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NOTE EQUIVALENT TO AN OPINION

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NOTE EQUIVALENT TO AN OPINION ON THE MEDICAL ASSESSMENT PROCEDURE FOR ALIENS APPLYING FOR RESIDENCE PERMITS ON MEDICAL GROUNDS

In a letter of 23 December 2003, Mr Jean-François Mattei, Minister for Health, Families and the Disabled, asked the National AIDS Council to address the issue of the assessment procedure of medical situations that may justify a residence permit[1]. The Ordinance of 1945[2] stipulates that a residence permit is granted to " a foreign citizen usually residing in France whose health condition requires medical care, the lack of which could entail consequences of exceptional severity, on condition that he/she cannot receive appropriate treatment in his/her country of origin ". The procedure requires in particular that a medical officer at département level, give an opinion on the applicant's medical file. The Law of 26 November 2003 supplemented the existing scheme by giving the medical officer or the chief medical officer from Paris police head-quarters the ability to call the applicant before a regional medical commission[3]. The Minister's request is that the Council not only address the commission's structure and functioning, but also the very concept of " consequences of exceptional severity " and the way practitioners are informed as to care supply in the applicants' countries of origin.

1 BASICALLY THE COUNCIL CONSIDERS THAT THE RIGHT OF RESIDENCE FOR HEALTH CARE MUST BE INTEGRATED IN A GLOBAL HEALTH AND COOPERATION POLICY.

From a public health standpoint, the principle of access to care for as many people as possible is imperative. For HIV infection, which is spreading among the underprivileged, lesser access to care undermines efforts designed to control the epidemic. The cost-benefit ratio of care shows long-standing evidence in favour of early intervention, which benefits the person directly and prevents more costly interventions or complications at later stages of the disease. Access to care for any person present on national territory whatever his/her legal status must therefore be facilitated and encouraged. In this respect, the ongoing reform of State Medical Benefits is contrary to basic public health principles and provides no satisfactory response to the current issues, at both economic and health levels.

The Council once again puts emphasis on the principle whereby a patient with no residence permit cannot be denied treatment unless alternative access to care is provided, by virtue of the right to health protection that every person holds; the Council has always advocated that right and will continue to do so. Denial of care would amount to placing lives in jeopardy. Also, it would be advisable to seek ways and means for European Union member states to endorse that principle and more extensively, to promote common health and cooperation policies. The only acceptable exception to that principle would be nationals from countries of which it is common knowledge that treatment is available and that there is an actual individual right and access to that treatment, without any risk of stigma or discrimination. Health care for migrants in France raises the issue not only of the legislation applicable on national territory but also the capacity of the health care systems of migrants' countries of origin.

That is why the Council will very soon address migrants' health with a global approach to the issue which is the only way to tackle it satisfactorily. It will especially analyse the modes of access to care for aliens present on French territory and the health schemes promoted by cooperation policies.

Notwithstanding this necessary approach and the time allotted, the Council has nevertheless decided subsidiarily to respond to the issues referred by the Minister.

[1] Appendix, referral letter in French.

[2] Ordinance no 45-2658 of 2 November 1945.

[3] Article 12b, paragraph 11, as it now stands following Law no 2003-1119 of November 2003.

2 CONSIDERATIONS AND PROPOSALS ON THE ASSESSMENT OF ALIENS' APPLICATIONS FOR RESIDENCE PERMITS ON MEDICAL GROUNDS.

2.1 ON THE GENERAL ORGANIZATION OF THE PROCEDURE PROVIDED BY THE LAW:

Envisaged as an ability granted to the préfet to question medical officers' opinions, the 'summons' by the regional medical commission is, following a Parliamentary debate, within the medical officers' scope[4]. As legislation currently stands, it is in no way an appeal procedure, either for the préfet or for the applicant, but an additional medical opinion to supplement the medical officer's opinion which is itself based on a certificate from an officially approved physician or a hospital practitioner. The Council therefore questions the relevance of such a commission, especially as after close study of the document adopted at the final reading of the Bill, it would seem that the 'summons' of the applicant to the commission has no clear purpose. Moreover, the " medical consultation " concept is not concisely defined either as a medical check-up, an analysis of the medical file or an assessment, in the applicant's presence, of access to treatment on his/her country of origin.

