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

1) Reference Details

Jurisdiction: European Committee of Social Rights
Date of Decision: 3 November 2004

2) Facts

The complaint was lodged on 3 March 2003. It related to Articles 13 (the right to social and medical assistance), 17 (the right of children and young persons to social, legal and economic protection) as well as Article E of the Revised European Social Charter (prohibition of all forms of discrimination in the application of the rights guaranteed by the treaty). It was alleged that recent reforms of the Aide médicale de l’Etat (State medical assistance) and to the Couverture maladie universelle (Universal sickness cover) deprived a large number of adults and children with insufficient resources of the right to medical assistance.

3) Law

National Law

- Section 97 of the 2003 Finance (Amendment) Act of 30 December 2003

International Law

- Article 13 of the European Social Charter (the right to social and medical assistance)
- Article 17 of the European Social Charter (the right of children and young persons to social, legal and economic protection)
- Article E of the European Social Charter (prohibition of all forms of discrimination in the application of the rights guaranteed by the treaty)

4) Legal Arguments

The Complainant

The complainant (FIDH) asked the Committee to declare that the legislation and practice contravened the provisions of Articles 13 and 17 of the Revised Social Charter and discriminatory. Concerning Article 13, FIDH submitted that it ended the exemption of illegal immigrants with very low incomes from all charges. FIDH acknowledged that though the fact that the persons concerned were unlawfully present on the territory pf the State party
may constitute a reason under Article 13(4) for them not to be entitled to exactly the same treatment as nationals, but in no way would it justify denying them all medical assistance.

FIDH further submitted that the 2003 Finance (Amendment) Act exacerbated the situation by abolishing the system of immediate admission to the assistance scheme, requiring that individuals must spend an uninterrupted period of three months in France before being entitled to state medical assistance and restricting the emergency medical care covered to hospital treatment to situations which involve an immediate threat to life. Concerning Article 17, FIDH argued that the restriction on the rights of children and young persons arising from the Act of 31 December 2002 constituted a violation of Article 17, and listed several differences between the arrangements made for the exercise of the right to medical assistance by French children and those made for the exercise of the same right by the children of illegal immigrants, including the provision of spectacles and dental prostheses, admission to the medical assistance scheme after a certain time, and the fact that medical care for the children of illegal immigrants is provided only in situations that involve an immediate threat to life. FIDH inferred from this that the situation constituted a violation of Article 17 in conjunction with Article E.

The State

The State submitted that illegal immigrants, including children, do not fall within the scope of the definition of protected persons given in the Appendix to the Charter and are not, therefore, covered by any of the rights guaranteed by the Charter. The State further submitted that the effect of the reform in the Act of 30 December 2002 was to ensure that the medical costs of children will be met in full, without any patient contribution, even if their presence is unlawful, and that the FIDH is wrong to assert otherwise.

5) Decision

The Committee held that legislation or practice which denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if they are there illegally, is contrary to the Charter. On the alleged violations of Article 13 the Committee noted that the legislation in question did not deprive illegal immigrants of all entitlement to medical assistance, and therefore found no violation. It did however find a violation of Article 17 on the basis that medical assistance to the illegal immigrant children in France is limited to situations that involve an immediate threat to life and that children of illegal immigrants are only admitted to the medical assistance scheme after a certain time.