Access to Health Care for Illegal Immigrants: A Specific Organisation in France

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Abstract

Health care is a fundamental human right in Europe, and all Member States recognise everyone’s right to access to preventive healthcare and to receive medical care in the event of sickness or pregnancy. Nevertheless, this right is focused on citizens and the application to migrants, particularly undocumented migrants, varies widely in the EU. The French legislation is organized with a humanitarian approach. In this article, the authors present the French system of social protection, the “Couverture médicale universelle” or CMU, which provides the same protection to asylum seekers and documented immigrants as to nationals, and the “Aide médicale d’état” or AME, that is open to every person who does not fulfil the legal conditions to obtain the CMU, such as illegal immigrants. Created in 1995, recently access to the AME has been restricted. A claim of discrimination has been rejected by the Conseil d’Etat and 215 000 persons received the AME in 2009. The expenses incurred by the AME increased by 17% in 2010, and there is a debate in Parliament to limit care and to ask the recipient for a financial contribution.

Keywords

access to health care; undocumented migrants; health protection; human rights; French system of social protection; Aide médicale d’état (AME); Couverture médicale universelle (CMU); specific protection for illegal immigrants

1. Introduction

Health care is a fundamental human right in Europe, and all member states recognise the right of everyone to access to preventive health care and to receive medical care in the event of sickness or pregnancy. Nevertheless, this right is focused on citizens, and the application to migrants, particularly undocumented migrants, varies in the EU. Roman Romero-Ortuno compared 6 EU countries

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(Belgium, Germany, The Netherlands, United Kingdom, Spain, and Italy) and concluded:

Among the six EU countries studied, only Spain has created the legal conditions for the fulfilment of its duty, followed in “generosity” by Italy. This humanitarian (or human rights-based) approach contrasts with the more utilitarian (or negative externalities-based) approach seen in Germany and, to a lesser extent, the UK, which cover illegal immigrants insofar as that “protects (physically and psychologically) the health of the host population… Belgium and the Netherlands would represent a ‘softened’ case of this utilitarian approach.

He pointed out that in Spain, those illegal immigrants who register with their local census (Padron Municipal des Habitantes) will be fully entitled to healthcare under the same conditions as Spaniards. Unregistered illegal immigrants will retain entitlement as long as they are minors under 18 or women during pregnancy, delivery or postpartum. Only urgent care will be provided to the rest in the event of severe illness or accidents.

Similarly, French legislation regulating access to healthcare for immigrants presented in this article is clearly organized with a humanitarian approach. Immigrants with residence permit can receive the Couverture Médicale Universelle (CMU). Illegal immigrants can benefit of a specific insurance; the “Aide médicale d’état” (AME) open to every person who does not fulfil the legal conditions to obtain the CMU.

The increasing number of immigrants coming to France is the result of on the one hand, the free movement for citizens of Member States and the EEA (Norway, Switzerland, Iceland, Liechtenstein), and on the other hand, of the attraction of Europe and developed countries for southern and eastern populations. The immigrants are seeking by all possible means to avoid poverty and unemployment in their country of origin. Even if their conditions as undocumented immigrants in France are very bad, they are sometimes much better off than those in their native country. This population is vulnerable and in poor health; this is a public health concern. Illegal immigrants are in need of prevention and medical care.

2. The French Social Protection System

The French social protection system consists of two pillars.

2.1. General Social Protection

General social protection in France is accessible to all persons residing on French territory, and linked to a professional activity (as an employee or as an indepen-

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3) Article 12 of the Organic Law n° 8 of 22 December 2000 on the rights and liberties of foreigners in Spain and their social integration.
dent worker). It is a compulsory public insurance for every person working in France and their family members. The insurance is partially paid by the employee (a small amount) and by their employer. Self-employed workers have the same social protection as employees and pay personally for the corresponding taxes.

In this social protection system, the recipient pays for care and is then reimbursed. For expensive care, pregnancy and chronic diseases, the costs for the care is fully reimbursed. In other cases, 70% of the expenses for medicines and care are reimbursed, and a contribution is paid by the recipient. An extra private complementary insurance can pay for the part of the expenses that were not reimbursed. When the person is unable to pay for this private insurance, a specific free insurance is provided (under resource conditions) called “complementary CMU”.

