

France: Court dismisses charges in tainted blood scandal

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On June 18, France's highest appeals court sustained a decision to dismiss for lack of evidence the trials of all those accused in a scandal involving the distribution of AIDS-contaminated blood to the French public. The ruling by the Court of Cassation put the finishing touches on the official cover-up of one of the most horrifying crimes of the Socialist Party (PS) government that ruled France in the early 1980s. The politically explosive character of the case stemmed not only from the justified outrage of the victims' families, but also from the fact that the highest levels of the political and business elite were implicated in this social crime.

From 1983 to 1985, the heads of the National Center for Blood Transfusion (CNTS)—the public company that collects and processes blood supplies—distributed stocks of non-treated blood that they knew to be contaminated by the HIV, the virus that causes AIDS. More than 4,000 victims received these poisoned transfusions, above all in the French hemophiliac population. Many of them have since died. Investigations are still under way as to whether contaminated blood samples were delivered to other countries, notably Tunisia, where they would have claimed more victims.

According to Patrice and Agnès Gaudin, parents of two hemophiliac children contaminated at the ages of 5 and 8, who died at 11 and 15, "They were used as guinea pigs, receiving blood transfusions twice a week, even though their hemophilia only required such a treatment once a month. From 1983 to 1985, [doctors] knew that the blood packets were contaminated—first 45 percent, then 60 percent, then 100 percent."

The French criminal justice system established that the heads of the CNTS knew that the supplies of tainted blood were deadly in May 1985, but that they continued to sell them off until October 1985. This was the main piece of evidence that resulted in 1992 in the sentencing of Jean-Michel Garretta, head of the CNTS in 1985, to four years

in prison. Garretta's assistant, Jean-Pierre Allain, the former general director for health Jacques Roux, and the former director of the National Health Laboratories—subsequently exonerated—were also declared guilty by the courts.

While senior medical officials were singled out for punishment, the PS government of the time, led by Laurent Fabius, bears an equal if not greater responsibility. It blocked the deployment of an AIDS detector test developed by the US firm Abbott so as not to harm the French firm Pasteur, which was about to market its own detector test. Fabius, currently second-in-command at the PS and head of its openly free-market wing, is widely expected to be the PS candidate in the next presidential elections in 2007.

Judicial proceedings against the ministers of the Fabius government—Fabius himself, the minister of Social Affairs Georgina Dufoix and Health minister Edmond Hervé—continued until the end of the 1990s. In 1992-93 the High Court of Justice dropped the charges against the ministers for lack of evidence, but the French Association of Hemophiliacs opened new proceedings in 1994 in the Republican Court of Justice (CJR). In March 1999, the CJR—comprised of three judges and 23 legislators—acquitted Fabius and Dufoix but found Hervé guilty of involuntary homicide and wounding, while exempting him from any punishment. A PS senator, François Autain, unleashed a scandal by declaring that he and all his Socialist colleagues had voted to acquit the accused because the charges were "politically motivated."

Judge Marie-Odile Bertella-Geffroy finished her investigations in May 1999, preparing trials for 7 people on charges of poisoning and 23 on charges of involuntary homicide. Among them, she charged Laurent Schweitzer—former assistant to Fabius and currently CEO of the auto firm Renault—and the ministerial counselors of Edmond Hervé. In July 2002, the Paris appeals court

dismissed these charges for lack of evidence and the Court of Cassation has now upheld the dismissal.

The court's decision rested largely on a law introduced by Senator Pierre Fauchon of the center-right UDF (Union for French Democracy) and passed on July 10, 2000, which modified the criminal code to require a very high level of proof in cases involving involuntary crimes. Prosecutors must now demonstrate a "characterized error" of a "particular gravity" in order to prove someone guilty of such a crime.

When the National Assembly passed the law, it was widely viewed as a legislative amnesty for the tainted blood scandal. Thus Olivier Duplessis, president of the French Association for Recipients of Blood Transfusions, wrote a letter to François Hollande, then president of the PS, denouncing the law for "installing a two-speed justice that favors high officials, in particular political ones, and penalizes lower ones whose errors, although 'direct,' are often only the inevitable consequences of the decisions of those who make 'indirect' errors."

The Court of Cassation's decision to cover up the scandal produced decisions couched in insulting and haughty language. Faced with a conspiracy which lasted for years, and which the justice system itself has recognized lasted for months, the court's solicitor general, Dominique Commaret, maintained that "criminal justice does not have the obligation to find someone guilty each time there is an accident in life."

The essential role of the Fauchon law in the dismissal of the charges is obvious when one considers the treatment of Edmond Hervé's ministerial counselors. Even if there was enough evidence in 1999 to condemn the minister, his counselors—like the rest of the accused—are let off in 2003. According to the courts, "In the uncertainty on the existence of a causal link between the errors of which they are accused and the damages supposedly resulting, the failings of the ministerial cabinet officials, of the CNTS members, and of the director of the National Health Laboratory cannot be criminalized."

Emmanuel Piwnica, Laurent Schweitzer's lawyer, adopted a cruder tone, lecturing the bereaved families: "The criminal justice system is not a toy.... It will solve neither the problems of public health nor the suffering of the victims."

Families of victims who were present at the trial shouted their anger and frustration. The reporter for the center-left daily *Le Monde* described the scene: "The victims' families shout, while the Court retires, in a long line of black robes turning their backs to the public.

'Shame! Shame on you!' 'Rotten justice!' 'You didn't look at the files, everything was decided in advance!'" A family told the daily *Libération*, "There are two justices: one for white-collar assassins, another for the lower orders of society."

Lawyers specializing in public health and medical cases fear that this decision and the interpretation of the Fauchon law upon which it was founded will preclude any future criminal prosecutions in cases involving gross negligence or malpractice. François Honnorat explained it succinctly: "Since the Fauchon law, we are confronted with a problem in proving that errors occurred."

Indeed, several controversial health cases await trial, under conditions where it will be essentially impossible to establish direct links between the actions of a given high official or doctor and the onset of a particular disease. Amongst others, there are: the hepatitis B vaccination campaign, during which pharmaceutical companies knowingly published false data to justify vaccinations that threatened populations not at risk for the disease with serious side effects; the radioactive cloud emitted by the Chernobyl nuclear plant, whose importance French health authorities downplayed, preventing the setting up of elementary precautionary measures used throughout the rest of Europe; and Creutzfeldt-Jakob disease ("mad cow" disease), a deadly disease that attacks the brains of those who eat contaminated beef.

Libération wrote on June 19, "It is the entire question of criminal responsibility in public health that is in question." On June 20, the conservative daily *Le Figaro* also complained of the Fauchon law, although from a different standpoint: it worried that the "solicitude" granted to high officials by the law does not extend to CEOs.

In fact, this tragedy shows that, when needed, the major political parties and the corporate media in France will unite to ensure that there is no criminal responsibility for public health. As *Le Figaro's* comment shows, ruling circles are actively seeking ways of further shielding themselves from criminal charges. This must give pause to those who would insist that "democratic" governments are incapable of killing their own citizens for profit or reasons of state.



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