

TUAF01 : Refugees and Asylum Seekers and HIV: Deportation and Human Rights Violations

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Prevention of the deportation of non-European HIV positive foreigners in spite of an unfavourable judgement by the European Court of Human Rights

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HIV positive individuals' human rights

△ **Our objective: universal access to treatment**

△ **An emergency: access to treatment for HIV positive individuals who reside in countries where treatment is available**

- Same access to treatment as nationals
- Residence permits
- No deportation

Deportation = Death sentence

△ **BUT a recent decision by the European Court of Human Rights did not consider it as being a matter of fundamental rights**



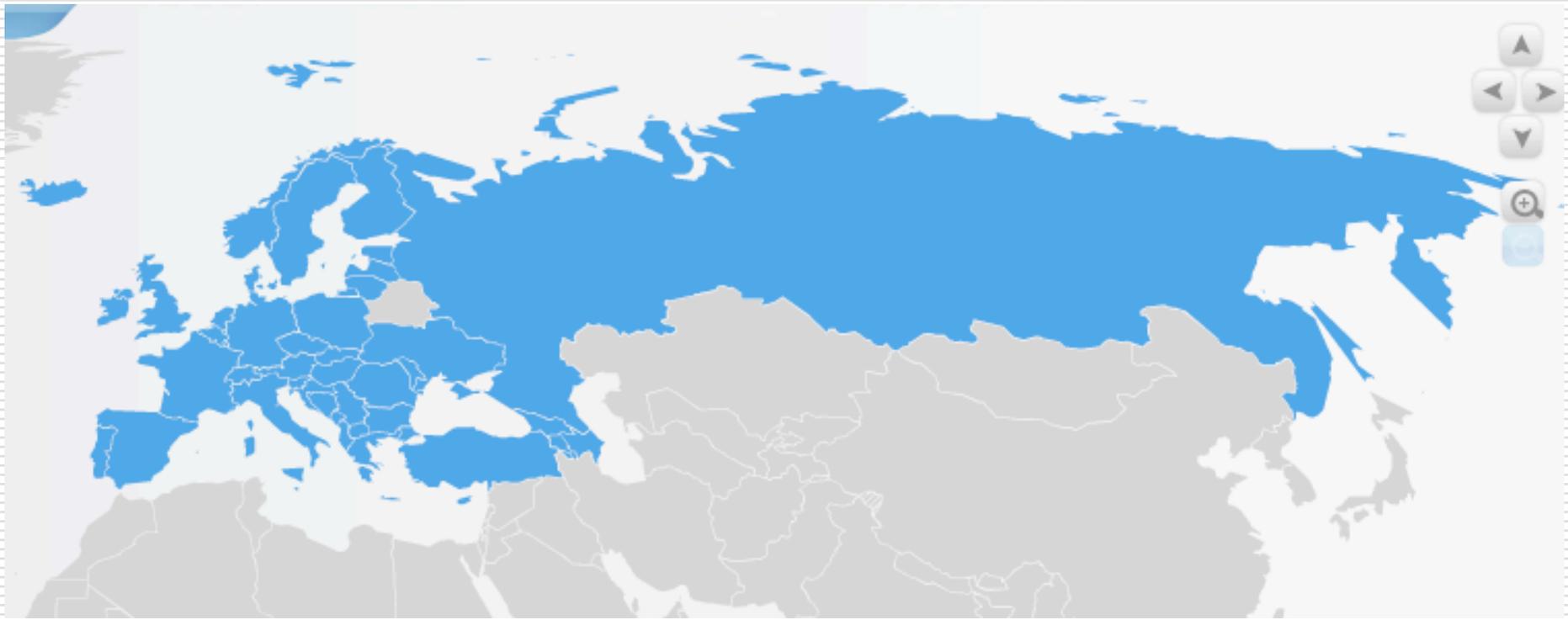
Médecins du Monde's campaign in 2009:

Deportation of a foreigner suffering from serious illness is a death sentence

Is the decision to deport a HIV positive individual to a country where treatment is not available in keeping with human rights?

△ What is the ECHR?

- 42 countries adhering to the European Convention of Human Rights.
- Highest jurisdiction when all national alternatives have been made use of.
- States required to conform to its jurisprudence.



Countries adhering to European Convention of Human Rights in 2010

Albania/Andorra/Arménia/Austria/Azerbaijan/Belgium/BosniaHerzegovina/Bulgaria/Croatia/Cyprus/
CzechRépublic/Denmark/Estonia/Finland/France/Georgia/Germany/Greece/Hungary/Iceland/Irelan
d/Italy/Latvia/Liechtenstein/Lithuania/Luxembourg/Macedonia/Malta/Moldova/Monaco/Montenegro/
Netherlands/Norway/Poland/Portugal/Romania/Russia/SanMarino/Serbia/Slovakia/Slovenia/Spain/
Sweden/Switzerland/Turkey/Ukraine/United Kingdom

Deporting a HIV positive woman to Uganda is judged legal by the ECHR (Mrs N v. UK, 27th May 2008)

△ Mrs N

- 31 year-old HIV positive woman from Uganda
- Suffering from opportunistic infections and cancer
- Stabilised with antiretroviral treatment
- Life expectancy without treatment: less than one year

△ **For ECHR, Mrs N's deportation did not constitute a violation of article 3 of the European Convention which prohibits inhumane or degrading treatment!**

Why did the ECHR deem that deporting Mrs N. did not represent inhumane or degrading treatment?

