion which widely support the reform. And not just in order to have a good consistency in French law, but for obvious reasons of common sense.”

3.4 The final vote on 28th January 2015

Thus the Bill returned once again to the *Assemblée Nationale* which, according to the constitution, would have the final word. It was submitted for the final reading a few days later on Wednesday 28 January 2015.

Member of the *Assemblée Nationale* Ms. Colette Capdevielle, Socialist Party recorder spoke about the rejection of the reform by the Senate “The Senate has considered that this provision did not present a sufficient connection with the original purpose of the text (i.e.the Bill on the modernization and simplification of the law and procedures in the domains of Justice and Internal affairs). It is an analysis that we do not share, this article has the same objective namely reforming property law, there is no doubt that there is therefore a close link with the original purpose of the text. In these conditions of disagreement, the Government has asked us to finally decide and that's what we'll do.”

The bill was submitted for final reading at the National Assembly a few days later on

Wednesday 28th January 2015. Some reactions are worth to be noted in order to illustrate the views that were expressed during the session of the Assemblée Nationale:

Michel Zumkeller said “Obviously the animal's status deserved further study and better consideration of the work of the study group Animal Protection of the National Assembly [...] We regret that this article be discussed in the text today by our chamber”

Marc Dolez on his side approved the clarification of the legal status of animals “We support the clarification of the legal status of animals in the Civil Code and we approve this good compromise which enables to better take into account its quality of living and sentient being without creating a legal category between persons and property [...]”

The conservative party the Union for a Popular Movement (UMP) through several of its representatives reiterated its opposition to the text. Only Frédéric Lefebvre expressed a favorable position to the text justifying the reason for the change: “Today, there is an inconsistency in our law. There is nothing to worry about with this amendment which only says what is already said in the Rural Code. It is simply a consistency work, our job is to reassure our fellow countrymen who are now worried. It is important for all of us, while the 30 Millions d'amis Foundation and many intellectuals have noted this inconsistency, to rectify this error.”

One of the most virulent opponents at the UMP, Mr.Gosselin stated: “The reproaches of this text are widely known, the final blow came from the Senate a few days before. No one disputes the choice of simplification which is very useful [...] a point just seem a little more anecdotal which I want to develop is the status of animals: [...] so it creates a special status that is likely to have major consequences, there is no question of opposing the fact that animals are living and sentient beings, and that respect of animal welfare is the primary concern of farmers; we do not wish to limit the legitimate fight against animal abuse, but it seems very risky to introduce in the Civil Code a status of the animal, which does not specify to which category the animals belong and may thereby cause confusion [...] all breeders and farmers are likely to be the victims [...] there is a real difficulty with this article which was introduced in secret by our colleague Glavany. We should on this topic have a real consultation with the livestock industry, laboratories and hunters. We need to measure all consequences and here I feel that the consequences have not been adequately assessed. Tomorrow agriculture, hunting may be threatened [...] If the civil code must evolve to a new status of the animal, this can only be done through a consultation [...] the text as it is proposed to us does not resolve all issues, it creates difficulties.”

Finally, Mr.Marc Le Fur regretted the lack of consultation: “We legislate without having

organized a consultation with farmers, who are shocked by this. This type of arrangement will be used tomorrow to challenge certain types of breedings. Yet efforts have been made by farmers: pigs and sows are now free to move in their stalls, poultry and laying hens have seen their space expanded, these developments have cost a lot to farmers, people who have moved and now feel challenged by these developments. This provision is formidable [...] it poses serious threats to the agricultural sectors of livestock.”

In response to criticism related to the lack of consultation and the reproach of having filed the text in secret, Jean Glavany said: “We have respected the rules of the chamber at all stages of the proceedings, nothing has been done in secret. As for the lack of dialogue which you regret, it was up to you to have it. [...] There is a great foundation that shows that 90% of French people are favorable to this change, and even beyond, the consultation with farmers and the FNSEA, if you did not have it, I had it; the opposition soon vanished after a short discussion between reasonable people. We had an inconsistency in our law, we put an end to it and that is a very good thing. It's a small but symbolic step forward, which will have little consequence in terms of law but will have a significant symbolic impact.”

The amendment was finally adopted. All groups voted for with the exception of the conservative UMP party who voted against, and the Left Front (Front de gauche) which abstained. All amendments calling for the withdrawal of the Glavany amendment were rejected. The Bill became Law No. 2015-177 of 16th February 2015 on the modernization and simplification of law and procedures in the fields of Justice and Home Affairs.¹³ Thus, officially animals are no more property by the French law; they are living and sentient beings. They however remain subject to the laws which protect them, subject to the regime of tangible property.¹⁴

4. Conclusion

One may ask about the practical effects of the new Article 515-14 of the Civil Code? Is it a symbolic move, evolution or revolution?

The change in the Civil Code will not change the status of animals profoundly in the short term. Animals can still be bought, sold, used, in a word “exploited” as before. We may however anticipate that this change will in some respect have practical effects.

¹³ French Official Gazette: journal officiel number 0040 of February 17, 2015 296.

¹⁴ It worth to be noted that the Civil Code now gives a positive definition of animals whereas, for example, Article 641a of the Swiss Civil Code merely states that “Animals are not objects.”

Judges will probably move ahead with more creativity and courage and be keener to render more “animal friendly” decisions as before. Such a move will not change everything overnight, but it makes everything possible in the future.

The change is not a revolution for sure, but the change may allow further developments in the law and, therefore, can be considered as paving the way for an evolution of the status of animals in French law in the next coming decades. As such, it can be considered as a highly “symbolic move” which should be warmly welcomed.

Can we now consider, after the change, that the purpose contemplated by the promoters of the amendment has been achieved? The answer is clearly not since the Environmental Code still does not recognize the sensitivity of wildlife (which constitutes the vast majority of animals living in France). A new attempt to change the legal status of wildlife was made very recently but the Assemblée Nationale rejected it in March 2015.¹⁵

Advancing the legal status of animals in France requires patience and perseverance; we had to wait 1976 (Act of 10 July) to see the animal's sentience officially recognized under French law (in the Rural Code Article L214-1) and again another 39 years for seeing the sentience recognized in the civil code, 211 years after the birth of the Civil Code in 1804. Paradoxically, at the time where animals' sentience is now enshrined in the Civil Code, we have never seen in France as many projects of large factory farms as at present. The next coming years and decades will tell us whether this symbolic move will really ameliorate the lives of those animals who fall under the Civil Code in practice.

¹⁵ Amendment n°956 submitted by member of the Assemblée Nationale, Ms. Laurence Abeille to the bill on Biodiversity drafted by the government. It must be noted that the amendment did not have the support of the government and especially not of its Minister for Environment, Ms. Segolène Royal who opposed it, and it had also to face the strong opposition of the powerful hunting lobby extremely well represented at the Assemblée Nationale.