

## **A short overview of some COVID19 responsibility problematics in France**

On July 6, 2020, the number of COVID19 confirmed cases in France stood at 168,335 and the number of deaths 29,920. These numbers have continued to increase and are of great concern.

It is well known that an excess mortality was noted in the EPHADs (Institutions for dependent and aged persons), and attributed to COVID19. In Ile-de-France (Paris and its region) the excess mortality

Legal actions have been launched, either to challenge governmental bodies responsibilities, in particular criminal complaints against such or such holder of a public charge, such as complaints lodged before the *Court of Justice of the Republic*, unique jurisdiction empowered to judge acts committed by members of the government within their functions (there were 63 complaints before the *Court of Justice of the Republic* on May 13, 2020).

There has been a noticeable, and sometimes criticised, mobilisation of lawyers, especially when some of them have tried, by initiating by themselves defence associations, in order to get clients; moreover, that has been the case with lawyers non specialised at all in personal injury matters.

[https://www.lemonde.fr/planete/article/2020/06/11/des-victimes-du-covid-19-pris-dans-les-files-de-cabinets-d-avocats-opportunistes\\_6042449\\_3244.html](https://www.lemonde.fr/planete/article/2020/06/11/des-victimes-du-covid-19-pris-dans-les-files-de-cabinets-d-avocats-opportunistes_6042449_3244.html)

But it is of principle that any mission of a lawyer consists of accompanying, advising and enlightening the associations in regard of the actions they later themselves decide to bring; such a principle certainly inspired the French legislation on mass action (2014), providing that lawyers must not coordinate any group action, but only bring legal actions on their behalf.

In regard to COVID19, it can be noted that the FENVAC (*National Federation of Victims of Attacks and Collective Accidents*, aimed at grouping all particular associations of victims), as well as notably families of victims of the coronavirus who died in EPHADs, decided to file together a legal action by way of a criminal complaint lodged with the Public Prosecutor in Paris at the end of April 2020:

<https://www.parismatch.com/Actu/Societe/Coronavirus-des-familles-et-une-association-de-victimes-saisissent-la-justice-1683968>

The complaint is grounded on article 223-1 of the Penal Code which punishes *"The fact of directly exposing others to an immediate risk of death or injury likely to cause mutilation or permanent infirmity by the manifest violation deliberate of a particular obligation of safety or prudence imposed by law or regulation"*.

FENVAC referred to both Law n° 2020-290 of March 23, 2020 imposing health emergency measures to deal with COVID-19 epidemic and Decree of same date n ° 2020-293 prescribing *"general measures necessary to face the epidemic"*, despite of which professionals could not either have access to protective equipment and materials (such as sanitiser gel, protective gloves and masks), nor benefit from tests; as to medical staff, FENVAC invoked article R. 4423-3 of the Labor code which lists the measures which must be taken by the employer in the event of risks to workers' exposure to any biological agent.

Very fierce debates and controversies have taken place between supporters and opponents of using hydroxychloroquine; proponents of the use of this medication noted the significantly positive results obtained, based on the percentage of deaths in patients to whom this product was administered; opponents took refuge in the absence of any research methodology, consisting on randomised comparison with placebo, and therefore the absence of any certainty about hydroxychloroquine's real curative effects.

Professor Didier Raoult, as a main supporter of the use of hydroxychloroquine, was heard by a parliamentary committee: <https://www.youtube.com/watch?v=K71LcQDnIOg>

Professor Christian Perronne, another supporter, has published a book entitled "*Is there a single mistake they did not commit?*", targeting among other the pharmaceutical lab lobby: [https://www.francetvinfo.fr/sante/maladie/coronavirus/coronavirus-19-de-letalite-en-france-c-est-une-catastrophe-nationale-deploire-le-pr-perronne\\_4012715.html](https://www.francetvinfo.fr/sante/maladie/coronavirus/coronavirus-19-de-letalite-en-france-c-est-une-catastrophe-nationale-deploire-le-pr-perronne_4012715.html)

It is generally replied to such use of hydroxychloroquine, and in particular in France by Professor Philippe Juvin, that there is a lack of sufficient scientific experimentation of medications used by Professor Raoult.

Opinions allege that the real stake of such a hostile position against such a medication is actually to promote *Remdesivir*, which is the sole medication being authorised by European Union authorities since July 6, 2020: <https://www.sortiraparis.com/actualites/a-paris/articles/216687-coronavirus-l-union-europeenne-autorise-la-mise-sur-le-marche-du-remdesivir>

It is likely that all actions, debates and legal controversies surrounding the different responsibilities invoked in France regarding the COVID19 crisis, may lead to the creation of a specified temporary compensation fund, as an opportune alternative to multiplication of procedures.

Such was the case of the Compensation Fund for Transfused and Hemophiliacs (FITH) in 1991; the Compensation Fund for Asbestos Victims (FIVA) in 2001; the Compensation Commission for Victims of Nuclear Tests (CIVEN) in 2010 and the Compensation Fund for Victims of Pesticides (FIVP) in 2020.

It is very likely that creating such a pragmatic and compensatory fund would ultimately also be the means for diverting complaints and criminal actions from their concrete targets of responsibility and preserving perpetrators from the consequence of their failure.

**Jean-Pierre Bellecave**