- △ **Did the Court believe that article 3 cannot be applied in the case of a sick person being deported?**
 - **YES** BUT it does recognise some « very exceptional cases »
 - In 1997, deportation of Mr D, a person with late stage HIV infection, from Great Britain to Saint Kitts was tantamount to « inhumane and degrading treatment »

- △ **Did the court consider that Mr D would unquestionably have access to appropriate treatment in Uganda?**
 - **NO**
 - According to the WHO, in Uganda, only half of those needing antiretroviral treatment have access to it.

Why did the ECHR deem that deporting Mrs N. did not represent inhumane or degrading treatment?

- △ **Did the court believe that the cost of treatment would put a heavy burden on the British health system?**
 - **YES**, the Court took financial considerations into account.
 - According to the court, a positive decision could have encouraged too many HIV positive people to come to Europe to receive treatment.

A statement based on a presumption: the myth of immigration for health

- △ A presumption: people immigrate in order to receive health care and those migrants come to Europe to benefit from medical cover.

△ **It's a myth.**



A statement based on a presumption: the myth of immigration for health

- According to a survey led by the NGO, Médecins du Monde, among about a thousand migrants in Europe in 2008, only 6% refer to health as being one of the reasons which made them immigrate.

	BE	EL	ES	FR	IT	NL	SE	UK	Total
For economic reasons, to earn a living	46,4	55,9	76,4	51,3	92,9	36,3	27,2	38,0	55,7
For political, religious, ethnic or sexual orientation reasons or to escape from war	34,8	22,0	9,3	21,6	7,1	44,1	54,4	46,3	26,1
To join or follow someone	12,5	11,0	4,6	15,1	4,0	3,9	6,8	10,2	8,9
Because of family conflict	11,6	5,1	5,6	9,5	12,1	4,9	9,7	8,3	7,9
To ensure the future of their children	6,3	11,0	11,6	4,5	1,0	9,8	5,8	4,6	6,8
For health reasons	6,3	8,5	4,2	10,1	1,0	4,9	7,8	3,7	6,1
To study	4,5	1,7	6,0	4,5	3,0	3,9	6,8	2,8	4,2
Other reason	18,8	3,4	8,3	15,1	0,0	11,8	11,7	12	11,2

*Since each person can cite several reasons for migrating, the percentage totals in the columns are above 100.

Reasons for leaving country of origin by survey country (%)

Source: Doctors of the World's European, Access to health observatory, *Undocumented migrants access to health in 11 European countries*, September 2009.

A statement based on a presumption: the myth of immigration for health

- According to a study carried out in France in 2002 and published in the Bulletin Epidémiologique hebdomadaire, only 9% of HIV positive foreigners responded that they had been tested in their country of origin.

F. Lot, C. Larsen, N. Valin, P. Gouëzel, T. Blanchon, A. Laporte, "Social and medical experiences of HIV positive people originating from sub-Saharan Africa, cared for in the hospitals in Paris and its region", Bulletin Epidémiologique Hebdomadaire, 2002.

- In 2009, the Comede, a medical committee for exiles in France, offering medical, social and psychological care to nearly 5,000 patients a year, has estimated that between 6% and 11% of HIV, HBV or HCV positive patients were tested in their country of origin.

Comede, Exiles' health. Activity and observation report, 2009, p.24

How can we ensure legal protection for foreigners?

- △ We must advocate at the European level so that in its subsequent judgements in the ECHR will alter its jurisprudence.



Act Up-Paris, May 2008

How can we attain legal protection for foreigners?

- △ We must advocate at the European level, to obtain a residence permit for health reasons which would be recognised by European Institutions.
- △ At the national level, we must fight for the recognition of a permit for health reasons
 - EHCR instituting only a minimum standard!

A protective national legislation: the French case

- △ Since 1998, individuals suffering from serious illness and who cannot receive treatment in their countries.
 - Protected from deportation
 - Can benefit from a residence permit for health reasons
- △ This legislation had been adopted thanks to the lobbying accomplished by patient organisations and organisations working to protect rights of foreigners and sick people.



- △ In 2005, less than 0,5 % of the foreigners who were living in France benefited from a residence permit owing to their state of health

Stop deportation!

The decision of the ECHR came as a blow in the fight for HIV positive migrants' fundamental rights.

We propose to every activist in countries where there is access to treatment to fight for the implementation of similar legislation in order to provide access to treatment and care to every single person who needs it.

Thank you for your attention.

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