Even though referral to this new regional medical commission is optional, resorting to it can only slow down the process of access to a residence permit on medical grounds. Moreover, for some regions such as Ile-de-France which totals two thirds of all national applications (Paris police head-quarters alone registers 50% of all national applications[5]), the functioning of one single commission seems unrealistic and could eventually block the entire system. Consequently there is true concern that procedures will thus take much longer. Administrative complications may render access to care and patients' compliance more difficult; this is not acceptable from a public health stand point[6].

Subsequently, the Council considers that the regulations in force must be fully applied. Firstly, as the circular of 5 May 2000[7] once again stresses, the préfet must give formal acknowledgement to the person who is applying for a residence permit. That document will enable the person to stay on French territory and will give him/her access to Universal Medical Coverage (CMU), until his/her case is ruled. Secondly, when the préfet decides to approve the application under article 12 a, paragraph 11 previously mentioned, it is compulsory for him to issue a 'temporary residence permit' which allows the holder to work. The 'temporary residence authorization', often issued, does not ensure access to appropriate care.

2.2 REGARDING THE COMMISSION'S COMPOSITION AND ROLE:

Establishing the practicalities of the commission's functioning must have one main objective: not to lengthen applications' duration of investigation.

The commission should have a small and uneven number of members, for instance five. Members, proposed by the regional medical officer and then appointed, should include a representative of the French Medical Association, and medical practitioners from the regional teaching hospital specialized in the main diseases observed. If need be, the regional medical commission could request the expert assistance of a specialist physician for additional information on a particular case. The medical officer who issued the initial 'summons' should not be a member of the commission.

The regional medical commission should operate like a commission of independent experts whose duty it is to rule the case submitted to them. To that end, it should assess both the consequences to the person of lack of treatment and the actual access to necessary care that person has in his/her country of origin. Subsequently, in order to issue an opinion, the commission requires precise and updated information on the health care systems' situation in the countries of origin.

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[4] In its initial form, the amendment that proposed the creation of the commission was designed to halt 'phoney certificates'. During the discussion on the amendments, the procedure was changed and it is now the medical officers' responsibility to call the applicants before the commission. See Parliamentary debate, 3rd session of 8 July 2003, Journal Officiel, pp. 7089-7090. Such suspected misuse also appears in the circular of the Ministry of the Interior of 7 May 2003, p. 11. Setting up this commission would seem to be related to some form of suspicion as regards medical opinions issued previously.

[5] For the year 2002, the DPM directorate estimates that the number of medical opinions issued by the medical officers in France by virtue of article 12 a, paragraph 11 is 23 000, a 50% increase over the previous year. However, figures include both initial applications and renewals that current statistical data do not enable to differentiate.

[6] In this respect, it must be stressed that as things stand, getting a residence permit for medical reasons takes time. According to data collected in a Paris hospital, average time is 6.5 months and varies from 4.6 to 22.8 months.

[7] See joint circular from the Ministry of Employment and Solidarity and the Ministry of the Interior, of 5 May 2000, DPM/CT/DM2-3/DGS/2000 and NOR/INT/D/00/00103/C.

2.3 REGARDING INFORMATION ON TREATMENT AVAILABILITY AND ACCESSIBILITY IN COUNTRIES OF ORIGIN:

According to the circulars of 12 May 1998 and 5 May 2000 of the Ministry of the Interior, the medical officers do have information on the existence of treatment in the country of origin. Such information is provided by the medical advisor of the Populations and Migrations Directorate (DPM) of the Ministry of Health.

Up to now, information collected mainly concerns availability of treatment and biological follow up in various countries but not their actual accessibility to patients. As evidenced in the Council's report on HIV in Overseas departments, possible access to treatment is not equally distributed, even in French territories. Acess to treatment in developing countries depends on a number of variables: not only treatment availability, the person's income and the proximity of dispensaries, but also elegibility criteria for some hospital or community-based care programmes. National or international initiatives can modify the generally not favourable situation of these countries. However, the National AIDS Council considers that it is often difficult to establish with certainty the effectiveness of individual access to medication, to biological tests and to satisfactory care in many countries.