Moreover, some compulsory amounts are charged to the recipients: 0,50 Euros for each package of medicines, 0,50 Euros for each instance of nursing care, 2 Euros for transfer in an ambulance. The maximum sum paid per year is limited to 50 Euros, and the recipients of CMU and AME (see below) do not have to pay for this. For every consultation with a physician a contribution of one Euro is required (except for children, CMU recipients and pregnant women after the 6th month). The sum of 18 Euros is charged for each day in a public or a private hospital, and 13,50 Euros in psychiatric hospitals (except for AME and CMU recipients). For medical charges of more than 91 Euros, 18 Euros are paid by the patient. A private insurance and the complementary CMU can pay for these charges.

2.2. The Couverture Médicale Universelle (CMU) and the “Aide Médicale d’Etat” (AME)

For unemployed people and their family, according to the solidarity principle and to the fight against the exclusions, a specific social insurance is open to all the residents: the CMU (universal medical coverage), funded by the State and provided under resources conditions. CMU is meant for people living in France on a regular basis, with an imperative condition of legal residence (nationals or foreigners with residence a permit). As of 31 December 2009, there were 3,793,493 CMU recipients, of which 66% for the complementary CMU and 753,678 for the basic CMU.

The CMU is dedicated to the principle of a right for all to equitable access to healthcare of appropriate quality under the same conditions as a person could receive with the social medical insurance linked to work.

The AME was created in 1995 for all other persons remaining on French territory who do not fulfil the residence conditions to obtain the CMU. The AME is directed at “people without a stable residence and to illegal aliens”. The AME

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4) According to the prescription of Article 3 of the Oviedo Convention on Human Rights and Biomedicine.
does not make any selection by country of origin or by nationality; it is open to everyone.

3. Immigrants’ Access to Care

3.1. Medical Care in Emergency Open to Everyone Staying in France

In France, medical care in case of emergency (when the patient’s life is endangered) is open without any restriction to all foreigners who need it, whatever their legal status (having a residence permit or not). For example, the following are considered as emergency care: treatment of serious infectious disease posing a threat of contamination (tuberculosis, HIV), and all care given in hospitals for children, pregnancy and for the new-born (Article L 254-1 Code Action Sociale et des Familles).

Such protection, known as AME humanitarian, is open to every foreign citizen travelling in France who has no social protection in its country of origin or private insurance and who is in need of medical care for accident or illness. This opportunity can also be offered to a person living permanently in a foreign country, who comes to France to receive individual care that cannot be provided in the country of origin. Very few cases are admitted each year.

Undocumented aliens with very serious diseases have access to care in emergency, and can be allowed to stay in France for the follow-up of the illness. According to Article 313-11 of the Code de séjour des étrangers, a residence permit can be given to aliens with serious diseases when they cannot have access to the appropriate medical treatment in their country of origin. Quite often, in the country of origin, despite the fact that treatment is available, access to it and to medical supervision is not a reality. Treatment being available does not mean that in practice everybody has access to it.

The AME is not funded by the public social medical insurance but by the State, after the agreement of the Minister of Social Affairs. When a person who resides abroad is visiting a relative and needs medical care, this care cannot be provided by means of the relative’s CMU; the visitor can only receive humanitarian AME.

3.2. Medical Care for Asylum Seekers and Immigrants with Documents

The French Constitution guaranties access to health protection to all. The access to care is based on the principle of territoriality, and is open to every resident in France without any condition of nationality. Health protection and medical care are a right for every immigrant legally residing or working in France and for asylum seekers. Foreigners seeking asylum may obtain a temporary residence permit for the period their application is under consideration.
Immigrants coming from the EEA are allowed to reside and work in France. They can obtain a residence permit if they provide proof of employment; however, they are not obliged to apply for a residence permit. A right of permanent residence is granted to any EEA citizen who has resided five years in France.

Art. L311-2 of the Code d’entrée et de séjour (CSS) establishes the principle of affiliation to the general social protection system to all persons regardless of their nationality who are “[. . . .] employed or working in any capacity or in any place whatsoever, for one or more employers and regardless of the amount and nature of their salary, the shape, the nature or the validity of their contract”.

3.3. The Situation of Illegal Immigrants Is a Growing Issue

It is considered as an offense for a non-EEA or a foreign citizen to remain in France without a residence permit. Article L 621-1 of the CSS lays down punitive sanctions: one year’s imprisonment and a 3750 Euros fine.

In addition, everyone voluntarily willing to help an undocumented immigrant to stay in France is exposed to punitive sanctions of up to 5 years imprisonment and a fine of 30 000 Euros. Family members of the immigrant cannot be prosecuted under this article (e.g., a husband or wife, parents, brothers and sisters and their spouses). Nevertheless, family members could be punished for complicity in irregular entrance on French territory or irregular stay in France, for the purposes of marriage or arranging a marriage or child recognition in order to obtain a residence permit or to obtain French nationality.

