



## Case 163043

C.E., n° 163043, 23 April 1997

**Country:** France

**Region:** Europe

**Year:** 1997

**Court:** Conseil d'Etat [Council of State]

**Health Topics:** Child and adolescent health, Health care and health services, Health systems and financing

**Human Rights:** Freedom from discrimination, Right to health, Right to social security

### Facts

In this case, the Groupe d'information et de soutien des travailleurs immigrés (G.I.S.T.I.) (Information Group Supporting Immigrant Workers) requested the annulment of the decree of 21 September 1994, which modified the Social Security Code such that foreign workers were required to provide certain documents, such as proof of address, in order to access the social security system and receive social security benefits.

### Decision and Reasoning

The Council held that the decree did not violate the right to protection of health as defined by Paragraph 11 of the Preamble to the Constitution of 1949 or as provided for in international law. Article 4-1 of Convention n°118 of the International Labor Organization from June 28, 1962 established a right to equality of treatment regarding welfare benefits without reference to residence. However, this requirement was not breached where a state dispensed welfare through a branch system, and the recipients of welfare were required to live in the vicinity of that branch, as was the case here. Therefore, the requirement to provide documentation did not breach the Convention.

The Council considered Article 24-1 and Art 26 of the Convention on the Rights of the Child, which states that parties recognize the rights of children to enjoy the best state of health possible and to benefit from medical services. The Council held that because the decree affected only laborers above the age of majority, the Convention on the Rights of the Child could not be invoked to invalidate the decree. Additionally, these provisions did not affect individuals and could not be invoked in support of changing an individual administrative decision.

Because the decree reserved the rights to nationals of states belonging to the European Communities, the Council rejected the allegation that there was a discriminatory effect on such nationals. Additionally, the decree created no obstacle to the continued receipt of benefits regarding health and maternity insurance, invalidity and death foreseen by article L 161-8 of the Social Security Code for those already receiving benefits. Therefore, the Groupe d'information et de soutien des travailleurs immigrés was not entitled to cancellation of the decree.

### Decision Excerpts

« Considérant que le décret attaqué définit les titres et documents attestant de la régularité du séjour et du travail des étrangers en France en vue de leur affiliation à un régime de sécurité sociale ; qu'il a été pris en application de l'article L. 115-6 du code de la sécurité sociale issu de l'article 36 de la loi susvisée du 24 août 1993 qui subordonne cette affiliation à la régularité de la situation des intéressés ; qu'ainsi le moyen tiré de prétendue violation du onzième alinéa du préambule de la Constitution aux termes duquel la nation "garantit à tous, notamment à l'enfant, à la mère et aux vieux travailleurs, la protection de la santé, la sécurité matérielle, le repos et les loisirs" est en tout état de cause inopérant »