

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



26 August 2004

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

**Case Document No. 6**

**SUPPLEMENTARY OBSERVATIONS FROM THE  
INTERNATIONAL FEDERATION OF HUMAN RIGHTS  
LEAGUES (FIDH) IN REPLY TO THE OBSERVATIONS  
FROM THE FRENCH GOVERNMENT DATED 2<sup>nd</sup> APRIL  
2004**

**(TRANSLATION)**

**registered at the Secretariat on 28 July 2004**

In a letter dated 2 April 2004, the French Government submitted supplementary observations on Complaint No. 14/2003 before the European Committee of Social Rights. There are three main strands to its argument:

- the content of the changes under way, which according to the Government would pose no practical threat to access to care;
- the fact that rights embodied in the Charter do not extend to nationals of non-signatory states;
- the care and treatment offered to young persons, which would be more favourable under the state medical assistance (AME) scheme than under the universal medical coverage (CMU) scheme, applicable before the contested reform.

The FIDH wishes to reply to these three points.

**1. Measures currently or about to be adopted that remove effective access to the state medical assistance scheme**

The Government states that the draft circular appended to the Federation's observations of 18 December 2003 has been superseded. The Federation simply notes that this proposed document has since been abandoned.

However, it has been succeeded by two draft decrees, one on state medical assistance (**supporting document 1**) and the other on the conditions for access to state medical assistance (**supporting document 2**). They were submitted to the Chair of the national health insurance fund (CNAM) on 10 February 2004. On 24 February 2004, the governing board of the CNAM unanimously issued an unfavourable opinion on the two draft decrees, on the grounds that they failed to take account of the lack of security of those concerned and their reduced access to care, which was quite incompatible with elementary public health and safety requirements (**supporting document 3**). At the same time, the *Observatoire du droit à la santé des étrangers* (monitoring centre on foreign nationals' right to health) expressed very strong opposition (**supporting document 4**). Despite this consensus, the draft decrees are apparently now under consideration by the *Conseil d'Etat* (the highest administrative court).

These criticisms of the successive reforms of the state medical assistance scheme reflect the stance already taken by the FIDH in its original complaint and in its supplementary observations to the European Committee of Social Rights, namely that the scheme's growing complexity, the increasing number of eligibility conditions and the excessive number of supporting documents that are required make it difficult, if not impossible, for this group of the population to gain access to the system, and thus to treatment. This is what the European Social Charter is precisely designed to avoid.

Meanwhile, voluntary organisations and associations, such as Médecins du Monde, Médecins sans Frontières, Comede and Samu Social, which offer day-to-day medical and social support to vulnerable groups of the population in France, have criticised successive reforms of the state medical assistance

scheme and their immediate effects in terms of preventing access to care (press file: **supporting document 5**).

Despite the fact that the decree has not yet been finally approved, on 14 May 2004 the national health insurance fund sent a circular letter (LR-DMR/71/2004) to the directors of local and regional health insurance funds and their counterparts in the overseas *départements* and territories on how to interpret the residence condition for eligibility for the scheme (**supporting document 6**). Effectively, this asks the relevant social security bodies to apply the draft decree in anticipation. In particular, it seriously undermines the evidential value of formal declarations by applicants for medical assistance or those providing their accommodation concerning their presence in the country. The result is that members of this extremely vulnerable group will find it much more difficult, if not impossible, to establish the nature of their presence in France. The monitoring centre on foreign nationals' right to health has recently drawn the attention of the Chair of the national health insurance fund governing board to the abuses to which this circular gives rise (**supporting document 7**).

The conditions governing eligibility for care of foreign nationals residing in France but with no residence permit, as modified since December 2002 and the introduction of this complaint, may be summarised as follows:

1. Section 57 of the 2002 Finance (Amendment) Act, No 2002-1576 of 30 December 2002:
  - introduction of a maximum flat-rate charge (*ticket modérateur*), to be established by decree. The latter has not yet been published but the principle is still applicable;
  - state medical assistance scheme no longer confined to hospital care: came into force on 31 December 2002;
  - children of state medical assistance beneficiaries no longer entitled to social security and supplementary universal medical coverage (CMU) benefits: came into force on 31 December 2002.
  
2. Section 97 of the 2003 Finance (Amendment) Act, No 2003-1312 of 30 December 2003:
  - end of immediate eligibility;
  - three months' residence requirement;
  - creation of a fund, under Article L. 251-4 of the Social Action and Family Code, to meet the specific costs arising from urgent hospital treatment for non-state medical assistance beneficiaries, if failure to provide such treatment could be life-threatening or result in a serious and lasting deterioration in health, or in connection with childbirth.

Meeting such costs does not establish any personal entitlement to state medical assistance;

- where provision or a prior undertaking is made to meet the cost of hospital treatment and accommodation, the state medical assistance scheme may not cover the part of the cost corresponding to this provision or undertaking, which has to be met by the state medical assistance beneficiary.