So as to obtain more extensive information on actual care accessibility, it is therefore necessary to set up an information and coordination link between the different administrations likely to be involved and which would include the Populations and Migrations Directorate. For instance, the technical assistants working abroad under the jurisdiction of the Ministry of Foreign Affairs, can provide information to the DPM which can in turn make it available to the medical officers and the regional commissions. Such evaluations should be regularly updated, country by country, disease by disease.

2.4 REGARDING THE CONCEPT OF EXCEPTIONAL SEVERITY:

The " consequences of exceptional severity " must be assessed both in terms of public health and for the person involved. Referring to such a concept implies that for each applicant not only must the vital prognosis be examined, but also the existence of a severe impairment to an important function. The principle must be that of an individual examination of the application. In each case, the severity of the disease and, failing treatment, its immediate and long-term consequences, must be assessed.

Assessing a situation of exceptional severity will be facilitated by guidelines. Medical officers should be able to consult the opinions issued by the regional medical commissions. This information source, regularly supplemented, would be a reference particularly through the inventory of the serious diseases that justified granting a residence permit for medical reasons, as well as the analyses undertaken by the commission members on the cases submitted to them. Subsequently it would be advisable for representatives of the regional commissions to meet at national level, at least once a year so as to establish some form of harmonization.

APPENDIX, REFERRAL LETTER IN FRENCH

Le Ministre de la santé, de la famille
et des personnes handicapées
République Française

Paris, le 23 déc.2003

Monsieur le Président

Le Conseil national du sida a émis, en date du 18 décembre 1995, un avis, suivi d'un rapport, sur la situation des personnes atteintes par le VI H de nationalité étrangère et en irrégularité de séjour.

Cet avis a permis d'éclairer le législateur qui a procédé, en 1997 (loi du 25 avril 1997) et 1998 (loi du 11 mai 1998), à plusieurs modifications du code pénal et de l'ordonnance du 2 novembre 1945. C'est dans ce cadre qu'a été introduit l'article 12bis 11° qui prévoit la délivrance de plein droit d'un titre de séjour temporaire assorti d'une autorisation de travail « *à l'étranger résidant habituellement en France dont l'état de santé nécessite une prise en charge médicale dont le défaut pourrait entraîner des conséquences d'une exceptionnelle gravité, sous réserve qu'il ne puisse effectivement bénéficier d'un traitement approprié dans le pays dont il est originaire* ».

Le 28 octobre 2003, l'Assemblée nationale a adopté une loi modifiant différentes dispositions de l'ordonnance du 2 novembre 1945 et a ajouté un alinéa à l'article 12bis 11° (article 7-4° de la loi adoptée le 28 octobre 2003) :

4° Le douzième alinéa (11 °) est complété par deux phrases ainsi rédigées :

« La décision de délivrer la carte de séjour est pise par le préfet ou, à Paris, le préfet de police, après avis du médecin inspecteur de santé publique de la direction départementale des affaires sanitaires et sociales compétente au regard du lieu de résidence de l'intéressé ou, à Paris, du médecin, chef du service médical de la préfecture de police. Le médecin inspecteur ou le médecin chef peut convoquer le demandeur pour une consultation médicale devant une commission médicale régionale dont la composition est fixée par décret en Conseil d'Etat. »

Je souhaite que le Conseil organise une réflexion propre à préparer l'**élaboration du décret fixant la composition de la commission médicale régionale nouvellement créée**, ainsi qu'une circulaire qui préciserait **les modalités de fonctionnement de cette commission**.

Cette réflexion doit également porter sur :

- **l'opportunité de préciser la notion de « conséquences d'une exceptionnelle gravité »** et sur les éléments propres à éclairer cette notion ;

- **les sources et les modalités possibles de recueil d'informations relatives à l'offre de soins dans les pays d'origine** propres à éclairer tes médecins appelés à émettre un avis sur le fait que l'étranger « *puisse [ou non] effectivement bénéficier d'un traitement approprié dans le pays de renvoi* ».

Je vous remercie de me faire connaître les résultats de votre réflexion et vos propositions avant ta fin du mois de février.

Je vous prie de croire, Monsieur le Président, à l'expression de ma haute considération.

Jean-François MATTEI