

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS**  
**COMITE EUROPEEN DES DROITS SOCIAUX**



3 November 2003

**COMPLAINT N° 14/2003**

**International Federation of Human Rights Leagues  
(FIDH)**

**v. France**

**Observations from the French Government  
on the merits**

**registered on 24 October 2003**

(TRANSLATION)

**FRENCH REPUBLIC**

**PERMANENT DELEGATION OF FRANCE  
TO THE COUNCIL OF EUROPE**

PF No. 431

/D

CE 11.2.1  
European Committee of Social Rights

**NOTE VERBALE**

The Permanent Delegation of France to the Council of Europe presents its compliments to the Council of Europe Secretariat and is honoured to submit, further to its letter of 22 September 2003, the French Government's observations on the merits of the complaint lodged with the European Committee of Social Rights by the International Federation of Human Rights Leagues (FIDH).

The Permanent Delegation of France to the Council of Europe avails itself of this opportunity to renew to the Council of Europe Secretariat the assurance of its highest consideration.

Strasbourg, 24 October 2003

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**Observations from the French Government  
on the merits of complaint No 14/2003 submitted by the  
International Federation of Human Rights Leagues (FIDH)  
to the European Committee of Social Rights**

In a decision of 16 May 2003, the European Committee of Social Rights declared admissible the complaint lodged against France by the International Federation of Human Rights Leagues (FIDH), concerning the reform of the state medical assistance scheme in December 2002.

The Federation considers that Section 57 of the 2002 Finance (Amendment) Act, No. 2002-1576 of 30 December 2002, modifying the French state medical assistance and universal medical coverage schemes is in breach of Articles 13 and 17 of Part II and Articles E and G of Part V of the Revised European Social Charter of 3 May 1996.

The French Government wishes to make the following observations.

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**I. THE FACTS**

The 2002 Finance (Amendment) Act, adopted by Parliament on 30 December 2002, included specific provisions:

- requiring recipients of medical assistance to contribute to the cost of their medical treatment but excluding the treatment costs of children and young persons and of persons suffering from long-term conditions whose costs would be met in full by the social security system, and the costs of screening tests. It should be noted from the outset that, unlike the patient contributions of persons insured under the sickness insurance scheme, these contributions are subject to a maximum ceiling;

- abolishing the three-year residence requirement for entitlement to payment of the costs of non-hospital treatment;
- re-establishing entitlement to full payment of treatment costs, under the medical assistance scheme, for the children of parents unlawfully resident in the country; this entitlement had been withdrawn under the Social Security Finance Act of 21 December 2001 and replaced with only partial eligibility for the universal medical coverage (CMU) scheme.

## **II. THE COMPLAINTS**

The FIDH complains firstly that the introduction of a patient contribution from recipients of medical assistance will require those who are in financial difficulty "*to meet, in whole or in part, the cost of medical consultations and associated prescriptions*" and may be enough to dissuade those concerned from seeking treatment, thus failing to benefit from any effective preventive measures or regular follow up. As a result, "*simple conditions that could have been dealt with effectively and at little cost will not be treated, leading to serious and costly complications*". In other words, the French Government is "*quite simply*" depriving illegal immigrants "*of their right to health, enshrined in Article 13 of the Charter*" (part A.1 of the memorial).

Secondly, it recognises that one of the implicit effects of Article 13 of the Charter, particularly paragraph 4, which limits equal treatment with nationals to foreign nationals lawfully within the country's territories, is that illegal immigrants can be granted less favourable treatment (part A.2 of the memorial). However under Article 13 illegal immigrants, like everyone else, should continue to benefit from the effective exercise of the right to health, and it is this principle that is apparently threatened by the introduction, in French legislation, of a flat-rate treatment charge or patient contribution (*ticket modérateur*).

Thirdly, it maintains that the clarification in the appendix to the Revised European Social Charter, which states that foreigners may only benefit from the rights embodied in the text "*in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned*", does not apply to children and young persons (part B.2.1), if the legislation of the country concerned, as in the case of France, does not require the latter to have a residence permit. According to the complainant, the Revised Charter is therefore implicitly applicable to the under-age children of foreign nationals unlawfully resident in France.

