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OPINION AND NOTE

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DISCRIMINATION

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**OPINION ON THE BILL ON THE PROTECTION OF THE
SICK AND DISABLED AGAINST DISCRIMINATION**

OPINION

1. The National AIDS Council notes that the provisions apply generally to discriminatory acts based on handicaps or health, and not specifically to those suffering from AIDS. The statement of purpose of the bill defines as its objective "improved protection of the rights of the sick and disabled", and "improved prevention of phenomena of social exclusion and discrimination", without specific reference to AIDS. The Council approves this approach :
 - firstly, because it appears to be wise to avoid, whenever possible, setting this disease apart from others ;
 - secondly, and conversely, because the appearance of AIDS has revealed more generalized discrimination and social exclusion due to disease and handicap, and because we can only applaud this realization of the need to counter the whole range of such phenomena.
2. The bill sets out to sanction a range of discriminatory acts, whether on the part of government departments (art. 187-1) or private individuals (art. 416), and provides not-for-profit associations with the option of declaring themselves as civil plaintiffs in penal actions. These provisions should make it possible to combat more effectively a whole range discriminatory acts in daily life, such as the refusal to provide a product or a service, which may be particularly apparent where housing or certain types of contract (insurance, vehicle rental, and so on) are concerned.
3. The bill does not extend to protection against discrimination in hiring employees (art. 416,3). A refusal to hire a given individual on the grounds of his or her state of health or disablement is not to be sanctioned in criminal law. The National AIDS Council does not oppose this restriction in the scope of the bill, since to do so would have posed thorny problems of implementation. The Council does however feel that it is both relevant and a matter of urgency to consider ways in which abuses might be prevented in this area also, particularly the refusal to employ or the dismissal of an individual not because he or she is suffering from AIDS but solely because of his or her HIV-positive status.
4. In the event of refusal to provide goods or services because of the health or disablement of an individual, no offence exists if the person refusing is able to adduce a "legitimate motive": such reference to a "legitimate motive", the existence of which will be the responsibility of the judiciary to determine in each case, provides the criminal law provisions thus put in place with the flexibility needed for effective enforcement.
5. With more specific respect to the possible effects of this bill on insurance policies, the Council considers that the new system might encourage the companies firstly to justify more effectively decisions to refuse insurance cover or to require payment of higher premiums for cover on grounds of health and, secondly, to introduce a larger measure of transparency into this area.

All in all, in the view of the National AIDS Council, the passing of such a bill could only be beneficial. Such benefit would, firstly, be symbolic in that discrimination based on health or handicap would be unambiguously outlawed ; and, secondly, it would be of practical benefit in that it would permit a more effective combat against certain forms of social exclusion, despite the fact that experience of the law on racism demonstrates the limitations of the mechanism in place, notably because of the difficulties encountered by victims in proving the discriminatory character of the rejection they have experienced.

Finally, the Council notes that this bill responds to the concern expressed by various international bodies, the European Parliament in particular, which, in a resolution passed on May 26, 1989, asked Member States to "introduce, if appropriate, new legislative and regulatory measures to halt and prevent all discrimination against those living with HIV or AIDS".

Note :

There was with surprise and dismay that the National AIDS Council, notably at its plenary session of April 26, 1990, observed that this bill had been amended during the period between its referral to the NAC and the vote in Parliament. The amendment concerned is an important one: it purports to be a matter of detail but explicitly excludes insurance from the scope of the

bill. Ms Héritier-Augé has informed Claude Évin, Minister of Social Affairs and Solidarity, of the concern felt by the National AIDS Council regarding a change made without its knowledge on an essential point in the bill.

NOTE

See French version