Public employees are not under obligation to denounce illegal immigrants. Social workers working for undocumented migrants do not have to tell the administration which foreign citizens do not have a residence permit; they are obliged to respect professional secrecy. This confidentiality is very strict, and the respect for this professional confidentiality in criminal jurisprudence is general and absolute. No one can discharge the professional from their obligation to confidentiality, except in cases set by the law. This is very different from the German situation where all public employees are obliged to denounce any illegal alien encountered during the course of their work.5

To benefit from health protection and medical care, the Law of 24 August 1993 introduced a condition of residence or of regular entry on French territory. According to the constitutional principle of equality, every immigrant residing legally in France and asylum seekers have the same rights as French citizens.

Art. L 115-6 CSS says that persons from foreign countries can only benefit from the compulsory social security protection when they have a residence or work permit. The same rights are open to immigrants coming from countries who have signed a convention of reciprocity for social protection, from a country

5) Article 76 of the 1990 Alien Act, see Romero-Ortuno, supra note 2, p. 256.
that has signed an agreement with the EU (Algeria, Morocco, Tunisia and Turkey), or from a country that has signed a bilateral agreements with France (Central Africa, Gabon, Mali, Senegal, Togo). In accordance with the principle of reciprocity, Article 11 of the Civil Code states that “the immigrant will have, in France, the same rights as the French citizen will have in the country the immigrant comes from”.

3.4. Medical Care for Occupational Accidents

Social protection for occupational accidents is a specific item of public social insurance charged to the employer. There is no condition stipulated of regular residence in France. Some immigrants without a residence permit can be employed and earn a salary. This situation (called “hidden work”) is illegal; the employer is obligated to verify that the employee has both a residence and work permit. Employers who know that an immigrant has made use of forged documents can be prosecuted. On the other hand, the undocumented immigrant in question cannot be sanctioned.

When an immigrant is injured while working, the right to specific protection is open to the victim if the employer reports the accident to the social services. However, if the employee in question is an undocumented immigrant, generally speaking, the employer does not do this.

The social health insurance covers all medical care, and if the accident victim is unable to work for a certain period, compensation is paid for the lack of salary (half-salary indemnification). If the employee is completely unable to work anymore, a pension is paid. This is applicable to every worker; being an illegal immigrant is not an obstacle to this system of protection. It is only necessary to prove that a salary has been paid by the employer.

4. Health Protection for Illegal Immigrants

4.1. The AME

A special health protection system is open to illegal immigrants living in the country without any residence permit. As was seen above, in 1995 France adopted the AME specifically for people without a stable residence and for illegal aliens. The AME is granted under conditions of general law to those residing in France for over 3 years. For foreigners living in France for less than three years, the AME

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8) Article L. 190-1-2 of the Code des familles et de l'action sociale CFAS.
9) Ibid., Article 186-4.
is awarded for one year only and covers care in health establishments and any medical prescriptions on that occasion, as well as care in outpatient clinics.\(^{10}\)

As illegal immigrants cannot make use of the CMU, the AME has been amended by the Convention of 17 October 2000 following the establishment of the CMU. The former AME regulations related to the need for care has been transformed into a framework of social medical assistance. This new mode of protection is State-funded.\(^{11}\)

At present, the AME is an assistance-system irrespective of disease; it is provided by the social services of the place of residence. To qualify, the candidate must prove 4 points:

- their identity, and the identity of persons living or depending upon them,
- residence in France,
- financial resources not exceeding a certain amount (for 2009, under 634 Euros by month for one person living alone),
- the persons living abroad who are in charge of the candidate.

A certificate of the right to the AME is delivered for one year and can be renewed. This document should be presented to every health professional physician, pharmacist, dentist, laboratory, etc. When the candidate qualifies for the AME, all medical expenses paid during the month before the delivery of the certificate can be reimbursed. Due to financial restrictions, the admission requirements were modified in 2002 and 2003, the beneficiary has to prove that they stayed in France for at least 3 months (Article 97 of the Law for Finances of 30 December 2003).