As a result, France is in contravention of the non-discrimination principle embodied in Article E of the Revised Charter, under which the enjoyment of the rights in the Charter must be secured without discrimination on any ground such as "*national extraction or social origin, health, association with a national minority, birth or other status*". The alleged contravention arises from:

- firstly (part B.2.1), the introduction under the medical assistance scheme of patient charges that are also applicable to children and young persons, in breach of Article 17 of the European Social Charter, which requires France to grant them social protection;
- secondly (part B.2.2), granting foreign children and young persons entitlement to 100% of certain costs under the medical assistance scheme, rather than supplementary universal medical coverage (CMU).

Finally, the Federation argues that introducing patient charges for the recipients of state medical assistance, which according to the complainant amounts to an obstacle to treatment, is incompatible with the protection of public health and thus in breach of Article G of the Revised Charter, which quotes the protection of public health as one of the grounds on which signatories may restrict the application of the Charter to foreign nationals.

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### **III. The MERITS OF THE COMPLAINT**

**1. Firstly, there are no grounds for the FIDH complaint that illegal immigrants' right to health under Article 13 of the Revised Charter have been violated.**

Article 13 is headed "The right to social and medical assistance", and 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;*
- 2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;*
- 3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;*
- 4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953."*

The FIDH maintains that by introducing a patient contribution to be paid by recipients of medical assistance the French Government is "*quite simply*" depriving illegal immigrants "*of their right to health, enshrined in Article 13 of the Charter*". In particular, it argues that although paragraph 4 of Article 13 restricts the right to equal treatment to foreign nationals who are lawfully resident in the territory, there is an implicit requirement for illegal immigrants to receive treatment that, while less favourable, nevertheless guarantees their right under Article 13 to proper health care, and that this right is threatened by the introduction, in French legislation, of a flat-rate treatment charge (*ticket modérateur*).

The Federation bases its argument on paragraph 4 of Article 13, which establishes the principle of equal treatment between nationals and certain non-nationals in the following terms: the Parties undertake "*to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.*"

By a process of reverse reasoning, the Federation then takes the principle that the provisions of paragraphs 1 to 3 should apply equally to lawfully resident foreign nationals of parties to the Charter to mean that paragraph 4 must be implicitly interpreted as granting illegal immigrants rights of the same nature, with the sole difference that the treatment does not have to be on an equal footing with nationals.

This reasoning reflects a mistaken interpretation of Article 1 of the Appendix and Article 13.4 of the Charter itself, particularly regarding their scope. Although illegal immigrants have various entitlements to care and treatment, particularly under French domestic law, they do not fall within the scope of the "protected persons" set out in the Revised Charter.

These are defined in Article 1 of the Appendix to the Charter, which under Article N is an integral part of the Charter.

The Appendix is headed "Scope of the Revised European Social Charter in terms of persons protected", and Article 1 reads:

*"Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19."*

Contrary to what might be inferred from a rapid reading of the Charter, in the light of Article 1 of the Appendix, Article 13 paragraph 4 of the Charter cannot be interpreted as implicitly granting rights to illegal immigrants. Indeed the scope of Article 13.4 with regard to protected persons is narrower rather than broader than that of other Charter provisions.

Firstly, under the terms of Article 1 of the Appendix, the rights embodied in paragraphs 1 to 3 of Article 13 are confined to nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned. For its part, Article 13.4 merely establishes the principle of equal treatment with regard to the rights set out in paragraphs 1 to 3 for foreign nationals who meet certain conditions. In no circumstances can Article 13.4 be interpreted as implicitly granting rights to illegal immigrants.

Secondly, Article 1 of the Appendix should not be taken to exclude Article 13.4 from the restriction of the scope of the Charter to "*nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned*".

