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**OPINION**

**CONTAMINATED BLOOD**

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**1991 DECEMBER 3RD**

**OPINION REGARDING PAYMENT OF COMPENSATION TO  
HAEMOPHILIACS AND THE RECIPIENTS OF HIV-  
INFECTED BLOOD TRANSFUSIONS**

At its plenary session of November 8, 1991, the National AIDS Council resolved on its own initiative to consider the widely discussed issue of the payment of compensation to haemophiliacs and the recipients of blood transfusions infected with HIV during the transfusion procedure. The Council regrets that this thorny issue was not officially referred to it, since it is the Council's duty, according to its founding decree, to put forward opinions of an ethical or technical nature regarding all social issues raised for French society by the AIDS epidemic.

While deliberately refraining from adopting any stance on the polemical and political dimensions of this affair, or on the debate regarding the actual sequence of events in 1985, the efforts to attribute blame to individuals (this being the responsibility of the judiciary), nor on the appropriateness of the measures proposed (this being the responsibility of the legislature), it is the Council's task to advise on a whole series of ethical questions which it sees as deriving from an initial confusion between two distinct lines of reasoning : medical and economic.

1. The Council has great sympathy with the tragic nature of the experiences of all those infected through blood transfusion as it does with all those living with HIV, however they have been infected. The consequence of that sympathy is that the National AIDS Council feels great concern at the potentially harmful consequences, in terms of public opinion backed up law, of making a choice of which individuals the Nation, through the State, wishes to compensate in a spirit of solidarity. Such a measure will inevitably generate the perverse consequence of dividing a community of individuals, all suffering from the same problem, into two distinct categories: those seen as "innocent victims", as compared with the others, perceived as sick and considered, if not openly, as guilty, or at least responsible for their medical condition.

2. The National AIDS Council considers that it is important to emphasize certain points which may have negative future consequences :

- It is always dangerous and, in any event, unjustified, to apply retroactively to a period strictly limited in time, knowledge that became firmly established only after that period. However, if the State and the Nation accept such retroactive responsibility, including its application to a period in the past when the information then available did not allow proper assessment of the risks of infection by blood products, there follows from this a number of consequences and potential claims associated with the following issues :

- Why fix a boundary date (1980) which, while it corresponds to the first known cases of AIDS, quite obviously does not correspond to the dates on which the patients were infected ?
- Why take into account only infection specifically by HIV ?
- Why take into account only the medical risk associated with the transfusion procedure ?

- It appears to the Council that all medical procedures irrespective of their nature (vaccination, anaesthesia, surgery, medication, etc...) carry a risk. Until now, such dangers, which are intrinsic to the practice of medicine, have been accepted in France as part of the patient-physician relationship. The measures proposed may cast doubt in minds of patients on all proposed treatments. Who is capable, at the present time, of determining which practices, now presumed to be safe, might not, in ten or twenty years' time, be found to be harmful ? The relationship of trust between doctor and patient might thus be shaken to its very foundations, despite the essential nature of those foundations. There is a great danger that we shall soon find ourselves in a situation that is a very familiar one in other countries : the refusal by doctors, because of their fear of legal action, to intervene in serious medical cases in which a fatal outcome is probable in the short or the long run. Might not French society be at risk of moving in the direction of a situation in which doctors refuse to shoulder their responsibilities ?

3. The Council regrets that a confusion of ideas has taken hold in the public mind, a confusion between the concepts of liability and culpability that carries with it dangers for the future and which is reinforced by the spirit of the law currently being drafted. There is, unmistakably, liability without culpability when damage results from an individual using public services with which a specific risk is associated, but there is not necessarily individual culpability. Whereas liability without culpability calls for national solidarity in the provision of compensation, culpability entails, apart from penalties, other types of compensation, including legal redress.

4. The transfusion of blood products (which require very costly preparations) is an indispensable medical procedure. Criticism of the operation of blood transfusion facilities must not lead to doubt being cast on the ethics of blood donation, which is an essential component of the French system.
5. The National AIDS Council considers it dangerous to focus attention, in connection with these tragic circumstances, exclusively on the legal and financial aspects. To do so leads us to forget what is the principal concern of the authorities and of society as a whole, and that is prevention. We would point out that the sums provided for under the law on compensation for the individual cases that have been recorded add up to twenty times the budget devoted to the WHO's global programme to combat AIDS, to which France is a contributor..