

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**



14 April 2004

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

Case Document No. 5

**SUPPLEMENTARY OBSERVATIONS
FROM THE FRENCH GOVERNMENT
ON THE MERITS**

(TRANSLATION)

registered at the Secretariat on 2nd April 2004

In a letter dated 18 December 2003, the International Federation of Human Rights Leagues (FIDH) submitted observations in reply to the French Government's own comments on the Federation's complaint - No 14/2003 of 3 March 2003 - concerning the reform of the state medical assistance and the universal medical coverage schemes.

In its observations in reply, the FIDH:

- argued that the French Government recognised that the introduction of a flat-rate treatment charge or patient contribution (*ticket modérateur*) made effective access to medical care difficult if not impossible and that recent legislation, approved by Parliament on 30 December 2003, continued the process of dismantling the state medical assistance scheme (1);
- repeated its arguments that France's commitment to applying Article 13 of the Revised Social Charter extended to the nationals of non-signatory states not lawfully resident in France (2);
- maintained that the French Government did 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", whereas these children were not in fact granted equal treatment with French children (3).

The French Government offers the following additional observations on these three points.

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1. The FIDH's presentation of recent legislation

The FIDH argues that Section 97 of the 2003 Finance (Amendment) Act (No 1312 of 30 December 2003):

- abolishes immediate access to the medical assistance scheme, which has the effect of "denying care" to foreign nationals who cannot establish that they satisfy "the draconian new entitlement requirements for the assistance scheme";
- makes eligibility for the scheme conditional on three months' uninterrupted presence in France;
- restricts the emergency medical care entitlement to "hospital treatment in situations that involve an immediate threat to life".

The amendments to Articles L. 251-1, L. 251-3 and L. 251-2 and the new Article L. 251-4 of the Social Action and Family Code embodied in Section 97 of the 2003 Finance (Amendment) Act are appended.

It should be noted that the draft circular quoted by the Federation in support of its observations has been superseded. It was simply one of a number of initial administrative working documents, dating from spring 2003, and was rejected by the Government before the changes to the legislation and regulations governing the state medical assistance scheme - the only relevant provisions – were finally adopted.

The recent legislation on state medical assistance clarifies the notion of residence in France, previously the source of major difficulties. The introduction of the requirement for three months' uninterrupted presence in France provides a more formal basis for the "stable presence" condition in the initial legislation and removes the uncertainty attached to the treatment of applications from persons recently arrived in the country.

Henceforth, as in the case of universal medical coverage, those who meet the three months' uninterrupted presence and means test requirements are entitled to medical coverage for one year.

Foreign nationals who do not meet the three months' residence requirement but are nevertheless unlawfully resident in the country are not denied care. The new Article L. 251-4 of the Social Action and Family Code entitles them to necessary emergency hospital treatment, if failure to provide such treatment could be life-threatening or result in a serious and lasting deterioration in health.

The various current treatment options may thus be summarised as follows:

1. Foreign nationals with less than three months' residence in France holding a short-stay visa:	Obligation to take out an insurance policy to cover any treatment costs incurred during the stay in France.
2. Foreign nationals residing in France without authorisation for three months or less:	Eligibility for emergency treatment for which the state reimburses the national health insurance fund (CNAMTS) according to a fixed amount.
3. Foreign nationals residing in France without authorisation for more than three months:	Eligibility for state medical assistance if the other conditions are met, with the possibility of retroactive coverage of cost of treatment from the first day of hospitalisation, on condition that the latter occurred after the lapse of the three month eligibility period.
4. Foreign nationals lawfully residing in France for more than three months:	Affiliation to an occupational health insurance scheme or, failing that, entitlement to universal medical coverage, subject to the means test.

In example 3, the cost of emergency medical treatment while applications are being processed is met by the hospitals concerned. This provision replaces the immediate eligibility for state medical assistance previously applicable to medical emergency cases.

2. Entitlement of nationals of non-signatory states unlawfully resident in France to rights enshrined in the European Social Charter

The FIDH maintains that the Revised Social Charter is applicable to nationals of non-signatory states unlawfully resident in France. The *a contrario* line of reasoning on which it bases its claims is fundamentally flawed.

The French Government refers again to its previous observations, which show that the Federation's interpretation of the Charter's scope, particularly that of Article 13, is incorrect. This is clearly demonstrated in Charter case-law and the preparatory work on the Charter.

3. Failure to apply the Revised Charter to the children of nationals of non-signatory countries and their unequal treatment

The Federation claims that:

- the French Government would not deny that Articles 17 and E of the Revised Social Charter require it to meet, via the medical assistance scheme, the full cost of treatment required by the dependent children of nationals of non-signatory countries;
- dependent children of nationals of non-signatory countries "suffer discriminatory treatment in relation to other minors".

With regard to the first point, the French Government rejects the FIDH's assertion and notes, as it did in its previous memorial, that the application of the Revised Social Charter does not extend to nationals of non-contracting parties. They cannot therefore claim that it applies to their dependent children.

This is in fact recognised by the Federation itself in the first sentence of section B.2.1 of its original complaint, where it states: "Foreigners may only benefit from the rights embodied in Article 17 of the Charter *"in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned"* (Appendix to the Revised Social Charter).

While the lawful residence condition is not applicable to children, this certainly does not imply a legal obligation to apply Articles 17 and E of the Revised Social Charter to these children.

Turning to the second point, the accusation of discrimination against these children is totally unfounded.

As has already been described, the entitlement to universal medical coverage that Section 37.I of the 2002 Social Security Finance Act (No 1246 of 21 December 2001) granted to the under-age dependents of persons who themselves failed to meet the stable and lawful residence conditions for eligibility was not accompanied by entitlement to supplementary universal medical coverage. The latter covers the proportion of treatment costs – more than a third – not covered by the general health insurance scheme. Moreover, Section 37.II of the 2002 Act simultaneously abolished children's eligibility for state medical assistance under their parents' entitlement, so that any shortfall could not be made up in this way.

This situation was remedied by Section 57.III of the 2002 Finance (Amendment) Act, No 1576 of 30 December 2002. This legislation is in fact the target of the Federation's complaint. Since its enactment, the full cost of these children's care has been met by the state medical assistance scheme.

It has been shown that there is no legal obligation to apply Article 17 of the Revised Charter to the under-age children of nationals of non-signatory countries, but granting such children medical assistance with no patient contribution, as is the case in France, means that, effectively, the right to appropriate social protection embodied in this article is fully satisfied.

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