The personal scope of paragraph 4 is actually narrower than that of the rest of the Charter, not broader as the FIDH would have us believe when it argues, incorrectly and through a reverse reasoning process, that it implicitly applies to illegal immigrants. In practice the equal treatment principle that it lays down is restricted to parties' application of "*the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953*".

Article 1 of the European Convention on Social and Medical Assistance reads: "*Each of the Contracting Parties undertakes to ensure that nationals of the other Contracting Parties who are lawfully present in any part of its territory to which this Convention applies, and who are without sufficient resources, shall be entitled equally with its own nationals and on the same conditions to social and medical assistance (hereinafter referred to as "assistance") provided by the legislation in force from time to time in that part of its territory.*"

The principle of equal entitlement to social and medical assistance embodied in Article 13.4 therefore only concerns foreign nationals who fulfil four conditions:

- they must be nationals of a Party to the Charter;
- the Party must have ratified the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953;
- they must be lawfully present in the territory of the Party of residence;
- finally, they must be "without sufficient resources", within the meaning of Article 1 of the European Convention on Social and Medical Assistance.

As confirmation of the aforementioned points, the Appendix to the Revised Charter states, with reference to Article 13.4:

*"Governments not Parties to the European Convention on Social and Medical Assistance may ratify the Charter in respect of this paragraph provided that they grant to nationals of other Parties a treatment which is in conformity with the provisions of the said convention."*

To summarise, contrary to what the complainant Federation argues, Article 13.4 of the Revised Charter cannot be interpreted as being concerned with the treatment of nationals of parties who are lawfully resident, as opposed to those who are not lawfully resident. It simply specifies *which nationals of parties to whom the European Social Charter is applicable* are also entitled to strictly equal treatment with the nationals of the country of residence under the specific provisions of the European Convention on Social and Medical Assistance of 11 December 1953.

The complaint presented by the FIDH, based on alleged violations of the rights of illegal immigrants when in practice the European Social Charter does not grant them those rights, derives from an incorrect interpretation of the scope of Article 13.4 of the Charter with regard to persons protected. The complainant's arguments should therefore be rejected.

**2. Secondly, with regard to the alleged breaches of the right to social protection of children and young persons and of the non-discrimination principle enshrined in Articles 17 and E of the Revised Charter, the French Government submits the following points:**

The complainant argues that treating and caring for children and young persons under the state medical assistance rather than the universal medical coverage (CMU) scheme is in breach of Articles 17 and E of the Revised Charter.

There is no legal justification for the Federation's argument that the introduction of a patient contribution to the cost of care of children and young persons is a violation of their rights under Article 17 of the Charter, which is a flagrant misinterpretation of current French law.

In practice, the aforementioned Act of 30 December 2002 explicitly excludes the costs incurred for the care and treatment of children and young persons from the scope of patient contributions under the medical assistance scheme.

Section 57 of Act No. 2002-1576 of 30 December 2002 amends Article L. 251-2 of the Social Action and Family Code by adding the following provision:

*"3. Other than in the case of expenses incurred on behalf of a child or young person or in one of the cases mentioned in paragraphs 1 to 4, 10, 11, 15 and 16 of the Social Security Code, recipients of state medical assistance shall pay a contribution to their costs as provided for in Article L.322-2 and section 2 of chapter II of title II of book III of that Code ..."*

Providing care and treatment totally free of charge reflects the treaty requirement that children should not suffer untoward consequences in their access to care as a result of their parents' unlawful residence.



Contrary to what the FIDH maintains, therefore, the reform in no way constitutes a restriction on the rights of children and young persons, since the re-establishment of the right to medical assistance for the children of state medical assistance beneficiaries ensures that their costs will be met in full, with no patient contribution.

These children's affiliation to the state medical assistance scheme therefore improves their situation regarding access to care.

The complainant's arguments that the reform of the state medical assistance scheme is in breach of Articles 13, 17, E and G of the Revised European Social Charter should therefore be rejected.

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For all these reasons and subject to any others that might be adduced the French Government invites the European Committee of Social Rights to reject the complaint submitted by the International Federation of Human Rights Leagues as being without foundation.