

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



21 January 2004

**Collective Complaint No. 14/2003
International Federation of Human Rights
Leagues (FIDH) v. France**

Case Document No. 4

**OBSERVATIONS FROM THE INTERNATIONAL
FEDERATION OF HUMAN RIGHTS LEAGUES (FIDH)
ON THE MERITS**

registered at the Secretariat on 15 December 2003

(TRANSLATION)

Secretary General of the Council of Europe

Attention:

Mr Régis Brillat
Secretariat of the European Social Charter
Council of Europe
F-67 075 Strasbourg Cedex

Paris, 15 December 2003

Complaint No. 14/2003
International Federation of Human Rights Leagues (FIDH) v. France

Subject: supplementary observations by the FIDH in reply to the observations
by the French Government

Dear Sir,

Please find enclosed the FIDH's observations in reply to the
observations submitted by the French Government concerning the merits of
Complaint No. 14/2003.

Yours faithfully,

(signed) Sidiki Kaba
President

**Observations by the International Federation of Human
Rights Leagues (FIDH) on the French Government's response to
Complaint No. 14/2003 to the European Committee of Social Rights**

1 – Confirmation and aggravation of the facts complained of

The FIDH notes that the Government at no point denies that the introduction of a flat-rate treatment charge or patient contribution (*ticket modérateur*) under the state medical assistance scheme may make effective access to medical care difficult if not impossible.

It should also be mentioned that, since the lodging of the complaint with the European Committee of Social Rights on 3 March 2003, the French Government has moved ahead with the dismantling of the state medical assistance scheme. After failed attempts to introduce by means of a circular superfluous requirements for potential beneficiaries of the scheme (draft circular of May 2003, see enclosure 1), measures have now recently been adopted under budgetary legislation (2003 Finance (Amendment) Act, see enclosure 2). These new measures further undermine the medical assistance scheme and restrict access to it, in particular with:

- the abolition of the system of immediate admission to the assistance scheme, which has the effect of denying care to all those who fail to meet the draconian new entitlement requirements for the assistance scheme and/or of delaying treatment and thus aggravating medical conditions and increasing the cost of treatment in the long term. Immediate admission to the state medical assistance scheme has just been abolished under the 2003 Finance (Amendment) Act that is in the process of being passed (see enclosures 2, 3 and 4);
- the requirement that individuals must spend an uninterrupted period of three months in France before being entitled to state medical assistance;
- the restriction of the emergency medical care provided to hospital treatment in situations that involve an immediate threat to life. This restriction has just been introduced under the 2003 Finance (Amendment) Act that is in the process of being passed (see enclosures 2, 3 and 4).

2 – The unfounded grounds advanced by the French Government for excluding foreigners unlawfully resident in France from the scope of Article 13 of the European Social Charter

Article 1 of the Appendix to the Charter defines the “persons protected” by the Charter as follows: *“Without prejudice to (...) Article 13, paragraph 4, the persons covered by Articles 1 to 17 include foreigners only insofar as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned.”* In other words, the lawful residence requirement is the rule governing entitlement to the protection of the Social Charter and Article 13, paragraph 4, is one of the exceptions to that rule.

According to the Government’s interpretation, Article 13, paragraph 4, embodies the principle of equal entitlement to social and medical assistance, subject to the following conditions:

- the individuals in question must be nationals of a Contracting Party to the Charter;
- the Contracting Party concerned must have ratified the 1953 European Convention on Social and Medical Assistance or, failing that, must *“grant to nationals of other Parties a treatment which is in conformity with the provisions of the said convention”*, in other words, entitlement to the social rights embodied in that convention *“on the same conditions”* and *“equally with its own nationals”* on the basis of the principle of equal treatment;
- the individuals in question must reside lawfully or work lawfully within the territory of the Party concerned.

The reference to the 1953 European Convention on Social and Medical Assistance in no way alters the content of the right in question.

By a process of reverse reasoning, it follows that if one of these conditions is not met (the State concerned is not a Party to the European Convention on Social and Medical Assistance, its equal treatment principle is not applied or the individuals in question do not reside or work lawfully in the State concerned), the right to social and medical assistance does not apply on an equal footing. However, there is nothing in the text of the Social Charter to prevent this right to social and medical assistance applying, although not on an equal footing, to nationals of States not meeting one of the above-mentioned conditions.

3 – The position of minors and the unequal treatment of the children of foreigners unlawfully resident in France

Contrary to what the Government maintains in its observations, the fact that children are entitled to free state medical assistance, under an exemption to the patient contribution introduced under the measures complained of, in no way suffices to establish equal treatment between the dependent children of foreigners unlawfully resident in France and French and European children. The FIDH would make the following points here:

- firstly, the Government does not deny that the dependent children of foreigners unlawfully resident in France must receive treatment based on non-discrimination in accordance with Articles 17 and E of the Charter;
- secondly, the cost of medical care is not the only factor to be taken into account when comparing two systems of medical cover (universal medical coverage, which minors came under until the reform complained of, and state medical assistance) and determining whether or not equal treatment is guaranteed: other parameters are also relevant. In particular, there are differences that demonstrate that dependent children of foreigners unlawfully resident in France suffer discriminatory treatment in relation to other minors and that the decisions of the French State lead to their receiving poorer medical protection and put specific additional obstacles in the way of their obtaining medical protection and hence also care:

- **the disparity between the benefits provided under the universal medical coverage scheme and the state medical assistance scheme:** in particular, spectacles and dental prostheses are not covered under the medical assistance scheme, unlike the supplementary component of the universal medical coverage scheme (public service supplementary insurance available free of charge to destitute persons lawfully resident in France, under which minors were covered prior to the reform);

- **the ending of “immediate admission” to state medical assistance,** which rules out prevention, delays care or even leads individuals to do without treatment, thereby aggravating their medical conditions and increasing their long-term cost, as indicated in section 1 above;

- **the restriction of the emergency medical care provided to situations that involve an immediate threat to life,** as indicated in section 1 above.