



THE COUNCIL OF STATE AND THE ADMINISTRATIVE JURISDICTION

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8 March 2017 | Contentious decision

Injunction resumption of care

The judge hearing the application for interim measures of the Conseil d'Etat confirms the injunction to resume the care of a one-year-old child

> *Read the order*

The judge hearing the application for interim measures of the Conseil d'État confirmed the injunction to resume the care of a one-year-old child.

The essential :

- A one-year-old child in the pediatric intensive care unit at La Timone Hospital, Marseille, was diagnosed with severe neurological injuries, resulting in paralysis of the limbs, face and Breathing and artificial feeding.
- Following the initiation of a collegial procedure, the physician in charge decided to stop the child's continuing treatment, considering that it would be unreasonably obstinate. The parents objected and filed a complaint with the Administrative Court of Marseilles.
- After ordering an expert opinion, the judge in the Tribunal de Administratif de Marseille, by an order dated 8 February 2017, suspended the decision to discontinue the treatment and ordered the medical team to continue the treatment.
- On appeal by the Public Assistance - Hôpitaux de Marseille, the judge hearing the application for interim measures of the Council of State upheld the order; It was based on two elements:

○ On the one hand, the state of consciousness of the child had been the subject of improvement and its future evolution remained uncertain. The judge hearing the application for interim measures therefore took the view that the cessation of treatment had not been decided after a sufficiently long period to assess the consequences of the neurological lesions.

○ Secondly, the judge hearing the application for interim measures considered that the opinion of the parents was of particular importance; But they were unanimously opposed to the cessation of treatment.

The facts and the procedure:

A one-year-old child who was placed in the pediatric intensive care unit at La Timone Hospital in Marseilles was diagnosed with severe neurological damage, resulting in paralysis of the limbs, face and dependence on respiration And artificial feeding.

The doctor in charge then decided to initiate the collegiate procedure provided for in the Public Health Code, at the end of which it may be decided to interrupt the treatment of a person who is unable to express his wishes. This decision may be taken when the treatments reflect an unreasonable obstinacy: when they appear unnecessary, disproportionate or when they have no other effect than the mere maintenance of life artificially, they may be suspended or not undertaken.

In the present case, following a collegial meeting, it was decided unanimously to discontinue the treatments given to the child on the grounds of the irreversible nature of the neurological lesions and a difficult state of consciousness To be evaluated but probably strongly altered. The parents of the child, informed of the conclusions of that meeting, then expressed their opposition to the cessation of treatment and referred the matter to the judge hearing the application for interim measures of the Marseille Administrative Court.

By an initial order of 16 November 2016, the judge hearing the application for interim measures of the Administrative Court provisionally suspended the execution of the decision and ordered a medical examination.

By a second order of 8 February 2017 he suspended the decision to discontinue the treatment and ordered the medical team to provide the child with appropriate care.

The Public Assistance - Hôpitaux de Marseille appealed against this order to the judge hearing the application of the Conseil d'État.

The decision of the President of the Court of First Instance:

1. In today's order, the judge hearing the application for interim measures from the Conseil d'État begins by recalling that he must exercise a particular office in respect of a decision to discontinue his salary.

In principle, the judge in charge of summary conviction, who pronounces itself within a very short period of time, can only put an end to a fundamental freedom when it is manifestly unlawful. However, with regard to the decision to discontinue or not to undertake treatment on the ground that it would reflect an unreasonable stubbornness, whose execution irreversibly affects life, the judge hearing the application for interim measures orders the safeguard measures. Since it considers that this decision does not fall within the assumptions provided for by the law.

2. The judge hearing the application for interim measures of the Conseil d'État shall then examine whether the conditions imposed by law to interrupt the salary of a person unable to express his wishes (procedure applied by the hospital) were satisfied.

It falls within the framework of its recent case-law (EC, Assembly, 24 June 2014, Ms Rachel L. and others), which provides that the physician in charge must rely on a set of medical and non- Depends on the particular circumstances of each patient.

In the present case, the President of the Conseil d'État held that, in view of the medical and non-medical elements, the conditions laid down by the law had not been met.

It points out, on the one hand, that there has been evidence of improvement in the state of consciousness of the child and that there is uncertainty as to the future development of this state. In these circumstances, despite the extremely pejorative prognosis established by the medical experts, he considered that the cessation of treatment could not be regarded as taken after a sufficiently long period to evaluate with certainty the consequences of the neurological lesions.

The judge hearing the application for interim measures also observes that, since it was not possible to ascertain the will of the child, who was less than one year old at the date of the decision, the opinion of his parents is of particular importance. However, they unanimously oppose the cessation of treatment.

In the light of those considerations, the President of the Court of First Instance considers that the continuation of the treatment in the circumstances of the case did not characterize an unreasonable obstinacy, having for no other purpose than the artificial maintenance of life. The decision to discontinue the child's treatment was therefore not a matter of the interruption of treatment provided for by law in respect of persons unable to express their wishes.

Since it finds that the decision could not be taken by the doctor in the context of that procedure, the President of the Court of First Instance does not rule on the question whether that procedure was applicable or whether, A minor, the consent of the parents to the cessation of treatment was necessary.

The President of the Conseil d'État therefore dismissed the appeal of the AP-HM. In accordance with the order of the judge hearing the application for interim measures of the Marseille Administrative Court, the Court of First Instance continued to take care of the child.