## **2. The non-applicability of rights embodied in the European Social Charter to nationals of non-signatory states**

The Government claims that the FIDH has sought to extend rights enshrined in the Social Charter to nationals of non-signatory states.

This interpretation is erroneous. The Charter is clearly only binding on its contracting parties and the Federation has never intended to argue that it is universally applicable. Moreover, in its observations of 18 December 2003, it cited Article 1 of the Appendix to the Charter, which defines foreign nationals protected by the Charter as: "foreigners ... [who] are nationals of other Contracting Parties ...".

However, the Federation must also point out that certain international treaties that are universal in scope, such as the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, which came into force in France on 21 September 1970, establish the principle of non-discrimination on grounds of nationality, and that this is applicable to access to social security. As a result, a right granted only to the nationals of contracting parties to the European Social Charter may be applicable to all.

The Federation also refers to its own analysis of Article 1 of the Appendix to the Charter, according to which Article 13 paragraph 4 is one of the exceptions to the principle established in Article 1 of the Appendix that Social Charter protection is conditional on lawful residence.

## **3. The treatment of young persons**

The Government maintains that the Federation is wrong to argue that the Social Charter is applicable to the children of nationals of non-contracting parties and that including foreign children in the scope of the state medical assistance scheme was in breach of the principle of equal treatment.

The Federation contests the arguments put forward by the Government in support of its case.

- Regarding the first point, it refers to its earlier point about the Government's erroneous interpretation. The Charter is clearly only binding on its contracting parties and the Federation has never intended to argue that it is universally

applicable. Articles 17 and E of the Revised Charter therefore only cover the children of nationals of Charter contracting parties.

- Turning to the second point, the Government's claim that state medical assistance would offer children and young persons more favourable treatment than the universal medical coverage scheme, as provided for prior to the reform in question, is totally fallacious.

The fact that these provisions exempt young persons from the patient contribution, so that all their treatment costs are met by state medical assistance, does not suffice to show that the situation of eligible children of unlawfully resident nationals of Social Charter signatory states has improved, or that they are treated the same as French and other European children.

The provisions applicable prior to the reform, listed by the Government in its most recent observations of 2 April 2004, need to be extended. Section 57 of the 2002 Finance (Amendment) Act repealed a provision that entitled children of foreign nationals with no residence permit to full - not partial as the Government claims - remission of the costs of treatment. The changes in the charging arrangements for the children of unlawfully resident foreign nationals may be summarised as follows:

- Before the 2002 Finance (Amendment) Act of 30 December 2002 the dependent children of foreign nationals who failed to meet the stable and lawful residence conditions for eligibility for universal medical coverage (CMU) were themselves covered by the basic and supplementary CMU schemes.

Section 37.I of the 2002 Social Security Finance Act of 21 December 2001 brought France into line with several international conventions and treaties ratified by France embodying equal treatment in social security matters, particularly for children. These include:

- the International Convention on the Rights of the Child of 20 November 1989, which came into force in France on 3 September 1990;
- the United Nations International Covenant on Economic, Social and Cultural Rights of 16 December 1966, which came into force in France on 4 February 1981;
- the United Nations International Covenant on Civil and Political Rights of 16 December 1966, which came into force in France on 4 February 1981;
- ILO Convention No. 118 concerning equality of treatment of nationals and non-national in social security of 28 June 1962, which came into force in France on 13 May 1975.

As a result, like French children and the dependent children of lawfully resident foreign nationals, the young persons concerned had the cost of their

care met in full, because they were eligible not only for basic universal medical coverage, as noted earlier and not disputed by the Government, but also, assuming they also met the income criteria, for the supplementary scheme, under Articles L.861-1 and R.861-1 of the Social Security Code. As the Federation stated in its initial complaint, these children were exempted from the need for a French residence permit so they could not be denied care on the grounds that they were not lawfully resident.

- Since the 2002 Finance (Amendment) Act of 30 December 2002 these same children have been covered by the state medical assistance scheme.

The Federation is forced to repeat its claims that state medical assistance is a cut-price form of care offering a lower level of health protection, and even more significantly that, as in the case of all potential beneficiaries, it is more difficult to secure access to this scheme. The relevant factors are:

- the different services and benefits covered by universal medical coverage and state medical assistance: in particular, spectacles and dental prostheses are not covered by the latter, whereas their cost is met by the supplementary universal medical coverage scheme, a free public service for persons on low incomes who are lawfully resident and for which the young persons concerned were eligible before the reform;
- non-immediate eligibility for the state medical assistance scheme;
- the restriction of urgent medical care covered by the scheme to immediately life-threatening situations.

Far from having rectified the situation, as the Government wishes us to believe, the 2002 Finance (Amendment) Act has made it worse.

Finally, the FIDH notes that the Government does not dispute that the treatment of dependent children of unlawfully resident foreign citizens who are nationals of contracting parties to the Revised Social Charter must be based on the principle of non-discrimination, in accordance with Articles 17 and E.