### 4.2. Claim of Discrimination

On 28 September 2005, several associations for protection of immigrants and human rights contested Article 97 of the Finance Law on grounds of discrimination, and asked for the annulment of the decree 2005 859 modifying the conditions to be fulfilled to be eligible for the benefit of the AME. They based their claim for annulment on the violation of Articles 9 and 10 of the International Covenant on Economic, Social and Cultural Rights, stating that parties recognize the right of everyone to social medical insurance. In June 2006, the \textit{Conseil d'Etat}\(^{12}\) considered that Articles 9 and 10 of the International Covenant on Economic, Social and Cultural Rights do not apply directly to individuals, and therefore may not be eligible for cancelling a decree. Moreover, a violation of Article 26 of the International Covenant on Civil and Political Rights stating that “\textit{All persons are}...”

\(^{10}\) \textit{Ibid.}, Article 186-3 .

\(^{11}\) \textit{Ibid.}, Article L 251-1.

\(^{12}\) \textit{Conseil d'Etat} decision 285576 (7 June 2006).
equal before the law and are entitled without any discrimination to equal protection of the law”, can only be invoked by those who claim they are discriminated against. It cannot be used as a basis for the annulment of a decree.

As to the substance, the Conseil d’Etat did not find any discrimination in the decree. Firstly, the decision referred to Article 6 of the Convention n° 97 of the International Labour Organisation, which states that for the purpose of medical assistance Members Parties to the Convention should apply without any discrimination regarding nationality, race, religion or gender, the same treatment as is applicable to national citizens. However, this article refers to immigrants working in the country with a residence permit, and not to illegal aliens. Secondly, the Conseil d’Etat considered that there is no discrimination in the difference of treatment of those who fulfil the requirements of the CMU and those to whom only the AME applies. In the distinction between the two forms of protection, the legislator takes into account the difference of status of aliens who satisfy the conditions for legal residence in France in accordance with French law and international treaties, and of those aliens who do not satisfy the conditions. This criteria is objective and in accordance with the aims of the law.

Thus, all the arguments based on discrimination used by the associations for the annulment of the decree were rejected by the Court.

Furthermore, the Conseil d’Etat considered the case of children. Article 3-1 of the International Convention of the Rights of Children (UN, 26 January 1990) forbids any restriction in the access to care for minors under the age of 18, because the best interests of the child should prevail. The Conseil d’Etat argues that during the first 3 months of residence without access to the AME, minors, who then can only benefit from medical care in case of an emergency in a life-threatening situation, would be deprived of all other necessary care. This lack of necessary medical treatment would have negative consequences for the child’s health. Consequently, the Conseil d’Etat declared the decree as being against the law in as far as it applies to alien minors, not on the basis of discrimination, but due to not respecting a conventional obligation.

As a result, since this decision, the condition of 3 months residence to be eligible for the AME is no longer applicable to children.

5. Final Remarks

In 2009, over 215 000 persons received the AME at a cost to the State of 588 million Euros. For financial and political reasons the legislation is subject to change.

The legislative project “Immigration, Integration and Nationality” modifies the conditions to benefit recipients of a residence permit for the purpose of long-term care for serious diseases. The new terms of the Article 313-11 will be as fol-
allows: “if there is no appropriate treatment in the country of origin”, instead of “the individual cannot actually obtain appropriate treatment in the country of origin” Such a modification will result in refusal of prolongation of the residence permit and allow for the deportation of foreign patients to their country of origin when medical treatment is available. Deportation will interrupt ongoing treatment and make the care more complicated, compromising the person’s chances of survival. For instance, in some countries less than 5% of people who need treatment for AIDS can obtain it (because it is not available everywhere in the country or because they cannot afford to pay for it).

On 30 October 2010, during the discussion of the 2011 Finance Law there was a debate in the Parliament to ask illegal immigrants who receive assistance under the AME to pay a contribution of 30 Euros each year. In the Assemblée Nationale, the President of the Commission of Laws said that expenses under the AME increased by 17% between May 2009 and May 2010. So in order to limit expenses, the Assembly voted for a yearly contribution of 30 Euro from AME recipients, and a limitation of the care to be provided (e.g., no treatment for sterility and no hydrotherapy treatment). In December 2010, the Senate rejected this amendment. The Commission of Social affairs was of the opinion that this 30 Euros burden on very poor people will be a huge constraint leading them to postpone or to refuse necessary medical care. Thus simple diseases that could be treated at low cost could more easily become serious with expensive complications. A special commission will decide (before the end of December 2010) whether this amendment to the law must be adopted or not.

Whatever the possible restrictions in the two laws, the balance between the respect of right to health care and the adequate use of public funds becomes a difficult choice, but we should not forget that illegal immigrants, working in the country, can be significant economic contributors, as well as sometimes, very vulnerable patients.

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13) Chamber of Representatives.